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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA 926/2016 & CMs No.44272-73/2016**

Reserved on: 28.03.2017

Date of decision: 11.04.2017

IN THE MATTER OF:

GUDDI DEVI & ORS

..... Appellants

Through : Mr. Rajiv Bajaj, Advocate with
appellant in person.

versus

NEELAM DEVAL

..... Respondent

Through : None.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J.

1. The appellants/defendants are aggrieved by the judgment on admissions pronounced by the learned trial court on an application filed by the respondent/plaintiff under Order XII Rule 6 CPC in a suit for partition of a residential premises.

2. The facts narrated by the respondent/plaintiff in the plaint are that the subject premises was originally owned by her mother, Smt. Sheela Devi, the first wife of Shri Sant Ram, who died intestate in the year 1983, leaving behind two legal heirs, namely, the respondent/plaintiff and her father, Shri Sant Ram. Later on, Shri Sant Ram got married to the appellant No.1 and

from out of the said wedlock, they had five children (appellants No.2 to 6 herein), who are the step brother/sisters of the respondent/plaintiffs. Shri Sant Ram died intestate on 16.5.2014, and on his demise, the respondent/plaintiff claims entitlement to 8/14th share in the suit premises, as against the appellants No.1 to 6/defendants, who as per her, are entitled to 1/14th share each in the suit premises. Stating that when the respondent/plaintiff had approached the appellants/defendants demanding her share in the suit premises and was refused, she had to institute the present partition suit in October, 2014.

3. After service was effected on all the appellants/defendants, they filed a joint written statement and pleaded *inter alia* that though Shri Sant Ram had purchased the suit premises in the name of his wife, Smt. Sheela Devi, the same was bought from his own funds. During her lifetime, Smt. Sheela Devi had executed documents transferring the suit premises in favour of her husband, who became the sole and absolute owner thereof. During his lifetime, Shri Sant Ram had executed a will bequeathing the suit premises in favour of the appellant No.1 (defendant No.1) and by virtue of the said will, she had become the exclusive owner thereof. It was thus stated that the respondent/plaintiff had no concern with the suit premises and does not have the *locus standi* to institute the partition suit.

4. After the pleadings were completed in the suit, sometime in April-May, 2016, the respondent/plaintiff filed an application under Order XII Rule 6 CPC stating *inter alia* that there is sufficient material on record to demonstrate that she is entitled to a judgment on admissions. Reference was made in the said application to a Relinquishment Deed executed by the appellants No.2 to 6 in favour of their mother, appellant No.1, a certified

copy whereof was placed on record. In their reply, the appellants did not deny the existence of the Relinquishment Deed but sought to explain that at the time when the said document was executed, it was not to their knowledge that late Shri Sant Ram had executed a will, original whereof was in the custody of the sister of the appellant No.1(defendant No.1) whereunder he had bequeathed the suit premises exclusively in favour of his wife.

5. After hearing the arguments advanced by the parties, the trial court held that the appellants/defendants had failed to file any documents, including the will allegedly executed by late Shri Sant Ram, to substantiate their claim that he had bequeathed the suit premises exclusively in favour of the appellant No.1 (defendant No.1). It was noted that the averments made in the written statement about the said will, were vague and unspecific as no details thereof were furnished, not even the date of execution of the purported will was mentioned in the written statement.

6. It is not out of place to mention here that in response to an application that was filed by the respondent/plaintiff under Order XI Rules 12 and 14 CPC, calling upon the appellants/defendants to produce the original title documents of the suit premises allegedly executed by Smt. Sheela Devi in favour of Shri Sant Ram alongwith the complete chain of documents, the appellants/defendants had stated in their reply that the said documents had got lost/misplaced. This being the position, an adverse inference was drawn by the learned trial court against the appellants/defendants, for non-production of the said documents and it was held that as the main plank of the defence taken by the appellants/defendants was predicted on the aforesaid documents, on failure to produce them, they are not left with any

defence. It was also noted that the pleas taken by the appellants/defendants in the written statement were bereft of any details and material particulars.

7. The trial court held that the suit premises belonged to Smt. Sheela Devi, who had died intestate, and on her demise, the respondent/plaintiff and her father, Shri Sant Ram became joint owners to the extent of $\frac{1}{2}$ share each and on the demise of Shri Sant Ram, his half undivided share in the suit premises had devolved on his wife, the appellant No.1 (defendant No.1), the children from his second marriage, i.e., the appellants No.2 to 6 herein and the respondent/plaintiff who was born from the first marriage, and each of them were entitled to $\frac{1}{7}$ th share therein. Thus the undivided share of the respondent/plaintiff in the suit premises was held to be $\frac{8}{14}$ th. Consequently, a judgment on admission was passed followed by a preliminary decree in respect of the suit premises. Aggrieved by the aforesaid order, the appellants have filed the present appeal.

8. Mr. Bajaj, learned counsel for the appellants submits that the learned trial court has failed to appreciate that at no point in time did the appellants/defendants admit to the fact that the respondent/plaintiff had a share in the suit premises and in the absence of any admission of any nature, a judgment on admissions could not have been passed.

9. This Court has heard the learned counsel for the appellants and carefully perused the impugned order in the light of the pleadings in the suit and the application filed by the respondent/plaintiff under Order XII Rule 6 CPC and under Order XI Rules 12 and 14 CPC, as also the documents placed on record, particularly the Relinquishment Deed dated 19.9.2014.

10. In several judicial pronouncements, courts have had the occasion to examine the object of Order XII Rule 6 CPC and have held that the said provision confers a wide discretion upon Courts to pass a judgment on the basis of admissions made by the parties, at any stage of the suit. The scope and ambit of Order XII Rule 6 CPC was examined by the Supreme Court in the oft quoted case of Uttam Singh Duggal and Co. Ltd. vs. Union Bank of India reported as **AIR 2000 SC 2740**, where the following observations were made :-

*"12. As to the object of the Order 12 Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that 'where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. **The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.**' We should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed." (emphasis added)*

11. The underlying object of Order XII Rule 6 CPC is to ensure that a party can obtain a speedy judgment where an admission has been made by the other side. While passing an order under Order XII Rule 6 CPC, Courts have not only to scan the pleadings of the parties, but also take into consideration any document or statement on record, which can even be dehors the pleadings. [Refer: Shikharchand and Ors. vs. Mst. Bari Bai and

Ors.; AIR 1974 MP 475, I.T.D.C. Ltd. vs. Chander Pal Sood and Son; 84 (2000) DLT 337 (DB), K.N. Construction vs. JVG Finance Ltd.; 111 (2004) DLT 437, Rajiv Srivastava vs. Sanjiv Tuli and Anr.; AIR 2005 Delhi 319 and Harish Relan vs. Kaushal Kumari Relan; 237 (2017) DLT 282]

12. Before applying the provisions of Order XII Rule 6 CPC, the facts of each case must be examined by the court. In the present case, the relationship between the parties is not in dispute. The factum of Smt. Sheela Devi (biological mother of the respondent/plaintiff) being the owner of the suit premises by virtue of a set of sale documents is also undisputed. However, the appellants/defendants have taken a plea in their written statement that late Shri Sant Ram had purchased the suit premises in the name of Smt. Sheela Devi from his own funds and in her lifetime, his wife had executed some documents to transfer the said premises in his favour and by virtue of the said documents, Sh. Sant Ram had become the exclusive owner of the suit premises. It has also been averred by the appellants/defendants that late Shri Sant Ram had executed a will, bequeathing the suit premises in favour of his second wife, appellant No.1 herein, without furnishing any details of the will and based on the said bequest, she had become the absolute owner thereof to the exclusion of all else including the respondent/plaintiff.

13. It may be noted here that nowhere in their written statement, did the appellants/defendants refer to the Relinquishment Deed dated 19.9.2014 executed by them in favour of the appellant No.1. The carpet was pulled from under their feet when the respondent/plaintiff filed an application under Order XII Rule 6 CPC and brought to light a duly registered Relinquishment Deed executed by the appellants No.2 to 6 in favour of their

mother, appellant No.1. A certified copy of the Relinquishment Deed was obtained and filed by the respondent/plaintiff with the aforesaid application, which clearly mentions in the recital that late Shri Sant Ram did not execute any will in his lifetime.

14. Caught on the back foot, the appellants/defendants could not deny the execution of the Relinquishment Deed but sought to explain the circumstances in which the said document was executed. They claimed in the reply that when the said document was executed, it was not to their knowledge that Shri Sant Ram had in fact executed a will during his lifetime, bequeathing the suit premises in favour of the appellant No.1, which document was in the custody of the latter's sister.

15. It would have been a different matter if at the time of filing their reply to the application filed by the respondent/plaintiff under Order XII Rule 6 CPC, the appellants/defendants would have backed their claim by producing the will allegedly executed by Shri Sant Ram in favour of the appellant No.1, but that is not the case.

16. As is apparent from a perusal of the impugned judgment, the suit was instituted by the respondent/plaintiff on 7.8.2015. At the time of filing their written statement, the appellants/defendants elected not to file any document. On completion of the pleadings in the suit, the respondent/plaintiff moved an application under Order XI Rules 11 & 14 CPC in July, 2015, calling upon the appellants/defendants to produce the original title documents in respect of the suit premises along with the complete chain of documents. In reply to the said application, appellant No.1 filed an affidavit on 21.3.2016, stating *inter alia* for the first time that the title documents of the suit premises were lost/misplaced when the said

premises was being whitewashed and the same shall be filed as and when available.

17. Issues were framed in the suit on 21.3.2016 and thereafter, the parties were called upon to file their list of witnesses. Pertinently, no documents were filed by the appellants even at that stage. The learned trial court has recorded that the appellants/defendants neither filed a list of witnesses nor did they mention the names of any of the attesting witness to the will allegedly executed by late Shri Sant Ram in favour of the appellant No.1. The sister of the appellant No.1, in whose custody the said will was, has not even been named by the appellants in the list of witnesses.

18. Taking note of the unspecific, vague and ambiguous defence taken by the appellants/defendants in their written statement and observing that they had not filed any documents, whether photocopies or originals, to substantiate their defence, and even the affidavit dated 21.3.2016 filed by the appellant No.1 in reply to the application filed by the respondent/plaintiff under Order XI Rules 12 and 14 of the CPC, for production of documents, was extremely vague and without any material particulars, an adverse inference was drawn against them for non-production of the said documents and the conclusion drawn was that they did not possess any documents to support the defence taken by them in the written statement.

19. There are a catena of judicial pronouncements wherein it has been held that if the defence raised by the defendants is extremely vague, opaque and ambiguous, then it is the duty of the court to turn down the said defence and based on admitted documents, pass a judgment on admissions. [Refer: Delhi Jal Board vs. Surendera P. Malik; **104 (2003) DLT 151**, Vijay Myne vs. Satya Bhushan Kaur; **142 (2007) DLT 483**, Shri Vimal Khanna vs. Shri

Kishan Chand Khanna; DRJ 116 (2010) 251, P.P.A. Impex Pvt. Ltd vs. Mangal Sain Mittal; 166 (2010) DLT 84 and Tirath Ram Shah Charitable Trust and Ors. vs. Sugra Bi @ Sughra Begum (Decd.); 225 (2015) DLT 666]

20. In the present case, the Relinquishment Deed dated 19.09.2014 executed by the appellants No.2 to 6 in favour of the appellant No.1 (defendant No.1) is an undisputed document. A copy of the said registered document has been filed by the respondent/plaintiff. The said Relinquishment Deed clearly states in the recitals that late Shri Sant Ram had not executed any will in his lifetime. This clearly falsifies the plea taken by the appellants in their joint written statement that Sh. Sant Lal had executed a will in favour of the appellant No.1. In fact, the Relinquishment Deed demolishes the entire defence set up by the appellants/defendants in their written statement.

21. It is evident that the appellants/defendants have deliberately withheld material information at the time of filing their written statement. There is not a whisper in their written statement about the execution of the Relinquishment Deed or a mention made therein that when the said document was executed by the appellants No.2 to 6 in favour of the appellant No.1, they were unaware of the fact that late Shri Sant Ram had executed a will, and that the said document was in the custody of the sister of the appellant No.1.

22. This Court finds considerable force in the observation made in the impugned order that the appellants/defendants did nothing to prove their case. They did not file the list of witnesses or name any witness to the purported will, including the sister of the appellant No.1, nor did they lodge

any police complaint to substantiate their plea that all the documents of title relating to the suit premises allegedly executed by Smt. Sheela Devi in favour of late Shri Sant Ram, had got lost or were misplaced. All these versions are bereft of any material particulars and not backed by any document.

23. There is no explanation offered by the appellants as to why could they not obtain even a copy of the will purportedly executed by late Shri Sant Ram in favour of the appellant No.1 from her sister. The vagueness of the said defence is also apparent from the fact that the appellants have not even furnished the name of the person in whose custody the said will is supposed to be. The trial court also took note of the fact that the appellants had stated before the High Court, before the suit was later transferred to the trial court, that they were not in possession of any such document, nor did they intend to file any document.

24. In response to the application filed by the respondent/ plaintiff under Order XI Rules 12 and 14 CPC, the appellant No.1 (defendant No.1) filed an affidavit stating *inter alia* that the title documents relating to the suit premises were not traceable. The said bald averment has been made without furnishing any details as to when did the said document go missing and whether any steps were taken to lodge a complaint with the local police with regard to loss of such an important document. Drawing an adverse inference against the appellants for non-production of all the relevant documents to support their case and substantiate the defence taken by them in the written statement, the impugned judgment on admission came to be passed and it was declared by the learned trial court that the respondent/plaintiff shall be entitled to 8/14th undivided share in the suit premises whereas, each of the

appellants would be entitled to 1/14th share therein.

25. Even in the course of arguments in the present appeal, this court had enquired from learned counsel if the appellants are in a position to produce the relevant documents of transfer allegedly executed by Smt. Sheela Devi in favour of her husband, Sh. Sant Lal and the will allegedly executed by the latter in favour of the appellant No.1. Ample time was given to the appellants to produce the relevant documents, but learned counsel for the appellants expressed his inability to produce them. In such circumstances, there is no question of taking the case to trial as it would be a futile exercise. When the entire case of the appellants hinges on documents which have not seen the light of the day through out the suit proceedings and in the appeal and on the other hand, the respondent/plaintiff has filed a copy of the Relinquishment Deed which is a registered document, and states in so many words that Late Sh. Sant Lal had not executed any will in his lifetime, the trial court cannot be faulted for passing a judgment on admissions.

26. This Court is therefore of the opinion that the trial court was justified in piercing the sham defence taken by the appellants/defendants and proceeding to pass a judgment on admissions. The appeal is accordingly dismissed in *limine*, along with the pending applications, being devoid of merits.

APRIL 11, 2017
sk/rkb/ap

(HIMA KOHLI)
JUDGE