

\$~

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

Reserved on: 10th February, 2020

Date of decision: 20th February, 2020

+ **CM (M) 163/2020 & CM APPLs. 5208/2020, 5209/2020**

HUNNY SHARMA & ORS.

..... Petitioners

Through: Mr. R. K. Trakru and Mr. Hem C.
Vashisht, Advocates.
(M:9811039867)

versus

VED PRAKASH SHARMA & ANR.

..... Respondents

Through: Mr. Karan Kapoor and Mr. Manik
Kapoor, Advocates for R-1.
(M:9582767512)
Mr. Arnabee Chakrabarty, Advocate
for R-2. (M:9591983894)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

1. A suit for partition of property ad-measuring 200 sq. yds. in Arjun Nagar, Kotla Mubarakpur, Opp. Defence Colony, New Delhi (*hereinafter* 'suit premises') was filed by Mr. Ved Prakash Sharma (*hereinafter* 'Plaintiff') against the family members of his two brothers – Mr. R.P. Sharma and Mr. O.P. Sharma. In the said suit, Defendant Nos.1 and 2 represent the family of Mr. R.P. Sharma and Defendant No.3 is the widow of Mr. O.P. Sharma.

2. The case of the Plaintiff is that he along with his brother i.e. Mr. O.P. Sharma and the wife of the second brother – Mrs. Raj Rani Sharma purchased the suit premises. Each of the brothers/their family owned 1/3rd

share. Despite repeated requests, the Defendants did not agree for partition. Hence the suit for partition.

3. In the written statement, Defendant No.3 - Mrs. Puran Laxmi Sharma – wife of Mr. O.P. Sharma, primarily pleaded non-joinder of necessary parties. She took the stand that she is residing in a portion of the suit premises which is less than her 1/3rd share in the property. Finally, it was averred that physical division of the property is not possible by metes and bounds.

4. The family of Mr. R.P. Sharma i.e., his son (Naresh Sharma) and grandson (Hunny Sharma s/o Lalit Sharma) filed a common written statement. Substantive defences were raised that the Plaintiff was a minor at the time of purchase of the suit premises. The co-ownership of the Plaintiff was disputed. It was further claimed that Mr. R.P. Sharma purchased the property from his own funds. The interpretation of the sale deed is also disputed. It is further claimed that in a handwritten letter dated 27th June, 1973, the Plaintiff had relinquished his share in favour of Mr. R.P. Sharma.

5. After completion of pleadings, an application under Section 65 of the Evidence Act was filed to lead secondary evidence. Production of some original documents was sought. The suit was then transferred on 8th December, 2015 to the District Judge, Saket Courts (South) in view of the increase in the pecuniary jurisdiction of the Delhi High Court. The matter proceeded before the Trial Court. For some time, mediation was explored between the parties. Application under Orders I Rule 10 CPC and VI Rule 17 CPC were filed by the Plaintiff seeking impleadment of the daughters of Mr. R.P. Sharma and wife and daughter of Mr. Lalit Sharma who had since passed away. The said application was allowed on 27th July, 2017. On 15th

October, 2018 and 24th January, 2019, the Court explored the appointment of a Local Commissioner for recording evidence. On 22nd April, 2019, however, the Court passed the following order:

“The present case is fixed for filing of the affidavit towards admission/denial of documents and framing of issues. Counsel for the plaintiff stated that the defendant did not place on record any document. After hearing both the parties, this court is of the opinion that no legally acceptable dispute has been raised by the defendant in the written statement. Accordingly, an opportunity is granted to both the parties to address arguments on the point of passing of a preliminary decree or final decree straightway. Put up for arguments on the said point on 17.05.2019. All the parties are directed to appear in person on the next date of hearing along with original documents especially the title documents of the defendants.”

6. As per the above, the Court observed that no legally tenable dispute exists and hence the Court wanted to hear arguments for passing a preliminary decree straightaway. The Court then directed parties to appear in person along with all the original documents. On 17th May, 2019, a review application was filed which was rejected by the Trial Court in the following terms:

“An application seeking review of the order dated 22.04.2019 has been filed in the meantime stating therein that there was no admission and even as per the initial order sheets, it is clear that an application was filed by the plaintiff seeking permission to lead secondary evidence and as such there is a need for recording of evidence. On the last date, this court specifically directed the both parties to appear in person along with their original documents especially the title documents but

only Sh. Naresh Sharma and Ms. Puran Laxmi Sharma are present. Further, on 22.04.2019, this case was fixed for addressing argument on the point of decree or final decree straightway and it was not a final decision and therefore, there is no need to review the said order.

This court wants to clarify the title of the property from both the parties. Therefore, both the parties were directed to appear in person along with all the original documents. Accordingly, the review application is dismissed.

All the parties are directed to appear in person along with all the relevant documents including the title documents and the parties can be examined as per Order 10 Rule 1-2 CPC R/w Section 165 of Indian Evidence Act. Put up on 05.07.2019.”

7. As per the above order, there was no finality in the order dated 22nd April 2019 and hence there was no cause to review the said order. On 5th July, 2019, the Court directed all the Defendants to appear for recordal of their statements under Order X CPC. On 27th July, 2019, the statements of Mr. Naresh Sharma, Ms. Madhubala Sharma, Ms. Rita, Ms. Laxmi Sharma, Mr. Hunny Sharma, Ms. Gunchika @ Timmy Sharma, Mr. Naresh Sharma on behalf of Ms. Sunita Mullick was recorded. After recording the statements, the Court passed the following order:

“Copies of certain documents have been filed as per the last direction by the parties. Copy supplied.

This court examined Sh. Naresh Sharma, Ms. Madhubala Sharma, Ms. Rita, Ms. Laxmi Sharma, Sh. Hunny Sharma and Ms. Gunchika @ Timmy Sharma as per Order 10 Rule 1-2 CPC r/w Section 165 of the Indian Evidence Act. Sh. Naresh Sharma has also given statement on behalf of Ms. Sunita Mullick (sister of the Sh. Naresh Sharma), who has already executed a registered GPA on his behalf and prayed

that his statement be read on behalf of Sunita Mullick also except her residential address in the said property till her marriage.

Put up for arguments on the point of passing a preliminary decree as per Order 12 Rule 6 r/w Order 14 Rule 1(6) CPC on 31.08.2019 at 11:30AM.”

8. On 9th January, 2020, adjournment was sought on behalf of the Defendants which was rejected. The case was partially heard. At this stage, the Petitioners herein/Defendants (*hereinafter ‘Defendants’*) have filed the present petition challenging the orders dated 22nd April 2019, 17th May 2019, 27th July 2019, 9th January 2020 and 14th January 2020.

9. The submission of Id. counsel for the Defendants is that the Court is proceeding in an unusual manner and instead of framing of issues after admission/denial, has recorded the statements of all the Defendants under Order X CPC and is intending to pass a preliminary/final decree on the premise that there is no legally tenable defence. The case of the Defendants is that such a shortcut method cannot be adopted by the Trial Court, as admittedly this is not a case for passing a decree under Order XII Rule 6 CPC. The Defendants have seriously challenged the rights of the Plaintiff and the matter ought to have proceeded for trial. Reliance is placed on the judgment of the Supreme Court in ***Alka Gupta v. Narender Kumar Gupta, (2010) 10 SCC 141***. Reliance is also placed on ***Inder Mohan Singh & Ors. v. Sube Singh [RSA 160/2013, decided on 10th November, 2014]*** to argue that unless there is an unambiguous admission, a decree under Order XII Rule 6 CPC cannot be passed. The Defendants also seek transfer of the suit from the said Judicial Officer. Reliance is placed on the following three judgments:

- *Harsh Talwar v. Rani Gadhoke*, 73 (1998) DLT 167
- *Smt. Bhanu Kumari v. Jitendra Singh & Ors.*, RLW 2007 (2) 1077
- *Usmangani Adambhai Vahora v. State of Gujarat & Anr.*, (2016) 3 SCC 370

10. On behalf of the Plaintiff, it is argued that the case of the Defendants is that there is a relinquishment deed/letter. However, till date, no relinquishment deed/letter has been placed on record. Thus, this is a fit case of passing a decree for partition and the Trial Court has not done anything unusual. In such matters, delay in adjudication takes place because of sham defences which are raised.

11. The powers of a Civil Court which is trying a suit, to pass a decree under Order XII Rule 6 CPC or in a summary manner, are not in question. In an appropriate case where the Court finds that there is in fact, no defence or the defence is not tenable at all, the Court would be empowered to proceed even without framing of issues. Sometimes it is possible that the Court feels that there is no factual issue that requires evidence and may just proceed to final arguments. In some other cases, summary disposal under Order XIII A CPC as applicable to commercial disputes is also permissible. However, the question is whether the present case is one which warrants such a course of action.

12. The plaint is simple and straight that the Plaintiff is one of the purchasers of the property as per the sale deed dated 6th March, 1965/27th February, 1965. However, a closer examination shows that the issue raised by the defendant is substantive. The suit was filed in 2014 and on the said date, as per the affidavit in support, the Plaintiff is 65 years of age. Thus, clearly the Plaintiff was a minor at the time when the alleged sale deed was

executed and registered. Further, the identity of the property has also been questioned by the Defendants. The identity of the persons who signed has also been in questioned. One of the objections raised was of non-joinder due to non-impleadment of the daughters of Mr. R.P. Sharma and the wife and daughter of Late Mr. Lalit Sharma. This objection had to be overcome by the Plaintiff by filing an application under Order I Rule 10 CPC read with Order VI Rule 17 CPC. The further objections raised by the Defendants is that Mr. R.P. Sharma had purchased the property from his own funds and that the Plaintiff has no rights in the property. The sale deed which is placed on record does mention the name of Mr. V.P. Sharma. The same is also registered, but the same is claimed to be a certified copy. There is no letter of relinquishment which has been placed on record. Various documents in the form of property tax invoices, electricity bills, etc. have been placed on record which are raised in the name of Mr. Om Prakash Sharma. The ID cards from the Election Commission of India also show that various family members are reflected to be living in the same property. Under these circumstances, the Trial Court's observation that no legally acceptable dispute has been raised does not appear to be correct.

13. There is no doubt that adjudication of suits has to be expedited. However, the same cannot mean that there can be a complete departure from the procedure prescribed under CPC. The judgment of the Supreme Court in *Alka Gupta (supra)* is apt. The relevant paragraphs of the said judgment read as under:

“16. The Code of Civil Procedure is nothing but an exhaustive compilation-cum-enumeration of the principles of natural justice with reference to a proceeding in a court of law. The entire object of the

Code is to ensure that an adjudication is conducted by a court of law with appropriate opportunities at appropriate stages. A civil proceeding governed by the Code will have to be proceeded with and decided in accordance with law and the provisions of the Code, and not on the whims of the court. There are no short-cuts in the trial of suits, unless they are provided by law. A civil suit has to be decided after framing issues and trial permitting the parties to lead evidence on the issues, except in cases where the Code or any other law makes an exception or provides any exemption.

...

19. But where the summons have been issued for settlement of issues, and a suit is listed for consideration of a preliminary issue, the court cannot make a roving enquiry into the alleged conduct of the plaintiff, tenability of the claim, the strength and validity and contents of documents, without a trial and on that basis dismiss a suit. A suit cannot be short-circuited by deciding issues of fact merely on pleadings and documents produced without a trial. In this case, the learned Single Judge has adjudicated and decided questions of fact and rendered a judgment, without evidence tested by cross-examination.

The observation of the learned Single Judge that “the facts of this case do not require any opportunity for leading evidence to be given to the plaintiff” violates Order 15 Rule 3 of the Code. Where summons have been issued for settlement of issues and where issues have been settled, unless the parties agree, the court cannot deny the right of parties to lead evidence. To render a final decision by denying such opportunity would be high-handed, arbitrary and illegal. Even the Division Bench committed the same error.”

14. From the above, it is clear that unless and until an exception needs to be carved out due to admissions made or other reasons as prescribed in the CPC, the general procedure for framing of issues and trial has to be

followed. The defences in the present case are not such that can be adjudicated under Order XII Rule 6 CPC.

15. Recently in ***Hari Steel and General Industries Ltd. and Ors. v. Daljit Singh and Ors.***, AIR 2019 SC 4796, the Supreme Court has observed that unless there is a categorical and unconditional admission, a decree under Order XII Rule 6 CPC cannot be passed. The relevant paragraphs read as under:

“30. In the judgment in the case of S.M. Asif vs. Virender Kumar Bajaj (supra), this Court has held that the power under Order XII Rule 6 of Code of Civil Procedure is discretionary and cannot be claimed as a right. It is further held in the aforesaid case that where the defendants have raised objections, which go to root of the case, it would not be appropriate to exercise discretion under Order XII Rule 6 of Code of Civil Procedure. Para 8 of the judgment read as under:-

“8. The words in Order 12 Rule 6 Code of Civil Procedure “may” and “make such order ...” show that the power under Order 12 Rule 6 Code of Civil Procedure is discretionary and cannot be claimed as a matter of right. Judgment on admission is not a matter of right and rather is a matter of discretion of the court. Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order 12 Rule 6 Code of Civil Procedure. The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.”

...

33. By applying the ratio laid down by this Court in the

aforesaid judgments, it is to be held that there are no categorical and unconditional admissions, as claimed by the respondents-plaintiffs. In view of the stand of the appellants that, the pages 3 and 4 of the agreement dated 3.5.2005 are tampered and their signatures are fabricated, when specific issue is already framed, it cannot be said that there are categorical and unconditional admissions by the appellants. Mere admission of entering into arrangement/contract on 7.4.2005 and 3.5.2005 itself cannot be considered in isolation, without considering the further objections of the appellants that certain pages in the agreement are fabricated. In case the appellants prove that the agreement is fabricated as claimed, post trial it goes to the root of the case on the claim of the respondents-plaintiffs. Hence, we are of the view that the aforesaid judgments fully support the case of the appellants.”

16. It is also the settled position in law that Order X CPC cannot be used by the Court to start an enquiry or as a substitute to a trial. The manner in which the Trial Court has recorded the statements of five Defendants/parties on the same date under Order X CPC shows that the same is like a cross-examination by the Court which is impermissible in law. The Supreme Court in ***Kapil Corepacks Pvt. Ltd. & Ors. v. Harbans Lal Thr. LRs., (2010) 8 SCC 452*** observed that Order X CPC is not a substitute to trial.

17. While the long pendency of suits could tempt Trial Courts to cut short procedure, it has to be borne in mind that civil suits decide the rights of the parties finally. In the present case, the right to the property itself would have to be adjudicated and no person can be conferred or deprived of a right without following proper procedure. Accordingly, the Trial Court is directed to frame issues in the suit and the parties are permitted to lead evidence. Since the Trial Court is of the opinion that this is one of the oldest suits

pending in the Court, if the Court deems appropriate, a Local Commissioner may be appointed for recordal of the evidence. The statements recorded under Order X CPC shall remain on record and shall be considered at the time of final adjudication as part of the evidence in the suit.

18. Insofar as the prayer for transfer of the matter to another judicial officer is concerned, the mere fact that the Id. trial court may have proceeded on an erroneous basis in law, does not make out a ground to transfer the matter. The request seeking transfer of the suit to another Judicial Officer is rejected.

19. The petition and all pending applications are disposed of. The impugned orders are set aside in the above terms.

FEBRUARY 20, 2020

Rahul/A.S.

**PRATHIBA M. SINGH
JUDGE**