

**A.No.1897 of 2020
in
C.S.No.237 of 2015**

RESERVED ON : 15.03.2021

PRONOUNCED ON : 01.04.2021

P. RAJAMANICKAM.,J.

This application has been filed by the plaintiff under Order XIV Rule 8 of O.S Rules r/w Order XX Rule 18 and Section 151 of CPC to pass a preliminary decree declaring that the applicants/plaintiffs as joint owners of atleast $\frac{1}{4}^{\text{th}}$ undivided share in the suit property.

2. Mr.Madhan Babu, the learned counsel for the applicants/plaintiffs has submitted that the applicants have filed the above suit to divide the suit property into two equal shares and allot one such share to the applicants 1 and 2 / plaintiffs 1 and 2 jointly. He further submitted that the suit property was originally purchased by the paternal grand father of the plaintiffs 1 and 2 namely Mr.G.C.Nawalgaria from and out of his personal earnings in the joint name of himself and his wife Mrs.Damayanti Devi Nawalgaria. He further submitted that the said Mr.G.C.Nawalgaria died on 02.05.1975 and

thereafter in the year 1982, there was an oral family arrangement between the legal heirs of the said Mr.G.C.Nawalgaria namely Mrs.Damayanti Devi Nawalgaria (wife), the defendants 1 to 3 and Mr.Sushil Nawalgaria (father of the plaintiffs 1 and 2 and husband of the third plaintiff) and as per the said family arrangement, the first defendant received her share in kind and went out of the suit property.

3. He further submitted that in the year 1983 another oral family arrangement was made and in the said family arrangement, the 2nd defendant received a sum of Rs.7.80 lakhs in lieu of his share in the suit property. Further, the said Mr. Sushil Nawalgaria and the third defendant settled the claim of Mrs.Damayanti Devi also and thereby they became the absolute owners of the suit property. He further submitted that subsequently the said Mrs.Damayanti Devi expired on 20.05.1996. Thereafter, Mr.Sushil Nawalgaria died leaving behind the plaintiffs as his legal heirs. He further submitted that on 20.11.2014, the 3rd plaintiff has orally settled /released her share in the suit property in favour of the plaintiffs 1 and 2. Hence, the

plaintiffs 1 and 2 are entitled to $\frac{1}{2}$ share and the 3rd defendant is entitled to $\frac{1}{2}$ share in the suit property. But the defendants 1 and 2 also claimed share in the suit property and hence the applicants herein were constrained to file the above suit for partition to divide the suit property into two equal shares and allot one such share to the plaintiffs 1 and 2 jointly.

4. The learned counsel for the applicants/plaintiffs has further submitted that during pendency of the suit, the third defendant died and his legal heirs were impleaded as defendants 5 to 8. He further submitted that the defendants 5 to 8 filed a written statement stating that they have no objection for passing a preliminary decree as prayed for in the plaint. He further submitted that the first respondent / first defendant has filed a written statement stating that the defendants 1 to 3 are entitled to $\frac{1}{4}$ th share each and the plaintiffs are jointly entitled to $\frac{1}{4}$ th share and also he has no objection for passing preliminary decree to that effect. He further submitted that the second respondent/second defendant has filed a written statement stating that the defendants 2 and 3 are each entitled to $\frac{1}{3}$ rd share and the plaintiffs are jointly entitled to $\frac{1}{3}$ rd share. He further submitted that since

the first defendant has admitted that the plaintiffs are entitled to $\frac{1}{4}^{\text{th}}$ share and the 2nd defendant has admitted that the plaintiffs are jointly entitled to $\frac{1}{3}^{\text{rd}}$ share, a preliminary decree may be passed declaring that the plaintiffs are joint owners of at least $\frac{1}{4}^{\text{th}}$ share in the suit property as per Order XII Rule 6 of CPC.

5. The learned counsel for the applicants / plaintiffs has further submitted that as per Order XX Rule 18 of CPC, more than one preliminary decree can be passed and hence he requests to pass a preliminary decree declaring that the plaintiffs are joint owners of at least $\frac{1}{4}^{\text{th}}$ share in the suit property without waiting for the determination of other questions between the parties.

6. The learned counsel for the applicants/plaintiffs, in support of his contentions, relied upon the following decisions:

***1. Phoolchand and another Vs. Gopal Lal, (1967) 3
SCR 153 : AIR 1967 SC 1470;***

**2. Karam Kapahi and Others Vs. Lal Chand Public
Charitable Trust and another, (2010) 4 SCC 753 and**

**3. Raveesh Chand Jain Vs. Raj Rani Jain, (2015) 8
SCC 428.**

7. Per contra, Mr. Vikram Veerasamy, the learned counsel for the 1st respondent/1st defendant has submitted that in a suit for partition by a co-parcener or co-sharer, the court should not give a decree only for the plaintiff's share, it should consider the shares of all the heirs after making them parties and then pass a preliminary decree, whereas in this application, the plaintiffs have prayed to pass a preliminary decree declaring their shares alone and the same is not permissible under law.

8. The learned counsel for the 1st respondent/1st defendant has further submitted that the judgment on admission by the defendant under Order XII Rule 6 of CPC is not a matter of right and rather is a matter of discretion of the court. He further submitted that if a case involves questions which

cannot be conveniently disposed of under Order XII Rule 6 of CPC, the court is free to refuse exercising discretion in favour of the applicants. He further submitted that the purpose of Order XII Rule 6 of CPC is to avoid waiting by the plaintiff for part of the decree when there is a clear, unequivocal, unambiguous and unconditional admission of the defendants in respect of the claim of the defendants. He further submitted that where specific issues have been raised inspite of admission on the part of the defendants, the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to decree. He further submitted that in this case, the plaintiffs have not admitted the share of the defendants 1 and 2. Further, the 2nd defendant denied the entitlement of share by the 1st defendant and in such a case, no preliminary decree can be passed based on the admissions made by the defendants in their written statement. Therefore, he prayed to dismiss this application.

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9. The learned counsel for the 1st respondent/1st defendant in support of his contentions, relied upon the following decisions :-

1. *Shankar Balwant Lodhande (Dead) by LRS Vs.*

Chandrakant Shankar Lokhande and Another

(1995) 3 SCC 413.

2. *State Bank of India Vs. M/s.Midland Industries and*

others, AIR 1998 (Delhi) 153.

10. Ms.R.V.Gayatri for Mr.P.B.Ramanujam, the learned counsel for the 2nd respondent/2nd defendant has adopted the arguments advanced by the learned counsel for the 1st respondent/1st defendant and she also prayed to dismiss the application as not maintainable.

11. Mr.K.T. Sankara Subramanian, the learned counsel for the respondents 5 to 8 /defendants 5 to 8 has submitted that though the defendants 5 to 8 in their written statement prayed to decree the suit as prayed for, in so far as this application is concerned, he leave it to the discretion of the court.

12. This Court has carefully considered the rival submissions and perused the materials filed in this suit.

13. There is no dispute that the suit property was originally purchased by one Mr.G.C.Nawalgaria jointly in his name and in the name of his wife Mrs.Damayanti Devi Nawalgaria. It is also not in dispute that both of them died leaving behind three sons namely Mr.Sushil Nawalgaria (father of the plaintiffs 1 and 2 and husband of the 3rd plaintiff), Mr.Mahender Nawalgaria (D2) and Giriraj Nawalgaria (D3) and one daughter namely Mrs.Shashi Kala Murarka (D1) .

14. According to the plaintiffs, after the death of Mr.G.C.Nawalgaria, family arrangements took place and as per the said family arrangements, first defendant took her share in kind and the second defendant was given a sum of Rs.7,80,000/- in lieu of his share in the suit property and as such, the defendants 1 and 2 are not entitled to get any share. Their further case is that subsequently, the said Sushil Nawalgaria died leaving behind them

(plaintiffs) as his legal heirs and as such, they are entitled to half share and 3rd defendant is entitled to half share in the suit property.

15. The further case of the plaintiffs is that the first defendant has admitted in her written statement that the plaintiffs are jointly entitled to $\frac{1}{4}$ th share and the second defendant has admitted in his written statement that the plaintiffs are entitled to $\frac{1}{3}$ rd share in the suit property. Their further case is that since the defendants 1 and 2 have admitted that the plaintiffs are entitled to at least $\frac{1}{4}$ th share in the suit property, as per Order XII Rule 6 of CPC, at present they are entitled for a preliminary decree in respect of $\frac{1}{4}$ th share.

16. In ***Shankar Balwant Lodhande (Dead) by LRS Vs. Chandrakant Shankar Lokhande and Another***, (cited supra), the Hon'ble Supreme Court in paragraph No.4 has held as follows:-

“4. Order 20 Rule 18 envisages passing of a decree for partition of property or for separate possession of a share therein. Sub-rule (2) is material which provides that "if and in so far as such decree relates to any other immovable property or to

*movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree **declaring the rights of the several parties interested in the property** and giving such further directions as may be required". (Emphasis ours) Thus, it could be seen that where the decree relates to any immovable property and the partition or separation cannot be conveniently made without further inquiry, then the court is required to pass a preliminary decree declaring the rights of several parties interested in the property. The court is also empowered to give such further directions as may be required in this behalf A preliminary decree in a partition action, is a step in the suit which continues until the "final decree is passed. In a suit for partition by a coparcenar or cosharer, the court should not give a decree only for the plaintiffs share, it should consider shares of all the heirs after making them parties and then to pass a preliminary decree. The words "declaring the rights of the several parties interested in the property" in sub-rule(2) would indicate that shares of the parties, other than the plaintiff(s), have to be taken into account while passing preliminary decree. Therefore, preliminary decree for partition is only a declaration of the rights of the parties and the shares they have in the joint family or coparcenary property, which is the subject- matter of the suit. The final decree should specify the division by metes and bounds and it needs to be engrossed on stamped paper."*

17. From the aforesaid decision, it is clear that a preliminary decree in a partition suit, is a step in the suit which continues until the final decree is passed. It is also clear that in a suit for partition by a coparcener or cosharer, the court should not give a decree only for the plaintiff's share, it should consider the shares of all the heirs after making them as parties and then to pass a preliminary decree. In this case, the plaintiffs' contention is that as per the family arrangements, the defendants 1 and 2 got their shares in kind and amount respectively and as such, they are not entitled to get any share in the suit property. Since in the partition suit, the plaintiff and the defendant are in same pedestal, admission of the plaintiff also required for passing preliminary decree under Order 12 Rule 6 of CPC. In this case, as already pointed out that the plaintiffs have not admitted that the defendants 1 and 2 are having any share. When the plaintiffs are not admitting the rights of the defendants 1 and 2, this court is of the view that no preliminary decree can be passed for partition declaring the plaintiffs' share alone by invoking the provisions of Order XII Rule 6 of CPC.

18. In ***State Bank of India Vs. M/s.Midland Industries and others***

(cited supra), the Delhi High Court in paragraph No.6 has observed as follows:-

(6) Having noted these facts of this case it would be appropriate to refer to Order 12 rule 6 Civil Procedure Code. which lays down as under :-

"6(1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced".

There is no doubt that Rule 6 of Order 12 has been couched in a very wide language. However, before a court can act under Rule 6, admission must be clear, unambiguous, unconditional and unequivocal. Furthermore a judgment on admission by the defendant under Order 12 rule 6 Civil Procedure Code is not a matter of right and rather is a matter of discretion of the court, no doubt such discretion has to be judicially exercised. If a case involves questions which cannot be conveniently disposed of or a motion under this rule the court is free to refuse exercising discretion in favour of the party invoking it. It is not in each case where Order 12 rule 6 Civil Procedure Code is invoked that the court 528 would be obliged to pass

a decree which case would depend upon its own peculiar facts. Where the defendants have raised objections which go to the very root of the case, it would not be proper to exercise this discretion and pass a decree in favor of the plaintiff. The purpose of Order 12 rule 6 Civil Procedure Code is to avoid waiting by the plaintiff for part of the decree when there is a clear, unequivocal, unambiguous and unconditional admission of the defendant in respect of the claim of the defendant. The rule only secures that if there is no dispute between the parties, and if there is on the pleadings or otherwise such an admission as to make it plain that the plaintiff is entitled to a particular order or judgment he should be able to obtain it at once to the extent of admission. But the rule is not intended to apply where there are serious questions of law to be asked and determined. Likewise where specific issues have been raised in spite of admission on the part of the defendants the plaintiff would be bound to lead evidence on those issues and prove the same before he becomes entitled to decree and the plaintiff in that event cannot have a decree by virtue of provision of Order 12 rule 6 Civil Procedure Code without proving those issues.

19. From the aforesaid decision, it is clear that rule 6 of Order 12 of CPC has been couched in a very wide language. However, before a court can act in the said provision, admission must be clear, unambiguous, unconditional and unequivocal. Further more, a judgment on admission by the defendant under Order XII Rule 6 of CPC is not a matter of right and

rather is a discretion of the court, no doubt such discretion has to be judically exercised. It is also clear that if a case involves question which cannot be conveniently disposed of under the said provision, the court is free to refuse exercising discretion in favour of the party invoking it. It is also clear that the said rule is not intended to apply where there are serious questions of law to be asked and determined.

20. In this case, as already pointed out, the case of the plaintiffs is that in view of the family arrangements, the defendants 1 and 2 relinquished their shares in the suit property. But the defendants 1 and 2 are seriously disputing the alleged family arrangements. Further, they also claimed right over the suit property.

21. In ***Brigadier H.S.Cheema and Another Vs. State Bank of India*** 80 (1999) DLT 117 : 1999 (50) DRJ 431, the Delhi High Court in paragraph No.5 has held as follows:-

“5. Provisions of Order 12 Rule 6 of the Code of Civil Procedure provide a remedy to a party to obtain

speedy relief in respect of a fact which is admitted by the other party. Such an admission in the written statement could be in respect of the entire claim made in the suit or even for a part of the claim for which decree could be passed separately.”

22. It is also relevant to refer to the decision in **Janardhan Jog Vs. Sri Krishna ILR 1989 KAR 1895 : 1989 (3) KarLJ 65** wherein the Karnataka High Court in paragraph No.9 has observed as follows:-

“9. An admission contemplated by Order 12 Rule 3 CPC, has to be an absolute admission, capable of being worked out by itself. The other questions to be determined in the suit, on decree being made under Order 12 Rule 6, should be such independent questions, reliefs granted on which should be capable of being granted without affecting the former decree (i.e., the one passed on the basis of admission). If the admitted fact cannot independently stand, and the ultimate relief or reliefs to be granted in the suit is interlinked with those facts, then, it will not be a proper exercise of the discretion, to make a decree under Order 12 Rule 6 CPC. “

23. From the aforesaid decisions, it is clear that if an admission is

made for a part of the claim for which decree can be passed separately, a decree can be passed under Order 12 Rule 6 of CPC in respect of the said relief alone. It is also clear that an admission contemplated by Order 12 Rule 6 of CPC has to be an absolute admission, capable of being worked out by itself. The other questions to be determined in the suit, should be such independent questions and the reliefs for such questions can be granted without affecting the decree passed on the basis of admission. If the admitted fact cannot independently stand and the ultimate relief or reliefs to be granted in the suit is interlinked with those facts, then, it will not be a proper exercise of the discretion, to pass a decree by invoking the Provisions of Order 12 Rule 6 of CPC.

24. In this case as already pointed out, according to the plaintiffs, they are entitled to $\frac{1}{2}$ share and the third defendant is entitled to $\frac{1}{2}$ share. Their further case is that the defendants 1 and 2 are not entitled to get any share in the suit property, whereas the 1st defendant claimed $\frac{1}{4}$ th share and the 2nd defendant claimed $\frac{1}{3}$ rd share. According to the 2nd defendant, the

first defendant is not at all entitled to get any share in the suit property. Therefore, it cannot be said that the admission is absolute and capable of being worked out by itself. Further, by accepting the contention of the learned counsel for the plaintiffs, if any preliminary decree is passed declaring that the plaintiffs are entitled to 1/4th share and subsequently if the court comes to the conclusion that the plaintiffs are entitled to 1/2 share a decree cannot be passed without affecting the decree passed under Order 12 Rule 6 of CPC.

25. In *Phoolchand and another Vs. Gopal Lal*, (cited supra), after passing of the preliminary decree, some of the parties died and hence the shares will be changed. Under the said circumstances, the Hon'ble Supreme Court has held that there is no bar for passing a second preliminary decree. In this case, the facts are totally different. In this case, the plaintiffs prayed to pass a preliminary decree by invoking the provision of Order XII Rule 6 of CPC. Hence, the aforesaid decision will not help the plaintiffs.

26. In *Raveesh Chand Jain Vs. Raj Rani Jain*, (cited supra), the

plaintiff filed a suit for recovery of possession and also for damages. In the said suit, the plaintiff has filed an application under Order XII Rule 6 of CPC for passing a decree in her favour on the ground that a suit for partition, which had earlier been filed by the defendant on the same ground i.e., that the suit property was a HUF property, had been dismissed by the District Court and affirmed by the High Court and the plaintiff contended that the same amounted to an unequivocal admission by the defendant and that the plaintiff was entitled to possession. Taking into consideration of the said fact, the Hon'ble Supreme Court has held that since the question of ownership was already decided in the earlier suit filed by the defendant, the said issue need not to be decided afresh and as such the plaintiff is entitled for a decree under Order XII Rule 6 of CPC in respect to the possession alone. But in this case, the plaintiffs are seeking preliminary decree for partition to declare their $\frac{1}{4}^{\text{th}}$ share in the suit property. If any such decree is granted, that will not serve any purpose unless all the issues are decided and finally declare the shares of all the parties. Hence, the aforesaid decision also will not help the plaintiffs.

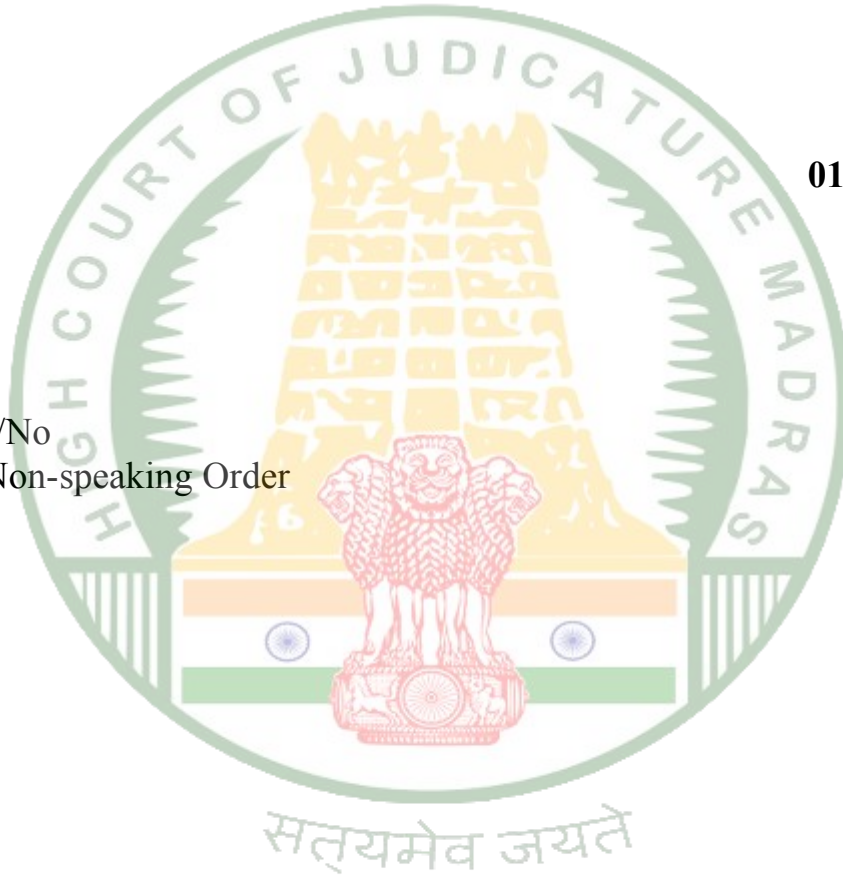
27. For the aforesaid reasons, this Court is of the view that this application is misconceived and the same is liable to be dismissed.

28. In the result, this application is dismissed. No costs.

01.04.2021

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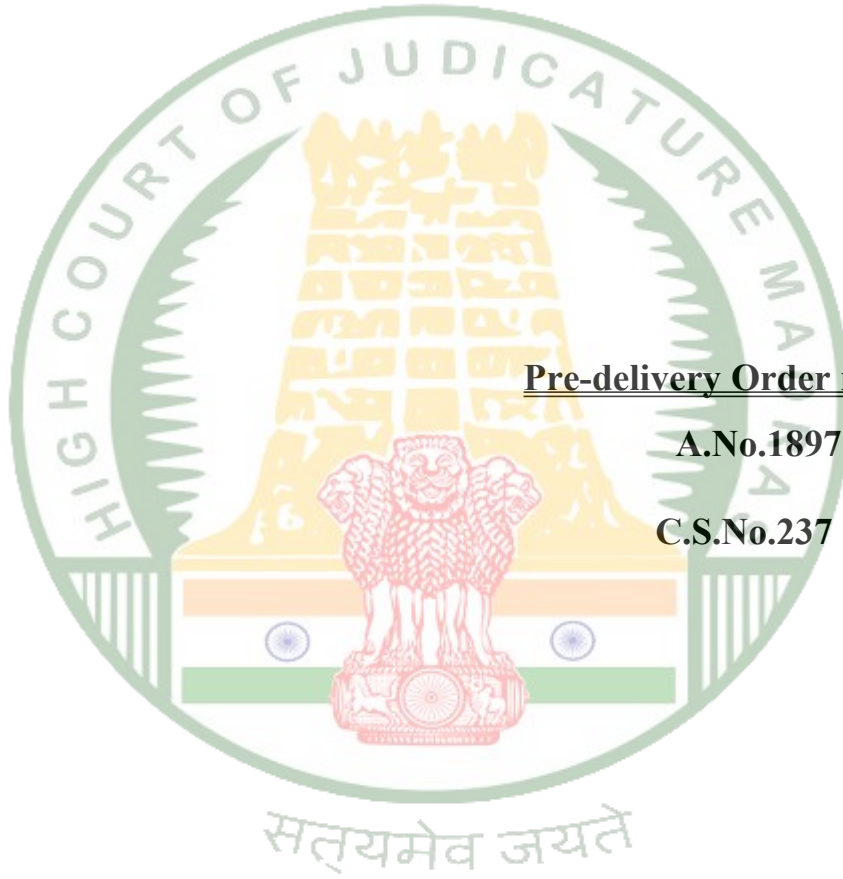
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P. RAJAMANICKAM,J.

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Pre-delivery Order made in

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