

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.934 of 2018

1. Ashok Shaw Son of Late Etwari Shaw Resident of 3rd Floor, Swyamprabha Apartment, Opposite Road No. 3, Ashok Nagar, Ranchi.
2. Apurb Kumar Son of Sri Ashok Shaw Resident of 3rd Floor, Swyamprabha Apartment, Opposite Road No. 3, Ashok Nagar, Ranchi and present residing at Unites States (U.S.). Both Resident of 3rd Floor, Swyamprabha Apartment, Opposite Road No. 3, Ashok Nagar, Ranchi.

... .. Petitioner/s

Versus

1. Manas Shaw Son of Late Etwari Shaw Resident of Mohalla- Dih Jamalpur, Sadar Bazar, Post Office and Police Station- Jamalpur, District- Munger.
2. Manish Kumar Son of Manas Shaw Resident of Mohalla- Dih Jamalpur, Sadar Bazar, Post Office and Police Station- Jamalpur, District- Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Manoj Kumar, Adv.
For the Respondent/s	:	Mr. Hans Raj, Mr. Ram Sevak Choudhary, Advocates.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

6 29-08-2022 Heard Mr. J.S. Arora, learned senior counsel for the petitioners and Mr. Hans Raj, learned counsel for the respondents.

2. The present petition has been filed challenging the order dated 03.01.2018 passed in Title Suit No. 65/2011 by learned Sub Judge-1, Munger by which a petition under Order XII Rule 6 of the CPC read with Section 151 CPC filed on behalf of defendant No.1 for passing a judgment/preliminary decree on admission has been rejected by the learned trial court.

3. The Petitioners are defendants No.1 and 2 in the



suit for partition filed by the plaintiffs/respondents. The suit has been filed for partition of the joint family properties of the parties and seeking a decree of partition in respect of the joint family property in which the plaintiffs have claimed 50 *per cent* share in the suit property described in Schedule-I Item A, B, C, D, E, F, G). Petitioners/defendants filed a written statement and subsequently filed a petition under Order XII Rule 6 r/w Section 151 of the CPC stating therein that the plaintiffs have filed the suit for partition of the joint family properties to the extent of 50 *per cent* share of the plaintiffs and rest 50 *per cent* of the defendants and in para-7 of that petition the defendants/petitioners have stated that the defendants with a view to bring the controversy to an end do hereby admit “*that the properties detailed as Item No. ‘A’, ‘B’, ‘E’, ‘F’ and ‘G’ of Schedule-I of the plaint be treated as joint between the parties with 50% share of the plaintiffs and 50% share of the defendants. Accordingly, there remains no dispute between the parties, rather both the parties are admitting that those properties are joint between them being 50% share of the plaintiffs and 50% share of the defendants.*”

4. With regard to properties described at Item No. ‘C’ and ‘D’ of Schedule-I of the plaint, the defendants have not



admitted the claim of the plaintiffs and have prayed that the suit may be decreed on admission with respect to Item No. A, B, E, F and G of Schedule-I of the plaint only and the suit may be allowed to continue only in respect of properties/business detailed in Item No. 'C' and 'D' of Schedule-I of the plaint.

5. The learned trial court has rejected the prayer of the defendants and refused to pass the preliminary decree on admission with regard to properties described at Item No. 'A', 'B', 'E', 'F', and 'G' of Schedule-1 of the plaint on the ground that it is discretion of the court to pass decree on admission and the law does not permit any person to fulfill his lusts and choices individually rather there must be equal interest, equal legal remedy and clean hands of both the parties.

6. Mr. Arora, learned senior counsel for the petitioners submits that in so far as the provisions of Order XII Rule 6 is concerned, its scope and ambit are very wide and the Hon'ble Supreme Court in the case of ***Karam Kapahi v. Lal Chand Public Charitable Trust*** reported in ***(2010) 4 SCC 753*** has held as follows:-

“37. The principles behind Order 12 Rule 6 are to give the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about 'which there is no controversy' [See the dictum of Lord Jessel, the Master of Rolls, in *Thorp v.*



Holdsworth in (1876) 3 CD 637 at 640].

38. In this connection, it may be noted that order 12 Rule 6 was amended by the Amendment Act of 1976. Prior to amendment the Rule read thus:

“6. Judgment on admissions. - Any party may, at any stage of a suit, where admissions of facts have been made, either on pleadings or otherwise, apply to the Court for such judgment or order as upon such admission he may be entitled to, without waiting for the determination of any other question between the parties and the Court may upon such application make such order or give such judgment, as the Court may think just.

39. In the 54th Law Commission Report, an amendment was suggested to enable the Court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering judges to use it 'ex debito justitiae', a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the Court always retains its discretion in the matter of pronouncing judgment.

40. If the provision of order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider in as much as the provision of order 12 Rule 1 is limited to admission by 'pleading or otherwise in writing' but in Order 12 Rule 6 the expression 'or otherwise' is much wider in view of the words used therein namely: 'admission of fact...either in the pleading or otherwise, whether orally or in writing'.

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47. Therefore, in the instant case even though statement made by the Club in its petition under Section 114 of the Transfer of Property Act



does not come within the definition of the word 'pleading' under Order 6 Rule 1 of the Code, but in Order 12 Rule 6 of the Code, the word 'pleading' has been suffixed by the expression 'or otherwise'. Therefore, a wider interpretation of the word 'pleading' is warranted in understanding the implication of this rule. Thus the stand of the Club in its petition under Section 114 of the Transfer of Property Act can be considered by the Court in pronouncing judgment on admission under Order 12 Rule 6 in view of clear words 'pleading or otherwise' used therein especially when that petition was in the suit filed by the Trust.

48. However, the provision 'under Order 12 Rule 6 of the Code is enabling, discretionary and permissive and is neither mandatory nor it is peremptory since the word "may" has been used. But in the given situation, as in the instant case, the said provision can be applied in rendering the judgment.

7. Learned counsel further relied upon the judgment of Hon'ble Supreme Court in the case of ***Raveesh Chand Jain v. Raj Rani Jain*** reported in ***(2015) 8 SCC 428*** whereby the Hon'ble Supreme Court has held as follows:-

“8. In order to appreciate the submission made by the learned senior Counsel we would like to quote Order XII Rule 6 Code of Civil Procedure, which reads as under:

“6. ***Judgment on admissions.***-(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 an 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.

The bare perusal of the aforesaid provision makes it clear that it confers wide discretion on the court to pass a judgment at any stage of the suit on the basis of admission of facts made in the pleading or otherwise without waiting for the determination of any other question arose between the parties. Since the Rule permits the passing of judgment at any stage without waiting for determination of other question, it follows that there can be more than one decree that may be passed at different stages of the same suit. The principle behind Order XII Rule 6 is to give the Plaintiff a right to speedy judgment so that either party may get rid of the rival claims which are not in controversy.

9. The provision of Order XII Rule 6 has been discussed by this Court in the case of Karam Kapahi and Ors. v. Lal Chand Public Charitable Trust and Anr. : (2010) 4 SCC 753, wherein this Court observed:

“39. In the 54th Law Commission Report, an amendment was suggested to enable the court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Judges to use it "ex debito justitiae", a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment.

40. If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by "pleading or otherwise in



writing" but in Order 12 Rule 6 the expression "or otherwise" is much wider in view of the words used therein, namely: "admission of fact... either in the pleading or otherwise, whether orally or in writing".

41. Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see *Charanjit Lal Mehra v. Kamal Saroj Mahajan*, SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see *Mullas's Commentary on the Code*, 16th Edn., Vol. II, p. 2177).

42. In *Uttam Singh Duggal and Co. Ltd. v. United Bank of India* this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment.

10. Coming back to the instant case there is no dispute that the Plaintiff/Respondent filed the suit for possession of the suit property and also for recovery of Rs. 5,55,000/- and future damages at the rate of Rs. 15,000/- per month. The Plaintiff/Respondent claimed title in the suit property and averred that the Appellant is in unauthorized occupation of the suit property without any authority or justification. In the plaint it was specifically pleaded that the ownership right in the suit property has already been decided in favour of the Respondent and against the Appellant by judgment and decree dated 8.9.2003 and the appeal filed by the Appellant was also dismissed vide judgment dated 12.9.2011. Hence, the Appellant is in illegal possession of the suit property.

11. On an application filed by the Plaintiff/Respondent Under Order XII Rule 6 Code of Civil Procedure seeking a judgment in the suit, the trial court dismissed the application stating that there is no unequivocal admission for passing a judgment in the suit. The High Court, however, reversed the order passed by the trial



court and held that considering the earlier judgment deciding the ownership of the suit property in favour of the Appellant, the suit for possession ought to have been decreed by the trial court. Consequently, the High Court decreed the suit.

12. Paras 6 and 7 of the impugned judgment passed by the High Court are quoted hereinbelow: (Raj Rani Jain v. Raveesh Chand Jain, 2014 SCC OnLine Del 4406)

“6. The only new aspect urged in the present written statement is that the Respondent/Defendant claimed that he received ownership share in the suit property by virtue of a written compromise entered into before the police station Anand Vihar on 22.10.1997, however, it is noted that the earlier suit, which was a suit for partition filed by the Respondent/Defendant, the issue as regards the claim of the Respondent/Defendant to the ownership rights in the suit property was very much in issue, and hence the Respondent/Defendant had to urge in the earlier proceedings all the basis of his claims of ownership rights in the suit property and if that was not done the Respondent/Defendant is now barred by the principle of constructive res judicata from raising any claims which ought to have been urged in the earlier proceedings. The principle with respect to doctrine of res judicata is that there must be finality achieved to litigation and parties must not be harassed over and over again merely by changing certain facts with respect to the main relief claimed viz., of ownership rights in the suit property.

7. In view of the above, the impugned order dated 7.6.2013 is completely illegal and the issues in the present case stand covered against the Respondent/Defendant by the principle of res judicata enshrined in Section 11 Code of Civil Procedure. So far as the relief of possession is concerned, suit of the Plaintiff/Petitioner/mother will hence stand decreed against the Respondent/Defendant for the portion so in



possession of the Respondent/Defendant as per the site plan filed. Since the Respondent/Defendant/son is harassing the mother from 1998 and today we are in the year 2014, this appeal is allowed with actual cost. Petitioner/Plaintiff will file an affidavit in this Court supported by certificate of fees of her counsels in this appeal with respect to the fees paid to the counsels, and such fees paid will be the cost which will be payable by the Respondent/Defendant to the Petitioner/Plaintiff. The aforesaid affidavit accompanied by the certificate of the fees of the counsels be filed by the Petitioner within a period of four weeks and costs be paid thereafter within a period of four weeks.

From the reading of para 7 of the order, as quoted hereinabove, it reveals that the High Court not only decreed the suit for possession but also directed the Plaintiff/Respondent to file an affidavit giving details of the cost of litigation since the appeal was allowed with cost.

13. As discussed hereinabove, there is no dispute with regard to the law settled by this Court that Order XII Rule 6 confers wide discretion on the Court to pass judgment either at the stage of the suit on the basis of admission of the facts made in the pleadings or otherwise, but the Court shall later on decide the other questions which arise for consideration in the Suit.

14. It is equally well settled that the provision of Order XII Rule 6 of the Code is not a mandatory provision rather discretionary. While exercising power of passing judgment on admission made in the pleading or otherwise, the Court must keep the matter pending for adjudication so far as other issues are concerned.”

8. From perusal of the aforesaid judgments cited by the learned senior counsel, it appears that the principle behind



Order XII Rule 6 is to give the plaintiff a right to speedy judgment so that either party may get rid of rival claims which are not in controversy.

9. From perusal of the petition filed by defendants/petitioners for seeking preliminary decree on admission, it is quite clear that the claim of the plaintiff for partition to the extent of 50% share in the Schedule-1 properties has been accepted *in toto* by the defendants/petitioners with respect to Item No. 'A', 'B', 'E', 'F', and 'G' of Schedule-1 of the properties.

10. Mr. Hans Raj, learned counsel appearing for respondents/plaintiffs, on the other hand, submits and admits that there is no dispute with regard to the admission of the defendants made in the petition filed under Order XII Rule 6 and the plaintiffs are also agreeable to the claim of the defendants to pass a judgment and preliminary decree on admission with respect to Schedule-1 properties having Item No. 'A', 'B', 'E', 'F', and 'G'.

11. However, both learned counsel submit that with respect to Item No. 'C' and 'D' of Schedule-1 properties, the trial court must adjudicate the claim of partition between the parties and may pass separate decree after determining the rival



claims of the parties upon Item No. 'C' and 'D' of Schedule-1.

12. In view of the clear-cut consensus and admission between the parties appearing before this Court, this Court is satisfied that facts are admitted in respect of the properties detailed at Schedule-1, item no. 'A', 'B', 'E', 'F', and 'G'. Accordingly, the impugned order dated 03.01.2018 passed in Title Suit No. 65/2011, is hereby, set aside and the matter is remitted to the learned trial court to pass judgment and preliminary decree on admission with respect to Schedule-I properties, Item No. 'A', 'B', 'E', 'F', and 'G' with a further direction that the trial court shall keep the matter pending for adjudication so far as claim of partition with respect to Schedule-I property, item No. 'C' and 'D' are concerned.

13. The petition stands dispose of with the aforesaid observation and direction.

(Anil Kumar Sinha, J)

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