

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 99 OF 2022
IN
NOTICE OF MOTION NO. 955 OF 2018
IN
SUIT NO. 493 OF 2018

DAULATBANOO SADRUDDIN
NANAVATI,
an Indian Inhabitant residing at 7th floor,
Noor-e-Rehmat, 59, Byramjee Jeejeebhoy
Road, Bandra (West), Mumbai 400 050

... APPELLANT
(ORIG. PLAINTIFF/
APPLICANT)

~ VERSUS ~

SHEPHALI
SANJAY
MORMARE

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- 1. TAZALDIN SADRUDDIN**
NANAVATI,
an Indian Inhabitant residing at
7th floor, Noor-e-Rehmat, 59,
Byramjee Jeejeebhoy Road,
Bandra (West), Mumbai 400 050.
- 2. SHAHID SADUDDIN**
NANAVATI,
an Indian Inhabitant but resident
of Canada having his address in
India at 7th floor, Noor-e-Rehmat,
59, Byramjee Jeejeebhoy Road,
Bandra (West), Mumbai 400 050.

3. **SHAMS FAYAZ SURANI NÉE SHAMS NANAVATI**,
an Indian Inhabitant but resident of Canada having her address in India at 7th floor, Noor-e-Rehmat, 59, Byramjee Jeejeebhoy Road, Bandra (West), Mumbai 400 050.
4. **FARIDA MEHBOOB LALANI NÉE FARIDA NANAVATI**,
an Indian Inhabitant but resident of United States of America having her address in India at 7th floor, Noor-e-Rehmat, 59, Byramjee Jeejeebhoy Road, Bandra (West), Mumbai 400 050.
5. **AMIN ABDUL AZIZ RAJWANI**,
an Indian Inhabitant residing 2nd floor, Mon Repos Apartments, Next to Mannat, Byramjee Jeejeebhoy Road, Bandra (West), Mumbai 400 050.
6. ^(A) **NADIAYA KARIM RAJWANI**,
^(B) **RAHIM KARIM RAJWANI**,
^(C) **ZAHRA KARIM RAJWANI**,
being heirs of late Karim Abdul Aziz Rajwani, being Indian Inhabitants residing at 4th floor, Panju Mahal Apartments, Next to Prathnalaya, 59, Byramjee Jeejeebhoy Road, Bandra (West), Mumbai 400 050.
7. **YASMIN SHAHI VALIYANI, NÉE YASMIN RAJWANI**,
an Indian Inhabitant residing 285

Loretta Ave S. Ottawa, ON, K1S,
5A5, Canada and having local
address at 6th floor, Noor-e-
Rehmat, 59, Byramjee Jeejeebhoy
Road, Bandra (West), Mumbai
400 050.

8. **MUNIRA MUNIR MERCHANT
NÉE MUNIRA RAJWANI,**
an Indian Inhabitant having her
address at c/o Dr Munir Merchant
1500 South Main Street Fort
Worth Houston, Texas, TX 76104,
United States of America and
having local address at 6th floor,
Noor-e-Rehmat, 59,
Byramjee Jeejeebhoy Road,
Bandra (West), Mumbai 400 050.

...RESPONDENTS
(ORIG. DEFENDANTS)

WITH
APPEAL NO. 141 OF 2022
IN
NOTICE OF MOTION NO. 955 OF 2018
IN
SUIT NO. 493 OF 2018

1. **TAZALDIN SADRUDDIN
NANAVATI,**
an Indian Inhabitant residing at 7th
floor, Noor-e-Rehmat, 59, Byramjee
Jeejeebhoy Road, Bandra (West),
Mumbai 400 050.
2. **SHAHID SADRUDDIN
NANAVATI,**

an Indian Inhabitant but resident of Canada having his address in India at 7th floor, Noor-e-Rehmat, 59, Byramjee Jeejeebhoy Road, Bandra (West), Mumbai 400 050.

3. **SHAMS FAYAZ SURANI NÉE SHAMS NANAVATI**,
an Indian Inhabitant but resident of Canada having her address in India at 7th floor, Noor-e-Rehmat, 59, Byramjee Jeejeebhoy Road, Bandra (West), Mumbai 400 050.

4. **FARIDA MEHBOOB LALANI NÉE FARIDA NANAVATI**,
an Indian Inhabitant but resident of United States of America having her address in India at 7th floor, Noor-e-Rehmat, 59, Byramjee Jeejeebhoy Road, Bandra (West), Mumbai 400 050.

... APPELLANTS
(ORIG. DEFENDANT NOS.
1 TO 4)

~ VERSUS ~

1. **AMIN ABDUL AZIZ RAJWANI**,
an Indian Inhabitant residing 2nd floor, Mon Repos Apartments, Next to Mannat, Byramjee Jeejeebhoy Road, Bandra (West), Mumbai 400 050.
2. (A) **NADIAYA KARIM RAJWANI**,
(B) **RAHIM KARIM RAJWANI**,
(C) **ZAHRA KARIM RAJWANI**,
being heirs of late Karim Abdul Aziz Rajwani, being Indian

Inhabitants residing at 4th floor,
Panju Mahal Apartments, Next
to Prathnalaya, 59, Byramjee
Jeejeebhoy Road, Bandra (West),
Mumbai 400 050.

3. **YASMIN SHAHI VALIYANI,
NÉE YASMIN RAJWANI,**
an Indian Inhabitant residing 285
Loretta Ave S. Ottawa, ON,
K1S, 5A5, Canada and having
local address at 6th floor, Noor-
e-Rehmat, 59, Byramjee
Jeejeebhoy Road, Bandra (West),
Mumbai 400 050.

4. **MUNIRA MUNIR
MERCHANT NÉE MUNIRA
RAJWANI,**
an Indian Inhabitant having her
address at c/o Dr Munir
Merchant 1500 South Main
Street Fort Worth Houston,
Texas, TX 76104,
United States of America and
having local address at 6th floor,
Noor-e-Rehmat, 59,
Byramjee Jeejeebhoy Road,
Bandra (West), Mumbai 400
050.

(ORIG. DEFENDANT NOS.
1 TO 8)

5. **DAULATBANOO
SADRUDDIN NANAVATI,**
an Indian Inhabitant residing at
7th floor, Noor-e-Rehmat, 59,
Byramjee Jeejeebhoy Road,
Bandra (West), Mumbai 400 050

...RESPONDENTS
(ORIG. PLAINTIFF)

APPEARANCES

FOR THE APPELLANT IN APP/141/2022 **Mr Vineet Naik, Senior Advocate,**
with Mutahhar Khan, Amit Mehta, Vinayak Shukla & Omkar Dalvi, i/b Amit Mehta.

FOR THE APPELLANT IN APP/99/2022 & FOR RESPONDENTS NOS. 1 TO 4 IN APP/141/2022 **Mr Cyrus Ardeshir, with Ziyad Madon, i/b VN Gupta.**

FOR THE RESPONDENTS NOS. 7 & 8 IN APP/99/2022 & FOR RESPONDENTS NOS. 3 & 4 IN APP/141/2022 **Mr Navroz Seervai, Senior Advocate, with Prasad Shenoy & Nirav Shroff, i/b Nirav Shroff.**

FOR RESPONDENTS NOS. 5 & 6(A) TO (C) IN APP/99/2022 **Dr Birendra Saraf, Senior Advocate, with Chaitanya Kotnis.**

FOR RESPONDENTS NOS. 1 & 2 IN APP/141/2022 **Mr Chaitanya Kotnis.**

CORAM : G.S.Patel & Gauri Godse, JJ

DATED : 30th September 2022

ORAL JUDGMENT (Per GS Patel J):-

1. On 2nd May 2019, after an elaborate and careful discussion, RD Dhanuka J dismissed Notice of Motion No. 955 of 2018 filed by the sole Plaintiff, Daulatabanoo Nanavati, in Suit No. 953 of 2018. In that Motion, Daulatabanoo sought a judgment or decree on admission for herself and for the supporting Defendants Nos.1 to 4,

against Defendants Nos. 5 to 8. Daulatbanoo and Defendants Nos. 1 to 4 have both appealed: Daulatabanoo's Appeal is Appeal No.99 of 2022. She is represented by Mr Vineet Naik, Senior Counsel. Appeal No. 141 of 2022 is by the original Defendants Nos. 1 to 4, represented by Mr Ardeshir.

2. Daulatbanoo's Motion itself was deceptively simple. It sought an order in the form of a judgment or decree on admission under Order XII Rule 6 of the Code of Civil Procedure, 1908 ("CPC") in terms of prayer clause (a) of the plaint. The Suit itself is for partition. Necessarily, therefore, there is a prayer for a preliminary decree. This is in consonance with Order XX Rule 18(2) of the CPC. Then in the Motion the Plaintiff sought further declaration that Defendants Nos. 1 to 4 (as one group) and Defendants Nos. 5 to 8 as the other had an undivided one-half share in the properties described "sixthly in the schedule", Exhibit "A" to the Plaint. Finally, the Motion sought further relief for partition of those properties including by appointment of the Commissioner.

3. For a long time, the Nanavati and Rajwani families were together in a flourishing real estate business. The heads of the two branches began their business in a more modest fashion but grew it over time. The Nanavati branch was headed by Sadruddin Mohammad Nanavati. The head of the other was Abdul Aziz Fazalbai Rajwani. In the three decades that spanned 1960 to 1990, the Nanavati and Rajwani families grew their partnership business in the name of "Nanavati Construction Company". Nanavati died on 9th February 1999 and Rajwani on 10th July 2015. The Plaintiff and

Defendants Nos. 1 to 4 are Nanavati's heirs. Defendants Nos. 5 to 8 are Rajwani's. The partnership firm was dissolved on Nanavati's death. By this time, the two groups had acquired interests in many number of properties, most of them in North Mumbai. For the purposes of their Motion, they categorised these into the Versova and non-Versova properties. The Plaintiff is Sadruddin Nanavati's widow. Her case was that the lands and properties that were what she called the non-Versova properties were capable of being partitioned. Other properties were excluded from the Suit.

4. Before Dhanuka J, the Plaintiff accepted that she was pressing her Motion in respect of only four properties excluding those that were described as properties being "firstly" and "fifthly" in the schedule at Exhibit "A".

5. There is a lengthy discussion in the impugned order regarding the facts and correspondence, but in view of what transpired before us it may not be necessary to review that material. The litigation history is noted in the impugned order. It noted that as many as 24 issues were framed. Various judgments that were cited before the Court. Neither side has addressed us on these aspects of the matter.

6. Mr Naik for the Appellants has in fact reduced his claim to a few properties and what he calls three admissions. He tabulated these for us at a previous hearing with an accompanying recompilation of references to the relevant documents.

7. The one page tabulated cover sheet given to us by Mr Naik reads thus:

Sr. No.	Particulars	Ref. In the Reply Aff. Dated 8 September 2018 of Def. Nos. 5, 7 & 8 in N/M No. 955 of 2018 - Appeal Memo Book	Orig. Page Nos. Ref. in Written Statement in Suit No. 493 of 2018 dt. 29 November 2019 of Def. No. 5 Appeal Memo Book
1.	Conveyance dated 9 August 1995 of St. Martins Road Property shows Nanavati and Rajwani have undivided one half share each	Para 39 (pg. 165) Vol. - I	Rfd. in W.S. para 17 (II) (v) pg. 641 Vol. - III & annexed as Ex. '30' at pgs. 777A – 777M (Vol. - III)
2.	Consent Decree dated 24 July 1992 in Suit No. 132 of 1981 [Sadruddin N. Nanavati & Ors. vs. Homai Jal Moos & Ors.] shows Nanavati and Rajwani have undivided one half share each in Pali Mala Road Property and Sherly Rajan Road Property	Para 42 (pg. 166) Vol. - I	Rfd. in W.S. para 17 (III) (iv) pg. 649 -650 Vol. - III & para 17 (IV) (iii) pg. 653 Vol. - III & annexed as Ex. '40' at Vol. - IV pgs. 1031 – 1050
3.	Five Deeds of Conveyances all dated 29 April 1993 whereby five sixth undivided share in Symons Property has been conveyed in favour of Nanavati and Rajwani, each having an undivided one half share in the five sixth share	Para 48 (pg. 167) Vol. - I	Rfd. in W.S. para 17 (VI) (ii) pg. 661 – 662 Vol. III and these conveyances are separately annexed to the Compilation

8. As we can see, in the Appeal, arguments are thus confined to the properties at St Martins Road, Pali Mala Road, Sherly Rajan Road and what is known as the Symons Property. For each of these alleged admissions, there is a supporting reference and a document that is annexed.

9. The first item refers to the St Martins Road Property. The Appellants' claim is that a conveyance dated 9th August 1995 shows that Nanavati and Rajwani have an undivided one-half share each. The contesting Defendants Nos 5, 7 and 8 filed an Affidavit in Reply in the Plaintiffs' Notice of Motion No. 955 of 2018. Defendant No. 5 had also filed a Written Statement to the Suit. In the Affidavit in reply filed by Defendants Nos. 5, 7 and 8 in the Notice of Motion, in paragraph 39 there is a reference to the conveyance. The averment made in the Affidavit in Reply is that the deponent craves "*leave to refer to and rely upon the deed of conveyance dated 9th August 1995, the decree and judgment dated 6th April 1990 for its true and correct interpretation*". But earlier, regarding the same property, the deponent said that the property is incapable of partition.

10. In the Written Statement, there is a narrative that the property at St Martins Road was conveyed to Nanavati and Rajwani. A copy of the conveyance is annexed at Exhibit "30" to the Written Statement. Then there is a narrative about applications being filed to bring on record the names of the heirs. A copy of the conveyance itself is also annexed.

11. As regards the shares in the Pali Mala Road property and the Sherly Rajan Road property, there is similarly a reference in paragraph 42 of the Affidavit in Reply filed by Defendants Nos. 5, 7 and 8. Here again the averment is that those deponents crave leave to refer to and rely on the consent decree “*for its true and correct interpretation*”. A consent decree dated 24th July 1992 in regard to these two properties is referenced in the Written Statement of Defendant No. 5 in paragraph 17 and a copy is annexed as Exhibit 40. Here again there is a reference to the consent terms that the consent decree would operate as a conveyance and later a reference to a specific performance Suit No. 132 of 1981.

12. Finally, in regard to the Symons Property regarding which there were supposedly five conveyance deeds all dated 29th April 1993, the same Affidavit in Reply has an averment in paragraph 48 where the deponent craves leave to refer to these five conveyances, five deeds of rectification dated 3rd August 1993 and a Supplemental Agreement dated 20th December 1991 “*for its true and correct interpretation when produced.*” Again, in the Written Statement of Defendant No. 5 there is a reference in paragraph 17 to the consent terms. It is stated that the property has been dealt with by the consent terms. How that came to pass is set out in sub paragraph (ii) of paragraph VI.

13. It is on this basis that Mr Naik maintains that there are ‘clear admissions’ as to the shares of the two groups

14. What are the admissions that the Plaintiff seeks to have entered in a judgment? These are in regard to the shares of the Defendants in these properties — and, at the cost of repetition, we are now limiting ourselves to the four properties covered by the three entries in the tabulation above.

15. Order XII Rule 6 of the Code of Civil Procedure (“CPC”) read thus:

“ORDER XII

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 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.

(Emphasis added)

16. It is clear from this that there must be an admission of fact. It may be made in a pleading or otherwise and it may be oral or in writing. The Court may record the admission at any stage of the Suit either on application of a party or suo motu and it may do so without awaiting the determination of any other question between the parties. It may make such order or give such judgment as it

thinks fit having regard to these admissions. Once a judgment is pronounced under the first sub-Rule, a decree is to be drawn and must bear the date on which the judgment was pronounced.

17. But it is also settled law that the admission must be clear and unambiguous. We understand this statement of law to be so well settled as to admit no controversy.

18. The position therefore is that the admission must relate to that which is sought to be recorded and held against the contesting Defendants. Before Dhanuka J, the decision of the Supreme Court in *Raveshchand Jain v Raj Rani Jain*¹ was cited for a general proposition on the ambit of Order XII. This decision also held that there can be multiple decrees. But the same decision also holds, as Dhanuka J noted, that the provision is not mandatory. It is discretionary. The Court must keep the matter pending for adjudication as regards other issues. Dhanuka J correctly held that the discretionary power must be exercised judiciously and not in the casual manner. More importantly, in paragraph 110 he said that there has to be a clearest possible admission of facts and the Court has thus to examine whether there is indeed any such admission.

19. Dhanuka J looked at the relevant portions of the Written Statements. He held that the Court must read the averments in their

1 (2015) 8 SCC 428, paragraph 41.

entirety and not in isolation. Joint properties having been brought by the parties in the joint venture projects had merged with the terms and conditions agreed by the parties. But the duty on the Court was to ascertain the so-called admission and to then render a judgment. Dhanuka J held there was no clear admission of facts as sought to be canvassed by the Plaintiff. We agree. In the case of all four properties mentioned in the tabulation above, in the Affidavit in Reply in the Plaintiffs Notice of Motion the contesting Defendants Nos. 5, 7 and 8 have merely sought to refer to these documents “for their true meaning and legal effect.” We believe that Mr Naik is over-stretching the case when he says that the moment a party craves leave to refer to a document and the document is annexed, then the statement in that document must be construed as a binding admission, even if the shares of the parties in the property is in question.

20. It is true that an admission furnishes the best evidence, but this is subject to an important and critical qualification; an admission does so, unless explained. Unless explained, admissions furnish the best evidence.² Clear admissions, duly proved, are substantive evidence against the person making them, but are not conclusive.³ For an admission to furnish such evidence, an adequate opportunity must be given to the person making the so called admission to explain it. For, unless rebutted, an admission is indeed the best evidence.⁴ In a situation such as this, a case will need to be

² *Ramji Dayawala & Sons v Invest Import*, (1981) 1 SCC 80; paragraph 17.

³ *Bharat Singh v Mst Bhagirathi*, AIR 1966 SC 405 (paragraph 19).

⁴ *Narayan Bhagwantrao Gosavi Balajiwale v Gopal Vinayak Gosavi*, AIR 1960 SC 100; *Nagindas Ramdas v Dalpatram Ichharam*, (1974) 1 SCC 242; *Gautam Sarup v Leela Jetly*, (2008) 7 SCC 85.

put to the Defendants at the trial and the contesting Defendants from the other group will have to be given an opportunity to explain their position. Nothing short of this will do. We agree with Dhanuka J that there is not the kind of clear, unequivocal and unambiguous “admission” as to warrant a judgment in favour of the Plaintiffs.

21. Other aspects canvassed before Dhanuka J were not pressed before us nor were we asked to look at other properties. Before us in fact the entire case was limited to considering these documents compiled and annexed with the tabulation and nothing further.

22. There is one additional factor that weighs against the Plaintiff in Appeal. As Dhanuka J noted, the kind of reliefs sought by the Plaintiff is entirely discretionary. There is no right of the Plaintiff that is determined or taken away while refusing to grant a judgment on admission. All that this means is that the Plaintiff must prove her case fully at the trial in the Suit. No person is entitled to a judgment on admission as a matter of right. All that a party can do is to make an application to the Court and to seek the exercise of the Court’s discretion as to whether to grant a judgment on admission or not. That consideration would depend on the Applicant being able to show in the clearest possible terms that there was indeed a clear and unambiguous admission.

23. The prayers in the Motion seek to give finality to what is clearly a preliminary decree in a partition Suit. This means that the shares of one group would be ascertained in relation to the shares of the other group and this would be so in respect of the four

properties to which the Appeal has been limited. Unless the contesting Defendants Nos. 5 to 8 therefore said that they accepted their share in each of these properties to be such and such, there could be no judgment on admission. It had to be shown that those Defendants had said exactly this and had done so either on Affidavit or in the Written Statement or otherwise perhaps in writing or even orally. There is no case before us of an oral admission. There is no case before us of an admission outside the Affidavit and the Written Statement. We are therefore only to consider the averments mentioned above and to test whether these can fairly be said to constitute an admission. We believe it would be straining things impermissibly, apart from doing quite considerable violence to the language and to the legislative intent, to construe a generalised statement like this as an 'admission' warranting the passing of even a preliminary decree determining the shares of one group vis-à-vis the other.

24. We find no merit whatsoever in the Appeal. We see no infirmity in the impugned order. The Appeals are dismissed. There will be no order as to costs.

(Gauri Godse, J)

(G. S. Patel, J)