

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 27 OF 2021

- 1 Smt. Vimal Dattaram Shiroadkar,
aged 75 years, wife of late Dattaram
Shiroadkar, housewife;
(Since deceased) through LR's Appellant
Nos.4 to 21)
(Amendment carried out as per Order dated
02/02/2023 passed in MCA No.2627/22 (F))
- 2 Mr. Shekhar Dattaram Shiroadkar (since
deceased) Through his sole and universal
heir, Appellant No.1

(Amendment carried out as per order dated
22/12/2021 passed in MCA No.294/2021)
- 3 Mrs. Deepa Shekhar Shiroadkar,
aged 50 years, housewife;
- 3a Gulabi Noru Naik,
w/o. Late Noru B. Naik
Aged 80 years, housewife
R/o. Awade near Narayana Mandir,
Borim Taluka Ponda Goa.

(Amendment carried out as per order dated
02/03/2023)
- 4 Mr. Bharat Dattaram Shiroadkar,
aged 52 years, married,
businessman and his wife;
- 5 Mrs. Vidhya Bharat Shiroadkar;
aged 42 years, housewife,
- 6 Mrs. Smita Chandrakant Shiroadkar
wife of late Chandrakant Shiroadkar,
aged 45 years, housewife and her children;
- 7 Master Ritvik Chandrakant Shiroadkar,
aged 14 years, student;

- 8 Miss Reema Chandrakant Shirodkar,
aged 5 years, student;
(The appellants No.7 and 8 are represented
by their mother, Appellant No.6.)

(Amendment carried out as per order dated
22/12/2021 passed in M.C.A. No.293/2021)

- 9 Mr. Das Dattaram Shirodkar,
aged 49 years, married, businessman and
his wife;
- 10 Mrs Seema Dattaram Shirodkar,
aged 40 years, housewife;
- 11 Mr. Laximikant Dattaram Shirodkar,
aged 48 years, married,
businessman and his wife;
- 12 Mrs. Lata Laxmikant Shirodkar,
aged 42 years, housewife;
- 13 Miss Shanti Dattaram Shirodkar,
aged 45 years, housewife;
- 14 Mr. Damodar Dattaram Shirodkar,
aged 43 years, married, businessman and
his wife;
- 15 Mrs. Neeta Damodar Shirodkar,
aged 38years, housewife;
- 16 Mr. Deepak Dattaram Shirodkar,
aged 40 years, married, businessman and
his wife;
- 17 Mrs. Archana Deepak Shirodkar,
aged 35 years, housewife;
- 18 Mrs. Pramila Prakash Shirodkar,
wife of late Prakash Shirodkar,
aged 52 years, housewife;
- 19 Mr. Dattaram Prakash Shirodkar,
aged 24 years, service,

All residents of H. No.281/5,
Mugali, Curtorim, Salcete Goa,

20 Mrs. Sharada Sunil Naik,
daughter of late Prakash Shirodkar,
aged 27 years, housewife and her husband;

21 Mr. Sunil L. Naik,
aged 30 years, businessman;

Both residents of Housing Board, Gogol,
Margao, Goa

... Appellants

Versus

1 Mr. Rajendra Dattaram Shirodkar,
son of late Dattaram Shirodkar,
aged 54 years, married, businessman, and
his wife;

2 Mrs. Swati Rajendra Shirodkar,
aged 45 years, housewife;

Both residents of Silver Strip Building,
Near Rajendra Prasad Stadium, Margao,
Goa.

... Respondents

Shri Sudin Usgaonkar, Senior Advocate with Ms. Pooja
Naik, Advocate for the Appellants.

Shri Joaquim Godinho, Advocate for the Respondents.

CORAM: BHARAT P. DESHPANDE,J.

DATED : 8th June 2023

ORAL JUDGMENT:

1. Admit.

2. Heard Mr. Sudin Usgaonkar, learned Senior Advocate for the
appellants and Mr. Joaquim Godinho, learned Counsel for the
respondents.

3. This is a First Appeal filed by the original plaintiffs challenging the impugned judgment dated 25/02/2019 in Special Civil Suit No.58/2015/A whereby a suit for partition was dismissed only on the ground that though during evidence shares of the parties are admitted the plaint was not amended to that effect.

4. The learned Senior Counsel Shri Usgaonkar appearing for the appellants strongly contended that co-ownership of the plaintiffs and the defendants was determined in the earlier proceedings filed between the parties in Special Civil Suit No. 195/96/A. The plaintiffs desired to effect partition of the suit property claiming therein that all the plaintiffs are having 17/18th share whereas the defendant is having 1/18th share in the suit property. The defendant No.1 in his written statement and more specifically in paragraph No.3 disputed the contentions of the plaintiffs and claimed that there are only 11 shares out of which defendant is entitled upon 1/11th share. After framing of issues parties led evidence. During cross-examination of the plaintiff, he admitted pleadings of defendant No.1 in paragraph 3 of the written statement thereby admitting the shares of the plaintiffs and the defendants as stated in the written statement. Though the learned Trial Court considered these admission, dismissed the suit only on the ground that the plaintiff failed to amend the pleadings in the plaint.

5. Mr. Usgaonkar placed reliance on the following decisions:

1. **S.M. Asif v/s. Virender Kumar Bajaj**¹
2. **M/s. Hi-Tech Technologies Pvt. Ltd. V/s. Surinder Mohan Singh Sandhu and another**²
3. **Chander Mohan v/s. Brij Mohan**³

1 (2015) 9 SCC 287

2 CR No.4194 of 2013 (O&M)

3 MANU/PH/0631/1999

6. *Per contra*, Mr. Godinho, learned Counsel appearing for the respondents strongly contended that the plaintiff claimed more share in the suit property in the plaint which was denied by defendant No.1 and he has specifically disclosed the shares of the parties who are entitled. He then submitted that issues were framed and the plaintiffs filed an affidavit-in-evidence. However, the plaintiff stuck to pleadings in the plaint claiming 17/18th share in the suit property which was specifically denied by the defendants. Though during cross-examination plaintiff admitted the shares as disclosed in paragraph 3 of the written statement, that itself would not be ground for decreeing the suit as the plaintiffs ought to have amended the pleadings including the prayer clause.

7. The short question which cropped up in the present matter is whether admission on the part of the plaintiffs during cross-examination about the shares of the parties to the suit would suffice to mould the relief.

8. Since the co-ownership of the parties to the proceeding is already decided in the earlier suit bearing Special Suit No.195/96/A, the only prayer in the present proceedings was to partition the suit property as per the shares of the respective parties. In Special Civil Suit No.195/96/A filed by the present defendants claiming the entire suit property, the present plaintiffs filed a counterclaim. After leading evidence, the learned Civil Court dismissed the suit of the present defendants and allowed the counterclaim of the present plaintiffs. It was declared that the plaintiffs and defendants are joint owners of plots No.D1 and D2 and the house/building constructed therein. Thus, the only question which was necessary to determine was in respect of the share of the respective co-owners.

9. The plaintiffs filed a suit for partition and in paragraph 3 of the plaint they claimed as follows:

“The Plaintiffs and the Defendants are joint owners and possessors of the suit plots, being the Plaintiffs are entitled for 17/18th share and the Defendants are entitled for 1/18th share.”

10. These defendant resisted the said suit by filing written statement and in response to paragraph 3 of the plaint which reads thus :

“3. With reference to para 3 of the plaint, the contents there of is vehemently denied as false. Defendant no.1 further States that considering his role in construction of the residential house in suit plot D-1 he is entitle for 1/3 share. Defendant No.1 further state that plaintiffs completely misguided this Hon'ble court, that plaintiffs are entitled for 17/18" share and the Defendants are entitled for 1/18" share.

As per the plaint, Defendant would like to state that:

- 1. Plaintiff no.1 ... (1 Share)*
- 2. Plaintiff no.2 & 3 ... (1 Share)*
- 3. Plaintiff no.4 & 5 ... (1 Share)*
- 4. Plaintiff no.6,7 & 8 ... (1 Share)*
- 5. Plaintiff no.9 & 10 ... (1 Share)*
- 6. Plaintiff no.11 & 12 ... (1 Share)*
- 7. Plaintiff no.13 ... (1 Share)*
- 8. Plaintiff no.14 & 15 ... (1 Share)*
- 9. Plaintiff no.16 & 17 ... (1 Share)*
- 10. Plaintiff no.18 to 21 ... (1 Share)*

Therefore the total shares pleaded by the Plaintiffs in the plaint is false and hence the suit is liable to be dismissed with cost.”

11. Thus, it is the contention of the defendants that there are total 11 shares out of which plaintiffs are entitled for their respective shares as stated above, in paragraph 3. After framing of issues, the plaintiffs stepped into the witness box and filed an affidavit-in-evidence. Though the plaintiffs claimed shares as mentioned in the plaint, during cross-examination there is clear admission on the part of plaintiff that the share mentioned by defendant No.1 in paragraph 3 of the written statement are admitted. Though this fact has been considered by the Trial Court in paragraph 10 of the impugned judgment as an admission, the suit has been dismissed only on the ground that the plaintiffs failed to amend the plaint and failed to

produce the plan to show how the suit plot and house to be divided amongst the parties.

12. As far as the plan is concerned, the learned Trial Court has completely erred in dismissing the suit for none production of a plan for the simple reason that the suit is for partition and therefore, the first step is to pass the preliminary decree by adjudicating the shares of the parties as admitted and then keeping it open for the purpose of drawing final decree wherein the aspect of the partitions on the basis of a plan could be ascertained.

13. As far as admission of the shares as mentioned in paragraph 3 of the written statement, Order XII Rule 6 CPC reads thus:

“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.”

14. A bare perusal of this provision shows that a judgment could be passed on the admission of fact which is pleaded either in the pleadings or otherwise, whether orally or in writing. The word "otherwise" appearing in the above Rule has to be read and to mean that such admission could be during evidence that too on oath. If the plaintiff in the cross-examination admit the shares disclosed by the defendants in his written statement, such admission could have been considered sufficient enough for exercising the discretion in moulding the relief thereby passing a preliminary decree for partition.

15. Mr. Usgaonkar has rightly placed reliance on the case of *S.M. Asif* (supra) wherein the Apex Court has categorically expressed that though the Court is having a discretionary power, 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.

16. Similarly in the case of *Chandar Mohan* (supra), Punjab and Haryana High Court observed that there is no need for amending the pleadings once a fact has been admitted by the party during the proceedings and even in the cross-examination.

17. Learned Counsel Shri Godinho has placed reliance in the case of *Bachhak Nahar v/s. Nilima Mangal and Another*⁴ which deals with Order VI Rules 1 to 3 of CPC including its object and purpose. However, the said judgment is not applicable to the present matter as there is clear admission on the part of the plaintiff regarding shares of the parties as claimed by the defendant and that too during cross-examination on oath.

18. The whole purpose of Order XII Rule 6 of CPC is to cut short the litigation when there is a clear admission of a fact. The said purpose though required to be exercised the discretion, the Trial Court must give sufficient reason for not exercising such discretion. The matter in hand clearly goes to show that the reasons on which the suit has been dismissed cannot be considered as plausible reasons not to exercise the discretion. Once the plaintiffs admit and that too on oath the shares disclosed by the defendants, the suit after having decreed, there was no need for amending the plaint or moulding the relief. The Trial Court was empowered to mould the relief on the

4 (2008) 17 SCC 491

basis of admission. By not doing this, the learned Trial Court erred in rejecting the suit.

19. It is necessary to note that the present suit was only for the partition of the shares of the parties and once shares are admitted during cross-examination, a preliminary decree ought to have been drawn.

20. The impugned judgment, therefore, needs to be quashed and set aside. The suit for partition needs to be decreed on the basis of shares of the respective parties as disclosed in paragraph 3 of the written statement and as admitted by the plaintiff in the cross-examination on oath.

21. The appeal is allowed. The impugned judgment is hereby quashed and set aside. The suit for partition is decreed as per shares of the parties disclosed in paragraph 3 of the written statement. Preliminary decree to be drawn accordingly.

BHARAT P. DESHPANDE, J.

MENA
VISUAL SHOR