2023:BHC-AS:23862

Harish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 41 OF 2023

Sushma Sailendra Singh And Ors. ...Applicants
Versus
Rajendra Birendra Singh And Ors. ...Respondents

Mr. Hemant Mehta, Mrs. Jinal Mehta and Ms. Anamika Tiwari i/b Mehta & Co. for the Applicants.

Mr. Rajiv Narula, Mr. Milind Mane i/b Jhangiani Narula & Associates for Respondent No. 1.

CORAM : SHARMILA U. DESHMUKH, J.
DATE : AUGUST 18, 2023

P. C. :

1. Heard.

2. The challenge in the Petition is to the order dated 20th October, 2022 rejecting the Plaintiffs Application seeking judgment on admission under the provisions of Order 12 Rule 6 of the CPC.

3. Summary Civil Suit No. 2717 of 2013 was instituted by the Petitioners-Plaintiffs seeking a declaration that the Plaintiff has ¼ share i.e. 25% undivided share right, title and interest in the suit flat viz flat No. 501, Pushp Kunj, A-Road, Churchgate, Mumbai and for partition and separate possession of the suit flat i.e. flat No. 501. In the written statement the contention of the Defendant No. 1 was that under an agreement dated 31st October, 1988 Sailendra Singh, Rabindra Singh, Tapendra Singh and Defendant No. 1 had acquired the suit flat for a total consideration of Rs. 30,00,000/- and that the share certificate was transferred jointly in the names of the aforesaid persons. The contention of the Defendant No. 1 was that he was in exclusive use occupation and possession of the suit flat since June, 1990 and had been residing there with his family members. The Defendant No. 1 pressed into service a family arrangement, which according to the Defendant No. 1, had been acted upon and the suit flat came to the share of the Defendant No. 1. It was further contended that under the family arrangement dated 18th September, 1992 there was distribution of gold bonds and as such the family arrangement was acted upon. It was further contended that as per the family arrangement the flat Nos. 503 and 504 in the same building which also forms part of the estate came to the share of Tapendar Singh and his elder brother Dipendar Singh and the suit flat viz flat Nos. 501 came to the share of Defendant No. 1. There was denial to the right of the Plaintiffs as co-owner and having ¼ undivided share in the suit flat. This Court is informed that subsequently issues are framed and the matter has proceeded to trial.

4. An application came to be moved by the Plaintiffs under the provisions of Order 12 Rule 6 of the CPC seeking decree on admission. In the affidavit in support of the application the Plaintiff relied upon the Pleadings in Recovery Proceeding No. 313 of 2004 which was filed by a financial institution in which the Defendant No. 1 was arraigned as Defendant No. 4 along with the Plaintiff as Defendant No. 2a and Defendant No. 3 as Defendant No. 7. It is contended that in those recovery proceedings before the Debt Recovery Tribunal, Misc. Application was filed by the Defendant No. 1 on 10th June, 2021 seeking stay of the order dated 13th May, 2021 passed by the Debt Recovery Tribunal. Along with the application an affidavit was filed before the Debt Recovery Tribunal in which the Defendant No. 1 had admitted that the Original Plaintiff is the co-owner of the suit flat having ¼th share in the suit flat and that Defendant No. 1 has only 50% share in the suit flat. There was also a reference to the additional affidavit dated 9th July, 2021 filed by the Defendant No. 1 before the Debt Recovery Tribunal. The affidavit of Plaintiffs further refers to the order of the Debt Recovery Tribunal in which the submissions of the counsel for Defendant No. 1 was recorded that the Defendant No. 1 owned 50% share and that the Plaintiff and the other Defendants owned 25% share.

5. Based on the admission, which according to the Plaintiff, constituted a clear and unequivocal admission of the right of the Plaintiff to ¼th share of the suit property, the application was filed for decree on admission. This application was opposed by the Defendant No. 1 by filing his affidavit in reply on 4th April, 2022. It was denied that there was any clear admission that the Plaintiff is the co-owner of the suit flat to the extent of ¼th share and a reference was made to paragraph No. 12 of the affidavit before the Debt Recovery Tribunal which clearly referred to the instant proceedings pending before the Civil Court. The Trial Court by order dated 20th October, 2022 rejected the Notice of Motion No. 851 of 2022 giving rise to the present Revision Application.

6. Before proceeding it would be beneficial to refer to the provisions of Order 12 Rule 6 of the Code of Civil Procedure, 1908 which reads as under :-

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.
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> (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.

7. A plain reading of provisions of Order 12 Rule 6 would indicate that 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 make such order or give such judgment as it deems fit having regard to such admission. There is no debate at the bar that the pleadings are not required to be confined only to the pleadings in the instant suit and the same can be taken into consideration even if it forms part of some other proceedings.

8. Learned counsel appearing for the revision Applicant has invited the attention of this Court to the Application which was filed by the Defendant No. 1 before the Debt Recovery Tribunal and would contend that in paragraph No. 11 of the said application the Defendant No. 1 has made categorical admission that the Defendant No. 1 is one of the co-owner of the said flat having 50% share in the suit flat and that the Plaintiff is having ¼th share. He further points out the admission that the said flat is not exclusively owned by the Defendant No. 1 and that he is having only 50% shares in the said flat. He would further point out that in paragraph No. 12 of the said application a reference has been made to the instant suit which is pending before the City Civil Court. He further points out the additional affidavit which has been filed in the proceeding by the Defendant No. 1 in which a reference is made to the instant suit and it is contended that during the life time of the Plaintiff he has been claiming to be the owner of the said flat to the extent of 25% share along with the other Defendant while the Defendant No. 1 is 50% share holder in the said flat. He further refers to the order of the Debt Recovery Tribunal in which the submission of the counsel for the Defendant No. 1 was recorded wherein again, according to him, a categorical submission is advanced that the Defendant No. 1 owned 50% share and the Plaintiff and other Defendants owned 25% share. He would contend that the admissions made in the recovery proceedings read as a whole would constitute a clear and unambiguous admission qua the Plaintiff being owner of ¼th share in the suit flat. He would submit that in these proceedings there is no reference to the family arrangement which is now sought to be contended for the purpose of qualifying the admission which has been given before the Debt Recovery Tribunal. In support of his submissions he relies upon the following decisions.

- **Uttam Singh Duggal Vs. United Bank of India, [(2000) 7 SCC 120]**

- **Karam Kapahi Vs. Lalchand Public charitable Trust, [(2010) 4 SCC 753]**

- **Pransukhlal Mafatlal Hindu Swimming Boat Club Trust**

Vs. Vasant Joshi, [(2004) SCC ONLINE BOM 205]

- **Saroj Anand Vs. Prahlad Rai Anand, [(2009) 15 SCC 505]**
- **State of Maharashtra Vs. Ramdas Shrinivas Nayak, [(1982) 2 SCC 463]**

9. The decisions have been relied upon in support of his proposition firstly that the admission need not be confined to the pleadings which form part of the instant suit and can form part of the pleading in other proceeding, however, the same is not debated. He placed reliance on the decision in the case of **Karam Kapahi Vs. Lalchand Public charitable Trust,** wherein the Apex Court has considered the principle of election and has held that election is an obligation imposed upon a party by course of equity to choose between two inconsistent or alternative rights or claims in cases where there is a clear intention of the person from whom he derives one that he should not enjoy both. He presses the decision in service to contend that Defendant No. 1cannot aprobate and reprobate at the same time and once an admission has been given as regards the Plaintiff having ¼th share in the property, the Defendant No. 1 cannot now change his stand. The decision in the case of **Saroj Anand Vs. Prahlad Rai Anand,** has been relied upon to support the proposition that the submissions which have been made by the counsel of Defendant No. 1 would also constitute an admission which would be binding on the

Defendant No. 1. The decision in the case of **State of Maharashtra Vs. Ramdas Shrinivas Nayak,** has been relied upon to support the proposition that the judgment which has been recorded by the Debt Recovery Tribunal correctly records the admission of Defendant No. 1.

10. *Per contra,* learned counsel appearing for the Respondent-Defendant No. 1 contends that the pleadings which form part of the application before the Debt Recovery Tribunal cannot constitute clear and unambiguous admission so as to entitle the Plaintiff for a decree on admission under the provisions of Order 12 Rule 6 of CPC. He would contend that in the written statement it was the specific case that the property had been purchased in joint name of all the parties. However subsequently, there has been family arrangement of 1982 which was acted upon. As such, he would contend that there are other issues which are required to be decided and a decree on admission cannot follow. He would further submit that it has been the consistent case that the parties have equal shares in the properties however, the case of the Defendant No. 1 is one of family arrangement and as such, what was sought to be canvassed before the Debt Recovery Tribunal was that the parties had ¼th share however, there is dispute about the right title and interest which is the subject matter of the instant suit. He has taken this Court to the application as well as the additional affidavit which has been filed and would contend that the admission about ¼th share of the Plaintiff No. 1 is further qualified by the reference to the suit in the instant case and as regards the dispute which is pending. He would urge that, that being so, the Plaintiff is not entitled to a decree on admission. He further refers to the power of this Court under Section 115 of the CPC and would contend that the Civil Court has exercised the jurisdiction vested in it and while doing so has exercised discretion and unless it is pointed out that there is immaterial irregularity or illegality in the decision making process the power under Section 115 ought not to be exercised. In support of his submissions he relies upon the following decisions.

- Lalita Sahoo and Ors. Vs. Rania Das and Ors, [(2004) SCC Online Ori 24].
- Raj Kumar Chawla Vs. Lucas Indian Services, [2006 (89) DRJ 506 (DB)].
- Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India and Ors. [(2000) 7 SCC 120]
- Vijay Gupta and Ors. Vs. Ashok Kumar Gupta [2007 (95) DRJ 167].
- Securities and Exchange Board of India Vs. Arihant Cotsyn Ltd. & Ors, [(2005) 13 Supreme Court Cases 498].
- Gangeshwar Ltd. Vs. Sugar Mills Mazdoor Sangh and Anr. [(2005) 13 SCC 500].
- Ubaiba Vs. Damodaran, [(1999) 5 SCC 645].

- **Madanlal Vs. Shyamlal, [(2002) 1 SCC 535].**

11. The decision in the case of **Lalita Sahoo and Ors. Vs. Rania Das** is pressed into service to support his contention that there cannot be any decree under Order 12 Rule 6 of the CPC when different issues arising in the suit are yet to be decided. This according to him supports his contention that the issue as regards the family arrangement is yet to be decided. As regards the decision in the case of **Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India and Ors.** is concerned, the decision has been relied as regards the position that pleadings in other proceedings can also be taken into consideration. The decision in the case of **Vijay Gupta and Ors. Vs. Ashok Kumar Gupta** has been relied for the proposition that the judgment on admission is not a matter of right and rather is a matter of discretion of the Court and when the Defendant has raised objection which will go to the very root of the case, it will not be appropriate to exercise this discretion. He has referred to various paragraphs of the said decision to drive home the point that the pleadings in the documents have to be read as a whole to see its effect and one or two lines cannot be permitted to be taken out of context and used as an admission of the parties entitling the other to a judgment on admission. To the same effect is the decision of the Delhi High Court in the case of **Raj Kumar Chawla Vs. Lucas Indian Services**. As regards the contours of the powers under

Section 115 is concerned, he relies upon the decision of the Apex Court in the case of **Securities and Exchange Board of India Vs. Arihant Cotsyn Ltd. & Ors** and in the case of **Madanlal Vs. Shyamlal.**

12. Considered the submission and perused the papers with the assistance of learned counsels appearing for the parties.

13. The seminal question that arises for consideration of this Court is firstly, whether the jurisdiction which is exercised by the Civil Court suffers from any material irregularity or illegality for this Court to interfere in exercise of its power under Section 115 of the CPC and secondly, whether there has been any clear and unambiguous admission, so as to entitle the Petitioner to a judgment on admission. I would consider the second question first as that would be a necessary factor to be taken into consideration while arriving at a conclusion as to whether there is any material irregularity or illegality in exercise of the jurisdiction by the Civil Court. To qualify as clear and unambiguous admission, there cannot be any further qualification and the pleadings before the Debt Recovery Tribunal will have to be read as a whole to see whether there is a clear and unambiguous admission. In that context if we peruse the pleadings in the application before the Debt Recovery Tribunal, the Defendant No. 1 has stated in paragraph No. 11 that originally the suit flat was jointly owned by the Plaintiff and other Defendants and these

Defendants have equal share and the Defendant No. 1 was one of the co-owner of the flat having ¼th share in the suit flat and that he had purchased the shares of the other co-owner. It is contended that the said flat is not exclusively owned by these Defendants and they are having only 50% share in the flat. The Defendant No. 1 then further goes on to state that one of the co-owners had filed a suit claiming 25 % share before the City Civil Court which is pending and as the said flat is in dispute for deciding the right title and interest in the said flat no further action be taken for recovery of the claim amount as the same would be illegal and bad in law. The Defendant No. 1 also referred to the papers and proceedings of the Suit No. 2717 of 2013. In the proceedings before the Debt Recovery Tribunal an additional affidavit came to be filed by Defendant No. 1, which is annexed at page 85 of the Revision Application in which the Defendant No. 1 pleaded that without prejudice to his right and contention in the instant suit, the legal representatives of deceased Plaintiff would if at all be entitled to 25% share in flat No. 501 as claimed by the original Plaintiff during his life time, without impleading them, there would be travesty of justice if the said flat was put to sale. In my view, to qualify as clear and unambiguous admission of acceptance of ¼th share of Plaintiff there cannot be any reference to any dispute which is pending as regards the right title and interest in the property. I find considerable force in the submission of learned counsel for the Respondent that the pleadings before the Debt Recovery Tribunal cannot constitute an unqualified admission for the reason that what was sought to be put across and still is the case of the defendant No. 1 is that originally the suit flat was purchased by the parties having shares as co-owners and the instant suit is as regards right, title and interest in the suit flat pursuant to the family arrangement, which is pending. The reference to the instant case is not only for the purpose of contending that the recovery proceeding are bad or illegal but also for the purpose of showing that there is a dispute about the right title and interest in the suit flat.

14. The reference has been made, to my mind upon a reading of the application as well as the affidavit, to the share of the Plaintiff to the extent of ¼th share in the suit flat for the purpose of showing that the original suit flat was purchased in the name of all the co-owners and subsequently as a dispute has arisen in respect of the right title and interest in the property, the same will be governed by the decision in the said suit. For judgment on admission, the admission of the fact cannot be qualified by any further contention and it has to constitute an unequivocal admission of the right of the Plaintiff in the suit flat. The case of the Defendant No. 1 before the Trial Court in the instant case is also that the Plaintiff and the other Defendants were the co-owners of the flat, however, subsequently there was a family arrangement which is entered into between the parties pursuant to which the suit flat i.e. flat No. 501 came to the share of the Defendant No. 1. Before the Debt Recovery Tribunal, there is no reference to the family arrangement, however, there is a reference to the instant suit and the Defendant No. 1 has also claimed leave to refer to and rely on the said proceeding. As regards the submissions of the counsel appearing for the Defendant No. 1 before the Debt Recovery Tribunal, which is recorded on 12th July, 2021, the same refers to the factual position that flat No. 501 was jointly owned by the Plaintiff and other Defendants which position is not disputed by learned counsel appearing for the Respondent even today. It is his specific case that the share certificate stands in the name of the parties, however, due to subsequent family arrangement, the suit flat has come to the share of the Defendant No. 1. Learned counsel for the Respondent has rightly pointed out the further submission as regards instant suit which was filed by the Plaintiff claiming his 25% share before the City Civil Court which is pending.

15. Considering the above, in my view, it cannot be said that in the proceeding before the Debt Recovery Tribunal there has been a clear and unambiguous admission of the claim of the Plaintiff to the extent of ¼th share in the suit flat. It is also submitted by learned counsel for the

Respondent that in the proceeding before the Trial Court, the issue of the validity of the family arrangement and as to whether by virtue of the family arrangement, the Defendant No. 1 has become entitled to the suit flat is also an a issue. To counter this submission, learned counsel appearing for the Revision Applicant has pointed out that there is no counter claim filed. However, it cannot be disputed that a material proposition of fact has been raised by the Defendant No.1, as regards the family arrangement in respect of which an issue has been framed and which is required to be decided. The decision relied upon by learned counsel for the Respondent in the case of **Lalita Sahoo and Ors. Vs. Rania Das and Ors,** deals with such a position, where it is held that there cannot be any decree on admission under Order 12 Rule 6 of CPC when different issues arising in the suit are yet to be decided.

16. That brings us to the next question as regards the power to be exercised under Section 115 of CPC. Section 115 of CPC which deals with the revisional jurisdiction of this Court reads as under:-

> **Revision –**
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> (1)The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears –
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> (a) to have exercised a jurisdiction not vested in it by law, or

> (b) to have failed exercise a jurisdiction so vested, or
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> (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,
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> the High Court may make such order in the case as it thinks fit:
>
> Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.
>
> (2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.
>
> (3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

17. The provisions of Section 115 reads that the jurisdiction of this Court can be exercised if the sub-ordinate Court appears to have exercised a jurisdiction not vested in it by law or had failed to exercise the jurisdiction so vested or to have acted in exercise of its jurisdiction illegally or with material irregularity. Considering that the Trial Court has not refused to exercise the jurisdiction, however has exercised a discretion in favour of the Defendant No. 1, the question required to be considered is whether the Trial Court has acted in exercise of its jurisdiction illegally or with material irregularity. Perusal of the order of the Trial Court would indicate that the Trial Court has considered the averments made in the written statement as regards the other flats being flat No. 503 and 504 which also forms part of the property partitioned between the Plaintiff and Defendant and has recorded that the claim is that the suit flat came to the share of Defendant No. 1, which claims the parties are required to establish. The Trial Court has further considered that in the Petition which was filed before the Debt Recovery Tribunal, the Defendant No. 1 has averred regarding the share of the deceased Plaintiff and the averments made in the Petition, if proved, according to procedure, the Plaintiff will be benefited definitely. Learned counsel appearing for the Revision Applicant submits that this is a material irregularity inasmuch as there is no question of the averments made in the Petition to be proved in the instant suit. In my opinion, the Trial Court has considered that the averments as regards the share of the Defendant No. 1 to the extent of 50% if proved by the Plaintiffs, would be to the advantage of the Plaintiffs. The Trial Court has further held that it is not a fit case to use the discretionary power to pass the decree on admission as in the instant case landed property is involved. In my view, the observation of Trial Court that as landed property is involved, decree on admission cannot be passed is unsustainable, however, having regard to the discussion above, there is no material irregularity or illegality in exercise of discretion by the Trial Court.

18. In light of discussion above, in my opinion, there is no reason to interfere with the discretionary power which has been exercised by the Trial Court. The Revision Application fails and stands dismissed.

(SHARMILA U. DESHMUKH, J.)