

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
INTERIM APPLICATION (L) NO.11048 OF 2021  
IN  
SUIT NO.135 OF 2013**

M/s. K.D.Estate Developers ... Applicant/Plaintiff  
versus

Vivek Mahadeo Mahale and Ors. ... Defendants

**WITH  
INTERIM APPLICATION NO.1362 OF 2021  
IN  
SUIT NO.135 OF 2013**

Vivek Mahadeo Mahale and Ors. ... Applicants  
and

M/s. K.D.Estate Developers ... Plaintiff  
versus

Vivek Mahadeo Mahale and Ors. ... Defendants

Mr. Gautam Ankhad with Mr. Naresh Ratnani i/by Ashwin Ankhad and Associates,  
for Applicant/Plaintiff.

Mr. Makrand V. Raut, for Defendants.

**CORAM : N.J.JAMADAR, J.**

**DATE : 31 JANUARY 2023**

**P.C.**

1. These applications present an interesting situation. The Applicant/Plaintiff in IAL 11048 of 2021 and the Defendants/Applicants in IA 1362 of 2021 seek diametrically opposite reliefs.

2. In IAL 11048 of 2021, the Plaintiff seeks a decree on admission under the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 ('the Code'). In

IA 1362 of 2021, the Defendants, on the other hand, seek rejection of the Plaint under Order VII Rule 11 of the Code, as the Plaint does not disclose a cause of action and in any event, the Plaintiff No.4, the successor in interest of the original Plaintiff Nos.1 to 3 has no cause of action against the Defendants. However, both parties are firm that the suit need not go to trial.

3. The original Plaintiff Nos.1 to 3 approached the Court with a case that they are the owners of land bearing Survey Nos.119 and 120, Hissa No.1 and 2A, situated at Kandivali, Tal. Borivali (the suit property). The Defendant Nos.1 to 3 claimed to have acquired adjacent property bearing Survey No.120 Hissa No.2B, which is distinct from Hissa Nos.1 and 2A forming part of the suit property. Defendant Nos.1 to 3, thus, have no right, title and interest in the suit property. Yet on 12 November 2012, the Defendants lodged a false report with Borivali Police Station, resulting in the arrest of Plaintiff No.2. Hence, the Plaintiff apprehended that the Defendants through unlawful means may interfere with and try to obtain possession of the suit property. Thus, a Suit seeking declaration that the Defendants have no right, title or interest in the suit property and a decree of permanent injunction restraining the Defendants and their agents and assigns from interfering with the Plaintiffs exclusive possession and/or holding out themselves to be the owners of the suit property and the consequential reliefs. The Plaintiffs also prayed for a decree of damages in the sum of Rs.1,50,00,000/-.

4. In the Suit, the Plaintiffs took out Notice of Motion (L) No.3260 of 2012 seeking interim reliefs. On 23 November 2012, a statement was made on behalf of the Defendants that the Defendants were concerned only with the property bearing Hissa No.2B and not with the suit property and the Defendants shall not interfere in any manner with the possession of the Plaintiffs over the suit property.

5. By a subsequent order dated 4 April, 2014 the said Notice of Motion No.328 of 2013 (Notice of Motion (L) No.3260 of 2021) came to be disposed of by clarifying that the Defendant No.1 was concerned only with Survey No.120, Hissa No.2B and not with the suit property. The Defendant No.1 was directed not to enter into the suit property.

6. In the intervening period, Plaintiff No.4 acquired all rights, title and interest of original Plaintiff Nos.1 to 3 in the suit property vide Registered Deed of Conveyance dated 21 July 2013. Plaintiff No.4 came to be impleaded and Plaintiff Nos.1 to 3 stood deleted from the array of the parties. Post demise of Defendant Nos.2 and 3, their legal representatives have been impleaded as Defendant Nos.2(a) to 2(v) and 3(a) to 3(j).

7. Plaintiff No.4 has preferred IAL 11048 of 2021 for a decree on admission banking upon the aforesaid statements made on behalf of the Defendants recorded in the order dated 23 November 2012 and 4 April 2014. The Plaintiff No.4 also banked upon the contentions in paragraph No.9 of the Written Statement filed on behalf of

the Defendants wherein the Defendants contend that the Defendants had never claimed any right in Survey No.120, Hissa No.2A, of which the Plaintiff claimed to be the owner. According to Plaintiff No.4, the aforesaid statements made on behalf of the Defendants, on the strength of which interim orders were passed by this Court on 23 November 2012 and 4 April 2014, and the contentions in the Written Statement, clearly constitute admissions of the title of the Plaintiff over the suit property. Therefore, on the basis of such clear and unambiguous admissions, the Plaintiff is entitled to a decree.

8. An Affidavit in Reply is filed on behalf of the Defendants. The Defendants contend that there are no such clear and categorical admissions as claimed by the Plaintiff, which can form the basis of a decree on admission. On the contrary, according to the Defendants, the Defendants have categorically and consistently asserted that the Defendants were not at all concerned with the suit property and never threatened the original Plaintiff Nos.1 to 3's possession over the suit property. In contrast, an endeavour on the part of the original Plaintiffs to encroach upon the property of the Defendants had constrained them to initiate action. Therefore, the Application, being wholly misconceived, deserves to be rejected.

9. In IA No.1362 of 2021 the Defendants contend that the plaint does not disclose any cause of action. It is based on unjustified apprehension. In addition, on account of the subsequent events of Plaintiff No.4 acquiring the suit property from the

original Plaintiff Nos.1 to 3 and the Defendants having conveyed their interest in property bearing Survey No.120, Hissa No.1B to Chaitanya Reality, Plaintiff No.4 has no subsisting cause of action against the Defendants. The Suit, therefore, deserves to be dismissed.

10. I have heard Mr. Gautam Ankhad, learned Counsel for the Applicant/Plaintiff and Mr. Raut, learned Counsel for the Defendants at some length. With the assistance of the learned Counsel for the parties, I have perused the pleadings/averments in the Applications and the Replies thereto.

11. Mr. Ankhad would urge that clear and unequivocal admission of the fact that the Defendants had no right, title and interest over Survey No.120/2A and their interest was confined to Hissa No.2B can form a legitimate foundation of a decree on admission. In view of such clear and unequivocal admissions not only in the pleadings but also in the statements recorded by this Court, it would be superfluous to have a trial. Invoking the provisions contained in Order XII Rule 6 of the Code, Mr. Ankhad submitted, this is a fit case where the Court can exercise jurisdiction to pass a decree on admission.

12. To lend support to aforesaid submission, Mr. Ankhad placed reliance on the judgment of the Supreme Court in the case of **Karam Kapahi and Ors. V/s. Lal Chand Public charitable Trust and Anr.**<sup>1</sup>

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<sup>1</sup> (2010) 4 SCC 753

13. In contrast, Mr. Raut, learned Counsel for the Defendants submitted that there is no admission which can be pressed into service by the Plaintiffs to claim a decree thereon. In fact, the plaint does not disclose a cause of action at all. At best, it is based on an unjustified apprehension. Resultantly, the plaint itself is liable to be rejected. Moreover, subsequent developments, according to Mr. Raut, where both the original Plaintiffs and Defendants have been divested of their interest in the suit property, render the continuation of the suit an exercise in futility.

14. Mr. Ankhad joined the issue by canvassing a submission that in the application for rejection of the Plaint, the Defendants have not raised the ground that the plaint does not disclose a cause of action. Subsequent developments, occasioned by devolution of interest on account of assignment, by themselves do not furnish a sustainable ground for rejection of the plaint. It is only the averments in the plaint which the Court must look into, to decide whether the Plaint discloses a cause of action and not the defence of the Defendants. To buttress this submission, Mr. Ankhad placed reliance on a recent judgment of the Supreme Court in the case of **Shrihari Hanumandas Totala V/s. Hemant Vithal Kamat and Ors.**<sup>2</sup>

15. I have considered the rival submissions carefully. Since the Plaintiff claims a decree on admission, it may be apposite, in the first instance, to note the statements and contentions which, according to the Plaintiff, constitute admissions

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<sup>2</sup> (2021) 9 SCC 99

entitling him to a decree thereon.

16. The order dated 23 November 2012 in Notice of Motion (L) No.2360 of 2012 reads thus :

“1. The learned Advocate for Defendants states that the Defendants are concerned only with the property bearing No.2B and not with the Suit Property described in Exhibit 'A' to the Plaint i.e. property bearing No.2A. The learned Advocate for Defendants on instructions, states that the Defendants shall not interfere in any manner with the property of the Plaintiffs described in Exhibit 'A' to the Plaint. Statement is accepted.

2. The Notice of Motion to be heard in normal course. “

17. The subsequent order dated 4 April 2012 whereby ad-interim order was made absolute, reads thus :

“1. Defendant No.1 relies upon and makes a statement in terms of the ad-interim order of this court dated 23 November 2012. Counsel on his behalf states that the statement be continued pending the suit. Counsel on behalf of the Plaintiff states that would suffice. Hence, it is clarified that the Defendant No.1 is concerned only with property bearing Survey No.120, Hissa No.2B and not the suit property bearing Survey Nos.119 and 120, Hissa Nos.1 and 2A. Defendant No.1 shall not enter in any manner in the suit property bearing Survey Nos.119 and 120, Hissa Nos.1 and 2A.”

18. Relevant part of the Written Statement, which the Plaintiff presses into service, reads as under :

“9. This Defendant states that reading of the plaint itself discloses that the Plaintiffs are claiming to be owners of S.No.120/2-A and not S.No.120/2-B. However, the Plaintiffs have for reasons best known to them sought to take forcible possession of S.No.120/2-B from this Defendants illegally which constrained this Defendant to defend his property and his possession by

putting criminal law in motion. The documents annexed to the Plaint itself show that this Defendant has never claimed any rights in S.No.120/2-A of which the Plaintiffs claim to be the owners. On the other hand, it is the Plaintiffs who are illegally staking a claim on this Defendant's property despite it being an admitted position that they have no right, title or interest in S.No.120/2-B and only claim to be owners of S.No.120/2-A. This Defendant therefore, submits that the Plaint discloses no cause of action whatsoever against this Defendant and on this ground also the present suit deserves to be dismissed with costs awarded to this Defendant."

19. Mr. Ankhad made a painstaking effort to urge that the aforesaid statements and contentions spelled out sturdy admissions for a decree of declaration and perpetual injunction.

20. On a careful reading of the aforesaid statements recorded in the orders dated 23 November 2012 and 4 April 2014, it becomes abundantly clear that the Defendants took a stand that they were only concerned with Hissa No.2B of Survey No.120 and not Hissa No.2A. These statements cannot be construed to draw an inference that the Defendants have admitted that they were, at an anterior point of time, denying the title of the Plaintiffs over the suit land and subsequently conceded the title of the Plaintiffs over the suit land.

21. The Defendant's assertion that they were concerned with Hissa No.2B of Survey No.120, over which they claimed ownership, according to Mr. Ankhad, necessarily leads to an inference that the Plaintiffs ownership over Hissa No.2A of Survey No.120 is not put in contest and, therefore, a declaration must follow. I am

afraid to accede to this submission. The reason is not far to seek. It is incumbent upon the Plaintiff to not only show that the Defendants do not contest his claim of title but also that the Defendants by their act or omission had denied the legal character of the Plaintiff. A declaratory decree cannot operate in vacuum.

22. In this context, the judgment of the Supreme Court in the case of **Karam Kapahi (supra)**, on which a strong reliance was placed by Mr. Ankhad, may not advance the cause of the Plaintiff. In the said case, the Supreme Court after referring to the previous pronouncements, expounded the wide ambit of the provisions contained in Order XII Rule 6 of the Code as under the said Rule, the admissions can be inferred from the facts and circumstances of the case and need not be restricted to admissions in pleadings. The observations in paragraphs 40 and 41 are material and hence extracted below :

“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**<sup>3</sup> SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see Mulla’s Commentary on the Code,

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3 (2005) 11 SCC 279

16<sup>th</sup> Edition, Vol II P. 2177).”

(Emphasis supplied)

23. It is imperative to note that the Supreme Court emphasised the discretionary nature of the power conferred under Order 12 Rule 6 also in the following words :

“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 a given situation, as in the instant case, the said provision can be applied in rendering the judgment.”

(emphasis supplied)

24. In the case of **Himani Alloys Limited V/s. Tata Steel Limited**<sup>4</sup> the Supreme Court underscored the discretionary nature of jurisdiction under Order 12 Rule 6. The observations of the Supreme Court in paragraph 11 are material and, hence, extracted below :

“11 *It is true that a judgment can be given on an “admission” contained in the minutes of a meeting. But the admission should be categorical. It should be a conscious and deliberate act of the party making it, showing an intention to be bound by it. Order 12 Rule 6 being an enabling provision, it is neither mandatory nor peremptory but discretionary. The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trial which permanently denies any remedy to the defendant, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is a clear “admission” which can be acted upon. (See also Uttam Singh Duggal & Co. Ltd. vs. United Bank of*

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4 (2011) 15 SCC 273

*India [2000 (7) SCC 120], Karam Kapahi vs. Lal Chand Public Charitable Trust [2010 (4) SCC 753] and Jeevan Diesels and Electricals Ltd. vs. Jasbir Singh Chadha [2010 (6) SCC 601]. There is no such admission in this case.”*

*( emphasis supplied)*

25. In view of the aforesaid enunciation of law, unless an admission is clear and unequivocal and it is in respect of facts, which entitle a party to a decree, resort to the provisions contained in Order 12 Rule 6 may not be warranted. I am, therefore, persuaded to hold that, in the instant case, on the basis of the statements made and contentions taken in the Written Statement, an inference of initial denial of title and later admission cannot be drawn. In my considered view, the present is a case where the parties are not at issue. The Plaintiff asserts title to property 2A. The Defendants assert title to adjacent property 2B. Mere non-denial of Plaintiff's title to property 2A whilst asserting title to property 2B, without allegations of the Defendants having denied the legal character of the Plaintiff, would not furnish a foundation for a declaratory decree.

26. As regards the application for rejection of plaint, it is trite only the averments in the plaint are required to be considered. It is also well recognized that it is a meaningful reading of the averments in the plaint and not a formal reading that should be resorted to, to ascertain the existence of a cause of action.

27. I have perused the plaint in the instant suit carefully. The original Plaintiff Nos.1 to 3 asserted that the cause of action arose on 12 November 2012 when

the Defendants falsely claimed to be the owners of the suit property. In paragraphs 10 and 11 of the Plaint, it is averred that the Defendants filed malafide and bogus police complaint in order to harass and extort money from the Plaintiffs. The Plaintiffs, thus, seriously apprehended that the Defendants through unlawful means may interfere with and try to obtain the possession of the suit property by illegal and forceful means. The Defendants might approach the statutory authorities including the MCGM and misled them about the Plaintiffs right on the suit property. It is necessary to note that in paragraph No.13, alleging wrongful arrest of Plaintiff No.2 at the instance of Defendant Nos.1 to 3, damages to the tune of Rs.1.50 Crores were sought.

28. So far as the claim for damages, it would be suffice to note that Plaintiff Nos.1 to 3, post assignment of the rights in the suit, have been deleted and, thus, personal claim for damages for wrongful arrest of Plaintiff No.2 stood abandoned.

29. Mr. Ankhad was at pains to persuade the Court to hold that the aforesaid averments in the plaint make out a sufficient cause of action.

30. I am afraid to accede to the submission of Mr. Ankhad. The averments in the Plaint singularly lack the allegation of Defendants having violated or threatened to violate the Plaintiff's right. The Plaint proceeds on an apprehension. The basis of the apprehension was the complaint dated 12 November 2012. In this context, the allegations in the complaint dated 12 November 2012 lodged by the Defendants which

led to arrest of the Plaintiff No.2, became imperative. It is the said complaint which is stated to have furnished cause of action to the Defendants. It is well recognized that while considering the application for rejection of the plaint, not only the averments in the plaint, but the documents annexed to the plaint are germane. Copy of the said complaint had not been annexed to the plaint. The Plaintiff No.4, despite an opportunity, expressed his inability to place the same on record.

31. It is imperative to note that there is a qualitative difference between breach of obligation qua the suit property and pursuing remedies in respect of the adjacent property whilst not denying the claim of original Plaintiffs over the suit property. Moreover, the Plaintiff No.4 does not claim that the Defendant Nos.1 to 3, post assignment of interest by original Plaintiff Nos.1 to 3, threatened to cause obstruction to the Plaintiff No.4. With the divestment of interest of Defendant Nos.1 to 3 in the adjacent property, Hissa N.2B, absence of dispute, as such, between the parties to the suit becomes even more stark. In the aforesaid view of the matter, I am inclined to hold that the plaint is devoid of cause of action as it does not indicate that the Defendants committed breach of obligation on their part or threatened to commit breach of obligation.

32. The conspectus of aforesaid discussion is that the Application for rejection of the plaint deserves to be allowed.

33. Hence, the following order :

**ORDER**

- (i) Interim Application (L) No.11048 of 2021 seeking a decree on admission stands rejected.
- (ii) Interim Application No.1362 of 2021 stands allowed.
- (iii) The Plaint stands rejected with costs.

**(N.J.JAMADAR,J.)**