

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY AT GOA
ORDINARY ORIGINAL CIVIL JURISDICTION**

INTERIM APPLICATION NO. 2815 OF 2022

IN

SUIT NO. 1427 OF 2019

Dr. Mrs. Devika Sunil Jamdar

...Applicant

IN THE MATTER BETWEEN

Dr. Mrs. Devika Sunil Jamdar

...Plaintiff

Versus

Ms. Serika Lal alias Sarika Aggarwal & Ors.

...Defendants

* * *

- Mr. Vineet B. Naik, Senior Counsel a/w Mr. Karl F. Tamboly and Mr. Sukand R. Kulkarni i/b Indrajeet R. Kulkarni, for Applicant/Plaintiff.
- Mr. Gauraj Shah i/b Preeti Gokhale, for Defendant No.1.
- Ms. Charushila M. Vaidya, 2nd Assistant to Court Receiver.

* * *

CORAM : MANISH PITALE, J.

DATE : 20th DECEMBER, 2023.

ORDER:

1. By this application filed under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC), the plaintiff is seeking decree on admissions, thereby seeking declaration that the plaintiff and defendant Nos. 1 to 3 are entitled to 1/4th share in the right, title and interest in flat No. 308, Shalaka Co-operative Housing Society Ltd., Colaba, Mumbai. Although the prayer clause also refers to an amount of about Rs. 4.25 Crores deposited in the office of the Prothonotary and Senior Master of this Court, the learned senior counsel appearing for the applicant / plaintiff, on instructions, submitted that the decree on admissions is being sought only in respect of the aforesaid flat.

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2. The plaintiff and defendant Nos. 1 to 3 are sisters. Defendant Nos. 2 and 3 are supporting the plaintiff and hence, the only contesting party is defendant No. 1. In the present application, the plaintiff claims that in view of the statements made in the written statement of defendant No. 1, which amount to admissions and in any case, divulge a vague and moonshine defence, the present application deserves to be allowed.

3. The suit has been filed for administration and partition of estate of the father of the plaintiff and the defendants. The plaintiff claims that the parties to the suit being the legal representatives of the deceased father are entitled to 1/4th share in the estate and property to the credit of the deceased.

4. The plaintiff had also filed a suit for grant of Letters of Administration, in respect of the properties and credits of the deceased father. The said petition bearing Testamentary Petition No. 2244 of 2017, was converted to Testamentary Suit No. 08 of 2018, as the defendant No. 1 herein had filed a caveat. The said suit concerned various properties of the estate of the deceased, including the aforementioned flat and the amount lying with the Prothonotary and Senior Master of this Court.

5. On 08th April, 2021, the plaintiff and defendant No. 1

placed consent terms before this Court and in that context the suit was disposed of. The consent terms specifically recorded that while the defendant No. 1 had withdrawn her caveat and given consent for making the prayer in the Testamentary Petition No. 2244 of 2017 absolute by appointment of the plaintiff as administrator of the estate and credits of the deceased father, the aforementioned flat and the amount lying before the Prothonotary and Senior Master of this Court were expressly excluded. It was specifically recorded that the consent terms had been filed without prejudice to the rights and contentions of the parties in the present suit i.e. the Suit No. 1427 of 2019. It was further specifically stated that the said flat and the amount lying with the Prothonotary would be dealt with in the present suit.

6. As a consequence, in respect of the aforesaid properties, the present suit is a contested matter.

7. The defendant No. 1 filed her written statement in the present suit. It is the case of the plaintiff in the present application that a perusal of the written statement shows that the defendant No. 1 has given vital admissions and that in any case, the pleadings in the written statement show moonshine defence, as a result of which, the plaintiff is entitled to invoke Order XII Rule 6 of the CPC, to seek a decree on admissions in respect of the aforesaid flat. As noted

hereinabove, the present application is being pressed only in respect of the flat.

8. Mr. Vineet Naik, learned senior counsel appearing for the plaintiff i.e. the applicant, invited attention of this Court to the written statement filed on behalf of defendant No. 1. After referring to the same, he submitted that the defendant No. 1 had made vague and bold statements of denial with not even a semblance of material to stake claim to exclusive ownership of the aforesaid flat. It was submitted that the defendant No. 1 is unable to deny the fact that the deceased father was the member of the society in which the flat is located. The aforesaid society has denied issuing any documents to defendant No. 1, as she is not a member. This is also conceded in the written statement and according to the learned senior counsel for the plaintiff, merely stating that the deceased father desired to give the flat to defendant No. 1, amounts to nothing but moonshine defence.

9. On this basis, it was submitted on behalf of the plaintiff that if the position of law clarified in various judgments, is taken into consideration, the present suit deserves to be decreed in respect of the flat in question, so that all the four sisters, including the defendant No. 1, get $1/4^{\text{th}}$ share in the said flat.

10. The learned senior counsel for the plaintiff specifically relied upon judgments of the Delhi High Court in the case of *Vijaya*

*Myne vs. Satya Bhushan Kaura*¹, *P.P.A. Impex Pvt. Ltd. vs. Mangal Sain Meta*², *Rajeev Tandon and Another vs. Rashmi Tandon*³ and *Monika Tyagi and Others vs. Subhash Tyagi and Others*⁴. Reliance was also placed on judgments of the Supreme Court in the case of *T. Arivandandam vs. T. V. Satyuapal and another*⁵ and *Charanjit Lal Mehra and Others Vs. Kamal Saroj Mahajan (Smt) and another*.⁶

11. On the other hand, Mr. Gauraj Shah, learned counsel appearing for defendant No. 1 submitted that the prayer made in the present application in respect of the subject flat cannot be granted, for the reason that the defendant has not made any clear or unequivocal admission. It is submitted that defendant No. 1 has emphatically denied the claims of the plaintiff and she has set up her own case. It is submitted that the defendant No. 1 has placed on record in the written statement, the efforts made to collect documents from the society, even by approaching the Deputy Registrar of Societies, in order to support her assertion that the deceased father did give the flat exclusively to the defendant No. 1. It was submitted that there were sufficient pleadings in the written statement to indicate that the matter must go to trial and an opportunity must be granted to the defendant No. 1 to lead evidence in support of her case.

1 2007 SCC OnLine Del 828

2 2009 SCC OnLine Del 3866

3 2019 SCC OnLine Del 7336

4 2021 SCC OnLine Del 5400

5 (1977) 4 SCC 467

6 (2005) 11 SCC 279

12. Apart from this, the learned counsel appearing for defendant No. 1 also referred to communications addressed by the deceased father during his lifetime, from the year 2003 onwards, which would demonstrate the manner in which he was treated by the plaintiff and her husband. Such documents indicated the desire of the deceased father to not allow the plaintiff to enter the subject flat. The said communications also indicated the unauthorized manner in which other properties / flats of the deceased father were disposed of by the plaintiff. It was indicated that since the present suit is a suit for partition and all the parties are plaintiffs as well as defendants, the defendant No. 1 would be entitled to raise such issues during the course of trial, including claiming reliefs in respect of the properties disposed of by the plaintiff against the wishes of the deceased father.

13. The learned counsel for defendant No. 1 placed reliance on judgment of the Delhi High court in the case of *Delhi Jal Board vs. Surendra P. Malik*⁷ and judgments of the Supreme Court in the case of *Nagubai Ammal and Ors. vs. B. Sharma Rao and Ors.*⁸ and *Karan Kapoor vs. Madhuri Kumar*.⁹ On this basis, it was submitted that the present application deserved to be dismissed.

14. In order to consider the rival submissions, in the light of

⁷ ILR (2003) I Delhi 269

⁸ AIR 1956 SC 593

⁹ Judgment and order dated 06th July, 2022 passed in Civil Appeal No. 4545 of 2022

the pleadings on record, it would be appropriate that the position of law is considered in the context of Order XII Rule 6 of the CPC. The said provision reads as follows :

“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.”

15. Section 17 of the Indian Evidence Act, 1872, defines admission as a statement oral or documentary which suggests any inference as to any fact in issue or relevant fact.

16. In the case of **Nagubai Ammal and Ors. vs. B. Sharma Rao and Ors.** (*supra*), the Supreme Court has observed that an admission is not conclusive as to the truth of the matter stated therein and it is only a piece of evidence, indicating that the weight to be attached to such admission depends on the circumstances under which it is made. It is further laid down that an admission must be clear and unambiguous, which can be said to be conclusive, unless explained.

This position of law has been consistently followed and it is further clarified by the Supreme Court in the case of *Hari Steel and General Industries Limited and Another vs. Daljit Singh and Others*,¹⁰ that while exercising power under Order XII Rule 6 of the CPC, the Court must be conscious of the fact that a judgment on admissions is judgment without trial, which permanently denies any remedy to the appellant on merits. Thus, it is within the discretion of the Court, as to whether such a judgment or decree on admissions is to be granted.

17. This Court is of the opinion that in the written statement of the defendant No. 1 in the present case, such clear and unambiguous admissions are not found. The defendant No. 1 has denied the case set up by the plaintiff and she has asserted circumstances in which, according to her, the subject flat exclusively belongs to her.

18. In these circumstances, it was vehemently submitted on behalf of the plaintiff that even in a case where the contents of the written statement show only a vague denial and moonshine defence, the Court can exercise power under Order XII Rule 6 of the CPC, to grant judgment on admissions. It is asserted that the defence set up by defendant No. 1 is not even a stateable defence, in the facts and circumstances of the present case.

¹⁰ (2019) 20 SCC 425

19. This Court has appreciated the written statement in the context of the aforesaid specific contention raised on behalf of the plaintiff. A perusal of the written statement filed on behalf of defendant No. 1 shows that apart from denying the case set up by the plaintiff, the defendant has claimed that the deceased father had transferred the subject flat in her name in the year 1978. She claims that even records of the society reflected her name as a member till a particular year. The defendant No. 1 has also referred to documents obtained from the various authorities under the Right to Information Act, to support her case. It is further asserted that she approached the society for grant of inspection and demanded documents, which the society did not permit. She had to approach the Deputy Registrar of Societies, who addressed a communication to the society. Thereupon, the Deputy Registrar addressed a communication to the defendant No. 1 stating that the society had asserted certain facts as regards the original membership of the deceased and the absence of nomination in favour of defendant No. 1 and ultimately it was stated that the matter was pending before this Court. In that context, the Deputy Registrar informed the defendant No. 1 that she should approach the competent Court for reliefs.

20. This Court is of the opinion that the contents of the written statement do not indicate that the defendant No. 1 has raised a moonshine defence or that the contents are so vague that a

judgment and decree on admissions in respect of the subject flat must follow against her.

21. It is relevant that defendant No. 1 has also relied upon certain communications addressed by the deceased father to the plaintiff during his lifetime, from the year 2003 onwards, which do indicate the desires of the deceased father and the nature of relationship between the deceased father and the plaintiff, as also the defendant No. 1. These documents are of the relevant period during the lifetime of the deceased father. They do *prima facie* show a protest lodged by the deceased father against some actions of the plaintiff in disposing of certain immovable property/properties belonging to the deceased father. There is substance in the contentions raised on behalf of defendant No. 1 that this being a partition suit, all the parties are plaintiffs as well as defendants and that defendant No. 1, in turn, would be entitled to raise claims in respect of such property/properties of the deceased father, allegedly unauthorizedly disposed of by the plaintiff.

22. This Court is of the opinion that there is indeed sufficient material on record to indicate that the case must go to trial and that the plaintiff cannot claim a judgment and decree on admissions in respect of the subject flat against the defendant No. 1. It must be kept in mind that granting a judgment on admissions and decreeing the

suit in such a manner is judgment without trial and the Court must tread consciously and with sensitivity on such a path. This Court is not convinced that in the present case the plaintiff has made out her case for grant of judgment on admissions.

23. As regards the judgments of the Delhi High Court on which the plaintiff has placed much reliance, a perusal of the same shows that the said cases have turned on their own facts. In any case, the judgments of the Delhi High Court are at best of persuasive value and they cannot be binding on this Court.

24. As regards judgment of the Supreme Court in the case of **T. Arivandandam vs. T. V. Satyuapal and another** (*supra*), there can be no quarrel with the proposition that a litigant cannot be allowed to abuse the process of the Court, but the pleadings on behalf of defendant No. 1 in the present case, cannot be said to be of such quality that she can be condemned to suffer judgment on admissions.

25. Judgment of the Supreme Court in the case of **Charanjit Lal Mehra and Others Vs. Kamal Saroj Mahajan (Smt) and another** (*supra*), relied upon by the plaintiff would also not take her case any further, because it is simply laid down therein that an admission can be inferred from the facts and circumstances of the case and that such an admission can be acted upon for expeditious disposal of the matter. But, this Court is of the opinion that the admission has to be

clear and unequivocal, which is not the case in the present matter.

26. In view of the above, this Court does not find any merit in the present application. Accordingly, it is dismissed.

(MANISH PITALE, J.)