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C.R.P.No.3075 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2023

CORAM :

THE HON'BLE DR. JUSTICE D.NAGARJUN

C.R.P.No.3075 of 2022

Gyanchand

... Petitioner

Vs.

1.H.Leela Kumari
2.H.Nirmal Chand
3.V.Saroja Chorida
4.P.Ashwin Kumar

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order dated 12.08.2022 in I.A.No.01 of 2020 in O.S.No.2883 of 2019 on the file of the court of the I Additional City Civil Court Judge, Chennai.

For Petitioner : Mr.P.John Bosco

For Respondents : Mr.M.Suresh Kumar for R2

ORDER

This revision is filed by the petitioner against the order of



C.R.P.No.3075 of 2022

dismissal of I.A.No.1 of 2020 in O.S.No.2883 of 2019
(C.S.No.587/2018) (B) on the file of this Court in C.N.R.No.TNCH01-
013580-2019) filed under Order XII Rule 6 r/w Section 151 of C.P.C.

2.The facts in brief which necessitated the petitioner to prefer
this revision are as under;

The petitioner has filed O.S.No.2883 of 2019 against the
respondents / defendants seeking declaration of title, recovery of
possession, return of the original title deeds, including past and future
mesne profits.

According to the petitioner / plaintiff, the suit schedule
property was originally purchased by the plaintiff's adoptive mother by
name Late Smt.Meena Bai out of her own funds under registered sale
deed dated 28.01.1956. The plaintiff's adoptive father by name
K.C.Manickchand predeceased the plaintiff's adoptive mother. After the
death of the plaintiff's adoptive mother, the plaintiff being sole legal
representative has been in possession and enjoyment of schedule of
property.



C.R.P.No.3075 of 2022

WEB COPY

The plaintiff's adoptive mother by name Smt. Meena Bai has executed her last Will and testament on 16.05.1990 vide a registered document No.39 of 1990, S.R.O. T.Nagar, bequeathing all her properties, assets including the suit schedule property absolutely to the plaintiff. The said Will has been duly probated in O.P.No.638 of 2008 on the file of this Court dated 03.03.2009. Smt.Meena Bai has adopted the plaintiff as her son by executing registered adoption deed on 26.04.1990 vide Document No.400 of 1990. It was informed to the plaintiff by his adoptive mother that the original sale deed pertaining to the schedule of property was misplaced.

One late I.Hansraj and his mother Madi Bai are also related to adoptive mother of the plaintiff and the defendants are the legal heirs of I.Hansraj. The adoptive mother of the plaintiff has permitted I.Hansraj to use the ground floor along with entire first floor of the schedule of property and as a licensee and the plaintiff's adoptive parents were also living in the schedule of property during their life time. As the adoptive mother of the plaintiff had no children, late I.Hansraj wanted the



C.R.P.No.3075 of 2022

WEB COPY

plaintiff's adoptive mother to adopt children of the I.Hansraj. Smt.Meena Bai during her life time has demanded the late I.Hansraj to vacate the premises and a notice dated 10.10.2015 was also issued to him directing him to vacate the schedule premises and to deliver the property to her. As the respondents/defendants have not used the premise, the plaintiff has filed a suit seeking to declare him as the absolute owner of the schedule of property and a direction to the defendants to vacate and hand over the schedule of property and also a direction to the defendants to return the original title deeds and to pay a sum of Rs.18,00,000/- towards past mesne profits and to pay a sum of Rs.1 lakh per month as future mesne profits.

The respondents in defence filed a detailed written statement denying the allegations of the plaintiff, stating that the defendants' father namely I.Hansraj was the absolute owner of the schedule of property, having right title interest and denied the contention of the plaintiff that he is the adoptive son of the late Meena Bai. It is also stated that the adoption deed was clandestinely registered without consent of late Meena Bai with an intention to grab the property and that the plaintiff



C.R.P.No.3075 of 2022

WEB COPY

was never in possession of the schedule of property. He added that the said Meena Bai and her husband have handed over the original title deeds along with the possession to the father of the defendants about 35 years ago. Thereby the defendants' father and other family members have become absolute owners of the schedule of property and have been paying the property tax etc. Late Meena Bai has not executed any such document, probate order is not binding on the defendants as O.P.No.638 of 2008, the father of the defendants viz. I.Hansraj was not added as party and that the defendants were continued to be in possession of the property as owners and not as a licensee.

Subsequent to filing of the written statement in the main suit by the respondents, the plaintiff has filed I.A.No.1 of 2020 under Order XII Rule 6 r/w Section 151 of C.P.C. praying the court to pass a judgment and decree on the basis of admission.

3. Heard both sides and perused the record.



WEB COPY



C.R.P.No.3075 of 2022

4. Order XII Rule VI of C.P.C. reads as under:-

"[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.] "

5. According to the petitioner one H.Padamchand has filed C.S.No.167 of 1997 on the file of this Court on the Original Civil jurisdiction against the nine defendants, of which father of the defendants I.Hansraj was defendant No.1. In the said suit H.Padamchand sought for declaration that the schedule of property therein was a joint family



C.R.P.No.3075 of 2022

property and for partition and for separate possession of the same. The schedule of property in the present suit is shown as item No.4 of the schedule A in the C.S.No.167 of 1997. The father of the defendants by name I.Hansraj has filed the written statement in the said C.S.No.167 of 1997 stating that “In so far as item No.4 of the A schedule property is concerned, it is not the property of the joint family but the property of Smt.Meena Bai”.

6. The petitioner has filed copy of the written statement of D3, D4 and D9, wherein they have admitted the relationship of the parties to the said suit. By taking the pleadings the learned counsel for the petitioner submits that the defendants' father I.Hansraj has admitted in the written statement filed in C.S.No.167 of 1997 that the adoptive mother of the petitioner is the absolute owner of the schedule of property. Thereby, according to petitioner since the defendants are claiming their right only through I.Hansraj as his legal heirs, the admission made by I.Hansraj in C.S.No.167 of 1997, is binding on the defendants and thereby it is deemed that the defendants are also admitted that the schedule of property belongs to the adoptive mother of the plaintiff and



C.R.P.No.3075 of 2022

WEB COPY

that since the petitioner is the adopted son of Meena Bai and that she has executed a Will deed also which was probated the said admission of I.Hansraj also acts as an admission by the defendants thereby sought for decreeing the suit as prayed for.

7.In the contrary, it is the case of the respondents/defendants that the respondents/defendants are the absolute owners of the schedule of property and the admission allegedly made by their father I.Hansraj in C.S.No.167 of 1997 cannot be treated as admission by the respondents. The other contention of the respondents is that the execution of Will deed and adoption deed by Meena Bai are doubtful and that probate was taken hurriedly without incorporating the defendants' father I.Hansraj as a party thereby any amount of doubt would arise in respect of genuineness of those documents and therefore the issues raised by the respondents/defendants have to be put to trial and thereby a decree and judgment cannot be passed under Order XII Rule 6 C.P.C.

8.There is no dispute that both petitioner and the respondents are claiming the rights over the schedule of property only through Meena



C.R.P.No.3075 of 2022

WEB COPY

Bai who purchased the schedule of property under a registered sale deed dated 28.01.1956.

9. I.Hansraj has mentioned in the written statement as defendant No.1 in C.S.No.167 of 1997 that the item No.4 of the schedule of property, which is schedule of property in the suit on hand, belonging to Meena Bai and that the said property cannot be included in the joint family property and thereby cannot be subjected to partition in C.S.No.167 of 1997. Since the defendants are the sons of I.Hansraj and claiming the rights only through him, the alleged admission made by father I.Hansraj in C.S.No.167 of 1997 also binds the defendants.

10. The admissions made I.Hansraj in C.S.No.167 of 1997 is binding on respondents/defendants but the said admissions only to the effect that Smt.Meena Bai is the owner of the schedule of property for which even the defendants are also admitting in this case even without considering the admissions of I.Hansraj in C.S.No.167 of 1997 as the respondents/defendants also claiming their rights only through Smt.Meera Bai. Thereby the admissions made by I.Hansraj cannot be



C.R.P.No.3075 of 2022

WEB COPY

treated as an admission that the petitioner is the owner of the schedule of property.

11. According to petitioner, Meena Bai being the owner of schedule of property has executed a registered Will on 16.05.1990 and the same was also probated in O.P.No.638 of 2008. As per the documents filed before the Court, one Meena Bai stated to have executed a registered Will deed on 16.05.1990, bequeathing all her properties including the schedule of property in favour of the plaintiff. Similarly, the plaintiff has also filed an adoption deed dated 26.04.1990 to show that Meena Bai has adopted the plaintiff as her adoptive son. However, the respondents/defendants are disputing both the documents. Merely because the plaintiff has filed a registered Will deed and a registered adoption deed, the case of the plaintiff that he is the adopted son of Smt.Meena Bai and that Smt.Meena Bai has bequeathed the plaint schedule property and other properties in favour of the petitioner/plaintiff cannot be accepted without proving both the documents. If the respondents/defendants have not been disputing the Will deed dated 16.05.1990 and adoption deed dated 26.04.1990, then contention of the



C.R.P.No.3075 of 2022

petitioner can be accepted. Since the defendants have been disputing both the documents, the plaintiff is put to strict proof of the same and trial required to be conducted to prove both the documents.

12.It is submitted by the learned counsel for the petitioner that the Will deed cannot be doubted as the probate was also granted by this Court in O.P.No.638 of 2008. It is true that probate is granted in O.P.No.638 of 2008 in respect of Will deed executed allegedly by Meena Bai in favour of the plaintiff. However, as submitted by the learned counsel for the respondents neither the respondents nor their father were made parties in the said probate proceedings. According to petitioner in probate process the aggrieved parties and third persons need not be included as parties. Apart from that, as rightly submitted by the learned counsel for the petitioner, an attempt was made by filing an application before this Court seeking to set aside the probate granted. However, the said application was dismissed. Therefore, the proceedings before this Court in respect of granting the probate, in respect of Will executed in favour of the plaintiff has become final. But even then in case if the defendants are able to prove that the said Will has not been executed by



C.R.P.No.3075 of 2022

WEB COPY

Meena Bai, the petitioner has no case on the basis of Will. Therefore, unless execution of Will deed by Ms.Meena Bai is proved, it cannot be said that on account of admission of I.Hansraj, petitioner cannot be decided as the absolute owner.

13. Further, admittedly the title deeds in respect of schedule of property are with the respondents/defendants and not with the petitioner/plaintiff. It is not explained by the petitioner as to how title deeds came into the hands of the respondents/defendants.

14. According to petitioner/plaintiff, the title deeds of the schedule of properties were missing. But the respondents/defendants submit that Ms.Meena Bai has given the title deeds to Hansraj. Further, according to the petitioner/plaintiff, the respondents/defendants have been in possession over the schedule of property since long time, no reason is explained as to why steps are not taken by petitioner/plaintiff for eviction immediately after the death of Meena Bai and also as to why Meena Bai during her life time has not asked the respondents/defendants to vacate the premises.



C.R.P.No.3075 of 2022

WEB COPY

15. Further since the respondents/defendants have been disputing the execution of adoption deed dated 26.04.1990, the petitioner is expected to prove the adoption deed during the course of regular trial. If any one of the documents namely, either the Will deed or adoption deed is proved then petitioner counter case can be accepted.

16. Above all, on a careful perusal of the written statement filed by the defendants in the main suit in O.S.No.2883 of 2019, it is evident that the defendants have not asserted themselves as owners of the schedule of property on the basis of any title document. According to the defendants, Meena Bai the original owner, during her life time and her husband's life time about more than 35 years ago inducted the respondents/defendants into possession of the property as a oral gift along with original title deeds and since then they have been continued to be in possession of the said property as owners by paying municipal tax etc. The submissions of the defendants that they have become the owners by way of oral gift is questionable, as prima facie oral gift of immovable property is not valid. However, the indirect submissions of the



C.R.P.No.3075 of 2022

WEB COPY

defendants would go to show that even though the Meena Bai is the absolute owner, the defendants continued to be in possession of the property as owners for the last more than 35 years, thereby they have perfected the title over the schedule of property.

17. Therefore, the questions like genuineness of adoption deed, genuineness of Will deed, how and why original title deeds of the property are with the respondents/defendants, whether oral gift set up by the respondents/defendants can be accepted and whether the respondents/defendants are only licensees and the continuous uninterrupted long possession for the last more than 35 years by the defendants over the schedule of property amounts to adverse possession, and other questions have to be tried and debated by framing appropriate issues in the main suit and these issues cannot be decided in the interlocutory application.

18. Section 58 of Indian Evidence Act, 1872, provides that facts admitted need not be proved. Order XII Rule 6 draw its power from Section 58 of Indian Evidence Act. Order XII Rule 6 CPC being enabling



C.R.P.No.3075 of 2022

provision, it is discretionary. The Court on thorough examination of the fact by exercising judicial discretion has to pass the judgment as it will be a judgment not on merits. In a case reported in 2022 LiveLaw(SC) 567, in Karan Kapoor v. Madhuri Kumar, the Hon'ble Supreme Court has held at para 16 as under:-

"16. Thus, legislative intent is clear by using the word 'may' and 'as it may think fit' to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the Court can refuse to invoke the power of Order XII Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by other, and the Court is satisfied to the nature of admission, then the parties are not compelled for full-fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the Court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the Court if thinks fit may pass an order at any stage of the suit. In case the judgment is pronounced by the Court a decree be drawn accordingly and parties to the case is not required to go for trial."



C.R.P.No.3075 of 2022

WEB COPY

19. In order to consider the application under Order XII Rule 6 of C.P.C., the admission has to be clear, unequivocal straight, and not ambiguous. The plaintiff cannot collect the stray sentences here and there to demonstrate before the court that the defendants have admitted the suit claim. Even otherwise, even after an admission by the defendants, it is not mandatory Order XII Rule 6 of C.P.C. that court shall pass judgment and decree in favour of the plaintiff. In case if the court comes to the conscious conclusion that the admission made by the defendants is clear so far as the issues before the court, only then the court is required to pass the judgment and decree. Which means, even if there is an admission by the defendants, still court is at liberty not to pronounce the judgment and decree but can order a trial. In the case on hand, the admission made by I.Hansraj is only in respect of admitting the ownership of original owner Meena Bai, which is not in dispute and as the defendants are also claiming the right only through her. Neither the defendants nor I.Hansraj have admitted about the adoption deed and Will



C.R.P.No.3075 of 2022

deed.
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20. In view of the above, this court is not in agreement with the petitioner, that there is a clear admission in respect of claim of the plaintiff and the defendants have raised many issues in respect of claim of the petitioner/plaintiff and thereby all the issues have to put to trial. Therefore, the prayer of the petitioner to grant decree and judgment basing on the alleged admissions cannot be accepted.

21. In view of the above, the orders dated 12.08.2022 passed by the learned trial Judge does not suffer impropriety or irregularity, thereby need not be interfered. This Civil Revision Petition stands dismissed accordingly. No costs.

28.06.2023

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C.R.P.No.3075 of 2022

DR.D.NAGARJUN, J.

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To

The I Additional City Civil Court Judge
Chennai.

C.R.P.No.3075 of 2022

28.06.2023