



2023:DHC:7450



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 21st September, 2023**
+ C.R.P. 141/2022
SMT. NEELAM DHINGRA Petitioner
Through: Appearance not given
versus
PRIYANKA Respondent
Through: Mr. Rishabh Kapur, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 115 of the Code of Civil Procedure, 1908, (hereinafter "CPC") has been filed on behalf of the petitioner seeking the following reliefs:

- “(i) Set-aside the Order Dated 30.11.2021 passed by the Court of Shri Surender Mohit Singh, Additional District Judge-04, North District, Rohini Courts, Delhi, in Suit being CS DJ No.127 of 2019, titled as "Neelam Dhingra Vs. Priyanka";*
- (ii) Allow the Application under Order XII Rule 6 read with Section 151 of C.P .C. filed by the Petitioner and pass the judgment and decree on admission, as prayed for in the Application under Order XII Rule 6 of C.P.C.;*
- (iii) Award costs of the present Petition in favour of the Petitioner and against the Respondent;*
- (iv) Pass any such other or further orders as this Hon'ble Court*



may deem fit and proper on the facts and in the circumstances of the case, in favour of the Petitioner and against the Respondent.”

2. The relevant facts of the present petition are recapitulated as under:
- The petitioner herein, is the wife of Late Sh. Prem Kumar. before his death, had executed a Will dated 18th April 2017 by virtue of which his 1/3rd share in the disputed property bearing no A-21, Swaran Singh Road, Adarsh Nagar, Delhi-110033, measuring 160 Sq. yards (hereinafter “suit property”), was bequeathed in favour of the petitioner. The suit property, was originally purchased by Late Sh. Atam Prakash, father-in-law of the petitioner, *vide* sale deed dated 24th February 1971.
 - It has been stated by the petitioner that Late Sh. Atam Prakash sold the aforesaid property to his three sons, namely, Sh. Prem Kumar (since deceased), Sh. Shyam Sundar and Sh. Ashok Kumar Dhingra by way of a registered sale deed dated 12th March 2001, following which they all became owners 1/3rd share in the suit property.
 - Late Sh. Atam Prakash died in the year 2010 and his wife (mother-in-law of the petitioner) predeceased him. The aforesaid property was mutually partitioned among the three brothers with each brother occupying one floor of the house.
 - Sh. Nand Kishore Dhingra i.e., father-in-law of the respondent herein was inducted as a licensee by the petitioner’s husband/Late Sh. Prem Kumar in the year 2004 *qua* the first floor portion of the suit property.



Sh. Nand Kishore is also one of the sons of Sh. Atam Prakash and hence the brother-in-law of the petitioner herein.

- e) In the year 2015, the husband of the petitioner had asked Sh. Nand Kishore to vacate the property and subsequently it was assured that the suit property would be vacated by the end of December, 2015. Sh. Nand Kishore expired on 24th July 2017. However, the respondent continued to stay in possession of the said property.
- f) On 16th March 2019, plaintiff, i.e., the petitioner before the learned Trial Court filed a suit for possession; damages, *mesne* profits, and injunction against the respondent vide Civil Suit bearing CS No. 127/2019. The respondent, i.e., the defendant before the learned Trial Court contended in the written statement that the sale deed dated 12th March 2001 is forged and fabricated and therefore, the defendant is a co-sharer in the Joint Hindu Family property by virtue of being the daughter-in-law of Late Sh. Nand Kishore.
- g) Thereafter, the petitioner moved an application under Order XII Rule 6 read with Section 151 of the CPC, as the respondent had admitted the following facts in her written statement, which are - (i) that the aforesaid property has been purchased by way of a registered sale deed by three persons; and (ii) that all the three persons are living in the aforesaid property after mutual partition.
- h) The learned Trial Court vide order dated 30th November 2021, dismissed the application under Order XII Rule 6 read with section



151 of the CPC, thereby, holding that there is no admission of facts *qua* the alleged sale deed dated 12th March 2001..

i) Aggrieved by the impugned order dated 30th November 2021, the petitioner has preferred the present petition.

3. Learned counsel appearing on behalf of the petitioner submitted that the learned Trial Court failed to consider the fact that the respondent became a part of the family of Late Sh. Atam Prakash, only after her marriage in the year 2004, and the suit property was purchased in the year 2001, therefore, the respondent cannot seek shelter under the Hindu Succession Act and challenge the concerned ownership/partition *qua* the suit property.

4. It is submitted that the learned Court below erred by not appreciating that the suit property was purchased *vide* a registered sale deed, further the said sale deed could have been challenged by late Sh. Nand Kishore and the same option was never exercised by him as he was aware of the fact that the suit property had been purchased by the three brothers who were residing there as well.

5. It is further submitted that the learned Trial Court has failed to consider the spirit of Order XII Rule 6 of the CPC, as it is evident that the respondent has no defence available.

6. It is submitted by way of paragraph 5 of the written statement that the respondent has admitted to factum of the will and sale deed being false and fabricated and the same amounts to admission as per the requisites of the said provision and hence the learned Trial Court erred by not appreciating the said fact and circumstances.



7. Hence, in view of the foregoing submissions, it is prayed on behalf of the petitioner, that the present petition may be allowed, and the reliefs may be granted as prayed.

8. *Per Contra*, learned counsel appearing on behalf of the respondent vehemently opposed the arguments advanced on behalf of the petitioner submitting to the effect that the learned Court below has rightly adjudicated the application and has dismissed the same in terms of the settled law.

9. It is submitted that there exists no admitted facts in the Written Statement or in the reply to the application under Order XII Rule 6 of the CPC, *qua* the ownership of the suit property.

10. It is submitted that the alleged sale deed dated 12th March 2001, is forged and fabricated as there was no mention of the same before the suit was filed.

11. It is submitted that Late Sh. Aatam Prakash had four sons and since there is no executed sale deed, there stands no reason to exclude Sh. Nand Kishore from the suit property.

12. It is submitted in view of the aforementioned arguments that the instant petition is liable to be dismissed.

13. Heard the arguments advanced on behalf of the parties and perused the record.

14. In order to adjudicate the instant petition, it is imperative to analyse the impugned order dated 30th November 2021. The relevant paragraphs of the same are reproduced herein:



*"I have heard the rival contentions of the parties.
There is no dispute with respect to the Hindu Succession Act 1956 that after passing the Act, the nature of the property in the hands of class-I legal heirs would be separate property as per the judgment of "Commissioner of Wealth Tax v. Chandersen, 1986 AIR (SC) 1753". In the present suit there is no denial that the suit property in the hands of Sh. Atma Prakash is a separate property. However, the disputed fact is whether the Sale Deed dated 12.03.2001 is false and fabricated document or not. If there would not have been any dispute qua the aforesaid Sale Deed then it may be an admitted fact and judgment may be passed under Order 12 Rule 6 CPC. However, in the present suit this is the main disputed fact and issue has already been framed by the predecessor of this court vide order dated 12.09.2019 as under:-*

*"6. Whether the will dated 18.04.2017 and Sale Deed dated 12.03.2001 are forged and fabricated document? **OPD.**"
As per the arguments of ld. counsel for the defendant, there is no existence of alleged Sale Deed and in the absence of that the whole property must devolve upon the class-I legal heir of late Sh. Atrna Prakash.*

In Premwati & Ors (Supra) at para no. 8, the Hon'ble High Court of Delhi has laid down as under:

"8. As per the provisions of Order 12 Rule 6 CPC a court is entitled to pass judgment on the basis of admitted facts which emerge Order 12 Rule 6 CPC therefore can also be invoked on behalf of the defendants to seek dismissal of the suit on the basis of admitted averments which existed."

Keeping in view of the above said submissions and perusal of record, there is no admitted facts qua the alleged Sale Deed dated 12.03.2001. Hence, the present application under Order 12 Rule 6 CPC is dismissed and disposed of, accordingly."

15. A bare perusal of the impugned order reveals that the learned Trial Court, while passing the impugned order dated 30th November 2021,



observed that even though there is no denial to the fact that the undivided suit property is a separate property. The disputed fact remains *qua* the sale deed being false and fabricated. The learned Trial Court has further observed that in the event that there was no dispute *qua* the sale deed being fabricated, then it would have been an admitted fact and the Court may have passed a judgment under Order XII Rule 6 of the CPC.

16. The learned Trial Court observed that the respondent herein contended that there is no existence of a sale deed and the absence of the same would delve the suit property upon the class-I legal heirs of Late Sh. Atam Prakash.

17. At this juncture, this Court deems it fit to delve into the aspect of law governing the extent and scope of the relevant provisions mentioned hereinabove.

18. It is well settled that Order XII Rule 6 of the CPC governs judgments on admission in every detail. By virtue of the said provision, the Courts have the power to pass a judgment concerning any submission made by the parties at any point of the proceedings, be it oral or written.

19. An admission is a common law principle and the end goal of the same is to enable a party to swiftly secure judgment when the defendant makes an admission in the pleadings or in another manner. A party covered by this rule may apply to the Court for a judgment regarding the scope of relief to which the party is entitled, depending on the other party's admission. The goal of the aforementioned rule is to be applied in a way that promotes speedy justice without impinging on the right to a fair trial by taking into



account the unique circumstances of the concerned case.

20. The above stated principle has been reiterated by the Hon'ble Supreme Court in case titled *Charanjit Lal Mehra v. Kamal Saroj Mahajan*, (2005) 11 SCC 278, wherein, it was determined that Order XII Rule 6 of the CPC, was implemented with the goal of accelerating trials. In order to expedite the processes, the concerned case may be dismissed if the defendant/s make any admissions or if any admission is inferred from the facts and circumstances of the case without any disagreement.

21. Adverting to the facts of the present petition, it is contended by the petitioner that the suit property was sold by late Sh. Atam Prakash *vide* registered sale deed dated 12th March 2001, which has also been averred in paragraph four of the plaint. On the contrary, the respondent has out rightly denied the very existence of the sale deed and submitted that the sale deed had never been mentioned before the suit was filed by the petitioner, thereby, making it false and fabricated. The learned Court below had observed that there is no dispute with regard the suit property being a separate property and the primary point of contention is regarding the sale deed being false and fabricated.

22. It is also observed that the predecessor Judge of the learned Trial Court had framed the issue pertaining to the suit, which also pertained to the sale deed being false and fabricated. It is further observed that in the event the contention that the sale deed is fabricated was not disputed, it would have constituted to be an admitted fact.

23. The admissions on the part of the respondent, as alleged by the



petitioner before the learned Trial Court and before this Court, is evidently disputed and hence cannot be adjudicated in an application made under Order XII Rule 6 of the CPC.

24. Since this Court has discussed the facts of the instant case in the foregoing paragraphs, it will only be prudent to further discuss the scope of the Section 115 of the CPC, which has been invoked by the petitioner in the present petition, thereby, asking this Court to exercise its revisional powers by deciding whether the learned Court below had exercised its jurisdiction illegally or irregularly.

25. In view of the above discussions of facts and law it is, hereby, held that there is no error on the part of the learned Trial Court in dismissing the application under Order XII Rule 6 of the CPC, filed by the petitioner. The learned Trial Court has correctly passed the impugned order by stating that the issue pertaining to the sale deed being false and fabricated is disputed and therefore, the same cannot be termed to be admitted facts as per the law settled by the Hon'ble Supreme Court in regard to the principles governing the provisions of the Order XII Rule 6 of the CPC.

26. Since the petitioner has failed to make his case seeking revision, and in the absence of any infirmity in the exercise of jurisdiction by the learned Court below. The impugned order dated 30th November 2021 passed in Civil Suit bearing no. CS DJ 127/2019 is, hereby, upheld.

27. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.



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28. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 21, 2023
gs/ds/ryp

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 17.10.2023
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