

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FA 137 of 2022

Mujibar Rahaman Khalifa
-vs-
Mizanur Rahaman Khalifa

For the appellant : Mr. Masud Karim

For the respondent : Mr. Amit Baran Dash,
Ms. Ankana Sarkar

Heard on : November 21, 2024.

Judgment on : November 21, 2024.

Sabyasachi Bhattacharyya, J.:

1. The present challenge has been preferred by the defendant in a suit for partition against a judgment on admission under Order XII Rule 6 of the Code of Civil Procedure.

2. The trial court proceeded on the premise that in the written statement, the defendant/appellant admitted substantially the plaintiff case and, as such, granted a preliminary decree.
3. Learned counsel for the appellant raises a question as to whether, in the absence of any clear and unequivocal admission in the written statement, the learned trial Judge could pass such order without permitting the parties to adduce evidence. It is contended that if a mixed question of fact and law is involved, no judgment could be passed under Order XII Rule 6 of the Code of Civil Procedure.
4. Learned counsel for the appellant meticulously places the contentions in the written statement and submits that the defendant controverted the plaintiff case on several counts. For example, in paragraph 5 of the written statement, it was stated that the plaintiff has omitted to give the full description about the asbestos shed structure standing on the suit property and being used for residential purpose. Again, the defendant, in paragraphs 7 to 9 of the written statement, has denied categorically that any approach was made by the plaintiff for partition of the property by metes and bounds. As such, the learned trial Judge ought to have held a full-fledged trial and

only pass a preliminary decree upon giving ample opportunity to both sides to adduce evidence and substantiate their respective cases by adducing evidence.

5. Learned counsel appearing for the appellant contends that the description of the property in the plaint does not tally with the sale deed, which is relied on by the plaintiff.
6. The discretion under Order XII Rule 6, it is argued, has been exercised by the trial Judge in an unfettered manner, thereby denying remedy to the defendant.
7. Learned counsel appearing for the appellant cites a judgment of the Supreme Court in the matter of *Hari Steel and General Industries Ltd. Vs. Daljit Singh* reported at *AIR 2019 Supreme Court 4796*, where the Supreme Court, inter alia, reiterated a portion of the judgment impugned therein and observed that it is well-settled that to entitle a plaintiff to a decree on admission, it is essential that the admission made by the defendant in respect of the plaintiff's case/claim should be clear and unequivocal.
8. Learned counsel next cites an unreported judgment of the Supreme Court in the case of *Rajesh Mitra @ Rajesh Kumar Mitra Vs. Karnani Properties Limited*, where the Supreme

Court reiterated the proposition that the court can invoke Order XII Rule 6 only in cases where admissions are unconditional, unequivocal and unambiguous or when admission is based upon undisputed inference.

9. Learned counsel for the appellant places reliance on the said judgment to argue that the learned trial Judge proceeded on an erroneous premise that there was a judicial admission on the part of the defendant.
10. Learned counsel appearing for the respondent controverts the allegations made by the appellant and submits that the unequivocal admissions made by the defendant in the written statement, in particular paragraphs 5 and 6 thereof, were sufficient to grant a judgment on admission.
11. It is pointed out that the description of the suit property in the plaint tallies with that of the sale deed, the latter having been admitted by the defendant.
12. It is argued that no mixed question of fact and law is involved in the present case, which could deter the learned trial Judge from passing a judgment on admission.

13. Upon hearing learned counsel for the parties, we are of the opinion that the learned trial Judge was justified in passing the impugned judgment for the following reasons:
14. In paragraphs 1 and 2 of the plaint, the plaintiff categorically stated that the plaintiff and the defendant jointly purchased the land as described in paragraph 1. Further, it was stated that both the plots were attached to each other after amalgamation the total land sands measuring more or less 4 cottas 4 chittacks together with the structure as described therein and that the plaintiff and defendant, according to law, are the joint owners of the said property having undivided $\frac{1}{2}$ share each. It was further reiterated that both parties have been paying municipal tax of the said property thereby exercising their right of ownership in the said property detailed in the schedule of the plaint.
15. The defendant dealt with paragraph nos. 1 and 2 of the plaint in paragraphs 5 and 6 respectively of the written statement. In paragraph 5, it was stated that the contention averred by the plaintiff in paragraph no. 1 of the plaint was “admitted” with, however, a minor modification. It was stated categorically in paragraph 5 of the written statement that both

the plaintiff and defendant are the co-owners and have been seized and possessed of the property jointly since the date of purchase. The only modification which was introduced to such admission was that the plaintiff has omitted to give the full description about the asbestos shed structure standing on the suit property and being used for residential purpose. In paragraph no. 6, the defendant unequivocally stated that with reference to paragraph no. 2 of the plaint, the contention articulated in the said paragraph was “admissible and not contradicted”.

16. Thus, the defendant has categorically admitted the description of the suit property and joint ownership of the parties, apart from the minute deviation that full description of the asbestos shed structure and the same being used for residential purpose has not been enumerated in the plaint.

17. However, nothing hinges on such minor deviation, if any. We find that the sale deed was referred to in the plaint and is an annexure to the plaint, being one of the documents filed with the plaint within the contemplation of Orders VI and VII of the Code of Civil Procedure. Thus, the admission in the written statement by the defendant regarding the identity of

such property as such, and the co-ownership between the parties as well as their joint possession, cannot be brushed aside on such mere deviation, if at all. What is germane in a partition suit is the co-ownership of the respective parties. Joint title and possession and co-ownership have been clearly admitted in paragraph nos. 5 and 6 of the written statement, thereby leaving nothing to guesswork.

18. Accordingly, there was no reason why the learned trial Judge erred in passing a judgment on admission on such count alone.
19. Insofar as denial in the written statement of the plaintiff having approached the defendant for partition and being refused the same is concerned, we find that such a denial is not a deterrent in a partition suit being decreed in preliminary form. First, insofar as the preliminary decree is concerned, only the title and shares of the parties are declared. That apart, even if the version of the written statement was to be accepted, the cause of action for partition arises *de die in diem*. The very act of the defendant in filing the written statement and disputing the relief of partition can be construed as a component of the cause of action for granting partition.

20. Thus, the essential components necessary for entertaining a partition suit and passing a preliminary decree were all admitted by the defendant/appellant in his written statement and, as such, we do not find any illegality in the impugned judgment.
21. The argument of the defendant that an admission, in order to come within the purview of Order XII Rule 6 of the Code, is required to be clear and unequivocal, does not cut ice. Nothing could be more clear and unequivocal than the defendant stating in his written statement that the contentions averred by the plaintiff in the relevant paragraphs are admitted. Again, in paragraph 6, it has been stated that the contentions in paragraph 2 of the plaint are admissible and not contradicted. Those two paragraphs of the plaint contain the entire relevant pleadings insofar as the title, co-ownership and joint possession of the parties are concerned.
22. Apart from such expressions regarding admission being used, in paragraph 5 of the written statement, the defendant categorically makes a positive assertion that both the plaintiff and the defendant are co-owners and have been seized and possessed jointly since the date of purchase. The full

description of one of the components of the property not having been elaborated in the plaint cannot prevent the court from passing a partition decree in a preliminary form, since it would be within the domain of the Partition Commissioner, at the final decree stage, to adjust shares and allocate shares appropriately, keeping in view the actual extent and description of the property.

23. The learned trial Judge also took into consideration two judgments of the Supreme Court which are germane on the issue. In the case of *Nagindas Ramdas Vs. Dalpatram Ichharam @ Brijram and others* reported at (1974) 1 SCC 242, it was held by the Supreme Court that there is a distinction between evidentiary admission and judicial admission (admission made in pleading). It was held that judicial admission stands on a higher footing and pedestal than mere evidentiary admission, since the latter can be explained away. In the present case, the admission is a part of the pleadings of the written statement and, thus, a “judicial admission”. Order XII Rule 6 of the Code is wide enough to encompass such an admission.

24. Again, in the case of *Uttam Singh Duggal and Co. Vs. Union Bank of India and others* reported at (2007) 7 SCC 120, the Supreme Court observed that the object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled. The said judgment was also considered by the learned trial Judge and is apt in the context, since whatever ingredients were necessary for passing a preliminary partition decree find place in the pleadings of the plaintiff and the corresponding admissions in the written statement in the present case.

25. We do not find any further mixed question of law and fact being left to be decided by the court in the teeth of such categorical admission as indicated above on the part of the defendant, the admission being clear and unequivocal. The instant case is fit for passing a judgment on admission under Order XII Rule 6 of the Code of Civil Procedure. The limited denials in the written statement are not germane for passing a preliminary decree of partition and as such could not entail a detailed hearing of the parties on merits of the matter.

26. The propositions cited by learned counsel for the appellant, as held by the Supreme Court in *Rajesh Mitra (supra)*, are well settled and there cannot be any quarrel with the same. Order XII Rule 6 can be granted in cases where admissions are unconditional, unequivocal and unambiguous or when admission is based upon undisputed inferences. However, such proposition fits the present case on facts exactly and as such does not help the appellant before us.

27. In view of the above discussions, FA No. 137 of 2022 is dismissed on contest without any order as to costs, thereby affirming the judgment and preliminary decree dated February 28, 2020 passed by the learned Civil Judge (Senior Division), Fifth Court at Alipore, District: South 24 Parganas in Title Suit No. 359 of 2018.

28. A formal decree be drawn up accordingly.

29. The records be sent down by Special Messenger at the costs of the respondent, which shall be deposited within a week from date.

I agree.

(Uday Kumar, J.)

(Sabyasachi Bhattacharyya, J.)