

**Item 16.07.
No. 2024
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**Ct
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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 1443 of 2022

**Sri Soumik Mallick
Vs
Sri Souvik Mallick**

Mr. M Rahman,
Mr. Sankar Paul,
Ms. Shipra Roy,
Mr. Soumyashis Sarkar. ... for the petitioner.

Mr. Sarbananda Sanyal,
Mrs. Paulami Chakraborty,
Mr. Samrat Chakraborty. For the opposite
party.

1. This revisional application has been filed assailing the Order No. 07 dated 31st March, 2022 passed in connection with Title Suit No. 115 of 2021 by the learned Civil Judge (Senior Division), Katwa, Purba Bardhaman, wherein learned Judge disposed of the application under Order 12 Rule 6 of the Code of Civil Procedure holding, inter alia, virtually, that in spite of admission by the pleadings, evidence is required to pass a judgment on admission in preliminary form in the partition suit pending between the parties.

2. Mr. M Rahman, learned counsel appearing on

behalf of the petitioner/defendant has drawn my attention to the plaint and written statement filed by the parties before the Trial Court and submitted that both the parties to the suit admitted that suit property previously belonged to Jyotsna Mallick, grandmother of the parties to this suit and she gifted away about her entire suit property to the plaintiff and defendant by registered deed of gift and thereby both the plaintiff and the defendant became joint owner of the suit property having 8 anns shares in each.

3. According to Mr. Rahaman, learned Trial Judge ought to have invoked the provision of Order 12 Rule 6 of the Code of Civil Procedure by drawing up a preliminary decree in the partition suit.
4. Per contra, Mr. Sarbananda Sanyal, learned counsel appearing on behalf of the opposite party/plaintiff has submitted before this Court that recording of evidence is required in spite of admission of share of the parties by the pleadings. In support of his contention he referred to the other averments of the pleadings and submitted that there is a dispute regarding possession over the suit property.
5. Mr. Sanyal has further submitted that there is a tenancy in the suit property in the ground floor of

the premises.

6. Before delving into the merit I would like to reproduce the provision of Order 12 Rule 6 of the Code of Civil Procedure which runs as follows:

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.”

7. On careful scrutiny of the provision, I find that intention of the legislature behind this enactment is to assist the Court for speedy disposal of the suit. The words “without waiting for the determination of any other question between the parties” mandates a direction upon the Court to pass judgment on admission.
8. The partition suit is pending between the parties and both the parties by filing their respective pleadings admitted the half share of the parties over the suit property and in that case, particularly considering the nature of the suit, I am of the humble view that the learned Trial

Judge ought to have invoked the provision of Order 12 Rule 6 of the Code of Civil Procedure without waiting for determination of any other question between the parties regarding possession.

9. Given facts and circumstances, the order impugned stands set aside.
10. The revisional application stands allowed with a direction upon the learned Trial Judge to pass order keeping an eye on the observation of this Court in terms of Order 12 Rule 6 of the Code of Civil Procedure.
11. With this observation, the revisional application stands disposed of.
12. Connected applications, if any, also stand disposed of accordingly.
13. All parties shall act on the server copies of this order duly downloaded from the official website of this Court
14. Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Bibhas Ranjan De, J.)

