

15.1.2024
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Ct. no. 652
sb

C.O. 2693 of 2019

**Usha Saggi
Vs.
Pashupati Nath Mehra & Ors.**

Mr. Avijit Sarkar for the Petitioner

Service of notice upon the learned counsel who appeared on behalf of opposite parties in the court below is taken on record. In spite of service, opposite parties are not represented.

In the present Application, the order dated 13th December, 2018 passed by the learned Civil Judge, Senior Division, 1st Court, Barasat in Title suit no. 239 of 2008 is under challenge.

The petitioner's case is that the petitioner herein filed aforesaid suit with a prayer for partition, injunction and also for appointment of receiver. The opposite parties herein as defendants appeared in the said suit and filed written statement. Thereafter plaintiff has come out with an application under Order XII rule 6 of the Code of Civil Procedure contending that the defendant in their written statement has admitted that the parties in the suit have 1/7th share each in the suit property and as such preliminary decree may be passed on admission in respect of the suit properties.

Learned court below after considering the submissions made by both the parties arrived at a finding that the defendant no. 1 in his written statement did not admit claim of the plaintiff, on the contrary they are willing to contest the instant suit and accordingly, he declined to pass any decree on admission under Order XII rule 6 of the Code.

I have considered the submissions made by the petitioner and also perused the impugned order as well as the written statement filed by the defendant.

On perusal of the written statement, it appears that in paragraph 16, the contesting defendant no. 1 has taken a specific plea that the property in question was taken in permanent settlement from the rightful owner by the defendant alone using the name of his grand father, Dewan Chand Mehra as settlee to pay respect to him. It is his further case that Dewan Chand Mehra had no title or possession in the suit property nor he ever paid the balance amount of Selami to the settlor as he had no title or possession in the suit property nor he ever claimed the suit property to be his own as according to the said defendant, Dewan Chand knew that he lent his name as settlee and the defendant since the date of taking property in settlement has been retaining right, title interest and possession thereof.

From the aforesaid averment made in the written statement by the defendant it is clear that such

averments give rise to a triable issue, which involves both question of law and fact. When defendant's plea is not consistent with the plea of plaintiff, rather contrary to it, such averment in written statement can by no stretch of imagination be called as "admission".

Moreover using the word "may" in Rule 12, the legislator wanted to make the Rule enabling, discretionary and permissive and not mandatory or obligatory. Accordingly when the court below it its discretion found that the averments made in written statement involves a triable issue, I do not find any reason to interfere such finding invoking jurisdiction under Article 227 of the Constitution of India, specially when the order impugned is neither illegal nor improper.

C.O. 2693 of 2019 is accordingly dismissed.

However, since the suit is pending since 2008 the learned court below is directed to make every endeavour for expeditious disposal of the suit and to make his best efforts so that the entire proceeding of the suit may be concluded preferably within a period of ten months from the date of communication of the order.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)