

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.246 OF 2024

Gilbert Clifford Pereira

.. Applicant

Versus

Cecil Francis Pereira and Anr.

.. Respondents

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- Mr. Arjun Sawant a/w. Ms. Joshna D'Souza i./by Mr. Gouresh Mogre, Advocates for Applicant.
 - Mr. J. M. D'Silva a/w. Ms. Jacqueline D'Silva and Ms. Corrina D'Souza, Advocates for Respondents No.1.
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CORAM : MILIND N. JADHAV, J.

DATE : AUGUST 05, 2024

P.C.:

1. Heard Mr. Sawant, learned Advocate for Applicant and Mr. D'Silva, learned Advocate for Respondent No.1.

2. This Civil Revision Application is filed taking exception to the order dated 08.01.2024 passed by learned Bombay City Civil Court in Notice of Motion No.260 of 2023 in S. C. Suit No.260 of 2019. The Notice of Motion is filed by Plaintiffs under the provisions of Order XII Rule 6 of the Code of Civil Procedure, 1908 (for short '**CPC**') seeking decree of admission. Plaintiff filed S. C. Suit No.260 of 2019 for seeking a declaratory relief that he is sole and absolute owner and only person entitled to all right, title and interest in the suit property which is described as open land admeasuring 100 sq.ft. in paragraph No.3 of the suit plaint. Apart from the declaratory relief, Plaintiff also sought

injunctive relief and Mr. Sawant would inform the Court that the learned Trial Court has passed order below Exhibit-5 in favour of the Plaintiff.

3. In so far as Application filed below Order XII Rule 6 of the CPC is concerned, Mr. Sawant would draw my attention to the fact that Defendant No.1 has acted as a witness in witness action in eviction suit proceedings filed in the Small Causes Court against one of the erstwhile tenant of the property who was residing in Flat No.1 on the ground floor. Though the suit property is nomenclatured and described as 100 sq.ft. only and as delineated in red at Exhibit-A of the suit plaint, Mr. Sawant would submit that essentially it is a larger portion of land alongwith ground plus two storey structure occupied by the family members of the deceased father. Plaintiff, Defendant No.1 and Defendant No.2 are brothers. Defendant No.1 is occupying Flat No.1 on the ground floor. Plaintiff is occupying Flat No.2 on the ground floor and Flat No.5 on the second floor and Defendant No.2 is occupying flat No.3 and 4 on the first floor.

4. Apart from the structure there is an open space in front where Plaintiff's case is that for a long period of time and until the filing of the present suit proceedings, he used to park his four wheeler car. He would submit that Defendant No.1's son thereafter encroached upon that space and started parking his two motorcycles on the same

parking space and caused nuisance to the Plaintiff compelling him to file the present suit proceedings. In support of his case, Mr. Sawant has drawn my attention to the statement of Defendant No.1 recorded in witness action in the year 1996 by the Small Causes Court in the eviction proceedings against the erstwhile tenant. He would submit that Defendant No.1 has accepted the fact that father of the parties to the suit proceedings had made a Will in respect of the suit property and the probate of the said Will was obtained by the parties. He has drawn my attention to the Will, Probate of which is appended at Exhibit-B to the suit plaint and is part of the proceedings before me. In the said Will he has drawn my attention to the Clause (7) wherein bequeathal of open land on the ground floor of the property belonging to the deceased has been made to the Plaintiff. On reading of paragraph No.7 he would argue that since it is stated in the Will that all open space and open land on the ground floor of the said property has been bequeathed upon Plaintiff and the Defendant having accepted the Will and the said Will being probated, then this Court should construe it as an admission by Defendant that the open land belongs to Plaintiff and hence the Plaintiff is entitled to a decree on admission.

5. He has relied upon the decision of this Court (Coram : Mrs. Roshan Dalvi, J.) in the case of *H. K. Taneja vs. Bipin Ganaratra*¹ to contend that the provisions of Order XII Rule 6 of the CPC are salutary

¹ [2013(1) Mh.L.J.]

in nature and the rule is very wide. Though he would submit that while considering Application under Order XII Rule 6 of the CPC, the Court consider all admissions in any pleadings touching upon the matter but however on a specific question put to him whether there is any imprimatur given by the Defendant No.1 in his evidence with respect to the open land specifically belonging to Plaintiff, he in his usual fairness would submit that it is not so. However he would still maintain that once Defendant No.1 has time and again and repeatedly accepted that the Will is probated and accepted by him, it would have to be implied by this Court that in view of provisions of Order XII Rule 6 of the CPC there is an admission on the part of Defendant No.1 that open land belongs to Plaintiff only and no one else.

6. What Mr. Sawant is essentially arguing before me is to imply on the basis of the acceptance of the Will by Defendant. This cannot be implied under the provisions of Order XII Rule 6 of CPC. What is clearly required to be seen is whether the admission which is given is unequivocal, clear and specific and nothing more. It also has to relate to the specific claim of Plaintiff.

7. In the present case, the admission of fact that Will has been accepted by Defendant No.1, cannot be construed to mean that the open land on the suit property claim for which the suit plaint has been filed and belongs to the Plaintiff has to be allowed *in limine*. Merely

by accepting the Probate of the Will, I do not find there is any unequivocal admission by the Defendant that he has accepted the fact that the open land in front of the Building belongs to the Plaintiff only.

8. In view of the above observations and findings, the impugned order as delivered by the learned Trial Court has been correctly passed and does not call for any interference. Needless to state that all questions are kept open for the Plaintiff to rely on the Will if so desired and permissible in law. All contentions of both parties to the suit proceedings namely Plaintiff and Defendant No.1 are expressly kept open.

9. Learned Trial Court is directed to determine S. C. Suit No.260 of 2019 as expeditiously as possible and in any event within a period of six months from today after hearing both the sides. Both parties are directed to co-operate with the learned Trial Court. Trial Court is directed not to give adjournments to the parties and to give adjournments only if they are utmost necessary due to any emergency or exigency.

10. While sustaining the impugned order, with the above directions, Civil Revision Application stands disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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