



2024 : DHC : 2349



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: January 22, 2024
Judgment pronounced on: March 22, 2024

+ CM(M) 433/2019
SANGEETA BERI

..... Petitioner

Through: Mr. Mittal Lal with Mr. Vipin
Gupta, Mr. Mohit Dhama and
Mohd. Tariq, Advs.

versus

CHANDER KANT BERI

..... Respondent

Through: Mr. Shiv Prakash Pandey and Mr.
Raghav Pandey, Advs.

CORAM:
HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. The present petition has been filed under Article 227 of the Constitution of India, 1950 by the petitioner assailing the order dated 09.07.2018 passed by the court of Learned Additional District Judge, Karkardooma Courts, New Delhi (hereinafter referred as "Trial Court") in Civil Suit No. 2259/2017, titled as "*Sangeeta Beri Vs. Chander Kant Beri*" whereby the learned Trial Court, dismissed the application of the petitioner filed under Order XII Rule 6 of Code of Civil Procedure, 1908 (*hereinafter referred as "CPC"*) for judgment on admission.

2. Petitioner herein is plaintiff and respondent herein is the defendant in Civil Suit No. 2259/2017 which is pending adjudication before the Learned Trial Court.

CM(M) 433 of 2019

Page 1 of 10



3. The relevant facts for the purpose of adjudication of the present case are, that, the petitioner has asserted that she is the owner of the property bearing No. 71, Hargobind Enclave, Delhi-110092 (hereinafter referred as 'suit property') vide Conveyance Deed dated 06.01.1995 executed in her favor by President of India through LAO DDA. The respondent is the brother in law of the petitioner and was permitted to occupy the first floor of the suit property as licensee without any payment of charges, with an understanding that he would vacate the suit property as and when required. The license was revoked w.e.f 15.07.2017 by serving legal notice dated 27.06.2017 through which the respondent was called upon to handover the possession of the suit property on or before 15.07.2017 failing which the respondent will be considered as an unauthorized occupant of the suit property and shall also be liable to pay damages @ Rs. 25,000/- per month. The respondent filed a reply dated 04.07.2017 to the said notice demanding Rs. 5 Crores from the petitioner and refused to vacate the suit property.

4. Subsequently, the petitioner filed Civil Suit No. 2259/2017 for possession, permanent injunction and mesne profit against respondent on 19.08.2017. The respondent contested the suit by filing a written statement. The petitioner filed an application under Order XII Rule 6 CPC on the basis of admission of the respondent that Jaypal Singh Gill, the original sub-lessee sold the property to petitioner vide GPA dated 11.06.1986 in favour of Ravi Kant Beri, thus, admitting that the petitioner is absolute owner of the suit property in his written statement. Respondent filed his reply to the said application on 26.03.2018. Vide



impugned order dated 09.07.2018 the Learned Trial Court dismissed the said application of the petitioner, there being no clear admissions. Aggrieved with the aforesaid, the petitioner has challenged it before this Court.

5. The impugned order dated 09.07.2018 passed by learned Trial Court in Civil Suit No. 2259/2017, observes the following:

“15. It can now be considered if both defences of the defendant can be discarded at this preliminary stage. In the facts of the present case the defendant has given specific particulars of the properties which were sold and the amounts which were handed over to the husband of the plaintiff for treating property no. 71, Hargovind Enclave as joint property of the parties. At the outset, this defence of the defendant cannot be rejected merely because he has taken another contradictory defence. The suit is yet at a preliminary stage and which defence the defendant chooses to go forth with would at best be a matter of trial. The ratio of Harish Relan (supra) though undisputed was passed in different facts and is of no help to the plaintiff in the facts of the case.

17. There are thus no unequivocal admissions on record warranting decree of the suit at this stage. The defendant has sufficiently pleaded an oral family settlement and veracity of assertions of the defendant is at best a matter of trial.”

Submissions by the Petitioner

6. The learned counsel for the petitioner submitted that, the Learned Trial Court failed to appreciate that the respondent has admitted that the petitioner had purchased the property from Mr. Jaipal Singh Gill even prior to the alleged oral family settlement being relied upon by the petitioner, thus admitting that the petitioner is the absolute owner of the suit property. He further submitted that the respondent had raised a frivolous defense that the suit property is held Benami in the name of the



petitioner. Such a defense is barred under Section 4 of the Benami Transaction Prohibition Act.

7. It is submitted that the learned Trial Court has failed to appreciate that respondent had taken contradictory pleas in written statement. Notably, in preliminary objections, respondent on one hand has alleged that he along with his wife have been in long, continuous, uninterrupted use, enjoyment and possession of 1st floor of the suit property and hence they have become owners by adverse possession and on the other hand, he took a contradictory defence that they have half share in the suit property pursuant to oral family settlement. Both the defences are contradictory to each other, thus, pointing out that respondent infact has no defence to claim trial.

8. It is further submitted that the Learned Trial Court has failed to read the pleadings meaningfully and it is the duty of the learned Trial Court to see whether a real defense has been made out in the written statement or something illusionary has been projected. Reliance is placed on *Mayor (H.K) v. Vessel M.V Fortune Express: (2006) 3 SCC 100*.

9. Learned counsel for the petitioner has also relied upon the judgments of *Sonny Sarna v. Urmil Wadhawan: 2013 SCC OnLine Del 4681*; *Vinod Chopra v. Vasudev Chopra: 2016 SCC OnLine Del 1806*; *Pushpa Rathi v. Jugnu Bansal, 2017 SCC OnLine Del 10881*; and *Saroj Salkan v. Huma Singh: 2016 SCC OnLine Del 2673*.

Submissions by the Respondent:



10. Conversely, learned counsel for respondent submitted that the application filed by the petitioner under Order XII Rule 6 CPC is not maintainable as the law requires that admission of a particular fact must be plain, unambiguous and unequivocal. Reliance has been placed on ***Delhi Jal Board v. Surendra P. Malik: 114 (2003) DLT 151.***

11. Learned counsel for the respondent relied upon the averments made in the written statement and submitted that through paragraph nos. 1 (iv), (v), (vi) of the reply on merits in the written statement, respondent had made assertions as to various amount paid by the respondent and his late father-in-law to the petitioner herein for treating the suit property as joint property of the parties. Further, respondent contended that both the parties have 50% share each in the said property.

12. Learned counsel further brought to light that he has filed a counter claim where he along with his wife Kumkum Beri claims themselves to be the owner and in possession of the first floor of the suit property and have half share in the plot of land underneath, in view of the oral settlement and declaration dated 01.03.1987, duly implemented and acted upon since that very day till date.

13. To prove his claim, learned counsel for the respondent further stated that the said property is shown in the record of House Tax Department, of MCD in the name of Sangeeta Beri, however, the respondent has been paying house tax in respect of both the floors of the suit property through cheques from the very beginning till date. He has also been paying electricity bills in respect of the electricity connection



for the first floor and water bills for both floors by account payee cheques from his bank account.

14. To support his contentions, learned counsel for the respondent has relied upon the judgments of *Rohit Rishi v. Rahul Rishi*: IA No. 3945/2013 in CS (OS) 2343/2012 order dated 28.08.2015 of the Hon'ble High Court of Delhi; *Vijay Mayne v. Satya Bhushan Kumar*: 142 (2007) DLT 483; and *Usha Rani v. Nirulas Corner House Pvt. Ltd.*: 73 (1998) DLT 124.

Analysis & Conclusion

15. As per Order XII CPC, admission is considered as being made either through pleadings or in answer to interrogatories, or by non-traverse. An admitted fact need not be proved unless the court directs otherwise. The fundamental purpose of incorporating the provision is to grant an immediate relief if the court finds a legally enforceable admission. Rule 6 of Order XII CPC gives the discretion to the court to pass decree in favor of the plaintiff in case an admission is made by the defendant. The phrase "any party" used in this provision gives the right to plaintiff as well as defendant in a suit to apply for judgment at "any stage". It is well-settled that the words like "may" and "make such order" shows that the power under the rule is discretionary and cannot be claimed as a matter of right

16. In the case of *Delhi Jal Board v. Surendra P Malik*, 114 (2003) DLT 151, the test for identifying an unequivocal admission has been well established. The court has downright listed the factors to be



considered while examining any admission which includes; admission of fact should arise from the suit, admission should be plain, unambiguous and unequivocal, whether defense set up requires evidence for determination of the issues, objections raised rendering the judgment go to the root of the matter.

17. In the present matter, the assertion of the respondent is that there was an oral family settlement and therefore in pursuance to that in his own right, he is in possession of the suit property. It is further the contention of the respondent that he has also given particulars of properties of his wife and father, which were allegedly sold by the husband of the petitioner and the sale proceeds were adjusted towards the cost of the suit property and the cost of raising construction on the same, for treating the entire suit property as joint property of the parties. Also, he is claiming title in the suit property by way of adverse possession. Whereas, petitioner is relying upon the admission by way of necessary implication that in paragraph no. 1(xii) of reply on merits of written statement, respondent has admitted that Mr. Jaypal Singh Gill the original sub-lessee sold the property to petitioner vide GPA dated 11.06.1986 in favour of Mr. Ravi Kant Beri, thereby the respondent has thus admitted that the petitioner is absolute owner of the suit property.

18. It is relevant to note that the petitioner in order to seek judgment on admission has based his claim with respect to averments made by respondent in his written statement. Thus, it is worth to mention certain paragraphs in the written statement, which are reproduced as under:



“1. That the suit is hopelessly barred by time. The defendant with his wife Mrs. Kumkum Beri is owner of the half share i.e. first floor portion of property no.71 with half share in the plot of land underneath, Hargobind Enclave, Delhi pursuant to oral family settlement and declaration in March 1987 on 1st day of March and since then, the defendant with his wife has been in continuous peaceful possession, use and enjoyment of the said portion of the property in as owners. Hence the suit being barred by time deserves to be dismissed.

2.

3. That the suit is bad for non-joinder of necessary parties. Mr. Ravi Kant Beri, husband of the plaintiff and younger brother of the defendant and Mrs. Kumkum Beri (wife of the defendant) are necessary parties to this suit. There was oral family settlement and declaration in March 1987 on 1st day of March between Mr. Ravi Kant Beri, his wife Mrs. Sangeeta Beri (plaintiff), the defendant, his wife Mrs. Kumkum Beri and their father Mr. Yoginder Pal Beri and mother Mrs. Krishna Beri to the effect that this property No.71, Hargobind Enclave, Delhi will be owned and enjoyed by both Mr. C. K. Beri (defendant herein) with his wife on the one hand and Mr. Ravi Kant Beri with his wife Mrs. Sangeeta Beri (plaintiff herein), on the other hand equally, both sides having 50% share each, with right to occupy, posses and enjoy the same and that Mrs. Sangeeta Beri and Mr. Ravi Kant Beri would enjoy ownership right in respect of the ground floor portion and the defendant Mr. C. K. Beri and his wife Mrs. Kumkum Beri would enjoy ownership right in respect of the first floor portion of this property. Mrs. Kumkum Beri is necessary and proper party to the suit. Hence the suit is not maintainable.”

19. Furthermore, in paragraph 1(iv), (v), (vi) of the reply on merits in the written statement contain assertions as to the various amount paid by the respondent and late father-in-law of the petitioner herein for treating the suit property as joint property of the parties. It is also relevant to note that paragraph no. 1 (vii) further reiterates that in March 1987 after construction of House no. Plot no. 71, Har Govind enclave, Delhi, the petitioner and her husband alongwith their family members had been residing on the ground floor alongwith parents, while the respondent



2024 : DHC : 2349



alongwith his family members was residing on the first floor of the property.

20. The respondent has clearly denied the claim of the petitioner that she is the absolute owner of the entire property bearing no. 71, Hargobind Enclave, Delhi vide registered conveyance deed dated 06.01.1995. He has submitted that the erstwhile owner Mr. Jaypal Singh Gill, who was sub-lessee vide sub-lessee dated 26.03.1979 of the property had sold the same to the petitioner by executing documents like agreement to sell, GPA etc. dated 11.06.1986. The respondent has also submitted that the said conveyance deed being in the name of the petitioner does not make her absolute owner of the property as the contribution as sale consideration amount for the same was provided by the respondent / his wife as mentioned in the written statement. The respondent has also pleaded that these facts were within the knowledge of the petitioner and were duly communicated vide reply dated 04.07.2017 to the legal notice dated 27.06.2017 sent by the counsel of the petitioner. The argument raised on behalf of the petitioner does not appeal to the reason that respondent is raising the plea that the suit property is held benami in the name of the petitioner, which is barred under Benami Transaction Prohibition Act, 1988. However, it is the case of respondent that vide oral family settlement arrived between the parties, it was mutually agreed to treat the entire property as joint property and the property was held by the petitioner as member of HUF and he is not trying to convey that suit property is held by petitioner as a Benami transaction. Further, there is no force in the argument raised on



behalf of the petitioner that respondent has raised contradictory pleas in the same breath by asserting himself to be the owner by way of adverse possession and also having half share in the property by furnishing consideration towards purchase and construction of the property though in the name of the petitioner. The respondent in his written statement has clearly stated that he is residing in the suit property since March, 1987 pursuant to oral settlement and declaration mentioned therein as the owner. More so, in the counter claim filed on behalf of the respondent after making the aforesaid assertions, the respondent has claimed that he along with his wife is having 50% share in the suit property with right to occupy and enjoy the same, the way petitioner along with her husband would enjoy the ownership rights. Accordingly, he has preferred for a decree of declaration by way of counter claim to the effect that he has right of ownership of half share in the suit property and has also prayed for decree of partition of suit property by metes and bounds after passing preliminary decree for partition.

21. In view of the above discussions, there are no unequivocal admissions on record for passing the decree of admissions. The rival contentions placed on record by the parties require a trial, accordingly, the views expressed merit no interference in the impugned order passed by the learned Trial Court, consequently, the petition is dismissed.

SHALINDER KAUR, J.

MARCH 22, 2024/ss/dp