



Surya Kant & ors.

..... Petitioners

versus

Balwant Singh (deceased) through his LRs Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. P.R.Yadav, Advocate
for the petitioners.

Mr. Sachin Mittal, Advocate and
Mr. Parth Sharma, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

1 Present revision petition is directed against the order dated 02.02.2017 passed by Civil Judge (Junior Division), Gurugram (Haryana) whereby prayer made by the plaintiffs seeking decree in terms of Order XII Rule 6 CPC relying upon the admission made by the defendant stands declined. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the petitioners as plaintiffs and the respondent as defendant.

2 Plaintiffs filed a suit seeking decree of declaration to the effect that plaintiff No.1 is owner to the extent of 1/3rd share, plaintiffs No.2 & 3 are owners to the extent of 1/3rd share and plaintiffs No.4 to 6 are owner to the extent of 1/3rd share. After filing of the suit, the parties arrived at compromise dated 07.05.2012. On the same day respondent-defendant filed



written statement admitting the claim of the plaintiffs and also suffered statements on oath before the Court admitting the claim of the plaintiffs. Subsequent thereto, an application was filed seeking permission to withdraw admission and to permit him to contest the suit on merits. The same stands dismissed by the Trial Court holding that admission needs to be tested as a piece of evidence and the proof thereof cannot be dispensed with. The import of such admission yet to be tested, the same cannot be allowed to be withdrawn.

3 Thereafter, plaintiffs made prayer seeking decree on the basis of admission as contemplated under Order XII Rule 6 CPC. The same stands declined by the Trial Court observing that the defendant claimed that there was no family constituted by the parties to the lis and thus there can't be any question of family settlement. On the same day, the Trial Court framed following issues vide separate order :-

- “1. Whether family settlement dated 10.11.2011 has been entered between the plaintiffs and defendant as alleged? OPP*
- 2. If issue no. 1 is decided in favour of plaintiffs, whether plaintiffs are entitled to the declaration as prayed for? OPP.*
- 3. Relief.”*

4 Learned counsel for the plaintiffs while assailing the impugned order submits that the Trial Court erred in ignoring the mandate of Order XII Rule 6 CPC. Defendant not only signed compromise with the plaintiffs but also filed admitted written statement and made statement on oath before the Trial Court admitting the claim of the plaintiffs. Thus there was no option with the Court but to decree the suit filed by the plaintiffs. He further



submits that the Court also erred in holding that the parties do not constitute family being distant relatives. He relies upon para 27 of the ***Kale and others Vs. Deputy Director of Consolidation & ors. 1976(3) SCC 119*** wherein Supreme Court observed as under :-

“27. As regards the first point it appears to us to be wholly untenable in law. From the principles enunciated by us and the case law discussed above, it is absolutely clear that the word 'family' cannot be construed in a narrow sense so as to confine the parties to the family arrangement only to persons who have a legal title to the property. Even so it cannot be disputed that the appellant Kale being the grand son of Lachman and therefore a reversioner at the time when the talks for compromise` took place was undoubtedly a prospective heir and also a member of the family. Since respondents 4 & 5 relinquished their claims in favour of the appellant Kale in respect of Khatas 5 & 90 the appellant, according to the authorities mentioned above, would be deemed to have antecedent title which was acknowledged by respondents 4 & 5. Apart from this there is one more important consideration , which clearly shows that the family arrangement was undoubtedly a bona fide settlement of disputes. Under the family arrangement as referred to in the mutation petition the respondents 4 & 5 were given absolute and permanent rights in the lands in dispute. In 1955 when the compromise is alleged to have taken place the Hindu Succession Act, 1956, was not passed and respondents 4 & 5 would have only a limited interest even if they had got the entire property which would ultimately pass to the appellant Kale after their death. The respondents 4 & 5 thought that it would be a good bargain if by dividing the properties equally they could retain part of the properties as absolute owners. At that time they did not know that the Hindu Succession Act would be passed a few months later. Finally the compromise sought to divide the properties between the children of Lachman, namely, his two daughters and his daughter's son the appellant Kale in equal shares and was, therefore, both fair



and equitable. In fact if respondents 4 & 5 would have got all the lands the total area of which would be somewhere about 39 acres they might have to give away a substantial portion in view of the ceiling law. We have, therefore to see the circumstances prevailing not after the order of the Assistant Commissioner was passed on the mutation petition but at the time when the parties sat down together to iron out their differences. Having regard to the circumstances indicated above, we cannot conceive of a " more just and equitable division of the properties than what appears to have been done by the family arrangement. In these circumstances therefore, it cannot be said that the family settlement was not bona fide Moreover respondents 4 & 5 had at no stage raised the issue before the Revenue Courts or even before the High Court that the settlement was not bona fide. The High Court as also respondent No. 1 have both proceeded on the footing that the compromise was against the statutory provisions of law or that it was not registered although it should have been registered under the Registration Act."

5 Further reference is being made to ***Smt. Badami (deceased) by her LR Vs. Bhali, 2012 AIR (Supreme Court) 2858*** wherein the dictum of law laid down in *Kale* has been following observing as under :-

“15. xxxxx

xxx xxx xxx

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Courts will find no difficulty in giving assent to the same;

xxx xxx xxx“



6 *Per contra*, learned counsel for the defendant refers to averments made in the plaint to submit that the whole case of the plaintiffs was based upon family settlement and arrangement dated 10.11.2011. The same arrangement has been made on the basis of compromise dated 07.05.2012. Thus the material question that needs to be decided by the Courts would be as to whether the parties to the *lis* constitute family or not and it is in these circumstances, the Trial Court rightly followed dictum of law laid down in by Supreme Court in ***Sahu Madho Das Vs. Mukand Ram (1955) 2 SCR 22***. He thus submits that for the said reason, the precise issues have been framed as decree on the basis of admission cannot be claimed as a matter of right.

7 I have heard learned counsel for the parties and have gone through the records of the case.

8 In order to appreciate the rival contentions raised by the parties, it will be apt to peruse provisions as contained under Order XII Rule 6 CPC which read as under :-

“6. 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.”

9 A bare perusal of the provision would reveal that the discretion has been vested in the Court as the expression used is ‘the Court may’ and not ‘the Court shall’. It is in these circumstances that Supreme Court while



interpreting Order XII Rule 6 CPC in *Beryl Murzello & ors. Vs. Ram Chandra Bhairo Mane & ors. 2007 (4) LJR 783* observed as under :-

“The Court is not bound to grant declaration prayed for on the mere admission of the claim by the defendant if the Court has reason to insist upon a clear proof apart from admission. The result of a declaratory decree confers status not only on the parties but for generations to come and so it cannot be granted on a Rule of admissions and, therefore, insisted upon adducing evidence independent of the admission.”

10 There cannot be any conflict with the ratio of law laid down in *Kale’s case supra* wherein the Supreme Court observed that the family arrangements need to be honoured and by way of family arrangement, a person having no semblance of right, can also be vested with right. The same is reiterated by Supreme Court in the case of *Smt. Badami’s case supra*. However, in the present case, defendant against whom the admission is being pleaded, has got nothing in the compromise and the issue whether parties constitute family is yet to be ascertained.

11 In view of above, the present revision petition is dismissed.

12 Needless to say anything observed herein shall be construed as an expression on merits of the case.

27.02.2025

Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No