

(2013) 08 DEL CK 0197

In the Delhi High Court

Case No : FAO (OS) 365 of 2013, C.M. 12309 of 2013

Shri Anil Goel

APPELLANT

Vs

Shri Ghanshyam Goel and Others

RESPONDENT

Date of Decision : 26-08-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 8 Rule 5(1)

Citation : (2013) 08 DEL CK 0197

Hon'ble Judges : S. Ravindra Bhat, J;Najmi Waziri, J

Bench : Division Bench

Advocate : K.K. Aggarwal and Sh. Rajiv Garg, for the Appellant;

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—This is a regular first appeal from the order of the learned Single Judge in CS(OS) No. 2946/2011, whereby a decree for partition under Order XV, Code of Civil Procedure, was passed declaring the plaintiff and the four defendants as having a 1/5th share in the suit property, i.e. No. C-10/11-A, Krishna Nagar, Delhi. The plaintiff, Ghanshyam Goel, and the four defendants—Anil Goel, Virendra Goel, Sunil Goel and Madhuri Mittal are siblings, and the four sons and daughter of the late Asa Ram Goel (hereafter "the father"). The five individuals in question are the only legal heirs of Asa Ram Goel; a fact that no party disputes.

2. In the suit, Ghanshyam Goel approached this Court with the following claim:

It is therefore most respectfully prayed that this Hon'ble Court may be pleased:

(a) to pass a decree of partition of the suit property namely plot No. -C-10/11-A, Krishna Nagar, Delhi admeasuring approximately 222 Sq. Yds., bounded as north-road, south-others plot No. -C-9/15, East-outer's Plot No. -C-10/10 and West-Other's Plot No. -C-10111-B, as more particularly shown in the site plan market Annexure-A herein in red color by metes and bounds, and to grant possession of 1/5 (one fifth) share each thereof, in favour of the plaintiff and against the

defendant.

Or in the alternative, i.e. in case the suit property cannot be partitioned by metes and bounds.

To direct sale of the suit property by public auction, private sale or otherwise as deemed fit and proper by this Hon'ble Court, and to grant 1/5 (one fifth) of the sale proceeds in favor of the plaintiff and against the defendant.

(b) to pass a decree of permanent injunction in favor of the plaintiff and against defendant No. -1, restraining the said defendant his agents, or any one acting for or on his behalf from mutating in his name, selling, transferring, alienating, parting with possession, or creating any third party interest in the suit property.

(c) towards the cost of the proceedings in favor of the plaintiff and against defendant no. -I. and

(d) to pass such other order or direction as deemed fit and proper by this Hon'ble Court in the facts and circumstances of the present case.

3. All five siblings were entitled to an equal share of the property left behind by the father. The learned Single Judge accepted Ghanshyam Goel's claim. Anil Goel, the present appellant, in his written submission had preferred several objections:

(a) He (Anil Goel) controverted the will on the basis of which all five siblings were to acquire an equal share;

(b) Claimed that the suit was not properly valued for the purposes of court fees and jurisdiction,

(c) That certain other properties, i.e. Flat No. 25C, Pocket E, Dilshad Garden, Delhi 110095; House No. A-233, Surajmal Vihar, Delhi, 110 092; House No. 13, United India Apartments, Mayur Vihar Phase-I, Delhi, and certain jewellery, shares and FDRs, left behind by Asa Ram Goel were also liable to be partitioned; and finally,

(d) That the father had partitioned all the said properties by metes and bounds during his lifetime, thus rendering the present proceedings void.

4. On these objections, the Learned Single Judge, in the impugned judgment, held that:

(a) independent of the will, an equal right to succeed to the suit property vests in all siblings, thus rendering that objection irrelevant;

(b) Ghanshyam Goel had valued the suit property at Rs. 80 lakhs, and paid ad valorem Court Fees on his 1/5th share of Rs. 16 lakhs,

(c) That Anil Goel had not specifically pleaded for the partition of those additional properties, and this being a suit for partition, the nomenclature of

"defendant"/"plaintiff" was not determinative, and it was open for Anil Goel to specifically plead for the partition of those properties as well, though he had not done so; and finally,

(d) that no proof of the alleged partition during Asa Ram Goel's lifetime had been provided and thus that fact had not been proved. Accordingly, the partition of the one property mentioned in the plaint was permitted.

5. In the present appeal, Anil Goel claims firstly,

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(c) [t]hat the respondent No. -1 has not included and or explained the where about of the gold and silver jewellery, share certificate, cash and FDRs left out by the deceased father of the parties which was entirely managed by the respondent No. -3 within the entry knowledge of the parties to the suit. However, the value of the aforesaid gold and silver jewellery, share certificate cash and FDRs is not less than 20 Lakhs

and furthermore, that partition of only one property to the exclusion of all other properties is inappropriate.

6. It is argued by learned counsel, Shri Rajiv Garg, that the learned Single Judge could not have directed the partition of the properties in view of clear averments that a prior partition had taken place and that even otherwise, all properties, particularly those ostensibly owned by the plaintiff, belonged to the Hindu Undivided Family. It was submitted that the first respondent (plaintiff) had neither included nor explained the whereabouts of the gold and silver jewellery, share certificate, cash and FDRs left out by the deceased father of the parties, which were entirely managed by the third respondent within the entire knowledge of the parties to the suit. It was argued that the value of the aforesaid gold and silver jewellery, share certificate, cash and FDRs is not less than Rs. 20 Lakhs. Learned counsel submitted further that the late father, Asa Ram Goel along with Sh. Parmeswari Dayal, his brother, out of their own funds and resources, had jointly purchased immovable property bearing plot No. -C-10/11, Krishna Nagar, Delhi measuring 444 Sq. Yds., by Sale Deed dated 11.07.1955, (registered as document No. 5978, in Additional Book No. -1, Volume No. -2981 at pages 16-20 in the office of the Sub-Registrar Delhi on 12.12.1955) and thereafter constructed their own independent houses thereon in such a manner that the share of the respective parties could later on be divided without any difficulty by putting a common middle wall. The late father, Asa Ram Goel started residing on the eastern side of the wall, and Sh. Parmeswari Dayal, his brother on the western side of the wall. The aforesaid plot was of uneven measurement; therefore, to keep the premises in a proper shape from all sides, certain piece of land was left vacant, which remained in the respective possession of Sh. Asa Ram Goel and his brother Sh. Parmeswari Dayal. Thereafter, both the brothers i.e. Sh. Asa Ram Goel (father of the parties herein) and his brother Sh. Parmeswari Dayal executed a partition deed dated 04.11.1986, and registered it

on 31.12.1986, partitioning the property in two equal shares by metes and bounds.

7. Learned counsel relied particularly on the following averments in the written statement to say that there was no admission and that the facts urged required a regular trial since several disputed questions arose for decision. The said averments in the written statement read as follows:

8. That during the lifetime, the father of the parties has already partitioned the entire family properties to the fact that the plaintiff would be having his share as the flat of Dilshad Garden, the defendant no. 3 would be having the flat of United India Apartment. The defendant no. 4 being merit daughter is leading her happy marital life The answering defendant would be having the property in question and he would be maintaining the entire social liabilities for which the same is being done accordingly. The defendant no. 2 being well; of and senior officer shall maintain himself even without any share of the property for which anybody was happy. Therefore, it was complete lull in the family till now. Thus the rule of estoppel would be applied as none of the party raised any objection to the aforesaid family partition carried by the father of the parties.

8. The learned Single Judge noted that in suits for partition, the distinction between a plaintiff and defendant is inappropriate, and equal rights vest in all to claim partition. Equally, it is for the party claiming partition to prove that the properties in question are liable to be partitioned. Accordingly, while Ghanshyam Goel had approached the Court for partition of the property at Krishna Nagar, there is no obligation on him (or indeed, any party in a partition suit) to necessarily claim partition of all properties. Anil Goel does not contest that the Krishna Nagar property is liable to be partitioned into five equal shares, but rather, claims that such partition may be made only if other properties alleged by him to be left behind by Asa Ram Goel are also partitioned. For this, it was open, and remains open by way of subsequent proceedings, for Anil Goel to specifically plead for those properties to be partitioned - a pleading which is absent in the present proceedings (both in the written statement in the suit, and the Appeal Memorandum in the present appeal), and support that plea with the requisite proof of title, ownership and claim to succession. Similar, with respect to the jewellery, FDRs etc. that Anil Goel claims must be partitioned, no specifics of their existence, possession, ownership or any other details have been provided, let alone supported by documentary or other evidence. Thus, the claim that the Krishna Nagar property cannot be partitioned unless such other properties are also partitioned cannot be accepted; although it is open for any party claiming partition to make a positive claim in that respect.

9. The appellant also claims that late Asa Ram Goel had partitioned the Krishna Nagar property during his lifetime between the present parties, and thus, the property is no longer the subject of joint family ownership. However, to support this pleading, no evidence, documentary or otherwise, has been brought on record to prove the fact of such partition. In the absence of any such supporting

material, this plea cannot be accepted.

10. There is no doubt that every suit filed in Court should be decided on the merits; the plaintiff ordinarily has the further right to claim a decision based after considering all evidence and depositions and a full trial. Yet, the CPC arms the Court to issue summary judgment, based on admissions which can conclude the real and substantial disputes between the parties, on the basis of existing material and pleadings, by directing a decree to be drawn, or such number of decrees as may be necessary in the suit. In the present case, the learned Single Judge was of the view that the material on record were such that a decree on admissions could be drawn, entitling all the parties, i.e. siblings and children of the late Asa Ram Goel.

11. The law on admissions is clear enough. Order XII, Rule 6 of the CPC enables courts to draw decrees on the basis of admissions available on the record. This power is not conditioned by one or the other parties applying for a decree; and indeed, it may not arise in the pleadings. However, the authorities on this issue insist that the admission to lead to a judgment and decree should be unambiguous. (see, *Jeevan Diesels and Electricals Ltd. Vs. Jasbir Singh Chadha (Huf) and Another*,). To explain, in *Uttam Singh Dugal and Co. Ltd. Vs. Union Bank of India and Others*, , it was held as follows:

11. Learned Counsel for the appellant contended that Order XII Rule 6 comes under the heading "admissions" and a judgment on admission could be given only after due opportunity to the other side to explain the admission, if any, made; that such admission should have been made only in the course of the pleadings or else the other side will not have an opportunity to explain such admission; that even though, the provision reads that the Court may at any stage of the suit make such order as it thinks fit; effect of admission, if any, can be considered only at the time of trial; that the admission even in pleadings will have to be read along with Order VIII Rule 5(1) of CPC and Court need not necessarily proceed to pass an order or a judgment on the basis of such admission but call upon the party relying upon such admission to prove its case independently, that during pendency of other suits and the nature of contentions raised in the case, it would not be permissible at all to grant the relief before trial as has been done in the present case; that the expression "admissions" made in the course of the pleadings or otherwise will have to be read together and the expression "otherwise" will have to be interpreted ejusdem generis.

12. As to the object of the Order XII Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the object is to

enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.

13. The next contention canvassed is that the resolutions or minutes of meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent bank cannot amount to a pleading or come within the scope of the rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made is in dispute. And the Court had a duty to decide the same and grant a decree. We think this approach is unexceptionable.

12. A Court considering whether to decree a claim under Order XII Rule 6, CPC should see the written statement as a whole; the order cannot be claimed as a matter of course, since it is discretionary, and the Court has to base its exercise of discretion on sound principles. Here, the defendant does not deny the relationship between the parties. Also he does not deny that the suit property belonged to the father. What he, however, insists is that a partition had taken place earlier, (without specifying when - not even the approximate month or year, let alone the date of such partition or family arrangement) and that certain other properties were part of the joint family. With the written statement, the appellant did not produce any document in support of the plea regarding prior partition, or even as how it was given effect to. Similarly, no material or document was relied on to say how the other properties belonged to joint family. This is exactly what was meant by the Supreme Court when it said (in *Uttam Singh Dugal & Co. Ltd.*) that:

13...[w]hen a statement is made to a party and such statement is brought before the Court showing admission of liability by an application filed under Order XII Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the Court, we do not think the trial Court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial Court has dealt with the same...

13. The learned Single Judge observed as follows:

10. As far as the denial by the defendant no. 1 of the Will pleaded by the plaintiff is concerned, it is felt that no issue arises for the proof thereof in as much as even in the absence of the Will the share of the plaintiff and the four defendants remains the same as claimed by the plaintiff under the Will also. The counsel for the plaintiff and the counsel for the defendants no. 2 to also on being asked state that they are not pressing the said Will.

11. As far as the objection of the defendant no. 1 as to the valuation is concerned, admittedly the defendant no. 1 is in possession of the property and the plaintiff has valued the suit property for Rs. 80 lacs and paid ad valorem Court Fees on his 1/15 the share of Rs. 16 lacs. There is thus no error in valuation also.

12. in so far as the plea of the defendant no. 1. of the suit being not for partition of the entire estate of Shri Asa Ram Goel which comprised of the two properties, in occupation of the plaintiff and the defendant no. 3 respectively, the counsel for the defendant no. 1 contends that the said two properties were acquired benami by Shri Asa Ram Goel in favour of the wife of the plaintiff and in the name of the defendant no. 3 respectively.

13. It is significant that the defendant no. 1 has not sought any relief with respect to the said properties and has not claimed partition, neither thereof nor of the jewellery, shares, FDRs also stated to have been left by the deceased. Rather, the defendant no. 1 has sought dismissal of the suit for partition. In a partition suit, the nomenclature of plaintiff and defendant is irrelevant and all parties enjoy the same status. If the defendant no. 1 was serious in his claim of the deceased having left other properties, the remedy of the defendant no. 1 in this suit for partition was to seek partition of said properties also. The defendant no. 1, while not seeking partition of other properties alleged to be left by the deceased, is interested in having the suit, for partition of the property admittedly left by the deceased dismissed. In fact no particulars even of the jewellery, FDRs, shares alleged to have been left by the deceased have been pleaded. In the absence of particulars, no issue with respect "thereto is to be framed. Similarly, without defendant no. 1 claiming partition of" benami properties" no issue with respect thereto also is required to be framed. The said pleas are found to be vexatious and dilatory.

14. Moreover, it being the case of the defendant no. 1 that the said properties were acquired benami by Shri Asa Ram Goel in the names of the wife of the plaintiff and the defendant no. 3, notwithstanding the bar under the Benami Transactions Act, 1988 to such a plea, again no relief in that respect also has been claimed. The said pleas also are thus not found to come in the way of a preliminary decree for partition being passed.

15. The counsel for the defendant no. 1 at this stage states that it is also his submission in para 8 of the written statement that the partition has already taken place with the flat at Dilshad Garden being given to the plaintiff, the flat at

Krishna Nagar to the defendant no. 1 and the flat at Mayur Vihar being given to the defendant being given to the defendant no. 3 and nothing being given to the defendants no. 4 and defendant no. 2.

16. To say the least, for a partition the title to the properties has to be shown and which as aforesaid has not been shown. Also, the pleas in this regard are bereft of any particulars whatsoever. As held in the case of Kawal Sachdeva Vs. Madhu Bala Rana and Others , it is not all pleas which invite framing of issues but only material pleas. The said pleas are thus not found to be material ones and only vexatious to delay the decree for partition.

This Court has considered the averments and the material on record and finds no reason to differ from the conclusions of the Single Judge, which is based on sound understanding of the principles applicable in such cases. It is not sufficient for a party to litigation to merely assert or deny the existence of facts; if the rules of procedure mandate disclosure through evidence -especially documentary which the party has failed to disclose, the Court may well conclude that there is no triable issue and given the circumstances of a particular case, based upon the material available, draw a decree which may conclude the issues to the extent they require to be concluded. Here, the Court notices that the appellant/first defendant, not only failed to produce or indicate any material in his favour; he even omitted to claim reliefs which were a natural corollary to his pleadings (in the written statement). In these circumstances, there is no infirmity with the judgment and decree of the learned Single Judge. The appeal is bereft of merit and is consequently dismissed along with the pending application. No costs.