

In the court of Sub Judge – I, Patna City

T.P.S. - 376/16

Order

24-01-2023

A petition u/o XII rule 6 read with section 151 C.P.C dated 05.08.2019 is been filed on behalf of plaintiff. Ld. advocate on behalf of plaintiff submits that plaintiff has filed this suit for preliminarily decree of 2/5th share in the suit property as mentioned in schedule – B and C of the plaint. It is further stated that defendant no. 1 is father of the plaintiff and defendant no. 2 & 3 are brothers of the plaintiff. It is further stated that the suit properties are ancestral property of the plaintiff and defendant and both parties together constitute joint Hindu family governed by Mitakshra School of Hindu Law and defendant no. 1 being Karta of the joint Hindu family property. It is further stated that defendant no. 1 while filing W.S. has admitted the entire averments made in the plaint by the plaintiff. It is further stated that defendant no. 1 in para 11 (sixth line) has admitted that defendant no. 1 has no objection if 2/5th share is curved out and given to plaintiff. Further, it is also submitted that defendant no. 2 and 3 have also admitted plaintiff's case impliedly vide their written statement. Further, Ld. advocate on behalf of plaintiff has contended that u/o XII rule 6, judgement be passed on the admission of the defendant itself. Further it is stated on behalf of plaintiff that defendant no. 1 has filed amendment in W.S. after three years and defendant has also not cross examine plaintiff's witnesses. It is further stated that leave for hearing on amendment petition of defendant by the court does not grant consent for withdrawal of admission and also does not mean that amendment petition in w.s is allowed. It is further stated that defendant no. 1 has unequivocally admitted the case of the plaintiff. Accordingly, it is prayed that judgement u/o XII rule 6 read with section 151 C.P.C be passed in favour of plaintiff. Plaintiff has relied upon judgement of Hon'ble court civil appeal no. 6098 of 2021.

Separate rejoinder has been filed by the defendant no. 1 and defendant no. 2 & 3 respectively. Defendant no. 1 vide rejoinder dated 21.08.2019 has submitted that the plaintiff's petition is filed with an object to delay the suit proceeding as plaintiff. It is further stated that as per para 6 of plaintiff's petition with regard to entire averment made in the plaint, being admitted by defendant no. 1, it is submitted that the averment were obtained by defendant no. 1, by practising fraud upon defendant no. 1, by obtaining his signature of w.s., by misrepresenting as to the character of the document. It is further stated that such fraudulent misrepresentation as to the character of the document renders

In the court of Sub Judge – I, Patna City

T.P.S. - 376/16

Cont.
24-01-2023

the document as vide *ab-initio*. Further, Ld advocate appearing on behalf of defendant no. 1 has submitted that all properties are self acquired property of the defendant no. 1 and admission was obtained by plaintiff from her father by playing fraud & misrepresentation. It is further submitted that as per para 27 of judgement of Hon'ble court (2015 vol. 4 PLJR SC 290) “admissions cannot be withdraw but clarifications can be incorporated through amendment in pleadings”. It is further stated that leave for hearing on amendment petition has been granted by the court vide detailed order dated 10.04.2019. It is further stated that for the judgement order XII rule 6, admissions must be clear, specific and unambiguous. It is also submitted that admission must be with free consent and same must not be obtained by fraud, undue influence and misrepresentation. Defendant no. 1 has relied upon judgement namely Civil appeal no. 6098/21, AIR 2000 SC 2740 & AIR 2000 Del (DB).

Further, separate rejoinder dated 21.08.2019 is filed on behalf of defendant no. 2 and 3. Ld. Advocated on behalf of defendant no. 2 and 3 has submitted that the amendment petition defendant no. 1 is pending since 28.01.2019. It is further stated that after the leave for hearing to defendant no. 1 petition for amendment in w.s is granted, but plaintiff is delaying the hearing of the said amendment petition. Further it is submitted that defendant no. 2 and 3 vide their w.s. has objected to the plaintiff claim, accordingly no judgement can be passed u/o XII rule 6 C.P.C. It is further stated that defendant no. 2 and 3 being coparcener, having equal rights in the suit property have fully objected to the plaintiff's claim and there is no admission on behalf of defendant no. 2 and 3. Accordingly, it is prayed on behalf of defendant no. 2 and 3 that plaintiff petition to be dismissed.

Heard both parties. Before appreciating the arguments of the facts and controversy involved in the present case, the relevant provisions are reproduced as under :-

Order 12 rule 6 C.P.C - 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

In the court of Sub Judge – I, Patna City

T.P.S. - 376/16

Cont.
24-01-2023

drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced”

Also, perused the judgement filed by defendant Karan Kapoor Vs. Madhuri Kumar, Civil Appeal No. 4545 of 2022 decided on 06.07.2022, wherein Hon'ble Supreme Court observed *inter-alia* as under (Para 16) :-

“..... legislative intent is clear by using the word ‘may’ and ‘as it may think fit’ to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the Court can refuse to invoke the power of Order XII Rule 6. The said provision has been brought with intent that if admission of facts raised by one side is admitted by other, and the Court is satisfied to the nature of admission, then the parties are not compelled for full-fledged trial and the judgment and order can be directed without taking any evidence.”

From perusal of the provisions of order XII rule 6 C.P.C. and the judgement of Hon'ble Supreme Court, it is settled principle that the power under order XII rule 6 C.P.C is a discretionary relief and cannot be claimed as a matter of right and discretion should be used only when there is a clear, categorical and unconditional admission and such right should not be exercise to denied the valuable right of a defendant to contest the claimed based on the defendant taken.

Also, perused the record alongwith judgement filed by respective parties. It transpires that present title partition suit - 376/16 has been filed by plaintiff's namely Smt. Manju Kumari and Smt. Anuradha Kumari against three defendants for passing, *inter-alia*, preliminary decree to the extent of 2/5th share with respect to suit property as mentioned in schedule 'B' & 'C' of the plain. Further, it transpires that prior to filling of plaintiff's petition u/o XII rule 6 read with section 151 C.P.C., defendant no. 1 had filed a petition dated 28.01.2019 for amendment in written statement further, it also transpires that the rejoinder dated 07.02.2019 is filed by the plaintiff and a later on plaintiff has filed the petition u/o XII rule 6 read with section 151 C.P.C. Further, it transpires that till date, the said amendment petition on behalf of defendant had not been heard. Further, it transpires that defendant has contended that in pursuant to order dated 06.03.2019, this court by order dated 10.04.2019 has allowed leave to the defendant for hearing the amendment petition in W.S. For better understanding, the court's order dated 10.04.2019 is reproduced as under :-

In the court of Sub Judge – I, Patna City

T.P.S. - 376/16

Cont.
24-01-2023

10.04.2019 उभय पक्ष की ओर से हाजरी दी गयी है। वादी की ओर से प्रतिवादी संख्या (1) द्वारा दाखिल आवेदन पत्र दिनांक 25.03.2019 का प्रतिउत्तर दाखिल किया गया।

उभय पक्ष के विद्वान अधिवक्ता वाद में उपस्थित हुए। प्रतिवादी संख्या (1) आवेदन पत्र दिनांक 25.03.2019 को संचालित कर निवेदन करते हैं कि माननीय उच्चतम न्यायालय के फैसले 2015(4) PLJR SC 290 के आलोक में संशोधन आवेदन पत्र को सुनने हेतु Leave Petition grant किया जाय। सुना। प्रार्थना स्वीकार किया जाता है तथा Leave Petition grant किया जाता है। वाद दिनांक 24.04.2019 वास्ते वादी के साक्ष्य हेतु रखा गया।

Dictated

Sub Judge - 1

From the perusal of the court's order dated 10.04.2019, it transpires that the court has granted leave for hearing the defendant no. 1 petition for amendment in W.S. It also transpires that the said petition is pending for disposal.

Now applying the provisions of order XII rule 6 C.P.C and in view of the judgement mentioned above, in the present fact & circumstances of the case, it transpires that pleading of defendant no. 1 is not yet complete as the court has vide order dated 10.04.2019 has granted leave to defendant no. 1 petition for hearing on the amendment sought. Further, it also transpires that plaintiff has failed to satisfied court as to how defendant no. 2 & 3 has admitted the pleading of the plaintiff impliedly in their written statement. Further, in view of contentions raised by the plaintiff and separate defence taken by defendant no. 1 and defendant no. 2 & 3 jointly is plausible or not, is a matter of trial, which in the opinion of this court can only be decided after granting opportunity to lead evidence by the respective parties. Accordingly, this court is of opinion that on the basis of incomplete pleading of defendant no. 1 and failure of plaintiff to satisfy the court with regard to implied admission by defendant 2 & 3, the jurisdiction u/o XII rule 6 C.P.C cannot be invoked. Both parties have not led any argument with regard to application of section 151 C.P.C. Accordingly, the plaintiff petition dated 05.08.2019 is hereby dismissed as devoid of any legal ground. Put for further proceeding on

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Sub Judge - 1