

**Orders on IA filed under Oder XXII Rule 6 read with
Section 151 of CPC.,**

The applicant/defendant No.13 has filed the application to decree the suit as per prayer (2) of the plaint besides partitioning all the suit properties except item No.11 which can be allotted to the defendant No.13.

2. The authorized signatory of the 13th defendant society has sworn an affidavit annexed to the application and submitted that, the defendant No.5 along with defendants No.1 and 7 filed written statement and submitted no objections to decree the suit. The defendant No.5 in his cross examination has admitted the said prayer to decree the suit.

That the plaintiff has sought for allotment and partition of 1/10th share in suit schedule properties. That the prayer No.2 is for setting aside the judgment and decree in OS.No.318/2013. That the defendant No.13 is the contesting defendant and it has no for passing partial decree in the suit by allowing prayer No.2.

That the defendant No.13 has preferred RA.No.90/2009 challenging the judgment and decree passed in OS.No.318/1993 besides Mis.No.7/2015. Since there is no contest by any defendant as regards items No.1 to 10 of suit schedule properties there is no impediment to decree the suit. That the defendant No.13 is a bonafide purchaser of item No.11 of suit schedule properties. Therefore, item No.11 property can be allotted to the defendant No.13 as defendants No.2 and 8 besides other defendants have compromised OS.No.367 and 368 of 2009. Therefore, to avoid going through agony of multiple litigations, it is necessary to decree the suit as per prayer 2 of the plaint. Hence, the application.

3. The opponent/SPA holder of the plaintiffs filed statement of objections and submitted that, the defendant No.13 has trespassed into item No.11 and has put up illegal construction. In order to protect the construction the application is filed, which is not maintainable in law. That partial partition is not recognized in law. That the

defendant No.13 has no right to move the application for partial partition, when he is not a member of joint family.

That the plaintiffs were not parties to OS.No.318/1993. That the defendant No.13 is not a bonafide purchaser. Therefore, by denying the other averments made in the affidavit of the defendant No.13, the opponent prayed for dismissal of the application with costs.

4. The defendant No.5 filed statement of objections which is in similar lines with the counter statement of the opponent. Apart from that, the defendant No.5 has sought for decree the suit in respect of item No.11 of suit properties in favour of the plaintiffs and the defendants No.1 to 8 and prayed for dismissal of the application with costs.

5. Heard.

6. The plaintiffs have instituted the suit for partition of suit schedule properties and for declaration that the judgment and decree passed in OS.No.318/1993 is not binding on the plaintiffs and for other relief. In this case,

power of attorney holder of the plaintiffs is partially cross examined by the defendant No.13 and evidence of the defendant is not yet commenced. Because, the defendant No.13 in his application submitted that, defendant No.5 has admitted to decree the suit in respect of prayer No.2.

7. The defendants No.1, 5 and 7 prayed to pass decree as sought for by the plaintiff. The defendant No.2 has prayed for dismissal of the suit. The defendant No.8 has also prayed for dismissal of the suit.

*As per Order XII Rule 6 of CPC., **Judgment on admissions:** Where admissions of facts 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 questions between the parties, make such order or give such judgment as it may think it fit, having regard to such admissions.*

(2).....

The purpose of Order XII rule 6 of Civil Procedure Code is to avoid waiting by the plaintiff for part of the decree when

there is a clear, unequivocal, unambiguous and unconditional admission of the defendant in respect of the claim of the plaintiff. But, in the present case, all the defendants have not admitted the claim of plaintiffs. Therefore, I proceed to pass the following:

ORDER

IA filed by the applicant/defendant
No.13 under Order XII Rule 6 read with
Section 151 of CPC ., is rejected.

(Anupama Lakshmi.B)
Addl. Senior Civil Judge & JMFC.,
Ramanagara.