

MHNG100013012010



**ORDER BELOW EXH 71 IN RCS.No.49 of 2010**

This is an application filed by plaintiff for passing decree on admission.

2. The Plaintiff contended that, the plaintiff has filed the instants suit for partition, separate possession and declaration in respect with agricultural land and house property. So far as, house property is concerned the defendant in their written statement categorically admitted ancestral nature of suit house, and also admitted shares in the said house. Therefore, the decree for partition with respect to said suit house property is required to be pass to minimize the dispute between the parties. Hence, prayed to grand the application.

3. On the other hand, the defendants filed their say below Exh.70 and denied the defendants in their written statement categorically admitted the ancestral nature of suit house. It is further contended that, the plaintiff has file the suit for declaration and partition along with other ancillary relief sought by the plaintiff in respect of agricultural land as well as house property of the deceased father of the plaintiff and defendants. The defendants have denied the claim of plaintiff. It is further contended that, the power to pass Judgment on admission U/o. XII, Rule VI of the

Code of Civil Procedure is discretionary and can not be claim as a matter of right. Hence, present application is not maintainable and same is liable to be rejected with cost.

4. Perused the application, say and submission of both sides following points arisen for my determination and on which I recorded finding along with reasons as stated.

No.	Points	Findings
1.	Whether the application filed by plaintiff for passing decree on admission is liable to be granted?	In Negative
2.	What order?	As per final order

### REASONS

#### As to point No.01

5. Perused the application and say filed by defendants. Learned advocate for the plaintiff submitted that defendants in their written statement categorically admitted the ancestral nature of the suit house property and also admitted the share. He invited the attention on para No.01 of written statement at Exh.35. Wherein it is contended that it is not disputed for the plaintiff and defendants Nos.01 to 03 and 5 to 06 that they are holding ancestral house property bearing Grampanchayat house property No.2169 and 2170 constructing of old house and newly constructed R.C.C. construction of two rooms and the open land. He also invited attention on para No.11 of written statement that defendants admitted the house property bearing ancestral property

of plaintiff and defendants. The defendants have no objection for the partition of same by mets and bound. Learned advocate for the plaintiff relied on the authority in **Himani alloys Ltd. Vrs. Tatas steel Ltd. Civil Appeal No.5077 of 2011, in para No.10 Hon'ble Court held that;**

*"It is true that Judgment can be given on admission contents in the minutes of admitting. But the admission should be categorical it should be conscious and deliberate act of the party making it, showing an intention to be bound by it. Order XII Rule VI being and enabling provision, it is neither mandatory nor peremptory but discretionary. The Court on examination of the facts and circumstances, has to exercised its judicial discretion, keeping in mind that Judgment on admission is Judgment without trial which permanent denies any remedy to defendant, by way of an appeal on merits. Therefore, unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercise to deny the valuable right of the defendant to contest the claim."*

6. On the other hand learned advocate for defendants submitted that the defendants in their written statement not categorically admitted the ancestral nature of the suit house therefore, the decree for the partition with respect to the suit house property can not be passed. The plaintiff has filed the suit

for declaration and partition along with other ancillary relief sought by the plaintiff in respect of the agricultural land as well as house property of the deceased father of the plaintiff and defendants.

7. After going through application and record of the case it appears that the plaintiff has filed this suit for declaration, partition, possession and permanent injunction in respect of joint family property as more particularly comprised in the plaint. The defendant in para No.11 contended that the house property being ancestral between plaintiff and defendants, the defendants have no objection for partition of the same by mets and bound. Therefore, to decide the share of the plaintiff and defendants by mets and bounds it is required be considered evidence adduce by both side. Defendants have not admitted categorically, specific shares of plaintiff and defendants in the ancestral suit property. Therefore, to decide the proper share of the plaintiff and defendants in the ancestral suit house property the evidence of both sides needs to be considered and in the absence of evidence partition of same can not be decided by mets and bound.

8. Moreover, I gone through the observation held by the Hon'ble Court in the authority referred by learned advocate for the plaintiff wherein it appears that facts contended in said authority contended distinct fact from the case in hand. Therefore, with due respect the observation held by the Hon'ble Court in the authority referred supra is not applicable to the case in hand. I also gone through Order XII Rule VI with enshrine and enabling provision

which is neither mandatory nor peremptory its judicial discretion. So far as, invoking judicial discretion the defendants have not straightway admitted that the house property is ancestral house property and field properties are ancestral properties. But, defendant contended that they are entitle to get partition by mets and bounds. The partition can be effected by mets and bounds in respect of whole ancestral suit properties and not only in respect of house property. It can only be decided when after, the both parties have adduced evidence. Therefore partition can not be decided by mets and bounds at this juncture and it can only be decided after conclusion of the trial. Hence, in view of entire discussion made herein above I am not inclined to grant the application. Hence, I answer to point No.01 in Negative and to answer point No.02 pass following order.

**ORDER**

- 1] Application below Exh.71 is rejected.
- 2] Cost in cause, parties to take note.

Date:- 15.04.2025

(R.S. Mankar)  
2nd Jt. C.J.J.D,  
Umred.

<b><u>CERTIFICATE</u></b>		
I affirm that the contents of this P.D.F. file Judgment/Order are same word to word as per the original order.		
Name of Court	:-	Jt. Civil Judge (Jr.Dn.) and J.M.F.C., Umred, Dist. Nagpur.
Presiding Officer	:-	R. S. Mankar
Judgment uploaded by	:-	S.B.Ghardinkar(Stenographer L.G.)
Date of Judgment/Order	:-	15.04.2025
Judgment/Order signed by the presiding officer on	:-	15.04.2025