

MHST-140017072022 	<u>RCS No.168/2022</u> Malan Haribhau Gavande and ors. Vs. Dattatray Krushna Aatole and ors.
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Order Below Exh.32

This is an application filed by plaintiff under order 12 rule 6 and O.6 R.15 of C.P.C. Application is supported by an affidavit.

2. It is submitted by plaintiff that, defendant has in his written statement only evasive denied the plaintiff's suit. Defendant has only denied the para no.1 to 16 of plaint but, has not given satisfactory answer to the plaintiff's suit. Therefore, plaintiff prayed for suit is liable to be decreed on admission given by defendant in written statement.

3. Defendant filed say below Exh.34 and denied all the contention of application. It is submitted by defendant that, plaintiff has not specifically stated that, which fact defendant has admitted in his written statement. Defendant has specifically paragraph wise denied the plaint. Only with intention to prolong the suit plaintiff has filed this application. Hence, prayed for reject the application.

4. Perused the application, say also perused plaint, written statement, written argument Exh.35 on record. Heard Ld. Advocate for both parties. Ld. Advocate for plaintiff relied upon following citation.

- i. Ramchandra Jamanadas Kataria Vs. Nuruddinbhai Majhar Ali 2004 Cj (Bom)1100.
- ii. Raveshchand Jain Vs. Raj Rani Jain 2015 CJ (S.C.)100.
- iii. Badat and Co., Bombay Vs. East India Trading Co. 1963 CJ (S.C.)19.

5. Gone through the citation. By way of this application plaintiff prayed for judgment on admission. Before going into discussion, firstly we have to consider relevant provision under order 12 rule 6 of C.P.C.

Order XII Rule 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.]

6. Considering the above provision, the court has power to pass the judgment on admission after considering the pleading of either oral or in written. Now, for consideration of this application we have to peruse the pleadings of parties i.e. plaint and written statement. After perusing, the plaint it reveals that, the plaintiff has filed the present suit for perpetual injunction. After perusing the plaint, the suit property is ancestral property of plaintiff. There is water canal (पाट पलान) in the suit property. Plaintiff is in possession of said water canal (पाट पलान) since 50-60 years. Defendant has trying to encroach upon suit property. Therefore, plaintiff filed the suit for perpetual injunction. Perusal of written statement Exh.21, it shows that, defendant has only admitted the description of suit property specifically mentioned in para no.1 of the plaint but, denied entire pleading of plaintiff. Defendant has specifically denied the suit of plaintiff. There is no specific admission by defendant in the written statement

Exh.21. Plaintiff has not specifically stated that, which fact is admitted by defendant in written statement. Plaintiff merely stated that, defendant has only evasive denied the plaint. On this ground suit cannot be decreed. Perusal of para no.17 of written statement defendant has specifically denied the pleading of plaint. In this application, or the argument of learned advocate of plaintiff, we did not point out to quote that, on which para number in the written statement of defendant he has admitted the content of plaint. In absence of such admissions, this application can not be allowed. To decide the suit on merit evidence of both parties are necessary for adjudication of this suit. The facts and ratio mentioned in the citation filed by Ld. Advocate for plaintiff is different from this present case hence, it cannot be considered. Therefore, this application is not tenable and liable to be rejected. Accordingly, I pass the following order-

ORDER

Application is rejected.

Phaltan.

Date: 06.02.2025.

(P. H. Patil)

4th Jt. Civil Judge Jr. Dn., Phaltan.