

A

RAVEESH CHAND JAIN

v.

RAJ RANI JAIN

(Civil appeal no. 1822 of 2015)

FEBRUARY 12, 2015

B

[M.Y. EQBAL AND SHIVA KIRTI SINGH, JJ.]

Code of Civil Procedure, 1908: Or.XII r.6 – Suit for recovery of possession and for damages against appellant who was respondent-plaintiff's son alleging that suit property was purchased by plaintiff from her own funds and she was absolute owner – Appellant-defendant opposed the suit contending that the suit property was a HUF property having been purchased in the name of the respondent using the funds of his grandfather, father and himself – Respondent filed application u/Or.XII r.6 stating that a suit for partition filed by appellant earlier on the same ground that suit property was HUF was dismissed and same amounted to unequivocal admission by the appellant that the respondent was entitled to possession – Trial court dismissed the application – High Court held that the suit for partition having been dismissed, the same will operate as res judicata and decreed the suit – Held: High Court was correct in decreeing the suit so far as recovery of possession was concerned in view of question of ownership having been already decided in earlier suit – The second question with regard to recovery of Rs. 5,55,000/- and future damages admittedly was not decided either in the earlier suit or in this suit – In that view of the matter, decreeing the entire suit on the basis of ownership of the respondent already decided in the earlier suit, the decree for recovery of damages ought not to have been passed by the High Court – However, while admitting the SLP the court had directed appellant to deposit Rs.5 lacs and notice was issued only confining to the question as to whether the decree passed u/

H

Or. XII r.6 was justified – Hence matter need not be remanded back to trial court for deciding the issue as to the quantum of damages– The amount of Rs.5 lacs held to be just and proper. A

Dismissing the appeal, the Court B

HELD: 1. The High Court not only decreed the suit for possession but also directed the plaintiff / respondent to file an affidavit giving details of the cost of litigation since the appeal was allowed with cost. There is no dispute that Order XII Rule 6 confers wide discretion on the Court to pass judgment either at the stage of the suit on the basis of admission of the facts made in the pleadings or otherwise, but the Court shall later on decide the other questions which arise for consideration in the Suit.It is equally well settled that the provision of Order XII Rule 6 of the Code is not a mandatory provision rather discretionary. While exercising power of passing judgment on admission made in the pleading or otherwise, the Court must keep the matter pending for adjudication so far as other issues are concerned. [Paras 14, 15 and 16] [1105-B-E] C D E

2. The view taken by the High Court was correct having regard to the question of ownership already decided in the earlier suit filed by the defendant/ appellent. The said issue need not have to be decided afresh and hence on the basis of the finding of ownership decided in favour of the plaintiff/respondent, the suit has to be decreed so far as the recovery of possession is concerned.So far as the second question with regard to the entitlement of the plaintiff/respondent to claim a decree for recovery of a sum of Rs. 5,55,000/- and future damages @ Rs.15,000/- per month was concerned, admittedly this question was not decided either in the earlier suit or in this suit. In that view of the matter, decreeing the entire suit on the basis of ownership of the F G H

A plaintiff/respondent already decided in the earlier suit, the decree for recovery of damages ought not to have been passed by the High Court. However, in the instant case, since at the time of admission of this Special Leave
 B appellant deposit a sum of Rs.5,00,000/- in the account of his mother-Respondent, notice was issued only confining to the question as to whether the decree passed under the provisions of Order XII Rule 6 CPC was justified. In compliance of the said order, the appellant
 C had already deposited the said amount. Hence, taking into consideration the relationship of the appellant and the respondent being mother and son, it is not proper to again remand the matter to the trial court for deciding the issue as to the quantum of damages the respondent is
 D entitled to get from the appellant for his unauthorized possession of the suit property. Therefore, the amount of Rs.5,00,000/- would be just and proper so far as the claim for damages is concerned. [Paras 18 to 21] [1105-G-H; 1106-A-C-G-H]

E *Karan Kapahi and Ors. v. Lal Chand Public Charitable Trust and Anr.* 2010 (4) Scc 753: 2010 (4) SCR 422 – Relied On.

Case Law Reference:

F 2010 (4) SCR 422 relied on Para 11
 CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1822 of 2015.

G From the Judgment and Order dated 28.08.2014 of the High Court of Delhi at New Delhi in C. R. P. No. 113 of 2014.

Sushil Kumar Jain, Khushbu Jain, Ms Pratibha Jain for the Appellant.

H Randhir Singh Jain, Ruchika Jain, Dhananjai Jain for the Respondent.

The Judgment of the Court was delivered by

M. Y. EQBAL, J.1. Leave granted.

2. This appeal by special leave is directed against the judgment and order dated 28.8.2014 of the High Court of Delhi allowing the revision petition preferred by the respondent/plaintiff against the order of the trial court which has dismissed her application in a suit for recovery of possession and damages with respect to a portion of the property being in unauthorized occupation of the appellant/defendant.

3. The factual matrix of the case is that the plaintiff-respondent filed a suit against the defendant/appellant who is her son, for recovery of possession and damages alleging that she had purchased the suit property out of her own fund and she is the absolute owner, but part of the property was under the illegal occupation of the appellant-defendant, who opposed the suit contending that the suit property was a Hindu Undivided Family property having been purchased in the name of the respondent using the funds of his grandfather, father and himself and not purchased by the respondent as she was a housewife having no income. Appellant-defendant further pleaded that though there was a dispute regarding his ownership and possession, the same was settled between all the family members vide compromise deed dated 22.10.1997.

4. The respondent filed an application under Order XII Rule 6 of the Code of Civil Procedure for passing a decree in her favour on the ground that a suit for partition, which had earlier been filed by the appellant on the same ground i.e. that the suit property was a HUF property, had been dismissed by the District Court vide judgment dated 8.9.2003 and affirmed by the High Court vide judgment dated 12.9.2011 and the respondent contended that the same amounted to an unequivocal admission by the appellant that the respondent was entitled to possession.

A 5. The trial court held that though the judgment dated
8.9.2003 of the District Court and judgment dated 12.9.2011
of the High Court had rejected the plea of the appellant that the
suit property was a HUF property, these findings were made
B in a suit for partition whereas the present suit was filed for
recovery of possession and damages. The trial court further
held that for passing a decree under Order XII Rule 6 CPC, the
defendant had to make an unequivocal and unqualified
admission. The appellant herein has not made such an
admission regarding his liability to pay the damages claimed
C by the respondent. The trial court dismissed the application vide
judgment dated 7.6.2013.

6. Aggrieved by the judgment of the trial court, the
respondent filed a revision petition before the High Court. The
High Court while allowing the appeal and decreeing the suit with
D costs held that the pleas taken by the appellant-defendant
regarding the contribution made by his grandfather, father and
himself in the purchase of the suit property had been rejected
by the High Court vide judgment dated 12.9.2011 and the
same will operate as res judicata. The High Court further held
E that while there was no evidence for holding the suit property
to be a HUF property, the title deeds of the suit property and
the land records stood in favour of the respondent-plaintiff. The
High Court noted that the only new plea taken by the defendant
F in his written statement was that he was a co-owner vide
compromise deed dated 22.10.1997 and held that this plea
was barred on the grounds of constructive res judicata having
not been raised earlier in the partition suit filed by the defendant.
The High Court accordingly set aside the order passed by the
trial court and decreed the suit.

G 7. Hence, the present appeal by special leave by the
defendant-son.

8. We have heard learned counsel for the parties. Mr.
Sushil Kumar Jain, learned senior counsel appearing for the
H

appellant, assailed the order passed by the High Court mainly on the ground that the High Court exceeded its jurisdiction under Section 115 of the Code of Civil Procedure. According to the learned senior counsel there is categorical denial that the appellant's possession in the suit property is not that of a trespasser but on the basis of his own right. Learned senior counsel submitted that for passing a judgment under Order XII Rule 6 CPC there must be unequivocal admission by the defendant in the pleading. According to the learned counsel judgment should not have been passed by applying the principles of *res judicata* inasmuch as the issue of *res judicata* does not arise in a case of judgment passed under Order XII Rule 6, CPC.

9. In order to appreciate the submission made by the learned senior counsel we would like to quote Order XII Rule 6 CPC, which reads as under:-

"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 an 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."

10. The bare perusal of the aforesaid provision makes it clear that it confers wide discretion on the court to pass a judgment at any stage of the suit on the basis of admission of facts made in the pleading or otherwise without waiting for the determination of any other question arose between the parties. Since the Rule permits the passing of judgment at any stage

A without waiting for determination of other question, it follows that
 there can be more than one decree that may be passed at
 different stages of the same suit. The principle behind Order
 XII Rule 6 is to give the plaintiff a right to speedy judgment so
 that either party may get rid of the rival claims which are not in
 B controversy.

11. The provision of Order XII Rule 6 has been discussed
 by this Court in the case of *Karam Kapahi and Others vs. Lal
 Chand Public Charitbale Trust and Another*, (2010) 4 SCC
 753, wherein this Court observed:-

C "39. In the 54th Law Commission Report, an
 amendment was suggested to enable the court to give a
 judgment not only on the application of a party but on its
 own motion. It is thus clear that the amendment was
 D brought about to further the ends of justice and give these
 provisions a wider sweep by empowering the Judges to
 use it "ex debito justitiae", a Latin term, meaning a debt
 of justice. In our opinion the thrust of the amendment is that
 in an appropriate case, a party, on the admission of the
 E other party, can press for judgment, as a matter of legal
 right. However, the court always retains its discretion in the
 matter of pronouncing judgment.

F 40. If the provision of Order 12 Rule 1 is compared
 with Order 12 Rule 6, it becomes clear that the provision
 of Order 12 Rule 6 is wider inasmuch as the provision of
 Order 12 Rule 1 is limited to admission by "pleading or
 [pic]otherwise in writing" but in Order 12 Rule 6 the
 expression "or otherwise" is much wider in view of the
 words used therein, namely: "admission of fact ... either
 G in the pleading or otherwise, whether orally or in writing".

H 41. Keeping the width of this provision (i.e. Order 12
 Rule 6) in mind this Court held that under this Rule
 admissions can be inferred from the facts and
 circumstances of the case (see *Charanjit Lal Mehra v.*

Kamal Saroj Mahajan, SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see Mulla's Commentary on the Code, 16th Edn., Vol. II, p. 2177). A

42. In *Uttam Singh Duggal & Co. Ltd. v. United Bank of India* this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment." B

12. Coming back to the instant case there is no dispute that the plaintiff/respondent filed the suit for possession of the suit property and also for recovery of Rs.5,55,000/- and future damages at the rate of Rs. 15,000/- per month. The plaintiff/respondent claimed title in the suit property and averred that the appellant is in unauthorized occupation of the suit property without any authority or justification. In the plaint it was specifically pleaded that the ownership right in the suit property has already been decided in favour of the respondent and against the appellant by judgment and decree dated 8.9.2003 and the appeal filed by the appellant was also dismissed vide judgment dated 12.9.2011. Hence, the appellant is in illegal possession of the suit property. C
D
E

13. On an application filed by the plaintiff/respondent under Order XII Rule 6 CPC seeking a judgment in the suit, the trial court dismissed the application stating that there is no unequivocal admission for passing a judgment in the suit. The High Court, however, reversed the order passed by the trial court and held that considering the earlier judgment deciding the ownership of the suit property in favour of the appellant, the suit for possession ought to have been decreed by the trial court. Consequently, the High Court decreed the suit. Paras 6 and 7 of the impugned judgment passed by the High Court are quoted hereinbelow:- F
G

"6. The only new aspect urged in the present written H

A statement is that the respondent/defendant claimed that he received ownership share in the suit property by virtue of a written compromise entered into before the police station Anand Vihar on 22.10.1997, however, it is noted that the earlier suit, which was a suit for partition filed by the respondent/defendant, the issue as regards the claim of the respondent/defendant to the ownership rights in the suit property was very much in issue, and hence the respondent/defendant had to urge in the earlier proceedings all the basis of his claims of ownership rights in the suit property and if that was not done the respondent/defendant is now barred by the principle of constructive res judicata from raising any claims which ought to have been urged in the earlier proceedings. The principle with respect to doctrine of res judicata is that there must be finality achieved to litigation and parties must not be harassed over and over again merely by changing certain facts with respect to the main relief claimed viz., of ownership rights in the suit property.

7. In view of the above, the impugned order dated 7.6.2013 is completely illegal and the issues in the present case stand covered against the respondent / defendant by the principle of res judicata enshrined in Section 11 CPC. So far as the relief of possession is concerned, suit of the plaintiff/petitioner/mother will hence stand decreed against the respondent/defendant for the portion so in possession of the respondent/defendant as per the site plant filed. Since the respondent / defendant / son is harassing the mother from 1998 and today we are in the year 2014, this appeal is allowed with actual cost. Petitioner / plaintiff will file an affidavit in this Court supported by certificate of fees of her counsels in this appeal with respect to the fees paid to the counsels, and such fees paid will be the cost which will be payable by the respondent / defendant to the petitioner / plaintiff. The aforesaid affidavit accompanied by the certificate of the fees of the counsels be filed by the

petitioner within a period of four weeks and costs be paid thereafter within a period of four weeks." A

14. From the reading of para 7 of the order, as quoted hereinabove, it reveals that the High Court not only decreed the suit for possession but also directed the plaintiff / respondent to file an affidavit giving details of the cost of litigation since the appeal was allowed with cost. B

15. As discussed hereinabove, there is no dispute with regard to the law settled by this Court that Order XII Rule 6 confers wide discretion on the Court to pass judgment either at the stage of the suit on the basis of admission of the facts made in the pleadings or otherwise, but the Court shall later on decide the other questions which arise for consideration in the Suit. C

16. It is equally well settled that the provision of Order XII Rule 6 of the Code is not a mandatory provision rather discretionary. While exercising power of passing judgment on admission made in the pleading or otherwise, the Court must keep the matter pending for adjudication so far as other issues are concerned. D E

17. Indisputably, the plaintiff/respondent filed the suit for following relief:-

(i) A decree for possession of the suit property; F

(ii) A decree for recovery of Rs.5,55,000/- and future damages @ Rs.15,000/- per month against the defendant.

18. So far as the first relief for a decree for possession is concerned, we are in full agreement with the view taken by the High Court having regard to the question of ownership already decided in the earlier suit filed by the defendant/ appellant. The said issue need not have to be decided afresh and hence on the basis of the finding of ownership decided in favour of the G

H

A plaintiff/respondent, the suit has to be decreed so far as the recovery of possession is concerned.

19. So far as the second question with regard to the entitlement of the plaintiff/respondent to claim a decree for recovery of a sum of Rs. 5,55,000/- and future damages @ Rs.15,000/- per month is concerned, admittedly this question has not been decided either in the earlier suit or in this suit. In that view of the matter, decreeing the entire suit on the basis of ownership of the plaintiff/respondent already decided in the earlier suit, the decree for recovery of damages ought not to have been passed by the High Court.

20. However, in the instant case, at the time of admission of this Special Leave Petition, the following order was passed on 12.11.2014:-

D "In the event the petitioner deposit a sum of Rs.5,00,000/- (Rupees Five Lakhs) in the account of his mother-Respondent, notice shall be issued only confining to the question as to whether the decree passed under the provisions of Order XII Rule 6 CPC is justified. The amount to be deposited within four weeks from today.

Put up the case on 11.12.2014.

F Till then, status quo, as on today, shall be maintained."

21. In compliance of the aforesaid order, the appellant had already deposited the aforesaid amount. Hence, taking into consideration the relationship of the appellant and the respondent being mother and son, we do not think it proper to again remand the matter to the trial court for deciding the issue as to the quantum of damages the respondent is entitled to get from the appellant for his unauthorized possession of the suit property. We, therefore, hold that the amount of Rs.5,00,000/- would be just and proper so far as the claim for damages is concerned.

22. We, therefore, think it fit not to interfere with the order passed by the High Court. This appeal is, therefore, dismissed. However, we allow the appellant to remain in possession of the suit property till 31.12.2015 on payment of Rs.10,000/- per month by way of damages for use and occupation of the suit property. It is made clear that in the event the appellant fails to vacate and hand over the vacant possession of the suit property and also fails in payment of monthly damages as fixed hereinabove on or before 31.12.2015, respondent will be entitled to execute the decree for recovery of possession and also for damages.

A

B

C

Devika Gujral

Appeal dismissed.