
Before T.H.B. Chalapathi, J.

SHISHPAL,—*Appellant*

versus

SUMER SINGH & OTHERS,—*Respondents*

R.S.A. 3365 of 1998

12th November, 1998

Code of Civil Procedure, 1908—Order 12 Rl. 6—Admission of the claim—Whether Court bound to pass decree.

Held that order 12 rule 6 of the Code of Civil Procedure enables the Court to grant a decree on the basis of admission. But the Court is not bound to pass a decree on the basis of mere admissions made by the defendant. Order 12 Rule 6 is only an enabling provision. The Court has the duty to see whether the plaintiff is entitled under law to get the relief sought for. The Court should also see whether the suit is collusive to defeat the provisions of Stamp Act, Registration Act, Transfer of Property Act or any other law concerning public revenues, public policy etc. The consent of parties cannot override the statute.

(Para 6)

Hindu Law—Family settlement—Pre-requisite of.

Held that the family settlement can be made among the members of the family or when there is a dispute among themselves. A family settlement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of others to the portions allotted to them respectively.

(Para 3)

R.S. Mittal, Senior Advocate with Major Sudhir Mittal,
Advocate for the Appellants.

ORDER

T.H.B. Chalapathi, J. (Oral)

(1) Plaintiffs are the appellants. They filed the suit against their paternal uncle Gyani Ram for declaration of their title alleging

that they were looking after him and about six months prior to the filing of the suit, Gyani Ram gave the property to them under a Family Settlement. In that suit, Gyani Ram appeared and filed a written statement acknowledging the transfer of the property in favour of the plaintiffs and also got a statement recorded. Thereafter he died before passing of the decree. The grand son of the said Gyani Ram (daughter's son) was impleaded as his legal representative when the legal representative wanted to file a separate written statement, it was objected to by the plaintiffs on the ground that the legal representative cannot take different plea from that of the original defendant, who died during the pendency of the suit. That objection was upheld by the Trial Court. Nevertheless the Trial Court dismissed the suit on the ground that the question of family settlement does not arise because the plaintiffs have no right, title or interest in the suit property during the life time of Gyani Ram. Agrieved by the same, the plaintiffs preferred an appeal unsuccessfully. Hence the Second Appeal by the plaintiffs.

(2) It is contended by the learned Counsel for the plaintiff-appellants that when the original defendant Gyani Ram admitted the claim of the plaintiffs and when the Court found that the legal representative of Gyani Ram cannot file a separate written statement taking pleas contrary to what had been taken by the original defendant, the suit of the plaintiff ought to have been decreed.

(3) I am unable to agree with the contention of the learned Counsel for the plaintiff-appellants. Admittedly, the suit property belonged to Gyani Ram. During his life time, the plaintiffs have no right in the suit property. There cannot be any Family Settlement. The Family Settlement can be made among the members of the family or when there is a dispute among themselves. As held by the Supreme Court in *Sahu Madho Das & others v. Mukand Ram and another* (1), it is well settled that a family settlement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of others as they had previously asserted it to the portions allotted to them respectively.

(1) A.I.R. 1955 S.C. 481

Reference may be made to *Maturi Pallaiah v. Maturi Narasimham and others* (2) and *Kale v. Dy. Director of Consolidation* (3). Here there is no dispute in regard to the property. Admittedly it belonged to Gyani Ram exclusively. When Gyani Ram during his life time wanted to give the entire property of his, to the plaintiffs, such transfer can only be effected by a Gift or Settlement Deed. Under Section 123 of the Transfer of the Property Act, a gift can be made only by a registered document attested by two witnesses. It is not the case of the plaintiffs that there can be an oral gift in the State of Punjab and the provisions of Section 123 of the Transfer of Property Act are not applicable. It has been held in *Malkiat Singh v. Gram Panchayat* (4) that an oral gift is not saved from requirement of validity under the Transfer of Property Act. Under Section 17 of the Registration Act, the right in the immovable property can only be relinquished or transferred by the original owner by a registered document. Admittedly, there is no regd. document in the instant case. The plaintiffs cannot, therefore, rely upon the alleged admission of Gyani Ram that he transferred his right in favour of the plaintiffs. Since there cannot be any oral transfer of property worth more than Rs. 100 such an admission is not valid in law and it does not create any title, interest or right in the immovable property in favour of the plaintiffs.

(4) The learned Counsel for the plaintiff-appellants also contended that there can be an oral relinquishment by Gyani Ram in favour of the plaintiffs. When the property is worth more than Rs. 100 even relinquishment has to be effected by a registered instrument in view of the provisions of Section 17 of the Registration Act.

(5) Simply because the defendant admitted the claim of the plaintiffs, the Court is not bound to pass a decree. It is the duty of the Court to examine the claim of the plaintiffs and whether the plaintiffs can succeed on the basis of the averments in the plaint. Even if the defendant is *ex parte*, the Court cannot pass a decree without satisfying itself in regard to the claim of the plaintiffs. If the Court feels on the basis of the plaint that there is no cause of

(2) A.I.R. 1966 S.C. 1836
(3) A.I.R. 1976 S.C. 807
(4) A.I.R. 1974 P&H 28

action to the plaintiffs, the plaint has to be necessarily rejected under Order 7 Rule 11 of Code of Civil Procedure.

(6) It is no doubt true that Order 12 Rule 6 of the Code of Civil Procedure enables the Court to grant a decree on the basis of admission. But the Court is not bound to pass a decree on the basis of mere admissions made by the defendant. Order 12 Rule 6 is only an enabling provision. It does not provide that the decree always be granted in terms of the prayer made in the suit on the basis of admissions. The Court has the duty to see whether the plaintiff is entitled under law to get the relief sought for. The Court should also see whether the suit is collusive to defeat the provisions of Stamp Act, Registration Act, Transfer of Property Act or any other law concerning public revenues, Public Policy etc. For instance, a suit is filed to enforce a contract which is against public policy or contrary to law and the defendant admits the claim in the suit and in such a case the Court will not lend its helping hand to enforce such a Contract as it is void and hit by Section 23 of the Contract Act being forbidden by law or opposed to public policy. The Court ought not to pass a decree mechanically based on admissions or consent of parties.

(7) As has been held by a Division Bench of Hyderabad High Court in *Kaisar Vardha Reddy v. Manvat Rao* (5), it is well known doctrine of law that the consent of parties cannot override the statute. Dealing with a similar provision as contained in Order 12 Rule 6 of the Code of Civil Procedure, Justice Kakewiche held in a case which arose a century ago that an order on admissions is not a matter of right, but is in the discretion of the Court (*In re Wright, Kirki v. North*) (6). The same view was taken by the Calcutta High Court in *J. C. Galstaun v. E. D. Sassoon & Co. Ltd.* (7). While dealing with Order 12 Rule 6 of the Code of Civil Procedure, the Court held that the power of the Court to pass a judgment on admission or consent is discretionary and this cannot be claimed as a matter of right. In *M/s Simla Wholesale Mart v. M/s Vaishno Dass Kishori Lal Bhalla and others* (8), it has been held that judgments upon admissions under Order 12 Rule 6 C.P.C. are matters of discretion and not of right.

(5) A.I.R. 1951 Hyderabad 63

(6) 1895 (2) Ch.D. 747

(7) A.I.R. 1994 Cal. 190

(8) A.I.R. 1977 H.P. 29

(8) Therefore, it is futile to contend that in every case where the defendant admits the claim of the plaintiff, a decree on the basis of admission or consent should follow.

(9) In the instant case, the claim of the appellants though admitted or consented by the defendant violates and contrary to the provisions of Indian Stamp Act, Indian Registration Act and Transfer of Property Act. As already stated, the Courts will not entertain any claim, through admitted, which makes a dent on the public exchequer or when it is forbidden by law or defeat any provisions of law and immoral or opposed to Public Policy.

(10) In this view of the matter, I do not find any grounds warranting interference with the decrees and judgments of the Courts below.

(11) The appeal, therefore, fails and is, accordingly, dismissed.

S.C.K.

Before V. S. Aggarwal, J.

RAVI PARKASH & OTHERS,—*Petitioners*

versus

DEWAN CHAND,—*Respondents*

C.R. No. 2306 of 1998

15th December, 1998

East Punjab Urban Rent Restriction Act, 1949—S. 13—Ejectment on the grounds of non-payment of rent & subletting ordered—Property let out to individual tenant—Tendering of rent on the first date of hearing on behalf of joint Hindu family will wash away ground of non-payment—Tender of rent does not depend on jural relationship of landlord and tenant—Orders of eviction upheld on the ground of subletting—On facts son of tenant found to be doing independent business in demised premises and was setting up his own title in the property—This amounts to unlawful subletting—Ground of subletting is to be determined on the date of filing of the eviction petition and subsequent death of tenant will not efface the ground of eviction.