* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **RFA No.747/2010**

% **19th October, 2011**

PREET INDER SINGH ..... Appellant
Through: Mr. Ujjwal Jha, Adv.

VERSUS

GURSHARNA KAUR & ANR. ..... Respondents
Through: Mr. Pramod Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the Trial Court dated 13.7.2010, and by which judgment, the Trial Court dismissed the suit under Order 7 Rule 11 CPC.

2. At the outset, I must state that merely because the Trial Court has dismissed the suit under Order 7 Rule 11 CPC, would not mean that if otherwise the judgment is correct on merits, the appeal would be allowed merely because of wrong provision of law is noted. In my opinion, in the present case what the Trial Court has done is that it has applied the provision of Order 12 Rule 6 CPC by taking the admitted

facts as appearing from the pleadings and documents filed by the parties and thereafter has proceeded to dismiss the suit. It is settled law that the heading or the provision which is referred to is not material, as long as there is a correct provision in law under which the powers can be exercised.

3. The facts of the case are that the appellant/plaintiff filed the subject suit seeking cancellation and setting aside of the relinquishment deed dated 17.1.2004 executed by him in favour of his mother/defendant no.1, and by which relinquishment deed, the appellant/plaintiff relinquished his 1/6th share of house no. B-1/3-A, Rajouri Garden, New Delhi in favour of the mother/defendant no.1. The respondent no.1/defendant no.1 contested the suit by taking up various defences. First defence was that the suit was barred by limitation because the relinquishment deed was executed on 17.1.2004 but the suit was filed on 8.12.2008. It was also contended on behalf of the respondent/defendant that there was another suit between the parties which was disposed of by a compromise decree, and such a compromise decree would therefore bar the appellant/plaintiff from filing the subject suit.

4. By the impugned judgment, the suit has been dismissed firstly relying upon the compromise decree between the parties dated 9.4.2007, as per which decree, the respondent no.1/defendant no.1 was granted possession of the suit property. Secondly, the Trial Court has referred to judicial admissions made by the appellant/defendant, i.e.

admissions made in pleadings in a case which was filed against the appellant/plaintiff by his wife under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and has dismissed the suit relying on such judicial admissions. The Trial Court has also ultimately held that frivolous litigation should not be allowed to be continued at the whims and fancies of a chronic litigant resulting in miscarriage of justice.

5. Before proceeding to dispose of the appeal certain additional facts are required to be noted. Sh. Sant Singh-father of appellant and husband of the respondent no.1 died in a road accident on 10.3.1999. On the demise of Sh.Sant Singh, the following properties came to the share of the appellant/plaintiff and the defendant nos. 1 and 2:

> "1.H.No.J-3/76A, Rajouri Garden, New Delhi-27.
> 2) H.No.B-1/3A, Rajouri Garden, New Delhi-27.
> (suit property in question).
> 3) Shop No.CW-569, Sanjay Gandhi Nagar, N.Delhi.
> 4) Shop No.AG-412, Sanjay Gandhi Nagar, N.Delhi."

Defendants nos. 1 and 2 executed relinquishment deeds dated 20.2.2002 relinquishing their share in favour of the appellant/plaintiff pertaining to the property nos. 1, 3 and 4. The plaintiff and defendant no.2 relinquished their 1/6th share in the suit property by executing the relinquishment deed dated 17.1.2004. It may be noted that relinquishment deeds executed by the parties in favour of each other are not of the same date inasmuch as the relinquishment

deeds executed by the defendant no.1 and 2 are prior in point of time, i.e. dated 20.2.2002, and the relinquishment deed which was executed by the appellant/plaintiff relinquishing his 1/6th share in the suit property is of a subsequent date, i.e. 17.1.2004. The defendants have not challenged the relinquishment deeds which have been executed in favour of the appellant/plaintiff dated 20.2.2002. It is therefore seen that whereas the appellant/plaintiff got share in three properties, the respondent no.1/defendant no.1 got 1/6th share in the subject property by virtue of the relinquishment deed dated 17.1.2004 executed by the appellant/plaintiff in favour of the respondent no.1/defendant no.1.

6. The basic contention of learned counsel for the appellant was that as per Order 7 Rule 11 CPC, the contents of the plaint have to be taken as correct, however, the Trial Court besides referring to the contents of the plaint has in addition referred to documents including the earlier compromise decree and other documents showing admission of the appellant/plaintiff in the proceedings initiated by the appellant's wife against him under the Protection of Women from Domestic Violence Act, 2005. It is therefore argued that the impugned order is thus unsustainable under Order 7 Rule 11 CPC as per which only the plaint can be referred to.

7. I have already, at the outset, referred to the fact that the impugned order is really an order in the nature of an order under Order 12 Rule 6 CPC and not under Order 7 Rule 11 CPC. A decree is defined under Section 2(2) CPC to include a dismissal of the suit. Therefore, the

defendant can also pray for dismissal of the suit under order 12 Rule 6 CPC on the basis of admitted facts which appear from pleadings or documents or otherwise in terms of Order 12 Rule 6 CPC. The object of the legislature while enacting Order 12 Rule 6 CPC was to prevent unnecessary continuation of litigation, therefore, Order 12 Rule 6 CPC is very widely worded whereby the suit can be decreed/dismissed even by the Court on its own motion by referring to admissions made in pleadings or whether made orally or in writing. Accordingly, in my opinion, the argument as raised on behalf of the appellant is misconceived that the impugned order is liable to be set aside merely because it wrongly refers to the provision of Order 7 Rule 11 and not Order 12 Rule 6 CPC. I hold that the impugned judgment therefore is a judgment under Order 12 Rule 6 CPC.

Of course, the contention of counsel for the appellant is correct that the Trial Court ought not to have referred to the compromise decree which was passed in the earlier litigation, in view of the order of the Supreme Court dated 16.7.2010 passed in SLP(Civil) No.17525 of 2010, however, even if we do not refer to the earlier compromise decree against the appellant/plaintiff and in favour of the respondent no.1/defendant no.1/mother with respect to the suit property, yet, the impugned judgment will have to be sustained. Such a cause is expressly permitted under Section 167 of the Evidence Act, 1872.

8. It is settled law that judicial admissions, as compared to evidentiary admissions, have to be looked into differently. Judicial admissions are based on higher pedestal than mere evidentiary admissions. Judicial admissions can themselves be made basis of a judgment. It is necessary, at this stage, to refer to the ratio of the Supreme Court in the case of ***Nagindas Ramdas vs. Dalpatram Iccha Ram alias Brijram & Anr. 1974 (1) SCC 242*** and which reads as under:-

> 27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if as the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to the wrong."

9. The Trial Court has in the impugned judgment referred to the admissions made by the appellant/defendant in judicial proceedings, being the proceedings under the Protection of Women from Domestic Violence Act, 2005. The relevant observations of the Trial Court in this regard are contained in para 13 which reads as under:

"13. Contrary to the aforesaid plea, in reply filed by plaintiff dated July 2008 (which was filed more than 4 ½ years after the relinquishment deed dated 17.1.2004 was executed) to the application u/s 12 of the Protection of Women from Domestic Violence Act, filed by Smt. Parminder Kaur, wife of the plaintiff against the plaintiff and defendants on 3.4.2008, it was categorically stated in para 5 of the Preliminary Objections;

> **"Although the property in which the complainant (Smt. Parminder Kaur) is residing, the respondent no.1 (plaintiff herein) has no right, title or interest in it."**

The said fact was also reiterated in para 1(xiv) of para wise reply which is reproduced herein as below:

> **"That the contents of para under reply are admitted to the extent that the complainant has been residing with the respondent no.1(Plaintiff herein) and 2(defendant No.1 herein) at the property bearing No.B-1/3A, Rajouri Garden, New Delhi-27. It is vehemently denied that the respondent no.1 has any right, title and interest in the property bearing no.B-1/3A, Rajouri Garden, New Dlehi-27".**

Also in para 1 (xi) of para wise reply it was categorically averred by the plaintiff that:

> **"It is vehemently denied that the respondent no.1 and respondent no.2(plaintiff and defendant no.1 herein) has filed a collusive suit to play big game of conspiracy against the complainant to dispossess her from the matrimonial home."**

It is pertinent to mention here that the collusive suit which is being mentioned here is suit bearing no.36/2007 wherein a compromise decree was affected and challenged.

The learned counsel for defendant had argued that this court cannot be oblivious to the admission

made by the plaintiff in Domestic Violence proceedings wherein he had admitted that his mother i.e. Defendant No.1 herein, was the sole owner of the suit property. Learned counsel for the plaintiff in reply had submitted that the plaintiff has already moved an application seeking amendment of the said reply. The said inequivocal admission of the plaintiff cannot be ignored by this court particularly when it has not been retracted till now. The said admission implied that the present suit has been filed by the plaintiff to frustrate the execution proceedings initiated by the defendant no.1 for executing the consent decree dated 9.4.2007. Most importantly, the admission of the plaintiff had been made in July 2008 after the alleged claim of the plaintiff that he became aware of undue influence/fraud committed by his mother on 28.3.2008, when the bailiff had came to take possession. The entire claim of the plaintiff in the present suit is therefore, an after thought. The court cannot lose sight of the fact that even when the relinquishment deed dated 17.1.2004 was executed, the plaintiff was aged 28 years and when the plaintiff got married to Parminder Kaur, a girl of his choice as per averments made in para 18 of the plaint on 7.5.2006, he was aged 30 years. It was also alleged by the plaintiff that although defendant no.1 always wanted that plaintiff should marry a particular girl of her choice but somehow that alliance could not be materialized and when plaintiff had a meeting with his present wife, Smt. Parminder Kaur and her family members then marriage was solemnized despite the fact that defendant no.1 created many obstacles indirectly which leads to the legitimate inference that the plaintiff could not have been under any undue influence of his mother."

10. Reading of para 13 of the impugned judgment along with the ratio of the decision of the Supreme Court in the case of ***Nagindas Ramdas (supra)*** it is clear that the Trial Court was justified in dismissing the suit on the basis of the admissions of the appellant/plaintiff made in the proceedings under the Protection of Women from Domestic Violence Act, 2005 and which admissions are

categorical. As per these admissions which have been referred by the Trial Court in para 13 of the impugned order, the appellant/plaintiff admitted that he had no right whatsoever in the suit property.

11. There is yet another reason why the impugned order is correct. In my opinion, the suit was in fact ex facie barred by limitation, because, it is not disputed that the appellant had knowledge of the relinquishment deed from the date it was executed by him in favour of the respondent no.1/defendant no.1/mother. It is not the case of the appellant/plaintiff that the knowledge of the relinquishment deed was concealed from him, and which could not have been so, because the appellant/plaintiff was himself signatory to the relinquishment deed dated 17.1.2004 in favour of the respondent no.1/defendant no.1/mother. The suit was filed on 8.12.2008. As per Article 59 of the Limitation Act, 1963 a suit to cancel a document has to be filed within 3 years from the date of the knowledge of the execution of the document. In this case, if the contention was that the document was executed allegedly by undue influence or fraud practice by the defendant no.1/respondent no.1, then the suit ought to have been filed by 17.1.2007. The suit however has admittedly been filed on 8.12.2008 and therefore quite clearly seeking relief of cancellation of the relinquishment deed is barred by limitation in view of Article 59 of the Limitation Act, 1963.

12. In view of the above, there is no merit in the appeal. The appeal is accordingly dismissed, leaving the parties to bear their own costs.

OCTOBER 19, 2011 **VALMIKI J. MEHTA, J**
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