

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

**A.P.O. No.214 of 2014
WITH
C.S. No.3 of 2009**

Roma Bhagat.

Versus

Nopany & Sons Pvt. Ltd. & Anr.

BEFORE:

The Hon'ble CHIEF JUSTICE DR. MANJULA CHELLUR

The Hon'ble JUSTICE ASHIM KUMAR BANERJEE

Heard on: 04.08.2014.

Delivered on: September 24, 2014.

For the Appellant: - Mr. Utpal Bose,
Ms. Sutapa Sanyal,
Mr. C.M. Ghorawat.

For the Respondents: - Mr. Ranjan Deb,
Mr. Ashis Chakraborty,
Mr. Ravi Kapoor,
Ms. K. Banerjee.

Dr. Manjula Chellur, Chief Justice :

This appeal is filed by defendant/tenant aggrieved by judgment dated 25.3.2010. Suit was filed for eviction of the defendant from suit schedule property. C.A.N. 979/2013 was filed for judgment and decree on admissions of defendant/tenant in affidavit-in-opposition in G.A. 114/2009.

In the schedule to the plaint, the suit property is described as 'A' Schedule property consisting of partly three storied, partly two storied and partly one storied together without houses being demarcated major portion of the premises no.11 in all measuring about 29 cottahs.

According to plaintiff before the Trial Judge, the affidavit-in-opposition filed by the defendant in G.A. No.114 of 2009 virtually admits the case of the plaintiffs. Further defendant placed an affidavit explaining the statement made in the earlier affidavit and according to him, suit was not maintainable as no notice for ejectment was served on him. However, plaintiffs sought for final judgment as provided under Order 12 Rule 6 of the Code of Civil Procedure.

The brief facts that led to the filing of the suit are as under: -

In the year 1934 one Late Madan Gopal Bhagat, father of the defendant became a tenant inducted by one Late Bhujendra Krishna Gooptu on a monthly rent of Rs.350/-. In the year 1962, Madan Gopal Bhagat died leaving behind his wife Sukhnandan Bhagat and their son Gopal Krishna Bhagat. It is pertinent to mention that Gopal Krishna Bhagat also died and the present appellant is the wife of Gopal Krishna Bhagat, the original defendant. Smt. Sukhnandan Bhagat, mother of the original defendant died on 08.5.1998 leaving behind her son Gopal Krishna Bhagat. According to plaintiff, original defendant cannot have any protection under the West Bengal Premises Tenancy Act of 1997 and continues to be in wrongful occupation of the suit premises. They have also claimed Rs.10,000/-

per month mesne profits from 10.7.2006 till the filing of the suit claiming to be the reasonable rating value of the property. With these averments they had sought for following reliefs:-

- a) A decree against the defendant for vacant possession of the suit premises more fully described in the schedule hereto annexed and marked "A";*
- b) Decree for Rs.90,50,000/- as stated in paragraph 9 of the plaint;*
- c) Further mesne profits till vacant possession is decreed by the defendant;*
- d) Alternative, to prayers (b) and (c) an inquiry into damages/mesne profits and a decree for such sum as may be found due and payable therein;*
- e) Receiver;*
- f) Injunction;*
- g) Attachment;*
- h) Costs;*
- i) Such further and/or other reliefs.*

Per contra, Late Gopal Krishna Bhagat, the defendant filed affidavit-in-opposition claiming that the suit is not maintainable and denied liability to pay mesne profits contending that he is not a trespasser, but he is a person in occupation of the premises by inheriting tenancy right after the death of his father and mother. According to him, he is a direct tenant under the landlord and the same

is accepted by the landlord, therefore cessation of tenancy in terms of Section 2 (g) of the West Bengal Premises Tenancy Act does not arise. According to him in the year 1954, the landlord let out the upper flat of the premises on a monthly rent of Rs.325/- while lower flat of the premises let out to his father Madan Gopal Bhagat in 1934. All the rents were paid regularly and separately to landlord Gooptu Estates Ltd. The rent was also enhanced from time to time.

After the death of his father, disputes arose between Gooptu Estates Ltd. and others regarding the ownership of the property. A Receiver was appointed by the Hon'ble High Court. Rent for the upper portion as tenant and as legal heir/representative as well as the executor of the Will of his late father, he was tendering rent in the name of Receiver. He claims that his mother executed a Power of Attorney as she was seriously ill. Now, the rents are deposited with the Rent Controller at the enhanced rate. He claims to have been declared as tenant before the Debts Recovery Tribunal as per the Receiver's report. He also narrates how the premises changed hands from time to time so far as ownership of the property. With these averments, he sought for dismissal of the suit as could be ascertained from the pleadings.

During pendency of the suit, a judgment was sought by the plaintiff under Order 12 Rule 6 of Code of Civil Procedure based on the affidavits.

The controversy in the suit is whether late Gopal Krishna Bhagat was a tenant in respect of entire premises along with his father or he was a tenant so far as upper portion of the building while his father was a tenant in respect of ground floor of the premises.

The learned Single Judge while disposing of the matter opines that from the statement and averment it appears that there has been unequivocal admission of fact that the defendant and his late father were having separate tenancies and after the death of his father, defendant and his mother used to pay rent for the tenancy of his late father, so far as lower premises is concerned. In the later statement and averment in the affidavit, defendant tenant claims that both the storied buildings were let out to the defendant and his father jointly. As the defendant took different stands at different times varying his statement from time to time the learned Judge opines that pleadings purporting to constitute admissions have to be taken as a whole.

According to learned Single Judge, the relief in the suit was for eviction of the defendant from entire suit premises which consist of partly first storied, partly second storied and partly third storied. However, there is difference so far as admission of the tenant that is what he initially stated that he took upper flat on rent and later he has become a tenant in respect of entire property along with his father in 1954. According to learned Judge though it is possible to pass a judgment partly, as the suit was for eviction of entire premises and the admissions do not indicate which portion of the property described in

the schedule of the plaint relates to opines that a Commissioner has to be appointed for elucidating the area of tenancy by appointing a Commissioner for the said purpose to ascertain the area to demarcate which was the portion in occupation of father of the defendant Madan Bhagat and which was the portion in occupation of the tenant Gopal Krishna Bhagat.

Coming to present controversy Rule 6 of Order 12 reads as under: -

6. Judgment on admission.- (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.*

The object of the above rule is to enable a party to secure speedy judgment, at least to the extent of relief to which, according to the admission of the defendant, the plaintiff is entitled. It is well-settled

that on an application suit can be partly decreed but it is a discretionary power vested with the Court. Depending upon facts and circumstances, Court can either reject or allow the application rendering speedy judgment. Scope of application of rule 6 cannot be restricted to admissions made in pleadings or prior to the pleadings. The admission made by the party must be clearly unambiguous, unequivocal and unconditional. Admissions could be express or implied. Plaintiff's admission in re-joinders can also be the basis for dismissal of the suit on an application by the defendant.

With this legal position, we have to analyse the controversial issue raised before us in the appeal and cross-objection. Initially, the appeal was filed by the defendant and after his death, his legal heir, i.e., his wife is brought on record. Cross-objection was filed by the plaintiff. So far as the contention of the appellant is that the learned Single Judge erred in opining that there was admission on the part of the defendant that the status of the tenancies as stated in the affidavit-in-opposition G.A. No.114 of 2009 and learned Judge ought to have said no decree or judgment could be passed on admission on the basis of status of tenancy pertaining to 1934. The learned Judge also erred in not opining that the defendant was paying rent initially to the upper flat and thereafter, for the entire premises and not for upper and lower premises. The learned Judge erred in opining that Section 2(g) of the West Bengal Premises Tenancy Act has application to the facts of the case. According to appellant, when the relief is for eviction of the

defendant from the entire building, a tenancy cannot be severed. The learned Judge ought to have believed the statement of the appellant to the effect that the defendant was paying rent jointly and regularly to the entire premises. With these averments, he has sought for setting aside the impugned order.

So far as the cross-objection, according to the respondent/plaintiff, the learned Judge failed to appreciate that the defendant in his pleadings admitted that his late father Madan Gopal Bhagat was inducted as tenant in respect of lower flat and he was inducted as tenant in the upper flat. The document placed on record by both the parties clearly demarcates the identity of the property. In G.A. No.979 of 2009 plaintiff has claimed eviction of the tenant only from the portion of the property which is easily identifiable. There was no difficulty to identify the property because in the pleadings filed in G.A. No.114 of 2009 clear admission of the defendant indicates which was the portion in occupation of his father and which was the portion in occupation of him. Therefore, there was no justification for the learned Judge to opine that the document does not relate to distinct and clear link with the claim of the plaintiff. There was no justification for invoking the provisions under Order 26 Rule 9 as there was no scope for elucidating the area of tenancy. Therefore, learned Judge erred in appointing a Commissioner.

It is not in dispute mainly based on the admissions made by the tenant in affidavit-in-opposition in G.A. No.114 of 2009 affirmed by Gopal Krishna Bhagat the plaintiff sought for speedy judgment.

The procedure contemplated under Order 12 Rule 6 can be adopted and the Court can in its discretion either allow the suit of the plaintiff to the extent admitted by the defendant or dismiss the suit of the plaintiff to the extent plaintiff admits the case of the defendant. In order to appreciate the stand of the plaintiff that there is clear, unambiguous and unequivocal admission on the part of the defendant tenant that his father was in occupation of the ground floor and he was in occupation of upper flat as tenants, the description of the schedule in the plaint does not demarcate the lower portion or lower flat that was in occupation of Madan Gopal Bhagat and what would exactly constitute upper flat for which the deceased defendant became the tenant. Apart from this by referring to various litigations between Gooptu Estates Ltd. under whom both father and son became tenants and third parties, the deceased defendant has categorically said in affidavit-in-opposition that he is not accepting the plaintiff as landlord/owner of the property. The admission to have a decree under Order 12 Rule 6 has to be clear admission. If it is a conditional admission Court cannot exercise discretion while considering the application under Order 12 Rule 6.

However, the present factual situation so far as the person in occupation of the premises in 1934 and 1954 cannot be clarified with the inspection by a Commissioner under Order 26 Rule 9 C.P.C. now. What exactly was in occupation of Madan Gopal Bhagat as tenant in 1934 and what exactly was the portion in occupation of his son Gopal Krishna Bhagat from 1954 onwards must be ascertained from the pleadings, the evidence to be led in and the evidence that would be relied upon by the parties. It has to be by a regular adjudication process.

In the light of above discussion and reasoning, we are of the opinion there cannot be a judgment and decree on admissions as contended by the plaintiff/petitioner in C.A.N. 979 of 2013. We are also of the opinion there is no need for appointment of a Commissioner for inspection of the premises in order to ascertain the details of tenancy pertaining to 1934 and 1954.

With these observations, we dispose of the appeal and cross-appeal.

(Manjula Chellur, Chief Justice)

I agree.

(Ashim Kumar Banerjee, J.)