

**NC: 2023:KHC:22485**  
**WP No. 1206 of 2023**



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 28<sup>TH</sup> DAY OF JUNE, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR**

**WRIT PETITION NO.1206 OF 2023 (GM-CPC)**

**BETWEEN:**

SMT RATHNAMMA  
W/O KUMARAPPA  
D/O LATE MURUDAPPA  
AGED ABOUT 57 YEARS  
AGRICULTURIST  
R/O BELAKATTE  
HANASUDI POST  
SHIVAMOGGA TALUK AND DISTRICT-577 201.

...PETITIONER

(BY SRI. PRASAD B S.,ADVOCATE)

**AND:**

SMT KAMALAMMA  
W/O PALAKSHAPPA  
D/O LATE MURUDAPPA  
AGED ABOUT 62 YEARS  
AGRICULTURIST  
R/O HOLEHATTI  
HOLALUR POST  
SHIVAMOGGA TALUK  
SHIVAMOGGA DISTRICT-577 201.

...RESPONDENT

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED ORDER DATED 03.12.2022 PASSED BY THE II ADDL.SENIOR CIVIL JUDGE AND JMFC SHIVAMOGGA IN OS.NO.29/2020 PREFERRING THIS WRIT PETITION BY THE RESPONDENT.THE CERTIFIED COPY OF THE ORDER IS PRODUCED AS ANNEXURE-A AND





CONSEQUENTLY, ALLOW THE APPLICATION FILED BY THE PETITIONER UNDER ORDER XII RULE VI OF CPC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

This petition by the defendant in O.S.No.29/2020 on the file of the II Additional Senior Civil Judge and JMFC, Shivamogga (for short "the Trial Court") is directed against the impugned order dated 03.12.2022 passed on I.A.No.4, whereby the said application filed by the petitioner under Order 12 Rule 6 CPC requesting the Trial Court to dismiss the suit on the basis of the alleged admission of the plaintiff, was rejected by the trial Court.

2. Heard learned counsel for the petitioner, learned counsel for the respondent and perused the material on record.

3. The material on record discloses that the respondents-plaintiffs instituted the aforesaid suit for partition and separate possession against the petitioner-defendant in relation to the suit schedule immovable property. In the said suit, in addition to filing the written statement, the petitioner-defendant filed the instant application, I.A.No.4 seeking dismissal of the suit. The said



application having been opposed by the respondent-plaintiff, the Trial Court proceeded to reject the application by holding as under:

**“ORDERS ON IA NO. 4 FILED UNDER ORDER 12**  
**RULE 6 CPC**

*The defendant through her counsel has filed IA No.4 under order 12 Rule 6 CPC praying to dismiss the suit on admission by the plaintiff. This IA was filed on 01.03.2021 when the matter had been posted for plaintiff evidence.*

2. *In the accompanying affidavit it is stated that the above suit has been filed by the plaintiff seeking the relief of partition and separate possession in respect of suit schedule properties and declaration that registered Will dated 04.07.2009 bequeathing the suit schedule properties in favour of the plaintiff and the defendant by their father, is null and void. It is further stated that as the plaintiff has admitted, accepted and acted upon the said Will by way of conduct and pleading, the suit is liable to be dismissed.*

3. *The plaintiff has filed objections contending that the instant application is not maintainable for the reason that she had clearly narrated in the plaint as to how the so called Will has lost the legal sanctity’ in order to seek relief in respect of said alleged Will she has highlighted the conduct of the defendant in the plaint by clearly stating that signature were obtained by way of misrepresentation*



*and accordingly Khata was changed; the property was mortgaged for securing agricultural loan to develop the property which will not be tantamount to the admission of alleged Will; there are no specific and unambiguous admission in the pleadings and therefore, provisions of Order 12 Rule 6 CPC cannot be invoked.*

*4. Heard the arguments of both sides. Perused material placed on record. The following points do arise for my consideration;*

- 1) Whether the applicant/defendant has made out grounds for invoking powers conferred under Order 12 Rule 6 CPC?*
- 2) What order?*

*5. My findings to the above points are as follows:*

*Point No. 1: In the Negative*

*Point No. 2: As per final order for the following:*

### **REASONS**

*6. **Point No.1:-** Learned counsel for the applicant/ defendant has argued that the plaintiff has given clear admission regarding the Will dated 04.07.2009 by way of pleading as well as through her conduct. The said Will was executed and registered on 04.07.2009 and subsequently on 11.10.2009 the father of the plaintiff and the defendant passed away. Prior to that his wife i.e. mother of the plaintiff and the*



*defendant died on 18.03.2009. The father of the plaintiff and the defendant has not died intestate. Infact, he died leaving behind the above said registered Will through which his properties were bequeathed in favour of the plaintiff and the defendant. The defendant has taken benefit under said Will and she has got changed Khata of land bearing Sy. No. 96/1, measuring 1 acre 30 guntas of Suguru Village in her name. She has also mortgaged the said property in favour of Manager, Canara Bank, Holaluru Branch against the loan of Rs.1,50,000/-. Therefore, learned Counsel for the defendant argues that the conduct of the plaintiff constitutes and implied admission and the same is reflected in plaint and hence this is a fit case to pass judgment on admission.*

7. *On the other hand, learned counsel for the plaintiff has argued the suit itself is based on the allegation that the alleged Will is created, concocted and the Khata was transferred by way of misrepresentation; therefore, the contention that the plaintiff has given admission regarding the Will looks ridiculous. He has also argued that the order 12 Rule 6 CPC applies only when there is clear, unambiguous and unequivocal admission on the part of parties.*

8. *In support of his argument, learned counsel for the defendant has relied on following decisions:*



- 1) ***Uttam Singh Duggal and Co., Ltd., -Vs- United Bank of India, 2001(4) KCCR SN 264 SC,***
- 2) ***Shikharchand -Vs- Bari Bai reported in AIR 1974 Madhya Pradesh 75***

9. *In the first mentioned case the Hon'ble supreme Court while affirming the judgment of the Hon'ble High Court of Calcutta upholding the decree passed by Hon'ble Single judge of High court for Rs.1,015.50 lakhs by invoking powers conferred under Order 12 Rule 6 CPC based on the admissions contained the resolutions of board meeting of company has held that where a claim is admitted the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted facts. This decision does not come to the aid of defendant side, because the factual matrix in the instant matter is entirely different where there is no unequivocal admission on the part of the plaintiff. Though, on the face of it, there are material to show that the Khata of some property has been changed to the name of the plaintiff based on Will and she has also availed loan by mortgaging the said property, such facts by itself do not constitute unqualified admissions or implied admissions. Because the plaintiff has alleged that her signature were obtained by the defendant when they were in good terms and the Will is product of fraud. These allegations being pure question of facts need to be proved in full fledged trial.*



10. *similarly the fact whether the plaintiff is estopped from disputing the validity of the Will as she has raised loan by mortgaging property on the strength of Khata effected by virtue of Will is a mixed question of fact and law which needs full fledged trial. At present there are no clear and unequivocal admission on the part of the plaintiff which brings the suit within the purview of Order 12 Rule 6 CPC. Learned counsel for the defendant by emphasizing the words “pleading or otherwise, whether orally or in writing,” appearing in Order 12 Rule 6 has strenuously argued that the word “otherwise” includes the admission by conduct and therefore the conduct of plaintiff in this case constitutes implied admission. As already discussed above, merely for the reason that Khata has been changed and loan has been raised in the name of the plaintiff, that cannot be taken as admission by conduct for the obvious reason that the plaintiff can very well show under what circumstances the Khata was changed and loan was availed. She can also assail the Will as well as Khata on the grounds available to her under law such as illegality, invalidity, misrepresentation and fraud etc.*

11. *The facts in the second citation referred to by learned counsel for the defendant involve lease agreement between the parties and claim for specific performance in the suit, which was compromised under Order 23 Rule 3 CPC, but the compromise decree was not honored. Subsequently, a suit for eviction was filed in which the learned trial court passed judgment on*



*admission and when the said judgment was challenged the Hon'ble Madhya Pradesh High Court was pleased to uphold the impugned judgment. In order to avoid the repetition, I desist from reproducing the facts of the instant case, and it is obvious that the above decision has not application to the facts of this case.*

12. *For the above said reasons I find no merits in the IA No.4 filed under Order 12 Rule 6 CPC filed by the defendant. Accordingly, the above points for consideration is answered in the Negative,*

13. **Point No.2:-** *In view of the above findings, I proceed to pass the following:*

**ORDER**

*IA No.4 filed by the defendant under Order 12 Rule 6 CPC is hereby dismissed with costs of Rs. 200/-“.*

4. Upon re-appreciation, re-evaluation and reconsideration of the entire material on record including the impugned order, I am of the view that the impugned order does not suffer from any illegality or infirmity nor can the same be said to have occasioned failure of justice warranting interference by this Court in exercise of its jurisdiction under Article 227 of the





Constitution of India as held by the Apex Court in the case of ***Radhey Shyam Vs. Chhabhi Nath*** reported in ***(2015) 5 SCC 423***.

5. In the result, I pass the following:

**ORDER**

- i. The Writ Petition is disposed of without interfering with the impugned order.
- ii. It is further made clear that all rival contentions urged by the petitioner in I.A.No.4 are kept open to be decided by the Trial Court in accordance with law and the Trial Court shall proceed with the Trial and shall dispose of the suit on or before 21.12.2023 without being influenced by the findings and observations recorded in the impugned order.

**Sd/-**  
**JUDGE**

BMC