

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.2450 of 2014

Date	Order with Signature of the Judge
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1. For hearing of CMA No.16772/2014.
2. For hearing of CMA No.11875/2016.

Heard on : 22.05.2018.

Date of order: : 29.08.2018.

For Plaintiff : Muhammad Zaki Zaidi, Advocate.

Kausar Sultana Hussain, J.:- By this order, I intend to dispose of an application under Order XII, Rule-6 read with section 151 C.P.C bearing C.M.A No.11875/2016, moved by the learned counsel for the plaintiff accompanied by an affidavit of the plaintiff Syed Ashgar Jafar, whereby, he prayed to pass judgment in the captioned suit on the basis of admission of the defendants emphasizing on the fact that the Conveyance Deed of immovable property, subject matter of the suit has been registered through Nazir of the Court in which the plaintiff as well as defendants are vendees being equal share holders/co-owners as per Sharia and further the defendants in their written statement have admitted these facts and ready /willing to pay share out of the price assessed in the market.

2. Notice of this application was issued to the defendants, but neither they filed any counter affidavit nor their counsel made appearance to advance arguments.

3. Heard learned counsel for the plaintiff, who has reiterated the same facts as highlighted in the application in hand. Considered the submissions so also perused the record. The plaintiff has filed captioned suit for partition and permanent injunction against the defendants in respect of constructed plot of land bearing House No.162-E, Block-3 (Survey Sheet 35-P/1), situated in Pakistan Employees Co-operative Housing limited, Karachi. According to the plaintiff the said property was purchased by the father of both the parties and

after the death of their parents, he demanded his legal Quranic share from the defendants, who are avoiding to do so and have malicious intention to usurp his share, hence he constrained to initiate these proceedings.

4. The plaintiff has involved the provision of Order XII, Rule-6 C.P.C for announcement of the judgment in his favour on the basis of written statement, filed by the defendants. I may say that this provision of law could be exercised when there should be clear and undisputed admission on the part of other side. The facts as narrated in written statement or otherwise must be accepted or rejected as a whole but not in part. Reliance is placed to the case of **Mrs. Shabeena Farhat...vs...Highway Housing Project (2014 CLC 322, Karachi)** wherein, it was held as under:-

“S.12.... Civil Procedure Code (V of 1908) Order XII, Rule-6.... Suit for specific performance of agreement to sell..... Decree on admission.....Principle.....Written Statement, consideration of.....Plaintiff filed application for passing of decree in her favour on the basis admission made by defendant’s company in its written statement....validity.....admission must be taken as a whole and it was not permissible to rely on a part of admission ignoring the rest.....Plaintiff asserted on the basis of statement of defendant’s company that it had agreed to execute lease but on the other hand plaintiff ignored remaining part of statement which showed that it was merely an offer for resolution of entire controversy by way of amicable solution..... Court could not accept one portion of written statement as admission while ignoring rest of the statement where it had refuted claim of plaintiff..... Neither written statement filed by the defendant’s company nor subsequent statement filed by it in the court could be treated unqualified, unconditional, clear, specific and or unambiguous or unequivocal admission.....Application was dismissed in these circumstances”.

5. Likewise, in another case of Amir Bibi thorough legal heirs....vs....Muhammad Khursheed & others (2003 SCMR 1261), wherein the apex Court of Pakistan has held as under:-

“...Order VIII, Rule-4 & Order XII, Rule-6.... Decreeing the suit by the Court on the basis of admission irrespective of the fact whether such admission was categoric, specific or otherwise....scope....Court in view of Order XII, Rule-6, C.P.C was competent to dilate upon and declined the undisputed part of the case or whole of the case as per the circumstances of each case but such power was not unfettered and the admission on the basis whereof a decree was sought must be specific, clear, unambiguous, categoric and definite....Court was bound to examine the plaint and written statement with diligent application of mind to ascertain the nature of admission and it was discretionary for the Court to accept or reject such application....Entire suit, in the present case, could not have been decreed as the claim of plaintiffs had been controverted on various legal and factual grounds which could only be decided on the basis of evidence and not on mere admission”

6. In view of the guidelines laid down in the above referred reported cases, I have meticulously vetted the contents of written statement and it is revealed that the defendants in their written statement contended that the plot in question was purchased through the father, but its price was contributed by the defendants No.1 to 4. It is further alleged that plaintiff was out of Pakistan when Conveyance Deed of the plot was registered in the name of legal heirs and due to love and affection, the name of the plaintiff was also added in the Conveyance Deed though he did not contribute a single penny in the purchase money. According to the defendants, four independent units were constructed by the defendant No.1 to 4, whereas, fifth unit was constructed by their father, which is presently under the possession of defendants No.5 & 6 and plaintiff. It is stated by the defendants that they being the co-owners/co-sharers of the unit left by their deceased father and mother are ready to pay share of the plaintiff arising

out from the price assessed through the market but with the condition precedent that plaintiff will have to vacate and hand over vacant possession of portion in his occupation. Lastly, it is asserted by the defendants that the plaintiff has not come to the Court with clean hands and concealed the fact that the plot in question has already been distributed among the sharers who have contributed in purchase price and thereafter, constructed their independent units under their possession for decades, as such, the claim of the plaintiff in respect of whole plot in question is ambiguous and illegal, liable to be dismissed. Appraisal of the contents of written statement, it is found that the defendants have categorically denied any right over four units and claimed to have purchased and constructed the said property without any contribution of the plaintiff and in para 08 of written statement, only offered to give share to the plaintiff in the 5th Unit which was alleged to have been constructed and occupied by their father.

7. In the attending circumstances, there is no substance in the contention of the plaintiff's side that his claim in the plaint has been accepted by the defendants in whole or express or unambiguous manner and later is also ready to give share in the whole property. Hence, application in hand merits no consideration in the light of canon as envisaged under Rule-6 of Order XII C.P.C. Consequently, application under discussion stands dismissed with no order as to costs.

JUDGE