

IN THE HIGH COURT OF SINDH, KARACHI

Suit No.663 of 2012

Syed Mubarak Khan.....Plaintiff.

VERSUS

M/s. Mughal Tobacco Company (Pvt.) Ltd.
& Others.....Defendants.

For hearing of CMA No.5661/2015.

Date of Hearing: 01.02.2017
Plaintiff: Through Mr. Badar Alam, Advocate.
Defendant No.1: Through Ms. Abida Parveen,
Advocate.
Defendants No.2 & 3: Through Mr. Ibadul Husnain,
Advocate.

ORDER

Mr. Badar Alam, Advocate for the Plaintiff.
Mr. Abida Parveen Advocate for Defendant No.1.
Mr. Ibadul Husnain Advocate for defendants No.2 & 3.

CMA NO.5661/2015.

This is an application under Order XII Rule 6 CPC filed on behalf of defendants No.2 & 3 with the prayer for passing of judgment and decree pursuant to the admission made by the plaintiff as alleged.

Learned Counsel for the defendants No.2 & 3 submits that a consent order was passed by this Court on 19.07.2013 and as per the admission and consent, the plaintiff has admitted that out of the total area of land of 26,620 Sq. Yds, 21,797 Sq. Yds. is not disputed and the

plaintiff has no claim on such piece of land. He submits that on the basis of such admission and consent, the Court may pass a judgment and decree to this effect and in support he has read out the Provision of Order XII Rule 6 CPC.

On the other hand, learned Counsel for the plaintiff has vehemently opposed this application and submits that no admission as alleged has been made, whereas, the plaintiff claims that the defendant No.1 has sold out certain portion of the land to the plaintiff and had undertaken to sell further land which during pendency of these proceedings has been sold to defendants No.2 & 3.

I have heard both the learned Counsel and perused the record.

At the very outset, the Counsel for defendants No.2 & 3 was confronted as to how this application is maintainable in this Suit on behalf of defendants No.2 & 3 as this is a Suit by the plaintiff for specific performance, declaration, damages and permanent injunction, whereas, there is no counter claim on behalf of defendants No.2 & 3. The learned Counsel could not satisfactorily respond, however, submits that in terms of Order XII Rule 6 CPC, any party can seek judgment and decree on the basis of admission.

Insofar as, the question of any admission by the plaintiff is concerned, I am unable to agree with such contention so raised by the Counsel for defendants No.2 & 3 as there appears to be no unequivocal or categorical admission to the effect that defendants No.2 & 3 are the lawful owners of the land claimed by them. On merits there appears to be no case for granting any judgment and decree under Order XII Rule 6 CPC as there is no categorical admission.

Insofar as, filing of application by the defendants in this matter for a judgment and decree on admission is concerned, it would suffice to observe that the Court cannot grant any relief beyond pleadings. The

defendants were at liberty to file an independent/individual Suit or a counter claim in this matter in order to obtain such relief; but in any manner, no such relief can be granted on the basis of some consent order passed in this matter. It is settled law that the Court is bound to confine itself to the relief(s) sought and which flow from the pleadings of the parties. The ownership being claimed by defendants No.2 & 3 of the land in question is not the subject matter of this Suit and passing of any consent order on an interlocutory application does not create a right in favor of defendant. It is also a matter of record that subsequent to passing of the aforesaid consent order, plaintiff had filed an application under Order VI Rule 17 CPC for amendment in the prayer clause(s) which has already been allowed and there is a specific challenge against defendants No.2 & 3's claim.

In view of hereinabove facts and circumstances, on 01.02.2017 by means of a short order listed application was dismissed by imposing cost of Rs.5,000/- (Rupees Five Thousand only) to be deposited in the account of Sindh High Court Clinic and above are the reasons thereof.

Shahbaz.

JUDGE