

Om Parkash
and others
v.
Chief Settlement
Commissioner,
Punjab
and others

Dua, J.

as mentioned earlier has been that the case is concluded by a finding of fact and that merely an erroneous construction of para 17 would not justify interference on the writ side. These contentions call for no further detailed comment and are obviously inadmissible in view of the foregoing discussion. If on the basis of erroneous view of the scope and meaning of para 17 an order is passed prejudicially affecting the petitioners' right, it would, on the fact and circumstances of this case, be an error apparent on the face of the record justifying interference on the writ side.

In the result these petitions succeed and allowing the same I quash the impugned orders. In the circumstances, however, there would be no order as to costs.

Harbans Singh J.

HARBANS SINGH, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Prem Chand Pandit, J.

RAJINDAR KAUR AND OTHERS,—*Appellants*

versus

DAROPDI AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1879 of 1961

1963

Sept., 30th.

Code of Civil Procedure (Act V of 1908)—O. 8 r. 5—Scope of— La Ilmi or not known—Whether amounts to “not admitted”.

Held, that in rule 5 of Order VIII of the Code of Civil Procedure, 1908, it is mentioned that every allegation of fact in the plaint shall be deemed to be admitted, if the defendant did not deny it specifically or by necessary implication. The only exception has been made in the case of persons under disability. Undoubtedly, minors are also covered by this exception. The effect of this exception is that if

a minor does not specifically or by necessary implication deny any allegation of fact made in the plaint, then the same will not be taken to be admitted by him and if at the time of the framing of the issues, he seeks an issue to be struck on that point, the Court is bound to frame one and the case would then be decided on the merits. If, however, the minor, through his guardian, does not raise any objection for the framing of an issue on that point, then later on he cannot be heard to say that that allegation of fact in the plaint was never admitted by him. From this it is clear that the scope of O. 8 R. 5, C.P.C., is only confined to the stage of pleadings and it has nothing to do with the conduct of the case afterwards.

Held, that if in the written statement one were to say with regard to a particular allegation of fact in the plaint that it is not known, i.e., "la ilmi", it will not be equivalent to saying that that allegation of fact is "not admitted".

Second Appeal from the decree of the Court of Shri Kul Bhushan, District Judge, Kapurthala (Camp Bassi), dated the 20th day of June, 1959, affirming with costs that of Shri S. R. Goel, Sub-Judge, 3rd Class, Bassi, dated the 18th October, 1958, granting the plaintiff a decree for possession of the house but dismissing her suit with regard to the possession of the vacant site and leaving the parties to bear their own costs. It was further ordered that a copy of the decree sheet be sent to the Collector for necessary action.

JAGJIT SINGH, ADVOCATE, for the Appellants.

ATMA RAM, ADVOCATE, for the Respondents.

JUDGMENT

PANDIT, J.—Smt. Daropti filed a suit against Sham Singh and 8 others for possession of a house and a vacant site (*bara*) on the allegations that she was the owner of these properties and the defendants had illegally entered into possession of the same.

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The defendants pleaded that the house belonged to the plaintiff, but not the vacant site.

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On the pleadings of the parties, only one issue was framed, namely, whether the plaintiff is the owner of the *abadi* and the *kotha* (vacant site) describe in the head-note of the plaint as No. 2.

It may be mentioned that both the counsel are agreed that this issue only relates to the vacant site and not the house in suit.

After discussing the evidence produced by the parties, the trial Court came to the conclusion that the plaintiff had failed to prove her ownership of the vacant site. As a result, her suit for possession of the house, which had been admitted by the defendants to be that of the plaintiffs, was decreed, while her suit regarding the vacant site was dismissed.

Against this decision some of the defendants, including three minors, filed an appeal before the learned District Judge, Kapurthala. The only point raised before the learned Judge was that the trial Court had failed to frame two necessary issues with regard to the adoption of Surjit Singh and the ownership of the house in suit. The submission was that Smt. Daropti had adopted, defendant No. 3, Surjit Singh, son of Sham Singh, defendant No. 1, and, therefore, Surjit Singh and some of the other defendants, as for example, his wife, Smt. Rajinder Kaur, defendant No. 2, and his minor son, Malkiat Singh, defendant No. 6, were residing in the house with the consent of the adoptee, as they were the members of his family. It was also contended that out of the nine defendants, three, namely, Malkiat Singh, Smt. Parkash Kaur and Smt. Nachhitro, defendants 6 to 8, were minors and they were represented by the Court Reader, who was appointed their guardian. In the written statement filed on their behalf, the reply with regard to the ownership of the house as alleged by the plaintiff in the plaint was that they had no knowledge about

such ownership. The word used was "*la ilmi*". The learned District Judge seemed to be of the view that since there was no categorical denial by the minor-defendants regarding the ownership of the house claimed by the plaintiff, there was no need of framing an issue on this point. As regards the adoption, the learned Judge remarked that only Surjit Singh, defendant, could take the plea that he had been adopted by the plaintiff and the same could not be taken by the other members of his family, and that Surjit Singh had not filed an appeal, against the decree of the trial Court. He, consequently, dismissed the appeal. Against this, the present second appeal has been filed by Malkiat Singh and Ajaib Singh, minors, and Smt. Rajinder Kaur.

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The only point that has been argued by the learned counsel for the appellant is that the trial Court had erred in law in not framing an issue regarding the ownership of the house. He submitted that the minor-defendants had not admitted the plaintiff's ownership of the house and, consequently, an issue should have been framed on this point and the plaintiff put to proof regarding the same. The argument was based purely on the provisions of Order 8, rule 5, Civil Procedure Code, which are as under:—

“Every allegation of fact in the plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.”

Learned counsel contended that, in the first place, the minors had never admitted the allegation of the plaintiff regarding the ownership of the house. It is true

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that their guardian had not specifically mentioned in the written statement that the allegations of the plaintiff were not admitted and instead he had used the word '*la ilmi*', that is, not known. But from that it could not be inferred that they were admitting the allegations of the plaintiff in this regard. Secondly, even if it be held that '*la ilmi*' is equivalent to implied admission, such an admission could not be used against the minors, who were persons under disability, as contemplated by the provisions of Order 8, rule 5, Civil Procedure Code. Reliance in this connection was placed on a Division Bench authority of the Madras High Court in *Kruthiventi Perrazu v. Nallaparazu Meerja Seethrama Chandrarazu Garu and others* (1).

The argument of the learned counsel for the appellant is, on the face of it, quite attractive, but, in reality, there does not seem to be any substance in it. Order 8 deals with the "written statement and set off." In Rule 5 thereof, it is mentioned that every allegation of fact in the plaint shall be deemed to be admitted, if the defendant did not deny it specifically or by necessary implication. The only exception has been made in the case of persons under disability. Undoubtedly, minors are also covered by this exception. The effect of this exception is that if a minor does not specifically or by necessary implication deny any allegation of fact made in the plaint, then the same will not be taken to be admitted by him and if at the time of the framing of the issues, he seeks an issue to be struck on that point, the Court is bound to frame one and the case would then be decided on the merits. If, however, the minor, through his guardian, does not raise any objection for the framing of an issue on that point, then later on he cannot be heard to say that that allegation of fact in the plaint was

(1) A.I.R. 1923 Mad. 114.

never admitted by him. From this it is clear that the scope of O. 8 R. 5 C.P.C., is only confined to the stage of pleadings and it has nothing to do with the conduct of the case afterwards. I am supported in this view of mine by a Bench decision of the Madras High Court in *Naggappa and others v. Siddalingappa and others* (2). The ruling relied upon by the learned counsel for the appellants has no application to the facts of the present case, because full facts regarding the entire proceedings of that case have not been given therein. I may, however, mention that there is authority for the proposition that if in the written statement one were to say with regard to a particular allegation of fact in the plaint that it is not known, i.e., "la ilmi", it will not be equivalent to saying that that allegation of fact is "not admitted" [see in this connection *Lakhmi Chand v. B. Ram Lal Kapur Vakil* (3)]. Under these circumstances, the plaintiff was not put to the proof of the allegations made by her in the plaint that she was the owner of the house in dispute. In this view of the matter, the trial Court had not made any error in not framing an issue regarding the ownership of the house.

The result is that this appeal fails and is dismissed. In the circumstances of this case, however, I will leave the parties to bear their own costs throughout.

B.R.T.

CIVIL MISCELLANEOUS

Before S. S. Dulat and Prem Chand Pandit, JJ.

LACHMI NARAIN AND OTHERS,—Petitioners
versus

THE FINANCIAL COMMISSIONER, PUNJAB, AND
OTHERS,—Respondents

Civil Writ No. 715 of 1963

Punjab Security of Land Tenures Act (X of 1953)—S. 18—Tenants entitled to make applications for purchase of

(2) 47 I.C. 589.

(3) A.I.R. 1931 All. 423.

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Oct., 1st.