

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**CIVIL REVISION No. 598 of 2023**

**BETWEEN:-**

**VINAY S/O MANOHAR KHANDEKAR, AGED  
ABOUT 66 YEARS, OCCUPATION: RETIRED  
20/3 OLD PALASIA, INDORE (MADHYA  
PRADESH)**

**.....PETITIONER**

**(PETITIONER SHRI VINAY KHANDEKAR, IN PERSON )**

**AND**

- 1. HARSHVARDHAN S/O MANOHAR  
KHANDEKAR, AGED ABOUT 62 YEARS,  
OCCUPATION: BUSINESS 201 MANGLAM  
AVENUE, VAIKUNTHDHAM COLONY INDORE  
(MADHYA PRADESH)**
- 2. SMT. PARVATI W/O MANOHAR KHANDEKAR,  
AGED ABOUT 90 YEARS, OCCUPATION:  
HOUSEWIFE 201 MANGLAM AVENUE,  
VAIKUNTHDHAM COLONY INDORE  
(MADHYA PRADESH)**
- 3. SMT. MANJU W/O ANAND JOSHI, AGED ABOUT  
66 YEARS, OCCUPATION: HOUSEWIFE FLAT  
1001, A WING, OBEROI GARDENS THAKUR  
VILLAGE KANDIVLI E MUMBAI  
(MAHARASHTRA)**
- 4. DR. PRAKASH S/O KAILASHCHANDRA  
KHANDEKAR, AGED ABOUT 85 YEARS,  
OCCUPATION: DOCTOR 91 BEACHERS  
BROOK ROAD MAYFEILD HEIGHTS VILLAGE  
CLEVELAND OHIO USA (OTHER COUNTRY)**
- 5. SMT. VAKSHU W/O MADHUKAR MACHWE,  
AGED ABOUT 91 YEARS, OCCUPATION:  
RETIRED 129, VAISHALI DELHI UNIVERSITY  
HOUSING SOCIETY NEAR MUNI MAYARAM  
HOSPITAL PITHAMPUR NEW DELHI (DELHI)**
- 6. MILIND S/O SAMBAJI KHANDEKAR, AGED  
ABOUT 72 YEARS, OCCUPATION: BUSINESS 128**

- 1-A PAUD ROAD OPP CHITALE SWEETS  
KOTHRUD PUNE (MAHARASHTRA)  
SHRI PRAMOD S/O SAMBHAJI KHANDEKAR,  
AGED ABOUT 65 YEARS, OCCUPATION:
7. BUSINESS 128 1-A PAUD ROAD, OPP CHITALE  
SWEETS KOTHRUD PUNE 411038  
(MAHARASHTRA)  
SMT. VASUDHA W/O ARUN BHAT, AGED ABOUT  
73 YEARS, OCCUPATION: HOUSE WIFE C/O SHRI
8. MILIND KHANDEKAR 128 1-A PAUD ROD, OPP  
CHITALE SWEETS, KOTHRUD PUNE 411038  
(MAHARASHTRA)  
MS VARSHA D/O SAMBHAJI KHANDEKAR, AGED  
ABOUT 70 YEARS, OCCUPATION: DOCTOR C/O
9. SHRI MILIND KHANDEKAR 128 1-A PAUD ROD,  
OPP CHITALE SWEETS, KOTHRUD PUNE 411038  
(MAHARASHTRA)  
SHRI NITIN S/O KULKARNI, AGED ABOUT 65  
YEARS, OCCUPATION: BUSINESS FLAT 1002
10. WING F2 SUCCESS TOWERS, PANCHVATI  
PASHAN PUNE (MAHARASHTRA)  
SHRI KIRAN S/O V KULKARNI, AGED ABOUT 65  
YEARS, OCCUPATION: BUSINESS C/O SHRI
11. NITIN KULKARNI FLAT 1002 WING F2 SUCCESS  
PACHVATI PASHAN PUNE (MAHARASHTRA)  
SMT MRINAL MOGHE, AGED ABOUT 69 YEARS,  
OCCUPATION: RETIRED C/O SHRI NITIN
12. KULKARNI FLAT 1002 WING F2 SUCCESS  
PACHVATI PASHAN PUNE (MAHARASHTRA)  
DR RAHUL S/O PRAKASH KHANDEKAR, AGED  
ABOUT 53 YEARS, OCCUPATION: DOCTOR 96
13. GRAHAM ROAD, SITE B CUYAHOGA FALLS  
OHIO 44223 USA (OTHER COUNTRY)  
SHRI ROHIT S/O PRAKASH KHANDEKAR, AGED  
ABOUT 51 YEARS, OCCUPATION: LAWYER 911
14. BEACHERS BROOK ROAD MAYFEILD HEIGHTS  
VILLAGE CLEVELAND OHIO USA (OTHER  
COUNTRY)  
SMT. CHITRA D/O VAKSHU MACHWE, AGED  
ABOUT 62 YEARS, OCCUPATION: DOCTOR 129
15. VAISHALI, DELHI UNIVERSITY HOUSINGH  
SOCIETY NEAR MUNI MAYARAM HOSPITAL  
PITHAMPURA, NEW DELHI (DELHI)
- SMT. AMRITA D/O VAKSHU MACHWE, AGED  
ABOUT 62 YEARS, OCCUPATION: DOCTOR
16. 129 VAISHALI DELHI UNIVERSITY HOUSING  
SOCIETY NEAR MUNI MAYARAM HOSPITAL

**PITHAMPURA NEW DELHI (DELHI)  
SMT. SWATI D/O VAKSHU MACHWE, AGED  
ABOUT 62 YEARS, OCCUPATION: DOCTOR  
129 VAISHALI, DELHI UNIVERSITY  
17. HOUSINGH SOCIETY NEAR MUNI MAYARAM  
HOSPITAL PITHAMPURA, NEW DELHI  
(DELHI)**

**.....RESPONDENTS**

**(BY SHRI )**

.....  
Reserved on : 11.10.2023

Pronounced on : 14.12.2023  
.....

*This revision having been heard and reserved for order, coming on for pronouncement this day, the court passed the following:*

**ORDER**

- 1] Heard on the question of admission.
- 2] This Civil Revision has been filed by the petitioner under Section 115 of the Code of Civil Procedure, against the order dated 10.7.2023, passed by the XIX<sup>th</sup> District Judge, Indore in Civil Suit No. 45-A/2015 whereby, the application filed by the petitioner/defendant No.1 Vinay Khandekar, under Order 12 Rule 6 of the C.P.C has been rejected.
- 3] In brief, the facts of the case are that a civil suit for partition, *mesne profit* and injunction has been filed by the plaintiff/respondent No.1 against the petitioner and as many as 17 other defendants being the members of the same Khandekar family.
- 4] Admittedly, the petitioner/defendant No.1 and the plaintiff No.1 and the defendant No.2 are the sons and daughters of late shri Manohar Khandekar, and the other defendants are also their close relatives being descendants of their common ancestor late Shri Ganpatrao alias Ganesh

Khandekar.

5] The plaintiff's case is that his grandfather Kailaschandra Khandekar had a house at 18/2 Marai Mohalla, Indore which he had inherited from his father Ganpatrao alias Ganesh Khandekar. The **plaintiff No.1** had two uncles and 3 aunts (brothers and sisters of father of the plaintiff).

6] The Plaintiff's case is that his father Manohar Khandekar has sold his ancestor's property situated at 18/2 Murai Mohalla, Indore and out of the sale proceeds of the same, he has also purchased a property at 12/1, Old Palasia, Indore in the year 1973, which is the suit property. The plaintiff has also averred that a Will has also been executed by his father as informed to him by the defendant No.1 and has asserted that the entire property is left by his father to him only. The plaintiff has further averred that his grandfather Kailaschandra Khandekar acquired his brother-Balchandra's share in the property for some monetary consideration in the year 1965.

7] In the aforesaid suit, written statement has already been filed by the defendant No.1, and a separate application has also been filed under Order 12 Rule 6 of the CPC contending that there are certain admissions made by the plaintiff in his plaint and, thus, the following reliefs have been sought in the aforesaid application:-

“1) the Plaintiff along with the rest of the Khandekar Khandekar family having accepted the release and sale deeds of the Murai Mohalla house is estopped from claiming the Murai Mohalla house to be an ancestral coparcenary property by application of Doctrine of election and is mandated to accept both these documents in their entirety that aver the full and sole ownership of Shri Kailaschandra Khandekar over the Murai Mohalla house, and his seven class I heirs as owners of the house as tenants-in-

common after his demise.

2) having admitted his father's Will with Indore Municipal Corporation prior to filing of suit the Plaintiff by application of Doctrine of Election is estopped from questioning the Will of his father and the source of funds for acquisition of the suit property mentioned by his father in the Will, in the Plaint.

3) it is further prayed that the court may be pleased to issue a suitable decree to the effect that;

a) Shri Kailaschandra Khandekar was the sole and full owner of the house at 18/2 Murai Mohalla, Indore and his wife and 6 children were the owners of the house as tenants-in-common in their capacity as class I legal heirs after his demise.

b) the sale proceeds of the Murai Mohalla house were distributed amongst the 7 tenants-in-common owners of the house.

c) the suit property is a self acquired property of Shri Manohar Khandekar.

d) the Will dated 29.12.2008 of Shri Manohar Khandekar is a valid and duly executed Will.

4) Award costs as also reimbursement of the entire expenses incurred by this defendant along with special cost of Rs.1,00,000/- under Section 35-B CPC and oblige by dismissing the suit.”

8] A reply to the aforesaid application has also been filed by the respondent/defendant No.1 opposing the same, and the learned Judge of the trial court, vide its order dated 10.7.2023, has rejected the same holding that it cannot be said that there is an admission on the part of the plaintiff on the basis of which, the suit can be rejected under Order 12 Rule 6 of the CPC as no positive finding can be recorded at this stage regarding the averments made by the plaintiff in the plaint.

9] Petitioner-Vinay Khandekar, who has argued the matter, has vehemently submitted that the impugned order is liable to be set aside as even assuming the averments made in the plaint as correct and without rebutting the same, the admissions made by the plaintiff in

respect of release and the sale deed of Murai Mohalla house are more than sufficient to hold that the plaintiff has already accepted both these documents in their entirety which only indicate that the property was owned by Kailaschandra Khanderkar was in his personal capacity. It is also submitted that his father's Will has also been admitted by the plaintiff before the Indore Municipal Corporation prior to filing of the suit and, thus, by the application of *Doctrine of Election*, the plaintiff is stopped from questing the Will of his father.

10] In support of his submissions, the petitioner has also submitted a detailed written synopsis on 9.11.2023 which is also taken on record and the petitioner has also relied upon the decisions rendered by the Hon'ble Supreme Court in the cases of *Subhodkumar & others vs. Bhagwant Namdeorao Mehetre* (2007)10SCC 571; *A. Arumugam vs. Ammaniammal* (2020) 11 SCC 103; *Krishna Biharilal vs. Gulabchand* AIR1971 SC 1041; *Raj Kumar Rajinder Singh vs. State of Himachal Pradesh* AIR 1990 SC 1833, 1990 SCR (3) 469; *Karam Kapahi & others vs. Lal Chand Public Charitable Trust & another*; AIR 2010 SC 2077.

11] Heard the petitioner and also perused the record.

12] From the record, it is found that in the present case, the suit for partition has been filed against the defendant No.1 and also against other 17 defendants, containing lengthy averments with extensive family history, and the cause of action is stated to be when the defendant No. 1 barred the plaintiff from entering the suit property. In such circumstances, it cannot be said that by mere reference by the plaintiff of the Will of his father, of the ancestral property allegedly

executed in favour of the defendant No.1-the petitioner, would amount to an admission as prescribed under Order 12 of Rule 6 of the CPC. It is not out of place to mention here that the petitioner's application under Order 12 Rule 6 of the CPC itself runs into 22 pages, in which he has tried to demonstrate that there is an admission on the part of the plaintiff, and even his written synopsis also runs into 12 pages supported by various judgments of the Supreme Court.

13] On perusal of the documents filed on record specially the plaint, this Court is of the considered opinion that the learned Judge of the trial court, while rejecting the application under Order 12 Rule 6 of the CPC and while relying upon the decision rendered by the Supreme Court in the case of *Karan vs. Madhuri (in Civil Appeal No.4645/2022 decided on 6.7.2022)* relevant para 16 of which reads as under,:-

“16. Thus, legislative intent is clear by using the word ‘may’ and ‘as it may think fit’ to the nature of admission. The said power is discretionary which should be only exercised when specific, clear and categorical admission of facts and documents are on record, otherwise the Court can refuse to invoke the power of Order XII Rule 6. The said provision has been brought with intent that if admission of facts raised by side is admitted by other, and the Court is satisfied to the nature of admission, then the parties are not compelled for full fledged trial and the judgment and order can be directed without taking any evidence. Therefore, to save the time and money of the Court and respective parties, the said provision has been brought in the statute. As per above discussion, it is clear that to pass a judgment on admission, the Court if thinks fit may pass an order at any stage of the suit. In case the

judgment is pronounced by the Court a decree be drawn accordingly and parties to the case is not required to go for trial.”

(emphasis supplied)

14] In view of the same, the trial Court has committed no illegality or jurisdictional error in holding that grounds raised by the petitioner can only be decided after the evidence is led by the parties, and thus, no interference is called for.

15] This court is also of the considered opinion that to demonstrate that there is an admission by the plaintiff, the defendant is not required to file an exhaustive application, as an admission must be able to be discerned by mere perusal of the plaint, otherwise, its evidentiary value can only be ascertained during the trial.

16] So far as the decisions relied upon by the petitioner are concerned, the same are clearly distinguishable and are of no help to him.

17] Accordingly, the Civil Revision being devoid of merits is hereby **dismissed.**

**(SUBODH ABHYANKAR)**  
**JUDGE**

**moni**