***  IN THE HIGH COURT OF DELHI AT NEW DELHI**

**+  FAO(OS) 51/2020**

Date of decision: 10th November, 2020

IN THE MATTER OF:

INDU SINGH ..... Appellant

Through: Mr. Nikhil Rohatgi and Mr. Shashank Khurana, Advocates

versus

SURENDER KAMBOJ & ORS. ..... Respondents

Through Mr. Rohit K. Naagpal, Mr. Akarshan Bhardwaj, Mr. Aditya Kasera and Mr. Dipanshu Gaba, Advocates for R-2, R-5 and R-9.

Mr. Ashish Mohan and Mr. Akshit Mago, Advocates for R-3 and R-4.

**CORAM:**
**HON'BLE MS. JUSTICE HIMA KOHLI**
**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**SUBRAMONIUM PRASAD, J.**

**CM No. 25792/2020 & 25793/2020 (Exemption)**

Allowed, subject to all just exceptions.

**CM No. 25791/2020 (delay)**

For the reasons stated in the application, the same is allowed. The delay of 43 days in filing the appeal is condoned.

The application is disposed of.

**FAO(OS) 51/2020 & CM No. 25790/2020 (stay)**

1. The present appeal is directed against the order dated 06.01.2020, passed by the learned Single Judge dismissing an application filed by the appellant/defendant No.9 which though was styled to be one moved under Order VI Rule 16 of the Code of Civil Procedure, 1908 (hereinafter referred to as "the CPC"), but in fact was one under Order XII Rule 6 of the CPC.

2. The respondent No.1/plaintiff has filed a civil suit on the Original Side of this court, registered as CS(OS) No.1834/2014, praying *inter alia* for partition of 22 properties, as mentioned in the plaint.

3. Sh. Jitender Singh Kamboj, father of the respondent No.1/plaintiff, had 6 sons and 3 daughters. To understand the factual matrix, it is necessary to peruse the genealogy as below:-

| Late Sh. Jitender Singh Kamboj | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Sh. Ved Prakash Kamboj<br><br>(Defendant No.3)<br><br>(Son) | Sh. Shardhanand Kamboj<br><br>(Defendant No.4)<br><br>(Son) | Sh. Virender Singh Kamboj<br><br>(Defendant No.1)<br><br>(Son) | Late Sh. Narinder Kumar Kamboj<br><br>(Deceased)<br><br>(Son) | Sh. Devender Kumar Kamboj<br><br>(Defendant No.2)<br><br>(Son) | Sh. Surendra Kamboj<br><br>(Plaintiff)<br><br>(Son) | Mrs. Shashi Bala Kamboj<br><br>(Defendant No.5)<br><br>(Daughter) | Mrs. Sushila Dari<br><br>(Defendant No.6)<br><br>(Daughter) | Smt. Prabha Devi Kamboj<br><br>(Defendant No.7)<br><br>(Wife of Defendant No.2) | Smt. Lalita Thind<br><br>(Defendant No.8)<br><br>(Daughter) |

4. It has been averred in the plaint that Sh. Jitender Singh Kamboj had set up a business concern in the name of "*M/s. Souvenir House"* with his

four sons, the plaintiff, defendant Nos.1 & 2 and Narinder Kumar Kamboj. Defendant Nos. 3 and 4 had initially joined the business but later, they had left the business. Resultantly, the business was being carried on by late Sh. Jitender Singh Kamboj, Sh. Virender Singh Kamboj (defendant No.1), Sh. Devender Kumar Kamboj (defendant No.2), the plaintiff (respondent No.1 herein) and Sh. Narinder Kumar Kamboj who had passed away before the suit was instituted.

5. It has been averred by the respondent No.1/plaintiff that out of the profits of the aforesaid business, respondent No.2/defendant No.1 had started a partnership business with one Sh. Lalji Kapoor in the name of *"Maharaja Art Palace"* and the understanding amongst the brothers was that the business of *"Maharaja Art Palace"* was also a joint family business up to 50% of the share along with the business of *"Souvenir House"*.

6. In or around the year 1975, *"Maharaja Art Palace"* was dissolved and the respondent No.2/defendant No.1 separated from Sh. Lalji Kapoor. On dissolution of the firm, Shop No. 19-C, Red Fort, Delhi which had been allotted to the respondent No.2/defendant No.1, was made a part of the joint family. After the dissolution of *"Maharaja Art Palace"*, the respondent No.2/defendant No.1 started another partnership firm in the name of M/s. "Virender Art Palace". It is stated that apart from *"Maharaja Art Palace"* several businesses were started, viz "Virender Art Emporium", "M/s. Kamboj Exports", "M/s. Arun Exports", "M/s. Indian Brass Collection", "M/s. You and Me" and "M/s. Virender Art Emporium Expo Mart". The respondent No.1/plaintiff along with three brothers and the wife of respondent No.2/defendant No.1 were partners in the firms.

7. It has also been stated by the respondent No.1/plaintiff that the ratio of profit sharing was different, but all of the said family businesses were being run by the joint family and several properties were purchased out of the family business. The other facts mentioned in the plaint are not being stated here since they are not relevant for the decision in the present appeal. Stating that the suit properties are all joint family properties, the respondent No.1/plaintiff has prayed for 1/3$^{rd}$ share in 19 properties and 1/9$^{th}$ share in 3 properties.

8. Initially, the appellant, Indu Singh, who is the wife of the respondent No.2/defendant No.1, Sh. Virender Singh, was not made a party to the suit. Vide order dated 08.10.2015, passed in I.A. No. 12588/2015 she was impleaded as defendant No.9 and she filed a separate written statement contending that the following 3 properties belong exclusively to her:-

> 1. Property bearing House No.2425, First Floor, Tilak Gali, Chuna Mandi, Pahar Ganj, New Delhi-110055.
>
> 2. Half portion of property No.25/3, Gali No.16, Vishwas Nagar, Shahdara, Delhi.
>
> 3. Property Bearing No. K-217, South City-I, Gurgaon (Haryana). Unitech Limited South City, Gurgaon.

The appellant stated that the abovesaid properties are not available for partition, as they had been purchased by her in her own capacity and not out of the business of the firm.

9. A replication was filed by the respondent No.1/plaintiff stating that the appellant/defendant No.9 (hereinafter referred to as the "Appellant"), is the wife of the respondent No.2/defendant No.1 and that she is a housewife who has never conducted any business and has never attended to any

business of the respondent No.1/plaintiff and the respondent No.2 to 5/defendants No.1 to 4. It has been further stated that in order to usurp the properties, the respondent No.2/defendant No.1 has clandestinely transferred some of the properties mentioned in the written statement, in the name of the appellant.

10. Thereafter, the appellant had filed the instant application under Order XII Rule 6 of the CPC (I.A. No. 15089/2016) for a judgment on admission contending *inter alia* that the respondent No.1/plaintiff has himself admitted that there was no HUF and it is only the coparcenary which governs the family and therefore, the properties which are in the name of the appellant, cannot be available for partition. It is the case of the appellant that in view of the specific stand of the respondent No.1/plaintiff that there is no HUF, it is crystal clear the 3 properties which stand in her name, do not belong to the HUF and are her individual properties. It was further stated that Section 4 of the Benami Transaction (Prohibition) Act bars the claim of the respondent No.1/plaintiff to the three properties which stand in the name of the appellant. It was also contended that the suit is barred by limitation in view of Article 110 of the Limitation Act.

11. By the impugned order, the learned Single Judge has dismissed the aforesaid application observing that a perusal of the averments made in the plaint and in the replication would show that the properties have been purchased in the names of one or the other member of the family and a reading of the plaint would show that the case of the respondent No.1/plaintiff is that the properties were purchased in the name of the appellant from the joint family funds. Therefore, in the face of the aforementioned pleadings, even if the respondent No.1/plaintiff has admitted

the existence of title in favour of the appellant, that cannot *per se* dis-entitle him to an opportunity to prove his case at trial. Observing that there is no unequivocal or categorical admission made in favour of the appellant which would entitle her to a judgment on the basis of admissions in the plaint or replication and that there are clear pleadings regarding the existence of a joint family, the learned Single Judge dismissed the application moved by the appellant.

12. Mr. Nikhil Rohtagi, learned counsel for the appellant would contend that the respondent No.1/ plaintiff has admitted that in para 13 of his replication, there was no HUF and only coparcenary law governs the parties. It is his submission that the appellant admittedly not being a coparcener and the properties in question are her self-acquired and exclusive properties, they cannot be made a part of the partition suit. He submitted that the respondent No.1/plaintiff has also filed an affidavit of admission/denial of documents in the suit proceedings wherein he has admitted all the documents filed by the appellant, including the title documents in respect of the 3 properties.

13. Referring to para 16 of the plaint, Mr. Rohtagi contended that the respondent No.1/plaintiff has himself admitted that upon the death of the father, Sh. Jitender Singh Kamboj, in 1998, the respondent No.2/defendant No.1 had got Shop No.2, Red Fort, Delhi transferred in his sole name in the records of the MCD/Archaeological Survey without the knowledge or consent of the respondent No.1/plaintiff and the other respondents/defendants herein. It is therefore clear that the respondent No.1/plaintiff was excluded for the first time in the year 1998 and if

reckoned from the said date, the suit is patently barred by limitation under Article 110 of the Limitation Act.

14. Mr. Rohtagi sought to argue that it is incumbent upon the courts to scrutinise the pleadings to find out whether a case has been made out in the pleadings and sufficient particulars thereof have been given, as mandated under Order VI Rule 4 of the CPC. He submitted that there are no particulars furnished by the respondent No.1/plaintiff of the formation of joint family/coparcenary and further, there are no particulars about the financial contribution if any having been made by various members of the so-called coparcenary. He stated that on an overall reading of the plaint and the admission made by the respondent No.1/plaintiff in respect of the list of properties purchased in the name of the appellant shows that there are clear admissions that:

a) There was no HUF/coparcenary in existence;
b) No Joint family or coparcenary funds were used in the purchase of any of the properties; and
c) Assuming without admitting that such a joint family did exist, the properties in the name of the appellant were neither held by her in trust or in a fiduciary capacity nor for the benefit of any other members of the joint family.

15. Mr. Rohtagi also submitted that the claim in the suit is barred by the provisions of the Benami Transaction (Prohibition) Act 1988 and the properties having been purchased by the partnership concerns, on dissolution of the firm, the properties would become the individual properties of the partners.

16. Paragraphs No. 3, 15 and 16 of the plaint and paragraph No.13 of the replication on which heavy reliance has been placed by learned counsel for the appellant which according to him, are unequivocal admissions on the part of the respondent No.1/plaintiff sufficient for passing a judgment on admission in favour of the appellant under Order XII Rule 6 of the CPC that would result in the dismissal of the suit in respect of the 3 properties mentioned above, read as under:-

> ***"Para 3 of the plaint**:-*
>
> *3. That the father of the parties late Sh. Jitender Singh Kamboj set up a business concern in the name of M/s. Souvenir House having business place at Shop No.2 Red Fort, Delhi. Since the eldest of the sons Shri Ved Prakash, Defendant No.3 is a writer. He had initially joined the business with the father but did not continue the same and after taking his share from his father separated himself from the family house as well as the business in or around 1974. He set up his separate house and started writing books and settled himself in life separate from the rest of brothers.*
>
> ***Para 15 & 16 of the plaint**:-*
>
> *15. That after the demise of late Shri Jitender Singh Kamboj on 18.8.1998, his share in the business fell to the share of the four brothers in equal four shares namely the Plaintiff, defendant no.1, defendant no.2 and late sh. Narinder Kumar Kamboj. The family house situated at house no.587 Kesari Mohalla Jain Mandir Gali Shahadara Delhi, however fell to the equal share of all the brothers and sisters 1/9the each. The plaintiff along with the other brothers namely late Shri Narinder Kumar Kamboj and Sh. Devender Kumar Kamboj treated the Defendant no.1 like their father and gave him all the respect that they paid to their father. They*

*took his advice for all the purpose be it business or otherwise and put him on the pedestal of their father late Sh. Jitender Singh Kamboj. The family of the three brothers namely plaintiff with defendant no.1-2 and late Sh. Narinder Kumar Kamboj himself lived in a joint family even after the demise of their father late Sh. Jitender Singh Kamboj and the defendant no.1 was put in the position of the head of the family. All the business remained joint with every working brother putting his money and efforts to the running of the business concerns and getting a share out of the profits to meet the Daily affairs while the rest of the profits was kept by the Defendant no.1.*

*16. That upon the death of the father of the plaintiff and the defendants late Sh. Jitender Singh Kamboj, in 1998 the defendant no.1 got the shop No.2 Red Fort, Delhi transferred in his sole name from Municipal Corporation of Delhi/Archaeological Survey of India without the knowledge/consent of the plaintiff or the defendant herein. Since the defendant no.1 had assured the plaintiff and the other brothers that they all were together and will be looked after equally, there was no occasion for the plaintiff or the others to have any doubt about his intentions.*

***Para 13 of the Replication**:*

*13. Para 13 of the Preliminary Objection as stated is wrong and is not admitted. It is stated that the suit of the Plaintiff is neither based on the concept of HUF as stated by the Defendant No.1 not the same has been pleaded. The family of the plaintiff is a coparcenary by its character and has been recognized as such in Hindu Law. The concept of HUF was introduced only for the purpose of Income Tax Act for certain Income Tax benefits to treat the same as an independent entity. It is not the case of the Plaintiff that there was any HUF i.e.*

*a Separate entity for the purpose of income tax as prescribed under the law. It is stated that the parties to suit belong to a trading family and carried on trade together. The trade carried on by the parties has been that of handicrafts and other articles and wares including silver, gold, ivory, wood and garments. It is stated that the father of the parties had 10 children including the Plaintiff and the defendant No.1 herein. It is stated that all the 10 children were provided for by the late father of the parties and it is an insult to the deceased father of the parties after his demise for one of his sons to state that he did not provide for them. All the 10 children were provided for and were married off with sufficient means during the lifetime of late Shri Jitender Singh Kamboj. Late Shri Jitender Singh Kamboj Even paid the share of his brother late Shri Dharmender Singh being the half share in the house namely 587, Kesari Mohalla, Jain Mandir Gali, Shahadara. The allegation is false to the knowledge of the defendant no.9. The Rest of the allegations are wrong and are denied."*

17. The short issue which arises for consideration in this appeal is as to whether in view of the averments made by the respondent No.1/plaintiff in the plaint and the replication, the appellant would be entitled to a judgment on admission under Order XII Rule 6 of the CPC, regarding the three properties referred to in para 8 above.

18. The law on the scope of Order XII Rule 6 CPC is well settled. The Supreme Court has in a catena of judgments held that the power conferred under Order XII Rule 6 of the CPC is a discretionary power and relief cannot be claimed under it as a matter of right. The provision of Order XII Rule 6 CPC is reproduced below for ready reference:-

"**Order XII**
**Rule 6** ***Judgment on admission***- *(i) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.*
*(ii) Whenever a judgment is pronounced under sub-rule (1) a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced*."

19. The law on the object and scope of Order XII Rule 6 of the CPC has been put to rest by the Supreme Court in Uttam Singh Duggal & Co Ltd. v. Union of India, reported as **(2000) 7 SCC 120,** wherein it was held as under:

> **"12.** ***As to the object of Order XII Rule 6 CPC, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rules, it is stated "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of relief to which according to the admission of the defendants, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule, as the object is to enable a party to obtain speedy judgment. Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed.*** **"** (emphasis added)

20. In Vijaya Myne v. Satya Bhusan Kaura, reported as **142 (2007) DLT 483 (DB)**, a Division Bench of this court had observed that:-

> "**12. ....*the purpose and objective in enacting the provision like Order 12 Rule 6, CPC is to enable the Court to pronounce the judgment on admission when the admissions are sufficient to entitle the plaintiff to get the decree, inasmuch as such a provision is enacted to render speedy judgments and save the parties from going through the rigmarole of a protracted trial. The admissions can be in the pleadings or otherwise, namely in documents, correspondence etc. These can be oral or in writing.*** *The admissions can even be constructive admissions and need not be specific or expressive which can be inferred from the vague and evasive denial in the written statement while answering specific pleas raised by the plaintiff. The admissions can even be inferred from the facts and circumstances of the case.* ***No doubt, for this purpose, the Court has to scrutinize the pleadings in their detail and has to come to the conclusion that the admissions are unequivocal, unqualified and unambiguous.*** *In the process, the Court is also required to ignore vague, evasive and unspecific denials as well as inconsistent pleas taken in the written statement and replies. Even a contrary stand taken while arguing the matter would be required to be ignored.*" (emphasis added)

21. In Himani Alloys Ltd. v. Tata Steel Ltd., reported as **(2011) 15 SCC 273,** the Supreme Court has held that:

> "11. *It is true that a judgment can be given on an "admission" contained in the minutes of a meeting. But the admission should be categorical. It should be conscious and deliberate act of the party making it,*

*showing an intention to be bound by it. Order XII Rule 6 CPC being an enabling provision, it is neither mandatory nor preemptory but discretionary.* ***The court, on examination of the facts and circumstances, has to exercise its judicial discretion, keeping in mind that a judgment on admission is a judgment without trail which permanently denies any remedy to the defendants, by way of an appeal on merits. Therefore unless the admission is clear, unambiguous and unconditional, the discretion of the Court should not be exercised to deny the valuable right of a defendant to contest the claim. In short the discretion should be used only when there is clear 'admission'*** **which can be acted upon…."** (emphasis added)

22. In S.M. Asif v. Virender Kumar Bajaj, reported as **(2015) 9 SCC 287**, the Supreme Court observed as under:-

"*8. The words in Order 12 Rule 6 CPC "may" and "make such order"....show that the power under Order 12 Rule 6 CPC is discretionary and cannot be claimed as a matter of right.* ***Judgment on admission is not a matter of right and rather is a matter of discretion of the court.*** *Where the defendants have raised objections which go to the root of the case, it would not be appropriate to exercise the discretion under Order XII Rule 6 CPC.* ***The said rule is an enabling provision which confers discretion on the court in delivering a quick judgment on admission and to the extent of the claim admitted by one of the parties of his opponent's claim.***" (emphasis added)

23. In Raveesh Chand Jain v. Raj Rani Jain, reported as **(2015) 8 SCC 428**, the Supreme Court held that:-

"*8….The bare perusal of the aforesaid provision makes it clear that it confers wide discretion on the court to pass a judgment at any stage of the suit on the basis of*

> *admission of facts made in the pleading or otherwise without waiting for the determination of any other question which arose between the parties.* ***Since the Rule permits the passing of judgment at any stage without waiting for determination of other questions, it follows that there can be more than one decree that may be passed at different stages of the same suit. The principle behind Order XII Rule 6 is to give the plaintiff a right to speedy judgment so that either party may get rid of the rival claims which are not in controversy."*** (emphasis added)

24. This court in Harish Relan v. Kaushal Kumari Relan, reported as **2017 SCC Online Delhi 6614,** authored by one of us, (Hima Kohli, J.) after analysing several decisions on the scope of Order XII Rule 6 CPC had observed as under:

> *"32. As can be seen from the view taken in the above decisions and a series of judicial pronouncements on similar lines, the underlying object of Order XII Rule 6 CPC is to enable the parties to obtain speedy justice. This Court had observed in the case of Tirath Ram Shah Charitable Trust v. Sughra Bi @Sughra Begum (Decd.) reported as 225 (2015) DLT 666, that the object of Order XII Rule 6 CPC is that* ***once there are categorical admissions of facts made by a party, then the litigation should not be permitted to linger on unnecessarily and in appropriate cases, on an application filed by a party under Order XII Rule 6 CPC, asking for a decree on the basis of the said admissions, the court ought to exercise its discretion and bring an end to such litigation by passing appropriate orders. Such admissions can be express or implied.*** *They can be a part of the pleadings or judicial admissions. However, the facts of each case have to be examined for applying the law laid down above."* (emphasis added)

25. A Division Bench of this court in Anupama Bansal v. Suraj Bhan Bansal**,** reported as **2019 SCC Online Delhi 8846,** authored by one of us, (Hima Kohli, J.) had observed as under:

> *"25. As can be seen from the above discussion, the aim and object of enacting Order XII Rule 6 CPC is to empower the court to pronounce a judgment on admission, when such admissions are considered sufficient to entitle the plaintiff in a suit, to a decree.* ***The underlying object of enacting the said provision is to ensure speedy justice and save the parties from undergoing the travails of a protracted trial. Such admissions can be in the form of pleadings or otherwise, i.e., in the documents, correspondence etc. placed on record****. Admissions can be oral or in writing. They can be constructive admissions without being specific or expressive, which fact can be inferred from vague and evasive denials in the written statement, while responding to specific pleas taken in the plaint."* (emphasis added)

26. A reading of the aforesaid decisions would show that ordinarily, the rights of the parties have to be decided in the suit. The controversy on merits of the disputed questions of fact cannot be considered at the stage of deciding an application under Order XII Rule 6 CPC. For a judgment on admission to be passed under Order XII Rule 6 CPC, the court has to see as to whether the admission of facts are plain, unambiguous and unequivocal and go to the root of the matter which would entitle the other party to succeed. The object of Order XII Rule 6 is that once there are categorical admission of facts made by a party, then the litigation should not be permitted to linger on unnecessarily and on an application filed by a party

asking for a decree on the basis of the said admissions, the court should exercise its discretion and bring such a litigation to an end.

27. We are of the opinion that the learned Single Judge has rightly held that the appellant is not entitled to any relief under Order XII Rule 6 of the CPC as the facts of the present case do not meet the requirements for a judgment on admission. On a reading of the plaint, the respondent No.1/plaintiff has averred in his pleadings as under:

> *"a) None of the brothers used to maintain separate accounts. The father of the parties purchased/booked several residential/commercial properties in the individual names of the sons. (Para 14)*
>
> *b) The properties mentioned in the plaint were booked/purchased from the funds of the joint business itself. (Para 14)*
>
> *c) By the sale of the properties mentioned in the plaint some more properties were purchased by the defendant No.1 in different names while assuring the plaintiff and defendant No.2 that he was purchasing all these properties for the benefit of the family. (Para 20)*
>
> *d) The properties in different names of the brothers in possession of all of them were held in trust for each other and for the benefit of each other in fiduciary capacity as provided for in Section 4(3)(b) of Benami Transactions (Prohibition) Act, 2008. (Para 27)*
>
> *e) The residential properties purchased in the individual names of the parties however, have been purchased from the share of profit of the parties together. They all are holding the properties in trust for each other and for the benefit of each other in fiduciary capacity. (Para 38)*

*f) Other than the properties which were purchased in the names of the plaintiff and defendant No.2 specifically the rest of the properties were purchased either in the name of the business or in the name of the defendant No.1, his wife or children. (Para 40)"*

28. *Per contra,* the appellant herein has taken a stand that the three properties, which are the subject matter of the application filed by her, were purchased by her in her own right and not from the joint family funds. She has pleaded that the said properties stand registered in her name and the respondent No.1/plaintiff cannot claim that they are available for partition.

29. It is the assertion of the respondent No.1/plaintiff that the aforesaid properties have been purchased from the funds of the joint family business for the benefit of the family and that the properties are in different names of the brothers and possession of all of them were held in trust for each other. The fact that in the replication, it has been stated by the respondent No.1/plaintiff that his suit is not based on the concept of a HUF and the concept of HUF has been introduced only for the purpose of the Income Tax Act for certain income tax benefits and further that it is not the case of the plaintiff that there was any HUF, would not entitle the appellant herein to a judgment on admission whereby the suit in respect of the three properties which are the subject matter of the instant proceedings, should be dismissed. It shall be for the appellant, who has been impleaded in the suit as defendant No.9, to establish that these properties were not purchased out of the joint family business funds and that she is exclusively entitled to the said properties.

30. The other legal issues sought to be urged by the appellant namely that the suit is barred by limitation under Article 110 of the Limitation Act; that since these properties have been purchased out of partnership funds and on dissolution of the partnership, the properties became separate properties in the hands of the partners and therefore, cannot be said to be purchased out of the joint family business, were not even raised before the learned Single Judge. Nevertheless, these issues involve mixed questions of fact and law and would have to be adjudicated in the suit by leading evidence. The appellant herein would not be entitled to a judgment on admission under Order XII Rule 6, CPC on the basis of the pleas which are now sought to be raised in the appeal.

31. The appeal is therefore devoid of merits and is dismissed along with the pending application.

**SUBRAMONIUM PRASAD, J.**

**HIMA KOHLI, J.**

**NOVEMBER 10, 2020**
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