

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

% *Date of Judgment :09.02.2015.*

+ CS(OS) 1630/2006

MR. KARAN NATH ..... Plaintiff  
Through Mr. T.K. Ganju, Sr. Adv. with  
Mr. Praveen Agarwal, Advocate

versus

MS. MINAKSHI NATH AND ORS. .... Defendants  
Through Mr. Amit Sehgal, Adv. for D-1  
and D-2  
Ms. Swaty S. Malik, Adv. for D-3

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

**INDERMEET KAUR, J.** (Oral)

**I.A.No.9189/2014 (u/ Order XXXIX Rules 1 and 2 CPC) and  
I.A.No.20883/2014 (u/O XXXIX Rule 4 CPC)**

1. The application under Order XXXIX Rules 1 and 2 CPC has been filed by defendant nos.1 to 3. They are the two daughters and the wife of defendant no.4 (Kailash Nath). Kailash Nath is admittedly the owner of the suit property i.e. the property bearing no. 39, Prithviraj Road, New Delhi. The prayer made in the application is that the plaintiff (surrogate son of defendant no.4) be restrained from getting his name mutated in the electricity connection no.1006560 or to substitute his

name as a co-owner in the suit property. Further prayer made in the application is that the plaintiff be restrained from using the address of the aforementioned property or representing himself as the co-owner in the suit property.

2. Reply has been filed by the plaintiff contesting the application. His submission is that the application in the present form is wholly misconceived. Submission is that the consent decree inter se defendant nos.1 to 3 and defendant no.4 passed on 07.11.2007 in CS(SO) 1257/2003 is not binding upon him as he was admittedly not a party to the suit. In that judgment it had been noted that Karan Nath (plaintiff) had filed a civil suit {(CS(OS) 1630/2006} seeking a challenge to the family settlement dated 01.7.1992 (pursuant to which the decree dated 07.11.2007 had been passed) and while recording the compromise decree it had noted this submission of the plaintiff that the said compromise arrived at inter se between defendant nos.1 to 4 will not be binding upon the plaintiff. Vehement submission of the learned counsel for the plaintiff being that the prayer made in the present application is even otherwise not maintainable as admittedly the plaintiff is the son of the defendant no.4 and his status has been recognized by all family members; the plaintiff is visiting his aged father being more than 85 years of age and looking after his health; the defendant nos.1 and 2 being the married daughters are living separately in their own homes; his mother (defendant no.3) is also not in a position to look after her

ailing husband all by herself; the present application has been filed by the defendants with a malafide interest.

3. Defendant no.4 i.e. Kailash Nath has also filed a reply. It was not a part of the record although it has been admittedly filed in the Registry as both the parties had copies of the same. Copy of the reply has been placed on record. In this reply the stand of defendant no.4 is that the plaintiff is admittedly his son. He has two daughters, both of whom are married and are not residing in the suit property; they are living in their separate houses. It has been reiterated that defendant no.4 (Kailash Nath) is the sole and absolute owner of the suit property and is in peaceful possession of the same. A guest house is being run in the property. It is pointed out that defendant nos.1 to 3 (his wife and two daughters) have now connived against him and are in complete control of the management of the guest house and have even gone to the extent of showcasing the answering defendant as a member of the staff and have issued pay cheques to him after deducting TDS. It is pointed out that the malafide and hostile conduct of defendant nos.1 to 3 is deplorable and the answering defendant has lost complete faith in them. He has reiterated that he had written a letter to the Water and Electricity Department of the NDMC (dated 02.4.2014) stating that out of the two electricity meters which are installed in the suit property (one of which is in the name of the defendant) and second one in the name of Amar Nath (deceased father of Kailash Nath) and the second meter be transferred in the name of the plaintiff. Submission being that he is

rightful owner of the suit property and has complete ownership rights in the suit property in his lifetime and is well within his right to make such a request to the Electricity Department to transfer this meter which was in the name of a dead man (his father) to his son.

4. The contentions and the counter contentions have been noted. Kailash Nath is undisputedly the owner of 39, Prithviraj Road, New Delhi. On 07.11.2007 he had entered into a compromise decree with defendant nos.1 to 3 in CS(OS) 1257/2003 in terms of which the suit property was to be completely owned by Kailash Nath and his wife during their lifetime and after their demise it would fall equally to their two daughters. In that suit before the compromise decree could be recorded plaintiff (Karan Nath) had moved an application seeking impleadment but this application stood dismissed. However, while recording the terms of the consent decree on 07.11.2007 the Court had noted that since Karan Nath was not a party to the suit the terms of the compromise would not bind him. On 11.08.2005 in that suit an order had been passed on an interim application. This was in I.A.No.6627/2003. It was directed that Ms.Elma (the lady through whom plaintiff was born) will not be inducted in the suit property; however, it will be open to the plaintiff (Karan Nath) to visit and meet his father/attend to him in case of emergency. This order had never been challenged. In terms of this order permission to Karan Nath to go and meet his father and to attend to him in emergent situations was taken care of. This order was passed in the year 2005. Thus it appears that

even at that point of time the father (defendant no.4) was on comfortable terms with the plaintiff and he wanted him to visit his home and to look after him.

5. The fact that he is a son born from a surrogate mother is an admitted fact. This in fact appears to be the bone of contention between the defendant nos.1 to 3 and defendant no.4.

6. Be that as it may, although the family settlement dated 01.11.1992 is the subject matter of challenge in CS(OS) No. 1630/2006, yet the undisputed fact remains that defendant no.4 Kailash Nath continues to remain the absolute owner of the suit property during his life time. This is clear from the decree dated 07.11.2007 (heavily relied upon by defendant nos.1 to 3).

7. By moving an application before the Electricity Department of the NDMC requesting them to transfer the meter in the name of the plaintiff (qua a dead meter earlier in the name of his father Amar Nath) is a matter which has to be taken care of by that Department and no orders are called for by this Court on the adjudication of that application.

8. The prayers made in the present application read as under:

- (a) Injunction restraining the plaintiff from mutating his name as owner in the Electricity Consumer No.1006560, K.No.K1946 or creating/substituting his name with any authority, as owner or co-owner of property bearing No.39, Prithviraj Road, New Delhi.

- (b) Injunction restraining the plaintiff from creating or using the address of the property bearing No.39, Prithviraj Road, New Delhi, in any identity documents.
- (c) Restrain the plaintiff from taking benefit of any document, bearing the address of the suit property bearing No.39, Prithviraj Road, New Delhi, as his residential address.
- (d) Mandatory injunction directing the plaintiff from disclosing and withdrawing all such pending applications, where he has misrepresented himself as co-owner or being in possession of the suit property bearing No.39, Prithviraj Road, New Delhi.

9. These prayers smack of malafides. This is for the reason that the daughters (defendant nos.1 and 2) do not want the plaintiff (Karan Nath) to even enter the suit property which in terms of the order dated 11.8.2005 stands settled. Plaintiff Karan Nath (admittedly the son of defendant no. 4) has already been granted permission to visit his father (defendant no.4). It is also not the case of the parties that the defendant no.4 is in a condition of mental instability and he has been coerced or pressurized by any person. In these circumstances, it is open to defendant no.4, being the absolute owner of the property, to choose the persons who can visit him in his house; the permission to Karan Nath to

visit the property in the order dated 11.8.2005 is even otherwise affirmed.

10. On 01.8.2014 certain interim directions were passed:

“ .....

*3. It is not disputed by the learned counsel for the non-applicants/plaintiffs that defendant no.4, in the very least, is in possession of the suit property, which is located at 39, Prithviraj Road, New Delhi.*

*3.1 The apprehension of the applicants/defendant nos. 1 to 3, who are the two daughters and the wife of defendant no.4 is that, the plaintiff /non-applicant is representing himself as being in possession of the suit property to various statutory authorities.*

*3.2 Accordingly, till the next date of hearing, the plaintiff will desist from representing to various statutory authorities or otherwise that he is in possession of the suit property.*

*4. List on 05.12.2014.”*

11. It is these directions which are a cause of grievance to the plaintiff.

12. The plaintiff as on date admittedly is not in possession of the suit property but at the cost of repetition, he is visiting his father as and when he wishes to and as and when required to meet to the conditions of

his health. There can be no bar to such entry by the plaintiff into the suit property for the said purpose.

13. It is pointed out by learned counsel for the plaintiff that the interim order dated 01.8.2014 is in fact creating an embargo on the entry of the plaintiff and this order has been used by the defendants to make submissions before Competent Authorities that the plaintiff has no concern with the suit property and he is hostile to the suit property. It is pointed out that the defendant nos.1 and 2 have become so hostile to the interest of defendant no.4 that notwithstanding that their father is still alive they have moved an application for mutation of the suit property before the Concerned Authorities. This factum is not disputed.

14. In this background, this Court does not deem it proper to continue with the interim directions contained in the order dated 01.8.2014 as they appear to be wholly unnecessary in the factual matrix as has emerged before this Court. However, it is made clear that the plaintiff will not hold himself out as an owner/co-owner of the suit property. Admittedly, the ownership of the suit property is with Kailash Nath. The family settlement dated 01.11.1992 which had led to the consent decree dated 07.11.2007 and which even otherwise is not binding upon the plaintiff is under challenge.

15. The order dated 01.8.2014 is accordingly set aside. It is, however, reiterated that the plaintiff will not project himself as a co-owner of the suit property. No further directions are called for.

16. Both these applications are disposed of.

**I.A.No.14166/2014 (under Section 151 CPC)**

**I.A.No.15077/2014 (for early hearing)**

17. These applications have become infructuous. Disposed of accordingly.

**CS(OS) 1630/2006**

18. List before Joint Registrar for evidence on 06.5.2015.

**INDERMEET KAUR, J**

**FEBRUARY 09, 2015**

**ndn**