

IN THE COURT OF MS. PRIGYA GUPTA,
SCJ-cum-RC (NORTH EAST DISTRICT)
KARKARDOOMA COURTS, DELHI

Civil Suit No. 433/24

CNR No. : DLNE03-000665-2024

1. Girish Kumar
S/o Late Shri Dal Chand

2. Smt. Rajendri
W/o Shri Girish Kumar

Both R/o H. No. C-333, Gali No. 2,
West Karawal Nagar,
Delhi-110094.

..... Plaintiffs

Versus

1. Devendra Kumar
S/o Shri Girish Kumar

2. Smt. Lata
W/o Shri Devendra Kumar

Both R/o H. No. C-260, Gali No. 9,
Mukund Vihar, Karawal Nagar,
Delhi-110094.

..... Defendants

Date of Institution of the suit	:	20/09/2024
Date of reserving Judgment	:	02/08/2025
Date of pronouncement of Judgment	:	12/08/2025

JUDGMENT

1. Vide this Judgment, I shall dispose of the present suit for declaration regarding debarring the defendants and for permanent injunction filed by the plaintiffs against the defendants.

2. Brief facts of the present suit are that the property measuring 114 square yards, out of Rect. No. 27, Killa No. 8, situated at Village Karawal Nagar, abadi of Karawal Nagar Extension, Shahdara-Delhi-110094, presently known as H. No. C-333, Gali No. 2, West Karawal Nagar, Delhi-1100094 (hereinafter referred to as the suit property) was acquired and developed by the plaintiffs with their hard earned money. The plaintiff No.2 is the owner/general attorney of suit property. The defendant No.1 is the son of the plaintiffs and the defendant No. 2 is the wife of defendant No.1. It is further averred by the plaintiffs that they provided all necessities and luxuries to defendant No.1 (their real son). The plaintiff No.1 also provided him with good education in hope of a bright future. The plaintiffs also expected the defendant No.1 to enhance their dignity in society with his good social work and character but all their dreams were shattered. The defendants started harassing, torturing and humiliating the plaintiffs. After their marriage, the defendants lived together as husband and wife peacefully for sometime. They were blessed with a daughter. Subsequently, some disputes arose between the defendants on some petty domestic issues which aggravated gradually. The plaintiffs requested the defendants to live peacefully but the defendants continued with their

unpleasant and unsocial attitude towards each other. They subsequently started misbehaving with the plaintiffs and other family members.

3. It is further the case of the plaintiffs that for some time, they kept tolerating the conduct of the defendants but subsequently brought it to the notice of the parents of the defendant no. 2 and requested them to make defendant no. 2 understand and maintain peace in the house but to no avail. Rather cruel attitude of the defendants kept increasing towards the plaintiffs. Finding no other option, the plaintiffs debarred, disowned and severed all relations with the defendants by publication of a public notice in a daily Hindi Newspaper namely Punjab Kesari dated 07/08/2024 and an intimation to this effect was also given to the police station Khajuri Khas and its copy was forwarded to the DCP (NE), Seelampur, Delhi, through a written application on 22/08/2024 through Speed Post.

4. It is further stated that subsequently, both the defendants along with their daughter and belongings left the suit property and started living at another address as mentioned in the memo of parties. On 01/09/2024, the defendant no. 1 came to the suit property stating that he was not comfortable at their new accommodation/address and tried to forcibly take the possession of the suit property. With the intervention of neighbours, he could not succeed in his ill motive but extended threats that he would come along with his wife and daughter to take forcible possession of the suit property. The plaintiffs have apprehension that the defendants may enter their property forcibly and illegally.

Hence, the present suit was filed by the plaintiffs seeking the following reliefs :

(a) A decree of declaration, in favour of plaintiffs and against the defendants, thereby declaring that the plaintiffs have debarred, disowned and severed their relations with the defendants by virtue of publication in newspaper namely Punjab Kesari dated 07.08.2024 and as a consequence of therein, the plaintiffs ceased to have any relations with the defendants;

(b) A decree of permanent injunction in favour of plaintiffs and against the defendants, thereby restraining the defendants, their relatives, associates, assigns, representatives, successors etc. from taking forcible possession of the suit property bearing No. C-333, Gali No.2, West Karawal Nagar, Delhi-110094 measuring 114 Sq. Yds, more specifically shown in red colour in the site plan attached herewith.

5. Vide order dated 20/09/2024, summons of the suit and notice of the application U/o 39 Rule 1 & 2 CPC were directed to be served upon the defendants and defendants filed their written statement.

In their written statement, defendant no. 1 and 2 stated that plaintiffs have no cause of action in their favour, thus, the suit is liable to be dismissed/rejected U/o 7 Rule 11 CPC. It is further stated that the answering defendants have no intention to take forcible possession of the suit property. In fact, the defendant no. 1 visited the suit property and told the plaintiffs that he was not comfortable at the new address and requested the plaintiffs either to permit him to live in the suit property or give his share in the suit property being their son, but the plaintiffs misbehaved with

him and told him that he has no share in the suit property as they have debarred and disowned the defendants. The answering defendants never extended any threat as alleged. The present suit has been filed to grab the share of the defendant no. 1 in the suit property

Replication to the written statement of defendants was filed on behalf of plaintiffs denying the averments made in the written statement and reiterating the facts of the plaint.

6. From the pleadings of the parties, following issues were framed vide order dated 17/02/2025 and matter was listed for PE:-

1. **Whether the plaintiffs are entitled to the relief of declaration as sought for in prayer clause (a)? (OPP-1 and 2)**
2. **Whether the plaintiffs are entitled to the relief of permanent injunction as sought for in prayer clause (b)? (OPP-1 and 2)**
3. **Whether the suit is not maintainable for want of cause of action? (OPD-1 and 2)**
4. **Relief.**

7. In order to prove their case, the plaintiff no. 1 examined himself as PW-1 vide his affidavit Ex. PW1/A wherein he re-iterated and reaffirmed the contents of the plaint and relied upon the following documents:-

1. Site plan – Ex. PW1/1.
2. Original newspaper namely Punjab Kesari dated 07/08/2024 – Ex. PW1/2.
3. Copy of Ittela Peshbandi dated 22/08/2024 – Mark-A.

4. Postal receipt dated 22/08/2024 – Ex. PW1/4 (colly).
5. Internet tracking reports – Mark-B (colly).
6. Copy his Aadhar Card – Ex. PW1/6 (OSR).

8. Plaintiff no. 2 namely Rajendri examined herself as PW2 vide her affidavit of evidence Ex. PW2/A. She relied upon the following documents:-

1. Copy of GPA dated 04/06/1997 – Ex. PW2/1 (OSR).
2. Copy of Agreement to Sell dated 04/06/1997 – Ex. PW2/2 (OSR).
3. Copy of Receipt dated 04/06/1997 – Ex. PW2/3 (OSR).
4. Copy of Deed of Will dated 04/06/1997 – Ex. PW2/4 (OSR).
5. Copy of her Aadhar Card – Ex. PW2/5 (OSR).

PW1 and PW2 were examined in chief and their cross-examination was deferred. Despite repeated opportunities given to the defendants, defendants failed to cross-examine PW1 and PW2 and their right to cross-examine the witnesses was accordingly closed vide order dated 11/06/2025. Vide joint statement of the plaintiffs, PE was closed vide order of the same date i.e. 11/06/2025 and the matter was listed for D.E.

9. Since the defendants failed to appear before the court and to take steps for leading D.E, their right to lead DE was closed vide order dated 19/07/2025 and the matter was listed for final arguments.

10. I have heard the arguments. Defendants did not appear to advance arguments. Opportunity was given to file the written arguments, however, the defendants chose not to file any written arguments.

11. My issue-wise findings are as under:-

Issue No. 1

1. Whether the plaintiffs are entitled to the relief of declaration as sought for in prayer clause (a)? (OPP-1 and 2)

The onus to prove this issue was upon the plaintiffs. The plaintiffs have prayed for declaration to the effect that the plaintiffs have debarred, disowned and severed their relations with the defendants by virtue of publication in newspaper namely Punjab Kesari dated 07.08.2024 and as a consequence thereof, the plaintiffs ceased to have any relations with the defendants. The plaintiffs, in their evidence, state that the defendants, after their marriage, started harassing and torturing the plaintiffs. They further assert that the defendants repeatedly engaged in fights with the plaintiffs and created unnecessary nuisance in order to pressurize the plaintiff to transfer their property in the name of the defendants. The plaintiffs, due to the conduct of the defendants, disowned and debarred the defendants from their movable and immovable properties by publication in newspaper “Punjab Kesari” dated 07/08/2024. They, now by way of a declaratory decree as prayed for, seek to put a seal of judicial affirmation over the fact that defendants are no more related to them and accordingly cannot claim any right in their property.

12. Before proceeding further, a due deliberation of Section 34 Specific Relief Act, 1963 is deemed appropriate. Section 34 of Specific Relief Act is being reproduced as under:-

“34. Discretion of court as to declaration of status or right.—

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so”.

13. As per Section 34 of Specific Relief Act, a declaratory decree may be issued when any person is entitled to any legal character or to any right as to any property and the adverse party is denying or is interested to deny his title to such character or right. Hence, in order to seek declaration, the plaintiffs need to establish that they are entitled to any legal character or legal right qua the property. Keeping the above provision of law in mind and being mindful of the edicts of law, it is observed that the nature of the declaration sought by the plaintiffs to the effect that they have disowned the defendants is not covered within the ambit of Section 34 of Specific Relief Act as the declaration sought is not in respect of any legal right or character which the plaintiffs can be declared entitled to. The act of the plaintiffs in disowning/debarring the defendants through a public notice by way of publication is merely an expression of their intention to debar the defendants from their properties and severing their relations with the

defendants. However, the relationship is a matter of legal status and the right to properties is governed by appropriate laws. Even if a son is debarred by either parent, the death of that parent would, if intestate, still lead to devolution of property upon that son. A mere proclamation has no dispositive legal effect, breaking all legally relevant familial ties. It is also imperative to mention that the plaintiffs are very well at liberty to dispose of their self acquired property in any manner they want to and the defendants have no right whatsoever to interfere in the same. In my opinion, the plaintiffs have a right to propound a Will to divest/disinherit the defendants from their self acquired properties. Further, plaintiffs can also dispose of their property by way of gift or sale.

As far as ancestral property of the plaintiffs, if any, is concerned, no degree of declaration as sought by the plaintiffs can extinguish the right of the defendants to their share in the ancestral property. Section 34 of Specific Relief Act provides for declaration of a legal character or right to property and does not aim at altering or extinguishing the legal/succession rights by itself. Thus, the declaratory relief as claimed by the plaintiffs cannot be granted as it does not fall within the ambit of Section 34 of Specific Relief Act.

Issue no. 1 is accordingly decided against the plaintiffs and in favour of the defendants.

Issue No. 2

- 2. Whether the plaintiffs are entitled to the relief of permanent injunction as sought for in prayer clause (b)? (OPP-1 and 2)**

14. In the present case, the plaintiffs have sought the relief i.e. a decree of permanent injunction in favour of plaintiffs and against the defendants, thereby restraining the defendants, their relatives, associates, assigns, representatives, successors etc. from taking forcible possession of the suit property bearing No. C-333, Gali No.2, West Karawal Nagar, Delhi-110094 measuring 114 Sq. Yds. (as shown in the site plan). I shall now deal with whether the plaintiffs are entitled to the said relief.

15. Ld. Counsel for the plaintiffs submits that the present suit of the plaintiffs stand duly proved in view of the unrebutted testimony of the plaintiffs i.e. PW1 and PW2 and the documents relied/proved upon by them i.e. site plan – Ex. PW1/1, original newspaper namely Punjab Kesari dated 07/08/2024 – Ex. PW1/2, copy of Ittela Peshbandi dated 22/08/2024 – Mark-A, postal receipt dated 22/08/2024 – Ex. PW1/4 (colly), internet tracking reports – Mark-B (colly), copy of Aadhar Card of plaintiff no. 1 – Ex. PW1/6 (OSR), copy of GPA dated 04/06/1997 – Ex. PW2/1 (OSR), copy of Agreement to Sell dated 04/06/1997 – Ex. PW2/2 (OSR), copy of Receipt dated 04/06/1997 – Ex. PW2/3 (OSR), copy of Deed of Will dated 04/06/1997 – Ex. PW2/4 (OSR), and copy of Aadhar Card of plaintiff no. 2 – Ex. PW2/5 (OSR). He states that since the defendants have failed to cross-examine the witnesses, the version of the plaintiffs stands proved. He further submits that as such the plaintiffs are entitled to the said decree, as prayed for.

16. A perusal of the entire record and the evidence led by the

plaintiffs shows that the version and the evidence led by the plaintiffs has remained unrebutted and unchallenged as the defendants failed to cross-examine the witnesses despite repeated opportunities. It is further to be observed that the defendants have also not led any D.E in their favour. There is therefore, no defence to the present suit.

Pertinently, PW1 and PW2 have deposed on the lines of the averments made by the plaintiffs in the plaint. The deposition made by PW1 and PW2 along with the aforesaid documents relied upon by them in their evidence lend credence to their version. In the absence of any defence evidence and cross-examination of the PW1 and PW2, there is no reason to disbelieve the same. The documents have been proved as per law and the suit has been proved on the scale of preponderance of probabilities in view of the documents placed by the plaintiffs on record.

17. Now in the present case, PW2 has deposed that she is the owner of the suit property by virtue of documents [GPA, Agreement to Sell, Receipt and Deed of Will; all dated 04/06/1997 Ex. PW2/1, Ex. PW2/2, Ex. PW2/3 and Ex. PW2/4 (OSR) respectively]. Since the stance of the plaintiffs and the documents so placed on record by the plaintiffs were not disputed by the defendants, the plaintiff no. 2 has been able to prove better title to the suit property. The plaintiffs have further deposed on oath that they have apprehension that the defendants can take forcible possession of the suit property from the plaintiffs. It is their stance that on 01/09/2024, the defendant no. 1 entered the suit property and tried to take forcible possession of the suit property. It is further asserted that it was only on the

intervention of the neighbours that the defendant no. 1 failed to take the forcible possession of the suit property. The witnesses further deposed that the defendant no. 1 threatened them that he along with his wife (defendant no.2) would take the forcible possession of the suit property. It is now crucial to highlight that the defendants, in their WS, specifically admitted that the defendant no. 1 visited the suit property on 01/09/2024. It is further averred in the WS that defendant no. 1 visited the suit property to inform the plaintiffs that he was not comfortable at the new address and requested the plaintiffs either to permit him to reside in the suit property or to give his share in the suit property.

In such a scenario, where the defendants, in their WS, admitted the fact that the defendant no. 1 visited the suit property on 01/09/2024 and PW1 and PW2 were never cross-examined, it can safely be concluded that the plaintiffs have been able to prove their case on the scale of preponderance of probabilities.

18. In view of the above-said discussion, it is clear that the plaintiffs case has remained uncontroverted. Further, in this regard, reliance can be placed upon the judgment of the Hon'ble High Court of Delhi in **M/s Eco Lab I.M.C.N Vs. Eco Labs Limited, 2011 (185) DLT 664**, wherein it was held that if the defendants have failed to cross-examine the plaintiffs, the evidence of the plaintiffs are presumed to be correct.

19. Accordingly, in light of the above evidence, this court finds no ground to disbelieve the testimony of plaintiffs (PW-1 & PW-2). Thus, in

view of un-rebutted and un-impeached evidence led by plaintiffs, this Court finds that plaintiffs have been able to prove the issue at hand.

Issue no. 2 is accordingly decided in favour of the plaintiffs and against the defendants.

Issue No. 3

3. Whether the suit is not maintainable for want of cause of action? (OPD-1 and 2)

20. The onus to prove the above-said issue was upon the defendants. It is to be noted that the issue in question was not pressed for. Further, no evidence was brought on record in respect to issue no. 3, nor were any arguments advanced on the said issue.

The plaintiffs, in the present suit, assert that the defendants harassed the plaintiffs by picking up quarrels and disturbed the peace in the family. It is further asserted by the plaintiffs that they have severed all their relations with the defendants by way of publication of a public notice dated 07/08/2024 in the newspaper “Punjab Kesari”. It is specifically asserted by the plaintiffs that defendant no. 1 and 2 along with their daughter left the suit property on 25/08/2024. Thereafter, on 01/09/2024, the defendant no. 1 visited the suit property and tried to take forcible possession of the suit property. The plaintiffs have accordingly filed the present suit for restraining the defendants from taking forcible possession of the suit property.

At this stage, it is pertinent to mention that cause of action is nothing but a bundle of facts which gives a right to a litigant to institute legal proceedings against the other party. Essentially, series of facts

culminating into infringement of legal right of a person which entitles him to seek recourse under the law, is known as a cause of action. The plaintiffs, by way of the facts narrated in the plaint, have very well disclosed the existence of a cause of action in their favour.

Thus, the issue no. 3 is decided against the defendants and in favour of the plaintiffs.

Issue No. 4 : Relief

In view of the above discussions, the suit of the plaintiffs is partly decreed and they are held entitled to the following relief:

(a) A decree of permanent injunction in favour of plaintiffs and against the defendants, thereby restraining the defendants, their relatives, associates, assigns, representatives, successors etc. from taking forcible possession of the suit property bearing No. C-333, Gali No.2, West Karawal Nagar, Delhi-110094 measuring 114 Sq. Yds, more specifically shown in red colour in the site plan attached herewith.

21. Costs of the suit is also awarded in favour of the plaintiffs.

22. Decree sheet be prepared in terms of relief granted.

23. File be consigned to record room as per rules and after due compliance.

**Announced in the open Court
today i.e. 12/08/2025**

**(PRIGYA GUPTA)
SCJ-cum-RC (NORTH-EAST),
KARKARDOOMA COURTS, DELHI**