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

+ CS (OS) 571/2017

I.A. 12006/2017 (under Order XXXIX Rule 1 and 2 CPC)

I.A. 15087/2017 (under Order XII Rule 6 r/w Order VII Rule 11 CPC-
by defendant No.1)

I.A. 5008/2018 (under Order VII Rule 11 CPC-by defendant No.6)

I.A. 5009/2018 (under Section 151 CPC-by defendant No.6)

I.A. 5102/2018 (under Order II Rule 2 r/w Order VII Rule 11 CPC-by
defendant No.7)

I.A. 16489/2019 (under Order VIII Rule 1A CPC-by defendant No.1)

I.A. 799/2020 (under Order XVIII Rule 16 CPC-by defendant No.2)

JAGDIP KAURPlaintiff

Represented by: Ms.Amrit Kaur Oberoi, Advocate.

versus

MANBIR SINGH OBEROI & ORS Defendant

Represented by: Mr.Abhishek Singh, Mr.Ytharth
Kumar and Mr.J. Amal Anand,
Advocates for defendant No.1.

Mr.R.K. Sachdeva, Advocate for
defendant No.2.

Mr.Madhur Sapra, Advocate for
defendant Nos.3 and 4.

Mr.Sanjeev Goyal, Advocate for
defendant No.5.

Mr.Himanshu Vij, Advocate for
defendant No.6

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

31.07.2020

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The hearing has been conducted through Video Conferencing.

I.A. 6220/2020 (exemption from filing attested affidavit and court fees-by defendant No.1)

1. Applicant/defendant No.1 is exempted from filing attested affidavit in support of the application at this stage. However, the same be filed within one week of the resumption of the normal functioning of the court.

2. Application is disposed of.

I.A. 6221/2020 (exemption from filing audio files-defendant No.1)

1. By this application, defendant No.1 seeks exemption from filing the audio files, transcripts whereof has been annexed as Annexure-A-2 and A-3 to the application.

2. At this stage, defendant No.1 is exempted from filing the audio files, however, the same be filed within one week of the resumption of the normal functioning of the court.

3. Application is disposed of.

I.A. 4498/2020(under Order XXXII Rule 15 CPC-seeking appointment of guardian ad-litem and court receiver for the plaintiff-by defendant No.1)

I.A. 6416/2020 (under Order XXXII Rule 15 CPC for appointment as guardian ad-litem of the plaintiff -by Madanjeet Singh Oberoi)

1. By I.A. No.4498/2020 under Order XXXII Rule 15 CPC defendant No.1 seeks appointment of a guardian ad-litem for the plaintiff whereas by I.A. No.6416/2020, Madanjit Singh Oberoi, the applicant, who is the other son of the plaintiff seeks appointment of himself as guardian ad-litem for the plaintiff.

2. Plaintiff is 97 years old and repeated pleadings on her behalf duly attested by way of affidavits were being filed whereas the contention of

defendant No.1 was that the plaintiff was not in a sound state of health and mind to depose and all these were defences of the other son of the plaintiff and brother of defendant No.1, that is, Madanjit Singh Oberoi. Due to this reason this Court had directed the plaintiff to be present in Court when this Court passed the following order on 4th December, 2019.

1. *The suit is listed for settling the issues, if required.*
2. *The dispute in the suit is primarily between the plaintiff and defendant No.1 her son, as the plaintiff in the suit claims that she was not aware of the documents got prepared by the defendant and based thereon seeks a decree of declaration declaring herself to be the absolute owner of the suit property and cancellation of the gift deed dated 10th August, 2004 being null and void and the consequential sale deed besides injunction.*
3. *Plaintiff is present in Court. She is old and infirm.*
4. *When this Court tried to talk to her and record her statement in chamber, the plaintiff was not in a position to understand the sanctity of oath and on interaction the plaintiff is repeating only two sentences. She states that her younger son has looted her and on asking the name of the younger son, the plaintiff stated that it was Manbir.*
5. *Countering the statement, learned counsel for the defendant states that before the plaintiff entered the Court room, she was being tutored by her other son Madanjeet Singh Oberoi who is now pursuing the suit on behalf of the plaintiff.*
6. *This Court had checked up with the CCTV footage outside the Court room and finds that prima facie there are talks going on and Madanjeet Oberoi is speaking to the plaintiff. In this situation, the statement of plaintiff cannot be recorded.*
7. *The Registry of this Court is directed to preserve the CCTV footage of the camera installed outside the Court No.47 from 3.00 PM to 3.10 PM of today i.e.4th December, 2019 and be kept on the record of this Court.*
8. *Before proceeding further in the suit and deciding the applications and on talking to parties it is evident that the*

plaintiff had three sons out of which one son who was in U.S. has already passed away, Madanjeet Oberoi is a U.S. citizen and has been long living in U.S., whereas defendant No.1 is living in Italy and is an Italian citizen.

9. The plaintiff after her husband's death for some part of life had lived in U.S. and is thus a U.S. citizen and earning not only family pension because of her husband in Government service in India but pension also as being a senior citizen in U.S. Unfortunately, none of the two sons live with her regularly and it appears that occasional visits are being made and she is being looked after by her maid. Allegation and counter-allegation about the mis-use of money including the pension funds of plaintiff are being levelled by the two brothers against each other.

10. Before proceeding further in the suit it is required to ensure that sufficient money is available with the plaintiff to ensure that she lives with dignity, ease and comfort that she is entitled to and her medical expenses and other expenses are taken care of.

11. Learned counsel for the plaintiff submits that bank accounts in which the family pension of the plaintiff was being received were frozen pursuant to a request by the defendant No.1 in a suit filed by the plaintiff, and now only her family pension as she is entitled pursuant to the Government services of her husband is being released to her.

12. Learned counsel for the defendant No.1 states that money from the accounts of the plaintiff was withdrawn and a sum of 6-7 lakhs which was lying deposited in the accounts has been withdrawn.

13. Learned counsel for the plaintiff states that the amount which was received by the plaintiff is lying in fixed deposit in the form of 7 FDRs in Bank of India, Connaught Place, Janpath Branch.

14. Learned counsel for the plaintiff fairly submits that after the dismissal of the suit an appeal was filed by the plaintiff, injunction was granted by this Court against defendant No.1 from utilising the FDRs or the interest thereon. She will place the copy of the orders on record.

15. *Plaintiff Mr. Madanjeet Oberoi will also file an affidavit indicating the amount received from U.S. as pension in favour of the plaintiff and as to the amount which he has withdrawn from the said account and give the detailed accounting thereof as to how it has been utilized by the plaintiff.*

16. *List the suit and applications on 5th December, 2019 when all these documents and affidavits will be placed by the parties on record so that interim measures with regard to necessary financial arrangements for the plaintiff can be made.*

17. *Order dasti.”*

3. Order dated 4th December, 2019 was followed by order dated 5th December, 2019 wherein this Court directed as under:

“1. Affidavit of Mr.Madanjit Singh Oberoi has been handed over which is taken on record. As per the affidavit, the plaintiff Mrs.Jagdip Kaur, who lives in A-16/4, Vasant Vihar, New Delhi is aged 97 years and has a bank account in Comerica Bank, Detroit, USA wherein she receives her pension of approximately 580 USD from the US Government. The affidavit does not specify whether the pension is per month or per annum. However, learned counsel for the plaintiff states that the plaintiff is receiving approximately 580 USD per month. The bank account in Comerica Bank, Detroit, USA was initially in the joint name of the plaintiff and Manbir Singh Oberoi/defendant No.1 and later since the year 2015 her other son Mr.Madanjit Singh Oberoi is the joint account holder. According to the affidavit till April, 2019 no money was withdrawn from this account however, in view of the fact that now the requirements of Mrs.Jagdip Kaur in India were rising the deponent approached the authorities who found that since the sum of 44,171 USD approximately was lying in her pension account they refused to enhance the pension. Hence the same was withdrawn by the deponent. Deponent agrees that this amount can be deposited in any account in the name of the plaintiff so that it is utilised for her benefit.

2. Learned counsel for the plaintiff states that the account

in the name of the plaintiff will be opened near her place of residence within one week whereafter the deponent Madanjit Singh Oberoi can transfer the amount of approximately 44,171 USD withdrawn by him in April, 2019 for the benefit CS(OS) 571/2017 Page 2 of 3 of the plaintiff. She further states that thereafter whatever the monthly pension of the plaintiff would be received at USA in Comerica Bank, Detroit, USA, the same will be transferred to this account, if permissible under law and in case required she would move an application in this regard.

3. Learned counsel for the plaintiff would file an affidavit of compliance before the next date of hearing.

4. List the suit before Court on 21st January, 2020.”

4. A perusal of the order itself reveals that on the said date the plaintiff was not in a position to understand either the nature of the suit or the nature of the proceedings and was in a very difficult situation, thus this Court wonders how till November, 2019 affidavits by the plaintiff could have been filed.

5. On 21st January, 2020 learned counsel for the plaintiff submitted that though scanned copy of the affidavit of Madanjit Singh Oberoi, the son of the plaintiff had been filed and as and when the original affidavit is received, she will file the same in Court. This Court also noted that though a medical certificate was obtained by 14th December, 2019 however, by then the plaintiff was admitted in ICU in Fortis Hospital and thereafter she was brought back to the residence. The position of the plaintiff is that she is being looked after by the attendants and both the sons of the plaintiff are out of India.

6. On 16th June, 2020 in I.A. No.4498/2020, considering the condition of the plaintiff this Court directed that all the latest medical reports of the plaintiff will be filed before this Court and SHO, PS Vasant Vihar was also

directed to depute a lady officer to visit the plaintiff and submit a status report as regards her health condition before the next date of hearing.

7. On 9th July, 2020, the next date fixed the matter could not be taken up as learned counsel for the plaintiff was suffering from COVID-19 and thus was not in a situation to appear. Thus the matter was adjourned for today directing SHO, PS Vasant Vihar to file status report in terms of the order dated 16th June, 2020.

8. A status report has been filed by the SHO, PS Vasant Vihar, which shows that the plaintiff is residing with her maid Smt.Bhooma Khatri @ Sonu who is attending to her for the last 25 years. Further plaintiff's elder son Madanjit Singh has appointed Mr.P.C. Sharma who resides in Ghaziabad as private manager to take her to the hospital and manage her day-to-day affairs.

9. So as to ascertain the true health of the plaintiff and whether she is in a position to understand the nature of the proceedings it would be appropriate to have the plaintiff examined by a medical board.

10. Consequently, Medical Superintendent, All India Institute of Medical Sciences, New Delhi is requested to appoint two doctors who can visit the plaintiff at her residence, i.e. H.No.A-16/4, Ground Floor, Vasant Vihar, New Delhi, or at a completely sanitized place can examine her as also all her previous medical records and opine the present medical status of the plaintiff as also her medical status in the month of October and November, 2019 when purported affidavits on her behalf have been filed. Copy of the order be communicated by the Registry to Medical Superintendent, All India Institute of Medical Sciences, who will fix the time of examination of the plaintiff.

11. Considering that admittedly the plaintiff is presently suffering from dementia it would be appropriate for this Court to appoint an independent Local Commissioner who will be present at the time of examination so as to see that no hindrance is caused in the examination of the plaintiff by the doctors of AIIMS, Mr.Samrat Nigam, Advocate (Mobile No.9810424476) is requested to act as the Local Commissioner to be present when the examination of the plaintiff is taking place. Learned Local Commissioner will also coordinate with the Medical Superintendent, AIIMS for fixing the date, time and venue of examination of the plaintiff and would inform the same to learned counsel for the plaintiff and defendant No.1 who may also be present at the time of examination.

12. Mr.Samrat Nigam, Advocate would ensure that the examination takes place smoothly and in case there is any interference by any of the parties or lawyers, it will be noted in the proceedings.

13. It is clarified that when the examination of the plaintiff is going on, Mr.P.C. Sharma will not be present.

14. Awaiting the report of the Medical Board of AIIMS as also the report of Mr.Samrat Nigam, the learned Local Commissioner, list the two applications on 21st September, 2020.

I.A. 12006/2017 (under Order XXXIX Rule 1 and 2 CPC)

I.A. 15087/2017 (under Order XII Rule 6 r/w Order VII Rule 11 CPC-by defendant No.1)

I.A. 5008/2018 (under Order VII Rule 11 CPC-by defendant No.6)

I.A. 5009/2018 (under Section 151 CPC-by defendant No.6)

I.A. 5102/2018 (under Order II Rule 2 r/w Order VII Rule 11 CPC-by defendant No.7)

I.A. 16489/2019 (under Order VIII Rule 1A CPC-by defendant No.1)

I.A. 799/2020 (under Order XVIII Rule 16 CPC-by defendant No.2)

List on 21st September, 2020.

I.A. 6219/2020 (under Section 151 CPC-by defendant No.1)

1. By this application, defendant No.1 seeks directions in respect of the accounts of the plaintiff besides the repairs of the house, bank statement etc.
2. List this application on 21st September, 2020.
3. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 31, 2020

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