

Civ DJ 611961/2016
Manoj Kumar Vs.
Smt. Laxmi Dev & Ors.

28.03.2023

Present: Sh. Anil Kumar, proxy counsel for Sh. I. S. Dahiya,
 Ld. Counsel for plaintiff with plaintiff Manoj
 Kumar in person.
 Sh. D. S. Pawariya, Ld. Counsel for defendants
 alongwith D-3 Jagdish in person.

Arguments heard from both sides on applications filed under Oder VIII Rule 1-A (3) CPC and under Order XVIII Rule 17A CPC for permission to lead defence evidence through two registered Wills, both dated 10/03/1993 executed by Sh. Raj Singh and Smt. Santra Devi, **both of whom are still alive.**

As per applications, the said documents were not traceable to defendants before 08/05/2022.

The applications are prima facie not maintainable, whereas, they cannot be allowed on merits too for following reasons:

a) In the written statement of defendants, there is no reference to registered Wills dated 10/03/1993; the defence of defendants is not based on said Wills.

b) The alleged testators namely Sh. Raj Singh and Smt. Santra Devi are still alive, hence, said Wills are inconsequential and nothing can be proved by leading evidence through them. In fact, Raj Singh has already been examined as a defence witness (DW4) and he deposed nothing about the alleged Wills.

Contd..2..

c) No cogent reason / good cause assigned in the applications while the said Wills dated 10/03/1993 remained untraceable till 08/05/2022.

d) The suit pertains to year 2009. The plaintiff has already completed his evidence, whereas, the defendants are at the verge of completion of evidence and are availing of final opportunity to lead evidence. Defendants have already led evidence through as many as four defence witnesses.

The Court finds that through the present applications, the defendants only seek to prolong the trial of the suit to cause prejudice to plaintiff. The defendants are seeking to lead evidence beyond their pleadings. No good cause assigned by defendants for failure to plead the facts pertaining to aforementioned Wills and for failure to lead evidence through them. The applications are frivolous, vexatious and completely misconceived; therefore, dismissed.

Put up for examination of DW Santra Devi and DW Ishwar Singh, as final opportunity to defendants, on 12/07/2023.

(VISHAL SINGH)
ADJ-03, WEST/DELHI
28.03.2023