

Civ DJ 613733/2016
Meena Kataria
Vs. Rekha & Ors.

16.11.2022

Present: Ms. Urvashi Sharma, proxy counsel for Sh. J.K.
Jain, Ld. Counsel for plaintiff.
Sh. Narender Sharma, Ld. Counsel for D-1.
Sh. R.S. Verma, Ld. Counsel for D-2 to D-4.

Plaintiff has filed application under Order XVIII Rule 2 (3) CPC for permission to lead evidence in rebuttal in respect of issue no.(v) i.e. Whether late Sh. Mahabir Singh executed any legal and valid Will? OPD.

As per application, the defendants propounded a Will dated 14/09/2009 of testator late Sh. Mahabir Singh, to prove which they examined DW2 Anil Kumar an attesting witness to the Will.

The plaintiff submits that she wants to examine Shakti Singh, who is another witness to the same Will dated 14/09/2009 to prove that the Will was not valid and proper and is unreliable.

The defendants have submitted that as per contents of plaint, the plaintiff already knew of the factum of execution of Will dated 14/09/2009 and challenged its genuineness by seeking relief in the plaint through decree of declaration that Will dated 14/09/2009 was forged and fabricated. The plaintiff did not lead evidence to prove issue no. (viii) i.e. Whether the plaintiff is entitled to a decree of declaration, as prayed for? OPP.

Contd..2..

The plaintiff was enjoined to lead evidence as to how the Will dated 14/09/2009 was forged and fabricated, that the plaintiff failed to do in her evidence. It is submitted that the plaintiff seeks to fill up the lacunae left in her evidence by seeking permission to lead evidence in rebuttal.

The Court needs to determine if plaintiff is still eligible to lead evidence in rebuttal in respect of issue no. (viii), although, she failed to lead evidence in respect of issue no. (v)?.

Adjournment sought on behalf of plaintiff to address arguments on next date.

On request on behalf of plaintiff, put up for arguments on 16/03/2023.

(VISHAL SINGH)
ADJ-03, WEST/DELHI
16.11.2022