

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

16.03.2023

Present: Plaintiff Ms. Meena Kataria in person with Ld.
 Counsel Sh. J. K. Jain.
 D-1 Ms. Rekha in person with Ld. Counsel Sh.
 Narender Sharma.
 Sh. R. S. Verma, Ld. Counsel for D-2 to D-4.

1. Arguments heard on application filed under Order XVIII Rule 2(3) CPC by plaintiff for permission to lead evidence in rebuttal of evidence led by defendants.

2. Through the application, the plaintiff seeks to examine Shakti Singh, a witness to the Will dated 14/09/2009 of late Sh. Mahavir Singh. The plaintiff also seeks to summon record from RML Hospital to prove that late Mahavir Singh was suffering from illness at the relevant time.

3. The application has been strongly opposed by Ld. Counsels for defendants who submit that the plaintiff has already completed and closed evidence through her statement dated 06/06/2019. Thereafter, defendant has also led an uncompleted evidence on 13/09/2022 and the case was fixed for final arguments on 16/11/2022.

4. Ld. Counsels for defendants submitted that the parties to the suit are close relatives. The plaintiff knew from the beginning that defendants are relying upon a registered Will

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dated 14/09/2009 executed by late Sh. Mahavir Singh, as is mentioned in the plaint. Through prayer clause no.(e), the plaintiff sought decree of declaration that registered Will dated 14/09/2009 is null and void being forged and fabricated.

5. In alternative, the plaintiff sought declaration that late Sh. Mahavir Singh was not legally competent to execute the said Will as he was not the absolute owner of the properties mentioned in the Will.

6. Through issue no.(viii) framed on 13/07/2015, the plaintiff was enjoined to prove the issue pertaining to the declaration sought by her.

7. On the other hand, through issue no.(v), defendants were enjoined to prove that late Sh. Mahavir Singh executed legal and valid Will. The defendants examined DW2 Anil Kumar Tanwar, an attesting witness to Will dated 14/09/2009 Ex. DW1/1, to prove its due execution.

8. On the other hand, plaintiff took no step during PE to prove issue no.(viii) as to how she was entitled to declaration that the Will in question was forged and fabricated or that late Mahavir Singh was incompetent to execute the said Will.

9. The Court is of considered opinion that in the guise of leading evidence in rebuttal of defence evidence, the plaintiff wants to wrongfully fill up the lacunae left in plaintiff's evidence. Plaintiff always knew of the existence of registered

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Will dated 14/09/2009 of late Mahavir Singh and sought declaration of its nullity, regarding which issue no.(viii) was also framed with onus of proof on plaintiff.

10. The defendants merely examined an attesting witness i.e. DW2 to the Will to prove its due execution. The plaintiff availed of the opportunity to cross examine DW2. There was no scope of leading evidence in rebuttal of evidence led by defendants since the defendants did not take plaintiff by surprise by leading any new evidence that plaintiff did not know of since the institution of suit. In fact, the plaintiff is seeking to take the defendants by surprise by moving the present application. When the plaintiff closed PE vide statement dated 06/06/2019, she did not even reserve her right to lead evidence in rebuttal. The application is misconceived and is dismissed.

Put up for final arguments on 11/07/2023.

(VISHAL SINGH)
ADJ-03, WEST/DELHI
16.03.2023