

Daman Kumar Malhotra Vs. A.K. Malhotra

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Court : Delhi

Decided On : Oct-18-2005

Reported in : (2006)142PLR2

Judge : J.P. Singh, J.

Acts : [Constitution of India](#) - Article 227; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 18, Rule 16

Appeal No. : C.M. (M) 1869/2005 and CM 11879 of 2005

Appellant : Daman Kumar Malhotra

Respondent : A.K. Malhotra

Advocate for Def. : G.C. Sharma, Adv.

Advocate for Pet/Ap. : Alok Lakhanpal, Adv

Disposition : Petition allowed

Judgement :

ORDER

J.P. Singh, J.

1. This petition under Article 227 of the [Constitution of India](#) is directed against the impugned order dated 30.7.2005 passed by Civil Judge, Delhi dismissing an

application under Order xviii Rule 16 of Code of Civil Procedure for immediate examination of a witness.

2. I have heard Mr. Alok Lakhanpal, learned Counsel for the petitioner and Mr. G.C. Sharma, learned Counsel for respondent and have gone through the impugned order as also copies of the documents placed on the file.

3. Briefly the facts are that the respondent herein (plaintiff in the trial Court hereinafter referred to as 'plaintiff') filed a suit for declaration, perpetual injunction and recovery of possession against the petitioner herein (defendant in the trial Court hereinafter referred to as defendant). It is prayed in the plaint that the Will executed by late Shri B.L. Malhotra be declared as a forged and fabricated document and for declaring some sale deed as void. There was a question of partition between the parties during pendency of the matter. An application under Order xviii Rule 16 of Code of Civil Procedure was moved by the defendant for recording the evidence of Shri Mukand Lal Malhotra, aged about 85 years on the ground that he was bed-ridden and suffering from prostate cancer. The said prayer of the defendant was declined, vide impugned order, though the plaintiff had not filed any reply. The affidavit of the said witness has been filed in the trial Court and as per that affidavit there is a deposition about the issues that are likely to arise in the dispute.

4. I am of the view that the very intention behind the provisions of Order xviii Rule 16 CPC is to record the evidence of a witness immediately at any time after institution of the suit if the said witness may not be available in future. The word used in the provisions are 'where a witness is about to leave the jurisdiction of the Court...'. Since the proposed witness in the present case is suffering from prostate cancer and is bed-ridden, it will be in the interest of justice if that witness is examined immediately, otherwise the impugned order if not set aside may lead to manifest injustice.

5. Considering all the facts and circumstances, I allow the petition, set aside the impugned order and direct the learned trial Judge to immediately examine the ailing witness and his cross-examination be completed either himself or through local commissioner. The parties are directed to appear before the Court concerned

on 27th October, 2005.

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