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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 574/2017, CM APPL.19812/2017
RAJESH KUMAR SHARMA

..... Petitioner

Through : Mr.Prashant Kr Mittal, Advocate.

versus

PARWATI SHARMA @ PUJA SHARMA & ORS

..... Respondents

Through : Mr.Anand Singh and Mr.Kartik
Malhotra, Advocates for respondent
No.1.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **27.11.2018**

1. This petition challenges the order dated 21.02.2017 passed by the learned Additional District Judge-North East-1, Karkardooma, Delhi in CS No.366/2016. The brief facts are:

In February, 2013, the respondent No.1 filed a suit for partition and injunction against the petitioner herein and respondent Nos.2 to 8. Only the petitioner herein contested the said suit and filed his written statement. On 28.04.2014 issues were framed and the petitioner was directed to lead his evidence to prove Will of the owner of the premises, in his favour.

On 06.012.2016 one of the attesting witnesses to the Will was examined and on 28.01.2017 the petitioner filed an application under Section 151 CPC for permission to examine second attesting witness of the Will. On 21.02.2017 vide impugned order the application was

dismissed.

2. It is pertinent to mention the impugned order notes that in the list of witnesses dated 09.05.2014, the petitioner had mentioned the name of Brij Mohan Sharma for the purpose of his examination.

3. On 28.04.2014 the petitioner was directed to file affidavits of his witnesses within four weeks. He did not file the affidavit of Sh.Brij Mohan Sharma. Again on 28.08.2014 the counsel for the petitioner undertook to file the affidavit within two days but yet again the said direction was not complied with. Again vide order dated 09.02.2015 the petitioner was directed to take steps for summoning the attesting witnesses of the Will who were to be examined prior to cross-examination of the petitioner but no steps were taken to summon the witness and even the cost of Rs.10,000/- was imposed vide order dated 28.09.2015. Thereafter, the case was transferred and last opportunity was granted to the petitioner for completion of his evidence vide order dated 22.09.2016. However, on the next date of hearing only the affidavit of the petitioner and one witness, namely, Sh.Satya Narayan Sharma was filed and the affidavit of Sh.Brij Mohan Sharma was again not filed despite the fact that on 04.11.2016 it was the last opportunity. The cross-examination of the attesting witness, namely, Sh.Satya Nayaran Sharma was recorded on 06.12.2016 and thereafter the application for examination of attesting witness, Sh.Brij Mohan Sharma was moved which was rightly rejected by the learned trial Court on the ground that it would cause prejudice to the respondent as it would have been appropriate if both the attesting witnesses were examined on the same day, lest the other

witness would be used to fill up the lacunae and gaps left by the first attesting witness. Even otherwise, as per law Will can be proved by only one attesting witness. Not only this, the conduct of the petitioner too shows his callous attitude in examining this witness despite various opportunities granted to him, hence, there is no ground to interfere in the impugned order and the petition is, therefore, dismissed. The pending application also stands disposed of.

4. No order as to costs.

YOGESH KHANNA, J.

NOVEMBER 27, 2018

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