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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **FAO(OS) 53/2016 & CM 6126/2016**

YOGESH KOHLI

..... Appellant

Through : Mr Siddharth Khattar with Mr Faisal Zafar

versus

GEETA SANON

..... Respondent

Through : Mr Puneet Aggarwal

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

29.04.2016

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This appeal has been preferred by the defendant in CS(OS) 1807/2003. The appeal is directed against the order dated 14.01.2016, passed by a learned Single Judge of this Court in OA 32/2015, which, in turn, was a chamber appeal assailing the order dated 26.11.2014, passed by the Joint Registrar (Judicial) in IA 20517/2014. The latter IA was preferred by the appellant/defendant seeking the striking out of the partial testimonies of PW1 and PW2 as contained in their affidavits by way of evidence towards examination-in-chief. The Joint Registrar had allowed the said application. Being aggrieved, the respondent/ plaintiff had preferred the chamber appeal, being OA 32/2015. The learned Single Judge by virtue of the impugned order has allowed the appeal partially inasmuch as the paragraphs expunged from the affidavit of PW2 were directed to be restored while the order was upheld in respect of the expunged paragraphs in the affidavit of PW1, being paragraphs 8 to 13 and 15.

We have heard the learned counsel for the parties. The reasoning adopted by the learned Single Judge in passing the impugned order is indicated by the following passage:-

“Since there are no specific pleadings contained in the suit, i.e. either in the plaint or in the replication of the plaintiff qua the grounds on which the will is claimed to be forged and fabricated, in my view, the learned Joint Registrar was justified in passing the impugned order, qua evidence sought to be led by plaintiff as PW-1, as it is well settled that no evidence can be led by a party beyond the pleadings. However, the said principle would not apply qua PW-2, who is not the plaintiff and claims to be an independent witness.”

We are of the view that the learned Single Judge has erred in the aforesaid reasoning. Once it is accepted by the learned Single Judge that there is no pleading with regard to a particular fact, no amount of evidence can be led by that party. It makes no difference whether the witness is the plaintiff or some other witness on behalf of the plaintiff. As long as there is no pleading with regard to a particular fact, no evidence can be led in respect thereof. Therefore, the learned Single Judge has erred in coming to the conclusion that this principle would not apply in respect of PW2, who is not a plaintiff and claims to be an independent witness.

Consequently, the impugned order is set aside and the order passed by the Joint Registrar (Judicial) dated 26.11.2014 is restored.

The appeal is allowed.

BADAR DURREZ AHMED, J

APRIL 29, 2016
SR

R. K. GAUBA, J