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

+ RSA 294/2016

SANJAY KHANNA

..... Appellant
Through: Mr. A.D. Malik, Advocate with Mr.
P.P.S. Rana, Advocate.

versus

SURENDER KHANNA

..... Respondent
Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **30.09.2016**

C.M. No.36348/2016 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.36347/2016 (condonation of delay)

2. For the reasons stated in the application, delay of 25 days in filing the appeal is condoned.

C.M. stands disposed of.

+ RSA No.294/2016 and C.M. No.36346/2016 (stay)

3. After arguments, counsel for the appellant states that appeal be

disposed of as not pressed inasmuch as the impugned judgment of the first appellate court dated 7.6.2016 only remands the suit for decision to the trial court after having proper pleadings, proper issues and thereafter allowing parties to lead evidence.

4. In my opinion, the operative part of the judgment of the first appellate court is completely justified because the respondent/plaintiff only pleaded ownership of the suit property without stating as to how the suit property was owned by the respondent/plaintiff for getting the relief of possession etc. Appellant/defendant/son of the plaintiff in the written statement however conceded existence of the Will of his mother, who owned the suit property, executed in favour of the father/respondent/plaintiff but it was contended that the mother was not of a sound mind when the Will was executed, and to this defence the respondent/plaintiff in the replication stated this as a matter of record. It is in these state of pleadings and issues that after leading evidence trial court decided the suit and therefore the first appellate court remanded the suit for a fresh decision after appropriate pleadings, framing of issues and leading of fresh evidence and which in the facts of the case is completely justified.

5. In any case, as per the request made on behalf of the appellant, the appeal is disposed of as not pressed.

VALMIKI J. MEHTA, J

SEPTEMBER 30, 2016

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