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

+ **FAO(OS) 602/2015**

BHUPINER SINGH NAGI Appellant

Represented by: Mr.Kapil Kher, Advocate.

versus

BALVINDER SINGH NAGI & ORS Respondent

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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28.01.2016

CM No.24854/2015 (Delay)

1. For the reasons stated in the application delay of 85 days in filing the appeal is condoned.
2. Application is disposed of.

FAO(OS) 602/2015

1. Impugned order dated April 09, 2015 disposes of IA No.20730/2014 filed by the appellant, wherein the prayer made is as under: -

“In view of the aforesaid facts and circumstances, it is most humbly prayed that the present application may kindly be allowed and the original Will dated 12.08.1976 of late Smt.Surjit Kaur may kindly be taken on record. Since the document is 30 years old and is being produced from the proper custody, this Hon’ble Court may presume that the signature and every other part of the said Will is duly executed and attested, or in the alternative, this Hon’ble Court may kindly permit the Defendant No.3 to lead additional evidence.”

2. The application was filed after parties had led their respective evidence and statements of counsel for the parties was recorded that they close their evidence. The application was filed thereafter with a prayer to only take on record the Will and raise a presumption of its due execution. No prayer was made to permit the applicant to lead further evidence.
3. The learned Single Judge has held that this was not the stage to consider raising any presumptions and all issues would be decided when the suit is finally heard.
4. Learned counsel for the appellant states that the grievance is to the fact recorded in the order dated April 09, 2015 that the original Will was not available.
5. We have seen the suit record. The original Will dated August 12, 1976 is in the suit file, but has not been exhibited. We further find that the Will was filed on August 14, 2014. Recording of evidence had been completed by September 18, 2013.
6. We therefore find no merit in the appeal in so far as relief has been declined. The factually wrong fact noted in the impugned order that the original Will is not on record is corrected to record that the original Will is on record, but it was filed after evidence was led and the Will has not been exhibited.
7. Argument of learned counsel for the appellant that the application should have been disposed of granting permission to the appellant to prove the Will is noted and rejected because before the learned Single Judge there was no prayer made to permit the appellant to lead evidence and prove the original Will.

8. The appeal is dismissed.
9. No costs.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 28, 2016
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