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

+ **FAO(OS) 54/2024, CAV 211/2024, CM APPLs. 25645-25647/2024**

**MUKESH GUPTA** ..... Appellant

Through: Mrs.Suruchi Mittal, Mr.Shubham  
Soni, Advocates

versus

**DANESH KUMAR GUPTA & ORS.** ..... Respondents

Through: Mr.Shivam Goel, Ms.Ramya S. Goel,  
Mr.Akash Katiyar, Advocates for R-1  
alongwith Respondent No.1 in  
person

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

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**02.05.2024**

1. Present appeal has been file challenging the order dated 16<sup>th</sup> January, 2024 passed by the learned Single Judge of this Court in I.A. No.17629/2022 under Sections 63 and 64 of the Indian Evidence Act, 1872 in a suit for partition being CS (OS) 4071/2014, whereby the application filed by the respondent no.1-plaintiff seeking permission to prove the certified copies of the will dated 20<sup>th</sup> July, 2005 was allowed and a cost of Rs.10,000/- was imposed upon the appellant-defendant no.1.
2. At the outset, learned counsel for the respondent no.1 raises a preliminary objection to the maintainability of the present appeal. In support of his submission, he relies upon the judgment of the Supreme Court in



***Shah Babulal Khimji vs. Jayaben D. Kania and Anr., (1981) 4 SCC 8,***  
wherein it has been held as under:-

*“...115... Similarly, orders passed by the Trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment...”*

3. In view of the aforesaid judgment of the Supreme Court, the present appeal is dismissed as non-maintainable. However, it is clarified that it shall be open to the appellant to challenge the impugned order in the appeal against the final judgment, in the event, it is against him.
4. With the aforesaid liberty, the present appeal alongwith applications stands dismissed.

**ACTING CHIEF JUSTICE**

**MANMEET PRITAM SINGH ARORA, J**

**MAY 2, 2024  
AS**