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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1106/2025 & CM APPL. 37609-37610/2025**

SHASHI KUMARI

.....Petitioner

Through: Mr. R.K. Sonkiya with Mr. Ranjeet
Thakur, Advocates.

versus

NAVEEN CHAUHAN

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

ORDER

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02.07.2025

1. Petitioner is defending a suit and is aggrieved by order dated 30.04.2025 whereby his request to place on record one registered *Will* has been declined.
2. The Court has gone through the impugned order and the facts of the present case are little unusual.
3. The suit filed by respondent Sh. Naveen Chauhan was dismissed by the learned Trial Court on 26.09.2022.
4. The plaintiff, accordingly, filed an appeal before the learned First Appellate Court and the learned First Appellate Court *vide* judgment dated 05.04.2024 remanded the matter to the learned Trial Court with direction to appreciate the testimony of DW-2 and then to conclude whether the *Agreement to Sell* was executed by her or not.
5. During reconsideration of the abovesaid matter, the defendants moved an application under Order VIII Rule 1-A CPC praying therein that *Will* dated 14.01.2011, executed by the mother of the parties, in favour of the defendant, be permitted to be placed on record. It was submitted that the abovesaid *Will* could not be brought on record at the earlier stage as, at that time, their mother

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was alive and the *Will* attained legal sanctity only upon her demise on 06.02.2023.

6. The learned Trial Court has, however, keeping in mind the scope of appreciation of the suit in question, in terms of the remand order, declined to take any such document on record.

7. This Court has gone through the order passed by the learned First Appellate Court. The relevant observations appearing in para 23, 24 and 25 of said order read as under:-

“23. Since the Ld. Trial Court has not at all applied mind to evidence of DW-2, nor given any finding by appreciating the evidence, one way or the other, I do not have the benefit of the view of the Ld. Trial court on these aspects. It was an important aspect which ought to have been considered by the Ld. Trial Court. Further, whether an opportunity to re-examine the witness was required to be given and it seems that denying defendant the opportunity to re-examine this witness is another error which was committed. The defendant ought to have been given an opportunity to re-examine the witness in view of the contradictory stand being taken by the witness after stepping into the witness box.

24. In these circumstances, the matter is remanded back to the Ld. Trial Court with the direction that the Ld. Trial Court should appreciate the testimony of DW-2 and conclude whether the Agreement to sell was executed by the GPA holder i.e. DW-2 or not.

25. List before the Ld. Trial Court on 31.05.2024.”

8. The abovesaid order would, clearly, indicate the scope of appreciation of the matter. The abovesaid order would, reflect that the learned First Appellate Court had also observed that the defendant ought to have been given an opportunity to re-examine the witness (stated to be DW-2) in view of the contradictory stand being taken by the witness after stepping into witness box.

9. Learned counsel for the petitioner submits that DW-2 is mother of the parties, who has, unfortunately, expired.



10. It is not in dispute that when the appeal was pending adjudication before the learned Appellate Court, the said witness i.e. DW-2 Smt. Rajwati had already expired and the *Will* was also within the knowledge of the petitioner herein. For the reasons best known to them, they did not bring such fact to the knowledge of the learned First Appellate Court and did not seek any permission in this regard to the effect that if the matter was to be remanded, they may also be permitted to place on record the abovesaid Will, particularly, in view of the fact that DW-2 is no more alive.

11. After hearing arguments for some time, learned counsel for the petitioner does not press the present petition. He, however, seeks liberty to move appropriate application before the learned First Appellate Court to seek permission to the abovesaid limited aspect only.

12. In view of the above, the present petition is dismissed as withdrawn. Liberty, as prayed, is granted.

13. It is, however, made clear that this Court has not made any observation on the merits of the case as such and it is expected that, as and when any such application is filed before the learned First Appellate Court, it shall consider the same in accordance with law.

14. The pending applications, if any, also stand disposed of accordingly.

MANOJ JAIN, J

JULY 2, 2025/st/pb