



2025:DHC:6794



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 11th August, 2025***

+ CM(M) 1396/2018

NEENA KHANNA

.....Petitioner

Through: Ms. Shalini Kapoor with Mr. Dhruv Chawla, Ms. Divyanshi Saxena, Mr. Udit Bhatiani, Ms. Aadya Sinha, Advocates.

versus

WENGER & CO & ORS

.....Respondent

Through: Mr. Ankit Jain, Sr. Advocate with Mr. Naresh Gupta, Mr. Rachit Gumber, Advocates.
Mr. Swastik Singh, Advocate.**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)****CM(M) 1396/2018& CM APPL. 49111/2025**

1. Petitioner seeks early hearing of the matter.
2. The Court has gone through the impugned order dated 01.10.2018 whereby the request of plaintiff/petitioner seeking to lead secondary evidence was disallowed, primarily, for the reason that the plaintiff herself had, at earlier point of time, during the pendency of present suit only, had sought exemption from filing original documents, which was allowed by this Court, when the suit was pending before this Court on its original side. Thereafter also, she moved an application seeking to place on record the document in question i.e. original *Will* of Sh. R.S. Tandon.
3. However, during *admission/denial of documents*, the *Will* in question was found to be a photocopy and not the original one and it was in the



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abovesaid backdrop of the facts that the plaintiff sought permission to lead secondary evidence.

4. Learned counsel for petitioner strongly relies upon *Prem Chandra Jain and Others. vs Sri Ram and Others.*: 2009 SCC OnLine Del 3202 and submits that learned Trial Court should have, at least, granted petitioner a due opportunity of leading evidence, with respect to the controversy in question and her application should not have been decided, merely, on the basis of the averments made in the application.

5. Para 5 of the abovesaid judgment reads as under:-

“5. The court, on an application seeking permission to lead secondary evidence, even if setting out reasons as contained in either of the clauses of Section 65, cannot take a decision on the correctness of the reasons. The application thus serves no purpose except delaying the proceedings. It is however often found that the courts allow or disallow the applications, without giving an opportunity to the parties for laying a foundation for reception or rejection of secondary evidence. Such procedure is impermissible in law. Factual controversies cannot be adjudicated on applications. That is however not to be understood as allowing a mini-trial on this aspect. The party seeking to prove document by secondary evidence is to lead evidence of the existence of circumstances/situations in which secondary evidence is permissible, during leading its evidence, whether by way of examination of witnesses or cross examination of opponents witnesses, in the suit/other proceeding itself. It will be decided at the stage of disposal of suit only, whether case for leading secondary evidence has been made out or not and if so, whether document stands proved by secondary evidence.”

6. Learned Senior Counsel for respondent also submits that he would have no objection if the present petition is disposed of in terms of the abovesaid specific directions and that the learned Trial Court can always, at a later stage of the case, can take appropriate decision whether the petitioner



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herein meets the foundational requirement for leading secondary evidence or not.

7. Present petition is, accordingly, disposed of in aforesaid terms and the impugned order stands modified to the abovesaid extent and learned Trial Court would, therefore, be at liberty to consider the above aspect of leading secondary evidence afresh in terms of *Prem Chandra Jain* (supra).

8. Pending application also stands disposed of in aforesaid terms.

9. Date already fixed i.e. 28.10.2025 stands cancelled.

(MANOJ JAIN)
JUDGE

AUGUST 11, 2025/ck/sw/JS