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

% **Date of decision: 30th April, 2025**

+ FAO 165/2012, CM APPL. 8796/2022, CM APPL. 8797/2022, CM APPL. 8798/2022 & CM APPL. 17973/2024

PRABHA DEVI

.....Appellant

Through: Mr. Munish Kumar Singh,
Adv.

versus

STATE & ORS

.....Respondents

Through: Mr. Manashwy Jha, Adv. for R1.
Mr. Vidit Gupta, Mr. Navin Bainsla
& Mr. Rajesh Bansal, Advs. for R2.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 25718/2025

1. This application is moved on behalf of the applicant/appellant under Order XXVI Rule 10A read with Section 151 of the Code of Civil Procedure, 1908 ["CPC"] read with Section 39 of the Bhartiya Sakshya Adhinyam, 2023 ["BSA"] seeking directions of this Court for appointment of an expert (writing expert/forensic expert/document examiner) and to submit his report before this Court.
2. Notice of the present application has been served upon the respondents. However, no reply is filed as yet nor any reply is required.
3. Having heard the learned counsel for the applicant/appellant and on perusal of the record, I find that the present application is bereft of any merits.



4. In a nutshell, the applicant/appellant has preferred an appeal under Section 299 of Indian Succession Act, 1925 [“ISA”] thereby assailing impugned Judgment dated 30.11.2021 passed by learned Additional District Judge-02, South District, Saket Courts, New Delhi [“**Probate Court**”] whereby the learned Probate Court had granted Probate in respect of last and final Will dated 30.03.1996 left behind by Smt. Laxmi Devi in favour of respondent No.2/Smt. Geeta, who is her niece.

5. It appears that during the course of long trial, the respondent No.2/Smt. Geeta (petitioner before the learned Probate Court) examined herself as PW-1 and also an attesting witness to the Will, namely Shri Moolchand as PW-2. Suffice it to state that although several objections were taken by the applicant/appellant disputing the execution and thereby genuineness of Will in question, the learned Probate Court considered the testimony of attesting witness besides certain writings, which were made by the deceased-testatrix in her diary, wherein she had exhibited her love and affection for the respondent No.2/Smt. Geeta and finding that the Will was executed by the testatrix in her sound disposing state of mind, the objections to the petition under Section 299 of the ISA, were dismissed.

6. Learned counsel for the applicant/appellant has urged that Will in question has been typed in Hindi script and the Will is fabricated inasmuch as it was typed after obtaining signatures of the deceased-testatrix on some blank papers. It was urged that if the document expert is examined in the present matter, he would be able to clarify if signatures on the Will were put by deceased-testatrix after it was typewritten or before it was typewritten.



7. On a perusal of testimony of witness examined in the present matter, this Court is of the view that no useful purpose would be served by examining any expert witness. Without expressing any opinion on the merits of the case, much time has since elapsed from the date of filing of the petition, that was instituted on 15.01.2009. Even the present appeal is pending since 17.04.2012. The present application is now purportedly moved on 14.04.2023. At this juncture, it would be expedient to reproduce the provisions of Order XLI Rule 27, which provides as follows:

“Order 41 Rule 27. Production of Additional Evidence in Appellate Court.

- (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if-
- (a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or
 - (aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or
 - (b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.
- (2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.”

8. A bare perusal of the aforesaid provision would show none of the conditions for allowing additional evidence are made out in the present matter. The applicant/appellant had lot of time to seek examination of such an expert during trial and even after instituting the present appeal. Now, allowing this application at this stage would result in enormous wastage of



time and efforts.

9. In view of the foregoing reasons, the present application is dismissed.

10. A copy of this order be sent to the learned Probate Court for information and records.

FAO 165/2012

11. Re-notify on 11.07.2025.

DHARMESH SHARMA, J.

APRIL 30, 2025/*Sadiq*