



\$~17

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

+ **CS(OS) 346/2016**

AJIT GOGNA

..... Plaintiff

Through: Mr. Kapil Lalwani, Adv.

Versus

JITENDER GOGNA & ORS

..... Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

10.05.2019

IA No.6851/2019 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

IA No.6850/2019 (of plaintiff u/S 151 CPC)

3. None appears for the defendant.
4. The plaintiff seeks a decree forthwith in terms of paragraph 12 of the order dated 31st January, 2018.
5. The counsel for the plaintiff states that FAO(OS) No.51/2018 preferred by the defendant No.1 against the order dated 31st January, 2018 was dismissed vide order dated 12th October, 2018 and Special Leave Petition preferred thereagainst was also dismissed.
6. FAO(OS) No.51/2018 preferred against the order dated 31st January, 2018 was dismissed with liberty to the defendant No.1 to file a review application before this Bench. The said Review Petition No.439/2018 filed by the defendant No.1 was disposed of vide judgment dated 27th February, 2019.

CS(OS) 346/2016

Page 1 of 2



7. While the stand of the defendant No.1 on 31st January, 2018 was that the original Will set up by the defendant No.1 and of which copy was filed, was with the defendant No.1 and the defendant No.1 will file the same and in which context it was held in paragraph 12 of the said order that if the defendant No.1 did not file the original Will, the plaintiff or any of the other defendants may apply for decreeing the suit forthwith, the stand of the defendant No.1 in the Review Petition was that the original Will had been lost and he will be proving the same by secondary evidence and for which reason the parties were relegated to evidence.

8. I have thus enquired from the counsel for the plaintiff, whether the plaintiff desires to lead any evidence.

9. The counsel for the plaintiff is not willing to commit either way and states that he is seeking a decree in terms of paragraph 12 of the order dated 31st January, 2018.

10. Without the plaintiff committing so, the plaintiff is not entitled to decree. It will have to be examined, whether the defendant No.1 by secondary evidence has proved the Will and such an exercise can be undertaken only after the plaintiff closes evidence.

11. Moreover, it is found that the evidence of the defendant No.1, who was directed to lead evidence, is also not concluded yet and is listed next on 2nd July, 2019.

12. The application is misconceived and is dismissed with costs of Rs.10,000/- payable to the Delhi High Court Advocates Welfare Trust.

RAJIV SAHAI ENDLAW, J.

MAY 10, 2019/‘bs’..

CS(OS) 346/2016

Page 2 of 2