

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

Reserved on : 08.08.2013

Pronounced on: 11.10.2013

+ CS(OS) 1502/2010

RANVIR DEWAN & ANR

Through

versus

RASHMI KHANNA & ORS

Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

..... Plaintiffs

Mr.Kamaldeep Dayal and
Ms.Yashodhara Anand Dayal,
Advocate.

..... Defendants

Mr. Harish Malhotra, Senior
Advocate with Mr.Anil Mittal,
Advocate for D-1 &2.

JAYANT NATH, J.

1. The plaintiffs have filed the present suit for declaration, mandatory and permanent injunction. Plaintiff No. 1 is the son of plaintiff No. 2. Defendant No. 1 is the daughter of plaintiff No. 2 and the sister of plaintiff No. 1. Defendant No. 2 is the husband of defendant No. 1. Defendant No. 3 is a tenant stated to have been illegally inducted on the second and third floor of the suit property by defendant No. 1.

2. The property which is the subject matter of the present proceedings is property bearing No. D-246, Defence Colony, New Delhi. As per the plaintiffs, the suit property was the self acquired property of late Col. (Retd). B. R.Dewan who was the father of plaintiff No. 1 and defendant No. 1 and

husband of plaintiff No. 2. Late Col. (Retd). B. R.Dewan is stated to have executed various Wills on different dates. His last Testamentary Will is dated 24.06.1984. He died on 16.09.1984. A probate case No. 16/1986 was filed before this Court by plaintiff No. 2, his wife. On 12.10.1987, this Court granted probate of the said Will dated 24.06.1984.

3. As per the Will dated 24.06.1984, the ground floor was willed to plaintiff No. 1 while the first floor was willed to defendant No. 1. Certain rights , however, were given to plaintiff No. 2. She was entitled to live and reside in the suit property free of rent and also enjoy the income from the tenants. She was entitled to dispose the tenants and/or take new tenant of her own will in the capacity of being the owner till her demise. It was further directed that in case, plaintiff No. 1 and defendant No. 1 sell their portions of the suit property, they would pay 1/5th of the sale consideration to Sh. Ashok Dewan, the son of the first wife of late Col. (Retd).B. R.Dewan. It was further directed that in case they want to construct a second storey in the defence colony property, then they would contribute equally and share the property equally unless they mutually desire otherwise.

4. In the meantime before the probate was granted, on 26.01.1986 a family settlement was entered into between the legal representatives of late Col. (Retd). B. R. Dewan including plaintiffs No. 1, 2 and defendant No. 1. Under the family settlement, a residential plot at R-7/189, Raj Nagar, Ghaziabad was settled as the exclusive property of Brig. Ashok Dewan, the son of late Col. (Retd). B. R.Dewan from his first wife. Certain other payments were also made to Brig. Ashok Dewan and Smt. Kamla Dewan.

The said Brig. Ashok Dewan and Kamla Dewan relinquished all their claims to the property of the deceased.

5. Plaintiff No. 1 in the plaint claims to be a largely self-made man who is happily married and has two children. On the other hand, it is claimed that defendants No. 1 and 2 had severe marital problems for most of their married life. It is further stated that defendants No. 1 and 2 could not manage their household expenses within the earnings of defendants No. 2 and this was the main reason for their marital problems. It is further stated that plaintiff No. 2 had showered them with lavish gifts for which there was always a constant demands on weddings, birthdays and festivals. They were not satisfied. It was stated that this was a severe drain on the funds of plaintiff No. 2.

6. Plaintiff No. 1 who was residing abroad is stated to have executed a General Power of Attorney in favour of plaintiff No. 2 on 27.09.1984 authorising her to deal on his behalf with respect to the suit property. The said Power of Attorney has been revoked on 04.05.2010.

7. It is sated that a need was felt to carry out repairs in the suit property as it was 45 years old. Plaintiff No. 1 claims that he offered to carry out the repairs and was also willing to pay 100% of the total cost to renovate the ground floor. However, it is stated that defendant No. 1 was not willing to contribute any capital to the repair of the first floor. Hence, as a practical solution a collaboration was entered into with a builder so that a basement, ground floor plus two floor above could be constructed.

8. A family settlement dated 23.07.2008 was also entered into between plaintiffs No. 1, 2 and defendant No. 1. The said settlement recorded that the entire basement and ground floor (including one parking space in the drive way) along with 40% freehold rights were settled in favour of plaintiff No. 1. The entire second floor including roof and right to build and construct the third floor at her own cost was settled in favour of defendant No. 1. Defendant No. 1 was provided 30% of the freehold share. The balance 30% was to vest with the builder. Rights of the roof of the third floor and above were to be shared 50% each between plaintiff No. 1 and defendant No. 1. The family settlement also recorded that the life interest in the entire property would remain with plaintiff No. 2.

9. A fresh collaboration agreement was signed with another builder-M/s Chandan & Chandan Enterprises Pvt. Ltd. on 17.12.2008. Plaintiff No.1 claims that the quality of the agreements got drafted by defendant No.2 was fairly mediocre. He states that when he asked defendants No.1 and 2 about the quality of the legal work, he was told that these were the standards that existed in India and that everybody was signing such agreements and that it was unreasonable for plaintiff No.1 to expect high professional standards that he was used to abroad.

10. The builder made a payment of Rs. 10 lacs on signing of the agreement with three cheques drawn in favour of plaintiffs No. 1, 2 and defendant No. 1 respectively. As per the Agreement a further sum of Rs. 1 crore was to be paid on receiving vacant possession of the house and another sum of Rs. 10 lacs was to be paid on completion of the project. The

plaintiffs claim that it was agreed that the amount which was to be received from the builder would be deposited in an escrow account and the interest on the deposit was to be received by plaintiff No. 2. Further it is claimed that defendant No. 1 took her share, namely, Rs. 33 lacs in her own personal account and thereafter, utilised the said sum of Rs. 33 lacs for entering into an agreement dated 12.02.2009, behind the back of plaintiff No. 1, with the builder for construction of the third floor. Various other allegations are made against defendants No. 1 and 2 about selection of the builder.

11. It is further stated that defendants No. 1 and 2 have on 07.07.2010 rented two floors to defendant No. 3 w.e.f. 09.07.2010 describing defendant No. 1 as the absolute owner. It is stated that defendants No. 1 and 2 had no right whatsoever to enter into the said rent agreement as plaintiff No. 2 has a life interest over the property. The rental agreement provides a rent of Rs. 1,50,000/- per month for the second floor and Rs.1,75,000/- per month for the third floor. Further an interest free refundable security deposit of Rs.9,75,000/- was also paid. It is claimed that the amount of rental and security deposit should accrue only to plaintiff No. 2 in terms of the family settlement and Will dated 24.06.1984 of Late Col.B.R. Dewan. It is further stated that behind the back of plaintiff No. 2, defendants No. 1 and 2 have got the mutation done of the second and third floors in their names. It is also further claimed that the life interest that was given to plaintiff No. 2 vide Will dated 24.06.1984 is in lieu of her maintenance to which plaintiff No. 2 had a pre-existing right. Hence the present suit has been filed seeking various reliefs including a decree of declaration that plaintiff No. 2 is entitled to the rental, security deposit and all other income accruing from the

second and third floors of the suit property. Declaration is also sought that the life interest granted in lieu of maintenance to plaintiff No. 2 in the suit property confers on plaintiff No. 2 an absolute ownership interest in the suit property.

12. The defendants No.1 and 2 have filed their written statement. It is stated in the written statement that plaintiff No. 1 was the absentee son of plaintiff No. 2 who was working abroad for the last 35 years. It is further stated that plaintiff No. 1 rarely found time to visit and care for his parents including his aged widow mother, plaintiff No. 2. It is further stated that plaintiff No. 1 has visited plaintiff No. 2 barely 4 to 5 times in 35 years and not even once since 2000 till April, 2010. It is stated that defendant No. 2 is a senior retired army officer who has served for 34 years with honour and dignity with the Armed Forces. The alleged marital problems of defendants No. 1 and 2 have been strongly refuted and denied. It is also denied that any lavish gifts have been showered by plaintiff No. 2 as has been falsely alleged. It is stated that the present litigation filed by the plaintiffs is a proxy litigation and plaintiff No.2 has been unnecessarily instigated.

13. The written statement denies that plaintiff No. 2 was given life interest in the suit property in lieu of her right of maintenance by late Col. B.R. Dewan. It is further stated that for the maintenance of plaintiff No. 2, the Will provided bank balances, shares, debentures, etc. which were to go to her. It is also pointed out that a registered lease deed dated 09.04.1997 was executed by the L&DO in favour of plaintiff No. 1 and defendant No. 1 whereby confirming complete ownership rights in the suit property to them

in equal shares. The said conveyance deed dated 09.04.1997 is a registered document. The conveyance deed was got executed by plaintiff No. 2 on behalf of plaintiff No. 1. Hence, plaintiff No. 2 is fully aware about this fact and has not even challenged the said conveyance deed and is now estopped from claiming that the life interest granted to her under the Will dated 24.06.1984 has conferred absolute ownership right on her. It is stated that plaintiff No.2 made her daughter defendant No.1 sign all the relevant documents i.e., agreement etc. with the developer as owner and she herself signed the said documents as attorney holder of her son who is said to be also a legal owner.

14. Defendants have denied all the other allegations made against them. It is stated that pursuant to the collaboration agreement dated 17.12.2008 with the builder, the plaintiffs scouted around for a suitable accommodation near and around defence colony for the residence of plaintiff No. 2 for the duration of construction period. Plaintiff No. 1 had already indicated that it was not practical to move plaintiff No. 2 abroad to Singapore where he was staying. Accordingly, it is stated that the defendants had offered to plaintiff No. 2 to reside at their residence for the duration of the construction. Plaintiff No. 2, accordingly, stayed with the defendants from January, 2009 to July, 2010. It is submitted that defendants No.1 and 2 took all due care of their mother. It is denied that there was any agreement to deposit any sum in an escrow account as claimed. It is stated that though plaintiff No.1 had suggested opening of an escrow account however it was not felt necessary to do so. It was felt at that time that plaintiff No.2 had received a sum of Rs.36.68 lacs from the builder as her share and would also receive income

from the second floor and the right to reside on the ground floor and the basement and this was sufficient to ensure the financial security of plaintiff No.2. It is stated defendants No. 1 and 2 acted bona fide with an intention to get maximum returns of the property and keeping in view the life time interest of plaintiff No. 2, and that plaintiff No. 2 was always kept in the picture. It is stated that all the security deposit and the rents have been deposited in Court. It is admitted that plaintiff No. 2 has a life interest in the property to reside and enjoy the rental income during the life time only of the second floor. It is stated that defendant No. 1 is the legal owner of the second and third floors of the suit property. It is further stated that whatever share of plaintiff No. 2 has as per the family settlement dated 23.07.2008 would be honoured. It is denied that the life interest of plaintiff No. 2 has matured to absolute ownership right in any manner whatsoever.

15. Issues were framed in this case on 21.02.2013 which read as follows:

- (i) Whether under the Will dated 24.06.1984 of Late Col. (Retd.) B.R. Dewan, the plaintiff No. 2 became the absolute owner of property No. D-246, Defence Colony, New Delhi? OPP
- (ii) What is the effect if any of the execution of the Conveyance Deed of freehold rights in the land underneath the property in the names of plaintiff No. 1 and defendant No. 1 and the plaintiffs not claiming any relief with respect thereto? OPD
- (iii) Relief.”

16. On 21.02.2013, it was also clarified that the parties need not lead evidence and the matter could be argued accordingly. It was also clarified that under issue No. (ii), the parties shall be entitled to rely upon the

mutation, lease and agreements executed with the builder for re-development of the property as well as family settlement and qua all of which documents there is no dispute.

17. On 04.03.2013 it was clarified that effect of the family settlement dated 23.07.2008 reiterating and admitting the life interest of plaintiff No. 2 under the Will dated 24.06.1984 despite execution of conveyance deed dated 09.04.1997 is a point which is covered by issues No. 1 and 2 which have already been framed.

18. It may also be noted that vide order dated 27.07.2010, a direction was issued to deposit the rent and security in respect of suit property in court. Defendants No. 1 and 2 have done the needful.

19. I will first deal with issue No. (i) which reads as under: _

- (i) Whether under the Will dated 24.06.1984 of Late Col. (Retd.) B.R. Dewan, the plaintiff No. 2 became the absolute owner of property No. D-246, Defence Colony, New Delhi? OPP

20. I have heard learned counsel for the parties.

21. Learned counsel appearing for the plaintiff has extensively argued that in terms of Section 14(1) of the Hindu Succession Act, plaintiff No. 2 as per the Will dated 24.06.1984 in lieu of her pre-existing right to maintenance, received a life interest in the suit property. In view of Section 14(1) of the said Hindu Succession Act, the said life interest has become an

absolute interest and accordingly, plaintiff No. 2 has become absolute owner of the said suit property. Learned counsel has relied upon the following judgments on interpretation of Section 14(1) of the Hindu Succession Act:-

- (i) ***Mangat Mal (dead) vs. Punni Devi (1995) 6 SCC 88***
- (ii) ***Maharaja Pillai Lakshmi Ammal vs. Mahraja Pillai Thillanayakom Pillai (1998) 1 SCC 99***
- (iii) ***V.Tulsamma v. Sesh Reddy (1977) 3 SCC 99***
- (iv) ***Palchuri Hanumayamma vs. Tadikamalia Kotlingam (dead) by LRs. (2001) 8 SCC 552***
- (v) ***Jagganathan Pillai v. Kunjithapadam Pillai & Ors. (1987) 2 SCC 572***
- (vi) ***Thota Sesharathamma vs. Thota Manikyamma (Dead) by LRs. (1991) 4 SCC 312***
- (vii) ***C.Masilamani Mudaliar vs. Idol of Sri Swaminathaswami Swaminathaswami Thirukoli (1996) 8 SCC 525***
- (viii) ***Smt. Naraini Devi vs. Ramo Devi (1976) 1 SCC 574***
- (ix) ***Gulwant Kaur vs. Mohinder Singh (1987) 3 SCC 674***
- (x) ***Seth Badri Prasad vs. Srimati Kanso Devi (1969) 2 SCC 586***
- (xi) ***Bai Vajia (Dead) by LRs. Vs. Thakorbhai Chelabhi (1979) 3 SCC 300***
- (xii) ***Mangal Singh vs. Smit Rattno (Dead) by LRs (1967) 3 SCR 454***
- (xiii) ***Dr. Mahesh Chand Sharma vs. Raj Kumari Sharma (Smt.) (1996) 8 SCC 128***

22. It is argued that the aforesaid judgments have taken the view that a

male is bound to maintain his wife and his children. It is claimed that a wife is entitled to be maintained by the husband whether he possesses property or not. A widow who does not succeed to the estate of her husband as his heir is entitled to maintenance out of his separate property as well as out of property in which he was coparcener at the time of his death. It is claimed that plaintiff no. 2 was given life interest in the suit property in lieu of her pre-existing right of maintenance. Hence, in terms of Section 14(1) of the Hindu Succession Act, the said right has fructified into an absolute right and plaintiff No.2 is the absolute owner of the suit property. Reliance is also placed upon the memorandum of family settlement dated 23.07.2008 which was executed between plaintiffs No. 1, 2 and defendant No. 1 which is stated to categorically provide that life interest of plaintiff No. 2 as per the Will dated 24.06.1984 in the property shall remain.

23. Learned senior counsel appearing for the defendants No. 1 and 2 has, however, contended that there is no pre-existing right of maintenance of plaintiff No. 2. He submits that the only right that a widow has for maintenance is under Sections 22 and 23 of the Hindu Adoption and Maintenance Act. Under the said provisions the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased. Amount of maintenance is also at the discretion of the court, whether any and what maintenance shall be awarded. He submits that other than these statutory provisions there is no other right of maintenance to a Hindu widow. It is further stated that plaintiff No.2 cannot claim any maintenance. She is getting a pension of Rs.40,000/- per month from Indian Army where her husband had served. In addition, she

has got Rs.40 lacs from the builder and is also getting rentals of Rs.40,000/- per month. It is stated that for her maintenance the Will bequeaths properties to plaintiff No.2 which are elaborated in paragraphs 10 to 14 of the said Will which includes plot of land at Ghaziabad, UP, Bank Balance, shares, debentures, fixed deposits, jewellery and other movables. Hence, it is stated that she has no right to claim maintenance.

It is also denied that right to receive rent from the property and reside therein during her lifetime was in lieu/view of any pre-existing maintenance rights of plaintiff No.2. It is further stated that the argument about pre-existing rights of plaintiff No.2 to maintenance was not raised in the Original Plaint but have been added pursuant to an amendment of plaint allowed on 9.4.2012. It is hence stated that the sad contention is an afterthought. It is contended that Section 14(1) of the Hindu Succession Act would have no application whatsoever. Reliance is placed on the following judgments to submit that plaintiff No.2 gets no rights under Section 14(1) of the Hindu Succession Act:

- (i) ***Mst. Karmi vs. Amru & Ors., AIR 1971 SC 745***
- (ii) ***Rukmanand Bairoliya vs. The State of Bihar & Ors. AIR 1971 SC 746***
- (iii) ***Sadhu Singh vs. Gurdwara Sahib Narike & Ors. AIR 2006 SC 3282***
- (iv) ***Sushma Thadani vs. Yatish Kumar Satija & Anr., 2007(96) DRJ 199***
- (v) ***Jagan Singh (Dead) Through LRs. Vs. Dhanwanti and Anr., (2012) 2 SCC 628***

(vi) *Shivdev Kaur vs. R.S. Grewal, AIR 2013 SC 1620*

24. It is further stated by learned senior counsel for defendants No.1 and 2 that even otherwise the rights bequeathed to plaintiff No.2 under the Will would be covered under clause of 14(2) of the Hindu Succession Act as it is a property acquired by plaintiff No. 2 under a Will and to such acquisitions, the application of Section 14(1) of the Act has been expressly excluded.

25. It is also argued by learned senior counsel appearing for the defendant that as per the Will dated 24.06.1984 the suit property was to vest with defendant No.1 and plaintiff No.1 absolutely. Reliance is placed on various clauses of the Will to state that these clauses clearly envisage that plaintiff No.1 and defendant No.1 are the absolute owners of the respective portions bequeathed to them. Reliance is specially placed on clause 9 of the Will dated 24.6.1984 which states that plaintiff No.1 and defendant No.1 would be the owners uptill death of plaintiff No.2, who will be entitled to live and reside in the said house and enjoy all the income from the tenants. Legal ownership was to vest with plaintiff No.1 and defendant No.1 of their respective portions. It is also stated that the Clauses of the Will provide that plaintiff No.1 and defendant No.1 are to compensate Mr.Ashok Dewan the son from the first wife of Col. Dewan with a sum of Rs.50,000/- each totalling Rs.1,00,000/- within two years of the demise of the testator/Col.B.R.Dewan. Further, the provision of the Will permitted plaintiff No.1 and defendant No.1 to sell their respective portions and if they do so then they shall pay 1/5th of the sale consideration to Mr.Ashok Dewan. Hence it is contended that Plaintiff No. 1 and defendant No. 1 are the

absolute owners of the suit property as per the Will dated 24.06.1984, and the claim of plaintiff No. 2 to absolute ownership is false.

26. It is further argued that even if plaintiff No.2 had any rights to the suit property, as claimed by the plaintiff the said rights stand completely extinguished in view of the Conveyance Deed executed by L&DO in favour of plaintiff No.1 and defendant No.1 pertaining to the suit property dated 9.4.1997. It is stated that the registered conveyance deed confers absolute rights in the suit property on plaintiff No.1 and defendant No.1. It is further stated that plaintiff No.1 and defendant No.1 shared cost of conversion of the property from lease hold to free hold which subsequently led to execution and registration of the conveyance deed dated 09.04.1997. It is stated that at no stage have plaintiffs challenged the said registered Conveyance Deed. In the absence of a challenge to the same, if any rights, of any sort did devolve upon plaintiff No.2 pursuant to the Will the same stands extinguished. It is stated that plaintiff No.2 was fully aware about the Conveyance Deed as she signed the same as Power of Attorney Holder of plaintiff No.1.

27. It is further stressed that the present litigation is only a proxy litigation by plaintiff No.1 who is using his mother. Reliance is placed on various averments to show that essentially the present case is an attempt by plaintiff No.1 to claim rights.

28. It is further contended that as far as the third floor is concerned in any case the plaintiff No.2 has no right to the same whatsoever. Reliance is

placed on clause 9 of the Will which provides that in case construction is carried out on the second story then plaintiff No.1 and defendant No.1 would contribute equally and share the property “unless they mutually desire otherwise”. Hence, it is stated that the family settlement which was executed by the parties on 23.7.2008 is a settlement which was an agreement as permitted in the Will. Reliance is placed on Clause 3 of the family settlement which states that the entire second floor including roof of second floor, with right to build and construct third floor as per rules and bye-laws at her own cost and expenses and one parking space would belong to defendant No.1 and all other parties shall have no right, title or claim to the same. Hence, it is stated that even otherwise, as per the family settlement the defendant No.1 is now the absolute owner of the third floor. Plaintiff No. 2 has no right to collect rent for the third floor. It is further argued that same is the position regarding the second floor.

29. Reference may first be had to Section 14 of the Hindu Succession Act which reads as follows:-

“14. Property of a female Hindu to be her absolute property-(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.- In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also

any such property held by her as *stridhana* immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

30. To understand the legal position regarding interpretation of Section 14 of the Hindu Succession Act, reference may first be had to some of the judgements relied upon by the learned counsel for the plaintiff.

31. The basic judgment on which the learned counsel stresses upon is the case of *V. Tulsamma v. Sesh Reddy (supra)*. The majority Bench in the said case noted that sub Sections 1 and 2 of Section 14 of the said Act were presenting serious difficulty in construction and that this is a classic instance of statutory provision which by reasons of its inapt draftsmanship, has created endless confusion. The facts of that case were that the husband of Tulsamma died in the year 1931 in a state of jointness with his step brother. The Appellant Tulsamma filed a petition for maintenance against the respondent. The parties thereafter arrived at a settlement. Under the compromise, Tulsamma was allotted scheduled properties but to enjoy only limited interests with no power of alienation at all. The properties were to revert back to the plaintiff after the death of Tulsamma. Tulsamma continued to remain in possession of property even after coming into force of the Hindu Succession Act. The Court while interpreting Section 14(2) of Hindu Succession Act, held as under:-

“69. ... This circumstance would also seem to indicate that the legislative intendment was that sub-section (2) should be applicable only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right-a kind of acquisition akin to one under gift or will. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.”

32. It was further clarified that when a specific property is allotted to a widow in lieu of her claim for maintenance, allotment would be in satisfaction of her *jus ad rem*, namely a right to be maintained out of a joint family property. It would not be a grant for the first time without any pre-existing right in the widow. In the facts of that case, as the properties in question were acquired by the appellant therein in a compromise in lieu/satisfaction of her right of maintenance, it was held that Section 14(1) was applicable and the appellant in that case must be deemed to become a full owner of the properties, allotted to her in the settlement.

33. In ***Jagganathan Pillai v. Kunjithapadam Pillai (supra)*** the Hon’ble Supreme Court clarified that Section 14(1) of the Hindu Succession Act would apply to any property possessed by a Hindu female acquired before the commencement of the Act or after the commencement of the Act. This matter pertains to a widow’s estate acquired by a widow as understood in Old Shastric Hindu Law.

34. Similarly, in the case of ***Gulwant Kaur vs. Mohinder Singh (supra)***, the Supreme Court stated that as per the explanation of Section 14 of the Act, the right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if the widow is in possession of the property in lieu of maintenance.

35. Similarly, in ***Mangat Mal (dead) vs. Punni Devi (supra)***, the case related to that of a widow of a coparcener who claimed that she was entitled to be maintained out of joint family property. An arbitration agreement was reached and the award was passed. Pursuant to the award, a property was accepted by the widow under the award for her life estate. In this regard the Court held:

“When Specific property was allotted to the widow in lieu of her claim for maintenance, the allotment was in satisfaction of her right to be maintained out of the joint family property. It was not a grant for the first time without any pre-existing right in the widow. The widow got the property by virtue of her pre-existing right, the instrument giving the property being merely a document effectuating such pre-existing right. Section 14(1) was large in its amplitude and covered every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance. Where such property was possessed by her at the date of commencement of the Act, she became its full owner.”

36. Lot of reliance was placed by the learned counsel for the plaintiff on the judgment of the Hon’ble Supreme Court in the case of ***Dr. Mahesh Chand Sharma v. Raj Kumari Sharma (supra)***. He stressed that this was a judgment of three-judge Bench of the Hon’ble Supreme Court and would supersede all other judgments which may have said something to the

contrary. This is a case where one Ram Nath made a Will in 1942 whereby he has bequeathed one of the properties to his wife Satyawati for life. Ram Nath died in 1953. Some disputes arose later between Satyawati and her son and a settlement took place. Under the settlement, Satyawati was given the right to reside in the first floor of the Doctor's Lane House. The Court held that the right that was given to Satyawati for the first floor of Doctor's Lane House had ripened to an absolute title. The Hon'ble Supreme Court held as follows:-

“By operation of Section 14 of the said Act, the right of residence given to Satyawati in the first floor of the Doctor's Lane house ripened into an absolute title inasmuch as the said right was given to her in recognition of a pre-existing right to maintenance inhering in her. Even under the Hindu Law obtaining prior to the enforcement of Hindu Adoptions and Maintenance Act, 1956, the son was under a personal obligation to maintain his mother and he was bound to maintain her whether or not he inherited property from his father. [See Para 548 of *Mulla's Hindu Law at P.552* (16th Edn.)].”

The Hon'ble Court relying upon the judgment of ***V.Tulsamma v. Sesh Reddy (supra)***, held that Section 14(1) of the Act would apply and not Sec. 14(2). It was further held that the decision in the case of ***V.Tulsamma v. Sesh Reddy (supra)*** would apply only when the female Hindu is in possession of the property either directly or constructively as on the date of the Act but she may acquire right to it even after the Act.

37. There are two latest judgments of the Supreme Court on interpretation of Section 14(1) which may also be looked into. The first one is of ***Jagan Singh (Dead) Through LRs. Vs. Dhanwanti (supra)***. The facts of the case

were that one Umrao Singh, who had no issue executed a Will, whereby he bequeathed all his land to his younger brother. However one property was bequeathed to his wife Dhanwanti who was to be owner but with restrictions. She would not have a right to transfer the property and that the property will pass onto her, subject to these restrictions. The Hon'ble Court after going through various judgments held that the issue is no longer *res integra* and a widow who succeeds to the property of her deceased husband on the strength of the Will cannot claim that the life estate given to her under the Will, will become an absolute estate. A widow who succeeds to the property of her husband on the strength of a Will cannot claim any right other than those conferred by the Will.

38. To the same effect is the latest judgment of the Supreme Court in the case of ***Shivdev Kaur vs. R.S. Grewal (supra)*** where the Supreme Court has held as follows:-

“13. Thus, in view of the above, the law on the issue can be summarised to the effect that if a Hindu female has been given only a “life interest”, through Will or gift or any other document referred to in Section 14 of the Act 1956, the said rights would not stand crystallised into the absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the Act 1956, the provisions of Sections 14(2) and 30 of the Act 1956 would become otios.

14. Section 14(2) carves out an exception to rule provided in sub-section (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a “life interest”, it would remain the same even after commencement of the Act 1956, and such a Hindu

female cannot acquire absolute title.”

39. The legal position that flows from the above judgments is that where a property is acquired by a Hindu female on partition or in lieu of her pre-existing right of maintenance, it is by virtue of a pre-existing right and such an acquisition would fall within the scope of Sub-Section (1) of Section 14 of the Hindu Succession Act even if the instrument, decree, order or award allotting property to the Hindu female prescribes a restricted estate. Such a limited estate would ripen into the absolute property of the widow. However, where the property is acquired by a female Hindu for the first time as a grant without any pre-existing right under a gift, Will, instrument, decree, order or award the terms which prescribes a restricted estate in a property, then Sub-Section (2) would apply and the estate would not become an absolute estate of the Hindu female.

40. On the time of pre-existing right, the only contention raised by learned counsel for the plaintiff is that plaintiff No.2 had a pre-existing right for maintenance and that in lieu of this pre-existing right, she was given a life interest in the Will dated 24.6.1984 of Col.(Retd.) B.R.Dewan. Hence it is contended that Section 14(1) of the Hindu Succession Act would apply. A specific question was posed to the learned counsel for the plaintiff as to on what basis plaintiff No.2 is claiming a pre-existing right for maintenance. He submitted that this pre existing right for maintenance of plaintiff No.2 is as per old shastric law. He relied on observations to the said effect in the case of *V.Tulsamma v. Sesh Reddy (supra)* which have been followed subsequently in various judgments to the effect that under Shastric Hindu Law a widow has a right to be maintained out of joint family property and

that in a joint family estate where a deceased husband has a share, she has a right to be maintained out of joint family properties.

41. The Hon'ble Supreme Court in the case of *V.Tulsamma v. Sesh Reddy (supra)* on the issue of maintenance held as follows:-

“71. Since the properties were allotted to the appellant in lieu of her claim for maintenance, it becomes necessary to consider the nature of the right which a Hindu widow has to be maintained out of joint family estate. It is settled law that a widow is entitled to maintenance out of her deceased husband's estate, irrespective whether that estate may be in the hands of his male issue or it may be in the hands of his coparceners. The joint family" estate in which her deceased husband had a share is liable for her maintenance and she has a right to be maintained out of the joint family properties and though, as pointed out by this Court in *Rani Bai v. Yadunandan Ram* her claim for maintenance is not a charge upon any joint family property until she has got her maintenance determined and made a specific charge either by agreement or a decree or order of a court, her right is "not liable to be defeated except by transfer, to a bona fide purchaser for value without notice of her claim or even with notice of the claim unless the transfer was made with the intention of defeating her right." The widow can for the purpose of her maintenance follow the joint family property "into the hands of any one who takes it as a volunteer or with notice of her having set up a claim for maintenance". The courts have even gone to the length of taking the view that where a widow, is in possession of any specific property for the purpose of her maintenance, a purchaser buying with notice of her claim is not entitled to possession of that property without first securing proper maintenance for her. *Vide Rachawa v. Shivayogapa* ILR (1894) 18 Bom 679 cited with approval in *Ranibai's case (supra)*. It is, therefore, clear that under the Sastric Hindu Law a widow has a right to be maintained out of joint family property and this right would ripen into a charge if the widow takes the necessary steps for having her maintenance ascertained and specifically charged on the joint

family property and even if no specific charge is created, this right would be enforceable against joint family property in the hands of a volunteer or a purchaser taking it with notice of her claim.”

42. The above judgment deals with the right of a Hindu widow from a joint family property. The learned senior counsel for the defendant submitted that in view of Section 4, 21, 22 and 23 of the Hindu Adoption and Maintenance Act the Shastric Law pertaining to maintenance is no longer applicable and the only right a widow has for claiming maintenance is as per the said statutory provision. The learned counsel for the plaintiff did not deal with the said contention of the learned senior counsel for the defendant or on the effect of The Hindu Adoption and Maintenance Act on the old Shastric Law.

43. The Hindu Succession Act, 1956 brought about sweeping changes including intestate succession for a Hindu widow. The issue however is the right of a Hindu widow for maintenance under the Hindu Adoption and Maintenance Act. The reference may be had to Sections 4, 21, 22 and 23 of the said Act which reads as follows:-

“4. Overriding effect of Act- Save as otherwise expressly provided in this Act,-

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

“21. **Dependents defined-** For the purposes of this Chapter "dependents" mean the following relatives of the deceased-

- (i) his or her father;
- (ii) his or her mother;
- (iii) his widow, so long as she does not remarry;”
- (iv).....

“22. **Maintenance of dependents-** (1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependents of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependent has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependent shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who take the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependent shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part, the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.”

(2)

“23. **Amount of maintenance-**(1) it shall be in the discretion of the Court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so, the Court shall have due regard to the considerations set out in sub-section (2), or sub-section (3), as the case may be, so far as they are applicable.”

44. A five Judge Bench of the Hon’ble Supreme Court in the case of *Amireddi Rajagopala Rao and Ors vs. Amireddi Sitharamamma and Ors.*

reported at **AIR 1965 SC 1970** in para 10, stated as follows:-

“10. Sub-section (1) of S.22 imposes upon the heirs of a deceased Hindu the liability to maintain the dependants of the deceased defined in s. 21 out of the estate inherited by them from the deceased, but this liability is subject to the provisions of sub-s. (2), under which only a dependant who has not obtained by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of the Act is entitled, subject to the provisions of the Act, to maintenance. Specific provision is thus made in s.22 with regard to maintenance of the dependants defined in s. 21 out of the estate of the deceased Hindu, and in view of s. 4, the Hindu law in force immediately before the commencement of the Act ceases to have effect after the commencement of the Act with respect to matters for which provision is so made. In terms, Sections 21 and 22 are prospective. Where the Act is intended to be retrospective, it expressly says so....”

45. Reference may also be had to the judgment of the Hon’ble Supreme Court in the case of **Sadhu Singh versus Gurdwara Sahib Narike & Ors. (supra.)**. In the said judgment of the Hon’ble Supreme Court the facts were that one Ralla Singh had some self acquired property. He had no issues. On 7.10.1968 he executed a Will. He died on 19.3.1977. Under the Will of Ralla Singh, his wife Isher Kaur took only a life estate and the properties were to vest in the appellant his brother. Isher Kaur gifted the property to the Gurdwara and the Gurdwara claimed that Isher Kaur had become absolute owner in terms of Section 14(1) of the Hindu Succession Act. The Hon’ble Supreme Court relying upon the provisions of Hindu Adoption and Maintenance Act held as follows:-

“4. Under Section 18 of the Hindu Adoptions and Maintenance Act, a Hindu wife is entitled to be maintained by her husband during her lifetime, subject to her not incurring the

disqualifications provided for in sub-section(3) of that Section. The widow is in the list of dependants as defined in Section 21 of the Act, The widow remains a dependant so long as she does not remarry. Under Section 22, an obligation is cast on the heirs of the deceased Hindu to maintain the dependant of the deceased out of the estate inherited by them from the deceased. Under sub-section(2), where a dependant has not obtained by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of the Act, the dependant would be entitled, but subject to the provisions of the Act, to maintenance from those who take the estate. It is seen that neither Section 18 relating to a wife nor Section 21 dealing with a widow, provides for any charge for the maintenance on the property of the husband. To the contrary, Section 27 specifies that a dependant's claim for maintenance under that Act, shall not be a charge on the estate of the deceased unless one would have been created by the will of the deceased, by a decree of court by an agreement between the dependant and the owner of the estate or otherwise. Thus a widow has no charge on the property of the husband. Section 28 provides that where a dependant had a right to receive maintenance out of an estate, that right could be enforced even against a transferee of the property if the transferee had notice of the right, or if the transfer is gratuitous, but not against a transferee for consideration without notice of the right.”

In the context of Section 14 of The Hindu Succession Act the following was stated:-

“11. ... Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-Section (1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after

the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act.

...

13. ... Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His will hence could not be challenged as being hit by the Act.”

46. The Court distinguished the case of *V.Tulsamma v. Sesh Reddy (supra)* inasmuch as in that case the widow had a pre-existing right in the properties of the joint family since she had a right to maintenance and it was in view of the pre-existing right and the decree obtained by her in that case that the compromise came into existence and she was put in possession of the property though limited and in such circumstances Section 14(1) of the Hindu Succession Act would operate.

47. The basic issue in the facts of this case is, does plaintiff No.2 have a pre-existing right to maintenance. The only argument made is that plaintiff No.2 has a pre-existing right of maintenance under the Shastric Hindu Law. What this argument implies is that every Hindu Widow has a pre-existing right to maintenance. Hence, going further on this argument whenever she receives a limited estate from her husband, it attracts Section 14(1) of the Act and she becomes an absolute owner. A similar contention was rejected by the Hon’ble Supreme Court in the case of *Sharad Subramanyan v. Soumi Mazumdar* AIR 2006 SC 1993. The Hon’ble Supreme Court noted

the submissions of learned senior counsel for the respondent while accepting the same and said as follows:

“Mr. Bhaskar P. Gupta, learned Senior Counsel for the respondents, rightly distinguished all these cases, as it was clearly proved therein, that the properties had been given to a female Hindu, either in recognition of or in lieu of her right to maintenance under the Shastric Hindu Law or under the Hindu Adoption and Maintenance Act, 1956. Consequently, these were instances where the dispositions of property, albeit as a limited estate, would blossom into a full interest by reason of sub-section (1) of Section 14 of the Act.

Learned Counsel further contended that, there is no absolute rule that all properties demised to a female Hindu were necessarily in recognition of or in lieu of her right to maintenance. It was possible, even after the Act came into force, to create a limited estate by reason of a gift or will. Such a situation would fall within the ambit of sub-section (2) of Section 14 of the Act as long as it was not in recognition of or in lieu of a right to maintenance under the Shastric Hindu Law or under a statute. Learned Senior Counsel relied on Section 30 of the Act, which recognises the right of a Hindu to dispose of self-acquired property by Will. Mr. Gupta relied on the judgment of this Court in ***Bhura and Ors. v. Kashi Ram***, which was also a case of, limited estate conferred on a female Hindu by a Will. This Court held that, upon a proper construction of the Will, the bequeathal in favour of the female Hindu was clearly indicative of:

“....the testator's intention of only creating a life interest in her and nothing more and the various expressions used therein are indicative of and are reconcilable only with the hypothesis that the testator was creating an estate in favour of ...(the female Hindu)... only for her lifetime and not an absolute estate.”

48. On the issue of the right of a widow to claim maintenance from the joint family property the Bombay High Court in the case of ***Krishna***

Madhav Ghule and Ors vs. Padminibai Mohan Ghule, 1977 MhLJ (402), and the Madhya Pradesh High Court in the case of ***Gowardhan Sheocharan and Ors v. Smt. Gangabai AIR 1964 MP 168*** have held that Sections 4, 21 and 22 of the Hindu Adoption and Maintenance Act do not, in any way, affect the general rule of Hindu law that where a husband leaves a share in the joint family property, his widow is entitled to maintenance out of it from those coparceners who hold that by survivorship. It is stated that the Hindu Adoption and Maintenance Act had not made provisions regarding maintenance of a wife of coparcener and hence the old law to that effect continues to apply.

49. However, in the present case admittedly the suit property is a self-acquired property of late Col. B.R. Dewan. It is not a joint Hindu family property. As per the Will dated 24.6.1984, the entire share of Col.B.R.Dewan in the HUF-B.R.Dewan and sons (which includes plot of land in Ghaziabad, Bank Balances, shares, debentures and fixed deposits) has been bequeathed to plaintiff No.2. No claim is made or pleaded for maintenance from the said HUF B.R.Dewan and Sons. The other members of this HUF are also not known. Hence plaintiff No. 2 has no right to maintenance from the joint Hindu family. In fact none is claimed.

50. Plaintiff No.2 has no right of maintenance under Section 21 or 22 of the Hindu Adoption and Maintenance Act inasmuch as she has inherited a part of the estate of late Col. B.R. Dewan. There is also no attempt to show the assets and income of plaintiff No.2 to determine as to whether any right of maintenance would flow to her under the said provisions. A perusal of the

Will dated 24.06.1984 executed by Late Col. B.R. Dewan would show that the right of maintenance of the plaintiff no. 2 has been duly taken care of from assets other than the suit property. The entire share of Shri B.R. Dewan in the HUF namely B.R. Dewan and Sons which includes a plot of land in Ghaziabad, bank balances, shares, debentures and fixed deposits have been bequeathed absolutely to plaintiff no. 2. In addition to this, what is not denied is that she is receiving pension from the Army what was initially being paid to Col. B.R. Dewan. Hence there is no right to claim maintenance under the statutory provisions in favour of plaintiff No. 2.

51. A reading of the Will executed by Late Col. (Retd.) B.R. Dewan does not show that the right to collect the rent as has been given to plaintiff No.2 is in lieu of any pre-existing right of maintenance that she might have. The onus to prove the existence of pre-existing right of maintenance with plaintiff No.2 was on the plaintiffs. The plaintiffs have failed to discharge the said onus.

52. A reading of the Will executed by Col. B.R. Dewan would show that title vests with plaintiff no. 1 and defendant no. 1 of their respective shares of the suit property. Para 9 of the Will specifically provides that Ranvir Dewan, plaintiff no. 1 and Rashmi Khanna, defendant no. 2 would be the owners upto the death of his wife. It further clarifies that the legal ownership will vest entirely with Ranvir Dewan and Rashmi Khanna of their respective portions. Plaintiff no.2 has been made a trustee on behalf of the legal owners to enjoy the income arising during her lifetime. The wealth tax assessment is also to be done in the name of Ranvir Dewan and Rashmi

Khanna. The said Ranvir Dewan and Rashmi Khanna are also to pay amounts to Shri Ashok Dewan, son of the first wife of Col. B.R. Dewan. They have also been given rights to sell their portions in the house on which eventuality they will have to pay 1/5th of the sale consideration to the said Shri Ashok Dewan. They have also been given permission to construct the second storey for which they have to contribute equally and share the property equally unless they mutually desire otherwise. Limited right to collect rent and enjoy residence free of charge is a right which is given to plaintiff no. 2 in the suit property which she gets on account of the bequest made in her favour and a right which she receives for the first time on account of the testamentary disposition made by Col. B.R. Dewan through the medium of the Will. Plaintiff no. 2 has no pre-existing right to the suit property and hence, her limited rights as given to her do not get enlarged. Section 14(1) of the Hindu Succession Act is not attracted.

53. In view of the above position, I hold that under the Will dated 24.6.2008 Colonel B.R.Dewan plaintiff No.2 does not become an absolute owner of property D-24, Defence Colony. Issue (i) is answered accordingly.

54. Now, I come to the second issue which reads as under:-

- (ii) “What is the effect if any of the execution of the Conveyance Deed of freehold rights in the land underneath the property in the names of plaintiff No. 1 and defendant No. 1 and the plaintiffs not claiming any relief with respect thereto? “ OPD

55. The basic contention here of learned senior counsel for the defendant is that subsequent to the Will of Col.B.R.Dewan dated 24.06.1984 two other

documents have taken place/been executed. One is Conveyance Deed executed by L&DO dated 9.4.1997 and the family settlement dated 23.7.2008. It is submitted that as per the Conveyance Deed executed by L&DO plaintiff No.1 and defendant no.1 are now the absolute owners of the suit property. This is a registered Conveyance Deed and it is stated that plaintiff No.2 has not even chosen to challenge the said Conveyance Deed. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of *N.V. Srinivasa Murthy vs. Mariyamma (AIR 2005 SC 2897)* and the judgment of the Andhra Pradesh High Court in the case of *Sannidhi Ratnavathi versus Arava Narasimha Murthy*, AIR 2004 AP 29 to claim that it was necessary for plaintiff No.2 to claim any rights in the suit property to seek declaration that the Conveyance Deed executed by L&DO is void and in the absence of the same no relief of title can be claimed by plaintiff No.2. Learned senior counsel has also relied upon the family settlement dated 23.7.2008 stating that as per the family settlement the defendant No.1 has been made absolute owner of the entire second floor with right to build and construct third floor of her own, one parking space and drive way alongwith 30% freehold rights in the land underneath his absolute owner. Hence, it is stated that plaintiff No.2 has now estopped from claiming any right, title or interest in the suit property of any sort.

56. Learned counsel for the plaintiff has on the other hand submitted that the family settlement is subsequent to the Conveyance Deed executed by L&DO dated 9.4.1997. The family settlement is dated 23.7.2008 and would supersede the Conveyance Deed dated 9.4.1997. Reliance is placed on paragraph 5 of the family settlement which specifically provides that life

interest of the first party, namely, plaintiff No.2 as per Will dated 24.6.1984 by Col.B.R.Dewan shall remain. Hence, it is stated that family settlement supersedes any other document and to the contrary and protects the rights of plaintiff No.2 as provided in the Will of Col.B.R.Dewan.

57. I may at this stage, also refer to Orders of this Court dated 4.3.2013 and 7.3.2013. These order dealt with an application IA No.3697/2013 under Order 14 Rule 5 CPC where the plaintiffs sought framing of an additional issues including issue No.5 which reads as follows:-

“(v)Whether during her lifetime plaintiff No.2 is entitled to reside and/lease out the suit property in her own name without any interference and enjoy all rentals and deposits therefrom in terms of life interest existing as on date under the Will dated 24.6.1984 and Memorandum of Family Settlement Agreement dated 23.7.2008.”

58. This Court on 7.3.2013 had declined to frame the above issue holding that plaintiff No.2 has not claimed any relief in the suit on the basis of life interest in the property. Relevant portion of Order dated 7.3.2013 dismissing the application of the plaintiff so far as framing of the present issue is concerned reads as follows:-

“3.The counsel for the plaintiffs has invited attention to Order 14 Rule 3(c) to contend that an issue can be framed even on the basis of documents produced by either of the parties and contends that on the basis of admitted Will of the predecessor of the parties, the plaintiff No.2 has a life interest.

4. As already noted, the plaintiff No.2 has not claimed any relief in the suit on the basis of having life interest in the suit property. If the plaintiffs were to claim such relief, the defendants may have taken defence thereto, as has been taken during the course of arguments today qua the third floor.

5. The defendants cannot be taken by surprise, by framing an issue on a case with which the plaintiffs have not come before this Court.

6. Though the counsel for the plaintiffs has also argued that the plaintiffs in their replication have set out the case of the plaintiff No.2 being entitled to rent on the basis of life interest but admittedly no opportunity to file a response thereto has been given to the defendants and new pleas, if any, taken in the replication cannot be made the basis for framing the issues.”

59. The above order is not stated to have been challenged. It is obvious that plaintiff No.1 cannot claim any right based on the life interest in the suit property. However, learned counsel for the plaintiff has argued that under Order 7 Rule 7 CPC, this Court can still mould relief and grant relief to the plaintiff.

60. A bare reading of the family settlement dated 23.7.2008 would show that the ownership of defendant No.1 of the second floor and third floor has been accepted by the parties. Relevant portion of the deed reads as follows:-

“3. That the entire second floor including roof and second floor, with right to build and construct third floor as per rules and bye-laws at her own cost and expenses, of the said property and one parking space in the drive way inside the property along with proportionate i.e. 30% (Thirty Percent) free hold land underneath was settled and agreed to be owned by and belonged to the THIRD PARTY and all other parties shall have no right, title share or claim of any kind or nature whatsoever in the said portion of the said property. The other parties, specifically Mr.Ranvir Dewan, the SECOND PARTY hereto, have agreed and assured to sign and execute whatever other papers, deeds and/or documents that may be required or necessary in order to complete any formalities to confirm the right and title of the THIRD PARTY in the said second floor including roof of

second floor with right to build and construct third floor of the property.”

61. However, defendants No.1 and 2 have stated that the defendants in view of Clause 5 of the family settlement would have no objection in case the rentals of the second floor are received by plaintiff No.2. An averment to the said effect has been made by defendants in the written statement in paragraphs 47 and 48. This is how the defendants No. 1 and 2 have understood the family settlement, especially clause five of the settlement. In view of Order 7 rule 7 CPC, relief to the said extent can be granted to plaintiff No. 2.

62. Accordingly, in view of the above, a decree is passed in favour of plaintiff No. 2 and against defendant No.1 declaring that plaintiff No.2 has rights to receive and recover rentals, if any, from property being second floor D-246, Defence Colony, New Delhi for her lifetime only. The rentals deposited in Court pertaining to the said second floor as per order dated 27.07.2010 would be released to plaintiff No.2. The balance amount deposited in Court i.e. rentals of third Floor plus other amounts may be released to defendant No. 1. No order as to costs.

63. Pending applications also stand disposed of.

JAYANT NATH, J

OCTOBER 11, 2013

Rb/n/‘raj’