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

+ **RSA No.7/2012**

% **21st February, 2014**

PREM CHAND

.....Appellant

Through: Mr. D.V. Nanda, Advocate.

VERSUS

RAM NATH DECEASED Through LR's. Respondents

Through: Mr. Anjum Kumar, Mr. Vivek
Malhotra, Advocates

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J(ORAL)

1. This regular second appeal has been filed impugning the judgment of the first appellate court dated 14.7.2011 whereby the first appellate court allowed the appeal and set aside the judgment and decree dated 29.11.2005 passed by the trial court decreeing the suit for declaration and injunction

(Suit No. 216/1976) filed by the appellant/plaintiff. Disputes pertain to
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rights in residential house bearing no. 198/29, Sri Ram Nagar, Shahdara, Delhi. When the suit was filed disputes were between the appellant/plaintiff and his father Ram Nath. Sh. Ram Nath expired during the pendency of the suit leaving behind a Will dated 10.8.1976, Ex. PW-1/1 in favour of his wife Smt. Leela Wati giving her a life estate in the suit property and after her death the property to devolve upon the other sons Sh. Manohar Lal, Sh. Sushil Kumar and Sh. Vijay Kumar, the respondents herein. The wife of Sh. Ram Nath Smt. Leela Wati, mother of the parties, expired on 7.11.1999 intestate.

2. Appellant/plaintiff in the suit had pleaded that the suit property was a Hindu Undivided Family (HUF) property but he failed to prove that the suit property was HUF property, however, since father Sh. Ram Nath died during the pendency of the suit leaving the suit property by means of a Will in favour of his wife Smt. Leelawati, mother of the parties, and by which Will a life estate was created in favour of Smt. Leela Wati, trial court held that the life estate in favour of Smt. Leela Wati was converted to a full ownership by virtue of Section 14 (1) of the Hindu Succession Act, 1956, and since Smt. Leela Wati died intestate appellant/plaintiff being the son and one of the legal heirs of Smt. Leela Wati became co-owner in the suit

property. The relevant observations of the trial court in this regard are contained in the following paras of its judgment:

“This issue has become redundant. Hence no findings is required. There were three more issues framed on 26.11.85 on the application U/o 22 Rule 4 which are as follows:-

1. Whether deceased Ram Nath executed a will in favour of Lila Wati his wife? If so its effect?
2. Whether Smt. Leela Wati is the sole L.R. of the deceased Ram Nath?
3. Relief.

Both these issues were decided vide order dt. 29/3/90 by Ld. D.K. Malhotra, the then Sub-Judge, Delhi & revision was filed against that order in the Hon'ble High Court, being C.R. No. 737/90. The Hon'ble High Court vide order dt. 14/1/92 opined that the trial Court has to see whether the property forming part of Joint Hindu Family property & as to whether Ram Nath had the capacity to will away the entire property. Keeping in view the findings of Hon'ble High Court the aforesaid issues are to be decided afresh.

It has already been decided at the first outset in issue no. 1 that it was not the joint Hindu Family property. To prove the will the LRs of Late Ram Nath examined PW1 Girja Shankar Mishra. PW1 deposed that the will was executed by Late Sh. Ram Nath Sharma in his presence & Ram Nath put his signatures after reading the contents in the presence of this witness & the other witness also signed in his presence. Sh. Ram Nath Sharma was of sound mind at that time. PW2 Manohar Lal also identified the signatures of his father on will Exh. PW1/1 Prem Chand appeared as DW1 but he has not signed at single word about the will which shows that, the defendant is not disputing the genuineness of will. Since the property is self acquired of Late Sh. Ram Nath thus he has right to bequeath the same by way of will Exh. PW1/1 Smt. Leela

Wati became the beneficiary of the property in question by way of will Exh. PW1/1 which was executed & registered in the year 1976. Hence Smt. Leela Wati was the sole legal heir of Late Sh. Ram Nath.

During the pendency of the suit Smt. Leela Wati expired & application U/o 22 rule 3 was moved alleging therein that Prem Chand was disinherited under the will executed by Late Sh. Ram Nath Sharma in favour of Smt. Leela Wati who expired on 7/11/9. It has further been alleged that Smt. Leela Wati was the beneficiary of the estate of Sh. Ram Nath Sharma for her life time and after her demise three sons namely Manohar Lal, Sushil Kumar & Vijay Kumar are the beneficiary of entire movable & immovable properties of Late Ram Nath Sharma. Now the question is whether by the will Exh. PW1/1 only life time interest was created by Late Sh. Ram Nath Sharma in favour of Smt. Leela Wati or she became the absolute owner of the properties left by her husband. It has been specially stated in the will **“I am the absolute owner of my movable or immovable properties whatsoever & whensoever during my life time & after my death, my wife Smt. Leela Wati shall be the absolute owner of my entire property movable or immovable & after her death my three sons Manohar Lal, Sushil Kumar & Vijay Kumar Shall inherit my entire movable or immovable properties.”** The testator gave absolute right to Smt. Leela Wati who died intestate. Now the question is whether the testator could validly impose condition upon the beneficiary & whether such condition validly debars Prem Chand from inheriting the property of his mother. **It is held in AIR 1929 Privy Council 283 that “the words in the will “that the estate shall vest in P” and that he shall be the testator’s heir and successor,” where clear dispositive words creating an absolute estate or inheritance in P and the various clauses that followed the main provisions were to come into operation after P had to inherited; they must, therefore, be regarded as an attempt to impose repugnant conditions upon the estate so created and were, therefore, void.”.**

The Hon'ble Supreme Court has also held in Gopala Menon Vs. Sivaraman Nair AIR 1979 SC 1345 that "it is implicit, when an absolute estate is conferred, that the grantee is free to deal with and dispose of the property in any manner. Indeed, if an absolute grant is burdened with a restraint on alienation, the grant is good and the condition void."

It has further been held by Hon'ble Delhi High Court in Rajrani Sehgal Vs. Dr. Parshottam Lal 1992 RLR 126 that "Succession Act, Ss. 114 & 138, while constructing a will, it is not permissible to pick up portions to find fault with the will. The document should be read as a whole to find out the dominant intention of the testator. If a testator conveys his property absolutely and then puts some restrictions or limitations then the latter are to be regarded as repugnant and hence void. It is only if a testator clearly says that 'estate shall remain intact', the rule against perpetuity can be invoked. Only if a will is shrouded in suspicion, the Court's conscience is required for its satisfactory execution. If a will is not in the possession of the petitioner then Certified copy of registered will which is as good as the original U/s 62 of Evidence Act may be filed."

Thus, it is clear from the discussion of Hon'ble Supreme Court, High Court & Privy Council, that the condition imposed on the beneficiary is repugnant, void & has no effect on the succession by the legal heirs of Late Smt. Leela Wati. Section 14 Hindu Succession Act lays down that the property possessed by a female Hindu shall be held by her as full owner thereof and not as a limited owner. The testator also gave full ownership right to the beneficiary Smt. Leela Wati by mentioning that after the death of testator she will be the absolute owner. Hence no condition is imposed upon the absolute owner to dispose off the property or to use it according to the wishes of the testator.

In the present case the general rules of succession laid down U/s 15 of Hindu Succession Act shall be applicable & all

the legal heirs of Late Smt. Leela Wati shall have equal rights including the daughters & Prem Chand.”

3. First appellate court has set aside the judgment of the trial court by holding that the estate which was received by Smt. Leela Wati was not converted into a full ownership, and for this purpose the first appellate court relied upon the judgment of the Supreme Court in the case of ***Gumpha (Smt.) and Ors. vs. Jaibai, (1994) 2 SCC 511***. The relevant observations of the first appellate court are contained in paras 16, 17, 19, 20, 21 of the judgment and which read as under :

“16. The only question therefore which arises for consideration in this appeal is whether by virtue of the will dated 10.8.1976 executed by Late Ram Nath, Smt. Leela Wati acquired a limited state in the suit property or became a full owner thereof by virtue of Section 14(1) of Hindu Succession Act 1956. Before advertng to the said question it would be prudent to reproduce the relevant portion of the will dated 10.8.1976 which is as under:

“That I am absolute owner of my movable and immovable property whatsoever and wheresoever during my life time and after my death, my wife Smt. Leela Wati shall be the absolute owner of my entire property movable and immovable-whatsoever and wheresoever and after her death my three sons – 3/Shri Manohar lal, Sushil Kumar and Vijay Kumar shall inherit my entire movable and immovable property whatsoever and wheresoever in equal shares. Sh. Prem Chand shall have no right, title or interest in any of my movable or immovable property. My aforesaid three daughters shall also no right, title or interest in any of my property. In case of my wife Smt. Leela Wati pre-deceased me, then after my death, my three sons – S/Shri Manohar Lal, Sushil Kumar and Vijay Kumar shall

inherit the property in equal shares. However, to make it quite clear that in no circumstances, Shri Prem Chand or any of his family member shall inherit any of my movable and immovable property.”

17. The perusal of terms of will dated 10.8.1976 clearly reveal that Late Sh.Ram Nath had desired that after his death his wife Smt. Leela Wati would be the owner of his entire property and after her death the same would devolve on his three sons Sh. Manohar Lal, Sushil Kumar and Vijay Kumar. It was clearly provided in that the respondent Sh. Prem Chand would not have any right, title or interest in any of his movable or immovable properties. The testator also desired that in case Smt. Leela Wati, his wife pre-deceased him then after his death all his property would devolve on his aforesaid three sons but Sh. Prem Chand would not inherit any of his movable or immovable properties.

19. Sub Section (2) of Section 14 of Hindu Succession Act provides that where a female hindu acquires any right in a property by virtue of will which provides for a restricted estate, then the provisions of Section 14 (1) of Act would not come into play. The said provision was interpreted by the Hon'ble Supreme Court in the case of Gumpha (Supra). The operative portion of the said judgment reads as under:

“12..... But what is its effect on the right of his widow if the testator gives only right of maintenance. Can it be said to be in lieu of maintenance? The answer is simple. The legislature then would have used the words, ‘for maintenance’ and not instead of ‘or in lieu of maintenance’. That could not have been the purpose. Under the Act, a female unlike customary law is an heir. She inherits the property in her own right. The expression ‘in lieu of maintenance’ or ‘arrears of maintenance’ would thus become inapplicable. Apart from it a right of maintenance under a will after 1956 would fall under sub-section (2) as even on ratio in *Tulasamma*⁸ it would be creation of right for the first time and not in recognition of pre-existing right. Even the expression in any manner whatsoever

cannot be of any help for deciding the right and interest of a female Hindu acquired under a will. The expression is no doubt very wide but its width cannot be extended to those acquisitions which are specifically dealt with by sub-section (2). Its operation has to be confined to such an acquisition which is not covered by sub-section (2) or any of the clauses of the explanation. It is true that the explanation is not exhaustive as is clear from the use of the word 'includes' but its ambit cannot be stretched so as to nullify the effect of sub-section (2). A reading of the two sub-sections together indicates that even though the law was evolutionized and a female Hindu was made an absolute owner in respect of any property acquired by her either before or after the date of enforcement of the Act yet the law did not intend to confer a higher and better right than what was enjoyed by a male Hindu. In *Tulasamma case*⁸ it was held by this Court that a female Hindu could acquire rights under Section 14(1) only if she was possessed of the property and that possession was by some legal authority. To put it differently a trespasser or a female Hindu who cannot establish any right in the property of which she was possessed could not acquire any right. (*Eramma v. Verrupanna* ¹⁴; *Kuldip Singh v. Surain Singh*¹⁵ and *Dindayal v. Rajaram* ¹⁶). It necessarily follows that the possession must be founded on some basis which may be acceptable in law and the right that she acquires under Section 14 depends on the nature of possession she enjoyed over the property. **Consequently if a female Hindu acquires possession after the enforcement of the Succession Act and that possession was traceable to an instrument or a document described in sub-section (2) then she could not get higher right than what is stipulated in the document itself.** The purpose and the legislative intention which surfaces from a combined reading of the two sub-sections is that it attempts to remove the disability which was imposed by the customary Hindu Law on acquisition of rights by a female Hindu but it does not enlarge or enhance the right which she gets under a will giving her a limited estate under Section 30 of the Act.”

(Emphasis supplied)

20. The Hon'ble Supreme Court in the case of *Gumpha* (supra) has clearly held that only in cases where a female hindu had a pre-existing right in a property would such right be converted from limited to a full owner u/s 14(1) of Act. Where however the female hindu did not have any pre-existing right and she acquires a limited estate in the same by virtue of a will then her rights in the said property would remain limited to the terms of the will.

21. In the present case the terms of will dated 10.8.1976 very clearly prescribed that Smt. Leela Wati late mother of plaintiff/defendant would acquire only a lifetime interest in the suit property and after her death the property would devolved upon her three sons namely Sh. Manohar Lal, Sushil Kumar and Vijay Kumar and Sh. Prem Chand would acquire no rights in the same.

4. For the purpose of disposal of the second appeal, the following substantial question of law is framed :

Whether the first appellate court has committed an illegality in relying upon the judgment of *Gumpha* (supra), although, the said judgment has in fact been overruled by a Larger Bench of the Supreme Court in the case of *C. Masilamani Mudaliar and Ors. vs. Idol of Sri Swaminathaswami Swaminathaswami Thirukoli and Ors. (1996) 8 SCC 525?*

5. In my opinion, the substantial question of law by its very language shows the appeal has to be allowed and the judgment of the first appellate court has to be set aside by restoring the judgment of the trial court.

Reliance placed by the appellate court on the judgment of *Gumpha's* case (*supra*) is clearly erroneous because the judgment in the case of *Gumpha* (*supra*) has been set aside by the larger Bench of the Supreme Court in the judgment of *C. Masilamani Mudaliar and Ors. (supra)* and in which judgment the Supreme Court has observed that the provision of Section 14(1) of the Hindu Succession Act, 1956 has to be read so as to convert the life estate which a woman gets to a full estate/full ownership. In *C. Masilamani Mudaliar and Ors. (supra)* Supreme Court has said that every Hindu woman has a pre-existing right of maintenance and which right is also recognized under the Hindu Adoption and Maintenance Act, 1956. Supreme Court accordingly held that any property which Hindu wife receives from her husband in lieu of pre-existing right of maintenance, and since there is a pre-existing right of a Hindu woman of maintenance in the property, such right gets converted into a full estate as per Section 14(1). The relevant paras of the judgment in the case of *C. Masilamani Mudaliar and Ors. (supra)* are as follows:

“15. It is seen that if after the Constitution came into force, the right to equality and dignity of person enshrined in the Preamble of the Constitution, Fundamental Rights and Directive Principles which are a trinity intended to remove discrimination or disability on grounds only of social status or gender, removed the pre-existing impediments that stood in the way of female or weaker segments of the society. In *S.R. Bommai v. Union of India* [1994] 3 SCC 1 this Court held that

the preamble is part of the basic structure of the Constitution. Handicaps should be removed only under rule of law to enliven the trinity of justice, equality and liberty with dignity of person. The basic structure permeates equality of status and opportunity. The personal laws conferring inferior status on women is anathema to equality. Personal laws are derived not from the Constitution but from the religious scriptures. The laws thus derived must be consistent with the Constitution least they became void under Article [13](#) if they violated fundamental rights. Right to equality is a fundamental right. Parliament, therefore, has enacted Section [14](#) to remove pre-existing disabilities fastened on the Hindu female limiting her right to property without full ownership thereof. The discrimination is sought to be remedied by Section [14\(1\)](#) enlarging the scope of acquisition of the property by a Hindu female appending an explanation with it.

16. The General Assembly of the United Nations adopted a declaration on December 4, 1986 on "The Development of the Right to Development to which India played a crusading role for its adoption and ratified the same. Its preamble cognises that all human rights and fundamental freedoms are indivisible and interdependent. All Nation States are concerned at the existence of serious obstacles to development and complete fulfilment of human beings, denial of civil, political, economic, social and cultural rights. In order to promote development, equal attention should be given to the implementation, promotion and protection of civil, political, economic, social and political rights.

17. Article [1\(1\)](#) assures right to development an inalienable human right, by virtue of which every person and all people are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realised. Article [6\(1\)](#) obligates the state to observance of all human rights and fundamental freedoms for all without any discrimination as to race, sex, language or religion. Sub-article (2) enjoins that...equal attention and urgent consideration

should be given to implement, promotion and protection of civil, political, economic, social and political rights. Sub-article (3) thereof enjoins that "state should take steps to eliminate obstacle to development, resulting from failure to observe civil and political rights as well as economic, social and economic rights. Article 8 casts duty on the State to undertake...necessary measures for the realisation of right to development and ensure, inter alia, equality of opportunity for all in their access to basic resources...and distribution of income". Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicate all social injustice.

18. Human Rights are derived from the dignity and worth inherent in the human person. Human Rights and fundamental freedom have been reiterated by the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The Human rights for woman, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth, culturally, socially and economically. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights.

19. Vienna declaration on the elimination of all forms of discrimination against women for short "CEDAW" was ratified by the U.N.O. on December 18, 1979. The Government of India who was an active participant to CEDAW ratified it on June 19, 1993 and acceded to CEDAW on August 8, 1993 with reservation on Articles 5(e), 16(1), 16(2) and 29 of CEDAW. The Preamble of CEDAW reiterates that discrimination against women, violates the principles of equality of rights and respect for human dignity; is in obstacle to the participation on equal terms with men in the political, social, economic and cultural

life of their country; hampers the growth of the personality from society and family and makes more difficult for the full development of potentialities of women in the service of their countries and of humanity. Poverty of women is a handicap. Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article [1](#) defines discrimination against women to mean "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose on impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Article [2\(b\)](#) enjoins the State parties while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women." To take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause enjoins to ensure legal protection of the rights of women on equal basis with men through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article [3](#) enjoins state parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article [13](#) states that "the state parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women", in particular.... Article [14](#) laid emphasis to eliminate discrimination on the problems faced by rural women so as to enable them to play "in the economic

survival of their families including their work in the non-magnetized sectors of the economy and shall take...all appropriate measures...." Participation in and benefit from rural development and, in particular, shall ensure to such women the right to participate in the development programme to organize self groups and cooperatives to obtain equal access to economic opportunities through employment or self-employment etc. Article [15\(2\)](#) enjoins to accord to women in equality with men before the law, in particular, to administer property....

20. The Parliament made the Protection of Human Rights Act, 1993. Section [2\(b\)](#) defines human rights means "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international conventions and enforceable by courts in India". Thereby the principles embodied in CEDAW and the concomitant right to development became integral parts of the Indian Constitution and the Human Rights Act and became enforceable. Section [12](#) of Protection of Human Rights Act charges the commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.

21. Article 5(a) of CEDAW to which the Government of India expressed reservation does not stand in its way and in fact Article [2\(f\)](#) denudes its effect and enjoin to implement Article [2\(f\)](#) read with its obligation under-taken under Articles [3](#), [14](#) and [15](#) of the Convention vis-a-vis Articles 1, 3, 6 and 8 of the Convention of Right to Development. The directive principles and fundamental rights, though provided the matrix for development of human personality and elimination of discrimination, these conventions add urgency and teeth for immediate implementation. It is, therefore, imperative of the State to eliminate obstacles, prohibit all gender based discriminations as mandated by Articles [14](#) and [15](#) of the Constitution of India. By operation of Article [2\(f\)](#) and other related articles of CEDAW, the state should take all appropriate measures including legislation to modify or abolish gender

based discrimination in the existing laws, regulations, customs and practices which constitute discrimination against women.

22. Article [15\(3\)](#) of the Constitution of India positively protects such Acts or actions. Article [21](#) of the Constitution of India reinforces "right to life". Equality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that give meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfilment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and discrimination based on gender for human development. Women are entitled to enjoy economic, social, cultural and political rights without discrimination and on footing of equality. Equally in order to effectuate fundamental duty to develop scientific temper, humanism and the spirit of enquiry and to strive towards excellence in all spheres of individual and collective activities as enjoined in Article [51A\(h\)](#) and (J) of the Constitution of India, facilities and opportunities not only are to be provided for, but also all forms of gender based discrimination should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. Therefore, the State should create conditions and facilities conducive for women to realise the right to economic development, including social and cultural rights.

23. Bharat Ratna Dr. B.R. Ambedkar stated, on the floor of the Constituent Assembly that in future both the legislature and the executive should not pay mere lip service to the directive principles but they should be made the bastion of all executive and legislative action. Legislative and executive actions must be conformable to and effectuation of the fundamental rights guaranteed in Part III and the directive principles enshrined in part IV and the Preamble of the Constitution who constitutes conscience of the Constitution. Covenants of the United Nation add impetus and urgency to eliminate gender based obstacles

and discrimination. Legislative action should be devised suitably to constellate economic empowerment of women in socio-economic restructure for establishing egalitarian social order. Law is an instrument of social change as well as the defender for social change. Article 2(e) of CEDAW enjoins that this Court to breath life into the dry bones of the Constitution, international convictions and the protection of Human, rights Act and the Act to prevent gender based discrimination and to effectuate right to life including empowerment of economic, social and cultural rights to women.

24. As per the U.N. Report 1980 "woman constitute half the world population, perform nearly two thirds of work hours, receive one tenth of the world's income and own less than one hundredth per cent of world's property". Half of the India population too are women. Women have always been discriminated and have suffered and are suffering discrimination in silence. Self sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities inequality and discrimination. Articles [13](#) [14](#) [15](#) and [16](#) of the Constitution of India and other related articles prohibit discrimination on the ground of sex. Social and economic democracy is the cornerstone for success of political democracy.

25. In Mrs. Valsamma Paul v. [Cochin University and Ors.](#), [1996]1SCR128 , this Court has held thus :

Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth-

cultural, social and economical. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Convention for Elimination of all forms of Discrimination Against Women (for short, "CEDAW" was ratified by the U.N.O. on December 18, 1979 and the Government of India had ratified as an active participant on June 19, 1993 acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity.

Establishment of new international economic order based on equality and justice will contribute significantly towards the promotion of equality between men and women etc. Article [1](#) defines "discrimination against woman" to mean "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field." Article [2\(b\)](#) enjoins upon the State parties, while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate, prohibiting all discriminations against women; to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause C enjoins upon the State to ensure legal protection of the rights of women on equal basis with men, through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women. Article [3](#) enjoins upon the State

parties that it shall take, in all fields, in particular, in the political, social, economic and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercises and enjoyment of human rights and fundamental freedoms on the basis of equality with men. Article [13](#) states that "the State parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of a men and women.

The Parliament has enacted the Protection of Human Rights Act, 1993. Section [2\(b\)](#) defines "human rights" to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international conventions and enforceable by courts in India". Thereby, the principles embodied in CEDAW and the concomitant right to development became integral part of the constitution of India and the Human Rights Act and became enforceable. Section [12](#) of the Protection of Human Rights Act charges the commission with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.

Though the Government of India kept its reservations on Articles 5(e), 16(1), 16(2) and 29 of CEDAW, they bear little consequence in view of the fundamental rights in Article [15](#)(1) and (3) and Article [21](#) and the directive principles of the Constitution.

26. It is true that Section [30](#) of the Act and the relevant provisions of the Act relating to the execution of the wills need to be given full effect and the right to disposition of a Hindu male derives full measure there under. But the right to equality removing handicaps and discrimination against a Hindu female by reason of operation of existing law should be in conformity with the right to equality enshrined in the Constitutional and the personal law also needs to be in conformity with the Constitutional goal. Harmonious interpretation, therefore, is

required to be adopted in giving effect to the relevant provisions consistent with the constitutional animation to remove gender-based discrimination in matters of marriage, succession etc. Cognizant to these constitutional goals, Hindu Marriage Act, Hindu Adoption and Maintenance Act, Hindu Succession Act etc. have been brought on statute removing the impediments which stood in the way under the Sastric law. Explanation I to Section 14(1) gives wide amplitude to the acquisition of property in the widest terms. It is merely illustrative and not exhaustive. The only condition precedent is whether Hindu female has a pre-existing right under the personal law or any other law to hold the property or the right to property. Any instrument, document, device etc. under which Hindu female came to possess the property-movable or immovable-in recognition of her pre-existing right, though such instrument, document or device is worded with a restrictive estate, which received the colour of pre-existing restrictive estate possession by a Hindu female, the operation of Sub-section (1) of Section 14 read with Explanation 1, remove the fetters and the limited right blossoms into an absolute right.

27. As held by this Court, if the acquisition of the property attracts Sub-section (1) of Section 14, Sub-section (2) does not come into play. If the acquisition is for the first time, without any vestige of pr-existing right under the instrument, document or device etc. then Sub-section (2) of Section 14 gets attracted. Sub-section (2) being in the nature of an exception, it does not engulf and wipe out the operation of Sub-section (1). Sub-section (2) of Section 14 independently operates in its own sphere. The right to disposition of property by a Hindu Under Section 30 is required to be understood in this perspective and if any attempt is made to put restriction upon the property possessed by a Hindu female under an instrument, document or device, though executed after the Act had come into force, it must be interpreted in the light of the facts and circumstances in each case and to construe whether Hindu female acquired or possessed the property in recognition of her pre-existing right or she gets the rights for the first time under the instrument without any vestige of preexisting right. If the answer is in the

positive, Sub-section (1) of Section [14](#) gets attracted. Thus construed, both Sub-sections (1) and (2) of Section [14](#) will be given their full play without rendering either as otiose or aids as means of avoidance.

28. In Gumpha's case (supra) though the will was executed in 1941 and the executor died in 1958 after the Act had come into force, the concept of limited right in lieu of maintenance was very much in the mind of the executor when will was executed in 1941 but after the Act came into force, the will became operative. The restrictive covenant would have enlarged it into an absolute estate; but unfortunately the bench had put a restrictive interpretation which in our considered view does not appear to be sound in law.

29. **The legatee Sellathachi had right to maintenance under the Hindu Adoption and Maintenance Act when the property was given to her for maintenance. It must be in lieu of her pre-existing right to maintenance and the property given under the will, therefore, must be construed to have been acquired by the legatee under the will in lieu of her right to maintenance. That right to maintenance to a Hindu female received statutory recognition under the Hindu Adoption and Maintenance Act, 1956. She is entitled to realise maintenance from property of her husband and even in the hands of strangers except the bona fide purchaser for value whether notice of her right.** She is equally entitled Under Section [37](#) of the Transfer of Property Act to have charge created over the property for realisation of her maintenance. On the demise of the testator, she being the class-I heir but for the bequeath, is entitled to succeed as an absolute owner. **In either of those circumstances, the question emerges whether she acquires a limited right Under Section [14\(2\)](#) for the first time under the Will. In the light of the facts and circumstances of the case and the legal setting, we F are of the considered view that she having had under Sastric law, as envisaged in the Will, the properties in recognition of her pre-existing right to maintenance, it is not a right acquired for the first time under the instrument**

will, but it is a reflection of the pre-existing right under the Sastric law, which was blossomed into an absolute ownership after 1956 Under Section 14(1) of the Act. Under these circumstances, it cannot be held that Sellathachi acquired the right to maintenance for the first time under the instrument will. The Division Bench, therefore, does not appear to have approached the problem in the correct perspective. In view of the settled legal position right from Tulasamma's case (supra) the right acquired under the Will is in recognition of the pre-existing right to maintenance known under the Sastric law and was transformed into an absolute right Under Section [14\(1\)](#) wiped out the restrictive estate given under the Sastric law and Sellathachi as absolute owner of the property. The Division bench of the High Court, therefore, was not correct in holding that Sellathachi has acquired only a limited estate under the Will and Section [14\(2\)](#) attracts to the restrictive covenants contained in the will limiting her right to maintenance for life time and, thereafter, the right to enjoy the income from the lands and on her demise, the income should go to the temples as mentioned in the will is not correct in law.”

(emphasis added)

6. A reference to the above paragraphs therefore makes it clear that life estate which Leela Wati received from her husband in terms of Will Ex. PW-1/1 dated 10.8.1976, became a full ownership right in the suit property, and since admittedly Smt. Leelawati died intestate, the appellant/plaintiff would be one of the legal heirs and hence a co-owner of the suit property.

7. In view of the above, this appeal is allowed and the impugned judgment of the first appellate court dated 14.7.2011 is set aside and the judgment of the trial court dated 29.11.2005 passed in Suit No. 216/1976 for

declaration and injunction declaring the plaintiff as joint owner of the suit property is restored. Parties are left to bear their own costs.

FEBRUARY 21, 2014
godara

VALMIKI J. MEHTA, J