

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.**

**RSA No.1751 of 1988.**

**Date of Decision: 23.09.2015.**

Satya Devi and others

....Appellants.

**VERSUS**

Bua Dass and others

....Respondents.

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**CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.**

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

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**Present:** Mr. K.S. Rekhi, Advocate for the appellants.

Mr. M.S. Rakkar, Senior Advocate with  
Mr. P.S. Bath, Advocate for the respondents.

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**SNEH PRASHAR, J.**

1. This was second appeal filed by appellants-defendants Satya Devi and others (hereinafter referred to as the “appellants”) impugning the judgment and decree dated 31.10.1986 passed in Civil Suit No.252 of 17.10.1984 by learned Additional Senior Sub Judge, Gurdaspur, decreeing the suit for mandatory injunction filed by plaintiffs-respondents Bua Dass and others (hereinafter referred to as the “respondents”) which was upheld by the first appellate Court vide judgment dated 13.11.1987.

2. Precisely, the facts which need elaboration are that respondents

Bua Dass and others filed a suit for grant of mandatory injunction directing appellants Satya Devi and others to vacate the two rooms and the portion of the courtyard shown by letters ABCD in the site plan Ex.P4 (hereinafter referred to as the “suit property”) on the averments that the house was originally owned by Hari Ram, their grandfather and he had bequeathed the same in their favour by executing a will dated 09.11.1968 (Ex.P1) on account of love and affection. Smt. Labh Kaur, predecessor-in-interest of the appellants, was permitted to live in a portion of the house i.e. the suit property under the will. After her death, her heirs had no right to occupy the suit property and they were living only as licencees under their mother Labh Kaur. They were asked to vacate the suit property but they refused to do so which necessitated filing of the suit.

It was also pleaded by the respondents that in an earlier suit between them and Labh Kaur and Lajwanti, decided on 24.03.1979 the validity and genuineness of the will was upheld. It was found that Labh Kaur had a contingent right to live in the house till her death. Labh Kaur died on 17.09.1984 and is survived by the appellants being her legal heirs and the appellants have no right to remain in the house.

3. The suit was contested by the appellants. Though they did not dispute that the house was originally owned by Hari Ram but they denied the execution and validity of the impugned will dated 09.11.1968 executed by Hari Ram and characterized the same as forged and fabricated document. They also denied that the validity and genuineness of the will was upheld in any previous litigation by a court of law. According to them, they had

acquired ownership rights in the suit property being legal heirs of deceased Smt. Labh Kaur, who was not a limited owner or licensee qua the suit property.

4. In the replication filed by the respondents they reasserted their claim as put forth in the plaint and submitted that the execution and validity of the will is not open to challenge in view of findings recorded in Civil Suit No.77 of 1978 decided on 24.03.1979.

5. On the rival contentions of the parties, following issues were framed:-

- (1) Whether the plaintiff is the owner of the house in dispute on the basis of the will dated 9.11.68? OPP.
- (2) Whether the plaintiffs are entitled to possession? OPP.
- (3) Whether the suit is not maintainable in the present form OPD.
- (4) Whether the findings about the will dated 9.11.68 have become final? OPP.
- (5) Relief.

6. Both the parties adduced their respective evidence. The findings of learned trial Court on issues no.1 and 4 that Hari Ram (deceased) had executed will Ex.P1 in favour of the respondents who are his grandsons and that the findings about the will in the earlier suit operate as resjudicata between the parties, were upheld by the first appellate Court. It was also concurrently held by both the Courts that the status of the appellants is that of licensees. Accordingly, finding the suit for mandatory injunction to be maintainable, the appellants were directed to vacate the suit property and hand over its possession to the respondents.

7. Feeling aggrieved with the judgment and decree dated 31.10.1986 the appellants preferred an appeal which was dismissed by the first appellate Court vide judgment dated 13.11.1987.

8. Still unsatisfied, the appellants have preferred the instant Regular Second Appeal.

9. The submissions made by Mr. K.S. Rekhi, learned counsel representing the appellants and Mr. M.S. Rakkar, learned senior counsel representing the respondents have been considered and record has been perused.

10. At the very outset, learned counsel for the appellants argued that it is apparent from the contents of the will Ex.P1 that Hari Ram had two daughters and a son namely, Lajwanti, Labh Kaur and Des Raj. A portion consisting of one room and veranda in the suit property was given to Lajwanti; another portion having two rooms and veranda was given to Labh Kaur who was a widow and similarly a portion having two rooms and veranda was given to Des Raj. In the subsequent part of the will, Lajwanti and Labh Kaur were restricted from alienating or mortgaging their portion and it was mentioned that after the death of both, the house will vest in the grandsons of the testator. Learned counsel contended that the first portion of the will conferred absolute estate in favour of Lajwanti and Labh Kaur regarding specific portions of the suit property given to them. It is a settled principle of law that once an absolute right of inheritance is created in favour of a person by executing a gift deed or a will, any subsequent clause in the document purporting to restrict that interest is invalid and the donee

gets an absolute estate as if the document contained no such clause. To support his argument, learned counsel relied upon *Shakuntla Devi vs. Kamla & Ors., 2005(2) R.C.R. (Civil) 668* and *Smt. Dakshyanamma vs. B.Siddalingaiah, 2005(3) R.C.R. (Civil) 506.*

11. Controverting the argument of learned counsel for the appellants, learned counsel for the respondents asserted that the house in question was self acquired property of the testator as mentioned in the will Ex.P1. It was specifically mentioned in the will by the testator that his daughters Lajwanti and Labh Kaur will have a right to reside in the suit property till they are alive. They had no right to sell or mortgage the property to anyone and after their death, the grandsons of the testator were made owners of the whole property. Learned counsel contended that no absolute estate had been conferred on Lajwanti and Labh Kaur by the testator and they were only permitted to live in the house during their lifetime. The right of Labh Kaur to live in the suit property came to an end on her death and the appellants, who were living as licencees under Labh Kaur, are legally bound to vacate the suit property and hand over possession of the same to the respondents..

12. The substantial question of law which needs to be answered is whether Labh Kaur and after her death, her daughters-appellants living in the suit property have an absolute right by virtue of Section 14(1) of Hindu Succession Act, 1956 (for short, “the Act of 1956”). The facts in hand are distinguishable from facts of *Smt. Dakshyanamma's case (supra)* and *Shakuntla Devi's case (supra)* relied upon by learned counsel for the

appellants. In Smt. Dakshyanamma's case (supra), the plaintiff-wife was given a share in the property in lieu of her maintenance. Similarly, in Shakuntla Devi's case (supra) also part of the property was bequeathed by the testator in favour of his two wives for their maintenance with the condition that they will not have power to alienate the same in any manner and after their death the property was to revert back to his daughter as absolute owner.

13. For ready reference, Section 14(1) of the Act of 1956 is reproduced hereunder:-

***“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.*

The explanation provided to Section 14(1) makes it clear that with regard to any property acquired by a female Hindu in lieu of maintenance or arrears of maintenance has to be held by her as full owner and not as a limited owner.

In the case in hand, the testator in his will Ex.P1 had specifically mentioned that he would remain the owner of the property so long as he was alive and after his death his two daughters and son were to possess the house as per the portions described by him in the will. He imposed a condition and categorically mentioned that Lajwanti and Labh Kaur can reside in the house till they are alive but they will have no right to mortgage or sell the portions given to them for residence and after their death his grandsons will be owners of the entire property. From the above construction of the will, it is crystal clear that only a possessory right during their lifetime was conferred on Labh Kaur and Lajwanti, the daughters of the testator and his actual intention was to make his grandsons as absolute owners of the entire property. In view of the ultimate device in favour of the grandsons i.e. the respondents, it cannot be said that Labh Kaur acquired any right in the property except for that she was allowed to live in the same till she was alive. A person, who is given only a right of residence in the property, cannot be said to have 'acquired' the property. Right of residence cannot be equated with any proprietary interest *albeit* such interest be of a limited character. That being so Section 14 of the Act of 1956 would not enlarge the right of residence of Labh Kaur to an absolute ownership in her favour.

14. Thus, it was rightly held by the trial Court as well as the first appellate Court that Labh Kaur, mother of the appellants had only been vested under the will Ex.P1, a limited right to live during her lifetime in a portion of the house. The appellants are admittedly the daughters of

deceased Labh Kaur and were living in the premises in her occupation with her consent. Their status is that of a licensee under Labh Kaur.

Accordingly, finding no ground for intervention in the judgment and decree dated 31.10.1986 passed by learned trial Court and affirmed by learned first appellate Court, the instant appeal being devoid of merit is hereby dismissed.

**(SNEH PRASHAR)**  
**JUDGE**

**23.09.2015**  
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