

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

+ **RSA No. 181/2014**

% **Reserved on: 25th July, 2016**
Pronounced on: 3rd August, 2016

SMT. REENA JAIN AND ANR. Appellants
Through: Mr. Alok Kumar and Mr. Neeraj
Gupta, Advocates.

versus

SHRI RAJIV KUMAR SAXENA Respondent
Through: Mr. Raj Kumar Rajput, Mr.
S.N.Pandey and Mr. Ajit Rajput,
Advocates.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **Yes**

VALMIKI J. MEHTA, J

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the two defendants in the suit, impugning the concurrent judgments of the courts below; of the Trial Court dated 6.4.2009 and the First Appellate Court dated 7.6.2014; by which the courts below have decreed the suit filed by the respondent/plaintiff for declaration that the Family Settlement Deed dated 18.12.2000 (Ex.DW1/1) and the Relinquishment Deed dated 3.2.1998 (Ex.DW3/1) are declared null and void. Respondent/plaintiff has also been held entitled to possession of the first floor and second floor of the suit property

bearing H.No. 408, Gagan Vihar, Delhi-110051 on a plot of land admeasuring 272 sq. yds. By the relinquishment deed the respondent/plaintiff had declared that the suit property belonged to his mother, and which deed was prayed to be cancelled on the ground that when this relinquishment deed was executed, he was not aware of the Will dated 28.4.1995, Ex.PW1/1, executed by the owner/father bequeathing the suit property in the respondent's/plaintiff's favour. By the Family Settlement Deed dated 18.12.2000 (Ex.DW1/1) entered into between the respondent/plaintiff/brother and the appellant no.1/sister/defendant no.1 it was agreed that the ground floor of the suit property will be exclusively owned by the respondent/plaintiff and the first floor and above portions by the appellant no.1/defendant no.1, and which deed was also prayed to be declared as void on the same ground that this document was executed in ignorance of existence of the Will of the father dated 28.4.1995, Ex.PW1/1.

2. The facts of the case are that the father of the appellant no.1/defendant no.1/sister and the respondent/plaintiff/brother Sh. Jagdish Prasad Saxena was the owner of the suit property stated above. As per the case of the respondent/plaintiff, the father died on 22.3.1996 leaving behind a Will dated 28.4.1995 bequeathing the suit property in favour of the mother Smt. Urmila Saxena as life estate and after mother's death to the respondent/plaintiff, however, this Will of the father dated 28.4.1995 was not to the knowledge of the

respondent/plaintiff till May, 2002, when the wife of the respondent/plaintiff was setting right the household articles she found this Will wrapped inside a cloth. In the replication to the written statement of the appellants/defendants the respondent/plaintiff firstly denied that he had ever executed the Family Settlement Deed dated 18.12.2000, and that in any case this family settlement did not give any rights to the appellant no.1/defendant no.1/sister in the suit property because the same was executed in ignorance of the existence of the Will of the father dated 28.4.1995. The plaintiff/respondent has further pleaded that on account of appellant no.1/defendant no.1/sister stating that she had a Will in her favour from the father of the suit property, but which was not shown to the respondent/plaintiff, appellant no.1 constructed the first floor and second floor on the suit property inspite of protestations of the respondent/plaintiff. The subject suit was hence filed for declaring as null and void the Relinquishment Deed dated 3.2.1998 executed by the respondent/plaintiff and appellant no.1/defendant no.1 in favour of the mother Smt. Urmila Saxena and also for cancellation of the Family Settlement Deed dated 18.12.2000, copy of which was said to be given to the respondent/plaintiff by the appellant no.1 only on 16.8.2002. Possession was also prayed of the first floor and second floor of the suit property which was constructed by and in possession of the appellant no.1/defendant no.1.

3. Appellants/defendants contested the suit. Appellant no.1 is the wife of appellant no.2/defendant no.2. The appellants/defendants disputed the existence of the Will dated 28.4.1995 executed by father whereby life estate was given in favour of his widow Smt. Urmila Saxena, mother of the respondent/plaintiff and appellant no.1, and after life estate to Smt. Urmila Saxena, thereafter exclusive ownership was to vest with the respondent/plaintiff. Appellants/defendants also pleaded that in any case rights stand irrevocably crystallized firstly in terms of the Relinquishment Deed dated 3.2.1998 executed by the respondent/plaintiff and appellant no.1/defendant no.1 in favour of the mother and secondly and finally by the Family Settlement Deed dated 18.12.2000 executed between the appellant no.1 and the respondent/plaintiff whereby the ground floor of the suit property was to vest in the respondent/plaintiff and the first floor and above portions were to vest with the appellant no.1/defendant no.1

4. The trial court on 31.3.2004 framed the following issues:-

- “(i) Whether the plaintiff is entitled for decree of declaration as prayed for? OPP
- (ii) Whether the plaintiff is entitled for decree of possession as prayed for? OPP
- (iii) Whether the WILL dated 28.4.1995 is false, forged and fabricated? OPD
- (iv) Relief.”

5. Both the courts below have held that the Will of the father dated 28.4.1995 stands proved. The courts below have held that the Relinquishment

Deed dated 3.2.1998 executed by the respondent/plaintiff and appellant no.1/defendant no.1 in favour of the mother and the Family Settlement Deed dated 18.12.2000 entered into between the respondent/plaintiff and the appellant no.1/defendant no.1 are null and void because they were signed by the respondent/plaintiff in ignorance of the existence of the Will of the father dated 28.4.1995. Though the respondent/plaintiff had denied execution of the Family Settlement Deed dated 18.12.2000, both the courts below have held that this family settlement stands proved in terms of the depositions of the witnesses on this Will Sh. C.L.Madan and Sh. J.K.Chopra who deposed as DW-1 and DW-5. The Family Settlement Deed dated 18.12.2000 was also held to be proved in view of the handwriting expert's report filed and proved by the appellants/defendants as Ex.DW7/1.

6. Before this Court, on behalf of the appellants, three aspects are argued:-

(i) It is firstly argued that taking that there is a Will of the father dated 28.4.1995, the said Will gave a life estate to the mother of the parties Smt. Urmila Saxena, and that this life estate got converted to a full estate as per Section 14(1) of the Hindu Succession Act, 1956. In support of this argument reliance was placed upon various judgments of this Court which have relied upon the Supreme Court judgment in the case of *C. Masilamani Mudaliar and Others Vs. Idol of*

Sri Swaminathaswami Swaminathaswami Thirukoil and Others (Division Bench of three Judges) (1996) 8 SCC 525.

(ii) Secondly, it is argued that respondent/plaintiff cannot succeed on the basis of the Will dated 28.4.1995 of the father inasmuch as the Family Settlement Deed dated 18.12.2000 will prevail in spite of the same having been entered into between the respondent/plaintiff and appellant no.1/defendant no.1 in ignorance of the Will of the father, and for which purpose, reliance is placed upon the judgment of the Supreme Court in the case of ***Kale and Others Vs. Deputy Director of Consolidation and Others, AIR 1976 SC 807; (1976) 3 SCC 119*** which holds final bindingness to a family settlement even if the same is executed by a party in ignorance of his legal rights.

(iii) Thirdly and finally, it is argued that once appellant no.1/defendant no.1 has constructed the first floor and second floor of the suit property under the *bonafide* belief that she is the owner of the same alongwith the terrace on account of having entered into a Family Settlement Deed dated 18.12.2000, appellant no.1 would become the owner of the same in view of the provision of Section 115 of the Indian Evidence Act, 1872 which estops a real owner who stands by when construction is being carried out, from claiming ownership rights in a property, once a third person constructs on the property in the *bonafide* belief that such third person is the owner of the property on which construction is made.

7. Learned counsel for the respondent/plaintiff has on the other hand supported the findings and conclusions of the courts below which have held that Section 14(1) of the Hindu Succession Act, 1956 does not apply and also that the judgment in the case of *Kale and Others (supra)* does not apply, and which findings of the courts below are arrived at on the basis that respondent/plaintiff was ignorant of the existence of the Will of the father dated 28.4.1995 when he had executed the Relinquishment Deed dated 3.2.1998 and the Family Settlement Deed dated 18.12.2000. It is also argued that the facts of the case do not call for application of Section 115 of the Indian Evidence Act.

8. The following substantial questions of law arise:-

- (i) Whether the courts below have committed a grave illegality and perversity in not applying the ratio of various judgments of the Supreme Court, and finally *C. Masilamani Mudaliar and Others's* case (*supra*) which hold that when a Hindu wife receives under a Will a life estate from her husband, then, such a life estate is to be taken as being granted in view of the pre-existing right of maintenance of a Hindu wife against her husband under the shastric law as also the Hindu Adoptions and Maintenance Act, 1956, and thus the life estate converts into a full estate as per Section 14(1) of the Hindu Succession Act, 1956?

(ii) Whether the courts below have committed a complete perversity in not referring to the directly applicable paragraphs containing the ratio of the judgment of the Supreme Court in the case of ***Kale and Others (supra)*** wherein it is said that a family settlement prevails although the same is executed in ignorance of the legal rights of the parties?

(iii) Whether the judgments of the courts below are in violation of the principle of estoppel contained in Section 115 of the Indian Evidence Act, 1872 inasmuch as once appellant no.1/defendant no.1 has constructed the suit property being the first floor and second floor with the right to the terrace under a *bonafide* belief that she is the owner and has spent amounts on construction, is not the respondent/plaintiff therefore estopped from claiming title in the first floor and above of the suit property?

9. Though at the beginning of the arguments on behalf of the appellants stress was laid upon questioning the Will Ex.PW1/1 dated 28.4.1995 of the father Sh. Jagdish Prasad Saxena, however, subsequently the arguments on behalf of the appellants veered around to the fact that the Will of the father did not give ownership rights to the respondent/plaintiff in the suit property and that since by the Will life estate was given to the mother Smt. Urmila Saxena, this life estate

got converted into a full estate whereby the mother Smt. Urmila Saxena became the exclusive owner of the suit property, and hence the respondent/plaintiff cannot claim exclusive ownership of the suit property with the fact that as the Family Settlement Deed dated 18.12.2000 prevails, hence, the respondent/plaintiff is only the owner of the ground floor of the suit property with the first floor and above portions vesting in the ownership of the appellant no.1/defendant no.1.

10. That the Will Ex.PW1/1 of the father dated 28.4.1995 gives a life estate in favour of the mother Smt. Urmila Saxena and after the life of the mother the property to the respondent/plaintiff/son is not disputed. The question is what is the legal effect of such a Will in the present case which gives life estate to Smt. Urmila Saxena, the widow of the deceased owner Sh. Jagdish Chander Saxena.

11. I have had an occasion to consider this aspect in the judgments in the cases of *Darshan Vs. Raj Kumar 2014 (144) DRJ 350* and *Prem Chand Vs. Ram Nath Deceased Through LRs 2014 (142) DRJ 132*. In both these judgments, I have relied upon the Division Bench judgment of the Supreme Court of three Judges in the case of *C. Masilamani Mudaliar and Others (supra)* and by which judgment the Supreme Court set aside the Division Bench judgment of two Judges in the case of *Gumpha (Smt.) and Others Vs. Jaibai, (1994) 2 SCC 511*. In the case of *Gumpha (Smt.) and Others (supra)*, the Division Bench of two Judges of the Supreme Court has held that life estate given under a Will by a

Hindu husband to his widow will not get converted into a full estate under Section 14(1) of the Hindu Succession Act but this view was held to be a wrong view and the judgment in the case of *Gumpha (Smt.) and Others (supra)* was specifically overruled by the judgment in the case of *C. Masilamani Mudaliar and Others (supra)*. The relevant paras of the judgment of the Supreme Court in the case of *C. Masilamani Mudaliar and Others (supra)* are paras 15 to 29 and these paras read as under:-

“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* 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 4-12-1986 on “The Development of the Right to Development” to which India played a crusading role for its adoption and ratified the same. Its preamble recognises 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 18-12-1979. The Government of India who was an active participant to CEDAW ratified it on 19-6-1993 and acceded to CEDAW on 8-8-1993 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 C 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 none 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 51-A(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 Indian 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 *Valsamma Paul v. Cochin University*, this Court has held thus: (SCC pp. 562-64, paras 26-29)

“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 18-12-1979 and the Government of India had ratified as an active participant on 19-6-1993 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 pre-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 case* 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 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 case* 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 is mine)

12(i) A reading of the aforesaid paras of the judgment of the Supreme Court in the case of *C. Masilamani Mudaliar and Others (supra)* shows that the Supreme Court has referred to various international conventions and treaties as also the objects of various provisions of the Constitution of India as also the obligation of Hindu husband to maintain his wife both under the shastric law as also the Hindu Adoptions and Maintenance Act, and has consequently held that when by a Will, a Hindu husband bequeaths life interest in a property to his

widow, the widow takes the property not as limited owner with life interest but she becomes the full owner thereof by virtue of Section 14(1) of the Hindu Succession Act.

(ii) Once that is the legal position and the language of the Will leaves no manner of doubt that a life estate was created in favour of the Hindu widow/Smt. Urmila Saxena by the Hindu husband/Sh. Jagdish Chander Saxena, there is left no manner of ambiguity that Smt. Urmila Saxena became the exclusive owner of the suit property by virtue of Section 14(1) of the Hindu Succession Act. Therefore, the contention of the respondent/plaintiff that on account of the Will Ex.PW1/1 dated 28.4.1995 of his father Sh. Jagdish Prasad Saxena, (the husband of Smt. Urmila Saxena) he is the exclusive owner of the suit property is a legally misconceived argument and is rejected by holding that Smt. Urmila Saxena became the exclusive owner of the suit property as per the Will Ex.PW1/1 dated 28.4.1995 and not the respondent/plaintiff.

(iii) The first substantial question of law is therefore answered in favour of the appellants/defendants and against the respondent/plaintiff.

13(i) Now coming to the second substantial question of law as regards finality of the Family Settlement Deed dated 18.12.2000, it is seen that both the courts below have given a concurrent finding that the Family Settlement Deed

dated 18.12.2000 was executed by the respondent/plaintiff. This family settlement is proved as Ex.DW1/1 and it has been proved through the depositions of the two attesting witnesses Sh. C.L. Madan and Sh. J.K. Chopra who deposed as DW-1 and DW-5 respectively. Also, the handwriting expert proved the signatures of the respondent/plaintiff on this family settlement deed by his report Ex.PW7/1, although the respondent/plaintiff had denied his signatures. Further, the appellant no.1/defendant no.1/sister has proved Ex.DW2/1 to Ex.DW2/18 being the house tax record and which shows that on the basis of the family settlement executed between the plaintiff no.1 and the respondent/plaintiff, appellant no.1 got mutated the first floor and above portion of the suit property in her favour. In this bunch of documents, there is also the letter by the respondent/plaintiff to MCD talking of Family Settlement Deed dated 18.12.2000, Ex.DW2/12 and an affidavit and an indemnity bond of the respondent/plaintiff to the same effect being Ex.DW2/13 and Ex.DW2/14 respectively.

(ii) Once the family settlement deed is proved, the issue arises is whether the respondent/plaintiff can contend that the same does not bind allegedly because he came to know of the Will of the father dated 28.4.1995 only subsequently in May, 2002. The answer to this has to be against the respondent/plaintiff and in favour of the appellants/defendants in view of paras 9 and 16 of the judgment of the Supreme Court in the case of *Kale and Others (supra)* and which paras hold

that even if a family settlement is executed in ignorance of the legal rights of the parties, the family settlement necessarily has to prevail. These paras of the judgment in the case of *Kale and Others (supra)* read as under:-

“9. Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in Order to buy peace or mind and bring about complete harmony and good will (sic) the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise *Kerr on Fraud* at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

“The principles which apply to the case of ordinary compromise between strangers, do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.”

The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. Today when we are striving to build up an egalitarian society and are trying for a complete reconstruction of the society, to maintain and uphold the unity and homogeneity of the family which ultimately results in the unification of the society and, therefore, of the entire country, is the prime need of the hour. A family arrangement by which the property is equitably divided between the various contenders so as to achieve an equal distribution of wealth instead of concentrating the same in the hands of a few is undoubtedly a milestone in the administration of social justice. That is why the term "family" has to be understood in a wider sense so as to include within its fold not only close relations or legal heirs But even those persons who may have some " sort of antecedent title, a semblance of a claim or even if they have a spes successionis so that future disputes are sealed for ever and the family instead of fighting claims inter se and wasting time, money and energy on such fruitless or futile litigation is able to devote its attention to more constructive

work in the larger interest of the country. The Courts have, therefore, leaned in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds. Where the Courts find that the family arrangement suffers from a legal lacuna or a formal defect the Rule of estoppel is pressed into service and is applied to shut out plea of the person who being a party to family arrangement seeks to unsettle a settled dispute and claims to revoke the family arrangement under which he has himself enjoyed some material benefits. The law in England on this point is almost the same. In *Halsbury's Laws of England*, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

“A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term “family arrangement” is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The Court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.”

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16. Similarly in *Maturi Pullaiah v. Maturi Narasimham* it was held that even if there was no conflict of legal claims but the settlement was a bona fide one it could be sustained by the Court. Similarly it was also held that even the disputes based upon ignorance of the parties as to their rights were sufficient to sustain the family arrangement. In this connection this Court observed as follows:

“It will be seen from the said passage that a family arrangement resolves family disputes, and that even disputes based upon ignorance of parties as to their rights may afford a sufficient ground to sustain it.

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Briefly stated, though conflict of legal claims in present or in future is generally a condition for the validity of a family arrangement, it is not

necessarily so. Even bona fide disputes, present or possible, which may not involve legal claims will suffice Members of a joint Hindu family may, to maintain peace or to bring about harmony in the family, enter into such a family arrangement. If such an arrangement is entered into bona fide and the terms thereof are fair in the circumstances of a particular case, Courts will more readily give assent to such an arrangement than to avoid it.” (emphasis is mine)

(iii) In view of the clear exposition of law in the case of *Kale and Others (supra)* the courts below have fallen into a grave error by holding that mere ignorance of the respondent/plaintiff of the Will of the father dated 28.4.1995 will entitle the respondent/plaintiff to claim setting aside of the Family Settlement Deed dated 18.12.2000. Accordingly, the substantial question of law no.(ii) is also answered in favour of the appellants and against the respondent/plaintiff.

14(i) On the third substantial question of law of applicability of the principle of estoppel against the respondent/plaintiff in view of Section 115 of the Indian Evidence Act, even this substantial question of law has to be answered in favour of the appellants and against the respondent/plaintiff because it is a fact that the appellant no.1 got constructed the first floor and the second floor on the suit property, and as per plan sanctioned in her own name, and by spending the moneys of the appellants. The construction which the appellant no.1/defendant no.1 made was on the *bonafide* belief that she is the owner of the first floor and above of the suit property pursuant to the Family Settlement Deed dated 18.12.2000. Once that is so the provision of Section 115 of the Indian Evidence

Act comes in and consequently the respondent/plaintiff is estopped from contending that the appellant no.1 is not the owner of the first floor and above portions of the suit property.

(ii) I have similarly held in the judgments in the cases of *Hari Mohan and Anr. Vs. Smt. Maya Devi and Anr.*, AIR 2012 Delhi 24 and *Sh. Mukhinder Singh (Deceased) Through L.Rs. & Ors. Vs. Sh. Gurbux Singh & Ors.* 2012 (4) ILR Delhi 578. The relevant paras in the cases of *Hari Mohan and Anr. (supra)* and *Sh. Mukhinder Singh (Deceased) Through L.Rs. & Ors. (supra)* read as under:-

“Relevant para of Hari Mohan and Anr. (supra)”

6. A Regular Second Appeal has to be only entertained if there arises a substantial question of law. Merely because two views are possible and the Appellate Court has taken one possible view, cannot mean that a substantial question of law arises. Appreciation of evidence is within the jurisdiction of the original Court and the Appellate Court, and which appreciation of evidence ought not to be lightly interfered because for maintaining a second appeal there is required not only a question of law but a substantial question of law.

In my opinion, the arguments as raised by the counsel for the appellants are misconceived and no substantial question of law arises inasmuch if really the appellant No.2/Smt. Koyal Devi, wife of appellant No.1, was the owner of the property, then the appellants would not have stood by and allowed the respondents to raise construction on the suit property. It is established on record that the respondent No.1 herein incurred the complete costs for construction on the plot, got electricity and water connections in her name and also has paid all the charges to the local authorities with respect to the subject property. Clearly therefore Section 60 of the Act applies. The argument of the appellants that the respondents herself denied applicability of Section 60, is without merit inasmuch as there cannot be an estoppel against law. The respondents are always entitled to argue that Section 60 of the Act applies. In my opinion, the Appellate Court is also otherwise correct because as per Section 115 of the Evidence Act, 1872, once a person having a belief that he is the owner of a plot, constructs on a plot and the real owner stands by then such real owner is estopped from claiming any title in the plot inasmuch as

by standing by he has given a representation that the person who constructs on the plot had complete entitlement to construct. Further, since the respondent No.1 has admittedly made entire construction on the plot in question, she is definitely the owner of the building which has been constructed on the plot though formally there may not be title papers in the name of the respondents with respect to the plot in question.

Relevant paras of Sh. Mukhinder Singh (Deceased) Through L.Rs. & Ors. (supra)

18. In my opinion, the trial Court has also rightly decided issue no.8 by holding that the appellants/plaintiffs are estopped from filing the subject suit. Though, the Trial Court has not given a very detailed reasoning, in my opinion, really the reasoning of the Trial Court is based upon Section 115 of the Evidence Act, 1872. As per the provision of Section 115 of the Evidence Act, if a person has a belief that he is the owner of a plot, and such person thereafter builds on the plot having the impression that he is the owner of the plot, and the real owner stands by and allows him to construct on the plot, the real owner is then estopped in law from claiming any rights on the plot once the third person has made the construction on the plot. While giving these observations, I reiterate the finding that the defendant no.1/respondent no.1 and Sir Sobha Singh were entitled to have an impression that it was the defendant no.1/respondent no.1 who is the owner of the plot inasmuch as there was a letter dated 4.10.1954 by Sardar Sohan Singh to the society for transfer of the plot and membership and which letter was never revoked, taken with the fact that pursuant to such letter there was a resolution of the society 3-C (Ex.P8) by which there was a transfer, though conditional on defendant no.1/respondent no.1 being a blood relation and that in 1954 itself transfer was made permissible to a person who was not a close relation. Further, and as already discussed above, no amount whatsoever was paid by Sardar Sohan Singh to Sir Sobha Singh for construction on the plot. Also never any income tax returns were filed, which have been proved on record, to show that Sardar Sohan Singh during his lifetime ever claimed ownership of the suit plot.

I may note that there was an earlier round of litigation with respect to production of income tax records of the appellants/plaintiffs as also Sardar Sohan Singh, and a learned single Judge of this Court had rejected the prayer of the defendant no.1/respondent no.1 to summon the income tax records of the appellants/plaintiffs and Sardar Sohan Singh, however, the order of this Court was set aside by the Hon'ble Supreme Court and the defendant no.1/respondent no.1 was allowed to summon the income tax records of the appellants/plaintiffs and Sardar Sohan Singh. By that stage it was however too late, and the necessary records in the income tax department were no longer available, possibly having been weeded out. But, that cannot mean that the appellants/plaintiffs who are bound to have possession of such records, ought not to have filed such records and therefore, I draw an adverse inference against the appellants/plaintiffs for concealing the income tax and wealth tax returns of the appellants/plaintiffs as also

of late Sardar Sohan Singh. The defendant no. 1/respondent No.1 has on the contrary filed his tax returns showing that he had claimed ownership of the suit property and represented himself to be the owner of the suit property in the tax records. These income tax and wealth tax returns have been filed and exhibited before the Trial Court as Ex.PW4/1 to Ex.PW4/12.

19. Accordingly, I am of the opinion that the defendant no.1/respondent no.1 is also the owner of the suit property on the basis of the principle of estoppel enshrined in Section 115 of the Evidence Act, 1872 and I uphold the finding of the Trial Court on issue no.8 with respect to estoppel against the plaintiffs/appellants.”
(underlining added)

(iii) It is finally noted that even the trial court in its judgment notes that the appellant no.1/defendant no.1 has *bonafidely* constructed the property and therefore the trial court has in order to compensate the appellant no.1/defendant no.1 passed a decree of Rs. 5 lacs towards costs of construction incurred by the appellant no.1/defendant no.1 for the first and second floors of the suit property.

(iv) In view of the above discussion, even the third substantial question of law is answered in favour of the appellants and against the respondent/plaintiff.

15. The sequitur of the above discussion would be that this second appeal is allowed and the suit of the respondent/plaintiff will stand dismissed, leaving the parties to bear their own costs.

AUGUST 03, 2016
ib/Ne

VALMIKI J. MEHTA, J