

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

Reserved on: 04.04.2016
Pronounced on: 13.07.2016

+ **RFA (OS) 147/2013**

MRS. PRITAM DEWAN AND ANR.Appellants

Through: Sh. Kamaldeep Dayal, Advocate.

Versus

MRS. RASHMI KHANNA AND ANR.Respondents

Through: Sh. Harish Malhotra, Sr. Advocate with
Sh. Anil Mital and Sh. Tarun Gandhi, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT

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1. In this appeal, the unsuccessful plaintiffs/appellants who are the widow and son of late Col. B.R. Dewan question the judgment of a learned Single Judge of this court (dated 11.10.2013) which held that the first Appellant (widow) was not the absolute owner of the suit property under Section 14(1) of the Hindu Succession Act, 1956. However, in view of the statement and admission of the defendants (i.e the daughter and her husband) the widow's right to receive rents paid by tenants of the second floor, during her lifetime was acknowledged and a consequential decree made.

2. The facts of the case are that D-246, Defence Colony, New Delhi (hereafter "the suit property"), was a self-acquired property of Col.(Retd.)

B.R. Dewan. By his will dated 24.06.1984 he bequeathed life interest in the suit property in favour of the first Appellant (his widow) to hold it as a trustee on behalf of the legal owners (the second Appellant-hereafter “the son” or “Ranvir” and the first Respondent, hereafter “the daughter” or “Rashmi”) and income arising during her lifetime was to be enjoyed by her. She was also entitled to evict the tenants and or create new tenancies of her own will in the capacity of her being the owner till her demise after which the legal ownership would vest with Ranvir and Rashmi of their respective portions. Thereafter, the ground floor was to be left to Ranvir Dewan and first floor to the daughter, Rashmi. The relevant extracts of the Will are as follows:

“...After my demise, Ranvir Dewari and Rashmi Khanna would be owners but upto the death of my wife – Pritam Dewan - who has served and cared about me throughout my life, would first be entitled to live and/ reside in the House D-246 Defence Colony, New Delhi, free of rent and also enjoy all the Income from the tenants (presently GSIC) She would also be entitled to dispose of the tenants and/or take, new tenants of her own will in the capacity of her being the owner till her demise. Legal Ownership would vest the Ranvir Dewan and Rashmi Khanna of their respective portions. In short Mrs. Pritam Dewan would hold life interest in my house property D-246, Defence Colony, New Delhi, as trustee on behalf of the legal owners and the Income arising during her life time will be assessed in her hands and only after her demise would the income be that of the legal owners. For, all purposes Ranvir Dewan and Rashmi Khanna would be assessed to Wealth after my demise...”

3. Before the probate of the said Will was granted, a family settlement was entered between the parties (i.e the mother, the son and daughter) under which the a residential plot at R-7/189, Raj Nagar, Ghaziabad was settled as

the exclusive property of Brig. Ashok Dewan, the son of late Col. B.R. Dewan from his first wife. Certain other payments were also made to him and Smt. Kamla Dewan.

4. To carry out the repairs of the 45 year old suit property, a Collaboration Agreement was entered into with a builder enabling construction of a basement, ground floor and two floors above it, on the suit property. A family settlement dated 23.07.2008 (hereinafter referred as “the family settlement”) was also entered into between the parties which granted rights of the entire basement and ground floor along with 40% freehold rights in favour of the son. The entire second floor including roof and the right to build and construct the third floor with her own funds was given to the daughter along with 30% of the freehold shares. The balance 30% was to vest with the builder. The said settlement also recorded that the life interest in the entire property was to remain with the mother, i.e the first appellant.

5. After the cancellation of the first collaboration agreement, another collaboration agreement dated 17.12.2008 (hereinafter referred as collaboration agreement) was signed with Chandan & Chandan Enterprises. In terms of the collaboration agreement a sum of ₹ 1 crore was to be paid by the builder to the parties. The Appellants filed CS(OS) 1502/2010 before the court alleging unlawful embezzlement of ₹33 lakhs that was paid by the builder in the account of Rashmi and that was otherwise allegedly supposed to be paid in a common escrow account for use of the first Appellant/mother. They also alleged that the respondents have unlawfully entered into a lease agreement on 09.07.2010 for the lease of the second and third floors of the suit property thereby infringing upon the rights of the first Appellant/mother.

Other fraudulent actions of the Respondents were alleged by the Appellants in CS(OS) 1502/2010.

6. In the suit, various reliefs including a decree of declaration that the first Appellant/mother was entitled to rent, security deposit and all other income accruing from second and third floors of the suit property were sought. Declaration was also sought that life interest granted in lieu of maintenance to the mother/first Appellant in the suit property conferred on her an absolute interest in the suit property. The suit was contested by the defendants, including the daughter, who alleged that the family settlement and collaboration agreement resulted in redefining the rights of the parties, particularly the widow and children (Ranvir and Rashmi). The defendants also stated that for the maintenance of the mother, the Will had provided bank balances, shares, debentures, etc. that were bequeathed to her. It was also pointed out that a registered lease deed dated 09.04.1997 was executed by the L&DO in favour of the son and daughter confirming complete ownership rights in the suit property to them in equal shares. The conveyance deed dated 09.04.1997 is a registered document. The second plaintiff on behalf of the first plaintiff executed the conveyance deed. Therefore, the second plaintiff was fully aware about this fact and did not challenge that conveyance deed; she was now estopped from claiming that the life interest granted to her under the Will dated 24.06.1984 conferred absolute ownership right on her. It is stated that the mother, first plaintiff/appellant made her daughter sign all the relevant documents i.e., agreement etc. with the developer as owner and she herself signed the said documents as attorney holder of her son who claims to be the legal owner.

7. The following issues were framed for consideration based on which trial commenced:

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

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

(iii) Relief.”

8. The learned Single Judge in the impugned judgment held that the second plaintiff, i.e. the mother had not become the absolute owner of the suit property under Section 14(1) of the Hindu Succession Act, 1956 and that in the facts and circumstances of the case, Section 14(2) of the Act applied, thus resulting in the first appellant becoming only a limited owner. The learned Single Judge, however, in view of concessions made by the first two defendants, in their written statements, decreed the suit, partly, in the following terms:

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

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

It is against this that the Appellants are before this court.

9. The Appellants argue that the learned Single Judge erred in not recognizing that the right of residence and the right to earn income by letting out the said property, secured through the Will, constituted the mother's maintenance right and hence limited interest in the suit property received by her in lieu of her right of maintenance had ripened into an absolute interest over the property by virtue of the operation of section 14(1) of the 1956 Act. They further contend that the learned Single Judge erred in law by not appreciating the line of cases : *V Tulsamma vs Sesha Reddy* (1977) 3 SCC 99, *Mangat Lal (dead) vs. Punni Devi* (1995) 6 SCC 88 , *Maharaja Pillai Lakshmi Ammal vs. Maharaja Pillai Thillanayakom Pillai* (1998) 1 SCC 99, *Palchuri Hanumayamma (Smt) v. Tadikamalla Kotlingam (Dead) BY LRs* (2001) 8 SCC 552 , which held that every Hindu woman has an inherent pre-existing right to maintenance that has its genesis in Shastric law and any right given in lieu of this maintenance fructifies into the absolute right of the woman under the 1956 Act. Learned counsel for the appellant argues that a Hindu male is bound to maintain his wife and his children. It is claimed that a wife is entitled to be maintained by the husband regardless of possession or

ownership of property. A widow not succeeding to the estate of her husband as his heir is entitled to maintenance out of his separate property as well as out of property in which he was coparcener at the time of his death. It is claimed that the mother was given life interest in the suit property *in lieu* of her pre-existing right of maintenance. Consequently, by reason of Section 14(1) of the Hindu Succession Act, that right has expanded into an absolute right and the widow/first appellant is the absolute owner of the suit property. Reliance is also placed upon the memorandum of family settlement dated 23.07.2008 which was executed between the parties, which categorically provides that life interest of the widow, the second plaintiff in terms of the Will dated 24.06.1984 in the property would survive and subsist.

10. The Appellants further contend that the learned Single Judge erred in concluding that the first Appellant had not discharged the burden of showing that such a pre-existing right vested in her and that the interest in the property was given in lieu of this right. Reliance is placed on *Pillai* (supra) and *Punni Devi* (supra) which held that the deed by which husband gives the property need not specifically state that it was given in lieu of maintenance and if, therefore, the wife is placed in exclusive possession of the property with the right to take income for her maintenance, presumption is that the property was given to her in lieu of maintenance and hence attractive of Section 14(1) of the Act.

11. The Defendant/respondents urge this court to not interfere with the findings of the learned Single Judge. They argue that the first appellant/mother had no pre-existing right of maintenance. Sh. Harish Malhotra, learned senior counsel submits that the only right that a widow has for maintenance is under Sections 22 and 23 of the Hindu Adoption and

Maintenance Act. Under those provisions the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased. The amount of maintenance is also at the discretion of the court, whether any and what maintenance shall be awarded. He submits that other than these statutory provisions there is no other right of maintenance to a Hindu widow. It is further stated that the second plaintiff/mother cannot claim any maintenance. She is getting a pension of ₹ 40,000/- per month from the Indian Army where her husband had served. In addition, she was given ₹40 lakhs from the builder and is also getting rentals of ₹40,000/- per month. It is stated that for her maintenance the Will bequeathed properties elaborated in paragraphs 10 to 14 of the said Will which includes plot of land at Ghaziabad, UP, Bank Balance, shares, debentures, fixed deposits, jewellery and other movables. Therefore, it is stated that she has no right to claim maintenance.

Analysis and Conclusions

12. The question for consideration before this court is whether the life interest created in favour of the first Appellant under her husband's Will was in *lieu* of her right to maintenance and resultantly did she become the absolute owner of the suit property by virtue of operation of Section 14(1) of the 1956 Act.

13. Section 14(1) of the 1956 Act abolished limited estate of women and held that any property possessed by her before or after the commencement of the Act would become her absolute property thereof. Section 14(2) , as a limitation on the scope of sub-section (1) says that a property acquired by any deed or instrument where the terms of such instrument prescribe a

limited estate to the woman would continue as such and will not become her absolute estate. Section 14 reads as follows:

“14. Property of a female Hindu to be her absolute property-

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

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

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

14. To understand the interplay between these two sub-sections of Section 14, reference will have to be made to the tests laid down by the courts. The Supreme Court in the *V Tulsamma Case (supra)* held that:

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

award allotting the property prescribes a restricted estate in the property."

15. It has been well established in a number of cases as cited above that every Hindu woman has an inherent pre-existing right of maintenance, as recognised by the Shastric laws and the 1956 Act. To assess the application of sub section (1) or (2) of section 14 of the Act, it is important to see whether in a particular case the transfer of interest in the property was made in *lieu* of this pre-existing right or a new interest was created for the first time, without any reference to the maintenance right.

16. In the facts of this case, the Will created in favour of the Appellant a life interest in the suit property along with the right to income from the property. The Appellants in the appeal have time and again emphasised on the fact that the first Appellant being a Hindu wife has a pre-existing maintenance right and that in *lieu* of that the right in the suit property should be seen as her maintenance right and she should be given absolute interest thereof.

17. The learned Single Judge in the impugned judgment, extensively relied on the cases of *Jagan Singh vs. Dhanwati* 2012 (2) SCC 628; *Shiv Dev Kaur vs. RS Grewal* AIR 2013 SC 1620; *Sadhu Singh vs. Gurudwara Sahib Narike & Ors.* AIR 2006 SC 3282 and *Sharad Subramanyam vs. Soumi Mazumdar* AIR 2006 SC 1993, to hold the proposition that when a property is given to a woman under a Will, she cannot claim any right other than those specifically mentioned in the Will and hence a life interest specifically created by a Will would not ripen into an absolute interest under the Act. It was observed by the Supreme Court in the *Sadhu Singh (supra)*:

“Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-Section (1) of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act.

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

18. A similar view was expressed by the Supreme Court in the case of *Sharad Subramanyam* (*supra*) and also noted by the learned Single Judge :

"Mr. Bhaskar P. Gupta, learned Senior Counsel for the respondents, rightly distinguished all these cases, as it was clearly proved therein, that the properties had been given to a female Hindu, either in recognition of or in lieu of her right to maintenance under the Shastric Hindu Law or under the Hindu Adoption and Maintenance Act, 1956. Consequently, these were instances where the dispositions of property, albeit as a limited estate, would blossom into a full interest by reason of sub-section (1) of Section 14 of the Act. Learned Counsel further contended that, there is no absolute rule that all properties demised to a female Hindu were necessarily in recognition of or in lieu of her right to maintenance. It was possible, even after the Act came into force, to create a limited estate by

reason of a gift or will. Such a situation would fall within the ambit of sub-section (2) of Section 14 of the Act as long as it was not in recognition of or in lieu of a right to maintenance under the Shastric Hindu Law or under a statute. Learned Senior Counsel relied on Section 30 of the Act, which recognises the right of a Hindu to dispose of self-acquired property by Will. Mr. Gupta relied on the judgment of this Court in **Bhura and Ors. v. Kashi Ram**, which was also a case of, limited estate conferred on a female Hindu by a Will. This Court held that, upon a proper construction of the Will, the bequeathal in favour of the female Hindu was clearly indicative of: "...the testator's intention of only creating a life interest in her and nothing more and the various expressions used therein are indicative of and are reconcilable only with the hypothesis that the testator was creating an estate in favour of . . . (the female Hindu)... only for her lifetime and not an absolute estate."
(Emphasis supplied)

19. On an analysis of the above mentioned judgments, it is clear that when a Hindu husband creates interest in a property in favour of his wife through a Will or any other instrument, then the intention of the husband evidenced by the instrument is to be ascertained to deduce if the transfer is in *lieu* of her pre-existing maintenance right that would ripen into absolute interest or it is a transfer of a limited interest, to be vested in the woman in that limited and restricted manner itself.

20. Thus to answer the question before this court, the intention of Col. B.R Dewan in transferring the life interest in the suit property to the first Appellant would have to be ascertained. The Will mentions that the son and daughter would be the owners of the property but the first Appellant/mother would have life interest in the property upto her death and would be entitled to the income from the property. She was constituted as a trustee on behalf of

the legal owners to enjoy the life interest and the income from the property. The Will also directs the owners of the property i.e. the son and daughter, to pay one-fifth of the sale consideration to Ashok Dewan in case of sale of the suit property. Moreover, the wealth tax assessment was also to be done in the name of the son and the daughter, as the owners of the property. All these statements in the Will clearly point out that the intention of Col. B.R. Dewan was to bequeath the ownership of the property to the son and daughter and to grant the limited right of life interest to the first appellant/widow to enjoy, reside and earn rental income from the suit property.

21. The following terms of the family settlement are relevant:

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

That the FIRST PARTY had agreed to the above settlement which was arrived at earlier and is now being reduced into writing and has no objection and shall not object to the same at any point of time. It is, however, mutually agreed and

confirmed that the life interest of the FIRST PART, Mrs. PritamDewan, as per the WILL dated 24-06-1984 left behind by Col. B. R. Dewan, in the property shall remain.”

The actions of the parties like signing and registration of the Conveyance Deed, as well as signing of the Collaboration agreement only by the owners of the property that is the son and daughter with the builder also point that the parties had recognised the legal ownership of the son and daughter and the limited life interest of the first Appellant.

22. The Appellants had further urged that the rents and the security deposit for the third floor be secured in favour of the first Appellant in lieu of her recognised life interest in the property given by the Will which is reiterated in the Family Settlement. The Will had created life interest in the Appellant in the suit property. Having regard to the authorities cited above, this Court is of opinion that the present case is quite clearly one where a life interest was created in favour of the first appellant, widow of Col. B.R. Dewan. Therefore, her argument about ownership of the suit property as an absolute owner (on the basis of the plea that the life interest enlarged into a full owner's right) has to fail. The question that survives consideration is the relief, if any, that the said appellant is entitled to.

23. The terms of the Family Settlement, especially Clause 5 (quoted *supra*) clarify that the pre-existing property right of the first appellant, spelt out (in the form of life interest in the suit property *including the right to rent out the property, receive and enjoy rents*) was protected. The relevant extract of clause 5 is as follows:

“It is, however, mutually agreed and confirmed that the life interest of the FIRST PART, Mrs. Pritam Dewan, as per the

WILL dated 24-06-1984 left behind by Col. B. R. Dewan, in the property shall remain.”

Concededly, the will contemplated that the wife would enjoy rents:

“...After my demise, Ranvir Dewari and Rashmi Khanna would be owners but upto the death of my wife – Pritam Dewan - who has served and cared about me throughout my life, would first be entitled to live and/ reside in the House D-246 Defence Colony, New Delhi, free of rent and also enjoy all the Income from the tenants (presently GSIC). She would also be entitled to dispose of the tenants and/or take, new tenants of her own will in the capacity of her being the owner till her demise.”

24. The collaboration agreement brought about a radical change in the facts, in that the suit property- which consisted of a ground plus two storeyed structure, was constructed upon; a third floor was built. Now, this change was possible because of the Family Settlement – and later, the Collaboration Agreement. This change was reflected in the redefining of the *property rights* of the son and daughter (i.e 40% and 30% to them in the entire suit property). The Family arrangement also stated that the 40% right included ownership of proportionate share in the suit plot and the entire ground floor and basement; the daughter was entitled to the second floor and enjoyed 100 % right to construct on the third floor. Both the daughter and son were entitled to equal (50% each) share in the fourth floor. Such being the position, it is clear that if there were any doubt as to the first appellant’s rights over the newer portions of the property that were to come up (as was bound to happen, given that the rights over those new constructions were declared for the first time) the same should have been clarified. It is in this context that the first appellant’s claim is to be viewed.

25. Whilst the ownership of the third floor was to vest in Respondent No.1 (by virtue of the family settlement of 2008), the first Appellant would nonetheless have the right to take income from the second floor during her life time- this was the position before the Family Settlement. The family settlement had also recognised this life interest of the first Appellant/mother. Her contention that the intention of the Will could not be construed in a way so as to exclude her life interest from the third floor as it mentions that the interest extends to the entire suit property, appears plausible. On the other hand, Clause 5 of the Family Settlement states that the existing right of the first appellant under the Will would be preserved. That can equally plausibly mean that the existing right related to the existing state of the property and constructions upon it. The other interpretation would result in her claiming – inequitably, it would so seem, rents and interests from those portions of the property which were built with the funds and out of the assets of the other heirs. Taken to its logical extreme, the pre-existing rights of the first appellant would mean that all rents derived from *all* portions of the property, after reconstruction, would necessarily fall to her share, during her life time. Therefore, in our opinion the most plausible interpretation is to hold that the first appellant is entitled to the rents that she was deriving and entitled to derive, at the time the Family Settlement was executed (excluding the portions which were made over to third parties as a result of reconstruction, if any).

26. In light of the above findings, even though the life interest of the first Appellant would not ripen into absolute interest under section 14(1) of the Hindu Succession Act, 1956, she is entitled to rental income and security

deposits received from leasing of the second floor of the suit property. The appeal, therefore, fails and is dismissed without any order on costs.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

JULY 13, 2016

