

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

+ **RSA No.198 /2016 and CM No. 27241/2010 (Stay)**

% **1st August, 2016**

SH. DALIP KUMAR & ANR. Appellants
Through: Mr. Rajiv Bajaj, Advocate.

VERSUS

M/S SHREE GOPAL JEWELERS & ORS. Respondents
Through:

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This Regular Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (CPC) is filed by the appellants/plaintiffs against the concurrent Judgments of the courts below; of the Trial Court dated 20.02.2015 and the First Appellate Court dated 28.04.2016; by which the suit filed by the appellants/plaintiffs for permanent injunction and cancellation of the Sale Deed dated 17.01.1996 executed by their mother Smt. Pushpa Rani in favour of the respondents/defendants has been dismissed.

2. The facts of the case are that the entire property comprising of

suit property being Shop No.1, Ground Floor, House no.22-23/2744, Beadonpura, Karol Bagh, New Delhi was owned by Late Sh. Mohan Lal husband of Smt. Pushpa Rani. Late Sh. Mohan Lal executed his WILL dated 16.10.1970; Ex.PW2/1, bequeathing the suit property.

3. The case of the appellants/plaintiffs was that under the Will only lifetime interest was given and therefore on the death of their mother Smt. Pushpa Rani, the appellants/plaintiffs would become the owner of the property and hence during her lifetime she has no legal right to execute the Sale Deed dated 17.01.1996 in favour of the respondents/defendants. The relevant portion of the Will reads as under:-

“.....I am executing this WILL in respect of the aforesaid entire properties, and express till I am alive, I shall remain owner of H.No.22, 23/2744 Beadonpura, Karol Bagh, New Delhi and Housing property situated in Kuch Barkat Ram, Ferozepur city (Pb) and the shop of cloth business known as Banbasi Stores 2738, Ajmal Khan Road, Karol Bagh, New Delhi and would have right to deal with the properties i.e. House situated in Kucha Barkat Ram, Ferozepur City (Pb) H.No.22, 23/2744 Beadonpura, Karol Bagh, New Delhi and Banbasi Stores, Ajmal Khan Road, Karol Bagh, New Delhi and to withdraw any amount from the shop. After my death, my wife Smt. Pushpa Rani would be the owner of my move-able and immoveable properties i.e. 1/4 share in the shop known as Banbasi Store and other amount lying with the shop and all other things. Smt. Pushpa Rani would provide a room to Smt. Krishna Wanti my 2nd wife in House No.22-23/2744 Beadon Pura, Karol Bagh New Delhi and inspite of it Pushpa Rani will also give her a sum of Rs.50/- per month and this will continue till the time of her death. In case Krishna Wanti and Pushpa Rani wanted to live together, they may, in those circumstances there is no need of maintenance but it would depend on Krishna consent. Smt. Krishna Wanti shall have no right to let out the alleged room and she will use the room for her residence only. After the death of Pushpa Rani my both sons S/Shri Dalip Kumar, Vimla Rai would be owner the owner in equal ratio of my properties i.e.

Banbasi Stores, H.No.22, 23/2744 Beadonpura, Karol Bagh, New Delhi and share of House situated in Kucha Barkat Ram, Ferozepur City (Pb) and etc. etc. My both daughters Smt. Shashi Bala Bhasin and Smt. Vijay Rani Sehgal would have no right, concern or title with my properties i.e. H.No.22-23/2744 Beadon Pura, Karol Bagh, New Delhi, 1/4 share of shop known as Banbasi Stores and house situated in Kucha Barkat Ram Ferozepur City & cash etc. etc. and they would be treated as debarred from these properties. In case my any daughter file any proceedings to have her share from the aforesaid properties that would be treated as null and void. My wife Smt. Krishna Wanti shall have no right in my properties or money or share of the shop which has been referred above in the WILL nor shall have any right to claim any thing and would be entitled to have a room (residential room) and a sum of Rs.50/- for her maintenance by virtue of this WILL.

NOW this Deed of WILL is made for record and to be utilised in future at the relevant time. 16-10-70....” (underlining added)

4. There are two issues which are called for decision in the present case. The first is whether the language of the Will in question is to be read giving only life-estate/life-interest to Smt. Pushpa Rani with remainder to the appellants/plaintiffs who are the sons of Smt. Pushpa Rani and Late Sh. Mohan Lal being the appellants/plaintiffs. The second issue is that even if the Will gives a life estate to Smt. Pushpa Rani, whether the life estate does not convert itself into a full estate in view of the Section 14(1) of the Hindu Succession Act, 1956.

5. I have already reproduced the relevant portion of the Will above and this Will does not use the term life-estate or life-interest. As per the Will the subject property in its entirety, including the tenanted shop no. 1 sold to the defendants/respondents, was bequeathed by giving full

ownership to Smt. Pushpa Rani wife of Late Sh. Mohan Lal. Absolute ownership is bequeathed and in this regard the courts below have rightly held that this is so because there is no restriction as per the Will that Smt. Pushpa Rani is not entitled to sell etc the same. The fact that such language does not result in creating a life estate in favour of the beneficiary but it gives full ownership is no longer *res integra* and this has been so held by the Supreme Court in the recent judgment in the case of ***Sadaram Suryanarayana and Another Vs. Kalla Surya Kantham and Another (2010) 13 SCC 147***. I have had an occasion to examine the similar facts in the case of ***Smt. Suman Lata Vs. Sh. Amit Kumar and Anr., RSA No. 395/2015*** decided recently on 18.07.2016 wherein I have relied upon the ratio of the ***Sadaram Suryanarayana's*** case. The relevant paragraphs of the judgment in the case of ***Smt. Suman Lata (supra)*** are paras 4 to 9 which read as under:-

“4. The other issue which calls for determination is with respect to interpretation of the Will whose relevant portion is reproduced by the first appellate court in para 37 of the judgment as reproduced above. The issue is that whether such Will gives only life interest to the appellant/plaintiff alongwith her husband Sh. Raj Kumar or does the same give absolute ownership interest to the appellant/plaintiff and her husband Sh. Raj Kumar in the suit property, and, even if absolute interest is created by the Will of late Sh. Sant Ram Sachdev in favour of the appellant/plaintiff and her husband Sh. Raj Kumar whether still there is scope for giving effect to the later part of the Will which states that ‘after the death’ of the appellant/plaintiff and her husband Sh. Raj Kumar, the suit property and all other properties of late Sh. Sant Ram Sachdev will be owned by respondent no.1 and his brother Sh. Krishan Kumar.

5. On behalf of the respondent no.1/defendant no.1 it was sought to be argued that the subject Will created only a life interest in favour of the appellant/plaintiff and not absolute ownership. It is argued that in any case as per Section 88 of the Indian Succession Act, 1925 since the later part of the Will gives absolute interest in the suit property to the respondent no.1/defendant no.1 and his brother Sh. Krishan Kumar, this clause is inconsistent/repugnant with the earlier part of the Will giving absolute interest to the appellant/plaintiff and her husband Sh. Raj Kumar and therefore the later clause giving absolute ownership of the suit property to the respondent no.1/defendant no.1 and Sh. Krishan Lal will prevail as per Section 88 of the Indian Succession Act, 1925 which reads as under:-

“Section 88. The last of two inconsistent clauses prevails.-Where two clauses of gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.”

6. The law with respect to interpretation of the Will has been referred to by the first appellate court in its judgment by referring to the judgment of the Supreme Court in the case of *Navneet Lal @ Rangi Vs. Gokul & Ors. (1976) 1 SCC 630*. The relevant paras of the first appellate court dealing with what is the law on the subject interpretation of the Will as also the observations of the Supreme Court in the case of *Navneet Lal @ Rangi (supra)* are contained in para 19 to 22 of the judgment of the first appellate court and which paras read as under:-

“19. The general rule of construction in interpreting a 'Will', is first to ascertain by an examination of the entire Will what is the nature and the grammatical meaning of the language used by the testator. The entire instrument and all its parts are to be construed in relation to each other and so as, if possible, to form one consistent whole.

20. The fundamental and foremost rule while reading and interpreting the Will, is that the intention of the testator should be found from the recitals/clauses mentioned by him in his Will and the effect should be given to it as far as possible for the construction of the Will. Every case in hand should be looked into independently and that the other cases will be of little assistance because the different clauses in different Wills will always differ from case to case.

21. In *Navneet Lal @ Rangi Vs. Gokul & Ors. 1976(1)SCC630*, **The Hon'ble Supreme Court Of India** in para 8 has laid down five rules while construing/interpreting a Will and observed as under:-

(1) In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered; but that is only for the purpose of finding out the

intended meaning of the words which have actually been employed.

(2) In construing the language of the will the court is entitled to put itself into the testator's armchair (Venkata Narasimha v. Parthasarathy) (1913) 41 Ind App 51 at p.73 (PC) and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense.... But all this is solely as an aid to arriving at a right construction of the Will, and to ascertain the meaning of its language when used by that particular testator in that document. [Venkata Narasimha's case (supra) and Gananmbal Ammal v. T. Raju Ayyar: (AIR 1951 SC 103)]

(3) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory (Raj Bajrang Bahadur Singh v. Bakhtraj Kuer): (AIR 1953 SC 7)

(4) The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator made his will, such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus. (Pearey Lal vs. Rameshwar Das): (AIR 1983 SC 1703).

(5) It is one of the cardinal principles of construction of Wills that to the extent that it is legally possible effect should be given to every disposition contained in the Will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the Will. (Ramachndra Shenoy v. Mr. Hilda Brite: (AIR 1964 SC 1323)

22. While interpreting a 'Will', it is the primary duty of a court is to read the Will as a whole and ascertain from the language of the recitals therein as to what was the intention of the testator, that is to construe the Will. In interpreting the 'Will' the regard must have to be, not merely to the words used but to the evident intention of the testator. However, those intentions must be ascertained by the proper construction of the words he uses, and once ascertained, they must not be departed from.”

(underlining added)

7. Learned counsel for the respondent no.1/defendant no.1 has also placed reliance upon the judgment of the Supreme Court in the case of ***Kamla Devi Vs. Prabhawatti Devi (Smt.) and Others (2001) 10 SCC 602*** to argue that a Will which contains clauses such as found in the facts of the present case, it should be held that there is no repugnancy and what subsists on the death of the persons to whom absolute ownership is bequeathed in the first instance would be available to those later persons in the eventuality of death of first beneficiaries as stated in the Will. The relevant paras of this judgment are para 7 and 8 which read as under:-

“7. The other part of the submission is in respect of the interpretation of the will. We find para 3 of the will itself is very relevant for the purpose of interpretation of the will, which is quoted hereunder:-

“3. That subsequent to Smt. Kamla’s death the persons enumerated thereafter shall be the owners of the property *that subsists.*”

8. We find the Will in its earlier part recites that on his death his wife, Smt. Kamla Devi (the appellant), shall become the owner of the property which survives. Use of the word 'survives' here means what remains after the testator death. If the testator is still living, he may dispose of some and thus she will become the owner of what survives. Similarly, we do not find any rider is placed in this Will, after vesting of this property unto her or in any way limiting her right of transfer or disposal. Finally, the aforesaid quoted portion makes it absolutely clear that this property given to her under the Will was not limited but made her absolute owner. The significant words in paragraph 3 quoted above records clearly, subsequent to the death of the appellant, the persons enumerated in the Will shall be the owner of the property of what subsists. This means, whatever remains, or the residual property at the time of her death. So the High Court misconstrued the Will. It clearly confers on the appellant absolute ownership and not limited ownership. We may record here that trial court declined to grant decree of possession to the appellant against which the appellant has not preferred any appeal which has become final.”

8. In my opinion, the issue with regard to the interpretation of the Will in question is in fact squarely covered by the judgment of the Supreme Court in the case of ***Sadaram Suryanarayana and Another Vs.***

Kalla Surya Kantham and Another (2010) 13 SCC 147 wherein the Supreme Court in similar factual situation has held that there is no inconsistency or repugnancy because in case the person to whom property is absolutely bequeathed in the first instance does not dispose of the same in his lifetime, then, whatever is available at the time of death of the first beneficiary will devolve upon the remainder man. The relevant paras of the judgment of the Supreme Court in the case of ***Sadaram Suryanarayana and Another (supra)*** are paras 8 to 10, 15, 19 and 22 to 26 and which paras read as under:-

“8. The English rendition of Clause 6 of the Will executed by Smt. Kalla Jaggayamma is as under:

“(6) 2nd item tiled house situated in New colony out of which Eastern wing 2 rooms shall devolves to my 2nd daughter Chandaram Appalanarasamma and the Western wing rooms shall devolve upon my elder daughter Chandram Ramanamma with absolute rights of Sale, Gift, Mortgage etc., and this will come into force after my demise. After demise of my daughters the retained and remaining property shall devolve upon their female children only.”

9. It is evident from a plain reading of the above that the testatrix had bequeathed in absolute terms the property mentioned in Clause 6 in favour of her daughters Chandaram Appalanarasamma and Chandaram Ramanamma with absolute rights of sale, gift, mortgage etc. That the bequest was in absolute terms was made abundantly clear by the use of the words "absolute rights of sale, gift, mortgage etc." appearing in Clause 6 above. To that extent there is no difficulty. What led to a forensic debate at the Bar was the latter part of bequest under which the testatrix has attempted to regulate the devolution of the property in question after the demise of her daughters. The testatrix has desired that after the demise of her daughters the property vested in them would devolve upon their female heirs only.

10. The question is whether the Testatrix Smt. Kalla Jaggayamma, had made two bequests, one that vests the property absolutely in favour of her daughters and the other that purports to vest the very same property in their female offsprings. If so whether the two bequests can be reconciled and if they cannot be, which one ought to prevail.

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15. To the same effect is the decision of this Court in *Mauleshwar Mani's case* where the question once again was whether an absolute interest created in the property by the Testatrix in the earlier part of the Will can be taken away or rendered ineffective by the subsequent bequest which is repugnant to the first bequest. Answering the question in the negative, this Court held that once the testator has

given an absolute right and interest in his entire property to a devisee it is not open to him to further bequeath the very same property in favour of the second set of persons. The following passage from the decision in this regard is apposite: (SCC pp.473-74, para 12)

“12. In view of the aforesaid principles that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to the testator to further bequeath the same property in favour of the second set of persons in the same will, a testator cannot create successive legatees in his will. The object behind is that once an absolute right is vested in the first devisee the testator cannot change the line of succession of the first devisee. Where a testator having conferred an absolute right on anyone, the subsequent bequest for the same property in favour of other persons would be repugnant to the first bequest in the will and has to be held invalid.....We are, therefore, of the view that once the testator has given an absolute estate in favour of the first devisee it is not open to him to further bequeath the very same property in favour of the second set of persons.”

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19. In *Kaivelikkal Ambunhi's case* (SCC p.445, para 4), the Court applied the maximum *cum duo inter se pugnancia reperiuntur in testamento ultimum ratum est* which means that in a will if there are two inconsistent provisions the latter shall prevail over the earlier.

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22. It is evident from a careful reading of the provisions referred to above that while interpreting a Will, the Courts would as far as possible place an interpretation that would avoid any part of a testament becoming redundant. So also the Courts will interpret a Will to give effect to the intention of the Testator as far as the same is possible. Having said so, we must hasten to add that the decisions rendered by Courts touching interpretation of the Wills are seldom helpful except to the extent the same recognize or lay down a proposition of law of general application. That is so because each document has to be interpreted in the peculiar circumstances in which the same has been executed and keeping in view the language employed by the Testator. That indeed is the requirement of Section 82 of the Succession Act also inasmuch it provides that meaning of any clause in a Will must be collected from the entire instrument and all parts shall be construed with reference to each other.

23. Coming then to the facts of the case at hand it is evident from a careful reading of clause 6 of the Will extracted above that the same

makes an unequivocal and absolute bequest in favour of daughters of Testatrix. The use of words like "absolute rights of sale, gift, mortgage etc." employed by the Testatrix make the intention of the Testatrix abundantly clear. Learned Counsel for the plaintiff-respondents herein also did not have any quarrel with the proposition that the Testatrix had in no uncertain terms made an absolute bequest in favour of her daughters. What was argued by him was that the bequest so made could be treated as a life estate not because the testament stated so but because unless it is so construed the second part of clause 6 by which the female offspring of the legatees would get the property cannot take effect. It was on that premise contended that the absolute estate of Smt. Sadaram Appalanarasamma ought to be treated only as a life estate. The contention though attractive on first blush, does not stand closer scrutiny. We say so because the ultimate purpose of interpretation of any document is to discover and give effect to the true intention of the executor, in the present case the testatrix.

24. We are not here dealing with a case where the Testatrix has in one part of the Will bequeathed the property to 'A' while the same property has been bequeathed to 'B' in another part. Had there been such a conflict, it may have been possible for the plaintiff-respondent to argue that the latter bequest ought to take effect in preference to the former. We are on the contrary dealing with a case where the intention of the Testatrix to make an absolute bequest in favour of her daughters is unequivocal. Secondly, the expression "after demise of my daughters the *retained and remaining properties* shall devolve on their females children only" does not stricto sensu amount to a bequest contrary to the one made earlier in favour of the daughters of the testatrix.

25. The expression extracted above does not detract from the absolute nature of the bequest in favour of the daughters. All that the Testatrix intended to achieve by the latter part of Clause 6 was the devolution upon their female offspring all such property as remained available in the hands of the legatees at the time of their demise. There would obviously be no devolution of any such property upon the female offspring in terms of the said clause if the legatees decided to sell or gift the property bequeathed to them as indeed they had every right to do under the terms of the bequest. Seen thus, there is no real conflict between the absolute bequest which the first part of Clause 6 of the Will makes and the second part of the said clause which deals with devolution of what and if at all anything that remains in the hands of the legatees.

26. The two parts of Clause 6 operate in different spheres, namely, one vesting absolute title upon the legatees with rights to sell, gift, mortgage etc. and the other regulating devolution of what may escape such sale, gift or transfer by them. The latter part is redundant by reason of the fact that the same was repugnant to the clear intention of

the testatrix in making an absolute bequest in favour of her daughters. It could be redundant also because the legatees exercised their rights of absolute ownership and sale thereby leaving nothing that could fall to the lot of the next generation females or otherwise. All told the stipulation made in the second part of clause 6 did not in the least affect the legatees being the absolute owners of the property bequeathed to them. The corollary would be that upon their demise the estate owned by them would devolve by the ordinary law of succession on their heirs and not in terms of the Will executed by the testatrix.”
(underlining added)

9. A reading of the aforesaid paras shows that the Supreme Court has held in similar facts that there is no inconsistency because what will remain of the property, to the extent the same survives on the death of the first beneficiary, will devolve upon the subsequent beneficiaries. The Supreme Court has also held that the language of the Will in facts such as the present would give not a life estate but absolute ownership to the first beneficiary in view of the categorical language in the Will entitling the first beneficiary to sell, mortgage etc the suit property. Therefore, in view of the ratio of the judgment of the Supreme Court in the case of ***Sadaram Suryanarayana and Another (supra)*** I hold that the Will in question does not give only a life interest to the appellant/plaintiff but gives absolute ownership of the suit property to the appellant/plaintiff and her husband late Sh. Raj Kumar, of course with the condition that whatever will remain and subsist out of the suit property as on the date of the death of the appellant/plaintiff and Sh. Raj Kumar, the same would vest with the respondent no.1/defendant no.1 and his brother Sh. Krishan Kumar. Of course, I must hasten to add that the same would not in any manner take away the fact that the suit for possession of appellant/plaintiff has to be dismissed even if there is absolute ownership of the suit property of the appellant/plaintiff and her husband Sh. Raj Kumar, since Sh. Raj Kumar has died intestate, the defendant no.1/respondent no.1 becomes a co-owner of the suit property as a legal heir/son of Sh. Raj Kumar inheriting 1/3rd share out of the half share of late Sh. Raj Kumar. Also, in case the suit property or whatever of it survives on the death of the first other beneficiary of the Will namely the appellant/plaintiff, at that stage of death of the appellant/plaintiff then it will be seen as to whether respondent no.1/defendant no.1 alongwith Sh. Krishan Kumar becomes owner inasmuch as it is pre-mature at this stage to make any observations in this regard during the lifetime of the appellant/plaintiff.”

6. In view of the above, courts below have rightly held the subject Will gives complete ownership rights to Smt. Pushpa Rani and not

life-estate as is urged and was urged by the appellants/plaintiffs in the courts below.

7. The second issue is that even if for the sake of argument we take that the Will only gave life-estate or life-interest to Smt. Pushpa Rani, whether this life-estate/interest becomes a full-estate/interest under Section 14 (1) of the Hindu Succession Act. This issue in my opinion is also no longer *res integra* because the Division Bench of the three Judges of the Supreme Court in the case of ***C. Masilamani Mudaliar and Others Vs. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil and Others (1996) 8 SCC 525*** has held that a Hindu widow when she gets life-estate, the same is taken in recognition of her pre-existing right of maintenance which is available to her under the Shastric law being a right of maintenance of a Hindu wife/widow, and additionally because of statutory provisions of the Hindu Adoptions and Maintenance Act, 1956. The Supreme Court in the case of ***C. Masilamani Mudaliar and Others (supra)*** overruled a Division Bench judgment of two Judges of the Supreme Court in the case ***Gumpha (Smt.) and Others Vs. Jaibai, (1994) 2 SCC 511***, wherein the Division Bench of two Judges of the Supreme Court has held differently on the interpretation of the document for holding that Section 14 (1) of the Hindu Succession Act does not convert the life-

estate into a full estate. Reference to the discussion 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 read with the obligation of a 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 a limited owner only with life-interest but that she becomes full owner thereof by virtue of Section 14(1) of the Hindu Succession Act. 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 p 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)

9. Therefore, even assuming for the sake of argument that in this case the subject Will did not give full ownership interest to Smt. Pushpa Rani but only gave life-interest, even this life-interest became a full ownership interest by virtue of Section 14(1) of the Hindu Succession Act.

10. In view of the above, no substantial question of law arises and therefore the second appeal is dismissed. No costs.

AUGUST 01, 2016
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VALMIKI J. MEHTA, J