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

+ RFA 607/2016

JASBIR KUMAR

..... Appellant

Through: Mr. Anil Kumar Gupta, Advocate with
Ms. Nishtha Garg and Mr. Abhishek Rana,
Advocates

versus

KANCHAN KAUR & ORS

..... Respondents

Through: Mr. Rahul Sood, Advocate
for R-1 to R-3.

Mr. Sudhir Nandrajog, Senior Advocate with
Mr. Rajesh Gupta, Mr. Harpreet Singh and
Mr. Pranjal Saran, Advocates for R-4.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

06.02.2017

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1. The appellant/plaintiff has assailed an order dated 08.07.2016 passed by the learned trial court, rejecting his suit for declaration, possession, permanent and mandatory injunction instituted against the respondent No.1/defendant No.1 (mother), respondent No.2/defendant No.2 (brother), respondent No.3/defendant No.3 (sister-in-law) and respondent No.4/defendant No.4 (subsequent purchaser). The said suit has been held to be barred under Section 14(1) of the Hindu Succession Act and rejected on the basis of an application filed by the respondent No.4/defendant No.4 under Order VII Rule 11 CPC.

2. The undisputed facts of the case are that Shri Himmat Singh, father of the appellant and the respondent No.2, husband of the respondent No.1 and father-in-law of the respondent No.3, was the owner of premises bearing No.7/2 and 7/3/C in RD Ram Roop Vidya Mandir Estate, Sanjay Nagar, Delhi. During his lifetime, Shri Himmat Singh had executed a registered Will dated 07.03.1980. He expired on 12.06.1999, leaving behind his widow, the respondent No.1 and two sons, the appellant and the respondent No.2 as his Class I heirs. Initially, the appellant/plaintiff had instituted a simple suit for permanent and mandatory injunction against the respondents No.1 to 3, for restraining them from transferring, selling or alienating the suit premises. When the respondents No.1 to 3 were served with the summons and had entered appearance in the suit, they filed a joint written statement taking a plea that the respondent No.1/defendant No.1 had executed a gift deed dated 15.06.2007 in respect of the suit premises in favour of her daughter-in-law, the respondent No.3 herein who had in turn had executed a sale deed in respect of the suit premises in favour of the respondent No.4, M/s Ashima Infrastructure Pvt. Ltd.

3. On gaining knowledge of the aforesaid turn of events, the appellant/plaintiff sought leave to withdraw the said suit while reserving his right to file a fresh suit. As a result, the present suit came to be instituted by the appellant/plaintiff, wherein he impleaded his family members as defendants No.1 to 3 and the purchaser of the suit premises as defendant No.4.

4. After pleadings were completed, issues were framed in the suit. At the stage of recording of evidence, the respondent No.4 filed an application under Order VII Rule 11 CPC, praying for rejection of the plaint on the

ground that the same was devoid of any cause of action and was also barred by law. A reply in opposition to the said application was filed by the appellant/plaintiff.

5. On a perusal of the Will dated 7.3.1980, the learned trial court arrived at the conclusion that the testator, Shri Himmat Singh had not placed any express restriction on the right of the respondent No.1/defendant No.1 to enjoy the suit premises and in such circumstances, her right to create a third party interest therein could not be restricted or inferred by the Court. Resultantly, the application filed by the respondent No.4/defendant No.4 was allowed and the appellant's suit was dismissed on the ground that it is barred under the provisions of Section 14(1) of the Hindu Succession Act.

6. The gravamen of the arguments addressed by the counsel for the appellant is that under the Will, the deceased had bestowed a life estate in favour of the respondent No.1 and therefore, she could neither execute a gift deed in favour of the respondent No.3 and nor could the respondent No.3 in turn execute a sale deed in favour of the respondent No.4 and both the documents ought to be declared as null and void. In support of his argument, he has cited the following decisions:-

- (i) Lakshmana Nadar and Ors. vs. R. Ramier; **AIR 1953 SC 304**
- (ii) Bhura and Ors vs. Kashiram; **(1994) 2 SCC 111**
- (iii) Mauleshwar Mani and Ors. vs. Jagdish Prasad and Ors.; **AIR 2002 SC 727**

7. Per contra, learned counsel for the respondents No.1 to 3 supports the impugned order and submits that the appellant is trying to misinterpret the subject Will and a bare reading thereof makes it explicit that late Shri

Himmat Singh had bestowed the suit premises in favour of the respondent No.1 as an absolute owner thereof and once, she was declared an absolute owner under the Will, no restriction could be placed on her right to gift or transfer the said property in any manner to the respondent No.3 and nor could the right of the respondent No.3 to sell the suit premises in favour of a third party (respondent No.4 herein), be questioned. He seeks to substantiate the said submission by referring to the decision of the Supreme Court in the case of Gopala Menon vs. Sivaraman Nair and Ors. reported as **(1981) 3 SCC 586**.

8. Mr. Nandrajog, learned Senior Advocate appearing for the respondent No.4 supports the submission made by learned counsel for the respondents No.1 to 3 and states that the respondent No.4 is a *bonafide* purchaser of the suit premises, for valuable consideration and without notice. He submits that the gift deed in question was executed by the respondent No.1 in favour of the respondent No.3 as long back as in the year 2007 and a sale deed was executed by the respondent No.3 in favour of the respondent No.4 after about four years, in the year 2011. Before purchasing the suit premises, the respondent No.4 had undertaken due diligence by examining the chain of title documents including the Will in question and only thereafter had it purchased the suit premises from the respondent No.3 in good faith.

9. The Court has heard the counsels for the parties and carefully perused the records, particularly, the subject Will and the interim order dated 18.02.2012 passed by the trial court on the stay application filed by the appellant/plaintiff in the suit, which the latter has referred to and relied upon.

10. The singular controversy raised by the appellant is that the trial court has erred in interpreting the Will dated 07.03.1980 executed by late Shri Himmat Singh. This Court is only concerned with the construction of the Will and is called upon to examine as to whether the said Will has conferred a limited estate on his widow, the respondent No.1 herein, in respect of the suit premises, or the bequest made was an absolute one.

11. The principles laid down for construction of a Will, as established in a line of judicial pronouncements over the years were summarized by the Supreme Court in the case of Navneet Lal alias Rangi vs. Gokul and Ors., (1976) 1 SCC 630, in the following words :

“8. From the earlier decisions of this Court the following principles, inter alia, are well established:

“(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. (Ram Gopal v. Nand Lal [AIR 1951 SC 139 : (1950) SCR 766, 772])

(2) In construing the language of the will the court is entitled to put itself into the testator's armchair (Venkata Narasimha v. Parthasarathy [41 IA 51, 72 : 21 IC 339 : 15 Bom LR 1010]) 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 case and Gnanambal Ammal v. T. Raju Ayyar [AIR 1951 SC 103 : (1950) SCR 949, 955])

(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. Thakurain Bakhtraj Kuer [AIR 1953 SC 7 : (1953) SCR 232, 240])

(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 makes 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 v. Rameshwar Das [AIR 1963 SC 1703 : 1963 Supp (2) SCR 834, 839, 842])

(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. (Ramachandra Shenoy v. Mrs. Hilda Brite [AIR 1964 SC 1323 : (1964) 2 SCR 722, 735]),

12. In the case of Sadaram Suryanarayana & Anr. vs. Kalla Surya Kantham & Anr., (2010) 13 SCC 147, dealing with the interpretation of a Will, whereunder the testatrix had bequeathed an immovable property in

favour of her two daughters and on their demise, devolved the same on their female children alone, the following observations made by the Supreme Court are instructive:

“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 two rooms shall devolve to my second daughter, Chandaram Appalanarasamma and the western wing two rooms shall devolve upon my elder daughter, Chandaram 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 offspring. If so whether the two bequests can be reconciled and if they*

cannot be, which one ought to prevail.

15. *To the same effect is the decision of this Court in Mauleshwar Mani case [(2002) 2 SCC 468] 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.”

19. *In Kaivelikkal Ambunhi case [(1995) 5 SCC 444] (SCC p. 445, para 4), the Court applied the maxim ‘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.*

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 the courts touching upon interpretation of the wills are seldom helpful except to the extent the same recognise 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 as 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 the daughters of the 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. The 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 respondent-plaintiffs 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 female 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.”(emphasis added)

13. There is no doubt that interpretation of a Will does not require any evidence. It is for the Court to evaluate the Will on the basis of the settled principles of construction. As held in the case of Bhura (supra), cited by learned counsel for the appellant, it is a settled law that Courts must make all efforts to determine the real intention of the testator by reading the Will as a whole and give effect thereto. Further, the construction which would advance the intention of the testator has to be preferred and every disposition contained in the Will, must be given effect to as far as possible, unless the law prevents such effect being given to it. In the case of Radha Sundar Dutta vs. Mohd. Jahadur Rahim and Ors. reported as **AIR 1959 SC 24**, the Supreme Court had observed that the court is duty bound to reconcile an apparent inconsistency in the Will and if there are two constructions of a document, one of which will give effect to all the clauses therein, while the other will render one or more nugatory, the former path must be adopted.

14. The Court has read the Will dated 7.3.1980 executed by Shri Himmat Singh in the light of the legal principles of construction enunciated above. The relevant para of the Will which requires to be interpreted is as follows:-

“..... I make Will that after my death, the above property movable and immovable whatsoever and wheresoever I may leave, shall go to my wife Smt. Kanchan Kaur Executor of Will, and after her death, shall go to my two sons – Surinder Singh & Jasbir Kumar in equal shares.....”

15. On a reading of the aforesaid para of the Will, it is apparent that the testator did not place any limitation upon the respondent No.1 with regard to her right to enjoy the suit premises how she likes. The learned trial court has concluded that the only interpretation that can be given to the Will is that in the absence of any express restriction placed by the deceased on the right of the respondent No.1 to enjoy the suit premises as she wished, which included her right to create third party interest therein, no such restriction could be inferred and that the provision of Section 14(2) of the Hindu Succession Act do not come into play and cannot be invoked to place any restriction on her right. Relying on the provision of Section 14(1) of the Hindu Succession Act, it was held that the respondent No.1 was well within her right to have succeeded to the property in question as an absolute owner and to gift the same by virtue of the gift deed dated 15.06.2007.

16. This Court is inclined to concur with the aforesaid findings returned by the learned trial court for the reason that had the deceased any intention of bequeathing only a life estate in respect of the suit premises in favour of his widow, the respondent No.1 herein, it would have been apparent from the language used in the Will, which would have then prescribed a restricted right or life estate in her favour. Meaning thereby, that the expressions used in the Will would have been indicative of the fact that the testator had intended to create an estate in favour of the respondent No.1 for her lifetime or unto her death. However, the language used in the subject Will does not point in that direction.

17. From the language used in the subject Will, it is evident that the testator had desired to devolve his movable and immovable properties in favour of the respondent No.1, as an absolute bequest. Respondent No.1 was

not only a beneficiary under the Will, she was also made the executor of the Will. The moment the deceased had declared that all his movable and immovable properties would go to devisee, the respondent No.1, inherent in the said declaration was his intention to bequeath an absolute interest in the property in favour of his wife including right to sell, transfer or alienate the same. That being the position, the second part of the relevant para of the Will, where the testator had stated that “..... *after her death, shall go to my two sons - Surinder Singh and Jasbir Kumar in equal shares.*” has to be construed to mean that if any part of the estate was available in the hands of the legatee, then the same would devolve on her two sons in equal share. If so interpreted, the conflict between the first part and the latter part of the para of the Will quoted above, stands reconciled, without any repugnance.

18. Even if it is assumed that the subject Will had bestowed a life estate in favour of respondent No.1, as sought to be urged by learned counsel for the appellant, the said life estate gets translated into an absolute estate, under Section 14(1) of the Hindu Succession Act, 1956 which contemplates that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The aforesaid issue is no longer *res integra* having been decided by the Supreme Court in the case of C. Masilamani Mudaliar & Ors. vs. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil & Ors., (1996) 8 SCC 525 wherein, it was held that the right acquired by a Hindu wife/widow under a Will, is in recognition of her pre-existing right to maintenance known under the Shastric law and in the light of the provisions of the Hindu Adoption and Maintenance Act, 1956, it would transform into an absolute right under Section 14(1) of the Hindu Succession Act. Thus, it

was held that when a Hindu husband bequeaths a life estate in a property unto his wife, she does not get a limited ownership with life interest, but becomes the absolute owner thereof in terms of Section 14(1) of the Hindu Succession Act.

19. Reliance placed by learned counsel for the appellant on the observations made by the trial court in the interim order dated 18.02.2012 passed on the stay application filed by the appellant to the effect that under the Will, the respondent No.1 had received limited and restricted rights, was no more than a tentative finding. The said position is borne out by the fact that while passing the order dated 18.02.2012, it was made clear that the Court was considering a prima facie case in the context of balance of convenience and irreparable loss and it was solely with the purpose of preserving the suit property and avoiding multiplicity of litigation, that the respondents/defendants were restrained from creating any third party interest in the suit premises, till the disposal of the suit. However, a rider was placed in the aforesaid order to the effect that the observations made therein were not an expression on the merits of the case. Therefore, the order dated 18.2.2012 would not be of any assistance to the appellant.

20. Given the facts and circumstances of the case, there is no manner of doubt that in view of the language used by the testator in the Will dated 07.03.1980, the respondent No.1 was not bequeathed a life estate but an absolute estate under Section 14(1) of the Act and consequently, she was free to deal with the suit property as she deemed fit, without any limitation on her powers of disposition. By the same analogy, her right to execute a gift deed in favour of the respondent No.3 cannot be questioned by the appellant. Nor can the right of the respondent No.3 to execute a sale deed in

favour of the respondent No.4, be treated as without any authority. As observed by the Supreme Court in the case of Gopala Menon (supra), the absolute and unrestricted power to dispose of a property is a necessary incident of an absolute estate and if an absolute grant is burdened with a restraint on alienation, the grant is good and the condition, void.

21. In view of the ratio of the judgement of the Supreme Court in the case of Sadaram Suryanarayana (supra), and C. Masilamani Mudaliar (supra), it is held that the Will in question does not bestow a life interest on the respondent No.3, but passes unto her an absolute bequest with a condition that if the same is not disposed of by her in her lifetime, then whatever is available on her demise, will devolve on her two sons, the appellant and the respondent No.2 herein.

22. Accordingly, the appeal fails. The impugned order dated 08.07.2016 is sustained. The parties are left to bear their own expenses.

HIMA KOHLI, J

FEBRUARY 06, 2017

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