

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

APPEAL SUIT No.1477 of 1997

ORDER:

This Appeal Suit, under Section 96 of the Code of Civil Procedure, 1908, was originally brought by the unsuccessful sole plaintiff (since died), assailing the decree and judgment, dated 29.08.1997, of the learned II Additional Senior Civil Judge, Kakinada, made in O.S.No.286 of 1989.

2. During the pendency of this Appeal Suit, the sole appellant died. Therefore, the 2nd appellant, who is brought on record, is prosecuting this Appeal Suit. Be it also noted that the 1st respondent/ 1st defendant also died during the pendency of this Appeal Suit and his LRs are brought on record as respondents 5 to 7 in this Appeal Suit.

3. I have heard the submissions of Sri *G.Krishna Murthy*, learned counsel appearing for the 2nd appellant, and of Sri *M.Ram Mohan*, learned counsel appearing for the respondents 2 to 7. I have carefully perused the material record.

4. The parties in this Appeal Suit shall hereinafter be referred to as the plaintiff (1st appellant since died) and the defendants as arrayed in the suit for convenience and clarity. The impleaded 2nd appellant shall be referred to as 2nd appellant and the impleaded respondents 5 to 7 shall also be referred to as respondents 5 to 7.

5. Before proceeding further, it is necessary to refer to the pleadings of the parties.

6. The averments in the plaint, in brief, are as follows: - 'The plaintiff is the wife of late Gunnam Veerraju. He died about one year three months prior to the institution of the suit. The defendants 1 & 2 are the sons of the plaintiff

and the 3rd defendant is her daughter. The 4th defendant is the son of the 3rd defendant. The plaint schedule properties in Item nos.1 to 11 are originally the separate properties of the plaintiff's husband, late Gunnam Veerraju. The said Veerraju executed a registered Will, dated 21.11.1983, in a sound and disposing state of mind. Under the said Will, he bequeathed the above said items of the plaint schedule properties to the plaintiff with absolute rights. After the death of Veerraju, the plaintiff took possession of the said properties and she cultivated the said lands personally. Item no.12 of the plaint schedule property of an extent of Ac. 0.15 cents in Survey No.222/ 7 was purchased by the plaintiff from Uppalapati Tata Rao of Sahapuram Village under a Registered Sale Deed, dated 05.05.1980. Since the date of said purchase, the plaintiff is in possession and enjoyment of the said Item no.12 of the plaint schedule properties with absolute rights. Item nos.13 & 14 of the plaint schedule properties are lands of an extent of Ac. 1.41 cents in Survey Nos.296/ 1 & 296/ 2 of Sahapuram Village and the plaintiff purchased the said properties from Gunnam Peda Kapu alias Pallayya and another under registered Sale Deed, dated 26.05.1969; and, since the dates of the said purchases, the plaintiff has been in absolute possession and enjoyment of the said properties. Having thus acquired the plaint schedule properties, as mentioned above, she has been in possession and enjoyment of the same by doing personal cultivation. The defendants developed evil intentions and bad ideas. They developed grudge against the plaintiff, as she was not giving any money whenever demanded. The defendants have become addicted to vices and are alienating the properties and squandering money. Therefore, the plaintiff refused to give them money. The plaintiff is spending amounts for religious purposes; the defendants are against the same. They also had a suspicion that the plaintiff may give away some of her property to her eldest daughter Tulasamma. Therefore, all the defendants in collusion with each other beat the plaintiff

and sent her away from the house, on 10.09.1989, and also trespassed into the plaint schedule properties. The plaintiff became helpless and came away to her eldest daughter's house at G. Medapadu and gave a police report. The defendants took away 52 kata bags of paddy worth Rs.10,000/- . The police did not take any action. The plaintiff being an old woman, having no assistance, is now depending upon her eldest daughter for maintenance and sustenance. The defendants have no right to continue in possession of the plaint schedule properties. They are mere trespassers. The plaintiff is, therefore, entitled to file the suit for declaration of title to the plaint schedule properties and for consequential relief of recovery of possession of the same after evicting the defendants therefrom and for other reliefs. Hence, the suit is filed for declaration of title of the plaintiff over the plaint schedule properties and for recovery of possession of the same from the defendants after ejecting the defendants therefrom.'

7. The defendants 1 to 4 filed a common written statement. The averments therein, in brief, are as follows: - 'The relationship mentioned in the plaint is true. The material allegations in the plaint except such of the averments, which are admitted in the written statement are all false. Item No.1 of the plaint schedule property situated in Aratlakatta Village is the erstwhile joint family property of defendants 1 & 2 as well as late Veerraju; the said property was kept jointly. The said property is never partitioned between Veerraju and his sons. Plaintiff's husband gave a declaration in his land ceiling proceedings. He mentioned therein that he was having 1/3rd undivided share in Item no.1 of plaint schedule properties. The defendants 1 & 2 also gave separate declarations. They have also shown therein, the 1/3rd undivided share in Item no.1 of plaint schedule properties. Therefore, Item no.1 of the plaint schedule properties is the ancestral property, which is

undivided between the parties and is being enjoyed jointly. The gold and silver belonging to the joint family is kept joint in an iron box and the keys remained with the plaintiff. Therefore, late Veerraju is having $1/3^{\text{rd}}$ undivided property in Item no.1 of the plaint schedule properties. Even if Veerraju, due to inadvertence, mentioned in his Will that he is entitled for Item no.1 of the plaint schedule properties, when it is ancestral and joint property, then it cannot be treated as exclusive property of Veerraju. Late Veerraju executed a registered Will, dated 21.11.1983, whereunder he gave limited right of enjoyment for life in Item nos.2 to 11 and $1/3^{\text{rd}}$ of Item no.1 of the plaint schedule properties, situated at Sahapuram Village. Item nos.2 to 11 fell to the share of late Veerraju in the family partition. Item no.12 is purchased by the plaintiff herself under separate document and the plaintiff is entitled to enjoy the same exclusively. Item nos.13 & 14 of the plaint schedule properties were conveyed under Deed, dated 20.10.1971, by the plaintiff in favour of the 3^{rd} defendant. Pass book is also issued to the 3^{rd} defendant; he is enjoying the same since then and was & is paying taxes. The same is admitted by Late Veerraju before the concerned land ceiling authorities and it was excluded from the holding of the plaintiff's husband. Therefore, Item nos.13 & 14 of the plaint schedule properties are exclusive properties of the 3^{rd} defendant. In the Will, dated 21.11.1983, it is specifically mentioned that the plaintiff has to enjoy for her life and after her, the land of Ac. 4.79 cents i.e., Item nos.2 to 11 and $1/3^{\text{rd}}$ of Item no.1 and Telukuladoddi along with Mangalore tiled house having Door No.3/ 117, shall be liable for partition amongst the defendants 1 to 3 and their eldest sister equally and that each of them is entitled to $1/4^{\text{th}}$ undivided share therein. The allegation that the plaintiff is in absolute possession and enjoyment of Item nos.13 & 14 of the plaint schedule properties is absolutely false. After the death of the plaintiff's husband, on 18.09.1988, the plaintiff came into possession of the land, in which she is having right to

enjoy for her life i.e., 1/3rd undivided share in Item no.1 and Item nos.2 to 11 of the plaint schedule properties. Item no.12 of the plaint schedule properties is the property purchased by her. The said property is leased out by the plaintiff to the 1st defendant in the month of April, 1988, for 50 kata bags of paddy towards first crop and 25 kata bags of paddy towards second crop. After the lease in favour of the 1st defendant by the plaintiff is over, the concerned authorities requested for payment of taxes for Fasli 1398 and when they were about to take coercive steps, to avoid unpleasantness the 1st defendant paid Rs.675.75 Rs. towards tax for the lands leased out to him at Sahapuram Village, whereas for the lands leased out to him at Aratlakatta Village, no tax is paid, as there was no threat. The plaintiff, after the death of her husband, left Sahapuram Village for her eldest daughter's house according to caste custom; but, stayed there at the instance of her brother-cum-son-in-law and also daughter; and, she was occasionally visiting Sahapuram Village. By the time of death of Veerraju, there was standing crop in the lands. The same was realized by the plaintiff. She got raised second crop and realized the second crop. The land was leased out to the 1st defendant. The plaintiff attended the annual ceremony of her husband, on 07.08.1989, and again left for Sahapuram along with her eldest daughter and son-in-law to G. Medapadu. The allegations that the defendants developed grudge against the plaintiff and other contrary allegations in the plaint are all false. These defendants never demanded money and there was no occasion for them to develop grudge. The 1st defendant sold away his tractor for Rs.45,000/ -. The plaintiff's eldest son-in-law and his son were partitioning their properties; at that time, the plaintiff requested the 1st defendant to advance the amount to her, which she wanted to accommodate to his eldest son-in-law and son for discharging their family debts. The 1st defendant expressed his inability to accommodate any amount to the plaintiff. Since then, her eldest son-in-law by name Marriredi

Suryanarayana began to entertain grudge against the defendants 1 & 2. The defendants are never addicted to any vices. The allegation that plaintiff was having religious bent of mind and the defendants are opposing for spending money for religious purposes is absolutely false. The suit is got filed by the eldest son-in-law and eldest daughter of plaintiff. The allegation that the defendants having colluded together sent away the plaintiff, on 10.09.1989, from the house and trespassed into the plaint schedule property is false. The eldest son-in-law of the plaintiff is responsible for giving the false police report. The allegation that the defendants took away 52 kata bags of paddy valued at Rs.10,000/- and the police did not take action on the complaint of the plaintiff are false. The plaintiff is having no assistance and is dependant upon her eldest daughter for maintenance and sustenance are false allegations. The plaintiff leased out the property, as stated above, which she is entitled to enjoy for her life as well as Ac. 0.15 cents purchased by her for 75 kata bags of paddy. Therefore, she is being maintained by eldest daughter is absolutely false. Item Nos.13 & 14 are in the possession of the 3rd defendant and other defendants have nothing to do with the said land and the 3rd defendant is personally cultivating the said land. Item no.1 is being enjoyed by defendants 1 & 2 and also the plaintiff in pursuance of the provisions of the Will executed by the father of the defendants 1 to 3. The 1/3rd undivided share is being enjoyed by the plaintiff and the 2/3rd undivided share is being enjoyed by the defendants 1 & 2 by jointly cultivating and sharing produce therefrom. But since Summer of 1989, the 1st defendant is cultivating the 1/3rd undivided share, which the plaintiff is entitled for her life along with other land, as stated above, for a total rent of 75 kata bags of paddy for the first and second crops in a financial year. The allegation that the defendants have no right to continue in possession of the plaint schedule properties is not correct. Item no.1, 1/3rd undivided share and Item nos.2 to 11, in which the plaintiff is

entitled for her life and Item no.12 are in possession of the 1st defendant in pursuance of the lease, as stated above, and the other defendants have nothing to do with the said land, except the 1st defendant, as stated above, during the lifetime of the plaintiff. The allegation that the defendants are trespassers is absolutely false. The allegation that the plaintiff is entitled to file the suit for declaration of title in the plaint schedule properties and for consequential relief of possession of the said properties after evicting the defendants therefrom and for other reliefs is absolutely untenable. The plaintiff is not entitled to any such reliefs as prayed for. The plaintiff is not having absolute title in Item nos.1 to 11 and 13 and 14 as stated above. Gold belonging to family consisting of one gold belt of 20 tulas, necklace of 3 tulas weight and palakasarlu weighing 7 tulas and 3 kgs of silver kept in the iron safe purports to have been removed by her and taken away to the house of the eldest daughter. The iron safe keys remained with the plaintiff and on enquiries it is now revealed that the said gold and silver have been removed by her secretly while she was going to G. Medapadu. The plaintiff has to account for the said jewels and gold & silver. All the while, defendants 1 & 2 are under the impression that the silver and gold are in the iron box, but, now it is being said that they were removed by the plaintiff and took it away to the eldest daughter's house. After verification of the same, defendants 1 to 3 reserve their right to take action. There is no cause of action for the plaintiff. The plaintiff has no right to seek for any declaration of title because she is not having absolute title, except in Item no.12. The plaintiff has no title at all in respect of Item nos.13 & 14 of the plaint schedule properties. The plaintiff is having 1/3rd undivided right in Item no.1 of the plaint schedule properties to enjoy for life; and, she is having right for enjoyment till her life in Item nos.2 to 11 of the plaint schedule properties. The value of the suit is incorrect. The

Court fee paid is incorrect. The trial Court is not having jurisdiction. Hence, the suit may be dismissed.'

8. Taking into consideration the above pleadings, the trial Court settled the following issues and additional issue for trial:

- i) Whether the plaintiff is entitled for declaration of title of the plaint schedule property and for recovery of possession after evicting the defendants as prayed for?
- ii) Whether the plaintiff is entitled for future profits as prayed for?
- iii) Whether items 13 to 14 of the plaint schedule properties are the exclusive properties of the 3rd defendant as pleaded in the written statement?
- iv) Whether the 1st defendant is cultivating 1/3rd undivided share of the plaintiff for a total rent of 75 kata bags for the first and second crops in a financial year as pleaded in the written statement?
- v) To what relief?

Issue No.4 was recast as follows:

Issue No.4:

4. Whether defendants 1 and 2 are cultivating tenants of items 2 to 12 and 1/3rd in item No.1?

Additional Issue No.1:

1. Whether item No.1 is the joint property of defendants 1 and 2 and their father and whether defendants 1 and 2 have 1/3rd undivided share each?

[Reproduced Verbatim]

9. At trial, the plaintiff and her supporting witnesses were examined as P.Ws.1 to 4 and Exs.A-1 and A-12 were marked on her side. D.Ws.1 to 4 were examined and Exs.B-1 to B-22 were marked on the side of the defendants.

10. It is pertinent to note that there is no dispute with regard to Item nos.12, 13 & 14 of the plaint schedule properties. The trial Court declared the title of the plaintiff in respect of Item no.12 of the plaint schedule properties and further held that the plaintiff already sold away Item nos.13 & 14 of the

plaint schedule properties to the 3rd defendant and accordingly dismissed the suit insofar as the said Item nos.13 & 14 of the plaint schedule properties. However, the trial Court held that the plaintiff is having a right as life estate holder in respect of Item nos.2 to 11 of the plaint schedule properties and in respect of 1/3rd undivided share in respect of Item no.1 of plaint schedule properties and declared the said right of the plaintiff as life estate holder. Accordingly, the trial Court also held that the defendants 1 & 2 are cultivating tenants of 1/3rd share of Item no.1 and Item nos.2 to 12 of plaint schedule properties and that they shall continue to deliver or to pay the value of 50 kata bags of paddy for first crop and 25 kata bags of paddy for the second crop either by way of deposit into Court or directly to the plaintiff under acknowledgement. It is apt to note the operative portion of the judgment of the trial Court, which reads verbatim as under:

“In the result, the suit is decreed in part. The title of the plaintiff to item 12 of plaint schedule property alone is hereby declared. The right of the plaintiff as life estate holder in respect of items 2 to 11 and 1/3rd undivided share of item 1 of plaint schedule properties is only declared. The defendants 1 and 2 as cultivating tenants of 1/3rd share of item 1 and items 2 to 12 of plaint schedule properties, shall continue to deliver or to pay the value of 50 kata bags of paddy for first crop and 25 kata bags of paddy for the second crop either by way of deposit into Court or directly to the plaintiff under acknowledgement. The rest of the suit claim is dismissed. Both parties are directed to bear their own costs.”

11. Aggrieved thereof, the unsuccessful sole plaintiff brought the Appeal Suit. However, as noted, on her death during the pendency of the Appeal Suit, the 2nd appellant, who is her eldest daughter, is prosecuting this Appeal Suit. Her two sons and another daughter are the defendants 1 to 3 in the suit.

12. In view of the submissions fairly now made before this Court by the learned counsel for both the sides that there is no dispute now between the parties as regards the finding of the trial Court that item nos.13 & 14 of the

plaint schedule properties were sold away by the plaintiff under a sale deed, dated 20.10.1971, in favour of the 3rd defendant and also with regard to the part of the decree declaring the right of the plaintiff insofar as item no.12 of the plaint schedule properties, the only and vital point that arises for determination in this appeal suit is – ‘Whether the plaintiff’s life estate under the Will, exhibit A3, dated 21.11.1983, executed by her husband, Gunnam Veerraju, enlarged into absolute right in view of the operation of Section 14 (1) of the Hindu Succession Act, 1956 (‘the Act’, for short)?’. The sole plaintiff, the wife of the testator, died during the pendency of this appeal suit. In that view of the matter, the scope of the *lis* has narrowed down to the above said issue/ point. Both the learned counsel, therefore, further fairly stated that the answers to the other issues or points, if any, involved depend on the answer to the aforestated vital issue or point and hence, in this appeal suit, no other issues or points arise for determination by this Court.

13. Thus, undisputedly the only vital point that falls for determination in this *lis* is:

Whether the sole plaintiff’s ‘life estate’ in the nature of restricted estate under exhibit A3-Will, dated 21.11.1983, executed by her late husband, Gunnam Veerraju in respect of item nos. 2 to 11 and 1/3rd undivided share of item no.1 of plaint schedule properties remained as such in view of Section 14(2) of the Act or whether it enlarged or ripened into ‘absolute interest/estate’ in view of the operation of Section 14 (1) of the Act?

13.1 The other usual points that fall for consideration are: -

1. Whether the decree & judgment of the trial Court holding that the sole plaintiff’s ‘life interest’ or ‘limited estate’ in the properties in question remained as such and did not enlarge or ripen into ‘absolute interest/estate’ are unsustainable under facts and in law as being contended by the appellant/ s?
2. To what relief?

14. POINT No.1:

Both the parties admit the execution of the Will and also do not dispute the recitals and the bequests in the said Will.

14.1 At the outset, it is to be noted that the plaintiff in her plaint pleaded that she became entitled to item nos.1 to 11 of the plaint schedule properties as per the afore-stated Will executed by her husband. She did not state specifically that she is given life estate under the Will and that by virtue of the provision of Section 14 of the Hindu Succession Act the limited right enlarged into absolute right and thereby she became entitled to the properties.

14.2 The relevant recitals in the Will verbatim read as under:



14.3 A plain reading of the Will shows that the testator was having ancestral property and also self acquired property and the said property was partitioned amongst the father and the sons and he became entitled to Ac.4.79 cents of Sahapuram, two house sites with Mangalor tile house and cattle shed in the same village and Ac.2.50 cents of Aratlakatta and that he has also got Ac.0.90 cents of land of Sahapuram under settlement deed, dated 06.01.1982, executed by his mother. The item of Ac.2.50 cents of land of Aratlakatta is item no.1 of the plaint schedule properties and the other items correspond to item nos.2 to 11 of the plaint schedule properties. These properties, that is, items 2 to 11 and 1/3rd share in item no.1 of the plaint schedule properties, are bequeathed by the testator to the plaintiff for life and the vested remainder rights were bequeathed in favour of his two daughters and two sons with the condition that they shall take the said properties equally. Even the claim of the sole plaintiff is based on the said Will, as already noted. It is not in dispute that as per the recitals/bequests in the Will, the plaintiff is only a life estate holder of the properties in question. It is to be reiterated that in the plaint the plaintiff did not plead that the life estate enlarged or ripened into absolute right in view of the law set out in the provision of Section 14(1) of Hindu Succession Act, 1956. However, a contention as was raised before the trial Court was also raised before this Court that the plaintiff's, that is, life estate holder's right became absolute in view of the above provision of law. It is further contended that since the testator is the husband and as the wife is having a pre-existing right to maintenance the limited right enlarged into absolute right and, therefore, the trial Court was in error in holding that the life estate did not enlarge into absolute right by virtue of the provision of the above said Section of law. Per contra, the learned counsel appearing for the defendants and the impleaded respondents contended that the property is not given to the plaintiff by her husband in lieu of maintenance and it is not also

the pleading of the plaintiff that the property was given in lieu of maintenance and therefore, the property given for life to the plaintiff shall not become the absolute property of the plaintiff and that the recitals/ bequests in the Will are traceable to Section 14(2) of the Act and that, therefore, the plaintiff remained only a life estate holder and the life estate did not enlarge or ripened into absolute right and the plaintiff never became the absolute owner of the property.

14.4 In support of the above-said contentions of the plaintiff-appellant, learned counsel placed reliance on the following decisions:

- 1) V.Tulasamma v. Sessa Reddy¹
- 2) Thoppa Naicker v. Tmt. Shinnammal & Another²
- 3) Rayani Appaiah v. Spl. Tahasildar, Addanki³
- 4) Kantipudi Manikyam v. Kantipudi Ramakrishna and others⁴
- 5) Satrugan Isser v. Sabujpari⁵
- 6) Raghubar Singh v. Gulab Singh⁶
- 7) Mangal Singh v. Smt. Tattono (dead) by LRs and Another⁷
- 8) Somula Bhaskar Reddy v. Somula Ramachandra Reddy⁸
- 9) Jupudy Pardha Sarathy v. Pentapati Rama Krishna & Others⁹

Much reliance was placed upon the decision in Jupudy Pardha Sarathy (9 supra).

¹ (1977) 3 Supreme Court Cases 99

² 2001 (2) CCC 421 (Mad.)

³ 1987 (2) (SN) 57 (F.B)

⁴ 1997 (\$) ALT 700

⁵ 1967 ALT 54

⁶ AIR 1998 SUPREME COURT 2401

⁷ AIR 1967 SUPREME COURT 1786

⁸ 2004 (5) ALT 367

⁹ (2016) 2 Supreme Court Cases 56

14.5 On the other hand, learned counsel for the defendants and impleaded respondents placed reliance on the decision in *Ranvir Dewan v. Rashmi Khanna*¹⁰.

14.6 I have gone through all the decisions. There is no dispute on the factual aspects. Since in the decision in *Jupudy Pardha Sarathy*, all the earlier decisions were referred to right from the leading precedent, it is apt to refer to the facts and the ratio in this cited decision rendered on 06.11.2015. The facts of the cited case to the extent relevant are as under: 'The testator stated in the Will that his 3rd wife Veera Raghavamma shall enjoy for life the tiled house with site and compound wall and with half right in the well covered by municipal door no.6-875, Rajahmundry and after life time of his wife, his second son, Narasimha Rao, shall have the property with absolute rights such as gift, sale etcetera and his second son shall have absolute rights such as gift and sale in respect of tiled house bearing D.no.6-876 and five shop rooms....'. Having regard to the said recitals and the legal position obtaining, the Supreme Court held as follows: - 'Though no specific word has been mentioned in Ext.A-2 that in lieu of maintenance life interest has been created in favour of Veeraraghavamma, in our opinion in whatever form a limited interest is created in her favour who was having a pre-existing right of maintenance, the same has become an absolute right by the operation of Section 14(1) of the Hindu Succession Act.'

14.7 Now it is necessary to refer to the decision in *Ranvir Dewan* (10 supra) rendered, on 12.12.2017, by the Supreme Court and relied upon by the respondents in this appeal suit wherein also the Supreme Court referred to the obtaining legal position from the first leading decision in *V. Tulasamma* and

¹⁰ AIR 2018 SC 62

Ors. v. Sessa Reddy (Dead) by L.Rs. [(1977) 3 SCC 99]. Therefore, it is necessary to refer to the relevant facts and the ratio in this cited decision.

The facts of the case are as follows: -

‘The Plaintiff contended that she was entitled to seek a declaration that she is the absolute owner of the suit house including its 3rd floor by alleging that her "life interest" was enlarged and ripened into an absolute interest by virtue of Section 14(1) of the Hindu Succession Act on the death of her husband. Defendant No.1 denied the claim of the plaintiff and contended that Plaintiff No.2- did not acquire absolute interest in the suit house and nor her "life interest" was enlarged and ripened into an absolute interest by virtue of Section 14(1) of the Act and that Plaintiff No. 2 received only "life interest" to live in the suit house during her lifetime in terms of the Will and, therefore, such right squarely falls Under Section 14(2) of the Act.’

In the above stated factual background of the cited case, the Supreme Court as already noted, having referred to the obtaining legal position gave the following reasons in support of the conclusion that the life interest neither enlarged nor ripened into absolute interest in the suit house and remained life interest, that is, restricted estate till her death, under Section 14(2) of the Act.

Firstly, the testator being the exclusive owner of the suit house was free to dispose of the property the way he liked because it was his self earned property.

Secondly the testator gave the suit house in absolute ownership to his son and daughter and conferred on them absolute ownership. At the same time, he gave only life interest to his wife, that is, a right to live in the suit house which belonged to his son and daughter. Such a disposition, the testator could make by virtue of Section 14(2) read with Section 30 of the Act.

Thirdly, such life interest which was in the nature of restricted estate under Section 14(2) of the Act and which remained a restricted estate till her death did not ripen into an absolute

interest under Section 14(1) of the Act. In other words, once the case falls under Section 14(2) of the Act it comes out of 14(1). It is permissible in law because section 14(2) is held as proviso to 14(1) of the Act.

Fourthly, the effect of the Will once became operational after the death of the testator, the son and the daughter acquired absolute ownership in the suit house to the exclusion of everyone whereas the wife became entitled to live in the suit house as of right. In other words, the wife became entitled in law to enforce her right to live in the suit house qua her son/ daughter so long as she was alive. If for any reason, she was deprived of this right, she was entitled to enforce such right qua son/ daughter but not beyond it.

Fifthly, the testator had also given his other properties to his wife which enabled her to maintain herself. More-over, a right to claim maintenance, if any, had to be enforced by the wife. She, however, never did it and rightly so because both were living happily. Therefore, there was no occasion for her to demand any kind of maintenance from her husband.

Sixthly, it is settled principle of law that the life interest means an interest which determines on the termination of life. It is incapable of being transferred by such person to others being personal in nature. Such person therefore could enjoy the life interest only during his/ her life time which is extinguished on his/ her death.

Seventhly, as mentioned above, the facts of the case on hand and the one involved in the case of Sadhu Singh are found to be somewhat similar. The facts of the case of Sadhu Singh were – ‘that the husband executed a Will in favour of his wife of his self-acquired property in 1968. Though he gave to wife absolute rights in the properties bequeathed but some restrictions were put on her right to sell/ mortgage the properties and further it was mentioned in the Will that the said properties after wife's death would go to testator's nephew. Due to these restrictions put by

the testator on his wife's right to sell/ mortgage, it was held that the wife received only the "life interest" in the properties by Will and such "life interest", being a "restricted estate" within the meaning of Section 14(2) of the Act, did not enlarge and nor ripen into the absolute interest Under Section 14(1) but remained a "life interest" i.e. "restricted estate" Under Section 14(2) of the Act. It was held that such disposition made by the husband in favour of his wife was permissible in law in the light of Section 14(2) read with Section 30 of the Act.'

For all the above reasons assigned in the cited case and as the Supreme Court found that the facts of the cited case are similar to the facts of Sadhu Singh's case and as the cited case is fully covered by the law laid down in Sadhu Singh's case, the Supreme Court eventually held that the case of Mrs. Pritam (Plaintiff No. 2) in that case falls under Section 14(2) of the Act insofar as it relates to the suit house and thus held that Mrs. Pritam received only 'life interest' in the suit house.

14.8 On a careful analysis of the facts of the present case on hand, it is quite obvious that the facts of the present case on hand are akin to the facts in Panvir Dewan's case (10 supra) and Sadhu Singh's case. In the case on hand also, firstly, it is to be noted that the testator was the exclusive owner of the properties in question and he was free to dispose of his said properties the way he liked for the said reason. Secondly, the testator specifically gave the properties in question to his two sons and daughters and conferred on them absolute ownership; and, at the same time he gave only 'life interest' to his wife, that is, a right to enjoy for life, the properties, which belonged to his sons and daughters as per the bequests in the Will. As held by the Supreme Court, the testator herein could make such disposition by virtue of Section 14(2) read with Section 30 of the Act. While gathering the intention of the testator the Court will put itself in the armchair of the testator. In the case on

hand, the testator intended that his wife shall enjoy certain properties mentioned in the Will for life which was in the nature of restricted estate and intended to give the said properties in absolute ownership to his sons and daughters and conferred on them absolute ownership while at the same time giving life interest to his wife. Any other view contrary to the intention of the testator would defeat his intentions and is therefore, impermissible under facts and in law. Thirdly, such 'life interest' that was in the nature of 'restricted estate' under Section 14(2) of the Act which remained a 'restricted estate' till her death did not ripen into an absolute interest under Section 14(1) of the Act. In other words, in the case on hand also, the case which has once fallen under Section 14(2) of the Act came out of Section 14(1). As held by the Supreme Court, such a view is permissible in law because Section 14(2) is held to be a proviso to Section 14(1) of the Act. Fourthly, the effect of the Will once became operational after the death of the testator, Veerraju, his sons and daughters acquired absolute ownership in the properties in question to the exclusion of everyone whereas the wife became entitled to enjoy the said properties for life as of right. In other words, the wife became entitled in law to enforce her right to enjoy such properties qua her sons and daughters so long as she was alive. If for any reason, she was deprived of this right, she was entitled to enforce such right qua sons and daughters but not beyond it. Fifthly, the 1st appellant/plaintiff, ie., the wife of the testator, admittedly owned other properties and is admittedly a resourceful and sufficiently affluent person. Such properties enabled her to maintain herself. She, in fact, purchased some properties also on her own and also sold items 13 & 14 of the plaint schedule properties to the 3rd defendant for valuable consideration is admitted and the said finding is not under challenge in this appeal suit. Further, by the impugned judgment, her title to item no.12 of the plaint schedule property was declared and the said finding is also not under challenge

in this appeal suit. The only issue before this Court is, as noted supra, as to whether the 'life interest' in items 2 to 11 and 1/3rd share in item no.1 of the plaint schedule properties enlarged or ripened into absolute interest. Moreover, a right to claim maintenance, if any, had to be enforced by the sole plaintiff, the wife of the testator. She, however, never enforced it and rightly so because both she and her husband were living happily and as there was no occasion for her to demand any kind of maintenance from her husband. Sixthly, as held in the above decision of the Supreme Court, it is settled principle of law that the 'life interest' means an interest which determines on the termination of life and it is incapable of being transferred by such person to others being personal in nature; such person therefore could enjoy the life interest only during his/her life time which is extinguished on his/her death. The sole plaintiff, the wife of the testator, died during the pendency of the appeal suit is not in dispute. Seventhly, as mentioned above, in the considered view of this Court, the facts of the case on hand and the facts in the case of Ranvir Dewan are found to be fairly similar. Therefore, this case is fully covered by the law laid down in Ranvir Dewan's case (10 supra).

14.9 On the above analysis of the facts and the legal position applicable to the case on hand, this Court finds that insofar as items 2 to 11 and 1/3rd share in item no.1 of the plaint schedule properties, the right of the 1st appellant/ sole plaintiff (since died) as per the recitals and bequests in exhibit A3, registered Will, dated 21.11.1983, executed by her husband, Gunnam Veerraju, is a 'life interest' in the nature of 'restricted estate' under Section 14(2) of the Act and that it remained a 'restricted estate' till her death and did not ripen into an 'absolute interest' under Section 14(1) of the Act. The point is accordingly answered.

15. POINT No.2:

In view of the foregoing discussion and the answer recorded supra under point no.1, this Court finds itself in agreement with the well reasoned findings of the trial Court and holds that there is no error in the impugned judgment of the trial Court and that the trial Court is justified in holding that the case of the plaintiff in respect of items of properties in question falls under Section 14(2) of the Act.

16. POINT No.3:

In the result, the first appeal suit is dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

16th April, 2018
KL/ VJL



M. SEETHARAMA MURTI, J