

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

RSA No.2164 of 2017 (O&M)
Date of Decision.22.04.2019

Santosh Kumari

...Appellant

Vs

Ratno Devi and others

..Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Munjal, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The short point involved in this case is whether Kalawati, mother of the plaintiff by way of Will dated 29.02.1998 on the basis of life interest granted as per the letter dated 09.03.1966 on her mother could become absolute owner as per the provisions of Section 14(1) of the Hindu Succession Act emanating right in favour of the plaintiff to claim declaration, the answer would be 'no', in view of the ratio decidendi culled out by Hon'ble Supreme Court in **Ranvir Dewan Vs. Mrs. Rashmi Khanna and another 2018(1) RCR (Civil) 193.**

It would be apt to reproduce Section 14 of the Hindu Succession Act:-

“14. Property of a female Hindu to be her absolute property- “(1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner. Explanation. —In this sub-section, “property” includes both movable

and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act. (2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.”

As per the Explanation of sub-section (1), the right in the property by a female Hindu would ripen into ownership in case it was “In Lieu of Maintenance” besides other circumstances but in sub-section (2), her ownership would be “limited” if it was by way of gift under Will or any other instrument or under a decree or order of the Civil Court.

Life interest would not confer an absolute ownership in favour of Kalawati as she had to enjoy the property during her life time. She could not deal with the property either through testamentary document or transfer. The aforesaid view of mine is derived from ratio decidendi culled out in para in paragraphs 36, 37, 41, 43 to 46 of judgment rendered in **Ranvir Dewan's case** (supra).

The same reads as under:-

“36. It is a settled principle of law that what the testator intended to bequeath to any person(s) in his Will has to be gathered primarily by reading the recitals of the Will only.

37. As mentioned above, reading of the Will would go to show that it does not leave any kind of ambiguity therein and one can easily find out as to how and in what manner and with what rights, the testator wished to give to three of his legal representatives his self acquired properties and how he wanted to make its disposition.

41. Reading of the aforementioned principle of law laid down in the cases of V. Tulasamma and Sadhu Singh (supra), it is clear that the ambit of Section 14(2) of the Act must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a “restricted estate” in the property. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Section 14 (2) of the Act, even if the instrument, decree, order or award allotting the property prescribes a “restricted estate” in the property.

43. A fortiori, plaintiff No.2-late Mrs.Pritam received only “life interest” in the suit house by the Will dated 24.06.1986 from her late husband and such “life interest” was neither enlarged nor ripened into an absolute interest in the suit house and remained “life interest”, i.e., “restricted estate” till her death under Section 14(2) of the Act. This we say for following factual reasons arising in the case.

44. First, the testator-Mr.Dewan being the exclusive owner of the suit house was free to dispose of his property the way he liked because it was his self earned property.

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

46. Third, such “life interest” was in the nature of “restricted estate” under Section 14(2) of the Act which remained a “restricted estate” till her death and 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 Section 14(1). It is permissible in law because Section 14(2) is held as

proviso to Section 14(1) of the Act. ”

This is on account of this, plaintiff has been non-suited.

In view of such circumstances, I do not find any illegality and perversity in the judgments and decrees passed by the Courts below, much less, no substantial question of law arises for determination by this Court. No ground for interference is made out. Resultantly, the second appeal is dismissed.

(AMIT RAWAL)
JUDGE

April 22, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No