

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

RSA No.927 of 2017 (O&M)
Date of Decision.07.02.2019

Col. Amrik Singh

...Appellant

Vs

Kehar Singh (D) through LRs

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. L.S. Sidhu, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The short point involved in the present case is whether defendant No.1, who was given limited right by virtue of award dated 28.02.1964, which was made rule of Court vide judgment dated 2.3.1964, during her life time can execute gift deed dated 28.11.2003, owing to the fact that she had become absolute owner as per Section 14(1) or 14(2) of the Hindu Succession Act, the answer would be 'no', for, provisions of Section 14(1) and 14(2) reveals that if a female Hindu gets right by virtue of decree, will, gift or any other instrument, order or award, she would be absolute owner. The provisions of the aforementioned Sections have been interpreted by the Hon'ble Supreme Court in paras 36, 37, 41, 43 to 46 of judgment rendered in **Mr. Ranvir Dewan Vs. Mrs. Rashmi Khanna and another AIR 2018 SC 62** and the same read 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.”

In these circumstances, finding of fact and law arrived by the Courts below in setting aside the gift deed in favour of defendant No.2 cannot be said to be suffering from any illegality and perversity, 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

February 07, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No