

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

**RSA No.4195 of 2017 (O&M)
Date of Decision.04.02.2019**

Santokh Singh ...Appellant
Vs
Sarup Singh and others ...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajiv Joshi, Advocate
for the appellant.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed at the instance of the defendant No.1 against the decretal of the suit filed by the respondent-plaintiff whereby the transfer deeds dated 18.2.2008 and 19.11.2007 executed by Kulwant Kaur in favour of appellant-defendant No.1 along with mutation bearing No.1445 have been set aside and injuncted not to alienate, sell, transfer, mortgage or dispose of the property in question in any manner.

Plaintiffs alleged that the transfer deeds were illegal and without jurisdiction as Kulwant Kaur had life interest in the suit property by virtue of Will dated 6.11.2000 executed by her late husband Banta Singh i.e. father of the respondents-plaintiffs and of the appellant-defendant No.1. It was registered Will with Sub Registrar, Jalandhar. Earlier defendant No.2 filed a suit for declaration regarding entire share of Banta Singh against the remaining legal heirs challenging the Will and the said suit was dismissed by the trial Court vide judgment dated 07.01.2008.

Defendants opposed the suit, raised numerous preliminary objections with regard to maintainability, non-joinder of

necessary parties. On merits, it was asserted that in the judgment and decree dated 07.01.2008, the Will dated 06.11.2000 executed by Banta Singh was upheld and supported the transfer deeds on the ground that Kulwant Kaur on the basis of aforementioned Will had acquired full ownership.

Mr. Rajiv Joshi, learned counsel appearing on behalf of the appellant-defendant No.1 relied upon the ratio decidendi culled out by Hon'ble Supreme Court in **Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna and others (2016) 2 SCC 56; 2016(1) RCR (Civil) 1** to contend that whatever rights the husband has bequeathed in favour of wife during his life time, she would be deemed to be sole owner, by virtue of provisions of Section 14 (1) of the Hindu Succession Act, 1956. The aforementioned judgment was rendered by relying upon the judgment of Hon'ble Supreme Court in **V. Tulasamma and others Vs. Sesha Reddy (dead) by LRs (1977) 3 SCC 99**. Both the Courts below have abdicated in illegally applying provisions of Section 14(2) of the Hindu Succession Act whereas it would have been Section 14(1). The subsequent judgment rendered by Hon'ble Supreme Court in **Mr. Ranvir Dewan Vs. Mrs. Rashmi Khanna and another AIR 2018 SC 62; 2018(1) RCR (Civil) 193** would not apply, thus, urges this Court for setting aside the finding under challenge.

I have heard learned counsel for the appellant, appraised the paper book and of the view that there is no force and merit. The contents of the Will, which have been upheld in the previous suit on account of judgment and decree dated 7.1.2008, were read out to this

Court wherein it was clearly stated that testator Banta Singh had bequeathed the property in favour of Kulwant Kaur, defendant No.2, during her life time. The expression 'in lieu of maintenance and limited interest' has been question of debate in the judgments referred to above.

It would be apt to reproduce the findings rendered in paragraphs 36, 37, 41, 43 to 46 by the Hon'ble Supreme Court in **Mr. Ranvir Dewan's case** (supra) which 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 the present case also, Kulwant Kaur had not been

given the property “In Lieu of Maintenance” but “Life Interest”, therefore, she could not acquire full ownership as per the ratio decidendi culled out in Jupudy Pardha Sarathy's case (supra), for, recital of the Will in the aforementioned case had given the widow “Life Interest” in lieu of maintenance.

There is stark difference between the expressions “In Lieu of Maintenance” and “Life Interest”. Had the recital contained the expression “In Lieu of Maintenance”, probably there would have been any force in the submissions of Mr. Joshi as the said right had ripened in full ownership in view of the law laid down by the Hon'ble Supreme Court in Jupudy Pardha Sarathy's case (supra) and V.Tulasamma's case (supra) in favour of Kulwant Kaur as per the provisions of Section 14(1) of the Act, therefore, recital in each and every Will would enable the Court to form opinion whether widow or wife of the deceased would acquire the right or right given to her would ripen to full ownership as per the provisions of Section 14(1) of the Act or “Life Interest” as per Section 14(2) of the Act.

In view of the aforementioned facts, I do not find any illegality and perversity in the concurrent finding of fact rendered 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

February 04, 2019
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No