



* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment Reserved on : 7th September, 2022*
Judgment Delivered on : 26th September, 2022

+ **CS(OS) 2664/2014 & I.A. 11202/2016 (u/S 151 of CPC)**

SHAKUNTLA & ANR

..... Plaintiffs

Through: Mr. Ankit Jain, Ms. Bhoomija Verma,
Mr. Sarvesh R, Advocates

Versus

RAJINDER SINGH DESWAL

..... Defendant

Through: Mr. Harish Malhotra, Senior
Advocate with Mr. N. K. Kantawala
and Ms. Shloka Rawat, Advocates

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

1. The present suit has been instituted seeking partition of the property bearing No. 8, Northwest Avenue Road, Punjabi Bagh Extn., New Delhi - 110026, measuring about 300 sq. yds (hereinafter referred as the 'Suit Property').
2. The case set up by the plaintiffs in the plaint:
 - i) The suit property was originally purchased by Sh. Mamchand Deswal, who constructed a house thereupon. He executed a registered will dated 24th February, 1993. He passed away on 18th October, 1993, leaving behind a widow, Smt. Nanki Devi and three children, being Shakuntala, Krishna Prakash and Rajender Singh Deswal. Before his death, Sh. Mamchand Deswal constructed a house on the plot of land,



which is the suit property in the present suit.

- ii) The plaintiff no.1 is a daughter, who is permanently settled in Gurgaon, Haryana after her marriage in 1975; the plaintiff no.2 is also a daughter, who is permanently settled in USA after her marriage in 1981 and; the defendant is also permanently settled in Mumbai, Maharashtra since 1968.
 - iii) On the death of Sh. Mamchand Deswal, Smt. Nanki Devi became the sole and absolute owner of the suit property on the basis of a Will dated 24th February, 1993, executed by Late Sh. Mamchand Deswal.
 - iv) Smt. Nanki Devi expired on 20th August, 2014 leaving behind a Will dated 26th August, 2013, wherein she bequeathed the suit property in favour of all the three children i.e. the two plaintiffs and the defendant in equal shares.
 - v) The suit property was in the possession of Smt Nanki Devi till her death. The first floor of the suit property was being let out by her from time to time to different tenants.
3. Based on the aforesaid pleadings, a decree of partition is sought in respect of the suit property to the extent of 1/3rd share each in favour of the two plaintiffs and the defendant.
4. Suit was contested by the defendant by filing a written statement, in which it was pleaded that:
- i) The defendant is in sole possession of the suit property. The defendant has always been paying the annual house tax of the suit property and the renovation of the suit property has also been carried out by the defendant out of his own funds from time to time.



- ii) The suit property was in the name of the father of the parties and no mutation has been carried out by the mother in her name after the death of the father.
 - iii) The mother had only the life/limited interest in the suit property as per aforesaid Will executed by the father of the parties. Hence, in terms of the Will dated 26th August, 2013, executed by the mother of the parties, the plaintiffs are not entitled to any share in the suit property, as the mother had no right to bequeath the suit property.
5. Counsel appearing on behalf of the plaintiffs has made the following submissions:
- i) Clause 4 of the will dated 24th February, 1993 specifically provides that after the death of the father of the parties, all his movable and immovable properties will be inherited by his wife and will be the ‘absolute’ and ‘exclusive’ properties of Smt. Nanki Devi. The use of the words ‘absolute’ and ‘exclusive’ clearly shows the intent of the testator to absolutely vest the suit property in favour of his wife.
 - ii) Upon the death of the father of the parties, the mother of the parties became the sole and absolute owner of the entire estate of the father of the parties. Thus, there was nothing left with the father of the parties, which could be bequeathed to the defendant.
 - iii) Clauses 4 and 7 of the Will are not mutually inconsistent and once the testator bequeathed absolute interest under clause 4 of his Will, then clause 7 stands repugnant and void-ab-initio.
 - iv) The father of the parties, after creating an absolute interest in favour of his wife, cannot change the line of succession of his wife. It cannot be contended that the Testator had any right to legislate as to how a



property belonging to his wife would devolve upon her death. Any property belonging to his wife, at the time of her death, would devolve as per her own Will.

v) Reliance is placed on Sections 82 to 88 of the Indian Succession Act, 1925 and the following judgments, in support of the aforesaid submissions:

- a) *Mauleshwar Mani & Others. v. Jagdish Prasad and Others*, (2002) 2 SCO 468.
- b) *Judge Pal Khera v. Chand Rani Khera & Ors*, MANU/DE/1766/2012.
- c) *Sudaran Suryanarayana & Anr. v. Kalla Surya Kantham & Anr.*, (2010) 13 SCC 147.

6. Senior counsel appearing for the defendant has made the following submissions:

- i) The father of the parties, through his Will dated 24th February, 1993, clearly expressed his intent to create a life/limited interest in favour of his wife, and after the death of his wife, the entire estate of Late Sh. Mamchand Deswal, including both moveable and immovable properties were to devolve absolutely upon the defendant. Therefore, the defendant is the absolute owner of the suit property.
- ii) In Clause 4 of the Will, no power has been given to the mother to dispose of the properties. Therefore, only a life/limited interest was created in favour of the mother.
- iii) A reading of various provisions of the Will in a harmonious manner shows that the intention of the father of the parties was that the defendant alone shall inherit his entire movable and immovable



properties. Separate provisions in the Will have been made in respect of the two plaintiffs as well as the mother of the parties.

- iv) If the interpretation of the clauses of the Will placed by the plaintiffs is taken to be correct, the Clause 7 of the Will would become otiose.
- v) Reliance is placed on the following judgments in support of the aforesaid submissions:
 - d) *Raghubir Singh vs. Budh Singh*, AIR 1978 Delhi 86.
 - e) *S. Rajagopal Chettiar v. Hamasaveni Ammal*, AIR 1992 SC 704.
 - f) *Navneet Lal v. Gokul*, AIR 1976 SC 794.

- 7. In rejoinder, the counsel for the plaintiffs has submitted that:
 - (i) There is no separate provision in the Will executed by the father with regard to the two plaintiffs, only a provision has been made in respect of their daughter's wedding.
 - (ii) The words '*sole*' and '*absolute*' used in Clause 4 in the Will are missing in Clause 7 of the Will.
- 8. The validity and legality of the Will dated 24th February, 1993 was undisputed by the parties, and hence, vide order dated 28th July, 2015, this Court granted liberty to the parties to address arguments on the effect of clauses 4 and 7 of the aforesaid Will and framed the following preliminary issue:

"What is the effect of Clauses 4 and 7 contained in the registered will dated 24.2.1993, executed by late Sh. Mamchand Deswal father of the parties? (Onus on the parties)"

- 9. Since the contentions of both sides are in respect of interpretation of the Will executed by the father, it is deemed apposite to set out the relevant



clauses of the Will:

“

3. *I have got my living wife Smt. NANKI DEVI, one married Son, named Shri Rajinder Singh Deswal, two married daughters namely Mrs. Shakuntla W/O Shri Bhupender Pal and Mrs. Krishna Prakash W/O Shri Brahm Prakash.*

4. *I, therefore, of my own free will and desire, declare, devise and bequeath that during my life time I shall continue to remain absolute owner in possession of all my estate, moveable and immoveable properties which at present I possess and which I will acquire till my death and after my death the same will be inherited by my wife, Smt. Nanki Devi and will stand absolute and exclusive properties of my wife.*

5. *I have bank accounts (saving and fixed deposits) joint accounts with my wife Smt. Nanki Devi, in Punjab National Bank, State Bank of India, and Union Bank of India, Punjabi Bagh, New Delhi-110026. I have got a locker in my and my wife's name in Union Bank of India, Punjabi Bagh, New Delhi-110026 and some important documents are lying in the locker. After my death the same will become the property of my wife Smt. Nanki Devi only and none of my other legal heirs shall have any right and interest with it.*

6. *I own one double storey House No. 8, North West Avenue Road, Punjabi Bagh Extension New Delhi-110026 on a plot of 300 sq. yards which was constructed from my own earnings of my life time. One storey of this house has been given on rent from which my monthly expenses are met as my pension is insufficient to meet the expenses. The monthly expenses of the house also includes, yearly House Tax, white washing and maintenance of the building etc. etc.*

7. *After the death of my wife, Smt. Nanki Devi my son named Rajinder Singh Deswal will inherit all my assets and property moveable and immoveable.*



8. Both of my daughters are well settled in their respectable families and enjoying happy life. My elder daughter (Mrs.Shakuntla)has got one daughter named Pooja and one Son Parshant Kumar.After my death a sum of Rs.21000/- should be paid to my daughterShakuntla for her daughter's marriage 'Pooja' from my bankaccounts.

9. My younger daughter Mrs. Krishna Prakash has also got two child, one daughter named Neha and one son named Poras. After mydeath a sum of Rs.21000/- should be paid from my Bank accounts toMrs. Krishna Prakash for her daughter's marriage (Neha).

...

11. The contents of my this Last Will have been typed by me and the same are correct and according to my desire and wish."

10. The following facts emerge from the reading of the aforesaid Will:
- i) In Clause 3 of the Will, the Testator lists out his Class-I legal heirs.
 - ii) In Clause 4 of the Will, the Testator states that he shall remain 'absolute owner in possession' of all his estate, movable and immovable properties during his lifetime. The said clause goes on to state that after the Testator's death, 'the same' i.e. all his movable and immovable properties shall be inherited by his wife and shall be her absolute and exclusive properties.
 - iii) Clause 5 of the Will deals with the bank accounts held by the Testator jointly with his wife. It clearly provides that after his death the said bank accounts shall become property of his wife only and none of the other legal heirs shall have any right or interest in it.
 - iv) Clause 6 gives the description of the suit property and its current status.



- v) Clause 7 provides that after the death of his wife, his son, the defendant herein, will inherit all his assets and movable and immovable property.
- vi) Clauses 8 and 9 deal with the bequest made in favour of the families of the daughters. The Testator notes that both his daughters are well settled in their respectable families and enjoying a happy life. Therefore, Rs.21,000/- be paid for the marriage of the daughters of the plaintiffs.
- vii) In Clause 11, the Testator clarifies that the aforesaid Will has been prepared by the Testator himself.
11. Sections 82 to 88 of the Indian Succession Act, 1925 deal with the aspect of interpretation of a will. The same are set out below:

“82. Meaning of clause to be collected from entire Will—The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other.

Illustrations

- (i) *The testator gives to B as a specific fund or property at the death of A, and by a subsequent clause gives the whole of his property to A. The effect of the several clauses taken together is to vest the specific fund or property in A for life, and after his deceased in B; it appearing from the bequest to B that the testator meant to use in a restricted sense the words in which he describes what he gives to A.*

....

83. When words may be understood in restricted sense, and when in sense wider than usual.- *General words may be understood in a restricted sense where it may be collected from the Will that the testator meant to use them in a restricted sense; and*



words may be understood in a wider sense than that which they usually bear, where it may be collected from the other words of the Will that the testator meant to use them in such wider sense.

84. Which of two possible constructions preferred.- Where a clause is susceptible of two meanings according to one of which it has some effect, and according to the other of which it can have none, the former shall be preferred.

85. No part rejected, if it can be reasonably construed - No part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it.

86. Interpretation of words repeated in different parts of Will - If the same words occur in different parts of the same Will, they shall be taken to have been used everywhere in the same sense, unless a contrary intention appears.

87. Testator's intention to be effectuated as far as possible - The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.

88 The last of two inconsistent clauses prevails - Where two clauses of gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.”

12. Both sides have relied upon various judgments in support of their submissions for the interpretation of the Will. First, I shall examine the judgments relied upon by the senior counsel appearing for the defendant.

13. In **S. Rajagopal** (supra), the word ‘absolutely’ was used in the earlier part of the will in respect of the bequest in favour of the wife. However, in the latter part of the will, it was provided that the property would go to the male children of the testator after the death of the wife. The Supreme Court



while analyzing the provisions of the will, came to the conclusion that in view of the language used in the will, it was the intention of the testator to create only a life interest in favour of his wife and this is clear from the fact that a provision in the will stated that after the death of the wife of the testator, the property would go to the male children of the testator. The relevant portion of the said judgment is set out below:

*“3. After going through the contents of the will we agree with the view taken by the High Court. We do not agree with the contention of the learned counsel for appellant raised before us that Padmanabha Chettiar, the testator of the will wanted to give absolute right in the property to his wife Dhanalakshmi Ammal and thereafter absolute right in favour of his daughter Rajalakshmi Ammal. The above intention is negatived by a clear mention in the will that after Rajalakshmi Ammal the property shall ultimately go to her male children. **In case the intention of the testator was to give the properties absolutely in favour of Rajalakshmi Ammal and not merely life interest then there was no question of mentioning that after her it should go to her male children.**”*

14. In **Raghubir Singh** (supra), a clause in the will provided that after the death of the testator, his wife shall become the absolute owner of his entire movable and immovable properties, with a right to transfer the properties in a manner she likes. It was further stated in a subsequent clause of the will that after the death of his wife, one of the sons would become absolute owner of the property. The Division Bench applying the principles laid down in Sections 82, 83, 85 and 87 of the Indian Succession Act, 1925 held that in order to determine the intention of the testator, the will has to be read as a whole. While interpreting the will, it has to be kept in mind that the testator was not a legally trained person and the interpretation of the will



should be done in such a manner that none of the provisions of the will become otiose or redundant. Applying the aforesaid principles, the Division Bench held that even though the word ‘absolute’ has been used in both the clauses of the will, the latter part of the will shall prevail over the earlier part of the will.

15. In *Navneet Lal* (supra), the Supreme Court laid out various principles with regard to interpretation of the will:

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

16. Applying the aforesaid principle to the interpretation of the will that was the subject matter in the said judgment, it was observed in paragraph 23 as under:

23. All the above features run counter to the theory of an absolute estate in favour of Smt Jarian. There is still another clinching factor. It is clear from the will that the testator had misunderstanding and quarrels with his brother regarding ancestral property and the matter had to be settled



by arbitration leading to partition and separate enjoyment of property as far back as 1889. It also appears from the recitals in the will that he had grave apprehension that after his death his only reversioners, his brother and nephew, “might trouble and harass my wife Mst Jarian and my sister's son Gokul”. One thing was, therefore, clear that the testator never intended that his property should pass to his brother and nephew. This intention of the testator would best be achieved by holding that there was a devise of a life estate to his wife and an absolute estate thereafter to Gokul indicating a different line of inheritance in the will. On the other hand, if any absolute estate would have been conferred on the widow, then on her death the property would have passed on by inheritance to her husband's heirs who were none else than the brother and the nephew of the testator. There was no other heir of Mst Jarian to inherit the property after her death.”

17. The facts in *S. Rajagopal* (supra) are almost identical to facts in the present case. In the present case also, the Will contains a clause, wherein the word ‘*absolutely*’ has been used by the Testator while bequeathing the property in favour of the wife and a subsequent clause states that **after the death of the wife**, the property shall be inherited by the son of the Testator, the defendant herein.

18. The dicta of *Raghubir Singh* (supra) is fully applicable in the facts and circumstances of the present case. In fact, in *Raghubir Singh* (supra), the testator had given a right to transfer the properties to his wife, which is not the case in the present case. No doubt, the Testator has used words such as ‘*absolute*’ and ‘*exclusive*’ in Clause 4 while bequeathing his properties in favour of his wife. However, the issue that would have to be considered is whether the Testator knew about the legal connotation of these words. It is nobody’s case that the Testator was a trained legal person, who understood the legal connotation of the terms used by him in his Will. The intention of



the Testator becomes clear in Clause 7, where he states that after the death of his wife, his son would inherit all his assets and moveable and immoveable properties.

19. The suit property was the only immoveable property owned by the Testator. Therefore, Clause 7 of the Will would become redundant and otiose, if it is held that an absolute bequest was made in favour of the wife of the Testator in Clause 4. In terms of Section 85 of the Indian Succession Act, 1925, no part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction upon it. Further, in terms of Section 88 of the Indian Succession Act, 1925, if two clauses of the gifts in a will cannot be reconciled, the latter of the two shall prevail. In the present case, if clauses 4 and 7 of the Will cannot be reconciled, it is clause 7 that shall prevail.

20. In respect of the bank accounts, it has been clearly stated in Clause 5 of the Will that the said bank accounts will become the property of his wife **alone and none of the other legal heirs would have any right in it**. The words '*only*' and '*none of the other legal heirs*' shall have any right and interest, seems to convey an unequivocal intention of the Testator that the monies in the bank accounts are the exclusive property of his wife. It is pertinent to note that the words such as '*none of the other legal heirs would have any right in it*' have not been used by the Testator in clause 4 of the Will while bequeathing properties in favour of his wife.

21. Section 82 of the Indian Succession Act, 1925 provides that the will has to be read as a whole. In the present case, the intent that emerges from the reading of the Will as a whole was that the wife of the Testator would have a life interest in the suit property and after her, the suit property would



devolve upon his son. It is nobody's case that the Testator did not have good relations with his son or that he did not wish to bequeath any of his properties in favour of his son.

22. In the present case, the Testator has noted in Clause 8 of the Will that both his daughters are well settled in their respectable families and enjoying a happy life. Therefore, only a sum Rs.21,000/- was provided for the marriage of their daughters. This suggests that the Testator did not intend that his daughters inherit his movable and immovable properties. If the Will is interpreted in a manner that the Testator's wife would get an absolute right in the property, this would mean that the wife would have the right to execute a Will in favour of her daughters i.e. the plaintiffs, or the plaintiffs could inherit the suit property on account of intestate succession. A reading of the Will as a whole suggests that this could not be the intention of the Testator as clause 7 of the Will clearly states that after the death of the mother, the defendant will inherit all the assets including movable and immovable properties. Therefore, the reasoning in *Navneet Lal* (supra), as propounded in paragraph 23 will be applicable in the present case.

23. The judgment in *Navneet Lal* (supra) has been sought to be distinguished by the counsel for the plaintiff by stating that in the said case, the intention of the testator was that after his death, the property did not fall into the hands of his reversioners, his brothers and nephew and this intention could be best achieved by holding that there was a life estate in favour of his wife and therefore, the property fell to the respondent after the demise of his wife. This logic is also applicable in the facts of the present case as the intention of the Testator was not to give any of the properties to his daughters and to provide Rs.21,000/- each to the daughters for their



daughters' wedding.

24. Now, I shall examine the judgments relied upon by the counsel for the plaintiffs.

25. The Supreme Court in the judgment in ***Mauleshwar Mani*** (supra) laid down the following principles with regard to interpretation of will:

“11. From the decisions referred to above, the legal principle that emerges, inter alia, are:

(1) where under a will, a testator has bequeathed his absolute interest in the property in favour of his wife, any subsequent bequest which is repugnant to the first bequeath would be invalid; and

(2) where a testator has given a restricted or limited right in his property to his widow, it is open to the testator to bequeath the property after the death of his wife in the same will.”

26. In the facts of the case before the Supreme Court, the wife of the testator was given an absolute estate with a right to transfer. On the basis of the right to transfer being given in favour of the wife, the Supreme Court came to conclusion that the subsequent bequest in the same will by the testator in favour of his children was repugnant to the first bequest and is therefore, invalid. The Supreme Court in paragraph 8 of the aforesaid judgment has observed that where the property has been given by a testator to the devisee with a right of alienation, such bequeath is a conferment of an absolute estate. In the present case, the Will does not state that the wife will have a right to transfer the properties of the Testator. Therefore, the said judgment would not be applicable to the facts of the present case.

27. In ***Judge Pal Khera*** (supra), the clause in the will provided that the



bequest is being made in favour of the testator's wife '*absolutely and exclusively to the exclusion of all others*'. The intention of the testator was that the beneficiary under the said will takes full benefit to the exclusion of all others. The expression '*to the exclusion of all others*' was used in combination with the words '*absolutely*' and '*exclusively*' and this weighed with the Division Bench in coming to the conclusion that the absolute estate had been given to the wife. This is evident from the extracts of the judgment set out below:

"12. *The testator of the will has clearly penned that after his demise, his moveable and immoveable property shall devolve upon his wife absolutely and exclusively to the exclusion of all others.*

26. ***These are words expressed to show an intention which is unidirectional i.e. to highlight that the beneficiary takes full and to the exclusion of others.***"

28. The Division Bench in the aforesaid judgment discussed the use of the words '*use*' '*hold*' and '*enjoy*' and held that even if the word '*sell*' has not been used, it cannot be said that the intention of the testator was to make a limited bequest in favour of his wife. The Division Bench further held that the aforesaid words were only in the nature of surplusage. Though, the words '*absolutely*' and '*exclusively*' have been used in Clause 4 of the Will in the present case, the expression '*to the exclusion of all others*' is conspicuously absent. Therefore, the observations in ***Judge Pal Khera*** (supra) will not be applicable in the present case.

29. In ***Sadaram Suryanarayana*** (supra), the testatrix executed a will bequeathing two different parts of her property in favour of each of her two daughters, with the stipulation that the same would devolve on them with



the absolute right of sale, gift, mortgage, etc. Subsequently, it was provided that after the demise of the daughters, the '*retained and remaining property*' shall devolve upon their female children only. Interpreting the aforesaid clause of the will, the Supreme Court observed that there was no conflict between the former and latter part of the will, as the former part of the will has made absolute bequest in favour of the daughters, whereas the latter part of the will stipulated the devolution upon the female children of the daughters in respect of '*retained and remaining property*' only. Accordingly, the Supreme Court harmoniously construed the aforesaid clause in the will and held that there was no inconsistency between the two clauses.

30. The will in *Sadaram Suryanarayana* (supra) stipulated an absolute right of sale on the legatee in the former clause unlike the will in the present case. The intention of the testatrix in the said judgment was to bequeath the property on the female children of her daughters that remained available in the hands of the daughters at the time of their death. In the present case, this is clearly not the intention of the Testator as the expressions '*rights of sale, gift, mortgage etc*' and '*retained and remaining property*' have not been used in the Will.

31. In view of the discussion above, I am of the considered view that in terms of the Will dated 24th February, 1993 executed by the father of the parties, the mother of the parties had only been given a life/limited interest in the suit property and after her death, the defendant was entitled to the suit property. Consequently, the preliminary issue is decided in favour of the defendant and against the plaintiffs.

32. Resultantly, the mother of parties was not entitled to execute a Will in



respect of the suit property. The only right claimed by the plaintiffs in the present suit is based on the Will of the mother. In view of my finding above on the preliminary issue, nothing further remains to be adjudicated in the present suit. The suit is dismissed. Parties to bear their own costs.

33. All pending applications stand disposed of.

34. Decree sheet be drawn accordingly.

SEPTEMBER 26, 2022

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AMIT BANSAL, J.

