

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)
ORIGINAL SIDE**

Present:

The Hon'ble Justice Krishna Rao

CS No. 91 of 2012

Aabira Mukherjee

Versus

Swapna Roy & Ors.

Mr. Altamash Alim
Mr. Nilay Sengupta
Mr. Sujit Banerjee
Ms. Ananya Barik

... for the plaintiff.

Mr. Aritra Basu
Mr. Ritoban Sarkar
Mr. Dwip Raj Basu
Mr. S. Mandal

... for the defendants.

Hearing Concluded On : 28.08.2024

Judgment on : 13.11.2024

Krishna Rao, J.:

1. The plaintiff has filed the preset suit praying for the following reliefs:

a) *Decree of declaration that the purported deed of settlement by trust dated October 6, 1993 in respect of the premises No. 46, Mahendra Sarkar Street, Kolkata 700012, more fully and particularly described in the Schedule hereto annexed and marked as Annexure “C”, situate within the aforesaid jurisdiction, is null and void;*

b) *Decree of declaration that the plaintiff no. 1(b) is the sole and absolute owner of the premises No. 46, Mahendra Sarkar Street, Kolkata 700012, more fully and particularly described in the Schedule hereto annexed and marked as Annexure “C”, situate within the aforesaid jurisdiction;*

c) *Decree directing the defendants nos. 1(a), 1(b) and 2 to forthwith deliver up the said purported deed of settlement by trust dated October 6, 1993 so that the said purported deed is cancelled by the Registrar, Original Side of this Hon’ble Court;*

d) *Decree for vacant and peaceful possession of premises No. 46, Mahendra Sarkar Street, Kolkata 700012, more fully and particularly described in the Schedule hereto annexed and marked as Annexure “C”, situate within the aforesaid jurisdiction, by evicting the defendant nos. 1(a) and 1(b) therefrom;*

e) *Temporary injunction;*

f) *Receiver;*

g) *Costs;*

h) *Further and/or other relief.*

2. Smt. Sabita Ray being the original plaintiff has filed the suit against the original defendant, Pradip Kumar Roy. During the pendency of the suit, both the original plaintiff and defendant passed away and their legal heirs have been substituted.

- 3.** One Hariprasad Ghosh was the owner of the Premises No. 46, Mahendra Sarkar Street, Kolkata - 700012. During his life time, he had two wives, namely Durga Rani Ghosh and Sushama Ghosh. He died intestate sometimes in the year 1940 leaving behind his two wives. Durga Rani Ghosh was issue less and Sushama Ghosh had one daughter, namely Sabita Ray with the wedlock between Hariprasad Ghosh and Sushama Ghosh.
- 4.** After the death of Hariprasad Ghosh, dispute arose between the two wives with respect to the properties of the deceased Hariprasad Ghosh. Durga Rani Ghosh during her life time has filed a suit against the Sushama Ghosh and her minor daughter being Suit No. 1142 of 1940 before this Court claiming equal distribution of the Estate of Hariprasad Ghosh. The suit filed by Durga Rani Ghosh was disposed of on 17th December, 1941 on the basis of the settlement entered between the parties.
- 5.** Durga Rani Ghosh died on 7th July, 1997 and Sushama Ghosh died on 25th June, 2002. On 5th September, 2010, the original plaintiff received a writ of summons along with copy of plaint from the Learned City Civil Court at Calcutta in a Title Suit No. 462 of 2010 initiated by the original defendant no. 2 wherein the original plaintiff was impleaded as pro forma defendant.
- 6.** As per the case of the plaintiff, on receipt of writ of summons, the plaintiff came to know about the Deed of Settlement dated 6th October,

1993 entered between Durga Rani Ghosh and Nirmalendu Ghosh as First Trustee and Second Trustee respectively with respect to premises No. 46, Mahendra Sarkar Street, Kolkata-700012. In the Deed of Settlement, it is also provided that after the death of Durga Rani Ghosh and Nirmalendu Ghosh, the premises No. 46, Mahendra Srkar Street, Kolkta-700012 shall absolutely vest in one Pradip Kumar Roy, the original defendant no.1 in the present suit as the beneficiary.

7. When the plaintiff came to know about the alleged Deed of Settlement dated 6th October, 1993, the plaintiff has filed the present suit.
8. Though the defendants have entered appearance in the suit but only defendant nos. (1a) and (1b) have filed their joint written statement but the defendant no.2 has neither filed his written statement nor has contested the suit.
9. Considering pleadings, submissions of the Learned Counsels for the respective parties and the suggested issues supplied by the parties, the following issues were framed:

1. *Whether the present suit is maintainable?*
2. *Whether the present suit is barred by limitation?*
3. *Whether Durga Rani Ghosh (deceased) on the basis of the compromise decree passed in Suit No. 1142 of 1940, acquired premises no.46, Mahendra Sarkar Street, Kolkata – 700012 (hereinafter referred to as the “said premises”) in lieu of and in recognition of her prior existing rights of maintenance out of the estate of her deceased husband?*

4. *Whether Durga Rani Ghosh (deceased) on the basis of her prior existing rights of maintenance out of the estate of her deceased husband could have conveyed the said premises by a Deed of Trust dated October 6, 1993?*

5. *Whether the deed of settlement dated 6th October, 1993 is in violation of the consent decree of this Hon'ble Court dated 17th December, 1941 in Suit No. 1142 of 1940?*

6. *Whether the deed of settlement dated 6th October, 1993 should be adjudged null and void and be delivered up and cancelled?*

7. *Whether the plaintiffs are entitled to a declaration that the plaintiffs are the joint and absolute owners of premises no.46, Mahendra Sarkar Street, Kolkata – 700012?*

8. *Whether the plaintiffs are entitled to a decree of vacant and peaceful possession of premises no.46, Mahendra Sarkar Street, Kolkata – 700012 by evicting the defendants therefrom?*

10. The plaintiff, namely, Aabira Mukherjee in support of her case examined herself as plaintiff's witness being P.W.1 and during her evidence, altogether six (6) documents were exhibited namely:

- (i) **Exhibit –A-** Death Certificate of Sabita Ray.
- (ii) **Exhibit –B-** Death Certificate of Sushama Ghosh
- (iii) **Exhibit –C-** Decree passed in Suit No. 1142 of 1940 dated 17th December, 1941.
- (iv) **Exhibit-D (Collectively)** - Copy of plaint of Title Suit No. 462 of 2010 and written statement filed by the plaintiff (Pro forma Defendant).
- (v) **Exhibit –E-** Power of Attorney dated 8th March, 2021.

(vi) **Exhibit -F (Collectively) (With Objection)** – E-mail dated 16th December, 2023 along with two letters dated 16th December, 2023 and copy of order dated 10.03.2022 in EJ 116 of 2010.

11. The defendant no.1 (a), namely, Swapna Roy has examined herself as Defendant's Witness, being D.W.1. During her evidence, altogether seven (7) documents were marked as Exhibits which are as follows:

- (i) **Exhibit - 1** - Deed of Settlement dated 6th October, 1993.
- (ii) **Exhibit - 2** - Death Certificate of Pradip Kumar Ray.
- (iii) **Exhibit - 3** - Death Certificate of Durga Rani Ghosh.
- (iv) **Exhibit - 4** - Death Certificate of Nirmalendu Ghosh
- (v) **Exhibit – 5 (Collectively)** - Property tax receipts of the suit property paid in the name of Pradip Kumar Roy.
- (vi) **Exhibit - 6** - Original Mutation Certificate of the Suit Property.
- (vii) **Exhibit – 7** - Terms of settlement entered between Durga Rani Ghosh and Sushama Ghosh dated 22nd December 1941.

12. Submissions of behalf of the plaintiff:

- a. Mr. Altamash Alim, Learned Advocate representing the plaintiff submits that Durga Rani Ghosh had filed the suit being Suit No. 1142 of 1940 for separate possession of the Estate of Hariprasad

Ghosh. He submits that the Decree dated 17th December, 1941 is completely exhaustive and was passed on terms of settlement entered between Durga Rani Ghosh and Sushama Ghosh. He submits that the Decree was passed for the benefit of the infant i.e. the original plaintiff in the present case who was minor at the time of filing of the suit by Durga Rani Ghosh in the year 1940.

- b. He submits that Durga Rani Ghosh had agreed with the terms of Settlement entered between the parties and this Court while passing decree was of the opinion that it would be for the benefit and maintenance of the infant defendant (being the Original plaintiff herein). He submits that the decree passed by this Court in terms of the settlement for the benefit of the minor defendant and for the maintenance of the minor defendant who was the original plaintiff in the present case.
- c. Mr. Alim submits that in the settlement between Durga Rani Ghosh and Sushama Ghosh dated 22nd December, 1941 it is categorically mentioned that on the death of Durga Rani Ghosh and on the death of Sushama Ghosh, their share in both movable properties will all devolve on Sabita Ghosh and in her absence on the lawful heirs of Hariprasad Ghosh. He submits that admittedly Durga Rani Ghosh, Sushama Ghosh and Sabita Ray passed away and the substituted plaintiff being the heir of the deceased Hariprasad Ghosh is entitled to get the suit property in terms of settlement and the decree passed by this Court.

- d. He submits that as per the terms and conditions of the settlement in the event of there being any occasion for Durga Rani Ghosh or Sushama Ghosh to alienate any of the properties has to apply before this Court for necessary leave but Durga Rani Ghosh without any leave from this Court has entered into a Deed of Settlement with third party, namely, Nirmalendu Ghosh and in the said deed, it is also provided that after the death of Durga Rani Ghosh and Nirmalendu Ghosh, the premises No. 46 shall absolutely vest upon the original defendant no.1, namely Pradip Kumar Roy which is illegal and void.
- e. Mr. Alim submitted that the case of the plaintiff is covered under the provisions of Section 14(2) of the Hindu Succession Act, 1956. He submits that the premises was acquired by Durga Rani Ghosh under a decree coupled with the terms of settlement. He submits that as per decree of Durga Rani Ghosh had restricted interest in the premises and after her death, the property was to revert back to the heirs of Hariprasad Ghosh and the plaintiff is the only surviving heir.
- f. He submits that Durga Rani Ghosh has not acquired the property by way of inheritance or devise or by way of partition or in lieu of maintenance, or arrears of maintenance or by gift from any person. He submits that in the decree, it is specifically mentioned that this suit is not be treated as a partition suit. He submits that Durga

Rani Ghosh was already living in a separate residence at 17, Dixon Lane, Calcutta.

- g. Mr. Alim relied upon the judgment in the case of ***Sharad Subramanyan Vs. Soumi Mazumdar and Others*** reported in ***(2006) 8 SCC 91*** and submitted that there is no indication, either in the terms of settlement or in the decree to indicate that the property had been given to Durga Rani Ghosh in lieu of her right to maintenance. He submitted that the case of the plaintiff covered within the ambit of sub-section (2) of Section 14 of the Hindu Succession Act, 1956 and the restricted life estate granted to Durga Rani Ghosh could not be enlarged into an absolute estate.
- h. Mr. Alim relied upon the judgment in the case of ***Basanti Devi (Dead) by the legal representatives and Others Vs. Rati Ram and Others*** reported in ***(2018) 16 SCC 608*** and submitted that Durga Rani Ghosh acquired the right by virtue of the compromise decree for the first time, thus Section 14(2) of the Hindu Succession Act, 1956 would be applicable in the present case.
- i. Mr. Alim relied upon the judgment in the case of ***Jaswant Kaur Vs. Major Harpal Singh*** reported in ***(1989) 3 SCC 572*** and submitted that sub-section (2) of Section 14 of the Hindu Succession Act, 1956 is in the nature of an exception to Section 14(1) of the Act and provides for a situation where property is acquired by a female Hindu under the written instrument or a

decree of court and not where such acquisition is traceable to any antecedent right.

13. Submissions on behalf of defendant nos.1(a) and 1(b).

- a. Mr. Aritra Basu, Learned Advocate representing the defendant Nos. 1 (a) and 1(b) submitted that the suit filed by the plaintiff is barred by limitation. He submits that the plaintiff has challenged the Deed of Settlement dated 6th October, 1993 in the year 2012 i.e. after the period of about 19 years. He submits that Durga Rani Ghosh died on 7th July, 1997 and after the death of Dura Rani Ghosh, it is the admitted by the plaintiff that they have visited the suit property in the year 1997 and 1999 and found the original defendant and the defendant no.2 were in possession of the suit property in terms of the deed dated 6th October, 1993.
- b. Mr. Basu submitted that during the cross examination of P.W.1, she has also admitted that she know that the defendants are in possession of the suit property in terms of the deed dated 6th October, 1993. He submits that the plaintiff had the knowledge about the Deed of Settlement in the year 1997 or 1998 but has not filed suit challenging the deed within the prescribed period of time.
- c. Mr. Basu submitted that Durga Rani Ghosh became the owner of the premises and thus she was capable of transferring and conveying or executing Deed of Trust dated 6th October, 1993. He submits that she became the owner of the premises in terms of

Section 14(1) of the Hindu Succession Act, 1956. He submits that she has exercised her pre-existing right of maintenance on and from 1941 i.e. after the death of her husband Hariprasad Ghosh.

- d. Mr. Basu submitted that Durga Rani Ghosh became the absolute owner of the property and thus she no longer was required to obtain permission before alienating or transferring the premises by way of the Deed of Trust dated 6th October, 1993. He submits that the restrictions contained in the Compromise Decree dated 17th December, 1941 was no longer effective in view of Section 14(1) of the Hindu Succession Act, 1956.
- e. He submits that before the Hindu Succession Act, 1956 came into force, the Hindu Married Women's Right to Separate Maintenance and Residence Act, 1946 was enacted to give statutory recognition of such right and therefore, there can be no doubt that the right of maintenance is a pre-existing right. He submits that in terms of Compromise Decree and the terms of Settlement, the premises was given to Durga Rani Ghosh for her use, enjoyment through her life.
- f. Mr. Basu in support of his submissions relied upon the judgment in the case of ***V. Tulasamma & Ors. Vs. Sesha Reddy (Dead) by L.Rs.*** reported in ***(1977) 3 SCC 99*** and submitted that sub-section (2) of Section 14 is applicable only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right. He further submitted that the property is

acquired by a Hindu female at the 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 sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property.

- g. Mr. Basu relied upon the judgment in the case of ***Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna & Ors.*** reported in **(2016) 2 SCC 56** and submitted that under the Hindu Law, the husband has got a personal obligation to maintain his wife and if he is possessed of properties then his wife is entitled to a right to be maintained out of such properties. It is equally well settled law that the claim of the Hindu widow to be maintained is not a mere formality which is to be exercised as a matter of concession, grace or gratis but is a valuable, spiritual and moral right.
- h. Mr. Basu relied upon the judgment in the case of ***Sukhram and Anr. Vs. Gauri Shankar and Anr.*** reported in **AIR 1968 SC 365** and submitted that after the death of Hariprasad Ghosh, Durga Rani Ghosh became same entitled to the same interest which her husband had in the said property and she became the owner of the property and thus she was competent to alienate or transfer the property.
- i. Mr. Basu relied upon the judgment in the case of ***Pratap Narain Vs. Chief Commissioner, Delhi and Others*** reported in **(1969) 3**

SCC 631 and submitted that if Durga Rani Ghosh was entitled to a share in her husband's properties then the suit properties must be held to have been allotted to her in accordance with law. As the law then stood she had only a life interest in the properties taken by her. Therefore, the recital in the deed in question that she would have only a life interest in the properties allotted to her share is mere a recording the true legal position. It is not possible to conclude that the property in question were given to her subject to the condition of her enjoying it for a life time.

- j. Mr. Basu relied upon the judgment in the case of **Raghubar Singh & Ors. Vs. Gulab Singh & Ors.** reported in **(1998) 6 SCC 314** and submitted that right to maintenance of the Hindu Widow, as a pre-existing right, was thus recognized by the two statutes, namely, the Hindu Women's Rights to Property Act, 1937 and Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, it was not created for the first time by any of those statutes. Her right to maintenance existed under the Shastric Hindu Law long before statutory enactments came into force.
- k. Mr. Basu relied upon the judgment in the case of **Santosh and Others Vs. Saraswathibai and Another** reported in **(2008) 1 SCC 465** and submitted that sub-section (2) of Section 14 applies to instruments, documents, decrees, awards, gifts etc. which create independent and new titles in favour of the female Hindu for

the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognize pre-existing rights.

14. Decisions with reasons:

- a. **Issue No. 1** is whether the present suit is maintainable?

The plaintiff has filed the suit for declaration of purported Deed of Settlement by Trust dated 6th October, 1993 is null and void along with other prayers. The plaintiff has filed the suit against all the necessary parties and after the death of the original plaintiff and original defendant no.1, the legal heirs of the original plaintiff and the defendant no.1 have been substituted. All cause of action arose within the jurisdiction of this Court and proper ad-volurem Court fees have paid. By an order dated 6th March, 2012, the suit was admitted and the department has scrutinized the plaint. Considering the above, this Court finds that the suit filed by the plaintiff is maintainable.

Issue No.1 is decided in favour of the plaintiff.

- b. **Issue No. 2** is whether the present suit is barred by limitation?

The defendants have raised contention that the suit filed by the plaintiff is barred by limitation on the ground that the plaintiff has filed the suit for declaration of the purported deed dated 6th October, 1993 as null and void in the year 2012 that is after the

period of about 19 years. Hari Prasad Ghosh was the owner of the premises No. 46, Mahendra Sarkar Street, Kolkata- 700012. He had two wives, namely, Durga Rani Ghosh and Sushama Ghosh. There were no issues in the marriage between Hariprasad Ghosh and Durga Rani Ghosh. In the wedlock between Hariprasad Ghosh and Sushama Ghosh, one daughter, namely, Sabita Ray, earlier known as Khukee was born. Hariprasad Ghosh died intestate sometimes in the year 1940. After the death of Hariprasad Ghosh, Durga Rani Ghosh filed a Suit No. 1142 of 1940 before this Court claiming equal distribution of the Estate of Hariprasad Ghosh.

During the pendency of the suit, Durga Rani Ghosh and Sushama Ghosh have settled their dispute by entering into a Settlement Deed and on the basis of the settlement arrived between the parties, this Court has passed a Compromise Decree on 22nd December, 1941. On 5th September, 2010, the original plaintiff has received a writ of summons alongwith copy of plaint from the Learned City Civil Court at Calcutta in connection with Title Suit No. 462 of 2010 and on receipt of writ of summons, the plaintiff came to know about the purported Deed of Settlement by Trust dated 6th October, 1993 with respect to the suit premises and the plaintiff has filed the suit on 6th March, 2012 within three years from the date of knowledge of the Deed dated 6th October 1993.

Durga Rani Ghosh died on 7th July, 1997. After the death of Durga Rani Ghosh, the original plaintiff, namely, Sabita Ray and the plaintiff no.1(b) visited the suit premises in the year 1997 and 1999 and found Pradip Kumar Roy (Original Defendant no.1) and Joydeb Das were at the premises at that time. During cross examination at question No.161, the P.W.1, the plaintiff No. 1(b) stated that Pradip Kumar Roy was occupying the premises on the basis of the deed of settlement dated 6th October, 1993. In question no. 160 during cross examination of P.W.1, she has stated that “I have read the plaint which was filed in T.S. No. 462 of 2010, I came to know that he was originally defendant no.1 and he was occupying the premises”.

The Counsel for the defendants tried to impress upon this Court that from the cross examination of P.W.1, it has been established that the Plaintiff has the knowledge of the purported deed around the year 1997 or 1998 but have filed the suit in the year 2012.

This Court considered the averments made in the plaint and the examination of P.W.1. The plaintiff has made out a specific case that the plaintiff has received writ of summons of Title Suit No. 462 of 2010 from the Learned City Civil Court on 5th September, 2010 and after going through the plaint, the plaintiff came to know about the purported Deed and thereafter, the plaintiff has filed the present suit. Though the plaintiff admitted

that after the death of Durga Rani Ghosh, the plaintiff no. 1(b) along with her mother, the original plaintiff went to the suit premises and found Pradip Kumar Roy and the defendant no.2 were in occupation of the premises but the same cannot be said the plaintiff had the knowledge of the Deed dated 6th October, 1993. The P.W.1 also admitted that the defendants are in occupation of the premises in terms of deed dated 6th October, 1993 but there is no evidence that the plaintiff had the knowledge of the Deed dated 6th October, 1993 in the year 1997 or 1998. The plaintiff has made out a specific case that the plaintiff came to know about the deed dated 6th October, 1993 only on receipt of writ of summons of the Title Suit No. 462 of 2010 on 5th of September, 2010. It is also the case of the defendants that the defendants are in occupation of the premises in terms of the purported deed.

As regard the answer given by P.W.1 that the defendants are in possession of the premises in terms of the deed dated 6th October, 1993 cannot be said that the plaintiff had the knowledge about the deed in the year 1997 or 1998. The defendants have not produced any evidence to prove that the plaintiff had the knowledge of the deed dated 6th October, 1993 in the year 1997 or 1998.

Considering the above, this Court finds that the plaintiff came to know about the Deed dated 6th October, 1993 only on receipt of

writ of summons of Tittle Suit No. 462 of 2010 and the plaintiff has filed the suit on 6th March, 2012 well within the period of limitation from the date of knowledge.

Issue No.2 is decided in favour of the plaintiff.

- c. **Issue Nos. 3 to 8** are connected with each other, accordingly, all the issues are taken up together.

There is no dispute that Hariprasad Ghosh had two wives, namely, Durga Rani Ghosh and Sushama Ghosh and there was no issue out of the wedlock between Hariprasad Ghosh and Durga Rani Ghosh. The original plaintiff, namely, Sabita Ray was the daughter born out of the wedlock between Hariprasad Ghosh and Sushama Ghosh. Hariprasad Ghosh was the owner of premises No. 46, Mahendra Sarkar Street, Kolkata-700012. Hariprasad Ghosh died intestate. After the death of Hariprasad Ghosh, Durga Rani Ghosh has filed a Suit No. 1142 of 1940 claiming for equal distribution of the estate of Hari Prasad Ghosh. The suit filed by Durga Rani Ghosh was disposed of by way of a Compromise Decree dated 17th December, 1941 in terms of settlement entered between Durga Rani Ghosh and Sushama Ghosh. Terms and settlement entered between Durga Rani Ghosh and Sushama Ghosh reads as follows:

1. *It is declared that the following immovable and moveable properties from part of the estate of the late Hari Prasad Ghosh:-*

Immoveable Properties:

1. *Two storied house and premises no. 46, Mahendra Sarkar Street, let out to tenant (North portion).*
2. *Two storied House and premises no. 46, Mahendra Sarkar Street, let out to tenant (South portion).*
3. *Two storied dwelling house and premises No. 100/1, Karaya Road in the Municipal town of Calcutta, partly occupied by the defendants and partly let out to tenants.*
4. *Premises no. 100, Karaya Road in the Municipal town of Calcutta let out to a tenant.*
5. *Homestead and Zamindary can do situated at Domjur in the District of Howrah.*

Moveable Properties:

1. *Rs. 1312-1 las-0 pie deposited in the Imperial Bank, Savings Bank Departmental under Index No. 32470.*
2. *Rs. 2850/- deposited in the Post Office Savings Bank Circus Post Office Calcutta covered by account No. 537851.*
3. *Five per cent Government Promissory Note No. 063850 for 1945-55 of the face value of Rs. 5,000/-.*
4. *Five per cent Government Promissory note No. 082668 of the face value of Rs. 1,000/-.*
5. *Five per cent Government Promissory Note No. 082669 of the face value of Rs. 800/-.*
6. *Five per cent Government Promissory Note No. 069594 of the face value of Rs. 500/-*
7. *Five per cent Government Promissory Note No. 069595 of the face value of Rs. 500/-.*

8. *Five percent Government Promissory Note No. 070919 of the face value of Rs. 100/-.*
9. *Five percent Government Promissory Note No. 070994 of the face value of Rs. 100/-.*
10. *Arrear of interest due on the above Government Promissory Notes.*

It is declared the plaintiff and the defendant Smt. Sushama Bala Ghosh the Two widows of Hari Prasad Ghosh deceased are the present heirs and legal representatives of the said deceased and are entitled to his estate subject to provision being made for the maintenance education of the defendant Smt. Sabita Ghosh until her marriage and for her marriage expenses.

3. The following properties are allotted for purposes of separate possession and beneficial enjoyment to the plaintiff to be held and enjoyed by her exclusively as a Hindu widow and heiress as aforesaid but severally against the defendant Smt. Sushama Bala Ghosh.

- (i) *46, Mahendra Sarkar Street (Both North & South portions) subject to thorough repairs being executed to the said premises as hereinafter provided.*

- (ii) *5 P.C. G.P. Note No. 082668 for Rs. 1,000/-*

5 P.C. G.P. Note No. 069593 for Rs. 1,000/-

5 P.C. G.P. Note No. 069594 for Rs. 500/-

Rs. 2,500/-

4. The following properties are allotted for the purposes of separate possession and beneficial enjoyment to the defendant Smt. Sushama Ghosh to be also held and enjoyed by her exclusively as a Hindu widow and heiress aforesaid but severally against the Plaintiff.

- (i) Premises Nos. 100 and 100/1 Karaya Road will be enjoyed by the 1st Defendant for life.

Property in Domjur which fetches an income of Rs. 3/- or Rs. 4/- per month will be enjoyed by the defendant no. 1.

- (ii) 5 P.C. G.P. Note No. 082669 for Rs. 800/-

5 P.C. G.P. Note No. 069595 for Rs. 500/-

5 P.C. G.P. Note No. 070919 for Rs. 100/-

5 P.C. G.P. Note No. 070994 for Rs. 100/-

Rs. 1,500/-

And also another 5 P.C. G.P. Note for

Rs. 1,000/- to be purchased with Rs. 1062/ 11 withdrawn from the two Savings Bank (i.e. Rs. 550/- from the Circus Post Office and Rs. 512/ 11 from the Imperial Bank of India) in the name of the defendant No. 1

Rs. 1,000/-

Rs. 2,500/-

5. Government Promissory Note No. 063850 being 5% loan for 1945-55 of the face value of Rs. 5,000/- is hereby set apart for the maintenance as aforesaid and marriage expenses of defendants Sabita Bala Ghosh. Smt. Sushama Ghosh is hereby appointed guardian of the person and property of the minor Smt. Sabita Bala Ghosh without any security and without any remuneration. The said 5% loan for 1945-55 of the face value of Rs. 5,000/- shall be transferred by the defendant Shshama Ghosh in the name of the defendant Sabitabala Ghosh and will be held by the said defendant Sushama Ghosh as such guardian. Defendant Smt. Sushama bala Ghosh will be entitled to withdraw interest thereof as and when the same accrues and will meet the expenses of maintenance education etc. of the said defendant Sabita Ghosh. The defendant Smt. Sushama Bala Ghosh would be entitled to sell the said note when the said Smt. Sabita's marriage is fixed, and meet there out the expenses of her

marriage without any further orders of Court. the defendant Smt. Sabita Ghosh would be entitled to the said G. P. Notes or any balance thereof on attainment of majority.

6. There will be a decree for Rs. 100/- in favour of the plaintiff against the defendant Smt. Sushama Bala Ghosh, being the assessed value of the plaintiff's shares in the household effects furniture and other similar moveable. The said sum shall be payable within a week from date hereof. The plaintiff has no further claim to the furniture household effect etc.

7. The defendant Smt. Sushama Ghosh will pay a sum of Rs. 1,000/- on account of the plaintiff in the hands of Mr. D. N. Coomar, Advocate within seven days from this date for the costs of effecting thorough repairs to premises No. 46. Mahendra Sarkar Street, Calcutta allotted to the plaintiff. Such repairs shall be effected under the direction of the said Mr. D. N. Coomar within a month and any balance left after meeting the costs and expenses of such repairs shall be refunded to the said defendant.

8. Each allottee of the properties as mentioned above will be entitled to the rents issues, profits and income of the properties which have been respectively allotted to her including arrears and outstanding therein and will further be entitled to have her respective name entered in the corporation and other public records and will hence forward be liable for discharge of all out standings thereon. The properties shall be maintained property and in a good state of repairs by the respective allottees.

9. In the event of there being any occasion for the plaintiff and/or the defendant Smt. Sushamabala Ghosh to alienate any of the properties respectively allotted to them, they will apply to this court in this suit for necessary leave with notice to all parties concerned.

10. On the death of the plaintiff her share and on the death of the defendant No. 1 her share in both the immovable properties will all devolve on Sabita Ghosh and on her absence on the lawful heirs of Hari Prasad Ghosh.

11. All claims for accounts are withdrawn and stand abandoned.

12. Mutual allegations are abandoned.

13. The administration of Smt. Sunnamabala Ghosh as succession certificate holder to the estate of Hari Prasad Ghosh deceased stand determined and no accounts need be filed by her.

14. An order is made herein vesting the properties to the respective allottees as aforesaid. This suit is not to be treated as a partition suit.

15. The defendant smt. Sushama Bala Ghoshal will pay the costs of the plaintiff to her attorney assessed at Rs. 1300/- she will pay her own costs to her own solicitor assessed at Rs. 1000/- out of the estate of the said Hari Prasad Ghosh on or before 22nd December, 1941.

16. Liberty to apply.

The suit filed by Durga Rani Ghosh was disposed of by this Court on 17th December, 1941 i.e. before the commencement of the Hindu Succession Act, 1956 in terms of settlement arrived between the parties.

Section 4 and Section 14 of the Hindu Succession Act, 1956, reads as follows:

“Section 4, Overriding effect of Act.— (1) *Save as otherwise expressly provided in this Act,—*

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

Section 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.”

The contention of the plaintiff is that the as per the terms of settlement between Durga Rani Ghosh and Sushama Ghosh dated 22nd December, 1941, the provisions being made for the maintenance, education of the minor Sabita Ghosh until her marriage and for her marriage expenses. The plaintiff also relied

upon Clauses 9 and 10 of the settlement wherein it is provided that if any of the party intending to alienate the property allotted to them have to take leave from this Court upon notice to all concern parties and upon death of Durga Rani Ghosh and Sushama Ghosh, the shares in both the immovable properties will all devolve upon Sabita Ghosh or in her absence on the lawful heirs of Hariprasad Ghosh.

Relying upon the said clauses, it is contended by the Learned Counsel for the plaintiff that Durga Rani Ghosh without obtaining leave from this Court has alienate the property to the defendant no.1 though the plaintiff no.1(b) is the only surviving heir of Hariprasad Ghosh is entitled to get the suit premises.

The main contention in the present suit whether the case of the plaintiff falls under sub-section(1) or sub-section (2) of Section 14 of the Hindu Succession Act, 1956. The contention of the plaintiff is that the case of the plaintiff falls under sub-section (2) of Section 14 and contention of the defendant is that the case falls under sub-section (1) of Section 14 of the Hindu Succession Act, 1956.

The matter has been considered at great length by the Hon'ble Supreme Court in the case of **V. Tulasamma & Ors. (Supra)** and it is held that:

“67. The short question that arises for determination in this appeal is as to whether it is

sub-section (1) or sub-section (2) of Section 14 of the Hindu Succession Act, 1956 that applies where property is given to a Hindu female in lieu of maintenance under an instrument which in so many terms restricts the nature of the interest given to her in the property. If sub-section (1) applies, then the limitation on the nature of her interest are wiped out and she becomes the full owner of the property, while on the other hand, if sub-section (2) governs such a case, her limited interest in the property is not enlarged and she continues to have the restricted estate prescribed by the instrument. The question is of some complexity and it has evoked wide diversity of judicial opinion not only amongst the different High Courts but also within some of the High Courts themselves. It is indeed unfortunate that though it became evident as far back as 1967 that sub-sections (1) and (2) of Section 14 were presenting serious difficulties of construction in cases where property was received by a Hindu female in lieu of maintenance and the instrument granting such property prescribed a restricted estate for her in the property and divergence of judicial opinion was creating a situation which might well be described as chaotic, robbing the law of that modicum of certainty which it must always possess in order to guide the affairs of men, the legislature, for all these years, did not care to step in to remove the constructional dilemma facing the courts and adopted an attitude of indifference and inaction, untroubled and unmoved by the large number of cases on this point encumbering the files of different courts in the country, when by the simple expedient of an amendment, it could have silenced judicial conflict and put an end to needless litigation. This is a classic instance of a statutory provision which, by reason of its inapt draftsmanship, has created endless confusion for litigants and proved a paradise for lawyers. It illustrates forcibly the need of an authority or body to be set up by the Government or the Legislature which would constantly keep in touch with the adjudicatory authorities in the country as also with the legal profession and immediately respond by making recommendations for suitable amendments whenever it is found that a particular statutory provision is, by reason of inapt language or unhappy draftsmanship, creating difficulty of

construction or is otherwise inadequate or defective or is not well conceived and is consequently counterproductive of the result it was intended to achieve. If there is a close inter-action between the adjudicatory wing of the State and a dynamic and ever-alert authority or body which responds swiftly to the drawbacks and deficiencies in the law in action, much of the time and money, which is at present expended in fruitless litigation, would be saved and law would achieve a certain amount of clarity, certainty and simplicity which alone can make it easily intelligible to the people.

68. *Since the determination of the question in the appeal turns on the true interpretation to be placed on sub-section (2) read in the context of sub-section (1) of Section 14 of the Hindu Succession Act, 1956, it would be convenient at this stage to set out both the sub-sections of that section which read as follows:*

“14. (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.”

Prior to the enactment of Section 14, the Hindu law, as it was then in operation, restricted the nature of the interest of a Hindu female in property acquired by her and even as regards the nature of

this restricted interest, there was great diversity of doctrine on the subject. The Legislature, by enacting sub-section (1) of Section 14, intended, as pointed by this Court in S.S. Munna Lal v. S.S. Rajkumar [AIR 1962 SC 1493 : 1962 Supp 3 SCR 418] “to convert the interest which a Hindu female has in property, however, restricted the nature of that interest under the Shastric Hindu law may be, into absolute estate”. This Court pointed out that the Hindu Succession Act, 1958 “is a codifying enactment, and has made far-reaching changes in the structure of the Hindu law of inheritance, and succession. The Act confers upon Hindu females full rights of inheritance and sweeps away the traditional limitations on her powers of disposition which were regarded under the Hindu law as inherent in her estate”. Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The words “any property” are, even without any amplification, large enough to cover any and every kind of property, but in order to expand the reach and ambit of the section and make it all comprehensive, the Legislature has enacted an explanation which says that property would include “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 the Act. Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by sub-section (1) of Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Shastric law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage and to recognise her status as an independent and absolute owner of property. This Court has also in a series of

decisions given a most expansive interpretation to the language of sub-section (1) of Section 14 with a view to advancing the social purpose of the legislation and as part of that process, construed the words "possessed of" also in a broad sense and in their widest connotation. It was pointed out by this Court in Gummalapura Taggina Matada Kotturuswami v. Satre Veerayya [AIR 1959 SC 577 : 1959 Supp 1 SCR 968 : 1959 SCJ 437] that the words "possessed of" mean "the state of owning or having in one's hand or power". It need not be actual or physical possession or personal occupation of the property by the Hindu female, but may be possession in law. It may be actual or constructive or in any form recognised by law. Elaborating the concept, this Court pointed out in Mangal Singh v. Rattno [AIR 1967 SC 1786 : (1967) 3 SCR 454 : (1968) 1 SCJ 468] that the section covers all cases of property owned by a female Hindu although she may not be in actual, physical or constructive possession of the property, provided of course, that she has not parted with her rights and is capable of obtaining possession of the property. It will, therefore, be seen that sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property.

69. Now, sub-section (2) of Section 14 provides that 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. This provision is more in the nature of a proviso or exception to sub-section (1) and it was regarded as such by this Court in *Badri Pershad v. Kanso Devi* [(1969) 2 SCC 586 : (1970) 2 SCR 95] . It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change

in the social and economic position of women in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It cannot be interpreted in a manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1). The language of sub-section (2) is apparently wide to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a restricted estate for her in the property and this would apparently cover a case where property is given to a Hindu female at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property. But that would virtually emasculate sub-section (1), for in that event, a large number of cases where property is given to a Hindu female at a partition or in lieu of maintenance under an instrument, order or award would be excluded from the operation of the beneficent provision enacted in sub-section (1), since in most of such cases, where property is allotted to the Hindu female prior to the enactment of the Act, there would be a provision, in consonance with the old Shastric law then prevailing, prescribing limited interest in the property and where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of sub-section (1). The Explanation to sub-section (1) which includes within the scope of that sub-section property acquired by a female Hindu at a partition or in lieu of maintenance would also be rendered meaningless, because there would hardly be a few cases where the instrument, decree, order or award giving property to a Hindu female at a partition or in lieu of maintenance would not contain a provision prescribing restricted estate in the property. The social purpose of the law would be frustrated and the reformist zeal underlying the statutory provision would be chilled. That surely could never have been the intention of the Legislature in enacting sub-section (2). It is an elementary rule of construction that no provision of

a statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the Statute so as, as far as possible, to make a consistent enactment of the whole statute. Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it 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. This constructional approach finds support in the decision in Badri Pershad case where this Court observed that sub-section (2) "can come into operation only if acquisition in any of the methods enacted therein is made for the first time without there being any pre-existing right in the female Hindu who is in possession of the property". It may also be noted that when the Hindu Succession Bill 1954, which ultimately culminated into the Act, was referred to a Joint Committee of the Rajya Sabha, clause 16(2) of the Draft Bill, corresponding to the present sub-section (2) of Section 14, referred only to acquisition of property by a Hindu female under gift or will and it was subsequently that the other modes of acquisition were added so as to include acquisition of property under an instrument, decree, order or award. This circumstance would also seem to indicate that the legislative intendment was that sub-section (2) should be applicable only to cases where acquisition of property is made by a Hindu female for the first time without any pre-existing right — a kind of acquisition akin to one under gift or will. 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 sub-section (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property."

The Hon'ble Supreme Court again in the case of **Bai Vajia (Dead) By Lrs. Vs. Thakorbhai Chelabhai & Ors.** reported in **AIR 1979 SC 993** held that:

"Sub-section (1) of Section 14 is large in its amplitude and covers every kind of acquisition of property by a female Hindu including acquisition in lieu of maintenance and where such property was possessed by her at the date of commencement of the Act or was subsequently acquired and possessed, she would become the full owner of the property. Sub-section (2) is more in the nature of a proviso or exception to sub-section (1). It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of women in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It cannot be interpreted in manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1). Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it 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 sub-section. (2), even if the instrument, decree, order or award allotting the property prescribes a restricted estate in the property."

Again, in *Vajia (supra)*, it has been reiterated that it cannot be said that where a property is given to a widow in lieu of maintenance, it is given to her for the first time and not in lieu of a pre-existing right. The claim of maintenance, as also

the right to claim property in order to maintain herself, is an inherent right conferred by the Hindu Law and, therefore, any property given to her in lieu of maintenance is merely in recognition of the claim or right which the widow possessed from before. It cannot be said that such a right has been conferred on her for the first time by virtue of the document concerned and before the existence of the document concerned, the widow had no vestige of a claim or right at all. Once it is established that the instrument merely recognized the pre-existing right, the widow would acquire absolute interest.”

In the present case in hand there is no dispute that both Durga Rani Ghosh and Sushama Ghosh were the two wives of Hari Prasad Ghosh. Durga Rani Ghosh admitted the claim of Sushama Ghosh in the suit premises and after the death of Hari Prasad Ghosh, Durga Rani Ghosh has filed suit for partition. Admittedly, Durga Rani Ghosh had pre-existing right over the property left behind by Hari Prasad Ghosh. After the death of Hari Prasad Ghosh due to the dispute between Durga Rani Ghosh and Sushama Ghosh, Durga Rani Ghosh filed suit for partition amongst them. During pendency of the suit both have settled their dispute and entered into a settlement deed. The plaintiff by relying upon clauses 2, 9 and 10 of the settlement entered between the parties claiming that the Durga Rani Ghosh without obtaining leave from this Court alienate the property and as per settlement after the death of Durga Rani Ghosh and Sushama Ghosh, the plaintiff No. 1(b) being the sole legal heir of the deceased Hari Prasad Ghosh is entitled to get the property.

The settlement was arrived between the parties on 22nd December, 1941 and on the basis of the settlement decree is passed by making the terms of settlement as part of the decree. The Hindu Succession Act, 1956, came into force with effect from 17th June, 1956. Durga Rani Ghosh entered into a Deed of Settlement on 6th October, 1993 as Settlor being the First Trustee with one Nirmalendu Ghosh as Second Trustee with respect to the suit premises and conveyed the suit premises to the original defendant, namely Pradip Kumar Roy. Durga Rani Ghosh died on 7th July, 1997. Execution of Deed of Settlement and death of Durga Rani Ghosh were occurred after the Act of 1956 came into force. Durga Rani Ghosh has not acquired right over the suit premises on the basis of the settlement dated 22nd December, 1941. She has acquired her pre-existing right over the property being the wife of the deceased Hariprasad Ghosh. She has filed the suit only for partition of the property amongst both the wives of Hari Prasad Ghosh and during pendency of the suit, both wives have settled their dispute by entering into terms of settlement, thus it cannot be said that Durga Rani Ghosh has only limited interest over the suit premises.

Considering the above, this Court hold that the case of the plaintiff is not covered under sub-section (2) of Section 14 of the Hindu Succession Act, 1956, it is covered under sub-section(1) of Section 14 of the Hindu Succession Act, 1956 as Durga Rani

Ghosh acquired her pre-existing right over the property being the wife of the deceased Hariprasad Ghosh.

In view of the above, issue nos. 3 to 8 are decided against the plaintiff and in favour of the defendants.

C.S. No. 91 of 2012 is **dismissed**. Decree be drawn accordingly.

(Krishna Rao, J.)