



2024:DHC:10057



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

BEFORE

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

+ **RSA 101/2019 & CM APPL. 40584/2019**

Between: -

MR. PUNEET KUMAR ANAND
S/O LATE SH. GULSHAN KUMAR ANAND
H.NO. 34-E/3, WEST PATEL NAGAR,
NEW DELHI

....APPELLANT

*(Through: Ms. Shoba Ramamoorthy, Ms. Vincy George and Mr. Gokulakrisnan
and Mr. Ajay Subhas, Advs.)*

AND

PISHORI LAL (DECEASED)
THROUGH HIS LRS

1. SMT. PRAMILA VAID
D/O LATE PISHORI LAI; W/O VINOD VAID
R/O H.NO 43, 2-C, NEW PALASIA EXTENSION
INDORE, M.P.

2. SMT. SEEMA SETHI
D/O LATE PISHORI LAI; W/O. ASHISH SETHI
R/O H.NO. 159, SECTOR 27-A, CHANDIGARH

3. SHRI TARUN ANAND
S/O LATE PISHORI LAI
R/O SARKHEJ COLONY
AHMEDABAD, GUJARAT

....RESPONDENTS

(Through: Mr. Neeraj Jain, Advocate for R-1 & 3.)



2024:DHC:10057



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Reserved on: 06.11.2024
Pronounced on: 24.12.2024

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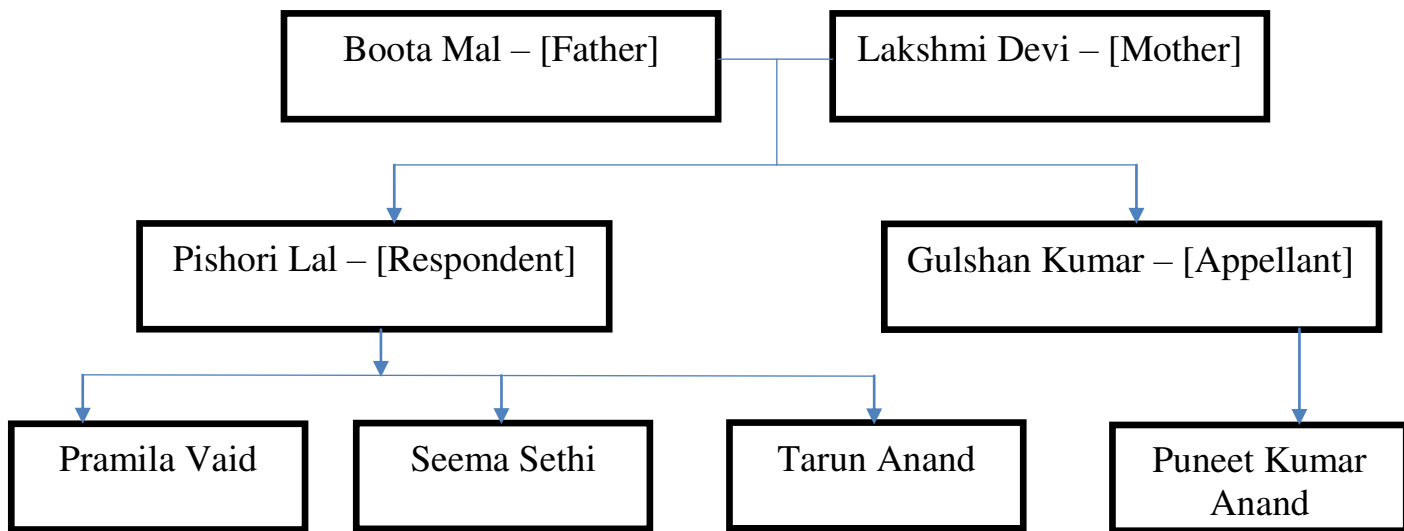
The present Second Appeal has been filed by the legal heirs of the original defendant, challenging the judgment and decree dated 12.12.2018 passed by the learned Additional District Judge in RCA No. 60769/2016, titled Puneet Kumar Anand v. Pishori Lal [deceased] through his legal representatives. By the impugned judgment and decree, the first Appellate Court dismissed the appeal and affirmed the judgment and decree dated 28.02.2015, passed by the learned Civil Judge in Suit No. 293/12, whereby, the suit for partition instituted by the respondent-plaintiff was decreed against the appellant-defendant.

2. The facts, as discerned from the record, indicate that the present dispute arises out of a suit for partition concerning the subject property, a residential house bearing Door No. 34-E/3, situated in East Patel Nagar, New Delhi. The property stands on a plot measuring 200 square yards [equivalent to approximately 1800 square feet or 167 square meters] and comprises a ground floor, a first floor, and a terrace.

3. The respondent-plaintiff and the appellant-defendant are the sons of late Mr. Boota Mal Anand and late Mrs. Lakshmi Devi. The respondent-plaintiff is the elder brother of the appellant-defendant. The familial relationship and direct lineage between the relevant parties is outlined in the following genealogy table:-



2024:DHC:10057



4. The dispute essentially centers on the interpretation of a Will executed by late Mrs. Lakshmi Devi, the mother of the parties. The appellant-defendant asserts that this Will conferred an absolute and unfettered interest in the subject property upon their father, late Mr. Boota Mal Anand, thereby empowering him to execute a subsequent Will, through which he bequeathed the property exclusively to the appellant-defendant.

5. Conversely, the respondent-plaintiff contends that the Will executed by their mother only granted their father a life estate, thereby restricting his authority to alienate, transfer, or further bequeath the property. This conflicting interpretation of the testamentary disposition forms the crux of the dispute.

6. The Courts below, upon examining of the testamentary document and the surrounding circumstances, concluded that the intention of the testatrix, Late Mrs. Lakshmi Devi, was to confer only a life estate upon the father, late Mr. Boota Mal Anand, thereby precluding him from alienating or further bequeathing the property to the exclusion of either son. The Courts found



that, upon the demise of the father, absolute ownership of the property was intended to vest equally between the two sons.

7. Consequently, the Trial Court decreed the suit for partition, declaring that the father lacked the authority to unilaterally alienate or bequeath the property. This determination of the Trial Court was subsequently affirmed by the first Appellate Court.

8. The appellant-defendants, however, vehemently contend that the interpretation adopted by the Courts below is flawed and contrary to the language of the testament. They assert that Clause 5 of the Will explicitly conferred an *absolute right of ownership* upon the father, Late Mr. Boota Mal Anand, thereby granting him unfettered authority to deal with the property, including the right to alienate or bequeath it as he deemed fit.

9. It is further argued that once an absolute estate is unequivocally vested in an individual by way of testamentary disposition, any subsequent clause in the same instrument seeking to impose restrictions on such absolute ownership, or to reassign the property to other beneficiaries, would be legally untenable. According to the appellants, the Will must be read harmoniously, and the intention to grant full ownership to the father must prevail over any purported limitations.

Submissions on behalf of the appellant-defendant:-

10. Ms. Shobha Ramamoorthy, learned counsel appearing on behalf of the appellant-defendant, argues that late Mrs. Lakshmi Devi, the mother of the parties, executed a registered Will dated 11.12.1968, bequeathing the properties in favour of her husband, Mr. Boota Mal. Learned counsel emphasizes that Clause 5 of the Will explicitly states that the sons and



2024:DHC:10057



daughters “*will have no rights in the said properties,*” thereby granting Mr. Boota Mal an unequivocal and absolute right over the properties.

11. It is further contended that subsequent to the initial bequest, Mrs. Lakshmi Devi specifically allocated certain portions of the properties in favor of her sons, Gulshan Kumar and Pishori Lal, within the same Will. This, according to the learned counsel, indicates that the Will conferred full ownership to Mr. Boota Mal, allowing him to exercise his rights, including further bequeathal or alienation of the property, without restriction.

12. On 13.03.1969, the property situated in Shahadara was acquired by the Land Acquisition Officer. Subsequently, at the behest of Mrs. Lakshmi Devi, a reference under Section 18 of the Land Acquisition Act was filed, culminating in LAC No. 645 of 1969 before the Additional District Judge. On 01.02.1970, Mrs. Lakshmi Devi passed away, bringing the Will dated 11.12.1968 into effect.

13. Subsequently, in April 1970, Mr. Boota Mal filed a petition before the aforesaid Reference Court under Order XXII Rules 2 and 3, read with Section 151 of the Code of Civil Procedure, 1908, seeking substitution of his name as the sole legal representative and heir of late Mrs. Lakshmi Devi. In the said reference petition dated 26.02.1970, Mr. Boota Mal explicitly asserted that he had been designated as the owner of the acquired land under the registered Will dated 11.12.1968. Accordingly, he requested that the name of late Mrs. Lakshmi Devi be replaced with his own in the reference proceedings.

14. In response to the substitution application filed by Mr. Boota Mal, the Reference Court issued a notice to the other legal heirs of late Mrs. Lakshmi



2024:DHC:10057



Devi. Pursuant to these notices, both sons of late Mrs. Lakshmi Devi appeared before the Reference Court to participate in the proceedings.

15. As per the order dated 21.04.1971, the Reference Court recorded the submission made by the learned counsel for Mr. Pishori Lal, stating that there was no objection to the compensation for the acquired land, previously payable to late Mrs. Lakshmi Devi, being released to Mr. Boota Mal. Furthermore, *vide* order dated 24.08.1971, the Reference Court noted that all the legal heirs of late Mrs. Lakshmi Devi, including Mr. Boota Mal, but excluding Mr. Gulshan Kumar, made a statement through their representative, expressing that the “*natural heirs whom I represent have no objection to the substitution of Boota Mal in place of Shrimati Lakshmi Devi, deceased.*” Consequently, on the same date, relying on the registered Will of late Mrs. Lakshmi Devi and the no-objection statements from the legal heirs, the Reference Court directed the substitution of Mr. Boota Mal in place of late Mrs. Lakshmi Devi.

16. Placing reliance on the judgment dated 04.10.1973 rendered by the Reference Court, which addressed the question of ownership of the acquired land, the Court held that Mr. Boota Mal had been substituted as the sole legal heir of late Mrs. Lakshmi Devi, his wife. This finding was based on the documentary evidence presented and the absence of any rebuttal or contest from other legal heirs. According to the learned counsel, the judgment of the Reference Court affirmed the validity of the substitution order and upheld the status of Mr. Boota Mal as the rightful claimant to the acquired land.

17. On 28.07.197, Mr. Boota Mal executed a registered will, wherein he devised the subject property in favor of Mr. Gulshan Kumar [father of the appellant herein]. In the said will, Mr. Boota Mal explicitly asserted that he



2024:DHC:10057



was the exclusive owner of the subject property by virtue of the Will executed by his late wife, Mrs. Lakshmi Devi.

18. On 30.05.1979, Mr. Boota Mal passed away. Following his demise, Pishori Lal [father of the respondents herein] initiated Probate Case No. 33/1979, seeking probate of the Will dated 11.12.1968 executed by Mrs. Lakshmi Devi. Subsequently, Mr. Gulshan Kumar [father of the appellant herein] filed Probate Case No. 58/1979, seeking probate of the will dated 28.07.1978 executed by Mr. Boota Mal, claiming that the latter had absolute ownership over the subject property. Thus, both probate proceedings thus became central to the dispute over the interpretation of the respective wills and the rightful ownership of the subject property.

19. On 30.07.1979, the respondent-plaintiff filed Original Suit No. 826/1979, from which the present second appeal arose. In the suit, the respondent-plaintiff sought partition of the subject property, relying on the will dated 11.12.1968 executed by late Mrs. Lakshmi Devi. The respondent-plaintiff contended that late Mr. Boota Mal, their father, was granted only a *life estate* in the subject property under the said will and that, upon his demise, the property was to devolve equally upon the respondent-plaintiff and the appellant-defendant in accordance with the terms of the Will dated 11.12.1968 executed by late Mrs. Lakshmi Devi.

20. In response, the appellant-defendant filed a written statement on 06.07.1982, asserting that their father, late Mr. Boota Mal, had exercised his rights as the absolute owner of the subject property. This claim was based on the will of late Mrs. Lakshmi Devi, dated 11.12.1968, which the appellant-defendant argued conferred full ownership upon Mr. Boota Mal, enabling him to act to the exclusion of all other legal heirs. The appellant-defendant



further emphasized that Mr. Boota Mal had sought substitution in the land acquisition proceedings on the basis of this Will, which affirmed his absolute ownership over the properties.

21. Drawing the attention of the Court to the Will of late Mrs. Lakshmi Devi dated 11.12.1968, learned counsel for the appellant submits that Clause 5 of the Will explicitly mentioned that “*That after my death, my husband Shri Boota Mal will be owner of the properties cited above and my sons and daughters will have no right in the said properties.*” Learned counsel argues that the Courts below committed an error in interpreting the intention of the testatrix, late Mrs. Lakshmi Devi, as creating merely a *limited interest* in favor of late Mr. Boota Mal. According to learned counsel, Clause 5 unequivocally conferred *absolute ownership* of the properties upon Mr. Boota Mal. Consequently, it was not within the legal purview of Mrs. Lakshmi Devi to impose further restrictions or to bequeath the same property to another set of beneficiaries under Clause 6 of the Will.

22. To support her submission, learned counsel places reliance on Section 95 of the Indian Succession Act, 1985, which governs limitations on testamentary dispositions, contending that once an absolute right has been conferred upon a beneficiary, the testatrix is precluded from imposing subsequent conditions or reallocations of the same property. Learned counsel further fortifies her argument by citing various authoritative precedents, including, *Madhuri Ghosh v. Debobroto Dutta*¹, *Mauleshwar Mani v. Jagdish Prasad*², *Tiruchendur Sri Subramania Swami Temple v.*

¹(2016) 10 SCC 805

²(2002) 2 SCC 468



*P. Ramaswamia Pillai*³, *Ramachandra Shenoy v. Hilda Brite*⁴. Relying on the principles enunciated in the said precedents, learned counsel submits that Clause 6 of the Will, which attempts to further bequeath the property after conferring absolute ownership on late Mr. Boota Mal, violates Section 95 of the Indian Succession Act, 1985, and is thus legally untenable. Consequently, the appellant-defendant asserts that the findings of the Courts below, interpreting the Will as creating only a limited interest, are patently erroneous and warrant reversal.

23. Learned counsel further argued that the conduct of the respondent-plaintiff in permitting late Mr. Boota Mal to assert ownership of the property during the land acquisition proceedings constitutes a clear case of estoppel. By acquiescing to such assertions and raising no objections to his substitution as the sole legal heir of late Mrs. Lakshmi Devi, the respondent-plaintiffs are now barred from challenging absolute ownership of Mr. Boota Mal. In support of this contention, learned counsel relied upon the principle of estoppel enshrined in Section 115 of the Indian Evidence Act, 1872, and referred to the following decisions rendered in the cases of *B.L. Sreedhar v. K.M. Munireddy*⁵, *Sunderabai v. Devaji*⁶, *Ramgowda Annagowda Patil v. Bhausahab*⁷, *S. Shanmugam Pillai v. K. Shanmugam Pillai*⁸, *Vijayabai v. Shriram Tukaram*⁹, *Hope Plantations Ltd. v. Taluk Land Board*¹⁰ and *SBI*

³1949 SCC OnLine PC 56

⁴1963 SCC OnLine SC 236

⁵(2003) 2 SCC 355

⁶(1952) 2 SCC 92

⁷1927 SCC OnLine PC 64

⁸(1973) 2 SCC 312

⁹(1999) 1 SCC 693

¹⁰(1999) 5 SCC 590



*v. M.J. James*¹¹. Based on these decisions, learned counsel submits that the respondent-plaintiff cannot now be permitted to contradict this stance by asserting that Mr. Boota Mal held only a limited interest in the property.

24. On the aspect of *res judicata*, learned counsel contended that the findings of the Reference Court, which held that late Mr. Boota Mal was entitled to claim compensation for the acquired property to the exclusion of all other legal heirs of late Mrs. Lakshmi Devi, is binding and operates as *res judicata*. This finding, based on the Will executed by late Mrs. Lakshmi Devi and the admissions of her legal heirs, precludes the respondent-plaintiff from reopening the issue of ownership of the subject property. To substantiate this argument, learned counsel placed reliance on *Bhanu Kumar Jain v. Archana Kumar*¹² and *Raj Lakshmi Dasi v. Banamali Sen*¹³.

25. On the aspect of incorrect interpretation of the documents, learned counsel for the appellant contended that the Will dated 11.12.1968 was not interpreted correctly by the Courts below. She submitted that the interpretation resorted to is contrary to the decisions of the Supreme Court. Furthermore, she argued that the Courts below failed to properly apply the provisions of the Indian Succession Act, 1925, which govern the validity and scope of testamentary dispositions. Learned counsel further submitted that while the interpretation of a document is generally not considered a question of law, the Courts below erred in drawing a distinction between documents of title and those involving questions of fact, thereby misconstruing the legal principles applicable in this case. According to her,

¹¹(2022) 2 SCC 301

¹²(2005) 1 SCC 787



the judgments of the Courts below, as reflected in their records, demonstrated a failure to follow established legal principles and precedents laid down by the Supreme Court. This erroneous interpretation, she argued, warrants interference by this Court.

Submissions on behalf of the respondent-plaintiff:-

26. Vehemently opposing the submissions advanced by learned counsel for the appellant, Mr. Neeraj Jain, learned counsel for the respondents, argued that the two Courts below have meticulously examined the Will dated 11.12.1968 executed by late Mrs. Lakshmi Devi. He asserted that both Courts rightly concluded that the said Will conferred only a *life estate* upon late Mr. Boota Mal Anand, her husband, with the property subsequently devolving equally upon her two sons, as per her testamentary intention.

27. Learned counsel emphasized that the findings of the Courts below were based on a detailed appreciation of the Will, in conformity with the settled principles of law laid down by the Supreme Court and the relevant provisions of the Indian Succession Act. Accordingly, he contended that the Will had been duly interpreted in line with binding precedents, and the appellant-defendant's challenge lacked any legal basis. In light of the above, he submitted that the present appeal is devoid of merit and deserved outright dismissal.

28. Learned counsel further contended that the interpretation of any document, including a testamentary instrument, does not *per se* constitute a question of law unless it can be demonstrated that the material evidence within such a document was misunderstood or misapplied by the Court of

¹³(1952) 2 SCC 219



2024:DHC:10057



fact. He emphasized that in the present case, the Trial Court, as the primary court of fact, categorically held that the Will dated 11.12.1968 executed by late Mrs. Lakshmi Devi is valid, legal, and enforceable. Learned counsel argued that the first Appellate Court, functioning as a Court of both fact and law, meticulously examined the findings of the Trial Court and affirmed its judgment dated 28.02.2015. The first Appellate Court, upon thorough consideration, concluded that the respondent-plaintiffs and the appellants-defendants were entitled to their respective shares in the suit property in accordance with the provisions of the Will. It further noted that the property was already subject to partition, with specific portions delineated in the Will to devolve upon the parties, thereby justifying the passing of both a preliminary and final partition decree. Learned counsel asserted that the appellant-defendants failed to highlight any infirmity in the reasoning or conclusions of the first Appellate Court that could constitute a substantial question of law.

29. I have heard the learned counsel for the parties and have perused the record.

30. The learned Trial Court, upon analyzing the Will dated 11.12.1968 in its entirety, has categorically held that the intention of late Mrs. Lakshmi Devi was to create only a *life estate* in favor of her husband, late Mr. Boota Mal, with the remainder of the estate to vest absolutely in her two sons, Gulshan Kumar and Pishori Lal, upon the demise of both testators. The learned Trial Court emphasized that construing the Will to confer an *absolute estate* upon Mr. Boota Mal would not only rewrite the language of the Will but also defeat the testatrix's clear intent, as explicitly expressed in the clauses of the Will. Particularly, the Trial Court relied on Clause 6 of the



Will, which unequivocally stated that the properties would devolve upon the two sons as “*full-fledged owners*” after the demise of both parents. In light of this interpretation, the learned Trial Court concluded that Mr. Boota Mal lacked the testamentary capacity to execute the subsequent Will dated 28.07.1978, as his rights under the earlier Will were limited to a life interest. Consequently, the learned Trial Court held that the suit properties could not be bequeathed by late Mr. Boota Mal in derogation of the rights explicitly granted to the sons under the Will of late Mrs. Lakshmi Devi. The relevant portion of the decision rendered by the learned Trial Court is extracted hereunder for reference:-

“38. I considered and applied the ratio of the case-laws as cited above by Ld. Counsel for the LR's of the plaintiff and Ld. Counsel for the defendant for interpreting the Will executed by Smt. Lakshmi Devi and I am of the view that the intention of Smt. Lakshmi Devi was to create only life estate in respect of properties as mentioned in the said Will in favour of Late Shri Boota Mai, her husband. The ratio of judgment, namely, Arunkumar and another Vs. Shriniwas and others (Supra) is squarely applicable to the facts of the present case. Therefore, I am of the view that the Will executed by Smt. Lakshmi Devi cannot be construed to the effect that the properties as mentioned in the said Will were bequeathed in favour of her husband Boota Mai as absolute estate as such a construction would not only amount to re-writing the several clauses in the said Will but would also constitute violence to the language and further defeat the very intention of the testatrix. The only possible and reasonable construction that could be placed on the Will executed by Smt. Lakshmi Devi for giving full effect to her intention as found expressed in all the relevant portion of the said Will would be to construe the bequest made in favour of her husband as one for life interest and the remainder bequeathed absolutely in favour of her two sons after death of her husband. Moreover, in clause 6 of the Will dated 11.12.1968, it has been categorically mentioned that above cited persons (who are Pishori Lai and Gulshan Kumar) will become full-fledged owners of the aforesaid properties after my death as well as death of my husband. This shows that the intention of the testatrix Smt. Lakshmi Devi was that the properties in question must go to her sons, namely Gulshan Kumar and Pishori Lai and they shall be full-fledged owners of the same which again shows that her intention was not to



make Shri Boota Mai, her husband, the absolute owner of the properties as mentioned in the Will. Therefore, it is held that late Shri Boota Mal had not become the absolute owner of the suit properties after demise of Smt. Lakshmi Devi on the basis of the Will dated 11.12.1968 executed by her and had no right or testamentary capacity to execute the Will dated 28.07.1978 under the Will dated 11.12.1968 executed by her wife Smt. Lakshmi Devi. Thus, additional issues No.1 and 2 are decided accordingly."

31. The appellant-defendant, who challenged this interpretation, filed the first appeal against the judgment and decree of the learned Trial Court. The first Appellate Court, while considering the appeal, conducted a thorough examination of the Will dated 11.12.1968 executed by late Smt. Lakshmi Devi and reaffirmed the findings of the Trial Court. It observed that the testatrix's intention, as discernible from the entirety of the Will, was to grant only a life estate to her husband, Shri Boota Mal, and to vest absolute ownership in her two sons after his demise. The Court emphasized that specific clauses, particularly clauses 4, 6, and the concluding paragraph, unequivocally reflected the intention of the testatrix to ensure the eventual division of the properties between her two sons as absolute owners. The relevant portion of the decision reads as under:-

"In view of the above, "the moot question before the court for consideration is regarding the interpretation of the WILL dated 11.12.1968, executed by late Smt Laxmi Devi, to the effect whether by virtue of said WILL, late Shri Buta Mai acquired the absolute ownership of the suit property, or he only had the life time estate in the property". The entire controversy in the case is revolving around the WILL dated 11.12.1968 of late Smt. Laxmi Devi. The said WILL dated 11.12.1968 is reproduced as under-

"WILL"

1. This WILL is executed on the 11th day of December 1968, at Delhi by me in favour of Shri Boota Mai Anand s/o Shri Radha Kishan r/o 34/3, East Patel Nagar, New Delhi, I am in full senses and without any force from outside, I have executed this WILL.



2. That I have five sons namely Shri Jagdish Lai, Pishorilal, Gulshan Kumar, Ashok Kumar(at present missing) and- Shri Hari Krishan Lal(deceased)represented by the three sons namely ShriDarshan Kumar, Harish Chander and Abnash.

3. That I have three daughters who are marriednamely Smt Krishna Wanti, wife of Shri Ram LalChandok, Smt Shanti Devi w/o Shri LKundanlal,SmtKailsh Rani w/o Shri Manohar Lal Sethi. Theyall are well settled and I have spent lot of money ontheir marriages.

4. That the under noted properties stands in myname and it is my desire that I execute a WILL inmy life time regarding the under noted properties, inorder to save my sons and husband from litigations:-

(i) One house, bearing no. 34-E/3, situated in East Patel Nagar, New Delhi, which was previously in the name of my son Shri Pishorilal and subsequently it was transferred in my name and the same was registered in the office of the Sub Registrar, concerned at Sl.no.1561 in additional. book no. 1, volume no. 328. on pages 52 on this 14th day of May1957.

(ii)Plot no. 37 and -38. South Bishan Road, Vishwas Nagar, Shahdara, Delhi, purchased by me in auction and regular sale deeds have been issued in my favour.

5. That I am the exclusive owner of these properties and by virtue of the WILL, I divide the said properties amongst my sons. As long as I am alive, no one has any right in the said properties.

6. That after my death, my husband Shri Boota Mal will be own of the properties cited above and my sons and daughters will have no right in the saidproperties.

7. That after my death as well as the death of myhusband, the properties noted above will go amongstmy sons as under:-

Plot no. 37, Vishwas Nagar, Shahdara, Delhi, will go half and half in the name of my sons Shri Gulshan Kumar and Shri Pishorilal. House no. 34-E/3, situated at East Patel Nagar, New Delhi, will go to my sons in the following manner:-

Lower portion.....GulshanKumar.

Upper portion.....Pishorilal

and the Third floor combined inthe name of Gulshan Kumar andPishorilal.

8. I hereby declare that the above cited persons will become full

Signature Not Verified

Digitally Signed
By:MAANAS JAJORIA
Signing Date:24.12.2024
18:39:15

Signature Not Verified

Digitally Signed
By:PURUSHAINDRA
KUMAR KAURAV



fledged owners of the aforesaid properties after my death as well as death of my husband. My other heirs, grandsons, sons Shri Jagdish Lal and Hari Krishan Lal and daughters will have no concern at all with the said properties.

In witness whereof I have set out my thumb impression on this WILL on the date and year cited above.

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18. It is settled law that no line of any document can be read in isolation. The judgment cited by both the parties herein also clearly lay down the law that the document particularly the WILL has to be read in toto to give effect to the true intention of the testator. Here, the reading of the entire WILL dated 11.12.1968, of late Smt Laxmi Devi, makes her intention clear that the testatrix late Laxmi Devi, intended to bequeath the suit property ultimately in favour of her two sons i.e. parties to the suit. As per this WILL, late Shri Buta Mai only had life time estate in the properties mentioned in the said WILL. If, the interpretation of the WILL, as alleged by the defendant, is accepted, then, there was no reason for late Smt Laxmi Devi to specifically mention Clause-4,6 and second last para of the WILL, in which, it is specifically stated that the properties mentioned in the WILL, would be divided in her two sons i.e. parties to the suit and after the death of Buta Mai, they would acquire the share in the said properties, as per the proportion given in the WILL.

19. This court does not have even iota of doubt that by virtue of WILL dated 11.12.1968, late Shri Buta Mai acquired only the life time interest in the properties mentioned in the WILL, therefore, he had no right or authority to execute the WILL dated 28.07.1978, in respect of the properties, which were the subject matter of will dated 11.12.1968.”

32. The position adopted by the first Appellate Court, affirming the judgment and decree of the learned Trial Court, is further reinforced by the provisions of the Indian Succession Act. Section 96 of the Act, particularly illustration 7, addresses the concept of a bequest with a limited interest coupled with an alternative bequest. For reference, the relevant provision is reproduced below:-

“96. Bequest in alternative.—Where property is bequeathed to a person with a bequest in the alternative to another person or to a class of persons, then, if a contrary intention does not appear by the will, the



legatee first named shall be entitled to the legacy if he is alive at the time when it takes effect; but if he is then dead, the person or class of persons named in the second branch of the alternative shall take the legacy.

Illustrations:

(i) A bequest is made to A or to B. A survives the testator. B takes nothing.

(ii) A bequest is made to A or to B. A dies after the date of the will, and before the testator. The legacy goes to B.

(iii) A bequest is made to A or to B. A is dead at the date of the will. The legacy goes to B.

(iv) Property is bequeathed to A or his heirs. A survives the testator. A takes the property absolutely.

(v) Property is bequeathed to A or his nearest of kin. A dies in the lifetime of the testator. Upon the death of the testator, the bequest to A's nearest of kin takes effect.

(vi) Property is bequeathed to A for life, and after his death to B or his heirs. A and B survive the testator. B dies in A's lifetime. Upon A's death the bequest to the heirs of B takes effect.

(vii) Property is bequeathed to A for life, and after his death to B or his heirs. B dies in the testator's lifetime. A survives the testator. Upon A's death the bequest to the heirs of B takes effect."

33. Learned counsel for the appellant-defendant has placed reliance on the decision of the Supreme Court in **Mauleshwar Mani**. However, upon a perusal of the same, it is seen that, the Court, after considering the principles laid down in **Radha Sundar Dutta v. Mohd. Jahadur**¹⁴ and **Rameshwar Bakhsh Singh v. Balraj Kuar**¹⁵, formulated the legal principle that when a testator grants a restricted or limited interest in the property, they retain the authority to make a subsequent bequest of the same property, effective upon the death of the initial beneficiary, within the same will. The relevant portion of the said decision is reproduced hereunder for reference:-

"10. In Ramkishorelal v. Kamalnarayan [AIR 1963 SC 890 : 1963 Supp (2) SCR 417] it was held that in a disposition of properties, if

¹⁴1959 SCR 1309

¹⁵AIR 1935 PC 187



there is a clear conflict between what is said in one part of the document and in another where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion, in such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded. In Radha Sundar Dutta v. Mohd. Jahadur Rahim [AIR 1959 SC 24 : 1959 SCR 1309] it was held where there is conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa. In Rameshwar Bakhsh Singh v. Balraj Kuar [AIR 1935 PC 187 : 1935 All LJ 1133] it was laid down that where an absolute estate is created by a will in favour of devisee, the clauses in the will which are repugnant to such absolute estate cannot cut down the estate; but they must be held to be invalid.

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 bequest 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."

34. On the aspect as advanced by the learned counsel for the appellant-defendant that the respondent-plaintiff is estopped from claiming any title to the property by virtue of the admission made in the Reference Court under the land acquisition proceedings, the first Appellate Court noted that such admissions, even if made, could not override or negate the title derived from the Will. The Court held that title to immovable property must be conferred through a legal document and cannot be extinguished by inconsequential admissions. The Appellate Court further clarified that the proceedings under the Land Acquisition Act were confined to determining the compensation



payable to Shri Boota Mal and did not touch upon the broader ownership rights under the Will. The relevant portion of the decision reads as under:-

“20. The appellant/defendant has moved an application u/o 41rule 27 CPC, seeking permission to lead evidence regarding the proceedings of reference u/s 18 of Land Acquisition Act, admittedly filed by late Smt Laxmi Devi, during her life time. Relying upon the said proceedings, the defendant/appellant has urged that plaintiff/respondent has admitted in those proceedings that late Shri Buta Mai was absolute owner of the properties mentioned in the WILL dated 11.12.1968. The defendant/appellant also raised this issue during trial and filed an application u/o 14 rule 5 CPC, seeking framing of additional issue in this regard. However, the Ld. Trial court, vide detailed order dated 09.04.2014, dismissed the said application of the defendant/appellant and also the plea of the defendant/appellant regarding the admission of the plaintiff/respondent about the ownership of late Shri Buta Mai in those proceedings by giving the reason that the intention of Lrs of late Smt Laxmi Devi is not relevant to decide the suit, but the intention of late Smt Laxmi Devi is relevant to be considered. I concur with this reasoning given by the Ld. Trial court that for deciding the real controversy between the parties only the intention of late Smt Laxmi Devi emerging from her WILL dated 11.12.1968, has to be considered by the court, but not the intention of her LRs. Along with the present appeal, the defendant/appellant has annexed few orders and statements, passed/recorded in the Land Acquisition proceedings. Those orders and statements are part of judicial proceedings therefore, u/s 114 Evidence Act, I am presuming all those orders and statements to be correct and under the said presumption I proceed to decide whether the same benefits the defendant/appellant in any way. This court is of the considered view even if, the proceedings of the Land Acquisition reference, pointed out by the defendant/appellant, are considered by the court, then also, they are not of any help to the defendant/appellant, since, in the said proceedings, there is no admission by the plaintiff/respondent herein that late Shri Buta Mai was the absolute owner of the properties, but he, through his counsel Shri Rajender Bhasin, only gave the statement dated 21.04.1971, in the said proceedings that he has no objection, if, the compensation is given to his father late Shri Buta Ma]. The admission by a person cannot ipso-facto confer any right, title or interest in the immovable property on the other person. An admission does not confer the title similarly, admission of a party would not lead to relinquishment of his right therein, if he has otherwise, acquired a title in the property. The title conferred on a person in an immovable property by way of legal document, cannot be taken away by way of any inconsequential



2024:DHC:10057



admission made by any person. Here, the plaintiff/respondent has acquired the title in the sit property by way of legal enforceable document i.e. WILL dated 11.12.1968, of his mother and no inconsequential admission can take away his title conferred upon him by way of said legal document. Hence, any admission, at all, of the plaintiff/respondent in the land acquisition proceedings, cannot confer any right, title or interest in the immovable property, on Buta Mai. Otherwise also, the said proceedings under Land Acquisition Act, were restricted only for payment of compensation to late Shri Buta Mai, in respect of property at Shahdara and nothing else.”

35. Upon a thorough examination of the findings rendered by the learned Trial Court and the first Appellate Court, as well as the documents admitted in evidence, this Court is of the considered opinion that there is no material perversity or error apparent in the decisions of the Courts below. The concurrent findings are well reasoned and based on a holistic interpretation of the Will dated 11.12.1968. The Supreme Court, in **Chandrabhan v. Saraswati**¹⁶, has elucidated the scope of a second appeal under Section 100 of the CPC. It held that the test for determining whether a question of law is “substantial” involves assessing whether the question is of general public importance or whether it directly and substantially affects the rights of the parties. Furthermore, if the question has already been conclusively settled by binding precedent or involves the mere application of well-settled principles, it cannot be treated as a substantial question of law. Questions that are palpably absurd or lack any legal merit also do not qualify as substantial questions of law.

36. To qualify as *substantial*, a question of law must be one that is open to genuine debate, unsettled by existing legal principles or binding precedents, and significantly impacts the determination of the case with



respect to the rights of the parties. For a question to be deemed as “involved in the case,” it must have a firm basis in the pleadings and should naturally arise from the factual findings established by the Courts of fact. Furthermore, it must be essential to resolve the said question to arrive at a just and proper decision. The ultimate consideration remains a balance between ensuring justice at all stages of the legal process and avoiding unnecessary prolongation of the litigation. The relevant portion of the said decision reads as under:-

“27. The guidelines to determine what is a substantial question of law within the meaning of Section 100 CPC has been laid down by this Court in Sir Chunnilal V. Lal Mehta & Sons v. Century Spinning and Manufacturing Co. Ltd.⁴

28. In Sir Chunilal V. Mehta and Sons (supra), this Court agreed with and approved a Full Bench judgment of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju⁵ which laid down the principles for deciding when a question of law becomes a substantial question of law.

29. In Hero Vinoth v. Seshammal⁶, this Court followed Sir Chunilal v. Mehta & Sons (supra) and other judgments and summarized the tests to find out whether a given set of questions of law were mere questions of law or substantial questions of law.

30. The relevant paragraphs of the judgment of this Court in Hero Vinoth (supra) are set out herein below:-

“21. The phrase “substantial question of law”, as occurring in the amended Section 100 CPC is not defined in the Code. The word substantial, as qualifying “question of law”, means of having substance, essential, real, of sound worth, important or considerable. It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely. However, it is clear that the legislature has chosen not to qualify the scope of “substantial question of law” by suffixing the words “of general importance” as has been done in many other provisions such as Section 109 of the Code or Article 133(1)(a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general

¹⁶2022 SCC OnLine SC 1273



importance. In *Guran Ditta v. Ram Ditta* (1927-28) 55 IA 235 : AIR 1928 PC 172] the phrase “substantial question of law” as it was employed in the last clause of the then existing Section 100 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case. In *Sir Chunilal case* [1962 Supp (3) SCR 549 : AIR 1962 SC 1314] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in *Rimmalapudi Subba Rao v. NoonyVeeraju* [AIR 1951 Mad 969: (1951) 2 Mad LJ 222 (FB)] : (Sir Chunilal case [1962 Supp (3) SCR 549 : AIR 1962 SC 1314], SCR p. 557)

“[W]hen a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular fact of the case it would not be a substantial question of law.”

31. The proper test for determining whether a question of law raised in the case is substantial would be, whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this Court. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or the question raised is palpably absurd, the question would not be a substantial question of law.

32. To be ‘substantial’, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, insofar as the rights of the parties before it are concerned. To be a question of law “involving in the case” there must be first, a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case or not, the paramount overall



consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any lis. (See Santosh Hazari v. Purushottam Tiwari⁴).

33. The principles relating to Section 100 of the CPC relevant for this case may be summarised thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents and involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that the High Court will not interfere with findings of facts arrived at by the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to "decision based on no evidence", it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

37. Applying the aforementioned principle, it becomes evident that the issues raised in the present appeal are predominantly factual or involve the straightforward application of well-settled legal principles to the facts of the



2024:DHC:10057



case as determined by the Courts below. As such, no substantial question of law arises for consideration by this Court. Thus, the legal position on the subject is clear, i.e. a second appeal under Section 100 of the CPC is maintainable solely on the basis of a substantial question of law and not on factual issues. However, an exception arises when the High Court determines that the findings of fact recorded by the courts below are perverse, in that they are either unsupported by evidence, based on irrelevant material, or result from erroneous inferences drawn by the application of incorrect legal principles. Additionally, if there has been a misplacement of the burden of proof, the appeal may be entertained, and the Court is permitted to reappraise the evidence in such circumstances.

38. The Supreme Court in the case of *Balasubramanian v. M. Arockiasamy*¹⁷, placing reliance on *Ramathal v. Maruthathal*¹⁸ and *Ram Daan v. Urban Improvement Trust*¹⁹ held that when both the lower Courts have arrived at concurrent findings of fact and disbelieved the evidence of certain witnesses, interference by the High Court in a second appeal is generally unwarranted. However, the Court clarified that this restraint on interference is not absolute. Where findings are perverse, lack evidentiary support, or the appreciation of evidence suffers from material irregularity, the High Court may justifiably intervene on questions of fact. However, in the present case, the appellant-defendant has not demonstrated any material irregularity or perversity in the findings of the Courts below as gleaned from the arguments and the material shown.

¹⁷ (2021) 12 SCC 529

¹⁸ (2018) 18 SCC 303

¹⁹ (2014) 8 SCC 902

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2024:DHC:10057



39. In view of the aforesaid, the Court does not find any substantial questions of law to have arisen in the instant case. Consequently, the appeal fails and stands dismissed, along with pending application.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

DECEMBER 24, 2024/sp

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