



2024:DHC:8811



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

Reserved on: 8th November, 2024

Date of Decision: 14th November, 2024

+ CS(OS) 885/2024 & I.A. 44460-44461/2024

SHARAD GUPTA

.....Plaintiff

Through: Dr. Farrukh Khan and Mr. A. Khalid
and Mr. Saifuddin Khan, Advocates

versus

SUDERSHAN GUPTA AND ANR.

.....Defendants

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J:

1. The present suit has been filed seeking a declaration that the plaintiff is the remainderman in respect of the suit property i.e., complete ground floor of plot no. 14, Sri Fort Road, New Delhi-110049 admeasuring 400 sq. yards along with garage and 50% of the Annexe servant quarter ('suit property'), for all purposes in terms of the registered Will dated 15.11.2011 thereby declaring that the plaintiff has an absolute interest in the suit property.

2. In addition, the plaintiff has also sought a declaration that defendant no. 2 has no right, title or interest in the suit property and defendant no. 1 shall be bound by the terms of the registered Will dated 15.11.2011. Lastly, the plaintiff has sought a perpetual injunction, thereby, restraining the defendants from selling, alienating or parting with the possession or creating



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third party interest in the suit property; and restraining the defendants in engaging any act or omission against the terms of the registered Will dated 15.11.2011, which is detrimental to the vested rights and interests of the plaintiff in the suit property.

3. As stated in the plaint, the registered Will dated 15.11.2011 was executed by late Mr. Ravinder Kumar Gupta ('Testator'), who unfortunately passed away on 06.05.2012. Plaintiff and defendant no. 2 are the children of the Testator, while defendant no. 1 is the widow of the Testator.

4. The plaintiff has relied upon the contents of the Will dated 15.11.2011 for seeking the reliefs in the plaint, wherein the relevant portion of the said Will reads as under: -

"I hereby GIVE, DEVISE AND Bequeath all my properties, moveable or immovable to my wife, Mrs. Sudershan Gupta **absolutely and for ever** and after her demise all my only immovable properties shall be owned by my only son, Shri Sharad Gupta and in case my wife predeceases me, my only son Shri Sharad Gupta shall own all my only immovable properties & immovable properties to my daughter Swati Gupta."

(Emphasis Supplied)

5. The plaintiff stated that by virtue of the Will dated 15.11.2011, the testator has entrusted defendant no. 1 with life interest in the suit property and created an absolute interest in favour of the plaintiff on the demise of defendant no. 1. The relevant paragraphs of the plaint read as under: -

"13. That the Plaintiff respectfully submits before this Hon'ble Court that on bare perusal of contents of Will dated 15.11.2011, executed by Plaintiff father, it is unambiguously explicated that the Defendant No.1 only has life interest i.e., limited interest in the Suit Property, thereby restricting her right to reside, enjoy and possess the suit property during her lifetime, with no right to sell, transfer and/ or otherwise alienate the Suit Property. It is imperative to note that the will of the father of the Plaintiff explicitly delineates and elucidates



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by way of unriddling the fact that upon the demise of the Defendant No.1, the exclusive ownership rights of the Suit Property (immovable property), as expounded in the Will of the Father of the Plaintiff, is to be devolved upon the Plaintiff absolutely.

...

15. That the Plaintiff is absolute owner/ultimate beneficiary and remainderman of the suit property by virtue of registered will dated 15.11.2011 executed by testator, Ravinder Kumar Gupta (late father of Plaintiff) and Plaintiff has strong reasonable apprehension that Defendants in future may deny the absolute title of Plaintiff, hence, the Plaintiff hereby seeks declaration to declare Plaintiff to be the remainderman in respect of the suit property i.e. complete ground floor of Plot No 14 Siri Fort Road, New Delhi-110049, admeasuring 400 Sq Yards along with garage and 50% of the Annexe Servant Quarter, for all purpose in terms of will dated 15.11.2011 executed by testator, Ravinder Kumar Gupta and thus thereby declaring the absolute interest of Plaintiff in suit property.”

(Emphasis Supplied)

6. Learned counsel for the plaintiff referred to Section 14(2) of the Hindu Succession Act, 1956 (‘Act of 1956’) to contend that since the suit property has been acquired by defendant no. 1 under the Will dated 15.11.2011, her life interest in the suit property would remain as a restricted estate and the suit property has not become her absolute property.

7. This Court has heard the learned counsel for the plaintiff, read the contents of the admitted registered Will dated 15.11.2011 and perused the record.

8. In the considered opinion of this Court, the contention of the plaintiff that under the registered Will dated 15.11.2011, only a life interest was created in favour of defendant no.1 in the suit property is wholly incorrect. The bequest to defendant no. 1 is absolute, as is evident from the express language of the Will dated 15.11.2011. There are no limitations on



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defendant no. 1's right to enjoy the suit property. Furthermore, the testator has not placed any restriction on the rights of defendant no.1 to create third-party interest in the suit property. The Testator in the registered Will dated 15.11.2011 have explicitly used the expression(s) 'absolute' and 'for ever', which clearly indicates that the bequest to defendant no. 1 is absolute. Thus, the reliance placed by the learned counsel for the plaintiff on Section 14(2) of the Act of 1956 is misconceived.

9. In this regard, it would be apposite to refer to a judgment of the Supreme Court in **Madhuri Ghosh & Anr. v. Debobroto Dutta & Anr.**¹, wherein the Supreme Court held that in case, absolute bequest has been made in respect of a property to certain persons, then a subsequent bequest made qua the same property later in the same Will to other persons will be of no effect. The Court held that the earlier clause of the Will granting absolute right to the Testator's widow would prevail over the subsequent clause. The content of the Will, which was the subject matter in the said judgment was reproduced in paragraph '3' therein of the judgment and are similar to the facts of this case. The relevant paragraphs of the said judgment read as under: -

“9. Having heard the learned counsel for the parties, the point before us is a narrow one, namely, what is the true construction of Para 2 of the will dated 21-1-2000, and whether in view of such true construction, Para 4 of the said will can be said to survive.

10. It will be noticed on a reading of Para 2 of the said will that the testator has chosen his language very carefully. He makes it clear that after his death, House No. 77 shall “vest” on my wife Smt Madhuri Ghosh and my elder daughter Sunanda Ghosh jointly. With this declaration he goes on to further state that after the death of his wife, the said daughter shall become the “exclusive” owner of the



said House No. 77 and that if his daughter was to predecease his wife, then his wife shall become the “exclusive” owner. A reading of this paragraph, therefore, leaves no manner of doubt that what is granted jointly in favour of the widow and the elder daughter is an absolute right to the property, namely, House No. 77. There are no words of limitation used in this paragraph and we, therefore, find it very difficult to agree with the High Court in its conclusion that what is bequeathed by Para 2 is only a limited interest in favour of the widow and the elder daughter.

11. However, it remains to consider the argument on behalf of the respondent that the will should be read as a whole and that the testator's intention should be given effect so that the grandchildren are “not on the road” as is argued by the counsel for the respondents. In law, the position is that where an absolute bequest has been made in respect of certain property to certain persons, then a subsequent bequest made qua the same property later in the same will to other persons will be of no effect. This is clearly laid down in *Ramkishorelal v. Kamal Narayan*, AIR 1963 SC 890 as follows: (AIR pp. 893-94, para 12)

“12. The golden rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the court had to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has, to a trained conveyancer, a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not

¹ (2016) 10 SCC 805



so equally skilled in the art of conveyancing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is 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. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. ...It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible. It is only when this is not possible e.g. where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void.”

12. This judgment was referred to with approval and followed in *Mauleshwar Mani v. Jagdish Prasad*, (2002) 2 SCC 468 as follows: (SCC p. 473, paras 9-11)

“9. The next question that arises for consideration is, the validity of the second part of the will whereby and whereunder the testator gave the very same property to nine sons of his daughters.

10. In *Ramkishorelal v. Kamal Narayan*, AIR 1963 SC 890 it was held that in a disposition of properties, if 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 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 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 bequeath would be invalid; and
- (2) where a testator has given a restricted or limited right in his property to his widow, it is open to the testator to bequeath the property after the death of his wife in the same will.”

13. Needless to add, it is settled law that the fact that Clause 4 has been declared by us to be of no effect would not impact the bequest made under Clause 2, and the rest of the will, therefore, would have to be given effect to. In view of the aforesaid, we do not deem it necessary to go into the other questions raised by Shri Dhruv Mehta, learned Senior Counsel, namely, the absence of pleading and the effect of Section 14 of the Hindu Succession Act, 1956. The appeal is, accordingly allowed and the judgment of the High Court is set aside.”

(Emphasis Supplied)

10. Similarly, a Coordinate Bench of this Court in **Jasbir Kumar v. Kanchan Kaur & Others²**, while dealing with similar bequest made in a Will upon construction of the bequest, categorically held that the vesting of



the estate in favour of the widow was absolute and the plea of the sons that it was only a life interest was rejected. The relevant portion of the judgment reads as under: -

“13. There is no doubt that interpretation of a Will does not require any evidence. It is for the Court to evaluate the Will on the basis of the settled principles of construction. As held in the case of Bhura (supra), cited by learned counsel for the appellant, it is a settled law that Courts must make all efforts to determine the real intention of the testator by reading the Will as a whole and give effect thereto. Further, the construction which would advance the intention of the testator has to be preferred and every disposition contained in the Will, must be given effect to as far as possible, unless the law prevents such effect being given to it. In the case of Radha Sundar Dutta vs. Mohd. Jahadur Rahim and Ors. reported as AIR 1959 SC 24, the Supreme Court had observed that the court is duty bound to reconcile an apparent inconsistency in the Will and if there are two constructions of a document, one of which will give effect to all the clauses therein, while the other will render one or more nugatory, the former path must be adopted.

14. The Court has read the Will dated 7.3.1980 executed by Shri Himmat Singh in the light of the legal principles of construction enunciated above. The relevant para of the Will which requires to be interpreted is as follows: -

“..... I make Will that after my death, the above property movable and immovable whatsoever and wheresoever I may leave, shall go to my wife Smt. Kanchan Kaur Executor of Will, and after her death, shall got to my two sons – Surinder Singh & Jasbir Kumar in equal shares.....”

15. On a reading of the aforesaid para of the Will, it is apparent that the testator did not place any limitation upon the respondent No.1 with regard to her right to enjoy the suit premises how she likes. The learned trial court has concluded that the only interpretation that can be given to the Will is that in the absence of

² 2017:DHC:715



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any express restriction placed by the deceased on the right of the respondent No.1 to enjoy the suit premises as she wished, which included her right to create third party interest therein, no such restriction could be inferred and that the provision of Section 14(2) of the Hindu Succession Act do not come into play and cannot be invoked to place any restriction on her right. Relying on the provision of Section 14(1) of the Hindu Succession Act, it was held that the respondent No.1 was well within her right to have succeeded to the property in question as an absolute owner and to gift the same by virtue of the gift deed dated 15.06.2007.

16. This Court is inclined to concur with the aforesaid findings returned by the learned trial court for the reason that had the deceased any intention of bequeathing only a life estate in respect of the suit premises in favour of his widow, the respondent No.1 herein, it would have been apparent from the language used in the Will, which would have then prescribed a restricted right or life estate in her favour. Meaning thereby, that the expressions used in the Will would have been indicative of the fact that the testator had intended to create an estate in favour of the respondent No.1 for her lifetime or unto her death. However, the language used in the subject Will does not point in that direction.

17. From the language used in the subject Will, it is evident that the testator had desired to devolve his movable and immovable properties in favour of the respondent No.1, as an absolute bequest. Respondent No.1 was not only a beneficiary under the Will, she was also made the executor of the Will. The moment the deceased had declared that all his movable and immovable properties would go to devisee, the respondent No.1, inherent in the said declaration was his intention to bequeath an absolute interest in the property in favour of his wife including right to sell, transfer or alienate the same. That being the position, the second part of the relevant para of the Will, where the testator had stated that “..... after her death, shall go to my two sons - Surinder Singh and Jasbir Kumar in equal shares.” has to be construed to mean that if any part of the estate was available in the hands of the legatee, then the same would devolve on



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her two sons in equal share. If so interpreted, the conflict between the first part and the latter part of the para of the Will quoted above, stands reconciled, without any repugnance.”

(Emphasis Supplied)

11. This Court is of the considered opinion that the language of the bequest used by the Testator in the registered Will dated 15.11.2011 while making the devolution of the suit property in favour of defendant no.1, leaves no manner of doubt that the absolute interest in the suit property was bequeathed in favour of defendant no. 1. Accordingly, defendant no. 1 is, therefore, free to deal with the suit property in the manner she deems fit, without any limitation on her powers of disposition. It is clear and unambiguous that no right, title or interest in the suit property vested in favour of the plaintiff under the registered Will dated 15.11.2011.

12. In view of the aforesaid findings, the plaintiff has no right, title or interest in the suit property. Furthermore, the present suit filed by the plaintiff for seeking reliefs of declaration and injunction against defendant nos. 1 and 2 is without any cause of action and hence, the same is hereby rejected under Order VII Rule 11(a) of the Code of Civil Procedure, 1908. The pending applications stand dismissed.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 14, 2024/rhc/MG