



2025:DHC:2721



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**IN THE HIGH COURT OF DELHI AT NEW DELHI
BEFORE
HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

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**CS(OS) 416/2021 and CRL.M.A. 5518/2023, I.A. 15269/2021, I.A.
18098/2022**

RAJEEV KUMAR

SON OF LATE SHRI SHADI LAL KUMAR,
R/O. WZ-692, FIRST FLOOR,
SHIV NAGAR EXTENSION,
NEW DELHI-110058
MOBILE NO.9212376741

.....PLAINTIFF NO.1

SH. RAKESH KUMAR,

SON OF LATE SHRI SHADI LAL KUMAR,
R/O. 33, WYNGATE DRIVE
AVON, CT-06001

ALSO AT;

BF-108, JANAK PURI,
NEW DELHI-110058
E-MAIL:RK996@NYU.EDU

.....PLAINTIFF NO.2

*(Through: Mr. Anil Panwar, Mr. Tanishq Panwar and Mr. Kawirangbou
Charenamei, Advs.)*

Versus

SH. SANJEEV KUMAR

SON OF LATE SHRI SHADI LAL KUMAR,
R/O. BF-108, JANAK PURI,
NEW DELHI-110058

.....DEFENDANT NO.1

SMT. GEETA KUMAR @ DIMPLE

WIFE OF SH. SANJEEV KUMAR,
R/O. BF-108, JANAK PURI,

Signature Not Verified
Signed
By: PURUSHAINDR
KUMAR KAURAV



NEW DELHI-110058

.....DEFENDANT NO.2

(Through: Mr. Ankit Jain, Sr. Adv with Mr. Pankaj Gupta and Mr. Mohit Gupta, Advs.)

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Reserved on: 02.04.2025

Pronounced on: 17.04.2025

J U D G M E N T

1. The instant civil suit has been instituted seeking the following reliefs:-

“i) Pass a decree of declaration in favour of the plaintiffs and against the defendants declaring therein that the defendant No.3 has no right to make gift of any part of the property in question i.e. BF-108, Janak Puri, New Delhi-110058 as shown red in the attached site plan except the life estate/interest;

ii) Pass a decree of cancellation thereby cancelling the alleged gift deeds; one being dated 26.08.2018 being registration No. 5037 in Book No. 1, Volume No. 2942 on pages 171 to 179 dated 26.02.2018 thereby gifting the entire ground floor, entire first floor and entire third floor with roof/terrace rights and another gift deed dated 06.05.2019 being registration No. 9669 in Book No. 1, Volume No. 4331 at pages 722 to 132 thereby gifting the entire second floor of the property in question i.e. BF- 108, Janak Puri, New Delhi-110058;

iii) Pass a decree of injunction in favour of the plaintiffs and against the defendants restraining the defendants from creating third party interest in the suit property by way of transferring, alienating and parting with possession in any manner in the suit property i.e. BF-108, Janak Puri, New Delhi- 110058;

iii-a) Pass a decree of permanent injunction in favour of the plaintiffs and against the defendants restraining the defendants, their agents, servants and legal heirs from dispossessing the plaintiff No.1 from the second floor of property bearing No. BF-108, New Delhi-110058.



iv) Pass a decree of injunction in favour of the plaintiffs and against the defendants restraining the defendants from operating of locker No. 186 in Punjab National Bank, Hari Nagar, New Delhi- 110064 and also injunct the defendants from withdrawing the amount from the accounts mentioned in para 17 of the plaint.

v) Award cost of suit in favour of the plaintiff and against the Defendants.”

2. The factual matrix of the case would indicate that the plaintiffs, namely, Shri Rajeev Kumar and Shri Rakesh Kumar and defendant no.1, namely, Shri Sanjeev Kumar are the sons of late Shri Shadi Lal Kumar and late Smt. Sunita Rani. Defendant no.2, Smt. Geeta Kumar is the wife of defendant no.1.

3. The root of the dispute lies in the interpretation of a registered Will dated 24.09.2015 executed by late Shri Shadi Lal Kumar, who passed away on 22.12.2015. By virtue of the said Will, late Shri Shadi Lal Kumar bequeathed certain moveable and immovable properties to his wife, late Smt. Sunita Rani, who survived him, and later, she passed away during the pendency of present proceedings.

4. It is pertinent to mention that at the time of institution of the present civil suit, Smt. Sunita Rani was impleaded as defendant no.3. Upon her demise, her name was deleted from the array of parties. Accordingly, any reference to defendant no.3 herein shall be construed as a reference to late Smt. Sunita Rani.

5. It is stated that sometime in the year 2021, the plaintiffs came to know about the execution of two registered gift deeds, dated 26.02.2018 and 06.05.2019, whereby, late Smt. Sunita Rani gifted the ground floor, first



floor, second floor and third floor, alongwith the roof rights of property bearing No.BF-108, Janak Puri, New Delhi-110058 to defendant no.2 Smt. Geeta Kumar (daughter-in-law of late Smt. Sunita Rani).

6. The relief clause in the suit would also indicate that a declaration of cancellation of gift deeds dated 26.02.2018 and 06.05.2019 has also been sought. As per the case set up by the plaintiffs, the Will dated 24.09.2015 was executed by late Shri Shadi Lal Kumar in favour of his wife late Smt. Sunita Rani bequeathing the properties for her lifetime and upon her demise, the properties were to devolve among the three sons, i.e. plaintiffs and defendant no.1.

7. The defendants appear to have filed a common written statement asserting therein that late Smt. Sunita Rani became the sole and absolute owner of the property by virtue of the registered Will dated 24.09.2015. It was also stated that she had the full rights to sell or dispose of the property in any manner, whatsoever, and if during her lifetime, she had executed gift deeds in favour of defendant no.2, the same is legally permissible and no fault can be found therein.

8. After the completion of pleadings *vide* order dated 02.03.2023, this Court framed the following preliminary issue:-

“Whether by virtue of registered will dated 24.09.2015, defendant No.3 became the sole and absolute owner of the suit property or derived only a lifetime interest therein?”

9. The aforesaid order was assailed by the plaintiffs in an appeal being FAO(OS) 50/2023 before the Division Bench of this Court. In the said



appeal, the plaintiffs took the plea that the preliminary issue framed under Order XV Rule 3(1) of the Code of Civil Procedure, 1908 (CPC) can only be of the jurisdictional issues. Hence, according to them, the issue framed *vide* the order dated 02.03.2023 lacks the necessary characteristics to be framed under the aforesaid provision of CPC and thus, the order dated 02.03.2023 was sought to be assailed.

10. It was also one of the pleas taken by the plaintiffs that though the registered Will dated 24.09.2015 was admitted by them, however, the moveable properties left behind by their parents were equally divided amongst three sons. According to the plaintiffs, the aforesaid fact negates the contentions of the defendants that the moveable and immovable properties were bequeathed exclusively to defendant No.2.

11. The Division Bench, *vide* order dated 04.01.2024, disposed of the appeal, directing this Court to adjudicate on the issue framed *vide* order dated 02.03.2023 as a preliminary issue without evidence.

12. The aforesaid direction has been issued on the anvil of the fact that the defendants have consented not to raise any plea of coercion pleaded by them in reply to paragraph No.17 of the plaint. The Division Bench was of the opinion that the Will dated 24.09.2015 requires to be interpreted in view of the recitals made therein, which would not require any further evidence to be adduced by the parties, and therefore, the decision on the said issue will have a bearing on the outcome of the civil suit itself. Paragraphs Nos.9 to 17 of the order passed by the Division Bench read as under:-

“9. This Court has considered the submissions of the learned counsel for



the parties and perused the record.

10. The twin facts of existence of the valid registered Will dated 24.09.2015 and the ownership of the suit property by late Sh. Shadi Lal Kumar are admitted by the parties.

11. The Appellants have expressed concern only with regard to the proof of averments made by them in paragraph 17 of the plaint as regards creation of fixed deposits. The Respondents in reply to the said paragraph in the written statement have admitted the contents of the table set out in the plaint. Therefore, the creation of the fixed deposits is not disputed by Respondent No.3.

12. The Respondents and more specifically Respondent No.3 is bound down to her statement made before this Court that the contention in the written statement (in reply to paragraph 17 of the plaint) with respect to the alleged coercion in creating the fixed deposits will not be pressed during arguments for decision of the issue framed in the impugned order.

13. It is accordingly, directed that the effect, if any, of the facts set out by the Appellants in the table at paragraph 17 of the plaint shall be considered by the learned Single Judge, as it stands, without taking into consideration the allegations of coercion made in the corresponding paragraph of the written statement.

14. The Appellants are satisfied with the aforesaid directions and are accordingly, agreeable to the adjudication of the issue framed by the learned Single Judge in the impugned order on the admitted facts between the parties.

15. In the considered opinion of this Court, there is no infirmity in the impugned order dated 02.03.2023. In view of the consent of the parties recorded in this order, the issue framed by the learned Single Judge satisfies the conditions set out in under Order XV Rule 3(1) CPC. Further, in view of the admitted position by all parties to the suit, as regards the absolute ownership of late Sh. Shadi Lal Kumar as well as the validity of the Will dated 24.09.2015, the claims and defences raised by the parties only involves the interpretation of the clause of the registered Will dated 24.09.2015 and no further evidence is required to be adduced for deciding the issue. This Court is also of the opinion that the decision on this issue will be sufficient for the decision of the entire suit.

16. With the aforesaid directions and binding the parties to the statements made before this Court, the present appeal is disposed of. The objection raised by the Respondents to the maintainability of the appeal has not been



decided in view of the consent recorded above.

17. Pending applications also stand disposed of.”

13. *Mr. Anil Panwar*, learned counsel appearing for the plaintiffs, takes this Court through the registered Will dated 24.09.2015 and emphasises that the said Will not only relates to the properties which are disputed in the instant civil suit, but encompasses within itself various moveable properties. He then contends that if the remaining moveable properties are divided equally between the plaintiffs and defendant no.1, there is no reason as to why the property in dispute in the instant civil suit should not be divided in the same manner. He, therefore, imputes *mala fides* on the part of the defendants in not adhering to the equitable division of the suit property.

14. Learned counsel further reads the recitals of the Will and submits that the reading of the entire document nowhere empowers the beneficiary of the Will, namely, late Smt. Sunita Rani to gift the suit properties. According to him, the intention of the Testator has to be adjudged on the basis of attending circumstances. He explains that the latter part of the Will unequivocally states that after the death of the Testator and his wife, namely, late Smt. Sunita Rani, simultaneously or separately, the properties would devolve to all three sons, who would all become the joint and complete owners of the properties in equal shares.

15. He further explains that if the first part of the Will is construed to mean that the beneficiary was entitled to dispose of the property or to gift it, then the second part of the Will would become redundant, and such an interpretation of the Will should not be resorted to in any manner. He then



contends that one of the floors, as stated in the gift deeds i.e., the third floor, did not even exist at the time of execution of the Will. To buttress his submissions, he placed reliance on the decisions in the cases of *Bhagwat Sharan v. Purushottam*¹, *Shyamal Kanti Guha v. Meena Bose*², *Shakuntla v. Rajinder Singh Deswal*³ and *Laxmana v. Chandrappa Gowda*⁴.

16. *Per contra*, Mr. Ankit Jain, learned senior counsel assisted by Mr. Pankaj Gupta, appearing on behalf of the defendants, contends that the issue in question deserves to be decided against the plaintiffs. According to him, the Will dated 24.09.2015 confers unfettered and absolute right in favour of the beneficiary to dispose of the property as per her wishes, without prior consent of any of the other legal heirs and if the beneficiary, namely, late Smt. Sunita Rani executed registered gift deeds in favour of defendant no.2, the said deeds confer an absolute right in favour of defendant no.2. According to him, during the lifetime of the beneficiary, if she had chosen to dispose of the property in any manner whatsoever, then there arises no question of devolving the said property into the share of other legal heirs.

17. According to him, the right of devolution of the property in favour of the other legal heirs is extinguished on the execution of the Will dated 24.09.2015. He submits that if there is a conflict between the former and latter part of the Will, it is the latter part that gives way to the former part of the Will, meaning thereby that the devolution of the property would succumb to the first part of the Will.

¹ (2020) 6 SCC 387.

² (2008) 8 SCC 115.

³ 2022 SCC OnLine Del 3059.

⁴ (2022) 18 SCC 483



18. With respect to the division of the other moveable assets, he submits that no estoppel would operate against law, and he explains that in the instant case, it is well settled that the beneficiaries under the Will, if conferred unrestricted rights, any steps with respect to the disposal of the said property would not be subject to any challenge. To substantiate his position, the learned senior counsel placed reliance on the decisions in the cases of *Sanjay Ray v. Sandeep Soni & Ors.*⁵, *S. K. Chopra v. V. N. Chopra*⁶ and *Sadaram Suryanarayana v. Kala Surya Kantham*⁷.

19. In rejoinder submissions, *Mr. Panwar* reiterates his initial submissions and contends that the decision relied upon by the defendants would be of no assistance to them. Additionally, learned counsel submits that there is no plausible answer forthcoming from the defendants as to why the moveable assets were subjected to division. He then contends that the issue requires to be decided in favour of the plaintiffs and against the defendants.

20. I have considered the submissions made by learned counsel appearing for the parties and perused the record.

21. Before embarking on the merits of the case, it is pertinent to briefly sail through the legal discourse revolving around the interpretation of the Will and the recourse to be adopted when there appear to be conflicting recitals in the Will.

⁵ 2022 SCC Online Del 1525.

⁶ 2017 SCC Online Del 8987

⁷ (2010) 13 SCC 147.



22. In **Ramkishorelal v. Kamal Narayan**⁸, the Supreme Court had considered the question of conflict(s) in an instrument and had explained the approach to be observed in the following words:—

“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 so equally skilled in the art of conveyance. 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. (See Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo). 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.”

⁸ 1963 Supp (2) SCR 417



23. Further reference can be made to the decision of the Supreme Court in the case of *Navneet Lal v. Gokul*⁹, wherein, the Supreme Court summarised the principles regarding the interpretation of the Will, and held that the true intention of the testator has to be gathered not by solely looking into the isolated expressions used in the Will but rather to perceive the Will as a whole with all its provisions. The relevant extracts of the said case read as under:-

“8. From the earlier decisions of this Court the following principles, inter alia, are well established:

“(1) In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered; but that is only for the purpose of finding out the intended meaning of the words which have actually been employed. (Ram Gopal v. Nand Lal [1950 SCC 702 : AIR 1951 SC 139 : (1950) SCR 766, 772])

(2) In construing the language of the will the court is entitled to put itself into the testator's armchair (Venkata Narasimha v. Parthasarathy [41 IA 51, 72 : 21 IC 339 : 15 Bom LR 1010]) and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense... But all this is solely as an aid to arriving at a right construction of the will, and to ascertain the meaning of its language when used by that particular testator in that document. (Venkata Narasimha case and Gnanambal Ammal v. T. Raju Ayyar [1950 SCC 978 : AIR 1951 SC 103 : (1950) SCR 949, 955])

(3) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory. (Raj Bajrang Bahadur

⁹ (1976) 1 SCC 630



Singh v. Thakurain Bakhtraj Kuer [AIR 1953 SC 7 : (1953) SCR 232, 240])

(4) The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus. (*Pearey Lal v. Rameshwar Das* [AIR 1963 SC 1703 : 1963 Supp (2) SCR 834, 839, 842])

(5) It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will. (Ramachandra Shenoy v. Hilda Brite Mrs [AIR 1964 SC 1323 : (1964) 2 SCR 722, 735]).”

24. The Supreme Court in ***Gopala Menon v. Sivaraman Nair***¹⁰, observed that the recitals of Will therein, read that the property described therein “shall vest in my wife, Sreedevi Amma, daughter of Moorkkath Madhavi Amma, with power of alienation”. In the context of the said recital, the Supreme Court held that in such a scenario, absolute estates exist in favor of the beneficiary therein i.e., the wife. The Supreme Court further held that

¹⁰ (1981) 3 SCC 586.



when an absolute estate is conferred, then it is implicit that the beneficiary is free to deal with and dispose of the property in any manner.

25. In ***Mauleshwar R Mani v. Jagdish Prasad***¹¹, the English translation of the Will therein reads that “*The testator's wife whose name is Smt Sona Devi, would be entitled to the entire assets and properties with the right of transfer and after death of Sona Devi....*”. In such a factual scenario, the Court held that the beneficiary was given an unlimited and absolute estate. The Court further held that 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. Furthermore, 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. The relevant extracts of the said case read as under:-

“10. In *Ramkishorelal v. Kamalnarayan* [AIR 1963 SC 890 : 1963 Supp (2) SCR 417] 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 : 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*

¹¹ (2002) 2 SCC 468.



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 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.

12. *In view of the aforesaid principles that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to the testator to further bequeath the same property in favour of the second set of persons in the same will, a testator cannot create successive legatees in his will. The object behind is that once an absolute right is vested in the first devisee the testator cannot change the line of succession of the first devisee. Where a testator having conferred an absolute right on anyone, the subsequent bequest for the same property in favour of other persons would be repugnant to the first bequest in the will and has to be held invalid. In the present case the testator Jamuna Prasad under the will had bequest his entire estate, movable and immovable property including the land under self-cultivation, house and groves etc. to his wife Smt Sona Devi and thereafter by subsequent bequest the testator gave the very same properties to nine sons of his daughters, which was not permissible. We have already recorded a finding that under the will Smt Sona Devi had got an absolute estate and, therefore, subsequent bequest in the will by Jamuna Prasad in favour of the nine daughters' sons was repugnant to the first bequest and, therefore, invalid. We are, therefore, of the view that once the testator has given an absolute estate in favour of the first devisee it is not open to him to further bequeath the very same property in favour of the second set of persons."*



26. In the case of *Madhuri Ghosh v. Debobroto Dutta*¹², the Supreme Court held 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 would be of no effect.

27. In *M.S. Bhavani v. M.S. Raghu Nandan*¹³, the Will involved therein is similar to the factual matrix in the present case, which reads as “*After my death, my wife Smt Nirmala shall be sole legal and rightful heir over my immovable and movable property and she will have every right and authority to sell, mortgage and lease my house or totally bequeath it to anybody who take care of her in her last days, and old age alsoIn case my wife is unable to sell the house during her lifetime, my daughter shall be the seller of the house and she should (sic) the house mutually with my son Raghunanda.*” The Supreme Court held that there is no inconsistency in the Will therein and as per the intention of the Testator therein, the property is bequeathed by giving an absolute interest.

28. The gravamen of the controversy pivots upon the construction and legal import of the registered Will dated 24.09.2015, executed by late Shri Shadi Lal Kumar. The rights asserted by the plaintiffs and those defended by the defendants turn decisively on the interpretation of its clauses. Accordingly, it is necessary to examine the relevant recitals forming the substratum of the testamentary disposition. The pertinent portion of the Will, which has come under judicial scrutiny, reads as follows:-

¹² (2016) 10 SCC 805.

¹³ (2020) 5 SCC 361.



“ I hereby declare that I have the following immovable and Movable properties as per detail below:-

- a) That i am the sole and complete owner and in possession of entire freehold built up property bearing No.BF-108, on land measuring area 150 Sq.Yds. comprising of Ground Floor. First Floor and Second Floor with all its land and roof rights. Situated in the layout plan of Janak Puri, New Delhi 110058 having been acguared the same, by virtue of deed, duly regd. As document No.5766, in addl. Book No.1, Volume No.7419, on pages 94 to 95, Dt.27/07/93, registered in the office of Sub-Registrar. Delhi and I, Shadi Lal Kumar is currently sole orner of aforesaid property and this property is free of any liens or claims.*
- b) I have a joint Savings Bank account No. 1527000300370822 in the Punjabi National Bank, Hari Nagar Branch, situated at BF-81, JanakPuri, New Delhi-110000, in this name of myself with my wife Smt. Sunita Rani.*
- c) I also have a Savings Bank account No. 1527000109468100 in the Punjab National Bank, Hari Nagar Branch, situated at BF-81, Janakpuri, New Delhi-110058, in my own name with nominee as my wife Smt Sunita Rani.*
- d) I have a PPF (Public Provident Fund) Account No. 467 in the Punjab National Bank BF-81, Janak Puri, New Delhi-110058*
- e) I have a joint MIS (Monthly Income Scheme) Account No. 175714 in the POST OFFICE, JAIL ROAD SHIV NAGAR, New DELHI, in the name of myself and my wife.*
- f) I have a joint Recurring Deposit Account No. 128706 in the POST OFFICE, JAIL ROAD SHIV NAGAR, New DELHI, in the name of mysell and my wife*
- g) I have a joint Savings Bank Account No 8360790 in the POST OFFICE, JAIL ROAD SHIV NAGAR, New DELHI, in the name of myself and my wife.*
- h) I have a joint Locker No. 186 in the Punjab National Bank, Hari Nagar Branch, situated at BF-81, Janakpuri, New Delhi-110058, in the name of myself and my wife*
- i) I have a joint SCSS (Senior Citizen Savings Scheme) Account No. 2747 in the Punjab National Bank B-1, Community Centre, Janak Puri New Delhi-110058 with a total sum of rupees fifteen lakhs. Interest on this amount @9% is credited by the bank in our Savings Account No. 1527000300370822 in the PNB, BF-81, Janakpuri, New Delhi*
- j) I have a Joint Savings Account No. 016593700002717 in the YES BANK, B-1 COMMUNITY CENTRE, JANAK PURI, NEW DELHI-110058 in the name of myself and my*

*That as long as I am alive, I shall remain the absolute owner of the said properties and right to enjoy the same in any manner whatsoever, I think fit and proper in the present circumstances. **But after my death, my***



above mentioned Properties along with all other moveable and immoveable properties, which shall stand in my name at the time of my death, will go and devolve to my WIFE NAMELY SUNITA RANI, who alone, after my death will become the sole and complete owner of my above said Property and she can enjoy her full rights in the manner she likes and she can sell, dispose off, rent out, let out or entered into any agreement with any person(s) etc. in respect of the above said properties, with anyone without taking any permission from any of my legal heirs And my other legal heirs sons brothers, sisters daughters, son-in-law, daughter-in-law, successors, relative and none else etc. shall have no rights, title, interest, share, claim, concern, whatsoever respect of the said properties

That after the death of myself and my wife simultaneously or separately, in that event, the said Properties along with all other moveable and immoveable properties. will go and devolve to my all three sons who all will become the joint and complete owners of my above said Properties in equal share and they will bound be to sell, dispose off the said property to anyone intending purchasers and sale amount shall be divided between them in equal share and also get the amount from all above accounts and moveable items jewellery, cash etc from the locker and all items and considerations will be divided between them in equal shares."

29. A bare perusal of the aforesaid recital reveals the following legal consequences:-

- (i) Upon the demise of the Testator, all movable and immovable assets forming part of his estate were to devolve in favour of his wife, late Smt. Sunita Rani. The said bequest was immediate and operative from the date of his death.
- (ii) The said late Smt. Sunita Rani was unequivocally declared as the sole and absolute owner of the entire estate, both in title and in interest, without qualification or reservation.
- (iii) The Will expressly authorised her to exercise complete dominion over the properties bequeathed to her. This included the right to sell, alienate, gift, lease, or otherwise dispose of the properties or enter into any agreements, without restriction or interference.



(iv) The Will further declared that she was not required to obtain any consent or concurrence from the other legal heirs of the Testator. The bequest in her favour was made to the express exclusion of all other potential claimants.

(v) In no uncertain terms, it was provided that the other legal heirs shall have no right, title, interest, share, or claim—whether present or future—in respect of the properties so bequeathed.

30. When the characteristics of the Will, as delineated above, are examined on the touchstone of well-established principles of testamentary jurisprudence, as enunciated by the Supreme Court in a series of authoritative pronouncements, it is manifestly clear that the Will did not confer merely a life estate upon late Smt. Sunita Rani rather, it clothed her with an absolute and unencumbered title, free from any fetters of succession or reversion. The bequest, in its essential nature, was unconditional and not circumscribed by temporal limitations as to her lifetime.

31. The latter portion of the Will, which contemplates that upon the demise of both the Testator and his wife, whether simultaneously or at different times, the properties, both movable and immovable, shall devolve equally upon their three sons, must be read in harmony with the earlier dispositive clause. Such a construction suggests that this latter clause was intended to operate only in the event that the absolute owner, late Smt. Sunita Rani died without disposing of any properties during her lifetime.

32. Far from being mutually contradictory, both parts of the Will appear to co-exist harmoniously when interpreted in light of the overarching



testamentary intent. The intention discernible from the Will is that during her lifetime, the beneficiary, late Smt. Sunita Rani, was to exercise full and unhindered ownership rights, and it was only in the absence of any disposition or encumbrance by her that the properties would devolve in equal shares upon the three sons. In other words, the clause relating to devolution upon the sons was contingent and residual in character, operative only upon the failure of the late Smt. Sunita Rani, to deal with the properties in the exercise of her plenary ownership. Any construction to the contrary would amount to reading into the Will a restriction which the Testator consciously chose to eschew.

33. So far as the contention of the plaintiffs regarding non-existence of the third floor in the Will is concerned, the defendant specifically controverts the same in the Written Statement that the third floor was existing and even the photographs filed by the plaintiff would suggest that there is some construction on the third floor of the property in question. Even otherwise, the recitals of the Will make it fundamentally clear that the intention of the Testator was to give an absolute interest in favour of the beneficiary.

34. The contention of the plaintiffs that the Will confers only a life interest upon late Smt. Sunita Rani, therefore, deserves to be rejected. Furthermore, the authorities relied upon by the plaintiffs are inapposite to the facts of the present case as the recitals in the Will under consideration leave no scope for ambiguity or contradiction and instead reflect a clear intent of the Testator.



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35. Even otherwise, where a testamentary instrument unequivocally confers upon the beneficiary an absolute, unqualified, and unrestricted right to deal with the property in any manner, any subsequent clause seeking to impose limitations or conditions on such right becomes *otiose*. A later clause, the literal interpretation of which would undermine or defeat the clear and absolute bequest made earlier, cannot be enforced so as to dilute or negate the vested rights conferred upon the primary legatee. This principle stands fortified by settled jurisprudence and authoritative pronouncements of the Supreme Court, as referred to hereinabove.

36. In view of the foregoing analysis, this Court concludes that the preliminary issue *vide* the order dated 02.03.2023 must be answered in favour of the defendants. Consequently, the present suit, being devoid of merit, stands dismissed along with all pending applications.

37. No order as to costs.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

APRIL 17, 2025
p/@m