



2025:DHC:11478-DB



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

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Judgment reserved on: 09.12.2025
Judgment pronounced on: 18.12.2025

+ RFA(OS) 51/2025 & CM APPL. 53041/2025 (Stay)

SIMI ARUN PANDEYA

.....Appellant

Through: Mr. Rajesh Yadav, Senior
Advocate with Mr. Preet
Oberoi, Advocate.

versus

KUMUDINI MITTAL & ORS.

.....Respondents

Through: Mr. Suryakant Singla, Senior
Advocate with Ms. Mayanka
Dhawan, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal, filed under Section 96 read with Order XLI of the **Civil Procedure Code, 1908**¹ and Section 10 of the Delhi High Court Act, 1966, seeks to set aside the **Order dated 29.05.2025**², passed by the learned Single Judge of this Court in I.A. No. 11590/2025 filed in CS(OS) 438/2022 titled as '*Ms. Simi Arun Pandeya v. Mr. Amit Mittal*'. The said application was filed under

¹ CPC

² Impugned Order



Order XII Rule 6 of the CPC by the Appellant/Plaintiff.

2. The sole issue that arose for consideration before the learned Single Judge, and which stands adjudicated in the Impugned Order, is the very issue that survives for determination in the present Appeal. As expressly and fairly acknowledged by the learned Senior Counsel appearing for the Appellant/Plaintiff, the scope of the present Appeal is narrowly circumscribed and confined exclusively to the judicial construction and interpretation of Clause I(a) of the Will dated 03.07.1992, executed by late Smt. Angoori Devi Mittal, mother of the Appellant and grandmother of Respondent Nos. 2 and 3, which Will was duly attested and registered on 17.06.1999.

BRIEF FACTS:

3. The present Appeal arises from CS(OS) 438/2022 instituted before this Court by the Appellant/Plaintiff seeking partition, declaration, rendition of accounts, permanent injunction, etc., of **property bearing No. B-102, Swasthya Vihar, Delhi-110092³**, forming part of the estate of late Smt. Angoori Devi Mittal and late Sh. Surendra Kumar Mittal.

4. It is admitted that the suit property was the self-acquired property of late Smt. Angoori Devi, who executed a Will dated 03.07.1992, registered on 17.06.1999. The execution and validity of the said Will were accepted by both sides.

5. The Appellant-Plaintiff and the Defendant, late Sh. Amit Mittal, are the only children of the Testatrix. Upon the demise of the original Defendant during the suit, his Class-I legal heirs were impleaded and

³ Suit Property



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now constitute the Respondents in the present Appeal.

6. Under the Will, the property is bequeathed floor-wise. The First Floor is bequeathed absolutely to the Plaintiff/Appellant. One room each on the Second Floor is bequeathed to the Plaintiff/Appellant and the original Defendant. Clause I(a) further vests the Ground Floor absolutely in the husband, Sh. **Surendra Kumar Mittal**⁴, with full and unfettered powers of disposal, and provides that, upon his demise, the Ground Floor shall devolve upon the son, namely, the original Defendant.

7. Late Sh. Surendra Kumar Mittal (Husband of the testatrix), the primary legatee of the Ground Floor, died intestate on 05.09.2019, without having disposed of or alienated the Ground Floor during his lifetime.

8. Before the learned Single Judge, the Appellant contended that the Ground Floor formed part of the father's intestate estate and, accordingly, devolved in equal shares upon the Plaintiff/Appellant and the original Defendant under the law of intestate succession.

9. The Respondents (Legal Heirs of the original Defendant) contended that Clause I(a) created a valid residuary or contingent bequest, which became operative upon the father's death since the Ground Floor remained undisposed, thereby vesting it exclusively in the original Defendant.

10. *Vide* Order dated 29.05.2025, while adjudicating the Plaintiff/Appellant's application under Order XII Rule 6 of the CPC, the learned Single Judge accepted the Defendant/Respondents' construction, holding Clause I(a) to be a permissible two-stage

⁴ Surendra Kumar Mittal/ S.K. Mittal



bequest - an absolute vesting in the husband followed by a residuary vesting in the son - and accordingly held that the Ground Floor devolved exclusively upon the original Defendant.

11. A preliminary decree was passed declaring the Appellant as owner of the First Floor and one Second Floor room, and the original Defendant as owner of the Ground Floor and the remaining Second Floor room, with both parties holding the land beneath the superstructure in equal shares.

12. The learned Single Judge further directed mediation regarding division of movable assets. Insofar as the findings on Clause I(a) and the consequential preliminary decree adversely affect the Appellant's rights, the present Appeal has been preferred.

CONTENTIONS OF THE APPELLANT/ PLAINTIFF:

13. Learned Senior Counsel for the Appellant would contend, while confining the challenge solely to the construction of Clause I(a) of the Will, that the said clause embodies a two-tier disposition which, in law, cannot be sustained. He would submit, placing reliance upon the judgments of the Hon'ble Supreme Court in *Mauleshwar Mani & Ors. v. Jagdish Prasad & Ors.*⁵, and *Sadaram Suryanarayana & Anr. v. Kalla Surya Kantham & Anr.*⁶, to contend that in the case such as the one where the clause of the Will is in two parts and wherein in the first part there is a stipulation to the effect that the devolution of the estate would be on a person then the subsequent bequeath of the same cannot be held to be valid. It is, therefore, apposite to extract the relevant clauses of the Will as under:

⁵ (2002) 2 SCC 468

⁶ (2010) 13 SCC 147



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“I, hereby, desire and bequeath all my properties, moveable and immoveable, in the following manner:-

I. House No, B-102, Swasthya Vihar, Delhi-92, is my self-acquired property. It is a built-up house of 2 stories. I desire and bequeath the same as under: -

(a) After my death, my husband, Sh. S.K. Mittal, shall be entitled to the Ground Floor of my said house **absolutely and exclusively**. My husband shall be free to **use and dispose of the said Ground Floor** in any manner whatsoever. After the death of my husband, **Sh. S. K. Mittal, I bequeath the said Ground Floor to my son Amit Mittal**, as full owner thereof.

I may make it clear that the occupier of the house on upper floors shall be entitled to free passage from the ground floor without any kind of obstruction.

(b) I desire and bequeath that after my death, the first floor of my said house shall **vest absolutely and exclusively** in my daughter, Simi Pandeya, to the exclusion of all others.

(c) At present, on the second floor, only two rooms have been constructed. I, hereby, bequeath one room to my son, Amit Mittal and one room to my daughter, Simi Pandeya. Each of them shall be full owner of the portion bequeathed to them and shall have no right to object to the ownership of the other portion”

14. According to the learned Senior Counsel for the Appellant, Clause I(a) of the Will, and in particular, the first two lines thereof, which are reproduced hereinbelow: -

“After my death, my husband, Sh. S.K. Mittal, shall be entitled to the Ground Floor of my said house **absolutely and exclusively**. My husband shall be free to **use and dispose of the said Ground Floor** in any manner whatsoever.”

would confer an absolute interest on late Sh. S.K. Mittal, the father of the Appellant and grandfather of the Respondents herein resulting in obviating any need to refer to the second part of said Will, which reads as under:-

“After the death of my husband, Sh. S.K. Mittal, **I bequeath the**



said Ground Floor to my son Amit Mittal, as full owner thereof.”

15. He would contend that the judgment of the Hon’ble Supreme Court in *Mauleshwar Mani* (*supra*), as affirmed in *Sadaram Suryanarayana* (*supra*), applies squarely to Clause I(a) of the Will. On this basis, he would submit that the clause must be construed as vesting an absolute interest in late Sh. S.K. Mittal, and that upon his intestate demise, the natural law of succession would necessarily operate. Consequently, the Ground Floor, forming part of his estate, would devolve upon his legal heirs in equal shares under the governing rules of intestate succession.

CONTENTIONS OF THE RESPONDENTS/ LRS OF THE ORIGINAL DEFENDANTS:

16. **Per contra**, the learned Senior Counsel for the Respondents, Mr. Suryakant Singla, would support the judgment of the learned Single Judge and submit that the construction advanced on behalf of the Appellant is misconceived, being founded upon an isolated reading of Clause I(a) rather than a holistic appreciation of the Will in its entirety.

17. He would further contend that the paramount consideration in construing a testamentary instrument is the intention of the testator/testatrix; and a comprehensive reading of the Will unmistakably discloses that the testatrix sought to maintain parity between her children in the overall disposition of the property. It would, therefore, be urged that the interpretation adopted by the learned Single Judge accords with the true testamentary intent and



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ought not to be disturbed.

ANALYSIS:

18. We have heard the learned counsel for the parties and, with their able assistance, perused the Impugned Judgment, as well as other relevant materials placed on record.

19. A holistic reading of the relevant clauses of the Will demonstrates that the testatrix intended a balanced and equitable apportionment of the suit property between her two children. This intention is apparent from Clauses I(b) and I(c), wherein the First Floor is bequeathed exclusively to the daughter, and the two rooms on the Second Floor are divided equally between the siblings.

20. When read in this context, Clause I(a) indicates that the testatrix sought to ensure that, in the event she predeceased her husband, he would have full and unfettered authority to deal with the Ground Floor in accordance with his own discretion. Notably, late Sh. S.K. Mittal did not, during his lifetime, exercise the power conferred upon him to alienate, transfer, or otherwise deal with the said portion of the property.

21. Considered cumulatively, this conduct aligns with the overarching testamentary scheme and can be viewed as reflecting an adherence to, and carrying forward by the spouse, of what appears to be the common intent of the spouses and as reflected in the expressed terms of the will of the intent that both children ultimately benefit equally from the property. The distribution contemplated under Clauses I(b) and I(c), when read harmoniously with Clause I(a), reinforces the conclusion that the Will was structured to maintain



substantive equality between the siblings.

22. In these circumstances, the submission advanced by learned Senior Counsel for the Appellant, founded upon an isolated reading of Clause I(a) divorced from the remainder of the Will, cannot be sustained. Principles governing construction of testamentary instruments mandate that the Will be interpreted as a whole and that effect be given to all its provisions in a manner that preserves harmony and coherence; selective reliance on a single clause is therefore impermissible. The law in this regard has been succinctly laid down by the Hon'ble Supreme Court in the Judgement of *Navneet Lal v. Gokul and Others*⁷, which is reproduced hereinbelow for reference:

“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])

⁷ 1975 SCC OnLine SC 486



(3) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory. (*Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer* [AIR 1953 SC 7 : (1953) SCR 232, 240])

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

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

23. Accordingly, it becomes necessary to reproduce the relevant reasoning contained in the Impugned Order, which, in our view, sets out a sound, well-considered, and legally consistent interpretation of the Will in light of the factual matrix. The pertinent portion reads as under:

“Analysis and Findings

5. This Court has considered the submissions of the parties



and has perused the Will dated 17.06.1999.

6. At the outset, it is noted that both parties agreed that the only issue arising for consideration is the interpretation of Clause 'I(a)' of the Will dated 17.06.1999 and neither party wishes to lead evidence on the said clause.

7. Late Smt. Angoori Devi Mittal i.e., the deceased mother was the recorded owner of the suit property. She left behind a Will dated 03.07.1992, which was subsequently attested and registered on 17.06.1999. The execution of the said Will by the Testatrix is admitted between the parties and its validity is also accepted. It is the interpretation of the bequest in the said Will qua the Ground Floor of the suit property, which is the sole issue arising between the parties and for consideration of this Court.

8. Before proceeding ahead, it would be material to reproduce the Clause(s) 'I(a)', 'I(b)' and 'I(c)' of the Will which reads as under:

"I, hereby, desire and bequeath all my properties, moveable and immoveable, in the following manner:

I. House No, B-102, Swasthya Vihar, Delhi-92, is my self-acquired property. It is a built-up house of 2 stories. I desire and bequeath the same as under:-

(a) After my death, my husband, Sh. S.K. Mittal, shall be entitled to the Ground Floor of my said house **absolutely and exclusively**. My husband shall be free to **use and dispose of the said Ground Floor** in any manner whatsoever. After the death of my husband, Sh. S. K. Mittal, **I bequeath the said Ground Floor to my son Amit Mittal**, as full owner thereof.

I may make it clear that the occupier of the house on upper floors shall be entitled to free passage from the ground floor without any kind of obstruction.

(b) I desire and bequeath that after my death, the first floor of my said house shall **vest absolutely and exclusively** in my daughter, Simi Pandeya, to the exclusion of all others.

(c) At present, on the second floor, only two rooms have been constructed. I, hereby, bequeath one room to my son, Amit Mittal and one room to my daughter, Simi Pandeya. Each of them shall be full owner of the portion bequeathed to them and shall have no right to object to the ownership of the other portion"

(Emphasis supplied)

9. The parties are ad-idem on the devolution of the First Floor and Second Floor as per Clause 'I(b)' and '(c)' of this Will dated 17.06.1999.



9.1. The dispute has arisen only with respect to Clause 'I(a)', which bequeaths the Ground Floor. Clause 'I(a)' bequeaths the Ground Floor, firstly, upon Sh. Surendra Kumar Mittal (the husband) absolutely with the express right to dispose of the said floor. *Secondly*, the said Clause 'I(a)' bequeaths that after the death of Sh. Surendra Kumar Mittal the Ground Floor property shall vest in the son i.e., the original Defendant as a full owner.

9.2. The Testatrix, pre-deceased Sh. Surendra Kumar Mittal and therefore, Clause 'I(a)' came into operation and the ground floor was inherited by Sh. Surendra Kumar Mittal. However, admittedly Sh. Surendra Kumar Mittal did not dispose of the Ground Floor and expired on 05.09.2019. The original Defendant and his legal heirs contend that upon the demise of Sh. Surendra Kumar Mittal since the Ground Floor had not been disposed of by Sh. Surendra Kumar Mittal in his life time, the bequest in the Will vesting the Ground Floor absolutely in favour of the original Defendant came into operation.

9.3. On the other hand, the Plaintiff contends that with the vesting of the Ground Floor in Sh. Surendra Kumar Mittal, the remaining bequest in favour of the original Defendant lapsed and cannot be given effect to. The Plaintiff contends that the vesting of the Ground Floor shall be governed by law of intestate succession applicable to estate of Sh. Surendra Kumar Mittal. On this basis she claims 50% share in the Ground Floor of the Suit Property.

10. Before advertent to the controversy involved in the present case it would be relevant to refer to the relevant case laws applicable to the facts of the present case.

10.1. The Supreme Court in the case of **Navneet Lal alias Rangi v. Goku**, after analysing the entire case laws on the subject matter of construction of Will, highlighted the essential principles that should guide the Courts in interpreting Wills, the relevant paragraph of the said judgment reads 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 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])”

(Emphasis supplied)

10.2. Further the Supreme Court in the case of **Bay Berry Apartments (P) Ltd. v. Shobha** held that when recitals in a document are unambiguous and not uncertain, then in that case the said recitals will have to be given literal meaning and the intent of the propounder of the said document will have to be given effect to. The relevant paragraph of the said judgment reads as under:

34. When a document is **not uncertain** or **does not contain an ambiguous expression** it should be given its **literal meaning**. Only when the contents are not clear the question of taking recourse to the application of principles of construction of a document may have to be applied. It is also not a case where there exists any inconsistency between an earlier and later part of the document. **What is necessary for a true, proper and effective construction of the will in question is to give effect to the intention of the propounder of the will.”**

(Emphasis supplied)

10.3. In the case of **Sadaram Suryanarayana v. Kalla Surya Kantham** which was closely similar to the facts of the present case, the Supreme Court therein held as under:

“8. The English rendition of Clause 6 of the will executed by Smt Kalla Jaggayamma is as under:

(6) 2nd item tiled house situated in New Colony out of which eastern wing two rooms shall devolve to my second daughter, Chandaram Appalanarasamma and the western wing two rooms shall devolve upon my elder



daughter, Chandaram Ramanamma with absolute rights of sale, gift, mortgage, etc., and this will come into force after my demise.

After demise of my daughters the retained and remaining property shall devolve upon their female children only.”

9. It is evident from a plain reading of the above that the testatrix had bequeathed in absolute terms the property mentioned in Clause 6 in favour of her daughters Chandaram Appalanarasamma and Chandaram Ramanamma **with absolute rights of sale, gift, mortgage, etc.** That the bequest was in absolute terms was made abundantly clear by the use of the words “absolute rights of sale, gift, mortgage, etc.” appearing in Clause 6 above. To that extent there is no difficulty. What led to a forensic debate at the Bar was the latter part of bequest under which the testatrix has attempted to regulate the devolution of the property in question after the demise of her daughters. The testatrix has desired that after the demise of her daughters the property vested in them would devolve upon their female heirs only.

10. The question is whether the testatrix Smt Kalla Jaggayamma, had made two bequests, one that vests the property absolutely in favour of her daughters and the other that purports to vest the very same property in their female offspring. If so whether the two bequests can be reconciled and if they cannot be, which one ought to prevail.

.....

15. To the same effect is the decision of this Court in **Mauleshwar Mani** case [(2002) 2 SCC 468] where the question once again was whether an absolute interest created in the property by the testatrix in the earlier part of the will can be taken away or rendered ineffective by the subsequent bequest which is repugnant to the first bequest. Answering the question in the negative, this Court held that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to him to further bequeath the very same property in favour of the second set of persons.

to him to further bequeath the very same property in favour of the second set of persons.

.....

19. In **Kaivelikkal Ambunhi** case [(1995) 5 SCC 444] (SCC p. 445, para 4), the Court applied the maxim cum duo inter se pugnancia reperiuntur in testamento ultimum



ratum est which means that in a will if there are two inconsistent provisions the latter shall prevail over the earlier.

.....

22. It is evident from a careful reading of the provisions referred to above that while interpreting a will, the courts would as far as possible place an interpretation **that would avoid any part of a testament becoming redundant. So also the courts will interpret a will to give effect to the intention of the testator as far as the same is possible.** Having said so, we must hasten to add that the decisions rendered by the courts touching upon interpretation of the wills are seldom helpful except to the extend the same recognise or lay down a proposition of law of general application. **That is so because each document has to be interpreted in the peculiar circumstances in which the same has been executed and keeping in view the language employed by the testator.** That indeed is the requirement of Section 82 of the Succession Act also inasmuch as it provides that meaning of any clause in a will must be collected from the entire instrument and all parts shall be construed with reference to each other.

23. Coming then to the facts of the case at hand it is evident from a careful reading of Clause 6 of the will extracted above that the same makes an **unequivocal and absolute bequest** in favour of the daughters of the testatrix. The use of words like “absolute rights of sale, gift, mortgage, etc.” employed by the testatrix make the intention of the testatrix abundantly clear. The learned counsel for the plaintiff respondents herein also did not have any quarrel with the proposition that the testatrix had in no uncertain terms made an absolute bequest in favour of her daughters. What was argued by him was that the bequest so made could be treated as a life estate not because the testament stated so but because unless it is so construed the second part of Clause 6 by which the female offspring of the legatees would get the property cannot take effect. It was on that premise contended that the absolute estate of Smt Sadaram Appalanarasamma ought to be treated only as a life estate. The contention though attractive on first blush, does not stand closer scrutiny. We say so because the ultimate purpose of interpretation of any document is to discover and give effect to the true intention of the executor, in the present case the testatrix.

24. We are not here dealing with a case where the testatrix has in one part of the will bequeathed the property to A



while the same property has been bequeathed to B in another part. Had there been such a conflict, it may have been possible for the respondent-plaintiffs to argue that the latter bequest ought to take effect in preference to the former. We are on the contrary dealing with a case where the intention of the testatrix to make an absolute bequest in favour of her daughters is unequivocal. Secondly, the expression “after demise of my daughters the retained and remaining properties shall devolve on their female children only” does not stricto sensu amount to a bequest contrary to the one made earlier in favour of the daughters of the testatrix.

25. The expression extracted above does not detract from the absolute nature of the bequest in favour of the daughters. All that the testatrix intended to achieve by the **latter part of Clause 6 was the devolution upon their female offspring all such property as remained available in the hands of the legatees at the time of their demise.** There would obviously be no devolution of any such property upon the female offspring in terms of the said clause **if the legatees decided to sell or gift the property bequeathed to them as indeed they had every right to do under the terms of the bequest. Seen thus, there is no real conflict between the absolute bequest which the first part of Clause 6 of the will makes and the second part of the said clause which deals with devolution of what and if at all anything that remains in the hands of the legatees.”**

(Emphasis supplied)

10.4. A conjoint reading of paragraphs 9, 23, 24 and 25 of the aforesaid judgment of the Supreme Court leaves no manner of doubt that the bequest made in favour of the original Defendant under Clause ‘I(a)’ of the Will in the present case is not in conflict with the bequest made in the same clause previously in favour of Sh. Surendra Kumar Mittal.

Pertinently, the judgment of **Mauleshwar Mani** (supra) relied upon by the Plaintiff was duly considered by the Supreme Court.

10.5. A co-ordinate Bench of this Court in the case of **Jasbir Kumar v. Kanchan Kaur** in a similar facts and circumstances held to the following effect:

“16. 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 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. Keeping in view the aforesaid principles of interpretation and more specifically the judgment of Supreme Court in **Sadaram Suryanarayana** (supra), **Rajeev Kumar** (supra) and **Jasbir Kumar** (supra), this Court is of the opinion that the contention raised by the Plaintiff is without any merit, considering the facts of the case at hand and recitals of the Will dated 17.06.1999.

11.1 Upon examining the Will dated 17.06.1999, it is evident that the Testatrix intended to confer absolute ownership of the Ground Floor of the suit property upon the late Shri Surendra Kumar Mittal with a specific right to dispose of the said property. However, the Testatrix also stipulated that in the event Shri Surendra Kumar Mittal died without disposing of the Ground Floor then the said floor would devolve upon the original Defendant i.e., her son Sh. Amit Mittal. The legality of such a bequest in the Will has been acknowledged and deliberated upon by the Supreme Court in **Sadaram Suryanarayana** (supra), **Rajeev Kumar** (supra) and **Jasbir Kumar** (supra).

11.2 The bequest made in favour of the original Defendant is in the nature of the residuary bequest which takes effect only if the immovable property is not disposed of by the main legatee, i.e., the father during his life time.

11.3 In the judgment of **Madhuri Ghosh** (supra) relied upon by the Plaintiff, the Supreme Court was concerned with assertion of rights by the main legatee whose rights were being disputed and interfered with by the subsequent/contingent legatee, during her



life time. However, in the facts of this case there has been no conflict between the main legatee and the residuary legatee.

11.4 In the present case, since the main legatee i.e., Sh. Surendra Kumar Mittal neither alienated nor sold the Ground Floor during his lifetime, second part of Clause 'I(a)' of the Will becomes operative upon his demise. Accordingly, the Ground Floor, which remained un-transferred, would devolve exclusively upon the original Defendant in terms of second part of Clause I(a) of the Will.

11.5 On the other hand, if the submissions of the learned counsel for the Plaintiff are accepted to hold that Ground Floor devolves upon Plaintiff and the original Defendant, it would operate against the intent of the Testatrix, which is unambiguously reflected in Clause 'I(a)'. A holistic reading of the Will dated 17.06.1999 shows that the Testatrix intended for her son and daughter to hold the property in equal shares and she had partitioned the property in the manner set out in clause I(a), (b) and (c) of the Will.

11.6 Further, if the Plaintiff's submissions are accepted and the residuary bequest is ignored, the suit property will devolve in the ratio of 2:1 between the plaintiff and the original Defendant which would ex-facie run contrary to the intent of the Testatrix.

11.7 This Court, therefore, is unable to accept the submissions of the Plaintiff that prayer clause (a) in the suit is liable to be decreed in favour of the Plaintiff, declaring her owner to the extent of 2/3rd share in the suit property.

12. To sum up, as per the Will dated 17.06.1999 the Plaintiff is the absolute owner of the First Floor along with one room on the Second Floor in the suit property and original Defendant is the absolute owner of the Ground Floor along with one room on the Second Floor of the suit property. These are the rights of the parties in the super-structure. In the land as well the parties will be co-equal owners of 50-50 each.

13. Since this is a suit for partition and each party is a Plaintiff, in view of the findings returned hereinabove a preliminary decree is hereby passed declaring that the Plaintiff is entitled to First Floor along with one room on the Second Floor of the suit property and the original Defendant is held entitled to Ground Floor along with one room on the Second Floor of the suit property. These are the rights of the parties in the super-structure. The Plaintiff along with the original Defendant is the owner of the land in the ratio of 50:50.

14. The registry is directed to draw up a preliminary decree in terms thereof.



15. With the aforesaid directions, the application stands disposed of.”

24. We also consider it appropriate to refer to and rely upon the judgment of this Court in *Shakuntala & Anr. v. Ravinder Singh Jaiswal*⁸. In that decision, while examining analogous contentions relating to the construction of Clauses 4 and 7 of the Will propounded therein, the Coordinate Bench undertook a comprehensive analysis of the applicable principles and held as follows:

“12. This Court has duly considered the submissions advanced by the learned senior counsel for the parties and the judgments relied upon thereby. Upon a harmonious reading of the Will in its entirety, it becomes evident that the intention of the Testator was to confer a life/limited interest upon his wife and not an absolute or exclusive right in the suit property. Undoubtedly, Clause 4 of the Will uses the expressions ‘*absolute and exclusive*’, however upon careful perusal of Clauses 7, 8 and 9 of the Will, it becomes amply clear that the Testator bequeathed limited life estate in favour of his wife Mrs. Nanki Devi.

13. Moreover, while deliberating upon the intention of the Testator, this Court also deems it appropriate to refer to the Introductory Clause in conjunction with Clause 11 of the Will. A plain and literal reading of the Introductory Clause ascertains that the Will was authored personally by the Testator. This assertion further finds corroboration in Clause 11 of the Will, wherein the Testator has expressly stated that the Will was typed by him. In view of the aforesaid, this Court finds it appropriate to observe that, since the Will was typed by the Testator himself, the usage of words/expressions therein were in pursuance of the standpoint of a layman and his own understanding of the vocabulary used in a general parlance. By virtue of the same, the intention of the Will cannot be circumscribed by usage of expressions “*absolute and exclusive*” under Clause 4 of the Will. It is apposite to note that when a testamentary instrument is authored by a layman, the linguistic acumen and the terminology used therein must not be read *stricto sensu*, by putting the usage of expressions to examination through the lens of an expert. On the contrary, the language used must be construed in light of the Testator's intention coupled with an understanding of the expressions, which remains

⁸ 2025 SCC OnLine Del 5544.



unembellished by technical legal interpretation.

14. In view of the aforestated observations, the argument advanced by the learned senior counsel representing the Appellants lacks substance and is devoid of merit. In this regard, the attention is drawn towards Section 82 of the Act, 1925, which is reproduced hereinbelow-

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

A plain reading of the above provision makes it manifestly clear that the meaning of any clause in a Will is required to be understood in the context of the entire instrument and not in isolation.

15. Moreover, reference may also be made to the Sections 87 and 88 of the Act, 1925, reproduced herein below-

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

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

Section 87 of the Act, 1925 underscores that the intention of the Testator has to be given effect to, as far as possible. Whereas Section 88 provides that if two clauses of a Gift or a Will are so irreconcilable that they cannot possibly stand together, the latter shall prevail.

16. As far as the submission made by the learned senior counsel representing the Appellants that the learned Single Judge failed to adequately consider the plea under Section 14(1) of the Act, 1956, this Court relies on the learned Single Judge's order dated 28.07.2015. The relevant paragraph from the Order is reproduced herein below-

“4. With the consent of the counsels for the parties, only one issue is framed from the present-

(1) what is the effect of clauses 4 and 7 contained in the registered will dated 24.02.1993, executed by late Sh. Mamchand Deswal father of the parties? (Onus upon parties)

5. Counsels for the parties state that in view of the fact that the legality and validity of the will dated 24.02.1993 executed by Shri Mamchand Deswal is undisputed, they be permitted to address arguments on the aforesaid issue in



the first instance. The aspect of the legality and validity of the document dated 26.08.2013, stated to be a will executed by the mother of the parties in respect of the suit premises, shall be examined later on.”

A perusal of the above-stated paragraphs show that no claim or issue was raised by the Appellants before the learned Single Judge against its claim raised under Section 14 of the Act, 1956 before this Court. Paragraph 5 of the Order, at the outset, reflects that the parties sought permission only to address the dispute arising out of the Will dated 24.02.1993 and accordingly, the issue was framed upon their request. Consequently, the contention of the learned senior counsel representing the Appellants that the learned Single Judge did not consider the plea under Section 14 of the Act, 1956, does not hold any merit, particularly in view of the background that the order dated 28.07.2015 was passed with the consent of the Parties. Therefore, in absence of any independent claim or subsequent issues framed with respect to Section 14 of the Act, 1956, the Appellants cannot at this stage press for relief under this Section, since the same was not pressed before the learned Single Judge.

the learned Single Judge did not consider the plea under Section 14 of the Act, 1956, does not hold any merit, particularly in view of the background that the order dated 28.07.2015 was passed with the consent of the Parties. Therefore, in absence of any independent claim or subsequent issues framed with respect to Section 14 of the Act, 1956, the Appellants cannot at this stage press for relief under this Section, since the same was not pressed before the learned Single Judge.

17. The judgments relied upon by the learned senior counsel representing the Appellants are, upon careful examination, clearly distinguishable and thus inapposite to the adjudication of the present dispute. The Appellants' reliance on *Ram Kishore Lal* (Supra), *Ram Gopal* (Supra), *Mathai Samuel* (Supra) is misplaced, as these cases pertain to distinct testamentary instruments effectuated for bequest. Consequently, the above-stated judgments are of no assistance in the interpretation of the Will.

18. With regard to the remaining judgments cited by the learned senior counsel representing the Appellants, it is noted that the judgments enunciate the principle that, in case of conflict between two clauses of a Will, the intention of the Testator/Executor on comprehensive reading of the instrument is required to be gathered. Hence, this Court finds such a proposition to be of limited relevance in view of the statutory provisions and interpretive principles delineated in the preceding paragraphs.



19. Learned senior counsel representing the Respondent has also placed reliance on *Raghubir Singh* (Supra), in this case the Supreme Court while dismissing the findings provided by the Trial Court, observed that the interpretation of the Trial Court, which gave effect solely to the first part of the Will, ran contrary to the rules of construction under the provisions of Sections 82, 83, 85 and 86 of the Act. The Court highlighted that one cannot isolate the part granting an “absolute estate” to the widow. Rather the testamentary instrument that appears absolute must be construed as a life estate if the language of the Will, considered contextually, suggests such intent.

20. Alternatively, learned senior counsel representing the Respondent has placed its reliance upon the decision of the Supreme Court in *Navneet Lal* (Supra), which lays down the settled principle of testamentary interpretation. It unequivocally affirms that the intention of the Testator is the guiding light in construing a Will, and as such a holistic reading of the entire document is necessitated. Isolated expressions must not be construed in a vacuum, rather the Will must be interpreted in the context of the Testator's personal background, familial relations, and understanding of the language/expressions used.

21. In *S. Rajgopal Chettiar* (Supra), the Supreme Court upheld the decision of the High Court, upholding that the word ‘*absolutely*’ cannot be read in isolation, *de hors* the entire bequest. In view of the Supreme Court having adjudicated upon a similar set of facts, the decision therein provides authoritative guidance and serves as a valuable reference point for the present dispute. Accordingly, this Court finds it suitable to consider the rationale therein while rendering its own determination.

22. In light of the aforesaid statutory provisions and the observation of this Court upon the judgments relied upon by the learned senior counsel representing the parties, the arguments of learned senior counsel representing the Appellant that the bequest *qua* the suit property will stop at Clause 4 of the Will, is untenable and cannot be accepted in view of Section 82 of the Act, 1925. Notably, the Testator in Clauses 8 and 9 bequeathed a sum of Rs. 21,000/- (Rupees Twenty-One Thousand Only) each to his two married daughters, whilst categorically recording that they were well-settled in their respective matrimonial homes. The wordings used in the Clauses 8 and 9 of the Will, further reinforces the inference that the intention of the Testator was not to grant an absolute estate to his wife rather the intention was to create a limited interest, with a subsequent bequest in favour of his son.”

(emphasis added)



25. Although the said decision discusses and applies several authorities of the Hon'ble Supreme Court, we deem it necessary to distinguish the judgment in ***Mauleshwar Mani*** (*supra*), which has been heavily relied upon by the learned Senior Counsel for the Appellant.

26. In our considered view, ***Mauleshwar Mani*** (*supra*) was rendered in the peculiar factual matrix of that case. As is evident from the judgment, the testamentary disposition therein resulted in the estate bypassing an entire generation and devolving exclusively upon the male heirs, to the exclusion of the daughters, thereby giving rise to considerations markedly different from those present in the case at hand.

27. Furthermore, the judgments of the Hon'ble Supreme Court, as well as the statutory provisions governing testamentary construction, and as elucidated both in ***Shakuntala*** (*supra*) and ***Sadaram Suryanarayana*** (*supra*), reiterate that the determinative inquiry must centre on discerning the true intent of the testatrix, gathered through a holistic reading of the testamentary instrument.

28. Selective emphasis on isolated clauses of a Will, without appreciating the testamentary scheme reflected in the document as a whole, does not lead to a correct or legally sustainable construction.

29. In this context, we are of the view that the learned Single Judge, upon a comprehensive consideration of the Will in its entirety, has correctly discerned the true intent of the testatrix and, on that basis, rendered a well-reasoned decision. The Judgement under challenge, in our opinion, does not warrant interference.



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DECISION:

30. For the foregoing reasons, and upon a careful examination of the interpretation of Clause I(a) of the Will, as undertaken by the learned Single Judge in the Impugned Judgment dated 29.05.2025, we are of the considered opinion that the present Appeal is devoid of merit and is, accordingly, dismissed.

31. The present Appeal, along with pending application(s), if any, stands disposed of in the aforesaid terms.

32. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.
DECEMBER 18, 2025/tk/kr