2024:DHC:3185

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

Reserved on: 19th March, 2024

Date of decision: 24th April, 2024

\+ **CM(M) 1333/2017 & CM APPL. 42656/2017**

MANMOHAN SINGH & ANR ..... Petitioner

Through: Mr. Jagdish Kumar Solanki, Adv.

versus

SHITAL SINGH & ORS. ..... Respondents

Through: Mr. Raghav Anthwal & Mr. Charu Sharma, Advs. for R-1 to 4.
Mr. Jatin Mongia & Mr. Anatesh Banon, Advocates for R-5 (M-[redacted]).

CORAM:
JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

Background

1. This hearing has been held through hybrid mode.

2. The present petition under Article 227 of the Constitution of India has been filed by the Petitioners- Manmohan Singh and Ravinder Singh (i.e. Defendant Nos.1&3 in the suit), who are the sons of late Gurcharan Singh, challenging the impugned order dated 26th September, 2017.

3. Vide the impugned order, the preliminary issue framed in ***Suit No. 613355/2016*** titled '***Shital Singh v. Manmohan Singh'***, was decided by the ld. Addl. District Judge, West, Tis Hazari, Delhi *(hereinafter, 'ld. Trial Court')* in favour of the Respondent Nos. 1-4 (i.e., Plaintiff Nos. 1-4). The ld. Trial Court held that by virtue of the Will dated 13th January, 1989, Smt.

Mahinder Kaur (wife of the late Gurcharan Singh) became the absolute owner of property bearing '***No. B-356, Hari Nagar Clock Tower, New Delhi'*** *(hereinafter, 'subject property').*

4. The Respondents impleaded in the present petition are as follows:

Respondent No. 1	Shital Singh	Plaintiff No. 1
Respondent No. 2	Raghbir Singh	Plaintiff No.2
Respondent No. 3	Harbhajan Singh	Plaintiff No.3
Respondent No. 4	Kawaljit Kaur	Plaintiff No.4
Respondent No. 5	Narinder Singh	Defendant No. 2
Respondent No. 6	Adish Kaur	Defendant No. 4

5. The background facts of the present writ petition are as follows - A suit for partition and permanent injunction concerning the subject property was filed by three sons of the late Gurcharan Singh—Shital Singh, Raghbir Singh, Harbhajan Singh—and the daughter, Kawaljit Kaur. The suit was filed against three siblings: Manmohan Singh, Narinder Singh, Ravinder Singh, and Adish Kaur, a granddaughter through Darshan Singh, the pre-deceased son of Gurcharan Singh.

6. In total, Gurcharan Singh had seven sons, one of whom, Darshan Singh, had passed away, and one daughter. Gurcharan Singh passed away on 14th March, 1989, survived by his wife, Mahinder Kaur. He had executed a registered Will dated 13th January, 1989. In this Will, he made a bequest in favour of his wife, Smt. Mahinder Kaur, in the following terms:

> "*That so long as I am alive, 1 shall remain full owner of my properties moveable and immoveable and after my death, it is my heartiest desire that my properties*

shall devolve in the manner stated as under and not by succession.

A) with respect of my properties B.314, Hari Nader, Clock Tower, New Delhi-110064, as well as shop Mo.9040, East Park Road, Sheedi Pura, Karol Bagh, New Delhi. 110005, my previous WILL dated 2nd September, 1981 registered as document No. 5285 in additional Book No.3, Volume No.203, entered at pages 35 to 36 registered on 4th September, 1981 shall prevail and the said properties shall devolve in the manner stated in the said Will.

B) ***that my property No.B.356, WZ-132, Hari Nager, Clock Tower, New Delhi- 110064 shall devolve to my wife Smt. Mahinder Kaur as life estate. She shall have every right to recover the rent of the said property and use the same. She has every right to lease out any portion and recover rent but she has no right to sell, alienate and transfer the same. In case, of her death, the said property shall devolve in the following manner****:-*

i) Shop No.2 shall vest to my daughter Smt. Kamal Jeet wife of Shri Kuldeep Singh, shown In 'Yellow Colour' in the plan attached. Shops No.3 and 4 and room No.1 in the ground floor and adjoining kitchen shown in 'Red Colour' shall devolve upon my grand sons Serva Shri Balbir Singh and Avtar Singh, sons of Shri Ravinder Singh absolutely, under the guardian ship of their father Shri Ravinder Singh being only Minors. Shops No.1 and 5 to 10 are seven shops and rooms No.2, 3 and 4 and two kitchen end 3 rooms in the first floor and one kitchen shown in 'Greer Colour' shall devolve upon my sons, Shri Shital Singh, Narinder Singh and Man Mohan Singh in equal shares. The portion shown is in 'Green Colour' in the plan attached. The said sons shell be entitled to entire first floor, second floor and whatever floor added in the property.

> *That I specifically exclude my son Shri Darshan Singh, Harbhajan Singh, Raghbir Singh and Ravinder Singh from inheriting my properties both moveable and immovable.*
>
> *That as regards house hold articles, the same shall belong to my wife Smt. Mahinder Kaur. My household articles are consisting of Coolers, Television, etc. etc. However, my Scooter Lambretta Gen to DIH-2405 shall devolve upon my son Sh. Ravinder Singh. Whatever, merchandise and clothes are lying in my shop shall belong to my wife who have every right to sell them and recover the proceeds.*
>
> *That I have got a Chit in M/s. Gursant Chit Fund of a sum of Rs.30,000/-which shall vest to my wife Smt. Mahinder Kaur.*
>
> ***That in case, my wife pre-deceased me then the immoveable properties shall vest in the aforesaid manner and my moveable properties stated above, cash at bank and house hold articles etc. etc. shall vest to my son Shi Shital Singh absolutely.***

7. There were also other bequests made in the Will, however, the same are not relevant for the present petition. Thereafter, Mahinder Kaur is stated to have passed away on 10th March, 2012.

Procedural History

8. Respondent Nos. 1-4 (i.e. Plaintiff Nos. 1-4) had filed a suit before the ld. Trial Court *inter alia,* seeking a decree of partition in favour of the Respondent Nos. 1-4 in respect of the subject property, and to restrain the Petitioners, Manmohan Singh and Narinder Singh, from creating any third-party interest in the subject property or from causing any hindrance to peaceful enjoyment of the subject property by Respondent Nos. 1-4.

9. Before the ld. Trial Court, the Petitioners (Defendants Nos. 1 and 3) filed their joint written statement, asserting that the suit itself was not

maintainable under Section 14 of the Hindu Succession Act, 1956 *(hereinafter, '1956 Act')*. In their written statement, the Defendants admitted to the execution of a will dated 13th January, 1989. However, they contended that by virtue of the said Will, Mahinder Kaur was granted only a lifetime estate in the subject property, thereby limiting her rights. Accordingly, it was argued before the ld. Trial Court that after the death of Mahinder Kaur, the subject property should devolve as stipulated in the 1989 Will.

10. Thus, the preliminary issue was framed as under:

> *" Whether the suit filed, by the plaintiff is liable to be dismissed in view of the existence of the Will dated 13.01.1989 ? OPD."*

According to the Petitioners' arguments before the ld. Trial Court, the present situation falls under Section 14(2) of the 1956 Act, which specifies that a woman's limited interest in a property, as defined by a will, cannot be expanded to grant her absolute ownership. The above issue was, accordingly, framed as a preliminary issue for consideration and was decided by the impugned order.

11. In the impugned order, the ld. Trial Court placed reliance on the judgment of the Supreme Court in ***'Jupudy Pardha Sarathy v. Pentapati Rama Krishna' [2015 INSC 834]***. In that decision, the Supreme Court held that when a husband bequeaths immovable property to his wife, it is generally in lieu of her pre-existing right to maintenance. Therefore, even if the Will grants only a life estate to the wife, that right becomes absolute under Section 14(1) of the 1956 Act, because it compensates for her maintenance rights.

12. According to the ld. Trial Court, the said decision of the Supreme Court applies regardless of any specific mention in the Will regarding the life interest, as it automatically confers absolute ownership to the widow. In the present case involving late Gurcharan Singh, who bequeathed the subject property to his wife-Mahinder Kaur, during his lifetime for her maintenance, it is similarly concluded that she became the absolute owner of the subject property under Section 14(1) of the 1956 Act. Consequently, according to the ld. Trial Court the subject property should devolve according to her successorship upon her intestate death, rather than as specified in the Will dated 13th January, 1989. Thus, the ld. Trial Court decided in favour of the Respondents, dismissing any claims that the suit should be dismissed based on the Will's terms. The relevant observations of the ld. Trial Court are set out below:

> *"6. The execution of the correctness of Will is admitted by both the parties. Now, issue to be decided is whether by virtue of said Will Smt. Mahinder Kaur has got only life estate or her right can be enlarged so as to make her absolute owner of the suit property. As per contentions of the defendant, present case falls under the ambit of Section 14 (2) of the Hindu Succession Act wherein it is stated that if woman has limited interest in a property by virtue of Will then same cannot be enlarged to make female hindu an absolute owner of the property.*
> *7. However, the Hon'ble Supreme court in the case of* ***Jupudy Pardha Sarathy versus Pentapati Rama Krishna & others Civil Appeal No.375 of 2007,*** *decided on 06.11.15 has discussed said position at length.*
> *8.. The facts of the case are similar to that in the present case. The Hon'ble Apex Court in the said judgments has observed as follows:*

"34. Though no specific word has been mentioned in Exhibit A-2 that in lieu of maintenance life interest has been created in favour of Veeraraghavamma, in our opinion in whatever form a limited interest is created in her favour who was having a pre-existing right of maintenance, the same has become an absolute right by the operation of Section 14(1) of the Hindu Succession Act.

9. ***Hence, it has been held by the Hon'ble Apex Court that when an immovable property is bequeathed by husband in favour of his wife then same is done in lieu of pre-existent right of the maintenance of that female. Hence, in said case, female hindu becomes absolute owner of the property and the same falls under Section 14 (1) of the Hindu Succession Act and not under Section 14 (2) of the Hindu Succession Act. Hence, even if the Will states the female hindu acquire only life estate then also as the same has been given being a widow by her husband for the purpose of maintenance, therefore, she will have an absolute right in the property.*** *In the present case also, Sh. Gurcharan Singh has bequeathed the suit property in favour of his wife during his lifetime. The language of the Will clearly states that during lifetime, Smt. Mahinder Kaur was entitled to recover all the rent and to lease out the suit property. This shows that by virtue of the said Will, the suit property was bequeathed in favour of Smt. Mahinder Kaur in lieu of her pre existing right of maintenance by her husband being widow. Hence, in the present case also, provisions of Section 14 (1) of the Hindu Succession Act shall apply. Hence, it cannot be said that present suit is liable to be dismissed in view of the existence of Will dated 13.01.1989 or that suit property shall be devolved as per terms of Will dated 13.01.1989. By virtue of the said Will, Smt. Mahinder Kaur has become the*

absolute owner of the suit property who has died intestate. Hence, suit property shall devolve as per successorship. The present suit is accordingly decided in favour of the plaintiff and against defendant."

13. The above order passed by the ld. Trial Court has been challenged by two of the Defendants in the suit. Respondent No.5- Narinder Singh, who is Defendant No.2 in the suit, also supports the case of the Petitioners.

14. Notice was issued in the present petition vide order dated 24th November, 2017. The ld. Joint Registrar, vide order dated 4th July, 2018 noted that Respondent Nos. 1 to 4 and Respondent No. 6, had filed their common reply to the petition. As noted, vide order dated 10th October, 2018, the Respondent No. 5 had also filed its reply. On 15th January, 2019, the Petitioners submitted that they did not wish to file rejoinders in respect of the reply filed by Respondent No. 5. Vide order dated 4th April, 2019, this Court directed the ld. Trial Court to not pronounce final judgment in the suit, till further orders. On 15th November, 2019, this Court crystallised the limited issue that arose in the present petition in the following terms:

"The question that has arisen is whether the Will of Late Shri Gurcharan Singh dated 13th January, 1989, which allowed life estate in the suit property in favour of his wife - Smt. Mahinder Kaur, would be construed as creating an absolute right in favour of his wife or as maintenance, despite other bequests in the Will."

15. In the meantime, on 21st April, 2022, this Court was apprised of the judgment rendered by the Supreme Court in ***Jogi Ram v. Suresh Kumar & Ors. [2022 INSC 131]***. Thereafter, since none was appearing for the Respondent Nos. 1-4 & Respondent No. 6, on 23rd May, 2022, the Court directed the ld. Local Commissioner, who was recording evidence for the

parties in the connected Trial Court matter, be sent a copy of the order to apprise the said Respondents about the present writ. Vide order dated 24th November, 2022, this Court directed the parties to produce the issues framed in the suit before the ld. Trial Court, and on 13th February, 2023, the same were produced. The issues framed in the suit before the ld. Trial Court read as follows:

> ***"1. Whether the suit filed by the plaintiff is liable to be dismissed in view of the existence of the WILL dated 13.01.1989?***
>
> *2. Whether the plaintiff is entitled for preliminary decree of partition of the suit property as prayed for ? OPP*
>
> *3. Whether the plaintiff is entitled for final decree of the partition of the suit property as prayed for ? OPP*
>
> *4. Whether the plaintiff is entitled for permanent injunction as prayed for? OPP*
> *5. Relief"*

16. Vide order dated 4th August, 2023, the parties were given liberty to file their respective written submissions, as the question that has arisen in the present writ relates to the legal interpretation of Section 14(2) of the 1956 Act.

17. In the reply to the present petition dated 20th April, 2018, the stand of the Respondent Nos. 1-4 and Respondent No. 6 is broadly as follows:

- The present petition is not maintainable and should be rejected in all circumstances, by placing reliance on Supreme Court's decision in ***Estralla Rubber v. Dass Estate (P) Ltd., [2001 INSC 441].***

- It is disputed that the ld. Trial Court ignored the late Gurcharan Singh's wishes. Mahinder Kaur, being a housewife dependent on her husband, was bequeathed the subject property by late Gurcharan Singh through his Will, giving her rights to rent and lease it. This ownership was transformed under Section 14(1) of the 1956 Act after her husband's death, and she managed the subject property's income for her maintenance. Upon her death intestate, her legal heirs became entitled to inherit the subject property equally as Class-1 heirs under the 1956 Act.
- Assertions are made that Mahinder Kaur lived in the subject property for 23 years, relying on the rent from the property for maintenance, supported by additional movable assets provided in the Will.
- It is further mentioned that the subject property now includes construction up to the second floor. However, at the time of the Will's execution in January 1989, the subject property was only partially constructed up to the first floor. Afterwards, Mahinder Kaur issued a General Power of Attorney on 4th October, 2007, to Respondent No. 1, authorising him to manage the subject property, including renting it out and overseeing additional construction.
- It is denied that the ld. Trial Court wrongly relied on ***Jupudy Partha Sarathy (supra)***. Petitioners have not raised any ground specifying as to why the judgment referred by the ld. Trial Court was not applicable to the facts in question, and it is argued that the judgment cited by the ld. Trial Court applies directly to the factual circumstances of the said suit.

18. In the rejoinder dated 14th May, 2018, the stand of the Petitioners is mainly that the Will stipulated that Mahinder Kaur could only recover rent and lease the subject property, which the ld. Trial Court interpreted as conferring her maintenance rights. The ld. Trial Court held that even though the Will specified only a life estate, under Section 14(1) of the 1956 Act, this estate was converted into an absolute ownership. In the rejoinder, it is argued that the ld. Trial Court erred in its application of Section 14(1) of the 1956 Act. This is challenged on the ground that just because the subject property was given to Mahinder Kaur by her husband for the purpose of maintenance, she does not automatically gain absolute ownership. The Will did not grant her an absolute estate, but only a life estate with specific rights to use the property for her maintenance.

19. In the reply to the present petition, the stand of the Respondent No.5, who supports the Petitioners, is broadly as follows:

- Respondent No. 5 is in partial possession of and co-owns the property specified in the Will executed by his father – late Gurcharan Singh. Subject property was self-acquired by his father, who also built the ground floor and part of the first floor.
- The said Will, specifically excluded Darshan Singh (pre-deceased son), Harbhajan Singh, and Raghbir Singh from inheriting any movable and immovable properties. It also excluded Ravinder Singh from such properties, although his sons, under his guardianship, were assigned a portion of the subject property.
- Mahinder Kaur was granted a life or restricted estate in the subject property, allowing her to live there and collect rent but not to sell,

transfer, or alienate it. This estate was not granted as part of any pre-existing maintenance rights. She passed away on 10th March, 2012. Her limited estate ended with her death, and the subject property was divided among Petitioner No.1, the sons of Petitioner No.2, and Respondents No.1, 4, and 5 as stipulated in the Will.

- The Will clearly intended only to grant a "life interest" to his wife in the subject property, which included the right to reside there and to collect and use rent from the subject property. His intention was that his property, being self-acquired, should be distributed according to the terms set out in the Will, not by the general law of succession. Therefore, Mahinder Kaur's life interest in the subject property did not develop into an absolute interest; it was merely a limited estate that ended with her death.

Submissions of ld. Counsels for the parties

Submissions on behalf of the Petitioners and Respondent No. 5

20. Respondent No. 5- Narinder Singh supports the case of the Petitioners. He has been impleaded as Defendant No. 2 in the suit before the ld. Trial Court.

21. According to Mr. Jatin Mongia, ld. Counsel for the Respondent No.5, the ld. Trial Court completely erred in interpreting Section 14 of the 1956 Act. He submitted that the issue relating to the interpretation of Section 14(2) of the 1956 Act, in relation to bequest of a limited estate, is no longer *res integra* in view of the recent judgment of the Supreme Court in ***Jogi Ram (supra)***. In a similar factual situation, the Supreme Court held that the distinction between Section 14(1) and Section 14(2) of the 1956 Act hinges on whether the wife had an interest in the property prior to the execution of

the Will. In such cases, the property would become the absolute property of the woman. However, under Section 14(2) of the 1956 Act, a man's right to bequeath his self-acquired property to his wife for life and thereafter to other legal heirs remained intact.

22. It is his submission that the judgment relied upon by the ld. Trial Court in ***Jupudy Pardha (supra)*** was erroneous, as the decision related to a Will of 1920 before the 1956 Act's enactment and thus, the said judgment would not be applicable in the facts of the present case. In the present case, the Will is dated 13th January, 1989. He also submitted that ***Jupudy Pardha (supra)*** is further distinguishable on the grounds that in that decision, the parties did not dispute the fact that the property was given to the wife as maintenance. This is evident from paragraph 30 of the said decision. The manner in which the ld. Trial Court merely relied upon the said decision to hold the issue against the Petitioner and Respondent No. 5 is also incorrect. According to him the judgment in ***Jupudi Parda Sarthy (supra)*** is distinguishable on the following counts:

i) The widow in the said case was issueless.

ii) The husband did not give any other asset to the wife, except the property and well next door.

iii) That it was an admitted position that she was enjoying the property as maintenance,

It was in this background that the decision in ***Jupudi Partha Sarthy (supra)*** was delivered by the Supreme Court.

23. As per ld. Counsel, the latest decision of the Supreme Court in ***Jogi Ram (supra)*** clearly distinguishes ***Jupudi Partha Sarthy (supra)*** and also holds that if every case which falls under Section 14(2) of the 1956 Act, where a

life estate is created in favour of the wife, is to be construed under Section 14(1) of the 1956 Act, it may work to the disadvantage of women who may then be excluded in Wills by the husband. In ***Jogi Ram (supra)***, the Supreme Court clearly held that the intention under Section 14 of the 1956 Act was merely to ensure that any transaction, under which a Hindu female received a new or an independent title, under any of the modes mentioned in Section 14(2) of the 1956 Act, was fully recognized.

24. As per ld. Counsel, in the present case, the testator has also given other assets to the wife, hence it cannot be said that the enjoyment of rentals from the subject property during her lifetime constituted maintenance. Moreover, following the enactment of the Hindu Adoption and Maintenance Act, 1956, *(hereinafter, 'HAMA')* the question of what constitutes maintenance must be decided solely under the provisions of HAMA and not based on the bequest in the Will. According to ld. Counsel, rentals enjoyed by the wife during her lifetime could at best constitute a charge on the subject property but would not grant her an absolute interest. This is because in the subject property, there are the 10 shops from where rental income is being earned, and the same ought to be treated as maintenance and not the property of the mother itself. The life estate given to the mother cannot lead to a situation that in every case the property is treated *in lieu* of maintenance and, thereafter, the wishes of the father are completely ignored.

25. Ld. Counsel highlighted that the question in the present case would be whether the suit in this case would be liable to be dismissed or decreed in terms of the Will. It is his submission that the Will is accepted and admitted by the Respondent Nos. 1-4 and Respondent No. 6 before the ld. Trial Court. The suit has to be adjudicated on the basis of whether the succession would

be as per the Will or would it be intestate succession, the mother having passed away intestate. The Will executed by the testator itself says that his assets should go as per the Will and not by succession. For whatever reasons, the testator has excluded four sons and given movable properties to his wife. Even in the present case at best, the rental income received from the subject property and the shops could be considered as maintenance, but not the property itself. Under such circumstances, it is his submission that the decision of the ld. Trial Court is unsustainable.

26. Finally, reliance is also placed upon the judgment in ***Sadhu Singh v. Gurudwara Sahib Narike (2006 INSC 586)*** to argue that any interpretation rendering Section 14(2) of the 1956 Act redundant cannot be accepted by the Court. In the said decision, the Supreme Court further held that the acquisition of possession of property by a female Hindu after the enactment of the 1956 Act does not normally attract Section 14(1) of the 1956 Act. Furthermore, if, after the 1956 Act, a female Hindu receives possession of the property under a devise, gift, or other transaction, and any restriction is placed on her right, such restriction must be considered in light of Section 14(2) of the 1956 Act.

Submissions on behalf of Respondent Nos. 1 to 4

27. On behalf of the Respondent Nos.1 to 4, it is submitted by ld. Counsel Mr. Raghav Anthwal that the ld. Trial Court's decision was correct and argues against any interference by this Court, upholding that the subject property should devolve *via* successorship as per the ld. Trial Court's interpretation of the 1956 Act. It is argued that the bequest of the rentals from the subject property in favour of the wife itself shows that the same

constitutes maintenance and would, therefore, constitute beyond life interest with the wife i.e., an absolute interest.

28. Ld. Counsel argued that the subject property was a self-acquired property of the late Gurcharan Singh, who was suffering from cancer. He executed a registered Will on 13th January 1989, leaving a life estate to his wife. His wife put the income from the property to use and continued to reside there. She also had the right to construct further and enjoy the rent from the subject property. The testator died on 14th March 1989. At the time the Will was executed, there were a total of 10 shops, and part of the first floor was constructed. However, after his demise, his wife completed the setup of the first floor and also constructed the second floor. She was also collecting the rent during her lifetime.

29. Ms. Mahinder Kaur, however, died on 10th March, 2012 intestate and, according to ld. counsel, under the 1956 Act, if a property has been given in lieu of maintenance, Section 14(1) of the 1956 Act would apply. According to him, the subject property ought to be divided, as though it was an intestate succession and not in terms of the Will.

30. He relied upon the decision of the Supreme Court in ***V. Tulasamma & Ors. v. V. Sesha Reddi (1977 INSC 91)*** to argue that the right to maintenance of a wife is an absolute right, and she ought to be deemed to have become the full owner of the property irrespective of the compromise. The wife's right cannot be deemed as a limited interest in the property.

31. Insofar as ***Jogi Ram (supra)*** is concerned, he submitted that in a recent decision of the Supreme Court in ***Munni Devi Alias Nathi Devi (Dead) v. Rajendra Alias Lallu Lal (Dead) (2022 INSC 590)***, the Supreme Court again reiterated the position as laid down in ***V. Tulasamma (supra)***,

and the Supreme Court had observed that there is no doubt that a Hindu woman's right to maintenance is not an anti-formality or illusion but a tangible right in the property.

32. In the written submissions dated 10th October, 2023, reliance is placed upon the following decisions:

- ***Prem Chand v. Ram Nath (2014: DHC:999)***
- ***Paramjit Anand v. Mohan Lal Anand (2018:DHC:2170)***

Analysis

33. The question that arises in the present case is whether the judgment delivered by the ld. Trial Court is sustainable in view of Section 14(2) of the 1956 Act. Section 14 of the Hindu Succession Act, 1956 reads as under:

> ***"Section 14 - Property of a female Hindu to be her absolute Property***
> *(1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.*
>
> *Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.*
>
> *(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the*

gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

34. The scope of the above provision has been discussed by the Supreme Court in ***Eramma v. Veerupana (1965 INSC 255)***. The Supreme Court noted that this section specifically applies to properties that a female Hindu possesses with some legal title, regardless of how limited her interest might have been prior to commencement of the 1956 Act. It clarifies that the purpose of the provision is to convert any ***'limited'*** ownership into ***'full'*** ownership, thereby eliminating the traditional ***'limited estate'*** or 'widow's estate' recognized in Hindu law. The 1956 Act makes Hindu women become absolute owners with complete disposition powers and makes the property heritable by her own heirs rather than reverting to the heirs of the last male holder. However, the Supreme Court also made it clear that Section 14(1) of the 1956 does not grant new property rights where the woman had no previous title to the property.

35. At this stage, the object and purpose of Section 14(2) of the 1956 Act needs to be noted. According to Mulla on Hindu Law (23rd Edition)[1], the object of this subsection is twofold:

- ***firstly***, it aims to specify that the language of Section 14(1) of the 1956 Act is distinct, and coexists with other related enactments, such

[1] Mulla on Hindu Law, 23rd Edn, pp. 1183 ("**Sub-section (2): Restricted estate**. The object of this sub-section is to confine the language of sub-s (1) to its own subject and to stress its co-existence with sets of provisions in other enactments such as the Transfer of Property Act and the Indian Succession Act which may be applicable to Hindus. The object of this sub-section is also to make it abundantly clear that a restricted estate can even after the commencement of the Act come into existence in case of interest in property given to a female Hindu, by operation of transactions *inter vivos*, by testamentary disposition, by decree or order of a civil court or under an award. It is also intended to make it clear that any such restricted estate created prior to the commencement of the Act will not be enlarged into full ownership by operation of sub-s (1) if the gift, will, other instrument, decree, order or award had prescribed a restricted estate. Also see notes on restricted estate, below.")

as the Transfer of Property Act, 1882 and the Indian Succession Act, 1925, applicable to Hindus.

- ***secondly***, it clarifies that a restricted estate can still be established post-enactment of the 1956 Act through various means like transactions, wills, decrees, or awards that define such a limited scope of ownership. If a restricted estate was created before the enactment, it does not automatically convert into full ownership under subsection (1) of Section 14 of the 1956 Act, if the original terms specified a limited ownership.

36. Thus, in the above background, the challenge to the ld. Trial Court's judgment is based on whether the bequest made by late Gurcharan Singh is one under Section 14(1) of the 1956 Act, as maintenance for his wife, or under Section 14(2) of the 1956 Act, as a bequest under the Will.

37. The decision on this issue would impact the legal heirs of Mahinder Kaur, the wife of the testator. As discussed initially, the couple had seven sons and one daughter. In paragraph (B) of the Will (as extracted above), the testator i.e., the husband of Mahinder Kaur, stipulates as under:-

i) The wife would have the right to recover the rent of the said property and use the same.

ii) The wife would have the right to lease out any portion and recover rent.

iii) However, she has no right to sell alienate and transfer the subject property

iv) After her death, the devolution would be as under:-

- Shop No. 2: to the daughter i.e. Kawaljit Kaur.

- Shop Nos. 3 and 4 and Room 1 in the ground floor, and the adjoining kitchen: in favour of the grandsons- Balbir Singh and Avtar Singh, sons of Ravinder Singh, absolutely.
- Shop Nos. 1 & 5 to 10, as also Room Nos. 2,3 and 4 and two kitchens, and three rooms in the first floor and one kitchen: in favour of Shital Singh, Narinder Singh and Manmohan Singh, in equal shares.
- First floor, second floor and if any further floor is added, the same would also belong to these sons.
- The testator excludes- Darshan Singh, Harbhajan Singh, Raghbir Singh and Ravinder Singh *i.e.* the four sons from inheriting any assets.
- Household articles in favour of the wife Mahinder Kaur, namely, coolers, television etc.
- Scooter- Ravinder Singh.
- A chit fund of Rs.30,000/- in favour of Mahinder Kaur
- The testator also provides that if his wife pre-deceases him, then the bequest would devolve in the same manner as set out above[2].

38. There are two competing arguments as to the legal interpretation of this Will. The first argument is that this entire bequest should be considered as maintenance for the wife under Section 14(1) of the 1956 Act which, therefore, results in her becoming the absolute owner of the property. The other argument is that the wife did not have any rights when the Will was

[2] Since the wife did not pre-decease the testator, this clause would not apply.

executed. The Will, merely, gave her life estate, and upon her death, it would devolve in terms of the Will.

39. The legal position of Section 14 of the 1956 Act is now well-settled in the following decisions:-

i) ***V. Tulasamma (supra),*** in this decision, the Supreme Court conclusively laid down the incidents and characteristics of a Hindu woman's right to maintenance, and held that the provisions of Section 14 of the 1956 Act ought to be liberally construed in order to advance the object of the 1956 Act, which is to enlarge the limited interest possessed by a Hindu widow, which was in consonance with the changing temper of the times;

ii) In ***Jogi Ram (supra)***, the Supreme Court discusses the entire law on the subject and also considers the earlier decisions, including the decisions in ***Jupudy Pardha Sarathy (supra)*** and ***V. Tulasamma (supra).***

iii) ***Jupudy Pardha Sarathy (supra)*** which the ld. Trial Court has relied upon, and;

iv) ***Munni Devi (supra)*** relied upon by the contesting Respondents.

40. In ***Tulasamma (supra)***, the Appellant sought maintenance from joint family properties controlled by the deceased husband's brother, as her husband had passed away in 1931. A decree awarded her certain properties for her maintenance, granting her a limited interest without rights of alienation. Despite the 1956 Act, she leased out these properties, leading to a challenge asserting that such alienations were only valid for her lifetime.

She claimed full ownership under Section 14(1) of the 1956 Act, but the Trial Court held that her interest did not expand under Section 14(2) of the 1956 Act. The Supreme Court allowed the appeal, and it was held that since the properties were acquired by the Appellant under the compromise in lieu of or in satisfaction of her right of maintenance, it is sub-section (1) and not sub-section (2) of Section 14 of the 1956 Act, that would be applicable, and hence the Appellant must be deemed to have become full owner notwithstanding that the compromise prescribed a limited interest to her. The Supreme Court also laid down the propositions emerging in respect of incidents and characteristics of a Hindu woman's right to maintenance. The relevant portions of the said decision are as follows:

> *"62. (1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights.*
>
> *(2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be*

liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long-needed legislation.

(3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

(4) Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse, declare or recognise pre-existing rights. In such cases a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in this sphere. Where, however, an instrument merely declares or recognises a pre-existing right, such as a claim to maintenance or partition or share to which the female is entitled, the sub-section has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus where a property is allotted or transferred to a female in lieu of maintenance or a share at partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

(5) The use of express terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', 'or arrears of maintenance', etc. in the

Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

(6) The words 'possessed by' used by the legislature in Section 14(1) are of the widest possible amplitude and include the state of owning a property even though the owner is not in actual or physical possession of the same. Thus, where a widow gets a share in the property under a preliminary decree before or at the time when the 1956 Act had been passed but had not been given actual possession under a final decree, the property would be deemed to be possessed by her and by force of Section 14(1) she would get absolute interest in the property. It is equally well settled that the possession of the widow, however, must be under some vestige of a claim, right or title, because the section does not contemplate the possession of any rank trespasser without any right or title.

(7) That the words 'restricted estate' used in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest, but also any other kind of limitation that may be placed on the transferee."

41. In ***Jogi Ram (supra),*** the testator in terms of the Will dated 15th April, 1968 bequeathed to his wife a limited ownership for her enjoyment during her lifetime with respect to 50% of the land in question. The Will also provided that she could not alienate, transfer or create third party rights over the same. After her lifetime, her share of the property was to vest absolutely in Shri. Jogi Ram. The question before the Supreme Court was whether the bequest was absolute in favour the wife as maintenance under Section 14(1)

of the 1956 Act, or bequest under the Will would follow, after the lifetime of the wife. The relevant portion of the judgment are set out below:-

> *"12. On the second aspect the High Court has taken a view that V. Tulasamma & Ors. (supra) case had sufficiently resolved any uncertainty under Sections 14(1) & 14(2) of the said Act. A Hindu female has a right to maintenance on a property if a charge was created for her maintenance, the right would become legally enforceable irrespective, even without a charge, the claim for maintenance was a pre-existing right so that any transfer declaring such right would not confer a new title but merely confirm pre-existing rights and Section 14(2) of the said Act cannot be interpreted in a manner that would dilute Sections 14(1) and 14(2) of the said Act.* ***Only in a scenario where the instrument created a new title in favour of the wife for the first time, would Section 14(2) would come into play and not where there was a pre-existing right****. Ram Devi was held to have been conferred with a limited right which would translate into an absolute right over the suit property as it was only a confirmation of the pre-existing right over the property.*
>
> *...*
>
> *17. There is no doubt that Section 14 of the said Act is the part of the said Act to give rights of a property to a Hindu female and was a progressive step. Sub-Section (1) of Section 14 of the said Act makes it clear that it applies to properties acquired before or after the commencement of the said Act. Any property so possessed was to be held by her as full owner thereof and not as a limited owner. The Explanation to sub Section (1) of Section 14 of the said Act defines the meaning of "property" in this subsection to include both movable and immovable property acquired by the female Hindu by inheritance or devise or a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, or by her skill or exertion, or*

by purchase or by prescription or in any other manner whatsoever, including stridhana. The Explanation is quite expansive.

18. Sub-Section (2) of Section 14 of the said Act is in the nature of a proviso. It begins with a 'non-obstante clause'. Thus, it says that "nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court...." etc. where a restricted estate in such property is prescribed. In our view the objective of sub-Section (2) above is quite clear as enunciated repeatedly by this Court in various judicial pronouncements, i.e., ***there cannot be a fetter in a owner of a property to give a limited estate if he so chooses to do including to his wife but of course if the limited estate is to the wife for her maintenance that would mature in an absolute estate under Section 14(1) of the said Act****."*

42. After having discussed the provision in detail, the Supreme Court interpreted the Will itself, and observed as under in relation to the intention of the testator:-

"19. Before considering the submissions it would be appropriate to turn to the Will itself. ***The Will while conferring a limited estate on Ram Devi, Tulsi Ram had clearly stated that she will earn income from the property for her livelihood. The income, thus, generated from the property is what has been given for maintenance and not the property itself****. The next clarification is that after the lifetime of Ram Devi, the appellant will get the ownership of the remaining half portion also. It is specified that in case Ram Devi pre-deceases Tulsi Ram, then all the properties would go absolutely to the appellant and that the other children will have no interest in the property. We may note that Tulsi Ram had six children. One son and four daughters are from the first wife and Bimla Devi was*

> *the daughter from the second wife. At the stage when the Will was executed one of the daughters was unmarried and the Will also provided that in case for performing the marriage Ram Devi needs money she will have the right to mortgage the property and earn money from the same and will further have the right to gain income even prior to the marriage.*
> *20. We have set forth the terms and conditions of the Will to understand the intent of the testator.* ***The testator is, at least, clear in terms that the income derived from the property is what is given to the second wife as maintenance while insofar as the properties are concerned, they are divided half and half with the appellant having an absolute share and the wife having a limited estate which after her lifetime was to convert into an absolute estate of the appellan****t."*

43. In the above decision, the Supreme Court drew a distinction between *'income from property'* and *'the property itself'*. It came to the conclusion that the income from the property to the wife was maintenance, but not the property itself. The Supreme Court then framed the following two issues for consideration:-

> *"i. In the given factual scenario did Ram Devi become the absolute owner of the property in view of Section 14(1) of the said Act or in view of the Will the Explanation under Section 14(2) would apply*
>
> *ii. What is the effect of the first round of litigation which came up to this Court between the appellant and Ram Devi, the two beneficiaries of the Will."*

44. The Court then analysed the decision in ***V. Tulasamma (supra)*** and held that the word *'possessed'* in Section 14(1) of the 1956 Act has to be

construed widely. The Hindu woman need not have physical or actual possession of the property so long she has a right in the property. The observations of the Supreme Court are as under:-

> *"29.* ***In the light of the aforesaid passage, Sections 14(1) & 14(2) of the said Act were entered by the Court. The word "possessed" was held to be used in a wide sense not requiring a Hindu woman to be an actual or physical possession of the property and it would suffice if she has a right in the property. The discussion in para 33 thereafter opines that the intention of the Parliament was to confine sub-section (2) of Section 14 of the said Act only to two transactions, viz., a gift and a will, which clearly would not include property received by a Hindu female in lieu of maintenance or at a partition. The intention of the Parliament in adding the other categories to sub-section (2) was merely to ensure that any transaction under which a Hindu female gets a new or independent title under any of the modes mentioned in Section 14(2) of the said Act. The conclusions were thereafter set forth in para 62 of the judgment……."***

45. After analysing the other decisions, in the facts of the said case, the Court observed that under Section 14(2) of the 1956 Act, a restricted right in favour of the female is permissible in law. The relevant portion is as under:-

> *"30.* ***In our view the relevant aspect of the aforesaid conclusion is para 4 which opines where sub-section (2) of Section 14 of the said Act would apply and this does inter alia applies to a Will which may create independent and new title in favour of females for the first time and is not a recognition of a pre-existing right. In such cases of a restricted estate in favour of a female is legally permissible and Section 14(1) of the said Act will not operate in that sphere***.

31. We may add here that the objective of Section 14(1) is to create an absolute interest in case of a limited interest of the wife where such limited estate owes its origin to law as it stood then. The objective cannot be that a Hindu male who owned self-acquired property is unable to execute a Will giving a limited estate to a wife if all other aspects including maintenance are taken care of. If we were to hold so it would imply that if the wife is disinherited under the Will it would be sustainable but if a limited estate is given it would mature into an absolute interest irrespective of the intent of the testator. That cannot be the objective, in our view.

32. The testator in the present case, Tulsi Ram, had taken all care for the needs of maintenance of his wife by ensuring that the revenue generated from the estate would go to her alone. He, however, wished to give only a limited lift interest to her as the second wife with the son inheriting the complete estate after her lifetime. We are, thus, of the view that it would be the provisions of Section 14(2) of the said Act which would come into play in such a scenario and Ram Devi only had a life interest in her favour. The natural sequittur is that the respondents cannot inherit a better title than what the vendor had and, thus, the view taken by the trial court and the first appellate court is the correct view and the sale deeds in favour of the respondents cannot be sustained."

46. The Supreme Court also distinguished the case of ***Jupudy Pardha Sarathy (supra)*** on the grounds that the decision concerned a Will dated before 1956, i.e., prior to the enactment of the Hindu Succession Act, 1956.

47. In another case, ***Mr. Ranvir Dewan v. Mrs. Rashmi Khanna & Anr. [2017 13 SCR 542]*** the facts were that the Appellant-a son of the testator, and the Respondent No.1-his sister, were each bequeathed different floors of

a house by their father's Will. The mother was granted a "life interest" in the house, allowing her to reside there until her death. Conflicts arose between the siblings, leading to a joint suit by the Appellant and his mother against Respondent No.1, seeking a declaration that the mother was the absolute owner of the house due to the expansion of her "life interest" into an absolute interest under Section 14(1) of the 1956 Act following her husband's death. However, both the Single Judge and the Division Bench of the High Court dismissed the suit, stating that the case fell under Section 14(2) of the 1956 Act, which maintained the mother's "life interest" as a "restricted estate" until her death. The Appellant and Respondent No.1 were deemed the absolute owners of their respective portions of the house. The Supreme Court upheld this judgment, agreeing that the disposition of the property under the will was in line with Section 14(2) read with Section 30 of the 1956 Act, and found no error in the trial court's judgments.

48. In the above decision, the Appellant's father was the sole owner of the said house. The Will he executed intended to grant only a 'life interest' to his wife (the Appellant's mother) in the house. This 'life interest' was granted independently of any pre-existing right she may have had. Furthermore, the Supreme Court noted that it was undisputed that this right was limited to her residing in the house during her lifetime and using the income from the property for her maintenance. The relevant portions of the said decision are as follows:

> *"33. In order to decide the question as to whether the appellant's case falls under Section 14 (1) or (2) of the Act, it is necessary to first examine as to what is the true nature of the estate held by the testator. Second, what the testator had intended and actually bequeathed*

to his wife by his Will; and lastly, the right in the property received by Mrs. Pritam, viz., absolute interest by virtue of sub-section (1) or "life interest" by virtue of sub-section (2) of Section 14 of the Act. 34. Coming now to the facts of the case, it is not in dispute that the suit house was the self-acquired property of late Mr. Dewan. It is also not in dispute as one can take it from reading the contents of Will that Mr. Dewan had intended to give only "life interest" to his wife in the suit house, which he gave to her for the first time by way of disposition of his estate independent of her any right. It is also not in dispute that it was confined to a right of residence to live in the suit house during her lifetime and to use the income earned from the suit house to maintain herself and the suit house. It is also not in dispute that the testator gave to his son ground floor of the suit house and first floor to his daughter with absolute right of ownership. The testator also permitted both of them to get their names mutated in the municipal records as absolute owners and, also get them assessed as owners in the wealth tax assessment cases.

35. So far as other properties, viz., one plot at Ghaziabad, share in HUF and moveable properties were concerned, Mr.· Dewan gave these properties to Mrs. Pritam-his wife absolutely.

36. It is a settled principle of law that what the testator intended to bequeath to any person(s) in his Will has to be gathered primarily by reading the recitals of the Will only.

37. As mentioned above, reading of the Will would go to show that it does not leave any kind of ambiguity therein and one can easily find out as to how and in what manner and with what rights, the testator wished to give to three of his legal representatives his self acquired properties and how he wanted to make its disposition.

...

41. Reading of the aforementioned principle of law laid down in the cases of V. Tulasamma and Sadhu Singh (supra), it is clear that the ***ambit of Section 14(2) of the Act must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award. the terms of which prescribe a "restricted estate" in the property. however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Section 14(2) of the Act. even if the instrument, decree, order or award allotting the property prescribes a "restricted estate" in the property****.*

42. Applying the principle laid down in the aforementioned two cases to the facts of the case on hand, we are of the considered opinion that the case of plaintiff No.2-Mrs. Pritam does not fall under Section 14 (1) of the Act but it squarely falls under Section 14 (2) of the Act. In other words, in our view, in the facts of this case, the law laid down in Sadhu Singh's case(supra) would apply*.*

43. A fortorari, plaintiff No.2-late Mrs. Pritam received only "life interest" in the suit house by the Will dated 24.06.1986 from her late husband ***and such "life interest" was neither enlarged nor ripened into an absolute interest in the suit house and remained "life interest", i.e., "restricted estate" till her death under Section 14(2) of the Act. This we say for following factual reasons arising in the case****.*

44. First. the testator-Mr. Dewan being the exclusive owner of the snit house was free to dispose of his property the way he liked because it was his self earned property.

45. Second, the testator gave the suit house in absolute ownership to his son and the daughter and conferred on them absolute ownership. At the same time, he gave

only "life interest" to his wife, i.e., a right to live in the suit house which belonged to son and daughter. Such disposition. the testator could make by virtue of Section 14 (2) read with Section 30 of the Act.

46. Third, such "life interest" was in the nature of "restricted estate" under Section 14(2) of the Act which remained a "restricted".

47. Fourth, the effect of the Will once became operational after the death of testator, the son and the daughter acquired absolute ownership in the suit house to the exclusion of everyone whereas the wife became entitled to live in the suit house as of right. ***In other words, the wife became entitled in law to enforce her right to live in the suit house qua her son/daughter so long as she was alive. If for any reason, she was deprived of this right, she was entitled to enforce such right qua son/daughter but not beyond it. However, such was not the case here****.*

48. Fifth, the ***testator had also given his other properties absolutely to his wife which enabled her to maintain herself****. Moreover, a right to claim maintenance, if any, had to be enforced by the wife. She, however, never did it and rightly so because both were living happily. There was, therefore, no occasion for her to demand any kind of maintenance from her husband.*

49. Sixth, it is a settled principle of law that the "life interest" means an interest which determines on the termination of life. It is incapable of being transferred by such person to others being personal in nature. Such person, therefore, could enjoy the "life interest" only during his/her lifetime which is extinguished on his/her death. Such is the case here. Her "life interest" in the suit house was extinguished on her death on 12.09.2016.

50. Seventh, as mentioned above, the facts of the case on hand and the one involved in the case of Sadhu Singh (supra) are found to be somewhat similar. The facts of the case of Sadhu Singh were that the husband executed a Will in favour of his wife of his self-acquired property in 1968. Though he gave to wife absolute rights in the properties bequeathed but some restrictions were put on her right to sell/mortgage the properties and further it was mentioned in the Will that the said properties after wife's death would go to testator's nephew. ***Due to these restrictions put by the testator on his wife's right to sell/mortgage, it was held that the wife received only the "life interest" in the properties by Will and such "life interest", being a "restricted estate" within the meaning of Section 14(2) of the Act, did not enlarge and nor ripen into the absolute interest under Section 14(1) but remained a "life interest" i.e. "restricted estate" under Section 14(2) of the Act. It was held that such disposition made by the husband in favour of his wife was permissible in law in the light of Section 14(2) read with Section 30 of the Act****. In our view, the facts of the case on hand are similar to the facts of Sadhu Singh's case(supra) and, therefore, this case is fully covered by the law laid down in Sadhu Singh's case.*

51. In view of foregoing discussion, we are of the considered opinion that there is no error in the impugned judgment, which has rightly held that the case of Mrs. Pritam (Plaintiff No.2) falls under Section 14 (2) of the Act insofar as it relates to the suit house."

49. The observations made by the Supreme Court in ***Jogi Ram (supra)*** and in ***Mr. Ranvir Dewan (supra)*** are squarely applicable to the facts of the present case. The Supreme Court, in fact, expresses concern that in every case where a Hindu man had a self-acquired property, if the wife is given

limited estate during her lifetime, but if the same is construed as the absolute ownership in her favour, there could be a hesitation in giving life estate, which would be contrary to the interest of women itself - thus, adversely influencing how properties are bequeathed to women. It could have the effect of inadvertently harming the interests of women which needs to be secured for their lifetime and may also expose women to the caprices of their children. However, the above position may be different depending on facts where the Court could construe a limited estate as absolute ownership, due to various circumstances.

50. The Court also observes that when there is no right that the woman had prior to the execution of the instruments *i.e.* the Will, a limited estate is permissible under Section 14(2) of the 1956 Act.

51. In the present case, the following facts are not disputed: -

i) That the property was a self-acquired property of the testator and his wife did not have any independent rights or pre-existing rights in the same;

ii) That the wife did not pre-decease the testator;

iii) That the wife enjoyed the lease rentals from the subject property during her lifetime;

iv) She was not given any right to sell, alienate or transfer the property;

v) The testator specifically identified and bequeathed which portions of the subject property would vest in each of his legal heirs after the wife's death. Such bequest was to be carried out in the same manner, even if the wife predeceased him.

52. The above factors establish that the testator had expressed his clear intention regarding which of his legal heirs would enjoy specific portions of the property and which heirs would not be entitled to any share of his property.

53. The law of succession clearly recognizes a bequest made by way of a Will. The purpose of drafting a Will is to grant an individual the freedom to decide how the assets should be distributed after their death. Therefore, as held by the Supreme Court in ***Navneet Lal v. Gokul & Ors. (1975 INSC 307)*** any interpretation of the law should further the said intention rather than contradict it.

54. In the case of Hindu women, who may not have their own income, receiving a life estate given to them by their husbands—who may predecease them—is an essential safeguard for their financial security during their lifetime. Such security is essential to ensure that the woman is not dependent on her children, after the demise of the husband. Under such circumstances, the wife has complete rights to enjoy the property during her lifetime. She can also enjoy the income from the said property throughout her life. However, it cannot be held that the entire property should be construed as maintenance giving the wife absolute rights over the property, after the death of her husband.

55. In the present case, the wife of the testator did not execute any Will during her lifetime, and died intestate. Mahinder Kaur continued to reside in the subject property for over 23 years after her husband's death, and even contributed to the development of the subject property. During these years no challenge to the said Will was raised, neither by her nor by the testator's children. Therefore, she obviously had no contrary intention to what her

husband expressed in his Will. By not drafting a will of her own, Mahinder Kaur did not express any intention that differed from her husband's will, thereby reinforcing the assumption that she agreed to the conditions he established before he breathed his last. The Will categorically states that the wife has no right to sell, alienate, or transfer the subject property. Given this position, to assert that upon the death of her husband she became the absolute owner of the subject property and could have sold or alienated the property would contradict the clear intent expressed in the Will as also the intention of the deceased mother clearly expressed through her conduct that she did not execute a Will or sell the property during her lifetime. Clearly, she intended to respect the wishes of her husband. As held in ***Jogi Ram (supra)***, an interpretation that she has absolute rights, would be contrary to the spirit of Section 14(2) of the 1956 Act itself. In this case, the wife's rights in the subject property clearly devolved upon her only under a Will. She did not *'possess'* any rights in the property prior to her husband's death; she acquired rights solely under the Will. She had the right to enjoy the income generated from the subject property during her lifetime, and this cannot be considered an absolute interest.

56. The ld. Trial Court relied upon a judgement clearly not applicable and distinguishable on facts, as the Will in ***Jupudy Pardha Sarathy (supra)*** related to the year 1935**,** prior to the enactment of 1956 Act. This position having been clarified in ***Jogi Ram (supra),*** no further discussion is required.

57. The decision in ***Munni Devi (supra)***, relates to a case where the Hindu woman was residing in the premises, and was collecting rent from the tenants, who were occupying part of the premises, prior to the demise of her husband. In such circumstances, the Court held that the Hindu women

become an absolute owner of the property under Section 14(1) of the 1956 Act. In the said case too, the Will was executed on 30th July, 1949, prior to the enactment of the 1956 Act. Further, the property in question was part of the HUF, and not self-acquired property. Hence, the same decision is also clearly distinguishable on facts, and is not applicable.

58. Thus, the impugned order passed by the ld. Trial Court dated 26th September, 2017 is, accordingly, set aside.

59. The preliminary issue as set out below is decided in favour of the Petitioners and Respondent No. 5:-

> *"1. Whether the suit filed by the plaintiff is liable to be dismissed in view of the existence of the WILL dated 13.01.1989?"*

60. The trial in the suit is concluded, and the matter is stated to be fixed for final arguments before the ld. Trial Court. The ld. Trial Court shall now proceed further. A copy of this judgment be communicated to the ld. Trial Court in ***Suit No. 613355/2016*** titled '***Shital Singh v. Manmohan Singh'***, pending before the ld. Addl. District Judge, West, Tis Hazari, Delhi.

61. The present petition is allowed. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 24, 2024
Mr/dn