

**IN THE COURT OF MS. SUGANDHA AGGARWAL,
ADDL. DISTRICT JUDGE, WEST, TIS HAZARI, DELHI
CIVIL SUIT NO. 613355/16**

Shital Singh Plaintiff

versus

Manmohan Singh & ors Defendants

Order
26.09.2017

1. This order shall decide the following preliminary issue:

“ 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.”

2. The facts essential for deciding the issue and as averred in the plaint are that Sh. Gurcharan Singh was the absolute owner of the property bearing no. B-356, Hari Nagar, Clock Tower, New Delhi-110064 (herein after referred to as 'suit property'). The property was vacant property of Sh. Gurcharan Singh who expired on 14.03.1989 leaving behind his wife, six sons, daughter of his deceased son and his daughter.

3. It is further contended that Sh. Gurcharan Singh during his lifetime has executed a Will dated 13.01.1989 bequeathing suit property in favour of his wife Smt. Mahinder Kaur. The Late Smt. Mahinder

Kaur expired intestate on 10.03.12 leaving behind the parties to the suit as her legal heirs. Hence, present suit for partition has been filed on behalf of plaintiffs.

4. Defendants have filed the written statement. In the written statement, defendants have also admitted execution of Will dated 13.01.1989. However, it is stated on behalf of defendants that by virtue of said Will Smt Mahinder Kaur was given only lifetime estate in the suit property. Hence, the rights of Smt. Mahinder Kaur were limited with respect to suit property. After the death of Smt. Mahinder Kaur, suit property has to devolve in the manner as stated in the Will dated 13.01.1989.
5. I have heard and considered the rival contentions of the parties and have perused the record.
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

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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.

Announced in the open court on 26.09.2017.

Sugandha Aggarwal
ADJ/West/Delhi/26.09.2017

This order contains 4 pages and all pages are duly signed by me.

Sugandha Aggarwal
ADJ/West/Delhi/26.09.2017