

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 25<sup>th</sup> April, 2020  
9<sup>th</sup> May, 2019

+ CS(OS) 78/2016 & IAs No.2362/2016 (u/O XXXIX R-1&2 CPC), 12095/2016 (u/O XXXIX R-2A CPC), 7917/2017 (of D-2 u/S 151 CPC), 15767/2018 (u/O VI R-17 CPC) & 15768/2018 (u/O VII R-14 CPC)

VICKRAM BAHL & ANR

..... Plaintiffs

Through: Mr. Ravi Gupta, Sr. Adv. with Jeevesh Nagrath, Mr. Sachin Jain, Ms. Diya Kapur, Advs. with P-1 in person.

Versus

SIDDHARTHA BAHL & ANR

..... Defendants

Through: Mr. Anil Sharma and Mr. Sanjay Agnihotri, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 20<sup>th</sup> February, 2019, the following order was passed:

*“1. The two plaintiffs have instituted this suit for permanent injunction restraining the two defendants from dis-possessing the two plaintiffs from the first floor and second floor along with garage on the ground floor of property no.D-859, New Friends Colony, New Delhi and from selling, alienating or creating third party rights in the said property and for mandatory injunction directing the defendants to hand over/return back goods belonging to plaintiff no.1 taken by the defendants from the Shop No.C-15, Hotel Crown Plaza Surya, New Friends Colony.*

*2. The suit was entertained and summons/notice thereof ordered to be issued and by an ex parte ad interim order dated*

*19<sup>th</sup> February, 2016 the defendants restrained from dispossessing the plaintiffs and/or from interfering with the use by the plaintiffs of the property and from selling the property. The said ex parte order has continued till now and the application for interim relief is also for consideration.*

*3. Though pleadings have been completed in the suit but IA Nos.15767/2018 and 15768/2018 of the plaintiffs for amendment of the plaint and for filing additional documents are pending consideration and are for hearing today.*

*4. On enquiry, the counsel for the plaintiffs states (i) that the plaintiff no.1 and the defendant no.1 are the sons of late Wing Commander N.N.Bahl and defendant no.2 – Sundri N. Bahl, and the plaintiff no.2 is the daughter of the plaintiff no.1; and, (ii) that the Wing Commander N.N.Bahl and Sundri N. Bahl were owners of the property No.D-859, New Friends Colony, New Delhi and executed a Will dated 31<sup>st</sup> March, 2006 whereunder they bequeathed their respective share to the other, (and) after the demise of both of them, to the two plaintiffs and the defendant no.1.*

*5. The counsel for the plaintiffs contends that the cause of action for this suit was, the claim of the defendant no.2 of having become the sole owner of the property on the demise of Wing Commander N.N.Bahl and being entitled to deal with the property. It is further stated that after the institution of the present suit, the defendant no.2 has also instituted a suit for recovery of possession of the portions of the property in possession of the two plaintiffs and which suit is pending before the Court of Additional District Judge, Delhi.*

*6. I have enquired from the counsel for the plaintiffs that since the defendant no.2 – Sundri N.Bahl is still alive, what is the cause of action to the plaintiff, inasmuch as it is the settled position in law that a will becomes operative only on the demise of the testator/testatrix and prior thereto, notwithstanding the Will, the beneficiaries thereunder have no right, title or interest in the property. It is enquired, whether not since under the Will of Wing Commander N.N.Bahl and defendant no.2 Sundri N. Bahl, the share of the dying spouse was bequeathed absolutely*

*to the surviving spouse and whether not the surviving spouse i.e. defendant no.2 Sundri N. Bahl, as of today, is the sole owner of the property.*

7. *The counsel for the plaintiff has first contended that the defendants cannot dis-possess the plaintiffs forcibly.*

8. *As far as that apprehension is concerned, the defendant no.2, by instituting the suit for recovery of possession, has already indicated that she does not in fact intend to recourse to unlawful and illegal means. The position can be further clarified by either recording the statement of the counsel for the defendants or by directing that the plaintiffs shall not be dis-possessed save by due process of law.*

9. *The counsel for the plaintiffs has next contended that the plaintiffs now want to amend the plaint to also include relief of declaration that the defendant no.2 cannot execute a Will contrary to the Will dated 31<sup>st</sup> March, 2006.*

10. *Though the counsel for the plaintiffs keeps on calling the document dated 31<sup>st</sup> March, 2006 to be a 'mutual Will', but no such nomenclature is found on the document and it is not deemed appropriate to use the said nomenclature which may have some legal connotations.*

11. *Counsel for the plaintiffs argues that merits of amendments are not gone into at the stage of consideration of application for amendment.*

12. *Undoubtedly so. However, if the cause of action itself for the relief sought to be added by way of amendment has not accrued, and the amendment is being sought without considering that, this Court (can) certainly prevent its process and time being wasted.*

13. *Attention of the counsels for the plaintiffs is also drawn to Section 14 of the Hindu Succession Act, 1956 and it has been enquired whether not thereunder also, besides under the language of the Will dated 31<sup>st</sup> March, 2006, the share of Wing Commander N.N.Bahl in the aforesaid property vests absolutely in the defendant no.2 Sundri N.Bahl.*

14. I may also record that though the counsel for the plaintiffs keeps on referring to the interest bequeathed to the defendant no.2 Sundri N. Bahl as 'life interest' but the said nomenclature also does not find mention in the Will and on the contrary what has been recorded in the Will is that the right of the dying spouse "shall rest with the survivor and no one else shall have the right or interest in the share of the deceased share".

15. The counsel for the plaintiffs has drawn attention to **Navneet Lal alias Rangi vs. Gokul & Ors.**, (1976) 1 SCC 630 but which is not a case of a mutual Will as the counsel for the plaintiffs desires to call the Will dated 31<sup>st</sup> March, 2006 and thus will have no application.

16. The counsel for the plaintiffs has next referred to **Dilharshankar C. Bhachech vs. Controller of Estate Duty, Ahmedabad**, (1986) 1 SCC 701 but in which case the surviving spouse was the husband and the need to consider the application of section 14 supra did not arise.

17. The counsel for the plaintiffs has next referred to **Arun Kumar and Anr. vs. Shriniwas & Ors.**, (2003) 6 SCC 1998 but in that case also the surviving spouse was the husband and again the question of consideration of the application of Section 14 (supra) did not arise.

18. The counsel for the plaintiffs has lastly referred to **Raghubir Singh & Ors. Vs. Budh Singh** (1977) 13 DLT 196 but the said judgment does not notice Section 14 (supra).

19. I am further of the prima facie opinion that as long as the right of the plaintiffs against forcible dis-possession is protected, the cause of action, if any to the plaintiffs for challenging the alienation, if any, of the property by way of Will or otherwise by the defendant no.2 Sundri N. Bahl will arise only on demise of Sundri N. Bahl and not during her lifetime. Attention of the counsels for the parties is drawn to **Mahima Vs. DDA** 2014 SCC OnLine Del 3661, **Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna** (2016) 2 SCC 56, **K.S. Palanisami Vs. Hindu Community in General and Citizens of**



***Gobichettipalayam (2017) 13 SCC 15 and Ranvir Dewan Vs. Rashmi Khanna (2018) 12 SCC 1.***

21. *The counsel for the plaintiffs seeks adjournment to argue further on the applications which were for hearing today.*

22. *It is deemed appropriate to grant adjournment.*

23. *List on 3<sup>rd</sup> April, 2019.”*

2. The senior counsel appearing for the plaintiffs was further heard on 3<sup>rd</sup> April, 2019 and 9<sup>th</sup> May, 2019 and the counsel for the defendants has also been heard.

3. It is deemed appropriate to set out hereinbelow in entirety the document dated 31<sup>st</sup> March, 2006 admitted by all concerned to be the Will of Wing Commander N.N. Bahl and the defendant No.2 Sundri N. Bahl:

***“OUR WILL***

1. *I, We (1) Wing Commander N.N. Bahl (Retd.) aged over 73 years son of (Late) Shri Kundan Lal Bahl (2) Mrs. Sundri N. Bahl aged over 67 years wife of Wing Commander N.N. Bahl (Retd.) both residents of House No.D-859, New Friends Colony, New Delhi-110065 and at present in sound disposition of mind and body and in enjoyment of proper sense without any threat or persuasion of any one but of our own accord and free will declare this to be our last Will. All earlier Wills to be treated as cancelled. This Will is being re-written on the dictate of our conscience.*
2. *We are the joint owners of our House No.D-859, New Friends Colony, New Delhi-110065 and it is our self acquired house property.*
3. *We declare that when any one of us i.e. Wg. Cdr. N.N. Bahl (Retd.) or Mrs. Sundri N. Bahl expires the rights and interest of deceased in the said house property D-*

859, New Friends Colony, New Delhi-110065 shall rest with the survivor & no one else shall have the right or interest in the share of the deceased share. However, after the death of both of us the said above house property No. D-859, New Friends Colony, New Delhi shall be owned by our two sons Mr. Vickram Bahl and Mr. Siddhartha Bahl and our grand daughter Miss Saachi Bahl (age 13<sup>1/2</sup> years) daughter of our son Mr. Vickram Bahl and these three will be absolute owners of their respective shares as detailed here-in-below and they shall have the right to own and use their respective portions in the said property no. D-859, New Friends Colony, New delhi-110065.

4. (a) Mr. Vickram Bahl shall be owner of the entire First Floor of the main house building and adjoining servant quarter on top of the garage office.
- (b) Mr. Siddhartha Bahl will be the owner of the entire Ground Floor of the main house building including the garage office on the ground floor. The front lawn and the set-back also belongs to him.
- (c) Miss Saachi Bahl will be the owner of the entire Second Floor of the main building, half built and half un-built, and the servant quarter on the Second Floor.
- (d) The driveway, the inner staircase, the rear staircase with bathroom under it and the terrace (roof rights) of the entire building will be the joint property of all three parties. Also the land underneath the building (492 Square Yards) will be common property of the three share holders. Note, it will be prudent and advisable for all three owners of the house No. D-859, New Friends Colony, New Delhi, to have mutual consent for hiring out or selling of their respective share, if ever required.

- (e) *Shop No. C-15, in Hotel Crowne Plaza Surya will go to Mr. Siddhartha Bahl.*
  - (f) *Shop No. C-16, in Hotel Crowne Plaza Surya will go to Mr. Vickram Bahl.*
  - (g) *The Office Flat No.407, at Nehru Place will go to Mr. Vickram Bahl.*
5. *The Office Flat No.409 at 56, Nehru Place, will not go to any one of the three share holders, it will be left to the survivor i.e. Wg. Cdr. N.N. Bahl or Mrs. Sundri N. Bahl to decide about it.*
6. *We direct that after our death our two sons Mr. Vickram Bahl and Mr. Siddhartha Bahl and our grand daughter Miss Saachi Bahl will be the joint executors of our this Will. We expect that all concerned will respect our sentiments expressed in our this Will.*

*IN WITNESS WHEREOF WE HAVE HEREUNTO SET AND SUBSCRIBE OUR HAND AND SIGNATURE ON THIS 31<sup>ST</sup> DAY OF MARCH 2006 IN THE PRESENCE OF THE FOLLOWING WITNESSES AND ALL OF US BEING PRESENT AT THE SAME TIME AND PLACE.*

WITNESSES :

- 1. *Sd.*
- 2. *Sd.*

TESTATORS

- 1. *Sd.*
- 2. *Sd.”*

4. It is the case of the plaintiffs in the plaint, (i) that the aforesaid document is in the nature of “mutual Will”; (ii) that the original Will must be in possession of the defendants which the defendants are not disclosing to the plaintiffs; (iii) that it appears to the plaintiffs that Wing Commander N.N. Bahl and defendant No.2 Sundri N. Bahl made three copies of the original Will and they have together made some changes in their

handwriting; (iv) out of the three copies of the Will, two copies have been earmarked in the name of the plaintiff no.1 and plaintiff No.2 respectively; (v) that during the lifetime of Wing Commander N.N. Bahl, he disclosed to the plaintiffs and defendant No.1 about the execution of the Will and that the same had been kept in envelopes; and, (vi) that after two months of the death of Wing Commander N.N. Bahl, the defendant No.2 Sundri N. Bahl gave two copies of the Will earmarked in the name of the plaintiff No.1 and plaintiff No.2 respectively to the plaintiffs.

5. The two defendants Siddhartha Bahl and Sundri N. Bahl have contested the suit by filing a joint written statement pleading, (i) that the defendant No.2 was the co-owner of property No.D-859, New Friends Colony, New Delhi and on demise of her husband Wing Commander N.N. Bahl on 3<sup>rd</sup> September, 2015 has become the sole and absolute owner of the property; (ii) that Wing Commander N.N. Bahl and the defendant No.2, during the lifetime of Wing Commander N.N. Bahl, executed a registered Will dated 31<sup>st</sup> March, 2006; by virtue of the said Will, both Wing Commander N.N. Bahl and his wife Sundri N. Bahl intended to give the surviving spouse, rights, title and interest in the said property absolutely and exclusively to the exclusion of all others; by the said Will, which is admitted by all parties, the bequeathal of the property was absolute and unequivocal; liberty was given to the defendant No.2 to enjoy the property in any manner she liked, which shows that she was to become the absolute owner of the property; no restrictions were put, which further shows that the property was bequeathed absolutely by Wing Commander N.N. Bahl to his wife defendant No.2 and the defendant No.2 became the absolute owner; (iii) that the defendant No.2 also became the absolute owner of the estate in terms of



Section 14 of the Hindu Succession Act; (iv) that it is the right of the defendant No.2 to exercise her rights in respect of the property and it is the defendant No.2 who can create a Will in respect of the property; (v) that the property cannot be snatched from defendant No.2 on the basis of the Will dated 31<sup>st</sup> March, 2006; (vi) that the original of the said Will is not with the defendants as the same was taken by the plaintiff No.1 after the demise of Wing Commander N.N. Bahl and the copy of the Will dated 31<sup>st</sup> March, 2006 which the plaintiffs have filed along with the plaint, are denied; (vii) that there is no cause of action in favour of the plaintiffs and against the defendants; (viii) that the suit for permanent injunction is barred by Section 41(i) of the Specific Relief Act, 1963; (ix) that the defendant No.2 and her husband Wing Commander N.N. Bahl, since the construction of the property in the year 1979, were living in the property and enjoying the same as their residence along with their children; (x) that on the marriage of the plaintiff No.1, he was allowed to stay on the first floor till found alternate accommodation; (xi) that after the death of Wing Commander N.N. Bahl, the plaintiff No.1, taking advantage of the emotional state of the defendant No.2, got letters/documents executed, obtained signatures on blank papers, allegedly to be submitted with Air Force for pension and withdrew amounts on the pretext of making payment to authorities and also grabbed possession of the first and second floors and garage in the property; (xii) that the suit for permanent injunction is also barred by Section 41(h) of the Specific Relief Act; since the plaintiffs are claiming rights under the Will dated 31<sup>st</sup> March, 2006, the remedy for obtaining probate thereof is available to the plaintiffs; (xiii) that the property bearing Shop No.C-15, Hotel Crowne Plaza Surya is exclusively owned and in possession of defendants No.1&2

and the plaintiffs have no right therein; (xiv) that the property bearing Shop No.C-15, Hotel Crowne Plaza Surya is jointly owned by plaintiff No.1 and defendant No.2; (xv) that the younger son of the defendant No.2 i.e. the defendant No.1, has been living in another premises; (xvi) that the market rent of the first and second floors and garage occupied by the plaintiffs is approximately Rs.1,50,000/- per month; (xvii) that the entire property was in possession and occupation of defendant No.2 and her husband Wing Commander N.N. Bahl and the use and occupation of the first and second floors and garage of the said property by the plaintiffs is unauthorised; (xviii) that the defendant No.2, on account of the harassment meted out by the plaintiffs, has on 13<sup>th</sup> January, 2016 disowned the plaintiff No.1; (xix) that the defendant No.1 has always been in good relations with his parents and is in constructive possession of the entire property; (xx) that the plaintiff No.1 owns Bungalow No.C-64, Friends Colony (East), New Delhi as well as factory at A-13, Noida, U.P. but still refuses to vacate the subject house; the said two properties were purchased from joint family incomes and substantial amount was paid by defendant No.2 and her husband Wing Commander N.N. Bahl, though in the name of plaintiff No.1, to make him independent; (xxi) that the Will dated 31<sup>st</sup> March 2006 was in the knowledge of the plaintiff No.1; (xxii) that there are no other Wills apart from the one that was registered on 31<sup>st</sup> March, 2006; (xxiii) that the plaintiffs having admitted the defendant No.2 as the absolute owner of the property, have no cause of action in their favour; (xxiv) that it is the right of the defendant No.2 to exercise rights in respect of the property and sale and create a Will in respect of the property; (xxv) that under the Will dated 31<sup>st</sup> March, 2006, the defendant No.2 is the absolute owner and the plaintiffs have no right in

the property; and, (xxvi) that the plaintiffs are misinterpreting the Will dated 31<sup>st</sup> March, 2006; the said Will is very clear; the defendant No.2 thereunder has become the owner of the property absolutely and exclusively; there was no express or implied agreement, as suggested by the plaintiffs.

6. We are at this stage only concerned with the entitlement, if any of the plaintiffs to the property in the lifetime of defendant No.2 Sundri N. Bahl. If the plaintiffs are found to have none, the suit has to be dismissed. Even otherwise, the handwritten changes even if any in the Will or the other factual controversies raised are not germane to the matter for adjudication i.e. (i) the entitlement of the plaintiffs to continue in possession of the property; and, (ii) the entitlement of the plaintiffs to restrain the defendants from selling alienating or creating third party rights in the property. The said rights depend upon the interpretation in accordance with law of the Will dated 31<sup>st</sup> March, 2006, the contents whereof as reproduced above and valid execution, whereof are not in dispute. If the plaintiffs have no rights to the property *in presenti* or during the lifetime of defendant No.2, the suit has to be dismissed at the threshold and does not require any trial. On the contrary, if the plaintiffs indeed have such rights, then also for the purposes of granting the reliefs against dispossession and alienation, again no trial is required.

7. The senior counsel for the plaintiffs has also drawn attention to:

(a) Letter dated 23<sup>rd</sup> December, 2015 purported to have been written by defendant No.2 Sundri N. Bahl to the plaintiff No.1 as under:

*“Dear Vickram,*

*I will not ever talk or think of demolishing, sale or rebuilding any part of our house. We will live in our home in peace and harmony as we have been in the past. We will honour each other sentiments and the sentiments that Papa and I have agreed upon.*

*Let us have love and faith and confidence in each other.*

*Sd.*

*Sundri Bahl*

*23.12.2015”*

(b) Letter dated 24<sup>th</sup> December, 2015 purported to have been written by defendant No.2 Sundri N. Bahl to the plaintiff No.2 Saachi Bahl as under:

*“Dearest Saachi,*

*I assure and promise you that you will always have the entire second floor of the house D-859, NFC with one third right in the ownership of the land and other one third being with your father and the last one third being with your uncle Siddhartha Bahl.*

*I assure you that NOBODY has the right to take away or dispossess you of this right which is a gift and blessings of your grand parents.*

*Sd.*

*Sundri Bahl*

*23.12.2015”*

(c) Letter dated 25<sup>th</sup> December, 2015 purported to have been written by defendant No.2 Sundri N. Bahl to the Commissioner of Police as under:

“25<sup>th</sup> December, 2015

To

*The Commissioner of Police,*

*New Delhi*

*Copy to SHO, NFC.*

*I Sundri Bahl, would like to report that my son Siddhartha Bahl, resident of 104-B, Maharani Bagh has threatened to shoot and kill my other son and his family – Vickram Bahl, his wife and children if I do not give a portion of my property D-859, New Friends Colony (Garage Office and front lawn) to him which my late husband I had agreed to give the Garage Office to Vickram Bahl for his exclusive use and the front lawn for common use by all three 1/3<sup>rd</sup> partners mentioned in the Will agreement namely Vickram Bahl, Siddharth Bahl and Saachi Bahl.*

*I fear that he may carry out his threat and therefore appropriate action must be taken urgently to protect me and my son and his family from Siddharth Bahl.*

*Thanking you,*

*Sd/-*

*Sundri N. Bahl.”*

(d) Transcript of the conversation recorded on 26<sup>th</sup> December, 2015 between plaintiff No.1 and defendant No.2 Sundri N. Bahl *inter alia* as under:

*“VB: I’ve understood, okay okay...Get the provisions that are signed in my name in the corrected copy of the will. He wants them removed that the office and the front yard should go to him.*



*VB: And yesterday what happened, what provoked him to say that he will shoot me? And this and that.*

*SNB: No no no...this he has been telling me...from the beginning...*

*VB: No, I want to know only this that yesterday he said...what did he say exactly you tell me...How did it come about?*

*SNB: He asked me, because, the previous day, that is, day before yesterday...I told him that I'll go home and I will convince them to...try and convince them to get this, and I'm sure its not a very big thing...so they'll agree to it. I came back, and I asked you. You said, not an inch I will spare.*

*VB: No. One second. You came back. You asked me and I said, not an inch extra would I take from him or give from him what is written in the will. Okay. Now listen to me...and you told me, okay if it's just that, I will take it as a given to you. You told me that also. Am I right?"*

8. Though the aforesaid, save for the writing and signature thereon to be of defendant No.2, are also controverted but again what is to be seen at this stage is, whether any of the aforesaid create any legal right in the plaintiffs to the property or any part thereof, inasmuch as if they do not, even if are proved to be correct, would be of no avail.

9. The senior counsel for the plaintiffs, in addition to the judgments earlier cited by the counsel for the plaintiffs, has also drawn attention to **Krishna Kumar Birla Vs. Rajendra Singh Lodha** (2008) 4 SCC 300, **Meera Dewan Vs. Shakuntala Dewan** AIR 2002 Del 321, **Shiva Nath Prasad Vs. State of W.B.** (2006) 2 SCC 757, **Kuppuswami Raja Vs.**

***Perumal Raja*** AIR 1964 Mad 291 and ***Ranvir Dewan Vs. Rashmi Khanna*** (2018) 12 SCC 1.

10. The counsel for the defendants contended (a) that Wing Commander N.N. Bahl has bequeathed his 1/2 undivided share in the house to the defendant No.2, absolutely and without any restrictions and the defendant No.1 is entitled to deal with the property in her absolute discretion; (b) that the defendant No.2 has also become the absolute owner by virtue of Section 14(1) of the Hindu Succession Act; reliance was placed on ***Jupudy Pardha Sarathy Vs. Pentapati Rama Krishna*** (2016) 2 SCC 56 and on ***Dilip D. Chowdhari Vs. Maharashtra Executor & Trustees*** (2010) 6 SCC 633; (c) that the plaintiffs, under the Will dated 31<sup>st</sup> March, 2006 admitted by them also, have no rights or share in the property at present; the plaintiffs are however claiming rights in the property to the exclusion of the defendant No.2 and in contravention of the Will dated 31<sup>st</sup> March, 2006 admitted by them; (d) that the remedy if any of the plaintiffs is only after the demise of defendant No.2; (e) attention is invited to paragraph 7 of the plaint; and, (f) that the plaintiffs got the defendant No.2 to sign the letters filed by them, taking advantage of the old age of the defendant No.2.

11. I have considered the contentions and also gone through the records.

12. I first proceed to discuss the literal interpretation of the document dated 31<sup>st</sup> March, 2006 admitted by all concerned to be the validly executed last Will of Wing Commander N.N. Bahl and defendant No.2. Thereunder, Wing Commander N.N. Bahl and defendant No.2 Sundri N. Bahl, being husband and wife, and of which Wing Commander N.N. Bahl is no more, bringing into effect the Will insofar as he is concerned, and defendant No.2

Sundri N. Bahl is alive, not bringing into operation the Will insofar as she is concerned, have expressed (i) that when either of them expires, his/her interest in house No.D-859, New Friends Colony, New Delhi “shall rest with the survivor & no one else shall have the right or interest in the share of the deceased share”; (ii) that only after death of both of them, the house shall be owned by the two plaintiffs and the defendant No.1, as delineated therein; and, (iii) that there is no clause in the Will placing any restriction on the right of the surviving spouse to deal with the share of the spouse in the house inherited under the Will, in any manner deemed fit by the surviving spouse; however, in the same Will, with respect to Flat No.409, at 56, Nehru Place it is provided that it will not go to any of the three shareholders and it will be upto the survivor i.e. Wing Commander N.N. Bahl or Sundri N. Bahl to decide about it.

13. The question for consideration is, whether owing to Wing Commander N.N. Bahl and defendant No.2 Sundri N. Bahl having executed a single document as Will of both of them and therein, with respect to house No.D-859, New Friends Colony, New Delhi in which both of them had equal undivided share, having bequeathed their respective undivided share to the survivor, without any restriction and having provided that after the demise of both of them different portions of the house shall stand bequeathed to the two plaintiffs and the defendant No.1, any restrictions are to be read in the right of the surviving spouse to deal with the share of the non-surviving spouse inherited under the Will.

14. **Krishna Kumar Birla** supra cited by the senior counsel for the plaintiffs is the most widely published case of recent years and which made

“mutual Will” a household nomenclature. However therein the Court was concerned with the aspect of mutual Wills only to the extent, whether the same creates caveatable interest in favour of the named executor, in probate proceeding. The husband and wife therein had on the same day executed separate Wills, with respect to their separate assets as well as with respect to assets jointly held by them, and on identical terms, appointing each other and certain others as executors of their respective Wills. Under the said Wills, each had bequeathed their properties to the other and thereafter to charitable trusts. It was held that (a) a Will, by its very nature is revocable; it is the last desire of the testator; till his last breath, he will have a final say; the latter Will revoking the earlier Will, will be probated; (b) despite the existence of a mutual Will, the representative under the latter Will will take the property; he however takes the property subject to the terms of the mutual Will; (c) whether there exists any agreement enforceable either in equity or by way of a suit for specific performance, will have to be considered only in the event the probate is granted and not prior thereto; (d) even when there is such an agreement and one party has died after departing from it or revoking or altering the Will, the survivor having notice of the breach, cannot claim to have the latter Will set aside since the notice gives him the chance of altering the Will as regards his own property; the death of the deceased party is sufficient notice for this purpose; (e) if however the deceased has stood by the agreement and not revoked or altered his Will, the survivor is bound by it and although probate will be granted of a latter Will made by the survivor in breach of the agreement, since a Court of probate is only concerned with the last Will, the personal representative of the survivor nevertheless holds the estate in trust, to give effect to the provisions of the

joint Will or mutual Wills; (f) mutual Wills may be contained in a joint Will or in separate documents; (g) if the survivor, whether or not, after taking an actual benefit under the arrangement, alters his Will, his personal representative takes the property which is subject to the agreement, upon trust to perform the contract; (h) a joint mutual Will, becomes irrevocable on the death of one of the testators, if the survivor has received benefits under the mutual Will and there need not be a specific contract prohibiting revocation when the arrangement takes the form of two simultaneous Wills but one single document; and, (i) if one single document is executed by both the brothers using the expressions “our property”, “our present wishes”, “our Will” and such similar expressions, it is strong cogent evidence of the intention that there is no power to revoke except by mutual consent.

15. ***Meera Dewan*** supra was a suit filed by a daughter against her mother, for declaration that the daughter had become the owner of the first floor of the property by virtue of the mutual and companion Wills of the father of the plaintiff and that the defendant mother was not entitled to sell, transfer or alienate the property under the said Will. The father of the plaintiff, and the defendant mother in that suit, were the joint owners of the property comprising of ground and first floor, subject matter thereof, in equal share; the father of the plaintiff as well as the defendant mother executed separate Wills on the same day; in the Will of the father of the plaintiff, he bequeathed his 50% interest in the suit property to the brother of the plaintiff, subject to the right of residence in the ground floor of the said property in favour of the defendant mother and the right to add by construction, a second floor, to go to the sister of the plaintiff; the defendant mother, in her Will, bequeathed the first floor to the plaintiff, subject to a



right of residence in the first floor, to the father of the plaintiff. Deciding the application for interim relief, it was held, that (i) if the two Wills executed by the executants are mutual, before the death of one of them, the agreement remains a contractual one, in consideration of mutual promises and can be revoked by mutual agreement or even by unilateral breach giving rise to, at the most, an action for damages; (ii) however after the death of any one of the executants, both the Wills become operative and the other is not entitled to revoke the Will thereafter; and, (iii) as per the dicta of the Supreme Court in *Dilharshanker C. Bhachech Vs. Controller of Estate Duty, Ahmedabad* (1986) 1 SCC 701, an agreement may appear from the Will or may be proved outside the Will—for this purpose pre-dominant intention of the executants at the time of execution is to be seen; finding, that the executants of the two Wills were husband and wife and were joint owners of the property in equal share and had one son and two daughters, it was held that intention and agreement between the parents as to how the respective shares in the property should be given to the three children, was decipherable and while bequeathing the property in the aforesaid manner, both had given the right of residence in the property to the surviving spouse.

16. *Shiva Nath Prasad* supra arose out of the same disputes as were subject matter of *Krishna Kumar Birla* supra and out of complaint filed of offences under Sections 120-B, 406, 417 and 420 IPC and in which summons were issued and which order of summoning was upheld by the High Court. While dismissing the appeal and finding it to be undisputed that the Wills subject matter thereof were mutual Wills, it was held, (a) that “mutual Wills and secret trust” are doctrines evolved in equity, to overcome the problems of revocability of Wills and to prevent frauds; (b) that the

doctrine of mutual Wills is to the effect that where two individuals agree as to the disposal of their assets and execute mutual Wills in pursuance of the agreement, on the death of the first testator, the property of the survivor testator, the subject matter of the agreement, is held on an implied trust for the beneficiary named in the Wills; (c) that the second testator may alter his/her Will because a Will is inherently revocable, but if he/she does so, his/her representative will take the assets subject to the trust; (d) that the rationale for imposing a “constructive trust” in such circumstances is that equity will not allow second testator to commit a fraud by going back on her agreement with the first testator; (e) that since the assets received by the second testator on the death of the first testator were bequeathed to the second testator on the basis of the agreement not to revoke the Will of the first testator, it would be a fraud for the second testator to take the benefit, while failing to observe the agreement and equity intervenes to prevent this fraud; (f) that in such cases, the instrument itself is the evidence of the agreement and he that dies first, does by his act carry the agreement on his part into execution; (g) that if second testator then refuses, he/she is guilty of fraud, and can never unbind himself/herself and becomes a trustee; and, (h) that such a contract to make corresponding Wills in many cases gets established by the instrument itself as the evidence of the agreement.

17. ***Kuppuswami Raja*** supra also holds (i) that a joint and mutual Will becomes irrevocable on the death of one of the testators, if the survivor had received benefits under the mutual Will and there need not be a specific contract prohibiting revocation when the arrangement takes the form of not two simultaneous mutual Wills but one single document; (ii) that if one single document is executed by two brothers using the expressions ‘our

property', 'our present wishes', 'our Will' and such similar expressions, it is strong cogent evidence of the intention that there is no power to revoke, except by mutual consent; (iii) that a Will is mutual when the two testators confer upon each other reciprocal benefits as by either of them constituting the other his legatee, that is to say, when the executants fill the roles of both testator and legatee towards each other; but where the legatees are distinct from the testators, there can be no position of a mutual Will; and, (iv) that in the case of mutual Will, he that dies first carries out his/her part of the contract into execution and the Court will not permit the other to break the contract.

18. It thus follows that the principle of, a mutual Will coming into effect and binding also the testator who may still be alive, on the death of one of the two testators, is well enshrined in the Indian Law.

19. Mention in addition may also be made of ***K.S. Palanisami Vs. Indu Community In General*** (2017) 13 SCC 15, also a case of joint and mutual Will by husband and wife. Though it was held that the survivor could sell the properties but on interpretation of the Will subject matter thereof to the effect, that only the remainder of the estate was ultimately bequeathed to charity.

20. The questions for consideration which thus arise are, (I) whether the undisputed document dated 31<sup>st</sup> March, 2006, reproduced hereinabove and subject matter of the present case, qualifies as a mutual Will and if so, the effect thereof; and, (II) even if the aforesaid question is answered in favour of the plaintiffs, the effect, if any of Section 14(1) of the Hindu Succession Act thereon.

21. I will first proceed to consider in the light of authoritative pronouncements aforesaid, whether the document dated 31<sup>st</sup> March, 2006 supra, admittedly the validly executed last Will of Wing Commander N.N. Bahl and the defendant No.2 herein, qualifies as a mutual Will. The said Will insofar as house No.D-859, New Friends Colony, New Delhi, subject matter of this suit is concerned, (i) provides that Wing Commander N.N. Bahl and defendant No.2 were the joint owners thereof (in the absence of any clarification that the shares therein of Wing Commander N.N. Bahl and defendant No.2 were otherwise, in equal share); and contains their joint declaration (ii) that when either of them expires, his/her 1/2 undivided share therein “shall rest” with the survivor and no one else shall have the right or interest in the share of the deceased spouse; (iii) that after the death of both of them, (a) plaintiff No.1 Vickram Bahl shall be the absolute owner of the entire first floor of the main house and adjoining servant quarter on the top of the garage office; (b) defendant No.1 Siddhartha Bahl will be the absolute owner of the entire ground floor of the main house including the garage office on the ground floor, the front lawn and the setback; (c) plaintiff No.2 Saachi Bahl will be the owner of the entire second floor of the main house and 1/2 built and 1/2 unbuilt servant quarter on the second floor; and, (d) the two plaintiffs and the defendant No.1 will be the joint owners of drive way, inner staircase, rear staircase with bathroom under it, roof rights and the land underneath. The factum, of the subject house being the joint property of Wing Commander N.N. Bahl and defendant No.2, in which each had 1/2 undivided share with each being the owner of each and every portion thereof and neither being capable of willing away any particular portion thereof and being capable of only bequeathing his/her undivided share therein, and the

language used in the document dated 31<sup>st</sup> March, 2006 of, Wing Commander N.N. Bahl and defendant No.2 jointly making a declaration therein with respect to the subject house, in my opinion, leaves no matter of doubt as to the agreement arrived at between Wing Commander N.N. Bahl and defendant No.2, as to how the said house should be owned, after the demise of both of them. As aforesaid, neither of them were capable of bequeathing any specific portion of the property to any of their progeny, as has been done under the document dated 31<sup>st</sup> March, 2006. By the said document, they devised and bequeathed their respective 1/2 undivided share to the surviving spouse, making the surviving spouse the sole owner of the property and capable of bequeathing different portions thereof, as has been done under the document dated 31<sup>st</sup> March, 2006. The document dated 31<sup>st</sup> March, 2006 *re ipsa loquitor* contains the agreement and no outside evidence is required. The defendants, in their joint written statement have not taken any plea of the agreement being otherwise than as evident from the language of the document dated 31<sup>st</sup> March, 2006 itself. Moreover, the document being a Will, interpretation whereof is governed by the provisions of the Indian Succession Act, 1925 (as recently held by me in judgment dated 23<sup>rd</sup> April, 2020 in CS(OS) No.191/2016 titled ***Kamal Parti Vs. Smt. Raj Kumar Parti***) and there being no ambiguity or uncertainty of the agreement between Wing Commander N.N. Bahl and defendant No.2, the question of permitting any oral evidence also, does not arise, in view of Sections 91 & 92 of the Indian Evidence Act, 1872. Once such an agreement is found and the Will is found to be with respect to joint property and the Will of Wing Commander N.N. Bahl and defendant No.2 is contained in the same document, the same qualifies as a mutual Will.



22. Once the defendant No.2 Sundri N. Bahl is found to have become, instead of owner of 50% undivided share in the subject house, 100% owner of the said house under the mutual Will of herself and her husband, whereunder they have, after their demise, bequeathed separate portions of the property to the two plaintiffs and the defendant No.1, the defendant No.2 Sundri N. Bahl, after the demise of her husband Wing Commander N.N. Bahl, is not entitled to renege from her agreement with her husband Wing Commander N.N. Bahl and is bound by the same. But for the said agreement, Wing Commander N.N. Bahl would not have bequeathed his 50% undivided share in the property to the defendant No.2 Sundri N. Bahl. The defendant No.2 Sundri N. Bahl accepted the said Will and after taking advantage thereunder cannot deal with the property, contravening her agreement with her deceased husband Wing Commander N.N. Bahl.

23. Though I was in the hearing on 20<sup>th</sup> February, 2019 swayed by the 50% undivided share of Wing Commander N.N. Bahl having been bequeathed to defendant No.2 Sundri N. Bahl absolutely and without any restriction, but find that the document dated 31<sup>st</sup> March, 2006, while bequeathing the 50% share of the pre-deceasing spouse in favour of the surviving spouse uses the word “rest” as distinct from the words “shall be owned”, “will be absolute owners of their respective shares as detailed hereinbelow” and “they shall have the right to own and use their respective portions” used, while making the bequeath, after the demise of both, in favour of the two plaintiffs and the defendant No.1. From such difference in the language used, it is evident that the bequeath of the share of the pre-deceasing spouse in favour of the surviving spouse was transitory i.e. till the absolute bequeath in favour of the two plaintiffs and the defendant No.1,

after the demise of both spouses. The language of the document thus is ingrained with limitation in the rights of the surviving spouse.

24. Another doubt which plagued the undersigned during the hearing on 20<sup>th</sup> February, 2019, was with respect to the cause of action i.e. whether the plaintiffs, during the lifetime of defendant No.2 could claim any right or cause of action whereof had accrued to them. The said doubt is also found to be unfounded in the light of the judgments cited by the senior counsel for the plaintiffs. As per the said judgments, on the demise of Wing Commander N.N. Bahl, the subject house is held by the defendant No.2 Sundri N. Bahl in trust for the plaintiffs and/or the defendant No.1 and the plaintiffs, as the beneficiaries of the said trust, would have a cause of action. Moreover, from the tenor of the judgments, it is evident that the rights in favour of the ultimate beneficiary under the mutual Will are crystalized on the demise of either of the executants and during the lifetime of the other executant of the mutual Will. **Meera Dewan** supra was also filed during the lifetime of the surviving spouse. Reference may also be made to **Jagan Singh Vs. Dhanwanti** (2012) 2 SCC 628 which was also a suit for injunction during the lifetime of the surviving spouse who along with the other, who had since died, had made a mutual Will. Resultantly it follows that the defendant No.2 during her lifetime cannot sell, alienate, transfer or otherwise deal with the property, so as to deprive the plaintiffs of what has been devised in their favour under the mutual Will of their parents and the plaintiffs have a cause of action *in presenti* to restrain the defendant No.2 from doing so. Though the defendant No.2, as per judgments aforesaid would be entitled to make a Will in contravention of the mutual Will but whosoever receives the

property under the said Will of defendant No.2 would also be bound to the plaintiffs in terms of the mutual Will.

25. The plaintiffs however besides seeking to so restrain the defendant No.2, are also seeking to restrain the defendants from dispossessing the plaintiffs from the portion of the property in their occupation. The question is, whether the plaintiffs, during the lifetime of defendant No.2, are entitled to continue in possession/occupation against the wish of defendant No.2. The ownership of the portion of the property bequeathed under the mutual Will in favour of the plaintiffs comes into effect only on the demise of defendant No.2. On first blush, it appears that the defendant No.2, *in presenti* being the owner of the property, is entitled to dispossess the plaintiffs. However, on further consideration and finding it to be the admitted position that the plaintiffs, since the lifetime of Wing Commander N.N. Bahl have been residing on the upper floors of the property and not finding any provision in the mutual Will with respect to dispossession of the plaintiffs therefrom and in the light of use in the mutual Will of the words “shall rest”, I am of the view that the resting of the property in the defendant No.2, after the demise of Wing Commander N.N. Bahl, even though to the exclusion of his other heirs, is without any right to so dispossess the plaintiffs from what has ultimately been bequeathed to them. Though the plaintiffs during the lifetime of defendant No.2 have no ownership or other rights even in the portion ultimately bequeathed to them, so as to entitle them to deal therewith but in the absence of any right found in favour of defendant No.2 to so dispossess the plaintiffs, the plaintiffs are entitled to permanent injunction against dispossession also, including through legal process. Though the counsel for the defendants cited ***Dilip D. Chowdhari***

supra in this context and contended that therein specifically right to continue in occupation had been conferred and which is not so in this case but I am unable to agree. In the present case, owing to the peculiarities pointed out, the plaintiffs even in the absence of any specific clause in the mutual Will permitting them to continue in occupation, are found to be entitled to continue in occupation.

26. I thus answer the first of the two questions framed in paragraph 20 hereinabove arising for adjudication in the present case, in favour of the plaintiffs and against the defendants.

27. That brings me the second of the two questions aforesaid i.e. of interplay of Section 14 of the Hindu Succession Act in the case of a mutual Will. I have wondered whether, if Section 14(1) were to be applicable, the restricted estate bequeathed by Wing Commander N.N. Bahl in favour of his wife defendant No.2, enlarges into an absolute estate, defeating the mutual Will.

28. Section 14 of the Hindu Succession Act is as under:

***“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 of maintenance or 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.”*

29. Mulla's treaties on Hindu Law, 23<sup>rd</sup> (2018) Edition sums up the position with respect to Section 14, as (a) a most expansive interpretation to the general rule enacted in sub-section (1) has been given; (b) sub-section (2) must be read only as a proviso or exception to sub-section (1) and its operation must be confined to cases where property is acquired for the first time as a grant, without any pre-existing right, under a Will, the terms of which prescribe a restricted estate in the property; (c) where the property is acquired by a female Hindu in lieu of maintenance, it is in lieu of a pre-existing right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the Will prescribes a restricted estate in the property; (d) it depends on the facts of each case, whether the same is covered by the first or the second sub-section; and, (e) sub-section (2) can come into operation only if acquisition of the property is made without there being a pre-existing right to the female Hindu who is in possession of the property.

30. Thus, for the defendant No.2 Sundri N. Bahl to claim that notwithstanding the restricted estate bequeathed to her under the Will of her husband, she is the absolute owner of the property, it was incumbent on the



defendant no.2 Sundri N. Bahl to plead that the subject property was bequeathed to her in lieu of a pre-existing right. Without the defendant no.1 pleading so, she cannot claim absolute right to the property under Section 14(1).

31. However, neither does the undisputed document dated 31<sup>st</sup> March, 2006, being the joint and mutual Will of Wing Commander N.N. Bahl and defendant No.2, provides that Wing Commander N.N. Bahl was bequeathing his 50% undivided share in the subject house in favour of his wife defendant No.2 Sundri N. Bahl for her maintenance nor has the defendant No.2 pleaded so. Only a lip service has been paid to Section 14 of the Hindu Succession Act. Rather, from a bare reading of the mutual Will of the defendant No.2 and her husband Wing Commander N.N. Bahl, it is evident that the defendant No.2 Sundri N. Bahl was/is possessed of other properties also. In the written statement also, the defendant No.2 Sundri N. Bahl is disclosed to be the owner of Shops No.C-15 and C-16, Hotel Crown Plaza Surya as well as of Office Flats in Nehru Place. For the defendant No.2 Sundri N. Bahl to make out a case of pre-existing right of maintenance against her husband Wing Commander N.N. Bahl, it was incumbent upon her to plead so and to disclose all her assets and which has not been done. Adverse inference against the defendants has to be drawn therefrom.

32. A pre-existing right is not a question of law alone but is a question of fact. For the defendant No.2 to, notwithstanding having been bequeathed the restricted estate (as is evident from use of the words “shall rest”, as aforesaid), become an absolute owner under Section 14(1) of the Hindu Succession Act, it was incumbent on defendant No.2 to plead that she was

dependent on her husband Wing Commander N.N. Bahl for maintenance and had no source of income or maintenance. Supreme Court, recently in *Ajit Kaur Alias Surjit Kaur Vs. Darshan Singh* (2019) 13 SCC 70, finding the widow in that case, to be though in possession but without any 'pre-existing right' to the property, reiterated that she could not claim full ownership under Section 14(1) of the Hindu Succession Act. I may in this context notice that in the present case, the two plaintiffs admittedly during the lifetime of Wing Commander N.N. Bahl also were in occupation of the upper floors of the property and the ground floor was in occupation of Wing Commander N.N. Bahl and the defendant No.2 and from a reading of the mutual Will, there is no intention of the plaintiffs, after the demise of either of the spouses, being removed from the upper floors, where they have been residing or for making the same available for renting, to provide maintenance to the surviving spouse, is not evident. Therefrom also, the question of restricted bequest of Wing Commander N.N. Bahl of his 50% undivided share in the house to the defendant No.2 to provide maintenance for her is not borne out.

33. Even otherwise, I have in *Mahima* supra noticed the dichotomy of views in dicta of the benches of equal strength in *Sadhu Singh Vs. Gurdwara Sahib Narike* (2006) 8 SCC 75 on the one hand and *Jagannathan Pillai Vs. Kunjithapadam Pillai* (1987) 2 SCC 572 and *Gulwant Kaur Vs. Mohinder Singh* (1987) 3 SCC 674 on the other hand and opted to follow *Sadhu Singh* supra, holding that:

A. *Sadhu Singh*, after analysing and interpreting the language of Section 14(1) as well as the changes in Hindu Law upon the coming

into force of the Hindu Adoptions and Maintenance Act, 1956 holds Section 14(1) to be applicable only where the Hindu female is in possession of the property on the date of commencement of the Hindu Succession Act and not where the Hindu female comes into possession of the property after the commencement of the said Act. Per contra, *Jagannathan Pillai* on which the subsequent judgments in *Gulwant Kaur, Nazar Singh Vs. Jagjit Kaur* (1996) 1 SCC 35 and *Santhosh Vs. Saraswathibai* (2008) 1 SCC 465 taking a different view are based, was a case where the widow though acquired a limited estate from her husband was not in possession on the date of coming into force of the Hindu Succession Act and repossessed the property thereafter. It was in this context that the Supreme Court held Section 14(1) to be applicable holding that the word “possessed” has to be given a wide meaning. This peculiar fact of the widow in *Jagannathan Pillai* having acquired the property prior to the commencement of the Hindu Succession Act was not noticed in the subsequent judgments supra holding that possession of the property under Section 14(1) could be before or after the commencement of the Act. In none of the said judgments the provisions of the Hindu Adoptions and Maintenance Act and the changes brought about thereby in the right of Hindu female to maintenance were also noticed.

B. Section 14(1) carves out a difference between possession of the property and acquisition of the property. Only the word “acquired” is qualified with the words “whether before or after the commencement of this Act”. Had the intention of the legislature been that a property

acquired by a female Hindu, whether before or after the commencement of the Act, shall be held by her as full owner and not as a limited owner, there was no need to carve out a distinction between possession and acquisition of the property. From such distinction made out and from the intentional omission to qualify the word "possessed" with the words "whether before or after the commencement of this Act" the legislative intent of, for applicability of Section 14(1), possession on the date of commencement of the Act being essential is quite explicit.

C. All statutes particularly those governing and regulating human relations are dynamic in nature and their interpretation, inspite of societal changes, cannot remain static. Law cannot be a fossil. The Supreme Court in *Union of India v. Raghubir Singh* (1989) 2 SCC 754 emphasized the need for adapting the law to new urges in society and quoted with approval the Holmesian aphorism that the "life of the law has not been logic, it has been experience". It was further held that in a developing society such as India, law does not assume its true function when it follows a groove chased amidst a context which has long since crumbled. Similarly in *State of Punjab v. Devans Modern Breweries Ltd.* (2004) 11 SCC 26 it was held that a decision although neither reversed nor overruled may cease to be law owing to changed conditions and changed law, as reflected by the principle "cessante ratione legis cessat ipsa lex". In *Bhuwalka Steel Industries Ltd. v. Bombay Iron and Steel Labour Board* (2010) 2 SCC 273 it was reiterated that the trend of judicial opinion is that stare decisis is not a dogmatic rule allergic to logic and reason; it is a flexible

principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience. *V. Tulasamma* is a judgment of a different era, the guiding principle whereof was the Shastric Hindu Law and to convert, the limited ownership rights of women who till then were clearly discriminated against insofar as ownership of property was concerned, to absolute right. However with the changing times and changing relationships particularly between husband and wife it is felt that to adopt the interpretation of Section 14(1) as in *V. Tulasamma* would be to the detriment of wives. If such an interpretation were to be followed in today's times, husbands having differences with their wives would hesitate from providing a separate residence for the wife for the fear of losing all rights thereto and the said residence after the lifetime of the wife going into the hands of her heirs. Similarly husbands owning property would fear bequeathing a life estate therein to their wives.

D. The additional reasoning given in *Nazar Singh* of acquisition of the property under a compromise being different from acquisition of property under a Will owing to the Will being not mentioned in Section 14(1), as aforesaid does not appear to be correct.

E. The plaintiffs in the Memorandum of Family Settlement expressly agreed that the plaintiffs no.2&3 shall cease to have any right of residence in the flat after their marriage and will not claim any interest, right or title whatsoever in the flat and that the plaintiff no.1 shall also cease to have any right of residence in the flat if she



remarries or resides at another place and that the right of residence of the plaintiff no.1 in the said flat was for her life time only. The plaintiffs further agreed that they shall not claim any right in future over any property of the defendant no.2. The plaintiffs further agreed that after the marriage of the plaintiffs no.2&3 it will be the defendant no.2 who would be entitled to the rent of the third floor of the flat. The plaintiffs presented the said Memorandum of Family Settlement before the Court and before the Court also undertook to abide by the terms & conditions of the Settlement and not to file any claim, petition, complaint or other proceeding against the defendant in any Court of law. I have wondered whether not the very institution of the present suit is in violation of the undertaking given by the plaintiffs to the Court at the time of culmination of the earlier litigation and whether the plaintiffs are entitled to do so. Though undoubtedly in some of the judgments cited by the senior counsel for the plaintiffs also the decrees had been passed in terms of the agreements entered into (in *Santhosh* supra it was held that consent decrees must be construed having regard to the well settled legal position) but at the same time the Courts have held that such Family Settlements are to be honoured, upheld and enforced. It is not as if in the earlier litigation between the plaintiffs and the defendant no.2 any right of maintenance or residence of the plaintiffs against the defendant no.2 had been established. The matter was still at large. It is well-nigh possible that ultimately the plaintiffs may not have succeeded in any claim for maintenance against the defendant no.2. It would be against equity, in my opinion, to in such circumstances permit the plaintiffs to

act in contravention of the Family Settlement and the undertaking given by them to the Court in the earlier proceedings.

34. I have in *Kamal Parti* supra, after considering the judgments subsequent to *Mahima* supra also including *Jupudy Pardha Sarathy* supra referred to by the counsel for the defendants also, not found any reason to take a different view than that taken in *Mahima* supra.

35. *Ranvir Dewan* supra referred to by me in the order dated 20<sup>th</sup> February, 2019 holds (a) that Section 14(2) of the Act is 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; (b) that where 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; (c) that the husband in that case was the absolute owner of the property and was free to bequeath his property to anyone and had so bequeathed the property to his son and daughter; (d) that at the same time he gave only life interest to his wife to live in the house which belonged to his son and daughter; (e) that such disposition the testator could make by virtue of Section 14(2) read with Section 30 of the Act; and, (f) that such life interest was in the nature of “restricted estate” under Section 14(2) of the Act which remained restricted till her death.

36. The second question framed in paragraph 20 above qua Section 14 of the Hindu Succession also is thus decided in favour of the plaintiffs and against the defendants.

37. The plaintiffs, as aforesaid, are found entitled also to the relief of restraining the defendants from dispossessing the plaintiffs from the first and second floors of house No.D-859, New Friends Colony, New Delhi, which under the mutual Will, had been bequeathed to the plaintiffs; however the plaintiffs are not found entitled to continue in possession of the garage on the ground floor, which under the mutual Will also, has not been bequeathed to the plaintiffs. The plaintiffs, as aforesaid, are also found entitled to the relief of permanent injunction restraining the defendants from dealing with the property in contravention of the mutual Will aforesaid. However, as far as the third relief claimed by the plaintiffs of return of goods is concerned, the pleadings of the plaintiffs in that respect are found to be vague and no case for return of the goods is made out. For the plaintiffs to be entitled to mandatory injunction directing the defendants to return any goods, it was incumbent upon the plaintiffs to plead that the compensation in money would be inadequate. Else, specific performance in the form of mandatory injunction with respect to movable assets cannot be granted in law. The plaintiffs have not claimed the relief of recovery of value of the goods.

38. Resultantly, a decree is passed, in favour of the plaintiffs and jointly and severally against the two defendants,

- (i) of permanent injunction restraining the defendants from dispossessing the plaintiffs, including through the process of law, from the first and second floors of house No.D-859, New Friends

Colony, New Delhi; however the plaintiffs are not found entitled to any right with respect to the garage on the ground floor of the said house; considering that the relief of injunction as well as the basis on which the relief of injunction is granted to the plaintiffs, being premised on equitable doctrine as aforesaid, it is further ordered that the grant of relief of permanent injunction against dispossession from the first and second floors of house No.D-859, New Friends Colony, New Delhi is subject to the plaintiffs, within sixty days hereof delivering peaceful vacant physical possession of the garage on the ground floor to the defendant No.2; and,

(ii) of permanent injunction restraining the defendants from transferring, selling or creating any third party right, title or interest in house No.D-859, New Friends Colony, New Delhi.

The parties are however left to bear their own costs.

Decree sheet be drawn up.

**RAJIV SAHAI ENDLAW, J.**

**APRIL 25, 2020**

**MAY 09, 2019**

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