DR. MAHESH CHAND SHARMA A

v.

SMT. RAJ KUMARI SHARMA AND OTHERS

DECEMBER 1, 1995

[B.P. JEEVAN REDDY AND S.B. MAJMUDAR, JJ.] B

Indian Succession Act, 1925—Section 119—Applicability—Date of vesting of legacy—Property bequeathed by the testator to his wife for life and after her death to his legal heirs—On the date of testator's death son was the only legal heir—Held, legacy becomes vested in the son on the death of testator. C

Indian Succession Act, 1925—Section 111—Exception—Applicability—"A specified individual"—Meaning of—Cannot refer to or mean the testator.

Indian Succession Act, 1925—Section 120—Applicability—Applies only in case of happening of a specified uncertain event—Death is not an uncertain event. D

Transfer of Property Act, 1882—Section 3—"Transfer"—Meaning of—Settlement during pendency of suits between mother and son—Son challenging validity of Will made in favour of mother—Mother settling dispute by accepting son's title to the property in lieu of monthly maintenance—Held, it is not a transfer of the property. E

Hindu Succession Act, 1956—Section 14(1) and (2)—Applicability of—Right of residence to a Hindu female alongwith a sum of money in lieu of maintenance—Whether ripens into full ownership on commencement of the Act. F

Hindu Succession Act, 1956—Section 14(1)—"Possessed"—Meaning of—Whether actual or physical possession is necessary.

Limitation Act, 1963—Article 65—Plea of adverse possession—Nature of—Mixed question of law and fact—All facts necessary to establish adverse possession must be pleaded. G

Constitution of India—Articles 133 and 136—Finding of Trial Court on limitation no contested in appeal—Held, plea of limitation cannot be raised before the Supreme Court. H

A On 10.4.1942, one R made a Will bequeathing one of his properties (Doctor's Lane property) to his wife S for life and to his legal heirs after her death. The Will prohibited any transfer of the property by S. R died in 1953 leaving behind his wife, one son (first defendant) and four daughters. At the time of his death, as per the prevalent law, only the son was the legal heir. There was litigation between the son and the mother, and as many as seven suits were filed. The son claimed that R has made another Will dated 26.9.1950 superseding his earlier Will. The suits were finally settled on 27.1.1955 and the mother accepted the title of the son over the Doctor's Lane property. The mother was given a right of residence in the first floor of the property. The son was to pay S maintenance allowance of Rs. 125 per month and in the event of the mother's decision not to reside in the property, a maintenance allowance of Rs. 150 per month was to be paid to her. After the death of the mother, the son's wife was to become the owner of the property.

The son, who was abroad, appointed the second defendant as his general power of attorney in respect of his properties in India. The second defendant sold the Doctor's Lane property to his brother (third defendant) and his own two sons (defendant Nos. 4 and 5).

S died in 1972, after coming into force of the Hindu Succession Act, 1956. One of the daughters filed a partition suit in the High Court in respect of all properties left behind by R and S claiming 1/5th share in the property on the ground that by virtue of the provisions of the Hindu Succession Act, the daughters of R also became the legal heirs of his property. The learned Single Judge dismissed the suit of the daughter in respect of the Doctor's Lane Property. In respect of all other properties his suit was decreed.

The daughter appealed under clause 10 of the Letters Patent against the order of the Learned Single Judge. The appeal of the daughter was allowed by the Division Bench which held that :

(a) The Will dated 10.4.1942 in favour of S is true, valid and effective;

(b) the Will dated 25.9.1950 alleged to have been made in favour of the son was not proved;

(c) the interest created in S was a life estate and not a widow's estate

and therefore, could not be surrendered in favour of the son; A

(d) the alleged surrender under settlement dated 27.1.1955 was not total and complete and, therefore, no surrender in the eyes of law;

(e) the Will dated 10.4.1942 contemplates that the property shall devolve on legal heirs of R on the death of his wife and at the time of wife's B death, there were five legal heirs of R due to the operation of Hindu Succession Act, 1956 and therefore, the property would devolve on all five heirs; and

(f) the Will dated 10.4.1942 was a bequest to a class and therefore the exception to the Section 111 of the Indian Succession Act, 1925 was C applicable and not Section 119 or Section 120.

On appeal by the third defendant who had purchased the property, partly allowing the appeal, this Court

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HELD : 1.1. The present case squarely falls within the four corners of Section 119 of the Indian Succession Act, 1925. It fits in neatly into Illustration (iii) to Section 119. By virtue of Section 119 of the Indian Succession Act, the bequest to "the legal heirs of the testator" vested in the first defendant, he alone being the legal heir of the testator on the date of death of R (testator). The vesting of bequest to "the legal heirs of the E testator" was not postponed till the death of interposer, S. [63-H, 64-A]

1.2. Once the bequest to "the legal heirs of the testator" provided by the Will got vested in the first defendant on the date of the death of the testator, there is no question of the first defendant being divested there- F from. On the death of S, the first defendant became entitled to possession of the Doctor's Lane house which had already vested in him. [64-C]

Chilanakuri Pullappa v. *Guruka Bayanna*, AIR (1962) AP 54 and *P. Somasundaram* v. *K. Rajammal*, AIR (1976) Mad 295, referred to.

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2.1. For the exception to Section 111 of the Indian Succession Act, 1925 to apply, it must first be shown that the bequest is to a class of persons. Then it must be shown that the said class of persons is described as standing in a particular degree of kindred to a specified individual. The third requirement is that the possession of the bequest is deferred until a time later than the death of the testator for one or the other reason. If the H

A above ingredients are satisfied then the property bequeathed devolves upon such persons of the class as are alive on the date of death of the interposer (prior bequest) and upon the representatives of such of those who may have died after the death of the testator but before the death of the interposer. [65-C]

B 2.2. The words "a specified individual" as used in exception to Section 111 of the Indian Succession Act, 1925 cannot refer to or mean "the testator". The very Explanation uses both the words "testator" and "a specified individual". If the idea behind the exception was to refer to testator, then it would not have employed the words "a specified in-
C dividual". Nothing was more simpler than using the words "the testator" instead of the said words actually used. This means that the words "a specified individual" refer to an individual other than the testator. This understanding is re-enforced by the several illustrations appended to the section. In each of those illustrations, the class of persons is described as children (or the relatives of) a person other than the testator. None of them
D speaks of a class of persons related as aforesaid to the testator. [65-E-F]

2.3. In the present case, the legal heirs of testator are described as standing in a particular degree of kindred to the testator - and not to "a specified individual". Therefore, the exception to Section 111 of the Indian
E Succession Act, 1925 becomes inapplicable in the present case. [65-G-H]

3. A mere reading of Section 120 of the Indian Succession Act, 1925 would indicate that it is not attracted in the present case. The death of S was not a specified uncertain event. In the present case, the bequest is not a contingent one. If so, the bequest is not postponed within the meaning
F of Section 120. [66-F]

N. Krishnammal v. *R. Ekambaram & Ors.*, [1979] 3 SCC 273, distinguished.

4. The settlement of 1955 does not amount to a transfer and is not
G incompetent and ineffective for being inconsistent with the terms of the 1942 Will. One must look at the situation obtaining in the year 1955 in order to examine if the settlement amounted to a transfer. Seven suits were pending between mother and the son. The validity of 1942 Will was in dispute because the son relying on another Will of R, said to have been executed in
H the year 1950, superseding the 1942 Will. No Court had pronounced till then

as to which Will was the last Will and testament of R. The right given to S under the 1942 Will was itself in dispute in those suits. In such a situation, a compromise, a settlement was arrived at between the parties, whereunder S acknowledged and accepted the first defendant's title to the Doctor's Lane house in lieu of right of residence in the first floor and cash maintenance of Rs. 125 per month. The settlement does not say which of the said two Wills is true and valid. The settlement was *de hors* the claims and contentions of both the parties including their claims and contentions under the respective wills espoused by them. [68-C-E]

5.1. A right of residence given for life to a female Hindu in a property plus a sum of money in lieu of her right to maintenance ripens into full ownership on the coming into force of the Hindu Succession Act, 1956. Under the 1955 settlement, S was given not only the right of residence in the first floor but also a sum of Rs. 125 per month in cash towards her maintenance. It was further provided under the settlement that if S did not intend to reside in the aforesaid portion, the first defendant shall pay her Rs. 150 per month as maintenance instead of Rs. 125 per month. This clearly indicates that the right of residence was given to her in lieu of and in recognition of her per-existing right to maintenance. Once this is so, it is sub-section (1) of Section 14 of the Hindu Succession Act, 1956 that applies and not sub-section (2). [69-E]

Tulasamma v. *Sesha Reddi*, [1977] 3 SCC 99; *Mangat Mal* v. *Punni Devi*, [1995] 6 SCC 88, relied on.

5.2. The expression "possessed" in Section 14(1) of the Hindu Succession Act, 1956 means and refers to a right to possession and not necessarily actual or physical possession. So long as she has a right to possession, the mere fact the the female Hindu was not in physical possession matters very little. [70-G]

Mulla's Hindu Law (16th Edn.) at p. 810, referred to.

5.3. By virtue of Section 14(1) of the Hindu Succession Act, 1956 the limited estate of S (given to her under the 1942 Will) would have ripend into absolute estate if S had been "possessed" of the entire Doctor's Lane house on the date of commencement of the Hindu Succession Act. But she was not. She had given up her possession and right to possession over the first floor under the 1955 Settlement. Accordingly, it must be held that on

A the date of coming into force of the Hindu Succession Act, 1956, S became the absolute owner of the first floor of the Doctor' lane house property. [71-E-F, 72-A]

5.4. Section 14 of the Hindu Succession Act, 1956 operates on its own force once the facts requisite for attracting its application are established. B Though there is no specific reference to Section 14 of the Hindu Succession Act in the plaint, having regard to the law applicable to pleadings (Order 6 Rule 2 of the Civil Procedure Code), it would not be just and proper not to give effect to the said highly salutary provision on the above ground which, in the facts and circumstances of the case, is a mere technicality. [70-D]

C *Kedar Lal Seal & Another* v. *Hari Lal Seal,* AIR (1952) SC 47, referred to.

6.1. It is well settled that the plea of adverse possession is not a pure question of law but a mixed question of fact and law. It is also well D established that the party pleading adverse possession must state with sufficient clarity as to when his adverse possession commenced and the nature of its possession. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary E to establish his adverse possession. [73-E, 75-E]

6.2. The defendants' case was that the 1942 Will was not true and that after the death of R first defendant came into possession of all the properties including the Doctor's Lane house and was in adverse possession thereof since 1954 the plea of limitation was not based upon any other F ground or fact. The defendants have not suggested that their adverse possession commenced at any later point of time. Once it is held that (a) the 1942 Will is true, and (b) the remainder bequest vested in the first defendant on the death of R, the bottom gets knocked out of this plea. [73-C]

G 6.3. So far as the 1955 settlement is concerned, there can be no question of adverse possession by the first defendant commencing thereunder or from its date. Under the said settlement, the first defendant was declared to be the owner of Doctor's Lane House and S was given the right of residence in the first floor thereof. Once the first defendant is declared to be the owner of the said property, there is no question of adverse H possession by him. [73-H, 74-A]

7. A party who abandons a particular plea at a particular stage cannot be allowed to re-agitate in appeal. Among the issues framed in the suit, Issue No. 5 pertains to the plea of limitation. On this issue, the learned Single Judge recorded a finding in favour of the plaintiff. The decision on the above issue was not contested by the parties before the Division Bench. Once this is so, it is not open to the appellant in these appeals to seek to re-agitate the said plea. [72-H, G]

8. The sale deed executed by the second defendant as the General Power of Attorney of the first defendant in favour of Defendant Nos. 3 to 5 is valid and effective insofar as the ground floor of the Doctor's Lane house is concerned. So far as the first floor of the said Doctor's Lane house is concerned, it became the absolute property of S on the coming into force of the Hindu Succession Act, 1956, i.e., by operation of Section 14(1) of the said. On her death, the said first floor devolved upon her son and four daughters in equal shares under Section 15 of the Hindu Succession Act, 1956. [75-H, 76-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 547-48 of 1991.

From the Judgment and Order dated 25.3.87 of the Delhi High Court in R.F.A. (OS) Nos. 14 and 15 of 1984.

Arun Mohan, Ms. Chitra Mahendale and Ashok Grover for the Appellant.

M. C. Bhandare, M.R. Chawla, K.N. Tripathi, J.R. Das and S.S. Jauhar for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Third defendant is the appellant. He along with Defendant Nos. 4 and 5 is the alienee of the house property, which is the subject-matter of these appeals. Second defendant is the brother of third defendant and father of Defendant Nos. 4 and 5. Defendant Nos. 2, 4 and 5 are figuring as respondents in these appeals but are supporting the third defendant.

Plaintiff and Defendant Nos. 6 to 8 are the daughters of late Ram Nath Dewan while the first defendant is the son of Ram Nath Dewan. First

A defendant and second defendant have married sisters. First defendant was practically settled in U.S.A. along with his family. He appointed the second defendant as his General Power of Attorney. Acting as the General Power of Attorney of first defendant, the second defendant executed a sale deed in respect of No. 5, Doctor's Lane, New Delhi (the house property which is the subject-matter of these appeals, which shall be referred to hereinafter as "Doctor's Lane") in favour of his brother (Defendant No. 3) and sons (Defendant Nos. 4 and 5).

The plaintiff, daughter of late Ram Nath is seeking to avoid the sale of the said house property in the present suit for partition and separate possession of her 1/5th share. The other daughters, Defendant Nos. 6 to 8, are tacitly supporting the plaintiff, though they have remained *ex parte*. The first defendant too has remained *ex parte*. He did not even filed a written statement. He died pending the suit. His legal representatives, all of whom are residing in U.S.A., have also not chosen to appear in the suits/appeals. Thus, the contest has been between plaintiff on one side and Defendant Nos. 2 to 5 on the other.

RELEVANT FACTS :

Ram Nath Dewan was a self-made man. He earned substantial properties in Delhi. He married a little late in life. His wife, Satyawati, was younger to him by atleast fifteen years, if not more. They had a son (first defendant) and four daughters (plaintiff and Defendant Nos. 6, 7 and 8). With a view to provide a secure life to his wife, Ram Nath made a Will on 10th day of April, 1942 whereunder he bequeathed one of his properties, viz., No. 5 Doctors Lane, New Delhi to Satyawati for life. He provided that after Satyawati's death, the said property shall go to his legal heirs. Ram Nath died in the year 1953.

Soon after the death of Ram Nath, disputes arose between the mother and the son. The son (first defendant) put forward another Will said to have been executed by Ram Nath on September 26, 1950 superseding the earlier Will. As many as seven suits came to be instituted between the mother and the son. In January 1955, a settlement was arrived at between them. Under this settlement, the mother, Satyawati, was given a right to reside in the first floor of the Doctor's Lane house. The son was to pay her Rs. 125 per month as maintenance allowance. If the mother did not intend to reside in the said first floor, the son was to pay her Rs. 150

per month as maintenance allowance. Provision was made for the marriage of the youngest daughter. It was affirmed that No. 58, Todar Mal Road, New Delhi, is the exclusive property of the mother but she undertook not to transfer the property in any manner whatsoever. After her death, the wife of the first defendant was to be the owner of the said property. Certain jewellery and other articles were also given to the mother. A joint statement in the above terms was submitted into the Court on January 27, 1955 and the suits disposed of in terms of the settlement on the same day.

The first defendant, Rajender Nath, was practically settled in U.S.A. along with his family. He appointed his co-son-in-law, Sri G.C. Sharma (second defendant) as his General Power of Attorney in respect of his properties in India. On March 4, 1971, the second defendant executed a sale deed in respect of the Doctor's Lane house in favour of his brother (third defendant) and his own two sons (Defendant Nos. 4 and 5). Satyawati died on July 2, 1972. Soon thereafter, the present suit for partition was filed in respect of all the properties left by Ram Nath and Satyawati. The plaintiff disputed the validity of the sale deed executed by the second defendant on more than one ground. She asked for a declaration to that effect. She claimed a 1/5th share in all the properties including the suit house. According to her, each of the Defendant Nos. 1 and 6 to 8 were entitled to 1/5th share.

The plaintiff's case in brief, as set out in the plaint, is this: the Doctor's Lane house was constructed by Ram Nath on the land obtained by him on perpetual lease from the Secretary of State for India in Council. Ram Nath made a Will on April 10, 1942 bequeathing the said house to his wife, Satyawati, for her life. He provided that on her death, it will devolve upon his "legal heirs". Ram Nath and Satyawati owned certain other properties also in Delhi. All the said properties are liable to be divided among plaintiff, Defendant No. 1 and Defendant Nos. 6 to 8 in equal shares. The plaintiff is in joint possession of the said properties along with Defendant Nos. 1 and 6 to 8. Only after the death of her mother, has to plaintiff come to know of the General Power of Attorney executed by the first defendant in favour of the second defendant and the sale of the Doctor's Lane house by the second defendant to Defendant Nos. 3 to 5. When she demanded partition of all the properties including the Doctor's Lane house, the first defendant demurred. He alleged that in the year 1955, there was a settlement between himself and Satyawati whereunder she had

A surrendered the Doctor's Lane house in his favour retaining only a right of residence in the first floor. The plaintiff does not admit the truth and validity of the said settlement. In any event, the settlement, if any, cannot affect the rights of the daughters (Plaintiff and Defendant Nos. 6 to 8) in the said properties since they were not parties to the said settlement. The B first defendant had no right whatsoever in the Doctor's Lane house during the life time of Satyawati. He or his Power of Attorney holder had, therefore, no right to execute a sale deed in respect of the said Doctor's Lane house. The Power of Attorney and the sale deed are both illegal, invalid, fictitious, sham, collusive, void and without consideration and are not binding upon the plaintiff and her sisters. Pending the suit, the plaintiff C asked for an amendment of the plaint seeking relief of possession of her 1/5th share in the Doctor's Lane house. The amendment was allowed on December 6, 1983 with a direction that the said amendment shall be effective only from the date of the said order.

D The second defendant filed a written statement disputing the several averments in the plaint insofar as they concerned him. Defendant Nos. 3 to 5 filed a joint written statement defending the alienation in their favour. They submitted that the Will dated April 10, 1942 was revoked by another Will dated September 26, 1950 made by Ram Nath. In any event, the settlement arrived at between Satyawati and the first defendant on January E 27, 1955 is binding upon all who claim through Satyawati. Under the said settlement, Satyawati surrendered all her right, title and interest (life interest) in the Doctor's Lane house in favour of the first defendant , retaining a mere right of residence in the first floor. The first defendant thus became the absolute owner of the Doctor's Lane house and, therefore, F the sale deed executed by his Power of Attorney is good and valid. As a matter of fact, the Doctor's Lane property was resumed and entered upon by the President of India. At the intervention of Defendant Nos. 3 to 5, however, a supplementary lease deed (perpetual lease) dated June 3, 1952 was executed by the President of India in favour of Defendant Nos. 3 to 5.

G The learned Single Judge of the Delhi High Court, who tried the suit, dismissed the suit insofar as the Doctor's Lane house is concerned but decreed it insofar as other properties are concerned. The learned Judge held that by virtue of the settlement dated January 27, 1955, Satyawati surrendered all her right, title and interest in the Doctor's Lane house in H favour of her son, first defendant, who was the only legal heir of Ram Nath

on the date of the said settlement. The first defendant thus became the absolute owner of the Doctor's Lane house. Inasmuch as the first defendant has not disputed the correctness of the sale deed executed by the second defendant in favour of Defendant Nos. 3 to 5, the sale of the Doctor's Lane house in favour of the said defendants is good and valid.

Only the plaintiff appealed under Clause 10 of Letters Patent against the judgment of the learned Single Judge*. The Division Bench allowed the appeal on the following findings:

(1) The Will dated April 10, 1942 made by Ram Nath is true, valid and effective.

(2) The Will put forward by Defendant Nos. 2 to 5, said to have been executed by Ram Nath on September 25, 1950 in favour of the first defendant is not proved to have been executed by Ram Nath.

(3) The interest created in Satyawati under the 1942 Will is a life estate and not a widow's estate. While a widow's estate could be surrendered in favour of the nearest reversioner(s), the life estate cannot be so surrendered. In any event, since the alleged surrender under the settlement dated January 27, 1955 was not total and complete, it was no surrender in law. As a matter of fact, the 1942 Will expressly prohibited Satyawati from transferring the said property during her life time.

(4) While it is true that in the year 1942 when the Will was executed, first defendant, Rajender Nath, was the only "legal heir" of Ram Nath but the Will contemplates that the Doctor's Lane house shall devolve upon the legal heirs of the testator on the death of Satyawati. On the date of the death of Satyawati, not only the first defendant (the son) but the daughters also were the "legal heirs" by virtue of the Hindu Succession Act, 1956. Each of them is entitled to 1/5th share in the disputed house.

(5) On the language of the 1942 Will, it is the exception to Section 111 of the Indian Succession Act, 1925 that applies and not Section 119 or for that matter Section 120. Since it was a bequest to a class, the class has

* The legal representatives of the first defendant also filed an appeal, R.F.A. No. 15 of 1984 but that appeal related to some other property and hence has no relevance herein. The said appeal was disposed of by the Division Bench on the same day, i.e., March 25, 1984. The legal representatives of the first defendant have not preferred any appeal to this Court.

A to be ascertained on the death of the interposer. "To the extent of the application of exception to Section 111 of the Succession Act, it (bequest under the Will in favour of legal heirs) was contingent".

On the above findings, the Division Bench held that Plaintiff, first defendant and Defendant Nos. 6 to 8 are entitled to 1/5th share each in the B Doctor's Lane house. Inasmuch as the first defendant or his legal heirs did not question the sale deed dated March 4, 1971, Defendant Nos. 3 to 5 will be entitled only to the 1/5th interest of the first defendant in the Doctor's Lane house. The judgment of the Division Bench is questioned by the third defendant in these appeals who is supported, as stated above, by Defendant C Nos. 2, 4 and 5.

CONTENTIONS OF THE PARTIES:

Shri Arun Mohan, learned counsel for the appellant, urged the following contentions :

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(i) Even if the Will dated September 25, 1950 is held not established and the 1942 Will is taken to be the true and effective Will, even then the Doctor's Lane house must be held to have become the absolute property of the first defendant under and by virtue of the settlement dated January E 27, 1955. Satyawati had only a right to reside on the first floor during her life time and no more. The plaintiff has neither pleaded nor relied upon Section 14 of the Hindu Succession Act, 1956 nor is it her contention that Satyawati became the absolute owner of the first floor by virtue of Section 14. She cannot, therefore, be allowed to raise the said plea for the first time in these appeals. As a matter of fact, the Doctor's Lane house was resumed F by the President of India in terms of the grant and later granted on perpetual basis to Defendant Nos. 3 to 5 by order dated June 3, 1952.

(ii) In law, succession is never in abeyance. On the language of the Will, it is Section 119 - and in particular Illustration (iii) thereto - that G applies. It means that while the life estate devolved upon Satyawati on the death of Ram Nath, the remainder interest vested simultaneously in the first defendant, he being the only legal heir on the date of the death of Ram Nath. The vesting of remainder interest is not postponed till the date of death of the interposer, Satyawati.

H (iii) The Division Bench of the High Court was in error in holding

that the exception to Section 111 applies in this case. The said exception contemplates bequest to "a class of persons described as standing in a particular degree of kindred to a specified individual". In this case, neither the bequest is to a class of persons nor were the persons in whose favour the bequest was made stood in a particular degree of kindred to a specified individual. The words "a specified individual" in the said exception do not and cannot comprehend the testator. They refer to a person other than the testator. The High Court was also in error in holding that Section 120 of the Indian Succession Act is attracted. That section applies only to a bequest which is contingent and here the bequest is certainly not contingent.

(iv) Though Satyawati was alive for about seventeen years after the 1955 settlement, she never questioned the said settlement. On the contrary, by her conduct, she always affirmed the ownership of the first defendant over the Doctor's Lane house. As a matter of fact, she was not even living in the first floor wherein she was given a right to reside under the said settlement. In such a situation, Section 14 of the Hindu Succession Act has no application since she was not possessed of the said property - not even of the first floor, on the date of the coming into force of the said Act.

(v) The life estate holder is also entitled to surrender his/her interest in favour of the remainder-men. The requirement of a total and complete surrender applicable in the case of widow's estate is not applicable in the case of a limited estate.

(vi) The suit is barred by limitation. This suit, as originally filed, was based upon the plea of joint possession even with respect to the Doctor's Lane house which is admittedly untrue and untenable. The relief of possession was added by amending the plaint only on December 6, 1983. This date is beyond twelve years from the date of sale in favour of Defendant Nos. 3 to 5. Defendant Nos. 3 to 5 have perfected their title by adverse possession, in any event.

On the other hand, Shri M.C. Bhandare, learned counsel for the respondent-plaintiff, urged the following contentions while supporting the reasoning and conclusion of the Division Bench :

(I) The case of Defendant Nos. 2 to 5 is not only unjust but is based upon fraud. The second defendant, who is a senior advocate practising at

A Delhi, took unfair advantage of the faith reposed in him by the first respondent, his co-son-in-law, and cheated him out of his property by executing a sale deed for a nominal consideration in favour of his own brother and sons. Because the first defendant was settled in America along with his family and was not taking proper interest in his properties and
B affairs in India, the second defendant got an opportunity which he made full use of for his own unjust enrichment. This factor is relevant because these appeals are filed under Article 136 of the Constitution of India.

(II) The alleged family settlement arrived at on January 27, 1955 was not a voluntary one. The defenceless widow was confronted by her own son
C who put forward a rival but false Will said to have been executed by Ram Nath whereunder he sought to deprive Satyawati of all her interest in the Doctor's Lane house under the 1942 Will. As many as seven suits were pending. There was also an arbitration by one Chanan Ram, referred to in the said joint statement. Under the settlement, Satyawati was deprived of her life estate in the Doctor's Lane house and she was given a partly sum
D of Rs. 125 per month along with a mere right of residence in the first floor. It was further provided that if she did not choose to reside in the said first floor, she would be given extra Rs. 25 per month. The entire settlement was unjust and unfair to the widow.

E (III) That the interest created in Satyawati under the 1942 Will is a life estate and not a widow's estate as rightly held by the Division Bench. The 1942 Will placed an express prohibition against transfer of her interest by Satyawati. The so-called surrender is in reality a transfer of her interest and hence barred by the Will. Once the said settlement goes, the 1942 Will
F stands in its full effect. Satyawati became the absolute owner of the said property by operation of law, viz., Section 14 of the Hindu Succession Act, 1956. The sale of the Doctor's Lane house by the first defendant or his Power of Attorney holder is, therefore, of no effect and incompetent.

G (IV) On the clear language of the Will, Section 119 of the Indian Succession Act is not attracted. The Will clearly indicates that the devolution of interest upon the legal heirs of the testator was to take place on the death of Satyawati. It was a case of bequest to a class within the meaning of the exception to Section 111. Because of the said contrary intention in the Will, Section 119 is not at all attracted. It is the exception to Section
H 111 that applies.

(V) The duty of court in the case of construction of a Will is always to give effect to the intention of the testator. The intention of Ram Nath is made clear beyond any doubt by the clear words used in the Will, according to which Satyawati was to be the life estate holder and that "after her (devisee) death" the property was to go to the "legal heirs of the testator". On the death of Satyawati (devisee), the legal heirs of the testator were the son and four daughters of Ram Nath and it is they who succeeded to the said property in equal shares.

(VI) Even if the plaintiff has not expressly pleaded or relied upon Section 14 of the Hindu Succession Act, 1956 in the plaint, she is yet entitled to rely upon the said provision. The plaintiff had made it clear at more than one place in the plaint that she is claiming her right in the Doctor's Lane house and other suit properties not only under her father, Ram Nath, but also under her mother, Satyawati. In the light of the said specific pleading, the plaintiff is entitled to rely upon Section 14 of the Hindu Succession Act.

(VII) The plea of limitation is wholly untenable. The plaintiff and other legal heirs of Ram Nath succeeded to the Doctor's Lane house only on the death of Satyawati who was the limited estate holder. During the life time of Satyawati, they had no right to, nor were they obliged to, challenge the alienation of the Doctor's Lane house from the date of death of Satyawati. Even the amendment of the plaint including the relief of possession, granted on December 6, 1983 is within a period of twelve years.

THE 1942 WILL AND THE 1955 SETTLEMENT :

For a proper appreciation of the contentions, it is necessary to set out the 1942 Will as a whole :

"DEED OF WILL

I Mr. Ram Nath Dewan S/o. Pt. Mool Raj caste Brahmin resident of No. 5 Doctors Lane, New Delhi hereinafter called the testator made this Will without any persuasion fraud and collusion in favour of my wife, Shrimati Satya Vati Dewan daughter of Pt. Atma Ram Vedi hereinafter called the Devisee. Now this deed witnesses as follows :

1. That the testator bequeaths the use, enjoyment and interest of my house on part plot No. 5, in block No. 88, Doctors

A Lane, New Delhi worth Rs. 50,000 in my said wife, the devise during her life after his (testator) death and declares that after her (devisee) death the property will go to the legal heirs of the testator.

2. That the said devisee will continue to live in the said house
B according to her sweet will and shall also have a right to give the said property on rent to any tenants.

3. That the said devisee shall have no right to transfer the property in any way whatsoever.

C 4. That the said devisee will be whole and sole manager and beneficiary of the said property during her life and shall possess a right to make any alteration and addition in the building accommodation in accordance of her sweet will and desire. No legal heir of the testator shall have any right to
D object to that.

5. That the devisee will realise the rent of the said property if any and appropriate and spend it on herself or anyone else in accordance of her sweet will. No legal heir of the testator shall have any right to interfere in that.
E

6. That no legal heir of the testator shall be entitled to live in the said house without permission of the said devisee during her life and said devisee will have right to eject any person living in the house at the time of the testator's death.

F 7. That the said devisee shall be liable to pay the lease money (Land Rent) to the Government either from the income derived from the house or from her own pocket.

8. That the repair of the house will depend upon the sweet
G will of the devisee.

In witnesses whereof, I, Mr. Ram Nath Dewan, the testator have put my signature to this my Will this 10th day of April 1942 in present of the attending witnesses:

H sd/- Ram Nath Dewan

We are not setting out the 1950 Will put forward by Defendant Nos. 3 to 5 inasmuch as it is held not proved by both the learned Single Judge and the Division Bench of the High Court and no effort was made before us to challenge the said concurrent finding. It is, however, necessary to set out the settlement arrived at between Satyawati and the first defendant on January 27, 1955. It reads :

"Joint statement of Shri Rajender Nath Dewan Plaintiff and Smt. Satyavati Defendant dated 27.1.1955 recorded in Suit No. 689/54 titled 'Rajender Nath Dewan versus Satyavati' decided on 27.1.1955 by Shri S.S. Kalha, SJIC Delhi.

ENGLISH TRANSLATION

Statement of Shri Rajender Nath Dewan Plaintiff and Smt. Satyavati defendant on Solemn affirmation: The parties have compromised to the effect that the award of Shri Chanan Ram Arbitrator be set aside. The defendant will reside on the Ist floor of No. 5, Doctors Lane, New Delhi. The plaintiff will pay her Rs. 125 per month as maintenance allowance. The defendant will arrange for her food separately at her own expense. In case the defendant does not intend to reside in the aforesaid portion, the plaintiff will pay her Rs. 150 per month as maintenance allowance. In case the defendant resides at the aforesaid place but take meal with the plaintiff then the plaintiff will pay her Rs. 50 per month as maintenance allowance. The defendant shall not sublet the aforesaid property and she will not keep Mayadevi (and another person whose name is illeglible) with her. Dr. Vidyavati or Shri Rishikesh or their family members also will not reside with the defendant but they will be free to visit the defendant at the said place. There are Postal Certificates of the value of Rs. 5000 in the name of defendant and the deceased Dewan Ram Nath which certificates are lying in safe custody with the Palai Central Bank, New Delhi. The defendant will encash these certificates at the time of the marriage of Kumari Ramakanta Dewan and utilise the proceeds for her marriage expenses. Before that the defendant will not be entitled to encash these certificates nor will she be able to remove them from the safe custody of the bank. There is also a fixed deposit receipt of the Palai Central Bank, New Delhi in the name of

defendant for the sum of Rs. 3,139/15. The defendant shall be the owner of this deposit and she will be free to utilise it as per her own Will or at the time of necessity. The family Jewellery is lying in Locker No. 664, Type C with Punjab National Bank, Tropical Building, New Delhi. The parties to the suit will not remove the Jewellery from the Locker and this Locker will be operated only at the time of the marriage of Km Ramakanta. After removing such part of the jewellery as may be considered proper to be given on Ramakanta's marriage to Ramakanta, the locker shall be re-sealed and the remaining jewellery will be owned by the plaintiff after the death of the defendant. There is another locker with Imperial Bank of India, New Delhi in the name of the defendant. Shri Shyam Kishore and Shri Sukhbir Prasad Jain, Advocates accompanied by the parties shall prepare an inventory of the articles in the locker. Those articles which belong to Thakurji Maharaj (God) will be handed over to the defendant and shall be placed by her in the Temple. Out of the contents of the locker the Necklace, the watch and one ring, which belong to defendant along with her papers including a fixed deposit receipt, will be handed over to the defendant. The shares scrips and the other articles including a watch belonging to the father of the plaintiff shall be handed over to the plaintiff. There are two watches with the defendants (one gents and one ladies) which shall be returned by the defendant to the plaintiff. In case, the plaintiff fails to pay the above said maintenance allowance to the defendant the defendant shall be entitled to recover that from the rents from the property in the possession of the plaintiff over which rents she shall have a first charge. The following are the particulars of the property :

1. 5. Doctors Lane, New Delhi;

2. 56-58 Todar Mal Road, New Delhi;

3. Some land in Shahadra.

The rent of the above property shall be realised by the plaintiff. The defendant is the owner of property No. 58, Todar Mal Road, New Delhi. She shall not transfer the property in any manner whatsoever. The right to realise rent and give the premises on rent shall vest in Smt. Vinodni Dewan. After the death of the defendant,

Smt. Vinodni Dewan shall be the owner of the property. The above statement of the parties may also be read as their statement in Civil Suit Numbers 682 of 1954, 40 of 1954, 442 of 1954 and 683 of 1954, and by virtue of this statement these Suits may be dismissed. The Plaintiff shall have the right to withdraw all rents which have been deposited in various Courts by the tenants. Out of this one-tenth proceeds will be paid over by the plaintiff to the defendant. Except property No. 58, Todar Mal Road, the plaintiff shall be the owner of rest of the property.

R.O. & A.C.

sd/- Satyavati Dewan sd/- Sukhbir Prasad Advct

sd/- R.N. Dewan sd/- Shyam Kishore Advct

27.1.1995

Sd/- SJIC

ORDER : In terms of the statements of the parties the suit is dismissed. The parties are left to bear their own costs. The parties shall remain bound by the compromise and by their statements. Order announced.

Sd/- S.S. Kalha.

SJIC Delhi

27.1.1955."

(In the above joint statement, plaintiff means the first defendant herein and the defendant means Satyawati Dewan. Smt. Vinodni Dewan is the wife of the first defendant.)

The 1942 Will - its meaning and effect :

We shall first examine the effect of the Will executed by Ram Nath in the year 1942, the correctness or validity whereof is not in question before us. On the date he executed the Will, he had a son and four daughters. Out of the properties held by him, he gave one house property, viz., No. 5, Doctor's Lane, New Delhi to his wife, Satyawati, for her life.

A He declared that during her life time, she shall have the exclusive right to reside therein but that she shall not be entitled to transfer it in any manner. After her death, he declared, the property will go to "the legal heirs of the testator". On the date of death of Ram Nath, it is agreed by all the parties before us, first defendant was the only "legal heir of the testator". It is
B equally not in dispute before us that on the date of death of Satyawati, the "legal heirs of the testator" are the first defendant, the plaintiff and Defendant Nos. 6 to 8 by virtue of the provisions contained in the Hindu Succession Act, 1956.

The first and crucial question is whether on the language of the Will
C and the law governing the Wills, the vesting in "the legal heirs of the testator" took place on the date of death of testator (as contended by the appellant) or on the date of death of Satyawati (as contended by the plaintiff-respondent). In other words, the question is whether it is Section 119 of the Indian Succession Act that is attracted or the exception to
D Section 111 of the said Act. If it is Section 119 that is attracted, the position would be that the remainder interest did vest in the first defendant on the date of death of Ram Nath which means that the daughters will have no right in the Doctor's Lane House. On the other hand, if it is the exception to Section 111 that applies, the vesting takes place on the date of death of Satyawati, which means son and four daughters together will be "the legal
E heirs of the testator". Sections 119 and 111 read as follows :

> "*119. Date of vesting of legacy when payment or possession postponed.* - Where by the terms of bequest the legatee is not entitled to immediate possession of the thing bequeathed, a right
F to receive it at the proper time shall, unless a contrary intention appears by the will, become vested in the legatee on the testator's death, and shall pass to the legatee's representatives if he dies before that time and without having received the legacy, and in such cases the legacy is from the testator's death said to be vested interest.
G
> *Explanation* - An intention that a legacy to any person shall not become vested in interest in him is not to be inferred merely from a provision whereby the payment or possession of the thing bequeathed is postponed, or whereby a prior interest therein is
H bequeathed to some other person, or whereby the income arising

from the fund bequeathed is directed to be accumulated until the time of payment arrives, or from a provision that, if a particular event shall happen, the legacy shall go over to another person.

Illustrations

(i) A bequeathed to B 100 rupees, to be paid to him at the death of C. On A's death the legacy become vested in interest in B, and if he dies before C, his representatives are entitled to the legacy.

(ii) A bequeaths to B 100 rupees, to be paid to him upon his attaining the age of 18. On A's death the legacy becomes vested in interest in B.

(iii) A fund is bequeathed to A for life, and after his death to B. On the testator's death, the legacy to B becomes vested in interest in B.

(iv) A fund is bequeathed to A until B attains the age of 18 and then to B. The legacy to B is vested in interest from the testator's death.

(v) A bequeaths the whole of his property to B upon trust to pay certain debts out of the income, and then to make over the fund to C. At A's death the gift to C becomes vested in interest in him.

(vi) A fund is bequeathed to A, B and C in equal shares to be paid to them on their attaining the age of 18, respectively, with a proviso that, if all of them die under the age of 18, the legacy shall devolve upon D. On the death of the testator, the shares vested in interest in A, B and C, subject to be divested in case A, B and C shall all die under 18 and, upon the death of any of them (except the last survivor) under the age of 18, his vested interest passes so subject, to his representatives.

111. Survivorship in case of bequest to described class. - Where bequest is made simply to a described class of persons, the thing bequeathed shall go only to such as are alive at the testator's death.

A *Exception.* - If property bequeathed to a class of persons described as standing in a particular degree of kindred to a specified individual, but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest, or otherwise, the property shall at that time go to such of them as are then alive, and to the representatives of any of them who have died since the death of the testator.

B

Illustrations

(i) A bequeaths 1,000 rupees to 'the children of B' without saying when it is to be distributed among them. B has died previous to the date of the will, leaving three children C, D and E. E died after the date of the will, but before the death of A. C and D survives A. The legacy will belong to C and D, to the exclusion of the representatives of E.

C

D

(ii) A lease for years of a house was bequeathed to A for his life, and after his decease to the children of B. At the death of the testator, B had two children living, C and D, and he never had any other child. Afterwards during the lifetime of A, C dies, leaving E, his executor. D has survived A, D and E are jointly entitled to so much of the leasehold term as remaining unexpired.

E

(iii) A sum of money was bequeathed to A for her life, and after her decease, to the children of B. At the death of the testator, B had two children living, C and D, and after that event, two children, E and F, were born to B. C and E died in the lifetime of A, C having made a Will, E having made no will. A has died, leaving D and F surviving her. The legacy is to be divided into four equal parts, one of which is to be paid to the executor of C, one to D, one to the administrator of E and one to F.

F

G

(iv) A bequeaths one-third of his lands to B for his life, and after his decease to the sisters of B. At the death of the testator, B had two sisters living, C and D, and after that event another sister E was born. C died during the life of B, D and E have survived B. One-third of A's lands belong to

H

D, E and the representatives of C, in equal shares. A

(v) A bequeaths 1,000 rupees to B for life and after his death equally among the children of C. Up to the death of B, C had not had any child. The bequest after the death of B is void.

(vi) A bequeaths 1,000 rupees to 'all the children born or to be born' of B to be divided among them at the death of C. At the death of the testator, B has two children living D and E. After the death of the testator but in the lifetime of C two other children, F and G, are born to B. After the death of C another child is born to B. The legacy belong to D, E, F and G, to the exclusion of the after-born child to B. B C

(vii) A bequeaths a fund to the children of B, to be divided among them when the eldest shall attain majority. At the testator's death, B had one child living, named C. He afterwards had two other children named D and E. E died, but C and D were living, when C attained majority. The fund belongs to C, D and the representatives of E, to the exclusion of any child who may be born to B after C's attaining majority." D

Let us first analyse Section 119 from the point of view of the facts of this case and see what does it say. According to it, unless a contrary intention appears from the Will, a bequest made to a legatee, who is not entitled to immediate possession of bequest, gets vested in such legatee on the date of death of the testator. The Explanation appended to the section eludicates the words "unless a contrary intention appears by the Will" occurring in the main limb of the section. The Explanation says inter alia that merely because a prior interest in the bequest is given to some other person, it does not mean that a contrary intention is indicated in the Will. Illustration (iii) is of crucial relevance. It says that where a fund is bequeathed to A for life and after A's death to B, the legacy to B becomes vested in interest in B on the testator's death. If we read the principle underlying the main limb of Section 119 along with the Explanation and Illustration (iii), it becomes abundantly clear that the present case squarely falls within the four corners of this section. It fits in neatly into Illustration (iii) to Section 119. Here, the Doctor's Lane house is bequeathed to Satyawati for life and after her death to the legal heirs of the testator. Once E F G H

this is so, the legacy to the legal heirs of the testator became vested in such legal heir(s) on the date of death of the testator - and admittedly on that death, first defendant was the only legal heir of the testator. We may mention that merely because a prior interest in the bequest is given to Satyawati, it cannot be said that the Will indicates a contrary intention within the meaning of the main limb of Section 119. See *Chilanakuri Pullappa* v. *Guruka Bayanna*, A.I.R. (1962) A.P. 54 and *P. Somasundaram* v. *K. Rajammal,* A.I.R. (1976) Mad. 295 in this behalf. Now, once the bequest to "the legal heirs of the testator" provided by the Will got vested in the first defendant on the date of the death of the testator, there is no question of the first defendant being divested therefrom. On the death of Satyawati, the first defendant became entitled to possession of the Doctor's Lane house which had already vested in him.

Sri Bhandare, learned counsel for the respondent plaintiff, submitted repeatedly that the above interpretation would be inconsistent with the intention of the testator as clearly expressed in the Will. He submitted that the first and the foremost rule of interpreting the Will is to ascertain the intention of the testator and to give effect to it. The learned counsel submitted that according to the Will, the Doctor's Lane house was to devolve upon the legal heirs of the testator only on the death of Satyawati and not at any earlier point of time. He emphasised the words "and declares that after her (devisee's) death, the property will go to the legal heirs of the testator" occurring in clause (i) of the Will. It is true that that is what the testator said but then the said Will has to be understood and construed in the light of the statutory rules governing the Will, viz., the provisions of the Indian Succession Act, 1925. Section 119 of this Act, which applies to the Will in question by its own force, says, to repeat, that where a property is bequeathed to A for life and after his death to B, the legacy to B becomes vested in interest in B on the death of the testator. As pointed out earlier, the bequest in the Will squarely falls within the four corners of Section 119 and in particular of Illustration (iii) thereto. It may be remembered that Illustrations to the section are parts of the Section and help to eludicate the principle of the section.

Now, let us examine whether the exception to Section 111 of the Indian Succession Act is attracted herein - and not Section 119 - as contended by Sri Bhandare. The main limb of Section 111 says that where bequest is made simply to a described class of persons, the bequest shall devolve only upon such members of the class as are alive on the date of

the testator's death. The exception appended to Section 111 says that if property is bequeathed to a class of persons/described as standing in a particular degree of kindred/to a specified individual/but their possession of it is deferred until a time later than the death of the testator by reason of a prior bequest, or otherwise/the property shall at that time go to such of them as are alive and to the representatives of any of them who have died since the death of the testator. For the exception to apply, it must first be shown that the bequest is to a class of persons. Then it must be shown that the said class of persons is described as standing in a particular degree of kindred to a specified individual. The third requirement is that the possession of the bequest is deferred until a time later than the death of the testator for one or the other reason. If the above ingredients are satisfied then the property bequeathed devolves upon such persons of the class as are alive on the date of death of the interposer (prior bequest) and upon the representatives of such of those who may have died after the death of the testator but before the death of the interposer. Now, let us assume in these appeals that bequest is to a class of persons. The next question is whether the said class of persons is "described as standing in a particular degree of kindred to a specified individual"? We are of the opinion that the words "a specified individual" cannot refer to or mean "the testator". The very Explanation uses both the words "testator" and "a specified individual". If the idea behind the exception was to refer to testator, then it would not have employed the words "a specified individual". Nothing was more simpler than using the words "the testator" instead of the said words actually used. This means that the words "a specified individual" refer to an individual other than the testator. This understanding of ours is re-inforced if we look at the several illustrations appended to the section. In each of those illustrations, the class of persons is described as children or (or the relatives of) a person other than the testator. None of them speaks of a class of persons related as aforesaid to the testator. Once this is so, the exception goes out of the picture. In the case before us, the legal heirs of testator - assuming that they constitute a class of persons within the meaning of the exception - are described as standing in a particular degree of kindred to the testator - and not to "a specified individual". Indeed, there was a good amount of controversy before us as to the meaning to the words "particular degree of kindred". We need not, however, go into that aspect because once we come to the conclusion that the words "a specified individual" cannot and do not refer

A B C D E F G H

A to the testator, the exception becomes inapplicable.

Sri Bhandare, learned counsel for the respondent-plaintiff, put forward an alternative argument, viz., that it is Section 120 of the Indian Succession Act that applies. According to him, it is a case of a contingent bequest within the meaning of the said section, which reads as follows :

B

> *"120. Date of vesting when legacy contingent upon specified uncertain event.* - (1) A legacy bequeathed in case a specified uncertain event shall happen does not vest until that event happens.
>
> C (2) A legacy bequeathed in case a specified uncertain event shall happen does not vest until the happening of that even becomes impossible.
>
> (3) In either case, until the condition has been fulfilled, the interest of the legatee is called contingent.
>
> D
>
> *Explanation.* - Where a fund is bequeathed to any person upon his attaining a particular age, and the Will also gives to him absolutely the income to arise from the fund before he reaches that age, or directs the income, or so much of it as may be necessary, to be supplied for his benefit, the bequest of the fund is not contingent."
>
> E

(Illustrations omitted as unnecessary)

A mere reading of Section 120 would indicate that it is not attracted in the present case. The death of Satyawati was not a specified uncertain F event. The decision of this Court in *N. Krishnammal* v. *R. Ekambaram & Ors.*, [1979] 3 S.C.C. 273 is of no relevance herein. That was a clear case of contingent bequest. In the present case, the bequest is not a contingent one. If so, the bequest is not postponed within the meaning of Section 120.

G We are, therefore, of the opinion that by operation of law, i.e., by virtue of Section 119 of the Indian Succession Act, the bequest to "the legal heirs of the testator" vested in the first defendant - he alone being the legal heir of the testator on that date - on the date of death of Ram Nath (testator). The vesting of bequest to "the legal heirs of the testator" was not postponed till the death of interposer, Satyawati. The language of clause H (i) of the Will cannot be construed otherwise.

Sri Bhandare then contended that the use of the plural "heirs" - and not the singular "heir" - in clause (i) is indicative of the intention of the testator that he was referring to his legal heirs as may be in existence on the death of Satyawati. In our opinion, this argument is plainly unacceptable. In the year 1942, Ram Nath could not have foreseen the enactment of Hindu Succession Act, 1956 or that in future his daughters would also become his "legal heirs" by some change in law. The language of clause (i) does, no doubt, convey the intention of the testator, viz., immediate bequest (for life) is to Satyawati and the ultimate (absolute) bequest is to his legal heirs after the death of Satyawati. But this clause has to be read, understood and construed in the light of the rule contained in Section 119 of the Indian Succession Act, as explained hereinabove - with the necessary consequence, which too has been set out hereinabove.

For the above reasons, we disagree with the finding of the Division Bench of the High Court on this aspect.

THE SETTLEMENT OF 1955 AND ITS EFFECT :

The next question is, what happened in the year 1955 when there was a settlement between Satyawati and the first defendant and what is its effect? As mentioned hereinbefore, soon after the death of Ram Nath in the year 1953, disputes arose between Satyawati and the first defendant. As may as seven suits were filed by one against the other. The first defendant had put forward a rival Will, said to have been executed by Ram Nath in the year 1950, whereunder the Doctor's Lane house was given to the first defendant. It appears that pending the said suits, there was a reference to arbitration and an award was also rendered by the Arbitrator, one Sri Chanan Ram. Obviously, the award did not put an end to the disputes between the mother and the son. Only later and evidently at the intercession of certain mutual well-wishers, the parties arrived at a settlement whereunder the said award was declared ineffective and a different arrangement arrived at. Under this settlement, the first defendant (described as 'plaintiff') was declared to be the owner of all the properties left by Ram Nath including Doctor's Lane house - except No. 58, Todar Mal Road, New Delhi. At the same time, Satyawati was given the right of residence in the first floor of the Doctor's Lane house along with cash maintenance of Rs. 125 per month. It was stipulated that if she resides in the said portion, the first defendant shall pay her only a monthly main-

A tenance of Rs. 125. But if she did not intend to reside in the said portion, the first defendant was to pay her Rs. 150 per month. Thus, on the plain language of the settlement, the Doctor's Lane house became the property of the first defendant *subject to* the right of residence given to Satyawati in the first floor thereof. Shri Bhandare, learned counsel for the respondent-
B plaintiff, contended that inasmuch as the interest given to Satyawati under the 1942 Will was a life estate and not widow's estate - with which proposition we agree - and because the Will prohibited her from transferring the said property, the said settlement is incompetent and void since it amounts to a transfer. We are not prepared to agree. One must look at the situation obtaining in the year 1955 and not to the situation obtaining, or
C findings recorded, in the present proceedings. Seven suits were pending between mother and the son. The validity of 1942 Will was in dispute, because the son (first defendant) was relying on another Will of Ram Nath, said to have been executed in the year 1950, superseding the 1942 Will. No Court had pronounced till then as to which Will was the last Will and
D testament of Ram Nath. In other words, the right given to Satyawati under the 1942 Will was itself in dispute in those suits. In such a situation, a compromise, a settlement was arrived at between the parties, whereunder Satyawati acknowledged and accepted the first defendant's title to the Doctor's Lane house in lieu of right residence in the first floor and cash maintenance of Rs. 125 per month. The settlement does not say which of
E the said two Wills is true and valid. The settlement was *de hors* the claims and contentions of both the parties including their claims and contentions under the respective Wills espoused by them. (It is only in this suit that it has been held by the learned Trial Judge that the 1942 Will is the last Will of Ram Nath inasmuch as Defendant Nos. 2 to 5 have failed to establish
F the truth and correctness of the 1950 Will put forward by their first defendant in the said earlier suits and by them in the present suit. The finding of the learned Single Judge on the issue was not challenged by Defendant Nos. 3 to 5 in the appeal.) It may be remembered that under the 1942 Will Satyawati was not entitled to any maintenance amount from the first defendant. The said monthly maintenance was provided to her,
G payable by the first defendant, under and as part of the said settlement. We are, therefore unable to agree with Sri Bhandare that the said settlement amounts to a transfer or that it is incompetent and ineffective for being inconsistent with the terms of the 1942 Will.

H For the same reasons, the contention that a surrender by a widow

must be total and complete is wholly beside the point. Neither the interest given to Satyawati was a widow's estate (as rightly found by the Division Bench) nor was it a case of surrender. It was compromise, a settlement, of conflicting claims.

THE RELEVANCE AND EFFECT OF THE HINDU SUCCESSION ACT, 1956 :

Now, we come to the third imported event, viz., the enforcement of the Hindu Succession Act and its effect. The Act came into force in June. 1956. By operation of Section 14 of the said Act, the right of residence given to Satyawati in the first floor of the Doctor's Lane house repend into an absolute title inasmuch as the said right was given to her in recognition of a pre-existing right to maintenance inhering in her. Even under the Hindu Law obtaining prior to the enforcement of Hindu Adoptions and Maintenance Act, 1956, the son was under a personal obligation to maintain his mother and he was bound to maintain her whether or not he inherited property from his father. [See para 548 of Mulla's Hindu Law at P.552 (16th Edn.)] Under the settlement, Satyawati was given not only the right of residence in the first floor but also a sum of Rs. 125 per month in cash towards her maintenance. It was further provided under the settlement that if Satyawati did not intend to reside in the aforesaid portion, the first defendant shall pay her Rs. 150 per month as maintenance of Rs. 125 per month. This clearly indicates that the right of residence was given to her in lieu of and in recognition of her pre-existing right to maintenance. Once this is so, it is sub-section (1) of Section 14 that applies and not sub-section (2) *vide V. Tulasamma* v. *V. Sesha Reddi*, [1977] 3 S.C.C. 99. It has recently been held by a Bench of this Court (S.P. Bharucha, J. and one of us, S.B. Majmudar, J.) In *Mangat Mal* v. *Punni Devi*, [1995] 6 S.C.C. 88 that a right of residence given for life to a female Hindu in a property plus a sum of money in lieu of her right to maintenance ripens into full ownership on the coming into force of the Act. Accordingly, it must be held that on the date of coming into force of the Hindu Succession Act, 1956, Satyawati became the absolute owner of the first floor of the Doctor's lane house property.

Sri Arun Mohan, learned counsel for the appellant-third defendant, submitted that inasmuch as the plaintiff has not invoked or relied upon Section 14 of the Hindu Succession Act and also because no reference to

A the said provision is found in the judgment of the learned Single Judge or the Division Bench, she should not now be allowed to invoke the said provision for the first time in these appeals. Learned counsel submitted that neither in the plaint nor at any time during the arguments in the Courts below was this contention urged by the plaintiff. Counsel also submitted
B that had the plaintiff raised this contention in the plaintiff, the defendant-appellant would have had an opportunity of establishing that Section 14 has no application for the reason that she was not "possessed" of the said first floor on the date of coming into force of the Act. Counsel submitted that Satyawati was never living in the first floor; she was either living with the first defendant or with other relatives. We have given our anxious
C consideration to the said submission but are unable to agree with it. In the plaint, it is repeatedly stated that the plaintiff is claiming the suit property both through Ram Nath and Satyawati. It is true that there is no specific reference to Section 14 of the Hindu Succession Act but we are of the opinion, having regard to the law applicable to pleadings (Order 6 Rule 2
D of the Civil Procedure Code) and the decisions of this Court in that behalf - [See *Kedar Lal Seal & Anr.* v. *Hari Lal Seal*, A.I.R. (1952) S.C. 47] that it would not be just and proper not to given effect to the said highly salutary provision on the above ground which, in the facts and circumstances of the case, is a mere technicality. Section 14 operates on its own force once the
E facts requisite for attracting its application are established. It must be remembered that the settlement between Satyawati and the first defendant was arrived at on January 27, 1955 whereas the Hindu Succession Act came into force in June, 1956, i.e., within less then seventeen months. Moreover, we are concerned with right to possession and not physical possession. It
F has been repeatedly held by this Court [See the several decisions referred to under the heading "possessed - meaning of" in Mulla's Hindu Law (Sixteenth Edition at Page 810)] while construing the expression "possessed" in Section 14(1) that the said expression means and refers to a right to possession and not necessarily actual or physical possession. So long as she has a right to possession, the mere fact that the female Hindu was not
G in physical possession matters very little. Therefore, it is immaterial whether Satyawati was physically occupying the said first floor or not. So long as she had the right to possession over the said first floor, Section 14(1) is attracted. There has never been any suggestion by Defendant Nos. 2 to 5 that Satyawati had given up the said right. On the contrary, Exh.
H D-28 (a former statement of Satyawati in a suit), filed and relied upon by

the appellant, shows that Satyawati herself was holding a General Power of Attorney from the first defendant (executed in 1960 and in 1964) and was managing all his properties in India. This is also the testimony of the plaintiff in this suit. She has deposed Page 47 of Vol,. 11 Paper Book) that till three months before her death, Satyawati was residing in the said house along with a maid servant and her son. Nothing worthwhile has been brought out in her cross-examination to doubt this statement of hers. We accept her statement. The facts established herein do clearly attract Section 14 of the Hindu Succession Act. The ends of justice demand that the said provision is given effect to. The plea of lack of opportunity is at best a technical one, in the particular facts and circumstances of the case. We are, therefore, not inclined to accept Sri Arun Mohan's plea that Section 14(1) should not be allowed to be invoked by the respondent in these appeals.

We may pause here and append a note of explanation. It is true that under the 1942 Will, the bequest to Satyawati was only for her life and the bequest to "the legal heirs of the testator" i.e., to the first defendant, vested in him on the death of the testator, as held by us and for the reasons assigned hereinbefore. But all this is subject to the statutory provisions contained in Section 14(1) of the Hindu Succession Act. This statutory provision supersedes the recitals in the Will. By virtue of Section 14(1) of the said Act, the limited estate of Satyawati (given to her under the 1942 Will) would have ripend into absolute estate if Satyawati had been "possessed" of the entire Doctor's Land house on the date of commencement of the Hindu Succession Act. But she was not. She had given up her possession and right to possession over the first floor under the 1955 Settlement. She was "possessed" of only the first floor of the house. Secondly, and more important, first defendant is basing his title to the Doctor's Lane house on the 1955 settlement. As stated hereinbefore, both Satyawati and the first defendant arrived at a particular settlement notwithstanding their respective claims and contentions. Satyawati never challenged the said settlement during her life-time. The settlement cannot, therefore, be held to be involuntary or inoperative. Satyawati, in fact, acted for a number of years as the General Power of Attorney of her son, the first defendant, and managing his properties in India. Merely because in these proceedings, the 1942 Will is held to be the last and valid Will of Ram Nath, the settlement of 1955 cannot be ignored or brushed aside. It is also nobody's case that the settlement was not *bonafide* or that it was not acted upon. For these reasons, it must be, and is, held that Satyawati became the absolute owner

A only of the first floor of the Doctor's Lane house - and not of the whole house.

THE PLEA OF LIMITATION :

B The sale of the Doctor's Lane house in favour of Defendant Nos. 3, 4 and 5 is dated March 4, 1971. The sale deed was executed by the second defendant acting as the General Power of Attorney of the first defendant. The sale deed pertains to the entire house property, viz., No. 5, Doctors Lane, New Delhi. On the date of sale, Satyawati was alive. She died on July 2, 1972. On the death of Satyawati, her interest devolved upon her four C daughters (plaintiff and Defendant Nos. 6 to 8) and the son (first defendant) under Section 15 of the Hindu Succession Act. The present suit was instituted soon after the death of Satyawati. The plaintiff claimed partition and separate possession of her 1/5th share in all the properties including the Doctor's Lane house. The suit was originally filed on the basis of D plaintiff being in joint possession along with other heirs or Ram Nath and Satyawati of all the suit properties including Doctor's Lane house. Later, however, the plaintiff applied for amendment of plaint adding the relief of possession insofar as the Doctor's Lane house is concerned. The amendment was granted on December 6, 1983 with a direction that the said amendment shall be effective only from the date of the said order.

E

The plea of limitation raised by the defendant-appellant cannot be upheld for more than one reason. The reasons are the following:

(a) Among the issues framed in the suit, Issue No. 5 pertains to the F plea of limitation put forward by defendant Nos. 2 to 5. The issue runs thus: "Whether the suit is within time?" On this issue, the learned Single Judge (Trial Judge) recorded a finding in favour of the plaintiff. He found the suit within limitation. The decision on the above issue was not contested by the parties before the Division Bench. The Division Bench has expressly recorded that "the decisions on the above issues (Issues 1, 2, 3, 4, 5 and G and 6) are not contested by the parties in this appeal and, therefore, the findings of the learned Single Judge are hereby affirmed". Once this is so, it is not open to the third defendant-appellant in these appeals to seek to re-agitate the said plea. We cannot allow him to do so. A partly who abandons a particular plea at a particular stage cannot be allowed to re-H agitate in appeal.

(b) The plea of limitation raised in Para (8) of the defendant's written statement was in the following words: "8. It is denied that the suit of the plaintiff is within limitation. The answering defendants and the predecessor-in-interest, Rajender Nath, have been in any case in adverse possession of the property in suit since 1954". It is on the basis of the said plea that Issue No. 5 aforementioned was framed. Now, let us examine what does the said plea signify? The plea has to be understood in the context of other pleas raised in their written statements. The defendant's case was that the 1942 Will is not true and that after the death of Ram Nath, first defendant came into possession of all the properties including the Doctor's Lane house and was in adverse possession thereof since 1954. The plea of limitation was not based upon any other ground or fact. Once it is held that (a) the 1942 Will is true, and (b) the remainder bequest vested in the first defendant on the death of Ram Nath (as held by us hereinabove accepting the plea of the appellant), the bottom gets knocked out of this plea. It is also necessary to point out that there is no plea in the written statement that the adverse possession of the first defendant commenced under and by virtue of the 1955 settlement. There is also no plea that the adverse possession of the defendant commenced at any later point of time. It is well settled that the plea of adverse possession is not a pure question of law but a mixed question of fact and law. It is also well established that the party pleading adverse possession must state with sufficient clarity as to when his adverse possession commenced and the nature of its possession. In this case, the defendant's plea is that the adverse possession of the predecessor-in-interest, i.e., the first defendant, commenced in 1954. Once that plea falls to ground, as held hereinabove, there is no alternate plea. To repeat, the defendants have not suggested that their adverse possession commenced at any later point of time.

Sri Arun Mohan, learned counsel for the appellant, sought to contend that the adverse possession of Defendant Nos. 3 to 5 commenced under the 1955 settlement and in any event with effect from the date of sale in their favour. In the first instance, this was not the plea in the written statement and, therefore, we cannot allow the learned counsel to raise such a plea for the first time in these appeals, more particularly in view of the fact that Defendant Nos. 3 to 5 did not contest the finding of the learned Single Judge on Issue No.5 as aforementioned. Even otherwise, we are of the opinion that there is no substance in this contention. So far as the 1955 settlement is concerned, there can be no question of adverse possession by

A the first defendant commencing thereunder or from its date. Under the said settlement, the first defendant was declared to be the owner of the Doctor's Lane house and Satyawati was given the right of residence in the first floor thereof. Once the first defendant is declared to be the owner of the said property, there is no question of adverse possession by him. Yet another circumstance: Satyawati become the absolute owner of the first B floor by virtue of the operation of Section 14 of the Hindu Succession Act, as held by us hereinabove. There is no plea by the defendants that at any point of time after the commencement of the Hindu Succession Act, the first defendant dispossessed Satyawati and was in possession of the first floor also.

C

Now, coming to the submission of Sri Arun Mohan that the adverse possession commenced on the date of sale in their favour, viz., March 6, 1971, this again is not the plea of the defendants. In any event, the sale deed does not expressly recite that possession of the house was delivered by the first defendant to the purchasers at the time of execution of sale D deed.* Further, plaintiff has stated in her deposition (See page 47 of the Paper Book - Vol. II) that till three months before her death, Satyawati was living in the house along with a maid servant and her son. Nothing worthwhile has been brought out in her cross- examination to doubt her testimony on this aspect. We accept her statement. If so, the suit will be E within twelve years, even assuming that the suit is deemed to have been filed on December 6, 1983, i.e., the date on which plaint was amended incorporating the relief of possession.

(Satyawati died on July 2, 1972.) In this behalf, we may mention that F the learned Trial Judge had framed additional issues (See Page 46 of Vol. I Paper Book) with respect to the validity and legality of this sale deed.

There is yet another way of looking at this issued.

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* Clause (3) of the sale deed, which is the clause touching upon the possession of the property sold, read: "The Vendor hereby convenants with the Vendees that the said G premises shall be quietly entered into and upon and hold and enjoyed and the rents and profits received therefrom by the Vendees without any interruption or disturbance by the Vendor or any person claiming through or under him and, without any lawful disturbance or, interruption by and other persons whomsoever." Clauses (7) [which is wrongly numbered as clause (4)] entitles the vendees to recover the rents due from the tenants. At an earlier stage, the sale deed recites that "a portion of the property" had been leased out to Defendant Nos. 4 and 5 on a rent of Rs.300 p.m. But for these H recitals, there is not recital relevant to delivery of possession.

We have found hereinabove that the first defendant became full owner of Doctor's Lane house on the death of Ram Nath and that pursuant to the 1955 settlement read with Section 14 of the Hindu Succession Act. Satyawati became full owner of the first floor of the house which means that both of them remained as independent owners of ground and first floors of the house respectively. Thereafter, when the entire house was sold to Defendant Nos. 3 to 5 on March 4, 1971, their possession-assuming for the sake of argument that they came into possession of the house on the date of sale can be treated to be adverse to Satyawati. However, the plaintiff who is found to be co-owner of the first floor along with the first defendant (who passed his interest in favour of Defendant Nos. 3 to 5) filed the present suit within twelve years of the date of the sale deed. She had already joined Defendant Nos. 3 to 5 as parties to the suit and had brought in challenge the right of these defendant to occupy the house by virtue of the sale deed in their favour. The suit was filed for the relief of partition of the co-ownership property on the basis of joint possession. So far as the first floor is concerned, it is covered by the main relief in the suit which was prayed for within twelve years from the date of the sale deed. Consequently, the suit cannot be treated as time barred for the said relief of partition which is being confirmed by us.

In this connection, we may emphasis that a person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all the facts necessary to establish his adverse possession. For all the above reasons, the plea of limitation put forward by the appellant, or by Defendant Nos. 2 to 5 as the case may be, is rejected.

So far as the plea of resumption of the plot (Doctor's Lane house) by the President of India and its re-grant to Defendant Nos. 3 to 5 is concerned, it is of little consequence. The re-grant, if any, was in recognition and in continuation of earlier grant. We have not been shown the documents relevant in this behalf nor any serious argument addressed on this score.

The result of the above discussion is that the sale deed executed by the second defendant as the General Power of Attorney of the first defendant in favour of Defendant Nos. 3 to 5 must be held to be valid and effective insofar as the ground floor of the house property comprised in

A No. 5, Doctors Lane, New Delhi is concerned. (This is so because the first defendant or his legal representatives have not chosen to question or impugn the said sale.) So far as the first floor of the said Doctor's Lane house is concerned, it became the absolute property of Satyawati on the coming into force of the Hindu Succession Act, 1956, i.e., by operation of
B Section 14(1) of the said Act. On her death, the said first floor devolved upon her son (first defendant) and four daughters (plaintiff and Defendant Nos. 6 to 8) in equal shares under Section 15 of the Hindu Succession Act. Defendant Nos. 3 to 5 will be entitled only to the 1/5th share of the first defendant in the first floor. The remaining 4/5th share in the first floor is allotted to plaintiff and Defendant Nos. 6 to 8, each 1/5th. The decree
C passed by the Division Bench of the Delhi High Court is modified accordingly and is restricted to the first floor of the hose property comprised in No. 5, Doctors Lane, New Delhi. All other directions given by the Division Bench in respect of the Doctor's Lane house are affirmed but restricted to the first floor thereof.

D The appeals are allowed in part accordingly. No order as to costs.

B.K.M. Appeal allowed partly.