SADHU SINGH

v.

GURDWARA SAHIB NARIKE AND ORS.

SEPTEMBER 8, 2006

[B.P. SINGH AND P.K. BALASUBRAMANYAN, JJ.]

Hindu Law:

Hindu Succession Act, 1956: Sections 14(1), 14(2) and 30.

Property of a female Hindu—Rights of—Male Hindu executed a Will in favour of his wife in respect of his self-acquired property—It was stipulated in the Will that so long as his wife was alive she would be the owner of the properties and after her death his two nephews would take the property in equal shares—It was specifically stated in the Will that during her lifetime his wife would not transfer the properties to any other heirs by way of any Will and that she would not be entitled to mortgage or sell the properties during her lifetime—However, on his death his widow gifted the property in favour of a Gurdwara—Nephew filed a suit challenging the deed of gift claiming that under the Will the widow took only a life estate in the suit property—The trial court dismissed the suit holding that the Will was not genuine and that the widow had taken the property absolutely on the death of her husband as an heir—On appeal, the first appellate court held that the Will was genuine and that the widow had only a life estate or limited estate in the suit property—In second appeal, the High Court reversed the decision of the first appellate court and dismissed the suit—Correctness of—Held: An owner of property has normally the right to deal with that property including the right to devise or bequeath the property—Thus, a Hindu male could dispose it of by a testament—Therefore, there is nothing in the Act which affects the right of a Hindu male to dispose of his separate property by providing only a life estate or limited estate for his widow—Therefore, the wife or widow has to take it as the estate falls—The widow was not competent to gift away the properties in favour of the Gurdwara—Hence, gift deed set aside and property restored to the nephew—Hindu Adoptions and Maintenance Act, 1956, Ss. 18, 21 and 22.

Indian Succession Act, 1925:

A *Testamentary disposition—Will—Various clauses—Construction of—Held: Harmonious construction should be adopted so as to give effect to all the terms of the Will if it is in any manner possible—In the case of a Will, every effort must be made to harmonize the various clauses—If that is not possible, it will be the last clause that will prevail over the former and giving way to the intention expressed therein.*

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One 'R' held some property which was self-acquired. 'R' had no children and died leaving behind his wife. Before his death, he executed a Will in favour of his wife in respect of all his properties. In the Will it was stated that so long as his wife was alive she would be the owner of the properties and after her death his two nephews (sister's sons) would take the property in equal shares. It was specifically stated in the Will that during her lifetime his wife would not transfer the properties to any other heirs by way of any Will and that she would not be entitled to mortgage or sell the properties during her lifetime. However, on the death of 'R' his widow purported to gift the property in favour of a Gurdwara.

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The appellant-nephew filed a suit challenging the deed of gift claiming that under the Will, the widow of 'R' took only a life estate in the suit property. The trial court dismissed the suit holding that the Will propounded by the appellant was not genuine and that the widow had taken the property absolutely on the death of her husband as an heir. On appeal, the lower appellate court held that the Will was genuine and that the widow had only a life estate or limited estate in the suit property. The High Court, in second appeal, reversed the decision of the lower appellate court and dismissed the suit. Hence the appeal.

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F **On behalf of the appellants, it was contended that Sections 14(2) and 30 of the Hindu Succession Act, 1956 was applicable to the facts of the case and that Section 14(1) of the Act had no application.**

Allowing the appeal, the Court

G **HELD: 1. When a male Hindu dies possessed of property after the coming into force of the Hindu Succession Act, 1956, his heirs as per the schedule, take it in terms of Section 8 of the Act. The heir or heirs take it absolutely. There is no question of any limited estate descending to the heir or heirs. Therefore, when a male Hindu dies after 17.5.1956 leaving his widow as his sole heir, she gets the property as class I heir and there is no limit to**

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her estate or limitation on her title. In such circumstances, Section 14(1) of the Act would not apply on succession after the Act, or it has no scope for operation. Or, in other words, even without calling in aid Section 14(1) of the Act, she gets an absolute estate. A

Bhura v. *Kashi Ram,* [1994] 2 SCC 111 and *Sharad Subramanyan* v. *Soumi Mazumdar,* JT (2006) 11 SC 535, relied on. B

Raghubar Singh v. *Gulab Singh,* AIR (1998) SC 2401, *Gummalapura Taggina Matada Kotturuswami* v. *Setra Veeravva,* [1959] Supp. 1 SCR 968, *Erama* v. *Veerupanna,* [1966] 2 SCR 626, *Dindyal* v. *Rajaram,* [1971] 1 SCR 298, *S.S. Munnia Lal* v. *S.S. Rajkumar,* [1962] Supp. 3 SCR 418; *Kuldip Singh and Ors.* v. *Surain Singh and Ors.,* (CA No. 138 of 1964) and *Mst. Karmi* v. *Amru,* AIR (1971) SC 745, referred to. C

Mayne: "Hindu Law", 15th Edn., p. 1171, referred to.

V. Tulasamma v. *Shesha Reddi,* [1977] 3 SCR 261, held inapplicable.

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Kaveri Amma v. *Parameswari Amma,* AIR (1971) Ker 216 and *Gostha Behari* v. *Haridas Samanta,* AIR (1957) Cal 557, approved.

2.1. An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a Will bequeathing the properties, the legatees take it subject to the terms of the Will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His Will hence could not be challenged as being hit by the Act. [811-C-D-E] E F

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2.2. When he thus validly disposes of his property by providing for a limited estate to his heir, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited H

A estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the case of a testamentary disposition taking effect after the Act, would make Sections 30 and 14(2) redundant or otiose. It will also make redundant the expression
B 'property possessed by a female Hindu' occurring in Section 14(1) of the Act. An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of
C right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance. [811-E, F, G; 812-A]

V. Tulasamma v. *Shesha Reddi,* [1977] 3 SCR 261 and *Bal Vijaya* v. *Thakurbai,* [1979] 2 SCC 300, referred to.

D *Mayne: "Hindu Law",* 15th Edn.. p. 1172, referred to.

2.3. 'R' had validly disposed of his separate property by a Will. This is permissible as he has the capacity to so dispose it of. He is also enabled to do so by Section 30 of the Hindu Succession Act, 1956. He is thus entitled to interfere with the succession that would have ensued if he had died intestate.
E [812-E, F]

3.1. Going by the terms of the Will, initially, 'R' has conferred an absolute estate on his wife subject to the restriction that she shall not dispose of the same by a Will to any other heirs. The Will also says that after the death of his wife, the two nephews would take the properties in equal shares.
F Thus, what is seen is that an apparent absolute estate has been conferred on his wife but with a stipulation that on her death the property will devolve on his two nephews and with an interdict that she shall not dispose of the property by testamentary disposition in favour of any other heir. It is stated that his wife will be the owner of the moveable and immoveable properties after the
G death of the testator. But at the end, the Will has also stipulated that his wife will not be entitled to mortgage or sell the properties during her lifetime. [813-C, D, E]

3.2. What the court has to attempt is a harmonious construction so as to give effect to all the terms of the Will if it is in any manner possible. While
H attempting such a construction, the rules are settled. Unlike in the case of a

transfer *in presenti* wherein the first clause of the conveyance would prevail over anything that may be found to be repugnant to it later, in the case of a Will, every effort must be made to harmonize the various clauses and if that is not possible, it will be the last clause that will prevail over the former and giving way to the intention expressed therein. [813-E, F]

Ramachandra Shenoy v. *Mrs. Hilda Brite,* [1964] 2 SCR 722, relied on.

3.3. Thus, the first attempt must be to reconcile all the clauses in the Will and give effect to all of them. When one makes the attempt in the context of what this Court had indicated in *Ramchandra Shenoy,* it is found that the apparent absolute estate given to his wife by the testator is sought to be cut down by the stipulations that the property must go to his nephews after the death of the wife, that the wife cannot testamentarily dispose of the property in favour of any one else and the further interdict in the note that the wife during her lifetime would not be entitled to mortgage or sell the properties. Thus, on reconciling the various clauses in the Will and the destination for the properties that the testator had in mind, it has to be held that the apparent absolute estate in favour of the wife has to be cut down to a life estate so as to accommodate the estate conferred on the nephews. [814-B, C, D]

4. Thus understood, it has necessarily to be held, as was held by the first appellate court, that the wife of 'R' was not competent to gift away the properties in favour of the Gurdwara as she had done. Even if the gift were to be treated as valid, the donee thereunder cannot resist the claim for eviction by the legatees under the Will, the nephews of 'R', on the cessation of the life estate of the wife of 'R'. Admittedly, that life estate has ceased and once it is found that the plaintiff has acquired a title to the property as a legatee under the Will, he would be entitled for and on behalf of himself and his brother to recover possession of the property from the Gurdwara in view of the death of the wife of 'R'. [814-E, F]

5. Merely because mutation was effected, it would not lead to the loss of the title if the plaintiff had otherwise acquired title under the Will and the right to possession on the death of the wife of 'R' which, obviously occurred after the mutation. On the materials available, including the clear evidence in proof of the Will propounded by the plaintiff and upheld by the first appellate court, which finding was accepted by the second appellate court, the fact that at the time of mutation, the plaintiff did not raise an objection on the strength of the Will is not a circumstance that would justify the discarding of the Will or the effect of it. [815-A, B]

A **5. Hence, the gift executed by the wife of 'R' cannot survive the cessation of the life estate or stand in the way of the ultimate beneficiary recovering possession on the strength of the bequest in his favour on the coming to an end of the intervening life estate. [815-E]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1854 of 2003.

B

From the Judgment and Order dated 18.9.2001 of the High Court of Punjab and Haryana at Chandigarh in Regular Second Appeal No. 3090/1997.

Ram Lal Garg, P.N. Puri, Sudarshan Goel and Dhiraj for the Appellant.

C P.C. Jain, Suresh Kumari, Dinesh Verma, A.P. Mohanty, Harinder Mohan Singh, Shabana Saifi, Kaushal Yadav, Ranbir Yadav and Anil Hooda for the Respondents.

The Judgment of the Court was delivered by

D **P.K. BALASUBRAMANYAN, J.** 1. One Ralla Singh held some property. It was self-acquired. Isher Kaur was his wife. They had no children. On 7.10.1968, Ralla Singh executed a will. Ralla Singh died on 19.3.1977. His widow Isher Kaur on 21.1.1980, purported to gift the property in favour of a Gurdwara. The appellant filed a suit challenging the deed of gift. He also prayed for recovery of possession after the death of Isher Kaur. The appellant E claimed that under the will of Ralla Singh, Isher Kaur took only a life estate and the properties were to vest in the appellant and his brother. On the terms of the will under which she took the properties, Isher Kaur had no right to gift the property to the Gurdwara. She was bound by the terms of the bequest. Isher Kaur and the Gurdwara, contended that the property received by Isher F Kaur on the death of her husband was as his heir and it was taken by her absolutely and she was competent to deal with the property. It was pleaded that in any event, Section 14(1) of the Hindu Succession Act entitled her to deal with the property as an absolute owner. The appellant countered that Isher Kaur having taken the property under the disposition of her husband, was bound by its terms and she had only a life estate and no competence G to donate the property. It was a case to which Section 14(2) of the Hindu Succession Act applied and the limitation on rights imposed by the will was binding on Isher Kaur. Her estate could not get enlarged under Section 14(1) of the Act.

H 2. The trial court held that the will propounded by the appellant was not

genuine. On that basis, it dismissed the suit holding that Isher Kaur had taken the property absolutely on the death of her husband as an heir and under the circumstances she was entitled to donate the property to the Gurdwara. The appellant filed an appeal. Pending the appeal, on 17.6.1996, Isher Kaur died. The lower appellate court held that the will propounded by the appellant was proved to be the last will and testament of Ralla Singh. The appellant had proved its due and valid execution. The will was thus upheld. The Court held that on the terms of the Will, Isher Kaur had only a life estate or limited interest in the property and she had no right to transfer the property by way of gift. Since Isher Kaur had taken the property under the will which placed a restriction on her right, Section 14(2) of the Hindu Succession Act applied. Consequently, the appellant as the legatee under the will was entitled to recover possession of the property on the termination of the life estate of Isher Kaur. Thus the trial court decree was reversed and the suit decreed. On behalf of the donee Gurdwara, a Second Appeal was filed in the High Court. The High Court, by what can even charitably only be called a thoroughly unsatisfactory judgment, reversed the decision of the lower appellate court. It did not strain its thought process. Purporting to apply the ratio of the decision of this Court in *V. Tulasamma* v. *V. Shesha Reddi,* [1977] 3 SCR 261 and *Raghubar Singh* v. *Gulab Singh,* AIR (1998) SC 2401 that court held that Section 14(1) of the Act applied to the case. It did not refer to the decisions relied on, on behalf of the appellant herein. Though it accepted the finding of the appellate court on the genuineness and due execution of the will by Ralla Singh, it did not specifically deal with the question whether Section 14(2) of the Act was attracted to the case. Thus, reversing the decision of the lower appellate court, the High Court dismissed the suit. The appellant plaintiff, is before us challenging the decision in Second Appeal.

3. The finding that Ralla Singh had executed a will on 7.10.1968 rendered by the lower appellate court has not been upset by the Second Appellate Court. In fact, it has considered the Second Appeal on the basis that the will has been executed and the property came to Isher Kaur on the basis of that Will. What it has presumably held is that Isher Kaur had pre-existing right in the property and consequently the limitation placed on her rights in the Will, could not prevail in view of Section 14(1) of the Hindu Succession Act. It did not bear in mind that the property was the separate property or self-acquired property of Ralla Singh and his widow, though might have succeeded to the property as an absolute and sole heir if Ralla Singh had died intestate on 19.3.1977, had no pre-existing right as such. The widow had, at best, only a right to maintenance and at best could have secured a charge by the process

A of court for her maintenance under the Hindu Adoptions and Maintenance Act in the separate property of her husband. May be, in terms of Section 39 of the Transfer of Property Act, she could have also enforced the charge even as against an alienee from her husband. Unlike in a case where the widow was in possession of the property on the date of the coming into force of the Act in which she had a pre-existing right at least to maintenance, a situation B covered by Section 14(1) of the Hindu Succession Act, if his separate property is disposed of by a Hindu male by way of testamentary disposition, placing a restriction on the right given to the widow, the question whether Section 14(2) would not be attracted, was not considered at all by the High Court. It proceeded as if the ratio of *V. Tulasamma* (supra) would preclude any enquiry C in that line.

4. Under Section 18 of the Hindu Adoptions and Maintenance Act, a Hindu wife is entitled to be maintained by her husband during her life time, subject to her not incurring the disqualifications provided for in sub-Section (3) of that Section. The widow is in the list of dependants as defined in D Section 21 of the Act. The widow remains a dependant so long as she does not remarry. Under Section 22, an obligation is cast on the heirs of the deceased Hindu to maintain the dependant of the deceased out of the estate inherited by them from the deceased. Under sub-Section (2), where a dependant has not obtained by testamentary or intestate succession, any share in the E estate of a Hindu dying after the commencement of the Act, the dependant would be entitled, but subject to the provisions of the Act, to maintenance from those who take the estate. It is seen that neither Section 18 relating to a wife nor Section 21 dealing with a widow, provides for any charge for the maintenance on the property of the husband. To the contrary, Section 27 specifies that a dependant's claim for maintenance under that Act, shall not F be a charge on the estate of the deceased unless one would have been created by the will of the deceased, by a decree of court, by an agreement between the dependant and the owner of the estate or otherwise. Thus a widow has no charge on the property of the husband. Section 28 provides that where a dependant had a right to receive maintenance out of an estate, G that right could be enforced even against a transferee of the property if the transferee had notice of the right, or if the transfer is gratuitous, but not against a transferee for consideration without notice of the right. Section 28 is in *pari materia* with Section 39 of the Transfer of Property Act. The Kerala High Court in *Kaveri Amma* v. *Parameswari Amma & Ors.,* AIR (1971) Kerala 216 has liberally interpreted the expression "right to receive maintenance" H occurring in the section as including a right to claim enhanced maintenance

against the transferee. The sum and sub-total of the right under the Hindu Adoptions and Maintenance Act is only to claim maintenance and the right to receive it even against a transferee. In the absence of any instrument or decree providing for it, no charge for such maintenance is created in the separate properties of the husband.

5. In the case on hand, since the properties admittedly were the separate properties of Ralla Singh, all that Isher Kaur could claim *de hors* the will, is a right to maintenance and could possibly proceed against the property even in the hands of a transferee from her husband who had notice of her right to maintenance under the Hindu Adoptions and Maintenance Act. No doubt, but for the devise, she would have obtained the property absolutely as an heir, being a Class I heir. But, since the devise has intervened, the question that arises has to be considered in the light of this position.

6. Learned counsel for the respondent relied heavily on the decision in *V. Tulasamma* v. *V. Shesha Reddi* (supra). To understand the ratio of that decision, it is necessary to notice the facts that were available in that case. The husband of Tulasamma had died in the year 1931 in a state of jointness with his step-brother, leaving Tulasamma as his widow. Tulasamma approached the court in the year 1944 claiming maintenance against the step-brother of her husband. Her claim was decreed. She put the decree in execution and at the stage of execution, on 30.7.1949, a compromise was entered into. Under the compromise, Tulasamma was allotted the properties but she was to enjoy only a limited interest therein, with no power of alienation. Tulasamma alienated the property, a portion by way of lease and another portion by way of sale. These transactions were challenged by Sesha Reddi on the ground that Tulasamma had only a restricted estate under the terms of the compromise and her interest could not be enlarged into an absolute estate by virtue of Section 14(1) of the Act in view of Section 14(2) of the Act. The alienees from Tulasamma pleaded that the estate Tulasamma possessed as on the date of the coming into force of the Act had ripened into an absolute estate in view of Section 14(1) of the Hindu Succession Act and Section 14(2) cannot be invoked to restrict her right. It was in that context that this Court held that it was a case where Tulasamma possessed the property on the date of the coming into force of the Act as a limited owner having acquired the same by virtue of a compromise and in the light of the explanation to sub-Section (1) of Section 14, it was a case to which Section 14(1) applied and Section 14(2) could not be relied on to override the effect of Section 14(1). The Court held that Tulasamma had a pre-existing right in the properties of the joint family

A since she had a right to be maintained and it was in view of that pre-existing right and the decree obtained by her in that case that the compromise came into existence and she was put in possession of the property involved in that suit. The properties were to revert to the step-brother of her husband after the death of Tulasamma. Tulasamma was thus in possession of the property on the day the Hindu Succession Act came into force. Thus, she was a Hindu B female who possessed the property at the commencement of the Act but with a restricted right under a compromise. It was therefore a case where a female Hindu possessed the property on the date of the Act in which she had a pre-existing right though limited and in such circumstances Section 14(1) had operation to convert her limited estate into an absolute one and Section 14(2) C could not be relied on for taking the case out of Section 14(1) of the Act on the basis that the property was put in her possession on the basis of a compromise.

7. Now, it is clear from the section and implicit from the decisions of this Court, that for Section 14(1) of the Act to get attracted, the property must be D possessed by the female Hindu on the coming into force of the Hindu Succession Act. In *Mayne on Hindu Law*, 15th Edn., page 1171, it is stated:

> "on a reading of sub-Section (1) with Explanation, it is clear that wherever the property was possessed by a female Hindu as a limited estate, it would become on and from the date of commencement of the E Act her absolute property. However, if she acquires property after the Act with a restricted estate, sub-Section (2) applies. Such acquisition may be under the terms of a gift, will or other instrument or a decree or order or award."

8. In *Gummalapura Taggina Matada Kotturuswami* v. *Setra Veeravva* F *and Ors.*, [1959] Supp. 1 S.C.R. 968, this Court quoted with approval the following words of Justice *P.N. Mookherjee, in Gostha Behari* v. *Haridas Samanta,* A.I.R. 1957 Calcutta 557, at 559:

> "The opening words in "property possessed by a female Hindu" G obviously mean that to come within the purview of the section the property must be in possession of the female concerned at the date of the commencement of the Act. They clearly contemplate the female's possession when the Act came into force. That possession might have been either actual or constructive or in any form recognised by law, but unless the female Hindu, whose limited estate in the disputed H property is claimed to have been transformed into absolute estate

under this particular section, was at least in such possession, taking the word "possession" in its widest connotation, when the Act came into force, the section would not apply." A

and added:

"In our opinion, the view expressed above is the correct view as to how the words "any property possessed by a female Hindu" should be interpreted." B

9. In *Eramma* v. *Verrupanna & Ors.*, [1966] 2 SCR 626, this Court emphasized that the property possessed by a female Hindu as contemplated in the Section is clearly the property to which she has acquired some kind of title whether before or after the commencement of the Act and negatived a claim under Section 14(1) of the Act in view of the fact that the female Hindu possessed the property on the date of the Act by way of a trespass after she had validly gifted away the property. The need for possession with a semblance of right as on the date of the coming into force of the Hindu Succession Act was thus emphasized. C D

10. In *Dindyal & Anr.* v. *Rajaram*, [1971] 1 SCR 298, this Court again noticed that,

"......before any property can be said to be "possessed" by a Hindu woman as provided in Section 14(1) of the Hindu Succession Act, two things are necessary (a) she must have a right to the possession of that property and (b) she must have been in possession of that property either actually or constructively." E

This Court relied on the decisions in *S.S. Munnia Lal* v. *S.S. Rajkumar & Ors.*, [1962] Supp. 3 S.C.R. 418 and *Kuldip Singh & Ors.* v. *Surain Singh & Ors.*, [Civil Appeal No. 138 of 1964] in support. F

11. On the wording of the section and in the context of these decisions, it is clear that the ratio in *V. Tulasamma* v. *V. Shesha Reddi* (supra) has application only when a female Hindu is possessed of the property on the date of the Act under semblance of a right, whether it be a limited or a pre-existing right to maintenance in lieu of which she was put in possession of the property. The *Tulasamma* ratio cannot be applied ignoring the requirement of the female Hindu having to be in possession of the property either directly or constructively as on the date of the Act, though she may acquire a right to it even after the Act. The same is the position in *Raghubar Singh* v. *Gulab* G H

A *Singh* (supra) wherein the testamentary succession was before the Act. The widow had obtained possession under a Will. A suit was filed challenging the Will. The suit was compromised. The compromise sought to restrict the right of the widow. This Court held that since the widow was in possession of the property on the date of the Act under the will as of right and since the B compromise decree created no new or independent right in her, Section 14(2) of the Act had no application and Section 14(1) governed the case, her right to maintenance being a pre-existing right. In *Mst. Karmi* v. *Amru & Ors.,* AIR (1971) SC 745, the owner of the property executed a will in respect of a self-acquired property. The testamentary succession opened in favour of the wife in the year 1938. But it restricted her right. Thus, though she was in possession C of the property on the date of the Act, this Court held that the life estate given to her under the will cannot become an absolute estate under the provisions of the Act. This can only be on the premise that the widow had no pre-existing right in the self-acquired property of her husband. In a case where a Hindu female was in possession of the property as on the date of the coming into force of the Act, the same being bequeathed to her by her D father under a will, this Court in *Bhura & Ors.* v. *Kashi Ram,* [1994] 2 SCC 111, after finding on a construction of the will that it only conferred a restricted right in the property in her, held that Section 14(2) of the Act was attracted and it was not a case in which by virtue of the operation of Section 14(1) of the Act, her right would get enlarged into an absolute estate. This E again could only be on the basis that she had no pre-existing right in the property. In *Sharad Subramanyan* v. *Soumi Mazumdar & Ors.* JT (2006) 11 SC 535 this Court held that since the legatee under the will in that case, did not have a pre-existing right in the property, she would not be entitled to rely on Section 14(1) of the Act to claim an absolute estate in the property bequeathed to her and her rights were controlled by the terms of the will and F Section 14(2) of the Act. This Court in the said decision has made a survey of the earlier decisions including the one in *Tulasamma.* Thus, it is seen that the antecedents of the property, the possession of the property as on the date of the Act and the existence of a right in the female over it, however limited it may be, are the essential ingredients in determining whether sub-Section (1) G of Section 14 of the Act would come into play. What emerges according to us is that any acquisition of possession of property (not right) by a female Hindu after the coming into force of the Act, cannot normally attract Section 14(1) of the Act. It would depend on the nature of the right acquired by her. If she takes it as an heir under the Act, she takes it absolutely. If while getting possession of the property after the Act, under a devise, gift or other H transaction, any restriction is placed on her right, the restriction will have play

in view of Section 14(2) of the Act.

12. When a male Hindu dies possessed of property after the coming into force of the Hindu Succession Act, his heirs as per the schedule, take it in terms of Section 8 of the Act. The heir or heirs take it absolutely. There is no question of any limited estate descending to the heir or heirs. Therefore, when a male Hindu dies after 17.6.1956 leaving his widow as his sole heir, she gets the property as class I heir and there is no limit to her estate or limitation on her title. In such circumstances, Section 14(1) of the Act would not apply on succession after the Act, or it has no scope for operation. Or, in other words, even without calling in aid Section 14(1) of the Act, she gets an absolute estate.

13. An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His will hence could not be challenged as being hit by the Act.

14. When he thus validly disposes of his property by providing for a limited estate to his heir, the wife, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the case of a testamentary disposition taking effect after the Act, would make Sections 30 and 14(2) redundant or otios. It will also make redundant, the expression 'property possessed by a female Hindu' occurring in Section

A 14(1) of the Act. An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance.

B

15. Dealing with the legal position established by the decisions in *Tulasamma* (supra) and *Bai Vijaya* v. *Thakurbai,* [1979] 2 SCC 300, the position regarding the application of Section 14(2) of the Act is summed up in *Mayne on Hindu Law* thus:

C

> "Sub-section (2) of Section 14 applies to instruments decrees, awards, gifts etc., which create independent and new title in favour of females for the first time and has no application where the instruments concerned merely seek to confirm, endorse, declare or recognize pre-existing rights. The creation of a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in such a case. Where property is allotted or transferred to a female in lieu of maintenance or a share at partition the instrument is taken out of the ambit of sub-section (2) and would be governed by section 14(1) despite any restrictions placed on the powers of the transferee."

D

E (See page 1172 of the 15th Edition)

16. Here, Ralla Singh has validly disposed of his separate property by a Will. This is permissible as he has the capacity to so dispose it of. He is also enabled to do so by Section 30 of the Hindu Succession Act. He is thus entitled to interfere with the succession that would have ensued if he had F died intestate. In the context of the will executed by him the question is what has he bequeathed to his wife and whether he had placed any restriction on her estate so bequeathed. The corollary would be whether the appellant is entitled to the decree sought for by him in the context of Section 14(2) of the Hindu Succession Act.

G

17. We shall now construe the will of Ralla Singh. He says in the will that he is 73 years old. He has no progeny. Only his wife and his two nephews (sister's son) are alive and he wants to dispose of the property during his life time. He was absolute owner of the properties. He wants to provide for management of the properties in such a manner that after his death his wife H so long as she remains alive will be the absolute owner and party in possession

of all his properties and after her death, the rights over the property would be inherited by his two nephews. He is hence executing the will in favour of his wife in respect of all his properties moveable and immovable so that she will be the absolute owner and party in possession after his death. So long as he was alive he will be the owner of his properties and after his death his wife would be the owner of his properties. So long as his wife was alive she will be owner of the properties and after her death his nephews will take the property in equal shares and during her lifetime his wife Isher Kaur will not transfer the properties to any other heirs by way of any Will. He has also added a note to the effect that his wife after his death will not be entitled to mortgage or sell the properties during her life time.

18. Going by the terms of the will, initially, Ralla Singh has conferred an absolute estate on his wife subject to the restriction that she shall not dispose of the same by a will to any other heirs. The will also says that after the death of Isher Kaur, the two nephews Pritam Singh and Sadhu Singh would take the properties in equal shares. Thus, what is seen is that an apparent absolute estate has been conferred on Isher Kaur but with a stipulation that on her death the property will devolve on his two nephews and with an interdict that she shall not dispose of the property by testamentary disposition in favour of any other heir. It is stated that Isher Kaur will be the owner of the moveable and immoveable properties after the death of the testator. But at the end, the will has also stipulated that Isher Kaur will not be entitled to mortgage or sell the properties during her life time.

19. What the court has to attempt is a harmonious construction so as to give effect to all the terms of the will if it is in any manner possible. While attempting such a construction, the rules are settled. Unlike in the case of a transfer *in presenti* wherein the first clause of the conveyance would prevail over anything that may be found to be repugnant to it later, in the case of a will, every effort must be made to harmonize the various clauses and if that is not possible, it will be last clause that will prevail over the former and giving way to the intention expressed therein. In *Ramchandra Shenoy and Anr.* v. *Mrs. Hilda Brite and Ors.*, [1964] 2 S.C.R. 722, this Court held:

> "It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent

A interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will. It is for this reason that where there is a bequest to A even though it be in terms apparently absolute followed by a gift of the same to B absolutely "on" or "after" or "at" A's death, A is *prima* B *facie* held to take a life interest and B an interest in remainder, the apparently absolute interest of A being cut down to accommodate the interest created in favour of B."

20. Thus the first attempt must be to reconcile all the clauses in the will C and give effect to all of them. When we make that attempt in the context of what this Court had indicated in the decision quoted above, we find that the apparent absolute estate given to his wife by the testator is sought to be cut down by the stipulations that the property must go to his nephews after the death of the wife, that the wife cannot testamentarily dispose of the property in favour of any one else and the further interdict in the note that the wife D during her life time would not be entitled to mortgage or sell the properties. Thus on reconciling the various clauses in the will and the destination for the properties that the testator had in mind, we have no hesitation in coming to the conclusion that the apparent absolute estate in favour of Isher Kaur has to be cut down to a life estate so as to accommodate the estate conferred on E the nephews.

21. Thus understood, it has necessarily to be held, as was held by the first appellate court, that Isher Kaur was not competent to gift away the properties in favour of the Gurdwara as she had done. Even if the gift were to be treated as valid, the donee thereunder cannot resist the claim for F eviction by the legatees under the will, the nephews of Ralla Singh, on the cessation of the life estate of Isher Kaur. Admittedly, that life estate has ceased and once it is found that the plaintiff has acquired a title to the property as a legatee under the will, he would be entitled for and on behalf of himself and his brother to recover possession of the property from the Gurdwara in view of the death of Isher Kaur.

G

22. An attempt was made to argue that on the death of Ralla Singh the mutation had been effected in favour of the widow Isher Kaur and in the face of it the title of Isher Kaur will have to be found to be absolute. It was also faintly suggested that logically at that time the plaintiff should have put H forward the will and the non-propounding of the will at that time is a

circumstance militating against the acceptance of the will. We are not able to find any merit in this submission. Merely because mutation was effected, it would not lead to the loss of the title if the plaintiff had otherwise acquired title under the will and the right to possession on the death of Isher Kaur which, obviously occurred after the mutation. On the materials available, including the clear evidence in proof of the will propounded by the plaintiff and upheld by the first appellate court, which finding was accepted by the second appellate court, we are satisfied that the fact that at the time of mutation, the plaintiff did not raise an objection on the strength of the will is not a circumstance that would justify the discarding of the will or the effect of it.

23. It was then argued that a substantial part of the properties had been given to the plaintiff on his filing the Suit No.485 of 1977. An extent of 77 bighas and 9 biswas of land was taken by the nephews leaving the rest for Isher Kaur. The validity or the enforceability of the will executed by Ralla Singh and the bequest flowing therefrom cannot be held to be affected by the filing of the suit No.485 of 1977 or the obtaining of the 77 bighas and 9 biswas of the land by the plaintiff during the life time of Isher Kaur. The defendant Gurdwara is a donee from Isher Kaur and its title would depend on the title Isher Kaur had. Obviously, Isher Kaur could not confer a larger title than she herself had. On a true construction of the will we have found that Isher Kaur had only a life estate in the properties. Hence, the gift executed by her cannot survive the cessation of the life estate or stand in the way of the ultimate beneficiary recovering possession on the strength of the bequest in his favour on the coming to an end of the intervening life estate.

24. Thus, on a consideration of all the relevant aspects we have no hesitation in setting aside the judgment and decree of the High Court and in passing a decree in favour of the plaintiff for recovery of possession of the property from the Gurdwara, the donee from Isher Kaur, and any one claiming under or through it, on the strength of his title and to hold it for himself and his brother. The suit filed by the plaintiff is therefore decreed for recovery of possession. Since the donee from Isher Kaur was a Gurdwara and Isher Kaur died only during the pendency of the First Appeal, we hold that the plaintiff would not be entitled to any mesne profits if the properties are surrendered to him by the Gurdwara pursuant to this decree, within a period of six months from today. But, if the Gurdwara does not surrender the property pursuant to this decree within the time stipulated and the plaintiff is compelled to initiate

A proceedings in execution, the Gurdwara would be liable for mesne profits from the date of the decree of the first appellate court till recovery of possession at the rate to be determined by the executing court after first delivering the property to the decree holder pursuant to this decree.

25. The appeal is, thus, allowed. We make no orders as to costs.

B

V.S.S. Appeal allowed.