



2025:DHC:1363



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

% ***Reserved on : 31st January, 2025***
Pronounced on: 27th February, 2025

+ **TEST.CAS. 3/2022 I.A. 261/2023 I.A. 938/2025**

CHINMAY BISWASPetitioner
Through: Ms. Suruchi Mittal, Mr.
Shubham Soni, Advocates.
versus

STATE GOVT OF NCT OF DELHI & ANRRespondents
Through: Ms. Pavitra Kaur, Mr. Shiven
Asthana, Advocates for R-1.
Mr. Debashis Mukherjee, Mr.
Anand Shankar, Mr. Parma
Nand, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. This petition has filed under Section 276 of the Indian Succession Act 1925 seeking probate of registered Will dated 19th January 2007 authored by the petitioner's mother, late Mrs. Kamala Biswas ('*Testatrix*').
2. The said Will is registered *vide* document No. 173, Book 3, Vol no. 1.548 at pages 44 to 48 before Sub Registrar V, New Delhi.
3. The testatrix passed away on 4th May 2021 and her death certificate, issued by the South Delhi Municipal Corporation, has been placed on record. The testatrix was a resident of *I-1727 Chitranjan Park, New Delhi-110019* ('*suit property*').



4. The said Will was executed in the presence of two attesting witnesses, Sh. Prodip Kr. Ganguly and Sh. Pradip Nandy. Copy of the Will was filed with the petition and the original of the aforesaid Will was taken out from a sealed cover and exhibited as **Ex. PW-1/ 4**.

5. The probate petition is supported by an affidavit of the petitioner, who is the son of the testatrix, as also by both the attesting witnesses who stated that the Will was executed by the testatrix in sound state of mind after understanding the contents, voluntarily and without any outside pressure. Further, it was stated that the Will was executed in their presence and in the presence of the other witnesses. All three, the testatrix and two witnesses, signed the Will in each other's presence.

6. The testatrix was married to late Shri Chuni Lal Biswas, who had pre-deceased the testatrix on 01st April 2000. By Will dated 9th March 1999, the suit property was bequeathed to his wife/ testatrix. The Will dated 09th March 1999 executed by late Shri Chuni Lal Biswas is exhibited as **Ex. PW-1/2 (OSR)**.

7. The suit property had been leased out by L&DO to late Shri Chuni Lal Biswas *vide* lease deed dated 07th September 1973. Pursuant to the death of Shri Chuni Lal Biswas, the said was transferred in the name of his wife per his Will dated 09th March 1999. The transfer was registered *vide* letter dated 17th April 2001 bearing number L&DO/PS-II/506.

8. It is noted, that at this stage, the '*no-objection certificate*' of the son and the daughter was given. It is also stated there is no dispute through the Will, which was made by Late Shri Chuni Lal Biswas.



9. The testatrix met with a tragic accident and underwent a hip replacement surgery on 26th August 2011 at Gujarmal Modi Hospital, but she did not recover completely and another procedure was done at All India Institute of Medical Sciences (AIIMS) in January 2012. However, she remained bed-ridden for the rest of her life and was looked after by petitioner and his wife, till she passed away on 04th May 2021, at the age of 91 years, due to cardiac arrest during the COVID-19 pandemic (*second wave*). Medical documents of the testatrix are exhibited as **Ex. PW1/6(OSR) (Colly)**.

10. On 12th January 2022, this Court issued notice to the respondents as well as to the concerned SDM to file a valuation report of the subject property and publish citations in two daily newspapers in NCT of Delhi, as well as, Kolkata, which was duly complied with. No objections were received pursuant to the said citations. The SDM (Kalkaji) filed a valuation report of the suit property and which was recorded in the order dated 3rd August 2023.

11. Counsel for petitioner had objected on the ground that the time for filing reply/objections had already expired. Counsel for respondent no.2, daughter of the testatrix, sought time to file their objections and undertook to file the reply/objections along with application for condonation of delay.

12. When the matter was listed on 4th October 2023, counsel for respondent no.2 submitted that he has filed an application for seeking condonation of delay, however, the same was not on record.

13. On 16th November 2023, last opportunity was given to respondent no.2 to file the reply. It was noted that even the



vakalatnama and reply to the petition was lying under objection and an affidavit of admission/denial had not been filed.

14. On 11th January 2024 the Joint Registrar (Judicial) noted that reply had still not been filed by respondent no.2 to the application under Order VIII Rule 10 of CPC filed by petitioner, despite grant of last opportunity. Yet another opportunity was granted to respondent no.2 to file the response.

15. On 22nd February 2024, there was no appearance on behalf of the respondents, the matter was listed before the Joint Registrar (Judicial) on 21st March 2024.

16. On 21st March 2024, the Joint Registrar (Judicial) noted that respondent no.2 had been served on 30th March 2023. The reply/objections filed by respondent no.2 were lying under defects since a long time and they had not been re-filed after removing defects. No application for condonation of delay was filed by respondent no.2, despite grant of various opportunities. The limitation for filing the objection/reply had already expired quite some time back. Accordingly, the right of respondent no.2 to file the reply/objections stood closed.

17. On 11th July 2024, when the matter was listed before the Court, counsel for respondent no.2 stated that reply/objections had been filed in 2023 itself, however, still lying under objections since they were not accompanied with affidavit of admission/denial of documents. The Court, therefore, directed that petitioner would be granted leave to lead evidence to prove the Will in accordance with law, and the matter was listed before the Joint Registrar (Judicial) for recording of statements.



18. Evidence by way of affidavit of **PW-1** to **PW-3** was filed. The witnesses were examined on 10th September 2024 and were discharged. Registered Will dated 19th January 2007 was taken out from the sealed cover and exhibited as exhibit as **Ex.PW-1/4**.

19. On 05th December 2024, when the matter was listed before the Court, no one appeared on behalf of respondent no.2. The respondent no.2 was therefore, proceeded *ex parte*. The matter then was listed on 30th January, 2025 for final hearing.

20. **I.A. 938/2025** had been moved by respondent no.2 for recall of order dated 05th December 2024, proceeding *ex parte* against respondent no.2. In light of above facts and circumstances and egregious dilation by respondent no.2, the Court considered it fit not to recall the order, however, in the interest of justice, allowed counsel for respondent no.2 to address arguments on the basis of material on record. Accordingly, submissions were heard of both parties.

Analysis

21. In order to prove the execution of the Will, petitioner as **PW-1** had tendered its evidence through affidavit along with attesting witnesses as **PW-2** and **PW-3**, who have tendered their evidence through affidavit.

22. **PW-2** identified his signatures at all the pages at point B1 and signatures of the testatrix at points marked as X1, X2, X3, X4 and X5 and the Will dated 19th January 2007, exhibited as **Ex. PW-1/4**.

23. It was stated that the Will was executed by the testatrix in his presence and the presence of the other witness **PW-3**.

24. Both witnesses also signed as witnesses in the presences of the

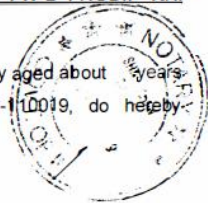


testator.

25. The evidence of PW-2 and PW-3 is reproduced below:

EVIDENCE BY WAY OF AFFIDAVIT OF PW-2 PRODIP KR. GANGULY S/O LATE SH. B GANGULY

I, Prodip Kr. Ganguly S/o Late Sh. B Ganguly aged about 45 years R/o I-1723, Chittranjan Park, New Delhi-110019, do hereby solemnly affirm and state as under:



1. I say that I am an Indian citizen.
2. I say that I am one of the witness to the Will dated 19.01.2007, registered as document S. No.173 in Book no.3 Vol No.1.548 pages from 44 to 48 on dated 19.01.2007, executed by late Smt. Kamala Biswas, R/o I-1727, Chittranjan Park, New Delhi-110019. The said Will was executed by the Testator in sound state of mind after being understood the contents. The said Will was made voluntarily without any outside pressure in full possession of senses of Testator. I identify my signatures at point B1 and signatures of Smt. Kamala Biswas at points marked as 'X1' 'X2' 'X3' 'X4' and 'X5'. Registered Will dated 19.01.2007 is already exhibited as Ex PW-1/4.



Prodip Kr. Ganguly

3. I say that the Will dated 19.01.2007 was executed by Late Smt. Kamala Biswas in my presence and in the presence of another witness namely, Sh. Pradip Nandy.
4. I say that both the witnesses also signed as witness in the presence of the Testator. All the three, the testator and two witnesses signed in the presence of each other Will dated 19.01.2007.
5. I say that I had also filed affidavit at the time of filing of petition by the Petitioner Sh. Chinmay Biswas and I identify my signatures on the said affidavit at points 'B2' and 'B3'.
6. I say that the particulars furnished by me above are correct and that I have no canceled or misrepresented any facts and the same have been read over to me in vernacular which are correct to my knowledge and belief.

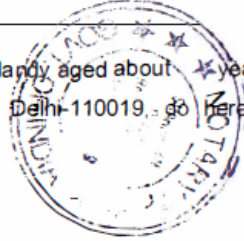


Prodip Kr. Ganguly
DEPONENT



EVIDENCE BY WAY OF AFFIDAVIT OF PW-3 PRADIP NANDY
S/O SH. TARAKESHWAR NANDY

I, Pradip Nandy S/o Sh. Tarakeshwar Nandy, aged about 45 years
R/o 1839/A/10 Govindpuri Ext., New Delhi-110019, do hereby
solemnly affirm and state as under:



1. I say that I am an Indian citizen.
2. I say that I am one of the witness to the Will dated 19.01.2007, registered as document S. No.173 in Book no.3 Vol No.1.548 pages from 44 to 48 on dated 19.01.2007, executed by late Smt. Kamala Biswas, R/o I-1727, Chittranjan Park, New Delhi-110019. The said Will was executed by the Testator in sound state of mind after being understood the contents. The said Will was made voluntarily without any outside pressure in full possession of senses of Testator. I identify my signatures at Point C1 and signatures of Smt. Kamala Biswas at points



Pradip

marked as 'X1' 'X2' 'X3' 'X4' and 'X5'. Registered Will dated 19.01.2007 is already exhibited as **Ex PW-1/4**.

3. I say that the Will dated 19.01.2007 was executed by Late Smt. Kamala Biswas in my presence and in the presence of another witness namely, Prodip Kr. Ganguly.
4. I say that both the witnesses also signed as witness in the presence of the Testator. All the three, the testator and two witnesses signed in the presence of each other Will dated 19.01.2007.
5. I say that I had also filed affidavit at the time of filing of petition by the Petitioner Sh. Chinmay Biswas and I identify my signatures on the said affidavit at points 'C2' and 'C3'.
6. I say that the particulars furnished by me above are correct and that I have no canceled or misrepresented any facts and the same have been read over to me in vernacular which are correct to my knowledge and belief.

Pradip Nandy
I have verified the deponent's affidavit in my presence.

Pradip
DEPONENT
08 AUG 2024



26. Contesting the Will on a point of law, respondent no.2 relied upon the decision in ***Kamal Parti v Raj Kumar Parti & Anr.*** 2020 SCC OnLine Del 2941, where in *para 31* the Court noted as under:

“31. From the Will, not making any provision with respect to the subject property (which the defendant no. 1 could not sell, save with the consent of all her three sons) after the lifetime of the defendant no. 1, as is normally found in the Wills bequeathing a restricted estate, also it follows that the deceased Om Parkash Parti did not envisage his wife defendant no. 1 discriminating between the three sons in any manner whatsoever including in the matter of making a Will. The deceased Om Parkash Parti proceeded on the premise, that if the subject property was not sold by the defendant no. 1 with the consent of all his three sons, the same, after the lifetime of defendant no. 1, would be inherited by his three sons, just like it would have been had the defendant no. 1 predeceased him. The prohibition in the Will, on disposition of the property by the defendant no. 1 save with the consent of his three sons, was with the intent of property, if not so sold, ultimately after the lifetime of defendant no. 1, belonging to the three sons.”

(emphasis added)

27. Counsel for respondent no.2 pointed out that as per the Will of late Chuni Lal Biswas, it was stated as under:

“...In my earnest wish that my wife Srimati Kamala Biswas will not sell the house at I-1727 C.R. Park without the consent of my son Chinmay Biswas and my daughter Dr. Smt. Jayashri Basu Roy Choudhuri unless there is acute financial distress and hardship, whereas Srimati Kamala Biswas could rent out some portion of the house during her life time if my wife Srimati Kamla Biswas wants to rent out the portion of the house.”

(emphasis added)



28. Based on this, respondent no.2 stated that without the consent of both the son and the daughter, there were restrictions on the testatrix to bequeath the subject property to anyone.

29. This argument is however, unmerited, considering that Will of late Shri Chuni Lal Biswas at best restricts the testatrix from selling out the house without the consent of both son and daughter and permits her to rent out some portion of the house during her lifetime. There is no restriction on bequeathal which requires consent. On the contrary, there is a specific clause in the Will of late Shri Chuni Lal Biswas, which reads as under:

“And whereas my wife Srimati Kamala Biswas will on my demise inherit the house no. I-1727 at Chittranjan Park, New Delhi proceeds of all my financial investments, cash bank balance, she will have absolute right of ownership over the full house located at I-1727, C.R. Park, New Delhi- 110019.”

30. It is quite clear, that the even as per the Will, the property was bequeathed to the testatrix to exercise full rights of ownership in respect of the said property and the condition if at all, which was imposed by late Shri Chuni Lal Biswas was only on the question of sale. The decision in ***Kamal Parti*** (*supra*) was on its particular facts and circumstances and would not apply as a general rule to all such Wills.

31. In response, counsel for petitioner responded by relying on the decisions in ***Umrao Singh v Baldev Singh*** 1932 SCC OnLine Lah 410 and ***V. Tulasamma & Ors. v Sessa Reddy*** (1977) 3 SCC 99.

32. It was also contended by petitioner that even the restriction for



sale was qualified and waived in the event of financial hardship. It was thus, in the recognition of a right to maintenance which is a pre-existing right. Even if there was a limited estate, without admitting and without prejudice, it got enlarged into an absolute estate under Section 14(1) of the Hindu Succession Act 1956 ('HSA').

33. In such a case, since the testatrix would have a pre-existing right, to be maintained out of the property of her husband, the restriction would not apply to her and therefore, the bequest in her favour would be an absolute bequest.

34. On various occasions, interpretation of Wills, which contain absolute bequest in favour of beneficiary followed by a subsequent bequest, have been deliberated upon by the Courts. Adverting to these decisions and the opinion of the Courts may be instructive for the purposes of this matter.

35. The Constitution Bench of Supreme Court in *Ramkishorelal and Anr. v Kamal Narayan* 1962 SCC OnLine SC 113 observed as under:

“12. The golden Rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court had to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has to a trained conveyancer a clear and definite significance and one can be sure



about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of convincing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal Deo) [(1960)(3) SCR 604 at p. 611] . It is clear, however, that an attempt should always be made to read the two parts of the document harmoniously, if possible; it is only when this is not possible, e.g., where an absolute title is given in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void.

(emphasis added)

36. In *V. Tulasamma and Ors. v Sessa Reddy* (1977) 3 SCC 99, Justice P. N. Bhagwati speaking for himself and Justice A.C. Gupta adverted to Section 14 of the HSA, its wide ambit and scope and absolute ownership in the hands of female Hindu and all kinds of property which is required by her. In this regard, *para 68* is instructive, extracted as under:



“...Sub-section (1) of Section 14, is wide in its scope and ambit and uses language of great amplitude. It says that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The words “any property” are, even without any amplification, large enough to cover any and every kind of property, but in order to expand the reach and ambit of the section and make it all comprehensive, the Legislature has enacted an explanation which says that property would include “both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement” of the Act. Whatever be the kind of property, movable or immovable, and whichever be the mode of acquisition, it would be covered by sub-section (1) of Section 14, the object of the Legislature being to wipe out the disabilities from which a Hindu female suffered in regard to ownership of property under the old Shastric law, to abridge the stringent provisions against proprietary rights which were often regarded as evidence of her perpetual tutelage and to recognise her status as an independent and absolute owner of property....”

(emphasis added)

37. Even, as per the principal opinion given by Justice Fazal Ali in *V. Tulasamma* (*supra*) in para 62, it was observed as under:

“(1) The Hindu female's right to maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right



against property which flows from the spiritual relationship between the husband and the wife and is recognised and enjoined by pure Shastric Hindu law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu. Such a right may not be a right to property but it is a right against property and the husband has a personal obligation to maintain his wife and if he or the family has property, the female has the legal right to be maintained therefrom. If a charge is created for the maintenance of a female, the said right becomes a legally enforceable one. At any rate, even without a charge the claim for maintenance is doubtless a pre-existing right so that any transfer declaring or recognising such a right does not confer any new title but merely endorses or confirms the pre-existing rights. (2) Section 14(1) and the Explanation thereto have been couched in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the 1956 Act and promote the socio-economic ends sought to be achieved by this long needed legislation. (3) Sub-section (2) of Section 14 is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.”

(emphasis added)

38. In *Mauleshwar Mani and Ors. v Jagdish Prasad and Ors.* (2002) 2 SCC 468, the Supreme Court was dealing with a Will where the first part had been bequeathed in the name of the testator’s wife, whereas, the second part provided that after the death of the wife, the sons and daughters would inherit the property. The Court held that the



Will, gave in the express terms an inheritable estate with power of alienation to the wife, which was an unlimited and an absolute estate. The Court relied upon **Ramkishorelal** (*supra*) and **Rameshwar Baksh Singh & Ors. v Balraj Kuar & Ors.** and culled out legal principles, stating as under:

“11. From the decisions referred to above, the legal principle that emerges, inter alia, are:

(1) where under a will, a testator has bequeathed his absolute interest in the property in favour of his wife, any subsequent bequest which is repugnant to the first bequeath would be invalid; and

(2) where a testator has given a restricted or limited right in his property to his widow, it is open to the testator to bequeath the property after the death of his wife in the same will.

12. In view of the aforesaid principles that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to the testator to further bequeath the same property in favour of the second set of persons in the same will, a testator cannot create successive legatees in his will. The object behind is that once an absolute right is vested in the first devisee the testator cannot change the line of succession of the first devisee. Where a testator having conferred an absolute right on anyone, the subsequent bequest for the same property in favour of other persons would be repugnant to the first bequest in the will and has to be held invalid.”

(emphasis added)

39. Relying on both **Ramkishorelal** (*supra*) and **Mauleshwar** (*supra*), Justice R.F. Nariman in **Madhuri Ghosh and Anr. v Debobroto Dutta and Anr.** (2016) 10 SCC 805 dealt with a Will that was bequeathed by the testator to his wife and elder daughter and that after death of the wife, the elder daughter would become the exclusive



owner and if his daughter was to predecease the wife, then the wife would become the exclusive owner (*para 2 of the Will*). It was also stated that after the death of his wife and elder daughter, various other lineal descendants would become owners of specified parts of the house (*para 4 of the Will*). The question for consideration was whether only a life interest was created or absolute interest in favour of the wife and the elder daughter. The Court held in clear terms, that what was granted in favour of testator's widow and elder daughter, was an absolute right and not a limited interest while relying upon the legal principles culled out in *Mauleshwar (supra)*.

40. This line of jurisprudence has been relied upon more recently by a Single Judge of this Court in *RFA 607/2016* titled as *Jasbir Kumar v Kanchan Kaur & Ors.* 2017:DHC:715. The controversy before the Court was the interpretation of the Will executed by Late Sh. Himmat Singh and as to whether the Will has conferred a limited estate on his widow or the bequest was an absolute one. The Court first relied upon a decision in *Bhura and Ors. v Kashi Ram* (1994) 2 SCC 111 to emphasise that Courts must make all efforts to determine the real intention of the testator by reading the Will as a whole and on the decision in *Radha Sundar Dutta v Mohd. Jahadur Rahim and Ors.* AIR 1959 SC 24, stating that where there is an apparent inconsistency in the Will and if there are two constructions of a document, the one which will give effect to all the clauses must be adopted. Using the framework of Section 14 (1) of HSA, the Court then held as under:

“18. Even if it is assumed that the subject Will had bestowed a life estate in favour of respondent No.1, as sought to be urged by learned counsel for the



appellant, the said life estate gets translated into an absolute estate, under Section 14(1) of the Hindu Succession Act, 1956 which contemplates that any property possessed by a female Hindu, whether acquired before or after the commencement of the Act, shall be held by her as full owner thereof and not as a limited owner. The aforesaid issue is no longer res integra having been decided by the Supreme Court in the case of C. Masilamani Mudaliar & Ors. vs. Idol of Sri Swaminathaswami Swaminathaswami Thirukoil & Ors., (1996) 8 SCC 525 wherein, it was held that the right acquired by a Hindu wife/widow under a Will, is in recognition of her pre-existing right to maintenance known under the Shastric law and in the light of the provisions of the Hindu Adoption and Maintenance Act, 1956, it would transform into an absolute right under Section 14(1) of the Hindu Succession Act. Thus, it was held that when a Hindu husband bequeaths a life estate in a property unto his wife, she does not get a limited ownership with life interest, but becomes the absolute owner thereof in terms of Section 14(1) of the Hindu Succession Act.”

(emphasis added)

41. In *C. Masilamani Mudaliar and Ors v Idol of Sri Swaminathaswami Swaminathaswami Thirukoil & Ors.* (1996) 8 SCC 525, the Supreme Court articulated on Section 14(1) of HSA more extensively and opined as under:

“26. It is true that Section 30 of the Act and the relevant provisions of the Act relating to the execution of the Wills need to be given full effect and the right to disposition of a Hindu male derives full measure thereunder. But the right to equality, removing handicaps and discrimination against a Hindu female by reason of operation of existing law should be in conformity with the right to equality enshrined in the Constitution and the personal law also needs to be in



conformity with the constitutional goal. Harmonious interpretation, therefore, is required to be adopted in giving effect to the relevant provisions consistent with the constitutional animation to remove gender-based discrimination in matters of marriage, succession etc. Cognizant to these constitutional goals, Hindu Marriage Act, Hindu Adoption and Maintenance Act, Hindu Succession Act, etc. have been brought on statute removing the impediments which stood in the way under the Sastric law. Explanation I to Section 14(1) gives wide amplitude to the acquisition of property in the widest terms. It is merely illustrative and not exhaustive. The only condition precedent is whether Hindu female has a pre-existing right under the personal law or any other law to hold the property or the right to property. Any instrument, document, device etc. under which Hindu female came to possess the property — moveable or immovable — in recognition of her pre-existing right, though such instrument, document or device is worded with a restrictive estate, which received the colour of pre-existing restrictive estate possession by a Hindu female, the operation of sub-section (1) of Section 14 read with Explanation I, remove the fetters and the limited right blossoms into an absolute right.

27. As held by this Court, if the acquisition of the property attracts sub-section (1) of Section 14, sub-section (2) does not come into play. If the acquisition is for the first time, without any vestige of pre-existing right under the instrument, document or device etc. then sub-section (2) of Section 14 gets attracted. Sub-section (2) being in the nature of an exception, it does not engulf and wipe out the operation of sub-section (1). Sub-section (2) of Section 14 independently operates in its own sphere. The right to disposition of property by a Hindu under Section 30 is required to be understood in this perspective and if any attempt is made to put restriction upon the property possessed by a Hindu female under an instrument, document or



device, though executed after the Act had come into force, it must be interpreted in the light of the facts and circumstances in each case and to construe whether Hindu female acquired or possessed the property in recognition of her pre-existing right or she gets the rights for the first time under the instrument without any vestige of pre-existing right. If the answer is in the positive, sub-section (1) of Section 14 gets attracted. Thus construed, both sub-sections (1) and (2) of Section 14 will be given their full play without rendering either as otiose or aids as means of avoidance.”

(emphasis added)

42. Accordingly, from the aforesaid facts, all aspects relating to proving the genuineness of the Will, have been complied with.

43. The Court does not find any impediment in grant of probate; accordingly, petition is allowed. Pending applications (if any) are disposed of as infructuous.

44. Subject to petitioner filing requisite court fees, administration and surety bond, probate along with a copy of the Will, shall be granted in favour of petitioner.

45. Judgment be uploaded on the website of this Court.

**(ANISH DAYAL)
JUDGE**

FEBRUARY 27, 2025 /RK/na