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

Judgment reserved on: 09.10.2026
Judgment pronounced on: 21.11.2026

\# **CNR No. DLHC010490832026**

\+ EX.F.A. 74/2026 & CM APPL. 70593/2026 (Stay)

TILAK RAJ .....Appellant

Through: Mr. Sanjiv Bahl, Sr. Adv. With Mr. Vikrant Arora, Advocate.

versus

SHIKHA MATHUR

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

CM APPL. 70594/2026

1. The present Application, filed under Section 151 of the **Code of Civil Procedure, 1908**[1], seeks condonation of a delay of 15 days in re-filing the above-captioned Execution First Appeal, being **EX.F.A. 74/2026**[2].

2. By way of the present Application, it is stated that the present Appeal, upon being returned with objections on 03.09.2026, was although required to be re-filed by 10.09.2026, however the same

[1] CPC
[2] present Appeal

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could be re-filed only on 25.09.2026, since the Appellant was unwell and could not visit his counsel for the purpose of signing the requisite documents.

3. For the sufficient reasons stated therein, the present Application is allowed, and the delay of 15 days in re-filing the Appeal is condoned.

4. Accordingly, the present Application stands disposed of.

EX.F.A. 74/2026

5. The present Appeal, filed under Section 96, read with Order XXI Rule 58(4) of the CPC, by the Appellant, who is the Decree Holder in the execution proceedings, seeks to assail the **Order dated 19.05.2026**[3] passed by the **learned District Judge-14, Central District, Tis Hazari Courts, Delhi**[4] in **Execution Case No. 691/2019**[5], titled *"Tilak Raj v. Puneet & Ors."*.

6. By way of the Impugned Order, the learned Executing Court sustained the **objections preferred by the Respondent under Order XXI Rule 58 read with Sections 47 and 151 of the CPC**[6], and vacated the order of attachment dated 13.04.2026 passed in respect of **property bearing No. A-2A/84, DDA Flats, Janakpuri, New Delhi-110058**[7].

FACTUAL MATRIX:

7. The Appellant had, in the year 2003, instituted a Civil Suit, re-numbered as **CS No. 610986/2016**[8], *inter alia*, against one Sh. Puneet

[3] Impugned Order
[4] learned Executing Court
[5] Execution Petition
[6] Objections
[7] Subject Property
[8] Suit

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Mathur, son of Sh. Balvir Singh, who was arrayed as Defendant No. 5 therein, for the recovery of a sum of Rs. 3,30,000/- along with interest, alleging that he had been deprived of the said amount, through a cheque wrongly debited from his bank account, by illegal and fraudulent means.

8. By the **Judgment and Decree dated 11.02.2019**[9], the learned Additional District Judge-13, Central District, Tis Hazari Courts, Delhi, decreed the Suit against Sh. Puneet Mathur and the legal representatives of Defendant No. 7 for a sum of Rs. 3,95,450/-, along with simple interest at the rate of 4% per annum on the sum of Rs. 3,30,000/- from 14.01.2003 till realisation.

9. Pursuant thereto, the Appellant filed the Execution Petition on 18.04.2019. During the pendency thereof, Sh. Puneet Mathur, who was arrayed as Judgment Debtor No. 1 therein, passed away. Consequently, Notice of the Execution Petition was sought to be issued to his widow, Smt. Shipra Mathur, as his legal representative, who, however, remained unserved.

10. The Appellant thereafter filed an Affidavit before the learned Executing Court asserting that Smt. Shipra Mathur *"still holds"* the Subject Property, where the deceased Judgment Debtor had resided earlier. On the strength of the said Affidavit, the learned Executing Court, *vide* Order dated 13.04.2026, directed the issuance of warrants of attachment in respect of the Subject Property, and a prohibitory order under Order XXI Rule 54 of the CPC came to be issued on 18.04.2026.

11. The Respondent, who is the sister of the deceased Judgment Debtor, thereupon filed the Objections in the said Eviction Petition

[9] Decree

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against the said Attachment Order.

12. It was her case that the Subject Property had been allotted in 1971 by the Delhi Development Authority to her father, Sh. **Balvir Singh**[10], who, by a **registered Will dated 07.08.2007**[11], had bequeathed the same to her, and that upon the demise of the Testator in April, 2013, she had become its rightful legal owner. It was further averred that the Will merely permitted the deceased Judgment Debtor to construct a second floor out of his own resources and to reside thereon with his family, without any right to sell the same, that no such floor was ever constructed, and that the Subject Property continues to consist only of the ground and the first floors.

13. In his Reply to the said Objections, the Appellant contended that the Subject Property had been inherited by all the legal heirs of the Testator, including the deceased Judgment Debtor, and that, in any event, even under the Will, the second floor, or the roof, of the Subject Property belonged to Smt. Shipra Mathur. It was further contended that any clause in the Will restricting the right of the legatee to deal with the property bequeathed to him was invalid.

14. By way of the Impugned Order, the learned Executing Court, upon a perusal of the Will, held that the Subject Property had been bequeathed to the Respondent, that the deceased Judgment Debtor had been granted no more than a right to construct a second floor thereon, and that there was no material to show that any such floor had been constructed or had devolved upon Smt. Shipra Mathur.

15. The Objections were, accordingly, sustained and the attachment of the Subject Property was vacated. The Appellant was directed to

[10] Testator
[11] Will

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furnish the details of any other property of the Judgment Debtors. Aggrieved thereby, the Appellant has preferred the present Appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

16. Learned counsel appearing on behalf of the Appellant would contend that the learned Executing Court erred in sustaining the Objections and in vacating the attachment, without properly appreciating the material on record. It would be submitted that Smt. Shipra Mathur, being the widow and a Class-I legal heir of the deceased Judgment Debtor, has stepped into his shoes and is entitled to whatever right, title or interest he held in the Subject Property.

17. Learned counsel for the Appellant would submit that the principal challenge to the Impugned Order rests upon the construction of the Will itself. In this regard, learned counsel would draw the attention of this Court to the concluding bequest therein, whereby the Testator gave and bequeathed the *"second floor of flat No. A-2A/84, Janakpuri, New Delhi to my son Puneet Mathur"*, to contend that the second floor of the Subject Property stood exclusively bequeathed to the deceased Judgment Debtor, and that his right thereto was neither restricted to a mere right to construct nor contingent upon the construction of the said floor.

18. Learned counsel for the Appellant, in order to substantiate the aforesaid submission, would place reliance upon the decision of the Hon'ble Supreme Court in ***Kaivelikkal Ambunhi v. H. Ganesh Bhandary***[12], and of the Full Bench of this Court in ***Maj. Gen. Rajinder Singh Chowdhary v. S. Manjit Singh Chowdhary***[13], to submit that, in terms of Section 88 of the **Indian Succession Act,**

[12] (1995) 5 SCC 444
[13] 2000 SCC OnLine Del 724 : AIR 2001 Del 15 (FB)

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1925[14], where two clauses of a Will are inconsistent, the later clause prevails over the earlier, and that the concluding bequest in favour of the deceased Judgment Debtor must, therefore, prevail over the restriction contained in the preceding part of the Will.

19. Learned counsel for the Appellant would further submit that, the Will having carved out a distinct interest in the second floor in favour of the deceased Judgment Debtor, the learned Executing Court could not have vacated the attachment in its entirety without examining that interest, and erred in holding that no attachable interest survived in favour of Smt. Shipra Mathur merely for want of evidence of actual construction. It would also be submitted that nothing has been brought on record by the Respondent to show that the second floor has not been constructed.

20. Learned counsel for the Appellant would lastly submit that the Impugned Order, if allowed to stand, would render the Decree incapable of satisfaction and cause grave prejudice to the Appellant, who has been pursuing the recovery of the decretal amount for a considerable period of time.

21. No other submissions were advanced by the learned counsel appearing on behalf of the Appellant.

ANALYSIS:

22. This Court has heard the learned counsel appearing on behalf of the Appellant and, with his assistance, perused the material available on record, including the record of the learned Executing Court placed on record by the Appellant.

23. At the outset, it may be noticed that the present Appeal was heard on the first date of its listing, at the stage of admission, with the

[14] Succession Act

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consent of the learned counsel appearing on behalf of the Appellant, and the Judgment was reserved upon such hearing, without notice being issued to the Respondent.

24. This course was adopted since the controversy lies within a narrow compass of the construction of the Will, which forms part of the record of the learned Executing Court placed before this Court by the Appellant himself, and upon the consequences of that construction under the provisions of the CPC governing attachment in execution. Since the determination of these questions does not depend upon any disputed fact on which the version of the Respondent would be required the matter was heard finally with the consent of the Appellant.

The Nature of the Enquiry

25. Before adverting to the competing constructions of the Will, it is necessary to identify the precise question which arises for determination, in light of the statutory provisions under which the attachment was made and the Objections were preferred.

26. The Decree was passed against the deceased Judgment Debtor in his lifetime, and it is against his legal representative that the same is now sought to be executed. In this regard, Section 50 of the CPC assumes significance, which governs such execution, reads as under:

> "**50. Legal representative.**—(1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.
> (2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application

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> of the decree-holder, compel such legal representative to produce such accounts as it thinks fit."
>
> ***(Emphasis supplied)***

27. It is a matter of record that Smt. Shipra Mathur, wife of the deceased Judgment Debtor, was not a party to the Suit and is not a judgment debtor in her own right. Therefore, as envisaged in Section 50 of the CPC, the Decree can be executed against her only in her capacity as the legal representative of the deceased Judgment Debtor, and only to the extent of the property of the deceased which has come to her hands. Her own property, if any, is beyond the reach of the Decree.

28. The attachment of the Subject Property could, therefore, have been sustained only if the deceased Judgment Debtor held an interest therein which, upon his demise, came to the hands of Smt. Shipra Mathur. Moreover, even such an interest is not, by that circumstance alone, liable to attachment. In this regard, Section 60(1) of the CPC assumes relevance, which delineates the property liable to attachment and sale in execution of a decree, reads, in so far as is relevant, as under:

> "**60. Property liable to attachment and sale in execution of decree.**—(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf: …"
>
> ***(Emphasis supplied)***

29. A perusal of the aforesaid provisions makes it abundantly manifest that the attachment contemplated by the CPC is a step in aid

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of the sale of the property attached, so that the decree may be satisfied out of its proceeds. It is for this reason that the statute confines attachment to property which is saleable, or over which the judgment debtor has a disposing power which he may exercise for his own benefit. A right which its holder cannot himself sell, and which he can enjoy only in person, is not one which the executing court can sell on his behalf.

30. It is in the light of these provisions that the Objections fell to be adjudicated under Order XXI Rule 58 of the CPC, the relevant portion whereof reads as under:

> "**58. Adjudication of claims to, or objections to attachment of, property.**—(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained: …
> (2) <u>All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.</u>
> xxx xxx xxx
> (4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree."
>
> ***(Emphasis supplied)***

31. The scope of the adjudication contemplated by the aforesaid provision was explained by the Hon'ble Supreme Court in ***L.K. Prabhu v. K.T. Mathew***[15] in the following terms:

> "**10.2.** A significant change was introduced by the Amendment Act 104 of 1976. Order XXI Rule 58 was substituted to enlarge the scope of adjudication of claims and objections. Earlier, a claimant was required to institute a separate suit under Order XXI Rule 63 or invoke Section 53 of the T.P. Act. <u>The amended Rule now</u>

[15] 2025 SCC OnLine SC 2577

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> mandates that all questions relating to right, title, or interest of the property attached be determined in execution itself. …
> xxx xxx xxx
> Thus, the effect of the amended Rule 58 is that the Executing Court shall adjudicate all questions relating to right, title, or interest of the property attached between the parties to the claim proceedings, and its determination has the force of a decree. …"
>
> ***(Emphasis supplied)***

32. The Objections preferred by the Respondent, which raised a question of right, title and interest in the Subject Property, were thus required to be determined by the learned Executing Court itself, and the order made thereon, having the force of a decree, is amenable to appeal. It is in exercise of the appellate jurisdiction so conferred that the present Appeal has been preferred.

33. It is equally well settled that an attaching creditor is entitled to attach only the right, title and interest of the judgment debtor in the property attached, and nothing more. In ***L.K. Prabhu*** *(supra)*, the Hon'ble Supreme Court, relying upon its earlier decision in ***Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan***[16], reiterated the said principle in the following terms:

> "**17.** It is well settled that attachment before judgment cannot extend to properties which have already been alienated prior to the institution of the suit. In *Vannarakkal Kallalathil Sreedharan* v. *Chandramaath Balakrishnan*, this Court held that an agreement for sale creates an obligation attached to the ownership of the property and an attaching creditor is entitled to attach only the right, title, and interest of the judgment debtor. … The following paragraphs from the said judgment are relevant in this regard:
>
> xxx xxx xxx
>
> '**6.** There is a useful parallel from the decision of the Calcutta High Court in *Purna Chandra Basak* v. *Daulat Ali Mollah*, AIR 1973 Cal. 432 wherein it was observed that the attaching creditor attaches only the right, title and inter-est of the debtor and attachment cannot confer upon him any higher right than the judgment-debtor had at the date of attachment. …' "
>
> ***(Emphasis supplied)***

[16] (1990) 3 SCC 291

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34. The attachment, thus, does not enlarge the interest of the judgment debtor, nor does it confer upon the attaching creditor any right greater than that which the judgment debtor himself possessed. Whatever the Appellant could attach in the present case was, therefore, no more than such interest as the deceased Judgment Debtor held in the Subject Property and as came to the hands of his legal representative.

35. The question which arises for determination in the present Appeal is, thus, whether the deceased Judgment Debtor held, in the Subject Property, an interest which was saleable and which, upon his demise, came to the hands of Smt. Shipra Mathur. The plea of intestate succession, though raised in the Reply before the learned Executing Court, was not pressed before this Court, and the Appellant's case on the merits rests entirely upon the Will. It is, therefore, to the terms of the Will that this Court must now turn.

Terms of the Will

36. The Will records the circumstances of the Testator and of his family at the time of its execution. The Testator was then 72 years of age, his wife had predeceased him, and he had one son, namely, the deceased Judgment Debtor, and two married daughters, one of whom is the Respondent. The relevant recitals in the Will read as under:

> "AND WHEREAS at present I have been residing with my daughter Smt. Shikha and her daughter at Ground and First floor of A-2A/84, DDA Flat, Janakpuri, New Delhi-110058, who have been taking proper care of me by providing all kinds of facilities for the last five years. … My son Puneet Mathur has been source of trouble to me through out and has caused me great financial losses despite my helping him from time to time. He is associated with bad elements and there are civil and criminal cases pending against him in the court of law. I am not satisfied with his conduct and behaviour and his activities are detrimental to me as he was making undesirable efforts to sell, alienate, transfer or making a deal in

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> respect of my only flat No. A-2A/84, Janakpuri, New Delhi to some person misrepresenting himself in my name, in order to facilitate illegally the disposal of my flat No. A-2A/84, Janakpuri, New Delhi, he has fraudulently obtained duplicate papers from Delhi Development Authority. The undesirable and uncalled for activities have thus made him unbecoming of my son and as a result thereof I disowned my son Puneet Mathur and his wife Smt. Shipra from my properties particularly from A-2A/84, Janakpuri, New Delhi-110058 by way of PUBLIC NOTICE published in the Newspaper 'VIRAAT VAIBHAV' dated 20.06.2007."
>
> ***(Emphasis supplied)***

37. Having so recorded, the Testator proceeded to make the following dispositions in respect of the Subject Property:

> "AND WHEREAS I have the following immoveable property in my name.
>
> 1) FLAT HOUSE NO.84, BLOCK NO.A-2A, DDA FLAT, JANAKPURI, NEW DELHI-110058. Plot No.2A/84, DDA Single Unit flat has provisions of three floors i.e. Ground, First and Second Floor. At present ground and first floor have been constructed but there is no construction in the second floor.
>
> I wish and desire that as long as I am living, I shall be the beneficial owner of the aforesaid house/flat held by me. After my death the abovesaid property bearing House/Flat No.A-2A/84, Janakpuri, New Delhi-110058, in my name shall devolve upon my daughter Shikha Mathur. I declare that after my death the ground and first floor of Flat No.A-2A/84, Janakpuri, New Delhi-110058, in my name and also any other property immoveable to be acquired in my name in future shall be bequeathed to my aforesaid daughter Smt. Shikha Mathur. It is my wish and desire to allow my son Puneet to construct IInd floor with his own resource and may live thereon with his family members but he will have no right to sell the same, as my son Puneet Mathur approached and assured that he will mend his ways and he will not give any opportunity of any complaint against him. In these circumstances, I hereby grant him right to construct on the Second floor as per rules and regulations of Delhi Development Authority but he will have no right to sell the same to anybody else except to reside therewith his family members.
>
> AND WHEREAS I hereby give and bequeath my immoveable property bearing No.A-2A/84, DDA Flat, Janakpuri, New Delhi-110058, and any other property likely to be acquired in my name to my aforesaid daughter Smt. Shikha Mathur, and second floor of flat No.A-2A/84, Janakpuri, New Delhi to my son Puneet Mathur."
>
> ***(Emphasis supplied)***

38. The controversy between the parties turns upon the last of the

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aforesaid clauses. The Appellant reads the bequest of the *"second floor"* to the deceased Judgment Debtor as an absolute and unqualified bequest which, being the later clause, overrides the restrictions contained in the preceding clause. The learned Executing Court, on the other hand, read the two clauses together, and held that the deceased Judgment Debtor had been granted no more than a right to construct the second floor and to reside thereon. Which of the two readings is correct depends, therefore, upon the principles which govern the construction of Wills.

The Principles Governing the Construction of a Will

39. The cardinal rule in the construction of a Will is that the Court must ascertain the intention of the testator, and that such intention is to be gathered from the instrument read as a whole. The Succession Act gives statutory expression to this rule in Sections 82, 87 and 88, which read as under:

> "**82. Meaning of clause to be collected from entire Will.**—The meaning of any clause in a Will is to be collected from the entire instrument, and all its parts are to be construed with reference to each other.
>
> xxx xxx xxx
>
> **87. Testator's intention to be effectuated as far as possible.**—The intention of the testator shall not be set aside because it cannot take effect to the full extent, but effect is to be given to it as far as possible.
>
> **88. The last of two inconsistent clauses prevails.**—Where two clauses or gifts in a Will are irreconcilable, so that they cannot possibly stand together, the last shall prevail."
>
> ***(Emphasis supplied)***

40. Section 88 of the Succession Act, upon which the Appellant has placed his principal reliance, is not, therefore, a rule of first resort. It is a rule of last resort, which comes into play only when the Court, having read the Will as a whole in the manner mandated by Section 82, finds that two clauses are so irreconcilable that they cannot

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possibly stand together. The very decision in ***Kaivelikkal Ambunhi*** *(supra)*, upon which the Appellant relies, makes this abundantly clear. After observing that, in the case of a Will, a later clause prevails over an inconsistent earlier clause, the Hon'ble Supreme Court cautioned as under:

> "**4.** A Will may contain several clauses and the latter clause may be inconsistent with the earlier clause. In such a situation, the last intention of the testator is given effect to and it is on this basis that the latter clause is held to prevail over the earlier clause. …
> xxx xxx xxx
> **6.** It may, however, be pointed out that this rule of interpretation can be invoked only if different clauses cannot be reconciled. (See: *Rameshwar Bakhsh Singh* v. *Balraj Kuar*.)"
>
> ***(Emphasis supplied)***

41. The Full Bench of this Court in ***Maj. Gen. Rajinder Singh Chowdhary*** *(supra)*, also relied upon by the Appellant, having surveyed the decisions of the Hon'ble Supreme Court on the subject, culled out the governing principles in the following terms:

> "**5.** … 2. 'In construing the language of the will the court is entitled to put itself into the testator's armchair and is bound to bear in kind also other matters than merely the words used. It must consider the surroundings circumstances, the position of the testator, his family relationship the probability that he would use words in a particular sense. But all this is solely as an aid to arriving at a right construction of the will and to ascertain the meaning of its language when used by that particular testator in that document.'
> 3. 'The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory.'
> 4. 'The court must accept, if possible such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator makes his will, such as the state of his property of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. …'

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> 5. 'To the extent that it is legally possible, effects should be given to every disposition contained in the will unless the law prevents effect being given to it. … 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.'
>
> xxx xxx xxx
>
> **7.** … This rule of interpretation can be invoked if different clauses cannot be reconciled. (See *Rameshwar* v. *Balraj*, AIR 1935 PC 187). …"
>
> ***(Emphasis supplied)***

42. These principles were applied by a Division Bench of this Court in ***Shakuntla v. Rajinder Singh Deswal***[17]. In that case, the testator had, in one clause, bequeathed his estate to his wife as her *"absolute and exclusive"* property, and had, in a later clause, provided that upon her death his son would inherit the same. Rejecting the contention that the bequest stopped at the earlier clause, this Court read the Will as a whole, and held that the testator intended to confer only a limited interest upon his wife, with a subsequent bequest in favour of his son. In doing so, this Court observed as under:

> "**14.** … A plain reading of the above provision makes it manifestly clear that the meaning of any clause in a Will is required to be understood in the context of the entire instrument and not in isolation.
>
> xxx xxx xxx
>
> **22.** In light of the aforestated statutory provisions and the observation of this Court upon the judgments relied upon by the learned senior counsel representing the parties, the arguments of learned senior counsel representing the Appellant that the bequest qua the suit property will stop at Clause 4 of the Will, is untenable and cannot be accepted in view of Section 82 of the Act, 1925. …"
>
> ***(Emphasis supplied)***

43. A conjoint reading of the aforesaid statutory provisions and decisions would indicate that the Will must be read as a whole, and the meaning of each clause must be collected from the entire instrument. An expression is not to be read in isolation, and the Court

[17] 2025:DHC:7048-DB

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must, as far as possible, adopt a construction which gives effect to every disposition and renders none of them redundant. In doing so, the Court is entitled to have regard to the circumstances of the testator and of his family. It is only where two clauses, so read, are found to be irreconcilable that the later clause prevails over the earlier.

Whether the Bequest in favour of the Deceased Judgment Debtor was Absolute

44. The learned Executing Court, upon a reading of the Will, construed the bequest in favour of the deceased Judgment Debtor in the following terms:

> "As per contents of the will, Flat No. A-2A/84, Janakpuri, New Delhi shall devolve upon Shikha Mathur i.e. the objector and not Shipra Mathur. Will further clarifies that after the death of the testator, ground and first floor of the said property and also any other immovable property shall bequeath upon Shikha Mathur. There is also a recital that there are only two floors constructed in the said property and there is no second floor, although right has been granted to construct second floor to Punit Mathur (son of testator and deceased husband of Shipra Mathur) and after construction same shall go to Punit Mathur. …"
>
> ***(Emphasis supplied)***

45. This Court is of the considered view that, when tested on the principles noticed hereinabove, the construction placed upon the Will by the learned Executing Court is correct and, accordingly, the reading propounded by the Appellant cannot be accepted.

46. The Will deals with the Subject Property in two successive clauses. The *first* of them sets out the scheme of the Testator in detail. It records that the Subject Property consisted of the ground and the first floors and that there was no construction on the second floor. It sets out explicitly that the Subject Property shall devolve upon the Respondent, and then, grants a limited right to the deceased Judgment Debtor. That right was to construct the second floor with his own

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resources, in accordance with the rules and regulations of the Delhi Development Authority, and to reside thereon with the members of his family, with no right to sell the same to anybody. The *second* clause proceeds to state that the *"second floor"* would be bequeathed to the deceased Judgment Debtor.

47. This Court, is of the considered view that there is no inconsistency between the two clauses, much less an irreconcilable one. The alleged inconsistency would present itself only in the event that the subsequent clause is read completely divorced from the preceding and prefatory part of the will. To do so would be a folly. The second clause cannot be read in isolation, separated from the earlier part of the will, which is fairly detailed and explicit in the limited right that it was granting to the deceased JD. The subsequent bequest of the second floor cannot be read in a manner such that it eclipses the preceding part of the will and be read as one conferring an absolute bequest upon the Judgment Debtor. Evidently, the author of the will was not desirous of doing so and the same is articulated unambiguously and in considerable detail in the preceding part. To do so would confer upon the deceased JD, a right which the author had expressly stated he did not wish to give, *viz.* the power of alienation of the second floor. This Court is of the view that the construction sought to be accorded takes a hyper-technical approach which would effectively negate the express desire of the author of the will. Such a construction cannot be permitted. At best, it could be termed an imperfect usage of the English language in the draftmanship.

48. The two clauses, when read in light of Section 82 of the Succession Act, convey a single and coherent intention, namely, that the Subject Property should go to the Respondent, and that the

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deceased Judgment Debtor should have the right to construct a second floor at his own cost and to reside thereon with his family, without any right to sell it. Such a construction gives full effect to every word used by the Testator, whereas the construction propounded by the Appellant would render the carefully worded restrictions in the first clause wholly otiose. That is precisely the kind of construction which, as held by the Full Bench in ***Maj. Gen. Rajinder Singh Chowdhary*** *(supra)*, the Court must avoid.

49. Further, the two clauses being capable of being reconciled, there arises no occasion to invoke Section 88 of the Succession Act. In ***Kaivelikkal Ambunhi*** *(supra), it was held* that the rule that the later clause prevails can be invoked only if different clauses cannot be reconciled. The decisions relied upon by the Appellant, far from supporting his case, thus militate against it.

50. The construction which this Court has placed upon the Will is reinforced when the Court places itself, as it is entitled to do, in the *"armchair of the Testator"*. The Testator records that the deceased Judgment Debtor had been a source of trouble to him throughout, that he had caused him great financial losses, and that he had made efforts to sell the very flat which forms the Subject Property by misrepresenting himself to be the Testator and by fraudulently obtaining duplicate papers from the Delhi Development Authority.

51. The Testator further records that, by reason of such conduct, he had disowned the deceased Judgment Debtor and Smt. Shipra Mathur from his properties, particularly from the Subject Property, by a public notice published barely seven weeks before the execution of the Will. He also records that it was the Respondent who had been residing with him in the Subject Property and taking care of him for the

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preceding five years. It was only upon the assurance of the deceased Judgment Debtor that he would mend his ways that the Testator chose to allow him to construct and reside upon the second floor.

52. It is inconceivable that a testator so circumstanced would have intended to confer upon that very son an absolute and alienable estate in a part of the very property which the son had attempted to sell behind his back. The restriction against sale is not an incidental condition attached to an absolute bequest. It is the very reason why the bequest was framed in the manner in which it was. Therefore, to read the Will as conferring upon the deceased Judgment Debtor an absolute interest in the second floor would be to defeat the clearly expressed intention of the Testator, and not to effectuate it.

53. For the same reason, the contention of the Appellant that the restriction against sale is void cannot be accepted. The Full Bench in ***Maj. Gen. Rajinder Singh Chowdhary*** *(supra)*, while noticing the decision of the Hon'ble Supreme Court in ***Gopala Menon v. Sivaraman Nair***[18], explained the said decision in the following terms:

> "**3.** … In Gopala Menon's case (supra), the Supreme Court was considering the effect of an absolute grant. Reading the will in its toto, the Supreme Court observed that intention of the testator which one can reasonably gather is that the testator wanted to confer an absolute estate upon the legatee. … It is implicit when absolute estate is conferred, that grantee is free to deal with and dispose of the property in any manner. If an absolute grant is burdened with a restriction on alienation, the grant is good and the condition void."
>
> ***(Emphasis supplied)***

54. The principle so stated presupposes the existence of an absolute grant. It has no application where, as in the present case, the instrument, read as a whole, does not confer an absolute estate at all, but defines a limited right, of which the absence of a power of sale is

[18] (1981) 3 SCC 586

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an integral part. There is no absolute grant from which the restriction can be severed, and the restriction, therefore, cannot be ignored as repugnant.

55. This Court, accordingly, holds that the Will did not bequeath to the deceased Judgment Debtor an absolute estate in the second floor of the Subject Property, but conferred upon him only a right to construct the said floor out of his own resources and to reside thereon with the members of his family, without any right to sell the same.

Whether any Attachable Interest came to the Hands of Smt. Shipra Mathur

56. The construction placed upon the Will does not, by itself, conclude the controversy. The attachment can be sustained only if the right conferred upon the deceased Judgment Debtor was one which the law permits to be attached, and which, upon his demise, came to the hands of Smt. Shipra Mathur within the meaning of Section 50(2) of the CPC. It is, therefore, necessary to examine the nature of that right, as well as the state of the Subject Property, on the touchstone of Sections 50 and 60 of the CPC.

57. By the express terms of the Will, the right conferred upon the deceased Judgment Debtor was incapable of being sold. Section 60(1) of the CPC, as noticed hereinabove, renders liable to attachment only such property as is saleable, or over which the judgment debtor has a disposing power which he may exercise for his own benefit. A right to construct and to reside, which the holder thereof is expressly forbidden to sell, answers neither description. The deceased Judgment Debtor could not himself have sold the right, and the executing court could not, therefore, have sold it in execution of the Decree against him.

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58. Furthermore, the right was, in its very nature, a personal right of residence, conferred upon the deceased Judgment Debtor for himself and the members of his family, and conditioned upon his constructing the second floor out of his own resources. It did not carry with it any right, title or interest in the Subject Property, which vested in the Respondent.

59. The law treats such an interest as inalienable by its very nature. Section 6(d) of the Transfer of Property Act, 1882, declares that an interest in property restricted in its enjoyment to the owner personally cannot be transferred by him. A right which the law does not permit its holder to transfer is, by the same token, not saleable property within the meaning of Section 60(1) of the CPC, nor is such right a property of the deceased Judgment Debtor which can be said to have come to the hands of Smt. Shipra Mathur within the meaning of Section 50(2) of the CPC, so as to be available for the satisfaction of the Decree.

60. There is yet another and more fundamental difficulty in the way of the Appellant. The Will itself records that, as on the date of its execution, there was no construction on the second floor. The Respondent, in her Objections, specifically averred that the second floor was never constructed and that the Subject Property continues to consist only of the ground and the first floors.

61. The Appellant, in his Reply, did no more than deny the said averment. He did not assert, much less place any material to show, that the second floor had ever been constructed by the deceased Judgment Debtor, or at all. The affidavit on the basis of which the attachment was obtained did not even advert to the second floor, and proceeded instead on the footing that Smt. Shipra Mathur held the

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Subject Property as a whole, which is not even the Appellant's case on the construction of the Will. The learned Executing Court, in this regard, held as under:

> "… However, there is no evidence placed on record by Ld. Counsel for JD that any such second floor stands constructed by Punit Mathur and that after, his death, the same was inherited by JD Shipra Mathur."
>
> ***(Emphasis supplied)***

62. The submission of the Appellant that nothing was brought on record by the Respondent to show that the second floor had not been constructed proceeds upon a misconception as to where the burden lay. It was the Appellant who sought the attachment of the Subject Property as property in which the deceased Judgment Debtor had an interest, and it was, therefore, for him to establish the existence of such an interest. The recital in the Will, coupled with the specific averment of the Respondent, was sufficient to shift any onus which may have rested upon her, and the Appellant brought nothing on record to discharge the burden which, in consequence, rested upon him. The finding of the learned Executing Court extracted hereinabove is, therefore, unexceptionable.

63. In the absence of any such construction, the *"second floor"* bequeathed to the deceased Judgment Debtor remained, at the highest, an unexercised permission to build and reside thereupon. There was no existing structure, and no estate in any such structure, which could have been the subject of attachment.

64. On a conspectus of the foregoing, this Court holds that the deceased Judgment Debtor did not hold in the Subject Property any interest which was saleable and which, upon his demise, came to the hands of Smt. Shipra Mathur. The Subject Property was,

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consequently, not liable to attachment in execution of the Decree, either in its entirety or in part, and the contention that the learned Executing Court ought to have retained the attachment to the extent of the second floor must, therefore, fail. The learned Executing Court, in arriving at the same conclusion, held as under:

> "Accordingly, it stands established that Shipra Mathur has no right, title or interest in the property bearing no. A-2A/84, Janakpuri, New Delhi as the same has been bequeathed upon applicant/ objector Shikha Mathur vide a registered will dated 07.08.2007. Hence, the assertion of Ld. Counsel for DH made by in his affidavit dated 13.04.2026 that property bearing no. A-2A/84, Janakpuri, New Delhi has devolved upon JD No. 1 Shipra Mathur does not appear to be correct. Accordingly, the attachment order dated 13.04.2026 vide which the property bearing no. A-2A/84, Janakpuri, New Delhi was attached stands vacated."
>
> ***(Emphasis supplied)***

65. In view of the foregoing discussion, this Court is of the considered view that there is no infirmity in the aforesaid conclusion which would warrant interference.

Decree rendered incapable of satisfaction

66. The submission of the Appellant that the Impugned Order would render the Decree incapable of satisfaction also does not merit acceptance. The hardship of a decree holder in realising the fruits of his decree, however real, cannot justify the attachment of property which is not liable to attachment. The learned Executing Court has, in any event, directed the Appellant to furnish the details of any other property of the Judgment Debtors, and the Appellant remains at liberty to pursue his remedies in respect thereof in accordance with law.

CONCLUSION:

67. The Decree under execution was passed against the deceased Judgment Debtor, and can be executed against Smt. Shipra Mathur

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only to the extent of such property of the deceased as has come to her hands.

68. The Subject Property was bequeathed by the Testator to the Respondent. The Will, read as a whole, conferred upon the deceased Judgment Debtor no more than a personal right to construct a second floor out of his own resources and to reside thereon with his family, without any right to sell the same.

69. The two clauses of the Will relied upon by the Appellant are not irreconcilable, and Section 88 of the Succession Act has no application. The right so conferred was neither saleable nor exercised, the second floor having never been constructed, and no attachable interest in the Subject Property, therefore, coming to the hands of Smt. Shipra Mathur.

70. The learned Executing Court was, therefore, right in sustaining the Objections and in vacating the attachment of the Subject Property, and this Court finds no infirmity in the Impugned Order which would warrant interference in the exercise of its appellate jurisdiction.

DECISION:

71. In view of the foregoing discussion, the present Appeal, being devoid of merit, is dismissed and, accordingly, the Impugned Order dated 19.05.2026 passed by the learned Executing Court is upheld.

72. It is clarified that nothing stated in this Judgment shall preclude the Appellant from proceeding, in accordance with law, against any other property of the Judgment Debtors, or against such property of the deceased Judgment Debtor as may be shown to have come to the hands of his legal representatives.

73. Accordingly, the present Petition, along with the pending Application, stands disposed of in aforementioned terms.

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74. There shall be no Order as to the Costs.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 21, 2026/ DJ

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