“WILL” under Section 30 of Hindu Marriage Act, 1956

An– Analysis

By

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The Hindu Succession Act, 1956 is an Act of the Parliament of India enacted to amend and codify the law relating to intestate or unwilled succession, among Hindus, Buddhists, Jains, and Sikhs. The Act lays down a uniform and comprehensive system of inheritance and applies to persons governed by both the Mitākṣharā and Dāyabhāga schools. It is hailed for its consolidation of Hindu laws on succession into one Act. The Hindu woman's limited estate is abolished by the Act. Any property possessed by a Hindu female is to be held by her absolute property and she is given full power to deal with it and dispose it of by will as she likes. Parts of this Act were amended in 2005 by the Hindu Succession (Amendment) Act, 2005.

In the case of males**, t**he property of a Hindu male dying intestate, each shall be granted one share of the deceased’s property. Also if the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother has remarried, she is not entitled to receive the inheritance.

Class II heirs are categorized as follows and are given the property of the deceased in the following order: (i) Father; (ii) Son's daughter's son; (iii) Son's daughter's daughter; (iv) Brother; (v) Sister; (vi) Daughter's son's son; (vii) Daughter's son's daughter; (viii) Daughter's daughter's son; (ix) Daughter's daughter's daughter; (x) Brother's son; (xi) Sister's son; (xii) Brother's daughter

In the case of females**,** Under the Hindu Succession Act, 1956, females are granted ownership of all property acquired either before or after the signing of the Act, abolishing their “limited owner" status. However, it was not until the 2005 Amendment that daughters were allowed equal receipt of property as with sons. This invariably grants females property rights.

The property of a Hindu female dying intestate, or without a will, shall devolve in the following order: (1) upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband, (2) upon the heirs of the husband, (3) upon the father and mother, (4) upon the heirs of the father, and (5) upon the heirs of the mother.

The Hindu Succession (Amendment) Act, 2005, amended Section 4, Section 6, Section 23, Section 24 and Section 30 of the Hindu Succession Act, 1956. It revised rules on coparcenary

property, giving daughters of the deceased equal rights with sons, and subjecting them to the same liabilities and disabilities. The amendment essentially furthers equal rights between males and females in the legal system.

The Hindu Succession (Amendment) Act, 2005, Act No. 39 of 2005, [dated 5th September, 2005.] reads as:

An Act further to amend the Hindu Succession Act, 1956.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:-

“3. Substitution of new section for section 6.

3. Substitution of new section for section 6.-For section 6 of the principal Act, the following section shall be substituted, namely:-

'6. Devolution of interest in coparcenary property.-(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the Mitakshara law, the daughter of a coparcener shall,-

(a) by birth become a coparcener in her own right in the same manner as the son;

(b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son, and any reference to a Hindu Mitakshara coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act, or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

(a) the daughter is allotted the same share as is allotted to a son;

(b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

(c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.- For the purposes of this sub-section, the interest of a Hindu Mitakshara coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

(4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no Court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-

(a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or

(b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.-For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a Court.'

Judgments of Supreme Court of India

1. According to Hindu Law Husband's property possessed by a widow. Adopted son getting into possession. Adoption invalid. If widow is in constructive possession meaning Property possessed by a female Hindu. **[Gummalapura Taggina Matada Kotturuswami –vs- Setra Veeravva and Ors. AIR1959SC577, 1959(1)AnWR158, (1959)IMLJ158, 1959MPLJ662, [1959]Supp1SCR968(SC-3J)]**

2. Joint Hindu family. Widow acquiring the same interest in the property of joint family on the death of her husband in 1952 which her husband had. Widow becoming full owner on 17-6-1956 of that interest in joint family property. Competent to sell that interest for her own purposes, without the consent of male co-parceners of her husband. Under the Law of the Mitakshara as administered in the territory governed by the Maharashtra and the Madras Schools and even in the state of Madhya Pradesh, a Hindu coparcener is competent to alienate for value his undivided interest in the entire joint family property or any specific property without the assent of his coparceners. A male member of a Hindu family governed by the Benares School of Hindu Law is undoubtedly subject to restrictions qua alienation of his interest in the joint family property but a widow acquiring an interest in that property by virtue of the Hindu Succession Act is not subject to any such restrictions. Held that on the death of her husband in 1952, the widow became entitled to same interest which her husband had in the joint family property. Of that interest, she became full owner on 17-6-1956, and being full owner she was competent to sell that interest for her own purposes, without the consent of the male coparceners of her husband. **[Sukh Ram and Anr. –vs- Gauri Shankar and Anr. (1968) 38 AWR 63(SC-3J)]**

3. Chandgi owned fair amount of land in village Asan, Tehsil and District Rohtak. He was Jat by caste and governed by Punjab Customary Law. On 21/11/1954, he made an oral gift of 2/3rds of the land in favour of Ranbir Singh and Hoshiar Singh, his grandsons, his son Ram Sarup having died. Mutation was entered by the Patwari and submitted for sanction. The mutation was reviewed because this mutation had been "decided (after) the date of possession of land given vide mutation 1290 respecting repartition". This apparently has reference to repartition proceedings in consolidation proceedings. At any rate, the mutation regarding Tamlik (gift) of 2/3rd share measuring 205-7 Kanals of land, entered at Khewat No. 18, comprising 43 plots, measuring 308-1 Kanals, together with rights in Shamlat was sanctioned. In Column 9 headed "Name of the owner with description" is mentioned "Ranbir Singh and Hoshiar Singh, s/o Ram Sarup, s/o Chandgi, s/o Nota, residents of the village in equal shares-2/3 shares, remaining as before 1/3 share". Under the heading "name of the cultivator with description" in Column 5 is mentioned "under personal cultivation". On 16/08/1961, Chandgi Ram registered a will and bequeathed the remaining 1/3rd share of the lands in favour of respondent Nos. 1 and 2. On 6/04/1963, Chandgi Ram died. On 16/11/1963, Mst. Mahli filed a suit for decree for possession of l/6th share in the lands in dispute. The main grounds alleged in the plaint were that the gift, dated 21/11/1954, was void because it was made in order to defeat the provisions of the Punjab Security of Land Tenures Act, 1953, and further that no possession had been transferred to the donees Ranbir Singh and Hoshiar Singh who were minors at that time. The will was

challenged on various grounds but the Court is only concerned with one ground, namely, that the land being ancestral in his hands, Chandgi Ram could not make a will and, at any rate, the plaintiff was entitled to challenge this alienation because she had become an heir under S. 8 of the Hindu Succession Act. The Trial Court decreed the suit to the extent of 1/9th of the land in dispute. On appeal, however, the suit was dismissed by the Senior Subordinate Judge. He held that both the gift and the will were valid and the plaintiff was not entitled to challenge the alienation, even if the property was ancestral in the hands of Chandgi Ram. He further held that there had been transfer of possession under the gift, and relying on Faujdar v. Bhamma he held that, at any rate, the possession of the donor was on behalf of the donees as the donees were minors who lived along with their mother with the donor. The High Court dismissed the appeal of Mst. Mahli in limine and the learned Single Judge refused to grant a certificate of fitness for appeal to the Letters Patent bench. Having obtained special leave, the appeal is now before the Court. Under the Punjab Custom (Power to Contest) Act (Punjab Act 11 of 1920) only a person descended in male lineal descent from the great-great grandfather of the person making the alienation or appointment can challenge an alienation of ancestral immovable property (Section 6), and "alienation" includes any testamentary disposition of property. It follows from the above discussion that before the enactment of the Hindu Succession Act the plaintiff had no right to contest alienations made by Chandgi Ram, and the Hindu Succession Act has made no change in this respect. The fact that she is an heir now does not bring her within the provisions of S. 6 of the Punjab Custom (Power to Contest) Act, 1920. In the result the appeal fails and is dismissed. **[Mahli –vs- Ranbir Singh. [1971] 3 SCC 958/ [1970] 0 UJ 395(SC-DB)]**

4. By the deed dated 4/01/1961 one Harnam Singh made a gift of agricultural land measuring 76 acres 3 bighas in favour of the appellant in appeal. Wazir Singh, respondent to this appeal claiming that he was adopted on 11/07/1947 by Harnam Singh according to Hindu rites and ceremonies challenged the gift of the land which he asserted belonged to the Hindu Joint family of Harnam Singh and himself. The suit filed by Wazir Singh was dismissed by the trial Court. The Court held that Wazir Singh was appointed as heir under the customary law of the Punjab and that he was not adopted according to Hindu rites and ceremonies and on that account Wazir Singh was not competent to challenge the alienation of the gift by Harnam Singh. On appeal, the District Court upheld the claim of Wazir Singh that he was adopted by Harnam Singh according to the Hindu rites and ceremonies and the property which was gifted was part of the coparcenary property and on that account the gift was void. The High Court of Punjab confirmed the decree passed by the District Court. With certificate granted by the High Court, this appeal has been preferred by the appellant. Two contentions are raised in support of the appeal: In reaching his conclusion that the adoption of Wazir Singh was according to Hindu rites and ceremonies, the District Judge misread documentary evidence and ignored the pleadings of the party. That in any case by virtue of S. 30 of the Hindu Succession Act, 1956 it was not open to Wazir Singh to challenge the gift made by his adoptive father Harnam Singh. The deed of adoption which is executed by Harnam Singh in 1947 states that: "After my death it is necessary that I should have a son to perform any ritual ceremonies. The name of a sonless person vanishes from the mortal world. I have brought up Wazir son of Mangal, a minor aged 16, years as a son since his childhood, for the last ten years. Wazir's marriage was also arranged by me and Wazir aforesaid is also looking after me as a natural son. I have adopted Wazir aforesaid,

minor son of Mangal, as my son in the presence of the Panchayat, after performing the religious ceremonies. Wazir will be the owner of my property of every kind as my natural son." The recitals in the deed of adoption corroborate the case of Wazir Singh that he was adopted according to Hindu rites and ceremonies in the presence of the Panchayat, and that he was treated as an adopted son. The recitals in the deed are supported by the witnesses examined in the Court of First Instance on behalf of Wazir Singh. Mr. Bishan Narain contended that the District Judge misread the written statement filed by the appellant in the Court of first instance and assumed that no plea was raised that the adoption was merely a customary adoption. Granting that a contention was raised that Harnam Singh did not adopt Wazir Singh according to the Hindu rites and ceremonies, the conclusion of the District Judge on appreciation of evidence that the ceremonies of adoption according to Hindu rites were performed, was binding upon the High Court in second appeal, It is conceded, and in our judgment rightly, that a Hindu governed by the customary law in the Punjab is not disentitled to make a formal adoption according to Hindu rites and ceremonies. Harnam Singh could make a customary adoption, he could also make a formal adoption according to Hindu rites and ceremonies. In the present case, the District Judge has found that there was a formal adoption of Wazir Singh according to Hindu rites and ceremonies. That finding was binding upon the High Court sitting in Second appeal. The first contention must, therefore, fail. Mr. Bishan Narain contended that S. 30 applied not only to disposition by will or other testamentary instruments but also to instruments inter vivos. On the plain terms of S. 30 it is impossible to read S. 30 as applying to disposition inter vivos. Mr. Bishan Narain relied upon S. 13 of the Hindu Adoptions and Maintenance Act of 1964 which reads: "Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter vivos or by will." But by virtue of his adoption in 1947, Wazir Singh acquired the status of a coparcener. A gift of coparcener's property by a member is void. There is nothing in S. 13 of the Hindu Adoptions and Maintenance Act, 1956 which detracts from that rule. S. 13 apply only where the property after adoption remains capable of being disposed of by the adoptive father as his property. The appeal, therefore; fails and is dismissed. **[Mukund Singh –vs- Wazir Singh. [1972] 4 SCC 178/ [1971] 1 UJ 204 / 1971(III)UJ205 (SC-3J)]**

5. Prior to Act of 1956 parties were governed by Aliyasantana Law (law). Whether rights of parties to be determined in accordance with law or under Succession Act. A male with life interest under law being in same position as a female limited owner under Hindu Law. Act of 1956 while enlarging right of latter under Section 14 into absolute interest did not specifically provided for enlarging of right of former. In absence of such specific provision X's interest ensured till his life-time only. **[Jalaja Shedthi and Ors. –vs- Lakshmi Shedthi and Ors. AIR1973SC2658, (1973)2SCC773, [1974]1SCR707(SC-DB)]**

6. Will executed in favour of newly wedded wife. Allegations of undue influence not proved. Alteration of the date held to be by the testator himself. Will held to be genuine. **[Surendra Pal –vs- Saraswati Arora. [1974] 2 SCC 600/ [1974] 0 AIR(SC) 1999/ [1975] 1 SCR 687(SC-3J)]**

7. The respondent, Ishroo Devi, filed a suit for a decree for possession of all the three items of property mentioned in the plaint and for future mesne profits. It was alleged that the three items of property mentioned in the plaint were the self-acquired properties of one Purohit Mani Ram. He executed a will on 25th May, 1959, out of his own free will in favour of the respondent. The original will was attached to the plaint. Purohit Mani Ram died on 24th March, 1960, at Jammu and the respondent claimed to be the sole owner of the properties. The first appellant is the son, the second appellant is the wife and the third appellant is the grand-daughter of Purohit Mani Ram. In the plaint it is alleged that the first appellant after the death of Purohit Mani Ram got rent deed executed in his favour and also recorded mutations in his name and dispossessed the respondent. The respondent also claimed that the three items of property were the separate properties of Purohit Mani Ram and that he was entitled to dispose of them under a will. In the written statement the appellants averred that the properties belonged to the joint family of which the first appellant and his father, Purohit Mani Ram, were members and as the properties were joint family properties, they cannot be disposed of by will. It was further alleged that the will was a forged one and is fictitious. This question as to what is the interest of Mani Ram in the joint family property at the time of his death was not raised before the High Court. In fact, the case of the first appellant was that the joint family consisted of himself and his father alone. Though in the partition suit filed by him he claimed one-third share conceding that his father and mother are entitled to the other two-thirds share. Though the question was not raised in any of the Courts below, the Court feels that being a pure question of law, interests of justice require that the question be decided. The High Court will decide the interest which Mani Ram had in the joint family property at the time of his death which he could dispose of by his will. In remitting this question to the High Court, the Court decrees the suit of the respondent in respect of one-behalf share of Item 1 (a) and one-third share in Items 1 (b) and 2 of the plaint schedule properties as to that extent her share is not questioned. The question as to what is the extent of the interest as regards Items 1 (b) & 2 of the plaint schedule properties which can be bequeathed by Mani Ram in favour of the respondent is remitted to the High Court for its determination. If the High Court finds that the respondent is entitled to one-third share it will decide accordingly. If it comes to the conclusion that Mani Ram was entitled to bequeath a greater share it will grant a decree accordingly. There will be no order as to costs. Appeal disposed of accordingly. **[Lakshmi Chand Khajuria – vs- Ishroo Devi. [1977] 2 SCC 501/ [1977] 0 AIR(SC) 1694/ [1977] 0 UJ 349/ [1977] 3 SCR 400(SC-DB)]**

8. High Court dismissed Defendant 1's Appeal and held that suit properties belonged to joint family, and there was no prior partition thus, Plaintiff was entitled to 7/24th share. Hence, this Appeal. Whether, Plaintiff's share in coparcenary property was only 1/24th or 7/24th. Held, assumption of fiction in Explanation 1 to Section 6 of Act that partition of property had taken place, immediately before death of person in whose property heirs claimed share, was irrevocable. However, inevitable corollary was that heir could get his or her share in interest which deceased had in coparcenary property at time of his death, in addition to his/her share in notional partition. Section 3 of Hindu Women's Rights to Property Act, 1937 conferred upon Hindu widow right to share in joint family property and right to demand partition like any male member of family. Section 14(1) of Act, 1956 provided that any property possessed by female

Hindu, acquired before or after commencement of Act, could be held by her as full owner thereof. Thus, interpretation of Explanation I, which furthered intention of legislature and remedy injustice could be preferred - Court shall strive to interpret the statute as to protect and advance the object and purpose of enactment. Appeal dismissed. **[Gurupad Khandappa Magdum –vs- Hirabai Khandappa Magdum and Ors. AIR1978SC1239, 1978 (4) ALR 522, 1978(26)BLJR354, [1981]129ITR440(SC), (1978)3SCC383, [1978]3SCR761, 1978(10)UJ381(SC-3J)]**

9. A Coparcener cannot gift his undivided interest in the coparcenary property except for purposes warranted by special text. Such a gift is void. But a gift to another Coparcener or to a stranger with the prior consent of all other Coparcener is valid and legal. Even sections 6 and 30 of the Hindu Succession Act has not extended the rule with regard to a gift by a Hindu undivided coparcener. An undivided coparcener can bequeath his interest in the undivided Hindu joint family property by will in view of section 30 of the Hindu Succession Act. When a particular state of law has been prevailing for decades in a particular area and the people of that area having adjusted themselves with that law in their daily lift it is not desirable that the Court should upset such law except under compelling circumstances. It is for the Legislatures to Consider whether it should change such law or not. Relinquishment in favour of all the coparceners is valid. Although the documents describes it to be a gift but if the document is in favour of all may be construed as relinquishment or renunciation in favour of all the coparceners–In such a case consent of other coparceners is immaterial. **[Thamma Venkata Subbamma –vs- Thamma Rattamma. [1987] 0 BBCJ(SC) 155/ [1987] 1 Scale 1000/ [1987] 0 AIR(SC) 1775/ [1987] 3 SCC 294/ [1987] 3 SCR 236/ [1987] 2 UJ 268/ [1987] 2 JT 440(SC-DB)]**

10. This appeal by special leave is at the instance of the plaintiff-appellant, since deceased, and is directed against the judgment and decree of the Gujarat High Court reversing those of the Civil Judge, Senior Division, Himatnagar, whereby the learned Civil Judge decreed the suit instituted by the appellant. The late Thakore Sartansinhji, the father of the appellant, was the Ruler of the former Mohanpur State situate in the district of Sabarkantha, Gujarat. After independence, the said Mohanpur State merged in the then State of Bombay (now the State of Maharashtra). The former Ruler, the father of the appellant, by a deed of gift dated May 14, 1951 gifted certain properties to his youngest son, the respondent No. 1 herein. By his will dt. May 22,1951, the former Ruler also bequeathed certain properties to the respondent No. 1 and his mother. The father of the appellant died on Dec. 9, 1955 and on his death the appellant became the Ruler. On May 10, 1956, the suit out of which this appeal arises was instituted by the appellant challenging the validity of the said deed of gift and the will. In the suit, the case of the appellant was that as the rule of primogeniture applied to the Raj Estate, he being the eldest son succeeded to the Gadi. It was contended that the former Ruler, that is, the father of the appellant, had no power of alienation either by gift or by will and, accordingly, the disposition made by him by the said deed of gift and the will in favour of his younger brother, the respondent 1, was illegal and invalid. The respondents including the younger brother of the appellant contested the suit, inter alia, denying that the former Ruler had no power of alienation as contended by the appellant. It was averred that the deed of gift and the will were perfectly legal and valid. The learned Civil Judge decreed the suit in part declaring that the deed

of gift and the will were illegal and directed the respondent 1 to hand over to the appellant the possession of the properties which were all agricultural lands, as mentioned in the deed of gift. The learned Civil Judge passed a decree for mesne profit, but refused the prayer of the appellant for an injunction on the ground that the appellant had failed to prove his possession of the properties mentioned in the plaint. Being aggrieved by the judgment and decree of the learned Civil Judge, the respondents preferred an appeal to the High Court. The High Court, after considering the facts and circumstances of the case and the evidence adduced by the parties, held that the former Ruler had the power of alienation and, accordingly, the deed of gift and the will impugned in the suit were legal and valid. The appeal was allowed and the judgment and decree of the learned Civil Judge were set aside. The appellants have placed much reliance upon the above documentary evidence in proof of their contention that there was a family custom prohibiting alienation by the Ruler of the State. The correspondence related only to the question of granting jiwai to the younger son of the former Ruler. It would appear from the correspondence that the entire attempt of the appellant was against the quantum of maintenance that was proposed to be granted by the Ruler to his younger son. It was not the contention of the appellant that in view of a family custom, the Ruler had no right of alienation, but his case was that in view of the annual revenue of the State the quantum of the jiwai would be out of proportion. It was only on this ground that he protested against the proposed jiwai. The Court did not think that the correspondence referred to above prove any custom of inalienability of the impartible estate. It is submitted on behalf of the appellants that as there was no instance of alienation till before the impugned deed of gift and the will, it should be presumed that there was a family custom of inalienability of the estate. More or less, a similar contention was made before the Privy Council in Protap Chandra Deos case (AIR 1927 PC 159) (supra) that the absence of any instance of a will purporting to dispose of the estate was itself sufficient evidence of the custom of inalienability of the estate. The said contention was overruled by the Privy Council. There must be some positive evidence of such a custom. Mere absence of any instance of alienation will not be any evidence of custom. Moreover, as noticed already, the correspondences which are being relied upon as the evidence of the alleged family custom of inalienability are far from being such evidence, for the only question that formed the subject-matter of all this correspondence related to the propriety of the quantum of jiwai. Accordingly, the Court held that the appellants have failed to prove that there was any family custom of inalienability of the estate. No other point has been urged in this appeal by either party. For the reasons aforesaid, the judgment and decree of the High Court are affirmed and this appeal is dismissed. **[Thakore Vinayasinhji –vs- Kumar Shri Natwarsinhji. [1987] 2 Scale 1193/ [1988] 0 AIR(SC) 247/ [1988] Supp1 SCC 133/ [1988] 1 UJ 332/ [1988] 1 SCR 1110/ [1987] 4 JT 455(SC-DB)]**

11. Proof of will, registering authority cannot be a statutory attesting witness. **[Dharam Singh –vs- Aso. [1990] 0 AIR(SC) 1888/ [1990] Supp1 SCC 684(SC-3J)]**

12. On the death of Balu the responsibility for the continuance of the family line fell on his widow Lilabai by the power of adoption vesting in her, and the power of Parvati to adopt was extinguished permanently and did not revive even on Lilabai's remarriage. Consequently the adoption of first defendant was invalid in the eye of law and he did not get any interest in the

suit properties. **Father and Son both died - Widow gave birth to posthumous daughter - Thereafter remarried - Widow and daughter entitled to share property fifty-fifty - Interest of both ripened into full ownership after coming into force of Hindu Succession Act.** On his death in 1942 his wife Parvati got under Section 3(2) of the Hindu Women's Rights to Property Act, 1937, the same interest as Bhiku had in the joint family properties. If a partition had taken place Bhiku would have got half share in the properties, which on his death devolved on Parvati. Parvati is still alive and is defending the claim of her granddaughter. She cannot, therefore, be deprived of her half share in the properties. The interest which initially devolved on Parvati, however, was limited in nature known as Hindu Women's estate. On the passing of the Act, 1956, she became full owner thereof. Likewise the remaining half share of Balu in the properties, devolved on the appellant of her mother's remarriage and she got a Hindu Women's estate therein which ripened in full ownership under Section 14(1) of the Hindu Succession Act. **[Sau Ashabai Kate –vs- Vithal Bhika Nade. Civil Appeal No. 1846 of 1974, decided On: 17.10.1989(SC-DB)]**

13. Issue for consideration is whether Amendment Act of 1973 would or would not apply to pending proceeding. Court observed that Amendment Act of 1973 having not omitted or deleted Section 4. Consequently those rights which are not affected would continue to date and after. Any rule or law of succession previously applicable to those who were governed by custom would after coming of Hindu Succession Act be permissible only in cases where no provision made under Act. Retrospective effect not to be given to Act unless legislature has made it so by express words or necessary implication. Section 7 of principal Act as amended by Amendment Act is retroactive and applicable to pending proceeding. **[Darshan Singh –vs- Ram Pal Singh and another. AIR1991SC1654, JT1990(4)SC561, 1990(2)SCALE1114, 1992 Suppl (1) SCC191, [1990]Supp3SCR212(SC-3J)]**

14. One Brahmadeo Singh son of Tuso Singh filed Partition Title Suit No. 13 of 1963 against his brothers and their heirs claiming 1/6th share in the coparcenary properties mentioned in schedules attached to the plaint. The trial Court dismissed the suit. While the F.A. No. 582 of 1968 was pending in the High Court of Patna, he died on June 8, 1981. The appellant, Pavitri Devi, filed an application for substitution of her and her son as legal representatives. Her claim has been founded on two grounds, namely as the daughter of Brahmadeo Singh as well as the registered gift deed Ex. 2 dated August 5, 1980 executed by her father giving his entire share in the joint family property and putting them in possession of 9.96 acres of land. When the factum of the date of death and her entitlement as an heir were put in issue by the contesting respondents before the appellate Court, the trial Court was directed to record the evidence and to submit its report thereon. The trial Court on recording voluminous evidence found that Brahmadeo Singh died on May 6, 1981 and not on June 8, 1981, and consequently the appeal stood abated. The trial Court also found that the appellant is not his daughter. The High Court held that "from the evidence it is clear that Brahmadeo Singh died on June 8, 1981" and the application for substitution was within limitation. However, it held that the appellant is not his heir and the gift deed executed by Brahmadeo Singh was doubtful. Accordingly the appeal was dismissed by decree and judgment dated February 11, 1984. Thus this appeal by special leave. The immediate question is whether the first appellant is the daughter of Brahmadeo Singh. The

High Court rejected her claim predominantly on two grounds: firstly that there was a discrepancy in the description of the name of her husband and that at the tonsuring ceremony (Mundan) she was described to be the daughter of one Uma Shanker Singh. As regard the first ground is concerned, the Court found that it is wholly irrelevant and cuts no ice into her case. With regard to tonsuring ceremony, said to be based on an entry found in a private record said to have been maintained 30 years before by the father of a witness. A private document produced from the custody of a private party though 30 years old cannot have the same weight as a public document, nor be relied on to make a child bastard. One finds that such a precarious document cannot be used to deny the paternity of the child. Voluminous oral evidence of 11 witnesses was adduced to prove paternity of the appellant that her father is Brahmadeo Singh. No adequate attention was bestowed by the High Court to subject that evidence to close scrutiny. No valid grounds were given to reject it. Therefore, without trenching into the field of appreciation, the Court has gone through it and the Court found no good ground to reject the oral evidence. This apart, the deceased himself described in 1963 in the genealogy attached to the plaint that Pavitri Devi is his daughter and her son as grandson. The High Court stated that there was no need to describe in the genealogy of the females. Whether there existed the need or not, it now bears great relevance. As a fact, it establishes that he proclaimed Pavitri Devi to be his daughter long before his death. In the gift deed also, though the Court found it to be void, he reiterated her to be his daughter. That was almost one year prior to his death. The Court has no hesitation to hold that the evidence establishes that Pavitri Devi is the daughter of Brahmadeo Singh. She being the Class I heir succeeded to the estate of the deceased by intestate succession under Section 6 and she is entitled to represent the estate in the partition action. Accordingly by operation of Section 6 of the Act read with Order 22 Rule 3 CPC she is entitled to represent the estate of the deceased. The application for substitution stands succeeded. She is brought on record as legal representative of the deceased appellant. The order of the High Court is accordingly set aside. The matter is remitted to the High Court for disposal on merits. The appeal is allowed. **[Pavitri Devi –vs- Darbari Singh. [1993] 3 Scale 671/ [1993] 4 SCC 392/ [1993] 5 JT 197/ [1993] 2 UJ 766/ [1993] 0 AIR(SCW) 3266(SC-DB)]**

15. To determine if the High Court committed any error of law in setting aside the concurrent orders passed by the two Courts below dismissing the suit of the plaintiff-respondent for declaration of title and recovery of possession. It has been found and is not disputed that the last male holder had two wives. He executed a will of his property in 1941 giving one-half share to each of his wives till their life and the respondent, the only daughter, was to be ultimate beneficiary. The testator died in 1958. The next to die in 1966 was one of his wives, the stepmother of the plaintiff. But, few months before her death, she had executed a will in favour of the defendant-appellant, a complete stranger to the family, allegedly her domestic servant. It is the validity of this will, basically, which has been subject-matter of dispute. According to the respondent, the will was invalid as her mother having right of maintenance only, she had no right or title which she could validly transfer by way of will in favour of the appellant. On pleadings of parties various issues were framed. It is not necessary to narrate them as the finding on the nature of interest that the mother of the respondent had in the property, was recorded both by the trial Court and First Appellate Court in her favour. It was held that her mother had life interest only. But the suit was dismissed as the life estate

created under the will stood converted into absolute estate under Section 14(1 of the Act as it was in recognition of pre-existing right. The High Court did not agree with this and held that the widow could not get larger interest than that was intended by the testator. Thus execution of the will by the last male holder in 1941, grant of life interest to the two wives, vesting of property ultimately in the daughter, death of testator in 1958, his wife whose share is now in dispute in 1966 and bequeathing of the property by her in favour of the appellant few months before her death are facts which have been found to have been proved by all the Courts. The difference arose between the High Court and the two Courts below on applicability of the law only. What, therefore, falls for consideration is if the testamentary disposition of property by a male Hindu by a will which comes into operation after 1956, creating life interest in favour of his widow, subsists as such after his death or she becomes an absolute owner by operation of sub-section - 1 of Section 14 read with the explanation. In other words, what is the dichotomy between two Ss. of Section 14 which forms the bedrock of revolutionary changes brought out in Hindu Law of Succession in 1956. The Act was one out of the series of legislations enacted in 1956 effecting far-reaching changes in the customary Hindu Law. It undid the social injustice to which the females were subjected for centuries by equating them with males in matters of inheritance, succession and disposition of property. The Act confers rights of inheritance and sweeps away the traditional limitations on powers of females on disposition of property etc. which were regarded under the Hindu Law as inherent in her estate (S.S. Manna Lal v. S.S. Raj Kumar.) They too became, a stock of descent (Kalawatibai v. SoiryabaP) A female Hindu who, except for stridhan property, was a limited owner became an absolute owner under Section 14 of the Act. The section not only removed the disability from which a female suffered in acquiring and holding property but it converted any estate held by her on the date of commencement of the Act from limited or restricted estate to an absolute estate or full ownership. In Thota Sesharathamma v. Thota Manikyamma it was observed that Section 14(1 was used as a tool to undo past injustice to elevate her to equal status with dignity of person on par with man. In Kalawatibai it was observed that this, section was a step forward towards social amelioration of women who had been subjected to gross discrimination in matter of inheritance. The purpose and the legislative intention which surfaces from a combined reading of the two Ss. is that it attempts to remove the disability which was imposed by the customary Hindu Law on acquisition of rights by a female Hindu but it does not enlarge or enhance the right which she gets under a will giving her a limited estate under Section 30 of the Act. For these reasons, the appeal fails and is dismissed. **[Gumpha –vs- Jaibai. [1994] 1 Scale 578/ [1994] 1 JT 535/ [1994] 2 UJ 121/ [1994] 2 SCC 511(SC-DB)]**

16. The appeal impugns the judgment and order dated 16th April, 1971 of the High Court at Madras. It arises out of a suit filed before the Subordinate Judge, Cuddalore, for partition of the estate of Koneri Gounder who died on 8th July, 1926. Succinctly stated, these are the relevant facts. On 5th July, 1956 Koneri Gounder executed a Will. He divided his estate in two equal parts. With one moiety bequeathed to the Plaintiff, the Court is not, here, concerned. The other moiety, under the terms of the Will, was to go to three persons, one of whom was the Defendant. These persons, the Will stated, would enjoy the said moiety with absolute right and freedom after the lifetime of the testator and his wife, Sowbagiammal. The Will directed the Plaintiff (whose legal representatives are the Respondents) to maintain the family of the

testator obeying his wife, paying and discharging his debts and collecting outstanding dues. The Will closed with the statement, "the entire terms of this Will shall come into effect only after the lifetime of myself and my wife, Sowbagiammal". Sowbagiammal died on 4th December, 1962. The suit was instituted after her death. The only question for determination in this appeal is whether, under the terms of the Will a limited estate was conferred upon Sowbagiammal in lieu of her pre-existing right to maintenance and whether, therefore, the terms of Section 14(1) of the Act, 1956, applied and the limited estate conferred upon her had enlarged so that she had become the full owner thereof?. The High Court took the view that the testator had intended to give a bare life estate to his widow, not a Hindu widow's estate, and that Section 14(2) of the Act applied so that Sowbagiammal had not become absolute owner of the property. Now, Sowbagiammal did not acquire the life interest in the property of the testator under a Will under Section 30 of the Act. The Will spoke from the date on which the testator died, namely, 8th July, 1926, which is when Sowbagiammal's limited interest in the property came into existence. She died after the coming into force of the Act. Under the terms of Section 14 of the Act, her limited interest was enlarged into an absolute right to the property. The decision in Gumoha case is, therefore, not germane. Counsel also drew our attention to the judgment in Bhura and Ors. v. Kashi Ram MANU/SC/0265/1994 : (1994)2 SCC 111. This was not a case under Section 14 of the Act and has no bearing upon the issue involved in this Appeal. In the result, the appeal succeeds. The judgment and order under appeal is set aside to the extent that it holds that Sowbagiammal had not become the full owner of the property in suit subsequent to the coming into force of the Act, 1956. **[K. Ramaswami Gounder (dead) by L.Rs. –vs- Adikesava Gounder and Ors. C.A. No. 74 of 1974, decided On: 31.08.1995(SC-DB)]**

17. Originally, the suit property was owned by one Mangal Chandra Ghosh. His wife is Apabala. They have three sons namely: Keshab Chandra Ghosh, Rajendra Nath Ghosh and Barid Baran Ghosh. Mangal Ghosh died on 8-1-1967. After his death, a partition came to be effected on 27-1-1967. Under that partition, the property forming a part of this civil appeal, namely demarcated 1/3 portion of land comprising .02 decimals pertaining to Khaitan No. 528 Dag Nos. 16 and 5/388 in Mouza Amtola, P.S. Bishnupur, District 24-Parganas together with two shop rooms situated therein fell to share of Keshab Chandra Ghosh. Apabala died on 5-9-1973. On 9-1-1974, Keshab Chandra Ghosh sold his one-third share to the plaintiffs (the appellants). The defendant (respondent) Baidya Nath Poddar) was a tenant of the suit premises on a monthly rent of Rs 50 and he was inducted into possession by the father of Keshab Chandra Ghosh. After his purchase, a title suit No. 225 of 1974 came to be filed on the ground that the defendant is a habitual defaulter. Under notice as per Section 106 of Transfer of Property Act, on 29-3-1974 plaintiffs determined the tenancy and called upon him to vacate. He did not do so notwithstanding the fact that the notice came to be acknowledged on 30-3-1974. On these averments, a decree for khas possession and for recovery of arrears of Rs 2500 was prayed for. In the written statement, it was urged that before the death of Mangal Chandra Ghosh, he had executed a registered Will under which he appointed his wife as the sole executrix. It was further provided that in case his wife died before obtaining probate, his son Barid Baran Ghosh would be the next executor. By that Will, the suit property was bequeathed to the said Apabala and his son Barid Baran Ghosh. The said Barid Baran Ghosh after the death of his mother wanted rents to be paid to him and he had obtained letters of probate in Case No. 10 of 1974 in

the Court of District Delegate, 24-Parganas. The so-called partition is fictitious, fraudulent and a sham transaction. In view of Will of Mangal Chandra Ghosh, Keshab Chandra Ghosh did not acquire any right. Much less could he convey any title in view of the plaintiffs. Therefore, the suit was liable to be dismissed. The Munsif held that in view of the Will under the partition, Keshab Chandra Ghosh did not acquire any right. Therefore, the plaintiffs acquired no better title. There was no relationship of landlord and tenant. Accordingly, the suit was dismissed. An appeal was preferred to the learned Additional District Judge, 10th Court, Alipore being Title Appeal No. 834 of 1976 which was dismissed. The second appeal was preferred to Calcutta High Court which also met with the same fate. Hence, the present civil appeals. On a careful consideration of the above arguments, the Court is of the view that the case of the appellants cannot be accepted. As rightly held by the High Court under the impugned judgment, during the lifetime of Mangal Chandra Ghosh, there was not even a suggestion that the property was purchased benami in his name. By merely joining the partition deed, the title of Mangal Chandra Ghosh is not in any way affected nor does it mean that the Will will be inoperative. First of all the plaintiffs-appellants will have to establish that Keshab Chandra Ghosh acquired valid title. No person can convey a better title other than what he has - is a settled principle of law. It is true that a Court granting probate does not decide questions of title. But unless the plaintiffs have established their title which in this case, they have miserably failed to do, they cannot succeed. Therefore, the suit has been rightly dismissed by the Courts below. Accordingly, the civil appeals will stand dismissed. **[Nepal Krishna Roy –vs- Baidya Nath Poddar: Joydeb Das. [1995] Supp1 SCC 289(SC-DB)]**

18. 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 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 per-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-movable 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. Further held : The right to disposition of property by a Hindu under Section 30 is required to be understood in this 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-section (1) and (2) of Section 14 will be given their full play without rendering either as otiose or aids as means of avoidance. The legatee Settathachi had right to maintenance under the Hindu Adoption and Maintenance Act when the property was given to her for maintenance. It must be in lieu of her pre-existing right to maintenance and the property given under the will, therefore, must be construed to have been acquired by the legatee under the will in lieu of her right to maintenance. That right to maintenance to a Hindu female received statutory recognition under the Hindu Adoption and Maintenance Act, 1956. She is entitled to realise maintenance from property of her husband and even in the hands of strangers except the bona fide purchasers for value whether notice of her right. She is equally entitled under Section 37 of the Transfer of Property Act to have charge created over the property for realization of her maintenance. . On the demise of the testator, she being the class-I heir but for the bequeath, is entitled to succeed as an absolute owner. In either of those circumstances, the question emerges whether she acquires a limited right under Section 14 (2) for the first time under the Will. In the light of the facts and circumstances of the case and the legal setting, the Court is of the considered view that she having had under Sastric law, as envisaged in the Will, the properties in recognition of her pre-existing right to maintenance, it is not a right acquired for the first time under the instrument will, but it is a reflection of the pre-existing right under the Sastric law, which was blossomed into an absolute ownership after 1956 under Section 14 (1) of the Act. Under these circumstances, it cannot be held that Sellathachi acquired the right to maintenance for the first time under the instrument will. The Division Bench, therefore, does not appear to have approached the problem in the correct perspective. In view of the settled legal position right from Tulasamma a case (supra) the right acquired under the Will is in recognition of the pre-existing right to maintenance known under the Sastric law and was transformed into an absolute right under Section 14 (1) wiped out the restrictive estate given the Sastric law and Sellathachi as absolute owner of the property. The Division bench of the High Court, therefore, was not correct in holding that Sellathachi has acquired only a limited estate under the Will and Section 14 (2) attracts to the restrictive covenants contained in the will limiting her right to maintenance for life time and, thereafter, the right to enjoy the income from the lands and on her demise, the income should go to the temples as mentioned in the will is not correct in law. Further held that under the pre-existing law, she is entitled to remain in possession of the whole estate known as widow s estate and after the Act has come into force that widow s estate was blossomed into an absolute estate by operation of Section 14 (1). Even in the Will Ex-A1, no such restrictive covenant was engrafted giving reasonable proportion of income consistent with her needs for maintenance. On the other hand, the express covenant is that, he recognised her right to maintenance and in lieu of the maintenance property was given to her for her maintenance during her lifetime. That is the pre-existing right as per then existing law. After the Act has come into force, the limited estate has blossomed into an absolute estate. Therefore, the doctrine of proportionality of maintenance is not applicable and cannot be extended. **[C.Masilamani Mudaliar –vs- Idol Of Sri Swaminathaswami Swaminathaswami Thirukoil. [1996] 2 Scale 664/ [1996] 3 JT 98/ [1996] 0 AIR(SCW) 1780/ [1996] 1 CCC(SC) 338/ [1996] 2 Supreme 720/ [1996] 1 HLR(SC) 359/ [1996] 2 CLT(SC) 33/ [1996] 8 SCC 525/ [1996] 0 AIR(SC) 1697(SC-3J)]**

19. B mortgaged property to K for 31 years. Property was succeeded by H daughter of respondent predecessor in title in 1965. Respondent filed suit for redemption of mortgage. Trial Court dismissed suit. In appeal District Court decreed suit. Appellant contended that suit was barred by limitation as suit was filed beyond 12 years from redemption of mortgage. Apex Court held, suit was not barred by limitation as limitation provided by Act was 30 years. **[Patel Bhudarbhai Maganbhai and Anr. –vs- Patel Khemabhai Ambaram and Ors. 1997 (29) ALR 627, JT1997(1)SC375, 1997 RD138, 1997(1)SCALE148, (1997)10SCC611, [1996]Supp9SCR967(SC-DB)]**

20. Whether Muslim personal Law can be amended by Judicial interference. Held, personal laws are matter of State policies with which Court do not have any concern. **[Ahmedabad Women Action Group (AWAG) and Ors. –vs- Union of India AIR1997SC3614, 1997(99(2))BOMLR150, II(1997)DMC224SC, (1997)3GLR1882, JT1997(3)SC171, 1997-1-LW688, 1997(2)SCALE381, (1997)3SCC573, [1997]2SCR389, 1997(1)UJ548(SC-3J)]**

21. Appellants were close agnates of testatrix's husband. Respondents, beneficiaries belonged to a different Caste. It was not unnatural for an old person to prefer to put thumb mark instead of signature. Beneficiaries as neighbour looked after the comforts of testatrix at the time of need. Appellants were living separate and away and testatrix was living alone. Site on which suit house was constructed was given by father-in-law of beneficiaries free of cost. High Court could not be said to have exceeded its limit in re-appreciating evidence & reversing findings of trial Court to uphold validity and genuineness of Will. **[Misri Lal (Dead) By LRs. –vs- Daulati Devi. [1997] 3 RCR(Civ) 477/ [1997] 5 Scale 294/ [1997] 3 CLT(SC) 298/ [1997] 7 Supreme 80/ [1997] 0 AIR(SCW) 3737/ [1997] 7 JT 132/ [1997] 7 SCC 133/ [1997] 0 AIR(SC) 3819(SC-DB)]**

22. In the present case the Court found that the language of the Will is clear and unambiguous. Thus to find out intentions of the testatrix, no supplementing or reading down any word is necessary. The testatrix bequeathed her property to her brother s sons, namely, one from first wife, plaintiff and other to Guruswamy, from the second wife. To both she clearly records in no uncertain words that they would have limited right with no right to alienate. She also clearly records in case son is born to them they would get absolute right including right to alienate. If that be so, the only point which requires our consideration, is what right Sevamma widow of Guruswamy gets after the death of Guruswamy? The Court has no hesitation to hold that the limited right of Guruswamy cannot be interpreted by any stretch of language that testatrix intended to give absolute right to Guruswamy or to his widow. They were to hold the property for delivery to the son, in case, born out of their wedlock. In no case Sevamma s right over the property would mature into absolute right by virtue of Section 14(1) of the Hindu Succession Act. Her right could only mature as such, if her claim could be based on any of her pre-existing right including right in lieu of maintenance out of her husband s property. But in no case it would mature where the property is held by her husband either in trust for the benefit of other or as limited and restricted owner with no right to alienate. Hence even if Sevamma continued to enjoy the property after the death of her husband, she held the property at the most, in the same capacity as her husband but not to claim it towards her right of maintenance.

If husband had any other property apart from what was gifted by Poovamma, she could claim her above right under Section 14(1) but not over the property given to her husband Guruswamy as a limited owner. The High Court fell into error while construing Section 14(1) of the Hindu Succession Act by extending its width so wide which spills over its permissible boundary when it held, a Hindu wife will acquire absolute right in the property of her husband and then applying it to the facts of this case. The Court found in the case before it, trial Court held that Sevamma became absolute owner by virtue of Section 8 of the Hindu Succession Act which has no legs to stand, both on facts and law. The Court had already recorded Guruswamy has a limited and restrictive right no absolute right. His widow on the facts of this case cannot be treated to be class 1 heir under the said Act. Hence both the Courts below fell into error in holding that Sevamma became absolute owner. Accordingly, the finding of both the trial Court and the appellate Court are unsustainable in law. In view of the aforesaid findings the Court answered the first question by holding that the Will dated 1st June, 1942, grants Guruswamy limited and restrictive right in no case to mature into full right. As a consequence of this the Court answered the second question by holding that Sevamma did not inherit the suit property from her husband nor possessed it in lieu of maintenance hence question of maturing it into full right under Section 14(1) of the Hindu Succession Act does not arise. Thus the Court held Sevamma had no right to alienate the suit property thus sale of the suit property in favour of respondent Nos. 1 and 2 cannot be held to be valid. Thus for these reasons and findings, the Court sets aside the findings and the judgment of both of the trial Court and the High Court and decree the suit of the plaintiff Costs on the parties. Both the Courts below fell into error in holding that Sevamma became absolute owner of the disputed property after death of her husband. The deceased husband had a limited and restrictive right in the property under a Will and his widow could not alienate it by invoking Section 14(1) of the Hindu Succession Act, 1956. **[Muninanjappa –vs- P.Manual. [2001] 2 RCR(Civ) 684/ [2001] 3 Scale 321/ [2001] 5 SCC 363/ [2001] 0 AIR(SC) 1754/ [2001] 0 AIR(SCW) 1618/ [2001] 3 Supreme 315(SC-DB)]**

23. Where the property has been given by a testator to the devisee with a right of alienation such bequeath is a conferment of an absolute estate. From the decided cases, the following principles emerge: Where under a Will, a testator has bequeathed an absolute interest in the property in favour of his wife, any subsequent bequeath which is repugnant to the first bequeath would be invalid; and 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. Under Section 169 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, a Bhumidhar with a transferable right is entitled to bequeath his holdings or any part thereof in favour of anyone except as what is provided therein. In the present case, Jamuna Prasad by virtue of his Will has bequeathed an absolute interest in the Bhumidhari land in favour of Smt. Sona Devi and by virtue of the said Will; Smt. Sona Devi being a legatee acquired Bhumidhari rights after the death of Jamuna Prasad. It is true that under Section 171 (2) (g) of the Act, the married daughters of Jamuna Prasad were entitled to succeed to the Bhumidhari plots of land. But in the present case, Smt. Sona Devi did not inherit the property (Bhumidhari land) as a widow of Jamuna Prasad but succeeded to the Bhumidhari land as legatee of Jamuna Prasad in pursuance of the Will dated 3.7.1958. The law does not permit a Bhumidhar to create successive legatees under a Will. It is open to him to make a bequeath of

his Bhumidhari land in favour of whomsoever he wants but he cannot create further succession contrary to the provisions of the Act. The second part of the Will created succession in favour of daughters' sons which was contrary and repugnant to the provisions of the Act. In the present case, Smt. Sona Devi having obtained an absolute estate (interest in the Bhumidhari land) under the Will and not as a widow of Jamuna Prasad, the succession to such holding after the death of Smt. Sona Devi shall be governed by the provisions of Section 174 of the Act and not under Section 172 of the Act. In that view of the matter, after the death of Smt. Sona Devi, her daughters and thereafter their sons would succeed to the holding and not all daughters' sons of Jamuna Prasad. Later clauses in Will in conflict with earlier clause, earlier clause to override later clauses. Where there is conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa. In a disposition of properties, if there is a clear conflict between what is said in one part of the document and in another 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, in such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded. Where an absolute estate is created by Will in favour of devisee, the clauses in the Will which are repugnant to such absolute estate cannot cut down the estate ; but they must be held to be invalid. **[Mauleshwar Mani and Ors. –vs- Jagdish Prasad and Ors. AIR2002SC727, 2002(2)ALD3(SC), 2002(2)ALLMR(SC)249, 2002(2)ALT28(SC), 2002 1 AWC(Suppl)682SC, (SC-Suppl) 2002(2)CHN1, JT2002(1)SC450, (2002)1MLJ200(SC), 2002 93 RD176, 2002 (1) SCALE303, (2002)2SCC468, [2002]1SCR423, 2002(1)UC238(SC-DB)]**

24. Gift of ancestral immovable property to married daughters by father. Father can make gift of ancestral immovable property within reasonable limits to his daughter at time of or even long after her marriage. Out of 3.16 acres of land owned by family, father making gift of 12 cents along with house standing on gifted land to his married daughters (appellants). Gift valid and cannot be held either unreasonable or excessive. After nearly 5 years of gift, father and his associates asking appellants to vacate property and trying to trespass into property. Appellants filing suit for permanent injunction. Dismissal of suit by trial Court affirmed in first and second appeals, whether justified? Held, no. Evidence of attesting witness misread and misconstrued. Rendering findings perverse and unsustainable in law. Simply because gifted property is house. It cannot be held that gift was not within reasonable limits. Respondent failed to plead and prove that gift was to unreasonable extent. Judgments and decrees passed by Courts below set aside. Appellants held to be absolute owners of suit property. Gift not vitiated by fraud or misrepresentation. Respondent is injuncted from interfering. A father can make a gift of ancestral immovable property within reasonable limits, keeping in view, the total extent of the property held by the family in favour of his daughter at the time of her marriage or even long after her marriage. The total property held by the family was 3.16 acres. 12 cents would be approximately 1/26th share of the total holding. The share of each daughter would come to 1/52nd or 1/26th share of the total holding of the family which cannot be held to be either unreasonable or excessive under any circumstances. Question as to whether a particular gift is within reasonable limits or not has to be judged according to the status of the family at the

time of making a gift, the extent of the immovable property owned by the family and the extent of property gifted. No hard and fast rule prescribing quantitative limits of such a gift can be laid down. The answer to such a question would vary from family to family. This apart, the question of reasonableness or otherwise of the gift made has to be assessed vis-a-vis the total value of the property held by the family. Simply because the gifted property is a house, it cannot be held that the gift made was not within the reasonable limits. As stated earlier, it would depend upon a number of factors such as the status of the family, the total value of the property held by the family and the value of the gifted property and so on. It is basically a question of fact. However, on facts, if it is found that the gift was not within reasonable limits, such a gift would not be upheld. It was for the respondent to plead and prove that the gift made by the father was excessive or unreasonable, keeping in view, the total holding of the family. In the absence of any pleadings or proof on these points, it cannot be held that the gift made in this case was not within the reasonable limits of the property held by the family. The respondent has failed to plead and prove that the gift was made to unreasonable extent, keeping in view, the total holding of the family. The first appellate Court and the High Court, thus, erred in non-suiting the appellants on this account. It is held that the respondent had the capacity to make a gift to a reasonable extent of ancestral immovable property in favour of his daughters. The gift was not vitiated by fraud or misrepresentation. The appellants are held to be the absolute owners of the suit property and the respondent is injuncted from interfering with the peaceful possession and enjoyment of the suit property by the appellant perpetually**. [R. Kuppayee and Anr. –vs- Raja Gounder. AIR2004SC1284, 2004(1)ALD51(SC), 2004(5)ALLMR(SC)308, 2004 (56) ALR 166, 2004(4)ALT12(SC), 2004 1 AWC(Suppl)475SC, 2004(1)BLJR543, (SC-Suppl)2004(2)CHN117, 97 (2004) CLT337(SC), (2004)186CTR(SC)106, [2004]265ITR551(SC), [2004(2)JCR78(SC)], JT 2003 (10)SC289, 2004-2-LW386, 2004(2)MhLj570, 2004(2)MhLJ570(SC), 2004(1)MPJR(SC)388, 2004 (3)PLJR1, 2003(10)SCALE600, (2004)1SCC295, [2003]Supp6SCR605, [2004]135TAXMAN37(SC-DB)]**

25. 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. 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. **[Sadhu Singh vs. Gurdwara Sahib Narike and Ors. MANU/SC/8475/2006 = 2006 65 ALR 639, AIR 2006 SC 3282, 2007 1 ALT 12 SC, 2006 4 AWC Suppl 3865 SC, 2006 4 CTC 773, JT 2006 8 SC 525, 2007 2 LW 541, 2007 1 MLJ 25 SC, 2007 1 OLR 18, 2007 1 OLR SC 18, 2006 9 SCALE 83, 2006 8 SCC 75, [2006]Supp5 SCR 799, 2007 1 UC 51(SC-DB)]**

26. Turning to the facts of the present case, the Court noticed that not only was there no material to indicate to the High Court that the property was given to Reba Mitra in lieu of her right of maintenance, but such an argument was not even advanced before the Court. The High Court then noticed Section 30 of the Act which empowers a Hindu possessed of any property to execute a Will; and confers a grant in favour of another either absolutely or to a limited extent; even to the extent of depriving his natural heirs from enjoying the estate left by him. The Court thinks that the High Court was right in taking this view. The High Court also took notice of the fact that there was no material on record from which it could be concluded that the disposition

of life estate in favour of Reba Mitra in the Will of her husband, Kamal Kumar Mitra, was in lieu of or in recognition of her right of maintenance. Consequently, the Court agrees with the finding of the High Court that Reba Mitra had only a limited right, namely, life interest in the Suit Property. Thus, she could not have created a long-term lease as she has purportedly done. From the factual circumstances, while the High Court's appointment of an Administrator pendente lite appears to be correct, the Court need not finally decide as to whether the appellant was unfit to act as an executor of Kamal Kumar Mitra's Will. The Court is cognizant of the fact that the High Court is still seized of the matter and the order passed is only an interlocutory order based on prima facie considerations. In our view, there was sufficient justification for the High Court to make the order for appointment of the Administrator pendente lite to protect the estate during the pendency of the petition before it. The question as to whether the appellant as the executor has breached his fiduciary duty, can only be determined at the end of the trial. In our view, therefore, the impugned judgment of the High Court is not liable to be interfered with. Where there was no material on record from which it could be concluded that the disposition of life estate in favour of wife in the Will of her husband was in lieu of or in recognition of her right of maintenance, she had only a limited right, namely, life interest in the suit property, therefore, she could not have created a long term lease in the property. **[Sharad Subramanyan –vs- Soumi Mazumdar. [2006] 3 RCR(Civ) 447/ [2007] 1 CivCC 29/ [2006] 5 Scale 197/ [2006] 0 AIR(SC) 1993/ [2006] 0 AIR(SCW) 2457/ [2006] 5 Supreme 438/ [2006] 11 JT 535/ [2006] 6 SCJ 293/ [2006] 7 SBR 419/ [2006] 8 SCC 91/ [2007] 1 MTJ 293(SC-DB)]**

27. 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. 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 possessed by the female Hindu on the coming into force of the Hindu Succession Act. 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) 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 transaction, any restriction is placed on her right, the restriction will have play in view of Section 14(2) of the Act. 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. 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. 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 otiose. It will also make redundant, the expression 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 right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance. 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 off. 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 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. The Court now construed 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 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. 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 say 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. Thus on reconciling the various clauses in the will and the destination for the properties that the testator had in mind, the Court has 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 the nephews. 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 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. 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. 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, the Court is 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. Section 14(1) of the Hindu Succession Act 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 a limited estate under the Mitakshara law or the right to maintenance. A Hindu male can testamentarily dispose of his property. When he does that, a succession under the Hindu Succession Act stands excluded and the property passes to the testamentary heirs. **[Sadhu Singh –vs- Gurdwara Sahib Narike. [2006] 4 RCR(Civ) 468/ [2007] 1**

CivCC 278/ [2006] 9 Scale 83/ [2006] 0 AIR(SC) 3282/ [2006] 8 JT 525/ [2006] 8 SCJ 555/ [2006] 8 Supreme 578/ [2006] 0 AIR(SCW) 4790/ [2006] 8 SCC 75/ [2007] 1 BBCJ(SC) 196(SC-DB)]

28. Absolute ownership of property. Hindu widow found possessed of land in question in lieu of her right to maintenance. Section 14 (1) clearly attracted. She became absolute owner of property in terms of Section 14 (1) and was competent to execute sale deed in 1960. High Court committed manifest error in reversing well-considered judgment of first appellate Court. Judgment of High Court set aside. **[Chandrika Singh (Dead) by LRs. and Anr. –vs- Sarjug Singh and Anr. 2007(4)ALT9(SC), 2007 1 AWC(Suppl)668SC, [2007(3)JCR182(SC)], 2006(13)SCALE408, (2006)12SCC49, [2006]Suppl(9)SCR880(SC-DB)]**

29. Suit for possession. Decreed in part declaring that plaintiff became absolute owner of undivided half share in property and entitled for partition and separate possession. Appellant defendant claimed that she was permitted to stay in suit property in lieu of maintenance and so property was her absolute property in terms of Section 14 (1) of Succession Act, but no issue framed regarding Section 14 (1). No evidence led specifically to show that in lieu of maintenance. She was permitted to possess property. Appeal without merit. Mere possession does not automatically attract Section 14 of the Hindu Succession Act. **[Smt. G. Rama –vs- T.G. Seshagiri Rao (Dead) by LRs. 2008(4)ALD135(SC), 2008 (72) ALR 659, 2008(5)ALT8(SC), 2008 4 AWC(Suppl)3793SC, 2009(1)CLR735, [2009(1)JCR19(SC)], JT2008(7)SC479, 2008(5)KarLJ460, 2009-2-LW385, (2008)6MLJ615(SC), (2009)153PLR500, 2008 105 RD421, 2008(9)SCALE666, (2008)1SCC392, (2008)12SCC392(SC-DB)]**

30. Once the validity of marriage is proved then there is strong presumption about the legitimacy of children born out of that wedlock under Section 112 of the Evidence Act. A male Hindu governed by Mitakshara system is not debarred from making a Will in respect of coparcenary or ancestral property under Section 30 read with Section 4 of the Hindu Succession Act. Birth during marriage, conclusive proof of legitimacy. Presumption under Section 112, rebuttable. In absence of cogent and reliable evidence as to non-access on part of deceased. Presumption under Section 112 available and it has to be held that plaintiff and defendants are sons of deceased. School leaving certificate. When held to be public document admissible per se without formal proof. Presumption of legitimacy of children. Imperative in civilised society to presume legitimacy of child born during continuance of valid marriage. Whose parents had 'access' to each other. In such case, undesirable to enquire into paternity of child. Section 112 based on presumption of public morality and public policy. **[Shyam Lal @ Kuldeep –vs- Sanjeev Kumar and Ors. AIR 2009 SC 3115, 2009 AWC-Suppl 2672 SC, JT 2009 8 SC 108, 2009 5 KCCR 3287, 2009 5 MLJ 1195 SC, 2009 Suppl (Crl OLR 991, 2009 3 PLJR 63, RLW 2010 1 SC 779, 2009 5 SCALE 507, 2009 12 SCC 454, [2009]5 SCR 1049, 2010 1 ShimLC 258, 2009 5 UJ 2134, CLT 2009 SuppCrl991(SC-DB)]**

31. If the husband had access to the wife, her children cannot be termed illegitimate merely on account of her adultery. If a man and woman live together for long years as husband and wife then a legal presumption arises as to the legality of marriage existing between the two. Such a presumption is however rebuttable. Mode of proof of a document has to be objected

before it is received in evidence and marked as exhibit. Even otherwise, a public document such a school leaving certificate is admissible per se without proof. A male Hindu governed by Mitakshara system is not debarred from making a Will in respect of coparcenary/ ancestral property. The appellant herein, who was the plaintiff before the Trial Court, filed a suit for declaration to the effect that mutation number 1313 dated 20.2.1988 in favour of defendant nos.1 and 2 was illegal, null and void. The plaintiff and defendant nos.3 and 4 are the sons and defendant nos.5 and 6 are the daughters of late Shri Balak Ram. They were joint owners and in possession of the estate of the deceased Balak Ram in equal shares. Balak Ram died on 31.10.1987. After his death, his estate came to be mutated in favour of his grandsons, defendant nos.1 and 2, on the basis of a Will executed on 4.12.1978, vide mutation number 1313 dated 20.02.1988. According to the plaintiff, the estate was inherited by the deceased Balak Ram from his father Mohar Singh and as such the same was ancestral in his hands. Late Balak Ram was governed by the Hindu Law and Customs in the matter of alienation and succession whereby he could not bequeath the ancestral property. It was further pleaded that no Will was executed by the deceased Balak Ram during his lifetime. The Will, if any, was forged and fabricated and ultimately the mutation of inheritance sanctioned on 20.2.1988 was illegal, null and void. The Trial Court decided issues nos.1, 2 and 10 against the plaintiff and issues no.3, 7 and 9 against the defendants. The suit of the plaintiff was dismissed by the Trial Court on 27.8.1996. The plaintiff, aggrieved by the said judgment filed an appeal before the learned District Judge, Solan who partly allowed the said appeal on 11.9.1997. The plaintiff and defendant no.4 were held to be the sons of deceased Balak Ram. The property in the hands of deceased Balak Ram was held to be ancestral to the extent of his share in the coparcenary property. High Court allowed the appeal of the respondents and set aside the judgment and decree passed by the learned District Judge, Solan. No interference is called for. If the husband had access to the wife, her children cannot be termed illegitimate merely on account of her adultery. Appeal dismissed. **[Shyam Lal @ Kuldeep –vs- Sanjeev Kumar. [2009] 12 SCC 454/ [2009] 4 Scale 507/ [2009] 0 AIR(SC) 3115/ [2009] 3 MhLR 373/ [2009] 4 Supreme 711/ [2009] 8 JT 108/ [2009] 5 UJ 2134/ [2009] 3 CCC(SC) 138/ [2009] 5 MLJ(SC) 1195/ [2009] 2 LS(SC) 166/ [2009] 5 SCJ 542/ [2009] 3 AWC(SC) 2672/ [2009] 3 BBCJ(SC) 363/ [2010] 8 RCR(Civ) 2798/ [2009] 3 CivCC 535/ [2009] 4 CHN(SC) 25(SC-DB)]**

32. Property of a female Hindu is her absolute property except where the property as given away by way of gift or Will. Creation of restricted estate by way of Will is permissible. A widow succeeding to the property of her deceased husband on the strength of his will, cannot claim any right other than those conferred by the will. Life estate given to her under a will cannot become an absolute estate. In this case two questions arise for consideration: Whether a Bhumidhar having a right to transfer his land under U.P. Zamindari Abolition and Land Reforms Act, 1951, while bequeathing his Bhumidhari right in favour of a beneficiary can impose a restriction on the right of the legatee to make it a life estate, and if he does so whether the interest of the holder of a life estate shall continue to remain so restricted, or whether such a legatee can claim his interest to be unrestricted to affect the bequest in favour of other beneficiaries. **[Jagan Singh –vs- Dhanwanti. [2012] 114 CLT(SC) 458/ [2012] 1 JT 369/ [2012] 1**

LS(SC) 64/ [2012] 1 LW(SC) 917/ [2012] 3 MLJ(SC) 367/ [2012] 1 Scale 497/ [2012] 3 SCJ 140/ [2012] 3 WLR(SC) 735/ [2012] 1 CivCC 790/ [2012] 1 Supreme 262/ [2012] 2 SCC 628/ [2012] 2 BBCJ(SC) 101/ [2012] 1 UAD(SC) 826(SC-DB)]

33. Respondent No. 1 had filled suit before Small Causes Court (Trial Court) alleging that Appellant was not entitled to receive any compensation or rehabilitation grant bonds as she was only a life estate holder. Trial Court dismissed suit holding that no relationship of landlord and tenant existed between Respondent Nos. 1 and 2 and Appellants. On Appeal, High Court affirmed judgment of Trial Court and dismissed writ petition of Appellants. Whether, High Court was justified in dismissing writ petition of Appellants. Held, if a Hindu female had been given a "life interest", through Will or gift or any other document then said rights would not stand crystallized into absolute ownership as interpreting provisions to effect that she would acquire absolute ownership/title into property by virtue of provisions of Section 14(1) of Act and Section 14(2) of Act clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain same even after commencement of Act, and such a Hindu female cannot acquire absolute title. Further, a question regarding title in a small cause suit might be regarded as incidental only to substantial issue in suit and therefore, when a finding as regards title to immovable property was rendered by a Trial Court, res judicata could not be pleaded as a bar in subsequent regular suit for determination or enforcement of any right or interest in immovable property. Hence, Trial Court had rightly refused to determine question relating to ownership of parties and no reason to interfere with impugned judgments of High Court and Trial Court was sustained. Appeal dismissed. **[Ramji Gupta and Anr. –vs- Gopi Krishan Agrawal (D) and Ors. MANU/SC/0365/2013 = 2014 II AD SC 188, 2013 4 ALJ 466 , 2013 99 ALR 66, AIR 2013 SC 3099, 2013 4 ALD 178, 2013 5 ALT 12, 2013 3 AWC 2782 SC, 116 2013 CLT 447, 2013 3 CTC 98, JT 2013 10 SC 443, 2013 3 LW 305, 2013 3 PLJR 1, 2013 2 RCRCivil 898, 2013 5 SCALE 665, 2013 9 SCC 438, 2013 2 JLJR 341(SC-DB)]**

34. High Court dismissed claim of Appellant wherein who claimed certain rights on basis of Will, and for same filed Suit against her nephew for mandatory injunction seeking eviction from suit premises claiming absolute right/ownership under provisions of Section 14 of Act. Whether, document creating a limited right, "life interest" in favour of Appellant got converted into absolute right on commencement of Act. Where a woman succeeded some property on strength of a Will, she could not claim any right in those properties over and above what was given to her under that Will. Further, life estate given to her under Will would not become an absolute estate under provisions of Act 1956 and, thus, such a Hindu female could not claim any title to suit property on basis of Will executed in her favour. However, if a Hindu female had been given only a "life interest", through Will or gift or any other document referred to in Section 14 of Act. Thus, said rights would not stand crystallized into absolute ownership as interpreting provisions to effect that she would acquire absolute ownership/title into property by virtue of provisions of Section 14(1) of Act. Moreover, Section 14(2) of Act carved out an exception to rule provided in Sub-section (1), which clearly provided that if a property had been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain same even after commencement of Act, and such a Hindu female could not acquire absolute title. Hence, Court did not find any cogent reason to interfere with concurrent findings of Court.

Where a woman succeeded some property on the strength of a Will, she cannot claim any right in those properties over and above what is given to her under that Will. Appeal dismissed. **[Shivdev Kaur (D) By L.Rs. and Ors. –vs- R.S. Grewal MANU/SC/0260/2013 = 2013 IV AD SC 196, 2013 2 AKR 596, 2013 3 RLW 2442 NULL, 2013 3 WBLR SC 689, 2013 3 BLJ493, 2013 98 ALR 247, AIR 2013 SC 1620, 2013 4 ALD 55, 2013 2 ALLMRSC 948, 2013 3 ALT 1, 2013 3 AWC 2980 SC, 2013 2 CTC 587, JT 2013 8 SC 306, 2013 3 LW 301, 2013 5 MhLJ 177, 2013 3 MPLJ 526, 2013 171 PLR 671, 2013 3 RCRCivil 20, 2014 122 RD 32, 2013 4 SCALE 573, 2013 4 SCC 636, 2013 3 WLN 33 (SC-DB)]**

35. Conversion of "life estate" into "absolute estate" on commencement of Act 1956. Life interest in property by executing Will. Father of appellant (Hindu female) created only "life interest" in her favour in suit property by executing Will dated 16.9.1944. Question involved - Whether such limited right got converted into absolute right on commencement of Act 1956. If Hindu female given only "life interest" through Will or gift or any other document referred to in Section 14. Said right would not stand crystallized into absolute ownership by virtue of provisions of Section 14(1). Section 14(2) carves out exception to rule provided in Section 14(1) thereof. Section 14(2) does not provide that such "life interest" would stand converted into absolute ownership on commencement of Act, 1956. No factual foundation ever laid by appellant before Courts below that she was destitute. Courts below taken consistent view rejecting claim of appellant having acquired absolute title in suit property. No cogent reason to interfere with concurrent findings of facts. The law on the issue can be summarised to the effect that if a Hindu female has been given only a "life interest", through Will or gift or any other document referred to in Section 14 of Act, 1956, the said rights would not stand crystallised into the absolute ownership as interpreting the provisions to the effect that she would acquire absolute ownership/title into the property by virtue of the provisions of Section 14(1) of the Act 1956, the provisions of Sections 14(2) and 30 of the Act 1956 would become otiose. Section 14(2) carves out an exception to rule provided in subsection (1) thereof, which clearly provides that if a property has been acquired by a Hindu female by a Will or gift, giving her only a "life interest", it would remain the same even after commencement of the Act 1956, and such a Hindu female cannot acquire absolute title. Expression 'destitute'. Not defined under Act, 1956 or under Code of Criminal Procedure, 1973, or Code of Civil Procedure, 1908. Whether person is destitute or not is question of fact. Whether person is destitute or not is a question of fact. The expression 'destitute' has not been defined under the Act, 1956 or under the Code of Criminal Procedure, 1973 or Code of Civil Procedure, 1908. The dictionary meaning is "without resources, in want of necessaries". A person can be held destitute when no one is to support him and is found wandering without any settled place of abode and without visible means of subsistence. In the instant case, no factual foundation has ever been laid by the appellant before the Courts below in this regard. In such a fact-situation the issue does not require consideration. Where a woman succeeded some property on the strength of a Will, she cannot claim any right in those properties over and above what is given to her under that Will. **[Shivdev Kaur (D) By L.Rs. and Ors. –vs- R.S. Grewal. 2013IV AD (S.C.) 196, AIR2013SC1620, 2013(2) AKR 596, 2013(4)ALD55, 2013(2)ALLMR(SC)948, 2013 (98) ALR 247, 2013(3)ALT1, 2013 3 AWC2980SC, 2013(3)B.L.J.493, 2013(2)CTC587, 2013GLH(1)881, JT2013(8)SC306, 2013-3-LW301, 2013(5)MhLj177, 2014(5)MPHT359, 2013(3)MPLJ526, (2013)171PLR671, 2013 (3)**

RCR(Civil)20, 2014 122 RD32, 2013(3)RLW2442(SC), 2013(4)SCALE573, (2013)4SCC636, (2013) 3WBLR(SC)689, 2013(3)WLN33(SC-DB)]

36. Suit based on title. Small causes Court has no right to adjudicate upon title of property. Procedure adopted in trial of case before Small Causes Court is summary in nature. Clause (35) of Schedule II to Act 1887 has made Small Causes Court. Court of limited jurisdiction. Certain suits are such, in which dispute is incapable of being decided summarily. Trial Court rightly refused to go into such issue. No fault found with findings recorded by Courts below in this regard. Matter which is collaterally or incidentally in issue for purpose of deciding matter which is directly in issue in case cannot be made basis for plea of res judicata. In order to operate as res judicata, the finding must be such, that it disposes of a matter that is directly and substantially in issue in the former suit, and that the said issue must have been heard and finally decided by the Court trying such suit. A matter which is collaterally or incidentally in issue for the purpose of deciding a matter which is directly in issue in the case cannot be made the basis for a plea of res judicata. A question regarding title in a small cause suit, may be regarded as incidental only to the substantial issue in the suit, and therefore, when a finding as regards title to immovable property is rendered by a Small Causes Court, res judicata cannot be pleaded as a bar in the subsequent regular suit, for the determination or enforcement of any right or interest in the immovable property. In order to avail justice, parties to suit shall have to proof his/her claim beyond a reasonable doubt**. [Ramji Gupta and Anr. –vs- Gopi Krishan Agrawal (D) and Ors. with Ram Prakash Agarwal and Anr. –vs- Gopi Krishan (Dead through L.Rs.) and Ors. [Along with Civil Appeal No. 2799 of 2013] 2014 II AD (S.C.) 188, AIR2013SC3099, 2013(4)ALD178, 2013(4) ALJ 466., 2013 (99) ALR 66, 2013(5)ALT12, 2013 3 AWC2782SC, 116(2013)CLT447, 2013(3)CTC98, 2013(2)J.L.J.R.341, JT2013(10)SC443, 2013-3-LW305, 2013(3)PLJR1, 2013(2)RCR(Civil)898, 2013(5)SCALE665, (2013)9SCC438, (2013) 11 SCC 296, 2014(2)UC1172(SC-DB)]**

37. Sub section (1) provides for conversion of life interest of a female Hindu into absolute right on commencement of the Act. Sub-section (2) however carves out an exception that such right would not get conferred in case of property acquired by Will etc. This case involves interpretation of section 14 of the Hindu Succession Act, 1956. There is no reason to interfere with the concurrent findings of the Courts below. Appeals dismissed. **[Shivdev Kaur (D) By Lrs. –vs- R.S. Grewal. [2013] 8 JT 306/ [2013] 3 BBCJ(SC) 246/ [2013] 3 RLW(SC) 2442/ [2013] 4 SCC 636/ [2013] 3 Supreme 186/ [2013] 0 AIR(SC) 1620(SC-3J)]**

38. Writing by owner of property that after death of himself or his wife survivor will inherit the property. Writing not attested by two witnesses, not a Will. Writing not registered, not a transfer document. Only a piece of paper having no legal value. Original owner rightly held to have died intestate. Will duly executed and proved. Valid, but one cannot bequeath more than he owns. Writing left by deceased owner not a Will. He died intestate leaving one widow and eight children. Property shall be divided into 9 shares one each to the widow and each child. All 9 will have 1/9 share. Property in question standing in the name of Rao Gajraj Singh was occupied by Rao Gajraj Singh and his wife Sumitra Devi. Rao Gajraj Singh executed a document in terms of which survivor of the two would inherit the property. Accordingly on death of Rao

Gajraj Singh his wife Sumitra Devi inherited the property but it continued to remain in his name. Sumitra Devi had eight children but she bequeathed the entire property to her one son, the appellant herein. Other children filed a suit for partition on the ground that will was not genuine and each of them had 1/8 share in the property. The suit was dismissed and so the appeal. The second appeal was partly allowed by the High Court. The writing of Rao Gajraj Singh having no legal value and the property continuing in his name after his death, he was rightly taken to have died intestate. So the property would devolve equally between his widow and the 8 children. Will of the widow was valid but she could not bequeath more than she owned. She could only bequeath her own 1/9 share. There is no infirmity in the impugned order. Appeals dismissed. **[Narinder Singh Rao –vs- AVM Mahinder Singh Rao. [2013] 8 JT 364/ [2013] 3 RLW (SC) 1897/ [2013] 3 Supreme 190/ [2013] 2 RCR (Civ) 679/ [2013] 0 AIR(SC) 1470/ [2013] 9 SCC 425(SC-DB)]**

It may not be out of place to mention here that I have got published an article in **"ALL INDIA DIGEST"** under the heading '**Oppression and discriminating women in succession in self-acquired property**', which has been published at page 380 to 387 of the said journal of the year 2012, which may please be perused to know how women are discriminated in the self-acquired property of a male/female Hindu.

Conclusion

Empowerment of women, leading to an equal social status in society hinges, among other things, on their right to hold and inherit property. Several legal reforms have taken place since independence in India, including on equal share of daughters to property. Yet equal status remains illusive. Establishment of laws and bringing practices in conformity thereto is necessarily a long drawn out process. The government, the legislature, the judiciary, the media and civil society has to perform their roles, each in their own areas of competence and in a concerted manner for the process to be speedy and effective. These amendments can empower women both economically and socially and have far-reaching benefits for the family and society. Independent access to agricultural land can reduce a woman and her family's risk of poverty, improve her livelihood options, and enhance prospects of child survival, education and health. Women owning land or a house also face less risk of spousal violence and land in women's names can increase productivity by improving credit and input access for numerous de facto female household heads. Making all daughters coparceners likewise has far-reaching implications. It gives women birthrights in joint family property that cannot be willed away. Rights in coparcenary property and the dwelling house will also provide social protection to women facing spousal violence or marital breakdown, by giving them a potential shelter. Millions of women - as widows and daughters - and their families thus stand to gain by these amendments.

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