

# RAJASTHAN HIGH COURT

Vallabh

Vs.

Ginni Devi

Civil First Appeal No. 131 of 1990

(A.C. Goyal, J.)

25.02.2004

## JUDGEMENT

### **A. C. Goyal, J.**

1. This S. B. Civil First Appeal by the plaintiff has been preferred against the judgment and decree dated 2-5-1990, whereby learned Additional District Judge No. 5, *Jaipur City, Jaipur*, dismissed the suit of the plaintiff for possession and mesne profits.
2. Briefly stated the facts of the case are that the plaintiff filed a suit for possession and mesne profits against the defendant respondent on 18-4- 1978, with the averments that the plaintiff is the son of SriRadhaVallabh - nephew of deceased KheriLal.
3. That on 2nd May 1946, SriKheriLal executed his last Will. According to the Will Kherilal bequeathed some properties in favor of his daughter (the defendant in this case) and the remaining properties in favor of the plaintiff. While giving details of the properties bequeathed vide this Will, it has been pleaded that some portion of the House No. 285 was given to the defendant and the remaining Haveli No. 285 was given to the plaintiff. In addition to this, the Haveli No. 283 was also given to the plaintiff. Both the properties are situated in Jaipur.
4. That SriKheriLal died on 5th May 1946. At that time Smt. Pura Devi, wife of KheriLal, the defendant and Smt. Chota Devi the widow of KheriLal's younger brother were alive. According to the Will Smt. Chota Devi and Smt. Pura Devi were given right of residence in the house bequeathed by Will. It was further provided in the Will that the plaintiff would provide appropriate amount for their maintenance and in case the plaintiff fails to do so both of them would be entitled to recover the rent from the

tenants for their maintenance but they would have no right to alienate the said property.

5. That both Smt. Pura Devi and Smt. Chota Devi refused to receive maintenance amount from the plaintiff and expressed their desire to receive the rent from the tenants and they continued to reside in this house till they expired. Smt. Pura Devi died on 14-12-1970 while Smt. Chota Devi died on 10-11-1974.

6. That the defendant who was residing at Beawer came to *Jaipur* and started living in the house left by SriKheriLal. The plaintiff after the death of Smt. Pura Devi and Smt. Chota Devi asked the defendant to vacate the premises but she refused to do so.

7. That in January 1975, the plaintiff came to know that the defendant after the death of her mother and in the lifetime of Smt. Chota Devi got rent notes executed from all the tenants and she is receiving Rs. 300/- as monthly rent from the tenants. The plaintiff served a notice upon the defendant On 31-3- 1975 and in reply to this notice the defendant even denied the execution of any Will, hence the suit.

8. The defendant in her written statement denied the pedigree as mentioned in para one of the plaint, any relationship of the plaintiff with her late father and all the facts relating to execution of the Will. It was pleaded by her that her father was ill for last six months and became unconscious about one week prior to his death on 5-5-1946 and thus his father was not in a position to execute any Will. While giving the facts against the execution of any Will, it was pleaded that the suit is beyond limitation.

9. On the basis of the pleadings following issues were framed.

(Vernacular matter omitted .....Ed.)

10. After recording the evidence of both the parties, the learned trial Judge vide impugned judgment while deciding all the issues except issue No. 6 against the plaintiff dismissed the suit with costs, hence this appeal.

11. I have heard learned counsel for the parties. On the submissions made by learned counsel, following points arise in this appeal:-

"1. Whether the Will Ex. 1 was executed by SriKheriLal in sound and disposing state of mind and thus the said Will was true and genuine?

2. Whether irrespective of the Will Ex. 1, the defendant became the absolute owner of the disputed property in view of the provisions of Section 14 (1) of the

## Hindu Succession Act 1956?

3. Whether the suit filed by the plaintiff was within limitation?"

12. Section 63 (c) of the Succession Act, 1925 (hereinafter referred to as 'the Act of 1925') provides the mode of execution of the Will while Section 68 of the Evidence Act 1872 (hereinafter referred to as 'the Act of 1872'), provides the mode of proof of execution of document required by law to be attested. The said provisions are as under:-

"63 (c) The will shall be attested by two or more witnesses, each of whom, has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or of the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

68. Proof of execution of document required by law to be attested.- If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence :

(Provides that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.)"

### First Point

According to learned counsel for the plaintiff-appellant the execution of the Will Ex. 1 was proved in accordance with the Provisions of Section 68 of the Act 1872 as one of the attesting witness P.W. 7 SriBadriNarainSethi has proved its execution in accordance with the provisions of Section 63 (c) of the Act 1925 and there was no reason to discard his evidence. It was also contended that none of the eleven circumstances as relied upon by the learned trial Judge was a suspicious circumstance and it is not a case of total exclusion of the legal heirs of late SriKherilal. He referred

the evidence on record and submitted that the plaintiff proved execution of the Will Ex. 1 and placed reliance upon *GopinathSunderlal v. ChunnilalSunderlal*,<sup>1</sup> *IshwardeoNarain Singh v. Kamta Devi*,<sup>2</sup> *Shashi Kumar Banerjee v. Subodh Kumar Banerjee*,<sup>3</sup> *RajlakshmiDassiBechulal Das v. Krishna Chaitanya Das Mohanta*,<sup>4</sup> *Madhukar D. Shende v. Tarabai Aba Shedage*,<sup>5</sup> *RamabaiPadmakarPatil (dead) Through L.Rs. v. Rukminibai Vishnu Vekhende*,<sup>6</sup> On the other hand, learned counsel appearing for the defendant-respondent contended that the decision of the trial Court is based on proper appreciation of evidence and the plaintiff failed to remove the suspicious circumstances surrounding the execution of a Will. Reliance is placed upon *Jawanmal v. Achaldas*,<sup>7</sup> *RamchandraRambux v. Champabai*,<sup>8</sup> *Motilal v. AnandiBai*,<sup>9</sup> *BhagwanKaur v. KartarKaur*,<sup>10</sup> *Guro (Smt.) v. Atma Singh*,<sup>11</sup> *GurdialKaur v. KartarKaur*,<sup>12</sup> *H. VenkatachalaIyengar v. B. N. Thimmajamma*,<sup>13</sup> *GaindiLal v. Bhura Mal*,<sup>14</sup>

13. I have considered the rival submissions in the light of the evidence and the judgments cited above. The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a Will by Section 63 (c) of the Act 1925. Where it appears that the propounder has taken prominent part in the execution of the Will which confers a substantial benefit on him, that itself is generally treated as a suspicious circumstance attending the execution of the Will. Where there are suspicious circumstances, the onus is on propounder to explain them to the satisfaction of the Court before the Court accepts the Will as genuine one and in such a case the Court would naturally expect that all legitimate suspicion should be completely removed before the document is accepted as the last Will of the testator.

14. In the present case while giving details of the pedigree, the plaintiff has come with a case that he is son of SriRadhaVallabh, who was nephew of deceased KheriLal i.e. the testator. The defendant in her written-statement denied this pedigree as well as the fact that SriRadhaVallabh was the nephew of KheriLal. It was also denied that Jai Narain and Moti Ram were sons of LaxmiNarain. As per written statement Moti Ram was son of one Kripa Ram. It was pleaded that Nanag Ram was son of Moti Ram and Govind Ram was son of Nanag Ram and both KheriLal and KishanLal were two sons of Govind Ram. Nanag Ram had no son named Sheo Chand and late KheriLal was in nowhere related to LaxmiNarain and thus the entire pedigree is false.

15. Now coming to the evidence, P.W. 1 the plaintiff SriVallabh stated that the pedigree mentioned in the plaint is correct but in cross-examination he pleaded

ignorance about his ancestors as stated in the plaint. It was also stated by him that he knows only this fact that Govind Ram and Nanag Ram were respectively father and grand-father of late SriKheriLal. Thus the plaintiff failed to prove this pedigree and the fact that his father was nephew of SriKheriLal. It was held by Division Bench of this Court in Jawanmal's case (supra) that in order that a person may succeed in getting letters of administration on the basis of relationship, he has to prove the relationship on which he relies, and also *prima facie* that there is no nearer heir alive. It was also held that where the witnesses produced to prove the correctness of pedigree were too young to have personally seen the common ancestor and they did not disclose the source of their knowledge, their evidence could not be relied on and thus it was held that pedigree was not proved. The defendant Smt. Ginni Devi is daughter of late SriKheriLal. She stated that there was none in the name of LaxmiNarain as her father's ancestors. She denied any relationship of her father with the plaintiff as well as plaintiff's father. The oral testimony of other witnesses examined on behalf of both the parties is not relevant on this aspect. Thus the plaintiff failed to prove the pedigree as well as this fact that his father was nephew of late SriKheriLal.

16. I have gone through Ex. 1. The reasons for executing this Will in favor of the plaintiff as stated in this Will are that the testator i.e. Kherilal had no son, he has become 65 years old, often remains ill, the plaintiff vallabh is the son of RadhaVallabh, his nephew in relation, the plaintiff Vallabh is serving him in his old age and he has a hope that he will serve him, his wife and his brother KishanLal's wife in future also and thus being happy with the plaintiff he is going to execute this Will in his favor.

17. As stated here-in-above, one of the reasons that plaintiff's father was nephew of SriKheriLal has not been found proved. Now it has to be seen as to whether the reasons favorable to the plaintiff for execution of the said Will in his favor have been proved or not? In Para 6 of the plaint, it is pleaded that Smt. Pura Devi and Smt. Chota Devi declined to accept the maintenance amount from the plaintiff and expressed their desire to receive the rent from the tenants in accordance with the terms and conditions contained in the Will Ex. 1. It is undisputed that Smt. Pura Devi died in December 1970 while Smt. Chota Devi died in November 1974. The plaintiff admitted this fact in examination-in-chief that both Pura Devi and Chota Devi stayed with him only for 15-20 days after the death of KheriLal and both of them expressed their desire that they would reside separately from the plaintiff and would receive the rent from the tenants. It was also admitted by him, that soon after the death of KheriLal, Smt. Pura

Devi started receiving the rent from the tenants. It was also admitted by him that the defendant vide Notice Ex. 3 asked him to pay the rent after four months of the death of KheriLal. He further stated that the defendant took over the possession of the entire premises and this fact came to his knowledge only in January 1975 and thereafter he got a notice Ex. 4 served upon her through advocate. He further stated that all the expenses in the treatment of KheriLal and after his death were borne out by Smt. Pura Devi. He also admitted this fact that Smt. Chota Devi was in a paralytic condition for about a period of four years and the entire expenses were borne out by the defendant Smt. Ginni Devi and her husband and he (the plaintiff) was not in speaking terms with them. Thus this evidence of the plaintiff himself clearly goes to show that he failed to prove these facts also that he ever served late SriKheriLal and he served wife of KheriLal as well as his brother KishalLal's wife at any point of time. It is also significant to say here that the plaintiff even did not plead these facts that he used to serve SriKheriLal and also served his wife as well as his brother's wife after his death. Therefore, the second important reason for executing the Will in favor of plaintiff that the plaintiff was serving SriKheriLal in his old age and he would continue to serve KheriLal, his wife and his brother's wife in future also goes away. In view of the entire discussion made here-in-above, the reasons for execution of this Will in favor of the plaintiff have not been proved at all by the plaintiff and thus the very basis for execution of the said Will in plaintiff's favor is not proved.

18. A careful scrutiny of the evidence reveals that even the execution of the said Will in accordance with the provisions of law is not proved. There are in all nine attesting witnesses who had put their signatures on the Will Ex. 1 according to the plaintiff's case. It is not in dispute that all except P.W. 7 BadriNarainSethi had expired. P.W. 2 Gapu Chand is the adopted son of attesting witness DiwanShyamLal. P.W. 3 ManmohanLal is the son of attesting witness Devi Narain. P.W. 4 GirdhariLal is the son of attesting witness DiwanBhanwarLal. P.W. 6 Hanuman Prasad is the son of attesting witness Ganga Pratap. All of them have identified the signatures of their respective fathers on this Will Ex. 1. Now comes P.W. 7 SriBadriNarain, who is said to be one of the nine attesting witnesses. In examination-in-chief, he stated in accordance with the provisions of Section 63 (c) of the Act 1925 that he put his signatures 'P to Q' on Ex. 1 in presence of SriKheriLal and under his instructions and SriKheriLal put his thumb impression marked 'A' in his presence and at that time KheriLal was mentally fit. But in cross-examination, he pleaded ignorance about each and every question put to him. He pleaded ignorance as to when SriKheriLal died after execution of this document. He pleaded ignorance that prior to his death SriKheriLal

was ill since long. Although he was ill but he does not know about the nature of ailment. He also pleaded ignorance about the draft of this Will, as to the scribe of this Will and regarding the presence of other witnesses also. He stated that he does not know as to whether KheriLal was not even able to speak for last ten days prior to his death and he did not have any talk with KheriLal at the time of execution of Will. He also does not remember as to who were other witnesses who signed this document in his presence and he also does not remember as to whether the wife, daughter and son-in-law of SriKheriLal were present or not at that time. He also does not remember the time and the contents of this Will and the fact that whether this Will was read over or not, although he admitted his relationship with the plaintiff. Learned counsel for the plaintiff-appellant contended that this Will is dated 2nd May, 1946 while P.W. 7 BadriNarain was examined during trial on 21-1-1980 and thus after a lapse of such long period it is natural to forget such facts. But keeping in view the surrounding circumstances of the execution of this Will, the statement of only one alive attesting witness assumes much significance. As stated here-in-above he remembered these facts that he put his signatures upon the instructions of KheriLal and in his presence and SriKheriLal put his thumb impressions in his presence but he pleaded ignorance about each and every question put to him in cross-examination and, therefore, his testimony cannot be relied upon simply on the ground that his statement was recorded after a period of about 34 years. A perusal of the other evidence goes to show that SriKheriLal was not physically and mentally fit to execute the said Will. There is one important contradiction also with regard to place of execution of this Will as according to the plaintiff, this Will was executed on third floor of Haveli No. 285 in a room facing east while according to P.W. 7 BadriNarain the said Will was executed in one room on the first floor. This contradiction assumes significance in view of the entire evidence and suspicious circumstances surrounding the execution of this Will, although in Shashi Kumar's case, AIR 1964 SC 529 (supra) it was held that where the evidence of both the attesting witnesses to the Will is that the Will was executed in the after-noon on the date on which it purported to have been executed, a slight discrepancy in the evidence of these witnesses as to the time when the Will was executed is not so serious as to destroy the value of their evidence. Thus even the execution of this Will is not proved as provided under Section 63 (c) of the Act 1925 in this case.

19. The defendant Smt. Ginni Devi stated that her father KheriLal was ill for about five to six months prior to his death as blood was oozing from his mouth and nose during that period and he was under the treatment of one Dr. Syed. It was also stated

by her that her father remained unconscious for about ten days prior to his death and during those ten days neither he was able to speak nor able to recognise any person. D.W. 2 SriRameshwar Prasad, D.W. 3 Sri Shiv Shankar Sharma, D.W. 4 SriKanhaiyalal and D.W. 5 SriAnandSwaroop all have corroborated the above statement of the defendant Smt. Ginni Devi and further stated that Smt. Ginni Devi, her mother and wife of younger brother of late KheriLal used to look after SriKheriLal. All these witnesses have been cross-examined in detail but nothing adverse has come out and thus in view of such evidence it appears that SriKheriLal was not in sound and disposing state of mind and thus the said Will was not found rightly to be true and genuine. Even the plaintiff SriVallabh in cross-examination stated that SriKheriLal was confined to bed for 10 to 15 days prior to his death as he was suffering from Bronchitis and was under treatment of Dr. SwaroopNarainMathur. The burden to prove this issue was upon the plaintiff and thus it was his duty to prove that KheriLal was physically and mentally fit to execute this Will but he failed to examine any doctor to prove this fact. As stated here-in-above P.W. 7 SriBadriNarain though admitted that KheriLal was ill but pleaded ignorance about the period of his illness and also the fact as to whether SriKheriLal was unable to speak for about ten days before his death although he admitted this fact that he had no talk with SriKheriLal at that time. Thus the trial Court rightly observed that it was not proved that SriKheriLal was in sound and disposing state of mind at the relevant time of execution of this Will.

20. Now, the submissions made by learned counsel for the appellant about eleven suspicious circumstances dealt with by the learned trial Judge are to be discussed. The first circumstance is that this Will is neither on stamp paper nor registered one and why the signatures of the defendant as well as her mother and aunt were not obtained as they were present according to the statement of the plaintiff himself. In Ishwardeo's case, AIR 1954 SC 280 (supra), the Hon'bleSC held that as there was nothing in law which requires the registration of a Will and Wills are in a majority of cases not registered at all and no inference against the genuineness of the Will on the ground of its non-registration can be drawn. Therefore, the fact that the Will is unregistered, may not be a suspicious circumstance but the presence of the wife of SriKheriLal, his brother's wife as well as the presence of the defendant had been admitted by the plaintiff himself in his statement but he has given no explanation as to why signatures of none of them were not obtained on Ex. 1. Thus, it is certainly a suspicious circumstance with regard to execution of the said Will.

21. As far as circumstances No. 2 to 10 are concerned, they cannot be really termed as suspicious circumstance as submitted by learned counsel for the appellant as a perusal of the earlier litigation between the parties as well as between the tenants on the one hand and Smt. Pura Devi, Smt. Chota Devi and the present defendant on the other hand, goes to show that parties were aware about the Will in favor of the plaintiff and thus it was not correct to say that the plaintiff never disclosed this Will prior to filing the present suit. Ex. A. 5 is certified copy of the order passed by Assistant Revenue Officer, City Survey. This order is dated 28-12-1949 and it shows a dispute between the present plaintiff and Smt. Pura Devi. A perusal of this order goes to show that the present plaintiff relied upon a Will said to be executed by SriKheriLal in his favor but according to this decision the entire property was found in possession of Smt. Pura Devi and her tenants and the plaintiff was having no possession over any portion of the said properties. Ex. 6 is the certified copy of the application filed by Smt. Pura Devi on 19-8-1950 in the Department of City Survey, wherein she stated that no Will was executed in favor of SriVallabh the present plaintiff. Ex. A. 4 is certified copy of the order passed by Assistant Revenue Officer of City Survey. This order is dated 21-11-1950. A perusal of this order also goes to show that the plaintiff relied upon this Will in his favor said to be executed by SriKheriLal and the plaintiff was directed to approach the Civil Court. Thus it was factually not correct to observe by the learned trial Judge that the plaintiff never disclosed this Will prior to filing of the suit. The other circumstances that a suit was filed by one Sri Mohammad Bux against the plaintiff as well as the defendant against the demolition of one toilet and the present plaintiff did not file any written statement; that in eviction suit filed by the present defendant against the tenants the applications filed by the present plaintiff to be impleaded as a party were dismissed; that in such applications the present plaintiff did not disclose names of two attesting witnesses Ladu Ram and Ram Kishore are not the circumstances which may be said to be suspicious surrounding the execution of this Will. Likewise denial of execution of the Will by Smt. Chota Devi vide her two affidavits Exs. 11 and 12 and two blank lines in the end of the said Will are also not suspicious circumstances surrounding the execution of the said Will and further there was no material available on the record to arrive at a conclusion as suspicious circumstance No. 10 that the ink used in Ex. 1 appears to be only ten years' old. But the circumstance No. 11 is certainly a suspicious circumstance which has been upheld by this Court that the plaintiff-appellant has failed to prove any pedigree or his relationship with late SriKheriLal. I have gone through the other Judgments also relied upon by learned counsel for the appellant. In Ramabai's case, AIR 2003 SC 3109

(supra) the Hon'ble Apex Court held that if the propounder succeeds in removing the suspicious circumstances the Court would grant probate, even if the Will might be unnatural and might cut off wholly or in part near relations. But in the instant case the facts are quite distinguishable as the very reasons for executing this Will in favor of the plaintiff have not been proved. This is really a very strong suspicious circumstance as to why this Will was executed in favor of the plaintiff who was not related to the testator and that too excluding the testator's wife, his brother's wife and his own daughter. A very small portion in Haveli No. 285 was given to the defendant while entire remaining portion of the said Haveli as well as the entire Haveli No. 283 were bequeathed in favor of the plaintiff and only a provision for life maintenance was made for the testator's wife and his brother's wife. The Hon'ble Apex Court in Madhukar D. Shende's case, AIR 2002 SC 637 (supra) held that the conscience of the Court has to be satisfied by the propounder of the Will adducing evidence so as to dispel any suspicious or unnatural circumstances attaching to a Will provided that there is something unnatural or suspicious about the Will. In the instant case the plaintiff-appellant has failed to satisfy the conscience of the Court. Similar view was taken in the cases of Gopinath Sunder Lal, AIR 1953 Nagpur 316, and Rajlakshmi Dassi, AIR 1972 Calcutta 210 (both supra). In Ram Chandra's case, AIR 1965 SC 354 (supra), the Hon'ble Apex Court held that such Will is unnatural when the testator left properties worth several lakhs, and gave his wife only Rs. 40/- per month as her maintenance, and made only paltry bequests to his daughters. In Moti Lal's case, 1971 UJ SC 206 (supra), it was held by Hon'ble Apex Court that the Will was not registered; and not on a stamped paper, it is also a suspicious circumstance in the facts and circumstances of the case. In *Bhagwan Kaur v. Kartar Kaur*,<sup>15</sup> in *Guro (Smt.) v. Atma Singh*,<sup>16</sup> in *Gurdial Kaur*,<sup>17</sup> and in H. Venkatachala's cases, AIR 1959 SC 443 (supra) the Hon'ble Apex Court held that burden is on propounder to remove the suspicion surrounding the execution of the Will.

22. There is yet another important suspicious circumstance surrounding the execution of this Will. In Para Nos. 3 and 4 of the plaint, while giving the details of the properties two site plans of Haveli Nos. 285 and 283 have been attached with the plaint marking numbers of the various rooms etc. In Para 4 of the written statement it was pleaded that room marked '6-A' in the map was not in existence in the year 1946. Similarly W.C. bathrooms, Room Nos. 8, 8-A and some other constructions specified in Para 4 of the written statement were not in existence in the year 1946 and the same were constructed by Smt. Pura Devi prior to filing the written statement in January 1979, and thus the Will appears to be forged one. When the plaintiff was cross-

examined with regard to these facts, he admitted that room No. 6-A as shown in Map Ex. 2 was got constructed by Smt. Pura Devi in the year 1968-69. He also admitted that W.C., Bath Rooms and some other constructions as pleaded in Para 4 of the written statement were not constructed by Smt. Pura Devi and they were not in existence at the time of execution of the said Will and thus the said Will Ex. 1 has not been proved to be a true and genuine document. In view of the entire discussion made here-in-above, this point was rightly decided by the trial Court against the plaintiff-appellant.

## SECOND POINT

23. Before advertng to the rival submissions, it would be appropriate to reproduce the provisions of Section 14 of the Hindu Succession Act, 1956 (in short the Act 1956) which are as under :-

14. Property of a female Hindu to be her absolute property.

1. Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation : In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a Will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, Will or other instrument or the decree, order of award prescribe a restricted estate in such property."

24. These facts are not in dispute that Kherilal died on 5th May, 1946, leaving behind his wife Smt. Pura Devi, Younger brother's wife Smt. Chotu Devi and daughter Smt. Ginni Devi. According to the Will Ex. 1 the plaintiff- appellant was to be the owner of the bequeathed properties with a rider that both Pura Devi and Chotu Devi would have right of residence in the said properties and the propounder i.e. the plaintiff would pay

appropriate amount for their maintenance and in case the plaintiff fails to do so both of them would have a right to recover the rent from the tenants for their maintenance till they are alive but they would have no right to alienate the said properties.

25. Learned counsel for the appellants contended that to attract the provisions of Section 14 (1) of the Act 1956, it should be proved that female Hindu should be limited owner of the properties and she should be in possession of the same, otherwise she would not be the absolute owner of the property. According to learned counsel for the appellant since Smt. Pura Devi was given only life interest and that too for her residence and maintenance, she was never the limited owner of the properties and thus Section 14 (1) of the Act 1956 is not applicable in the present case. He placed reliance upon *Raghubar Singh v. Gulab Singh*,<sup>18</sup> *Kalawatibai v. Soiryabai*,<sup>19</sup> and *Eramma v. Veerupana*,<sup>20</sup> Learned counsel for the respondent contended that Smt. Pura Devi was having not only a right of residence but also a right of maintenance and thus being the limited owner, she became the absolute owner of the said properties in accordance with Section 14 (1) of the Act 1956. He placed reliance upon *BhairavLal v. Ram Gopal*,<sup>21</sup> *Badri Prasad v. Smt. Kanso Devi*,<sup>22</sup> *Mst. Gaumati v. ShankerLal*,<sup>23</sup> *Ram Sarup v. Smt. Toti*,<sup>24</sup> *VaddeboyinaTulasamma v. VaddeboyinaSeshaReddi*,<sup>25</sup> *Smt. GulwantKaur v. Mohinder Singh*,<sup>26</sup> *Ram Kali (Smt.) v. ChoudhariAjit Shankar*,<sup>27</sup> *ThotaSesharathamma v. ThotaManlkyamma, dead by L.Rs.*<sup>28</sup> *Raghubar Singh v. Gulab Singh*,<sup>29</sup> *Smt. PulchuriHenumayamma v. TadikamallaKotlingam*,<sup>30</sup> *BhoomireddyChenna Reddy v. BhoospalliPeddaVerrappa*,<sup>31</sup>

26. I have considered the above submissions in the light of the judgments relied upon. Learned counsel for both the parties relied upon the judgment of Hon'bleSC delivered in *Raghubar Singh's* case, AIR 1998 SC 2401 (supra) wherein it was held as under :-

"The husband of the widow had executed a Will in favor of their grand child. The terms of the Will provided that "till myself (testator) along with my wife (widow) are alive we shall have full control over all our property movable and immovable". It is, thus, clear that testator and his widow were to retain all their rights and control over the property as owners thereof till their death and all those rights which they had over the suit property, were to later on devolve upon the legatee after their death. The legatee was to acquire only such "rights" and "control" over the suit property, which the testator and his wife themselves had in respect of the suit property during their lifetime. The Will unmistakably shows that the rights which the widow was declared to possess during her lifetime were the same as those of the testator himself and that she was to

remain in "full control over all the property movable and immovable" during her lifetime as an owner of the property. After the death of her husband, she continued to remain in possession of the suit property as its owner and she had full right and control over the same. In the compromise decree passed in the suit challenging validity of the Will, the ownership rights of the widow were recognized. The terms of the Will and the compromise decree thus unmistakably show that the widow had the "ownership and possession of the suit property" till her death and it ripened into full ownership by virtue of Section 14 (1) of the Act. The 'Will' as already noticed declared and the compromise Decree recognized the right of the widow as an 'owner in possession' of the suit property with all the "rights and control" over it. The compromise decree did not create any independent or new title in her favor for the first time. Sub-section (2) of Section 14, thus has no application to her case.

27. According to the learned counsel for the appellant in the instant case the widow was not given full control over bequeathed properties and only a right of residence and maintenance, hence, she did not acquire any limited right of ownership. But this submission cannot be accepted in view of the observations made in Para 14 of this judgment placing reliance upon V. Tulasamma's case, AIR 1977 SC 1944 (supra), wherein it was held that right to maintenance is undoubtedly a pre-existing right which existed in the Hindu Law before the passing of the Act of 1937 or the Act of 1956 and is, therefore, a pre-existing right. In Para 14 of this judgment it was held as under :-

"14. According to the old Shastric Hindu Law, marriage between two Hindus is a sacrament - a religious ceremony which results in a sacred and a wholly union of man and wife by virtue of which the wife become a part and parcel of the body of the husband. She is, therefore, called Ardhangani. It is on account of this status of a Hindu wife, under the Shastric Hindu Law, that a husband was held to be under a personal obligation to maintain his wife and when he dies, possessed of properties, then his widow was entitled, as of right, to be maintained out of those properties."

28. It was clearly held in Paras 27 and 29 of this judgment that even if it be assumed that the "right" which Smt. JanakDulari had under the Will, was to remain in possession of the property during her lifetime only and enjoy the property as well as its usufruct only during her lifetime, her limited estate ripened into full ownership by virtue of the coming into force of the Hindu Succession Act. Admittedly, she had continued to remain in possession of the property till her death in 1969, long after the

coming into force of the Act in 1956 and thus she became the absolute owner by virtue of sub-section (1) of Section 14 of the Act 1956. While taking similar view in Kalawati Bai's case, AIR 1991 SC 1581 (supra) the Hon'ble Apex Court held that a female became absolute owner not only in respect of inherited property but even of property received by way of gift or on partition or in lieu of maintenance etc. provided she was a limited owner. The Hon'ble Apex Court in Eramma's case, AIR 1966 SC 1879 (supra) held that the property possessed by a female Hindu, as contemplated by Section 14(1) of the Act 1956 is clearly property to which she has acquired some kind of title whether before or after the commencement of the Act. Thus a careful reading of the contents of the will clearly goes to show that Smt. Pura Devi was having a right to remain in possession and maintenance during her lifetime and thus she had acquired limited right of ownership which ripened into full ownership by virtue of Section 14 (1) of the Act 1956. The law laid down in the various judgments relied upon by learned counsel for the respondent is the same that a female Hindu having acquired limited right of ownership would be absolute owner by virtue of Section 14 (1) of the Act 1956. Thus, Pura Devi, wife of late Sri Kheri Lal became the absolute owner of the said properties by virtue of Section 14 (1) of the Act and after her death the defendant being the only legal heir became the absolute owner of the disputed properties. Thus this point was also rightly decided by the learned trial Judge in favor of the defendant-respondent.

### THIRD POINT

29. The learned trial Judge placing reliance upon *Ali Husain Khan v. Mt. Bandi Bibi*,<sup>32</sup> and *Abid Ali Khan v. Secy. of State*,<sup>33</sup> held that the plaintiff's suit for declaration of title since not filed within a period of 12 years from the date of the hostile possession of the defendant is out of limitation. Learned counsel for the appellant contended that no prayer for any declaration was made rather only prayer was for delivery of the possession and mesne profits and thus the decision of the trial Court on this point is not correct. According to the learned counsel for the appellant his case is based on the basis of the Will and since Smt. Pura Devi and Smt. Chota Devi were given right of residence and maintenance till they are alive and Smt. Chota Devi died in the year 1974, hence prior to their death no right accrued to the plaintiff-appellant for approaching the civil Court for getting possession of the bequeathed properties. According to learned counsel for the appellant Article 113 of the Limitation Act, 1963 would apply and the suit was filed within a period of three years from the date right to sue accrued to the plaintiff and that right accrued on 10-11- 1974 when Smt. Chota

Devi died. Learned counsel for the respondent supported the decision of the trial Court on this issue and contended that Article 65 of the Limitation Act would apply in this case.

30. I have considered the rival submissions and am of the view that the decision of the trial Court on this issue cannot be upheld. Both the decisions in Ali Hussain Khan, AIR 1916 Oudh 328 and Abid Ali Khan's case, AIR 1951 Nagpur 327 (supra) are not applicable in the instant case as the plaintiff- appellant did not make any prayer in the instant case for a declaration of his title over the suit properties rather he prayed only for delivery of the possession of the same on the basis of Will Ex. 1. Learned counsel for the appellant is right to say that right to sue accrued to him on 10-11-1974 when Smt. Chota Devi expired and thus Article 113 and not the Article 65 of the Limitation Act, 1963 would be applicable to the facts of the instant case. Thus, it is held that the present suit was filed within limitation. But in view of the decision on Point Nos. 1 and 2, this appeal is liable to be dismissed. Consequently, this appeal is dismissed with costs.

Appeal dismissed.

Cases Referred.

1. AIR 1953 Nag 316
2. AIR 1954 SC 280
3. AIR 1964 SC 529
4. AIR 1972 Cal 210
5. (2002) 2 SCC 85: AIR 2002 SC 637
6. (2003) 8 SCC 537: AIR 2003 SC 3109
7. 1954 Raj LW 668
8. AIR 1965 SC 354
9. 1971 UJ 206
10. (1994) 5 SCC 135
11. (1992) 2 SCC 507
12. AIR 1998 SC 2861
13. AIR 1959 SC 443
14. 1959 Raj LW 387
15. 1994 (5) SCC 135
16. 1992 (2) SCC 507
17. AIR 1998 SC 2861
18. AIR 1998 SC 2401

19. (1991) 3 SCC 410: AIR 1991 SC 1581
20. AIR 1966 SC 1879
21. 1959 Raj LW 94
22. AIR 1970 SC 1963
23. 1973 WLN 40: AIR 1974 Rajasthan 147
24. AIR 1973 Punjab and Haryana 329
25. AIR 1977 SC 1944
26. AIR 1987 SC 2251
27. (1997) 9 SCC 613
28. (1991) 2 UJ 685
29. (1998) 2 UJ (SC) 412: AIR 1998 SC 2401
30. AIR 2001 SC 3062
31. (1997) 10 SCC 673: AIR 1997 SC 2311
32. AIR 1916 Oudh 328
33. AIR 1951 Nag 327