

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

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**Date of decision: 18<sup>th</sup> July, 2014**

+ **CS(OS) 1771/2012, IAs No.11180/2012 (u/O 39 R-1&2 CPC), 17219/2012 ( of the defendant no.2 u/O 39 R-4 r/w 151 CPC) & 17220/2012 (of the defendant no.2 u/S 151 CPC)**

**MAHIMA AND ORS**

**..... Plaintiffs**

Through: Ms. Maninder Acharya, Sr. Adv. with  
Mr. S.N. Khanna, Adv.

Versus

**DDA & ANR**

**..... Defendants**

Through: Ms. Alpana Pandey, Adv. for D-1.  
Mr. D.K. Sharma, Adv. for D-2.

**CORAM :-**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

1. The three plaintiffs have instituted this suit for the reliefs of,  
(i) declaration that they are the absolute owners of MIG Flat No. AD-21-C Pitam Pura, New Delhi under the Family Settlement dated 29<sup>th</sup> November, 2006 executed by the plaintiff no.1 and the defendant no.2 Shri Anil Arora;  
(ii) mandatory injunction directing the defendant no.1 DDA to mutate the said flat from the name of the defendant no.2 Sh. Anil Arora to the name of the plaintiffs; (iii) mandatory injunction directing the defendant no.2 to handover to the plaintiffs all the requisite documents pertaining to the said flat; and, (iv)

permanent injunction restraining the defendant no.2 from creating any third party interest in the said flat, pleading:-

- (a) that the plaintiff no.1 was married to the defendant no.2 on 22<sup>nd</sup> January, 1987 and out of the said wedlock the plaintiffs no.2&3 Udit Arora and Pulkita Arora were born;
- (b) that the plaintiff no.1 and the defendant no.2 were involved in numerous litigations and after a long standing litigation in various courts of law, the plaintiff no.1 and the defendant no.2 agreed to settle all their disputes amicably out of Court and accordingly the Family Settlement dated 29<sup>th</sup> November, 2006 supra was executed between plaintiff no.1 acting for herself and on behalf of the minor plaintiff no.3, plaintiff no.2 and defendant no.2;
- (c) that the primary reason for execution of the said Family Settlement was to take care of the pre-existing right of maintenance and upbringing, residence, marriage expenses of the plaintiffs who were in possession of the said flat since much prior to the execution of the Family Settlement;

- (d) that after the execution of the said Family Settlement, the plaintiff no.1 as per the terms thereof consented for a decree of divorce by mutual consent and the marriage of the plaintiff no.1 and the defendant no.2 was dissolved by a decree of dissolution of marriage by mutual consent dated 19<sup>th</sup> December, 2006;
- (e) that the said flat had been originally allotted by the defendant no.1 DDA to one Shri Om Parkash and had changed hands from time to time and at the time of the execution of the Family Settlement the defendant no.2 was the owner thereof on the basis of registered GPA and Will dated 26<sup>th</sup> September, 1995;
- (f) that under the aforesaid Family Settlement, the defendant no.2 gave the plaintiffs lifetime interest of residence in the aforesaid flat owned by him; the said lifetime interest of residence was in lieu of all existing present and future rights of the plaintiffs as to their residence, maintenance and marriage expenses;
- (g) that as per the mandate and force of Section 14(1) of the Hindu Succession Act, 1956, the plaintiffs have become the sole and absolute owners of the said flat;

- (h) that the defendant no.2 had in the year remarried and his second wife was claiming that the defendant no.2 had executed a Will of the said flat in her favour;
- (i) that the plaintiffs on 26<sup>th</sup> April, 2011 approached the defendant no.1 DDA for converting the leasehold rights in the said flat into freehold in favour of the plaintiffs and also deposited a bank draft for Rs.59,200/- towards conversion charges; and,
- (j) however the defendant no.1 DDA had refused such conversion owing to non-submission by the plaintiffs of complete chain of GPAs and Agreement to Sell.

2. Summons of the suit and notice of the application for interim relief were issued to the defendants and vide *ex parte ad interim* order dated 1<sup>st</sup> June, 2012 the defendant no.2 was restrained from transferring, encumbering or selling the said flat or any part thereof and/or from making any additions, alterations thereto.

3. The defendant no.1 DDA has contested the suit by filing a written statement *inter alia* on the ground that since the plaintiffs had not submitted the complete documents and not deposited the conversion fee and also not

submitted the complete chain of GPAs and Agreement to Sell, hence the conversion case was still pending for want of compliance on behalf of the plaintiffs.

4. The defendant no.2 has also contested the suit by filing a written statement *inter alia* on the grounds:-

- (a) that the suit had been filed to curtail the probable rights of his newly born child from the second marriage;
- (b) that the Family Settlement does not give any ownership rights in the flat to the plaintiffs;
- (c) that the claim of the plaintiffs before the defendant no.1 DDA for conversion of the leasehold rights in the flat into freehold in the name of the plaintiffs had been rightly rejected;
- (d) that the plaintiffs want to grab the property;
- (e) denying that the plaintiffs were in possession of the said flat prior to the execution of the Family Settlement and pleading that it was the defendant no.2 who was in possession of the said flat as owner

thereof and the plaintiffs were residing with him as wife and children;

- (f) that as per the terms of the Family Settlement the rights of the plaintiffs in the said flat are restricted;
- (g) that the plaintiff no.1 is employed with the Income Tax Department and earning a handsome salary;
- (h) the question of applicability of Section 14(1) of the Hindu Succession Act did not arise as the defendant no.2 who is the owner of the flat is still alive; and,
- (i) that the plaintiffs have no rights to the said flat except in terms of the Family Settlement.

5. Though replications have been filed by the plaintiffs but need is not felt to refer thereto.

6. The suit was listed on 20<sup>th</sup> March, 2014 for framing of issues and for hearing on the application for interim relief when attention of the counsel for the plaintiffs was invited to Section 14 (2) of the Hindu Succession Act and it was enquired whether not the plaintiffs, having come into use and occupation

of the said flat on the terms contained in the Memorandum of Family Settlement dated 29<sup>th</sup> November, 2006, were disentitled from asserting any other rights in the said flat and whether not the plaintiffs could at best restrain the defendant no.2 from acting in contravention thereof.

7. The counsel for the defendant no.2 on 20<sup>th</sup> March, 2014 stated that the defendant no.2 is willing to abide by the said Memorandum of Family Settlement and shall not sell / transfer / encumber the said flat till either of the three plaintiffs have a right of residence therein and shall not disturb the possession, use and enjoyment of the plaintiffs of the said flat and shall not do any other thing prejudicial to the rights of the plaintiffs under the said Memorandum of Family Settlement.

8. On request of the counsels opportunity of hearing was granted. The counsels were thereafter heard on 26<sup>th</sup> March, 2014 and 2<sup>nd</sup> April, 2014.

9. Section 14 of the Hindu Succession Act on which the claim of the plaintiffs is premised is 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 in 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 or award prescribe a restricted estate in such property."*

10. While it is the case of the plaintiffs that they have become the full owners of the said flat under Sub-Section (1) supra, it is the case of the defendant no.2 that the rights of the plaintiffs in the said flat are under the Memorandum of Family Settlement and thus under Sub-Section (2) supra remain unaffected by the provisions of Sub-Section (1).

11. For proper appreciation of the aforesaid aspect, it is appropriate to reproduce in entirety herein below the Memorandum of Family Settlement:-

## “MEMORANDUM OF FAMILY SETTLEMENT

*This Memorandum of Settlement is executed on 29<sup>th</sup> day of November, 2006 amongst:*

- i) Anil Arora S/o Sh. H.L. Arora,  
R/o AD-29-A, Pitampura, Delhi -110088  
(Party of the First Part)*
- ii) Smt. Mahima Arora W/o Sh. Anil Arora  
(Party of the Second Part)*
- iii) Ms. Udita Arora D/o Sh. Anil Arora  
(Party of the Third Part)*
- iv) Pulkita Arora D/o Sh. Anil Arora (Minor)  
through her mother Mahima Arora and natural guardian  
(Party of the Fourth Part)*

*(Party No.(ii) to (iv) resident of AD-21-C, Pitampura, Delhi-110088.*

*The expression First Party, Second Party, Third Party and Fourth Party unless context means otherwise, shall mean and include their heirs, representatives, successors, assigns etc.*

*WHEREAS the litigation between Party of the First Part and Party of the Second Part are going on in different Courts and now they have decided to settle the disputes between them and to take the divorce by mutual consent between Mahima Arora and Anil Arora.*

*AND WHEREAS the First Party and the Second Party were married to each other according to Hindu Rites and Ceremonies on 22.01.1987 in Delhi.*

*AND WHEREAS Ms. Udita Arora and Ms. Pulkita Arora were born from the said wedlock and Pulkita Arora is minor.*

*AND WHEREAS the differences arose between the parties and following litigations were pending between First Party and Second Party.*

1. *Divorce Petition pending before Ms. Anju Bajaj Chandna, ADJ, Delhi.*
2. *Case Under Section 406/498 IPC pending in the Court of M.M. Shalimar Bagh, Delhi.*
3. *Revision Petition pending in the Court of Sh. Yogesh Khanna, ADJ, Delhi.*
4. *Petition for Permanent Injunction pending in the Court of Sh. D.K. Sharma, CJ, Delhi.*

*AND WHEREAS the parties desire to settle the matter and to end the differences and continue with their lives peacefully and without any interference from other party.*

*AND WHEREAS in order to arrive at just and reasonable settlement it was necessary to make arrangement for the residence and maintenance of and Third & Fourth Party.*

*AND WHEREAS the First, Second and Third Party (Second Party for self and for Fourth Party) have reached a settlement / arrangement to settle all their disputes and differences on 28.11.2006.*

*AND WHEREAS it was found necessary and expedient to record the terms of settlement to avoid any further or future disputes.*

***NOW THIS MEMORANDUM OF FAMILY  
SETTLEMENT WITNESSESTH AS UNDER***

1. *That the First Party is the absolute owner of the second Floor bearing No.AD-21-C, Pitampura, Delhi-110088 and also the Third Floor, built-up on the roof of the Second Floor. The Party of the First Part allows exclusively the Party of the Second Part by creating life interest of residence and further the Third & Fourth Party to live in the property at Second Floor only till their marriages and use the same for their residential purpose only subject to further following restrictions.*

a) *That the Third & Fourth Party shall cease to have any right of residence in the said property after their marriage and*

*they will not claim any interest, right and title in the property whatsoever.*

- b) That the Second Party also shall cease to have any right of residence in the entire portion of the property, if she remarries or resides at any other place.*
  - c) That the Party of the Second Part can let out for residence purpose only the Third Floor to any tenant in accordance with law & rules of any authority, user of the rental income shall be restricted to Rs.3000/- by herself for the welfare Third & Fourth Party and over the above Rs.3000/- shall be deposited in a Bank Account in the name of the Third Party and Fourth Party and shall be used for their marriage. The copy of the Rent / Lease Agreements containing occupation, place of working and the permanent address of every tenant will be supplied to the Party of the First Part. The Party of the Second Part is not entitled to let out the Second Floor to anyone at any point of time whatever the reason may be and will use the Second Floor as a residence for herself and daughters namely Udita and Pulkita only. After the marriage of Udita and Pulkita the rent of the Third Floor will be recovered from the tenant by the First Party without any interruption from the side of Second Party, Third & Fourth Party.*
  - d) That the Party of the First Part will be having the visiting rights to the Third & Fourth Party once in a month.*
  - e) That the Party of the Second Part will maintain and keep the Second & Third Floor in accordance with DDA & MCD Rules & Regulations. They will also pay the House Tax and Charges of all amenities i.e. water and electricity and keep the Second and Third Floor in intact and habitable condition.*
- 2. That the Party of the First Part has assured the other parties that the Property is free from all encumbrances and he will not create any Third Party interest and will not mortgage the property to anyone. Subject to Clause 1 (c) the Second Party will*

*not hand over any part of the Flat (Second and Third Floor) to anyone under any circumstances illegally.*

*3. That all the claims in respect of any nature whatsoever of the parties inter se themselves i.e. First Party, Second Party (for self and on behalf of Fourth Party) and Third Party stand settled and none of the parties shall claim whatsoever anything in future from the other party and Second Party shall execute documents in future, if required, for the any other purpose whatsoever the First and Second Party had signed jointly.*

*4. That the Party of the First Part and Second Part have agreed to get their marriage dissolved by mutual consent and signed all the divorce papers / proceedings (First & Second Motion) also record their statements in the Court.*

*5. That the Second Party will co-operate to the First Party to sign the papers i.e. for closing the Joint Accounts, Lockers etc.*

*6. That the First Party and Second Party undertake to withdraw or cause to withdraw all their cases civil / criminal / complaints against each other pending in different courts and the Second Party will co-operate to appear before the Hon'ble High Court for quashing of the FIR. The cases will be withdrawn after Second Motion will be recorded.*

*7. That the children shall remain in the custody of the Second Party.*

*8. That no party shall claim any right in future over any properties of each other even received by inheritance.*

*9. That present settlement is in lieu of all the existing present and future rights of the Second, Third and Fourth Party as to their residence, maintenance and marriage expenses etc. The Second, Third and Fourth Party are already in the possession of the property No.AD-21-C, Pitampura, Delhi-110 088.*

*10. That the settlement has been arrived without any coercion, pressure or threat.*

*11. That the Second Party has no interest adverse to any interest of Fourth Party.*

*IN WITNESS WHEREOF the First, Second (for herself and on behalf of the Fourth Party) & Third Party have put their hands unto this Memorandum of Understanding in the presence of the Witnesses on this day, month and year as mentioned hereinabove:-*

**WITNESSES:**

- |         |   |
|---------|---|
| 1. Sd/- | 1. <i>Sd/-</i><br><i>PARTY OF THE FIRST PART</i>  |
| 2. Sd/- | 2. <i>Sd/-</i><br><i>PARTY OF THE SECOND PART</i><br><i>(FOR HERSELF &amp; ON BEHALF</i><br><i>OF THE FOURTH PARTY)</i> |
|         | 3. <i>Sd/-</i><br><i>PARTY OF THE THIRD PART”</i>   |

12. The plaintiffs have also filed before this Court a copy of the judgment dated 19<sup>th</sup> December, 2006 of the Court of the Additional District Judge passing a decree of dissolution of marriage of the plaintiff no.1 with the defendant no.2 by way of mutual consent under Section 13B(2) of the Hindu Marriage Act, 1955 and which *inter alia* records “Parties have mutually and amicably settled all the issues on the terms and conditions set out in the petition. Both the parties have undertaken to abide by the terms and conditions of settlement so incorporated in the Memorandum of Family Settlement dated 29.11.06 which is Exhibit C-1.....The parties undertake and

assure each other that they would not file any claim, petition, complaint and / or any other proceedings against each other in any courts of law.”

13. The counsel for the plaintiffs during the hearing informed that at the time of execution of the deed aforesaid of Family Settlement, a petition filed by the plaintiffs no.1&2 under Sections 24 & 26 of the Hindu Marriage Act for maintenance was also pending consideration.

14. It is also not in dispute that the aforesaid Memorandum of Family Settlement was acted upon as recorded therein.

15. The senior counsel for the plaintiffs, to support the plea of the plaintiffs, of the plaintiffs under Section 14(1) of the Hindu Succession Act having become the owners of the flat, has placed reliance on (a) *Gadam Reddayya Vs. Varapula Venkataraju* AIR 1965 AP 66 (DB); (b) *Seth Badri Prasad Vs. Srimati Kanso Devi* 1969 (2) SCC 586; (c) *V. Tulasamma Vs. Sessa Reddy* (1977) 3 SCC 99; (d) *Gulwant Kaur Vs. Mohinder Singh* (1987) 3 SCC 674; (e) *Mangat Mal Vs. Punni Devi* (1995) 6 SCC 88; (f) *Jose Vs. Ramakrishnan Nair* AIR 2004 Kerala 16; and, (g) *M. Jana Bai Vs. M. Govardhanagiri Naidu @ M.G. Giri* AIR 2007 Karnataka 140.

16. Per contra, the counsel for the defendant no.2 in support of applicability of Section 14(2) of the Hindu Succession Act has referred to ***Rao Raja Tej Singh Vs. Hastimal*** AIR 1972 Rajasthan 191 and ***Kothi Satyanarayana Vs. Galla Sithayya*** (1986) 4 SCC 760.

17. The senior counsel for the plaintiffs has further contended that:-

- A. that the aforesaid flat is possessed by the three plaintiffs who are female *Hindus* ;
- B. that the aforesaid flat was acquired by the three plaintiffs under the Memorandum of Family Settlement aforesaid in lieu of their claim for maintenance or arrears of maintenance against the defendant no.2;
- C. that notwithstanding anything to the contrary contained in the Memorandum of Family Settlement, the plaintiffs have under Sub-Section (1) of Section 14 become the full owners of the said flat and are not the limited owners in terms of the Memorandum of Family Settlement;

- D. that the facts of the present case are identical to the facts in *Gadam Reddayya* (supra) and which was approved by the Supreme Court in para 39 of *V. Tulasamma* supra;
- E. Attention is invited to Section 25 of the Hindu Marriage Act and to Section 20 of the Hindu Adoptions and Maintenance Act, 1956 to support the plea that the plaintiff no.1 wife and the plaintiffs no.2&3 children had a right / claim for maintenance against the defendant no.2 and it is contended that the same was a pre-existing right; and,
- F. in response to a Court query it is stated that there is no difference between a right of maintenance and a right of residence.

18. Per contra the counsel for the defendant no.2 argued:-

- I. that the proceedings for maintenance were only by the plaintiffs no.2&3 and not by the plaintiff no.1 who was employed and earning handsomely;

II. that the plaintiff no.1 at the time of execution of the Memorandum of Family Settlement had no right of residence against the defendant no.2;

III. that the defendant no.2 has never admitted any right of any of the plaintiffs for maintenance against the defendant no.2.

19. I have considered the rival contentions.

20. I must admit that the query as posed by me to the counsel for the plaintiffs on 20<sup>th</sup> March, 2014 was on an understanding of Section 14 (supra) to the effect that Sub-Section (1) thereof applies only when the possession of a female Hindu of the property is by operation of law and that Sub-Section (2) thereof applies when the acquisition of property by a female Hindu is under an instrument. It was further my understanding that the possession of the plaintiffs of the subject flat was under the Memorandum of Family Settlement which is an instrument and in terms of which the order of dissolution of marriage of the plaintiff no.1 with the defendant no.2 was passed by the Court of competent jurisdiction and thus Sub-Section (2) would apply.

21. However I find that the Division Bench of the Andhra Pradesh High Court in *Gadam Reddayya* (supra) was concerned with a settlement deed between mother and son, whereunder the mother was given certain land during her lifetime with right to raise the crops and enjoy the fruits but with prohibition of contracting any debts on the security of the said lands and dealing with an argument that such a settlement deed is an instrument as envisaged by Sub-Section (2) of Section 14, held; i) that Sub-Section (2) comes into effect only in cases where a new right is created with certain restrictions and conditions and can have no application to cases of recognition of existing rights; ii) the mother had a right to be maintained by the son out of the estate; iii) it is pursuant to that right that her claim for maintenance was settled vide settlement deed and in lieu whereof she gave up her other claims; iv) that the settlement deed merely recognized the pre-existing right of the mother to maintenance; v) that no new right was conferred under the settlement deed on the mother; vi) the restrictions in the settlement deed merely set out the legal effect on her estate as maintenance holder and was akin to a life estate, with the mother being entitled to enjoy the land in lieu of maintenance and thus held the case to be falling outside

the scope of Sub-Section (2) and being governed by Sub-Section (1) of Section 14.

22. Similarly, the Supreme Court in *Seth Badri Prasad* (supra) was concerned with an arbitration award between the widow and sons of the deceased owner of the properties and made rule of the Court and under which the widow was given widow's estate in some of the properties and dealing with the contention of the widow having acquired the said properties under the arbitration award and the decree of the Court, Sub-Section (1) would be inapplicable, held; i) the critical words in Sub-Section (1) are "possessed" and "acquired"; ii) the word "possessed" has been used in its widest connotation and possession may be either actual or constructive or in any form recognized by law; iii) the word "acquired" in Sub-Section (1) has also to be given the widest possible meaning owing to the language of the Explanation to Sub-Section (1) which makes Sub-Section (1) applicable to acquisition of property by inheritance or devise or at a partition or in lieu of maintenance or arrears of maintenance or by gift etc.; iv) Sub-Section (2) of Section 14 is more in the nature of a proviso or an exception to Sub-Section (1); v) that the object of Section 14 is only to remove the disability on women imposed by law and not to interfere with contracts, grants or decrees

etc. by virtue of which a women's right was restricted; vi) the mere fact that there was a partition by means of arbitration which resulted in an award and a decree based on it did not bring the matter within Sub-Section (2) as the provisions of Sub-Section (1) became fully applicable particularly in view of the express terms of the Explanation.

23. That brings me to *V. Tulasamma* (supra). In that case also, a widow had filed a petition for maintenance against the step brother of her husband and with whom the said husband was in a state of jointness. An *ex parte* decree for maintenance was passed and in execution thereof a compromise was arrived at under which the widow was allotted certain properties but was to enjoy a limited interest therein with no power at all of alienation. It was further provided that on the death of the widow, the properties would revert to the step brother of her husband. The Supreme Court held; i) that a Hindu woman's right to maintenance is a personal obligation so far as the husband is concerned and if the husband has property then the right of the widow to maintenance becomes an equitable charge on his property and any person who succeeds to the property carries with it the legal obligation to maintain the widow; ii) a widow's right to maintenance, though not a right to property, is undoubtedly a pre-existing right in property which can be

enforced by the widow who can get a charge created for her maintenance on the property either by an agreement or by obtaining a decree from the Civil Court; iii) that the provisions of Section 14 must be liberally construed in order to advance the object of the Act which is to enlarge the limited interest possessed by a Hindu widow which was in consonance with the changing temper of the times; iv) it is manifestly clear that Sub-Section (2) of Section 14 does not refer to any transfer which merely recognizes a pre-existing right without creating or conferring a new title on the widow; v) the Hindu Succession Act has made revolutionary and far reaching changes in the Hindu society and every attempt should be made to carry out the spirit of the Act; v) Sub-Section (2) of Section 14 is merely a proviso to Sub-Section (1) and has to be interpreted as a proviso and not in a manner so as to destroy the effect of the main provision; vi) that a widow's claim to maintenance is undoubtedly a tangible right though not an absolute right to property so as to become a fresh source of title; vii) that by virtue of the Hindu Women's Right to Property Act, 1937, the claim of the widow to maintenance has been crystallized into a full fledged right and any property allotted to her in lieu of maintenance becomes property to which she has a limited interest which by virtue of provisions of Section 14 is enlarged into an absolute title;

viii) Section 14(2) applies only to cases where grant is not in lieu of maintenance or in recognition of pre-existing rights but confers a fresh right or title for the first time and while conferring the said title certain restrictions are placed by the grant or transfer. Where however the grant is merely in recognition or in implementation of a pre-existing right to claim maintenance, the case falls beyond the purview of Section 14(2) and comes squarely within the Explanation to Section 14 (1); ix) *Gadam Reddayya* (supra) was noticed and expressly approved; x) a Hindu female's right of maintenance is not an empty formality or an illusory claim being conceded as a matter of grace and generosity, but is a tangible right against property which flows from the spiritual relationship between the husband and the wife and is recognized and enjoined by pure Shastric Hindu Law and has been strongly stressed even by the earlier Hindu jurists starting from Yajnavalkya to Manu.

24. All the aforesaid judgments pertained to cases where the female had come into possession of the property prior to the coming into force on 17<sup>th</sup> June, 1956 of the Hindu Succession Act. I thus enquired from the senior counsel for the plaintiffs, whether the position would be any different if the female came into possession of the property after the coming into force of

the Hindu Succession Act. The senior counsel for the plaintiffs drew attention to *Gulwant Kaur* (supra) where the female came into possession of the property after the coming into force of the Hindu Succession Act, but the same view, as in the aforesaid judgments, was followed and it was observed that the very right to receive maintenance is sufficient title to enable the ripening of possession into full ownership if the female is in possession of the property in lieu of maintenance.

25. *Mangat Mal, Jose & M. Jana Bai* (supra) in all of which also the female had come into possession of the property prior to coming into force the Hindu Succession Act, merely reiterate the aforesaid legal position save that in *Jose* (supra) it was also observed that there is no distinction between the rights claimed by a widow and a daughter in respect of property of a male Hindu and Section 14, by using the expression female Hindu does not draw any distinction between a widow and a daughter.

26. As far as the judgments cited by the counsel for the defendant no.2 are concerned, though in *Rao Raja Tej Singh* (supra), the learned Single Judge of the High Court of Rajasthan undoubtedly held that a person who has only a right of residence in the property cannot be said to have acquired the

property, inspite of such right of residence having been created in lieu of a pre-existing right but the same is contrary to the judgments aforesaid of the Supreme Court. Similarly in *Kothi Satyanarayana* (supra) though the Supreme Court held the settlement deed (of prior to coming into force of the Hindu Succession Act) in favour of the widow of the predeceased son to be an instrument within the meaning of Sub-Section (2) of Section 14 but without any discussion or noticing the earlier judgments supra including of larger benches of the Court and the same does not bind the undersigned.

27. In the present case the Memorandum of Family Settlement (supra) itself provides “in order to arrive at just and reasonable settlement it was necessary to make arrangement for the residence and maintenance of” the plaintiffs no.2&3; that the said Settlement was in lieu of all the existing present and future rights of the plaintiffs “as to their residence, maintenance and marriage expenses etc.” against the defendant no.2, leaving no manner of doubt that the defendant no.2 was putting the plaintiffs in possession of the flat in settlement of the claims and rights of the plaintiffs for maintenance and residence against the defendant no.2. However a distinction was made; while the possession was given to the plaintiffs no.2&3 in settlement of their claims for maintenance as well as residence, plaintiff no.1

was put into possession in lieu of her claim against the defendant no.2 for residence only.

28. I have wondered whether the claim for residence is part of a claim for maintenance which is expressly mentioned in the Explanation of Sub-Section (1) of Section 14. I find the Supreme Court in *Mangat Mal* supra to have held that maintenance, necessarily must encompass a provision for residence and a provision for maintenance may be made by providing, for the course of the lady's life, a residence and where provision is made in this manner, by giving a life interest in property for the purposes of residence, that provision is made in lieu of a pre-existing right to maintenance and the Hindu lady acquires far more than the vestige of title which is deemed sufficient to attract Section 14(1). Reference was also made to Section 3(d) of The Hindu Adoptions and Maintenance Act, 1956 where maintenance is defined as including a provision for residence. Similarly in *B.P. Achala Anand Vs. S. Appi Reddy* (2005) 3 SCC 313 it was held that a Hindu wife is entitled to be maintained by her husband; she is entitled to remain under his roof and protection; she is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. It

was clarified that right to residence is a part and parcel of wife's right to maintenance. The same view was reiterated in *Komalam Amma Vs. Kumara Pillai Raghavan Pillai* (2008) 14 SCC 345.

29. It thus appears that notwithstanding the plaintiffs having been put into possession of the flat in terms of the Memorandum of Family Settlement, the same was in lieu of their right / claim of maintenance against the defendant no.2. Once that is found to be the case, the judgments supra cited by the senior counsel will apply and the plaintiffs would be entitled to the benefit of Section 14(1) supra.

30. However on researching further I find the Supreme Court to have struck a different note in *Sadhu Singh Vs. Gurdwara Sahib Narike* (2006) 8 SCC 75 to which the counsel for the defendant no.2 failed to draw attention. In this case the husband died on 19<sup>th</sup> March, 1977 bequeathing life interest only to his wife in the immovable property (though she even otherwise was the only natural heir). The question for adjudication was whether Sub-Section (1) or Sub-Section (2) of Section 14 supra would apply. The High Court, probably following the judgments noticed above, held that the wife had a pre-existing right in the property and consequently

the limitation placed on her rights in the Will could not prevail in view of Section 14(1). The Supreme Court however held, (i) that the High Court did not bear in mind that the property was the separate or self-acquired property of the husband and his wife though might have succeeded to the property as an absolute and sole heir if the husband had died intestate, had no pre-existing right as such; (ii) the wife, at best, only had a right to maintenance and at best could have secured a charge by the process of Court for her maintenance under the Hindu Adoptions and Maintenance Act and may be, in terms of Section 39 of the Transfer of Property Act, 1882 could have also enforced the charge against an alienee from her husband; (iii) unlike in a case where the widow was in possession of the property on the date of the coming into force of the Hindu Succession Act, in which case she had a pre-existing right at least to maintenance, a situation covered by Section 14(1), if a Hindu male disposes of his separate property by way of testamentary disposition, placing a restriction on the right given to the widow, the question, whether Section 14(2) would not be attracted, was not considered by the High Court which blindly followed the dicta of the Supreme Court in *V. Tulasamma* supra; and, (iv) under Section 18 of the Hindu Adoptions and Maintenance Act, a Hindu wife is entitled to be maintained by her husband

during her life time; under Section 22 thereof an obligation is cast on the heirs of the deceased Hindu to maintain the dependants of the deceased including his widow out of the estate inherited by them from the deceased; neither Section 18 relating to a wife nor Section 22 dealing with a widow, provides for any charge for the maintenance on the property of the husband; to the contrary, Section 27 specifies that a dependant's claim for maintenance shall not be a charge on the estate of the deceased unless one would have been created by the Will of the deceased, by a decree of Court, or by an agreement between the dependant and the owner of the estate; (v) though the wife in the absence of the Will would have obtained the property absolutely as an heir but since the Will had intervened, the question had to be considered in the light thereof; (vi) *V. Tulasamma* was a case, where a female Hindu possessed the property on the date of the commencement of the Hindu Succession Act and in which she had a pre-existing right though limited and in such circumstances Section 14(1) had operation to convert her limited estate into an absolute one and Section 14(2) could not be relied on for taking the case out of Section 14(1) of the Act on the basis that the property was put in her possession on the basis of a compromise; (vii) that for Section 14(1) to get attracted, the property must

be possessed by the female Hindu on the coming into force of the Hindu Succession Act; (viii) reliance was placed on Mayne on Hindu Law, 15<sup>th</sup> Edn. opining that if a female Hindu acquires property after the commencement of the Hindu Succession Act, with a restricted estate, Sub-Section (2) applies; such acquisition may be under the terms of a gift, Will or other instrument or a decree or order or award; (ix) reference was made to *Gummalapura Taggina Matada Kotturuswami Vs. Setra Veeravva* AIR 1959 SC 577 laying down that the words “property possessed by a female Hindu” in Section 14(1) clearly contemplate the female's possession when the Act came into force; (x) the *Tulasamma* ratio cannot be applied ignoring the requirement of, the female Hindu having to be in possession of the property either directly or constructively as on the date of the Act, though she may acquire a right to it even after the Act; (xi) thus 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;(xii) any acquisition of possession of property by a female Hindu after the coming into force of the Hindu Succession Act, cannot normally attract Section 14(1); (xiii) if she takes it as an heir under the Act, she takes

it absolutely; (xiv) if while getting possession of the property after the Hindu Succession 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; (xv) when a male Hindu disposes of his property by providing for a limited estate to his 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; (xvi) 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.

31. The Supreme Court, thus, in *Sadhu Singh* supra carved out a distinction between cases where the female had come into possession of the property before the coming into force of the Hindu Succession Act and those where the female came into possession thereafter. Though the Supreme Court in *Gulwant Kaur* supra, even where the female had come into possession after the coming into force of the Hindu Succession Act, followed *V. Tulasamma*, also relying on *Jagannathan Pillai Vs. Kunjithapadam Pillai* (1987) 2 SCC 572 where it was expressly held that there is nothing in Section 14 which supports the proposition that a Hindu

female should be in actual physical possession or in constructive possession of any property on the date of coming into operation of the Hindu Succession Act and that any property possessed by a female Hindu acquired after the commencement of the Hindu Succession Act will be held as a full and not a limited owner, but unfortunately neither of the said judgments were noticed in *Sadhu Singh*, which has held diametrically opposite thereto.

32. The plaintiffs were admittedly not in possession of the flat on the commencement of the Hindu Succession Act. In fact on that date even the defendant no.2 was not in possession. Thus applying the test laid down by *Sadhu Singh* supra, Section 14(2) would apply and the case of the plaintiffs would fail.

33. The question came up before the Supreme Court in *Jagan Singh Vs. Dhanwanti* (2012) 2 SCC 628, again in the context of a Will bequeathing a limited estate in favour of the wife and it was held that life estate given to a wife under a Will cannot become a absolute estate under the provisions of Section 14(2) of the Hindu Succession Act. In yet another recent judgment in *Shivdev Kaur Vs. R.S. Grewal* (2013) 4 SCC 636 also, quoting *Sadhu Singh* supra, it was held that if a Hindu female has been given only a "life

interest", through Will or gift or any other document, the said rights would not stand crystallized into the absolute ownership as, in interpreting the provisions to the effect that she would acquire absolute ownership / title to the property by virtue of the provisions of Section 14(1), the provisions of Sections 14(2) and 30 would become *otiose*. It was further held that Section 14(2) carves out an exception to rule provided in Sub-Section (1) which clearly provides 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 the same even after the commencement of the Act and such a Hindu female cannot acquire absolute right. A Single Judge of this Court also in ***Ranvir Dewan Vs. Rashmi Khanna*** 204 (2013) DLT 192 followed the same view.

34. I am now faced with the dilemma, whether to follow ***Jagannathan Pillai*** and ***Gulwant Kaur*** (supra) or ***Sadhu Singh*** (supra) and the judgments aforesaid subsequent thereto. All the judgments are of Benches of the same strength. The problem is confounded by yet another judgment of the Supreme Court in ***Nazar Singh v. Jagjit Kaur*** (1996) 1 SCC 35 (also of a Bench of the same strength) the facts whereof were identical to the facts of the present case and on which reliance ought to have been placed by the plaintiffs. Relying on ***Jagannathan Pillai*** (supra), Section 14(1) was held to

apply; a distinction was also carved out between property given to a Hindu female under a Will and the property given to a Hindu female under a compromise, in lieu of the claim of maintenance observing that will is referred to only in Sub-Section (2) and not in Sub-Section (1) (I may respectfully state that the Explanation to Sub-Section (1) refers to acquisition of property by a female Hindu by inheritance by devise and which would include Will). *Nazar Singh* was followed in *Santhosh v. Saraswathibai* (2008) 1 SCC 465 (again by a bench of the same strength) without however noticing *Sadhu Singh*; though *Gummalapura Taggina Matada Kotturuswami* (supra) taking a different view was noticed but no reason for differing therefrom given.

35. After weighing the two different views of the Supreme Court, I opt to follow the view taken in *Sadhu Singh* (supra) for the following reasons:-

A. *Sadhu Singh*, after analysing and interpreting the language of Section 14(1) as well as the changes in Hindu Law upon the coming into force of the Hindu Adoptions and Maintenance Act, 1956 holds Section 14(1) to be applicable only where the Hindu female is in possession of the property on the date of commencement of the Hindu

Succession Act and not where the Hindu female comes into possession of the property after the commencement of the said Act. Per contra, *Jagannathan Pillai* on which the subsequent judgments in *Gulwant Kaur*, *Nazar Singh* and *Santhosh* (supra) taking a different view are based, was a case where the widow though acquired a limited estate from her husband was not in possession on the date of coming into force of the Hindu Succession Act and repossessed the property thereafter. It was in this context that the Supreme Court held Section 14(1) to be applicable holding that the word “possessed” has to be given a wide meaning. This peculiar fact of the widow in *Jagannathan Pillai* having acquired the property prior to the commencement of the Hindu Succession Act was not noticed in the subsequent judgments supra holding that possession of the property under Section 14(1) could be before or after the commencement of the Act. In none of the said judgments the provisions of the Hindu Adoptions and Maintenance Act and the changes brought about thereby in the right of Hindu female to maintenance were also noticed.

B. Section 14(1) carves out a difference between possession of the property and acquisition of the property. Only the word "acquired" is

qualified with the words “whether before or after the commencement of this Act”. Had the intention of the legislature been that a property acquired by a female Hindu, whether before or after the commencement of the Act, shall be held by her as full owner and not as a limited owner, there was no need to carve out a distinction between possession and acquisition of the property. From such distinction made out and from the intentional omission to qualify the word "possessed" with the words "whether before or after the commencement of this Act" the legislative intent of, for applicability of Section 14(1), possession on the date of commencement of the Act being essential is quite explicit.

C. All statutes particularly those governing and regulating human relations are dynamic in nature and their interpretation, inspite of societal changes, cannot remain static. Law cannot be a fossil. The Supreme Court in *Union of India v. Raghubir Singh* (1989) 2 SCC 754 emphasized the need for adapting the law to new urges in society and quoted with approval the Holmesian aphorism that the "life of the law has not been logic, it has been experience". It was further held that in a developing society such as India, law does not assume its true

function when it follows a groove chased amidst a context which has long since crumbled. Similarly in *State of Punjab v. Devans Modern Breweries Ltd.* (2004) 11 SCC 26 it was held that a decision although neither reversed nor overruled may cease to be law owing to changed conditions and changed law, as reflected by the principle "cessante ratione legis cessat ipsa lex". In *Bhuwalka Steel Industries Ltd. v Bombay Iron and Steel Labour Board* (2010) 2 SCC 273 it was reiterated that the trend of judicial opinion is that *stare decisis* is not a dogmatic rule allergic to logic and reason; it is a flexible principle of law operating in the province of precedents providing room to collaborate with the demands of changing times dictated by social needs, State policy and judicial conscience. *V. Tulasamma* is a judgment of a different era, the guiding principle whereof was the *Shastric* Hindu Law and to convert, the limited ownership rights of women who till then were clearly discriminated against insofar as ownership of property was concerned, to absolute right. However with the changing times and changing relationships particularly between husband and wife it is felt that to adopt the interpretation of Section 14(1) as in *V. Tulasamma* would be to the detriment of wives. If such

an interpretation were to be followed in today's times, husbands having differences with their wives would hesitate from providing a separate residence for the wife for the fear of losing all rights thereto and the said residence after the lifetime of the wife going into the hands of her heirs. Similarly husbands owning property would fear bequeathing a life estate therein to their wives.

D. The additional reasoning given in *Nazar Singh* of acquisition of the property under a compromise being different from acquisition of property under a Will owing to the Will being not mentioned in Section 14(1), as aforesaid does not appear to be correct.

E. The plaintiffs in the Memorandum of Family Settlement expressly agreed that the plaintiffs no.2&3 shall cease to have any right of residence in the flat after their marriage and will not claim any interest, right or title whatsoever in the flat and that the plaintiff no.1 shall also cease to have any right of residence in the flat if she remarries or resides at another place and that the right of residence of the plaintiff no.1 in the said flat was for her life time only. The plaintiffs further agreed that they shall not claim any right in future over any property of the defendant no.2. The plaintiffs further agreed

that after the marriage of the plaintiffs no.2&3 it will be the defendant no.2 who would be entitled to the rent of the third floor of the flat. The plaintiffs presented the said Memorandum of Family Settlement before the Court and before the Court also undertook to abide by the terms & conditions of the Settlement and not to file any claim, petition, complaint or other proceeding against the defendant in any Court of law. I have wondered whether not the very institution of the present suit is in violation of the undertaking given by the plaintiffs to the Court at the time of culmination of the earlier litigation and whether the plaintiffs are entitled to do so. Though undoubtedly in some of the judgments cited by the senior counsel for the plaintiffs also the decrees had been passed in terms of the agreements entered into (in *Santhosh* supra it was held that consent decrees must be construed having regard to the well settled legal position) but at the same time the Courts have held that such Family Settlements are to be honoured, upheld and enforced. It is not as if in the earlier litigation between the plaintiffs and the defendant no.2 any right of maintenance or residence of the plaintiffs against the defendant no.2 had been established. The matter was still at large. It is well-nigh possible that

ultimately the plaintiffs may not have succeeded in any claim for maintenance against the defendant no.2. It would be against equity, in my opinion, to in such circumstances permit the plaintiffs to act in contravention of the Family Settlement and the undertaking given by them to the Court in the earlier proceedings.

36. I am therefore unable to find the plaintiffs to be entitled to the relief of declaration sought or to other consequential reliefs. The suit has to thus fail and is dismissed. The statement of the defendant no.2 as recorded hereinabove is however accepted and he is ordered to be bound by the statement given to the Court to not act in contravention of the Memorandum of Family Settlement and is cautioned of the consequences of breach of such assurance given to the Court.

In the circumstances, no costs.

Decree sheet be prepared.

**RAJIV SAHAI ENDLAW, J.**

**JULY 18, 2014**

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