
(2013) 07 AHC CK 0136
In the Allahabad High Court
Case No : Second Appeal No. 271 of 2013

Debobroto Dutta and Another	Vs	APPELLANT
Madhuri Ghosh and Another		RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 07 AHC CK 0136

Hon'ble Judges : Sudhir Agarwal, J

Judgement

Sudhir Agarwal, J.—Heard Sri P.K. Jain, learned Senior Advocate assisted by Sri Amit Kumar Singh, Advocate, for the appellants and Sri R.K. Jain, learned Senior Advocate assisted by Sri Saurabh Raj Srivastava, Advocate for the respondents.

2. This is defendants' appeal under Section 100 C.P.C. which has arisen from the judgment and decree dated 7.2.2013 passed by Sri Nand Lal, Additional District Judge, Court No. 8, Allahabad (the Lower Appellate Court and hereinafter referred to as "LAC") in Civil Appeal No. 84 of 2010 allowing plaintiffs' appeal and rejecting cross objection of the defendants. It has decreed plaintiffs' suit declaring him coowner to the extent of half of the share of House No. 77 (116), Ram Bagh, Allahabad. LAC has also declared will dated 4.6.2001 as void and plaintiffs have been declared owner to the extent of 1/3 share in House No. 50, Shahganj, Allahabad. Defendantappellants have been directed to hand over vacant possession of the disputed house no. 77 (116), Ram Bagh, Allahabad to plaintiffs, failing which they (plaintiffs) can execute decree with a further entitlement of damages at the rate of Rs. 2000/ per month.

3. This Court formulated following substantial questions of law, after hearing the parties under Order 41 Rule 11 C.P.C.:

(I) Whether the plaintiffsrespondents acquired absolute rights to the exclusion of the consequences and effect of other clauses of will dated 21.01.2000 in respect of House No. 77/116, Rambagh, Allahabad to the extent of share of testator, late Sri Ajit Ghosh or their rights are restricted so as to constitute the life interest?

(II) Whether the defendantsappellants were a mere licensee in respect of their right to reside in the accommodation in question mentioned above and he could have been evicted from the premises in dispute by plaintiffsappellants relying on the rights they have acquired under the will dated 21.01.2000?

4. The facts in brief, necessary for appreciation and adjudication of the matter, may be stated as under.

5. Plaintiffsrespondents, namely, Smt. Madhuri Ghose, widow of Late Ajit Kumar Ghosh and Kumari Sananda Ghosh, daughter of Ajit Kumar Ghosh, instituted Original Suit No. 787 of 2001 seeking a decree for declaration in their favour that they are joint owners of half share, left by Late Ajit Kumar Ghosh, in House No. 77 (117) Ram Bagh, Allahabad and 1/3rd share of Late Ajit Kumar Ghosh in House No. 50, Shahganj, Allahabad. They also sought a declaration against the will dated 4.6.2001 as null, void, ineffective and unenforceable, and decree of eviction of defendants from the portion of House No. 77 (116), Ram Bagh, Allahabad, besides damages and mesne profit etc.

6. The plaint case set up was that Smt. Subodh Bala Ghosh, mother of late Ajit Kumar Ghosh was owner of House No. 77 (116) Ram Bagh, Allahabad. She executed a will in favour of her son Ajit Kumar Ghosh and daughter in law Smt. Madhuri Ghose, bequeathing equal share in the house, to both of them. After her death, Smt. Madhuri Ghose, plaintiff no. 1 and Sri Ajit Kumar Ghosh, became coowner of the said house and their names also got mutated in the record of Nagar Nigam, Allahabad. Sri Ajit Kumar Ghosh executed a will dated 21.1.2000, which was also registered with SubRegistrar, Sadar, Allahabad whereby he bequeathed his share in House No. 77, Ram Bagh, Allahabad to both the plaintiffs, equally. Sri Ajit Kumar Ghosh was also joint owner of House No. 50, Shahganj, Allahabad along with Late Dr. A.K. Sur and Dr. P.K. Sur. He bequeathed his share in the aforesaid house also to the plaintiffs, jointly and equally, through the above said willdeed dated 21.1.2000. Sri Ghosh died on 18.6.2001 in a road accident and thereafter plaintiffs became joint owner of House No. 77, Ram Bagh, Allahabad as also that of House No. 50, Shahganj, Allahabad. Defendant no. 1, who was living with Late Ajeet Kumar Ghosh since his childhood, was maintained by him and allowed to stay in House No. 77, Ram Bagh, Allahabad, and after marriage, along with his wife. The defendant no. 2 was born to defendant no. 1 subsequently in the aforesaid house. The occupation of defendants no. 1 and 2, in the house, is in the nature of license. They have no otherwise right, title or interest in the aforesaid house. Plaintiff no. 2 received a letter dated 4.8.2001 from one Advocate, Sri Shankar Lal Gupta whereby she was communicated about the existence of an unregistered will deed dated 4.6.2001, allegedly executed by Late Ajit Kumar Ghosh, in favour of defendant no. 1, bequeathing his share to A. Coomar and Co. The notice was replied by plaintiffs through their counsel. Thereafter, defendant no. 2 sought to create trouble by moving an application in Nagar Nigam seeking mutation of his name over House No. 77, Ram Bagh, Allahabad on the basis of alleged will dated

4.6.2001 and hence the suit in question. The will dated 4.6.2001 was challenged being forged, fabricated, manufactured etc.

7. The defendants contested the suit by filing written statement.

8. Trial Court (hereinafter referred to as "TC") framed 10 issues whereof issues no. 1, 2 and 3 relate to substantial dispute involved in the suit and read as under:

English translation by the Court:

1. Whether the plaintiffs are coowners of the half portion of deceased Ajit Kumar Ghosh's house no. 77/116 Rambagh, Allahabad and whether they are entitled to get the defendants evicted from 1/2 portion of the aforesaid house?

2. Whether the plaintiffs are coowners of 1/3 portion of deceased Ajit Kumar Ghosh's house no. 50 Shahganj ?

3. Whether the unregistered will dated 04.06.2001 allegedly executed by deceased Ajit Kumar Ghosh is liable to be cancelled on the grounds mentioned in the plaint?

9. In the TC, Issues no. 1 and 2 were decided in favour of plaintiffs to the extent that their right over the property in dispute is only a life estate and thereafter it shall stand devolved upon the defendant no. 1 while Issue No. 3 was decided in favour of plaintiffs and against defendant no. 1. In the result, suit was decreed partly. Aggrieved thereto, plaintiffs came in Civil Appeal No. 84 of 2010 which has been allowed by LAC vide judgment and decree dated 7.2.2013 and the suit has been decreed in its entirety.

10. Before this Court, the real dispute is the construction and interpretation of will dated 21.1.2000. The Testator Ajit Kumar Ghosh has given description of the beneficiaries and relatives as under:

"My family consists of my wife Smt. Madhuri Ghose and two daughters namely Km. Sunanda and Mrs. Indrani Chowdhary out of the above two daughters the younger Indrani is married to Sri Amit Chaudhary r/o Slat Lake City, Calcutta and the elder daughter Km. Sunanda Ghose is physically handicapped since birth. I have one younger brother Sri Shyam Sunder Ghosh who is of unsound mind. Besides I have one nephew, Sri Debobrote Dutt s/o Late Sri S.S. Dutta and one cousin brother Sri H.N. Bose s/o Late Alopi Bose both are residing with me."

11. It clearly shows that he has referred to six persons namely, his wife, both the plaintiffs, his brother, defendant no. 1 and one cousin, Sri H.N. Bose.

12. Thereafter he has expressed his intention as to the manner in which his immovable and movable property should stand devolve and it read as under:

"1. That as long as I am alive, I shall be the exclusive owner of all my immovable and movable properties.

2. That house no. 77, Ram Bagh, Allahabad was inherited by me from my mother

Smt. Subodh Bala Ghose vide registered will dated 27.2.83 and I am the absolute owner of said immovable property. So long as I am alive, I shall be the exclusive owner of the said property and after my death my said house no. 77, Ram Bahg, Allahabad shall vest on my wife Smt. Madhuri Ghose and my elder daughter Sunanda Ghose jointly. After the death of my wife Smt. Madhuri Ghose my daughter Km. Sunanda Ghose shall become the exclusive owner of the said house property no. 77, Ram Bahg, Allahabad. In case Km. Sunanda Ghose predeceases my wife Smt. Madhuri Ghose, then Smt. Madhuri Ghose shall become the exclusive owner of the said house property No. 77, Ram Bagh, Allahabad. The ownership of my Ambassador Car No. UPD 2575 shall pass on to my wife Smt. Madhuri Ghose.

3. That my younger brother Sri Shyam Sunder Ghose shall have the right to reside at No. 77, Ram Bagh, Allahabad during his life time.

4. That after the death of my wife Smt. Madhuri Ghose and my daughter Kr. Sunanda Ghosh, my grand son Indranil Chaudhary son of Amit Chaudhary R/o AE232, Sector Salt Lake City Calcutta shall become the owner of the ground floor of house no. 77, Ram Bagh, Allahabad and he shall be exclusive owner of the said portion and my grand daughter Km. Mohana Chaudary, d/o Amit Chaudhary r/o AE232, Sector Salt Lake City Calcutta shall become the exclusive owner of second floor of house no.77, Ram Bagh, Allahabad and my grand son Debopriyo Dutta s/o Devobrito Dutto r/o 77, Ram Bagh, Allahabad shall become the owner of Ist floor of house no.77, Ram Bagh, Allahabad and none else shall have any right or title on the said house.

5. That all the above will pay the house taxes and water charges of the said house.

6. That the stair case and entrance shall be common between the owners of Ist floor and IInd floor.

7. That I have fixed deposit receipt in Banks; Post Office, Investment in Unit Trust of India and also Savings Bank Accounts either in my name or jointly with my wife and daughter Sunanda. After my death whose joint name is given with my name, she shall be the exclusive owner of the same and none other shall have any right in it.

8. That I am a partner in the firm M/s. A Coomar and Company, 50, Shahganj, Leader Road, Allahabad to the extent of 35%. Apart from the capital investment I have another deposit account in the said firm. After my death both my wife Smt. Madhuri Ghose and my daughter Km. Sunanda shall become the partner of my share in the said firm. In case the said firm dissolves before the death of Smt. Madhuri Ghose and Km. Sunanda Ghose, the entire deposit in the said shall devolve to Smt. Madhuri Ghose and Km. Sunanda Ghose and the share of the property No. 50, Leader Road, Allahabad and its goodwill shall devolve to both of them.

9. That if the firm M/s A.Kumar and Company, 50, Shahganj, Allahabad continues even after the death of Smt. Madhuri Ghose and Km. Sunanda Ghose, then my nephew Debrobrote Dutto shall become the exclusive owner of all my share in the said firm.

10. That it is the duty of Smt. Madhuri Ghose and daughter Km. Sunanda Ghose and Smt. Indrani Chaudhary to bear and maintain the expenses of my younger brother Sri Shyam Sunder Ghose till his life time.

11. That I have given a loan of Rs. 2,00,000/ (Rs. Two lacs only) free of interest to my brotherinlaw Sri A.K. Bose s/o M.N. Bose r/o 69/1, Thakur Pukur Road, Calcutta. After my death my wife Smt. Madhuri Ghose and my daughter Km. Sunanda Ghose shall be entitled for the said loan and none else.

12. That previously on 5.3.97 and 7.3.1998 I have executed registered wills which is registered in the office of SubRegistrar Chail, Ist, Allahabad which I hereby revoke through this will and this will is my last will."

13. It cannot be doubted that clauses 2 and 4 have something inconsistent with each other and that is how the entire dispute has arisen. In Clause 2 the house no. 77 has been given to the plaintiffs by using the term "exclusive owner" but Trial Court in order to give effect to Clause 4 has read the word "exclusive owner" as "life estate" while LAC has given full effect to the term "exclusive owner" and in that attempt has virtually rendered Clause 4 redundant. Both the Courts, therefore, in one or other manner have rendered some part of the document in question either redundant or have narrowed down their scope. This is how an onerous burden has now come upon this Court to construe the aforesaid document so as to find out the true intention of the intestate. This Court would consider when an otherwise harmonious construction is not possible whether a construction which shall result in rendering a clause redundant should be followed or a restricted meaning to a few words be given to make all clauses harmonious and workable.

14. I would prefer to remind first certain principles culled out by the Courts, time and again, which are to be taken care while construing a document like "a will".

15. One such principle is laid down in Ram Gopal Vs. Nand Lal and others AIR 1951 SC 139 which says:

"In construing a document whether in English or in vernacular the fundamental rule is to ascertain the intention from the words used; the surrounding circumstances are to be considered; but that is only for the purpose of finding out the intended meaning of the words which have actually been employed."

16. The next one comes from Gnanambal Ammal Vs T. Raju Ayyar AIR 1951 SC 103 wherein the Court referred to Venkata Narasimha Vs. Parthasarthy (1913) 41 IA 51 and said:

"In construing the language of the Will the court is entitled to put itself into the

testator's armchair and is bound to bear in mind also other matters than merely the words used. It must consider the surrounding circumstances, the position of the testator, his family relationship, the probability that he would use words in a particular sense all. But all this is solely as an aid to arriving at a right construction of the Will, and to ascertain the meaning of its language when used by that particular testator in that document." (emphasis added)

17. The next principle is culled out from *Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer* AIR 1953 SC 7. It says:

"The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory."

(emphasis added)

18. In *Pearey Lal Vs. Rameshwar Das* AIR 1963 SC 1703, the Court observed that so long as it is possible, the Court must accept such construction as would give to every expression same effect other than that which would render any of the expressions inoperative. The Court will look at the circumstances under which the testator makes its will such as state of his property, of his family and like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to inconsistency, that should be discarded in favour of a construction which does not create any such hiatus.

19. Then comes *Ramachandra Shenoy Vs. Hilda Brite* AIR 1964 SC 1323, where the Court said that it is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be given to every disposition contained in the will unless the law prevents effect being given to it. Of course, if there are two repugnant provisions conferring successive interests, if the first interest created is valid the subsequent interest cannot take effect but a Court of construction will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible to every testamentary intention contained in the will.

20. In *Sasiman Chowdhurain Vs. Shib Narain* AIR 1922 PC 633, the Court observed:

"... meaning of every word in an Indian will must always depend upon the setting in which it is placed, the subject to which it is related, and the locality of the testator from which it may receive its true shade of meaning."

21. In the above case, the Judicial Committee of Privy Council also said:

"... it is always dangerous to construe the words of one will by the construction of more or less similar words in a different will, which was adopted by a Court in

another case."

22. In *Shalig Ram Vs. Charanjit Lal* AIR 1930 PC 239, the Judicial Committee of Privy Council said:

"The intention of the testator must be gathered from the terms of the will, reading it as a whole and not much assistance is to be gathered from the numerous cases which were cited to the Board, and in which the terms of the will under consideration differed from the terms of the will in the present appeal."

23. In *Kamakhya Dat Ram Vs. Kushal Chand* AIR 1934 PC 72, Lord Macmillan reiterated the view taken in *Sasiman Chowdhurain Vs. Shib Narain* (supra) and said that in construing the language and arriving at the intention of a particular testator, decisions on the construction of other wills are of little assistance. The only guidance to be obtained from them is that what must be sought in every instance is the dominate intention of the testator.

24. In *Navneet Lal Vs. Gokul* AIR 1976 SC 794, the Court construed the term "malik" and observed:

"The term "malik" when used in a will or other document as descriptive of the position which a devisee or donee is intended to hold, has been held apt to describe an owner possessed of full proprietary rights, including a full right of alienation, unless there is something in the context or in the surrounding circumstances to indicate that such full proprietary rights were not intended to be conferred..."

25. In para 18 and 21 of the judgement in *Navneet Lal* (supra) it was held as under:

"18. It is, therefore, abundantly clear that the intention of the testator will have to be gathered from all the relevant and material contents in the entire will made in the situation in which the testator was placed in life in the back ground of his property, his inclinations, wishes, desires and attitudes as can be clearly and unambiguously found either from the recitals from the instrument or from absolutely undoubted contemporaneous legally admissible evidence."

"21. Ordinarily, however, without such clear evidence from the recitals in the will itself it may not be possible to hold that ownership of property, which is devised, without any thing more, would not connote absolute ownership of the same with the power of alienation."

26. Therein ultimately the Court held that though the property devolved upon the wife with word "malik" but in order to give effect to the entire document, the Apex Court held the term ""malik" in a restricted sense, giving a life estate and no right of transfer which after the death of wife would devolve upon one Gokul. In reading down the words "malik mustakil" in the will, the Court in *Navneet Lal* (supra) said that reading the will as a whole, if every disposition has to be rationally harmonised, it would emerge that testator intended a life estate for his

wife so long as she lived and that is consistent with his description of Gokul as his heir after his death. The Court referred to some other clauses of will to justify the above construction. In para 20 of the judgment, the Court said that testator has made a definite distinction between mere ownership of property and ownership of the same coupled with powers of transfer in every way. It further said:

"Ordinarily, however, without such clear evidence from the recitals in the will itself it may not be possible to hold that ownership of property, which is devised, without any thing more, would not connote absolute ownership of the same with the power of alienation."

27. In *Arunkumar Vs. Shriniwas* 2003 (6) SCC 98, the Court culled down certain principles from earlier decisions for construction of a will and in para 7 said:

"(i) The fundamental rule is to ascertain the intention of the testator from the words used, the surrounding circumstances for the purpose of finding out the intended meaning of the words which have been employed;

(ii) The court, in doing so is entitled to put itself into the armchair of the testator and is bound to bear in mind also other matters than merely the words used and the probability that the testator had/would have used the words in a particular sense, in order to arrive at a right construction of the Will and ascertain the meaning of the language used;

(iii) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the Will as a whole, with all its provisions and ignoring none of them, as redundant or contradictory, giving such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative;

(iv) Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator;

(v) It is one of the cardinal principles of construction of Wills that to the extent that it is legally possible effect should be given to every disposition contained in the Will, unless the law prevents effect being given to it. If even there appear to be two repugnant provisions conferring successive interests and the first interest created is valid the subsequent interest cannot take effect, the court will proceed to the farthest extent to avoid repugnancy, so that effect could be given as far as possible, to every testamentary intention contained in the Will."

28. In the above case, the Court further held that it is not the mere common meaning of the words, but an attempt should be made to gather intention of testator in the background of intended meaning and desire of testator.

29. In *Shyamal Kanti Guha Vs. Meena Bose* AIR 2009 SC 1194, the Court said:

"If this Court is to put itself into the testator's armchair to ascertain his intention from the words used in the Will; it must take into consideration the surrounding circumstances, the position of the testator, his family relationships, and attach importance to isolated expressions so as to give effect to all the clauses in the Will rather than making some of it inoperative."

30. Now, I proceed to consider whether "will" in question has rightly been construed by LAC or the construction given to it by TC was correct.

31. In opening paragraph of the will, the testator has given description of members of his family stating that it consists of his wife and two daughters, one is married and another, i.e., plaintiffrespondent no. 2 is physically handicapped since birth. Then he proceeded further by referring to his younger brother, Sri Shyam Sunder Ghose, who is of unsound mind; a nephew, i.e. defendantappellant no. 1; and one cousin, Sri H.N. Bose. In respect to later two, namely, nephew and cousin, he has further specified that both are residing with him.

32. With respect to House No. 77, Ram Bagh, Allahabad, in Clause2 of the "will", first he refers to the source from where the property came to be transferred to him. Here he has used two words, firstly that it is by inheritance from his mother and then he further says that it is through a registered will dated 27.2.1983. The property, therefore, has not come by way of succession as such but it came to be owned by testator as a result of execution of will dated 27.2.1983, after the death of his mother, Smt. Subodh Bala Ghose.

33. Proceeding further, he said that during his lifetime he shall be the "exclusive owner" of the said property and after his death, it shall vest jointly to his wife and elder daughter Sunanda Ghose. Here he has chosen to use a different term, i.e., "vest" and "exclusive owner".

34. In normal dictionary meaning, the "vest" may also result in giving absolute right to the property, but when a testator has used both the words at difference places, one should understand as to what the testator intended to see thereby. If the term "vest" intended to confer absolute right upon the testator's wife and elder daughter, there was no further occasion for him to proceed in the same clause by observing that after death of his wife, his elder daughter Sunanda Ghose shall become the "exclusive owner" of the House No. 77 and in case the elder daughter Sunanda Ghose pre deceases, testator's wife Smt. Madhuri Ghose shall become "exclusive owner". Meaning thereby, in case both are alive, testator has only intended to vest the property in them and not to make them "exclusive owner". Then in Clause3, he says that his younger brother, Shyam Sunder Ghose, shall have the right to reside in the house during his life time. Meaning thereby, right of residence has been conferred upon younger brother during his lifetime.

35. Further, under Clause4, testator has expressed his intention that after the death of his wife and elder daughter, Km. Sunanda Ghose, the property, i.e.

House No. 77, Ram Bagh, Allahabad shall devolve in the manner stated therein and not only they shall then be "exclusive owner" but none else shall have any right or title on the said house. The manner in which house in question has to be devolved under Clause4 is that the ground floor shall go to his grandson Indranil Chaudhary, i.e., son of testator's second daughter Indrani Chaudhary, wife of Amit Chaudhary, first floor shall go to the son of his nephew, i.e., defendantappellant no. 2, whom he has used the word "grandson" and second floor shall go to his grand daughter Km. Mohana Chauahary, daughter of Amit Chaudhary, i.e., husband of Indrani Chaudhary.

36. The testator, in other words, has visualized that his elder daughter Km. Sunanda Ghose, being physically handicapped, and his wife both after death would have no other heirs, and house in question, therefore, should be devolved upon grandchildren coming from the testator's second daughter Smt. Indrani Chaudhary and the son of defendantappellant no. 1, whom testator treated as his grandson. Clauses5 and 6 would also be relevant to understand meaning and intention of testator. In the above clauses, vide Clause5, he has said that all the above will pay house tax and water charges of the said house and then in clause 6, he says that the staircase and entrance shall be common between the owners of first and second floors. The testator, therefore, intended and knew that there would be a situation where owners of first and second floor would be different in view of what he has stated in Clause4 and, therefore, to avoid any dispute, a declaration has been made in Clause6 that entrance and staircase shall be common between the owners of first and second floor.

37. It is true that if we read Clause1 giving exclusive ownership with all rights to wife and elder daughter of the testator, all these subsequent clauses, and, in particular, Clauses4 and 6 shall render redundant. Reading other clauses of the "will", it cannot be doubted that testator had intended to make appropriate and adequate arrangement for his wife and elder unmarried daughter Sunanda, who was handicapped during their life, and has not provided any property otherwise to his second daughter Smt. Indrani Chaudhary, but by virtue of Clause4 has tried to mitigate on this aspect by providing that after the death of his wife and elder daughter, ground and second floor of the house shall stand devolved upon the grandson and granddaughter coming from second daughter Indrani Chaudhary and that is how children of Indrani Chaudhary shall also get some part/share of property of grandfather. In respect to other properties also, I find that in Clause8, for the life period, shares have been given to the wife and elder daughter, but after their death, vide Clause9, shares have been given to nephew, i.e. appellant no. 1. The testator has not treated nephew or his son as a stranger but they are treated as family members. Nephew's son has been shown as grandson of testator, which shows natural affection of testator to his nephew and his son. If this Court reads Clause2 so as to confer a limited interest over the property in dispute of plaintiffrespondents, that cannot be said to be in violation of any statutory provision at all inasmuch property is not being devolved upon them by succession but is coming through a "will". It cannot be said to be

violative of Section 14 of the Hindu Succession Act, 1956 (hereinafter referred to as "Act, 1956"). Therefore, if limited right or interest is construed to have been conferred upon wife and elder daughter, so as to give effect to all the provisions in the will, in my view, it cannot be said that this Court in so interpreting is doing any violence to the language or is reading provisions wide off the mark or is trying to read something, which is not there or is adding certain words etc.

38. Further, the testator while recognizing the factum that defendantappellant no. 1 was residing in the disputed house with the testator, has not treated him to be a mere licensee, and, on the contrary, has referred him as "nephew", and, his son as "grandson" with certain benefits/shares in the property through the aforesaid will. In that view of the matter, in my view, construction on the stipulations in the will given by TC was more apt and appropriate than that has been given by LAC. The question no. 1, therefore, is answered accordingly by declaring that the extent of share of plaintiffrespondents in respect to House No. 77/116, Ram Bagh, Allahabad is restricted to their life constituting a life interest. That being so, question no. 2 is answered in negative, i.e., against the plaintiffrespondents and in favour of defendantappellants by holding that they are not mere licensee in the accommodation in question and, therefore, cannot be evicted by plaintiffrespondents on the basis of will dated 21.1.2000.

39. In the result, the appeal is allowed. The judgment and decree dated 7.2.2013 passed by LAC in Civil Appeal No. 84 of 2010 is hereby set aside and that of TC dated 1.6.2010 passed in Original Suit No. 747 of 2001 is hereby restored and confirmed.

40. No costs