

(2014) 09 DEL CK 0111

In the Delhi High Court

Case No : I.A. No. 2166/2014 in CS (OS) No. 3048/2011

Kamla Nijhawan

APPELLANT

Vs

Sushil Kumar Nijhawan

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 12 Rule 6, Order 8 Rule 5, 151
Evidence Act, 1872 — Section 58, 68
Succession Act, 1925 — Section 124

Citation : (2015) 215 DLT 386 : (2014) 145 DRJ 186

Hon'ble Judges : G.P. Mittal, J

Bench : Single Bench

Advocate : Ved Prakash Sharma, Amrit Kaur Oberoi and Shubhani Jain, Advocate for the Appellant; Manish Vashisht and Dhruv Rohtagi, Advocate for the Respondent

Judgement

G.P. Mittal, J.—This is an application under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking a decree in favour of the Plaintiff and against the Defendants on admission.

2. A suit for possession, declaration, permanent and mandatory injunction, mesne profits and damages has been filed by the Plaintiff against the Defendants. Plaintiff Smt. Kamla Nijhawan is the grandmother of Defendant no. 1 and mother of Defendant no. 2. Defendants no. 3 and 4 are the government bodies and lessors of property no. 13/27, West Patel Nagar, New Delhi-110008.

3. The sum and substance of the averments made in the plaint is that Late Shri Balwant Rai Nijhawan, the deceased husband of the Plaintiff had executed a Will dated 22.08.1995 whereby he bequeathed various properties owned by him at the time of his death including ground floor of property no. 13/27, West Patel Nagar, New Delhi upon the Plaintiff. The Plaintiff's grievance is that Defendant no. 2 has fraudulently got the ground floor of the suit property mutated in his name on the basis of the earlier said Will, whereas the Plaintiff was to be the

owner of the entire estate of the deceased Balwant Rai Nijhawan including the ground floor of the property. The Plaintiff, therefore, sought a decree requiring Defendants no. 1 and 2 to handover the vacant and peaceful possession of the ground floor of property no. 13/27, West Patel Nagar, New Delhi and declaration that the mutation procured by Defendant no. 2 in his favour is null and void.

4. The Plaintiff also sought a restraint order against Defendants no. 1 and 2 from creating any third party interest and the mesne profits till the vacant and peaceful possession of the ground floor is handed over to the Plaintiff.

5. Defendants no. 1 and 2 have contested the suit by way of filing written statement and they have denied the averments made in the plaint. Defendants no. 1 and 2, however, did not dispute the Will dated 22.08.1995 purported to have been executed by the deceased Balwant Rai Nijhawan.

6. In reply to the present application, the Defendants have not disputed the execution of the Will dated 22.08.1995. The Defendants have admitted that the Will dated 22.08.1995 is the last Will of Late Shri Balwant Rai Nijhawan. The Defendants have, however, taken up a plea that the ground floor of property no. 13/27, West Patel Nagar, New Delhi was bequeathed in favour of Defendant no. 2 and thereafter, the Plaintiff was granted a life estate thereby postponing the bequeath in favour of Defendant no. 2 till the Plaintiff was alive. It is thus, stated that the Plaintiff is not entitled to any decree on admission.

7. In the rejoinder to the reply, the Plaintiff has reiterated that she got the property absolutely on the death of her husband and Defendants' plea that the Plaintiff was given only life estate is misconceived.

8. For appreciating the application under Order XII Rule 6 CPC, it will be apposite to extract relevant paragraphs of the Will propounded by the Plaintiff and not disputed by Defendants no. 1 and 2, hereunder:-

"WILL

I, B.R. Nijhawan (Balwant Rai Nijhawan) son of Late Shri Dina Nath Nijhawan, Advocate, presently resident of 33 Ormely Road, S.W. 12 London, do hereby make this Will of mine at London, this the 22nd of August, 1995.

x x x x x x x x

I am the owner and in possession of all my properties mentioned in schedule "A" attached and all these properties are my separate, self acquired and exclusive properties excepting one property bearing no. 13/27, West Patel Nagar the ground floor which it has been given to me by my father Late Shri Dina Nath Nijhawan through Will that he made. All these properties are capable of being disposed of in accordance with the law to which the properties are subject.

I have got two sons, namely, Vinod Kumar Nijhawan (V. K. Nijhawan) and Anil Kumar Nijhawan (A. K. Nijhawan), besides my wife, Mrs. Kamla Nijhawan.

After fully considering the pros and cons of the whole matter and realising that death is the law of nature and one has to give up his mortal coil sooner or later and with a view to avoid any further dispute and unwanted any misunderstanding in the family, I am making this Will as under:-

(A) I have got one industrial property mentioned at Item no. 1 of the Schedule (A). This property plot including construction was exclusively done by me and I have already bequeath no. 1/22, Phase I, Sector 20, Udyog Vihar (Dunda Hira) District Gurgaon, Haryana State, to my eldest son Vinod Kumar Nijhawan.

(B) Regarding property at Item no. 2 of the schedule "A" the same is bequeath and devise in favour of my eldest son Vinod Kumar Nijhawan. The property has already been registered in his name.

(C) Regarding property at Item no. 3 of the schedule "A" I hereby devise and bequeath in favour of my younger son Anil Kumar Nijhawan, who is living in States. If this property being 33 Ormely Road, S.W. 12 London is sold during my lifetime then in that case, the proceeds of the sale price will go to Anil Kumar Nijhawan my youngest son.

(D) Regarding house at Noida at Item no. 4 of the schedule "A" which was exclusively purchased by me, I bequeath in favour of my eldest son Vinod Kumar Nijhawan. This property has also been got registered in his name.

(E) Regarding house being no. 13/27, West Patel Nagar (ground floor) at Item no. 5 of Schedule "A" which was handed over to me by my father Late Shri Dina Nath through Will I bequeath in favour of Vinod Kumar Nijhawan. This ground floor consists of four rooms, kitchen, store, bath room & latrine as well as open ground at the back and front with a verandah. My son Vinod Kumar Nijhawan shall be the owner of my interest in the aforesaid property.

x x x x x x x x

Regarding moveable property at Item no. 5 of the schedule "A" the same is bequeathed and devised in favour of my wife, Mrs. Kamla Nijhawan, who shall be the owner thereof after my death.

I have disposed of all my properties mentioned in the schedule "A" but if however, I acquire any other property before my death shall also be the subject matter of this Will and shall go to my two sons Vinod Kumar Nijhawan and Anil Kumar Nijhawan in equal shares.

I want to make it further clear that I shall remain full- fledged owner of all my properties moveable and immoveable during my life time and after me if my wife Mrs. Kamla Nijhawan survives, she will be the owner of all my entire estate both moveable and immovable and this Will shall have effect after her death"

x x x x x x x x"

Sd/-

TESTATOR"

9. Referring to Section 124 of the Indian Succession Act, 1925 (Act of 1925) and illustration (i) to the Section, Advocate Ved Prakash Sharma, learned counsel for the Plaintiff has urged that bequest in favour of Defendant no. 2 was only in the nature of contingent bequest in case the Plaintiff did not survive deceased Balwant Rai Nijhawan. Since the Plaintiff has survived, the legacy to Defendant no. 2 is not to take effect and the Plaintiff is entitled to deal with the property independently.

10. The learned counsel for the Plaintiff has referred to Kamla Devi Vs. Prabhawatti Devi (Smt) and Others, and has contended that since there were no fetters upon bequest to the Plaintiff, the subsequent bequest in favour of son and grandson was held to be of no consequence.

11. The learned counsel for the Plaintiff heavily relies on Mauleshwar Mani and Others Vs. Jagdish Prasad and Others, to urge that if a document is susceptible two constructions, one which will give effect to all the clauses made therein while the other which will render one or more of them nugatory, the former should be preferred. Referring to para 10 of the report, the learned counsel for the Plaintiff urges that if it is not possible to resolve the conflict in the clauses, then the first clause in a Will will prevail over the subsequent clause/ clauses.

12. On the other hand, the learned counsel for the Defendants refers to the principles reiterated by three Judge Bench decision of the Supreme Court in Navneet Lal alias Rangji Vs. Gokul and Others, and has urged that if full effect is given to every word used in the Will dated 22.08.1995, it will be evident that there was only a life estate in favour of the Plaintiff.

13. The learned counsel for the Defendants has also urged that the Defendants who are the grandson and son of the Plaintiff have all respect for their grandmother and mother. She had been visiting India only once an year or two and a half portion of the ground floor of property no. 13/27, West Patel Nagar, New Delhi-110 008 is lying vacant and is always available to the Plaintiff to stay in the said portion. Thus, there is no question of passing any decree in view of the fact that the Plaintiff is of advanced age and is having only a life interest in the suit property.

14. The learned counsel for the Defendants also refers to AIR 2003 2528 (SC) , where in similar circumstances, the bequest in favour of the husband was held to be only a life estate and the appeal preferred by the testators' nephews who had been bequeathed the property after the death of testator's husband was allowed.

15. The following questions arise for determination for disposal of the instant application:-

(i) Whether there is any unequivocal admission of the Will?

(ii) Whether the Plaintiff was only a life estate holder to enjoy property no. 13/27, West Patel Nagar, New Delhi-110008 or whether the property was given absolutely to the Plaintiff?

(iii) Whether the Plaintiff would be entitled to a decree on admission?

16. Execution of the Will dated 22.08.1995 has not been disputed by the Defendants rather they have very much relied on the same. The Defendants do not say that the Will dated 22.08.1995 is required to be proved. There are several properties in respect of which bequest has been made in the instant Will. The property concerned in the instant suit is ground floor of property no. 13/27, West Patel Nagar, New Delhi-110008.

17. In *Thayyullathil Kunhikannan and Others Vs. Thayyullathil Kalliani and Others*, , a Division Bench of the Kerala High Court held that Section 58 of the Indian Evidence Act, 1872 has to be read as overriding Section 68 and as obviating the necessity for calling an attesting witness, unless the execution of the Will or the attestation is in dispute. In para 34, this is what the Division Bench had to say about no requirement of proof of the Will where its execution and the capacity of the testator to execute the Will is admitted:-

"36. Order 8 Rule 5 of the C.P.C. provides that unless there is a specific denial of any allegation of fact made in the plaint, it shall be taken to be admitted. Section 58 of the Evidence Act provides that no fact need be proved in any proceedings, which by any rule of pleadings in force at the time, the parties are deemed to have admitted by their pleadings. In this case, in the absence of any denial in the written statement, the genuineness and the validity of the will, Ext. A1 must be deemed to have been admitted by the law of pleadings, namely Order 8 Rule 5, and therefore that fact was not required to be proved at the trial. Section 68 states that 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. The proviso to the section which, was introduced by the amending Act 31 of 1926 makes an exception in the case of any document, not being a will, which has been registered, unless its execution by the persons by whom it purports to have been executed, is specifically denied. The fact that the proviso is not applicable to wills, and that it does not make an exception in the case of registered wills, does not lead to any inference that a will cannot be acted upon or used as evidence, unless it has been proved by an attesting witness. The only effect of the proviso is that registration of the will by itself does not obviate the necessity of calling an attesting witness to prove it, if it is otherwise required to be proved. The proviso does not speak of a case where a will is not in dispute. Section 68 relates to those documents which require to be proved at the trial of a suit. If by any rule of law or of pleadings, such proof is not required, section 68 cannot operate to insist on formal proof by calling an attesting witness. Section 58 has to be read as overriding section 68 and as obviating the necessity for calling an attesting witness, unless the execution of the will or the attestation is in dispute. In the

absence of any such plea in the written statement, it will be the height of technicality and waste of judicial time to insist on examination of an attesting witness, before a will could be used as evidence. Phipson on Evidence 12th Edition (1976) explains the rationale behind examining an attesting witness as that he is the witness appointed or agreed upon by the parties to speak to the circumstances of its execution, "an agreement which, may be waived for the purposes of dispensing with proof at the trial." (Paragraph 1751) In paragraph 1757, the learned author points out that proof of execution of documents required by law to be attested is dispensed with although the attesting witness may be alive and in court) "when the execution has been admitted for purposes of trial." Order 8 Rule 5 C.P.C. deems the execution of the will to be admitted in the absence of any denial thereof in the written statement. Examination of an attesting witness is therefore unnecessary when the parties have not joined issue on the validity or genuineness of the will."

18. I do subscribe to the view taken by the Division Bench of the Kerala High Court that when the execution of the Will and capacity of the testator to execute the Will had not been disputed, the Will can be taken to be proved, particularly in a civil suit.

19. Now, I shall turn to the most crucial question, that is, whether the Plaintiff was given only a life estate or whether the property was vested absolutely in her in the sense that the Plaintiff could alienate or dispose of the property during her lifetime.

20. I have extracted earlier the relevant portion of the Will dated 22.08.1995. Section 124 of the Act of 1925 deals with contingent bequest. Section 124 and illustration (i) are extracted hereunder:-

"124. Bequest contingent upon specified uncertain event, no time being mentioned for its occurrence. - Where a legacy is given if a specified uncertain event shall happen and no time is mentioned in the Will for the occurrence of that event, the legacy cannot take effect, unless such event happens before the period when the fund bequeathed is payable or distributable.

Illustration - (i) A legacy is bequeathed to A, and, in case of his death, to B. If A survives the testator, the legacy to B does not take effect."

21. In Kamla Devi Vs. Prabhawatti Devi (Smt) and Others, , the facts were extracted in para 3 of the report and the findings were given in paras 7 and 8 of the report. The relevant portions of the judgment are extracted hereunder:-

"3..... The execution of the will is not in dispute. Thus the main question which arises is the interpretation of the said will. According to the appellant, the will clearly indicates that after the death of Mahadev Prasad, the property in question would vest in the appellant i.e. the wife of the testator absolutely and there is no rider or limitation under it for its enjoyment. However, submission for the respondents is that the intention of the testator becomes clear by reading

the whole will which indicates he desired to distribute it equitably amongst his sons and grandsons also. If that be so, the testator's intention could only be to give limited life interest to his wife (the appellant). It records that after her death it goes to the sons and grandsons with the shares mentioned therein. The High Court interpreted this will and held, the right of the appellant is limited and she has only life interest. Thus two questions arise. First, whether the house in question is ancestral or jointly held by three brothers as joint owners and the second, whether under the will the appellant has only life interest.

x x x x x x x x x

7. The other part of the submission is in respect of the interpretation of the will. We find para 3 of the will itself is very relevant for the purpose of interpretation of the will, which is quoted hereunder:

"3. That subsequent to Smt Kamla's death the persons enumerated thereafter shall be the owners of the property that subsists."

8. We find the will in its earlier part recites that on his death, his wife Smt Kamla Devi (the appellant), shall become the owner of the property which survives. Use of the word "survives" here means what remains after the testator's death. While the testator was still living he may dispose of some and thus she will become the owner of what survives. Similarly, we do not find any rider placed in this will, after vesting of this property unto her or in any way limiting her right of transfer or disposal. Finally, the aforesaid quoted portion makes it absolutely clear that this property given to her under the will was not limited but made her absolute owner. The significant words in para 3 quoted above record clearly, subsequent to the death of the appellant, the persons enumerated in the will shall be the owner of the property of what subsists. This means, whatever remains, or the residual property at the time of her death. So the High Court misconstrued the will. It clearly confers on the appellant absolute ownership and not limited ownership. We may record here that the trial court declined to grant decree of possession to the appellant against which the appellant has not preferred any appeal which has become final."

22. Thus, in Kamla Devi, it was clear that the property had been bequeathed in favour of the wife without any rider or limitation. Moreover, bequest in favour of others was made in respect of the property that subsisted on the death of Kamla Devi. It was, therefore, evident that whatever was left from the bequest made to Kamla Devi was to go to the Respondents. Consequently, bequest to others was contingent upon any property being left by Kamla Devi.

23. Similarly, in Mauleshwar Mani and Others Vs. Jagdish Prasad and Others, , the contents of the Will were extracted in para 7 of the report which are extracted hereunder:-

"7. We shall now look into the will in the light of the rule of construction propounded by this Court in Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and

Others, . The relevant clause of the will is as under:

"Wasiyat nama haza iqrar karte vo likh dete hai ki bad vafat Mukir mere Jumla tarka mol mankoola vo ghair mankoola vo jumla اساسولبات vo arazi sir vo khudkast vo makan vo bag bagaicha gharz jo kuch bhi maujood rahe uske pane ki musthak phalay jauza mukir ba akhtiyar intakal hogi jiska nam Sona Devi hai vo bad vafat Sona Devi ke Ram Sureman vo Ram Ujagar vo Ram Milan... haikki hamare hai, honge."

The English translation of the first part of the will is:

"The testator's wife whose name is Smt Sona Devi, would be entitled to the entire assets and properties with the right of transfer and after death of Sona Devi...."

24. Referring to Ramkishore Lal Vs. Kamal Narain, and Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, , in Mauleshwar Mani & Ors. the Supreme Court held as under:-

"10. In Ramkishore Lal Vs. Kamal Narain, it was held that in a disposition of properties, if there is a clear conflict between what is said in one part of the document and in another where in an earlier part of the document some property is given absolutely to one person but later on, other directions about the same property are given which conflict with and take away from the absolute title given in the earlier portion, in such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded. In Radha Sundar Dutta Vs. Mohd. Jahadur Rahim and Others, it was held where there is conflict between the earlier clause and the later clauses and it is not possible to give effect to all of them, then the rule of construction is well established that it is the earlier clause that must override the later clauses and not vice versa. In AIR 1935 187 (Privy Council) it was laid down that where an absolute estate is created by a will in favour of devisee, the clauses in the will which are repugnant to such absolute estate cannot cut down the estate; but they must be held to be invalid.

11. From the decisions referred to above, the legal principle that emerges, inter alia, are:

(1) where under a will, a testator has bequeathed his absolute interest in the property in favour of his wife, any subsequent bequest which is repugnant to the first bequeath would be invalid; and

(2) where a testator has given a restricted or limited right in his property to his widow, it is open to the testator to bequeath the property after the death of his wife in the same will."

25. Turning to the facts of the instant case, it may be noticed that the deceased Balwant Rai Nijhawan, who had settled in London, had made provision of the properties held by him in UK and in India. Most of the properties which were held

by the testator were bequeathed in favour of his son Anil Kumar Nijhawan (AKN), who was also settled in London whereas the properties owned in India were devised in favour of his son Vinod Kumar Nijhawan (VKN), defendant no. 2 herein.

26. The immovable property mentioned at item no. 5 was bequeathed absolutely in favour of his son defendant no.2 herein. The dispute is because of the penultimate paragraph of the Will whereby the testator has reiterated that he shall remain full owner during his lifetime and that after his death, his wife will be the owner of all his estates both movable and immovable and that this Will shall have effect after her death. So, what can be gathered from the contents of the Will is that initially all the immovable properties mentioned in the Will situated in London were given to AKN whereas properties situated in India were given to VKN.

27. It is well settled that whenever there are contradictions in a Will, then all the clauses of the Will have to be read together to give harmonious construction. Of course, in the Will it has not been specifically stated that the Plaintiff will have only a life estate, yet making first bequest in favour of the two sons in respect of different properties and then making bequest of all the immovable properties in favour of the wife and then stating that the Will shall have effect after her death clearly indicates that the Will had given a vested right in favour of Defendant no. 2 in respect of the suit property on the death of the testator. This was not a contingent right. It was nowhere stated if anything is left from the bequest, that will go to the beneficiaries on the death of the Plaintiff Smt. Kamla Nijhawan as was the case in Kamla Devi (supra).

28. In Navneet Lal alias Rangi Vs. Gokul and Others, , the Supreme Court laid down the following principles for construction of a Will:-

"8. From the earlier decisions of this Court the following principles, inter alia, are well established:

"(1) 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. (Ram Gopal Vs. Nand Lal and Others,)

(2) In construing the language of the will the court is entitled to put itself into the testator's armchair (18 CWN 554 (Privy Council) : 1913 (15) BOMLR 1010 (Privy Council)) 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... 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. (Venkata Narasimha case and Gnanambal Ammal Vs. T. Raju Ayyar and Others,)

(3) The true intention of the testator has to be gathered not by attaching importance to isolated expressions but by reading the will as a whole with all its provisions and ignoring none of them as redundant or contradictory. (Raj Bajrang Bahadur Singh Vs. Thakurain Bakhtraj Kuer,)

(4) The court must accept, if possible, such construction as would give to every expression some effect rather than that which would render any of the expressions inoperative. The court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like. Where apparently conflicting dispositions can be reconciled by giving full effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator. Further, where one of the two reasonable constructions would lead to intestacy, that should be discarded in favour of a construction which does not create any such hiatus. (Pearey Lal Vs. Rameshwar Das,)

(5) 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. (Ramachandra Shenoy and Another Vs. Mrs. Hilda Brite and Others,

29. If the above stated five principles are applied and the Will is read as a whole, there is no doubt that the testator only created a life estate in respect of various immovable properties in London and in India in favour of the Plaintiff and the Will was made absolutely in favour of two sons after the death of the wife. So much so that with regard to property "C", the testator had observed that if this property is sold during his own lifetime, even then the sale proceeds are to go to AKN, his youngest son. It is thus, clear that immovable properties were devised absolutely in favour of his two sons and the Plaintiff was given only a life estate. The testator had gone to the extent of stating that apart from the properties which have been devised, if he acquired any property other than the properties mentioned in the Will, the same were also to go to his two sons VKN and AKN in equal shares. This interpretation is also in consonance with the judgment of the Supreme Court in AIR 2003 2528 (SC) , wherein the contents of the Will were extracted in para 2 of the report, which are as under:-

"2....."After my death, my husband Shri Ramachandra Ganesh Mudhalwadkar shall be the heir and owner of my property as detailed below. In accordance with this will (i) Master Anilkumar, s/o Narhari aged 12 (ii) Master Arunkumar, s/o Narhari aged 9 (iii) Master Shashikant, s/o Narhari aged 6, shall be the owners of my property after the death of my husband. Narhari Shamrao Satarkar will be their guardian. My property, the details of which are given below shall be enjoyed

by my husband Shri Ramachandra Ganesh Mudhalwadkar and the abovenamed (i) Anilkumar (ii) Arunkumar (iii) Shashikant, sons of Narhari Shamrao Satarkar in accordance with this will. This will is being made for the benefit and enjoyment of the property by my abovenamed husband and minor boys. The said minor boys are the sons of my niece i.e. the sons of the daughter of my brother. I have no issues and there is no likelihood of any, now. These boys and their mother have stayed with me since their childhood. That is why I have the same affection for them as if they are my children. Since I am fond of them, I wish that my property should naturally go to them after my death and the death of my husband. The source of my property which is being given away by this testament is like this. This is my self-acquired property. At the time of my marriage, my mother has given me 15 tolas of gold. After my marriage my husband has given me ornaments weighing 20 tolas. Thus 35 tolas of gold is my stridhan and out of the sale proceeds of gold the said property is purchased.

The relations of my husband have no right to this estate nor there will be any in future."

30. The Trial Judge in the light of Section 124 and illustration (i) of the Act of 1925 held that the husband inherited the property as full owner and therefore, the Plaintiffs were entitled to the relief prayed for. Appeal preferred before the High Court was dismissed. The Supreme Court while relying on the principles of Navneet Lal allowed the appeal holding that the testament could not be construed to bequeath the property absolutely in favour of husband and placing such the construction would not only amount to rewriting several clauses in the Will, but would also constitute violence to the language and would defeat the very intention of the testator.

31. In view of the foregoing discussion, I am of the considered opinion that the property no. 13/27, West Patel Nagar, New Delhi-110008 was bequeathed in favour of Defendant no. 2 absolutely with life estate to the Plaintiff.

32. Now, most vex question is whether the Plaintiff is entitled to a decree on admission even though she had been granted only a life estate.

33. By an order dated 31.07.2014, the Plaintiff was directed to file an Affidavit stating the number of days she was in India. Defendant no. 2 was also directed to file an Affidavit stating the portion of the property which is available to the Plaintiff whenever she visited India. The Defendants have placed on record the site plan of the entire ground floor and half of the ground floor, which is shown in red in the site plan (Annexure I), is stated to be lying vacant and available to the Plaintiff whenever she visits India, whereas the right portion is being used as a clinic by Defendant no. 1.

34. In her Affidavit, the Plaintiff testified that she visited India once in the year 2011 and stayed here from 03.10.2011 to 11.11.2011; again she visited India on 07.08.2013 and stayed till 30.08.2013. Thus, it appears that the Plaintiff visits India once in about two years. It also appears that the relations between the

Plaintiff and the Defendants are not very cordial and that is why, she has filed the instant suit and is seeking immediate possession of the suit property.

35. I have already held earlier that the Plaintiff is entitled only to a life estate. Defendant no. 2, or for that matter Defendant no. 1, who is the son of Defendant no. 2 cannot object to the enjoyment of the life estate by the Plaintiff. It is not permissible for the parties to give their own interpretation to the Will and it is for the Court to decipher the real intention of the testator, which as stated earlier was to create a life estate without any impediment. The Plaintiff is aged around 93 years and is at the fag-end of her life, she cannot be compelled to stay only in the half portion of the ground floor against her wishes.

36. In view of the clear admission, I hereby hold that the Plaintiff is entitled to a decree for possession. The suit of the Plaintiff is decreed in terms of prayer (a) of the Plaint.

37. A decree sheet be prepared accordingly.

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38. The suit shall proceed with regard to other prayers and for determination of the mesne profits/ damages which may be payable to the Plaintiff.

39. List before the Joint Registrar for directions and for fixing a date for recording of remaining evidence of the Plaintiff on 25.09.2014.