Balwant Kaur & Anr vs Chanan Singh & Ors on 18 April, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1908, 2000 AIR SCW 1518, 2000 (2) UJ (SC) 1290, 2000 (1) ALL CJ 812, 2000 UJ(SC) 2 1290, 2000 BOM CR 629, 2000 (5) SRJ 376, 2000 (4) LRI 838, 2000 (6) SCC 310, (2000) 5 JT 102 (SC), 2000 (5) JT 102, (2000) 2 MARRILJ 109, (2000) 3 SCALE 332, (2000) 3 PUN LR 469, 2000 (126) PUN LR 469, 2000 (2) MARR LJ 109, (2000) 3 MAD LW 335, (2000) 39 ALL LR 578, (2000) 2 HINDULR 1, (2000) 2 CURCC 201, (2000) 2 CURLJ(CCR) 129, (2000) 3 MAD LJ 59, (2000) 4 ANDHLD 36, (2000) 3 SUPREME 505, (2000) 2 RECCIVR 719, (2000) WLC(SC)CVL 437, (2000) 3 ALL WC 1836, (2000) 4 CIVLJ 408

Author: S.B.Majmudar

Bench: S.B.Majmudar

PETITIONER:
BALWANT KAUR & ANR.

Vs.

RESPONDENT:
CHANAN SINGH & ORS.

DATE OF JUDGMENT: 18/04/2000

BENCH:
S.B.Majumdar M.Jagannadha Rao

JUDGMENT:

S.B.Majmudar, J.

The appellants in this appeal, who are original defendant nos. 1 & 2 in civil suit filed by respondent nos. 1 to 4 herein have brought in challenge, on grant of special leave to appeal under Article 136 of the Constitution of India, the judgment rendered by learned Single Judge of the High Court decreeing the respondents/plaintiffs suit. This appeal raises a short question as to whether appellant no.1-original defendant no. 1, who is the widowed destitute daughter of testator-Sham Singh, had acquired full ownership of 1/3rd interest in the suit land pursuant to the will of her father dated 21st August, 1959 or whether she had only a life interest therein, which did not mature into full ownership in her favour under Section 14 (1) of the Hindu Succession Act, 1956 (hereinafter referred

to as the Succession Act). The Trial Court, in the suit filed by the respondents/plaintiffs, took the view that appellant no.1 had only a life interest which she could not bequeath in favour of defendant no.2 and, accordingly, granted a declaratory decree in favour of the plaintiffs. The learned District Judge, as a Court of first appeal, took a contrary view and dismissed the suit by holding that appellant no.1 had acquired full ownership of the suit property, up to her 1/3rd full interest in the suit land and she did not acquire only life interest therein pursuant to the will of the deceased.

As noted earlier, in the second appeal, the learned Single Judge of the High Court took a contrary view against the appellants and restored the decree of declaration granted by the Trial Court.

In support of this appeal learned senior counsel for the appellants vehemently contended that, on the facts of the present case, the right which accrued to appellant no.1 under the will of her father as full owner of the property was well sustained under Section 14(1) of the Succession Act and that the High Court was in error in applying Section 14(2) of the said Act. He tried to support his contention on the ground that appellant no.1, being widowed daughter of the testator, had a pre-existing legal right to succeed to the entire estate of the deceased under Section 8 of the Succession Act, if the testator had died intestate. It is this right of hers which was confirmed to the extent of 1/3rd by the will in question and, therefore, Section 14(1) of the Succession Act squarely got attracted to the facts of the present case and consequently the suit was liable to be dismissed.

On the other hand, learned counsel for the respondents/plaintiffs contended that the High Court had rightly applied Section 14(2) of the Succession Act for decreeing the suit. That as per the will of the testator only life interest was made available to appellant no.1. That she had no pre-existing right in the estate of her father who, admittedly, was the sole owner of his property; that he could have gifted or willed away the property to anyone he liked. Consequently, if the testator conferred a limited interest to appellant no.1 in his property as per his will, the said legacy was squarely covered by Section 14(2) of the Succession Act as held by the High Court and consequently the present appeal deserves to be dismissed.

Before considering the aforesaid short question involved in this appeal for our consideration, it is necessary to keep in view certain admitted and well established facts on record.

Factual background : One Sham Singh was the sole owner of land in dispute measuring 47 Kanals situated in village Dolharon, Tehsil Garhshankar of Hoshiarpur District of the State of Punjab. Appellant no.1 is his widowed daughter and was dependent on him for her maintenance and support. He had no other issue. The said Sham Singh executed a will dated 21st August, 1959 in favour of his daughter-appellant no.1 on whom he conferred life interest to the extent of residue 1/3rd of the suit land which, according to the will on her death had to revert to his two brothers Teja Singh and Beant Singh, predecessors in interest of the respondents herein. His two brothers were given the legacies of 1/3rd interest each in the suit land as full owners by the very same will. Thus 2/3rd interest in the suit land was sought to be willed away in favour of testators two brothers while 1/3rd interest was given to appellant no.1 first mentioned as full owner thereof but also next shown as holding life interest therein by the very same will and her 1/3rd interest was to devolve on the testators aforesaid two brothers as reversioners on her demise. Appellant no.1 claiming to have

become full owner of the 1/3rd property bequeathed to her on the death of the testator on 11th October, 1960 executed her own will on 6th February, 1970 bequeathing her right, title and interest in the suit land to appellant no.2/defendant no.2. That resulted in the aforesaid suit for declaration as filed by the plaintiffs claiming to be reversioners entitled to acquire ownership in the remaining 1/3rd part of suit property. In the light of the aforesaid factual background, the short question which is required to be considered is as to what is the right which accrued to appellant no.1 pursuant to the will of her deceased father. When we turn to the will in question, we find the following relevant recitals: ..Unfortunately I have no male issue. Not only this, Wahuguru is much angry with me that the daughter of the executant namely Musammat Balwant Kaur, having become a widow is serving me and the real brothers of the executant Bayant Singh and Teja Singh, who for the satisfaction and welfare of the executant also serve me and gives every help, financial and otherwise to my daughter aforesaid and looks after my daughter Musammat Balwant Kaur aforesaid in every way and I have full confidence that in future too the above mentioned 3 persons will serve me wholeheartedly and the brothers of the executant will maintain proper relations and good behaviour with the daughter of the executant and shall not leave any stone unturned in performing the custom after my death. Since in the absence of male issue, in the present time there remains dispute in respect of the rights of heirship of the female issue, as a result of which the property due to litigation is ruined and the owner is dishonoured in the world and among the relatives. I do not wish that after my death the result may be such in respect of my property and myself. Therefore, I, on my own free will and volition with full senses and good health execute this will with the following conditions that after the death of the executant, Teja Singh S/o Gujar Singh, real brother of the executant shall be the sole heir and owner and title holder of land measuring (illegible) opposite Shasshan and Bayant Singh S/o Gujar Singh, real brother of the executant shall be the heir owner and title holder of land. Kanals out of 5-12 kanals of land situated Dohaldoon, Khasra No.248/9.20 and 140/9.7 and Musammat Balwant Kaur, daughter Shyam Singh executant shall be the heir, owner and title holder of the entire remaining moveable and immoveable property of the executant situated at Doohadroon, Thana Mahalpur. No other person shall have no right in the heirship of the executant But Musammat Balwant Kaur daughter of the executant shall be benefited from the property mentioned above during her life time and on the death of Musammat Balwant Kaur, the brothers of the executant mentioned above, shall be the heirs of the property and if they die before the death of Musammat Balwant Kaur, the male issues of the said two brothers shall be the heirs of the property of Musammat Balwant Kaur..

The aforesaid relevant recitals in the will show that appellant no.1-widowed daughter of the testator, was a destitute and was solely dependant upon the testator for maintenance and the testator himself was also anxious about making provision for her maintenance even after his demise and relied upon his brothers, the other two legatees, for looking after his destitute daughter after his life time. It, therefore, becomes clear that appellant no.1-widowed daughter of the testator, was a destitute and had no one else to fall back upon for maintaining her but for the testator, her father. Under these circumstances, when the testator granted 1/3rd interest in the suit land to appellant no.1 by his will (as a residue after deducting 2/3rd interest of his brothers), even though he conferred life interest to her to that extent, can it be said that the said provision was in lieu of any pre-existing legal right of maintenance from his estate as available to his destitute widowed daughter? If any pre-existing right is culled out in her favour, at least on the date on which the will started operating upon the death of

the testator, then the appellants case would squarely be covered by Section 14(1) of the Succession Act but if, on the other hand, it is held that she had no pre-existing right in the testators estate on the date of coming into operation of the will, then it could be said that she got for the first time interest in testators property under the will and consequently Section 14(2) would get attracted, as held by the High Court.

Now, it must at once be stated that the reasoning of the lower appellate Court that the will in question did not create life interest in favour of appellant no.1 only because in the earlier part of the will she was described to be the owner of the residue 1/3rd share of property, cannot be sustained. On a conjoint reading of the will, it has to be held that the testator did not confer full ownership of 1/3rd interest in the suit land to his daughter-appellant no.1 but only conferred a life interest in the property to her. Section 88 of the Indian Succession Act, 1925 provides as follows: 88. The last of two inconsistent clauses prevails.- Where two clauses of gifts in a will are irreconcilable, so that they cannot possibly stand together, the last shall prevail.

This is obviously on the principle that the last clause represents the latest intention of the testator. It is true that in the earlier part of the will, the testator has stated that his daughter-Balwant Kaur shall be the heir, owner and title-holder of his entire remaining moveable and immovable property but in the later part of the same will he has clearly stated that on the death of Balwant Kaur, the brothers of the testator shall be the heirs of the property. This clearly shows that the recitals in the later part of the will would operate and make appellant no.1 only a limited estate holder in the property bequeathed to her.

However, this is not the end of the matter. The moot question which survives for consideration is as to whether, on the date of the operation of the will, namely, on 11th October, 1960, when the testator died, appellant no.1- widowed daughter of the testator, had any pre-existing right in the testators estate. Now it becomes at once clear that the pre-existing right must be a right in the testators estate prior to the date on which the will started operating. It must, therefore, be shown by appellant no.1 that she had any legal right in her fathers estate prior to 11th October, 1960. So far as this question is concerned, learned senior counsel for the appellants tried to answer it by submitting that appellant no.1- widowed daughter of the testator, had a pre-existing legal right to succeed to his estate under Section 8 of the Succession Act, being heir of class I. The said section provides: 8. General rules of succession in the case of males.- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter:- (a) firstly upon the heirs, being the relatives specified in class I of the Schedule;

(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule; (c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and (d) lastly, if there is no agnate, then upon the cognates of the deceased.

When we turn to the schedule, we find that daughter is mentioned as class I heir of the deceased male Hindu dying intestate while his brothers are mentioned as class II heirs in category II item (3) of clause II of the schedule. However, this section could have helped the appellants if it was shown that the deceased-Sham Singh had died intestate and not after executing the will in question. If

Sham Singh had died without making a will of his own properties, then appellant no.1 could have become the full owner of the entire property left by him and would have excluded both his brothers whose interest is claimed by the respondents/plaintiffs. But that situation never occurred on the death of the testator. Appellant no.1 had merely a right to succeed to her fathers property if she had survived her father and if her father had died intestate without making any will. This was merely a spes successionis, a chance to succeed to her fathers property and not any pre-existing legal right. It is, therefore, not possible to agree with the contention of learned counsel for the appellants for invoking Section 14(1) of the Succession Act that, on the date of the operation of the will, appellant no.1-widowed daughter of the testator, had any pre- existing right in the testators estate at any time prior to 11th October, 1960, under Section 8 of the Succession Act.

However, the appellants claim can be well sustained under the relevant provisions of the Hindu Adoptions and Maintenance Act, 1956 (for short the Maintenance Act). Let us have a look at these provisions. They are Sections 18 to 22 of the said Maintenance Act.

We shall first refer to Section 21 (vi) and Section 22(2) which deal with the right of maintenance accruing to the widowed daughter after the death of her father. Later on, we shall refer to the right of the widowed daughter under proviso (a) to Section 19(1) for maintenance against her father, during his life time, which is a right not only against the father personally but against the property he may be holding. When we come to deal with the proviso (a) to Section 19(1) lower down, it will be clear as to why we are saying that the widowed daughter has a pre-existing right to maintenance against her father during his life time in certain circumstances and as against the property he may be holding.

As per Section 21 clause (vi), if the deceased has left behind him his widowed daughter then provided and to the extent that she is unable to obtain maintenance from her husbands estate, or from her son or daughter, if any, or his or her estate; or from her father-in-law or his father or the estate of either of them, then such widowed daughter is to be treated as a dependant of the deceased. As enjoined by Section 22, she gets the legal right of being maintained out of the estate inherited by any of the heirs of her deceased father. Thus the right of being maintained out of the estate of the deceased father would inhere in appellant no.1, his widowed daughter and would get attached to the entire suit property if it goes in the hands of testators other testamentary heirs. It is not in dispute between the parties that she was a destitute widowed daughter. That she had no issues. As the recitals in the will clearly indicate, the testator was worried about her maintenance and that is why even enjoined his brothers-other legatees under the will, to look after his daughter, after his death. It is also not the case of the respondents/plaintiffs that appellant no.1- widowed daughter of the deceased, had any estate of her deceased husband or her father-in- law to fall back upon for claiming dependency benefit. If that was so, she would not have been maintained by her father in his lifetime. She, admittedly, was staying with him. Therefore, it has to be held that appellant no.1 was a destitute widowed daughter of the testator who had his estate as the only source for getting maintenance and dependency benefits. That statutory right inhered in her even during the life time of her father, as clearly indicated by the will itself.

In this connection, sub-section 2 of Section 22 of the Maintenance Act deserves to be noted. It provides that :

Where a dependent has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependent shall be entitled, subject to the provisions of this Act to maintenance from those who take the estate.

This statutory provision clearly indicates that once a person is found to be dependent of the deceased, then such a dependent has a pre-existing right qua the estate of the deceased to get maintenance and that right, if not crystallised by way of grant of definite share in the estate of the deceased either on his intestacy or on the coming into operation of his testament in favour of the dependent, then such pre-existing right of maintenance would remain operative even after the death of the Hindu and would get attached to the estate which may get transmitted to his heirs either on his intestacy or on account of the testamentary disposition in their favour. Thus, Section 22 sub-section 2 underscores pre-existing right of maintenance in favour of the dependent qua the estate of the Hindu. This aspect is further highlighted by Section 20 of the Maintenance Act. Sub-section 1 thereof provides that :

Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

It cannot be disputed that appellant no.1, who is the widowed daughter of the testator, was his legitimate child. Therefore, during the lifetime of her father, she has a legal right to be maintained by him, especially from his estate. Sub-section 3 of Section 20 lays down that : The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Now it is obvious that sub-section 3 refers to unmarried daughter, while appellant no.1 was a widowed daughter. Consequently, on her marriage, she would have been entitled to get maintenance from her husband as per Section 18 of the Act, if he was alive and the marriage was subsisting. Obviously, Section 18 cannot apply, as appellant no.1 was already a widow and not a subsisting wife of her late husband. She was, therefore, a widowed daughter-in-law of her father-in-law. For her, the relevant statutory provision is Section 19 of the Act, which deals with maintenance of widowed daughter-in-law. Sub-section 1 thereof lays down that: A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law. Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance (a) from the estate of her husband or her father or mother, or (b) from her son or daughter, if any, or his or her estate. Xxx xxx xxx (Emphasis supplied) Under the proviso to Section 19(1), the words used are

(a) from the estate of her husband or her father or mother and they mean that she has a right apart from the right she has against the estate of her husband a personal right against her father or mother during their respective lives.

The words the estate of before the words her husband are not to be read into the latter part of the clause as estate of her father or mother. What the proviso does here is to create (i) a right against the estate of her husband and also (ii) an independent and personal right against the father during his lifetime (or against the mother) if the daughter is unable to maintain herself out of her earnings or other property etc. That right against the father during his lifetime can be enforced against the property he is holding. The legislature has deliberately not used the words estate of her father in the proviso (a) to section 19(1). That right of the widowed daughter is covered under Section 21 (vi) read with Section 22(2). We have already referred to that right of maintenance against the estate of her father in Section 22(2) read with Section 21(vi). If indeed we read the words estate of before the words father in Section 19(1)(a), then Section 22(2) read with section 21(vi) would become otiose. That is why we say that the proviso (a) to Section 19(1) creates a personal right in favour of the widowed daughter against her father during his lifetime. Any property given in lieu thereof, during his life time or to go to her after the fathers life time would certainly fall under Section 14(1) of the Hindu Succession Act, 1956, that being in lieu of a pre-existing right during the fathers lifetime.

On facts, it must be held that the widowed daughter had a right against her father, during the latters lifetime, as she was a destitute and not taken care of by her husband or his estate. It is in lieu thereof, he gave her 1/3rd of her property.

This provision clearly indicates that if the widowed daughter-in-law is destitute and has no earnings of her own or other property and if she has nothing to fall back upon for maintenance on the estate of her husband or father or mother or from the estate of her son or daughter, if any, then she can fall back upon the estate of her father-in-law. This provision also indicates that in case of a widowed daughter-in-law of the family if she has no income of her own or no estate of her husband to fall back upon for maintenance, then she can legitimately claim maintenance from her father or mother. On the facts of the present case, therefore, it has to be held that appellant no.1, who was a destitute widowed daughter of the testator and who was staying with him and was being maintained by him in his lifetime, had nothing to fall back upon so far as her deceased husbands estate was concerned and she had no estate of her own. Consequently, as per Section 19(1)(a) she could claim maintenance from the estate of her father even during her fathers lifetime. This was a pre-existing right of the widowed daughter qua testators estate in his own lifetime and this right which was tried to be crystallised in the will in her favour after his demise fell squarely within the provisions of Section 22(2) of the Maintenance Act. Thus, on a conjoint operation of Sections 19(1)(a) and 22(2) read with Section 21(vi) there is no escape from the conclusion that appellant no.1 had a pre-existing right of being maintained from the estate of the testator during the testators lifetime and also had got a subsisting right of maintenance from the said estate even after the testators death when the estate would pass in favour of his testamentary heirs and the same situation would have occurred even if the testator had died intestate and if appellant no.1 could have become a Class-I heir. As we have already seen earlier, if the testator had died intestate, instead of 1/3rd interest she would have got full interest, in the suit land and it is that interest which was curtailed up to 1/3rd in lieu of her

claim for maintenance against the estate of the testator pursuant to the will in question. It, therefore, cannot be said that the provision in the will in her favour was not in lieu of a pre-existing right and was conferred only for the first time under the will so as to attract Section 14(2) of the Succession Act as, with respect, wrongly assumed by the High Court.

The testator in his wisdom with a view to ensure future claim of maintenance of appellant no.1 against his estate, carved out the residuary 1/3rd part thereof for being handed over to appellant no.1 on his demise. But for that provision his entire estate would have remained liable to meet the claim of future maintenance of appellant no.1 from that estate and could have been enforced against any of the heirs of deceased testator who might have succeeded to his estate as testamentary heirs on the testamentary succession getting opened in their favour. The testator wanted to free his other testamentary heirs from this pre-existing liability attached to his estate. He, therefore, carved out a parcel of his estate for enjoyment of his destitute widowed daughter, though of course as life interest which Section 14(1) of the Act made a full estate on the demise of the testator. It is in the light of this pre- existing statutory right of appellant no.1 for maintenance against the estate of the testator that the provision in the will, granting 1/3rd residuary life interest to appellant no.1, has to be appreciated. Once this legal right of appellant no.1 is visualised, it would obviously be the pre-existing right of maintenance in her favour qua the estate of the testator and it is this right which, though circumscribed as life interest in the will, would get matured into full ownership in her favour under Section 14(1) of the Succession Act, on the coming into operation of the will. That would precisely attract Section 14(1) of the Succession Act and would take the case out of the exceptional provision of Section 14(2). Both these provisions read 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 device, 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.

In the case of V.Tulasamma & Ors. v. V.Sesha Reddi (Dead) by L.Rs. [1977] 3 SCR 261, a three-Judge Bench of this Court, speaking through Bhagwati, J.(as he then was) has clearly laid down the scope and ambit of Sections 14(1) and (2) of the Succession Act. The relevant observations at the bottom of page 268 to beginning of page 270 deserve to be extracted in extenso: Now, sub-section (2) of section 14 provides that 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. This provision is more in the nature of a proviso or exception to sub-section (1) and it was regarded as such by this Court in Badri Pershad v. Smt. Kanso Devi [(1970) 2 SCR 95]. It excepts certain kinds of acquisition of property by a Hindu female from the operation of sub-section (1) and being in the nature of an exception to a provision which is calculated to achieve a social purpose by bringing about change in the social and economic position of women in Hindu society, it must be construed strictly so as to impinge as little as possible on the broad sweep of the ameliorative provision contained in sub-section (1). It cannot be interpreted in a manner which would rob sub-section (1) of its efficacy and deprive a Hindu female of the protection sought to be given to her by sub-section (1). The language of sub-section (2) is apparently wide to include acquisition of property by a Hindu female under an instrument or a decree or order or award where the instrument, decree, order or award prescribes a restricted estate for her in the property and this would apparently cover a case where property is given to a Hindu female at a partition or in lieu of maintenance and the instrument, decree, order or award giving such property prescribes limited interest for her in the property. But that would virtually emasculate sub-section (1), for in that event, a large number of cases where property is given to a Hindu female at a partition or in lieu of maintenance under an instrument, order or award would be excluded from the operation of the beneficent provision enacted in sub-section (1), since in most of such cases, where property is allotted to the Hindu female prior to enactment of the Act, there would be a provision, in consonance with the old Sastric law then prevailing, prescribing limited interest in the property and where property is given to the Hindu female subsequent to the enactment of the Act, it would be the easiest thing for the dominant male to provide that the Hindu female shall have only a restricted interest in the property and thus make a mockery of sub-section (1). The Explanation to sub- section (1) which includes within the scope of that sub-section property acquired by a female Hindu at a partition or in lieu of maintenance would also be rendered meaningless, because there would hardly be a few cases where the instrument, decree, order or award giving property to a Hindu female at a partition or in lieu of maintenance would not contain a provision prescribing restricted estate in the property. The social purpose of the law would be frustrated and the reformist zeal underlying the statutory provision would be chilled. That surely could never have been the intention of the Legislature in enacting sub- section (2). It is an elementary rule of construction that no provision of a statute should be construed in isolation but it should be construed with reference to the context and in the light of other provisions of the statute so as, as far as possible, to make a consistent enactment of the whole statute. Sub-section (2) must, therefore, be read in the context of sub-section (1) so as to leave as large a scope for operation as possible to sub-section (1) and so read, it must be confined to cases where property is acquired by a female Hindu for the first time as a grant without any pre-existing right, under a gift, will, instrument, decree, order or award, the terms of which prescribe a restricted estate in the property. This constructional approach finds support in the decision in Badri Prasads case (supra) where this Court observed that sub-section (2) can come into operation only if acquisition in any of the methods enacted therein is made for the first time without there being any pre-existing right in the female Hindu who is in possession of the property"...

(Emphasis supplied) In the light of this settled legal position, therefore, the relevant recitals in the will have to be construed in the background of admitted and well established facts referred to by us

earlier. It is easy to visualise that if the testator had created a life interest to the extent of 1/3rd of his property in favour of his maid servant or a female cook who might have served him during his life time, then such female legatees could not have claimed benefit of Section 14(1) and their claim would have confined only to Section 14(2) as they would not have any pre-existing legal right of maintenance or dependency qua the estate of the deceased employer but appellant no.1, as a destitute widowed daughter of the testator, stands on entirely a different footing. The will in her favour does not create for the first time any such right as might have been created in favour of a maid servant or a cook. In fact, the will itself recognises her pre- existing right in express terms and provides that even after his death, his other legatee brothers have to look after the welfare of his widowed daughter. Under these circumstances, Section 14(1) can legitimately be pressed in service by learned senior counsel for the appellants on the basis of legal right flowing to her under the relevant provisions of the Maintenance Act. Once that conclusion is reached, the result becomes obvious. The judgment and order passed by the High Court cannot be sustained and will have to be set aside. Instead, the decree of dismissal of the respondents suit as passed by the lower appellate Court will have to be confirmed, though on entirely a different set of reasoning, as indicated herein above, and not on the ground that the earlier part of the recitals in the will would supersede the later part of the recitals.

The appeal is accordingly allowed. The judgment and order of the High Court are set aside and the decree of dismissal of respondents suit as passed by the learned District Judge, Hoshiarpur on 16th August, 1976 is confirmed.

There will be no order as to costs in the facts and circumstances of the case.