Mr. Ranvir Dewan vs Mrs. Rashmi Khanna on 12 December, 2017

Equivalent citations: AIR 2018 SUPREME COURT 62, 2018 (12) SCC 1, (2018) 1 HINDULR 270, (2018) 1 RECCIVR 193, (2018) 1 WLC(SC)CVL 238, (2018) 1 PAT LJR 122, (2018) 1 RAJ LW 762, (2018) 1 ANDHLD 20, (2018) 1 ICC 999, (2018) 182 ALLINDCAS 185 (SC), (2018) 139 REVDEC 376, (2018) 3 ICC 913, (2017) 14 SCALE 201, (2018) 127 ALL LR 262, (2018) 1 ALL RENTCAS 10, (2018) 4 CALLT 21, (2018) 125 CUT LT 601, (2018) 1 CIVILCOURTC 397, (2018) 1 JLJR 47, (2018) 3 MAD LJ 102, (2018) 2 MAD LW 1, (2018) 4 CAL HN 189, 2018 (2) KCCR SN 102 (SC), (2018) 1 BOM CR 735

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Bench: Abhay Manohar Sapre, R.K. Agrawal

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 21784 OF 2017
(ARISING OUT OF SLP (C) No.32044/2016)

Mr. Ranvir Dewan ...Appellant(s)

VERSUS

Mrs. Rashmi Khanna & Anr. ….Respondent(s)

JUDGMENT

Abhay Manohar Sapre, J.

1. Leave granted.

2. This appeal is filed by plaintiff No.1 against the final judgment and order dated 13.07.2016 passed by the Division Bench of the High Court of Delhi at New Delhi in R.F.A.(OS) No.147 of 2013 whereby the High Court dismissed the appeal filed by Plaintiff No.2 (since dead) and the appellant (plaintiff No.1) herein and confirmed the judgment and order dated 11.10.2013 of the Single Judge of the High Court in C.S.(O.S.) No.1502 of 2010.

3. In order to appreciate the controversy involved in the appeal, it is necessary to set out the facts of the case.

4. The appellant is plaintiff No.1 whereas the respondents are the defendants in a suit out of which this appeal arises. The appellant is the brother whereas respondent No.1 is the appellant's sister.

5. The dispute in this appeal is essentially between the mother, brother(son) and the sister(daughter). It relates to a residential house consists of basement and two floors situated at D-246, Defense Colony, New Delhi (hereinafter referred to as the "suit house").

6. Mr. B.R. Dewan was the sole owner of the suit house. He had two wives-Mrs. Kamla Devi and second - Mrs. Pritam. Out of wedlock with first wife

- Mrs. Kamla Devi, a son - Ashok was born whereas out of wedlock with second wife -Mrs. Pritam, a son- Ranvir-appellant and a daughter-Rashmi- respondent No.1 were born. Mr. Dewan owned moveable and immovable properties,

7. On 24.06.1984, Mr. Dewan executed a Will of his properties (movables and immoveable). So far as the suit house with which we are concerned in this appeal, Mr. Dewan gave its ground floor to his son-Ranvir Dewan exclusively whereas the first floor, he gave exclusively to his daughter-Rashmi Khanna.

8. So far as wife-Pritam was concerned, he gave to her a "life interest" to reside in the suit house till her death and also to recover the rent and utilize the income earned by way of rent to maintain herself and the suit house. He also gave her a right to evict the tenants and induct the new ones.

9. The Will, in clear terms, recited that the wife - Mrs. Pritam is given "life interest" in the suit house and she will act as a trustee of its legal owners (son and daughter) and utilize the income earned out of it and on her death, by his son and daughter to whom the suit house was given exclusively.

10. The Will also recited that Ranvir and Rashmi would be free to get themselves assessed as owners of their respective shares in the suit house in their wealth tax assessment cases on the death of Mr. Dewan.

11. Mr. Dewan then gave his share in HUF property - B.R. Dewan & sons which consists of a plot at Ghaziabad, bank balances, shares, debentures, fixed deposits and all household articles exclusively to his wife –Mrs. Pritam. He also made provision for his first wife-Kamla Devi for her maintenance to pay Rs.500/- per month to her during her life time.

12. In this manner, Mr. Dewan made disposition of his entire moveable and immoveable property in the Will. In the last, he expressed that he has executed the Will with a hope that there would be no dispute and litigation amongst his family members qua the properties on his death.

13. On 16.09.1984, Mr. Dewan expired. Mrs. Pritam - second wife of late Mr. Dewan then applied for grant of probate of the Will dated 26.04.1984. The Competent Court granted the probate on 12.10.1987. It was followed by the consequential order dated 05.01.1989 to enable the parties to give effect to the Will. The son and daughter accordingly got their names mutated in the municipal records as owners of their respective shares in the suit house.

14. Contrary to the testator's hope, soon after his demise, the disputes started between the mother and son on one side and the daughter on the other side. Initially, parties sat together and decided to develop the suit house by making some additions/alterations and accordingly entered in family settlement followed by an agreement with the developers/builders to develop the suit house.

15. However, the disputes could not be settled amicably and instead got precipitated. The disputes were essentially centered around to their inter se ownership rights over the suit house including its nature, their shares, income earned from the suit house and the newly constructed 3rd floor and who should receive it and lastly, ownership rights over the 3rd floor.

16. Mrs. Pritam-mother and Ranvir-son then jointly filed a suit being O.S. No.1502/2010 against the daughter/sister - Rashmi and the developer on the original side of the High Court at New Delhi out of which this appeal arises and claimed following reliefs:

> "(i) That this Hon'ble Court be pleased to pass a decree of permanent injunction restraining the Defendants, their agents, successors and any third party claiming through them from creating any/any further third party rights in respect of the 2nd and 3rd floors of the property bearing No.D-246, Defence Colony, New Delhi.
>
> (ii) That this Hon'ble Court be pleased to pass a decree of declaration that the alleged tenancy agreement dated 7 th July, 2010 executed by Defendant No.01 in favour of Defendant No.02 are illegal, null and void and of no effect.
>
> (iii) That this Hon'ble Court be pleased to pass a decree of declaration that the Plaintiff No.02 is entitled to the rental, the security deposit all other incomes accruing from the 2nd floor of the property bearing No.D-246 Defence Colony, New Delhi.
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> (iv) That this Hon'ble Court be pleased to pass a decree of declaration that the Plaintiff No.02 is entitled to the rental, the security deposit and all other income accruing from the 3rd floor of the property bearing No.D-246, Defence Colony, New Delhi.
>
> (v) That this Hon'ble Court be pleased to pass a decree of declaration that the Plaintiff No.01 is entitled to absolute rights over the 3rd floor and roof rights of the 3rd floor apart from the Basement and Ground Floor of the property bearing No.D-246, Defence Colony, New Delhi."

17. Though the plaint runs into several pages and seeks to claim five reliefs but, in substance, the controversy centered around to relief No.(v) only.

18. According to the plaintiff, Mrs. Pritam (wife) was entitled to seek a declaration that she is the absolute owner of the suit house including its 3 rd floor. It was alleged that her "life interest" was enlarged and ripened into an absolute interest by virtue of Section 14 (1) of the Hindu Succession Act (hereinafter referred to as "the Act") on the death of her husband. Though the plaint contains several other averments but they need not be stated herein being unnecessary to examine the issue relating to grant of relief No. (v).

19. Respondent No.1 (defendant No.1) filed the written statement. While denying the plaintiffs' claim, it was contended that plaintiff No.2-Mrs. Pritam did not acquire absolute interest in the suit house and nor her "life interest" was enlarged and ripened into an absolute interest by virtue of Section 14 (1) of the Act. It was contended that plaintiff No.2 received only "life interest" to live in the suit house during her lifetime in terms of the Will and, therefore, such right squarely falls under Section 14(2) of the Act. It was contended that so far as respondent No.1 is concerned, she acquired an absolute ownership right in the first floor of the suit house on the strength of clear recitals in the Will.

20. The Single Judge framed the issues. Parties adduced their evidence. By judgment/decree dated 11.10.2013, the suit was dismissed. It was held that Mrs. Pritam received only "life interest" in the suit house. In other words, it was held that the plaintiffs' case falls under Section 14 (2) of the Act.

21. Felt aggrieved, plaintiffs filed first appeal bearing R.F.A. (OS) No.147 of 2013 before the Division Bench of the High Court. By impugned judgment dated 13.07.2016, the Division Bench dismissed the appeal and upheld the judgment/decree of the Single Judge giving rise to filing the present appeal by way of special leave by plaintiff No.1 in this Court.

22. Heard Mr. Guru Krishan Kumar, learned senior counsel for the appellant and Mr. K. Ramamoorthy, learned counsel for respondent No.1 and Mr. S.S. Jauhar, learned counsel for respondent No.2.

23. Mr. Guru Krishan Kumar, learned senior counsel for the appellant while assailing the legality and correctness of the impugned judgment reiterated the same submissions, which were urged unsuccessfully before the Courts below.

24. His main submission was that the appellant's case squarely falls under Section 14(1) of the Act, which confers on Mrs. Pritam the absolute right of ownership over the suit house.

25. Elaborating the submission, learned counsel urged that since the wife is entitled in law to claim maintenance from her husband even prior to and also after coming into force of the Act, it is in recognition of this pre-recognized right when the husband gave a "life interest" through Will, the same got enlarged and ripened into an absolute right by virtue of Section 14 (1) of the Act. It is essentially this submission, which was elaborated by the learned counsel with reference to decided

cases.

26. In reply, Mr. K. Ramamoorthy, learned senior counsel for respondent No.1 while supporting the reasoning and the conclusion arrived at by the two Courts below contended that the same is in accordance with the law and does not call for any interference.

27. According to learned counsel, as rightly held by the two Courts below, the appellant's case squarely falls under Section 14 (2) of the Act.

28. Having heard the learned counsel for the parties and on perusal of the record of the case, we find no merit in the appeal. In our view, the reasoning and the conclusion arrived at by the two Courts is just and proper and being in accordance with law does not call for any interference.

29. Before we proceed to decide the appeal on merits, we may take a note of one subsequent event, which occurred during the pendency of this litigation. It is the death of wife-Mrs. Pritam (plaintiff No.2) on 12.09.2016. She left behind her two legal representatives, namely, appellant, i.e., son and respondent No.1, i.e., daughter. Both being Class I heirs would succeed to their mother's estate in equal share, if she has died intestate. However, if she has made any testamentary disposition of her estate in favour of any person then subject to proving the claim in accordance with law by the person(s) concerned, the disposition of her estate would take place accordingly.

30. We, however, express no opinion on any of these issues because, in our view, it is not the subject matter of this appeal and leave the parties to work out their inter se rights, if any, in accordance with law in the estate of Mrs. Pritam in appropriate forum as and when occasion so arises.

31. The main question, which arises for consideration in this appeal, is whether two Courts below were justified in holding that the case of appellant, i.e. Mrs. Pritam falls under Section 14 (2) of the Act thereby she continued to enjoy only the “life interest” in the suit house.

32. In other words, the question arises for consideration in this appeal is, what is the true nature of the right received by Mrs. Pritam in the suit house through Will dated 24.08.1986 from her husband, viz., "absolute" by virtue of Section 14 (1) of the Act or "life interest" by virtue of Section 14 (2) of the Act.

33. In order to decide the question as to whether the appellant’s case falls under Section 14 (1) or (2) of the Act, it is necessary to first examine as to what is the true nature of the estate held by the testator. Second, what the testator had intended and actually bequeathed to his wife by his Will; and lastly, the right in the property received by Mrs. Pritam, viz., absolute interest by virtue of sub-section (1) or “life interest” by virtue of sub-section (2) of Section 14 of the Act.

34. Coming now to the facts of the case, it is not in dispute that the suit house was the self-acquired property of late Mr. Dewan. It is also not in dispute as one can take it from reading the contents of Will that Mr. Dewan had intended to give only “life interest" to his wife in the suit house, which he gave to her for the first time by way of disposition of his estate independent of her any right. It is

also not in dispute that it was confined to a right of residence to live in the suit house during her lifetime and to use the income earned from the suit house to maintain herself and the suit house. It is also not in dispute that the testator gave to his son ground floor of the suit house and first floor to his daughter with absolute right of ownership. The testator also permitted both of them to get their names mutated in the municipal records as absolute owners and also get them assessed as owners in the wealth tax assessment cases.

35. So far as other properties, viz., one plot at Ghaziabad, share in HUF and moveable properties were concerned, Mr. Dewan gave these properties to Mrs. Pritam-his wife absolutely.

36. It is a settled principle of law that what the testator intended to bequeath to any person(s) in his Will has to be gathered primarily by reading the recitals of the Will only.

37. As mentioned above, reading of the Will would go to show that it does not leave any kind of ambiguity therein and one can easily find out as to how and in what manner and with what rights, the testator wished to give to three of his legal representatives his self acquired properties and how he wanted to make its disposition.

38. Law relating to interpretation of Section 14 (1) and (2) of the Act is fairly well settled by series of decisions of this Court. However, the discussion on the interpretation of Section 14 (1) and (2) of the Act can never be complete without mentioning the first leading decision of this Court in V. Tulasamma & Ors. vs. Sesha Reddy(Dead) by L.Rs. (1977) 3 SCC

99. In this decision, Their Lordships (Three Judge Bench) interpreted succinctly sub-sections (1) and (2) of Section 14 of the Act and then on facts involved in that case held that the case falls under Section 14(1) of the Act. This decision is referred by this Court in every subsequent case dealing with the issue relating to Section 14 of the Act and then after explaining its ratio has applied the same to the facts of each case to find out as to whether the case on hand attracts Section 14(1) or 14(2) of the Act. Indeed, we find that attempts were made in past for reconsideration of the law laid down in V. Tulasamma (supra), but this Court consistently turned down the request. (see-Gullapalli Krishna Das vs. Vishnumolakayya Venkayya & Anr. (1978) 1 SCC 67, Bai Vajia (Dead) by L.Rs. vs. Thakorbhai Chelabhai & Ors., (1979) 3 SCC 300 and Thota Sesharathamma & Anr. vs. Thota Manikyamma (Dead) by L.Rs. & Ors., (1991) 4 SCC 312).

39. In the case of V. Tulasamma(supra), the learned Judge, Justice S. Murtaza Fazal Ali, speaking for the Bench, succinctly and in a lucid manner while analyzing the true scope of Section 14(1) and (2) of the Act held as under :

> “Section 14(1) and the Explanation thereto of the Hindu Succession Act, 1956 provide that any property possessed by a female Hindu, whether acquired before or after the commencement of the 1956 Act, shall be held by her as full owner thereof and not as a limited owner; and that ‘property’ includes both movable and immovable property acquired by her by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether from 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 the 1956 Act. The language is in the widest possible terms and must be liberally construed in favour of the females so as to advance the object of the Act and promote the socio-economic ends, namely, to enlarge her limited interest to absolute ownership in consonance with the changing temper of the times sought to be achieved by such a long legislation.

Section 14(2) provides that nothing contained in Section 14(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 decree, order or award prescribes a restricted estate in such property. It is in the nature of a proviso and has a field of its own without interfering with the operation of Section 14(1) materially. The proviso should not be construed in a manner so as to destroy the effect of the main provision or the protection granted by Section 14(1) or in a way so as to become totally inconsistent with the main provision.

Section 14(2) applies only to instruments, decrees, awards, gifts, etc. which create independent and new titles in favour of the females for the first time and has no application where the instrument concerned merely seeks to confirm, endorse declare or recognize pre-existing rights. In such cases, a restricted estate in favour of a female is legally permissible and section 14(1) will not operate in that sphere. Where, however, an instrument merely declares or recognizes a pre-existing right such as a claim to maintenance or partition or share to which the female is entitled, Section 14(2) has absolutely no application and the female's limited interest would automatically be enlarged into an absolute one by force of Section 14(1) and the restrictions placed, if any, under the document would have to be ignored. Thus, where a property is allotted or transferred to a female in lieu of maintenance or a share at a partition, the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee.

The use of terms like 'property acquired by a female Hindu at a partition', 'or in lieu of maintenance', or 'arrears of maintenance' etc. in the Explanation to Section 14(1) clearly makes sub-section (2) inapplicable to these categories which have been expressly excepted from the operation of sub-section (2).

The words 'restricted estate' in Section 14(2) are wider than limited interest as indicated in Section 14(1) and they include not only limited interest but also any other kind of limitation that may be placed on the transferee." .

40. Similarly, while explaining the ratio of V. Tulasamma (supra) and how one has to read the ratio for being applied to the facts of a particular case, this Court in the case of Sadhu Singh vs. Gurudwara Sahib Narike & Ors., (2006) 8 SCC 75 again succinctly discussed the applicability of Section 14 (1) and (2) of the Act and on facts involved therein held that the facts involved would attract Section 14(2) of the Act. Justice Balasubramanyan speaking for two Judge Bench held in paras 13 and 14 and 15 as under:

> "13. An owner of property has normally the right to deal with that property including the right to devise or bequeath the property. He could thus dispose it of by a testament. Section 30 of the Act, not only does not curtail or affect this right, it actually reaffirms that right. Thus, a Hindu male could testamentarily dispose of his property. When he does that, a succession under the Act stands excluded and the property passes to the testamentary heirs. Hence, when a male Hindu executes a will bequeathing the properties, the legatees take it subject to the terms of the will unless of course, any stipulation therein is found invalid. Therefore, there is nothing in the Act which affects the right of a male Hindu to dispose of his property by providing only a life estate or limited estate for his widow. The Act does not stand in the way of his separate properties being dealt with by him as he deems fit. His will hence could not be challenged as being hit by the Act.
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> 14. When he thus validly disposes of his property by providing for a limited estate to his heir, the wife, the wife or widow has to take it as the estate falls. This restriction on her right so provided, is really respected by the Act. It provides in Section 14(2) of the Act, that in such a case, the widow is bound by the limitation on her right and she cannot claim any higher right by invoking Section 14(1) of the Act. In other words, conferment of a limited estate which is otherwise valid in law is reinforced by this Act by the introduction of Section 14(2) of the Act and excluding the operation of Section 14(1) of the Act, even if that provision is held to be attracted in the case of a succession under the Act. Invocation of Section 14(1) of the Act in the case of a testamentary disposition taking effect after the Act, would make Sections 30 and 14(2) redundant or otiose. It will also make redundant, the expression "property possessed by a female Hindu" occurring in Section 14(1) of the Act. An interpretation that leads to such a result cannot certainly be accepted. Surely, there is nothing in the Act compelling such an interpretation. Sections 14 and 30 both have play. Section 14(1) applies in a case where the female had received the property prior to the Act being entitled to it as a matter of right, even if the right be to a limited estate under the Mitakshara law or the right to maintenance.
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> 15. Dealing with the legal position established by the decisions in Tulasamma1 and Bai Vajia v. Thakorbhai Chelabhai13 the position regarding the application of Section 14(2) of the Act is summed up in Mayne on Hindu Law thus:
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> "Sub-section (2) of Section 14 applies to instruments, decrees, awards, gifts, etc., which create independent and new title in favour of females for the first time and has

> no application where the instruments concerned merely seek to confirm, endorse, declare or recognise pre-existing rights. The creation of a restricted estate in favour of a female is legally permissible and Section 14(1) will not operate in such a case. Where property is allotted or transferred to a female in lieu of maintenance or a share at partition the instrument is taken out of the ambit of sub-section (2) and would be governed by Section 14(1) despite any restrictions placed on the powers of the transferee."(See p. 1172 of the 15th Edn.)"

41. Reading of the aforementioned principle of law laid down in the cases of V. Tulasamma and Sadhu Singh (supra), it is clear that the ambit of Section 14(2) of the Act 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. Where, however, property is acquired by a Hindu female at a partition or in lieu of right of maintenance, it is in virtue of a pre-existing right and such an acquisition would not be within the scope and ambit of Section 14(2) of the Act, even if the instrument, decree, order or award allotting the property prescribes a "restricted estate" in the property.

42. Applying the principle laid down in the aforementioned two cases to the facts of the case on hand, we are of the considered opinion that the case of plaintiff No.2-Mrs. Pritam does not fall under Section 14 (1) of the Act but it squarely falls under Section 14 (2) of the Act. In other words, in our view, in the facts of this case, the law laid down in Sadhu Singh's case(supra) would apply.

43. A fortorari, plaintiff No.2-late Mrs.Pritam received only "life interest" in the suit house by the Will dated 24.06.1986 from her late husband and such "life interest" was neither enlarged nor ripened into an absolute interest in the suit house and remained "life interest", i.e., "restricted estate" till her death under Section 14(2) of the Act. This we say for following factual reasons arising in the case.

44. First, the testator-Mr.Dewan being the exclusive owner of the suit house was free to dispose of his property the way he liked because it was his self earned property.

45. Second, the testator gave the suit house in absolute ownership to his son and the daughter and conferred on them absolute ownership. At the same time, he gave only "life interest" to his wife, i.e., a right to live in the suit house which belonged to son and daughter. Such disposition, the testator could make by virtue of Section 14 (2) read with Section 30 of the Act.

46. Third, such "life interest" was in the nature of "restricted estate" under Section 14(2) of the Act which remained a "restricted estate" till her death and did not ripen into an "absolute interest" under Section 14(1) of the Act. In other words, once the case falls under Section 14(2) of the Act, it comes out of Section 14(1). It is permissible in law because Section 14(2) is held as proviso to Section 14(1) of the Act.

47. Fourth, the effect of the Will once became operational after the death of testator, the son and the daughter acquired absolute ownership in the suit house to the exclusion of everyone whereas the wife became entitled to live in the suit house as of right. In other words, the wife became entitled in law to enforce her right to live in the suit house qua her son/daughter so long as she was alive. If for any reason, she was deprived of this right, she was entitled to enforce such right qua son/daughter but not beyond it. However, such was not the case here.

48. Fifth, the testator had also given his other properties absolutely to his wife which enabled her to maintain herself. Moreover, a right to claim maintenance, if any, had to be enforced by the wife. She, however, never did it and rightly so because both were living happily. There was, therefore, no occasion for her to demand any kind of maintenance from her husband.

49. Sixth, it is a settled principle of law that the "life interest" means an interest which determines on the termination of life. It is incapable of being transferred by such person to others being personal in nature. Such person, therefore, could enjoy the "life interest" only during his/her lifetime which is extinguished on his/her death. Such is the case here. Her "life interest" in the suit house was extinguished on her death on 12.09.2016.

50. Seventh, as mentioned above, the facts of the case on hand and the one involved in the case of Sadhu Singh (supra) are found to be somewhat similar. The facts of the case of Sadhu Singh were that the husband executed a Will in favour of his wife of his self-acquired property in 1968. Though he gave to wife absolute rights in the properties bequeathed but some restrictions were put on her right to sell/mortgage the properties and further it was mentioned in the Will that the said properties after wife's death would go to testator's nephew. Due to these restrictions put by the testator on his wife's right to sell/mortgage, it was held that the wife received only the "life interest" in the properties by Will and such "life interest", being a "restricted estate" within the meaning of Section 14(2) of the Act, did not enlarge and nor ripen into the absolute interest under Section 14(1) but remained a "life interest" i.e. "restricted estate" under Section 14(2) of the Act. It was held that such disposition made by the husband in favour of his wife was permissible in law in the light of Section 14(2) read with Section 30 of the Act. In our view, the facts of the case on hand are similar to the facts of Sadhu Singh's case(supra) and, therefore, this case is fully covered by the law laid down in Sadhu Singh's case.

51. In view of foregoing discussion, we are of the considered opinion that there is no error in the impugned judgment, which has rightly held that the case of Mrs. Pritam (Plaintiff No.2) falls under Section 14 (2) of the Act insofar as it relates to the suit house.

52. We, therefore, find no merit in the appeal, which thus fails and is accordingly dismissed.

.....J. [R.K. AGRAWAL] .....J. [ABHAY MANOHAR SAPRE] New Delhi;

December 12, 2017