

A "MUTUAL WILL" COMES INTO FORCE UPON THE DEATH OF EITHER OF THE JOINT TESTATORS

*In a recent decision of the Delhi High Court in **Vickram Bahl & Anr. v. Siddhartha Bahl & Anr.**, [C.S.(OS) 78 of 2016] it was held that a mutual will comes into effect after the death of either of the joint testators.*

A will is a legal declaration of the intention of a person with respect to the manner in which their property must be dealt with after their death. It is a unilateral document which takes effect after the death of the person making it. A mutual will is a joint legal declaration executed by two or more persons with respect to the manner in which their joint property must be dealt with after their death.

FACTS:

One, Late Wing Commander N. N. Bahl and his wife, Mrs. Sundri Bahl had executed a mutual will dated 31st March 2006 wherein it was stated that after the demise of one spouse, the entire suit property will "rest" with the other spouse and no other person shall claim any right or interest in the property. As per the said mutual will, after the demise of both the testators, their eldest son, Mr. Vickram Bahl (Plaintiff No.1), grand-daughter, being the daughter of Plaintiff No. 1 (Plaintiff No. 2) and the testators' younger son, Mr. Siddhartha Bahl (Defendant No.1) were to be the owners of their respective shares in the property jointly owned by the testators, as mentioned in the will.

Under the provisions of the will, Plaintiff No. 1 was to be the owner of the entire first floor of the house and the servant quarter on top of the garage office; Plaintiff No. 2 was to be the owner of the entire second floor of the house including the servant quarter on the second

floor; and the Defendant No. 1 was to be the owner of the entire ground floor of the house including the garage office on the ground floor, front lawn and set-back. The will further provided that one office flat of the testators shall not go to any of the beneficiaries under the will and the survivor i.e. Wing Commandar N. N. Bahl or Mrs. Sundri Bahl shall decide about the same.

Sometime after executing the will, Wing Commander N. N. Bahl predeceased his wife, Mrs. Sundri Bahl (Defendant No. 2). Upon his demise, the Plaintiff Nos. 1 and 2 filed a suit *inter alia* praying for a permanent injunction restraining the Defendant Nos. 1 and 2 from dispossessing the Plaintiffs from their shares in the suit property as mentioned in the will.

ISSUE:

The issues for consideration before the Court were: (i) whether the document dated 31st March 2006 which had not been disputed, should be recognized to be a mutual will and if so, the effect thereof; and (ii) the effect of Section 14(1) of the Hindu Succession Act thereof on the bestowal.

SUBMISSIONS:

On behalf of the Plaintiffs it was submitted that the document dated 31st March 2006 was in the nature of a "mutual will" and upon the demise of Wg. Cdr. Bahl, the suit property was held by the Defendant No. 2 in trust for the Plaintiffs

and/or the Defendant No. 1 and accordingly the Plaintiffs as beneficiaries of the trust have a cause of action in the suit. It was submitted that the Defendant No.2 cannot transfer, sell or alienate the property or do any acts which would deprive the beneficiaries under the mutual will.

On the other hand, the Defendants submitted that Defendant No. 2 was the co-owner of the suit property and on the death of her husband, the Defendant No. 2 became the sole and absolute owner of the suit property and that the Defendant No. 2 also became the absolute owner of the estate in terms of Section 14 of the Hindu Succession Act.

JUDGMENT:

On the first issue, the following factors were considered:

- (i) The will in question provided that the suit property was jointly owned by the testators in equal undivided share;
- (ii) Upon the demise of either of the testators, his/her undivided share shall "rest" with the surviving spouse and no one else shall claim to have a share in it;
- (iii) After the death of both the testators, the property will be shared by Plaintiff Nos. 1 and 2 and Defendant No. 1 as mentioned specifically in the will.

The court observed that the language of the will makes it clear that the house in question is the joint property of the testators, in which each had half undivided share, i.e. each of them was the owner of each and every portion of the house and so neither was capable of bequeathing any particular portion but was capable of bequeathing the entire undivided share.

While referring to the decisions in **Krishna**

Kumar Birla v. Rajendra Singh Lodha (2008) 4 SCC 300, Meera Dewan v. Shakuntala Dewan AIR 2002 Del 321, Shiva Nath Prasad v. State of W. B. (2006) 2 SCC 757 and Kuppuswami Raja v. Perumal Raja AIR 1964 Mad 291, the court stated that the principle of a mutual will coming into effect and being binding on the testator who may be alive on the death of one of the two testators is well enshrined in the Indian law.

The court observed that the document dated 31st March 2006 contains the agreement between the husband and the wife in respect of the bequest of the property and when the agreement and the will with respect to the joint property of the owners are stated in the same document, the document dated 31st March 2006 will be considered as a mutual will.

The court held that under the mutual will, the testators have bequeathed separate portions of the suit property to the Plaintiff Nos. 1 and 2 and the Defendant No. 1, and upon the demise of her husband, the Defendant No. 2 was not entitled to renege from her agreement with him and was bound by the same. It was observed that the Defendant No. 2 having accepted the said will and after having taken advantage of it, cannot contravene her agreement with her husband.

The court observed that the will uses the word "rest" while referring to the ownership of the suit property by the surviving spouse while the use of words "shall be owned", "will be absolute owners of their respective shares as detailed hereinbelow" and "they shall have the right to own and use their respective portions" are used while bequeathing the property to Plaintiff Nos. 1 and 2 and Defendant No. 1. The difference in the language used makes it clear that the

bequeath from the predeceasing spouse to the surviving spouse was temporary until the final bequeath to the two Plaintiffs and Defendant No. 1, thereby limiting the rights of the surviving spouse.

The court held that the Plaintiffs, being the beneficiaries under the mutual will, had a cause of action to restrain the Defendant No.2 from transferring, selling or alienating the suit property or doing any acts which would deprive the beneficiaries of their rights. The court further observed that the Plaintiffs, during the lifetime of Defendant No. 2, cannot claim any ownership towards the portions of property to be ultimately bequeathed to them; however, they also have a right not to be dispossessed from the same. The Court concluded that the Plaintiffs were entitled to permanent injunction against dispossession by the Defendants from the portions occupied by them.

With respect to the second issue, it is pertinent to consider Section 14(1) of the Hindu Succession Act which reads as under:

14(1). Property of a female Hindu to be her absolute property- Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation:-In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

14(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."

Quoting Mulla's treaties on Hindu Law, 23rd (2018) Edition, the court stated as follows:

"29. Mulla's treaties on Hindu Law, 23rd (2018) Edition sums up the position with respect to Section 14, as (a) a most expansive interpretation to the general rule enacted in sub-section (1) has been given; (b) sub-section (2) must be read only as a proviso or exception to sub-section (1) and its operation must be confined to cases where property is acquired for the first time as a grant, without any pre-existing right, under a Will, the terms of which prescribe a restricted estate in the property; (c) where the property is acquired by a female Hindu in lieu of maintenance, it is in lieu of a preexisting right and such an acquisition would not be within the scope and ambit of sub-section (2), even if the Will prescribes a restricted estate in the property; (d) it depends on the facts of each case, whether the same is covered by the first or the second sub-section; and, (e) sub-section (2) can come into operation only if acquisition of the property is made without there being a pre-existing right to the female Hindu who is in possession of the property."

Upon interpretation of Section 14 of the Hindu Succession Act, the court observed that for the Defendant No. 2 to claim that she was the absolute owner of the suit property, it was incumbent upon her to plead that the suit property was bequeathed to her as a result of a pre-existing right. However, as the same was not pleaded in her written statement and no evidence was given in respect of the same, accordingly, it was held that the Defendant No. 2 cannot claim absolute right to the property under Section 14(1).

The court observed that a pre-existing right along with being a question of law is also a

question of fact. The Court relied on a recent judgment of the Apex Court in **Ajit Kaur Alias Surjit Kaur Vs. Darshan Singh (2019) 13 SCC 70**, wherein it was held that the widow in possession of the suit property but without any pre-existing right to the property, could not claim full ownership under Section 14(1) of the Hindu Succession Act.

In the present case, the Plaintiffs, during the lifetime of Wing Commander N. N. Bahl, were in occupation of the upper floors of the suit property. In the mutual will, there was no mention of dispossessing the Plaintiffs from the upper floors for making the same available for renting so as to provide maintenance to the surviving spouse.

On the second issue, the court stated that if Section 14(1) of the Hindu Succession Act were to be applicable, the restricted estate

bequeathed by the Wing Commander N. N. Bahl in favour of his wife would enlarge into an absolute estate defeating the very purpose of the mutual will.

Therefore, the second question framed with respect to applicability of Section 14(1) of the Hindu Succession Act was also decided in favour of the Plaintiffs and against the Defendants.

The Plaintiffs were held to be entitled to the relief of restraining the Defendants from dispossessing the Plaintiffs from the upper floors of the house and were also held entitled to the relief of permanent injunction restraining the Defendants from selling, transferring, alienating or dealing with the suit property in contravention with the terms of the mutual Will.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.