* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Reserved on: September 15, 2022***
Pronounced on: October 11, 2022

\+ RFA(OS) 15/2022 & CM No. 34279/2022

VIKRANT KAPILA & ANR. Appellants

Through: Mr. Sudhanshu Batra, Senior Advocate with Mr. Gagan Mathur, Ms. Madhu Sehgal & Mr. Rishi Sehgal, Advocates

Versus

PANKAJA PANDA & ORS. ..... Respondents

Through: Mr. Ashish Dholakia, Senior Advocate with Mr. Jai Sahai Endlaw and Mr. Ashish Kumar, Advocates for R-1 to 3

Mr. Arvind Nigam, Senior Advocate with Ms. Niharika Ahluwalia & Ms. Ishita Deswal, Advocates for respondents No.4 & 5

Ms. Astha Badoriya & Ms. Mansi Sharma, Advocates for respondent No.6

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

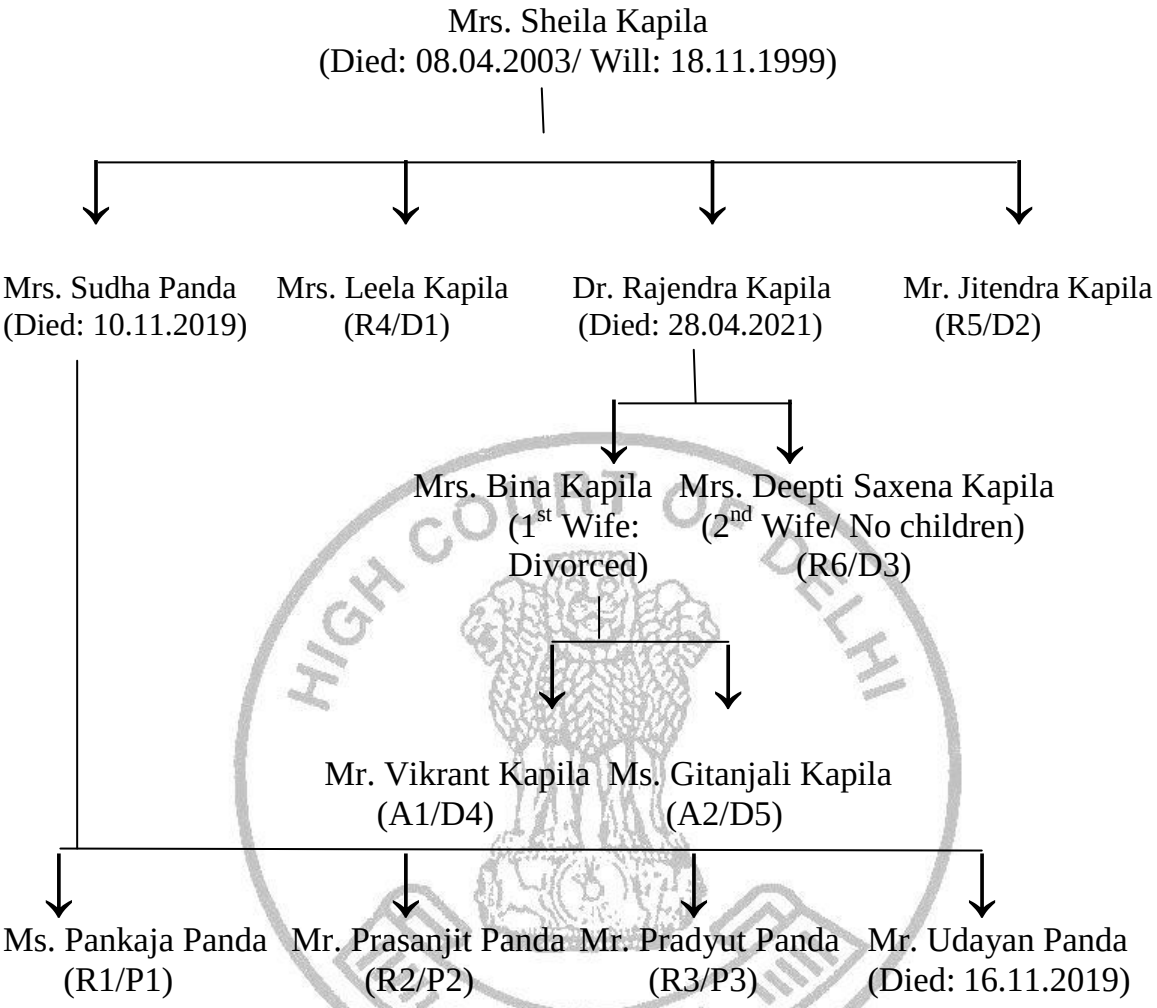
J U D G M E N T

SAURABH BANERJEE, J.

A Will will be a Will only when it will lay to rest the wishes of who is at rest.

We will endeavor to proceed so that the Will of who lays at rest is put to rest.

1. The family tree of the parties involved, is as under:



2. By virtue of the present appeal, appellants challenge the judgment and preliminary decree dated 10.05.2022[1] whereby the Learned Single Judge, based upon the Will of late Mrs. Sheila Kapila[2], after demarcating the 25% equal share of all her four children in the property bearing No. D-897, New friends Colony, New Delhi, admeasuring 471 Sq. Yards[3], has put the same to sale and distributed the proceeds thereof equally amongst them.

[1] hereinafter referred as "**Impugned Judgment**"
[2] hereinafter referred as "**Testator**"
[3] hereinafter referred as "**Property**"

3. The sole issue for consideration before us hinges upon the interpretation of one sanguine document-Will dated 18.11.1999[4], which, being admitted by all parties, is not under challenge. Relevant clauses for purposes of adjudication of disputes inter-se parties, being clauses (i), (ii) and (iii) of the said *Will*, are as under:

> *"i. The house shall belong to all the four children with each having 25% share in the property.*
>
> *ii. The beneficiaries will not have any power to dispose of their share of the property in any manner whatsoever. They will have the right to enjoy their share of the property but will not have the right to make any Will with respect to their share.*
>
> *iii. If any of the four beneficiaries die then his/her share of property shall devolve upon his/her children who will have the full ownership of the property with the power of disposal. However, if the children of the deceased beneficiary intend to dispose off their share of the property then they shall first offer it to the other beneficiaries of their children in case they are dead."* ***(emphasis added)***

The rest of the clauses, being jointly applicable to all the parties, are not relevant for the purposes of the present dispute.

4. Admittedly, there is no dispute qua the division of the equal 25% share of the four children in the Property, be it by way of testamentary succession in terms of the *Will* or by way of intestate succession in terms of the Indian Succession Act, 1925[5].

5. As per brief facts, respondent nos. 1 to 3 instituted a suit for partition of the Property belonging to the Testator pleading that the said Testator died

[4] hereinafter referred as "***Will***"
[5] hereinafter referred as "**Act**"

intestate on 08.04.2003 leaving behind four children, namely Mrs. Sudha Panda, Mrs. Leela Kapila, Dr. Rajendra Kapila and Mr. Jitendra Kapila. Upon her demise, the said four children inherited 25% equal share in her aforesaid Property. Thereafter, her first child, Ms. Sudha Panda died intestate on 10.11.2019 leaving behind respondent nos. 1 to 3. Both her second and fourth child being respondent nos. 4 and 5 are the only surviving children left. Lastly, her third child, Dr. Rajendra Kapila also died on 28.04.2021 leaving behind appellants and respondent no.6, his second wife. Before his demise, the said Dr. Rajendra Kapila executed a Will dated 22.02.2020 bequeathing all his estate to respondent no.6 to the exclusion of both appellants. Resultantly, legal proceedings are pending inter-se them in United States of America.

6. Both appellants and respondent no.6 are together entitled to 25% share inherited by them from the late Dr. Rajendra Kapila (*though the same is disputed by them*) and the respondent nos. 1 to 3 are together entitled to 25% share inherited by them from their mother late Mrs. Sudha Panda and respondent no. 4-Mrs. Leela Kapila and respondent no. 5-Mr. Jitender Kapila being the surviving children are individually entitled to 25% share each.

7. Upon being served, the respondent nos. 4, 5 and respondent no. 6 filed separate written statements supporting the case of the respondent nos. 1 to 3 whereas the appellant nos. 1 and 2 filed separate written statements opposing their case. The appellants propounded a copy of the *Will*, however, there was no whereabouts of the original thereof.

8. After hearing the parties and despite recording that the circumstances created a serious doubt noting non-production of the original thereof; and

that it was denied by respondent nos. 1 to 3, as well as respondent nos. 4,5 and 6; and after categorically expressing reservations qua its very existence, for the reasons recorded therein, the Learned Single Judge passed the detailed Impugned Judgment after considering the said *Will*.

9. Vide Impugned Judgment, Learned Single Judge disagreed with the contention of the appellants that as per clauses (ii) and (iii), the four children of the Testator only had a limited right in the Property and that upon the demise of any of the four children, their respective shares would devolve upon their respective children, i.e., the grand-children who will have the full ownership of the Property, and relying upon ***Madhuri Ghosh and Anr. v. Debobroto Dutta and Anr.***[6] held that as per clause (i), the Testator bequeathed the Property in equal share to all her four children and thus clause (iii) would not take away the absolute vesting of the Property in their favour; further that in terms of *Section 113* of the Act as the respondent no.4 had no child of her own, there could be no devolution and thus such a bequest was void *ab-initio*.

10. Lastly, relying upon ***Jasbir Kumar v. Kanchan Kaur and Ors.***[7] and ***Santosh Kumar v. Col. Satsangi's Kiran Memorial Aipeccs Educational Complex and Anr.***[8], Learned Single Judge held that as the dispute inter-se the parties was only with regard to the interpretation of clauses of the *Will*, hence, no evidence of any kind was required to be led.

11. The Impugned Judgment has brought all the parties at crossroads. Being aggrieved, hence the present appeal by the appellants, who have once

[6] (2016) 10 SCC 805
[7] RFA 607/2016 dated 06.02.2017- Delhi High Court
[8] 2018 SCC OnLine Del 12089

again raised similar issues, which already stand negated by the Learned Single Judge. The appellants, who are the legal heirs of the deceased third child of the Testator, are the lone branch fighting the battle against other three branches, comprising of the two surviving children and the other comprising of other set of grand-children of the Testator. According to us the root cause of this litigation emanates from the Will dated 22.02.2020 whereby the father of the appellants, late Dr. Rajendra Kapila has bequeathed all his estate to respondent no.6 to their exclusion. Much is at stake for the appellants in view thereof. As per parties, there are conflicting clauses in the *Will*. On one hand, appellants contend that as per clauses (ii) and (iii), the four children have a limited bequest whereas they, like other grand-children of the Testator, have an absolute bequest, whereas on the other hand, respondents contend that as per clause (i) those very four children have an absolute bequest and thus the subsequent clauses (ii) and (iii) qua the grand-children have no meaning.

12. Learned senior counsel for appellants contended that clauses (ii) and (iii) are supreme and have an over-riding effect over clause (i) and thus the appellants, alongwith other grand-children of the Testator, have an absolute bequest over their 25% share in the Property against the four children, who have a limited bequest with restrictions till their lifetime only. In support thereof, learned senior counsel drew our attention to the restrictions used in respect of the individual shares of the four children, namely they have "*no power to dispose*", "*have right to enjoy*" and "*not have the right to make any will*" in Clause (ii) against those used in respect of the rights of the grand-children, namely "*full ownership*", "*with the power of disposal*" in clause (iii).

13. Learned senior counsel then contended that the Impugned Judgment has been summarily passed under *Order XII rule 6* and *Order XV rule 1* of the Code of Civil Procedure, 1908[9] without according any chance of trial to the appellants to prove the *Will*.

14. In support of his submissions, learned senior counsel has relied upon ***M.S. Bhavani v. M.S. Raghu Nandan***[10]; ***Navneet Lal @ Rangi v. Gokul & Ors.***[11]; ***Ramachandra Shenoy & Anr. v. Hilda Brite & Ors.***[12]; ***Ramkishorelal & Anr. v. Kamal Narayan***[13]; ***Raj Bajrang Bahadur Singh v. Thakurain Bakhtraj Kuer***[14] and ***Jasbir Kumar (supra).***

15. Learned senior counsel then contended that in case of conflict between two clauses in a Will which cannot be read together, applying the principles of harmonious construction, the latter clause will prevail as per *Section 88* of the Act.

16. To be noted further that though the appellants have raised the plea(s) of *Section 6(d)* of The Transfer of Property Act, 1881 and *Section 113* of the Act, no arguments were addressed qua them so we need not dwell over them and the same are deemed to have been given up.

17. Per contra, learned (senior) counsels for all the respondents appearing separately before us, fully supported the views, reasonings and the findings of the Learned Single Judge recorded in the Impugned Judgment.

18. Learned senior counsel for respondent nos. 4 and 5, relying upon ***Madhuri Ghosh (supra)*** has contended that as per clause (i) the four

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[9] hereinafter referred as "**Code**"
[10](2020) 5 SCC 361
[11](1976) 1 SCC 630
[12](1964) 2 SCR 722
[13]1963 Supp(2) SCR 417
[14]1953 SCR 232

children have an absolute bequest over the Property and as such any other bequest qua the same Property in favour of the grand-children is *non-est*. In support thereof, he relied upon the admissions qua the combined 25% share in the Property made by appellants in their respective written statements, the e-mails dated 02.10.2021 and 03.11.2021, which have been admitted by them in their respective 'Affidavit of Admission/ Denial' to contend that undisputedly as per the *Will*, the four children have an absolute bequest over the Property and the grand-children have no interest over the same.

19. Learned senior counsel, further relying upon the averments made by appellants in paragraph 27 of their respective written statements, by respondent no. 4 in paragraph 15 of her written statement, by respondent no. 5 in paragraph 12 of his written statement and lastly by respondent no. 6 in paragraph 1 of her written statement, has also contended that all parties are in agreement that the said Property cannot be partitioned by metes and bounds.

20. Learned senior counsel has lastly contended that as the whole dispute is with respect to the interpretation of the *Will*, there is no triable issue, further as the same is an unregistered document, original whereof is not known, thus, the plea of the appellants is sham and bogus. In support, learned senior counsel has relied upon *Section 2* of The Partition Act, 1893 whereby the Court has the power to direct sale of the property on a request of any or all the shareholders and further submitted that as all the parties are residing outside India and have no intention of returning to India, a collective request was made by all the parties which led to passing of the Impugned Judgment.

21. Learned counsel for respondent nos. 1 to 3, supporting the case of

respondent nos. 4 and 5, has additionally drawn the attention of this Court to paragraph 26 of the written statement of the appellants and emails dated 02.10.2011 and 03.11.2021 sent by mother of appellants-Mrs. Bina Sehgal and appellants themselves to respondent nos. 1 to 3 wherein it has been admitted that Dr. Rajendra Kapila had a 25% share in the Property and there ought to be four equal shares thereof.

22. Similarly, learned counsel for respondent no. 6, also supporting the case of respondent nos. 4 and 5, has relied upon the Will dated 22.02.2020 of late Dr. Rajendra Kapila to stake claim to her 25% share in the Property and referred to the pending litigation inter-se herself and the appellants herein.

23. In support of above, learned counsel for respondents have relied upon ***M. S. Bhavani v. M. S. Raghu Nandan***[15]; ***Madhuri Ghosh (supra)***; ***Sadaram Suryanarayana & Anr. v. Kalla Surya Kantham & Anr.***[16]; ***Mauleshwar Mani v. Jagdish Prasad***[17]; ***Kaivelikkal Ambunhi v. H. Ganesh Bhandary***[18]; ***Gopala Menon v. Sivaraman Nair & Ors.***[19]; ***Commissioner of Wealth Tax, W. Bengal v. Bishwanath Chatterjee***[20]***; Rameshwar Bakhsh & Ors. v. Balraj Kaur & Ors.***[21]; ***Umrao Singh v. Baldev Singh & Anr.***[22]; ***Savita Anand v. Krishna Sain & Ors***.[23]; ***Santosh Kumar (supra)***; ***S.K. Chopra v. V.N. Chopra***[24]; ***Jasbir Kumar (supra)***;

[15](2020) 5 SCC 361
[16](2010) 13 SCC 147
[17](2002) 2 SCC 468
[18](1995) 5 SCC 444
[19](1981) 3 SCC 586
[20](1976) 3 SCC 385
[21]1935 SCC OnLine PC 51
[22]1932 SCC OnLine Lah 410
[23] RFA (OS) 63/2018 dated 03.11.2020-Delhi High Court
[24]2017 SCC OnLine Del 8987

Keshav Chander Thakur v. Krishan Chander[25]; ***Suman Lata v. Amit Kumar***[26]; ***Jagmohan Nath Kapoor v. Manmohan Nath Kapoor***[27]; ***Rajrani Sehgal v. Parshottam Lal and Ors.***[28]; ***Sheba Sujan George v. Abraham Varghese***[29]; ***Seethaiammal v. Ramakrishnan Asari & Ors***.[30]

24. It cannot escape our attention that it was only during rejoinder arguments that learned senior counsel for appellants, for the first time, also made a passing reference by contending that in view of *Section 87* of the Act, the intention of the Testator has to be harmoniously construed to give effect to all clauses of the *Will* as far as possible. As there is no pleading to that effect anywhere and it runs contrary to his pleadings qua *Section 88* of the Act, we are not propounding on it.

25. After hearing learned (senior) counsels for all the parties at considerable length and perusal of all the pleadings, especially the *Will* on record, we have no hesitation in concluding that the sole issue before us is revolving around the interpretation of the *Will*.

26. Before adverting to the facts of the case and giving our findings, we find that admittedly disputes regarding interpretation of a Will have been knocking the legal doors since time immemorial and though such doors have been successfully closed vide numerous pronouncements, but, unfortunately the said issue will always be burning as there can be no closure to it. In our opinion, for reaching a final culmination with respect to interpretation of a Will it is imperative for the Court to look at it from the eyes of a ***lay****man*

[25]2014 SCC OnLine Del 3092 [DB]
[26]2016 SCC OnLine Del 3959
[27]2011 SCC OnLine Del 1870
[28]1991 SCC OnLine Del 680
[29]2018 SCC OnLine Ker 843
[30]1968 SCC OnLine Mad 145

rather than a ***law****man*. For this we find support from ***Ramachandra Shenoy (supra)*** wherein it has been held as under:

> *"15. Quite a number of authorities were cited by learned Counsel on either side but in each one of these we find it stated that in the matter of the construction of a will authorities or precedents were of no help as each will has to be construed in its own terms and in the setting in which the clauses occur. We have therefore not thought it necessary to refer to these decisions."*

27. As per basic settled principles of law, it is the foremost duty of the Court to carefully give a purposeful meaning to the words and logical interpretation to the language of a Will to infer and draw the real intention of the testator. As meaning is sought to be given to the intention of the testator to what he must've meant, when he was alive, after his demise, due importance has to be given to the surrounding circumstances, the background, the status and relations with the family and society of the testator. The purpose must be to derive the real intention of the testator and recognize the dispositive rights of the beneficiaries for reaching a conclusion as far as practically possible. The Court is to look behind the cloak and lift the veil.

28. As far as possible, a Will has to be read as a whole and in case of contradictions, inconsistencies, variations or like, they have to be brought to variance with each other on a level playing field. The intention ought to be inferred from the words and the language used in the Will without reading into them or drawing any preconceived notion and without tinkering with the basic structure of the Will for deciphering their true literal meaning. The words in the Will ought to be given a plain, simple and grammatical

meaning as per Dictionary without any if(s) or but(s). We find support in ***N. Kasturi vs. D. Ponnammal & Ors.***[31] wherein it has been held as under:

> "*It is obvious that a court cannot embark on the task of construing a will with a preconceived notion that intestacy must be avoided or vesting must not be postponed. The intention of the testator and the effect of the dispositions contained in the will must be decided by construing the will as a whole and giving the relevant clauses in the will their plain grammatical meaning considered together. In construing a will, it is generally not profitable or useful to refer to the construction of other wills because the construction of each will must necessarily depend upon the terms used by the will considered as a whole, and the result which follows on a fair and reasonable construction of the said words must vary from will to will. Therefore, we must look at the relevant clauses carefully and decide which of the two rival constructions should be accepted.*"

29. Also, as far as possible all clauses in a Will are to be given equal importance, benefit and uniformity in conjunction with each other and not taken disjointly. The clauses in a Will are like Sailors on a ship sailing in the same direction. Each clause has an individual value like each Sailor has an individual role to play. Thus, a Will has to be harmoniously construed under all circumstances. What is to be kept in mind is that where some clause(s) in the Will are or can be overstepping on each other and as the same cannot be altered or no explanation can be sought from the testator, it should be made sure that such clause(s) do not trample upon each other so as to negate any one of them. In case the clause(s) are inconsistent and a divergent meaning is possible, the order of precedence should be followed, i.e., the more

[31] (1961) 3 SCR 955

powerful/meaningful clause(s) is to take precedence over the less meaningful clause(s). When there is a clause bequeathing absolute rights then the same cannot be followed by other clause(s) with restricted rights. An absolute right is an outright recognition which cannot be fettered by imposing a condition in the form of a restrictive right.

30. Where words in a clause can be interpreted in more than one way, it would be in the interest of things to choose and give the best possible, plausible, constructive meaning in the overall interest of everybody so as to draw a 'single straight line' with no breakers rather than falling back on something which is implausibly destructive against the interest of everybody. In such situations, the meaning which furthers the cause ought to be chosen rather than which goes against the cause. The Court steps into the shoes of a kapellmeister and at the end of the day as everybody likes a melodious song, it is the duty of the Court to choose the music which is ears to the soul. Word(s) and clause(s) of the same Will ought not be picked or chosen out of context. All words are to be regarded as essential and all the clauses should be reconciled with each other and are to be read together as being part and parcel of the same document, however in case, for some reason it is not possible to do the same, then the more beneficial interpretation should be adopted so as to bring a hiatus to the conflicting situation.

31. According to us, the *Will* in question is a single document to be read as a whole. All clauses in the *Will* are in complete sync with each other. The *Will* before us is like a mathematical theorem where each step is vital and has its own purposeful meaning and is inter-dependent upon the other steps, taking out one step would render the theorem non-existent. The Testator has merely recorded what is a matter of fact unconcerned by what was a matter

of law. Like any elderly of the family in an Indian household, it was her intention throughout to be just and fair, as far as possible, to each of those part of her progeny, including her children and her grand-children. She tried to paint both the sky and earth with the same colour to the best of her ability, not realising that the same was neither practically possible nor legally permissible.

32. We are of the opinion that the opening clause (i) clearly bears out her intention of distributing equal shares of 25% each in the Property to all the four children. As such there is an absolute bequest in favour of the four children by the Testator. The rest of the clauses are an expression of her desire that the Property would remain within the family for which the manner of devolution has been contoured. That the four children have been given an absolute bequest by clause (i) is also evident from the fact that there are no riders or limitations attached to it. Clause (ii) and (iii) are not restrictive but are only to streamline the carrying forward of the Property in the family lineage. Once it is held so, then clause (ii) and (iii) cannot stand in the way to curtail the unfettered rights of the four children given by clause (i) and the restrictions put therein are of no avail. The rest of the clauses in the *Will* are immaterial for the purposes of the present adjudication as they are applicable to all those jointly covered in the erstwhile clause (i), (ii) and (iii) separately. Such restrictive clause (ii) and (iii) are in fact void, repugnant and are against the law. The Testator could not have legally put any restrictions over her four children from making a Will or from not disposing of their respective shares after granting them absolute bequest. We find support from ***Gopala Menon (supra)*** wherein it has been held as under:

"6. The absolute and unrestricted power to dispose of

property is a necessary incident of an absolute estate. It is implicit, when an absolute estate is conferred, that the grantee is free to deal with and dispose of the property in any manner. Indeed, if an absolute grant is burdened with a restraint on alienation, the grant is good and the condition void."

33. Seeing it from another angle, even if clause (i), (ii) and (iii) are taken to be distinct from each other, even then, under the facts of the present case, if it is not possible to read all the clauses together, then also clause (i) will take precedence over clause (ii) and (iii). A bare reading of the *Will* shows that the grand-children have not been given any rights of their own as clause (ii) and (iii) are dependent upon clause (i) and the grand-children derive their rights from their parents, the four children of the Testator who have been given an absolute bequest by clause (i). According to us, no other reading can give a more purposeful interpretation to the *Will*. If we are to agree with the interpretation of the *Will* sought to be given by the appellants then it cannot be given effect to as the second legal heir-Mrs. Leela Kapila, respondent no. 4 has no child till date. Clause (ii) and (iii) have no meaning themselves and are in support of clause (i) of the *Will*. Even otherwise, the said view is neither practically possible nor legally permissible.

34. Learned senior counsel of appellants has sought to argue that the rights of the grand-children by clause (iii) are better than that of the four children by clause (i). Agreeing with the said contention will mean that the grand-children will steal a march over the four children. Alas, we do not agree as this could never have been intention of the Testator as a plain reading of the *Will* reveals otherwise. This cannot be permitted. Had that been so, the Testator would have made a direct bequest in favour of the

grand-children without bringing any of her four children into the picture. That is not so in the present case which makes us conclude otherwise. The most logical conclusion to the *Will* is thus that the Testator was methodical to recognise and give the equal 25% share by clause (i) and the grand-children have no independent right of their own and what is contained in clauses (ii) and (iii) are recognition of the expression of the desires of the Testator.

35. When an absolute bequest has been given to the four children by clause (i), then any bequest in favour of the grand-children by clause (ii) and (iii) is at the outset, otiose, redundant and cannot be given effect to. Thus 25% share in the Property of the four children as per clause (i) are supreme and the grand-children cannot have any rights whatsoever as per clause (ii) and (iii) as there would be no devolution onto them.

36. Upon giving due weightage and proper meaning to clause (i) after the above discussion, we have no hesitation is holding that the words "*shall*" and "*belong*" used in conjunction in clause (i) qua the 25% share of all the four children create an absolute bequest in their favour. According to us, the words "*shall belong*" is an expression of fact meaning something more than mere 'possession', that which is 'a part of' establishing what is 'rightful and actual' having an affirmative assertion about 'ownership'. It would thus mean that as per clause (i) of the *Will* there is an absolute bequest by the Testator in favour of those belonging to the First Generation. We are supported by ***Commissioner of Wealth Tax, W. Bengal (supra)*** wherein it has been held as under:

> *"5. The expression "belong" has been defined as follows in the Oxford English Dictionary:*

To be the property or rightful possession of.

So, it is the property of a person, or that which is in his possession as of right, which is liable to wealth-tax. In other words, the liability to wealth-tax arises out of ownership of the asset, and not otherwise. Mere possession, or joint possession, unaccompanied by the right to, or ownership of property would therefore not bring the property within the definition of net wealth" for it would not then be an asset "belonging" to the assessee."

37. We also find support in ***Raja Mohammad Amir Ahmad Khan vs Municipal Board of Sitapur & Anr***[32]**.** wherein it has been held as under:

"24. ... ... Though the word "belonging" no doubt is capable of denoting an absolute title, is nevertheless not confined to connoting that sense. Even possession of an interest less than that of full ownership could be signified by that word. In Webster "belong to" is explained as meaning inter alia "to be owned by, be the possession of". The precise sense which the word was meant to convey can therefore be gathered only by reading the document as a whole and adverting to the context in which it occurs. ...

25. Coming next to paragraph 5, what we have stated in regard to paragraph 2 and the use of the expression "belonging to me" occurring there would in our opinion apply equally to the use of the word 'owner' in this paragraph. ..."

38. Having held so, let us now advert to the position of law qua 'absolute bequest' and also, when there is such an 'absolute bequest'. We are fortified with ***Sadaram Suryanarayana (supra)*** wherein it has been held as under:

"12. In (Kunwar) Rameshwar Bakhsh Singh's case (supra) the Privy Council held that where an absolute estate is

[32] AIR 1965 SC 1923

created by a Will in favour of the devisee, other clauses in the Will which are repugnant to such absolute estate cannot cut down the estate; but must be held to be invalid. The following passage summed up the law on the subject:

> *"Where an absolute estate is created by a Will in favour of the 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."*

13. In Radha Sundar Dutta's case (supra), this Court was dealing with a situation where there was a conflict between two clauses appearing in the Will. This Court ruled in favour of the earlier clause, holding that the later clause would give way to the former. This Court said:

> *".....where there is a 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".*

14. The issue came up for consideration once again before a Constitution Bench of this Court in Ramkishore Lal's case (supra). In that case too the Court was concerned with the approach to be adopted in a matter where a conflict arises between what is said in one part of the testament vis-`-vis what is stated in another part of the same document especially when in the earlier part the bequest is absolute but the latter part of the document gives a contrary direction about the very same property. This Court held that in the event of such a conflict the absolute title conferred upon the legatee by the earlier clauses appearing in the Will cannot be diluted or taken away and shall prevail over directions contained in the latter part of the disposition. The following passage from the decision is instructive:

"The golden rule of construction, it has been said, is to ascertain the intention of the parties to the instrument after considering all the words, in their ordinary, natural sense. To ascertain this intention the Court has to consider the relevant portion of the document as a whole and also to take into account the circumstances under which the particular words were used. Very often the status and the training of the parties using the words have to be taken into consideration. It has to be borne in mind that very many words are used in more than one sense and that sense differs in different circumstances. Again, even where a particular word has, to a trained conveyancer, a clear and definite significance and one can be sure about the sense in which such conveyancer would use it, it may not be reasonable and proper to give the same strict interpretation of the word when used by one who is not so equally skilled in the art of conveyancing. Sometimes it happens in the case of documents as regards disposition of properties, whether they are testamentary or non-testamentary instruments, that there is a clear conflict between what is said in one part of the document and in another. A familiar instance of this is 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. What is to be done where this happens? It is well settled that in case of such a conflict the earlier disposition of absolute title should prevail and the later directions of disposition should be disregarded as unsuccessful attempts to restrict the title already given. (See Sahebzada Mohd. Kamgar Shah v. Jagdish Chandra Deo Dhabal

> *Deo (1960) 3 SCR 604. It is clear, however, that an attempt should always be made to read the two parts of the documents harmoniously, if possible. It is only when this is not possible, e.g., where an absolute title is given is in clear and unambiguous terms and the later provisions trench on the same, that the later provisions have to be held to be void."*

15. To the same effect is the decision of this Court in Mauleshwar Mani's case (supra) where the question once again was whether an absolute interest created in the property by the Testatrix in the earlier part of the Will can be taken away or rendered ineffective by the subsequent bequest which is repugnant to the first bequest. Answering the question in the negative, this Court held that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to him to further bequeath the very same property in favour of the second set of persons. The following passage from the decision in this regard is apposite:

> *"In view of the aforesaid principles that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to the testator to further bequeath the same property in favour of the second set of persons in the same will, a testator cannot create successive legatees in his will. The object behind is that once an absolute right is vested in the first devisee the testator cannot change the line of succession of the first devisee. Where a testator having conferred an absolute right on anyone, the subsequent bequest for the same property in favour of other persons would be repugnant to the first bequest in the will and has to be held invalid. ...We are, therefore, of the view that once the testator has given an absolute estate in favour of*

the first devisee it is not open to him to further bequeath the very same property in favour of the second set of persons.""

39. We also find support in ***Navneet Lal @ Rangi (supra)*** wherein it has been held as under:

"*(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.*"

40. We also find support in ***Madhuri Ghosh (supra)*** wherein it has been held as under:

"*11. In law, the position is that where an absolute bequest has been made in respect of certain property to certain persons, then a subsequent bequest made qua the same property later in the same will to other persons will be of no effect.*"

41. We further find support in ***Mauleshwar Mani (supra)*** wherein it has been held as under:

"12. In view of the aforesaid principles that once the testator has given an absolute right and interest in his entire property to a devisee it is not open to the testator to further bequeath the same property in favour of second set of persons in the same Will. A testator cannot create successive legatees in his will. The object behind is that once an absolute right is vested in the first devisee the testator cannot change the line of succession of first devisee.

> *Where a testator having conferred an absolute right on anyone the subsequent bequeath for the same property in favour of other persons would be repugnant to the first bequeath in the Will and has to be held invalid."*

42. We further find support in ***M.S. Bhavani (supra)*** wherein it has been held as under:

> *"12.5. In any case, even if it is assumed that the latter clause went beyond a mere expression of desire and created a bequest in favour of the children of the testator (Appellant No. 1 and Respondent No. 1), the first clause creating an absolute right in favour of Nirmala Murthy shall prevail over such clause.*"

43. Having held so, and though we are conscious of the various judicial pronouncements wherein it has also been held that the latter clause(s) will prevail over the earlier clause, however, having carefully gone through the *Will*, we have no hesitation in opining that the present case is not one such case where restrictive bequest given by latter clause(s) can override the absolute bequest given by earlier clause. If we hold so, it will render the *Will* with no meaning and will certainly go against the wishes of the Testator.

44. Being clear and specific, we find there is nothing cryptic or vague about the words or language used in clause (i). According to us, as there is an absolute bequest in favour of the four children in terms of clause (i), the remaining clauses in the *Will*, including clauses (ii) and (iii), are redundant as they can neither take precedence over nor override the said clause (i). Thus clause (ii) and (iii) will not and cannot prevail over clause (i).

45. Further, having once held so, no triable issue can be framed under the facts and circumstances of the case. We reiterate that the parties are consensus ad-idem qua the *Will* as all of them are relying upon the *Will* and

the only dispute is qua the interpretation thereof. Accordingly, there is nothing surviving which requires framing of any factual issue or legal issue. In view of the above, there is no triable issue left for the Court to adjudicate. In fact, when the case rests on admitted facts and/or documents, no triable issue arises and thus cannot be framed, further if there are no document(s) left to be proven by any of the parties, there is nothing left to prove. All issues inter-se the parties stand settled and closed and nothing is surviving. Appellants being the ones who propounded the *Will*, cannot be allowed to agitate anything disputing the same. They cannot be allowed to probate and reprobate to argue something contrary to their own pleadings. In fact, learned senior counsel for appellants was unable to point out any so-called triable issue which arises for adjudication in the present dispute.

46. Since approaching this Court and then canvassing its arguments before this Court, the appellants have neither denied their 25% equal share in the Property as per the *Will* nor have raised any dispute qua the admissibility of the said *Will*. It is thus deemed admitted for all purposes and so the doors of trial stood foreclosed from the very inception. Taking all the above into consideration, this is a fit case under *Order XII rule 6* and *Order XIV rule 1* of the Code to be exercised for proceeding to pass a decree without trial. This will, of course, enable saving valuable time, cost, effort and money of the parties. We find support in ***Savita Anand (supra)*** and ***Keshav Chander Thakur (supra)***.

47. In view of the aforesaid, as *Section 113* of the Act is not involved anymore, the parties are to proceed as suggested in the Impugned Judgment.

48. There is no hindrance in proceeding with the same as the steps qua sale and division of the Property inter-se the four children in this case, as

this Court, under *Section 2* of the Partition Act, 1893 can proceed on the request of all the shareholders by passing the Impugned Judgment in the facts of the case, especially in view of the undisputed fact that Property is to devolve in equal 25% share in all the four children.

49. Finding no infirmity, perversity or illegality in the Impugned Judgment dated 10.05.2022 passed by the Learned Single Judge qua the interpretation of the *Will* in question, we find there are no grounds of interference by this Court.

50. Since the appeal has been finally heard and disposed of, parties shall abide by the terms and conditions stipulated in the Impugned Judgement dated 10.05.2022 and proceed taking appropriate steps in the best interest of all.

51. The Impugned Judgment and decree dated 10.05.2022 to the extent that the Property be put up for sale so that the proceeds thereof can be divided equally amongst the parties in terms of the ***25% share each*** in the property bearing No. D-897, New friends Colony, New Delhi, admeasuring 471 Sq. Yards determined in the following manner is thus upheld:

Appellants & Respondent no. 6	Respondent nos. 1 to 3	Respondent no. 4	Respondent no. 5

52. Before parting we wish to reiterate that according to us, the main grievance of the appellants is against their late father-Dr. Rajendra Kapila, who executed a Will dated 22.02.2020 and bequeathed everything in favour of his second wife-respondent no.6 to their exclusion. Had that not been the case, there would have been no litigation at all as upon division, all the four children and their lineage were always entitled to the equal 25% share in the

Property, be it by way of testamentary succession in terms of the *Will* or by way of intestate succession in terms of the Indian Succession Act, 1925.

53. In view of above discussion, legal position and facts and circumstances of this case, we believe, we have given a purposeful meaning to the Will to put to rest the wishes of who lays at rest.

54. Accordingly, we dispose of the present appeal, alongwith the pending application, with the aforesaid directions. No order as to costs. The parties to bear their own costs.

(SAURABH BANERJEE)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

OCTOBER 11, 2022/rr