A SADARAM SURYANARAYANA & ANR.

v.

KALLA SURYA KANTHAM & ANR.

(Civil Appeal No. 2758 of 2004)

OCTOBER 22, 2010

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[MARKANDEY KATJU AND T.S. THAKUR, JJ.]

Indian Succession Act, 1925 *– Will – Execution of – Testator bequeathing property in absolute terms in favour of* C *her daughters – Latter part of bequest purporting to vest the same property in their female offspring – Interpretation of – Held: It is clear from the Will that testatrix had made an unequivocal and absolute bequest in favour of her daughters – By the latter part all such property as remained available* D *in the hands of the legatees at the time of demise, were to devolve upon their female offspring – Latter part is redundant since it was repugnant to the clear intention of testatrix in making an absolute bequest in favour of her daughters – Stipulation made in the second part did not in the least affect* E *the legatees being the absolute owners of the property bequeathed to them – Upon their demise the estate owned by them would devolve by the ordinary law of succession on their heirs and not in terms of the Will executed by testatrix – Will.*

F **The original owner bequeathed certain properties in favour of her daughters 'SA' and 'SR'. It was stipulated that after death of 'SA' and 'SR' the properties would devolve upon their female offsprings. 'SA' died intestate. The appellants, sons of 'SA', took possession of the** G **property bequeathed in favour of 'SA'. The respondents-daughter of 'SA' and others filed a suit for declaration of title over the suit property and for recovery of possession in view of the stipulation contained in the Will. The trial**

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court dismissed the suit. The High Court set aside the order passed by the trial court and decreed the suit. Therefore, the appellants filed the instant appeal.

Allowing the appeal, the Court

HELD:1.1 It is evident from a careful reading of Sections 84, 85, 86 and 87 of the Indian Succession Act, 1925 that while interpreting a Will, the courts would as far as possible place an interpretation that would avoid any part of a testament becoming redundant. The courts would also interpret a Will to give effect to the intention of the testator as far as the same is possible. Each document has to be interpreted in the peculiar circumstances in which the same has been executed and keeping in view the language employed by the testator. That indeed is the requirement of Section 82 of the Succession Act also inasmuch it provides that meaning of any clause in a Will must be collected from the entire instrument and all parts should be construed with reference to each other. [Para 16] [821-F-H; 822-A]

1.2 It is evident from a careful reading of clause 6 of the Will that the same makes an unequivocal and absolute bequest in favour of daughters of testatrix. The use of words like "absolute rights of sale, gift, mortgage etc." employed by the testatrix make the intention of the testatrix abundantly clear. The testatrix desired that after the demise of her daughters the property vested in them would devolve upon their female heirs only. There is no dispute that the testatrix had in no uncertain terms made an absolute bequest in favour of her daughters. The submission that the absolute estate of the 'SA' ought to be treated only as a life estate though attractive on first blush, does not stand closer scrutiny. It is said so because the ultimate purpose of interpretation of any document is to discover and give effect to the true

A intention of the executor, in the instant case, the testatrix. The intention of the testatrix to make an absolute bequest in favour of her daughters is unequivocal. Secondly, the expression "after demise of my daughters the *retained and remaining properties* shall devolve on their females
B children only" does not *stricto sensu* amount to a bequest contrary to the one made earlier in favour of the daughters of the testatrix. The expression extracted does not detract from the absolute nature of the bequest in favour of the daughters. [Paras 6 and 17] [815-A-B; 822-
C C-D]

1.3 All that the testatrix intended to achieve by the latter part of clause 6 was the devolution upon their female offsprings all such property as remained available in the hands of the legatees at the time of their demise.
D There would obviously be no devolution of any such property upon the female offsprings in terms of the said clause if the legatees decided to sell or gift the property bequeathed to them as indeed they had every right to do under the terms of the bequest. Thus, there is no real
E conflict between the absolute bequest which the first part of clause 6 of the Will makes and the second part of the said clause which deals with devolution of what and if at all anything that remains in the hands of the legatees. The two parts of clause 6 operate in different spheres,
F namely, one vesting absolute title upon the legatees with rights to sell, gift, mortgage etc. and the other regulating devolution of what may escape such sale, gift or transfer by them. The latter part is redundant by reason of the fact that the same was repugnant to the clear intention of the
G testatrix in making an absolute bequest in favour of her daughters. It could be redundant also because the legatees exercised their rights of absolute ownership and sale thereby leaving nothing that could fall to the lot of the next generation females or otherwise. The stipulation
H made in the second part of clause 6 did not in the least

affect the legatees being the absolute owners of the property bequeathed to them. The corollary would be that upon their demise the estate owned by them would devolve by the ordinary law of succession on their heirs and not in terms of the Will executed by the testatrix. [Para 17] [823-A-F]

1.4 The judgment and order passed by the High Court is set aside and that passed by the trial court restored. [Para 18] [823-G]

Sasiman Chowdhurain and Ors. vs. Shib Narain Chowdhury and Ors. **AIR 1922 PC 63**; *(Kunwar) Rameshwar Bakhsh Singh and Ors. v. (Thakurain) Balraj Kuar and Ors.* **AIR 1935 PC 187**; *Radha Sundar Dutta v. Mohd. Jahadur Rahim and Ors.* **1959 SCR 1309**; *Ramkishore Lal v. Kamal Narain* **(1963) Supp 2 SCR 417**; *Mauleshwar Mani and Ors. v. Jagdish Prasad and Ors.* **(2002) 2 SCC 468**; *Pearey Lal v. Rameshwar Das* **(1963) Supp 2 SCR 834**; *Ramachandra Shenoy and Anr. v. Mrs. Hilda Brite and Ors.* **1964 (2) SCR 722**; *Kaivelikkal Ambunhi (Dead) By Lrs. and Ors. v. H. Ganesh Bhandary* **(1995) 5 SCC 444 – referred to.**

Case Law Reference:

AIR 1922 PC 63	**Referred to.**	**Para 4**
AIR 1935 PC 187	**Referred to.**	**Para 8**
1959 SCR 1309	**Referred to.**	**Para 9**
(1963) Supp 2 SCR 417	**Referred to.**	**Para 10**
(2002) 2 SCC 468	**Referred to.**	**Para 11**
(1963) Supp 2 SCR 834	**Referred to.**	**Para 12**
1964 (2) SCR 722	**Referred to.**	**Para 13**
(1995) 5 SCC 444	**Referred to.**	**Para 14**

A CIVIL APPELLATE JURISDICITION : Civil Appeal No. 2758 of 2004.

From the Judgment & Order dated 4.3.200 of the High Court of Andhra Pradesh at Hyderabad in Appeal No. 1530 of 1998.

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Y. Raja Gopala Rao for the Appellants.

I. Venkatanarayana, A. Chandramohan, T. Anamika for the Respondents.

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The Judgment of the Court was delivered by

T.S. THAKUR, J. 1. This appeal by special leave is directed against an order dated 4th March, 2003 passed by the High Court of Andhra Pradesh whereby Civil Appeal D No.1530 of 1998 has been allowed, the judgment and order passed by the IInd Additional Senior Civil Judge, Vishakapatnam in O.S. No.32 of 1991 set aside and the suit for possession filed by the plaintiff-respondent decreed with mesne profits @ Rs.800/- p.m. from the date of the suit till the E date of delivery of its judgment. The facts giving rise to the filing of the suit may be summarised as under:

2. The appellants are the sons of late Smt. Sadaram Appalanarasamma while the respondents are her daughter and F son-in-law. The property in dispute consisting of four eastern portions (two on the ground floor and two on the first floor) bearing door Nos.44-23-35/7, 44-23-35/6, 44-23-35/1 and 44-23-35 situated at Railway New Colony, Visakhapatnam was originally owned by late Smt. Kalla Jaggayyamma, who passed away on 5th July, 1981 leaving behind four sons besides two G daughters named: Smt. Sadaram Appalanarasamma and Smt. Sadaram Ramanamma. It is not in dispute that in terms of a Will dated 4th September, 1976 executed by the deceased Smt. Kalla Jaggayyamma the property mentioned at item 2 in para 6 of the Will was bequeathed in favour of her two daughters

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mentioned above with a stipulation that the same shall after their death devolve upon their female offsprings. Smt. Sadaram Appalanarasamma mother of the first plaintiff and defendants 1 to 6 (Sadaram Suryanarayana, Sadaram Eswararao, Sadaram Devanand, Sadaram Ramana, Sadaram Satyanarayana and Sadaram Ramu) died intestate on 11th January, 1990. The case of the plaintiffs is that defendants 1 to 6 i.e. sons of late Appalanarasamma took possession of suit property comprising item no.2 of the Will executed by Smt. Kalla Jaggayyamma which had devolved upon plaintiff no.1 in her capacity as the daughter of late Appalanarasamma and the stipulation contained in the Will executed by Smt. Kalla Jaggayyamma. The plaintiffs respondents, therefore, filed OS No.32/91 in which they sought a decree for declaration of title over the suit property and for recovery of possession thereof apart from other reliefs.

3. The defendants appellants in the present appeal contested the suit, inter alia, taking the plea that late Smt. Sadaram Appalanarasamma had acquired absolute title in the property under the Will executed in her favour and that in terms of a Will dated 5th January, 1981 she had bequeathed the property in question to the defendant which they were entitled to retain in possession as owners thereof.

4. On the pleadings of the parties the Trial Court framed four issues, allowed the parties to adduce evidence in support of their respective cases, but eventually dismissed the suit. The Trial Court held that the execution of the Will by Smt. Kalla Jaggayyamma had been proved and that according to the said Will the property would devolve absolutely upon the legatee Smt. Sadaram Appalanarasamma. The plaintiffs' claim to the property based on the stipulation that upon the death of Sadaram Appalanarasamma the property would devolve upon her female offsprings was thus negatived. Aggrieved, the plaintiffs appealed to the High Court of Andhra Pradesh who has by the judgment impugned before us, reversed the view

A taken by the Trial Court and decreed the suit. In doing so the High Court followed the decisions of this Court in *Kaivelikkal Ambunhi (Dead) By Lrs. and Ors. v. H. Ganesh Bhandary* (1995) 5 SCC 444, *Ramachandra Shenoy and Anr. v. Mrs. Hilda Brite & Ors.* 1964 (2) SCR 722 and the decision of Privy
B Council in *Sasiman Chowdhurain and Ors. v. Shib Narain Chowdhury and Ors.* AIR 1922 PC 63 and *Pearey Lal v. Rameshwar Das* (1963) Supp 2 SCR, in preference to those delivered in *Mauleshwar Mani and Ors. v. Jagdish Prasad and Ors.* (2002) 2 SCC 468, *Ramkishore Lal v. Kamal Narain*
C (1963) Supp 2 SCR 417, *Radha Sundar Dutta v. Mohd. Jahadur Rahim and Ors.* 1959 SCR 1309 and *(Kunwar) Rameshwar Bakhsh Singh and Ors. v. (Thakurain) Balraj Kuar and Ors.* AIR 1935 PC 187.

5. The English rendition of Para 6 of the Will executed by
D Smt. Kalla Jaggayyamma is as under:

> "6) 2nd item Tiled house situated in New colony out of which Eastern wing 2 rooms shall devolves to my 2nd daughter Chandaram Appalanarasamma and the Western
E wing 2 rooms shall devolve upon my elder daughter Chandram Ramanamma with absolute rights of Sale, Gift, Mortgage etc., and this will come into force after my demise. After demise of my daughters the retained and remaining property shall devolve upon their female children only."

F 6. It is evident from a plain reading of the above that the testatrix had bequeathed in absolute terms the property mentioned in clause (6) (supra) in favour of her daughters Chandaram Appalanarasamma and Chandaram Ramanamma with absolute rights of sale, gift, mortgage etc. That the bequest
G was in absolute terms was made abundantly clear by the use of the words "absolute rights of sale, gift, mortgage etc." appearing in clause (6) above. To that extent there is no difficulty. What led to a forensic debate at the bar was the latter part of bequest under which the Testatrix has attempted to
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regulate the devolution of the property in question after the demise of her daughters. The Testatrix has desired that after the demise of her daughters the property vested in them would devolve upon their female heirs only. The question is whether the Testatrix Smt. Kalla Jaggayyamma, had made two bequests one that vests the property absolutely in favour of her daughters and the other that purports to vest the very same property in their female offsprings. If so whether the two bequests can be reconciled and if they cannot be, which one ought to prevail.

7. Before we address these questions we may briefly refer to the decisions noted above especially because the High Court seems to have seen a conflict in the legal position settled by those decisions.

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

9. 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".

A 10. 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-à-vis what B 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 C 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:

> D "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 E 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 F 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 G 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 H 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."

11. 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

A 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.

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xxx xxx xxx

We are, therefore, of the view that once the testator has given an absolute estate in favour of the first devisee it is C not open to him to further bequeath the very same property in favour of the second set of persons."

12. In *Pearey Lal's* case (supra), this Court held that while interpreting a Will the Court must take the document as a whole with a view to harmonizing apparently conflicting stipulations. D This Court recognized the following guiding principles in the matter of interpretation of Wills:

"(i) the intention of the testator by reading the will as a whole and if possible, such construction as would give to E every expression some effect rather than that which could render any of the expression inoperative must be accepted; (ii) another rule is that the words occurring more than once in a will shall be presumed to be used always in the same sense unless a contrary intention appears from the will; (iii) F all parts of a will should be construed in relation to each other; (iv) the court will look at the circumstances under which the testator makes his will, such as the state of his property, of his family and the like; (v) where apparently conflicting dispositions can be reconciled by giving full G effect to every word used in a document, such a construction should be accepted instead of a construction which would have the effect of cutting down the clear meaning of the words used by the testator; (vi) where one of the two reasonable construction would lead to intestacy, H that should be discarded in favour of a construction which

does not create any such hiatus." A

13. In *Ramachandra Shenoy's* case (supra) this Court was dealing with a case where the Testatrix had made a Will in favour of her daughter and a gift over in favour of her (daughter's) male children. The relevant portion of the Will was translated in English to the following effect: B

> "All these (properties) shall after me be enjoyed by my elder daughter Severina Sabina and after her lifetime by her male children too as permanent and absolute hukdars." C

The question was whether the Testatrix had made an absolute bequest to the daughter or created only a life interest followed by an absolute bequest in favour of the grandsons of the Testatrix. This Court held on an interpretation of the bequest that what was created in favour of the daughter was only a life D estate and that the intention of the Testatrix was to make an absolute bequest in favour of her grandsons through her daughter. The following passage from the decision is in this regard apposite:

> "It was common ground that under clause 3(c) the E testatrix intended to confer an absolute and permanent interest on the male children of her daughter, though if the contentions urged by the appellants were accepted the legacy in their favour would be void because there could legally be no gift over after an absolute interest in favour F of their mother. This is on the principle that where property is given to A absolutely, then whatever remains of A's death must pass to his heirs or under his will and any attempt to sever the incidents from the absolute interest by prescribing a different destination must fail as being G repugnant to the interest created. But the initial question for consideration is whether on a proper construction of the will an absolute interest in favour Severina is established. It is one of the cardinal principles of construction of wills that to the extent that it is legally possible effect should be H

A 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
B 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. It is for this reason that where there is a bequest to A even though it be in terms apparently absolute followed by a gift of the same to B
C absolutely "on" or "after" or "at" A's death, A is prima facie held to take a life interest and B an interest in remainder, the apparently absolute interest of A being cut down to accommodate the interest created in favour of B. In the present case if, as has to be admitted, the testatrix did
D intend to confer an absolute interest in the male children of Severina the question is whether effect can or cannot be given to it. If the interest of Severina were held to be absolute no doubt effect could not be given to the said intention. But if there are words in the will which on a reasonable construction would denote that the interest of
E Severina was not intended to be absolute but was limited to her life only, it would be proper for the Court to adopt such a construction, for that would give effect to every testamentary disposition contained in the will. It is in that context that the words 'after her lifetime' occurring in clause
F 3(c) assume crucial importance. These words do indicate that the persons designated by the words that follow were to take an interest after her, i.e., in succession and not jointly with her. And unless therefore the words referring to the interest conferred on the male children were held to be
G words of limitation merely, i.e., as denoting the quality of the interest Severina herself was to take and not words of purchase, the only reasonable construction possible of the clause would be to hold that the interest created in favour of Severina was merely a life interest and that the
H remainder in absolute was conferred on her male children."

14. In *Kaivelikkal Ambunhi's* case (supra), the Court applied the maximum "*cum duo inter se pugnantia reperiuntur in testamento ultimum ratum est*" which means that in a will if there are two provisions the latter shall prevail over the earlier. A

15. Time now to refer to the provisions of Indian Succession Act 1925, Chapter VI whereof deals with construction of Wills. Some of the principles of interpretation of Wills that are statutorily recognized in Chapter VI need special notice. For instance, Section 84 provides that if a clause is susceptible of two meanings, according to one of which it has some effect and according to the other it can have none, the former shall be preferred. So also, Section 85 provides that no part of a Will shall be rejected as destitute of meaning if it is possible to put a reasonable construction on the same. Section 86 provides that if the same word occurs in different parts of the same Will, they shall be taken to have been used everywhere in the same sense unless a contrary intention appears. Section 87 makes it clear that the intention of the Testator shall not be set aside merely because it cannot take effect to the full extent, and that effect is to be given to it as far as possible. Section 88 provides that if there are two clauses of gift in a Will, which are irreconcilable, so that they cannot possibly stand together, the last shall prevail. B C D E

16. It is evident from a careful reading of the provisions referred to above that while interpreting a Will, the Courts would as far as possible place an interpretation that would avoid any part of a testament becoming redundant. So also the Courts will interpret a Will to give effect to the intention of the Testator as far as the same is possible. Having said so, we must hasten to add that the decisions rendered by Courts touching interpretation of the Wills are seldom helpful except to the extent the same recognize or lay down a proposition of law of general application. That is so because each document has to be interpreted in the peculiar circumstances in which the same has been executed and keeping in view the language employed by F G H

A the Testator. That indeed is the requirement of Section 82 of the Succession Act also inasmuch it provides that meaning of any clause in a Will must be collected from the entire instrument and all parts shall be construed with reference to each other.

B 17. Coming then to the facts of the case at hand it is evident from a careful reading of clause 6 of the Will extracted above that the same makes an unequivocal and absolute bequest in favour of daughters of Testatrix. The use of words like "absolute rights of sale, gift, mortgage etc." employed by the Testatrix make the intention of the Testatrix abundantly clear. Learned C counsel for the plaintiffs respondents herein also did not have any quarrel with the proposition that the Testatrix had in no uncertain terms made an absolute bequest in favour of her daughters. What was argued by him was that the bequest so made could be treated as a life estate not because the D testament stated so but because unless it is so construed the second part of clause 6 by which the female offsprings of the legatees would get the property cannot take effect. It was on that premise contended that the absolute estate of the Smt. Sadaram Appalanarasamma ought to be treated only as a life estate. The contention though attractive on first blush, does not stand closer scrutiny. We say so because the ultimate purpose of interpretation of any document is to discover and give effect to the true intention of the executor in the present case the Testatrix. We are not here dealing with a case where the Testatrix has in one part of the Will bequeathed the property to 'A' while the same property has been bequeathed to 'B' in another part. Had there been such a conflict, it may have been possible for the plaintiff-respondent to argue that the latter bequest ought to take effect in preference to the former. We are on the contrary dealing with a case where the intention of the Testatrix to make an absolute bequest in favour of her daughters is unequivocal. Secondly, the expression "after demise of my daughters the *retained and remaining properties* shall devolve on their females children only" does not *stricto sensu* amount to a bequest contrary to the one made earlier

in favour of the daughters of the Testatrix. The expression extracted above does not detract from the absolute nature of the bequest in favour of the daughters. All that the Testatrix intended to achieve by the latter part of clause 6 was the devolution upon their female offsprings all such property as remained available in the hands of the legatees at the time of their demise. There would obviously be no devolution of any such property upon the female offsprings in terms of the said clause if the legatees decided to sell or gift the property bequeathed to them as indeed they had every right to do under the terms of the bequest. Seen thus, there is no real conflict between the absolute bequest which the first part of clause 6 of the Will makes and the second part of the said clause which deals with devolution of what and if at all anything that remains in the hands of the legatees. The two parts of clause 6 operate in different spheres, namely, one vesting absolute title upon the legatees with rights to sell, gift, mortgage etc. and the other regulating devolution of what may escape such sale, gift or transfer by them. The latter part is redundant by reason of the fact that the same was repugnant to the clear intention of the Testatrix in making an absolute bequest in favour of her daughters. It could be redundant also because the legatees exercised their rights of absolute ownership and sale thereby leaving nothing that could fall to the lot of the next generation females or otherwise. All told the stipulation made in the second part of clause 6 did not in the least affect the legatees being the absolute owners of the property bequeathed to them. The corollary would be that upon their demise the estate owned by them would devolve by the ordinary law of succession on their heirs and not in terms of the Will executed by the Testatrix.

18. In the result this appeal succeeds and is hereby allowed. The judgment and order passed by the High Court is set aside and that passed by the Trial Court restored. No costs.

N.J. Appeal allowed.