



2026:AHC:211171

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL REVISION No. - 157 of 2026

Smt Tara Devi (Deceased) And Another

.....Revisionist(s)

Versus

Sri Laxmi Nayaran Tiwari (Deceased) And 7 Others

.....Opposite
Party(s)

Counsel for Revisionist(s) : Ashwini Kumar, Ganesh Shanker
Srivastava

Counsel for Opposite Party(s) :

Court No. - 54

HON'BLE ANIL KUMAR-X, J.

1. Sri Ashwini Kumar, learned counsel for the revisionist is present.
2. The present civil revision has been filed against the order dated 23.07.2026 passed by the learned Additional District Judge in Probate Case No. 121 of 2001, Tara Devi Vs. Laxmi Narayan and others, whereby the application filed by the revisionist seeking amendment has been rejected.
3. Learned counsel for the revisionist has submitted that the impugned order is revisable under Section 115 CPC and has placed reliance upon the judgment of the coordinate Bench of this Court in **Indra Bahadur Yadav Vs. Harkhas and Aam and another, 2024:AHC-LKO:16921**. In the said case, considering a similar issue, the coordinate Bench took the view that an order passed in probate proceedings would not be appealable under Section 299 of the Indian Succession Act and that the remedy of revision under Section 115 CPC would be available.
4. With utmost respect, having considered the statutory scheme and the judgments of the Hon'ble Supreme Court, I am unable to agree with the said view.
5. The scope of Section 299 has been considered by the Hon'ble Supreme Court in **Subal Paul Vs. Malina Paul and another, AIR 2003 Supreme Court 1928**. The Hon'ble Supreme Court, while examining the nature of proceedings under the Indian Succession Act and the remedy available against an order passed therein, has held that Section 299 itself provides a

right of appeal and that the appellate remedy is to be governed by the provisions of the Code of Civil Procedure relating to appeals. The judgment makes it clear that the right of appeal under Section 299 is a statutory remedy available against an order passed by the District Judge in exercise of jurisdiction under the Act.

"Section 299 of the Indian Succession Act provides a specific right of appeal against the orders made by the District Judge by any person aggrieved by such order. The provision reads in substance that every order made by a District Judge by virtue of the powers conferred upon him by the Act shall be appealable to the High Court in accordance with the provisions of the Code of Civil Procedure applicable to appeals. Thus, the expression used by the legislature is not confined to a final order granting or refusing probate or letters of administration. The provision covers an "order made by the District Judge by virtue of the powers conferred upon him by this Act".

6. The same principle is also reflected in the judgment of the Hon'ble Supreme Court in **Chhotalal Lallubhai Vs. Chhibabhai Lalbhai, AIR 1972 SC 1262**, wherein the nature and scope of the appellate jurisdiction in proceedings under the Indian Succession Act were considered. The statutory scheme has to be examined with reference to the order passed and the jurisdiction exercised by the Court, rather than by merely describing the order as interlocutory or final.

7. In **Sharda Devi Vs. State of Bihar, (2002) 3 SCC 705**, the Hon'ble Supreme Court reiterated the well settled principle that a right of appeal is a creature of statute and where the statute provides a right of appeal, the same has to be given effect to in accordance with the statutory provision. The nature of the order and the source of jurisdiction under which it has been passed are relevant for determining the remedy.

8. More recently, in **Swaminathan Vs. Alankamony, 2022 LiveLaw (SC) 276**, the Hon'ble Supreme Court again considered the scope of Section 299 of the Indian Succession Act and the appellate remedy available against orders passed in proceedings under the Act. The judgment also demonstrates that Section 299 is a specific statutory provision providing an appellate remedy against orders passed by the District Judge in exercise of jurisdiction under the Indian Succession Act.

9. The above judgments make certain aspects clear. Firstly, Section 299 does not use the expression "final judgment" or "final order". Secondly, the legislature has deliberately used the wider expression "every order made by the District Judge by virtue of the powers conferred upon him by this Act".

Thirdly, the right of appeal is not confined only to an order granting or refusing probate or letters of administration. Fourthly, once the District Judge passes an order in exercise of jurisdiction conferred upon him under the Indian Succession Act, the statutory remedy provided under Section 299 cannot be defeated merely by describing such order as an interlocutory order. Lastly, the fact that the Code of Civil Procedure may otherwise provide a remedy of revision against certain interlocutory orders cannot take away the specific appellate remedy created by Section 299.

10. In the present case, the order under challenge has been passed by the learned Additional District Judge in a probate proceeding instituted under the Indian Succession Act. The application seeking amendment was considered and decided in the course of such probate proceedings. Therefore, the order cannot be treated as an order wholly independent of the proceedings under the Indian Succession Act. It is an order passed in exercise of jurisdiction vested in the probate Court.

11. The argument that Section 299 would apply only to orders finally deciding the probate proceedings would, in my considered opinion, amount to adding words to the provision which the legislature has not used. Had the legislature intended to restrict the right of appeal only against final orders, it could have so provided. Instead, the expression "every order" has been used. Therefore, the appellate remedy cannot be restricted only to orders finally granting or refusing probate.

12. It is also required to be kept in mind that Section 299 itself incorporates the provisions of the Code of Civil Procedure relating to appeals. Thus, the fact that the impugned order may be interlocutory in nature does not by itself exclude the applicability of Section 299. The question is whether the order has been made by the District Judge in exercise of jurisdiction under the Indian Succession Act. If the answer is in the affirmative, the statutory appellate remedy under Section 299 is attracted.

13. For the aforesaid reasons, I am of the considered view that the order dated 23.07.2026, though interlocutory in nature, is an order passed in the course of probate proceedings by the Court exercising jurisdiction under the Indian Succession Act and is, therefore, appealable under Section 299 of the said Act. The remedy of revision under Section 115 CPC would consequently not be maintainable.

14. I have carefully considered the judgment of the coordinate Bench in **Indra Bahadur Yadav (supra)**. However, in view of the aforesaid judgments of the Hon'ble Supreme Court and the language employed in

Section 299 of the Indian Succession Act, I am unable to follow the said view. The statutory expression "every order" and the law laid down by the Hon'ble Supreme Court indicate that the remedy under Section 299 is not confined only to final orders in probate proceedings.

15. Accordingly, the present revision is not maintainable. It is, accordingly, dismissed on the ground of availability of statutory remedy of appeal under Section 299 of the Indian Succession Act.

16. It is, however, provided that dismissal of the present revision shall not preclude the revisionist from availing the appropriate remedy against the impugned order, in accordance with law. If such remedy is pursued within the period permissible under law, the revisionist shall also be entitled to seek benefit of exclusion of the period spent in prosecuting the present proceedings, subject to fulfilment of the requirements of the applicable law.

October 8, 2026
Ujjawal

(Anil Kumar-X,J.)