

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.428 of 2013

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Dasai Rai, S/O Late Dev Rai, Resident of Village Chhotka Baniya, Pragana Maker,
P.S. Derni, District Saran.

.... Appellant/s

Versus

1. Surendra Rai, S/O Late Devki Rai (The Correct Name Of Dev Rai) Resident Of
Chhotka Baniya, P.S. Derni, District Saran.
2. Moti Rai S/O Late Devki Rai (The Correct Name of Dev Rai) Resident of
Chhotka Baniya, P.S. Derni, District Saran.
3. Baleshwar Rai S/O Late Devki Rai (The Correct Name of Dev Rai) Resident of
Chhotka Baniya, P.S. Derni, District Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Ms. Vagisha Pragya Vacaknavi, Advocate
 Mr. Binod Kumar Singh, Advocate

For the Respondent/s : Mr. Nalin Kumar, Advocate
 Mr. Madhaw Prasad Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 12-03-2015

Heard.

2. This is an Appeal preferred against judgment
dated 30th April 2013 in Probate Case No. 17 of 2010/Title Suit
No.8 of 2012 by learned 1st Additional District Judge, Saran at
Chapra dismissing the suit as barred by limitation.

3. Contention of learned counsel for the appellant is
that though following 5 issues were framed "(1) is the probate



*petition is maintainable;(2) Has the petitioner any valid cause of action; (3) Is will of deed dated 13.08.1982 duly executed by Saklu Rai uncle of the petitioner, genuine, valid and in sound deposition and health; (4) Whether petitioner is entitled for probate and administration of will; and (5) is petitioner entitled for any other relief ?" for determination and evidence was being adduced but the Court below even without framing issue on limitation decided the suit only on that issue and dismissed the suit placing reliance on a decision of the Apex Court in the case of **Kerala State Electricity Board** reported in **1976 (4) SCC page 634.***

4. It is further contended that there is no specific period prescribed for initiating proceedings for issue of probate or letters of administration with respect to any Will executed but taking aid of provisions as contemplated under section 137 of the Limitation Act make such issue relevant Court below committed serious error by dismissing the suit only on the point of limitation without giving any finding on other relevant issues. Reliance is placed on decisions of this Court in the case of **Prabhunath Singh & Anr. vs. Sukhdeo Rai** reported in **2010 SCC Pat. 709** and the case of **The goods of Lae Hari Har Rai & Ors.** reported in **AIR 2014 Patna 26.** In both such decisions earlier decisions of



the Apex Court case of ***Kunvarjeet Singh Khandpur vs. Kirandeep Kaur and Others*** reported in (2008) 8 SCC 463 has also been considered and discussed but subsequent decision of Apex Court the case of ***Krishan Kumar Sharma vs. Rajesh Kumar Sharma*** reported in (2009) 11 SCC 537 though has not been considered but wherein practically earlier decision rendered in the case of ***Kunvarjeet Singh Khandpur (supra)*** appears approved.

5. The Court below was required to get the evidence concluded and decided the matter on all the issues and if at all the plaintiff appellant could not have been able to satisfy valid execution of the Will, the delay, if any, in initiating proceedings could have come in his way. But in absence of any such finding judgment impugned cannot be held sustainable. Hence, it is set aside and the matter is remitted to the Court below to decide afresh and give finding on all relevant issues including period of limitation after properly framing the issues permitting the parties to adduce any further evidence, if so wishes. But at the same time, none of the parties should be permitted to cause any undue delay and hindrance in early disposal of the case.

6. With the above observation and direction, the Appeal stands disposed of. Parties are directed to appear before

the Court below or successor in his office on 15th April 2015.
Meanwhile, Registry is directed to ensure transmission of Lower
Court Records along with copy of this order immediately.

(Akhilesh Chandra, J)

Ashwini/-

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