

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.76 of 2012

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Shri Rajeshwar Sharma and other through their Legal Representatives	 Appellant/s
Versus	
Most. Sitapati Kuar wife of Ved Narain Sharma and other through their Legal Representatives	 Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shashi Shekhar Dwivedi-Sr. Advocate Mr. Murari Pd. Sinha-Advocate
For the Respondent/s	:	Mr. Partha Sarthy-Advocate Mr. Kumar Vikram-Advocate Mr. Avinash Chandra-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 9-05-2016

Appellants, who happen to be propounder of a Will allegedly executed by Late Ved Narain Sharma having been refused letter of administration by the Additional District Judge, Fast Track Court No.V, Aurangabad vide judgment dated 28.12.2005, Decree dated 07.01.2006 in Probate Case No.13 of 2001/ Title Suit No.01 of 2005 have challenged the same under present appeal. Earlier First Appeal No.8/2006 was registered which has been converted into Misc. Appeal in light of Full Bench decision of this Court reported in **2009(3) PLJR 990.**

2. Succinctly, the case of the appellants/ applicants as pleaded, testator, Ved Narain Sharma, son of Late Ram Lal Sharma was the cousin brother of father of appellant and was in jointness governed by the Mitakshra School of Law, Banaras. The joint family

possessed property detailed under Schedule-A of the petition wherein aforesaid Ved Narain Sharma had half share.

3. Ved Narain Sharma has one daughter Kusum Devi, opposite party no.2, who has been married in rich family and occasionally visiting her Naihar and in likewise manner, wife of Ved Narain Sharma, opposite party no.1 being an old lady was not physically capable to render service, look after Ved Narain Sharma, who was suffering from Cancer disease, on the other hand, appellants-applicants rendered all sorts of service to Ved Narain Sharma and on account thereof, he executed registered Will on 17.06.1997, properly attested by the witnesses in favour of applicants. At the time of executing registered Will, Ved Narain Sharma was mentally fit and sound. The aforesaid Will was scribed by Ranjit Kumar on direction of Ved Narain Sharma, who explained the contents of the Will to Ved Narain Sharma. Ved Narain Sharma also gone through the recital thereof, and then, voluntarily signed over the Will in presence of attesting witness, Ram Ikbale Narain Singh, Nand Kishore Lal, co-villagers as well as Surajdeo Singh of village-Daryapur, who also put their signature as per instruction of Ved Narain Sharma in his presence. The aforesaid document was scribed at Patna while Ved Narain Sharma was undergoing treatment of Cancer.

4. It has further been disclosed that Ved Narain Sharma died on 28.08.1997 at Patna while he was undergoing treatment



though his permanent place of abode happens to be at Village-Shamsher Nagar, P.S. Daudnagar, District-Aurangabad whereunder the properties, detailed under Schedule-A lie. It has also been averred that 'Shradh' was performed by Nawal Kishore Sharma. It has also been disclosed that as per condition of the Will, applicants are maintaining wife of deceased and further, undertook to maintain till her lifetime.

5. It has further been disclosed that after death of Ved Narain Sharma, the applicants acquired right, title with regard to the property belonging to Late Ved Narain Sharma and further, the properties are under their peaceful possession on the basis of the aforesaid Will. It has also been pleaded that there happens to be no impediment in granting letter of administration. Then thereafter, completing the paraphernalia, petition has been filed for grant of letter of administration. It is further evident that petition was verified by witness apart from propounder.

6. Respondents/ opposite parties appeared and filed their written statement wherein they have controverted the assertion made on behalf of applicants. However, they have admitted constitution of the joint family consisting of deceased Ved Narain Sharma along with applicants and further, Ved Narain Sharma till his lifetime was the Karta and under such capacity he had also purchased some lands in name of applicants. It has also been admitted that Ved Narain Sharma



was suffering from Cancer and was taken by the applicants to Patna for his treatment accompanied by his wife as well as daughter. It has further been disclosed that Ved Narain Sharma never disclosed that he was going to execute Will in favour of applicants and so, the aforesaid document was not at all created at the end of Ved Narain Sharma under his freewill.

7. Then, it has been submitted that they came to know that applicants succeeded in getting the signature of Ved Narain Sharma under deceitful means over blank stamp, which was later on converted as registered Will by the applicants in collusion with attesting witnesses, who were not at all present at the time when Ved Narain Sharma had gone to Patna for treatment. In likewise manner, also controverted presence of Surajdeo, another attesting witness. In the aforesaid background, it has also been pleaded that Ved Narain Sharma never instructed Ranjit Kumar, so called scribe to draft a Will. In the aforesaid eventualities, it has been pleaded that the alleged Will happens to be forged, fabricated. In likewise manner, it has also been pleaded that Ved Narain Sharma had not gone to the place of registry, accepted execution nor he gave L.T.I. before the Registrar in token thereof. It has also been pleaded that Ved Narain Sharma never paid entire consideration money to Kusum Devi, his daughter after sale of 3½ Bigha of land. It has further been pleaded that during course of serious illness of Ved Narain Sharma, who died on 28.08.1997,

applicant managed to have a Will dated 17.06.1997, which could not be said to be a genuine document as at that very moment, Ved Narain Sharma was carrying feeble mental as well as physical condition. So, pleaded for dismissal of the suit.

8. The learned lower Court had framed following issues:-

“1. Is this probate case (Title Suit) maintainable?

II. Whether the plaintiffs (applicants) have a valid cause of action for it?

III. Whether Ved Narain Sharma was the owner of the suit property?

IV. Whether Ved Narain Sharma was mentally fit at the time of execution of the deed of Will dt.17-6-1997?

V. Whether Ved Narayan Sharma voluntarily and knowingly executed the Will in favour of the applicants.

VI. Whether the plaintiff/ applicants are entitled to get Probate of the Will and the Letter of Administration of the suit properties.

VII. Whether the plaintiffs/ applicants are entitled to get relief as claimed?

VIII. To what other relief(s), if any, the plaintiffs/ applicants are entitled to get?”

And decided the issues against the applicants/ appellants

ultimately dismissing the petition, hence this appeal.

9. Learned counsel for the appellant raised manifold argument while assailing the judgment impugned. The first and foremost argument happens to be that being a registered document, its genuineness is to be presumed unless and until controverted by the opponent. From the pleading of the respondent/ opposite party, it is apparent that they have accepted genuineness of signature of Ved Narain Sharma over the Will. Had there been any sort of controversy, then in that event, the relevant registers kept at Registry Office which contains impression of the executants should have been called for and after having the same examined by an expert, cogent as well as conclusive material would have been placed, to substantiate that Ved Narain Sharma had not appeared before the Registrar and accepted execution rather he was impersonated. The aforesaid exercise, the reason best known to the respondents had not been taken up at their end and on account thereof, casting doubt over genuineness of the documents by the learned lower Court is not at all tangible.

10. Furthermore, it has also been submitted that there was no surrounding suspicious circumstance prevailing during course of execution of the Will because of the fact that under local parlance the male member of the family did not intend to allow the property to go in hands of outsiders. Having a daughter, who was married at well-to-do family was sufficient for the testator to execute the Will in



favour of cousin nephew (appellant) so that the property should remain with the family, more particularly while the Ved Narain Sharma was admittedly Karta of the family. Furthermore, it is apparent from the Will that interest of his wife has duly been protected which, the appellants are bound to honour. Apart from this, it has also been pleaded that having the document scribed, registered at Patna was not uncommon in the background of the fact that Ved Narain Sharma was suffering from Cancer and was under treatment at Patna. That means to say, his presence at Patna was but natural and finding that his life is going to shorten on account of Cancer, volunteered and executed Will in favour of appellant. In its continuity, it has been submitted that all the witnesses that of attesting witnesses, identifier have categorically stated regarding the activity of Ved Narain Sharma, who not only executed the Will in their presence rather also directed them to put their signature over the Will in his presence and then, produced the Will before the Registrar for registration where he accepted execution and on account thereof, the Will was registered. Therefore, no suspicious circumstance is found in the facts and circumstances of the case, which could have adverse impact over status of genuineness of the Will as well as with regard to mental condition of Ved Narain Sharma, the testator.

11. It has also been submitted at the end of learned counsel for the appellants/ applicants that witnesses were not at all

interested one whereupon their physical presence at the time of execution of Will in question could be doubted. In likewise manner, it has also been submitted that there happens to be complete absence of material that during course of execution of Will any sort of influence was imposed upon the executant, Ved Narain Sharma.

12. Furthermore, it has been submitted that executant, Ved Narain Sharma was very much pleased with the service rendered by the appellants who, even during course of ailments and further, admitted by the respondents, took care, accompanied the executant, Ved Narain Sharma to Bombay got treated, and even during stay at Patna, was properly cared by them. Therefore, execution of Will was not at all an abnormal circumstance nor is found clouded by any kind of exigency.

13. Also submitted that witnesses, during course of evidence more particularly the attesting witnesses, have categorically supported the factum of execution of Will executed by Ved Narain Sharma under fit, sound mental condition. Furthermore, mode of execution by the testator, Ved Narain Sharma is indicative of the fact that at the relevant time, testator, Ved Narain Sharma was possessing sound mental condition. Consequent thereupon, there was no scope left for learned lower Court to dissent as a result of which, the judgment impugned happens to be perverse and is fit to be set aside. Also referred *A.I.R. 1951 SC 280, (1995) 4 SCC 459, (2008) 4 SCC*

300, A.I.R. 2009 SC 1766.

14. Per contra, while substantiating the finding recorded by the learned lower Court, it has been submitted on behalf of respondent/ opposite party that the judgment impugned is based upon sound legal principle as well as appreciating the facts emerging out from the L.C. Record, therefore, need not attract interference.

15. It has further been pleaded that Will, which prohibits the natural line of inheritance is always to be seen with suspected eyes unless and until duly proved by cogent, reliable, conclusive evidence. That happens to be reason behind that propounder of the Will has been put under obligation to explain the suspicious circumstance prevailing according to the facts of the case and having been failed on that very score, would not inspire the Court to accept irrespective of nature of the document whether it happens to be registered or un-registered.

16. So far facts of the present case is concerned, admittedly there happens to be presence of wife and daughter of so alleged testator, Ved Narain Sharma. The first and foremost conceivable reason is to be seen what was necessitated to block the normal line of inheritance and whatever been incorporated in the recital of the Will on that score appears to be improbable, unbelievable. Therefore, the event of proselyte is found not at all reasonable explained. The second suspicious circumstance as per



submission made on behalf of respondent is that it happens to be an admitted fact that alleged testator, Ved Narain Sharma was suffering from Cancer. The appellant had filed series of prescriptions from Patna to Mumbai in order to substantiate that alleged testator, Ved Narain Sharma was being cared by them, but none of the prescriptions suggest that after returning from Mumbai, Ved Narain Sharma was being under the surveillance of the doctor and further, the doctor had found him physically as well as mentally sound as, just after two months from the alleged execution of Will, Ved Narain Sharma died. Therefore, this abnormal activity unless and until properly been explained, found sufficient to extirpate the dredge created by appellants.

17. Then, it has been submitted that presence of attesting witnesses is another circumstance which create doubt regarding genuineness of the Will. None of the attesting witnesses have stated that they were intimate with Ved Narain Sharma and on account thereof, were consulted at the end of Ved Narain Sharma, who shown. Moreover, what they say that during course of stay at Patna, request was made at the end of Ved Narain Sharma, which would not have, and create doubt over their impartial status. Therefore, at random presence of witnesses is another suspicious circumstance which has not properly been explained.

18. It has also been submitted that right from initial stage



while written statement was filed, though the respondent/ opposite party have categorically stated that under deceitful means, signature of Ved Narain Sharma was obtained by the applicants and further, specifically pleaded that he had not at all presented himself before the Registrar nor accepted the execution. Then in that event, the appellants/ applicants should have taken recourse of getting the relevant registers called for from the Registry Office, got it examined by an expert in order to ward off the allegation attributed at their end as well as should have also taken recourse to examine the Registrar. Hence, having failed on this score, split plea of appellants and found adverse to their interest. Furthermore, relied upon *A.I.R. 1962 SC 567, (2009) 3 SCC 687, 2008(1) P.L.J.R. 231, (2009) 1 SCC 354, (1982) 1 SCC 20, A.I.R. 1964 SC 529*.

19. Admittedly, from Para-7 of the petition, it is evident that alleged testator, Ved Narain Sharma died on 28.08.1997 at Patna. Petition for grant of letter of administration has been filed on 24.11.2001 that means to say, after more than three years. No explanation has been furnished nor any prayer has been made to condone the delay.

20. The moot question in the aforesaid facts and circumstances arose whether the petition is found barred by limitation. Under Indian Succession Act, no provision has been prescribed guiding the aforesaid event. However, in Krishna Kumar Sharma vs.

Rajesh Kumar Sharma reported in 2009 (3) P.L.J.R. 80 (SC), the same has been taken note of. Relevant Para thereof, is quoted below:-

"4. Learned counsel for the appellant submitted that the interpretation placed by the High Court is not correct. The primary question that needs reconsideration is whether [Article 137](#) of the [Limitation Act](#) is applicable. It appears that certain other aspects were considered by the High Court to which reference shall be made subsequently.

5. [In The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma](#) [1976 (4) SCC 634] it was inter alia observed as follows:

"18. The alteration of the division as well as the change in the collocation of words in [Article 137](#) of the [Limitation Act](#), 1963 compared with [Article 181](#) of the 1908 [Limitation Act](#) shows that applications contemplated under [Article 137](#) are not applications confined to the Code of Civil Procedure. In the 1908 [Limitation Act](#) there was no division between applications in specified cases and other applications as in the 1963 [Limitation Act](#). The words "any other application" under [Article 137](#) cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure Code other than those mentioned in Part I of the third division. Any other application under [Article 137](#) would be petition or any application under any Act. But it has to be an application to a court for the reason that [Sections 4 and 5](#) of the 1963 [Limitation Act](#) speak of expiry of prescribed period when court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during

such period.

22. The conclusion we reach is that [Article 137](#) of the 1963 [Limitation Act](#) will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in Athani Municipal Council case and hold that [Article 137](#) of the 1963 [Limitation Act](#) is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the [Telegraph Act](#) for judicial decision. The petition is an application falling within the scope of [Article 137](#) of the 1963 [Limitation Act](#)."

In terms of the aforesaid judgment any application to Civil Court under the Act is covered by [Article 137](#). The application is made in terms of [Section 264](#) of the Act to the District Judge. [Section 2\(bb\)](#) of the Act defines the District Judge to be Judge of Principal Civil Court.

6. Further in [S.S. Rathore v. State of M.P.](#) [1989(4) SCC 582] it was inter-alia stated as follows:

"5. Appellant's counsel placed before us the residuary [Article 113](#) and had referred to a few decisions of some High Courts where in a situation as here reliance was placed on that article. It is unnecessary to refer to those decisions as on the authority of the judgment of this Court in the case of *Pierce Leslie & Co. Ltd. v. Violet Ouchterlony Wapshare* it must be held that [Article 113](#) of the Act of 1963, corresponding to [Article 120](#) of the old Act, is a general one and would apply to suits to which no other article in the schedule applies."

7. [Article 137](#) of the [Limitation Act](#) reads as

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NO

follows:

"137. Description of application: Any other application for which no period of limitation is provided elsewhere in the Division.

*Period of Limitation: Three Years
Time from which period begins to run:*

When the right to apply accrues."

*The crucial expression in the petition is "right to apply". In view of what has been stated by this Court, [Article 137](#) is clearly applicable to the petition for grant of Letters of Administration. As rightly observed by the High Court in such proceedings the application merely seeks recognition from the Court to perform a duty because of the nature of the proceedings. It is a continuing right. The Division Bench of the Delhi High Court referred to several decisions. One of them was **S. Krishnaswami and etc. etc. v. E. Ramiah** (AIR 1991 Madras 214). In para 17 of the said judgment it was noted as follows:*

"17. In a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the Court to perform a duty. Probate or letter of Administration issued by a competent Court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the [Indian Succession Act, 1925](#) does not convey a meaning that by the Proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the Court to perform that duty. There is only a seeking of recognition from the

Court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a view to discharge the moral duty, the applicant seeks recognition from the Court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an 'application' under [Art. 137](#) of the [Limitation Act, 1963](#)."

8. Though the nature of the petition has been rightly described by the High Court, it was not correct in observing that the application for grant of probate or letters of Administration is not covered by [Article 137](#) of the [Limitation Act](#). Same is not correct in view of what has been stated in **The Kerala State Electricity Board's case** (*supra*).

9. Similarly, reference was made to a decision of the Bombay High Court's case in **Vasudev Daulatram Sadarangani v Sajni Prem Lalwani** (AIR 1983 Bom.268).

Para 16 reads as follows:

"16. Rejecting Mr. Dalapatrai's contention, I summarise my conclusions thus:--

(a) under the [Limitation Act](#) no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;

(b) the assumption that under [Article 137](#) the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;

(c) such an application is for the Court's

permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;

(d) the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years from the date of the deceased's death.

(e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;

(f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and

(g) once execution and attestation are proved, suspicion of delay no longer operates".

*10. These aspects were highlighted in **Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors.** (2008 (8) SCC 463)."*

21. Having applicability of Article 137 of the Limitation

Act, the period of limitation prescribed therefor happens to be three years. So, after death of deceased/ testator, the petition should have been filed within the prescribed period of three years. From the L.C. Record, as divulged above, it is apparent that petition was not at all filed within the aforesaid stipulated period. No explanation, excuse has been offered at the end of the appellant either in the petition nor during course of evidence. That being so, petition is found hit by law of limitation. Because of the fact that instant petition has been found

and held barred by limitation, on account thereof, other aspect has not been dealt with, as will be futile effort.

22. Consequent thereupon, instant petition sans merit and is accordingly, dismissed. However, in the facts and circumstances of the case, parties will bear their own costs.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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