

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.787 of 2016**

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Sunaina Devi

.... Appellant/s

Versus

Mithilesh Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Madhukar Pandey

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 20-10-2016

Heard the learned counsel, Mr. Manojeshwar Prasad

Sinha for the petitioner.

Perused the impugned order dated 23.06.2016 passed by the 6th Additional District Judge, Muzaffarpur in Probate Case No.14 of 1993 whereby the Court below rejected the application filed by the petitioner under Order VII Rule 11(d) C.P.C. on the ground that the probate case is barred by law of limitation as the Will is dated 21.10.1989 and the probate application has been filed in the year 1993 i.e. beyond three years.

This question about the limitation i.e. Article 137 of the Limitation Act, applicable to the probate case, has already been considered by this Court in the case of **Kismat Devi v. Ram Babu Prasad & Ors., AIR 2012 Patna 151** and relying on the decision of the Supreme Court 2009 (3) PLJR 80 and the decision of the Bombay High Court, AIR 1983 Bombay 268 has held that the

right to apply would accrue when it becomes necessary to apply which may not necessarily be within three years from the date of the deceased death but it does not necessarily mean that right to apply will never accrue within three years from the date of death. It will depend from the facts of each case. Therefore, the question as to when the right to apply accrues is the question of fact which is to be gathered from the materials available on record vide paragraph 24.

In such circumstances, at the stage of consideration of an application under Order VII Rule 11 C.P.C., this question cannot be decided for the purpose of rejection of the plaint filed by the respondent under Section 276 of the Indian Succession Act.

In view of the above facts and circumstances of the case, I find no reason to interfere with the impugned order and accordingly, this Civil Miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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