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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.11.2015

Pronounced on : 07.01.2016

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Original Side Appeal Nos. 10 and 72 of 2013

O.S.A. No. 10 of 2013:-

S. Vatsala

... Appellant

Vs.

1. K.S. Mohan
2. K.S. Sriram
3. V. Prema
4. B. Santha
5. M. Sathya
6. D. Usha
7. C. Sumithra
8. R. Sarala
9. K.S. Chakrapani

... Respondents

O.S.A. No. 72 of 2013:-

R.Sarala

... Appellant

Vs.

1. K.S. Mohan
2. K.S. Sriram
3. V. Prema
4. B. Santha
5. S. Vatsala
6. M. Sathya
7. D. Usha
8. C. Sumithra
9. K.S. Chakrapani Chettiar

... Respondents

Prayer:- Original Side Appeals filed under Order XXXVI Rule 9 of the O.S. Rules read with Clause 15 of the Letters Patent against the common judgment and decree dated 31/10/2012 made in A. Nos. 3516 of 2012 and 3515 of 2012 respectively in O.P. No. 731 of 2011.



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For Appellant : Mr. S.R. Raghunathan
in O.S.A. No. 10 of 2013
& R 5 in
O.S.A. No. 72 of 2013

For Appellant : Mr. K. Pandurangan
in O.S.A. No. 72 of 2013
& R 8 in
O.S.A. No. 10 of 2013

For RR 1 to 4 : Mr. M.S. Krishnan, SC
in O.S.A. No. 10 of 2013 for Mr. M. Balasubramanian
and R 2 in
in O.S.A. No. 72 of 2013

For R 5 : Mr. P.K. Sivasubramaniam
in O.S.A. No. 10 of 2013
and R 4 in
in O.S.A. No. 72 of 2013

RR 6 & 7 : Served - No appearance
in O.S.A. No. 10 of 2013

RR 1, 3, 4, 7 & 8 : Served - No appearance
in O.S.A. No. 72 of 2013

COMMON JUDGMENT

PUSHPA SATHYANARAYANA, J.

Synopsis:-

S.M. Subramanian Chettiar, testator of the Will dated 11.12.1996 died on 15.12.1996 leaving behind him two sons and 7 daughters as his legal heirs. As per the last Will and Testament, the deceased bequeathed the immovable property at Thanikachalam Road, T. Nagar, Chennai, to his two sons further directing to pay Rs.50,000/- to his daughters and appointed his own brother K.Chakrapani, ninth respondent herein, as the sole executor to carry out the terms of the Will.

2. Seeking Letters of Administration with a copy of the undisputed Will executed by the testator on 11.12.1996 at Chennai in the presence of witnesses, the two sons and two daughters of the deceased testator filed Original Petition in O.P. No. 731 of 2011. The same was opposed by one Sarala, one of the daughters of the deceased by way of application in



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Application No. 3515 of 2012 on the ground that it is barred by limitation and that the net value of the assets of the testator is undervalued. The said Original Petition was contested by one Vatsala, another daughter of the deceased testator by filing Application No. 3516 of 2012 stating that the petition is time-barred and sought for rejection of the plaint.

3. The petitioners opposed both the applications by filing separate counters. According to the petitioners, though the testator died on 14.12.1996, ie., within a few days after the execution of the Will dated 11.12.1996, the Will was read out in the presence of all parties on the 11th day ceremony of the deceased. According to them, the factual aspects can be proved only after converting the Original Petition into a Testamentary Original Suit and by allowing the parties to let in their evidence and it is premature to determine the question of limitation even before the trial.

4. Having considered the submissions raised by the learned counsel for the parties and the materials available on record, the learned single Judge of this Court by common judgment dated 31.10.2012, negating the objections for grant of Letters of Administration, dismissed the applications holding that the O.P. Cannot be rejected even before the matter could be taken up for appropriate consideration after due notice to the respondents. Assailing the said common judgment, the appellants are before this Court with these Original Side Appeals.

5. Heard the learned counsel on either side and also perused the records.

6. The appellants are the daughters of late S.M. Subramanian Chettiar who died on 15.12.1996. Claiming share in the father's properties, the appellants issued legal notice on 18.4.2003 demanding partition of the properties. There was no response from the respondents 1 and 2 herein and also no immediate action from the appellants. A suit in C.S. No. 524 of 2007 was filed by the appellant in O.S.A. No. 10 of 2013 on 21.3.2007. The same was contested by the defendants / respondents herein contending that the deceased father had allegedly left behind a Will dated 11.12.1996. The trial was completed and the suit was reserved for judgment on 16.11.2001. It is then the respondents 1 and 2 filed a petition for Letters of Administration in O.P. No. 731 of 2011. The main contention of the applicants is that the Will dated 11.12.1996 is not genuine one and it has been forged by the petitioners 1 and 2, viz., the sons of the deceased testator. Therefore,



the said Original Petition is sought to be rejected on the ground of limitation by filing O.A. Nos. 3515 and 3516 of 2012. The said applications were dismissed by the learned single Judge by common judgment dated 31.10.2012 which is impugned in the instant appeals.

7. As the issuance of Letters of Administration was opposed, it became contentious and the Original Petition was converted into T.O.S. No. 33 of 2013.

Contentions - an overlook:-

8. The primary contention of the appellants is that the petition under Sections 232 and 278 of the Indian Succession Act cannot be kept out from the scope of Article 137 of the Limitation Act on the basis that right to apply accrues from day to day. The said contention was assailed by the learned Senior Advocate for the respondents 1 to 4 in O.S.A. No. 10 of 2013 that proceedings for grant of Probate or Letters of Administration are not applications within the meaning of Article 137 of the Limitation Act and the hence, the same will not apply.

9. Learned counsel for the appellants would submit that the propounder of the Will has initiated proceedings seeking probate nearly after 15 years from the time of death of the testator and it is clearly barred by limitation and as such, according to him, there are latches on the part of the petitioners / respondents 1 to 4, who have come to Court belatedly only with an intention to defeat the rightful claims and shares of defendants.

10. Per contra, it is the response of the learned Senior Counsel for the respondents that the probate proceedings are for the purpose of establishing genuineness and due execution of the Will and the delay that has occurred in the limitation of proceedings, has been well explained by the respondents by proper pleading.

Points for determination:-

11. A thorough reading of the materials and the respective submissions of the learned counsels necessitate a brief glance into the Letters Patent Charter under which the High Court is established. Clauses 11 and 12 of the Letters Patent specifically vest in the High Court its Ordinary Original Jurisdiction. Clause 37 of the Letters Patent vested in the



High Court the power to make rules and orders for the purpose of regulating all proceedings in civil cases which are brought before it. The provision of CPC subject to modification mentioned in the Original Side Rules would be applicable to the exercise of ordinary civil jurisdiction by the High Court.

12. In this backdrop, the points to be considered are:-

- (i) Jurisdiction of Probate Court;
- (ii) Applicability of Limitation Act, more specifically, Article 137, in the absence of any specific Article prescribing the period of limitation for filing a petition for grant of Letters of Administration;
- (iii) Whether the Rules of the Madras High Court Original Side will have an overriding effect over the provision of Limitation Act?; and
- (iv) Continuous cause of action

Discussion:-

13. Before going into the merits of the case, it would be necessary for this Court to have a detailed discussion on the above points in the light of the various judgments of this Court and the Hon'ble Apex Court. Whether law has prescribed any period of limitation to apply for grant of probate or Letters of Administration? Are they governed by the Law of Limitation or exempted from the operation of the Limitation Act. Since they are in the nature of obligations seeking recognition as a testamentary trustee or for permission to perform the duties created in the testament, the cause of action arises and continues to exist so long as the testament remains unprobated. The right to apply continues so long as the object of the trust exists. Delay by itself cannot be a ground for refusing the grant of probate otherwise when there is proof of execution of the Will by acceptable and convincing and documentary evidence. In the absence of any specific period of limitation, Order XXV Rule 9 of the Original Side Rules only mandates the propounder to make specific averments explaining the reasons for the delay so caused.

Jurisdiction of Probate Court:-

14. The first aspect to be decided would be jurisdiction of probate Court. It is rudimentary that probate Court is not concerned with title as grant of probate does not in any way affect title. The term 'Will' has two distinct meanings. The first is metaphysical denoting the sum of what the testator wishes on his death. The second is physical and more common



denoting the document in which such intention is expressed.

15. When such a Will is put to test to prove that it is the last Will and testament of the deceased, it is a probate action. Probate Court cannot decide title. On the other hand, it is concerned only with the following aspects with respect to execution of a Will, viz.,

- (i) Whether the Will sought to be probated, is the last Will of the testator;
- (ii) Whether it is duly executed and attested as required in law;
- (iii) Whether the Will was executed without undue influence in a sound and disposing state of mind.

It is, indeed, the Court of probate cannot traverse beyond these aspects. While so, when the rights of parties are not decided in a probate proceedings, the Limitation Act becomes inapplicable.

16. In this regard, the Hon'ble Supreme Court in **Chiranjilal Shrilal Goenka vs. Jasjit Singh and others [1993 (2) SCC 507]** in paragraph 15 of the judgment held in the following words:-

"... the only issue in a probate proceeding relates to the genuineness and due execution of the Will and the court itself is under duty to determine it and preserve the original Will in its custody. The Succession Act is a self contained code in so far as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is clearly manifested in the fascicle of the provision of Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the Will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus it does no more than establish the factum of the will and the legal character of the executor. Probate court does not decide any question, of title or of the existence of the property itself."



17. One cannot deny that the grant of probate is under testamentary jurisdiction and the same cannot be taken away or delegated to any other Court. The scope of the probate Court also, as already explained, does not affect the rights and liabilities of the parties so as to make the Limitation Act apply.

18. The question why no period of limitation is prescribed for probate proceedings finds an answer in **Ganamuthi Upadasi vs. Vana Koil Filial Nadan [I.L.R. (1894) Mad 379]**, wherein Muthusami Ayyar, J. has observed as under:-

"It is no doubt usual to demand an explanation when there is unreasonable delay in applying for probate, because the time when after the testator's death the will is to be proved is not fixed, and the explanation is necessary to assist the Judge in coming to a finding as to the genuineness of the will propounded. The reason for the exemption of applications for probate from the operation of the Limitation Act probably is that the application for probate is in the nature of an application for permission to perform a duty created by a will or for recognition as a testamentary trustee, and the right to apply continues so long as the object of the trust exists or any part of the trust if really created remains to be executed."

Applicability of Article 137:-

19. Encouraged by the decision in **Kunvarjeet Singh Khandpur vs. Kriandeep Kaur [(2008) 8 SCC 463]**, the learned counsel for the appellant submitted that application for grant of probate / Letters of Administration is covered by Article 137 of the Limitation Act, 1963. The three years time prescribed in Article 137 starts from the date when the right to apply accrued. As such, according to the learned counsel, since the alleged Will was read out to all the legal heirs even on the eleventh day ceremony of the deceased, the knowledge and right to apply starts on that date. The relevant date 15.12.1996, being the date of death, the limitation starts from the eleventh day ie., from 26.12.1996 and the limitation would have set in by 27.12.1999.

20. In support of his submission as to how the period of limitation under Article 137 is to be reckoned, learned counsel for the appellants relied on the following judgments:-



(i) **Pratap Singh vs. State [Manu/DE/2316/2010]** wherein the Division Bench of the Delhi High Court, placing reliance on **Kunvarjeet Singh Khandpur's case** (cited supra) held as follows:-

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"The period of three years would surely commence atleast from the date on which a legatee under a Will could be justifiably ascribed with the knowledge that the Will on which his claim is founded is likely to be disputed by other persons especially the natural heirs of the Testatrix. By way of adumbration, hypothetically, a Will may have been executed in Delhi in 1950. The bequests made and dealt with therein may not have come into any dispute for several decades. It could be that some legatees were in possession of the properties with the tacit permission or approval of the other legatees, which approval was subsequently withdrawn. So long as the rights of any particular legatee are to emanate and flow from the Will, probate proceedings ought to be filed atleast within three years from this conjectured withdrawal of permission. That would then be the latest date on which "the right to apply accrues". This would be the most appropriate and meaningful interpretation given to the words "when the right to apply occurs"...."

(ii) **Basant Dayal vs. State and others [Test Case No. 5/2009]**, an unreported judgment dated 04.12.2009, is the next case relied on by the learned counsel for the appellants wherein a single Judge of the Delhi High Court had held as under:-

".... The petitioner had, in the meanwhile, taken no steps to approach the court having exclusive jurisdiction for probate or letters of administration. Even if the petitioner's knowledge of a dispute in relation to the Will now propounded by him, were to be assumed only in 1999, on a proper application of the law declared by the Supreme Court in Kunvarjeet Singh Khandpur, the right to apply accrued then. The three year period prescribed in [Article 137 \(of the schedule to the Limitation Act\)](#) therefore, commenced in



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1999, and ended sometime in 2002. Even if the petitioner were to be given benefit of doubt, for some reason, as the suits (one of which was filed by him) were pending till 30-4-2004, he ought to have approached this court, seeking the reliefs he now claims, within three years from that date. He has, however, filed the present petition on 3rd March, 2009, clearly beyond the period of limitation."

(iii) In **Karan Singh and others vs. State and others [2011 SCC Online Del 1883]**, once again the Delhi High Court observed as under:-

"... even if petitioner is imputed with the knowledge of factum of the existence of the present Will, which can be termed as accrual of the cause of action in his favour to file the present petition, the prescribed period of three years provide under [article 137](#) of [Limitation Act 1963](#) has expired in 2006 whereas the present petition has been filed in year 2009, therefore, present petition is hopelessly barred by the limitation."

(iv) Learned counsel also relied on an unreported decision of the Allahabad High Court in **Ram Singh vs. Smt. Laxmi Vajpayee - Testamentary Case No. 28 of 2005 [delivered on 08.02.2006]** wherein it has been held that in the absence of any specific period of limitation prescribed in the Indian Succession Act, 1925, Article 137 of the Limitation Act 1963 would be applicable.

21. In terms of the aforesaid judgments, the contention of the appellants was that the respondents 1 to 4 ought to have filed the petition for grant of Letters of Administration as mandatorily required under Section 213(2) of the Indian Succession Act within three years from 18.4.2003, the date of legal notice of partition or at least from the date of filing of the suit, ie., 03.7.2007. The Original Petition having been filed on 27.6.2011, according to the learned counsel, is beyond the period of limitation and is hopelessly time barred.

22. On the other hand, it was urged by the learned counsel for the respondents that right to apply for probate or Letters of Administration is a recurring one and it would be inappropriate to apply Article 137.



23. There is no wriggling out of the proposition settled by the highest Court in the land. Significantly, a bare reading of the judgment in **Kunvarjeet Singh Khandpur's case** (cited supra) would show that it was a proceeding from the District Court and, therefore, Their Lordships had no occasion to deal with the present proposition of applicability of Original Side Rules of the High Court and hence, the said pronouncement does not throw any light on this aspect.

24. Learned counsel for the appellants also seeks in aid the decision of this Court in **Sakunthala vs. Minor Vijayalakshmi and others [1989 - 2 - L.W. 319]**. The said decision is no more a good law as the same was overruled by a Division Bench in **S.Krishnaswami vs. E. Ramiah [1990 (1) LW 337]**, which view was subsequently approved by the Hon'ble Apex Court in **Kunvarjeet Singh Khandpur's case**, that in an application for grant of probate / Letters of Administration, no right is asserted or claimed by the applicant but still it has been held that Article 137 applies. The right to apply for probate / Letters of Administration accrues everyday till the Will remains unprobated as it is a continuing cause of action. Being a continuous right, as long as the right is not extinguished, it can be exercised at any time after the date of death of deceased. No doubt, the longer the delay, stronger would be the suspicion.

25. While deciding **Kunvarjeet Singh Khandpur's case** (cited supra), the Hon'ble Apex Court, besides making a reference to a decision of the Bombay High Court's case in **Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani [AIR 1983 Bom. 268]**, also approved the principles laid down in paragraph 16 therein. For easy understanding, the same is reproduced hereunder:-

"16. Rejecting 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 times after the death of the



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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 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."

The Hon'ble Apex Court also opined that conclusion 'c' is the correct position of law. Significantly, the reasoning of this Court though was approved by the Hon'ble Supreme Court, the conclusion is not in agreement with the same.

Period of Limitation:-

26. The statute of limitations alters the common law by introducing limitations to the right of actions in specified cases. The object of the Act is to secure and quiet men in their estates and possession. One means of doing so is within a reasonable time under the penalty of losing the right of action in case of their right to sue within a prescribed time. Such limitations tend to the prevention of false testimony, the preservation of public tranquility and above all, suppression of contention and strife among men. Therefore, a limitation period is a statutory period after which a lawsuit, or prosecution cannot be brought to Court.

27. It may be useful to consider the meaning of the words "right to apply accrues" that occur in Article 137. In this regard, it would not be out of place to refer to the judgment of the Hon'ble Apex Court in **Harihar Nath and others vs. State Bank of India and others [(2006) 4 SCC 457]** wherein while dealing with a petition for leave to continue pending proceedings under Section 446 Companies Act, the term "right to apply accrues" was dealt with *in extenso*. Speaking for the Bench, R.V.Raveendran, J., in paragraph 19 of the judgment,



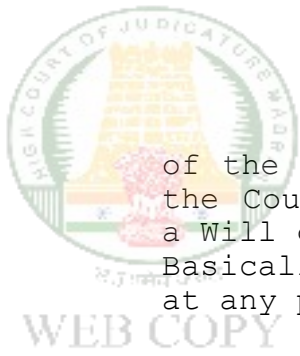
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observed in the following lines:-

" An application seeking leave to proceed, in respect of a pending suit or proceeding (filed before the order of winding up) is not an application for enforcement of any claim or right. It does not seek any 'relief' or 'remedy' with reference to any claim or right or obligation or liability. It is an application which is interlocutory in nature. An interlocutory application is not subject to any period of limitation, unless otherwise specifically provided by law. We are conscious of the fact that an application under [Section 446\(1\)](#) seeking leave to proceed with the suit/proceeding, is not filed as an 'interlocutory application' in the suit/proceeding before the court where such suit/proceeding is pending. But an interlocutory application is nothing but an application in the course of an action. It is a request made to a court, for its interference, in a matter arising in the progress of a proceeding. Therefore, in a broad sense, the application under [section 446\(1\)](#) filed before the company court seeking leave to proceed with a pending suit or proceeding, is an 'interlocutory application' with reference to the pending suit/proceeding. [Article 137](#) is intended to apply to applications for enforcement of a claim or adjudication of a right or liability in a court. An application for leave to proceed with a pending suit or proceeding not being such an application for any relief, will not attract [Article 137](#)."

28. That apart, the probate proceedings are initiated under Succession Act, which itself is a self-contained Code, does not prescribe limitation. More significantly, the Limitation Act also does not have specific provision to deal with probate petitions. According to Article 137, the three year limitation period is provided from when the "right to apply" accrues. If one applies this bar of three years to an application for obtaining probate, it would mean that the right to apply accrues immediately from the date of the death of the testator.

29. No doubt, Article 137 does not warrant for the assumption that the right to apply accrues on the date of death



of the deceased. An application for probate is only to seek the Court's imprimatur to perform a legal obligation created by a Will or for recognition as a testamentary trustee. Basically, the right being a continuous right can be exercised at any point after the death of the testator.

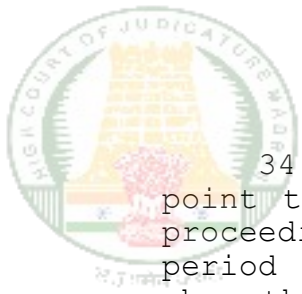
30. In **Ramanand Takur v. Paramanad Takur** [AIR 1982 Pat 87], following the decision of this Court in **Ganamuthi Upadasi** (cited supra), the Patna High Court held that it would be difficult to find out as to when the right to apply accrues in the absence of any date fixed. Hence, it was decided that right to apply remains until the Will remains unprobated.

31. The aforesaid discussion shows the line of judgments propounding that Limitation Act would not have any application in the proceedings for grant of Letters of Administration, but then there is the view in **Kunvarjeet Singh Khandpur's case** (supra), where while appreciating that proceedings for Letters of Administration in relation to a Will are in respect of continuous rights, Article 137 of the Limitation Act was held applicable. It is our humble view that possibly this divergence of view may require to be reconciled by the Honourable Supreme Court, but fortunately, this aspect would not trouble us in the present case on account of the Letters Patent jurisdiction read with the Original Side Rules.

32. Before going into an analysis on this point, it is worthwhile to extract Order XXV Rule 9 of the Original Side Rules which extensively deals about the Testamentary and Intestate matters:-

"In any case where probate or letters of administration is for first time applied for after the lapse of three years from the death of the deceased, the reason for the delay shall be explained in the Petition."

33. It is thus quite apparent that all that is required in the eventuality of the Letters of Administration being applied for after a lapse of three years from the date of death of the deceased, is that there should be an explanation forthcoming for the delay in presentation of the application and not that it would be a bar to institution of such proceedings. In our view, such a requirement is so stipulated on account of there being a continuous right, and long delays would throw suspicion on the Will. However, if this delay is explained and the Will proved in accordance with law, there would be no impediment to the grant of Letters of Administration in respect of the Will.



34. We may examine this matter even from another view point that if Article 137 of the Limitation Act would apply to proceedings for grant of Letters of Administration, then the period of limitation would have to be reckoned from the date when the right to apply accrues and not from the date of death of the deceased. It is only when there is a denial of such right or when the occasion to assert the right accrues, the question of bar of limitation would arise.

Delay and laches:-

35. Though the proceeding filed for grant of probate or letter of administration may not come within the meaning of Article 137 of the Limitation Act in the present case, yet the delay aspect is relevant to test the genuineness of the will propounded.

36. It is also worthwhile to mention that no period is prescribed for filing petition for probate or letters of administration or Succession Certificate in the Original Side Rules. As extracted above, Rule 9 specifically provides for delay in applying for Probate or Letters of Administration to be explained which is mandatory in nature. Depending upon facts and circumstances of each case, the right to apply for probate or letters of administration made become necessary even beyond three years from the date of death of the testator. One such instance may be when a party came to know of the Will long after the testator's death. Whenever there is delay, it has to be explained. More over, if the execution of the Will is proved, the delay in taking steps to probate the Will, will not loom large, since Order XXV, Rule 9 of Madras High Court Original Side Rules has not prescribed any period of limitation and probably, it aims to give explanation alone. Though delay may cause suspicion about the Will, it cannot be held that the application is barred by limitation under Article 137 as it may not be possible to find out as to when the right to apply accrued. Delay in taking steps may be one of the circumstances to be considered while determining the genuineness of the Will.

37. In this regard, a Division Bench of this Court in **Janaki Devi vs. R. Vasanthi and others [(2005) 1 MLJ 357]** has held that if the execution of the Will is proved, the delay in taking steps to probate the Will, will not loom large, since Order XXV, Rule 9 of Madras High Court Original Side Rules has not prescribed any period of limitation and probably, it aims to give explanation alone.



38. In the instant case, a perusal of the materials would show that even after the legal notice for partition was issued in 2003, no steps were taken. Nor after the suit was filed in 2007, steps could have been taken to apply for issuance of letters of administration. Therefore, it is clear that the petitioners deliberately waited for the suit to be over and only when the judgment was reserved in the suit in the year 2011, they have preferred the petition for grant of letters of administration.

Letters Patent and General Law:-

39. Coming to the aspect of the Letters Patent prevailing over general law, law is well settled that Letters Patent is a special law enacted for special cases in special circumstances whereas Limitation Act is a general law laying down the general rules of limitation laid down in other statutes. It has also become necessary to point out that the Letters Patent is a special charter conferring jurisdiction on Chartered High Courts based on which the Original Side Rules are formulated and as such, when there is a special enactment such as the Letters Patent, which expressly lays down the criteria on the jurisdiction of the Chartered High Court, it is totally unnecessary and in

fact, futile to refer to another legislation, which may not be applicable, to determine the jurisdiction of the Chartered High Court.

40. In this context, a three judges Bench of the Hon'ble Supreme Court in **A.S.K.Krishnappa Chettiar vs. S.V.V. Somiah [AIR 1964 SC 227]** held that the Limitation Act being a procedural law, is to be applied to matter to which they are made applicable by the legislature expressly or by necessary implication and cannot be extended by analogy or reference to proceedings to which they do not apply expressly or could be said to apply by necessary implication. The relevant passage found in paragraph 13 of the judgment is usefully extracted:-

".... The question is whether there is any well-recognized principle whereunder the period of limitation can be regarded as being suspended because a party is prevented under certain circumstances from taking action in pursuance of his rights. The Limitation Act is a consolidating and amending statute relating to the limitation of suits, appeals and certain types of applications to courts and must, therefore, be regarded as an exhaustive Code. **It is a piece of adjective**



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or procedural law and not of substantive law. Rules of procedure, whatever they may be, are to be applied only to matters to which they are made applicable by the legislature expressly or by necessary implication. They cannot be extended by analogy or reference to proceedings to which they do not expressly apply or could be said to apply by necessary implication.

It would, therefore, not be correct to apply any of the provisions of the Limitation Act to matters which do not strictly fall within the purview of those provisions. Thus for instance, period of limitation for various kinds of suits, appeals and applications are prescribed in the First Schedule. A proceeding which does not fall under any of the articles to that schedule could not be said to be barred by time on the analogy of a matter which is governed by a particular article. For the same reasons, the provisions of Sections 3 to 28 of the Limitation Act cannot be applied to situations which fall outside their purview.

These provisions do not adumbrate any general principles of substantive law nor do they confer any substantive rights on litigants, and, therefore, cannot be permitted to have greater application than what is explicit or implicit in them...."

(Emphasis applied)

41. Again, another three Judges Bench of the Hon'ble Supreme Court in **Kaushalya Rani v. Gopal Singh [AIR 1964 SC 260]** observed in paragraph 7 of the judgment as under:-

".... As the Limitation Act has not defined 'special law', it is neither necessary nor expedient to attempt a definition. Thus, the Limitation Act is a general law laying down the general rules of limitation applicable to all cases dealt with by the Act; but there may be instances of a special law of limitation laid down in other statutes, though not dealing generally with the law of limitation...."

42. At this juncture, it would be relevant to refer to the decision of the Larger Bench, comprising of five Judges, of the



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Hon'ble Apex Court in **P.S. Sathappan (Dead) by L.Rs. vs. Andhra Bank Limited and others [(2005) 1 MLJ 105 (SC)]**, wherein, in paragraph 32 of the judgment, it has been observed in the following words:-

"A Letters Patent is a special law for the concerned High Court. Civil [Procedure Code](#) is a general law applicable to all Courts. It is well settled law, that in the event of a conflict between a special law and a general law, the special law must always prevail. We see no conflict between Letters Patent and [Section 104](#) but if there was any conflict between a Letters Patent and the Civil Procedure Code then the provisions of Letters Patent would always prevail unless there was a specific exclusion. This is also clear from Section 4 Civil Procedure Code which provides that nothing in the Code shall limit or affect any special law. As set out in Section 4 C.P.C. only a specific provision to the contrary can exclude the special law. The specific provision would be a provision like [Section 100A](#)."

43. Following the Larger Bench judgment in **P.S.Sathappan case** (cited supra), the Hon'ble Supreme Court, in **Iridium India Telecom Ltd. vs. Motorola Inc. [2005 (1) CTC 304 (SC)]**, held that Letters Patent will prevail over CPC as the *non-obstante* clause used in Section 129 CPC is not merely declaratory but indicative of Parliament's intention to prevent the application of CPC in respect of civil proceedings on the Original Side of the High Courts. In Paragraph 19 of the judgment, Their Lordships have opined as follows:-

"The Legislature recognized the special role assigned to the Chartered High Courts and exempted them from the application of several provisions of the Code in the exercise of their ordinary or extra-ordinary civil jurisdiction for the simple reason that those jurisdictions were governed by the procedure prescribed by the rules made in exercise of the powers of the Chartered High Courts under clause 37 of the Letters Patent. Interestingly, [Section 652](#) of this Act itself empowered the High Courts to make rules "consistent with this Code to regulate any matter connected with the procedure of the Courts of Civil Judicature subject to its superintendence", suggesting that consistency with the Code was a sine qua non only when making rules for the subordinate courts."



Continuous cause of action:-

44. As regards the last aspect of continuous cause of action, rule of law is clear that no limitation will apply in cases where the cause of action continues. Speaking accurately, continuous cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought. If once a cause of action arises and the acts complained of are continuously repeated, the cause of action continues and goes on *de die in diem*.

45. While dealing with a service matter in **Basic Shiksha Parishad and another vs. Sugna Devi [(2004) 9 SCC 68]**, the Hon'ble Apex Court held that in a case of continuing cause of action, question of limitation would not arise and in this context, in paragraph 6, it has been held as follows:-

".... Once no order of termination or dismissal is produced, her service has to be treated as stood transferred to the Basic Education Board by operation of law. In that event she has to be treated as continuing in service and salary was accruing every month that accorded her a continuing cause of action. Therefore the question of limitation also won't arise in this case."

46. Now, applying the aforesaid principles to the facts of the present case, we find that there is an assertion of the claim of execution of the Will by the testator. Indisputably, subsequent to the filing of the suit in the year 2007 by the one of the appellants, the matter was referred to Lok Adalat and since the settlement did not fructify, the respondents herein proceeded to apply for probate of the Last Will and Testament of S.M.Subramaniam Chettiar. Admittedly, the Will was read out to the family members on the the eleventh day of the ceremony of the deceased testator, ie., on 26.12.1996. A legal notice was issued for partition in the year 2003 followed by suit in 2007 in which judgment was reserved in 2011. Pending suit, the Original Petition was filed in 2011.

47. We do believe that the respondents herein have a lot of explaining to do, but that would be an aspect to be examined during the proceedings to determine whether it is of such a



nature as would cause a fatal blow to the proceedings for grant of Letters of Administration or that the so called explanation offered by the respondents would be acceptable.

Conclusion:-

48. To put it in a nutshell, in the instant case, from the materials available on record, it is seen that the petitioners in the Original Petition (respondents herein) have endeavoured to give an explanation for the delay in filing of the Original Petition as beneficiaries for the Letters of Administration. The delay is long. There appear to be some gaps. However, these are aspects to be considered while examining the petition and the petition cannot be thrown out at the threshold defeated by the law of limitation, in view of the Original Side Rules discussed aforesaid.

49. In the light of the ratio laid in the above decisions, it cannot be stated that Letters Patent and Rules made thereunder by the High Court for regulating the procedure on the original side, are subordinate legislation and, therefore, only Limitation Act which is a superior legislation will prevail. On a conspectus of the above legal scenario, we conclude that the probate Court has been conferred with exclusive jurisdiction and particularly, the conspicuous absence of any period of limitation in applying for issuance of probate / Letters of Administration makes it clear that the law of limitation will not apply to Sections 232 and 278 of the Indian Succession Act in respect of proceedings initiated before this Court as per the Original Side Rules. In such view of the matter, the finding of the learned single Judge holding that Article 137 of the Limitation Act is not applicable to probate proceedings and dismissal of the Original Applications, in our considered opinion, require no interference.

50. We are, however, troubled by the fact that when the suit itself had been heard and reserved for judgment did the original petitioners (respondents herein) seek to file the application for Letters of Administration. This undoubtedly caused unnecessary delay in the proceedings, prejudicing the appellant. However, in view of the law discussed aforesaid, the petition cannot be thrown out at the threshold. We would, however, require the proceedings for grant of Letters of Administration to be expedited and an endeavour made to conclude the proceedings within a year from the date of communication of the present order, and the suit in which judgment was reserved (later on, de-part heard) be taken up together for final hearing and disposal. Both the parties will not take any unnecessary



adjournments and will co-operate to conclude the proceedings.

The appeals thus have to be dismissed, but with directions made aforesaid. There shall be no order as to costs.

WEB COPY

-s/d-

Assistant Registrar(co)

True Copy

Sub-Assistant Registrar

gri

To

1. The Sub Assistant Registrar
Original Side,
High Court, Madras

+2 ccs to Mr.S.R.Raghunathan Advocate, vide
sr.1423, 1145

+1 cc to Mr.K.Pandurangan Advocate sr.1115

+2 ccs to Mr.M.Balasubramanian Advocate sr.1117,
1118

+1 cc to Mr.P.K.Sivasubramaniam Advocate sr.1079

Common Judgment in

O.S.A. Nos. 10 and 72 of 2013

gj(co)

aa18/01/2016