

sIN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.1356 of 2017

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1. Gyanti Devi, Wife of Prabhat Kumar Singh @ Papu Kumar Singh, Resident of Village Dahiyawan, P.O.- Chapra, P.S.- Chapra Town, District- Saran.

.... Appellant/s

Versus

1. Estate of Vijay Kumar Singh, (deceased), Son of late Bachha Singh, resident of Village Dahiyawan, P.O.- Chapra, P.S. Chapra Town, District- Saran.
2. Hemant Kumar Singh.
3. Manoj Kumar Singh, Both Sons of Late Vijay Kumar Singh.
4. Punam Devi.
5. Reeta Devi.
6. Uma Devi. All daughters of Late Vijay Kumar Singh.
7. Jayanti Devi, Wife of Late Arun Kumar Singh.
8. Abhinav Kumar, Son of Late Arun Kumar Singh. All residents of Village Dahiyawan, P.S.- Chapra Town, District- Saran.
9. Prabhat Kumar Singh @ Papu Kumar Singh, Son of Late Vijay Kumar Singh, resident of village Dahiyawan, P.S.- Chapra Town, District- Saran (Traceless).
10. Dr. Prabha Gupta, Wife of Dr. Sajal Kumar, resident of Mohalla Bara Telpa P.S.- Chapra Town, District- Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. P.N. Shahi, Sr. Advocate
For the Respondent No. 10 : Mr. Ganpati Trivedi, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 27-08-2018

Heard Mr. P. N. Shahi, the learned senior counsel for the petitioner, and Mr. Ganpati Trivedi, the learned senior counsel for the respondent No. 10.

2. The petitioner has filed this Civil Misc. petition for quashing the order dated 03.07.2017 passed by the learned 2nd Additional District Judge, Saran at Chapra in Probate case No.60 of 2009 whereby the petition filed on behalf of the petitioner for



amending the probate application by adding a new paragraph to explain as to how the delay took place in filing the Probate application has been rejected.

3. The petitioner filed Probate case No. 60 of 2009 for grant of probate of a will dated 29.01.2005 executed in her favour by her father-in-law, who died on 16.06.2005. During the pendency of probate case the petitioner filed a petition on 17.05.2017 for amending the probate petition and adding paragraph 21 of the petition in order to explain the delay in filing the probate case. Opposite party No.10/ respondent No. 10 herein filed rejoinder opposing the prayer of the petitioner that probate case is of the year 2009, deposition of witnesses have already been recorded and part argument has also been heard. The amendment is with an object to fill up the lacunae in the probate application and the same should not be allowed. The learned Additional District Judge by the impugned order rejected the petition primarily on the ground that the amendment petition itself was filed after much delay and no explanation for such delay has been given. Ignorance of law cannot be a ground for condoning such delay.

4. Mr. P. N. Shahi, the learned senior counsel appearing on behalf of the petitioner, submits that when the probate case was filed there was no limitation in filing probate application. For the first time in the case of ***Kunvarjeet Singh Khandpur vs. Kirandeep Kaur &***



Ors reported in **(2008) 8 SCC 463**, while interpreting Article 137 of the Limitation Act, 1963, the Apex Court held that application under Section 264 for grant or revoking probate or letters of administration is covered by residuary provision as contained in Article 137 of the Limitation Act but the question remains to be considered that from which date the period of limitation shall commence. A single Bench of this court after considering the case of *Kunvarjeet Singh Khandpur vs. Kirandeep Kaur & Ors* (supra) in the case of ***Smt. Nalini Mishra v. Braj Kishore Mishra*** reported in **2010 (4) PLJR 355** held that the limitation shall run from the date of arising of cause of action.

5. The learned senior counsel for the petitioner further submits that the question of non application or application of Article 137 of the Limitation Act is not to be decided in the present case since the petitioner has filed the present case against the order of rejection of her petition seeking amendment in the petition of probate by which the petitioner wants to incorporate certain new facts in a separate paragraph explaining the delay caused in filing of the probate case after death of her father-in-law. It is submitted that in the present case in view of the provision as contained in Order VI Rule 17 of the Code of Civil Procedure the court has to judge whether the amendment sought for is fit to be allowed or disallowed within the parameter of the aforesaid provision. The aforesaid provision bestows unfettered



power on the court to allow such amendments which are necessary and relevant for the determination of the dispute between the parties. In a probate case genuineness of the will is the subject matter of the suit and if certain facts, which are sought to be brought by way of amendment with regard to delay in filing the probate case, the same does not, in any way, change the nature of the suit nor the same would cause any irreparable loss or prejudice to the opposite party. Even by way of amendment no accrued right of the opposite party is sought to be taken away. Therefore, the order passed by the learned Additional District Judge on the ground that amendment petition itself is filed after much delay is erroneous and he has failed to exercise the jurisdiction vested in him by the law.

6. As per contra, Mr. Ganpati Trivedi, the learned senior counsel for the respondent No. 10, submits that, of course, for filing the probate case there was no limitation on assumption that legatee of the will or the testator of the will get continuous cause of action unless and until the property, subject matter of the will, exists but the Apex Court in the case of *Kunvarjeet Singh Khandpur vs. Kirandeep Kaur & Ors* (supra) for the first time held that application under Section 264 for granting or revoking probate or letters of administration is covered by Article 137 of the Limitation Act which prescribes the period of filing application for probate or letters of administration



within three years. It is further submitted that the Apex Court in the case of *Krishna Kumar Sharma v. Rajesh Kumar Sharma* reported in *2009 (3) PLJR SC 80* reiterated the same view and held that application for grant of probate or letters of administration is covered by Article 137 of the Limitation Act. Article 137 will apply to any petition or application filed under any Act to a Civil Court and it is not confined to applications under CPC. It is submitted that father-in-law of the petitioner executed a will in the year 2005 and he died in the year 2005 itself but the probate case was filed in the year 2009. Thus, in view of the law laid down by the Apex Court in the case of *Krishna Kumar Sharma v. Rajesh Sharma* (supra) the petition for grant of probate or for issuance of letters of administration is barred. Therefore, the amendment meant for explaining the delay in filing the probate case is of no merit and the court has rightly rejected the petition.

7. On consideration of submissions of both sides, I find that in this Civil Misc. petition the question of limitation does not arise and the same is not at all relevant at this stage while the court is considering the legality or illegality of the order rejecting the amendment petition of the petitioner on the ground that the same was filed after much delay and no explanation for such delay has been given. The question of limitation shall be considered at the time of



deciding the probate case and not at the time of amendment. From the perusal of the amendment petition, it appears that it simply says that petitioner wanted to add paragraph 21 in the petition by stating the facts about delay in filing the probate case for grant of probate or letters of administration of the will of her father-in-law, who died in the year 2005. Even the learned Additional District Judge has not touched the question of limitation in filing the probate case, while considering the petition of amendment in the probate case. The petition of amendment has primarily been rejected on the ground that the same is filed after much delay but the court did not advert to the fact about the relevancy of the amendment petition or if the amendment petition is allowed whether the same would cause irreparable loss or would cause any irreparable prejudice or take away any accrued right of the other side. The amendment petition appears to be explanatory in nature with regard to presenting the probate case after four years from the date of death of the testator of the will. Therefore, I find that the amendment petition would not either change the nature of the probate proceeding nor it would cause any irreparable loss to the other side. All the amendments which are relevant for the determination of the dispute between the parties should be allowed. Therefore, I find that the learned Additional District Judge has committed jurisdictional error in dismissing the



amendment petition.

8. Accordingly, the order dated 03.07.2017 passed in Probate Case No.60 of 2009 is set aside. The amendment petition is allowed. This Civil Misc. petition is, thus, allowed with liberty to the opposite party to file additional written statement, if he so desires.

(Prabhat Kumar Jha, J)

BKS/Rajan

AFR/NAFR	NAFR
CAV DATE	N/A
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