

\$~7

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Date of Order: 22.01.2019

+

F.A.O. No.435/2018

PAWAN KUMAR SHARMA Appellant

Through: Mr. M. Hasibuddin, Advocate.

Versus

NEELAM SHARMA & ANR. Respondents

Through: Mr. Prateek K. Chadha, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

C.M. Nos.38072-38073/2018 (for exemption)

Allowed, subject to all just exceptions.

The applications stand disposed of.

C.M. No.38071/2018 (for delay)

For the reasons justified in the application, delay of 41 days in filing the appeal is condoned. The application is disposed of accordingly.

F.A.O. No.435/2018

1. The impugned order dated 01.05.2018 passed by the learned District & Sessions Judge, Head Quarters, Delhi, dismissing the application of the appellant, being M. No.5/17 under Section 263 of the Indian Succession Act, 1925 ('IS Act') seeking revocation of the probate of Will dated 10.07.2002 granted by judgment dated

09.01.2006 in Probate Case No.5/2005, is the subject-matter of challenge in this appeal. In fact by the judgment dated 09.01.2006, letter of administration was granted for the Will dated 10.07.2002.

2. The facts of the case are that one Hari Krishan Sharma was the owner of property No.C-126, Mansarovar Garden, New Delhi and property No.WZ-336, Village Naraina, New Delhi, apart from other movable properties. He executed a Will on 10.07.2002 and bequeathed the House No. WZ-336, Village Naraina, New Delhi, in favour of his wife Smt.Shanti Devi and property No.C-126, Mansarovar Garden, New Delhi, in favour of his daughter Neelam Sharma. The testator died on 03.12.2003. By judgment dated 09.01.2006, letter of administration in respect of Will was granted by the learned District Judge, Delhi on the petition filed by Smt. Neelam Sharma. After about ten years, the appellant filed an application under Section 263 of IS Act for revocation of the order dated 09.01.2006 on the ground that the deceased died issueless leaving behind his widow Smt. Shanti Devi and that he did not execute any Will. He also claimed that he came to know about the beneficiary in the year 2014 and gathered information about the falsity of the Will. By the impugned order, learned District & Sessions Judge found that the application is barred by time.

3. Learned counsel for the appellant contends that the period of limitation shall start from the date of knowledge and not from the date of the judgment.

4. Admittedly, there is no provision under the Limitation Act or under the IS Act specifying the period of limitation for filing an application seeking revocation of grant of probate or letter of administration. On a similar point raised, in *Lynette Fernandes vs. Gertie Mathias (since deceased) by LRs*; (2018) 1 SCC 271 Hon'ble Supreme Court held that the limitation for filing application seeking revocation of grant of probate will be covered by Article 137 of the Limitation Act which is the residuary Article and prescribes a period of limitation for three years. The Hon'ble Supreme Court further held that '*one must keep in mind that the grant of probate by a competent court operates as a judgment in rem and once the probate to the will is granted, then such probate is good not only in respect of the parties to the proceedings, but against the world. If the probate is granted, the same operates from the date of the grant of the probate for the purpose of limitation under Article 137 of the Limitation Act in proceedings for revocation of probate.*' Similarly in *Kunvarjeet Singh Khandpur vs. Kirandeep Kaur & Ors.*; (2008) 8 SCC 463 the Hon'ble Supreme Court held that the period of three years for institution of a petition for grant of probate commences from the point in time when the right to apply accrues to the petitioner.

5. In view of the judgment of the Hon'ble Supreme Court in *Lynette Fernandes (supra)*, the judgment granting letter of administration dated 09.01.2006 operates from that day itself and the right to sue accrues to the appellant on that day itself since the judgment operates in *rem*. So if a revocation is sought for grant of

probate or letter of administration, the period of three years should commence, from the date when the probate or letter of administration is granted. Since the judgment dt. 09.01.2006 is a judgment granting letter of administration in *rem*, the limitation of three years shall commence from 09.01.2006 and not from any date beyond that.

6. I do not find any infirmity and illegality in the impugned order dismissing the application of the appellant for revocation of the letter of administration being barred by time.

7. In view of this discussion, the appeal is dismissed.

JANUARY 22, 2019
‘AA’

(VINOD GOEL)
JUDGE