

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(TESTAMENTARY AND INTESTATE JURISDICTION)

MONDAY, THE 01ST DAY OF MARCH 2021

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

A.No.669 of 2020

O.P. No.474 of 2004

In the matter of the Last Will and
Testament of deceased
N.Janakiraman,
and
In the matter of Indian Succession Act
XXXIX of 1925

Guna,
W/o.Late N.Janakiraman,
residing at No.14,
Sakthi Vinayagar Koil Street,
MGR Nagar, Chennai - 78. :Petitioner

Vs

1. J.Kumudha,
W/o.K.Murthi,
residing at No.96, 1st Street,
Nethaji Nagar, Tondiarpet,
Chennai - 81.

2. J.Durga,
W/o.Guruswamy Naidu,
residing at No.2, 3rd Street,
Maheswari Nagar, Hastinapuram,
Chennai-44.

3. J.Sairam,
S/o.Late N.Janakiram,
residing at No.21, 3rd Street,
Maheswari Nagar, Hastinapuram,
Chrompet, Chennai – 44,
Kancheepuram District.

4. Thulasi,
D/o.Late N.Janakiram,

5. Raji alais S.Rajeswari
D/o.Late N.Janakiraman,

6. Pushpa alias B.Pushpalatha
D/o.Late N.Janakiraman,

7. Babu
S/o.Late N.Janakiraman,

8. Kutti (alias) B.T.Narasimhalu,
S/o.Late N.Janakiraman,
respondents 4 to 8 are residing at No.14
Sakthivinayagar Koil Street,
M.G.R.Nagar, Chennai 78. :Respondents

A.No.669 of 2020:

1. J.Durga,
W/o.Guruswamy Naidu,
No.2, 3rd Street,
Maheswari Nagar, Hastinapuram,
Chennai-44.
Kancheepuram District.

2. J.Sairam @ Anandan
S/o.Late N.Janakiram,
No.21, 3rd Street,
Maheswari Nagar, Hastinapuram,
Chrompet, Chennai – 44

..Applicants/Respondents 2 and 3

-Vs-

1. Guna,
W/o.Late N.Janakiraman,
No.14, Sakthi Vinayagar Koil Street,
MGR Nagar, Chennai - 78.

:Respondent/Petitioner

2. J.Kumudha,
W/o.K.Murthi,
residing at No.96, 1st Street,
Nethaji Nagar, Tondiarpet,
Chennai - 81.

3. Thulasi,
D/o.Late N.Janakiraman,

4. Raji @ S.Rajeswari
D/o.Late N.Janakiraman,

5. Pushpa @ B.Pushpalatha
D/o.Late N.Janakiraman,

6. Babu
S/o.Late N.Janakiraman,

7. Kutti @ Narasimhalu,
S/o.Late N.Janakiraman,

The respondents 3 to 7 are
residing at No.14
Sakthivinayagar Koil Street,
M.G.R.Nagar, Chennai 78.

:Respondents/1st Respondent and 4 to 8

This application praying that this Hon'ble Court be pleased to
condone the delay of 1376 days in filing application for revocation of letters
of administration dated 25/07/2012 in O.P.NO.474 of 2004.

This application coming on this day before this court for hearing, the court made the following order:

Reserved on : 17.02.2021

Pronounced on : 01.03.2021

This application has been filed under Order XIV rule 8 of Original Side Rules r/w Section 5 of Limitation Act, praying to condone the delay of 1376 days in filing the application for revocation of letters of administration dated 25.07.2012 in O.P.No.474 of 2004.

2. The case of the applicants in a nutshell is as follows:

(i) The respondents 2 and 3 in O.P.No.474 of 2004, are the applicants herein. The 1st respondent in this application filed the above referred Original Petition for granting letters of administration. After elaborate enquiry, the same was allowed. The applicants, are the daughter and son born to one Late Jankiraman, through his first wife. During the subsistence of marriage, one Guna, the 1st respondent/petitioner, started to live with the said Janakiraman. The alleged marriage between said Guna and Janakiraman, is not a valid marriage as per the Hindu Marriage Act.

(ii) During the relevant point of time, the 1st respondent took the applicants' father Janakiraman, to the Sub Registrar's Office and forcibly obtained a registered Will dated 20.05.1998, thereafter, the said Janakiraman died on 22.07.1998.

(iii) The original application for Letters of Administration has been filed on 21.12.2001 and the same was numbered only in 2004. After assigning with the case number, the Letters of Administration was granted only on 25.07.2012. In the meantime, prior to filing of the probate petition, the applicants herein filed an Original Suit in O.S.No.4562 of 1992 for the relief of partition. In the written statement, the 1st respondent claimed that a Will is in existence and steps are being taken to probate. But on verification, no steps have been taken between 2001 and 2004.

(iv) In the meantime, the suit filed in O.S.No.4562 of 1999, was dismissed for default. The applicants were under the bonafide impression that the proceedings initiated in O.P.No.474 of 2004, could be decided only after serving notice to the applicants. Some time in March 2012, the counsel, who was appearing for the applicants fell ill and he was not in a position to represent the applicants' case. Therefore, the applicants were not

in a position to proceed with the Original Petition in an effective manner. As per Section 263 of the Indian Succession Act, there is no limitation and only just cause, has to be shown for revoking the Letters of Administration.

(v) Furthermore, in O.P.No.474 of 2004, till 2016, no notice was served upon the applicants. On the date of filing of revocation petition i.e on 01.06.2016, law of limitation was not applicable. Only because of the reason that Registry pointed out lot of discrepancies, without any other alternative, the applicants filed this application for condonation of delay. On verification of the Court records, it shows that the 1st respondent has filed a memo in 2004 for service of notice on a wrong address. The notice was sent through proper Court i.e. DMC, Tambaram, but the Bailiff attached to the said Court returned the warrant that no such address or no such person exists or available. सत्यमेव जयते

(vi) The 1st respondent did not take any steps to serve the notice to the applicants for more than four years. Without taking any further steps to serve the notice to the applicants, the 1st respondent obtained orders for substituted service and after effecting the paper publication, the Letters of Administration has been granted.

(vii) The provisions of Article 137 of the Limitation Act, specifies that the period of limitation of three years starts from the day that right to claim accrues. In the present case, even though Original Petition was filed in 2001, the 1st respondent never took steps to serve citation as contemplated under Original Side Rules dealing with testamentary and intestate jurisdiction. The application for revocation was filed only on 01.06.2016. Without admitting there is a delay, it is the duty of the applicants to explain the delay under Section 5 of the Limitation Act. The Limitation Act, is not a substantial law, but only a procedural law to regulate the proceedings in which there is no specific bar incorporated in those statutes. Therefore, the applicants prayed to condone the delay of 1376 days in filing this application.

3. In response to the averments found in the affidavit filed by the applicants in support of the application, the 1st respondent/petitioner filed a counter affidavit and states as follows:

(i) In the written statement in OS.No.4562 of 1999, the respondents herein, clearly narrated the incidents that steps were being taken to probate the Will, which was executed by Janakiraman. The applicants could have been diligent in perusing about the probate

proceedings which were taken by the respondents herein in OP No.474 of 2004, before this Court.

(ii) Only after 10 years from the dismissal of their own partition suit, which was filed against the 1st respondent, the applicants herein has filed an application in I.A.No.8220 of 2013 to condone the delay of 3650 days, to restore the suit without any valid reason before the learned II Assistant Judge, City Civil Court, Madras. Ultimately, the said application was dismissed on 21.11.2013. Since the counter affidavit has been filed on 05.08.2013, on the said date itself, the applicants had gained knowledge about the probate. The applicants have deliberately failed to peruse the said order of probate granted on 25.07.2012. Despite their knowledge, they have not filed an application immediately.

(iii) After numbering the Original Petition, several times steps have been taken through Court and privately, to serve notice to the applicants. Despite of taking steps, the applicants had deliberately evaded to receive the Court notices and private notices with an ulterior motive. The reasons stated by the applicants, in respect to the illness having by their Advocates cannot be accepted. The law laid down by a Division Bench of

Mrs. Gertie Mathias, reported in **2018 (6) CTC 341 : 2018 (1) SCC 271** is applicable to the present pending application filed by the applicants.

(iv) The reasons stated for the delay of 1405 days is unsustainable. The name of the parties mentioned in the probate applications are all in accordance with the names found in the plaint pertaining to the partition suit filed by the applicants. Notice has been served to 1st respondent, one Kumudha, who is the sister of the applicants 1 and 2 herein, in O.P.No.474 of 2004 on 06.09.2004 itself. Having received the said notice, the said Kumudha has not come forward to oppose the probate petition in the aforesaid Original Petition till date. It is sufficient that one of the siblings, is served to attribute knowledge of the proceedings. In fact, both the applicants who are the sister and brother, are residing in the same street except different door numbers. The applicants have not approached this Court with clean hands and hence, the application filed by the applicants is devoid of merits.

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4. Heard Mr.V.Balasubramanian, learned counsel appearing for the applicants, Mr.V.Suryanarayana Reddy, learned counsel appearing for the 1st respondent and Mr.J.Baskaran, learned counsel appearing for respondents 5 to 7.

5. The first and foremost contention raised by the learned counsel appearing for the applicants is that, previously, in respect to filing application under Section 263 of Indian Succession Act, no limitation is provided. Only in the year of 2017, our Hon'ble Apex Court has held that Section 137 of the Limitation Act, is applicable to the petitions which are filed under Section 263 of the Indian Succession Act. Therefore, on the bonafide belief, the applicants kept quiet and therefore, it cannot be said that the applicants did not show a sufficient cause for allowing this application.

6. Per contra, the learned counsel appearing for the 1st respondent/petitioner would contend that though in respect to the limitation, there were different types of judgments, in the year of 2017 itself, our Hon'ble Apex court has clearly held that Article 137 of the Limitation Act, is applicable to the petitions filed under Section 263 of the Indian Succession Act and therefore, it is for the applicants to file application immediately after seeing the said 'Judge-made law'.

7. Now, by considering the rival submissions with the relevant records, it is true, in earlier periods, the Limitation Act is not applicable to the cases which relates to the Letters of Administration. In a case of

MANU/TN/0039/1991, this Court has held as follows:

“Article 137 of the Limitation Act would not apply to proceedings filed for grant of probate or letters of administration with or without the Will annexed.”

8. However, in a case of *Lynette Fernandes Vs. Mrs. Gertie Mathias*, reported in **2018 (6) CTC 341 : 2018 (1) 271**, a Division Bench of our Hon'ble Apex Court has held as follows:

“13. 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.”

9. Further, the said judgment was rendered by our Hon'ble Apex Court on 08.11.2017. Even assuming that the petitioner is under the bonafide impression that Limitation Act is not applicable to the Letters of Administration, he is having the duty to file the application immediately after seeing the judgment rendered by our Hon'ble Apex Court. But, the present petition has been filed on 10.02.2020, after a lapse of 2 years and 3 months.

10. In the said circumstances, it is necessary to see Article 137 of Limitation Act, which reads as follows:

Article	Description of application	Period of Limitation	Time from which period begins to run
137.	Any other application for which no period of limitation is provided elsewhere in this division.	Three years	When the right to apply accrues

Accordingly, this application has been filed within a period of three years, wherein, the Supreme Court ruled out that Article 137 of Limitation Act, is applicable to the applicants' case.

11. In view of the above, the submission made by the learned counsel appearing for the respondents herein that the application has not been filed within the period of limitation is not found correct and in this regard, this Court accepts the contentions raised by the applicants and hold that this application has been filed within the period of limitation.

12. Furthermore, the application for revoking the letters of administration in A.No.4108 of 2019, has been filed on 01.06.2016 itself, which is during the period wherein this Court was following the procedure that there is no limitation for filing the application to revoke the Letters of Administration. Therefore, this Court is of the considered opinion that the

application filed by the applicants in Application No.4108 of 2019, is well within the period of limitation. In otherwise, the merits of the applicants has to be decided only in Application No.4108 of 2019, which is filed for revoking the grant of Letters of Administration.

13. Ultimately, since the present application in A.No.669 of 2020 is filed only for the relief of condoning the delay, as already observed that the application is filed within the period of limitation, this application is an unnecessary one. In otherwise, the submission made by the learned counsel appearing for the applicants in respect to service of summons and other things has to be decided in A.No.4108 of 2019, which is filed for revoking the Letters of Administration dated 25.07.2012. The application is ordered accordingly.

14. List the matter on 06.04.2021.

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01.03.2021

//Certified to be a true copy//

Dated this the th day of 2021

SU/16.06.2021

COURT OFFICER(O.S.)

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Order/Judgment Decree in this format.