



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

FAO 223/2018, CM APPL. 20239/2018 & CM APPL. 12184/2021

Reserved on: 18.07.2022

Date of Decision: 10.10.2022

IN THE MATTER OF:

SOM PRAKASH

..... Appellant

Through: Mrs. Kajal Chandra, Ms. Perna Chopra, Mr. Divye Puri and Ms. Sakshi Anand, Advocates.

Versus

STATE AND ANR.

..... Respondents

Through: Ms. Hetu Arora Sethi, ASC, GNCTD with Mr. Siddharth Agarwal, Advocate for respondent No.1/State.
Mr. Yogesh Chhabra, Advocate for respondent No.2.

AND

FAO 239/2018, CM. APPL. Nos.20500, 43973/2018 & 26083/2020

RAJ KUMAR CHAUDHARY

..... Appellant

Through: Mrs.Kajal Chandra, Mr.Viren Kapur, Ms.Perna Chopra, Mr.Divye Puri and Ms.Sakshi Anand, Advocates.

Versus

STATE & ANR

..... Respondents

Through: Ms.Hetu Arora Sethi, ASC, GNCTD with Mr.Siddharth Agarwal, Advocate for respondent No.1/State.
Mr.Yogesh Chhabra, Advocate for respondent No.2.



CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

J U D G M E N T

MANOJ KUMAR OHRI, J.

1. The appellants have preferred the present appeals under Section 299 of the Indian Succession Act, 1925 against order/judgment dated 20.12.2017 passed by the learned District & Sessions Judge (HQs), Tis Hazari Courts, Delhi in Misc. DJ No. 61012/2016 *titled as Jai Ram v. Som Prakash & Anr*, revoking the Letters of Administration granted in favour of the appellant/*Som Prakash* vide judgment dated 01.09.1999 in respect of a Will dated 01.01.1991.

2. The facts, as emerge from the record, are as following. Appellant (*Som Prakash*) is nephew of one late *Smt. Satwanti Devi*, who statedly passed away issueless on 30.12.1996. *Satwanti Devi* was married to *Late Govind Lal Verma*, who pre-deceased her.

3. *Som Prakash* propounded a Will dated 01.01.1991, purportedly executed by *Satwanti Devi*, bequeathing property bearing No. 11223, single storeyed situated in *Bagh Rao Ji, Khasra No. 157/48-51/2, Block A/68 Double Phatak Road, Delhi* in his favour (hereinafter, referred to as '*said property*'). *Som Prakash* was the sole beneficiary under this Will. This Will was registered in the office of Sub-Registrar, Asif Ali Road. Seeking probate of Will dated 01.01.1991, *Som Prakash* filed a probate petition under Section 262 of the Indian Succession Act, 1925, which was registered as Probate Case No. 382/1997 and *titled as Som Prakash v. State* (hereinafter, referred to as "*Som Prakash's Probate Petition*"). In this petition, only the State was impleaded on the plea that *Satwanti Devi* had died issueless and left behind no legal heirs.



4. Som Prakash's Probate Petition was allowed and Letters of Administration were granted in his favour vide judgment dated 01.09.1999 passed by the learned District Judge, Delhi. Before the grant of probate, the probate Court had directed issuance of public notice/citation as per rules. A public notice was issued in National Herald to the general public at large inviting objections, however, no objection was received from any quarter.

5. Subsequently, *Som Prakash* sold the said property to one *Raj Kumar Chaudhary* (appellant in FAO 239/2018) vide sale deed dated 25.06.2008. At the time, respondent No.2/*Jai Ram* was a tenant in physical possession of the said property and the same was sold as it is. After purchasing the said property, *Raj Kumar Chaudhary* filed a suit for possession, permanent injunction and recovery of damages against *Jai Ram*, which was registered as Suit No 261/2009 (hereinafter, referred to as "*Raj Kumar's Suit*").

6. Records reveal that *Raj Kumar's Suit* was decreed *ex-parte* against *Jai Ram* on 03.02.2012. *Raj Kumar* filed an execution petition being Ex. No. 16/2014 to recover possession from *Jai Ram* however, it seems the *ex-parte* judgment lacked proper description of the suit property and *Raj Kumar* had to file an application in the decreed suit to seek clarification in this regard. In the said application seeking clarification, notice was issued to *Jai Ram*, who claimed ignorance of the suit itself, and filed an application under Order 9 Rule 13 CPC read with Section 151 CPC on 27.02.2013 for setting aside of *ex-parte* decree dated 03.02.2012. Reportedly, the application was allowed vide order dated 31.10.2019. A challenge to the said order is stated to be pending adjudication before the concerned Court.



7. Curiously, in the year 1997, *Jai Ram* also set up a Will dated 30.01.1996, allegedly executed by *Satwanti Devi* in his favour, whereby the said property was bequeathed to him. *Jai Ram* claimed that since he took care of *Satwanti Devi*, she rewarded him by bequeathing the property to him after revoking her earlier Will dated 01.01.1991 vide a registered revocation deed dated 26.09.1995.

8. *Jai Ram* had filed his own probate petition which was registered as Probate Case No. 136/1997 (later on re-numbered as Probate Case No. 184/2005) seeking Letter of Administration in respect of the Will dated 30.01.1996. In these proceedings, *Som Prakash* had filed an application for his impleadment on 28.01.1998/03.02.1998 under Order 1 Rule 10 CPC, which was allowed vide order dated 01.02.2000. *Som Prakash* had also filed his objections challenging the Will set up by *Jai Ram*. *Jai Ram*'s Probate Petition came to be dismissed for non-prosecution on 09.11.2005. Admittedly, no application seeking restoration of the petition has been filed till date.

9. Besides the aforesaid legal proceedings, there was a suit for injunction filed by *Som Prakash* against *Jai Ram*, which was registered as CS No. 91/97. It has been stated that in view of *Jai Ram* setting up the Will dated 30.01.1996 in his favour, *Som Prakash* withdrew the suit on 06.11.2001.

10. It is contended on behalf of respondent No.2 that *Som Prakash* was all along aware of the Will dated 30.01.1996 set up by *Jai Ram*, but suppressed the said material fact and thus fraudulently obtained the Letters of Administration in his favour.

11. Ms. Kajal Chandra, learned counsel appearing for the appellants, vehemently challenged the revocation on the ground of limitation. It was



contended that *Jai Ram* was aware of the grant of probate to *Som Prakash* in relation to Will dated 01.01.1991, in as early as year 2000, when *Som Prakash* filed his objections in *Jai Ram*'s Probate Petition. According to the appellants, *Jai Ram*'s application dated 04.07.2013 for revocation of order dated 01.09.1999 granting probate was time-barred. Learned counsel further contended that revocation application of respondent No.2 will be covered by Article 137 of the Limitation Act, since no specific article is prescribed for such application. Accordingly, limitation period for filing an application is 3 years from the grant of probate. In support of the contention, reliance was placed on the decisions in Lynette Fernandes v. Gertie Mathias since deceased by Legal Representatives reported as **(2018) 1 SCC 271**, Pawan Kumar Sharma v. Neelam Sharma and Another reported as **2019 SCC OnLine Del 6758** and Ramesh Nivrutti Bhagwat v. Dr Surendra Manohar Parakhe reported as **(2020) 17 SCC 284**.

12. In addition, on the merits, it was contended that the impugned order revoking the probate granted in favour of *Som Prakash* could not have been passed since the execution of Will dated 01.01.1991 had been duly proved in terms of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act. It was further contended that respondent No.2, on the other hand, failed to prove the deed of revocation dated 26.09.1995.

In the same vein, learned counsel questioned the legality of subsequent Will dated 30.01.1996 set up by *Jai Ram* and contended that the same is shrouded by suspicious circumstances, inasmuch as it was mischievously registered in the office of Sub-Registrar, *Kashmere Gate*, instead of *Asif Ali Road*, where the earlier Will dated 01.01.1991 which it



sought to revoke was registered. It was alleged that in an attempt to deceive, it was intentionally mentioned in the deed of revocation that the earlier Will dated 01.01.1991 was registered with the Sub-Registrar, Kashmere Gate.

In support of her submissions, learned counsel for the appellants placed reliance on the decisions in Cherichi v. Ittianam reported as **AIR 2001 Ker 184** and G. Gopal and etc. v. G. Nagarathinam & Anr. reported as **2006 SCC OnLine Mad 263**.

13. Per contra, Mr. Yogesh Chhabra, learned counsel for respondent No.2/*Jai Ram*, disputed the submissions made on behalf of the appellants and submitted that the Trial Court rightly revoked the Letters of Administration. On the issue of delay, it was submitted that the revocation application was filed in time, as *Jai Ram* obtained knowledge of the grant of Letter of Administration only when he was summoned in connection with an application seeking clarification filed by *Raj Kumar Chaudhary*. In this regard, learned counsel referred to the decision in Yuv Rajnarain Gorwaney v. State & Ors. reported as **2005 SCC OnLine Del 1207**.

On the merits of the case, it was contended that the appellant/*Som Prakash* had filed the Probate Case by misrepresenting and concealing material facts and obtained Letter of Administration fraudulently. The grant was also challenged for non-citation as the appellant/*Som Prakash*, admittedly, has four brothers and one sister, and none of them was impleaded in the Probate Case. In support of the submissions, reliance was placed on the decisions in Crystal Developers v. Asha Lata Ghosh (Smt) (Dead) Through LRs. and Others reported as **(2005) 9 SCC 375** and R. K. Mohammed Ubaidullah and Others v. Hajee C. Abdul Wahab



(D) by LR.s. and Others reported as **(2000) 6 SCC 402**.

14. So far as appellant/*Raj Kumar Chaudhary* in FAO No. 239/2018 is concerned, learned counsel for the appellant contended that the appellant is the *bonafide* purchaser of the estate left by the testatrix for *Som Prakash* and the subsequent revocation of Letter of Administration would not annul the disposition in his favour, which was done when probate was unchallenged. It was submitted that effect of revocation is only prospective and not retrospective. It was also contended that *Jai Ram* has not only failed to seek cancellation of sale deed executed by *Som Prakash* in favour of *Raj Kumar Chaudhary*, but also did not implead *Raj Kumar Chaudhary* as a necessary party in his revocation application. Further, till date, *Jai Ram* has failed to get the Will in his favour probated. In support of above submissions, learned counsel placed reliance on the decisions in Valerine Basil Pais (Dead) by LR.s v. Gilbert William James Pais and Anr reported as **1993 (2) Kar LJ 301** and Crystal Developers (Supra).

Mr. Chhabra, learned counsel for respondent No. 2, on the other hand, submitted that as the Letter of Administration was obtained fraudulently, its revocation will make all the acts of appellant/*Som Prakash* void *ab initio*.

15. I have heard learned counsels for the parties and have also gone through the entire case record. The facts being common, both the appeals are considered and disposed of vide this common judgment.

16. Having heard the rival contentions of the parties, this Court deems it expedient to test the impugned order in light of contention on the aspect of limitation as to whether the application seeking revocation could not have been entertained. In case respondent No.2 is able to meet



the first threshold, the need would arise to analyze the other contentions on merits.

17. *Jai Ram* has claimed that he became aware of the grant of Letter of Administration in favour of *Som Prakash* for the first time only when a notice was issued to him in an application filed by *Raj Kumar Chaudhary* seeking clarification of the *ex-parte* judgment dated 03.02.2012 passed in the suit for possession filed by *Raj Kumar Chaudhary* against *Jai Ram*. The said application was filed by *Raj Kumar Chaudhary* on 08.08.2012. *Jai Ram* filed the revocation application on 04.07.2013. On the basis of above facts, it was contended on behalf of *Jai Ram* that the revocation application was filed within the limitation period from the date of acquiring knowledge.

18. Although there is no provision in the Limitation Act which specifies the period of limitation in filing a revocation application, the Supreme Court in Lynette Fernandes (Supra) has observed that grant of probate or Letter of Administration by a competent Court is a judgment *in rem* and operates not only against the parties to the proceedings in the probate case but also against the world and the same would be governed by Article 137 of the Limitation Act, which is a residuary Article and provides limitation period of three years. The relevant observations are extracted hereunder:

“19. 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. In this matter, as mentioned supra, the appellant was a minor at



the time of grant of probate. She attained majority on 9-9-1965. She got married on 27-10-1965. In our considered opinion, three years' limitation as prescribed under Article 137 runs from the date of the appellant attaining the age of majority i.e. three years from 9-9-1965. The appellant did not choose to initiate any proceedings till the year 25-1-1996 i.e. a good 31 years after she attained majority. No explanation worthy of acceptance has been offered by the appellant to show as to why she did not approach the court of law within the period of limitation. At the cost of repetition, we observe that the appellant failed to produce any evidence to prove that the will was a result of fraud or undue influence. The same will has remained unchallenged until the date of filing of application for revocation. No acceptable explanation is offered for such a huge delay of 31 years in approaching the Court for cancellation or revocation of grant of probate."

19. Recently, the above observations were reiterated by the Supreme Court in Ramesh Nivrutti Bhagwat (Supra) wherein it was urged before the Court that the relevant date for the limitation period to begin in filing an application for revocation is not the date of grant, but the date of acquiring knowledge of the grant. Repelling the contention, the Supreme Court held as under:

"8. The learned counsel for the appellant argued that Ramesh had no notice of the proceedings initiated for grant of letters of administration and that he and his father (Balaji's brother) became aware of the fact only when the properties were sought to be mutated in the revenue records, pursuant to the letters granted. It was submitted that the limitation for filing an application should be calculated from the date of knowledge of the grant, and not the date of grant.

9. The counsel for the respondent, on the other hand, urged this Court to dismiss the appeal. It was contended that the letters of administration in respect of the will in



question dated 24-6-1977 were granted by the court after due notice and citation; proceedings for their grant were in rem. Consequently, when granted, the letters of administration operated against the entire world. The cause of action, if any, for seeking their cancellation, therefore, accrued from the date of their grant, and not on the date of knowledge of grant, in the absence of any allegation of fraud.

10. As evident, the appellant's application for cancellation of the letters of administration was rejected concurrently. The only question urged is whether there is any limitation prescribed and if not, whether the residuary provision (Article 137 in the schedule to the Limitation Act, 1963 - hereafter "the Act") applies and for which the starting point of limitation is the date of alleged knowledge of the grant of letters of administration.

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12. The Succession Act, 1925 does not prescribe a specific period of limitation for the grant of probate, or for moving an application for cancellation of probate or letters of administration. The residuary entry Article 137 of the Act, which covers proceedings for which no period of limitation is stipulated in the Act, provides for a three-year period of limitation. Article 137 reads as follows:

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13. This issue was considered in Kunvarjeet Singh Khandpur v. Kirandeep Kaur. This Court negatived the plea that since the Act prescribes no period of limitation in regard to matters concerning grant of probate or letters of administration, there is no time-limit. The Court followed the decision in the Kerala SEB v. T.P. Kunhaliumma which took note of the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the Limitation Act, 1908, and held that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure, 1908. In the older Limitation Act of 1908, there was no division between applications in specified cases and other applications, as in the Limitation Act, 1963. The Court



held in Kerala SEB that: (SCC pp. 638-39, paras 18 & 22)

“18. ...The words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to be applications under the Code of Civil Procedure other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the Limitation Act, 1963 speak of expiry of prescribed period when court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.

* * *

22. The conclusion we reach is that Article 137 of the Limitation Act, 1963 will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-Judge Bench of this Court in Athani Municipal Council case and hold that Article 137 of the Limitation Act, 1963 is not confined to applications contemplated by or under the Code of Civil Procedure.”

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17. In the present case, the letters of administration were granted in ancillary proceedings on 25-11-1994. The High Court took note of the fact that the notice of motion (in the disposed of proceeding) was filed on 29-3-1997; it was withdrawn on 1-4-1998. The petition for revocation of the letters of administration was filed on 29-7-1999. Proceedings were clearly time barred, given that the original grant of the ancillary letters took place on 25.11.1994; they constituted notice to all concerned. Clearly, the petition for revocation of letters of administration was time barred.”

20. To similar extent is the observation of a Co-ordinate Bench of this Court in Pawan Kumar Sharma (Supra), wherein following the dicta in *FAO 223/2018 & FAO 239/2018*

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Lynette Fernandes (Supra), the contention on aspect of beginning of limitation from the date of knowledge was rejected.

21. In view of the settled position of law, as discussed hereinabove, reliance placed by learned counsel for respondent No.2 on an earlier decision of this Court is misplaced and requires no further discussion.

22. Accordingly, the contention raised on behalf of the appellants that the revocation application was filed beyond the period of limitation is upheld. It is clear that respondent No.2 has failed to take steps in filing the revocation application within the time period of three years as available under Article 137 of Limitation Act. Consequently, the appeal filed on behalf of *Som Prakash* being FAO 223/2018 is allowed and the impugned judgment is set aside on this issue itself. Having arrived at such a conclusion, the other issues raised on behalf of the parties need not be gone into.

23. The pending miscellaneous applications as well as appeal being FAO 239/2018 are disposed of having become infructuous, in view of the conclusion reached in FAO 223/2018.

(MANOJ KUMAR OHRI)
JUDGE

OCTOBER 10, 2022/v