

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.23 of 2022

=====

Gulab Singh @ Gulab Prasad Singh son of Late Satya Narayan Singh, resident of Village-Maidha Dih, Post Office-Maudha, Police Station-Patepur, District-Vaishali and at present Mohalla-SDO Road (Maksudhpur), Hajipur, Police Station-Hajipur, District-Vaishali.

... .. Petitioner/s

Versus

1. Smt. Sheela Singh Wife of Dr. Krishna Mohan Singh, resident of Village-Maidha Dih, Post Office-Maudha, Police Station-Patepur, District-Vaishali and at present Mohalla-SDO Road (Maksudhpur), Hajipur, Police Station-Hajipur, District-Vaishali.
2. Dr. Krishna Mohan Singh son of Late Satya Narayan Singh, resident of Village-Maidha Dih, Post Office-Maudha, Police Station-Patepur, District-Vaishali and at present Mohalla-SDO Road (Maksudhpur), Hajipur, Police Station-Hajipur, District-Vaishali.
3. Sheela Devi, Wife of Rajendra Singh, resident of Village Balaur, Post Office and Police Station-Kudhani, District-Muzafferpur.
4. Manju Devi, Wife of Late Baidhanath Singh, resident of village-Chakjamal, Police Station-Deari, District-Vaishali.
5. Renu Devi, Wife of Nandlal Prasad Singh, resident of Village-Balbhadrapur, Post Office and Kudhani - Kudhani, District-Muzafferpur.
6. Ram Kailash Singh, son of Late Singhwar, resident of Village-Balbhadrapur, Post Office and Police Station Kudhani, District-Muzafferpur.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Ratnesh Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Chandra Kant, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

11 15-06-2023 This Civil Revision application has been filed against the order dated 05.05.2022 passed by Additional District Judge XIII, Vaishali at Hajipur in Probate Case No. 30 of 2020 whereby the petition filed by the petitioner under Article 137 of the Limitation Act for rejection of application for probate as barred by the law of limitation, has been rejected.



2. The application for probate bearing Probate Case No. 30 of 2020 was filed by one Sheela Singh, the Executor of the last Will and testament of Satya Narayan Singh, who died on 02.01.2000. The last Will and testament was signed by Testator on 10.02.1995 in presence of two witnesses. The application for grant of probate sets out the heirs and legal representatives of Satya Narayan Singh (the Testator) two sons namely Gulab Prasad Singh and Krishna Mohan Singh and four daughters namely Sheela Devi, Manju Devi, Renu Devi and Sunaina Devi out of them Sunaina Devi also died leaving behind her husband namely Ram Kailash Singh. The probate application was filed on 22.09.2020. The present application for rejection of the probate proceeding was filed on 15.12.2021 by the petitioner, Gulab Singh @ Gulab Prasad Singh, who is one of the sons of the Testator.

3. The ground urged for rejection of application for probate is that the application is barred by the law of limitation as the same has been filed after 20 years of the death of the Testator.

4. Learned counsel for the petitioner submitted that application for grant of probate should be dismissed on the ground that the application is barred by law of limitation.



According to learned counsel the application for grant of probate was filed after more than 20 years since the Testator died on 02.01.2000. There is no explanation as to the reason for the delay in filing of the application. Learned counsel for the petitioner further submits that Article 137 of the Limitation Act, 1963, as being applicable for grant of probate or letters of administration. According to the learned counsel, the right to apply for probate accrues on the date of the death of the Testator. If Article 137 of the Limitation Act applies then an application for grant of probate has to be filed within three years from the date when the right to make such an application accrues. In the present case, since the deceased expired on 02.01.2000, the application for his last will and Testament dated 10.02.1995 should have been filed within three years from the date of death of the Testator and also that there is no explanation for the delay.

5. Learned counsel for the petitioner further submitted that the petitioner filed objection on 20.10.2021 stating that unregistered will dated 10.02.1995 is forged and fabricated. It is further alleged that the opposite party no. 2, Dr. Krishna Mohan Singh, who is the husband of the applicant opposite party no. 1, is a cunning person and was instrumental



in creating the forged and fabricated Will dated 10.02.1995 in favour of his wife opposite party no. 1. Learned counsel further submitted that the learned lower court didn't convert the probate case in title suit (Testamentary Suit) while the petitioner contested the said application. It is submitted that the learned lower court has framed issue on 23.11.2021 on the basis of probate case and had not considered the objection filed by the petitioner. On 15.12.2021, the petitioner filed a petition stating therein that probate case is time barred under Article 137 of the Limitation Act as the same has been filed after 20 years of the death of Testator and prayed for dismissal of the probate case. Reliance is placed on ***Ramesh Nivrutti Bhagwat vs Dr. Surendra Manohar Parakhe*** reported in ***(2020) 17 SCC 284*** and ***Krishna Kumar Sharma vs Rajesh Kumar Sharma*** reported in ***AIR 2009 SC 3247***. In Ramesh Nivrutti Bhagwat, case, (Supra) revocation of letters administration was filed which was considered in view of Article 137 of Limitation Act.

6. Learned counsel for the petitioner has placed reliance at *Paragraph No. 12* of Ramesh Nivrutti Bhagwat case, (Supra) which is as follows:-

“The Succession Act doesn't prescribe a specific period of limitation for grant of



probate, or for moving an application for cancellation of probate or letter of administration. The residuary entry under Article 137 of the Limitation Act which covers the proceeding for which no period of limitation is stipulated in the Act, provides for three years period of limitation.”

7. The controversy centers on the interpretation of the expression whether the three years commencing from 'when the right to apply accrues' under Article 137 of the Limitation Act implies the date of death of the Testator or any other event which constrains a party to approach court of law for taking the first step for implementing the will of a Testator. The word used in Article 137 reads as follows:-

<i>Description</i>	<i>Period of limitation</i>	<i>Time from which period beings to run</i>
<i>Any other application for which no period of limitation is provided elsewhere in this Division.</i>	<i>Three years</i>	<i>When the right to apply accrues.</i>

8. It is clear from the above that although Article 137 applies for cases of grant of probate, the right to apply accrues not from the date of death of the Testator but from which the dispute arises or when it becomes necessary to apply



for grant of probate. In other words, a party may apply when a challenge is made to a Will or a dispute arises in relation thereto. It is also clear that there is no outer limit for filing an application for probate and the time starts running from the date when the right to apply accrues. The petitioner in the present revision application has urged that the right of the Executor to apply for probate accrues the moment the Testator dies and the limitation would therefore begin to run from the date of death.

9. In the aforesaid decision, which has been cited by the petitioner, the Hon'ble Supreme Court has considered several decisions passed by the Hon'ble Supreme Court. Some of them are as follows:-

i. Kerala SEB vs T.P. Kunhaliumma, [(1976) 4 SCC 634].

ii. Kunvarjeet Singh Khandpur vs Kirandeep Kaur, [(2008) 8 SCC 463].

iii. Sameer Kapoor vs State, [(2020) 12 SCC 480].

iv. Lynette Fernandes vs Gertie Mathias, [(2018) 1 SCC 271].

10. The view of the Hon'ble Supreme Court in *Kunvarjeet Singh Khandpur vs Kirandeep Kaur (Supra)* and *Krishna Kumar Sharma vs Rajesh Kumar Sharma (Supra)*



was to the effect that Article 137 of the Limitation Act is applicable to probate proceeding cannot be called to question save that the right to apply has to be construed in the light of the dispute which forces a party to apply for grant of probate. Neither of those decisions says that three years must be counted from the date of death of the Testator or that the right to apply would accrue as soon as the Testator dies. In a recent decision of Hon'ble Supreme Court in the case of ***Samir Kapoor and another vs State through Sub-Division Magistrate, South New Delhi and others*** reported in ***2020 (12) SCC 480***, the same question arises for consideration whether for an application for probate or letters of administration with Will the period of limitation would begin to run from which date?

11. The reason for view as expressed in *Paragraph No. 18* reads as follows:-

“Applying the law laid down by this Court in the aforesaid decision and the observations made hereinabove, the submission on behalf of the appellants that Probate Case No. 15 of 2001 filed by Respondent 2 for letters of administration under Section 228 of the Act, read with Section 276 of the Act is barred by law of limitation, cannot be accepted. At this stage, it is required to be noted that even in



the plaint, it is specifically pleaded that after passing away of the father of the parties in the year 2000, the appellants started intermeddling with properties bequeathed to Respondent 2, which were situated in Delhi and, therefore, left with no option, he was compelled to apply for letters of administration. Therefore, even as per the pleadings in the application, the cause of action started from the date on which the appellants started intermeddling with the properties bequeathed to Respondent 2, after passing away of the father of the parties in the year 2000. Therefore, in the facts and circumstances of the case, both the learned Single Judge and the Division Bench have rightly refused to reject the application in exercise of powers under Order 7 Rule 11 CPC. In the facts and circumstances of the case and as observed hereinabove, it cannot be said that the application for letters of administration was clearly barred by the law of limitation which was required to be rejected in exercise of powers under Order 7 Rule 11(d) CPC. We are in complete agreement with the view taken by the High Court.”

12. In view of the aforesaid decision of the Hon'ble



Supreme Court, the assumption that under Article 137 the right to apply necessarily accrues on the date of death of the testator is unwarranted as per Article 137 of the Limitation Act. The period of limitation prescribed is three years and the three years begins to run when the right to apply accrues. The crucial expression under Article 137 of the limitation is 'right to apply' and the right to apply for probate of the will dated 10.02.1995, accrued to the executor when the objector(s) started intermeddling with properties mentioned in the Will dated 10.02.1995.

13. So far question of limitation for filing probate case is concerned, the learned lower court has already framed issue as "whether this probate is barred by Limitation Act." The same is triable issue and can be adjudicated at the time of trial of the suit, which had already commenced.

14. So far question of conversion of the probate case into a title suit is concerned, it is well settled principle that when the probate application is contested, it is deemed to be converted to contentious cause and a duty is cast upon the court to convert the probate application into a Testamentary suit by an order.

15. In view of the above discussions, this court



doesn't find any merit in the present application. There is no irregularity or gross jurisdictional error in passing the impugned order.

16. Accordingly, this Civil Revision application is dismissed.

(Khatim Reza, J)

prabhat/-

U			
---	--	--	--

