



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

% **Date of order : 5th September, 2023**

+ **C.R.P. 229/2023**

SH. KASHMIRI LAL PRUTHI Petitioner

Through: **Mr.Sudeep Sudan, Advocate**
(through VC)

versus

SMT. ASHOK RANI Respondent

Through: **None**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. No. 42966/2023

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

C.R.P.229/2023 AND CM APPL. No.42965/2023

1. The present Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), has been filed by the petitioner seeking the following reliefs:

"a. Allow the present Revision Petition, thereby, setting aside the Order dated 20.05.2023 passed by Ld. ADJ-02, South West, Dwarka Courts, Delhi, in CS DJ ADJ No. 957/2017, titled as 'Smt. Ashok Rani Vs. Sh. Kashmiri Lal' and consequently dismiss the said Suit being barred by Limitation; and/or



b. Pass any other order as this Hon'ble Court may deem fit and proper in the facts and the circumstances of the present case.”

2. Learned counsel appearing on behalf of the petitioner submitted that the respondent had filed a Civil Suit bearing No. CS DJ ADJ 957/17, on 3rd October 2017, seeking declaration that the Will dated 8th September 2010, which was executed by Late Smt. Sheela Devi in favour of the petitioner, is null and void.
3. It is submitted that in the said Civil Suit, an issue of limitation was raised by the petitioner, i.e, the defendant before the learned Trial Court. The learned Court below *vide* the impugned order dated 20th May 2023, wrongly decided that the said Suit is maintainable and not barred by limitation since the actual cause of cause of action for filing the same accrued on 17th October 2014.
4. It is submitted the learned Trial Court failed to appreciate the fact that the respondent came to the knowledge about the above said Will on 17th February 2014, i.e. when the petitioner had filed an application under Order XXII Rule 4 of the CPC, before this Court, in Regular First Appeal bearing No. 511/2012, titled as '**Smt. Ashok Rani v. Smt. Sheela Devi**', for the purpose of getting himself substituted as a legal heir of Late Smt. Sheela Devi.
5. It is submitted that the limitation period to file such a suit as per Article 58 of the Limitation Act, 1963, is 3 years. It is further submitted that the learned Trial Court failed to consider that the limitation period would begin to run from the date of the knowledge of above said Will and not from



the date when the right to sue accrues.

6. It is submitted that the learned Court below failed to appreciate the fact that the actual threat arose against the title *qua* the property of the respondent on 17th February 2014, i.e., the date when the petitioner had filed the application before this Court.

7. It is submitted that the copy of the said Will was supplied to the respondent on 31st March 2014, and the said date may be presumed to be the date from which the limitation period to file the above said Civil Suit begins.

8. It is submitted that in light of the instant matter, the limitation period to seek declaration against the above said Will expired on 31st March 2017, and since the above said Suit was filed on 16th October 2017, as per the information available on 'E-courts website', the same is barred by the limitation.

9. It is submitted that the learned Trial Court wrongly came to the conclusion that the period of limitation for filing of the above said Civil Suit commenced from 17th October 2014, i.e., the date when the petitioner had filed a Probation Petition bearing No. PC/5/2016, before the Dwarka District Court *qua* Will dated 8th September 2010. It is submitted that the learned Court below erroneously held that since the actual cause of action arose on 17th October 2014, the said Civil Suit was maintainable and not barred by the limitation.

10. It is submitted that in view of the aforementioned submissions, the instant petition may be allowed and the impugned order be set aside.

11. Heard learned counsel appearing on behalf of the petitioner and



perused the record.

12. Before discussing the legal footing of the issues in the instant matter, the relevant facts and contentions are being recapitulated herein below.

13. It is the case of the petitioner, i.e., the defendant in the Civil Suit before the learned Trial Court, that the present Suit seeking the relief of declaration against the Will dated 8th October 2010, was filed after the expiry of the period of limitation. The said averment of the petitioner is on the ground that the respondent, i.e., the plaintiff before the learned Trial Court, came to know about the Will in question on 13th February 2014, i.e., the date when he had filed his application in Regular First Appeal bearing No. 511/2012, titled as '*Smt. Ashok Rani Vs. Smt. Sheela Devi*', before this Court, for his impleadment as a legal heir of late Smt. Sheela Devi.

14. It has been contended on behalf of the petitioner that the said application was filed by him on the basis of Will dated 8th September 2010, and that the copy of the said Will was supplied to the respondent on 31st March 2014. It has been averred that even if it is presumed that the respondent came to know about the above said Will on 31st March 2014, she should have filed the Suit for declaration within a period of 3 years, i.e., on or before 31st March 2017. Since, the present suit was filed on 16th October 2017, the same is, on the face of its record, barred by the limitation and hence, liable to be dismissed.

15. It has been also argued on behalf of the petitioner that the learned Trial Court had committed an error by arriving to the conclusion that the cause of action for filing of the instant Suit arose in favour of the respondent



only when the right to sue *qua* the Will dated 8th September 2010, accrued which is the date of filing of the Probate Petition, i.e., 17th October 2014. In support of the said argument, it has been submitted that the actual cause of action for filing of the Suit arose when the respondent came to the knowledge of the above said Will and the learned Court below failed to appreciate the same.

16. The learned Trial Court *vide* the impugned order dated 20th May 2023, had decided that the instant Suit is maintainable and not barred by limitation since the actual cause of cause of action for filing the same accrued on 17th October 2014, i.e., the date when the right to sue accrued in favour of the respondent. The relevant paragraphs of the impugned order has been reproduced below:

“10. This Court is of the considered view that as per the ratio of the judgments relied upon by the learned Counsel for the plaintiff, there is force in his arguments as admittedly the article 58 of the Limitation Act, 1908, which, is a residuary article in so far as the suits relating to declarations are concerned, the limitation begins to run when the right to sue first accrues and not from the date of knowledge as posed by the Ld. Counsel for the defendant. Therefore, in the present case also the right to sue accrued in favour of the plaintiff only when the defendant filed the probate case bearing PC no. 02/2015 on 17.10.2014 seeking probate of the Will dated 08.09.2010 in his favour and against the defendant. Therefore, it can be said that the real threat to the right of the plaintiff in the suit property accrued only on 17.10.2014 and not on 31.03.2014 when he came to know about the Will dated 08.09.2010.

11. Hence, as the present suit seeking declaration to declare the



Will dated 08.09.2010 was filed on 03.10.2017 before the expiry of period of 3 years from the date when the right to sue accrued in favour of the plaintiff, therefore, the present suit is within the period of limitation of 3 years.

12. Resultantly, the present suit is maintainable and not barred by limitation. The issue of maintainability of the present suit on the ground of limitation stands disposed off in above terms.”

17. Upon a bare perusal of the above said order, it has been deliberated upon by the learned Trial Court whilst passing the impugned order, that the limitation period in the Civil Suit, in accordance with Article 58 of the Limitation Act, 1963, commenced from the date when the right to sue accrued, and not from the date of the knowledge about the said Will. It observed that the right of the respondent to sue *qua* the Will dated 8th September 2010, arose only when the Probate Petition bearing No. 02/2015, was filed by the petitioner before the Dwarka District Court, which is on 17th October 2014. The cause of action therefore, arose on 17th October 2014, and since the Suit was filed within the period of 3 years, i.e., on 3rd October 2017, the same is within the limitation period. Hence, it decided that the said Civil Suit is maintainable and not barred by the limitation.

18. For the purposes of adjudicating the instant petition, it is prudent to discuss the settled legal principles. The relevant provision of Article 58 of the Limitation Act, 1963, has been reproduced hereunder:

<i>“Description of Suit</i>	<i>Period of limitation</i>	<i>Time from Which period begins to run</i>
<i>58. To obtain any other declaration</i>	<i>Three years</i>	<i>When the right to sue first accrues”</i>



19. According to Article 58 of the Limitation Act, 1963, the period of limitation shall be three years from the date on which the right to sue first accrues. Article 58, for the relief of declaration, undoubtedly provides limitation of three years from the date when the cause of action first accrues.

20. The expression ‘right to sue’ has not been defined in the Limitation Act, 1963, but it has been interpreted on several occasions by the Hon’ble Supreme Court in a catena of judgment including *State of Punjab v. Gurdev Singh*, (1991) 4 SCC 1; *Daya Singh v. Gurdev Singh (dead) by LRs*, (2010) 2 SCC 194; *Khatri Hotels Pvt. Ltd. v. Union of India*, (2011) 9 SCC 126. The law on the issue ‘when the cause of action for instituting a suit arises’, is quite well settled.

21. The Hon’ble Supreme Court in the judgment of *Khatri Hotels (P) Ltd. v. Union of India*, (2011) 9 SCC 126, has observed that in Article 58 of the Limitation Act, 1963, the word ‘first’ has been used between the words ‘sue’ and ‘accrued’. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrued.

22. In the judgment of *Khatri Hotels (Supra)*, when the Hon’ble Supreme Court was required to examine and decide a situation as to when will the period of limitation begin to run in cases wherein, Article 58 is applicable, had made the following pertinent observations: -

“24. *The Limitation Act, 1963 (for short “the 1963 Act”) prescribes time limit for all conceivable suits, appeals, etc. Section 2(j) of that Act defines the expression “period of*



limitation” to mean the period of limitation prescribed in the Schedule for suit, appeal or application. Section 13 lays down that every suit instituted, appeal preferred or application made after the prescribed period shall, subject to the provisions of Section 4 to 24, be dismissed even though limitation may not have been set up as defence. If a suit is not covered by any specific article, then it would fall within the residuary article. In other words, the residuary article is applicable to every kind of suit not otherwise provided for in the schedule.

xxx

27. The differences which are discernible from the language of the above reproduced two articles are:

(i) The period of limitation prescribed under Article 120 of the 1908 Act was six years whereas the period of limitation prescribed under the 1963 Act is three years and,

(ii) Under Article 120 of the 1908 Act, the period of limitation commenced when the right to sue accrues. As against this, the period prescribed under Article 58 begins to run when the right to sue first accrues.

xxx

29. In the case of Daya Singh (supra), the Supreme Court had observed as below:

“13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the Schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.



14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the Appellant-Plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the Defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council in reported in [AIR 1930 PC 270] Bolo v. Koklan. In this decision Their Lordships of the Privy Council observed as follows:

....There can be no 'right to sue' until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the Defendant against whom the suit is instituted.

16. ...Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the Defendants when they refused to admit the claim of the appellants, i.e., only 7 days before filing of the suit. Therefore, we are of the view that within three years from the date of infringement as noted in para 16 of the plaint the suit was filed. Therefore, the suit which was filed for declaration on 21.8.1990, in our view cannot be held to be barred by limitation. ””

23. Thus, it is clear that from the above line of decisions that when it comes to computation of the period of limitation for instituting a suit, the said period commences from the date when the right to sue has first arisen and there is an infringement, or a clear and unequivocal apprehension of



infringement of that right, as envisaged under Article 58 of the Limitation Act, 1963.

24. This Court is of the view that there can be no 'right to sue' unless, there is accrual of the right asserted in the suit and its infringement, or at least clear and unequivocal apprehension of infringement of that right by a person against whom the suit is instituted. The words 'right to sue' ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises and the party may obtain relief by legal means for such cause of action. The suit must be instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal apprehension to infringe that right by the defendant against whom the suit is instituted.

25. In light of the facts of the instant petition, it is an admitted case of the petitioner that the present dispute falls within the purview of Article 58 of the Limitation Act, 1963, as the respondent has sought for declaration *qua* the said Will being null and void.

26. It is inferred from the aforementioned discussions that the respondent was compelled to file the Civil Suit in consequence to the filing of the Probation Petition bearing No. 02/2015, by the petitioner against the respondent. By filing of the said petition, the title of the property in respect of which the said Will was executed came into dispute and the said circumstance gave rise to an actual cause of action against the respondent, hence the right to sue accrued in her favour.

27. Therefore, taking into consideration the above said probate petition



being filed on 17th October 2014, and the instant Suit having being filed on 3rd October 2017, the same was filed before the expiry of the period of 3 years. Henceforth, the above said Civil Suit filed by the respondent is not barred by the limitation and being in accordance with the mandate of Article 58 of the Limitation Act, 1963, it is maintainable.

28. The abovesaid observation of this Court clearly follows that whether a particular threat gives rise to a cause of action depends upon the question whether there is any legal right of the party, by whom the Suit is being instituted, being invaded or jeopardized. In other words, a cause of action for the first time will accrue to the party seeking such relief of declaration, when he is compelled to come to the Court by the action of the other party by whom such right has been infringed or there is an apprehension of such infringement.

29. In view of the above, it is observed that the action of the petitioner by filing of application before this Court for impleadment as a legal heir, however ineffective and innocuous it may be, could not be considered to be a clear and unequivocal threat to the respondent's right so as to compel her to file a civil suit. It is only when the above said probate petition was filed, that the actual cause of action arose which ultimately accrued the right to sue in favour of the respondent.

30. The learned Trial Court rightly reached to the conclusion that the limitation in cases, wherein, any other declaration has been sought to be obtained, will begin to run from the date when the right to sue first accrues. The said date does not necessarily have to be the date of the knowledge



about the above said Will, but the cause of action in such cases is to be considered from the date when there is an infringement or an apprehension of infringement of a lawful right of a person.

31. The present petition has been filed under Section 115 of the CPC, thereby, seeking revision of the impugned order. It is a settled law that under Section 115 of the CPC, this Court has to look only into the issue of the jurisdiction of the Court below in deciding any application and not to go into the merits of the case.

32. The mere fact that a decision of the Trial Court is erroneous due to a question of fact or of law does not amount to any illegality or a material irregularity. Only those matters are to be allowed under the revisional jurisdiction of the High Court, wherein, there has been an irregular exercise, or non – exercise, or the illegal assumption of the jurisdiction by the Court below. Therefore, in the instant petition, this Court does not find any infirmity in the impugned order as has been alleged by the petitioner.

33. In view of the above discussion of facts and law for the purposes of adjudication of the instant revision petition, the petitioner has not been able to make out a case which requires interference of this Court with the impugned order by way of exercising the revisional jurisdiction under Section 115 of the CPC.

34. Therefore, it is held that that learned Trial Court rightly construed the provisions of the Limitation Act, 1963, while coming to the conclusion that the suit is not barred by the period of limitation and also the date on which the cause of action accrued in favour of the respondent while considering the



issue of limitation.

35. This Court finds no error in the impugned order dated 20th May 2023, passed in the Civil Suit bearing No. CS DJ ADJ 957/17, by the learned ADJ-02, South West, Dwarka Courts, Delhi, and the same is hereby, being upheld.

36. Accordingly, this petition is thus, dismissed being devoid of any merits. Pending applications, if any, also stand dismissed.

37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

SEPTEMBER 5, 2023
SV/RYP

Click here to check corrigendum, if any