



2023:DHC:9289-DE



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 22nd December, 2023

+ **FAO(OS) 32/2020, CM APPL. 10063/2020, CM APPL. 10064/2020, CM APPL. 10065/2020, CM APPL. 10066/2020, CM APPL. 10067/2020, CM APPL. 18608/2023**

VINOD KUMAR AGGARWAL

....Appellant

versus

STATE & ORS

.... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. Sitab Ali Chaudhary & Mr. Gufran Ali, Advs.

For the Respondents : Ms. Beenashaw N. Soni with Ms. Mansi Jain & Mr. Ann Joseph, Advs. for R-2 to 4 and 9 to 12.

Mr. Deepak Biswas, Mr. Prateek Chauhan & Ms. Varsha Aggarwal, Advs. for R-5, 6 & 7.

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HON'BLE MR JUSTICE VIBHU BAKHRU

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

AMIT MAHAJAN, J.

1. The appellant has filed the present appeal under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ('CPC') read with Section 10 of



the Delhi High Court Rules, challenging the order dated 11.07.2019 (hereafter '**impugned order**'), passed by the learned Single Judge of this Court in I.A. No. 4809/2017, in *Asha Mongia & Ors v State & Ors*: Testamentary Case No. 106 of 2015 (hereafter '**Test Case**').

2. The learned Single Judge, by the impugned order, had dismissed I.A. No. 4809/2017, which was filed by the appellant under Order I Rule 10 of the CPC, for impleadment in the Test Case filed by Smt. Asha Mongia, who is arrayed as Respondent No. 9 in the present appeal, and other legal heirs in regard to the estate of late Sh. Dharamjeet Mongia and late Smt. Santosh Mongia.

3. The learned Single Judge further held that the Test Case cannot be held to be barred by limitation.

Brief Facts

4. The property bearing No. B-1/41, Janakpuri, Delhi (hereafter '**subject property**') was jointly owned by late Smt. Santosh Mongia and her brother, late Mr. Om Prakash Chopra. After the death of Mr. Om Prakash Chopra in the year 1988, it is claimed that his share in the subject property devolved upon his sisters, Smt. Santosh Mongia and Smt. Vimla Verma.

5. It is claimed that Sh. Dharamjeet Mongia and Smt. Santosh Mongia died intestate, under suspicious circumstances, on 11.02.2004, which also led to registration of an FIR bearing No. 76/2004. The subject property was sealed by the Police and was kept in their possession till 05.11.2014. The Police, thereafter, handed over the keys to Smt. Asha Mongia.



6. Sh. Dharamjeet Mongia had left behind his four brothers namely, Sh. S.D.S. Mongia, Sh. Sudershan Mongia, Sh. J.S. Mongia and Sh. Pradeep Mongia and one sister namely, Smt. Shakuntala Narang. It is stated that all brothers and sisters of late Sh. Dharamjeet Mongia have also expired. It is also stated that Smt. Vimla Verma, sister of late Smt. Santosh Mongia, has also expired.

7. The instant Test Case was filed by the legal heirs of late Sh. S.D.S. Mongia, for claiming Letters of Administration of the subject property and the other legal heirs claiming their interest through late Smt. Vimla Verma and late Sh. Dharamjeet Mongia, were arrayed as respondents. The estate comprises of the subject property only.

8. The appellant, Sh. Vinod Kumar Aggarwal, has filed the present appeal, and has arrayed the legal heirs claiming interest in the subject property through late Smt. Vimla Verma as Respondent Nos. 5 to 8, and the legal heirs claiming interest in the subject property through Smt. Santosh Mongia as Respondent Nos. 2 to 4 and Respondent Nos. 9 to 12.

9. The appellant claims that in the year 2014, after the demise of his father, he became aware of the fact that the subject property was purchased by his father in the year 1995 from Smt. Santosh Mongia. He claims that Smt. Santosh Mongia had executed an Agreement to Sell and a registered General Power of Attorney ('GPA') in regard to the subject property. The appellant has also filed an application with the Delhi Development Authority ('DDA'), for execution of a Conveyance Deed in his favour, in regard to the subject property. The appellant filed



an application for impleadment under Order I Rule 10 of the CPC in the instant Test Case, on 08.03.2017. The appellant also filed a civil suit being CS No. 260/2018 titled as *Vinod Kumar Aggarwal v. Asha Mongia, inter alia*, praying for a decree of declaration, thereby declaring the appellant as owner of the subject property. The appellant also prayed for permanent injunction, restraining the respondents from creating any third-party rights, and, requested that the keys of the subject property be handed over to him and the DDA be directed to execute a Conveyance Deed in respect of the subject property.

10. The said suit was later transferred to this Court and was renumbered as CS (OS) 322/2018. The suit, however, was dismissed as withdrawn on 09.07.2018. On the same date, the learned Single Judge, in the instant Test Case, allowed the appellant to assist the Court in regard to the issue as to whether the Test Case is barred by limitation. The Order dated 09.07.2018, passed by the learned Single Judge, reads as under:

*“Mr.Manu Sishodia-learned counsel for the applicant/Vinod Kumar Aggarwal states that the present Test case is barred by limitation in view of the judgment of the Supreme Court in **Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur & Ors. AIR 2008 SC 2058.***

Though the suit filed by Mr. Vinod Kumar Aggarwal has been dismissed today as withdrawn, yet Mr. Sishodia is directed to assist this Court on the aforesaid legal issue.

List on 19th September, 2018.”

11. By the impugned order, the learned Single Judge noted that since the appellant has already withdrawn the suit for declaration and injunction, no ground is made out for his impleadment in the Test Case.



The impleadment application, I.A. No. 4809/2017, filed by the appellant was, accordingly, dismissed. The learned Single Judge permitted the appellant to argue on the legal issue as to whether the Test Case is barred by limitation or not. The learned Single Judge, after hearing the arguments, by the impugned order, dismissed the objections raised by the appellant and held that the Test Case is not barred by limitation. This led to the filing of the present appeal.

Submissions on behalf of the appellant

12. The learned counsel for the appellant argued that the subject property had already been sold by Smt. Santosh Mongia to the appellant's father, Sh. Ram Prakash Aggarwal, for valuable consideration and therefore, cannot be a subject matter of any Letters of Administration.

13. He submitted that late Smt. Santosh Mongia had appointed the appellant's father as her Attorney by way of a registered General Power of Attorney. Late Smt. Santosh Mongia had also executed an Agreement to Sell, for herself and on behalf of her brother late Sh. Om Prakash Chopra, in favour of the appellant's father.

14. He submitted that even though the possession of the subject property was handed over to the father of the appellant, Smt. Santosh Mongia was allowed to stay in the property, which she continued till her death. The appellant came to know about the execution of the documents only after the death of Sh. Ram Prakash Aggarwal, when these documents were found in his personal almirah. The subject



property, after the death of Sh. Ram Prakash Aggarwal, on 02.05.2014, devolved upon the appellant and other legal heirs, who have executed a Relinquishment Deed dated 01.08.2014, in favour of the appellant.

15. He submitted that by the impugned order, the appellant is left remediless in regard to the claim in relation to the subject property, since the Suit being CS (OS) 322/2018, filed by the appellant for declaration and injunction has already been dismissed, as withdrawn. He further submitted that the withdrawal of the suit, in no manner, could have decided the fate of the application for impleadment in the Test Case, as scope of both the proceedings is completely different.

16. It is further submitted that the appellant has a caveatable interest in the estate of the deceased as his father was a *bona fide* purchaser of the property from late Smt. Santosh Mongia and his right and interest would be prejudiced if the Letters of Administration is granted. He also stated that any person, who has even a slight interest in the estate of the deceased, is entitled to contest the grant of Letters of Administration in regard to the estate of the deceased.

17. He relied upon the following judgments ***Kailash Vohra v. State & Ors*:2021 SCC Online Del 4695; *G. Gopal v. C Baskar and Ors*: (2008) 10 SCC 489**, and contended that the purchaser of the property from the deceased, would be entitled to file an application for impleadment in a Testamentary Case filed in respect to the estate of the deceased, in case the Letters of Administration is sought for the property which he claims to have been already sold to him.



18. It is further contended that the instant Test Case is barred by limitation. The counsel for the appellant stated that the right to apply for Letters of Administration accrued on the death of deceased, on 11.02.2004, however, the parties claiming their interest in the subject property of Smt. Santosh Mongia and Sh. Dharamjeet Mongia, had filed the petition on 15.01.2015, which is beyond the period of limitation, and the same is clearly barred by limitation.

Submissions on behalf of the respondents

19. Ms. Beenashaw N. Soni, learned counsel for Respondent Nos. 2 to 4 and Respondent Nos. 9 to 12, on the other hand, vehemently contended that the appellant is total stranger to the subject property and cannot raise any objection in regard to the grant of Letters of Administration, in favour of the legal heirs of the deceased Smt. Santosh Mongia and Sh. Dharamjeet Mongia.

20. She stated that the appellant claims to be the owner of the property on the basis of on an unregistered Agreement to Sell, which is not a valid document of title in the eyes of law.

21. It is further submitted by the counsels for the respondents, that the appellant had filed the suit claiming a decree of declaration in regard to the subject property but has unconditionally withdrawn the same. The appellant, after withdrawing the suit, cannot be allowed to indirectly lay any claim over the subject property.

22. It is submitted that the appellant has no caveatable interest in the subject property and, thus, cannot be impleaded in the instant Test Case.



23. It is further submitted that the scope in relation to Section 283 of the Indian Succession Act, 1925 (hereafter '**Succession Act**') has been authoritatively settled by the Hon'ble Apex Court in the case of ***Krishna Kumar Birla v. Rajendra Singh Lodha & Ors.: (2008) 4 SCC 300.*** The person claiming a right in the property to an Agreement to Sell has no *locus standi* to oppose the application for grant of Letters of Administration.

24. It is further submitted that the probate Court, while hearing the petition for grant of Letters of Administration, does not adjudicate on the title of the property. The appellant cannot be allowed to claim right over the property by filing an impleadment application in a petition for Letters of Administration.

25. The learned counsel for the respondents, vehemently, stated that there is no delay in filing of the petition in the Test Case. She submitted that the period of limitation would run only from the date when it becomes necessary for the parties to seek Letters of Administration. She relied upon the judgment passed by the Hon'ble Apex Court in the case of ***Kunwarjeet Singh Khandpur v. Kirandeep Kaur & Ors.: AIR 2008 SC 2058.***

Analysis

26. It is not disputed that the appellant had filed a substantive suit being CS(OS) 322/2018, claiming a decree of declaration and permanent injunction in regard to the subject property. The appellant, in the suit, claimed rights and title over the subject property stating that



the property was purchased by his father from late Smt. Santosh Mongia. It was claimed that Smt. Santosh Mongia had executed an Agreement to Sell, a General Power of Attorney and a receipt, all dated 14.11.1995, in favour of the appellant's father. The appellant, after some arguments before the learned Single Judge, had withdrawn the said suit unconditionally. The order dated 09.07.2018, passed by the learned Single Judge reads as under:

“In pursuance to the last order, Suit No.260/2018 for declaration and mandatory injunction titled 'Vinod Kumar Aggarwal V s. Asha Mongia' pending in the Dwarka Court before Sh. Kawaljeet Singh Arora, ADJ has been received. Registry is directed to re-number the same.

After some arguments, learned counsel for the plaintiff-Vinod Kumar Aggarwal wishes to withdraw the present suit. Consequently, the suit and pending applications are dismissed as withdrawn”

27. Thus, it is clear that the appellant, in any other proceedings, cannot seek any order to the effect of declaration of its title in the subject property. The same is discussed in detail, in the subsequent part of this judgment.

28. By another order dated 09.07.2018 passed by the learned Single Judge in I.A. No. 4809/2017, limited liberty was given to the appellant to assist the Court in regard to the legal issue as to whether the Test Case is barred by limitation, in view of the judgment of the Hon'ble Supreme Court in **Kunwarjeet Singh Khandpur v. Kirandeep Kaur & Ors** (*supra*). The appellant has not challenged the above order dated 09.07.2018, which has limited the scope of the appellant to address the arguments on the issue in regard to the limitation.



29. Since the appellant was granted limited liberty in I.A. No. 4809/2017 to assist the Court on the legal issue as to whether the Test Case was barred by limitation, the learned Single Judge after hearing the arguments, dismissed the objections raised by the appellant. We, however, do not agree with the observations made by the learned Single Judge that since the suit filed by the appellant, for declaration and injunction, has already been withdrawn, no ground for impleadment is made out.

30. The Succession Act is a complete code in itself and any adjudication under the said Act is only confined to grant or refusal of the Letters of Administration. Any other proceeding instituted by any person, in regard to the title of a property, is independent of such proceedings under the Succession Act. The appellant, in our opinion, was entitled to institute a suit claiming title over any property. The fact that the said suit was withdrawn could not have been relevant for the purpose of deciding the application for impleadment, which had to be decided on its own merits.

31. As noted above, the appellant was granted a limited right to address the arguments in its application being I.A. No.4809/2017, and the learned Single Judge has considered the same. The scope of the present appeal is limited to examining whether the objection raised by the appellant in regard to the Test Case, being barred by limitation, is legally sustainable.

32. However, since detailed arguments, in the present appeal, have been advanced by both the parties with regard to the interpretation of



caveatable interest, we consider it apposite to examine the said issue as well.

33. In case of a person dying intestate, the administration of his estate can be granted to any person who, according to the rules for the distribution of the estate, would be entitled to the whole or any part of the estate of the deceased. The Letters of Administration entitles the administrator to all rights, title and interests belonging to the person dying intestate.

34. Any person claiming to have any interest in the estate of the deceased is allowed to participate in the proceedings for grant of Letters of Administration. The person having interest in the estate is entitled to lodge a caveat against the grant of probate or Letters of Administration.

35. The application for Letters of Administration is filed under Section 278 of the Succession Act. The format of such application is provided in sub-section (1) of Section 278 of the Succession Act.

The said section is reproduced below:

“Section 278. Petition for letters of administration.

(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating: -

- (a) the time and place of the deceased's death;*
- (b) the family or other relatives of the deceased, and their respective residences;*
- (c) the right in which the petitioner claims;*
- (d) the amount of assets which are likely to come to the petitioner's hands;*
- (e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and*



(f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

36. The Succession Act is held to be a self-contained Code. It is settled law that the jurisdiction of the Court, while deciding the application for probate or Letters of Administration, is limited only to consider the contents of the application. The Court, at that stage, does not delve upon the question of title, in regard to the assets for which probate or Letters of Administration, is sought.

37. Any adjudication in relation to the right, title and interest of any other person, is beyond the domain of the Court exercising powers under the Succession Act.

38. The Hon'ble Apex Court, in the case of ***Krishna Kumar Birla v. Rajendra Singh Lodha & Ors.*** (*supra*), had examined the law in detail and held that to sustain a caveat, a caveatable interest must be shown and the test required to be applied is, does the claim of grant of probate prejudice his rights because it defeats some other line of succession in terms whereof the caveator asserts his right. It was further held that whatever would be the interest of the testator, the same must be accepted and the person questioning the existence of title in respect of the estate or the capacity of the testator to dispose of the property by will on ground outside the law of succession, would be stranger to probate proceeding, inasmuch as, none of such rights can effectively be adjudicated therein.

39. It was held that the judgments rendered in such proceedings are though judgment *in rem* but their application is limited. They are not



determinative of the question of title. The relevant extracts of the said judgment read as under: -

“84. Section 283 of the 1925 Act confers a discretion upon the court to invite some persons to watch the proceedings.

Who are they? They must have an interest in the estate of the deceased. Those who pray for joining the proceeding cannot do so despite saying that they had no interest in the estate of the deceased. They must be persons who have an interest in the estate left by the deceased. An interest may be a wide one but such an interest must not be one which would not have the effect of destroying the estate of the testator itself. Filing of a suit is contemplated inter alia in a case where a question relating to the succession of an estate arises.

85. We may, by way of example notice that a testator might have entered into an agreement of sale entitling the vendee to file a suit for specific performance of contract. On the basis thereof, however, a caveatable interest is not created, as such an agreement would be binding both on the executor, if the probate is granted, and on the heirs and legal representatives of the deceased, if the same is refused.

86. The propositions of law which in our considered view may be applied in a case of this nature are:

(i) To sustain a caveat, a caveatable interest must be shown.

(ii) The test required to be applied is : Does the claim of grant of probate prejudice his right because it defeats some other line of succession in terms whereof the caveator asserted his right?

(iii) It is a fundamental nature of a probate proceeding that whatever would be the interest of the testator, the same must be accepted and the rules laid down therein must be followed. The logical corollary whereof would be that any person questioning the existence of title in respect of the estate or capacity of the testator to dispose of the property by will on ground outside the law of succession would be a stranger to the probate proceeding inasmuch as none of such rights can effectively be adjudicated therein.”



40. Pursuant to the judgment passed in ***Krishna Kumar Birla v. Rajendra Singh Lodha & Ors.*** (*supra*) on 31.03.2008, the Hon'ble Apex Court in another decision dated 03.09.2008 in ***G. Gopal v. C Baskar and Ors*** (*supra*) held as under: -

“That being the position, we must hold that the respondents had caveatable interest in the estate of the testator and, therefore, they are entitled to be served before the final order is passed. It is well settled that if a person who has even a slight interest in the estate of the testator is entitled to file caveat and contest the grant of probate of the will of the testator.”

41. It appears that the Hon'ble Apex Court in the case had not taken note of the judgment passed in the case of ***Krishna Kumar Birla v. Rajendra Singh Lodha & Ors.*** (*supra*) and held that even a slight interest in the estate of a testator would entitle a person to file a caveat and contest the grant of probate of will of the Testator.

42. The Hon'ble Apex Court later in its judgment dated 10.03.2010 in the case of ***Jagjit Singh and Ors. Vs. Pamela Manmohan Singh:*** (2010) 5 SCC 157, noted that the views taken by the Hon'ble Supreme Court in ***Krishna Kumar Birla v. Rajendra Singh Lodha & Ors.*** (*supra*) and ***G. Gopal v. C Baskar and Ors*** (*supra*) were conflicting and referred the issue to be considered by a Larger Bench. The said case ***Jagjit Singh and Ors. Vs. Pamela Manmohan Singh*** (*supra*) was thereafter withdrawn by the appellants and therefore, it appears that no reference is pending before a larger bench of the Hon'ble Supreme Court as on date.



43. In such circumstances, it would be apposite to note the principle laid down by the Hon'ble Supreme Court in the case of ***National Insurance Co. Ltd. v. Pranay Sethi: (2017) 16 SCC 680***. The same reads as under:

“16. Presently, we may refer to certain decisions which deal with the concept of binding precedent.

17. In State of Bihar v. Kalika Kuer alias Kalika Singh and others, it has been held: -

“10. ... an earlier decision may seem to be incorrect to a Bench of a coordinate jurisdiction considering the question later, on the ground that a possible aspect of the matter was not considered or not raised before the court or more aspects should have been gone into by the court deciding the matter earlier but it would not be a reason to say that the decision was rendered per incuriam and liable to be ignored. The earlier judgment may seem to be not correct yet it will have the binding effect on the later Bench of coordinate jurisdiction. ...”

The Court has further ruled: -

“10. ... Easy course of saying that earlier decision was rendered per incuriam is not permissible and the matter will have to be resolved only in two ways — either to follow the earlier decision or refer the matter to a larger Bench to examine the issue, in case it is felt that earlier decision is not correct on merits.”

18. In G.L. Batra v. State of Haryana and others, the Court has accepted the said principle on the basis of judgments of this Court rendered in Union of India v. Godfrey Philips India Ltd., Sundarjas Kanyalal Bhatija v. Collector, Thane, Maharashtra and Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel. It may be noted here that the Constitution Bench in Madras Bar Association v. Union of India and another, has clearly stated that the prior Constitution Bench judgment in Union of India v. Madras Bar Association is a binding precedent. Be it clarified, the issues that were put to rest in the earlier Constitution Bench judgment were treated as precedents by latter Constitution Bench.”



44. Therefore, we are bound to follow the law as laid down by the Hon'ble Apex Court in ***Krishna Kumar Birla v. Rajendra Singh Lodha & Ors.*** (*supra*).

45. The Hon'ble Apex Court, in Paragraph 88, by way of an illustration, noted that a testator might have entered into an Agreement to Sell, entitling the vendee to file suit for performance of specific contract, however, no caveatable interest is created in favour of the vendee. Such an agreement would be binding both on the executor if the probate is granted and, on the heirs, and the legal representatives of the deceased if the same is refused. Therefore, any right, title or interest, which the person claims through such documents, is not disturbed only for the reason that a probate or a Letters of Administration is granted in regard to the estate of the deceased, which might also consist of the property as claimed by such vendee. Any such right is not affected or prejudiced by any grant of probate or Letters of Administration.

46. In the present case, the appellant claims to have acquired some interest and right in the property by virtue of execution of Agreement to Sell, General Power of Attorney and receipt. It is not disputed that no Sale Deed was executed in favour of the father of the appellant.

47. The learned counsel for the appellant contends that the documents executed in favour of the father of the appellant were prior to the judgment passed by the Hon'ble Apex Court, in the case of ***Suraj Lamp & Industries. vs State of Haryana & Anr: (2012) 1 SCC 656***. The Hon'ble Apex Court, in the said case, has held that the transactions through General Power of Attorney do not convey any title



and the courts will not treat such transactions as complete and concluded transfers. The judgment passed in the case of ***Suraj Lamp & Industries. vs State of Haryana & Anr*** (*supra*) was held to have a prospective effect in ***Maya Devi vs Lalta Prasad: (2015) 5 SCC 588***

48. There is no quarrel as far as the law in relation to the holder of Power of Attorney is concerned. It is true that the holder of the documents such as Agreement to Sell, General Power of Attorney, and receipt may have some right or interest in the property. The said rights, however, can be adjudicated by the appropriate court which is a civil court and are not subject matter of dispute for adjudication by a court exercising power in terms of The Succession Act. Whether any rights have flown in favour of the appellant by virtue of the Power of Attorney or Agreement to sell in favour of his father, cannot be adjudicated by the Court under the Succession Act.

49. The Court exercising power in terms of Succession Act, cannot go into the issues as to whether the alleged Power of Attorney is revocable or irrevocable and whether any right, title or interest flow from the documents, which are in possession of the appellant. It is not disputed that no Conveyance in favour of the appellant has been executed by either Smt. Santosh Mongia or DDA, which is the principal lessor of the subject property.

50. The reliance placed by the appellant in the case of ***Anoop Kumar Aggarwal v. Shanti Sarup Chowhan: 2018 SCC OnLine Del 10185*** thus, is misplaced. In the said case, the Court had held that once plaintiff has established his title over the property, it was for the defendant to



plead and prove his right, if any, to remain in occupation of the property. As stated above, right, if any, of the appellant would have to be agitated before the appropriate Court, which is a civil court in the present case.

51. The appellant after having withdrawn, the suit being CS (OS) 322/2018 filed for declaration and injunction, in regard to the subject property, cannot be allowed to indirectly agitate the same claim in the proceedings in relation to the grant of probate and Letters of Administration. The appellant, at best, had a claim for filing a suit which admittedly was filed but was withdrawn. The appellant is not claiming any interest in the estate of the deceased but claims that the asset had already been sold prior to the death.

52. Any order that would be passed by a Court in an application under Section 278 of the Succession Act, would be for the purpose of appointing an Administrator for the estate of the deceased. The same, in no manner, prejudice the right, title or interest, which any third person might have acquired on the said estate.

53. We are, therefore, of the opinion that the appellant has no caveatable interest and has no right to be impleaded in the instant Test Case.

54. Insofar as the issue as to whether the instant Testamentary Case is barred by limitation, it is contended by the appellant that the death of Smt. Santosh Mongia and Sh. Dharamjeet Mongia took place on 11.02.2004 but the instant Test Case was filed only in the year 2015. The appellant further contended that Article 137 of the Limitation Act, 1963 (hereafter '**Limitation Act**'), applies to Letters of Administration,



which prohibits filing of a petition after three years. Article 137 of the Limitation Act reads as under:

"137. Any other application for Three years. When the right to which no period of limitation is provided elsewhere in this Division. apply accrues."

55. Article 137 of the Limitation Act categorically provides that any application for which no period of limitation is provided elsewhere, the period of limitation will be construed to be three years and the period begins to run when the right to apply accrues. In the present case, the period does not begin to run from the death of the deceased but when the cause to apply for Letters of Administration accrues. The right to apply has been interpreted as the right which accrues when it becomes necessary for a party to apply, which may not be within the period of three years from the date of deceased's death.

56. We agree with the view taken by the learned Single Judge that the Testamentary Case for grant of Letters of Administration need not be filed within three years from the date of death but is filed within three years from the date when the need arises to file the same. The Learned Single Judge rightly relied on the judgment of the Hon'ble Supreme Court in ***Kunwarjeet Singh Khandpur v. Kirandeep Kaur & Ors.*** (*supra*). In that case, the Hon'ble Apex Court while interpreting the applicability of Article 137 of the Limitation Act in relation to the application for Letters of Administration, held as under:

"13. Article 137 of the Limitation Act reads as follows;



"137. Description, of application: Any other application for which no period of limitation is provided elsewhere in this Division.

Period of Limitation: Three Years

Time from which period begins to run: When the right to apply accrues"

The crucial expression in the petition is "right to apply". In view of what has been stated by this Court, Article 137 is clearly applicable to the petition for grant of Letters of Administration. As rightly observed by the High Court in such proceedings the application merely seeks recognition from the Court to perform a duty because of the nature of the proceedings it is a continuing right. The Division Bench of the Delhi High Court referred to several decisions. One of them was S. Krishnaswami and etc. etc. v. E.Ramiah (AIR 1991 Madras 214). In para 17 of the said judgment, it was noted as follows:

"17. In a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the Court to perform a duty. Probate or letter of Administration issued by a competent Court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the Indian Succession Act, 1925 does not convey a meaning that by the Proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense.

The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the Court to perform that duty. There is only a seeking of recognition from the Court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a view to discharge the moral duty, the applicant seeks recognition from the Court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in



law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an 'application' under Art. 137 of the Limitation Act, 1963."

14. Though the nature of the petition has been rightly described by the High Court, it was not correct in observing that the application for grant of probate or letters of Administration is not covered by Article 137 of the Limitation Act. Same is not correct in view of what has been stated in The Kerala State Electricity Board's case (supra).

15. Similarly reference was made to a decision of the Bombay High Court's case in Vasudev Daulatram Sadarangani v Sajni Prem Lalwani (AIR 1983 Bom.268).

Para 16 reads as follows:

"16. Rejecting Mr. Dalapatrai's contention, I summarise my conclusions thus:--

- a. under the Limitation Act no period is advisedly prescribed within which an application for probate, letters of administration or succession certificate must be made;*
- b. the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;*
- c. such an application is for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trustee and is a continuous right which can be exercised any time after the death of the deceased, as long as the right to do so survives and the object of the trust exists or any part of the trust, if created, remains to be executed;*
- d. the right to apply would accrue when it becomes necessary to apply which may not necessarily be within 3 years form the date of the deceased's death.*
- e. delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;*



f. such delay must be explained, but cannot be equated with the absolute bar of limitation; and (g) once execution and attestation are proved, suspicion of delay no longer operates".

The conclusion 'b' is not correct while the conclusion 'c' is the correct position of law."

57. In the present case, the respondents applied to DDA for mutation of the subject property in the year 2006. It is not disputed that the subject property was sealed and was in possession of the Police in relation to the pending FIR. The FIR was registered since Sh. Dharamjeet Mongia and Smt. Santosh Mongia had died in suspicious circumstances. The keys of the property were handed over by the Police only in the year 2014.

58. It appears that the appellant has also filed objections with the DDA against the mutation of subject property in name of the respondents. The request for mutation therefore remained pending with the DDA, possibly for the reason, that the subject property was sealed by the police and the objections were filed by the appellant.

59. It is claimed that the officials of the DDA asked the respondents, to seek the Letters of Administration with respect to the subject property. Therefore, it was then the need to apply actually arose for the respondents to file for the instant Test Case and the same was, thereafter, filed on 15.01.2015. We are of the view that the Test Case, filed on 15.01.2015, was well within the period of limitation and not barred by limitation.

60. It is not mandatory for a proposed administrator to file an application for grant of Letters of Administration in relation to the



property of a person who has died intestate, when the same relates to intestacy of a Hindu. Section 212(2) of the Succession Act reads as under:

“212. Right to intestate’s property.—

(1) No right to any part of the property of a person who has died intestate can be established in any Court of Justice, unless letters of administration have first been granted by a Court of competent jurisdiction.

(2) This section shall not apply in the case of the intestacy of a Hindu, Muhammadan, Buddhist, Sikh, Jaina, [Indian Christian or Parsi].”

61. When an application for grant of Letters of Administration is not mandatory, it cannot be argued that the right to apply would necessarily accrue within three years from the date of deceased’s death. Legal heirs of a deceased, inherit the right to administer the estate of the deceased, according to the rules for the distribution of the estate and the same is not dependent upon the grant of Letters of Administration. However, when such rights are not recognized by any department, the need to file such application arises. In order to avoid any claim to the contrary arising in future, the departments at times insist upon the grant of Probate in case of a Will or Letters of Administration in case a person dies intestate. In the present case, it appears that the DDA insisted upon the production of grant of Letters of Administration, which led to the filing of the Test Case in the year 2015. The respondents had applied for the mutation of the subject property in their name after the same was handed over to them by the police in the month of November, 2014.



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62. Thus, we agree with the view taken by the learned Single Judge that the present petition is not barred by limitation.

63. In view of the above, the present appeal is devoid of merits and is dismissed with cost of ₹25,000/-.

64. All pending applications stand disposed of.

AMIT MAHAJAN, J

VIBHU BAKHRU, J

DECEMBER 22, 2023/KDK/SK/AA