

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.974 of 2023

1. Mina Devi W/o Late Ravindra Singh R/o Village-Chakvyas, P.O. and P.S.-Goraul, Dist.-Vaishali.
2. Pinki Singh D/o Late Ravindra Singh R/o Village-Chakvyas, P.O. and P.S.-Goraul, Dist.-Vaishali. W/o Subodh Kumar, Present R/o-Village Lautan, P.S. Kastahan Dist.-Vaishali.

... .. Petitioner/s

Versus

1. Rohit Kishor Singh S/o late Guru Dayal Singh R/o Village-Chakvyas, P.S.-Goraul, Dist.-Vaishali.
2. Ramesh Singh S/o Late Guru Dayal Singh R/o Village-Chakvyas, P.S.-Goraul, Dist.-Vaishali.
3. Subodh Kumar Singh S/o Late Guru Dayal Singh R/o Village-Chakvyas, P.S.-Goraul, Dist.-Vaishali.
4. Asha devi D/o Late Guru Dayal Singh, W/o Sachitanand Singh R/o Village-Maksudpur, P.S.-Maniyari, Dist.-Muzaffarpur.
5. Usha Devi D/o Late Guru Dayal Singh, W/o Vishwanath Singh R/o Village-Maksudpur, P.S.-Maniyari, Dist.-Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Anil Prasad Singh, Advocate
For Respondent Nos. 1 to 3: Mr.Prakash Chandra, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 10-04-2025

Heard learned counsel for the parties and I intend to dispose of the petition at the stage of admission itself.

2. The petitioners are aggrieved by the order dated 03.08.2023 passed by learned Additional District Judge-III, Vaishali at Hajipur in Probate Case No. 25 of 2021, whereby and whereunder the learned trial court rejected the petition filed by the petitioners for dismissal of the probate proceeding on the



ground of limitation and delay.

3. The learned counsel for the petitioners submits that Will was produced for probate after 15 years of death of the testator without making the petitioners parties. Thus the probate was sought in suspicious circumstances. Learned counsel for the petitioners referring to the decision of learned Single Judge of High Court of Karnataka passed in the case of ***Sri Srinivas. R Vs. Sri Srinath. R*** in ***Miscellaneous First Appeal No. 8311 of 2019*** vide order dated 12.02.2020, which in turn referred to a decision of Division Bench of the same court in the case of ***B. Manjunatha Prabhu and Others vs C.G. Srinivas and Others*** reported in ***AIR 2005 Kar. 136***, which held that though Article 137 of the Limitation Act would not apply to the proceedings filed for grant of probate or Letters of Administration with or without the Will and may not come within the mischief of Article 137 of the Limitation Act, yet the delay aspect is relevant to test the genuineness of the Will propounded. The delay in taking steps gives rise to suspicion and the longer the delay the stranger the suspicion. Learned counsel submits that this aspect was not considered by the learned trial court as the Will produced for probate before the learned trial court has been filed after 15 years of the death of the testor. The probate



petitioners did not make the present petitioners party in the probate case and on application for impleadment being filed on behalf of the petitioners, the petitioners were allowed to be made party and they filed their objection. Learned counsel further submits that while adjudicating the probate case the learned trial court just heard the learned counsel of the probate petitioners on the point of limitation and on submission that the probate petitioners were villager and resident of remote place and were not having knowledge about legal process and hence, the probate petition was filed after delay, the learned trial court condoned the delay and registered probate case. When the intervenors were made party, they raised objection before the learned trial court which rejected the same by passing the impugned order. Therefore, the impugned order is not sustainable in the eyes of law and the same may be set aside.

4. Learned counsel appearing on behalf of respondent nos. 1 to 3 submits that there is no infirmity in the impugned order. The learned trial court has noted the fact that issues were settled on 24.03.2022 in the probate case and the first issue was regarding maintainability of the probate petition. The matter has been coming up for evidence of the probate petitioners/plaintiffs. Learned counsel further submits that the



learned trial court rejected the claim of the present petitioners on the ground that it was not justifiable to decide the issue of maintainability at this stage when the matter has been coming up for evidence of the probate petitioners/plaintiffs. The learned trial court further held that issue on maintainability will be decided along with other issues. Therefore, the impugned order needs no interference.

5. I have given my thoughtful consideration the rival submission of the parties and perused the record. Admittedly, the learned trial court considered the issue of delay at the time of admission of the probate petition. This order dated 06.09.2021 has not been challenged. Thereafter, it appears that the petitioners filed an application under Section 137 of the Limitation Act wherein it has been submitted that the testator died on 06.10.2005 and the probate petition has been filed after 15 years of the death and therefore, the probate petition was not maintainable. However, it appears that the learned trial court rejected the claim and prayer of the petitioners on the ground that the issue of maintainability was already settled as being issue no. 1 for adjudication of the probate case and the same would be decided along with other issues. Therefore, the petitioners cannot claim that it should be decided as preliminary



issue since it is an issue of law and fact.

6. Since the issue of maintainability is yet to be decided by the learned trial court and the learned trial court is already in seisin of the matter, I think the petitioners approached this Court in undue haste and I find no reason to interfere with the impugned order on merit as there is no apparent error in the order of the learned trial court and accordingly, the impugned order is affirmed.

7. In the result, the present petition stands dismissed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.04.2025
Transmission Date	NA

