

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.65 OF 2025

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Vidula Ashish Phule ...Applicant
vs.
Pankajkumar Chandulal Panchal and Another ...Respondents
Mr. Sumit Kothari, for the Applicant.

CORAM : N. J. JAMADAR, J.
DATE : FEBRUARY 11, 2025

P.C:

1. Heard the learned counsel for the parties.
2. This revision application is directed against an order dated 15th October, 2024 passed by the learned Judge, Pune whereby the application (Exh. 19) preferred by the applicant/defendant No. 1 for rejection of the plaint in R.C.S. No. 1206 of 2020 came to be rejected.
3. The respondent No. 1 instituted the suit for declaration that the purported Will dated 12th February, 1985 executed by late Shantabai Maganbhai Patel in favour of defendant No. 1 is invalid, false and fabricated and the Will dated 10th January, 1985 in favour of the plaintiff/ respondent No. 1 is legal and valid, and the consequential reliefs.
4. The plaintiff claimed that Shantabai was the wife of Maganbhai who was a friend of the grandfather of the plaintiff.

Defendant No. 1 has no concern with the said Shantabai. Shantabai passed away in the year 1988. In the year 2017, the plaintiff learnt that Shantabai had executed a Will in the year 1985 bequeathing her interest in the property bearing survey No. 113/1 situated at village Kothrud, Pune. Arunkumar Panchal was the executor of the said Will. Pratiklal, the son of Arunkumar, had delivered the said Will to the plaintiff. When the plaintiff approached the revenue authorities to mutate his name to the suit property, it transpired that defendant No. 1 had obtained Letters of Administration by propounding a false and fabricated Will of late Shantabai. Hence, the suit.

5. Defendant No. 1 preferred an application for rejection of the plaint primarily on the ground that the suit was barred by limitation. By the impugned order, the learned Civil Judge rejected the application observing, inter alia, that in the facts of the case, the question of limitation was a mixed question of law and facts and *ex facie*, it cannot be said that the suit was barred by law of limitation.

6. Mr. Kothari, the learned counsel for the applicant, would urge that from the very averments in the plaint, it becomes evident that the plaintiff had known about the grant of Letters of Administration in the year 2017. Therefore, the institution of the suit on 4th November, 2020 was clearly beyond the stipulated period of

limitation. It was submitted that the provisions contained in Article 137 of the Limitation Act, 1963 govern the application for revocation of the Letters of Administration. Time begins to run from the date of issue of Letters of Administration as it constitutes a notice to all concerned. To buttress this submission, Mr. Kothari placed reliance on the judgment of the Supreme Court in the case of **Ramesh Nivrutti Bhagwat vs. Dr. Surendra Manohar Parakhe**¹.

7. There can be no quarrel with the proposition that the provisions contained in Article 137 of the Limitation Act, 1963 govern an application for revocation or cancellation of the Probate or Letters of Administration. The Supreme Court in the case of **Ramesh Bhagwat** (supra), after referring to the previous pronouncements, enunciated that the application for revocation of Probate is governed by the provisions contained in Article 137 of the Limitation Act, 1963. However, the pivotal issue is of the time when the right to sue accrues. Under Article 137 of the Limitation Act, 1963 the period of limitation is three years, from the date when the right to apply accrues.

8. In the case at hand, the plaintiff has approached the Court with a case that the plaintiff became aware of the Will in favour of the defendant No. 1 at the end of the year 2017. Inquiries revealed that the defendant No. 1 had obtained the Letters of

1 (2020) 17 Supreme Court Cases 284.

Administration. The plaintiff further averred that on 5th December, 2018, the plaintiff had raised objection to the mutation of the name of defendant No. 1 to the record of rights of the suit land pursuant to Letters of Administration. The suit came to be instituted on 4th November, 2020. Letters of Administration were granted by an order dated 12th September, 2017.

9. In the backdrop of the aforesaid facts, the question as to whether the plaintiff had knowledge of the Letters of Administration immediately after the issue thereof, enters into the arena of determination of facts. It cannot be laid down as an immutable rule of law, that the right to seek revocation or cancellation of Letters of Administration accrues from the very date of issue of Letters of Administration. If the plaintiff had no knowledge about the grant of Letters of Administration, it cannot be said that the right to seek cancellation of Letters of Administration accrued on the date of issue of the Letters of Administration. Therefore, the question of knowledge of the plaintiff is a matter which warrants determination.

10. From the aforesaid perspective, the learned Civil Judge does not seem to have committed any error in recording that, in the facts of the case, the aspect of bar of limitation was a mixed question of law and facts. To put in other words, the suit cannot be said to be *ex*

facie barred by limitation. Thus, this Court does not find any infirmity in the impugned order.

11. Resultantly, the application does not deserve to be entertained and, thus, stands dismissed.

(N. J. JAMADAR, J.)