IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.617 of 2023

CNR No. BRHC010892642023

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Triloki Prasad Gupta @ Triloki Prasad Son of Late Bharat Prasad Gupta @ Late Bharat Prasad, Resident of village- Revilganj, Police Station - Revilganj, District - Saran.

... ... Appellant/s

Versus

In the Goods of Late Akshaibar Prasad X

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. J.S. Arora, Sr. Adv.
Mr. Md. Ejaz Akhtar, Adv.
Mr. Krishnakant Singh, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AJIT KUMAR

ORAL ORDER

4 06-11-2026 **I.A. No. 01 of 2026:**

It has been submitted that the originally first appeal was preferred by this appellant against the impugned judgment, which was directed to be modified into a miscellaneous appeal on the ground that there was no contest made before the original Court. Therefore, the judgment of this Court rendered in ***Kusheshwar Purbey v. Shri Shri 108 Ram Janaki Jee S & Ors. reported in (2017) 3 PLJR 791***, is the basis on which the instant miscellaneous appeal has been preferred.

2. For the reasons stated in paragraph 5 & 6 of the I.A. No. 01 of 2026, the delay caused in filing of the instant Miscellaneous Appeal is condoned.

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3. The I.A. No. 01 of 2026 is allowed.

Miscellaneous Appeal No. 617 of 2023:

Heard the parties concerned.

2. The present miscellaneous appeal has been filed by the appellant being aggrieved and dissatisfied by the judgment dated 23.03.2022, passed by the Court of learned Additional District Judge-Vth, Saran at Chapra vide Probate Case No. 09 of 2017.

3. It is the case of the appellant that initially the appellant has preferred First Appeal against the order dated 23.03.2022 passed by the Court of learned Additional District Judge-Vth, Saran at Chapra, vide Probate Case No. 09 of 2017. It has next been submitted that from the impugned judgment, it is evident that the learned Court concerned has considered all the points raised by this petitioner on merit, as would be evident from the impugned judgment, but finally, when it came to adjudicate the issues, the Court concerned was of the view that the appellant has not made any averments in his application of probate, regarding the maintainability of the probate case on the ground of limitation.

4. Since the probate case was filed much beyond the prescribed period of three years from the date of death of the

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deceased as per Article 137 of the Limitation Act, 1963, and the Court concerned was of the view that the probate case was barred by limitation, therefore, despite having gone into the merits of the probate case, the Court proceeded to deal with the merits of the case at hand. Still, the probate case in question was dismissed on the ground of limitation.

5. Mr. J.S. Arora, Senior Advocate, has assisted this Court, in this case, who submitted that in terms of the adjudication made by the Hon'ble Apex Court in the case of ***Sanjay Sharma @ Sanjay Bhardwaj v. Krishnadhan Khaware & Ors., 2026 INSC 708,*** the Court concerned was not required to have dealt with the limitation issues so vehemently as has been done in the instant case, while a mere statement of the appellant referring to the delay would have been sufficient enough to have adjudicated the case at hand. To support such contention, reference has been made to the judgment of the Hon'ble Apex Court in the case of ***Sanjay Sharma @ Sanjay Bhardwaj (Supra)*** and the relevant portion is extracted here:

> *" 6. It is, therefore, a continuous right that can be exercised at any time so long as the object of the Will survives. The right to apply would therefore accrue from the date that it becomes necessary to apply. This obviously need not be within three*

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years from the death of the testator. In this case, then, the need to apply would commence from the date when the respondents took actions hostile to the position established by the Will, that is, the execution of a General Power of Attorney by Laxmi Devi, wife of the testator on 8th August 2005. In that view of the matter, the application for probate of Will made by the executor Mr. Bhudeo Prasad Singh, in favour of the appellants Sanjay Sharma @Sanjay Bhardwaj is held to be within limitation since the same was filed 31st August 2005."

6. Considering the fact that the learned Court concerned has dealt with all such exhibits which the appellant has proposed in order to get the will adjudicated in the probate case at hand, but instead adjudicating the issues on merit, the Court concerned has referred to all such exhibits and the points raised by the appellant in the impugned judgment, while the probate case has been dismissed by the Court of learned Additional District Judge-Vth, Saran at Chapra, on the point of limitation, which is wholly uncalled for, and to put at rest, the issues which have been raised by this appellant, for which the Probate Case No. 09 of 2017 was filed in the Court concerned, the order impugned deserves to be interfered with and,

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accordingly, the impugned judgment passed in Probate Case No. 09 of 2017 is set aside, and Probate Case No. 09 of 2017 is restored to its original file, while shall be adjudicated by the Court concerned on merits, without looking into the issue of limitation, in similar terms as has been directed by the Hon'ble Apex Court in the aforementioned case.

7. It is expected that, by resorting to the procedures prescribed, final decision shall be taken in the case, expeditiously by the Court concerned, once the appellant approaches with appropriate materials, to enable the Court to adjudicate the issues raised in the aforementioned probate case.

8. Accordingly, the present Miscellaneous Appeal stands disposed of.

(Ajit Kumar, J)

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