IN THE HIGH COURT OF JHARKHAND, RANCHI
M.A. No. 342 of 2023

Satyendra Prasad Sah, aged about 47 years, son of Sri Jagdish Sah, by religion – Hindu, resident of Digwadih No.10, PO – Jealgora, PS – Jorapokhar, District – Dhanbad, Jharkhand

.... Appellant

-- Versus --

General Public of Locality, R/o Digwadih No.10, PO – Jealgora, PS – Jorapokhar, District – Dhanbad, Jharkhand

.... Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellant :- Mr. Raj Nandan Chatterjee, Advocate
For the Respondent :-

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*05/**27.10.2026*** By order dated 16th July, 2024, notices have been issued upon the general public.

2. Service report received with report that "notice to general public with the help of drummers beat and served a copy of notice by hanging on the electric pole and in view of that notice is complete.

3. This appeal has been preferred under Section 299 of Indian Succession Act, 1925 challenging the judgment dated 10.08.2023 passed by learned Principal District Judge, Dhanbad in Letter of Administration Case No.05 of 2022 by which the Letter of Administration application filed by the appellant under Section 278 of Indian Succession Act has been dismissed in respect of the will and Testament dated 25.04.2001 executed by Late Amriteshwar Chakraborty in favour of the appellant namely Satyendra Prasad Sah.

4. Learned counsel appearing for the appellant submits that the testator Amriteshwar Chakravorty was living at Digwadih No.10, PO – Jeolgora, PS – Jorapokhar, District – Dhanbad and died on 14.08.2004

and at the time of his death, he was residing at the said address. He further submits that Amriteshwar Chakravorty died issueless and had no relatives. He then submits that on 25.04.2001 Amriteshwar Chakravorty executed his last registered will in a sound health and perfect state of mind by which he bequeathed his immovable property in favour of the applicant. He next submits that testator had not appointed any executor of the will, therefore, the appellant has filed the said letter of administration for grant of Letter of Administration in respect of the will executed by Amriteshwar Chakravorty. He also submits that the documents have been filed before the learned Court and death certificate of testator Amriteshwar Chakravorty was marked as Exhibit-1, signature of testator Amriteshwar Chakravorty on will dated 25.04.2001 was marked as Exhibit-2, signature of testator Amriteshwar Chakravorty on will dated 25.04.2001 was marked as Exhibit-2/1, signature of testator Amriteshwar Chakravorty on will dated 25.04.2001 was marked as Exhibit-2/2, signature of witness (appellant) Satyendra Prasad Sah on will dated 25.04.2001 was marked as Exhibit-2/3, signature of witness Mukhut Kumar Sharma on will dated 25.04.2001 was marked as Exhibit-2/4 and will dated 25.04.2001 was marked as Exhibit-3. He next submits that although one of the witness on the will namely Mukhut Kumar Sharma was examined as AW-2 and documents are there in spite of that the learned Court has been pleased to dismiss the said letter of administration case only on the ground of limitation and the main case has not been decided. He next submits that learned Court has relied in the case of Sanjay Sharma @ Sanjay Bhardwaj versus Krishnadhan Khaware & Ors. of this Court in M.A. No.153 of 2012. He next submits that the said judgment was challenged before Hon'ble the Supreme Court

in Special Leave Petition (C) No.13473 of 2022 and converted into Civil appeal of 2026 has been set aside and the probate case has been restored to its file of trial court for deciding afresh. He next submits that delay aspect has already been dealt with by the Hon'ble Supreme Court in other cases and in view of that the order of learned Courts is not in accordance with law. On these grounds, he submits that this appeal may kindly be set aside as only on the ground of limitation the said letter of administration case has been dismissed and the case has not been decided on merit.

5. On perusal of the trial court record, it transpires that exhibits, as noted in the argument of learned counsel appearing for the appellant, have been marked by the learned Court. One of the witness on the said will has been examined as AW-2 and he has proved the signature. Appellant herein was also examined as AW-1 and the learned Court has been pleased to dismiss the said letter of administration case only on the ground of limitation and taking into consideration Article 137 of the Limitation Act and the learned Court has relied in the case of ***Sanjay Sharma @ Sanjay Bhardwaj versus Krishnadhan Khaware and Ors.*** of this Court which has been set aside by Hon'ble Supreme Court reported in 2026 INSC 708 wherein at Paragraph Nos.5 and 6 it has been held as under :-

> ***5.*** *The probate of a Will has three -fold purposes-* ***(a)*** *It is a judicial stamp of approval on the genuineness of the Will****;*** ***(b)*** *It acknowledges the appointment of an executor of the Will****;*** ***(c)*** *It grants the executor to act for the purposes of the Will. Keeping this in view, the specific view that the period of limitation for probate commences from the death of the testator has been rejected. The Bombay High Court in* ***Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani****, 5 which has been quoted with approval by this Court in* ***Kunvarjeet Singh Khandpur v. Kirandeep Kaur 6 , and Sameer Kapoor v. State 7*** *, except on one point held as under:*
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> ***"15.*** *Similarly reference was made to a decision of the*

Bombay High Court in ***Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani [AIR 1983 Bom 268] .*** *Para 16 reads as follows : (AIR p. 270)*

> ***"16.*** *Rejecting Mr Dalpatrai'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 from 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."*

Conclusion (b) is not correct while Conclusion (c) is the correct position of law."

In both judgments of this Court, it has been stated that point (b) is incorrect while (c) is the correct position of law.

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 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. In the case of ***Krishna Kumar Sharma vs. Rajesh Kumar Sharma reported in 2009 Supreme (SC) 577*** wherein at paragraph No.9 it has been held as under :-

> ***9.*** *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".*

7. The aforesaid aspect has been highlighted in the case of ***Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur & Ors. reported in 2008 Supreme (SC) 592.***

8. The aforesaid aspect has been further considered recently by Hon'ble Supreme Court in the case of ***Sameer Kapoor and Another vs. The State through Sub-Division Magistrate South, New Delhi and Others reported in 2019 Supreme (SC) 512*** wherein at paragraph No.17 it has been held as under :-

> ***17.*** *Therefore, considering the law laid down by this Court in the case of Kunvarjeet Singh Khandpur (supra), it can be said that 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 letters of administration issued by a competent court is conclusive proof of the legal character throughout the world. That the proceedings filed for grant of probate or letters of administration is not an action in law but it is an action in rem. As held by this Court in the case of Kunvarjeet Singh Khandpur (supra), an application for grant of probate or letters of administration 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. Therefore, even if the will is probated by any court mentioned in Section 228 of the Act, right to get the letters of administration is a continuous right which can be exercised any time, 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.*

9. In view of the aforesaid facts, reasons and analysis this Court comes to the conclusion that letter of administration is a continuous right which can be exercised anytime so long as the right to do so survive. Accordingly, the judgment dated 10.08.2023 passed by learned Principal District Judge, Dhanbad in Letter of Administration Case No.05 of 2022 is hereby set aside as having plainly erred in law this appeal is allowed.

10. The Letter of Administration Case No.05 of 2022 is restored to its original file with a direction to the learned Court to decide the same afresh.

11. This appeal is allowed in above terms and disposed of.

12. Let the trial court record be sent back to the learned Court concerned forthwith.

(Sanjay Kumar Dwivedi, J.)

Dated 27.10.2026
Sangam/
A.F.R.