



2026:DHC:1443



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 13.01.2026
Pronounced on : 18.02.2026
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+ **FAO 174/2022**

SMT JAI PALI & ORS.Appellant
Through: Mr. Asav Rajan, Ms. Aditi Pundhir
and Mr. Ajay Sharma, Advocates

versus

SMT PREM SAHDEVRespondent
Through: Mr. Rara Chand Sharma, Advocate
(through VC)

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

CM APPL. 29074/2022 & CM APPL. 29075/2022 (Exemption)

1. Allowed, subject to all just exceptions.
2. The applications stand disposed of.

FAO 174/2022, CM APPL. 29076/2022 & CM APPL. 32089/2022 (Delay)

1. By way of the present appeal filed under Section 299 of the Indian Succession Act, 1925(hereinafter referred to as "Act") read with Order XLI of the Code of Civil Procedure, 1908, the appellants seek setting aside of the order dated 13.10.2014 passed by the learned ADJ-02, South, Saket Courts, New Delhi, in M No. 52/2014 and the order dated 28.04.2014 passed by the

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learned ADJ-02, South, Saket Courts, New Delhi, in PC No. 174/2011.

2. Vide the impugned order dated 28.04.2014, the application seeking revocation of grant of probate under Section 263 of the Act, assailing the *ex-parte* grant of probate in favour of the respondent, was dismissed on the ground that the same was barred under Article 137 of the Limitation Act, 1963. Thereafter, vide order dated 13.10.2014, the review application filed by the appellants seeking review of the aforesaid order was dismissed, holding that the plea and objections raised by appellants in the revocation proceedings were rightly barred by limitation.

3. Briefly stated, the case of the appellants is that appellant no.1 is the widow of Late *Kartar Singh* (hereinafter referred to as the “deceased”) and the appellant nos. 2 to 4 being sons of the deceased, are the legal heirs of the deceased. The deceased was the owner of a land measuring 1000 sq. yds. situated at *Khasra no.1812-13, Aya Nagar, New Delhi* (hereinafter referred to as “property”), which had devolved upon him from his father. The respondent filed Probate Petition before the Trial Court on the basis of an alleged Will dated 01.03.1995 and other documents i.e., an Agreement to Sell and General Power of Attorney, claiming rights over the said property. The Trial Court granted an *ex-parte* probate decree in favour of the respondent on 16.08.2003, followed by grant of Letters of Administration on 17.05.2010.

4. Learned counsel for the appellants submit that the appellants were never served in the probate proceedings and came to know of the decree only



after the Letters of Administration was granted on 17.05.2010. Thereafter, they filed an application seeking revocation of the probate on grounds of fraud, forgery and invalid execution of the Will; however, the said application was dismissed by the impugned orders. It is further submitted that the limitation to file revocation would begin when the appellant acquired knowledge. In this regard, it is further submitted that the appellants were never served in the probate proceeding, as the respondent had given incorrect address of the appellants, and the service report in this regard has already been placed on record.

5. *Per Contra*, learned counsel for the respondent has taken a preliminary objection on the gross delay of 1588 days in filing the present appeal. On merits, it is submitted that the trial court has rightly upheld the dismissal of review as well as the revocation application.

6. I have heard the learned counsel for the parties and perused the material on record.

7. The revocation application filed by the appellants seeking revocation of the grant of probate was dismissed primarily on the ground that it was barred by limitation. On merits of the case, it was observed that a joint *Vakalatnama* dated 16.10.2001 bearing the signatures of appellant nos. 2 to 4 was filed in the probate proceedings, indicating their knowledge of the matter. It was further held that even assuming that the appellants had acquired knowledge of the grant of probate in the year 2004, from the civil proceeding (CS no. 138/2004) between the parties, the revocation application



filed thereafter was still beyond the prescribed period of limitation under Article 137 of the Limitation Act, 1963.

8. Thereafter, a review application filed by the appellants was dismissed on the ground that no error apparent on the face of the record was made out in the earlier order dated 28.04.2014 dismissing the revocation application. The Court held that the findings regarding limitation, including the appellants' knowledge of the probate proceedings and the bar under Article 137 of the Limitation Act, did not warrant reconsideration in review jurisdiction. The appellants' contentions that the revocation application was within limitation and that the probate had been obtained by fraud were not accepted, as the Court found no sufficient reason to interfere with or modify its earlier decision.

9. A contention is raised that the right to apply accrued for the first time when they gained knowledge of the grant of letter of administration on 17.05.2010. However, the Supreme Court has clarified in Lynette Fernandes v. Gertie Mathias¹, that for the purpose of limitation, the right to apply, specifically in revocation of probate, under Article 137 of the Limitation Act, accrues from the date of grant of the probate. The relevant extract of the said decision is produced below:

“19. One must keep in mind that the grant of probate by a competent court operates as a judgment in rem and once the probate to the will is granted, then such probate is good not only in respect of the parties to the proceedings, but against the world. If the probate is granted, the same operates from the date of the grant of the probate for the purpose of limitation under Article 137 of the Limitation Act in proceedings

¹ (2018) 1 SCC 271



for revocation of probate. In this matter, as mentioned supra, the appellant was a minor at the time of grant of probate. She attained majority on 9-9-1965. She got married on 27-10-1965. In our considered opinion, three years' limitation as prescribed under Article 137 runs from the date of the appellant attaining the age of majority i.e. three years from 9-9-1965. The appellant did not choose to initiate any proceedings till the year 25-1-1996 i.e. a good 31 years after she attained majority. No explanation worthy of acceptance has been offered by the appellant to show as to why she did not approach the court of law within the period of limitation. At the cost of repetition, we observe that the appellant failed to produce any evidence to prove that the will was a result of fraud or undue influence. The same will has remained unchallenged until the date of filing of application for revocation. No acceptable explanation is offered for such a huge delay of 31 years in approaching the Court for cancellation or revocation of grant of probate."

(Emphasis supplied)

10. As already noted above, the appellants had knowledge of the probate proceedings (PC No. 121/2000), having entered appearance therein on 16.10.2001 through counsel by filing a *Vakalatnama*. In any event, such knowledge is also evident from Civil Suit No. 138/2004 filed by the respondent against the appellants herein for specific performance and cancellation of the sale deed dated 13.11.1998, as well as for consequential reliefs concerning mutation entries in the revenue records. Furthermore, the appellants have taken inconsistent stand by pleading non-service despite having knowledge of the probate proceedings.

11. A gainful reference can be made to the decision rendered by the Supreme Court in Sunil Poddar v. Union Bank of India², wherein it was held that the plea of non-service cannot be taken if the defendant had actual notice of the proceedings and sufficient time to appear and answer the claim. The relevant extract of the said decision is produced below:

"23. It is, therefore, clear that the legal position under the amended Code is not whether the

² (2008) 2 SCC 326



defendant was actually served with the summons in accordance with the procedure laid down and in the manner prescribed in Order 5 of the Code, but whether (i) he had notice of the date of hearing of the suit; and (ii) whether he had sufficient time to appear and answer the claim of the plaintiff. Once these two conditions are satisfied, an ex parte decree cannot be set aside even if it is established that there was irregularity in service of summons. If the court is convinced that the defendant had otherwise knowledge of the proceedings and he could have appeared and answered the plaintiff's claim, he cannot put forward a ground of non-service of summons for setting aside ex parte decree passed against him by invoking Rule 13 of Order 9 of the Code."

(Emphasis supplied)

12. It emerges from the record that despite the earlier dismissal of the appellants' applications on the ground of delay, the present appeal has also been filed after an inordinate delay of 1588 days. Even if the period of 947 days to be excluded, as prayed for by the appellants on account of pursuing remedy against the impugned order through CM(M) 699/2015 before this Court, still the delay is gross. The conduct of the appellants, viewed cumulatively, shows that despite being aware of the proceedings, the appellants did not take the appropriate steps within the prescribed time at different stages of the case, hence, does not inspire confidence.

13. In light of the reasoning given in the impugned orders, the submissions put forth, the cumulative delay, and the decisions noted above, I do not find force in the merits of the contentions and hence, there is no reason to interfere with the impugned orders.

14. Accordingly, the present appeal is dismissed, along with pending applications.

MANOJ KUMAR OHRI
(JUDGE)

FEBRUARY 18, 2026/dh