

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1967 OF 2009
(Arising out of SLP (C) No.16110 of 2007)

Krishna Kumar Sharma

..Appellant

Versus

Rajesh Kumar Sharma

..Respondent

J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. Leave granted.
2. Challenge in this appeal is to the order passed by the Delhi High Court which by the impugned order allowed the appeal filed by the respondent.

3. Background facts in a nutshell are as follows:

Respondent, the propounder of the registered will dated 13th July, 1989 executed by his mother, has locked horns with his step brother, Krishan Kumar Sharma, the appellant herein Smt. Sneha Prabha Sharma, the testatrix, and her husband Ram Mohan Sharma were married twice. Respondent is the son of testatrix and Ram Mohan Sharma. Appellant is the son from the first wife of Ram Mohan Sharma. The respondent's case is this that the will dated 13th July, 1989 was made by the above said testatrix in sound disposing mind on 13th July, 1989 and it was got registered on 11th September, 1989. Smt. Sneha Prabha Sharma died on 9th July, 1990. Except the appellant, none of the other siblings of the appellant contested the petition moved by the appellant under Section 276 of the Indian Succession Act, 1925 (in short the 'Act').

The basic question before the High Court was whether Article 137 of the Indian Limitation Act, 1963 (in short the 'Limitation Act') applies to the facts of the present case. The High Court relied upon the judgments of Delhi High Court in S.S. Lal v. Vishnu Mitter Govil [112 (2004) Delhi Law Times 877 (DB)] and in Kanwal Malhotra v. State [125 (2005) Delhi Law

Times 281] to hold that Limitation Act has no application to proceedings seeking for probate.

4. Learned counsel for the appellant submitted that the interpretation placed by the High Court is not correct. The primary question that needs reconsideration is whether Article 137 of the Limitation Act is applicable. It appears that certain other aspects were considered by the High Court to which reference shall be made subsequently.

5. In The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma [1976 (4) SCC 634] it was inter alia observed as follows:

“18. The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other applications as in the 1963 Limitation Act. The words “any other application” under Article 137 cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure Code other than those mentioned in Part I of the third division. Any other application under Article 137 would be petition or any application under any Act. But it has to be an application to a court for the reason that Sections 4 and 5 of the 1963 Limitation Act speak of expiry of prescribed period when court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause

for not preferring the appeal or making the application during such period.

22. The conclusion we reach is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in *Athani Municipal Council case* and hold that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the Code of Civil Procedure. The petition in the present case was to the District Judge as a court. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act.”

In terms of the aforesaid judgment any application to Civil Court under the Act is covered by Article 137. The application is made in terms of Section 264 of the Act to the District Judge. Section 2(bb) of the Act defines the District Judge to be Judge of Principal Civil Court.

6. Further in S.S. Rathore v. State of M.P. [1989(4) SCC 582] it was inter-alia stated as follows:

“5. Appellant’s counsel placed before us the residuary Article 113 and had referred to a few decisions of some High Courts where in a situation as here reliance was placed on that article. It is unnecessary to refer to those decisions as on the authority of the judgment of this Court in the case of *Pierce Leslie & Co. Ltd. v. Violet Ouchterlony Wapshare* it must be held that Article

113 of the Act of 1963, corresponding to Article 120 of the old Act, is a general one and would apply to suits to which no other article in the schedule applies.”

7. Article 137 of the Limitation Act reads as follows:

"137. Description of application: Any other application for which no period of limitation is provided elsewhere in the Division.

Period of Limitation: Three Years

Time from which period begins to run:

When the right to apply accrues."

The crucial expression in the petition is “right to apply”. In view of what has been stated by this Court, Article 137 is clearly applicable to the petition for grant of Letters of Administration. As rightly observed by the High Court in such proceedings the application merely seeks recognition from the Court to perform a duty because of the nature of the proceedings. It is a continuing right. The Division Bench of the Delhi High Court referred to several decisions. One of them was S. Krishnaswami and etc. etc. v. E.

Ramiah (AIR 1991 Madras 214). In para 17 of the said judgment it was noted as follows:

“17. 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 letter of Administration issued by a competent Court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the Indian Succession Act, 1925 does not convey a meaning that by the Proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the Court to perform that duty. There is only a seeking of recognition from the Court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a view to discharge the moral duty, the applicant seeks recognition from the Court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an 'application' under Art. 137 of the Limitation Act, 1963.”

8. Though the nature of the petition has been rightly described by the High Court, it was not correct in observing that the application for grant of probate or letters of Administration is not covered by Article 137 of the Limitation Act. Same is not correct in view of what has been stated in The Kerala State Electricity Board's case (supra).

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 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”.

10. These aspects were highlighted in Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors. (2008 (8) SCC 463).

11. Since other questions were involved we remit the matter to consider the matter afresh in view of what has been stated in Kunvarjeet's case (supra).

12. The appeal is allowed to the aforesaid extent.

.....J.
(Dr. ARIJIT PASAYAT)

.....J.
(ASOK KUMAR GANGULY)

New Delhi,
March 27, 2009