

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 10482 OF 2013

Sameer Kapoor and another

..Appellants

Versus

The State through Sub-Division Magistrate
South, New Delhi and others

..Respondents

J U D G M E N T

M.R. SHAH, J.

Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Delhi at New Delhi in F.A.O(OS) No. 11 of 2009, by which a Division Bench of the High Court has dismissed the said appeal and has confirmed the order passed by the learned Single Judge refusing to reject

the plaint under Order VII Rule 11 of the CPC, the original defendants have preferred the present appeal.

2. The brief facts leading to this appeal are, that one Smt. Kailash Kapoor, a permanent resident of England, executed a will dated 16.05.1990 bequeathing thereunder all her assets to two of her grand-children. That the said Smt. Kailash Kapoor died in England on 10.09.2001. According to the appellants, they acted upon the said will and disposed of all the immovable properties of the aforesaid testatrix, possessed in India between 6.9.2000 to March, 2001. That after the death of late Smt. Kailash Kapoor, the High Court of Justice, District Probate Registry of Birmingham, England and Wales issued a probate in respect of the said will vide order dated 21.11.1997. It appears that thereafter in the year 2001, respondent no.2 herein, at whose instance the will was probated in England, applied for letters of administration for property situated in Delhi by filing a Testamentary Case under Section 228 of the Indian Succession Act (hereinafter referred to as the 'Act') being Testamentary Case No. 15 of 2001.

2.1 That the appellant herein filed I.A. No. 13895 of 2006 before the learned Single Judge of the High Court, praying to

reject the plaint under Order VII Rule 11 of the CPC on the ground that the said Testamentary Case under Section 228 of the Act, considering Article 137 of the Limitation Act, 1963, is barred by the law of limitation. It was the case on behalf of the appellants that though no limitation would apply seeking grant of probate so long as a person has not approached the court and will is probated, however, once the court at England and Wales had been approached and a probate had been granted, no petition for letters of administration could have been filed after a lapse of a period of three years. The said application was opposed by respondent no.2 herein – the original applicant. It was submitted that Article 137 of the Limitation Act would not apply.

3. The learned Single Judge vide order dated 24.09.2008 dismissed the said application and refused to reject the plaint under Order VII Rule 11 of the CPC by observing that Section 228 of the Act is akin to provisions of Section 222 and 276 of the Act and, therefore, when there is no period of limitation prescribed for submitting an application under Section 222 and/or Section 276 of the Act, for submitting an application under Section 228 of the Act, the period of limitation shall not be

applicable. Therefore, the learned Single Judge was of the opinion that Article 137 of the Limitation Act shall have no application.

4. Feeling aggrieved and dissatisfied with the order passed by the learned Single Judge rejecting the application to reject the plaint under Order VII Rule 11 of the CPC, the appellants herein approached the Division Bench of the High Court by way of F.A.O(OS) No. 11 of 2009. By the impugned judgment and order, the Division Bench of the High Court has dismissed the said appeal and has confirmed the order passed by the learned Single Judge rejecting the application under Order VII Rule 11 of the CPC.

5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Division Bench of the High Court, the appellants – applicants- original defendants have preferred the present appeal.

6. Mr. Divyakant Lahoti, learned Advocate has appeared for the appellants and Mr. M.A. Krishna Moorthy, learned Advocate has appeared for respondent no.2.

6.1 Mr. Divyakant Lahoti, learned Advocate appearing on behalf of the appellants has vehemently submitted that in the facts and circumstances of the case, both the Division Bench as

well as the learned Single Judge have materially erred in not rejecting the plaint under Order VII Rule 11 of the CPC.

6.2 It is vehemently submitted by the learned Advocate appearing on behalf of the appellants that Article 137 of the Limitation Act applies to any petition or application filed under any Act before a Civil Court. It is submitted that it is not confined to applications contemplated by or under the Code of Civil Procedure. It is submitted that therefore, Article 137 of the Limitation Act shall be applicable to the petitions under the provisions of the Indian Succession Act also.

6.3 It is vehemently submitted by the learned Advocate appearing on behalf of the appellants that till the will is unprobated, right to apply for probate is a continuous cause of action, therefore, Article 137 of the Limitation Act shall not be applicable on petitions for grant of probate and letters of administration of a will, filed under Section 276 of the Act. It is submitted that, however, once the will is probated, Article 137 of the Limitation Act will apply to any right which arises on account of probate of will. It is submitted that in such a case the right accrues on the date of grant of probate, and therefore, the period of limitation will commence from such date. In support of the

above submissions, learned Advocate appearing on behalf of the appellants has heavily relied upon the decision of this Court in the case of *Kunvarjeet Singh Khandpur v. Kirandeep Kaur*, reported in (2008) 8 SCC 463 (Paragraphs 15 & 16).

6.4 It is submitted by the learned Advocate appearing on behalf of the appellants that in the present case respondent no.2 had applied for grant of probate of will dated 16.05.1990, executed by late Smt. Kailash Kapoor, before the High Court of Justice, District Probate Registry, Birmingham (UK), which was granted by the High Court vide order dated 21.11.1997. It is submitted that therefore, the right to apply under Section 228 of the Act can be said to have accrued in favour of respondent no.2 on 21.11.1997. It is submitted that whereas respondent no.2 had preferred an application for grant of letters of administration of the aforesaid will dated 16.05.1990 under Section 228 of the Act, by a Probate Case No. 15/2001, after a lapse of period of three years as prescribed under Article 137 of the Limitation Act, i.e., on 28.02.2001. It is submitted therefore the application submitted by respondent no.2 under Section 228 of the Act is clearly barred by law of limitation and therefore the same is liable

to be rejected considering Order VII Rule 11(d) of the CPC – the applicant's application being barred by limitation.

6.5 It is further submitted by the learned Advocate appearing on behalf of the appellants that the learned Single Judge has materially erred in observing that Section 228 of the Act is akin to provisions of Sections 222 and 276 of the Act. It is submitted that while coming to the aforesaid conclusion, the learned Single Judge has not properly construed and/or considered the language of the two provisions, i.e., Section 228 and Section 276 of the Act. It is submitted that Sections 228 and 276 of the Act are totally different and operate under different circumstances. It is submitted that an application under Section 228 of the Act would be maintainable only in a case where a will has been proved/probated and deposited in a court of competent jurisdiction. It is submitted that therefore a valid application under Section 228 has to be necessarily filed on the basis of a will that has already been proved, authenticated and probated by a competent court in foreign jurisdiction. It is submitted that no such pre-condition or pre-requisite has been prescribed under Section 276 of the Act. It is submitted that unlike Section 228 of the Act, an application under Section 276 of the Act is to be filed

on the basis of a will which is un-probated and is being produced before the court for the first time.

6.6 It is further submitted by the learned Advocate appearing on behalf of the appellants that even the learned Single Judge has also materially erred in observing that the object and purpose of the two provisions is same, i.e., “to seek recognition in respect of will in question”. It is submitted that language of Section 228 of the Act makes it clear that a will in respect of which letters of administration is sought to be granted under that Section is an already recognized, proved or authenticated will, unless rebutted. It is submitted that whereas the will in question in an application under Section 276 of the Act is an un-recognised will which is being produced before the court for the first time and which is yet to be proved.

6.7 It is further submitted by the learned Advocate appearing on behalf of the appellants that even the scope of enquiry under Sections 228 and 276 of the Act is distinguishable and different. It is submitted that will under Section 276 of the Act is unauthenticated and yet to be proved. It is submitted that however the will under Section 228 of the Act is already proved and authenticated before a foreign court or a competent court

mentioned in Section 228 of the Act. It is submitted that therefore the scope of enquiry under Section 228 of the Act is a limited exercise.

6.8 It is further submitted by the learned Advocate appearing on behalf of the appellants that the Division Bench of the High Court has erred in its reasoning that Probate Case No. 15/2001 is not barred by limitation because it is the first Probate Petition filed in India, as the earlier Probate proceedings were in the Court of England and Wales. It is submitted that the Division Bench has materially erred in not properly appreciating the fact that the administration of an estate in probate is an *in rem* proceedings. It is submitted therefore the law of limitation is applicable even if the previous probate proceedings were initiated in a foreign jurisdiction as the same are *in rem*. It is submitted that therefore, both the learned Single Judge as well as the Division Bench have materially erred in dismissing the application filed by the appellants herein under Order VII Rule 11 of the CPC.

6.9 In support of his above submissions, learned Advocate appearing for the appellants has heavily relied upon the decision of the Punjab and Haryana High Court in the case of *Estate of*

Late Shri Gurcharan Dass Puri, reported in AIR 1987 P&H 122, as well as, the decision of the Patna High Court in the case of Ramanand Thakur v. Parmanand Thakur, reported in AIR 1982 Patna 87.

6.10 Making the above submissions and relying upon the aforesaid decisions of this Court, Punjab & Haryana High Court and Patna High Court, it is prayed to allow the present appeal and quash and set aside the orders passed by the learned Single Judge and the Division Bench and consequently reject the plaint under Order VII Rule 11(d) of the CPC.

7. The present appeal is vehemently opposed by the learned Advocate appearing on behalf of respondent no.2. It is vehemently submitted by the learned Advocate that in the facts and circumstances of the case, both the learned Single Judge and the Division Bench of the High Court have rightly held that an application under Section 228 of the Act would not be barred by limitation, inasmuch as Article 137 of the Limitation Act would not be applicable.

7.1 It is vehemently submitted by the learned Advocate appearing on behalf of respondent no.2 that the decision of this Court in the case of *Kunwarjeet Singh Khandpur (supra)* shall not

be applicable to the facts of the case on hand, as before this Court the petition was under Section 218/278 of the Act, however, in the present case, the petition is under Section 228/276 of the Act.

7.2 It is further submitted by the learned Advocate appearing on behalf of respondent no.2 that in the present case as such the probate proceedings before the court in England was never objected and there was no objection to the grant of probate. It is submitted that, in fact, the father of the appellants and respondent no.2 had given 'No Objection' to the said probate. It is submitted that in law, respondent no.2 is not obligated to apply for letters of administration in Delhi. It is submitted that in the case where the probate is not objected to, respondent no.2 had no reason to seek the same as well. It is submitted that therefore 'right to apply' under Article 137 of the Limitation Act, if any, never accrued against respondent no.2. It is submitted that both the learned Single Judge as well as the Division Bench have rightly dismissed the application under Order VII Rule 11(d) of the CPC and have rightly refused to reject the plaint.

7.3 Making the above submissions, it is prayed to dismiss the present appeal.

8. We have heard the learned counsel for the respective parties at length.

9. Two questions arise for consideration before this Court in the present appeal:

i) Whether Article 137 of the Limitation Act shall be applicable for application for grant of probate or letters of administration?;

ii) Whether the application under Section 228 of the Indian Succession Act shall be barred by the period of limitation prescribed under Article 137 of the Limitation Act, and whether the period of limitation for application under Section 228 of the Act would start to run from the date of grant of probate by a court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India?

10. Now so far as the first question is concerned, the same is now not *res integra* in view of the direct decision of this Court in the case of *Kunwarjeet Singh Khandpur (supra)* and in the case of *Krishan Kumar Sharma v. Rajesh Kumar Sharma* reported in (2009) 11 SCC 537. In both the aforesaid decisions, this Court has specifically observed and held that Article 137 of the Limitation Act shall be applicable to the petitions for grant of

probate or letters of administration also. Therefore, question no.1 is answered in the affirmative and it is observed and held that Article 137 of the Limitation Act, 1963 shall be applicable to the applications for grant of probate or letters of administration.

11. Now so far as question no.2 is concerned, it is the specific case on behalf of the appellants that the application submitted by respondent No.2 for letters of administration under Section 228 of the Act is barred by the law of limitation as provided under Article 137 of the Limitation Act. As observed and held hereinabove, Article 137 of the Limitation Act shall be applicable to the application for grant of probate or letters of administration submitted under Section 276 of the Act. Similarly, even the application under Section 228 of the Act shall also be covered by Article 137 of the Limitation Act. Therefore, it is observed and held that Article 137 of the Limitation Act shall be applicable to the applications under Section 228 of the Act also.

12. However, the next question which is posed for consideration before this Court is, when the 'right to apply' can be said to have accrued?

12.1 As per Article 137 of the Limitation Act, the period of limitation prescribed is three years and the three years begin to run when the 'right to apply' accrues. The crucial expression under Article 137 of the Limitation Act is 'right to apply'. It is the case on behalf of the appellants that in the present case the 'right to apply' for letters of administration had accrued in the year 1997, more particularly on 21.11.1997 when the High Court of Justice, District Probate Registry, Birmingham (UK) passed an order for grant of probate of will dated 16.05.1990 in favour of respondent no.2. It is the case on behalf of the appellants that therefore 'right to apply' under Section 228 of the Act had accrued in favour of respondent no.2 on 21.11.1997 and, therefore, respondent no.2 was required to submit an application for letters of administration within a period of three years from 21.11.1997. However, the application for letters of administration has been submitted on 28.02.2001, i.e., after a lapse of limitation of three years as prescribed under Article 137 of the Limitation Act and therefore Probate Case No. 15/2001 is clearly barred by law of limitation and, therefore, the same was required to be rejected in exercise of powers under Order VII Rule 11 of the CPC. It is also the case on behalf of the appellants that

so long as the will is not probated, the period of limitation would not start running. However, once the will is probated, in that case, the period of limitation as provided under Article 137 of the Limitation Act would begin to run from the date on which the will is probated.

13. We have heard the learned counsel for the respective parties.

14. At the outset, it is required to be noted that the relevant provisions for grant of probate or letters of administration with the will would be Section 276 of the Act.

Section 276 of the Act reads as under:

“276.Petition for probate – (1) Application for probate or for letters of administration, with the Will annexed, shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before this Court in which the application is made, with the Will or, in the cases mentioned in sections 237, 238 and 239, a copy, draft, or statement of the contents thereof, annexed, and stating—

- (a) the time of the testator’s death,
- (b) that the writing annexed is his last Will and testament,
- (c) that it was duly executed,
- (d) the amount of assets which are likely to come to the petitioner’s hands, and

(e) when the application is for probate, that the petitioner is the executor named in the Will.

(2) In addition to these particulars, the petition shall further state –

(a) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and

(b) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

(3) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.”

14.1 When an application under Section 276 of the Act is submitted for probate or for letters of administration with will, if any objection is raised by any body with respect to execution of the will, in that case, the applicant is required to prove the will and thereafter the will shall be probated and the court may pass an order for letters of administration. However, in a case where a will has been proved or deposited in a court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of India, in that case, as provided under Section 228 of the Act, when a properly authenticated copy

of the will is produced, the letters of administration may be granted in favour of such person. Meaning thereby, in such a situation, the will is not required to be proved again and it shall be conclusive. Therefore, Section 228 of the Act shall be an enabling provision and it confers an additional right to apply for letters of administration on the basis of such authenticated copy of the will. Therefore, as rightly observed by the learned Single Judge and the Division Bench that Section 228 is akin to Section 276 of the Act.

15. Now the next question which may arise for consideration would be, whether for an application for probate or letters of administration with will, the period of limitation would begin to run from which date?

16. While considering the issue involved, the decision of this Court in the case of *Kunvarjeet Singh Khandpur(supra)* is required to be referred to and considered. In the said decision, this Court considered the decision of the Bombay High Court in the case of *Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani* reported in AIR 1983 Bom. 268, as well as, the decision of the Madras High Court in the case of *S. Krishnaswami v. E. Ramiah*, reported in AIR 1991 Mad. 214. In the said decision, this

Court referred to and considered paragraph 17 of the decision of the Madras High Court in the case of *S. Krishnaswami(supra)*, which reads as under:

“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 letters 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 Article 137 if the Limitation Act, 1963.”

16.1 This Court approved the observations made in paragraph 17 by the Madras High Court in the case of *S. Krishnaswami (supra)* insofar as the nature of the petition for grant of probate or letter of administration is concerned. However, this Court did not agree with the finding that the application for grant of probate or letters of administration is not covered by Article 137 of the Limitation Act.

16.2 In the aforesaid decision, this Court also considered and referred to paragraph 16 of the decision of the Bombay High Court in the case of *Vasudev Daulatram Sadarangani (supra)* in paragraph 15, which reads as follows:

“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."

This Court did not agree with/approve conclusion (b).

However, approved conclusion (c), reproduced hereinabove.

17. Therefore, considering the law laid down by this Court in the case of *Kunwarjeet 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 *Kunwarjeet 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.

18. Applying the law laid down by this Court in the aforesaid decision and the observations made hereinabove, the submission on behalf of the appellants that Probate Case No. 15/2001 filed by respondent no.2 for letters of administration under Section 228 of the Act, read with Section 276 of the Act is barred by law of limitation, cannot be accepted. At this stage, it is required to be noted that even in the plaint, it is specifically pleaded that after passing away of the father of the parties in the

year 2000, the appellants started intermeddling with properties bequeathed to respondent no.2, which were situated in Delhi and, therefore, left with no option, he was compelled to apply for letters of administration. Therefore, even as per the pleadings in the application, the cause of action started from the date on which the appellants started intermeddling with the properties bequeathed to respondent no.2, after passing away of the father of the parties in the year 2000. Therefore, in the facts and circumstances of the case, both the learned Single Judge and the Division Bench have rightly refused to reject the application in exercise of powers under Order VII Rule 11 of the CPC. In the facts and circumstances of the case and as observed hereinabove, it cannot be said that the application for letters of administration was clearly barred by the law of limitation which was required to be rejected in exercise of powers under Order VII rule 11(d) of the CPC. We are in complete agreement with the view taken by the High Court.

19. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

.....J.
[L. NAGESWARA RAO]

NEW DELHI;
APRIL 29, 2019.

.....J.
[M.R. SHAH]