



NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

2025 INSC 227

CIVIL APPEAL NOS. _____ OF 2025
(@ SPECIAL LEAVE PETITION (C) NOS.1073-1074 OF 2023)

JAI RAM

...APPELLANT(S)

VERSUS

SOM PRAKASH & ANR. ETC.

....RESPONDENT(S)

J U D G M E N T

Leave granted.

2. Briefly stated the facts of the case are that one Satwanti Devi was the absolute owner of the property in question i.e., a single storied building situated in Bagh Rao Ji, Khasra No. 157/48-51/2, Block A/68, Double Phatak Road, Delhi. She executed a registered will dated 01.01.1991 in favour of Som Prakash (the respondent No.1 herein), her nephew. However, it is alleged that this will dated 01.01.1991 was subsequently revoked through a registered revocation deed dated 26.09.1995. Thereafter, Satwanti Devi is said to have executed another will on 30.01.1996 in favour of Jai Ram (the appellant herein), who was a tenant in the property in question. Satwanti Devi passed away issueless on 30.12.1996.

3. Thereafter, respondent No.1 filed a civil suit in Suit No. 91 of 1997 seeking the relief of permanent injunction against the appellant herein in respect of the property in question which was subsequently dismissed as withdrawn. In the meantime, the

appellant filed a Probate Petition bearing No. 136 of 1997 on the basis of the will dated 30.01.1996 and the same was dismissed for default.

4. Later, respondent No.1, on the basis of Will Deed dated 01.01.1991, filed a probate petition No. 382 of 1997 before the Court of District Judge, Delhi. By order dated 01.09.1999, the learned District Judge granted Letters of Administration of the property in question in favour of respondent No.1.

5. Thereafter, respondent No.1 sold the property in question in favour of one Raj Kumar Choudhary in the year 2008. Subsequently, Raj Kumar Choudhary filed a civil suit No. 261 of 2009 seeking possession, permanent injunction and recovery of damages against the appellant herein. By judgement dated 03.02.2012, the suit was decreed *ex parte* in favour of Raj Kumar Choudhary who has thereafter filed an execution petition.

6. During the pendency of this litigation, the appellant claims to have received the summons in the year 2013, at which time he discovered that Letters of Administration had already been granted to respondent No.1 concerning the property in question.

7. Being aggrieved, the appellant filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 ("Code" for short) in Suit No. 261 of 2009 on 27.02.2013 seeking for setting aside the *ex parte* decree and the same was allowed by order dated 31.10.2019.

8. Thereafter, the appellant also filed an application Misc No. 61012 of 2016 before the learned District Judge, Delhi seeking for revocation of Letters of Administration dated 01.09.1999 granted in favour of respondent No.1 in respect of will dated 01.01.1991. The learned District Judge by order dated 20.12.2017 allowed the miscellaneous application filed by the appellant under Section 263 of the Indian Succession Act, 1925 (for short "1925 Act") and revoked the grant of Letters of Administration dated 01.09.1999 in respect of will dated 01.01.1991 in favour of respondent No.1. The learned District Judge held that the will dated 01.01.1991 in favour of respondent No.1 had been revoked by way of a revocation deed dated 26.09.1996 and a second will dated 30.01.1996 was executed by the testator in favour of the appellant herein.

9. Being aggrieved, respondent No.1 approached the High Court of Delhi by way of filing FAO No. 223 of 2018. By the impugned order dated 10.10.2022, the High Court allowed the appeal preferred by respondent No.1 and set aside the order dated 20.12.2017. The High Court observed that the appellant herein filed the revocation application beyond the period of limitation. Hence the instant appeal has been filed.

10. We have heard learned counsel for the appellant and learned senior counsel for the respondents and perused the material on record.

11. During the course of submissions, learned counsel for the appellant contended that the High Court was not right in setting

aside the order dated 20.12.2017 passed by the District Court on an application filed by the appellant herein under Section 263 of the 1925 Act seeking revocation of the grant of probate in favour of the appellant/Som Prakash in Probate Case No.382/1997 titled as Som Prakash vs. The State by Order dated 01.09.1999. He contended that to said application, there was no objection filed in Misc. No.61012/2016 before the concerned District Court. There was no objection raised with regard to the application being belated. Consequently, the learned District Judge considered the said application on merits and granted relief by order dated 20.10.2017. However, in the appeal(s) filed as against the said order, a contention was raised for the first time before the High Court to the effect that the application filed by the appellant herein under Section 263 of the 1925 Act was belated and therefore was not maintainable. He submitted that the High Court was not right in accepting the said contention, firstly, because there was no such plea made before the District Court and secondly, no evidence was let in on the plea regarding limitation before the District Court. Consequently, the impugned order setting aside the order of the District Court is erroneous as the issue of limitation is a mixed question of law and facts. He therefore submitted that at best the respondents could only have had a consideration of their appeals on merits and not on the issue of limitation. He, therefore, submitted that the impugned order may be set aside and the order of the District Court may be restored.

12. *Per contra*, learned senior counsel appearing for the respondent(s) submitted that although the contention regarding limitation was not raised before the District Court in the application filed under Section 263 of the 1925 Act by the appellant herein, nevertheless, it was the duty of the District Court to have considered the said aspect and on a consideration of Article 137 of the Limitation Act, 1963, it would be evident that the application filed by the appellant herein seeking revocation of grant of probate under Section 263 of the 1925 Act was highly belated and hit by Article 137 of the Limitation Act. He, therefore, submitted that the High Court rightly appreciated the contentions of the respondents herein and consequently set aside the order of the District Court and there is no merit in these appeals.

13. We have considered the arguments advanced at the Bar in light of the facts of the case as well as the contentions raised by learned counsel for the respective parties.

14. It is noted that there was no objection raised to the application being filed by the appellant herein under Section 263 of the 1925 Act as being hit by Article 137 of the Limitation Act. Had such an objection being raised by the respondents expressly possibly the District Court would have raised the issue in that regard and evidence would have been let in by the parties. However, in the absence of such a plea raised by the respondents herein, the District Court proceeded to consider the application

filed under Section 263 of the 1925 Act on its merits and allowed the said application.

15. Being aggrieved by the said order, the respondents herein preferred the appeal(s) before the High Court. We find that the High Court was not right in setting aside the order of the District Court on the ground that the application filed by the appellant herein under Section 263 of the 1925 Act was hit by Article 137 of the Limitation Act and thereby setting aside the order of the District Court passed on the application filed by the appellant herein. This is more so because there was no objection raised by the respondents herein before the District Court. Consequently, in the absence of any averment, no issue was raised and no evidence was let in on that aspect of the matter. But, in the absence of such a plea or evidence on the issue of limitation, the High Court could not have set aside the order of the District Court.

16. In the circumstance, we set aside the order of the High Court dated 10.10.2022 and restore FAO Nos. 223/2018 and 239/2018 on the file of the High Court.

17. The High Court is requested to consider the said appeals purely on merit and without going into the question of limitation as there is no pleading on this aspect and consequently no issue raised or evidence being let in before the District Court.

18. It is needless to observe that all contentions on the merits of the appeal(s) are reserved to be raised by the respective parties.

19. The High Court shall consider the appeals as expeditiously as possible and in accordance with law.

20. The Appeals are allowed and disposed of in the aforesaid terms. No costs.

Pending application (s) shall stand disposed of.

.....J.
[B.V. NAGARATHNA]

.....J.
[SATISH CHANDRA SHARMA]

NEW DELHI;
FEBRUARY 03, 2025.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 1073-1074/2023

[Arising out of impugned final judgment and order dated 10-10-2022 in FAO No. 223/2018 10-10-2022 in FAO No. 239/2018 passed by the High Court of Delhi at New Delhi]

JAI RAM

Petitioner(s)

VERSUS

SOM PRAKASH & ANR. ETC.

Respondent(s)

[TO BE TAKEN UP IMMEDIATELY AFTER FRESH CASES]

IA No.8735/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

Date : 03-02-2025 These petitions were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE SATISH CHANDRA SHARMA

For Petitioner(s) :Mr. Rakesh Uttamchandra Upadhyay, AOR
Ms. Aarti U. Mishra, Adv.
Mr. Harsh Som, Adv.

For Respondent(s) :Mr. Sanjeev Anand, Sr. Adv.
Mr. Sanjay Jain, AOR
Ms. Kajal Chandra, Adv.
Mr. Hatneimawi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The Appeals are allowed and disposed of in terms of the
signed non-reportable judgment.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)
COURT MASTER (NSH)

(signed non-reportable judgment is placed on the file.)