

Kunvarjeet Singh Khandpur vs Kirandeep Kaur & Ors on 3 April, 2008

Equivalent citations: AIR 2008 SUPREME COURT 2058, 2008 AIR SCW 2726, (2008) 66 ALLINDCAS 140 (SC), 2008 (66) ALLINDCAS 140, 2009 (1) LANDLR 21, 2008 (6) SCALE 112, 2008 (5) SRJ 465, 2008 (8) SCC 463, (2008) 6 ALLMR 1 (SC), (2008) 2 CLR 16 (SC), (2008) 2 MARRILJ 19, (2008) 2 CTC 850 (SC), 2008 (2) MARR LJ 19, 2008 (6) ALL MR 1 NOC, (2008) 105 REVDEC 262, (2008) 1 CURLJ(CCR) 47, (2008) 3 CIVILCOURTC 238, (2008) 2 GUJ LH 591, (2008) 1 HINDULR 639, (2008) 2 KER LT 296, (2008) 2 LANDLR 21, (2008) 4 MAD LJ 239, (2009) 1 RECCIVR 806, (2008) 3 ICC 263, (2008) 6 SCALE 112, (2008) 2 UC 865, (2008) 71 ALL LR 774, (2008) 2 ALL WC 2024, (2008) 2 CAL HN 197, (2009) 1 LANDLR 21

Author: Arijit Pasayat

Bench: Arijit Pasayat, P.Sathasivam

CASE NO.:

Appeal (civil) 2464 of 2008

PETITIONER:

Kunvarjeet Singh Khandpur

RESPONDENT:

Kirandeep Kaur & Ors

DATE OF JUDGMENT: 03/04/2008

BENCH:

Dr. ARIJIT PASAYAT & P.SATHASIVAM

JUDGMENT:

J U D G M E N T REPORTABLE CIVIL APPEAL NO 2464 of 2008 (Arising out of SLP(C) No. 12488/2006) Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Delhi High Court dismissing the Civil Revision Petition filed by the appellant. By the impugned order the view expressed by learned Additional District Judge deciding a preliminary issue was upheld. Learned Additional District Judge had held that the petition for grant of Letters of Administration of Will

dated 9.9.1991 purportedly executed by late Sh. Mohinder Singh Khandpur was not barred by limitation and was maintainable.

3. The factual position needs to be noted in a nutshell as an interesting question of law is involved for the resolution of which factual details are not relevant.

4. Appellant's stand all through was that the testator- Mohinder Singh Khandpur has expired on 5.10.1995 and the petition under Section 278 of the Indian Succession Act, 1925 (in short the 'Act') for grant of Letters of Administration was filed on 7.8.2002, and therefore, the same was barred by limitation. Learned Additional District Judge after referring to Section 232 of the Act held that the cause of action in favour of the respondent Nos. 1 to 3 had arisen only when the Probate Petition No. 22 of 1996 filed by Ms. Nirmal Jeet Kaur- respondent No. 5 was withdrawn on 9.8.1999 and therefore the Petition for grant of Letters of Administration filed on 7.8.2002 was filed within three years and therefore was within time.

5. The order was challenged before the High Court. Appellant's stand was that Article 137 of the Limitation Act, 1963 (in short 'Limitation Act') had application. It was submitted that Article 137 of the Limitation Act has clear application and the application for grant of letters of Administration was filed beyond the speculated time.

6. The High Court observed that Article 137 of the Limitation Act does not apply to proceedings or grant of Probate/Letters of Administration and therefore the view of the learned Additional District Judge was correct. Reliance was placed on a Division Bench of the Delhi High Court in the case of S.S. Lal v. Vishnu Mittal Goel [112 (2004)DLT 877]

7. The High Court noted that there was no dispute that Mrs. Nirmal Jeet Kaur had filed a Probate Petition in the court of District Judge which was numbered as Probate Case No. 22 of 1996 for grant of Probate in respect of will dated 9.9.1991 after the death of Mohinder Singh Khandpur. The said petition was withdrawn on 9.8.1999. An application was filed by the present respondent Nos. 1 to 3 for being transposed as applicants in the application but the said application was dismissed with right and liberty granted to the present respondent nos. 1 to 3 to initiate appropriate proceedings.

8. In support of the appeal, learned counsel for the appellant submitted that the High Court's view that Article 137 of the Limitation Act was not applicable is incorrect. It is submitted that right to apply in terms of Article 137 accrued when there was a dispute about genuineness of the Will. Therefore it was submitted that the view of the High Court is clearly unsustainable.

9. On the other hand, learned counsel for the respondents submitted that the right to apply for grant of Letters of Administrations is a continuing right and the starting point is the happening of an event. In the instant case, after the petition for grant of probate was withdrawn the event arose. Further while permitting withdrawal, liberty was granted to the present respondent nos. 1 to 3 to initiate appropriate proceedings.

10. Two questions need to be addressed in this appeal. Firstly, about the applicability of Article 137 of the Limitation Act and secondly even if it is applicable whether the petition was within time.

11. 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*² 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."

12. 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.

13. 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*³ 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."

14. 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."

15. 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).

16. 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".

17. The conclusion 'b' is not correct while the conclusion 'c' is the correct position of law.

18. In view of the factual scenario, the right to apply actually arose on 9.8.1999 when the proceedings were withdrawn by Smt. Nirmal Jeet Kaur. Since the petition was filed within three years, the same was within time and therefore the appeal is without merit, deserves dismissal, which we direct but in the circumstances without any order as to costs.