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

\+ RFA 277/2026, CM APPL. 18905/2026, CM APPL. 18906/2026

BIMLA

W/o Late Mahavir Singh,

R/o B-169, Opposite Pole No. 136,

Mohalla Kaba, Near Shiv Mandir,

VPO-Chhawla, Delhi-110071 .....Appellant

Through: Dr. Adv Manish Aggarwal, Mr. Vishal Arun Mishra, Ms. Rupali Panwar, Ms. Namrata Sharma, Mr. Amit Ambawat and Ms. Shilpa Kumari, Advocates.

Versus

1. STATE
Through Chief Secretary
South West, Old Tax Terminal Building,
Kapasera, New Delhi
Email-standingcounselgnctd@gmail.com

2. SH. JAGDISH SINGH
S/o Late Kehri Singh
Rio H. No. 562, Krishna Kuteer,
Sector 31, Near Jalvayu Vihar,
Gurugaon, Haryana

3. SH. SAMEER SINGH
S/o Sh. Jagdish Kumar
Rio H. No. 562, Krishna Kuteer,
Sector 31, Near Jalvayu Vihar,
Gurugaon, Haryana

4. SH. BIR SINGH
S/o Late Gun1 Prakash
R/o VPO Dhansa, New Delhi

5.SMT NIRMALA
D/o Late Gmu Prakash
R/o H No. B-168,
Panna Gaba, Near Shiv Mandir,
VPO- Chhawla, New Delhi .....Respondents

Through: Ms. Rachita Garg, Adv, Ms. Varsha, Adv for Respondent No.1/State.
Mr Tushar Sannu, Mr Parvin Bansal, Advocates for Respondent NSES.
Mr Akash Vajpai, Ms Pallavi Awasthi and Ms Vaibhavi Mittal, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R

% **25.03.2026**

1. The present Regular First Appeal under Section 96 CPC has been filed on behalf of the Appellant, for setting aside the Judgment and Decree dated 09.01.2026, whereby the **Suit of the Plaintiff has been dismissed on the preliminary objection of being barred by limitation**.

2. The *facts in brief* are that, Shri Kehri Singh (deceased) was the recorded bhumidar of agricultural land ad-measuring 26 bighas and 16 biswas, in village Dhansa. He had served in the Army on the post of Junior Commissioner Officer and thereafter, he retired. On 27.06.1990, Kehri Singh made a Complaint against Respondent No.2 regarding the ordeal faced by him at his hands to the Commandant, IMA. The Department responded *vide* Letter dated 03.07.1990, to the Complaint of Kehri Singh.

3. Shri Kehri Singh executed a handwritten Will on 17/18.03.1991 in favour of the Appellant, Respondent No.3 and Respondent No.4 in the presence of witnesses, namely Sh. Sher Singh and Sh. Hari Rana, without any pressure and coercion. The witnesses had duly signed every page of the Will. Shri Kehri Singh passed away on 16.06.1993, leaving behind his sons, namely Shri Guru Prakash (since deceased), Shri Om Prakash (since deceased) and Shri Jagdish Kumar (Respondent No.2). The Appellant herein is the daughter of Shri Om Prakash.

4. After the demise of Shri Kehri Singh, Shri Guru Prakash filed an Application under Section 64 Delhi Land Reforms Act seeking mutation of the Suit property in his name and of Respondent No.2, without disclosing the existence of the Will in respect of the Suit property. The Tehsildar, Najafgarh *vide* Order dated 09.07.1996, effected the mutation in favour of the Respondents. The Appellant was not aware about the same, as the mutation had been carried out behind her back.

5. The Appellant thereafter, preferred an Application under Section 185 Delhi Land Reforms Act, 1954 before the Deputy Commissioner, South West, Delhi on 22.02.2012, along with an Application for Condonation of Delay. However, the Application was dismissed by learned Deputy Commissioner *vide* Order dated 27.06.2012, on the ground of it being barred by limitation.

6. The Appellant thereafter, preferred an ***Appeal bearing No.283 of 2012 before the learned Financial Commissioner, Delhi.*** The said Appeal was subsequently renumbered as Case No.308 of 2017. During the pendency of the Appeal before the learned Financial Commissioner, Late Shri Sher Singh, who was one of the attesting witnesses to the aforesaid Will, on

08.01.2014, in his statement admitted that the Will in question had been executed by Late Shri Kehri Singh in respect of the subject property.

7. The ***Financial Commissioner, vide Order dated 20.07.2023, dismissed the Appeal*** by observing that the question of legality and validity of a handwritten unregistered Will, needs to be examined by a competent Civil Court.

8. The Appellant then filed ***PC No.60/2023 seeking grant of Probate in respect of the Will.***

9. A ***Written Statement*** was filed by the Respondent, to which a ***Replication*** was filed.

10. The learned District Judge, *vide* impugned Order dated 09.01.2026, **dismissed the Probate Petition on the sole ground of it being barred by limitation.**

11. The **impugned Order is challenged on the ground** that it has not been considered that the *question of limitation*, is a mixed question of fact and law, and the Court ought to have considered the documents relied upon by the Appellant.

12. The Hon'ble Supreme Court, in the case of <u>*Kunvarjeet Singh Khandpur vs. Kirandeep Kaur*</u> (2008) 8 SCC 463, stated that the right to apply for Probate is a continuous right, not contingent on the date of the testator's death but on the moment when the obligation to seek acknowledgment from the Court arises. The determination of obligation is based on the encroachment of the Executor's right by another party, leading to the accrual of the right to apply. The withdrawal of Probate proceedings and subsequent filing of a Petition for Letter of Administration, are identified as events triggering this accrual of the right to apply.

13. The learned District Judge miserably failed to consider that the sole stand of the Respondent was that the cause of action for filing the present Petition would begin from the 11.01.2013, when the Respondent filed the reply in the Second Appeal before the learned Finance Commissioner, wherein the allegation regarding the genuineness of the Will was raised is wrong. It is contended that the *cause of action under Article 137 Limitation Act would begin from the date when final Order dated 20.07.2023 was passed by the learned Finance Commissioner*, whereby it was observed that the validity of the Will can only be determined by a Civil Court.

14. Since the judgment of the learned Financial Commissioner was passed on 20.07.2023, which directed the Petitioner to approach a competent Civil Court for seeking probate of the unregistered handwritten Will, the cause of action for filing the Probate Petition accrued then; hence, the Petition was instituted well within the period of limitation.

15. Reliance in this regard has also been placed on *Hanuman Prasad Agarwal vs. Satyanarain Agarwal* AIR 2020 Cal 246, wherein it has been reiterated that under Article 137 Limitation Act, the right to apply accrues when there is denial of right prompting the need to assert it.

16. The Appellant further stated that she had been diligently prosecuting her rights before the Revenue Authorities, including the Deputy Commissioner, to challenge the Mutation on the basis of Will and thus, the period spent upon in such Forums, is liable to be excluded under Section 14 Limitation Act, which provides any prosecution with *due diligence in good faith*, has to be considered where the proceedings failed due to defect of jurisdiction. The cause of action arose only on 20.07.2023, when the learned Financial Commissioner dismissed the Appeal, against the Mutation.

17. The ***learned Counsel on behalf of the Respondent who has appeared on Notice,*** has vehemently opposed the Appeal and has submitted that the benefit of Section 14 as asserted by the Appellant, cannot be granted in the given situation. It has been rightly observed by the learned district Judge that the cause of action at best arose in 2013, and the limitation for filing the Probate expired after three years.

18. It is further submitted that the Appellant pertinently failed to disclose in the entire Probate, about the date when she came to know about the Mutation. Thus, the Probate is patently barred by limitation and has been rightly rejected.

Submissions heard and record perused.

19. In the present case, Plaintiff/Appellant has relied upon the handwritten Will dated 17/18.03.1991 of Shri Kehri Singh, who died on 16.06.1993. According to the Appellant, Respondent No.2 was not given any share in the agricultural land. The father of Respondent No.4 and Respondent No.5, *initiated mutation proceedings* in respect of the said land, in his own favour and of Respondent No.2, surreptitiously and with deliberate concealment of the Will. The aforementioned Mutation Order was passed on 09.07.1996.

20. The aforesaid act of seeking and obtaining mutation, in disregard of the alleged Will, is clearly inconsistent with the rights claimed by the Appellant under the Will. While the Appellant has asserted that the mutation proceedings were conducted without her knowledge, it is not in dispute that she had acquired knowledge thereof, prior to filing the First Appeal on 22.02.2012, after which she preferred proceedings before the Deputy Commissioner challenging the mutation. Thus, at least from that date, the

Appellant was fully aware that her claimed rights under the Will, were not being recognised and were being disputed and denied by the Respondents.

21. Learned *Deputy Commissioner* decided the matter against the Appellant, against which ***Second Appeal*** was preferred before the learned ***Financial Commissioner***. In these proceedings, Respondents filed a Reply dated 11.01.2013, wherein the genuineness of the Will was categorically disputed and the document was described as forged and fabricated. This constitutes a clear and unequivocal denial of the Appellant's asserted rights under the Will, to her knowledge.

22. ***Thus, on that date, Appellant was unequivocally put to Notice of the Respondents' rejection of the validity of the Will and consequently, of the denial of her Rights thereunder.***

23. Learned District Judge has rightly referred to *Pamela Manmohan Singh vs. State*, 83 (2000) DLT 469, wherein it was held that the period of three years would commence, at the very least, from the date on which a legatee under a Will, could reasonably be attributed with knowledge that the Will forming the basis of his or her claim, was likely to be disputed by other persons, particularly the natural heirs of the testator.

24. Similar observations were also made in *Pratap Singh vs. State*, 2010 SCC OnLine Del 2715 and in *Geeta Tandon vs. Sunil Gomber*, 2023 SCC OnLine Del 2067, wherein it has been consistently held that though the right to apply for Probate is a continuing right in the absence of dispute, but once the Will is disputed and such dispute is within the knowledge of the propounder, the period of limitation under Article 137 begins to run.

25. Therefore, the settled legal position is that the right to seek grant of Probate or Letter of Administration, is a continuing right so long as the Will

remains undisputed. The obligation to approach the Court arises only when the validity of the Will is challenged or denied. Once such a dispute is raised and comes to the knowledge of the legatee or propounder, the limitation under Article 137 of the Limitation Act begins to run and probate proceedings must be instituted within three years from the date of acquiring knowledge of the dispute. ***Therefore, the right continues in the absence of challenge, but becomes time-bound upon awareness of contestation.*** The propounder must institute Probate proceedings within three years, from the date of acquiring knowledge of such dispute.

26. In the present case, the Respondents filed a Reply dated 11.01.2013 before the learned Financial Commissioner, expressly disputing the genuineness of the Will. This constituted a clear denial of the Appellant's asserted rights under the Will, and from this date, the Appellant was unequivocally aware that the Will was contested. Consequently, the period of limitation under Article 137 commenced from 11.01.2013. The Probate petition was, however, filed only on 29.03.2023, nearly a decade later, and is therefore clearly barred by limitation.

27. The Appellant has further relied on the case of *Kunvarjeet Singh Khandpur* (Supra), and *Hanuman Prasad Agarwal* (Supra), to contend that right to seek Probate/Letter of Administration, is a continuing right. However, as noted above, if there is no dispute, then the right is indeed a continuing one but once a dispute is raised, then the limitation is of three years from the date when the Will is challenged. Therefore, these judgments are of no assistance to the Appellant.

28. The Appellant has further referred to the Affidavit dated 08.01.2014 filed by the attesting witness Shri Sher Singh, asserting the genuineness of

the Will. However, this Affidavit itself demonstrates that a dispute had infact, arisen and that the Appellant felt compelled to assert the validity of the Will. This confirms that the contest existed in 2013–2014, further underscoring that the Probate petition filed in 2023 is **patently barred by limitation**.

29. The plea of exclusion under Section 14 of the Limitation Act is untenable in the facts of the present case. Section 14 permits exclusion of time spent in bona fide prosecution of a prior civil proceeding, pursued with due diligence and in good faith, which fails on account of defect of jurisdiction or other cause of a like nature. In the present case, the earlier proceedings before the Revenue Authorities were not dismissed for want of jurisdiction, but on the ground of limitation and on merits. Therefore, the essential pre-condition for invoking Section 14 is not satisfied. Moreover, the Appellant was aware of the denial of her rights under the Will at least since 11.01.2013, and thus cannot seek to extend the limitation period by relying upon proceedings that were neither incompetent for want of jurisdiction nor pursued within the prescribed limitation. Accordingly, the benefit of Section 14 is not available.

30. The Appellant has failed to show any cogent reason to question the impugned Judgment. The impugned judgment, therefore, does not suffer from any infirmity, warranting interference.

31. There is no merit in the Appeal, which is hereby, **dismissed** along with pending Applications.

NEENA BANSAL KRISHNA, J

MARCH 25, 2026/va/*R*