

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.1399 OF 2010**

RAMESH NIVRUTTI BHAGWAT

...APPELLANT

VS.

DR. SURENDRA MANOHAR PARAKHE

...RESPONDENT

**J U D G M E N T**

**S. RAVINDRA BHAT, J.**

1. This appeal by special leave questions the decision of the Bombay High Court affirming the rejection of an application for revocation of letters of administration granted to the respondent, (hereafter “the LOA holder”), in respect of the will of deceased Mrs. Antoinette Bendre Bhagwat (hereafter “Antoinette”).

**2.** Antoinette was the wife of Balaji Balwant Bhagwat (hereafter “Balaji”). The couple were permanent residents of California, US and were US citizens. Balaji predeceased Antoinette, bequeathing all properties to her. She died on 23.1.1981 at Alhambra, Los Angeles County, California. U.S.A. In her last will dated 24.6.1977, she bequeathed her properties to her husband. The will stipulated that in the event of Balaji predeceasing her, the property was to vest in an *inter - vivos* trust. The trust was created by the testatrix and her husband by a deed dated 24.6.1977. The Executor had filed a petition for probate of Antoinette’s will (Probate Case No. 662463 in the Superior Court of the State of California for Los Angeles County). It was probated on 26.2.1981.

**3.** On 02.11.1982, Dinkar Sambhaji Patole (hereafter “Patole”) as constituted attorney of the original executor’s successor, applied to the Bombay High Court (Petition No. 915/ 1982) for grant of letters of administration with an authenticated copy of the will annexed to the petition, in respect of the property and credit of the deceased, in the State of Maharashtra. Patole died

during the pendency of proceedings which were continued by Dr. Surendra Manohar Parakhe who was duly brought on record. letters of administration were granted by the High Court by order dated 24.11.1994.

**4.** Ramesh Nivrutti Bhagwat, the appellant (hereafter “Ramesh”) claiming to be a relative of Antoinette’s husband, took out a notice of motion (No. 912 of 1997) in Petition No. 915/ 1982 (i.e. the original administration proceeding). That application (notice of motion) was allowed to be withdrawn, with liberty to initiate appropriate proceedings. Ramesh claimed that neither he nor his father, nor any other family member had notice of the administration petition. It was alleged that only when the respondent LOA holder applied for mutation of name of Rural Gospel and Medical Mission of India, on the basis of the letters issued by the court, did he come to know about it after making inquiries in the office of the High Court. Ramesh claimed that on 29.03.1997 he learnt that the respondent had obtained letters of administration in respect of the will of Balaji by filing another Petition No. 912/ 97. This was allowed to be withdrawn on

01.04.1998. He then filed an application for revocation on 29.07.1999.

**5.** Ramesh alleged that the LOA holder had not complied with the direction of the court granting letters of administration by preparing an inventory of the property and credits within six months, and further that he did not render accounts of the property and credits within one year. The other allegation was that letters of administration were obtained by suppression of material facts and by misleading the Court. The appellant alleged that his uncle, late Balaji, had established the Bhagwant Mukti Ashram and the name of the Ashram was mutated in the revenue records in respect of the property. The testatrix's will and that of Balaji clearly showed that their intention was to use the property for charitable purposes. The appellant Ramesh also alleged that the Superior Court of California granted probate to John Graf Klotzle who was named as the successor by the earlier executor (Carl Kinsinger) and that the said executor appointed the respondent as his attorney for obtaining letters of administration. Therefore, it was alleged that the LOA holder was not appointed executor by the will. It was alleged that the probate was obtained

from the Superior Court of California without notice to the petitioner or his father or any other relative. It was alleged to have been obtained by fraud and suppression of material facts and the said decision is given contrary to, and ignoring the law in force in India.

**6.** The LOA holder opposed the application for cancellation of probate on several grounds, including that the petition was barred by the law of limitation, inasmuch as such applications are covered by Article 137 of the Limitation Act, 1963, and the petition ought to have been presented within three years. It was urged that even if the period of pendency of notice of motion were excluded, the petition for cancellation of probate was barred by time. It was also urged that the appellant had no *locus standi* to apply for revocation of the grant as he had no interest in the estate of the deceased on intestacy. It was alleged that the letters of administration granted by the court was an ancillary grant under Sections 228 and 271 of the Indian Succession Act, 1925 and could not be revoked as long as the original grant subsisted.

The Superior Court of California which probated the will followed the necessary procedure.

7. A learned Single Judge of the Bombay High Court relied on *Rukminidevi v. Narendra Lal Gupta*, (1985) 1 SCC 144, to say that if a party does not contest proceedings for grant of probate, it cannot be permitted to question the validity of the will by a collateral attack in different proceedings. The court held that the grant being *in rem*, binds not only persons who are parties but also others who are not parties to the proceedings, whether they had notice or not. The probate granted by the competent court is conclusive on the validity of the will unless revoked in accordance with law, and no evidence can be admitted to impeach it except in the proceedings for revocation. Thus, since the original probate granted by the California court was not challenged by appropriate proceedings and since the probate was in force, there is no question of revoking an ancillary grant which was merely to give effect to the original probate of the will granted by the California court. The Single Judge also held that since the letters of administration were granted in ancillary proceedings on

25.11.1994 and the petition for its revocation was filed on 21.7.1999, proceedings were time barred. The Single Judge held that such proceedings are covered by Article 137 of the Limitation Act, 1963, which requires the application to be filed within 3 years from the date when the right to apply accrues. Even if the period spent on the notice of motion from 29.3.1997 to 1.4.1998 were excluded from consideration, the petition for revocation was filed beyond the period of three years from 25.11.1994, as the three year period expired on 24.11.1997, and the revocation petition was filed on 21.7.1999. The court, after excluding the period of seven months and two days spent in pursuing the remedy of notice of motion, held it to be hopelessly barred by time. The Single Judge also held that the appellant Ramesh was not an heir of the deceased - a fact admitted by him in the rejoinder affidavit. In view of these facts, the application for revocation was rejected. Ramesh appealed unsuccessfully to the Division Bench. The judgment of the Division Bench rejected the sole contention made in the appeal, that the law prescribed no limitation for an application of cancellation of letters of administration.

**8.** Learned counsel for the appellant argued that Ramesh had no notice of the proceedings initiated for grant of letters of administration and that he and his father (Balaji's brother) became aware of the fact only when the properties were sought to be mutated in the revenue records, pursuant to the letters granted. It was submitted that the limitation for filing an application should be calculated from the date of knowledge of the grant, and not the date of grant.

**9.** Counsel for the respondent, on the other hand, urged this court to dismiss the appeal. It was contended that the letters of administration in respect of the will in question dated 24.06.1977 were granted by the court after due notice and citation; proceedings for their grant were *in rem*. Consequently, when granted, the letters of administration operated against the entire world. The cause of action, if any, for seeking their cancellation, therefore, accrued from the date of their grant, and not on the date of knowledge of grant, in the absence of any allegation of fraud.

**10.** As evident, the appellant's application for cancellation of the letters of administration was rejected concurrently. The only question urged is whether there is any limitation prescribed and if not, whether the residuary provision (Article 137 in the schedule to the Limitation Act, 1963 – hereafter “the Act”) applies and for which the starting point of limitation is the date of alleged knowledge of the grant of letters of administration.

**11.** The relevant provisions dealing with recognition in respect of grant of probate, of letters of administration in respect of the probate granted, and cancellation of probate (or letters of administration) of the Indian Succession Act, 1925, read as follows:

***“Section 228 - Administration, with copy annexed, of authenticated copy of Will proved abroad***

*When a Will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the State, whether within or beyond the limits of 1 India, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.*

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***Section 263 - Revocation or annulment for just cause***

*The grant of probate or letters of administration may be revoked or annulled for just cause.*

*Explanation.—Just cause shall be deemed to exist where—*

*(a) the proceedings to obtain the grant were defective in substance; or*

*(b) the grant was obtained fraudulently by making a false suggestion, or suggestion, or by concealing from the Court something material to the case; or*

*(c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or*

*(d) the grant has become useless and inoperative through circumstances; or*

*(e) the person to whom the grant was made has willfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.*

### **Illustrations**

*(i) The Court by which the grant was made had no jurisdiction.*

*(ii) The grant was made without citing parties who ought to have been cited.*

*(iii) The Will of which probate was obtained was forged or revoked.*

(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(v) A has been taken administration to the estate of B as if he had died intestate, but a Will has since been discovered.

(vi) Since probate was granted, a latter Will has been discovered.

(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.

(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind.

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**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."*

**12.** The Indian Succession Act, 1925 does not prescribe a specific period of limitation for the grant of probate, or for moving an application for cancellation of probate or letters of administration. The residuary entry Article 137 of the Act, which covers proceedings for which no period of limitation is stipulated in the Act, provides for a three-year period of limitation. Article 137 reads as follows:

| Description | Period of limitation | Time from which period begins to run |
|-------------|----------------------|--------------------------------------|
|-------------|----------------------|--------------------------------------|

|                                                                                                     |             |                                 |
|-----------------------------------------------------------------------------------------------------|-------------|---------------------------------|
| 37. Any other application for which no period of limitation is provided elsewhere in this Division. | Three years | When the right to apply accrues |
|-----------------------------------------------------------------------------------------------------|-------------|---------------------------------|

**13.** This issue was considered in *Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors.*, (2008) 8 SCC 463. This court negated the plea that since the Act prescribes no period of limitation in regard to matters concerning grant of probate or letters of administration, there is no time limit. The court followed the decision in *the Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma*, (1977) 1 SCR 996 which took note of the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the Limitation Act, 1908, and held that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure, 1908. In the older Limitation Act of 1908, there was no division between applications in specified cases and other applications, as in the

Limitation Act, 1963. The court held in *Kerala State Electricity Board (supra)* that:

*“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.*

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*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.”*

**14.** Applying the ratio in *Kerala Electricity Board (supra)*, the court, in *Kunwarjeet Singh Khandpur (supra)* observed that:

*“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 court then concluded that the right to apply for probate accrues on the date of death of the testator.

**15.** Recently, in *Sameer Kapoor and Another v. State through Sub-Divisional Magistrate South, New Delhi and Others*, 2019 Online SCC 630 (SC), the context was slightly different; the probate was issued by a foreign court. The executor sought letters of administration in an Indian court (like in the present case), under Section 228. The court dealt with the objection of limitation, and noticed, firstly, that *Kunvarjeet Singh Khadapur (supra)* had ruled about applicability of Article 137 for grant of probate in the first instance. Drawing a distinction from the grant of probate (or letters of administration) and the recognition of that, under Section 228, the court (in *Sameer Kapoor (supra)*) held as follows:

*“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 Kunvarjeet 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."*

**16.** The decision in *Lynette Fernandes v. Gertie Mathias*, (2018) 1 SCC 271, dealt with the precise issue of the period of limitation applicable for an application for cancellation of a probate or letters of administration. This court held as follows:

*"One must keep in mind that the grant of probate by a Competent Court operates as a judgment in rem and once the probate to the Will is granted, then such probate is good not only in respect of the parties to the proceedings, but against the world. If the probate is granted, the same operates from the date of the grant of the probate for the purpose of limitation Under Article 137 of the Limitation Act in proceedings for revocation of probate. In this matter, as mentioned supra, the Appellant was a minor at the time of grant of probate. She attained majority on 09.09.1965. She got married on 27.10.1965. In our*

*considered opinion, three years limitation as prescribed Under Article 137 runs from the date of the Appellant attaining the age of majority i.e. three years from 09.09.1965. The Appellant did not choose to initiate any proceedings till the year 25.01.1996 i.e., a good 31 years after she attained majority. No explanation worthy of acceptance has been offered by the Appellant to show as to why she did not approach the Court of law within the period of limitation. At the cost of repetition, we observe that the Appellant failed to produce any evidence to prove that the Will was a result of fraud or undue influence. The same Will has remained unchallenged until the date of filing of application for revocation. No acceptable explanation is offered for such a huge delay of 31 years in approaching the Court for cancellation or revocation of grant of probate.”*

**17.** In the present case, the letters of administration were granted in ancillary proceedings on 25.11.1994. The High Court took note of the fact that the notice of motion (in the disposed of proceeding) was filed on 29.03.1997; it was withdrawn on 01.04.1998. The petition for revocation of the letters of administration were filed on 29.7.1999. Proceedings were clearly time barred, given that the original grant of the ancillary letters took place on 25.11.1994; they constituted notice to all concerned. Clearly, the petition for revocation of letters of administration was time barred. It is accordingly held that there

is no infirmity in the concurrent findings impugned; the appeal fails and is dismissed with no order as to costs.

.....J.  
[ARUN MISHRA]

.....J.  
[VINEET SARAN]

.....J.  
[S. RAVINDRA BHAT]

New Delhi,  
October 04, 2019.