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C.A.No. 3025 OF 1997

ITEM No. 116

Court No.11

SECTION IVA

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

Civil Appeal No.3025/1997

Mary D'SouzaAppellant (s)

vs.

Henry D'Souza & Ors.Respondent (s)

(With Office Report)

Date : 19/08/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE BRIJESH KUMAR

HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s) Mr. Ajit Bhasme,Adv.
Mr. Mohammed Rishah,Adv.

For Respondent (s) Mr. E.C. Vidya Sagar,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

(Sarojbala)(Kanwal Singh)

PA to Addl.Registrar

Court Master

(The signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 3025 OF 1997

Mary D'Souza Appellant(s)

Vs.

Henry D'Souza & Ors. Respondent(s)

O R D E R

This appeal arises out of judgment and order passed by the Karnataka High Court in an appeal filed under Section 299 of the Indian Succession Act.

The brief facts are that Thomas D'Souza, father of the present appellant and the respondents, died on 5.8.1971. He left behind property in suit. According to the present appellant Mary D'Souza, her father executed a will in her favour. The execution of the will also took place on the same date, i.e., 5.8.1971. The appellant Mary D'Souza initiated proceeding for obtaining probate on the basis of the will. The same was granted by order dated 12.9.1974.

The respondents are brothers and sisters of the present appellant. They filed a suit for partition of the property left by their father. It is their case that during

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those proceedings for partition it came to their knowledge that the appellant Mary D'Souza had obtained probate on the basis of a will said to have been executed on 5.8.1971. Therefore, they moved Misc. Case No. 58/1986 for setting aside the order granting probate in favour of the present appellant. By order dated 8.5.1991 the petition was allowed and order granting probate was set aside. The Trial Court, considering all facts and circumstances of the case, more particularly the facts that appellant Mary D'Souza did not implead any of her brother and sister in the probate proceedings, the fact that the will is said to have been executed on the same day on which Thomas D'Souza died, and the statement of one of the attesting witnesses that he has signed the will as attesting witness after the death of Thomas D'Souza, came to the conclusion that the will is surrounded by suspicious circumstances, hence, it could not be acted upon. The present appellant went up in appeal before the High Court. The High Court

also taking into consideration all relevant facts and circumstances of the case upheld the findings recorded by the Trial Court and dismissed the appeal. Hence, this appeal. The learned counsel for the appellant before us submitted that the respondents had knowledge about the will and the probate was granted in favour of the appellant subsequently. In support of his contention he relied upon

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statement of the respondents that some papers were destroyed soon after the death of Thomas D 'Souza etc. but these are matters relating to appreciation of evidence and facts and circumstances, which we find has been appropriately done by the Trial Court and upheld by the High Court on making a proper discussion of the evidence and circumstances of the case. We also feel that there was no good reasons for the appellant not to have impleaded her other brothers and sisters in the petition for grant of probate. The learned counsel for the appellant then submits that the only ground which he would press is about the limitation, namely, the petition having been moved after twelve years, in the year 1986. We feel that the Trial Court and the High Court have also taken a correct view on the question of limitation, raised by the appellant. The fact which admits of no doubt is that the appellant did not implead respondents as parties in the probate proceedings. The clear intention was to hide the fact of execution of the will and to obtain the probate clandestinely. It is, therefore, nothing unusual that it was only in the suit filed for partition that the appellant had come out with the case about her entitlement to the property on the basis of will and the probate obtained on the basis of the same. In these

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circumstances the suit was filed on 25.9.1986. According to the learned counsel for the appellant the limitation for filing the petition would be as provided under Article 137 of the Limitation Act, wherein the period of limitation has been provided as three years. We, find that Article 137 of the Limitation Act provides for limitation for any other application for which no period of limitation is provided elsewhere, and it would start running when the right to apply accrues. The case of the respondents that they came to know about the will and the probate only during the partition suit which fact has been accepted by the two courts below and we find no good reason to take a different view in the matter. The suit for partition was filed, as indicated above, in 1984 and during the pendency of those proceedings it came to the knowledge of the respondent that some probate was obtained by the appellant. The petitioner moved for setting aside the probate in 1986 which is well within three years of gaining the knowledge about the probate. We, therefore, find no force in this argument too as canvassed on behalf of appellant before us.

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We find no merit in the appeal. It is accordingly dismissed. There shall, however, be no order as to costs.

.....J.
(BRIJESH KUMAR)

.....J.
(ARUN KUMAR)

