

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.199 of 2018

Manoj Kumar Sinha Son o f Late Kashinath Sah, Resident of Village -
Madhopur Tanasariya, P.O. - Madhopur Tansariya, Police Station Turkauliya,
District- East Champaran.

... .. Appellant/s

Versus

1. Mankesh Kumar Sinh Son of Late Kashinath Sinha, Resident of Village -
Madhopur Tausariya, P.O. Madhopur, P.S. - Turkauliya, District- East
Champaran.
2. Vijay Kumar Sinha Son of Late Kashinath Sinha, Resident of Village -
Madhopur Tausariya, P.O. Madhopur, P.S. - Turkauliya, District- East
Champaran.
4. Kuamri Usha Sinha Wife of Chandreshwar Prasad, D/o Late Kashinath
Sinha, Resident of Mohalla - Ekauna Chandmari, P.S. Banjaria, District-
East Champaran.
5. Sachindra Prasad Son of Late Madho Prasad Resident of Gopalpur, P.S.
Gopalpur, District- West Champaran.
6. Archana Kuamri D/o Sachindra Prasad, Resident of Gopalpur, P.S.
Gopalpur, District- West Champaran.
7. Sudhanshu Shekhar (Minor) Son of Sachindra Prasad, Under the
guardianship of their father namely Sachindra Prasad. Resident of Gopalpur,
P.S. Gopalpur, District- West Champaran.
8. Arpana Kumari (Minor) D/o Sachindra Prasad, Under the guardianship of
their father namely Sachindra Prasad. Resident of Gopalpur, P.S. Gopalpur,
District- West Champaran.
9. Prabhash Chandra Dutta Son of Late Shatish Chandra Dutta, Resident of
Mohalla Naya Tola, Kalambagh Chowk, Muzaffarpur, P.S. Kaji
Mohammadpur, District- Muzaffarpur.
10. Rohan Kumar (Minor) Son of Prakash Chandra Dutta, Under the
guardianship of their father namely Prakash Chandra Dutta, Resident of
Mohalla Naya Tola, Kalambagh Chowk, Muzaffarpur, P.S. Kaji
Mohammadpur, District- Muzaffarpur.
11. Radhi Kumari (Minor) D/o Prakash Chandra Dutta, Under the guardianship
of their father namely Prakash Chandra Dutta, Resident of Mohalla Naya
Tola, Kalambagh Chowk, Muzaffarpur, P.S. Kaji Mohammadpur, District-
Muzaffarpur.
12. Rajat Kumari D/o Prabhas Chandra Dutta, Resident of Mohalla Naya Tola,
Kalambagh Chowk, Muzaffarpur, P.S. Kaji Mohammadpur, District-
Muzaffarpur.

... .. Respondent/s

Appearance:

For the Appellant/s	:	Mr. Arvind Kumar Singh, Advocate
	:	Mr. Dilip Kumar Tondon, Advocate
	:	Mr. Rohit Ranjan, Advocate



For the Respondent/s : Mr. Shakti Suman Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

Date: 06-08-2025

Heard learned counsel for the appellant and learned counsel for the respondents.

2. The present appeal has been filed under section 299 of the Indian Succession Act, 1925. Against the order dated 16.12.2017 by Subordinate Judge 1st, Motihari in Probate Case No. 40 of 2012 in which the probate case has been dismissed on the ground of limitation.

3. The brief fact of the case is that the deceased father Kashi Nath Sinha of appellant executed a registered will dated 26-06-2000 in favour of the appellant and his two brothers in respect of his maternal property fully detailed in Schedule no. 1 of the record. It has been further stated that the testator died on 30-06-2000 leaving behind three sons and wife and one daughter and husband and children of predeceased daughter who are opposite party in this case. It has been further stated that the testator was resident of village Madhopur Tansaraia, P.S. Turkauliya District East Champaran which is within the jurisdiction of the Learned Trial Court. The will was typed by Mr. Mohan Prasad, at instruction of the testator and he was executed the will in his own pen in presence of the attesting



witnesses and the attesting witnesses have also put their mark in presence of the testator and he himself presented the same before the Registration Authority and admitted the execution of the will and the said will was last will of the testator.

4. In the present Probate Case the petitioners/ appellants have examined four witnesses in which AW-1 Jai Rai, AW-2 Manoj Kumar Sinha, AW-3 Mohan Prasad and AW- 4 Urmila Sinha. In support of the Probate case the Appellant filed Ext.1 original will and Ext. 2 Original death certificate of the testator.

5. Learned Counsel for the appellant submitted that the impugned judgment is not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment. He further submitted that after filing of aforesaid Probate case the respondents herein appeared and filed their written statement admitting the execution of will in favour of present appellants and also admitting the fact that the property under will belongs to deceased testator and submitted that they have no objection if probate/Letters of administration be granted in favour of present appellants.

5.i. He further submitted that after efflux of time



it became necessary to get the will probated to avoid any future litigation and to respect the verdict under the will and accordingly the said probate case has been filed 28.09.2012 as suggested by the Counsel that no specific limitation period is scheduled under law for filing of probate application.

5.ii. He further submitted that the witness of will have been examined who supported and proved the execution of will and further original will and death certificate of testator has been filed and marked as exhibit 1 and 2 respectively. He further submitted that since non have contested the execution of will nor raised any question of it being filed belatedly, just no question of limitation arose in the case and further no issue on the point of limitation has been framed by the learned trial Court nor with respect to title of property of testator, but on erroneous consideration the learned trial Court dismissed the probate case on the ground of limitation without considering the fact that no objection have been raised by any of the near relatives of deceased and further despite holding that petitioners have proved the execution of will and presumed the will to be genuine, on erroneous consideration of law laid down by a decision reported in *2017(1) P.L.J.R. at page 489*, without considering the fact that in said decision objection has been



made by the near relatives and thus not applicable in this case as per law laid down by Hon'ble Supreme Court by a judgment reported in **2008(8) S.C.C. at page 463**, whereby the Hon'ble Supreme Court has held that “once execution and attestation are proved suspicion of delay no longer operates”.

6. On deeply scrutinize facts and circumstances of the present case this Court is at view that the Apex Court while considering the question of application of Limitation Act for grant of Letter of Administration in the case of **Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur and Ors** since reported in **(2008) 8 SCC 463** has held as follows:-

“15. 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 he 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.

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

7. The Hon’ble Gujarat High Court in the case of

Habibbhai Ishabhai Sandhi vs Ibrahimbhai Ishabhai Sandhi

on 24 March, 2023 held that:

“5.5 The Supreme Court in Kunvarjeet Singh Khandpur (supra), stated that the crucial expression was “right to apply under Article 137”, it was observed, The crucial expression in the petition (sic Article) 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 C/FA/1098/2019 CAV JUDGMENT DATED: 24/03/2023 the proceedings it is a



continuing right.

5.6 This Court in ***Bhupendrabhai Samjubhai v. Diwaliben*** [(2013) 3 GLR 2177], held that delay in making application for letters of administration of will, which in that case was filed after 15 years would not be a vitiating aspect. It was held that delay will not bar such application.

5.7 Therefore, it is well settled that right to apply for probate or letters of administration under the Succession Act, 1955 is held to be a continuing right. The "right to apply" within the meaning of Article 137 will be a continuing right. It was judicially explained that in such proceedings, the application for probate or letters of administration only seeks recognition from the court to perform duty. It was held that purport of law is that by virtue of the very nature of the proceedings, it is continuing right."

8. Considering the facts and record of the present case and the settled law held by the Hon'ble Apex Court , I am of the view that treating the application of the appellant for probate of the will to be barred by limitation could hardly sustain. It was not correct to view the application to be barred by Article 137 of the Limitation Act. The very nature of the proceedings and the nature of cause which is continuous would entitled the appellant to get letters of administration or Probate of the property detailed in Schedule no.1 of the Probate Petition



on the basis of the will executed by the testator.

9. For the reasons as stated above, this appeal is allowed and the judgment dated 16.12.2017 by Subordinate Judge 1st, Motihari in Probate Case No. 40 of 2012 is set aside. Appellant is entitled for grant of Letters of Administration of registered will dated 26.06.2000 executed by Kashinath Sinha.

10. Accordingly, this appeal is allowed.

11. Office is directed to send back the trial Court records and proceedings along with a copy of this judgment to the trial Court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	AFR
CAV DATE	01.07.2025
Uploading Date	06.08.2025
Transmission Date	N/A

