

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**FIRST APPEAL No.361 of 2001**

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Arun Kumar Son of Late Shyamlal Prasad, Resident of Village Thawe  
Bideshi Tola, P.S. Manjhagarh (Thawe) District- Gopalganj.

... .. Appellant/s

Versus

1. Smt. Niramal Devi W/o Late Shyam lal Prasad, Resident of Village Thawe Bideshi Tola, P.S. Manjhagarh (Thawe) District- Gopalganj.
- 2.1. Krishna Mohan Prasad S/o late Birendra Prasad, Resident of Mohalla - Jaitpur, Ward No. - 04, P.S. Pupri, District- Sitamarhi.
- 2.2. Sri Mohan Prasad @ Gopal Prasad S/o Late Birendra Prasad, Resident of Mohalla - Jaitpur, Ward No. - 04, P.S. Pupri, District- Sitamarhi.
- 2.3. Nilu Rani W/o Kanhaiya Prasad, D/o Late Birendra Prasad, Resident of Mohalla - Jaitpur, Ward No. - 04, P.S. Pupri, District- Sitamarhi.
- 2.4. Ragini Kumari W/o Jagdish Prasad, R/o Flat No. 205, Sri Krishna Dham Apartment, Near Waxpol Factory, Butti Chowk, District Ranchi (Jharkhand).
3. Arbind Kumar Son of Bishwanath Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
4. Rohit Kumar Son of Bishwanath Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
5. Ritesh Kumar Son of Bishwanath Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
6. Rina Kumari D/o Bishwanath Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
7. Bishwanath Prasad Son of Late Radha Kishun Prasad, Under the guardianship of Bishwanath Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
8. Sheela Kumari D/o Late Shyamlal Prasad, Resident of Village Thawe Bideshi Tola, P.S. Manjhagarh, District- Gopalganj.

... .. Respondent/s

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WITH

**FIRST APPEAL No. 375 of 2001**

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Arun Kumar Son of Late Shyam Lal Prasad, Address - Resident of Village  
Thawe Bideshi Tola, P.S. Manjhagarh (Thawe) District- Gopalganj.

... .. Appellant/s

Versus

1. Smt. Niramal Devi W/o late Shyam Lal Prasad, Address - Resident of Village Thawe Bideshi Tola, P.S. Manjhagarh (Thawe) District- Gopalganj.



- 2.1. Krishna Mohan Prasad S/o Late Birendra Prasad, Resident of Mohalla - Jaitpur, Ward No. - 04, P.S. Pupri, District- Sitamarhi.
- 2.2. Srimohan Prasad @ Gopal Prasad Son of late Birendra Prasad, Resident of Mohalla - Jaitpur, Ward No. - 04, P.S. Pupri, District- Sitamarhi.
- 2.3. Nilu Rani W/o Kanhaiya Prasad, D/o Late Birendra Prasad, Resident of Mohalla - Jaitpur, Ward No. - 04, P.S. Pupri, District- Sitamarhi.
- 2.4. Ragini Kumari W/o Jagdish Prasad, R/o Flat No. 205, Sri Krishna Dham Apartment, Near Waxpol Factory, Butti Chowk, District Ranchi (Jharkhand).
3. Arbind Kumar Son of Bishwanath Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
4. Rohit Kumar Son of Bishwanath Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
5. Ritesh Kumar Son of Bishwanath Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
6. Rina Kumari D/o Bishwanath Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
7. Bishwanath Prasad Son of Bishun Prasad, Resident of Village P.S. Mirganj, District- Gopalganj.
8. Sheela Kumari D/o Late Shyam lal Prasad, Resident of Village Thawe Bideshi Tola, P.S. Manjhagarh, District- Gopalganj.

... .. Respondent/s

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WITH  
**FIRST APPEAL No. 182 of 2003**

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- 1.1. Smt. Usha Devi Widow of Late Gupteshwar Prasad @ Gupteshwar Prasad Jaiswal, Resident of Village - Sarenja, P.O. - Sarenja, P.S. - Rajpur, District Buxar. at present Charitarwan (Nagar Parishad), Buxar, P.S. - Buxar Town, District- Buxar.
- 1.2. Ram Krishna Jaiswal Son of Gupteshwar Prasad @ Gupteshwar Prasad Jaiswal, Resident of Village - Sarenja, P.O. - Sarenja, P.S. - Rajpur, District Buxar. at present Charitarwan (Nagar Parishad), Buxar, P.S. - Buxar Town, District- Buxar.
- 1.3. Bal Krishna Jaiswal Son of Gupteshwar Prasad @ Gupteshwar Prasad Jaiswal, Resident of Village - Sarenja, P.O. - Sarenja, P.S. - Rajpur, District Buxar. at present Charitarwan (Nagar Parishad), Buxar, P.S. - Buxar Town, District- Buxar.
- 1.4. Raja jaiswal Son of Gupteshwar Prasad @ Gupteshwar Prasad Jaiswal, Resident of Village - Sarenja, P.O. - Sarenja, P.S. - Rajpur, District Buxar. at present Charitarwan (Nagar Parishad), Buxar, P.S. - Buxar Town, District- Buxar.
- 1.5. Nitu Kumari Wife of Anil Kumr Jaiswal, D/o late Gupteshwar Prasad Jaiswal Resident of Nai Satti, Mugalsarai, Distt. - Chandauli (U.P.).
- 1.6. Ritu Kumari Wife of Sunil Kr. Jaiswal, D/o Late Gupteshwar Prasad Jaiswal, Jamania Kasba, Distt. - Ghazipur (U.P.).



1.7. Kujju Kumari Wife of Pankaj Kumar, D/o Late Gupteshwar Prasad Jaiswal,  
Resident of Ramanujanj, P.O. and P.S. Ramanujanj, Distt. - Ramanujanj,  
Chhatisgarh.

... .. Appellant/s

Versus

Dina Nath Prasad S/o Late Yadunath Prasad, Resident of Village - Serenja,  
P.O - Serenja, P.S. - Rajpur, District- Buxar, At present Sarenja Gola Charitar  
Ban, Ward no. 9, P.O. - Buxar, P.S. - Buxar Town, District- Buxar.

... .. Respondent/s

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Appearance : (In FIRST APPEAL No. 361 of 2001)

For the Appellant/s : Mr. Vishwajeet Kr. Mishra, Advocate

For the Respondent/s : Mr. Shashi Shekhar Dvivedi, Sr. Advocate

Mr. Parth Gaurav, Advocate

Mr. Anshu Raj Singh, Adv.

Mr. Aditya Singh, Adv.

Mr. Rahul Kumar, Adv.

Mr. Ashutosh Kr. Pandey, Adv.

(In FIRST APPEAL No. 375 of 2001)

For the Appellant/s : Mr. Vishwajeet Kr. Mishra, Advocate

For the Respondent/s : Mr. Shashi Shekhar Dvivedi, Sr. Advocate

Mr. Parth Gaurav, Advocate

Mr. Anshu Raj Singh, Adv.

Mr. Aditya Singh, Adv.

Mr. Rahul Kumar, Adv.

Mr. Ashutosh Kr. Pandey, Adv.

(In FIRST APPEAL No. 182 of 2003)

For the Appellant/s : Mr. B.M.Kumar Singh, Advocate

For the Respondent/s : Mr. Rajni Kant Jha, Advocate

Mr. Shantanu Bhattacharjee, Advocate

Mr. Prisu Snehil, Advocate

Mr. Aman Anand, Advocate

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**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI**

**and**

**HONOURABLE MR. JUSTICE DR. ANSHUMAN**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE DR. ANSHUMAN)**

**Date : 18-12-2025**

Heard learned Counsel for the appellants and

learned Counsel for the respondents of all three appeals.

2. First Appeal No.361 of 2001 has been filed

against the Judgment and decree dated 22.06.2001 passed by the



learned District Judge, Gopalganj, in Title Suit No.27 of 1987. First Appeal No.375 of 2001 has been filed against the judgment and decree dated 22.06.2001 passed by the learned District Judge, Gopalganj, in Probate Case No.11 of 1997 and First Appeal No.182 of 2003 has been filed against the judgment and decree dated 28.05.2003 passed in Title Suit No.15 of 1992, arising out of Probate Case No.21 of 1990 by the learned 1<sup>st</sup> Additional District Judge, Buxar, by which the suit has been allowed in favour of the plaintiff-respondent by granting probate to the defendant-appellant.

3. Vide Order No.41 dated 27.02.2020, the Hon'ble Single Bench has formulated a question, i.e., **“what would be meaning of accrual of cause of action for the purpose of reckoning the period in the background of intricacies having been referred hereinabove in the context of principle laid down by the Apex Court as referred hereinabove relating to applicability of Article 137 of the Limitation Act, 1963 relating to a petition for probate/letter of administration?”**.

4. Question has been framed and matter has been placed before the Division Bench after taking permission of Hon'ble the Chief Justice and only thereafter, these appeals have



come before the Division Bench for answering those questions of reference, which we have already acknowledged in Order No.46 dated 17.11.2025 that is to say applicability of Article 137 of the Limitation Act, 1963 as well as relating to the starting point of applicability in a petition for probate/letters of administration under Indian Succession Act.

5. Learned Counsel for the appellants submits that at the time of passing order of reference, Hon'ble Single Judge has categorically observed in the case of **Ramanand Thakur Vs. Parmanand Thakur**, reported in **AIR 1982 Patna 87**, and held that none of the provisions of the Limitation Act would be applicable but Hon'ble Supreme Court of India in the case of **Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur & Others** reported in **(2008) 8 SCC 463** as well as in the case of **Krishna Kumar Sharma Vs. Rajesh Kumar Sharma** reported in **2009 (3) PLJR 80 (SC)**, the Hon'ble Apex Court pleased to hold that Article 137 of the Limitation Act would be applicable wherein limitation of three years is prescribed so applicability of Limitation Act is found out of controversy. He further submits that the point for consideration is what shall be the cause of action is most fatal whether the date of death of testator or any subsequent date on which interest of executor is found



eclipsed. He submits that application of Limitation Act was completely ruled out in the case of **Smt. Nalini Mishra & Others Vs. Braj Kishore Mishra** reported in **2010(4) PLJR 355**.

6. Learned Counsel for the appellant relied on three judgments of Hon'ble Supreme Court of India, namely, **Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur & Others** reported in **(2008) 8 SCC 463** in Civil Appeal No.2464 of 2008 decided on 3<sup>rd</sup> April, 2008, secondly on the judgment of **Krishna Kumar Sharma Vs. Rajesh Kumar Sharma** reported in **2009 (3) PLJR 80 (SC)**, in Civil Appeal No.1967 of 2009 decided on 27<sup>th</sup> March, 2009, both by two judges Bench of Hon'ble Supreme Court and third judgment is **Ramesh Nivrutti Bhagwat Vs. Dr. Surendra Manohar Parakhe** reported in **2020 (3) BLJ 190-SC** in Civil Appeal No.1399 of 2010 decided on 4<sup>th</sup> of October, 2019. In the said judgment, the judgments of **Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur & Others** (Supra), **Kerala State Electricity Board, Trivandrum Vs. T.P. Kunhaliumma**, (1977) 1 SCR 996, **Sameer Kapoor and Another Vs. State through Sub-Divisional Magistrate South, New Delhi and Others**, 2019 Online SCC 630 (SC) :: 2019 (4) BLJ 328 (SC) and **Lynette**



**Fernandes Vs. Gertie Mathias, 2018 (1) BLJ 92 (SC) :: (2018) 1 SCC 271** as well as **Rukumini Devi Vs. Narendra Lal Gupta (1985) 1 SCC 144** were discussed. He submits that in the light of said three Judges Bench decision of Hon'ble Supreme Court passed in **Ramesh Nivrutti Bhagwat (supra)**, the reference as placed before the Hon'ble Division Bench has been well answered. He further submits that though the issue/reference shall be decided against him, but he submits that it is his abundant duty to intimate before this Court about the correct position of law. Therefore, he submits that the finding of **Ramesh Nivrutti Bhagwat (supra)** is the correct position of law.

7. Learned Counsel for the respondent appearing in the initial two appeals, namely, F.A. Nos.361 and 375 of 2001 relied on the following judgments:-

- I. **AIR 1960 Supreme Court 1309 (The State of Madras Vs. C.P. Agencies)**
- II. **AIR 1977 Supreme Court 640 (Gurdit Singh and Others Vs. Munsha Singh and Others etc.)**
- III. **AIR 1982 Patna 87 :: {(1982) BLJ 205 {Ramanand Thakur Vs. Parmanand Thakur}}**
- IV. **AIR 1983 Bombay 268 {Vasudev Daulatram Sadarangani Vs. Sajni Prem Lalwani}**



- V. First Appeal No.102 of 1980 (Prabhunath Singh & Another Vs. Sukhdeo Rai)**
- VI. (2008) 8 SCC 463 {Kunvarjeet Singh Khandpur Vs. Kirandeep Kaur and Others}**
- VII. AIR 2007 SC 1812 {Alchemist Limited & Another Vs. State Bank of Sikkim & Others}**
- VIII. (2009) 13 SCC 241 {Rajiv Modi Vs. Sanjay Jain and Others}**
- IX. AIR 2009 SC 3247 {Krishna Kumar Sharma Vs. Rajesh Kumar Sharma}**
- X. 2010(4) PLJR 355 {Nalini Mishra Vs. Braj Kishore Mishra}.**
- XI. AIR 2004 Supreme Court 4286 (Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Another).**
- XII. Civil Misc. Case No.1117 of 2018 (Arun Kumar Agrawal Vs. Anil Agrawal).**

8. Counsel for rest other respondents submits that he is adopting the arguments of Mr. Parth Gaurav, learned Counsel for the respondents in first two appeals. The Counsel appearing on behalf of the appellant in First Appeal No.182 of 2003 has adopted the argument of Mr. Vishwajeet Kumar Mishra, learned Counsel for the appellant in first two appeals.

9. In the case of **State of Madras Vs. C.P.**



**Agencies** reported in **AIR 1960 Supreme Court 1309**, this judgment of Hon'ble Supreme Court of India is on Section 80 of the Code of Civil Procedure, 1908 and, therefore, it has no applicability in the present case.

In the case of **Gurdit Singh** (supra) the question of applicability of the Limitation Act, 1963 has been tested and the dispute discussed therein the said judgment is not relating to probate or letters of administration. Therefore, this Court finds that the said judgment has no applicability in the present case.

In the case of **Ramanand Thakur** (supra) it has been held and discussion on applicability of Article 137 of the Limitation Act, 1963 on application in probate or letters of administration and it has been found that they are not governed by any article of Limitation Act and it has been held that “.....Therefore, while holding that Article 137 of the new Limitation Act applies to any petition or application filed under any Act, we do not feel any difficulty to come to the conclusion that so far as the application for grant of a Probate or Letters of Administration is concerned, they are not moved by any Article of Limitation Act.....”.

In the case of **Vasudev Daulatram Sadarangani** (supra), paragraph-16 states as follows:



*“(a) under the Limitation Act no period is advisedly prescribed within which application of probate, 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.*

*Conclusion (b) is not correct while Conclusion (c) is the correct position of law.”*

In case of **Prabhunath Singh** (supra) it has been held by Hon'ble High Court that after consideration of the judgment of **Vasudev Daulatram Sadarangani** (supra) in paragraphs 25 and 26 it has been held that “...the right to apply would accrue when it became necessary to apply which may not necessarily be within 3 years from the date of the death of testator. The delay is required to be explained but it cannot be equated with the absolute bar of limitation and once execution and attestation are proved, suspicion of delay no longer operates.

In view of the above settled principal of law and in view of our above finding regarding point No.(i), no suspicion arose in the present case and the right to apply accrue only on the institution of partition suit and, therefore, in my opinion, the application for the grant of probate or letters of administration is not barred.”

The case of **Kunvarjeet Singh Khandpur** (supra) and the case of **Vasudev Daulatram Sadarangani** (supra) have been discussed and it has been held that Section



137 of the Limitation Act shall apply on the application for grant of probate or letters of administration as right to file the application is a continuous right which can be exercised at any time after death of the testator. It has been held that an application for grant of probate or letters of administration merely seeks recognition from Court to perform a duty. The application for granting or revoking probate or letters of administration is covered by Article 137 of the Limitation Act, 1963.

In the case of **Alchemist Limited & Another** (supra) is relating to Company Law in which question of territorial jurisdiction has been tested. Therefore, this case has no direct applicability in answering the present reference.

The case of **Rajiv Modi** (supra) is a case relating to criminal matter in which question of applicability of cause of action within the territorial jurisdiction relating to complaint case has been tested. Hence, this judgment has no applicability in answering the reference.

The case of **Krishna Kumar Sharma** (supra) on the point of applicability of Article 137 in granting probate and letters of administration has been discussed and in this case both judgments ie., **Vasudev Daulatram Sadarangani** (supra) as



well as **Kunvarjeet Singh Khandpur** (supra) have been discussed and same finding has come that Article 137 of the Limitation Act, 1963 has applicability on the application for grant of probate or letters of administration.

In the case of **Nalini Mishra** (supra), it has been held that finding of Mr. Dalpatri's judgment was discussed and filing the probate after a long delay was directed to be accepted, where the Will was executed on 17.03.1936 and testamentary for issuance of letters of administration was filed in the year 2003-04.

In the case of **Y. Abraham Ajith and Others** (supra), the cause of action relating to complaint case has been explained and this matter is not related to the Indian Succession Act. Therefore, we are of the firm view that this judgment has no application in the present case.

In the case of **Arun Kumar Agrawal** (supra) again, the same judgment of **Vasudev Daulatram Sadarangani** (supra) and **Kunvarjeet Singh Khandpur** (supra) were discussed and the view laid down in those judgments as well as on the judgment of **Krishna Kumar Sharma** (supra) was affirmed. In this case probate case was challenged under Order VII Rule 11(d) and under Article 137 of the Limitation Act;



rather it was held that the probate case is not liable to be dismissed under the said provisions of law because cause of action accrues not after the death of testator but it depends on the facts of each case as to when cause of action accrues.

**10.** After placing the case laws, the Counsel of both appellants and respondents jointly submit that whatever be the controversies which are subject to reference before this Hon'ble Court, have now been settled in the latest judgment and, as such, there is no controversy left and the matter has already been settled by Hon'ble the Supreme Court in its latest judgment on this issue by Hon'ble three Judges Bench, namely, **Naresh Nivrutti Bhagwat Vs. Dr. Surendra Manohar Parakhe** reported in **2020 (3) BLJ 190-SC**.

**11.** We after perusal of the judgment discussed by both the parties reached on the conclusion that after decision of **Kunvarjeet Singh Khandpur** (Supra) as well as judgment held in **Krishna Kumar Sharma** (Supra), the appellate Court was pleased to quote that Article 137 of the Limitation Act would be applicable. Therefore, whatever be the earlier decision, prior to the above mentioned two decisions, the question of non-application of Article 137 of the Limitation Act, 1963 shall not arise. So far as the question relating to point of



applicability of limitation in a petition for probate/letters of administration shall arise which has to be answered, for that the analysis of three Judges Bench decision i.e., **Ramesh Nivrutti Bhagwat** (Supra) is self sufficient in the opinion of the Court. The said judgment is very much clear that Indian Succession Act, 1925 does not prescribe a specified period of limitation for grant of probate or for grant of letters of administration or moving application for cancellation of probate or letters of administration. The question of reference of the present appeals and the finding at para-10 of the said judgment are identical. Para-10 of the said judgment states as follows:

*“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.”*

12. The discussion has been made in **Ramesh Nivrutti Bhagwat** (Supra) at paragraphs-11 to paragraph-16 which state as follows:



*“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 India, and a properly authenticated copy of the Will is produced, letters of administration may be granted with a copy of such copy annexed.*

.....

**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.*

..... ..

**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 nay 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 follow:-*



***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 vs. 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 vs. 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.*

... ..

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 Kunvarjeet 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) :: 2019 (4) BLJ 328 (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 ::2018 (1) BLJ 92 (SC)**, 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.”

**13.** Thereafter, it has been held in paragraph-17 of the said judgment that the petition for revocation of letters of administration was time barred. Upon bare reading of the above mentioned discussion of all the decisions, particularly, three Judges Bench, it transpires to us that the following types of petitions are filed under the Succession Act, particularly, relating to issuance of probate/letters of administration:

- I. Application for issuance of probate;
- II. Application for issuance of letters of administration;
- III. Application for revocation of probate;
- IV. Application for revocation of letter of administration;

**14.** So far as the right to apply for probate accrues on the date of death of testator, the application for grant of probate or letters of administration is not an application in law, but is an application in rem. It is basically an application



for grant of probate or letters of administration for the Court's permission to perform a legal duty created by a Will or for recognition as a testamentary trusty. It 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. So far as the restriction casted in the judgment of **Kunvarjeet Singh Khandpur** (supra) and **Krishna Kumar Sharma** (supra), it is only to the extent that Article 137 of the Limitation Act shall not create any absolute bar on an application for grant of probate or letters of administration; rather it is a continuous right which can be exercised any time after death of the deceased as long as the right to do so survives. Delay beyond three years after death of the deceased would create suspicion, and greater the delay, greater would be the suspicion. Such delay must be explained but cannot be equated with an absolute bar of limitation and once execution and attestation are proved, suspicion of delay no longer operates. But Hon'ble three Judges Bench in **Ramesh Nivrutti Bhagwat** (supra) creates absolute bar in filing of an application for cancellation or revocation for grant of probate. If the concerned party does not approach the court of law within the period of limitation, then, according to



law laid down by Hon'ble Supreme Court, the petition for revocation of letters of administration would be time barred and period for limitation would be counted from the date of grant of probate, as the grant of probate by a competent Court operates as a judgment in rem. Once the probate to the Will is granted, then such probate is good not only in respect of the parties to the proceeding but also against the world at large and if probate is granted, the same operates from the date of grant of probate for the purpose of limitation under Article 137 of the Limitation Act in proceeding for revocation of probate as held in **Lynette Fernandes** (supra). Hence, the reference as framed is answered hereinbelow:

Article 137 of the Limitation Act, 1963 is applicable on application for issuance Probate/Letters of Administration and application for revocation of Probate/Letters of Administration. An application for issuance of probate/letters of administration under Article 137 of the Limitation Act does not create any absolute bar; rather it confers a continuous right, which may be exercised at any time after the death of the deceased as long as right to do so survives. But, Article 137 creates a situation wherein a delay beyond three years after death of the deceased give rise to suspicion, and greater the



delay, greater would be the suspicion. But such delay must be explained in accordance with the provisions laid down in Sections 4 and 5 of the Limitation Act, 1963. Once execution and attestation are proved, suspicion of delay no longer operates. But, on the other hand, application for cancellation or revocation for grant of probate/letters of administration shall create absolute bar if the concerned party does not approach the court of law within the period of limitation, and the period of limitation shall be counted from the date of grant of probate due to the reason that the grant of probate by a competent Court operates as a judgment in rem and once the probate or Will is granted, such probate is good with respect to parties to the proceeding as well as for the whole world. The reference is hereby answered.

**15.** After answering the reference it shall be appropriate for this Court to direct the office to place all the first appeals before appropriate Bench for consideration on merit.

**16.** This Court appreciate the honest and fair attitude of Mr. Vishwajeet Kumar Mishra, learned Advocate appearing on behalf of the appellant in first two appeals, who despite the fact that the three Judges Bench decision of the Hon'ble Supreme Court governs the reference against him, has



conducted himself as a true and honest advocate whose prime duty is to assist the Court first. The Court records its appreciation for his diligent efforts and the clarity with which he assisted in the adjudication of the matter. The Court commends his sense of duty and professional commitment.

**(Dr. Anshuman, J)**

**Bibek Chaudhuri, J: I agree**

**(Bibek Chaudhuri, J)**

Mkr./-

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