

Asha Mongia & Ors vs.state & Ors

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Court : Delhi

Decided On : Jul-11-2019

Appellant : Asha Mongia & Ors

Respondent : State & Ors

Advocate for Pet/Ap. : Mr. Beenashaw N. Soni, Mr. Sitab Ali Chaudhary, Mr. Gufran Ali, Ms. Rubina, Mr. Vinod Aggarwal

Judgement :

\$~22 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of decision:

11. h July, 2019 + TEST.CAS. 106/2015 ASHA MONGIA & ORS

... Petitioner

s Through: Mr. Beenashaw N. Soni, Advocate (M-9810046611) versus STATE & ORS

... RESPONDENTS

Through: Mr. Sitab Ali Chaudhary, Mr. Gufran Ali & Ms. Rubina, Advocates for the Applicant - Mr. Vinod Aggarwal (M- 98101190786) CORAM: JUSTICE PRATHIBA M. SINGH Prathiba M. Singh, J.

(Oral) I.A.4809/2017 1. In view of the order dated 9th July, 2018 in which Mr. Vinod Kumar Aggarwal had already withdrawn the suit for declaration and injunction, no ground is made out for impleading him in the present Test case.

Order dated 9th July, 2018 only records that the counsel would be assisting the Court on the legal issue as to whether the testamentary case is barred by limitation. Accordingly, I.A. 4809/2017 is dismissed in the above terms. TEST.CAS. 106/2015 2. The objection raised, on the basis of the judgment in Kunwarjeet Singh Khandpur v. Kirandeep Kaur & Ors. AIR 2008 SC2058 is that the TEST.CAS. 106/2015 Page 1 of 7 present petition is barred by limitation, as the death of the owners, namely, Mrs. Santosh Mongia and Mr. D.S. Mongia took place on 11th February, 2004, but the present petition was filed only in 2015. He further relies on Krishan Kumar Sharma v. Rajesh Kumar Sharma AIR 2009 SC3247 and Basant Dayal v. State & Ors. in Test Case No.5/2009 decided on 4th December, 2009.

3. The submission is that Article 137 of the Limitation Act, 1963 applies to letters of administration and hence the petition is time barred.

4. On behalf of the Plaintiff, Ms. Beenashaw Soni, Ld. counsel for the

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, submits that the judgment in Kunwarjeet Singh Khandpur (supra) itself is clear that though Article 137 applies, limitation would run only from the date when it becomes necessary for a party to seek letters of administration. It is her submission that in the present case, the owners died under suspicious circumstances on 11th February, 2004, as both were found dead. The police had sealed the property in question and the

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s, who were the family of the brother of Mr. D.S. Mongia had filed a petition for issuance of succession certificate in their favour for the movable property. In the said petition, the Applicant - Mr. Vinod Kumar Aggarwal had filed an impleadment application, and thereafter he also filed objections with the DDA seeking mutation. The

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s herein had also sought mutation of the property in their name with the DDA on 9th March, 2006 Since, no probate is required in Delhi, the mutation was being

considered by DDA until Mr. Vinod Kumar Aggarwal objected. The mutation continues to remain pending and no decision was taken on the same. Finally, the

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s were forced to approach this Court for Letters of Administration in view of the pendency of the mutation with the DDA. It was only when the TEST.CAS. 106/2015 Page 2 of 7 DDA did not grant the mutation and the officials therein were of the opinion that the

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s should seek letters of administration, that the need actually arose for the

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s to file the present petition. Accordingly, the present petition was filed on 15th January, 2015.

5. The Court has heard the Ld. counsels for the parties. A perusal of the judgment in Kunwarjeet Singh Khandpur (supra) clearly shows that Article 137 applies to Letters of Administration. Para 14 of the said judgment reads as under: 14. Article 137 of the Limitation Act reads as follows; 137. Description of application : Any other application for which no period of limitation is provided elsewhere in the Division. Period of Limitation : Three Years Time from which period begins to run : When the right to apply accrues. 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 in such proceedings seeks recognition from the Court to perform a duty because of the nature of the proceedings it is a continuing right. application merely the High Court the 6. In this judgment, the Supreme Court has also considered a judgment in Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma 1976 (4) SCC634as also by the Bombay High Court in Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani AIR1983 Bom 268. The Supreme Court partially overruled the judgment of the Bombay High Court. The TEST.CAS. 106/2015 Page 3 of 7 relevant portion of the said judgment is set out below: I 15. Though the nature of the petition has been rightly described by the High Court, it was not correct in observing that the application for grant of probate or letters of Administration is not

covered by Article 137 of the Limitation Act. Same is not correct in view of what has been stated in The Kerala State Electricity Board's case (supra).

16. Similarly reference was made to a decision of the Bombay High Court's case in Vasudev Daulatram Sadarangani v Sajni Prem Lalwani (AIR1983 Bom.268). Para 16 reads as follows:

"16. Rejecting Mr. Dalapatrai's contention, 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 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". TEST.CAS. 106/2015 Page 4 of 7 17. The conclusion 'b' is not correct while the conclusion 'c' is the correct position of law. 7. The Supreme Court held that conclusion (b) of the Bombay High Court was wrong and conclusion (c) was the correct position in law. Conclusion (c) has to be read with conclusion (d) i.e. if the right to file survives, it is the Courts legal duty to recognize a testamentary trustee. However, conclusion (d) is crucial and is repeated again below: (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. 8. Thus, the right to apply accrues only when it becomes necessary to apply and that necessity need not be within the three year period from the date of death.

9. A perusal of the above shows that the testamentary case need not be filed within three years from the date of the death, but is to be filed only within three years from the date when the need arises to file the same. In the present case, the

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s applied for mutation in 2006. The DDA may possibly have raised objections to the said mutation in view of the representations filed by Mr. Vinod Kumar Aggarwal. For whatever reason, the DDA has still not granted the mutation in favour of the

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s. Thus, the need has arisen much later i.e. after several years since the death of the deceased and after applying for mutation.

10. Ld. counsel for Mr. Vinod Kumar Aggarwal further submits that the right of the

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s is claimed through Mr. S.D.S Mongia, Mr. Sudershan Mongia and Mr. Pradeep Mongia who were all the brothers of Mr. D.S. Mongia. They have expired on 1st March, 2013, 26th February, 2014 and 31st TEST.CAS. 106/2015 Page 5 of 7 July, 2012 respectively. Since their right had already accrued and was abandoned by them during their lifetime, the

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s who are the legal heirs of the said brothers, cannot have a better right and cannot seek extension of limitation after the demise of the said three brothers, who were the legal heirs of the deceased. This interpretation is not correct as the said brothers had applied for mutation during their lifetime itself.

11. It is further noticed that the present case involves death of the deceased under unusual circumstances. The Police had initially suspected murder, however, as per Ms. Soni, Ld. counsel, the said case was closed as untraced on 9th May, 2005. The brothers of Mr. D.S. Mongia have passed away in 2012, 2013 and 2014 but prior to that, the request for mutation was already filed. Since the brothers i.e. the legal heirs had also already asserted their rights in the suit property during

their lifetime, it cannot be said that they had abandoned their rights, or that the limitation period for them to file the petition had already expired, considering that there was no rejection by the DDA during the lifetime of the brothers of Mr. D.S. Mongia. Thus, it cannot be held that the present petition is barred by limitation.

12. Mr. Vinod Kumar Aggarwal need not appear in this matter any further, as his application for impleadment has been rejected.

13. The keys of the suit property, which were initially lying with the Police have now been handed over by the Court which had dealt with the succession certificate case to Mrs. Asha Mongia. She is stated to be in possession of the suit property.

14. There were two sets of owners of the suit property, namely, Mrs. Santosh Mongia and Mr. Om Prakash Chopra who was her brother. The

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No.2, 3 and 4 are the legal heirs of Mrs. TEST.CAS. 106/2015 Page 6 of 7
Santosh Mongia.

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No.5 to 8 are the legal heirs of Mr. Om Prakash Chopra and Mrs. Santosh Mongia.
The parties i.e. the

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No.2 to 4 on one hand and

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No.5 to 8 are negotiating a settlement. All parties/their authorised
representatives/Power of Attorney holders to remain present on the next date.

15. List on 22nd July, 2019. PRATHIBA M. SINGH JUDGE JULY11 2019 Rahul
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