



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO..... OF 2026
(Special Leave Petition (C) No.13473 of 2022)

SANJAY SHARMA @
SANJAY BHARDWAJ ... APPELLANT(S)

VERSUS

KRISHNADHAN KHAWARE
AND ORS. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. Leave Granted.
2. The application dated 31st August 2005 initiated by one Bhudeo Prasad Singh, for probate of a *Will* dated 15th April 1995 executed by one Shrilal Singhanian, was rejected by the

District Judge, Deoghar¹ under Section 222 and 276 of the Indian Succession Act, 1925² by order dated 31st July 2012 as a consequence of an application having been made under Order VII Rule 11 of Code of Civil Procedure, 1908³ by the objectors-respondents herein. The High Court in terms of MA No.153 of 2012 which was dismissed by judgment dated 28th April 2022, agreed with the findings of the Civil Court. Hence this appeal.

Heard learned senior counsel for the parties.

3. The limited issue which presents for consideration is the whether the application for probate is barred by the law of limitation. The answer to this question is fairly straight forward. The ISA does not provide for any particular time period within which application for probate, or revocation thereof can be filed before the concerned Court. In these circumstances, the residuary provision of the Limitation Act, 1963⁴ i.e., Article 137 would be the relevant provision. It reads as under:

¹ Civil Court

² ISA

³ CPC

⁴ 1963 Act

	Description of suit	Period of limitation	Time from which period begins to run
137	Any other application for which no period of limitation is provided elsewhere in this Division.	Three years	When right to apply accrues

4. The primary ground that has been taken by the Courts below is that the application for probate was made in 2005 when the testator passed away a decade prior to 7th June 1995. This delay, in their considered view is unexplained and unjustified. At the outset we may state that we are unable to agree with such a view.

5. The probate of a *Will* has three -fold purposes- **(a)** It is a judicial stamp of approval on the genuineness of the *Will*; **(b)** It acknowledges the appointment of an executor of the *Will*; **(c)** It grants the executor to act for the purposes of the *Will*. Keeping this in view, the specific view that the period of limitation for probate commences from the death of the testator has been rejected. The Bombay High Court in ***Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani***,⁵ which has been quoted with approval by this Court in ***Kunvarjeet Singh Khandpur v. Kirandeep Kaur***⁶, and ***Sameer Kapoor v. State***⁷, except on one point held as under:

⁵ 1983 SCC OnLine Bom 54

⁶ (2008) 8 SCC 463

⁷ (2020) 12 SCC 480

“15. Similarly reference was made to a decision of the Bombay High Court in *Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani* [AIR 1983 Bom 268] . Para 16 reads as follows : (AIR p. 270)

“16. Rejecting Mr Dalpatrai'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 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 both judgments of this Court, it has been stated that point **(b)** is incorrect while **(c)** is the correct position of law.

6. It is, therefore, a continuous right that can be exercised at any time so long as the object of the *Will* survives. The right to apply would therefore accrue from the date that it becomes necessary to apply. This obviously need not be within three years from the death of the testator. In this case, then, the need to apply would commence from the date when the respondents took actions hostile to the position established by the *Will*, that is, the execution of a General Power of Attorney by Laxmi Devi, wife of the testator on 8th August 2005. In that view of the matter, the application for probate of *Will* made by the executor Mr. Bhudeo Prasad Singh, in favour of the appellants Sanjay Sharma @Sanjay Bhardwaj is held to be within limitation since the same was filed 31st August 2005.

7. A second issue arises for consideration. We ask a question as to whether under Order VII Rule 11 CPC on an application filed by the objector, it was open for the High Court to return findings that are on the merits of the *Will* itself. We think not. Whether or not a particular *Will* is suspicious comments directly upon the sanctity of the *Will* itself which was not open for the Court to adjudicate in the proceedings, summary in nature without, obviously having appreciated

evidence in that regard. The scope of adjudication of an application under Order VII Rule 11(d) is well established.

It has been held in *Salim D. Agboatwala v. Shamalji Oddhavji Thakkar*, as follows:⁸

“11. As observed by this Court in *P.V. Guru Raj Reddy v. P. Neeradha Reddy* [*P.V. Guru Raj Reddy v. P. Neeradha Reddy*, (2015) 8 SCC 331 : (2015) 4 SCC (Civ) 100], the rejection of plaint under Order 7 Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11.

12. Again as pointed out by a three-Judge Bench of this Court in *Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar* [*Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar*, (2018) 6 SCC 422 : (2018) 3 SCC (Civ) 524], the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.”

(emphasis supplied)

This Court speaking through R. Mahadevan J. *P. Kumarakurubaran v. P. Narayanan*⁹, held that once limitation becomes a question of law and fact, it cannot be dismissed summarily under Order VII Rule 11 proceedings:

“12.1. ... Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the

⁸ (2021) 17 SCC 100

⁹ 2025 SCC OnLine SC 975

issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable.”

8. On both these counts *qua* Order VII Rule 11 as also the question of limitation itself, the judgments and orders of the Courts below have to be set aside. The order dated 31st July 2012 passed by the District, Deoghar, and the judgment dated 28th April 2022 passed by the High Court of Jharkhand are set aside. As having plainly erred in law, the appeal is allowed. The matter stands restored to the concerned Civil Court to proceed in accordance with law.

Pending application(s), if any, stand disposed of. No costs.

.....J.
(SANJAY KAROL)

.....J.
(VIPUL M. PANCHOLI)

New Delhi;
July 15, 2026