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

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ARUN KUMAR

... ... Appellant/s

Versus

SMT.NIRMALA DEVI and ORS

... ... Respondent/s

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with

FIRST APPEAL No. 375 of 2001

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ARUN KUMAR

... ... Appellant/s

Versus

SMT.NIRMALA DEVI and ORS

... ... Respondent/s

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with

FIRST APPEAL No. 182 of 2003

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GUPTESWAR PRASAD

… … Appellant/s

Versus

DINA NATH PRASAD

… ... Respondent/s

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Appearance :
(In FIRST APPEAL No. 361 of 2001)
For the Appellant/s : Mr. Vishwajeet Kumar Mishra, Adv.
For the Respondent/s : Mr. S.S.Dwivedi, Sr. Adv.
Mr. K.N.Chaubey, Sr. Adv.

(In FIRST APPEAL No. 375 of 2001)
For the Appellant/s : Mr. Vishwajeet Kumar Mishra, Adv.
For the Respondent/s : Mr. S.S.Dwivedi, Sr. Adv.
Mr. K.N.Chaubey, Sr. Adv.

In FIRST APPEAL No. 182 of 2003)
For the Appellant/s : Mr. B.M.Kumar Singh, Adv.
For the Respondent/s : Mr. Rajni Kant Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV ORDER

41 27-02-2020 In F.A.No. 361 of 2001/ F.A.No. 375 of 2001 and F.A.No. 182/2003 common question of law has arisen, whereupon have been taken together, for proper consideration.

In both the appeals, respective Will followed with petition for grant of probate happens to be beyond the period of three years from the date of death of the testator and so, a ticklish question has arisen whether there would be applicability of Limitation Act and if so, which of the article and in what manner there would be reckoning of the period.

Heard both the sides.

It happens to be the consistent plea at the end of the executor that the Indian Succession Act is a special Act, it happens to be self contained Act, it classifies the will as privilege of impropriety, it prescribes the procedure how a Will is to be created/ probated/ Letters of Administration is to be granted/ Administrator is to be appointed, side by side also deals with mode of succession of Christian as well as Parsi though the provision relating to Will is the same with slight variance. It also deals with special privilege having in favour of the Mohamdans, also classified the Will executed by the testator within the jurisdiction of four Chartered High Court and so on. In none of the categories barrier has been prescribed couched with a law of

limitation. More particularly, confining the submission relating to the Will, it has been submitted that from perusal of the relevant sections, it is apparent that neither there happens to be any scope for applicability of the Limitation Act nor the cause of action could be perceived since its creation as the Will is a circumstance allowed by the testator in favour of the executor which is to effectuate only after the death of the testator. Then, one has to trace out whether Will has been created or not, as it is not necessary that will could be in his possession, or the will having in his favour, be a last will and if there happens to be creation of a Will, then thereafter, subsequent action is to be followed in terms of the Will. Filing of petition before the court for grant of letter of administration/ probate is nothing relating to creation of legal right in favour of executor, rather filing of petition is only for grant of permission to proceed to perform in terms of the Will. Hence, the probate or Letter of Administration is nothing but simply a seal or stamp given by the court of Justice having no influence over the devolution and so, in the aforesaid facts and circumstances of the case, there should not be perception of applicability of the Limitation Act nor it could be allowed to run in between ceasing the effect. Therefore, none of the provisions of the Limitation Act could be allowed to

adumbrate.

It has also been submitted that there happens to be series of judgments pronounced by the Privy Council as well as by the Supreme Court laying down the principle that no law of limitation would be applicable over filing of the petition under the Indian Succession Act for grant of probate/ Letter of Administration.

Then it has been submitted that the matter has come up for consideration before the Apex Court in the case of **Kunvarjeet Singh Khandpur v. Kirandeep Kaur & ors.**, reported in (2008)8 SCC 463 which has been considered by the Apex Court in the subsequent decision in the case of **Krishna Kumar Sharma vs. Rajesh Kumar Sharma**, reported in 2009(3) PLJR 80 (SC). However, before that matter in issue has already been decided by the Division Bench of our own High Court in the case of **Ramanand Thakur v. Parmanand Thakur**, reported in AIR 1982 Patna 87. It has also been submitted that the aforesaid judgments laid down by the Hon'ble Apex Court has been repeatedly considered and explained by the Single Bench in F.A. 102/1980 as well as Civil Misc. Jurisdiction No. 1117/1918. It has also been submitted that in Misc. Appeal No. 76/2012, as is evident the opinion

differed in the background of the facts of the aforesaid case as is evident from para-21 thereof wherein it has been incorporated:

"No explanation, excuse has been offered at the end of the appellant either in the petition or during the course of evidence. That being so, petition is found hit by law of limitation".

So, it has been submitted that although in the case of **Ramanand Thakur v. Parmanand Thakur**, reported in AIR 1982 Patna 87, it has been held that none of the provisions of the Limitation Act would be applicable, is found watered down by the Apex Court as observed in the case of **Kunvarjeet Singh Khandpur** (supra) as well as in the case of **Krishna Kumar Sharma** (supra), and also found propagated by the Single Bench repeatedly whereupon now it could be conclusively held that Article 137 of the Limitation Act would be applicable whereunder limitation of three years is prescribed. So, applicability of Limitation Act is found out of controversy.

Now next question for consideration would be the starting point of the period as, column 3 of Article 137 suggests that it should reckon from the date of accrual of the cause of action. What is cause of action? Cause of action, as is found, explained an event accruing in favour of plaintiff on account of

infringement of right/ or duly identified under law. So far present scenario is concerned, it is needless to say will replaces the testator or his successor-in-interest on account thereof, for its scenography, one has to approach the Court, whereupon, the period has to begin from the date of presence of cloud over the interest of executor, and so will be accrual of cause of action. On the other hand, it has nothing to connect with the death of the testator, hence the death of testator would not be the starting point rather subsequent date on which interest of executor is found eclipsed.

On the other hand, learned counsel representing the adversary have controverted the submission and submitted that learned counsels have confused the matter by arguing hot and cold simultaneously. It has been submitted that the Hon'ble Apex Court in **Kunvarjeet Singh Khandpur v. Kirandeep Kaur & ors.**, reported in (2008)8 SCC 463 and **Krishna Kumar Sharma vs. Rajesh Kumar Sharma**, reported in 2009(3) PLJR 80 (SC), after considering the earlier judicial pronouncements has observed consistently, conclusively concretely that there would be application of Article 137 of the Limitation Act during course of filing of petition for probate/ letter of administration, that means to say, the petition

irrespective of its nature (probate, Letter of Administration etc.) must be filed within three years, but so far counting is concerned, it should be from the date of origination of cause of action. Now explaining the cause of action, it has further been submitted that the cause of action will accrue only when there happens to be infringement of a right. So, submitted that infringement of right will be perceived only on the basis of a will acknowledging status of executor, and the same hints towards presence of a will which illuminate only after death of testator. That means to say, requirement of probate or Letter of Administration is only after death of the testator as soon thereafter the executor to be the successor-in-interest of the testator in terms of a Will. Further more, it has also been submitted that on the basis of unprobated Will, the executor will not be entitled to claim the right but, could rely upon the same and so, the cause of action, in the aforesaid facts and circumstances of the case, would be perceived just after death of the testator and so, it should be the reckoning date in ordinary course having some exception, as specified under Article 137 of the Limitation Act itself. In other words, this should be the starting point for commuting the period of limitation. Further, stressing upon the finding recorded by the Apex Court, as

referred to hereinabove, it has been submitted that the Hon'ble Single Judge under F.A.No. 102/1980, Civil Miscellaneous Jurisdiction No. 1117/2018 has not properly considered the same and so, some sort of ambiguity persist, on the other hand, in Misc. Appeal No. 76/2012 in principle as well as considering the facts of the case accepted applicability of Article 137 of the Limitation Act however, also recorded its commencement from the death of the testator. It has also been submitted that if the principle laid down by the Apex Court is properly scrutinized, it is manifest that counting of date, perhaps be from the date of death of the testator.

It has also been pleaded that at an earlier occasion, application of Limitation Act was completely ruled out and to justify such argument also referred to the case of **Smt. Nalini Mishra & ors. v. Braj Kishore Mishra**, reported in 2010(4) PLJR 355.

Will is a mode of disposition of the property possessed by the testator contrary to the natural law of inheritance while codicil is an annex thereto, that means to say supplementary one explaining any event relating to terms of the will. For better appreciation, the definition so prescribed under section 2 of the Indian Succession Act is to be taken note of:-

> "2(b) "codicil" means an instrument made in relation to a Will, and explaining, altering or

> adding to its dispositions, and shall be deemed to form part of the Will.
>
> (h) "Will" means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death."

In other words, Will is an instrument by which a person makes a disposition of his property to take effect after his death and which is in its own nature ambulatory and revocable during his life.

At the present moment, the other important event so defined under section 2 has also to be seen and those are:

> " (a) "administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor.
>
> (f) "probate" means the copy of a Will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator."

That means to say, Will is a document whether registered or unregistered but the last one is a legal declaration of the intention of the deceased/ testator (Sec.62) with regard to his property being left over to devolve upon the executor in a manner so prescribed thereunder and, grant of probate means acknowledging the same by a court of competent jurisdiction

under its seal. Before proceeding ahead, one has to identify the status of the testator as the same is duly distinguishable u/s 57 of the Act. It is further to be considered that as per Sec. 89, will or bequest could be considered void on the score of uncertainty. On the other hand, as per Sec. 90, there should be proper description of the property. In likewise manner, Sec.93 properly identify the executor to be read with Sec.99 for proper classification. Sec.95 prescribes acknowledgment of bequest without any limitation. Whenever matter comes for grant of probate under Part IX which comprises so many chapters guiding the eventuality, the only question for consideration before the competent court remains to find out whether the Will in question happens to be the last Will of the testator and whether it happens to be a genuine one? In case, the same is found not to be genuine one then, in that circumstance, there would not be any question of grant of probate and if probate is not granted then, in that circumstance, the executor is bound to loose his legal identity and the property has to devolve in accordance with natural law of inheritance. That means to say, putting behind a document which is yet to be duly acknowledged by a court of competent jurisdiction to be legal, valid and if allowed to sail without any interruption till the date

of infringement then, in that circumstance, a party is being allowed to enjoy the usufruct without any basis and foundation. Side by side the legal heirs would be deprived of to avail without justifeable reason. So, really that could be the intention of the legislature, whether it justifies the principle of natural justice as well as equity. If the executor has a genuine will in his favour, got it probated at an earliest, if not, should be allowed to disperse the property as per law of succession, that happens to be the intention of the legislature as is found duly explained u/s 211(2) having substantiated, supported by Sec. 213 of the Act, the barrier in due exercise without having probate could also be seen under Sec. 214. However, exception is found so prescribed u/s 223 having the executor as minor or unsound mind, nor to any association of individuals unless it is a Company.

The other relevant provision to be taken into consideration is Section 227 which prescribes effect of probate. As per Sec. 2(h), referred hereinabove, probate means the copy of a Will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate of the testator. On plain reading of Section 2(h), it is crystal clear that grant of probate is due recognition of legal character of the person to whom the grant is made which always depends upon

conclusive finding over genuineness of the will. In other words, grant of probate establishes conclusively the legal character of the person to whom the grant is made after having a definite finding over genuineness, viability of the will. Its impact could also be perceived after going through Sec. 273.

In **Mrs. Hem Nolini Judah v. Mrs. Isolyne Sarojbashini Bose & ors.**, reported in AIR 1962 SC 1471, it has been held:

> "(7) We have already pointed out that though it was said that Dr. Miss Mitter had executed a will in favour of her mother Mrs. Mitter in June 1925 bequeathing the house in dispute to her, no probate or letters of administration were ever obtained by Mrs. Mitter. It is true that Mrs. Mitter in her turn made a will in favour of the appellant and she obtained letters of administration of that will. In that will the house in dispute was mentioned as the property of Mrs. Mitter and was bequeathed to the appellant and in the letters of administration granted to her this property was mentioned as one of the properties coming to her by the will of her mother. The question therefore that arises is whether it was necessary before the appellant could take advantage of the bequest in favour of Mrs. Mitter that letters of administration of the will of Dr. Miss Mitter should have been obtained by Mrs. Mitter. Section 213 (1) which governs this matter is in these terms :-
>
> " (1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in

India has granted probate of the will under which the right is claimed, or has granted letters of administration with the will or with a copy of an authenticated copy of the will annexed."

This section clearly creates a bar to the establishment of any right under a will by an executor or a legatee unless probate or letters of administration of the will have been obtained. It is now well-settted that it is immaterial whether the right under the will is claimed as a plaintiff or a defendant; in either case S. 213 will be a bar to any right being claimed by a person under a will whether as a plaintiff or as a defendant unless probate or letters of administration of the will have been obtained: (see Gansham Narayandoss v. Gulab Bi Bai, ILR 50 Mad: (AIR 1927 Mad. 1054) (FB). But it is urged on behalf of the appellant that this section Will not bar her because she obtained letters of administration of the will of her mother Mrs. Mitter under which she is claiming and that it was not necessary for Mrs. Mitter to have obtained probate of the will of Dr. Miss Mitter in her favour. Now it is not in dispute that, the grant of probate or letters of administration does not establish that the person making the Will was the owner of the property which he may have given away by the will, and any person interested in the property included in the will can always file a suit to establish his right to the property to the exclusion of the testator in spite of the grant of probate or letters of administration to the legatee or the executor, the reason being that proceedings for probate or letters of administration are not concerned with titles to property but, are only concerned with the due execution of the will.

Therefore, when the plaintiff respondent contended in effect that the appellant could not establish her right to the full ownership of this property on the basis of the will of Mrs. Mitter because Mrs. Mitter had not obtained probate or letters of administration of the will of Dr. Miss Mitter, she was really contending that Mrs. Mitter was not the full owner of this property so that she could dispose it of as she willed. The plaintiff- respondent was thus disputing the title of Mrs. Mitter to dispose of the entire disputed house by her will on the ground that Mrs. Mitter was not the sole owner of this house after the death of Dr. Miss Mitter. In order therefore that the appellant should succeed on the basis of the letters of administration of the will of Mrs. Mitter which had been granted to her with respect to this house, she had to show that Mrs. Mitter was the full owner of this house at the time she made the-will in her favour. Now the appellant could show this by other evidence; but if the appellant wanted to rely on any will of Dr. Miss Mitter in favour of Mrs. Mitter, in proof of full ownership of Mrs. Mitter of this house, it would amount to this that the appellant was saying that Mrs. Mitter was the owner of the house as the legatee under the will made by Dr. Miss Mitter. The appellant would thus be asserting the ownership of Mrs. Mitter of the whole house as a legatee, and this is what sub-s. (1) of s. 213 clearly forbids, for it says that no right as - a legatee can be established in, a Court of Justice, unless the probate or letters of administration have been obtained of the will under which the right as a legatee is claimed. It is true that so far as the will of Mrs.

Mitter in favour of the appellant is concerned, she has obtained letters of administration of that and she can maintain her right as -a legatee under that will; but that will in her favour only gives her those properties which really and truly belonged to Mrs. Mitter, that will however does not create title in the appellant in properties which did not really and truly belong to Mrs. Mitter but which Mrs. Mitter might have thought it fit to include in the will. Therefore, as soon as the appellant, in order to succeed on the basis of the will in her favour of which she obtained letters of administration, alleges that Mrs Mitter was full owner of the property able to will it away to her, she had to prove the title of Mrs. Mitter to the property. Now it that title rests on Mrs. Mitter's being legatee of Dr. Miss Mitter the appellant will have to prove that Mrs. Mitter had the right as a legatee under the will of Dr. Miss Mitter. As soon as the appellant wants to prove that s. 213 will immediately stand in her way for no right as an executor or a legatee can be proved unless probate or letters of administration of the will under which such right is claimed have been obtained. The words of s. 213 are not restricted only to those cases where the claim is made by a person directly claiming as legatee. The section does not say that no person can claim as a legatee or as an executor unless he obtains probate or letters of administration of the will under which he claims. What it says is that no right as an executor or legatee can be established in any Court of Justice, unless probate or letters of administration have been obtained of the will under which the right is claimed, and therefore it is immaterial who wishes

to establish the right as a legatee or an executor. Whosoever wishes to establish that right, whether it be a legatee or an executor himself or somebody else who might find it necessary in order to establish his right to establish the right of some legatee or executor from whom he might derived title, he cannot do so unless the will under which the right as a legatee or executor is claimed has resulted in the grant of a probate or letters of administration. Therefore, as soon as the appellant wanted to establish that Mrs. Mitter was the legatee of Dr. Miss Mitter and was therefore entitled to the whole house she could only do so if the will of Dr. Miss Mitter in favour of Mrs. Mitter had resulted in the grant of probate or letters of administration. Admittedly that did not happen and therefore s. 213(1) would be a bar to the appellant showing that her mother was the full owner of the property by virtue of the will made in her favour by Dr. Miss Mitter. The difference between a right claimed as a legatee under a will and a right which might arise otherwise is clear in this very case. The right under the will which was claimed was that Mrs. Mitter became the owner of the entire house. Of course without the will Mrs. Mitter was an equal heir with her daughters of the property left by Dr. Mitter, as the latter would be taken to have died intestate, and would thus be entitled to one-fourth. It will be seen from the judgment of the High Court that it has held that the appellant is entitled to the one-fourth share to which Mrs. Mitter was entitled as an heir, to Dr. Miss Mitter and granted the plaintiff-respondent a declaration with respect to only half the house.

> Therefore, the High Court was right in holding that s. 213 would bar the appellant from establishing the right of her mother as a legatee from Dr. Miss Mitter as no probate or letters of administration had been obtained of the alleged will of Dr. Miss Mitter in favour of Mrs. Mitter. The contention of the appellant on this head must therefore fail."

With regard to letter of administration, it is found guided by Sec. 218, 219 as well as Section 282 of the Indian Succession Act, is found applicable as per desirability. However, the basic feature relating thereto is an appointment of an administrator to administer the estate till the subsequent event, and such appointment is being acknowledged as letter of administration. The cases is found duly overshadowed by Sec. 211 nor identification and could also extend apart from pendency as provided u/s 240, 249, 256, 258, 260 of the Act, and in the present context, the principle laid down by the Division Bench in **Suresh Singh & anr. v. Dr. Raja Ram Singh & ors.**, reported in 1992(2) PLJR 129 (HC) be referred. The matter for consideration was whether legatee could be substituted or not and on considering the same in positive, taking note of Sec. 211 of the Indian Succession Act so many citations were considered, and then it has been concluded:

> "12. In view of the foregoing discussions, I hold that a legatee or executor of an unprobated Will making a

> claim on the basis of the same can institute a suit or take a defence in a suit on the basis of such a Will, but his claim cannot be established in a court of law unless and until a probate or letters of administration is granted meaning thereby that neither any decree can be passed in favour of a plaintiff nor defence can be accepted in such a suit unless probate or letters of administration is obtained before its disposal. I also hold that if such a legatee or executor can institute a suit or set up a claim by way of defence, he can be allowed to be substituted in place of the testator or added as a party if he makes a claim on the basis of an unprobated Will. Therefore, it is held that the court below has committed error of jurisdiction in refusing the prayer made on behalf of the petitioners and thereby refusing to exercise jurisdiction vested in it under law. I am of the view that if the impugned order is allowed to stand, there will be failure of justice and irreparable injury would be caused to the petitioners if they are not permitted to be impleaded as party, the suit is allowed to be disposed of in terms of the compromise and they would be required to challenge the decree by filing another suit leading to multiplicity of the suit."

The execution of the Will could be seen differently according to the facts and circumstances of the case.

(a) When it is executed in favour of one lineal descendant excluding the others.

(b) When it is executed in favour of one of the siblings excluding the others.

(c) Where it is executed in favour of a stranger excluding the others.

(d) Where it is executed in favour of a firm, public institution giving management (a) one of the lineal descendant (b) sibling (s) stranger of office

and all have got independent identity, independent repercussion as well as independent ideology.

In (2008)8 SCC 463 (**Kunvarjeet Singh Khandpur vs. Kirandeep Kaur & ors.**), at para-15 it has been held:

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

Then it has been observed that the conclusion (b) is not correct while conclusion (c) is the correct position of law. In 2009(3) PLJR 80 (SC) (**Bharat Kumar vs. State of Bihar**), view has been affirmed. That means to say, the Apex Court has settled the path to the extent of applicability of Article 137 of the Limitation Act and during course thereof based upon principle laid down in the case of **The Keral State Electricity Board, Trivendrum vs. T.P.Kunhaliumma**, reported in AIR 1977 SC 282, relating to filing of the probate petition. However, the date of reckoning would be the date of accrual of cause of action. So, it happens to be cause of action which commands the sphere. That being so, before proper adjudicating thereupon, one has to see what is cause of action, its accrual and what does it mean.

In **Rajiv Modi vs. Sanjay Jain & ors.**, reported in (2009)13 SCC 241, it has been held:

> 12. In order to appreciate the jurisdictional aspect, it would be relevant to discuss the meaning of the expression "cause of action". This Court has laid down that the cause of action is a fundamental element to confer the jurisdiction upon any Court and which

has to be proved by the plaintiff to support his right to a judgment of the court.

13. It is relevant to take note of what was stated by this court in *State of Bombay v. Narottamdas Jethabha*i, 1951 SCR 51. In this case, it is observed, that: (AIR p.73, para 14)

“13. … The jurisdiction of the courts depended in civil cases on a "cause of action" giving rise to a civil liability, and in criminal cases on the commission of an offence, and on the provisions made in the two Codes of Procedure as to the venue of the trial and other relevant matters.”

14. In *State of Madras v. V.P. Agencies*, AIR 1960 SC 1309, it was stated that: (AIR p. 1310, para 3)

"3. ... ... Now the cause of action, has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the court to arrive at a conclusion in his favour." (emphasis in original)

15. In *Gurdit Singh v. Munsha Singh*, (1977) 1 SCC 791, this Court held that: (SCC p. 808, para 41)

“41. "The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts which a plaintiff must prove in order to succeed. These are all those essential facts without the proof of which the plaintiff must fail in his suit."

16. In *State of Rajasthan v. Swaika Properties*, (1985) 3 SCC 217, it was observed that: (SCC p. 223, para 8)

"8. ... The `cause of action' means every fact

which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court."

17. In *ONGC v. Utpal Kumar Basu*, (1994) 4 SCC 711, this Court held that: (SCC p.717, para 6)

"6. It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. ... Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition."

18. In *Bloom Dekor Ltd. v. Subhash Himatlal Desai*, (1994) 6 SCC 322, it was observed that: (SCC p. 328, para 28)

"28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (*Cooke v. Gill*, (1873) 8 CP. In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit."

19. In *Rajasthan High Court Advocates' Assn. v. Union of India*, (2001) 2 SCC 294, this Court stated that: (SC C p. 304, para 17)

"17. The expression "cause of action" has acquired a judicially-settled meaning. In the restricted sense cause of action means the

circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of the suit, including not only the infraction of the right, but the infraction coupled with the right itself. Compendiously the expression means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Every fact which is necessary to be proved, as distinguished from every piece of evidence which is necessary to prove each fact, comprises in "cause of action". It has to be left to be determined in each individual case as to where the cause of action arises."

20. In *Y. Abraham Ajith v. Inspector of Police*, (2004) 8 SCC 100, this Court said that: (SCC p. 105, para 17)

"17. The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal; a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In *Black's Law Dictionary* a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In *Words and Phrases* (4th Edn.), the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf."

21. In *Halsbury's Laws of England* (4th Edn.) it has been stated as follows:

"Cause of action has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a

> remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. `Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."
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> 22. This Court in *Alchemist Ltd. v. State Bank of Sikkim*, (2007) 11 SCC 335, it was held that: (SCC p. 346, para 37)
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> "37. From the aforesaid discussion and keeping in view the ratio laid down in a catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the appellant- petitioner would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a *material*, *essential*, or *integral* part of the cause of action. It is no doubt true that even if a small fraction of the cause of action arises within the jurisdiction of the court, the court would have territorial jurisdiction to entertain the suit/petition. Nevertheless it must be a "part of cause of action", nothing less than that." (emphasis in original)
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> 23. It is evident from the above decisions, that, to constitute the territorial jurisdiction, the whole or a part of "cause of action" must have arisen within the territorial jurisdiction of the court and the same must be decided on the basis of the averments made in the complaint without embarking upon an enquiry as to the correctness or otherwise of the said facts."

Cause of action, apart from Sec. 20 of the CPC which is identifiable relating to jurisdiction would also guide the framing of suit as per O.I R.1 as well as O II Rule 2. In the

aforesaid context cause of action means for which suit has been brought. In other words, it could be explained as the cause of action is the cause of action which gives occasion for and forms foundation of the suit.

So, foundation of the suit for obtaining probate is the date on which testator died, as the legal requisition of the document arose thereafter. Furthermore, grant of probate is the judgment in rem. That means to say, irrespective of the fact that parties have interest or not, once probate has been granted, the legal fiction stood in favour of executor, with regard to the property in question belonging to the testator.

This event could be perceived in different manner also. Virtually, the event guides the jurisdictional aspect as laid down under Sec. 20 of the CPC.

As Clause (c) has been affirmed by the Apex Court to be the correct proposition of law, is to be bifurcated in three parts for proper appreciation (a) a legal duty created by the Will, (b) for recognition as a testamentary trustee (c) devolution of property and as is evident, consolidating the issue has been perceived to be continuous right which can be exercised at any time after the death of the deceased when the cause of action would accrue has to be seen more particularly in the background

of Section 211 sub clause (2), as well as 213 of the Act whereunder without probate there could not be legal recognition coupled with the fact that the same was/ is applicable only in case of being Hindu. Further more, respective Single Judge failed to distinguish Section 220 “effect of letters of administration” in consonance of Section 222 “probate only to appointed executor”.

Whenever, there happens to be will relating to immovable property or movable property except transfer/ succession of office, it tentamounts to breakage of normal line of inheritance. Once law of succession is found barricaded, then in that circumstance, there should be earliest adjudication over the legality of the will in light of infirmities so classified u/s 59 of the Act, otherwise keeping the matter pending for indefinite period, will cause extra hardship to the natural incumbent. It is, as is evident from appraisal of all the judgments referred above, (passed by the learned Single Judge) manifest that aforesaid eventualities have not been perceived, considered, discussed, explained whereupon in spite of the fact that Sec. 137 of the Limitation Act has been made applicable, but counting thereof, from the date of accrual of cause of action is found still under controversy. So, accrual of cause of action is the basic theme

now needs extra attention as well as attracts elaborate explanation.

Consequent thereupon, the matter relating to date of reckoning, needs authoritative adjudication in consonance with the event of accrual of cause of action and found plausible in view of Sec. 211(2) as well as 213 of the Act and for that following question is being formulated:.

(A) 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 relating to a petition for probate/ letter of administration?

Accordingly, office is directed to list before the Division Bench after taking permission from Hon'ble the Chief Justice.

(Aditya Kumar Trivedi, J)

Surendra/-

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