

# Limitation Law and Probates and Letters of Administration

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## Introduction

When a person dies, her/his property or “estate” as it is called, is dealt with by one or more personal representatives as directed by the “will” left by the deceased or the “intestacy rules”. A will is a document in which the person making it, called the “testator”, states what she/he wants to happen to her/his estate after she/he dies<sup>1</sup>. If a person dies without leaving a will, that is she/he dies “intestate”<sup>2</sup>, the law contained in the Intestacy Rules governs what must be done with the estate. Personal representatives are called “executors”<sup>3</sup> if appointed by will and “administrators” if there is no executor<sup>4</sup>. Administrators are appointed by the High Court. This chapter would deal with testamentary succession. A further chapter would deal with intestacy laws.

## Probate of Will

A probate is a copy of a will certified by a court of competent jurisdiction<sup>5</sup>. It proves that it is the last and final will of the deceased penned on a particular date<sup>6</sup>. Probate is a legal process in which the court certifies the authenticity of the will<sup>7</sup>. It establishes the legal character of the Executor to implement the Will and to the validity of the Will<sup>8</sup>. Probate can be granted only to the executor appointed by the will<sup>9</sup>. The appointment may be expressed or implied<sup>10</sup>. A Probate can be granted only after seven clear days from the date of death of the person who has made the Will<sup>11</sup>. Under the Indian Succession Act, a probate can be granted only to the executor appointed under a will<sup>12</sup>. Probate of a Will when granted, establishes the genuineness of Will from the death of the testator and renders valid all intermediate acts of the Executor as such<sup>13</sup>.

## How to obtain a probate of a will?

A probate is granted with the court seal and has a copy of the will attached to it.<sup>14</sup> An executor appointed under the will may not be able to administer its provisions without a probate.<sup>15</sup>

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<sup>1</sup> Section 2(h), Indian Succession Act, 1925.

<sup>2</sup> Section 3(g), Hindu Succession Act, 1956.

<sup>3</sup> Section 2(c), Indian Succession Act 1925.

<sup>4</sup> Section 2(a), Indian Succession Act 1925.

<sup>5</sup> Section 2(f), Indian Succession Act 1925.

<sup>6</sup> Section 217, Indian Succession Act 1925, Law of Intestate and Testamentary Succession, Paras Dhawan, 3<sup>rd</sup> ed., Universal Law Publishing Co., pg 780.

<sup>7</sup> Section 2(f), Indian Succession Act 1925.

<sup>8</sup> Supra 6.

<sup>9</sup> Inder Chand Nayyar v. Sarvadeshik Arya Pratinidhi Sabha, AIR 1977 Del 34.

<sup>10</sup> Section 217, Indian Succession Act 1925, Law of Intestate and Testamentary Succession, Paras Dhawan, 3<sup>rd</sup> ed., Universal Law Publishing Co., pg 796.

<sup>11</sup> Section 293, Indian Succession Act 1925, Sanjiva Row, 7<sup>th</sup> ed. Pg 1223

<sup>12</sup> Section 217, Indian Succession Act 1925, Law of Intestate and Testamentary Succession, Paras Dhawan, 3<sup>rd</sup> ed., Universal Law Publishing Co., pg 781.

<sup>13</sup> Section 217, Indian Succession Act 1925, Law of Intestate and Testamentary Succession, Paras Dhawan, 3<sup>rd</sup> ed., Universal Law Publishing Co., pg 780.

<sup>14</sup> Ibid.

<sup>15</sup> Section 222, Indian Succession Act 1925, Law of Intestate and Testamentary Succession, Paras Dhawan, 3<sup>rd</sup> ed., Universal Law Publishing Co., pg 792.

**Application:** The application for a probate has to be made to the competent court (a pecuniary jurisdiction may require a higher court to issue a probate for high-value immovable assets) through a lawyer.<sup>16</sup>

**Documents:** The court usually asks the petitioner to establish the proof of death of testator, proof that the will has been validly executed by the testator, and that it is the last will and testament of the deceased.<sup>17</sup>

**Notification:** After receiving the petition or application for probate, the court issues a notice to the next of kin of the deceased to file objections, if any, to the granting of probate. It also directs the publication of a citation in a newspaper to notify the general public.<sup>18</sup>

**Fees:** The court may impose a percentage of assets as a fee to issue a probate. In Maharashtra, for example, a court fee of Rs 25 is payable for assets less than Rs 50,000; 4% for assets between Rs 50,000-2 lakh, and 7.5% for assets over Rs 2 lakh. There is a ceiling of Rs. 75,000.<sup>19</sup>

### **Letters of Administration**

Letter of Administration is issued by a competent authority (court) and appoints the Administrator to dispose of the property of a person.<sup>20</sup> It is required when the testator has failed to appoint an executor under a Will or where the executor appointed under a Will refuses to act or where executor has died before or after proving the Will but before administration of the estate.<sup>21</sup> A Letter of Administration can be granted after 14 clear days from the date of death of an intestate.<sup>22</sup> For obtaining a letter of administration the beneficiary has to apply to the court.<sup>23</sup> The court on receiving satisfactory proof of valid execution of the will issues letter of administration to the beneficiary.<sup>24</sup> The application for letter of administration has to contain the following details: The time of the testator's death, That the writing annexed in his last will and testament, That it was duly executed, The amount of assets which are likely to come to the petitioner's hands. A Letter of Administration may be granted to one or several people who may apply to the Court. If no one applies, it may be granted to a creditor of the deceased.<sup>25</sup> A Letter of Administration cannot be granted to a minor or a person of unsound mind.<sup>26</sup>

Letters of administration is not an instrument to avoid a suit.<sup>27</sup> When there is no estate which stands in need of administration, no suggestion that any creditor has to be paid or debt has to be collected, there is no occasion for grant of letters of administration.<sup>28</sup> Letters of administration are for the purpose of paying debts etc. of the deceased and for the administration of the estate.<sup>29</sup>

### **Difference between Probate and Letters of Administration**

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<sup>16</sup> [http://articles.economicstimes.indiatimes.com/2012-01-09/news/30607579\\_1\\_probate-executor-court-issues](http://articles.economicstimes.indiatimes.com/2012-01-09/news/30607579_1_probate-executor-court-issues)

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Section 229, Indian Succession Act 1925.

<sup>22</sup> In the matter of estate of Gurcharan Das, AIR 1987 P&H 122.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Section 236, Indian Succession Act 1925.

<sup>27</sup> AIR 1987 P&H 122.

<sup>28</sup> Ibid

<sup>29</sup> Ibid

A grant of probate only applies to estates where there are executors appointed in a will.<sup>30</sup> If there is a will but it does not appoint executors, the grant required is a "grant of letters of administration with will annexed".<sup>31</sup> Application for probate is in nature of a permission to perform a moral duty or for recognition as a testamentary trustee and the right to apply accrues so long as the object of the trust exists and any part of the trust remains to be executed.<sup>32</sup>

The beneficiary under a will can seek a letter of administration.<sup>33</sup> The person who is granted a letter of administration is called an administrator of the estate.<sup>34</sup> As already stated, it is an instrument to seek permission to administer the property of the deceased.<sup>35</sup>

The limitation period for applying probate and letters of administration also varies.<sup>36</sup>

## **Limitation Period for Grant of Probates and Letters of Administration**

### **Introduction to Limitation Act:**

A statute of limitations is an enactment in a common law legal system that sets the maximum time after an event that legal proceedings based on that event may be initiated. It is for general welfare that a period be put on litigation. Further, it is a general principle of law that law is made to protect only diligent and vigilant people. Equity aids the vigilant and not the indolent. Law will not protect people who are careless about their rights. (*Vigilantibus non dormientibus jura subveniunt*). Moreover, there should be certainty in law and matters cannot be kept in suspense indefinitely. It is, therefore, provided that Courts of Law cannot be approached beyond fixed period. In civil matters, the limit is provided in Limitation Act, 1963.

**Bar of Limitation** – Subject to provisions of sections 4 to 24 of the Act (i.e. Limitation Act), every suit instituted, appeal preferred and application made after the 'prescribed period' shall be dismissed, although limitation has not been set up as a defence.<sup>37</sup> 'Period of limitation' means the period of limitation prescribed for any suit, appeal or application by the schedule to the Act and 'prescribed period' means the period of limitation computed as per provisions of the Act.<sup>38</sup>

**Period as Prescribed in Schedule to the Act**<sup>39</sup> – The period has been prescribed in Schedule to the Act. Generally, it is as follows – (a) 3 years for a suit relating to accounts, contracts, declarations, decrees, suits relating to movable property, recovery of law suit under a contract etc. (b) 12 years for suits relating to possession of immovable property and 30 years for mortgaged property (c) One year for suit relating to torts (3 years for compensation in certain cases) (d) 30 to 90 days in case of appeals under Civil Procedure Code and Criminal Procedure Code. Period of filing appeal and application can be extended if proper cause is shown (but not the suit)<sup>40</sup>

**If Court is Closed on last day** – If court is closed on last day of limitation, suit, appeal or application can be filed on next day when Court reopens.<sup>41</sup>

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<sup>30</sup> Section 222, Indian Succession Act 1925.

<sup>31</sup> In the matter of estate of Gurcharan Das, AIR 1987 P&H 122.

<sup>32</sup> Ibid

<sup>33</sup> Section 232, Indian Succession Act 1925.

<sup>34</sup> Ibid

<sup>35</sup> In the matter of estate of Gurcharan Das, AIR 1987 P&H 122.

<sup>36</sup> Ibid.

<sup>37</sup> Section 3(1), Limitation Act, 1963.

<sup>38</sup> Section 2(j), Limitation Act, 1963.

<sup>39</sup> Schedule 1, Limitation Act, 1963.

<sup>40</sup> Section 5, Limitation Act 1963.

<sup>41</sup> Section 4, Limitation Act 1963.

**Continuous Running of Time** – When once period of limitation starts running, it continues even if there is any subsequent disability or inability to institute a suit or make an application.<sup>42</sup> However, if at the time when person is entitled to file a suit or make application, if a person was disabled (as he was minor or insane), the period of limitation will start after the disability is removed.<sup>43</sup>

In case of appeals against any judgment, if limitation is provided in any statute, that will prevail.

**Computation of Period of Limitation** – (a) First day or day of judgment is to be excluded.<sup>44</sup> (b) Time for getting copy of judgment or decree or order or award (against which appeal or application has to be filed is to be excluded.<sup>45</sup> (c) Time when leave to sue or appeal as pauper is applied for and is pending.<sup>46</sup> (d) Time spent (by mistake or misunderstanding) in proceeding bona fide in the Court without jurisdiction.<sup>47</sup> (e) If stay or injunction was granted, that period will be excluded.<sup>48</sup> (f) If consent/sanction of Government or some authority was required to be obtained for filing suit/application or notice was required to be given to Government in accordance with law, the period spent in obtaining the consent/sanction or time in giving notice is excluded.<sup>49</sup>

**Law of Limitation Only Bars Remedy, But Does Not Extinguish the Right** - In *Bombay Dyeing and Mfg Co. Ltd. v. State of Bombay*<sup>50</sup> (SC Constitution Bench), it was held that the law of limitation only bars the remedy of approaching the court of law. However, it does not extinguish the right as such.

**Application of Limitation Act to applications made under any act other than the Civil Procedure Code:**

Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the CPC.

A case study of *The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma*<sup>51</sup>.

Facts: The respondent filed a petition under Sections 10 and 16(5) of the Indian Telegraph Act 1885 read with Section 51 of the Indian Electricity Act 1910 claiming compensation against the appellant. The Kerala State Electricity Board is constituted under Section 5 of the Indian Electricity Supply Act, 1948<sup>52</sup>. On 10 March, 1972 the respondent filed a petition before the District Judge, Tellicherry under Section 16(3) of the Indian Telegraph Act 1885 claiming an enhanced compensation of Rs. 19,367.60. The District Judge held that the application was governed by Article 137 of the 1963 Limitation Act, and, therefore, the petition was filed beyond three years and was barred by time<sup>53</sup>. The respondent filed revision petitions to the High Court of Kerala. The respondent also applied for condonation of delay in filing the revision petitions in the High Court. The High Court condoned the delay in filing the petitions. The High Court in view of the decision of the High Court in *Kerala State Electricity Board v. Parvathi Amma*<sup>54</sup> set aside the order of the

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<sup>42</sup> Section 9, Limitation Act 1963.

<sup>43</sup> Section 6(1), Limitation Act 1963.

<sup>44</sup> Section 12(1), Limitation Act 1963.

<sup>45</sup> Section 12(3), Limitation Act 1963.

<sup>46</sup> Section 13, Limitation Act 1963.

<sup>47</sup> Section 14, Limitation Act 1963.

<sup>48</sup> Section 15(1), Limitation Act 1963.

<sup>49</sup> Section 15(2), Limitation Act 1963.

<sup>50</sup> AIR 1958 SC 328

<sup>51</sup> 1976 (4) SCC 634.

<sup>52</sup> Para 3, 1976 (4) SCC 634.

<sup>53</sup> Para 4, 1976 (4) SCC 634.

<sup>54</sup> [1973] I.L.R. Ker 524

District Judge and remitted the matter back to the court for disposal in accordance with law<sup>55</sup>. The view of the Kerala High Court is that Article 137 of the Limitation Act 1963 has the same meaning as Article 181 of the Indian Limitation Act 1908<sup>56</sup>. In the *Kerela State Electricity Board v. Parvathi Amma*<sup>57</sup>, the application was presented to the Labour Court, a tribunal which was not a court governed by the Civil or Criminal Procedure Codes, and, therefore, it was held that the applications are not governed by Article 137 of the Limitation Act, 1963<sup>58</sup>.

**Issue:** The primary issue to be decided by the Supreme Court was whether the petition was barred by time Under Article 137 of the Limitation Act, 1963.

**Decision:** The changed definition of the words "applicant" and "application" contained in Section 2(a) and 2(b) of the 1963 Limitation Act indicates the object of the Limitation Act to include petitions, original or otherwise, under special laws<sup>59</sup>. The interpretation which was given to Article 181 of the 1908 Limitation Act on the principle of ejusdem generis is not applicable with regard to Article 137 of the 1963 Limitation Act. Article 137 stands in isolation from all other Articles in Part I of the third division<sup>60</sup>.

The conclusion reached is that Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court<sup>61</sup>. It was held that Article 137 of the 1963 Limitation Act is not confined to applications contemplated by or under the CPC. The petition in the present case was to the District Judge as a court<sup>62</sup>. The petition was one contemplated by the Telegraph Act for judicial decision. The petition is an application falling within the scope of Article 137 of the 1963 Limitation Act<sup>63</sup>.

### **Application of Limitation Act to Probates and Letters of Administration**

1) Case study of *Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani*<sup>64</sup>

The major **issues** to be decided by the court in this case were:

- 1) Whether the application for probate is barred by limitation since it was filed 3 years after the date of the testator's death?
- 2) When does the right to apply accrues if such an application is envisaged in Art. 137?

**Decision:** Under the Limitation Act, no period is advisedly prescribed within which a petition for probate or letters of administration or succession certificate must be made after the deceased's death.<sup>65</sup> Art. 137 is a residuary provision in the Limitation Act. It states that any other application for which no period of limitation as provided elsewhere in this division, limitation period is 3 years.<sup>66</sup> The period begins from the point of time the right to apply accrues.<sup>67</sup>

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<sup>55</sup> Para 5, 1976 (4) SCC 634.

<sup>56</sup> Para 7, 1976 (4) SCC 634.

<sup>57</sup> [1973] I.L.R. Ker 524

<sup>58</sup> Para 9, 1976 (4) SCC 634.

<sup>59</sup> Para 22, 1976 (4) SCC 634.

<sup>60</sup> *ibid*

<sup>61</sup> Para 23, 1976 (4) SCC 634.

<sup>62</sup> Para 23, 1976 (4) SCC 634.

<sup>63</sup> Para 23, 1976 (4) SCC 634.

<sup>64</sup> AIR 1983 Bom 268

<sup>65</sup> Para 14, AIR 1983 Bom 268.

<sup>66</sup> Art 137, Limitation Act 1963.

<sup>67</sup> *Ibid*.

With respect to the second issue, the court stated that there is no warrant for the assumption that the right to apply envisaged in Art. 137 necessarily accrues on the date of the death of the deceased.<sup>68</sup>

The court summarized the issues in the following points<sup>69</sup>:

(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;<sup>70</sup>

(b) the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted;<sup>71</sup>

(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;<sup>72</sup>

(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.<sup>73</sup>

(e) delay beyond 3 years after the deceased's death would arouse suspicion and greater the delay, greater would be the suspicion;<sup>74</sup>

(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.<sup>75</sup>

## 2) In the matter of estate of Late Shri Gurcharan Dass Puri<sup>76</sup>

**Facts:** Gurcharan Dass Puri had expired on 27<sup>th</sup> nov. 1963 . He was survived by Wife, Son ( A.S. Puri) and 6 daughters. <sup>77</sup>Application for grant of letters of administration was made by his daughter, Pushpa Kochar, after 20 years. <sup>78</sup> A S Puri alleges that a family arrangement was arrived at according to the wishes of Gurcharan Dass Puri and according to it entire property would vest only in his son, A.S. Puri and his wife. <sup>79</sup> The contention was denied by the petitioner.<sup>80</sup>

Issues:

1) If so whether the application is within time?<sup>81</sup>

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<sup>68</sup> Para 14, AIR 1983 Bom2 68.

<sup>69</sup> Para 16, AIR 1983 Bom 268.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> AIR 1987 P&H 122.

<sup>77</sup> Para 1, AIR 1987 P&H 122.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid.

## 2) Whether an application for obtaining letters of administration as such is maintainable?<sup>82</sup>

### Decision:

On the first issue the court stated that the limitation act applicable to application for the grant of letters of administration.<sup>83</sup> Art 137 applies to such application .<sup>84</sup>On question of when the right to apply accrues, the court stated that the the right to apply for a probate accrues day to day so long as the will remains unprobated.<sup>85</sup> Application for probate is in nature of a permission to perform a moral duty or for recognition as a testamentary trustee and the right to apply accrues so long as the object of the trust exists and any part of the trust remains to be executed.<sup>86</sup> For application for grant of letters of administration, the right to apply accrues on the date of death.<sup>87</sup>

For deciding on the second issue the court drew a distinction between probate and letters of administration. A grant of probate only applies to estates where there are executors appointed in a will.<sup>88</sup> If there is a will but it does not appoint executors, the grant required is a "grant of letters of administration with will annexed".<sup>89</sup> Application for probate is in nature of a permission to perform a moral duty or for recognition as a testamentary trustee and the right to apply accrues so long as the object of the trust exists and any part of the trust remains to be executed. The beneficiary under a will can seek a letter of administration.<sup>90</sup> The person who is granted a letter of administration is called an administrator of the estate.<sup>91</sup> As already stated, it is an instrument to seek permission to administer the property of the deceased.<sup>92</sup>

The court further stated that the letters of administration is not an instrument to avoid a suit .<sup>93</sup> When there is not estate which stands in need of administration, no suggestion that any creditor has to be paid or debt has to be collected, there is no occasion for grant of letters of administration.<sup>94</sup> Letters of administration are for the purpose of paying debts etc. of the deceased and for the administration of his estate.<sup>95</sup>

In this case there was no property left for the legatees to be administered. Instead, it appeared that the application was to avoid a regular suit. <sup>96</sup> Thus the application wasn't maintainable in this case. <sup>97</sup>

### 3) Case study of *Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors.*

Facts: Appellant's stand all through was that the testator- Mohinder Singh Khandpur has expired on 5.10.1995 and the petition under Section 278 of the Indian Succession Act, 1925 (in short the 'Act') for grant of Letters of Administration was filed on 7.8.2002, and therefore, the same was barred by

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<sup>82</sup> Ibid.

<sup>83</sup> Para 3, AIR 1987 P&H 122.

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> Para 7, AIR 1987 P&H 122.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Para 8, AIR 1987 P&H 122.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

limitation<sup>98</sup>. Learned Additional District Judge after referring to Section 232 of the Act held that the cause of action in favour of the respondent Nos. 1 to 3 had arisen only when the Probate Petition No. 22 of 1996 filed by Ms. Nirmal Jeet Kaur- respondent No. 5 was withdrawn on 9.8.1999 and therefore the Petition for grant of Letters of Administration filed on 7.8.2002 was filed within three years and therefore was within time<sup>99</sup>.

Issue: Whether Article 137 of the Limitation Act, 1963 (in short 'Limitation Act') had application<sup>100</sup>. If it did, when does the right to apply accrue?

Contentions: The High Court observed that Article 137 of the Limitation Act does not apply to proceedings or grant of Probate/Letters of Administration and therefore the view of the learned Additional District Judge was correct. Reliance was placed on a Division Bench of the Delhi High Court in the case of *S.S. Lal v. Vishnu Mittal Goel*<sup>101</sup>. In support of the appeal, learned counsel for the appellant submitted that the High Court's view that Article 137 of the Limitation Act was not applicable is incorrect. It is submitted that right to apply in terms of Article 137 accrued when there was a dispute about genuineness of the Will. Therefore it was submitted that the view of the High Court is clearly unsustainable<sup>102</sup>. On the other hand, learned counsel for the respondents submitted that the right to apply for grant of Letters of Administrations is a continuing right and the starting point is the happening of an event<sup>103</sup>. In the instant case, after the petition for grant of probate was withdrawn the event arose. Further while permitting withdrawal, liberty was granted to the present respondent nos. 1 to 3 to initiate appropriate proceedings<sup>104</sup>.

Decision: Article 137 of the 1963 Limitation Act will apply to any petition or application filed under any Act to a civil court<sup>105</sup>.

Now, 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"<sup>106</sup>

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<sup>107</sup>.

Similarly reference was made to a decision of the Bombay High Court's case in *Vasudev Daulatram Sadarangani v Sajni Prem Lalwani*<sup>108</sup>.

Rejecting Mr. Dalapatrai's contention, I summarise my conclusions thus<sup>109</sup>:-

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<sup>98</sup> Para 3, AIR 2008 SC 2058

<sup>99</sup> Para 3, AIR 2008 SC 2058

<sup>100</sup> Para 10, AIR 2008 SC 2058

<sup>101</sup> [112 (2004) DLT 877]

<sup>102</sup> Para 8, AIR 2008 SC 2058

<sup>103</sup> Para 9, AIR 2008 SC 2058

<sup>104</sup> Para 9, AIR 2008 SC 2058

<sup>105</sup> Para 22, AIR 2008 SC 2058

<sup>106</sup> Art 137, Indian Limitation Act, 1963

<sup>107</sup> Para 14, AIR 2008 SC 2058

<sup>108</sup> AIR 1983 Bom.268

<sup>109</sup> Para 16, AIR 1983 Bom.268

(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<sup>110</sup>;

(b) the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted<sup>111</sup>;

(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<sup>112</sup>;

(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<sup>113</sup>;

(f) such delay must be explained, but cannot be equated with the absolute bar of limitation; and<sup>114</sup>

(g) once execution and attestation are proved, suspicion of delay no longer operates<sup>115</sup>.

The Supreme court held that the conclusion 'b' is not correct while the conclusion 'c' is the correct position of law<sup>116</sup>.

### **Critique on Wrong Judgments by Courts Relating to Applicability of Limitation**

In the Kerala Electricity Board judgment of 1977, it is clearly stated that any application to a Civil Court under the Limitation Act is covered by Article 137<sup>117</sup>. The question that arises now is whether limitation applies to letters of administration or not. The application for obtaining the probate for a will stands altogether on a different footing than the application for obtaining a letter of administration<sup>118</sup>. The application for probate is in the nature of an application for permission to perform a duty created by a will or for recognition as a testamentary trustee and the right to apply accrues so long as the object of the trust exists or any part of the trust, if created, really remains to be executed<sup>119</sup>. Hence, in Probates, there is no limitation period. However, in letters of administration, Article 137 applies from the death of the testator. There was still some confusion regarding the applicability of Article 137 of the Limitation Act to grant of Probates and Letters of Administration. There was further uncertainty relating to when the Right to Apply accrues i.e. when the period of limitation starts, if it does. The Supreme Court on 3<sup>rd</sup> April, 2008<sup>120</sup>, clearly, laid down the current position of law. To answer the question relating to the applicability of Article 137 of the Limitation Act, the Supreme Court quoted its previous judgment<sup>121 122</sup>. Relying on that judgment, the Supreme Court held that any application to

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<sup>110</sup> *ibid*

<sup>111</sup> *ibid*

<sup>112</sup> *ibid*

<sup>113</sup> *ibid*

<sup>114</sup> *ibid*

<sup>115</sup> *ibid*

<sup>116</sup> Para 17, AIR 2008 SC 2058

<sup>117</sup> *The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma*, 1976 (4) SCC 634.

<sup>118</sup> Para 3, *State of Punjab v.*

<sup>119</sup> *ibid*

<sup>120</sup> *Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors*, AIR 2008 SC 2058.

<sup>121</sup> *The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma*, 1976 (4) SCC 634.

<sup>122</sup> Para 11, *Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors*, AIR 2008 SC 2058.

Civil Court under the Act is covered by Article 137<sup>123</sup>. To answer the question relating to when the period of limitation starts, the Supreme Court made a reference to a Bombay High Court judgment<sup>124</sup> and pointed out the flaws in it<sup>125</sup>. The Bombay High Court had decided that the assumption that under Article 137 the right to apply necessarily accrues on the date of the death of the deceased, is unwarranted<sup>126</sup>. The Supreme Court specifically has pointed out that this conclusion of the Bombay High Court is wrong in Paragraph 17<sup>127</sup>. The right position is – “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;”<sup>128</sup>,

Thus, the position of law can be thus summarized as-

- 1) Article 137 of the Limitation Act applies to the grant of Letters of Administration i.e when the beneficiary is applying.
- 2) This right to apply (for grant of letters of administration) necessarily accrues on the date of the death of the deceased.
- 3) Grant for probate is a continuing right and the right to file for a grant of probate arises everyday because it's a moral duty on part of the trustee.

Various courts have misinterpreted this judgment. They have overlooked the most crucial part of this judgment (Paragraph 17). The courts believe that the Supreme Court is quoting and affirming the Bombay High Court's judgment. They fail to notice that The Supreme Court has clearly laid down that one of the conclusions given by the Bombay High Court is incorrect. The Supreme Court in 2009<sup>129</sup> has reiterated this position of law. However, they fail to include Paragraph 17 of the 2008 judgment.

Courts that have misinterpreted the judgment –

- 1) Patna High Court<sup>130</sup>

The 2008 judgment of the Supreme Court clearly settles the position of law as to when the right to apply accrues for an application for the letters of administration. However, in the case decided by the Patna High Court in 2010, the court again considered this question. The court held that until and unless there are compelling circumstances or there is a necessity, the right to apply doesn't accrue<sup>131</sup>. Thus, the court though quoted the 2008 Supreme Court judgment, it stated contrary to what had been decided in the judgment. Moreover the court used the terms 'probate' and 'letters of administration' interchangeably.<sup>132</sup>

- 2) Gujarat High Court<sup>133</sup>

The High Court of Gujarat in 2011 misquoted the 2008 judgment of the Supreme Court and held that right to apply is not necessarily the date of the death of the deceased.<sup>134</sup> The court was of the view

<sup>123</sup> Ibid, para 12.

<sup>124</sup> *Vasudev Daulatram Sadarangani v Sajni Prem Lalwani* AIR 1983 Bom.268.

<sup>125</sup> Para 16 and 17, *Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors*, AIR 2008 SC 2058.

<sup>126</sup> Para 16, *Vasudev Daulatram Sadarangani v Sajni Prem Lalwani* AIR 1983 Bom.268.

<sup>127</sup> Para 17, *Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors*, AIR 2008 SC 2058.

<sup>128</sup> Para 16, *Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors*, AIR 2008 SC 2058.

<sup>129</sup> *Krishna Kumar Sharma v. Rajesh Kumar Sharma* AIR 2009 SC 3247

<sup>130</sup> *Prabhunath Singh and Anr. v. Sukhdeo Rai* 2010 (58) BLJR 848

<sup>131</sup> Ibid, para 25.

<sup>132</sup> Ibid.

<sup>133</sup> In Re: *Nagraj Chhajer S/o. Budhmalji Chhajer*, 2011 GLH (2) 423

<sup>134</sup> Ibid., para 7.

that 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.<sup>135</sup> Therefore, even the High Court of Gujarat had given a decision contrary to the decision of the Supreme Court. The Supreme Court had already settled the position of law and it was not open for the high court to decide upon the same.

### 3) Delhi High Court

The Delhi High court in the year 2010 decided two cases related to probate applications. In the case decided by it in August 2010, while dealing with the issue of Limitation the court correctly quoted the Supreme court judgment of 2008 and held that Article 137 of the Limitation Act, 1963 applies to the applications for grant of probate and accordingly held that the application for probate was time barred<sup>136</sup>. But an important point to be noted here is that while computing the limitation period the court held that the period of three years would surely commence at least from the date on which a legatee under a Will could be justifiably ascribed with the knowledge that the Will on which his claim is founded is likely to be disputed by other persons especially the natural heirs of the Testatrix<sup>137</sup>. And based on this the court declared the application for grant of probate as time barred<sup>138</sup>. It failed to notice para-17 of the above mentioned Supreme Court judgment and, hence, failed to recognize that the limitation period starts from the day of death of the testatrix.

In the case decided by it in November 2010, again the court has correctly observed the Supreme Court judgment of 2008 that Article 137 of the Limitation Act, 1963 applies to the applications for grant of probate.<sup>139</sup> But the court failed to notice para-17 of the judgment and therefore doesn't deal with the issue of the limitation period clearly.

In the year 2011, the High Court decided three cases related to the probate applications. In one among them, the Court while deciding the issue of Limitation period for the grant of probate application did not refer to the two important Supreme Court judgments at all. It gave its judgment on this issue solely on the basis of the Delhi High Court judgment in *Pamela Manmohan Singh v. State* (2000) RLR.<sup>140</sup> While referring to this case the court correctly decided that Article-137 of the Limitation Act applies to the applications for grant of probate/administration.<sup>141</sup> However it went wrong in deciding the point from where this limitation starts.<sup>142</sup> The court should have referred to the above mentioned Supreme Court cases and was wrong in not looking into the Apex Court's judgments.

### 4) Guahati High Court<sup>143</sup>

The court quoted the Supreme Court Judgment and said that there's a limitation of three years on probate applications.<sup>144</sup> This is wrong. There is a limitation of 3 years on an application for grant of letters of administration.<sup>145</sup> Grant of probates is a continuing right and the duty can be discharged by the executor whenever.

### 5) Delhi High Court<sup>146</sup>

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<sup>135</sup> *Ibid.*

<sup>136</sup> Para 4 *Pratap Singh and Anr. v. The State and Anr.* 173 (2010) DLT 132

<sup>137</sup> *Ibid*, Para 5 and 7.

<sup>138</sup> *Ibid*

<sup>139</sup> Para 15, *Harinder Pal Singh v. State and Ors.* MANU/DE/3173/2010.

<sup>140</sup> Para 16, *Usha Dewani and Anr. v. Paras Ram T. Dewani* 2011 II AD (Delhi) 487, 2011 (122) DRJ 460.

<sup>141</sup> *Ibid*

<sup>142</sup> *Ibid*, Para 17-19,

<sup>143</sup> *Kamakhya Prasad Gupta and Anr. v. Jibon Lal Gupta*, 2011 (1) GLT 435.

<sup>144</sup> *Ibid.*

<sup>145</sup> *Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors*, AIR 2008 SC 2058.

<sup>146</sup> *Yogesh Duggal and Ors. v. State and Ors*, 179 (2011) DLT 557

The beneficiary had filed an application for grant of probate, which in itself is wrong. The beneficiary files for grant of letters of administration, to which limitation of three years applies from the date of the death of the deceased.<sup>147</sup> In this case, the court used both the terms interchangeably, as well.

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<sup>147</sup> *Kunvarjeet Singh Khandpur v. Kirandeep Kaur & Ors*, AIR 2008 SC 2058.