



**Reserved On : 01/07/2026**  
**Pronounced On : 05/08/2026**

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/FIRST APPEAL NO. 265 of 2000**

**With**  
**R/FIRST APPEAL NO. 266 of 2000**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR. JUSTICE J. C. DOSHI**

|                        |     |    |
|------------------------|-----|----|
| Approved for Reporting | Yes | No |
|                        | Yes |    |

**MADHUSUDAN MOTILAL JAYSWAL SINCE DECD THRU HIS HEIRS & ORS.**

**Versus**

**SHRAWANKUMAR MOTILAL JAYSWAL & ORS.**

**Appearance:**

DECEASED LITIGANT for the Appellant(s) No. 2  
 DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESENTATIVES  
 for the Appellant(s) No. 1,1.2,1.5

MR RS SANJANWALA, SR. ADVOCATE WITH MR. AADIT R  
 SANJANWALA(9918) for the Appellant(s) No. 1.1,1.2.2,1.3,1.4,3,4,5,6,7,8

MR HM PARIKH, SR. ADVOCATE WITH KISHAN Y DAVE(8293) for the  
 Defendant(s) No. 1,2

NOTICE SERVED for the Defendant(s) No. 3,4

**CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI**

**CAV JUDGMENT**

1. By common judgment dated 15.03.2000, learned 4<sup>th</sup> Joint Civil Judge Senior Division Nadiad, Kheda decided Special Civil Suit No. 130 of 1996 (old Regular Civil Suit No.66 of 1992) and Probate Application No.33 of 1997, whereby, Special Civil Suit was dismissed and Probate Application was allowed.



2. Being aggrieved by the common judgment, the original plaintiff, Madhusudan Motilal Jaiswal has filed the caption appeals.

3. First Appeal No. 265 of 2000 is filed to challenge the judgment and decree dismissing the Special Civil Suit No. 130 of 1996. First Appeal No. 266 of 2000 is filed to challenge the judgment and order passed in Probate Application No. 33 of 1997.

4. For sake of convenience and brevity, plaintiff of Special Civil Suit No.130 of 1996 is referred to as plaintiff and defendants of the suit as defendants. Mr. Sunilkumar Jaiswal, who has filed Probate Application No.33 of 1997 seeking probate of Will is referred as propounder.

5. The factual background of the case are that the plaintiff and defendant are heirs of deceased Motilal Jaiswal and Propounder is a grandson of deceased Motilal Jaishwal. Plaintiff Nos.1, 2 and 3 defendant No.1 are the sons of deceased Motilal Jaishwal. Plaintiff No.4 to 8 are Class 1 heirs of deceased Mohanlal, who happen to be brother of plaintiff No.1, 2 and 3 and defendant No.4 and son of deceased Motilal Jaishwal. Sunil Kumar the propounder is a son of Shravan Kumar, being son of deceased Motilal Jaiswal.

6. Crux of the dispute is the immovable property of survey

No.3138 admeasuring 4856.30 sq.mtrs at Moje Balasinor having its revenue survey number No.1686 (for short **“suit property”**). Plaintiff came out with the case that the suit property is ancestral property. Deceased father Motilal Jaishwal purchased the suit property from the income of ancestral property. After death of Motilal Jaishwal, plaintiff and defendant No.1 have equal undivided share in the suit property. Defendant No.1 and 2, since were intend to take away the suit property by fabricating the Will of deceased Motilal Jaishwal, filed an application before the City Survey Officer. The plaintiff came to know about execution of the purported or alleged Will of the deceased Motilal Jaishwal and further attempt to take away the suit property. The defendants since trying to take away suit property, plaintiff filed the suit for declaration and injunction. It was registered as Regular Civil Suit No.66 of 1992. The suit was later on converted into Special Civil Suit No.130 of 1996. Relief clauses were amended. In para 4, plaintiff claimed following reliefs (it is in Gujarati, for better understanding it is translated in English) :-

- “(A) Kindly declare that we, the plaintiffs, have lawful undivided share in the property situated at Mouje Balasinor bearing City Survey No. 3138, Revenue Survey No. 1686; and issue direction to get the aforesaid property measured by a Court Commissioner / City Survey authority, to divide it into five equal shares and fix the boundary marks, and pass a decree to hand over the direct possession of the property as per the share of us plaintiffs and defendant no. 1.*
- (B) Grant a permanent injunction restraining the defendants to sell or cause to sell to any other person*

*on the basis of a will, or create or cause to create the possession of a third party over the property situated at Mouje Balasinor bearing City Survey No. 3138, Revenue Survey no. 1686 by transferring in any other manner.*

- (C) Grant an injunction restraining Defendant No. 1 to enter or cause to enter the name of Defendant No. 2 on the basis of the said forged will in respect of the property situated at Mouje Balasinor bearing City Survey No. 3138, Revenue Survey No. 1686, and also restraining Defendant Nos. 3 and 4 from making an entry or cause to make an entry in the name of Defendant No. 2 in the disputed property at the behest of Defendant Nos. 1 and 2 and on the basis of the said bogus will.*
- (D) Grant any other relief that the Honourable Court may deem fit.*
- (E) Kindly grant the entire costs of this application from the defendants.”*

6. In written statement, defendant nos.1 and 2 raised usual contention that the suit property was self-acquired property of deceased Motilal Jaishwal. It is further contended that the deceased Motilal Jaishwal in his lifetime has partitioned his properties amongst his four sons, moreover marriage of the two daughters were carried out by deceased Motilal Jaishwal and they were given sufficient income, thereby leaving suit property, all alone. Deceased Motilal died on 10.10.1985 but prior to his death, he had executed Will dated 17.04.1976 in favour of the grandson Sunil Jaiswal, who was minor at the relevant time and thereby on testamentary disposition, deceased Motilal Jaishwal had given the suit property to the Sunil s/o. Shravan Jaishwal. The defendant in written statement indicated that they are



intending to file probate proceedings to obtain the probate of the Will of deceased Motilal Jaiswal. Consequently, probate application No.33 of 1997 was filed by propounder Sunil joining all Class 1 heirs of the deceased Motilal Jaishwal as opponent and objector under section 227 of the Indian Succession Act and claimed probate or letter of administration of Will of deceased Motilal dated 17.04.1976. The proceeding of the Special Civil Suit and probate application ran separately. Multiple suspicious circumstances were raised by the opponent by filing written statement. Amongst various suspicious circumstances, main contention was that probation application was not filed within stipulated time period; which makes Will doubtful; no public notice was issued inviting objections; that deceased had no reason to dispose of the suit property in favour of grandson when sons and daughters were alive as also other grandchildren were alive; that despite City Survey Superintendent directed propounder to produce original Will in revenue proceedings which took place in the year 1991 and confirmed in the year 1994 by Prant Officer in Appeal No.82 of 1992, yet propounder has not filed application to obtain probate within time. At the time of execution of Will, wife of deceased Motilal was alive. She died on 05.05.1977, yet in the Will it is stated that wife is expired. This makes Will more doubtful. In all objectors of probate application raised multiple suspicious circumstances.

7. Initially, proceedings of Special Civil Suit and probate proceedings ran separately. Issues were also framed separately and evidence were also recorded separately. But subsequent thereto proceedings were clubbed together and common



arguments were made. As stated above, learned Trial Court by common judgment, dismissed the Special Civil Suit and allowed the probate application which gives rise to the caption appeals.

8. Heard learned Senior Counsel Mr.R.S.Sanjanwala with learned advocate Mr.Aadit Sanjanwala for the appellants and learned Senior Counsel Mr.H.M.Parikh with learned advocate Mr.Kishan Dave for respondent nos.1 and 2. Written submission filed by both the parties are taken on record.

9. After narrating factual background of case, learned Senior Counsel Mr. R.S.Sanjanwala for the appellant attacking mainly on alleged Will of deceased Motilal argued that learned Trial Court has grossly erred in ignoring the evidence on record. He further submit that the Will is required to be proved in the manner any other documents are proved. It is submitted that in addition thereto the Will is to be proved as per the Section 63 of the Indian Succession Act read with section 68 of the Indian Evidence Act. It is further submitted that section 63 of the Indian Succession Act require that the testator shall sign or affix his mark to the Will and the signature of affixation shall show that it was intended to give effect to the writing as a Will and the Will is required to be attested by two or more witnesses each of whom has seen the testator sign the Will, and each of the witness shall sign the Will in presence of testator. He would further submit that in view of Section 68 of the Evidence Act the Will cannot be used in evidence until one attesting witness has been examined. He further submitted that the burden lies upon



the propounder to prove the Will. It is also submitted that the propounder is required to establish that the Will is validly executed, Will is signed by the testator, the executor had signed the Will after understanding the content of the Will. It is submitted that in present case the propounder Mr. Sunil who has filed the probate application did not appear in the witness box to discharge the burden and thereby it draws suspicious circumstances. He would further submit that in the entire matter Mr. Sunil son of Mr. Shravan Kumar, beneficiary of the Will did not enter into witness box, either in the suit previously or in a probate application.

9.1. Learned senior Counsel Mr. Sanjanwala also submitted though at the time of execution of the alleged Will beneficiary, Mr. Sunil was a minor and when he sought for probate of the Will he was major and not entering in the witness box would raise a grave suspicious circumstances. Learned Senior Counsel submitted that once the propounder discharges the burden with evidence showing competence of the testator, then only onus will shift upon the objector to show the existence of suspicious circumstances. He further submitted once suspicious circumstances are placed on record, the onus will shift back on the propounder to dispel the suspicious circumstances. It is further submitted that when the Will is shrouded with suspicious circumstances it ceases to be simple lis between plaintiff and defendant. He would submit that the learned Trial Court failed to understand this aspect and granted the probate on the ground that the plaintiff has accepted the signature of the deceased on a document called Will, however while doing so

the learned Trial Court failed to understand the contention of the plaintiff that Will is prepared on the blank sign paper. He would further submit that Will though runs in more than one page, signature of the testator is made only in the last page. He would further submit that even the writing on the upper part of the Will on the last page, as it comes down it become congested in the size of the letters which also raises a doubt. In all, learned Senior Counsel submit that multiple suspicious and doubtful circumstances tantamount on simple countenance of facts, however, learned Trial Court failed to notice and committed gross error in passing impugned judgment and decree.

9.2. In support of above submissions, learned senior Counsel Mr. Sanjanwala relied upon the judgment of Hon'ble Supreme Court in the case of **Derek A.C. Lobo and Ors. v/s. Ulric M.A. Lobo (dead) by LRs [2023 INSC 1093]** and in case of **Jaswant Kaur v/s. Amrit Kaur [AIR 1977 SC 74]**.

9.3. Mr. Sanjanwala, learned Senior Counsel for the appellant also argued that the sequence of proving a Will, showing a suspicious circumstances and shift back of onus must be followed in the process of appreciation of the evidence and same must be reflected in the judgment in order to show application of the mind to the well settled legal principles. It is further submitted that the propounder is required to satisfy the Court not only about existence of the Will, but also competence of the testator to execute the Will and understanding of the deceased testator to the contents of the Will as also to satisfy the Court's



conscience on all aspect of the Will. It is further submitted that the learned Trial Court has erred in believing the Will on the ground that the objectors purportedly admitted the signature and that the Will was exhibited in evidence. He would further submit that neither of the reasons are legally tenable to issue probate.

9.4. Learned Senior Counsel Mr.Sanjanwala also referred to following suspicious circumstances in support of his argument.

*(i) The Will dated 17.4.1976 surfaces for the first time in 1991-92, more than 15 years after its claim to be executed and 7 years after the testator's demise. There is no justification as to why the Will was belatedly propounded.*

*(ii) In the alleged Will dated 17.4.1976, the wife of the testator Chandaben, was alive as on 17.4.1976. She died much later than 5.5.1977 (please see the death certificate, Exh.61 at page 31 of PB). The justification given for that in the evidence is hollow and not believable.*

*(iii) The Will is claimed to have been witnessed by two persons as witnesses, namely, (i) Shridhar Amrutlal Jaiswal, who is the son of defendant No.1 Mama and Sumantlal Manilal Jaiswal, who is Banevi of the defendant No.1. The Will is claimed to have been written by one Arvind Shankar Trivedi by his hand. Out of the aforesaid three*



*persons, Shridhar Amrutlal Jayswal and Arvind Shanker Trivedi died before the suit proceedings on 11.02.1992 and 1997 respectively. The propounder ought to have proved the Will immediately on the demise. There is no justification as to why the propounder belatedly made the Will by which time, two of the most crucial witnesses had died. The testimony of these two persons would have had a significant bearing on the issue. Delay in propounding the will is a suspicious issues.*

*(iv). The propounder is also the beneficiary to the exclusion of all other children of Motilal Jaiswal, which is a suspicious circumstance. The bequest is clearly unnatural.*

*(v). The original Will was not produced although directed by the revenue authorities in RTS proceedings (please see order dated 18.01.1994 Exh. 85 page 55 of FA 265/2000 paperbook) (please also see order dated 15.01.1998 Exh. 86 page 58 of FA 265/2000 paperbook)*

*(vi) In the cross examination Defendant no. 1 has admitted that one of the witnesses to the Will viz. Sumantbhai resides in dahegam and Sumantbhai would come to stay with Defendant no. 1 (cross examination of Defendant no. 1 at page 69). Thus, the only surviving witness had better relations with Defendant no. 1 as compared to other family member.*

*(vii) In the cross examination of Sumantbhai, he has not identified the signature of the other witness. Additionally, this witness is only metric pass and runs a kirana store. (cross examination page 71). He further states in his cross examination that he was called by his father in law by writing a letter (cross examination page 72 of paperbook). But no such letter produced.*

*(viii) Sumantbhai has further stated in his cross examination (at page 74 of FA 265/2000 paperbook) that he does not remember whether the will was read out after being written. Whereas the same witness Sumantbhai in his examination in Chief in the evidence given in the probate application has made a positive statement that the Will was not read out after it was written (page 38 of the Paperbook of FA 266/2000). In the cross examination of the suit proceedings. Sumant bhai at page 74 of FA 266/2000 paperbook has stated that the testator had read the Will before signing. However, in his cross examination in the probate proceedings he has stated that he is not aware if the Will was read out by the testator before signing (page 40 of paperbook of FA 266/2000). There are contradictions in the evidence given by the sole surviving witness, which make his testimony unreliable.*

*(ix) On the propounders own showing, the Will was not read out and it was not read by the testator before signing*

(x) *It is an admitted position on record that the alleged writer of the Will Arvindbhai Trivedi was himself very old when the Will was written and he had hearing issues (cross examination of Shravanbhai at page 67 of FA 265/2000 paperbook) (also at cross examination of Sumantbhai at page 38 of FA 266/2000 paperbook). Thus the writer admittedly had hearing issues and the will was not read out as per say of one of the witnesses.*

(xi) *The Will at Exh. 150 (page 75 of PB) is only signed on the last page. A perusal of the Will would show that the spacing between two lines has been reduced in the later part of the Will, which seems to be a effort to squeeze in the writing before the signing clause. This also gives rise to the possibility that the Will was written on a blank piece of paper and the writing was later squeezed in and the font size was reduced co complete it before the signing clause. The initial Onus lies on the propounded and in case of any suspicion, the Propounder must remove the legitimate suspicions before the Will can be accepted. Judgment in Support are as follows;*

(i) *Meena Pradhan & Ors. Vs. Kamla Pradhan, Civil Appeal No.3351 of 2014 (Para 6, 10)*

(ii) *Shivkumar and Ors. Vs. Sharanbasappa and Ors., (2021) 11 SCC 277-3 Judge Bench- (Para 12-12.9)*

(iii) *Niranjana Umeshchandra Joshi Vs. Mrudula Jyoti Rao and Ors, (2006) 13 SCC 433, (Para 32, 33)*

*(xii) Although it is the prepounder's case that all members of the family were present during the execution of the Will, it is strange and surprising that none of the other children of Motilal Jaiswal (excluded in the Will) was made to sign as witnesses, whereas Defendant no. 1's brother in law was called from Dahegam to sign as Witness.*

9.5. Relying upon the judgment of **Dhani Ram (dead) through LRs and ors. v/s. Shiv Singh [(2023) SCC OnLine SC 1263 and in case of Yumnam Ongbi Tampha Ibema Devi v/a. Yumnam Joykumar Singh and others [(2009) 4 SCC 780]**, it is submitted that the learned Trial Court has grossly erred in believing the execution of the will despite the propounded document do not stand proven as per the legal criteria. Mere admission of signature would not be sufficient to prove the Will.

9.6. Lastly it was argued by learned Senior Counsel Mr.Sanjanwala that the probate application is grossly barred by law of limitation. It is argued that the Article 137 of the Limitation Act applies to the case on hand. It is submitted that under Article 137 the limitation period would be of three years which commence from the date on which right to apply accrues. It is further submitted that dispute was raised before the City Survey Superintendent in the year 1991 - 1992 wherein, the legality of the Will was questioned. The plaintiff instituted revenue proceedings seeking insertion of defendant No.2's name in the city survey record. By order dated 09.10.1992, name of



the defendant No.2 was mutated. In these proceedings the City Survey Officer directed the propounder to produce the original copy of the Will but it was not produced. Therefore, it could have been said that the dispute was raised about the validity of the Will in 1992 proceeding, yet the probate application was filed on 01.12.1998, therefore the probate application is hopelessly time barred beyond period of three years from the day on which right to apply accrues. In support of this contention, reliance was placed on the judgment in the case of **Arvind Garach v/s. Pragna Garach and others [2015 SCC OnLine Cal 6485]** and **in case of Kunvarjeet Singh Kandpur v/s. Kirandeep Kaur [2008 (9) SCC 463]**.

9.7. It was also argued by learned Senior Counsel Mr.Sanjanwala that if the court disbelieve the Will of the deceased Motilal, it will ipso facto prove that the property is HUF property and four sons of deceased Motilal had equal share in the suit property. He would further submit that two daughters of the deceased Motilal are not joined, therefore, learned Trial Court dismissed the suit. It is submitted that the daughters can be joined even at subsequent stage after passing the preliminary decree and therefore on the ground of non joining of two daughters, suit cannot be dismissed. Therefore the order passed by learned Trial Court to dismiss the suit is gross error of the learned Trial Court.

9.8. Mainly upon above submissions, learned Senior Counsel Mr.Sanjanwala submitted to allow both the appeals and to pass



the necessary order to upset the finding with regards to dismissal of the suit and grant of the probate in probate proceedings.

10. Per contra, learned Senior Counsel Mr. Parikh for the respondents argued in support of the impugned common judgment and decree. After narrating the facts of the case, learned Senior Counsel Mr.Parikh submitted that the plaintiff filed a suit for partition of ancestral property. He would further submit that the learned Trial Court after appreciating the evidence on record and perusing to the documentary evidence of the plaintiff came to the conclusion that plaintiff miserably failed to prove that the suit property is ancestral property. He would submit that the documentary and oral evidence placed on record without any doubt establish that the deceased Motilal had purchased the suit property from his own income and till his death the title of the suit property remains in the name of the deceased Motilal, which term the suit property as self acquired property of the deceased Motilal. He would further submit that since the plaintiff has miserably failed to prove that the suit property is ancestral property the learned Trial Court has rightly dismissed the suit of the plaintiff. He would further submit that even the suit was barred for non joinder of the parties. It is submitted that two daughters of the deceased Motilal were not joined in the suit for partition claiming suit property as an ancestral property and therefore the suit was rightly dismissed on the ground of non joiner of all the co-parceners / co-sharer.



10.1. It is submitted that in probate application Will of the deceased was duly proved as per section 63 of the Indian Succession Act read with section 68 of the Evidence Act. It is submitted that Sumantlal Jaiswal – son in law of the deceased was attesting witness. He was brother in law of plaintiff as well as defendant and an equal relationship with disputing party. He being attesting witness of Will has deposed before the learned Trial Court in probate application and identified signature of deceased Motilal on Will. It is submitted he has also identified signature of attesting witness who has expired when evidence was recorded. It is further submitted that presence of Sumantlal Jaiswal being son in law was quite natural at the time of execution of Will. It is submitted that when attesting witness proved execution of Will proved, raising some story of suspicious circumstances would not cast a doubt on the Will. It is submitted that two attesting witness are near relatives, one is the son-in-law of the deceased and other is brother in law of the deceased Motilal. They are equally related to the Plaintiff and defendant and in that way their deposition before the learned Trial Court is of great importance. It is further submitted that it comes on record that deceased Motilal has purchased suit property from Gokulbhai Somabhai on 05.08.1936, which makes suit property as self acquired property of the deceased and thus had right to dispose of his property by way of Will and thereby was competent to execute the Will and to dispose of the property in favor of the propounder Mr. Sunil. It is submitted that by way of Will, deceased has expressed his last wish and disposed of property posthumously. On previous occasion, during his life time, he has partitioned his self acquired properties amongst four sons and given sufficient to daughters in from of dowry.





Therefore there is no unequal disposition which may give rise to suspicious circumstances.

10.2. In all it is argued that judgment and decree passed by the Trial Court is based on sound appreciation of evidence and on best possible view under the provisions of law and looking to the evidence on record. Thus, learned senior Counsel Mr.Parikh submitted to dismiss the appeals.

10.3. So far as argument that probate application is barred by limitation Act is concerned, learned Senior Counsel Mr.Parikh submitted that application for probate does not mean claiming any legal right, it only recognize from the Court to perform duty. It is further submitted that the issue has been dealt by Hon'ble Apex Court as well as this Court in catena of judgments. Learned Senior Counsel Mr.Parikh referred to judgment in the case of **Krishnan Kumar Sharma v/s. Rajesh Kumar Sharma [(2009) 11 SCC 537]; Habibbhai Ishabhai Sandhi v/s. Ibrahimbhai Ishabhai Sandhi [First Appeal No.1098 of 2019,Gujarat High Court] and Nagraj Chhajer v/s.- [First Appeal No.796 of 2011,Gujarat High Court].**

10.4. In light of above submission, learned Senior Counsel Mr.Parikh submitted to dismiss both the appeals and confirm the impugned judgment.

11. I have heard learned advocates for the parties; applied mind to the facts of the case as well as evidence on record in as



much as to impugned common judgment and order.

12. Close look at dispute between the parties, it appears that plaintiff of the suit claims that suit property has been purchased by the deceased from the income of the ancestral property and claims undivided share in the suit property after the death of the deceased, whereas, probate application was filed by the beneficiary, Mr. Sunilkumar, the grandson of the deceased Motilal Jaiswal, to obtain the probate or letter of administration for the last will dated 17.04.1976.

13. Plaintiff claims undivided share in the suit property, on the other hand, propounder claims exclusive right over the suit property on the basis of Will of deceased.

14. In view of rival dispute between the party, question fall for consideration in this appeals are as under :-

- (i) Whether plaintiff proves that suit property is undivided property of HUF ? and plaintiff has undivided share in it ?
- (ii) Whether propounder succeeded in proving that Will dated 17.04.1976 is last Will of deceased Motilal Jaiswal and by which suit property is bequeathed to him ? Or Will is shrouded by suspicious circumstances and as such Will remain unproved ?
- (iii) Whether probate application was time barred ?
- (iv) What order ?

15. Before I proceed to discuss merit and demerit of the case and examine rival arguments, let refer issues framed in suit and probate proceedings as under :-

Issues framed in Special Civil Suit

- (1) *Whether plaintiffs prove that they have not right in the land survey no.3138 its revenue survey no.1686 as alleged ?*
- (2) *Whether plaintiffs prove that the above mentioned land is ancestral individual land as alleged ?*
- (3) *Whether proper court fee paid by plaintiff ?*
- (4) *Whether defendant prove that suit is bad for non joinder and mis joinder of necessary party as alleged ?*
- (4A) *Whether defendants prove that Will executed by the deceased is legal as alleged ?*
- (5) *Whether plaintiffs are entitled to get all the relief as prayed for ?*

Issues framed in probate proceedings

- (1) *Whether the applicant proves the fact of the application ?*
- (2) *Whether the opponents prove the contention of the written statement Exh.12?*
- (3) *Whether the applicant is entitled of the prayer asked in para 6 of the application ?*
- (4) *What order and decree ?*

16. It is not in dispute that suit property was purchased by deceased Motilal in the year 1936 by registered sale deed and



since then it continued in the name of deceased Motilal. Sharvankumar father of the beneficiary Sunilkumar filed application on 30.09.1991 before City Survey Officer (Exh.68) to mutate name of Sunil in the suit property as deceased expired on 10.10.1985 on the ground that deceased has executed Will in favour of Sunilkumar. Identical application was also moved to Talati cum Mantri on 10.01.1992 (Exh.69). By objection dated 04.11.1991, (Exh.70), Rohitkumar son of deceased Motilal filed contention and questioned about existence of Will and objected that Will is fabricated and further stated that in absence of approval from Court, Mr.Sharvankumar cannot mutate name of his minor son Sunil. Another objection was filed on 28.10.1991 by Kamleshkumar (Exh.71) in the same manner. City Survey Officer on 09.10.1992 (Exh.84) passed order and dismissed the application and also dismissed mutation entry on the ground that although it was informed to Sunilkumar - beneficiary to produce original Will in the office, however, beneficiary did not remain present and did not produce copy of Will.

17. Being aggrieved, beneficiary Sunilkumar preferred CTS application No.82 of 1992 before the Deputy Collector, Anand (Exh.85). This appeal was also dismissed and order of City Survey officer was confirmed. Being further aggrieved, the beneficiary preferred appeal No.12 of 1994 before the Collector, Anand (Exh.86) and by order dated 15.01.1998, Collector dismissed the appeal and confirmed the order passed by Deputy Collector as well as City Survey officer.

18. It is in this background, let refer judgment of Hon'ble Apex

Court in the case of **Sardari Lal v/s. Bishan Dass [2026 INSC 669]**, wherein, it is held that where there are suspicious circumstances, the onus would be on the propounder to explain them to satisfaction of the Court before the Will could be accepted as genuine. In para 27 to 29, Hon'ble Apex Court has discussed law regarding proof of Will. It reads as under :-

***“Law regarding proof of Wills***

*27. In Rani Purnima Debi (supra), a three-Judge Bench of this Court, after considering another three-Judge Bench decision rendered in H. Venkatachala Iyengar (supra), summarized the law as under: The mode of proving a Will does not ordinarily differ from that of proving any other document except as to the special requirement of attestation prescribed in the case of a will by Section 63 of the Indian Succession Act, and its mode of proof as prescribed in Section 68 of the Indian Evidence Act, 1872. The onus of proving the Will is on the propounder and in the absence of suspicious circumstances surrounding the execution of the will, proof of testamentary capacity and signature of the testator as required by law is sufficient to discharge the onus. Where, however, there are suspicious circumstances, the onus would be on the propounder to explain them to the satisfaction of the court before the Will could be accepted as genuine. If the caveator alleges undue influence, fraud or coercion, the onus is on him to prove the same. Even where there are no such pleas, but the circumstances give rise to doubts, it is for the propounder to satisfy the conscience of the court. The suspicious circumstances might be as to: (a) the alleged signature of the testator; (b) the condition of the testator's mind; (c) the dispositions made in the Will, which may appear unnatural, improbable or unfair in the light of relevant circumstances; or the Will might otherwise indicate that the said dispositions might not be the result of the testator's free will and mind; and (d) the propounder taking a prominent part in the execution of the Will which confers substantial benefits upon him. If the propounder succeeds in removing the suspicious circumstances, the court would grant probate, even if the will might be unnatural and might*

*cut off, wholly or in part, near relations.*

28. In *Smt Jaswant Kaur v. Smt. Amrit Kaur*<sup>24</sup>, a three-Judge Bench decision of this Court, it was held:

*“9. In cases where the execution of a will is shrouded in suspicion, its proof ceases to be a simple lis between the plaintiff and the defendant. What, generally, is an adversary proceeding becomes in such cases a matter of the court's conscience and then the true question which arises for consideration is whether the evidence led by the propounder of the will is such as to satisfy the conscience of the court that the will was duly executed by the testator. It is impossible to reach such satisfaction unless the party which sets up the will offers a cogent and convincing explanation of the suspicious circumstances surrounding the making of the will.”*

*(Emphasis supplied)*

29. In *Kalyan Singh, London Trained Cutter, Johri Bazar, Jaipur v. Smt. Chhoti and Ors.*<sup>25</sup>, a three- Judge Bench of this Court held:

*“20. ...a will is one of the most solemn documents known to law. The executant of the will cannot be called to deny the execution or to explain the circumstances in which it was executed. It is, therefore, essential that trustworthy and unimpeachable evidence should be produced before the court to establish genuineness and authenticity of the will. It must be stated that the factum of execution and validity of the will cannot be determined merely by considering the evidence produced by the propounder. In order to judge the credibility of witnesses and disengage the truth from falsehood the court is not confined only to their testimony and demeanor. It would be open to the court to consider circumstances brought out in the evidence or which appear from the nature and contents of the documents itself. It would be also open to the court to look into surrounding circumstances as well as inherent improbabilities of the case to reach a proper conclusion on the nature of the evidence adduced by the party.”*

*(Emphasis supplied)*

18.1. What could be considered as suspicious circumstances has been elaborated by Hon'ble Apex Court in para 30. Para 30 to 32 reads as under :-

*“ 30. Elaborating upon as to what could be considered ‘suspicious circumstance’ in the context of a will, in Shivakumar (supra), a three- Judge Bench of this Court held:*

*“12.6. A circumstance is “suspicious” when it is not normal or is “not normally expected in a normal situation or is not expected of a normal person”. As put by this Court, the suspicious features must be “real, germane and valid” and not merely the “fantasy of the doubting mind”.*

*12.7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependents; an active or leading part in making of the will by the beneficiary thereunder etcetera are some of the circumstances which may give rise to suspicion. These circumstances above noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to a legitimate suspicion about the execution of the will. On the other hand, any of the circumstances qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof and sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.*

*12.8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the will of the testator is surrounded by suspicious circumstance(s). While applying such test, the court would address itself to the solemn questions as to whether the testator had signed the will while being aware of its contents and after understanding nature and effect of the dispositions in the will.*



*12.9. In the ultimate analysis, where the execution of a will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the court and the party which sets up the will has to offer cogent and convincing explanation of the suspicious circumstances surrounding will.”*  
(Emphasis supplied)

*31. In Lilian Coelho & Ors. v. Myra Philomena Coelho, while laying stress on the obligation of the propounder to explain the suspicious circumstances so as to satisfy the conscience of the Court, it was observed:*

*“13. At the same time, if it is taken that the learned Single Judge had only recorded that the plaintiff had succeeded in proving the execution in terms of the provisions under Section 63 of the Succession Act, 1925 and Section 68 of the Evidence Act, 1872 in the light of well-nigh settled position of law, it would be open to the court to consider, rather, it is the irrecusable duty of the Court in case the objector raises suspicious circumstances, to call upon the propounder to remove such suspicious circumstances to satisfy its conscience.”*

*32. Survey of judicial precedents makes it clear that the burden to prove the Will lies on its propounder. Besides, the exercise of proving the Will is not confined to proving its execution in terms of Section 63 of the Succession Act by the mode prescribed by Section 68 of the Evidence Act. This is just the first step in that exercise. The exercise is complete when the propounder satisfies the Court’s conscience that the testator had signed the Will with free will, being aware of its contents, and after understanding the nature and effect of the dispositions in the Will. And, if there are suspicious circumstances raising doubts about the Will, it is the duty of the propounder to explain those suspicious circumstances to dispel the doubts and satisfy the Court’s conscience. As to what would be considered a ‘suspicious circumstance’ depends on the facts and circumstances of each case. Broadly, any circumstance, or set of circumstances, which gives rise to a legitimate suspicion about the valid execution of the Will could be considered a suspicious circumstance. However, those suspicions must*



*not be a figment of imagination or fantasy of a doubting mind.*

*Issue Nos.1 & 2”*

18.2. In para 67 and 68, Hon’ble Apex Court held as under :-

*“67. In H. Venkatachala Iyengar (supra), this Court had observed that what circumstances would be regarded as suspicious cannot be precisely defined or exhaustively enumerated. More so, that inevitably is a question of fact. Similar view is taken by this Court in Lalitaben Jayantilal Popat v. Pragnaben Jamnadas Kataria & Ors.*

*68. In Mansinghrao Yeshwant Rao Patil & Ors. v. Ramchandra Govindrao Patil & Ors.<sup>32</sup> a three-Judge Bench of this Court had observed that use of time-honored phrases like “the conscience of the Court being satisfied” cannot convert a question of fact into one of law. The relevant observations are extracted below:*

*“7. ... The use of time-honored phrases like “the conscience of the Court being satisfied” cannot convert a question of fact into one of law. The phrase is only a rule of prudence and is nothing more than a picturesque way of saying that when the legal heirs to property are being divested in whole, or in part, of their inheritance by a man who is no longer available for examination as a witness great caution should be employed before upholding such an act. But despite all this the question remains one of fact.”*

19. Taking into consideration aforesaid ratio laid down by Hon’ble Apex Court, let me first go through the Will of the deceased produced at Exh.159. The Will is hand written Will. However it is not written by the deceased but by scribe - Arvind Sankarlal Trivedi. The opening paragraph of the Will which was purportedly executed on 17.04.1976 states that **my wife Chandanben has expired.** It is further stated that Shravan Kumar is residing with testator (Sharvan kumar is father of



beneficiary). The Will is written and signed in different ink. Mr. Amrutlal Jaiswal and Samantrai are attesting witnesses and Mr. Arvind Sankarlal Trivedi is the scribe. The will is running in two pages, except at the end of the Will on second page, on no other page contain signature of deceased. Noticeable aspect that deceased was literate person, he after execution of alleged Will continue to read and write for many years and yet he did not choose to write his Will but permitted to be written by scribe. This circumstances, in absence of explanation is highly doubtful.

20. In the proceedings of Special Civil Suit, attesting witness to the Will has entered into witness box as PW-1 (Exh.158). He has stated that Will has been executed by his father in law and by Will, he has bequeathed suit property to grandson Sunilkumar and Will was executed on 17.04.1976. The Will was scribed by Arvind Sankarlal Trivedi. Attesting witness has identified signature of scribe Arvind Jaiswal. He has further stated that Arvind Trivedi was neighbour of deceased Motilal and he by profession was advocate. This witness thereafter has identified the signature of his father-in-law and other attesting witness. He has further stated that signature were taken immediately after the Will was written. He has also stated that all signatures are taken in presence of each other. He has further stated that the other attesting witness who is also near relative of plaintiff and defendant has expired.

21. In cross examination witness accepted that at the time of executing the Will his father-in-law was residing at Balasinor. He has further admitted that he does not know whether any

attesting witness was called by writing letter. He has further admitted that the other attesting witness was also an advocate by profession. It is further admitted that his father in law has good relations with all respected persons in village. It is accepted that he left Dehgam which is three hours away from Balasinor. It is also accepted that Baroda also has equal distance. It is accepted that he cannot recollect whether he reached first or other attesting witness. He admitted that he reached to Balasinor a day prior to the Will was executed but did not recollect that how many days he stayed in the village Balasinor subsequent to execution of Will. He further admitted that he cannot say that when the Will was written, whether it was written in the morning, in noon or in afternoon. He further admitted that his father-in-law has dictated only points to scribe and scribe has noted the points to prepare Will and it was drafted later on as per points dictated by his father-in-law. It is further admitted that his mother-in-law Chandanben died after his father-in-law expired. He has also accepted that his father-in-law had equal love and affection for all the sons and had no special love for any son or grandson. It is further accepted that he cannot recollect that whether Will was read over to deceased Motilal after it was prepared. He has accepted that he has not read the Will after it was prepared. He has further accepted that he cannot say that whether other attesting witness has read over Will or not.

21. What is noticeable that Will purportedly was executed on 17.04.1976. In the Will deceased has stated that his wife has expired. In the cross examination, it is admitted by attesting

witness that his mother in law Chandanben has expired subsequent to his father in law expired. Death certificate of Chandanben is produced at Exh.61 and it states that Chandanben died on 05.05.1977.

22. Statement / recital made in the Will by deceased Motilal that his wife has expired despite she was alive at the time of execution of Will and having been not rectified during life time by deceased Motialal, Will becomes highly doubtful and suspicious. The attesting witness - Mr. Sumantbhai who deposed in suit proceeding again appeared in witness box as attesting witness in probate proceedings at Exh.67. Although it is expected that deposition of attesting witness in both proceedings i.e. suit proceedings and probate proceedings would remain same. Perusal of his deposition in probate proceeding at Exh.67 shows that he conveniently made his statement on oath and depose likewise witness and no attesting witness. It also appears that perhaps propounder felt that recital in Will that wife is expired despite Chandaben wife of deceased Motilal did not expire, is required to be clarified.

23. Close look at deposition of attesting witness (Exh.67), he deposed that Will was handwritten by advocate Mr. Arvind Trivedi. At the time of writing Will of deceased Motilal, Mr.Arivind Trivedi called his brother in law and another attesting witness. It is further deposed by attesting witness that his father in law was dictating Will which has been reduced in writing by advocate and then prepared fair copy of Will. Apart from deposing sound disposing mind of deceased Motilal and signing Will by deceased

as well as attesting witness in presence of each other and identifying signature as also that Will was executed without any threat or pressure denied in regard to recital in the Will that my wife is expired offered explanation that scribe Mr.Arvind Trivedi was old age person and he was hard of hearing, to some extent deaf and therefore, he could not have properly heard deceased dictating Will and committed error. What further appears from deposition that scribe has taken points dictated by deceased and prepared fair copy of Will, however, said fair copy was not read over to deceased. Further explaining situation, attesting witness stated that scribe was trustworthy person and therefore, deceased did not find need to read over fair copy of Will.

23.1. Deponent in cross examination, admitted that he does not know whether deceased Motilal before signing the Will has read over the Will or not. In the same line, he has admitted that the does not know whether other attesting witness have read over the Will prior to signing it. He has further admitted that he cannot say when Chandaben wife of deceased expired after execution of Will. In para 12, during cross examination, attesting witness deposed that in probate proceedings in capacity of attesting witness did not recollect that whether he has given any prior deposition in regards to Will or not. In cross examination, he was shown his previous deposition recorded in probate proceedings. After perusing copy of deposition recorded in probate proceedings, in reply to question deponent stated that he did not recollect whether in his earlier deposition he has stated that scribe Arvindbhai was hard of hearing or was dumb and whether Chandaben wife of deceased Motilal had expired or

not.

24. Section 63 of the Indian Succession Act reads as under :-

**“63. Execution of unprivileged Wills.—**

*Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—*

*(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.*

*(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.*

*(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.*

**Section 68 of the Evidence Act reads as under :-**

*68. Proof of execution of document required by law to be attested.*

*If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence.*



25. In the case of **Gopal Swaroop v/s. Krishna Murari Mangal 2010 12 scale 470** Hon'ble Apex Court held that the Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature or mark, or the signature of such other person; that each of the witness has signed the will in the presence of the testator.

26. Coming back to the case on hand, it can be seen from the deposition as well as the Will that though Chandanben wife of the testator was alive at the time of executing Will, purported Will states that Chandanben is already expired. Attesting witness Mr.Sumantbhai at first blush when was examined to prove Will, did not explain that how and in what circumstances in the Will it is stated that Chandanben is already expired. In the subsequent deposition recorded in probate proceedings, he tried to improve his statement by saying that Arvind Bhai who was a scribe of the Will was hard of hearing or had hearing loss and was old age person, therefore he might not have heard proper dictation given by deceased Motilal. Apt to note that statement was made first time before the Court of law. Neither during life deceased Motilal nor beneficiary or even attesting witness till aforesaid deposition, ever said that scribe Arvindbhai was hard of hearing and due to which he has erroneously written in Will that Chandaben wife of deceased Motilal is already died, inspite of fact that she was alive at the time of execution of Will.



27. The Will is executed on 17.04.1976. Deceased Motilal died on 10.10.1985. There is gap of almost 10 years. Deceased survived for almost 10 years after execution of Will. Chandanben wife of the deceased Motial died on 05.05.1977 (Death certificate - Exh.61). Deceased Motilal in his life time did not correct the recital made in the Will that his wife Chandanben has already expired. Two attesting witness in their life time did not come forward to state that erroneously it is stated in the Will that Chandanben has expired though she was alive.

28. There is no positive evidence on record to show that scribe Arvindbhai was so feeble that he could not hear proper word. In converse the evidence come on record that deceased Motilal was of sound health till his last breath and was able to read and write and yet no explanation came forward that why it is stated that Chandanben is expired in the Will. Other circumstances which arises for the consideration and can be treated as a suspicious circumstances, are that in the revenue proceeding the propounder was called to produce the copy of the Will, he did not come forward and produce the copy of the Will either before City Survey Officer or before Deputy Collector or before the Collector, though all three authorities have found that dispute raises a serious doubt on the existence of the purported Will.

29. The inconsistent and self contradictory deposition of the attesting witness unsettle the genuineness of the Will and therefore does not satisfy the conscience of the Court. The learned Trial Court made a grave error to believe Will on the ground that plaintiffs have accepted the signature of deceased on



the Will which proves the Will. I see such finding completely unfathomable and against the settled principle of law. It also appears on record that Mr.Sunilkumar was a beneficiary, he has filed the probate application and yet he did not come forward and entered in the witness box to propound the Will and to prove the competence of deceased to execute the Will for as much raise doubt shrouded on the Will. Prima facie genuineness of the Will and other relevant aspect are first burden to be discharged by the pro-pounder.

30. There is no reason either canvassed or established that why Mr.Sunikumar did not appear in the witness box. It is acceptable that at the time of execution of the purported Will he was minor but when he preferred the probate application he was major therefore, he was required to enter in the witness box to prima facie prove genuineness of the Will and thereafter to dispel the shrouded circumstances. Some more aspect which can be noticed is that Will is dated 17.04.1976. The claim based upon the Will was first time made in year 1992, 7 years after the demise of the testator and yet no original Will was produced on record despite the revenue officers have passed the order.

31. Apart from Mr.Sunilkumar the beneficiary, deceased Motilal Jaiswal had other grandson, deceased was living with Shravan Kumar, father of the beneficiary Mr.Sunilkumar. The other grandsons were kept out of the inheritance and no reasons are stated. This also casts suspicious circumstances. It comes on record from the evidence that deceased Motilal Jaiswal has not read the Will after it was prepared by scribe Arvindbhai. This

is another suspicious circumstances. It establish that the even as per the evidence of attesting witness deceased has signed the Will without reading over it. The essential necessity of proving a document and Will as per section 63 of Act of 1925 is not fulfilled. According to the attesting witness scribe has firstly noted the points dictated by the deceased and then prepared the Will. The attesting witness admitted that deceased has not read the fair copy of the Will, even he did not recollect whether he has read the Will or any other attesting witness has read the Will. The points which were taken in the rough paper becomes first Will of the deceased. No such points have been produced. Moreover, scribe was, good friend of the deceased. The scribe besides a good friend of the deceased was also practicing lawyer and he frequently used to come at the residence of the deceased. In the gap of 10 years between execution of Will and death of deceased, at no point of time, he had drawn attention of deceased that some inadvertent error took place in the Will (that death of Chandaben is wrongly recited in Will).

32. Lastly the Will is written in two different ink. Signature of the deceased and attesting witness are in different ink than ink in which Will is written. Though this circumstance itself is not a suspicious circumstances but it add with other neat suspicious circumstances shrouded over the Will. The hand written Will written by scribe Arvindbhai does not contain the signature of deceased on each page of Will. This is another additional suspicious circumstances.

33. In all, thus the Will in question fails to satisfy the



conscience of the Court. Propounder himself does not come forward to rebut the suspicious circumstances. Therefore according to this Court the learned Trial Court has committed serious and grave error in allowing probate application.

34. As against submission that probate proceedings is time barred in view of section 137 of Limitation Act, it is submitted that propounder by way of probate proceedings only seeks recognize from the Court to perform duty and not seeking any legal right and therefore, no limitation would apply. What could be noticeable that Hon'ble Apex Court in para 6 in the judgment of *Krishna Kumar Sharma (supra)* addressed the issue and approved the finding of Bombay High Court in case of *Vasudev Daulatram Sadarangani v/s. Sajni Prem Lalwani [AIR 1983 Bombay 268]*, whereby, it is held that delay beyond three years would give rise to suspicious and greater delay, greater would be suspicion. Such delay must be explained but cannot be equated with absolute bar of limitation. Finding of Hon'ble Apex in the case *Krishna Kumar Sharma (supra)* is reproduced under :-

*"6. In The Kerala State Electricity Board, Trivandrum v. T.P. Kunhaliumma [1976 (4) SCC 634] it was inter alia observed as follows:*

*"18. The alteration of the division as well as the change in the collocation of words in Article 137 of the Limitation Act, 1963 compared with Article 181 of the 1908 Limitation Act shows that applications contemplated under Article 137 are not applications confined to the Code of Civil Procedure. In the 1908 Limitation Act there was no division between applications in specified cases and other applications as in the 1963 Limitation Act. The words "any other application" under Article 137 cannot be said on the principle of ejusdem generis to be applications under the Civil Procedure Code*



other than those mentioned in Part I of the third division. Any other application under [Article 137](#) would be petition or any application under any Act. But it has to be an application to a court for the reason that [Sections 4](#) and [5](#) of the 1963 [Limitation Act](#) speak of expiry of prescribed period when court is closed and extension of prescribed period if applicant or the appellant satisfies the court that he had sufficient cause for not preferring the appeal or making the application during such period.

22. The conclusion we reach is that [Article 137](#) of the 1963 [Limitation Act](#) will apply to any petition or application filed under any Act to a civil court. With respect we differ from the view taken by the two-judge bench of this Court in Athani Municipal Council case and hold that [Article 137](#) of the 1963 [Limitation Act](#) is not confined to applications contemplated by or under [the Code of Civil Procedure](#). The petition in the present case was to the District Judge as a court. 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](#)."

In terms of the aforesaid judgment any application to Civil Court under the Act is covered by [Article 137](#). The application is made in terms of [Section 264](#) of the Act to the District Judge. [Section 2\(bb\)](#) of the Act defines the District Judge to be Judge of Principal Civil Court.

12. Further in [S.S. Rathore v. State of M.P.](#) [1989(4) SCC 582] it was inter-alia stated as follows:

"5. Appellant's counsel placed before us the residuary [Article 113](#) and had referred to a few decisions of some High Courts where in a situation as here reliance was placed on that article. It is unnecessary to refer to those decisions as on the authority of the judgment of this Court in the case of [Pierce Leslie & Co. Ltd. v. Violet Ouchterlony Wapshare](#) it must be held that [Article 113](#) of the Act of 1963, corresponding to [Article 120](#) of the old Act, is a general one and would apply to suits to which no other article in the schedule applies."

[Article 137](#) of the [Limitation Act](#) reads as follows:



| <i>Description of suit</i>                                                                                  | <i>Period of limitation</i> | <i>Time from which period begins to run</i> |
|-------------------------------------------------------------------------------------------------------------|-----------------------------|---------------------------------------------|
| <i>137. Any other application for which no period of limitation is provided elsewhere in this division.</i> | <i>Three years</i>          | <i>When the right to apply accrues.</i>     |

*The crucial expression in the petition is "right to apply". In view of what has been stated by this Court, [Article 137](#) is clearly applicable to the petition for grant of Letters of Administration. As rightly observed by the High Court in such proceedings the application merely seeks recognition from the Court to perform a duty because of the nature of the proceedings. It is a continuing right. The Division Bench of the Delhi High Court referred to several decisions. One of them was *S. Krishnaswami and etc. etc. v. E. Ramiah* (AIR 1991 Madras 214). In para 17 of [the said judgment](#) it was noted as follows:*

*"17. In a proceeding, or in other words, in an application filed for grant of probate or letters of administration, no right is asserted or claimed by the applicant. The applicant only seeks recognition of the Court to perform a duty. Probate or letter of Administration issued by a competent Court is conclusive proof of the legal character throughout the world. An assessment of the relevant provisions of the [Indian Succession Act, 1925](#) does not convey a meaning that by the Proceedings filed for grant of probate or letters of administration, no rights of the applicant are settled or secured in the legal sense. The author of the testament has cast the duty with regard to the administration of his estate, and the applicant for probate or letters of administration only seeks the permission of the Court to perform that duty. There is only a seeking of recognition from the Court to perform the duty. That duty is only moral and it is not legal. There is no law which compels the applicant to file the proceedings for probate or letters of administration. With a*

*view to discharge the moral duty, the applicant seeks recognition from the Court to perform the duty. It will be legitimate to conclude that the proceedings filed for grant of probate or letters of administration is not an action in law. Hence, it is very difficult to and it will not be in order to construe the proceedings for grant of probate or letters of administration as applications coming within the meaning of an 'application' under [Art. 137](#) of the [Limitation Act, 1963](#)."*

*14. 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).*

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

*"16. Rejecting Mr. Dalapatrai'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".*

35. In the present case, revenue proceedings started in the year 1991 and during revenue proceedings, at different stages, revenue authorities have directed propounder to produce copy of the Will. The order initially started from 1991 continued till 15.01.1998 the day on which Collector Anand held revenue proceedings in favour of plaintiff. The probate proceedings started in the year 1997 after delay of almost 7 to 8 years, where first time genuinity and existence of Will was questioned. The Will first time surfaced in probate proceedings. AS held herein above, despite revenue authorities have passed order to place copy of Will on record, it is not produced. The yawning delay was required to be explained by propounder in probate proceedings but propounder who did not enter into witness box failed to show any reason for not producing copy of Will for 7 to 8 years despite existence of Will is questioned. Thus, Article 137 of Limitation Act would not apply to bar probate proceedings. Long and yawning delay by itself cast grave suspicious.

36. In so far as suit proceeding is concerned the finding in the probate proceeding would play a sequel role in the finding of the suit proceeding. If probate application fails axiomatically the suit relief will succeed. In absence of Will being proved, no bequeath in favour of beneficiary Mr.Sunil survive. No sooner, it come and



prove that Will is not proved, suit property would fall back to status of undivided property of family. Apt to note that deceased Motilal had purchased suit property in the year 1938. On his death, in view of section 8 of the Hindu Succession Act, all his Class I heir have undivided equal right. Though plaintiff pleaded case under section 6 of the Hindu Succession Act, claimed their share on the basis of claiming suit property as ancestral property, their legitimate right under section 8 of the Hindu Succession Act would not be negated, despite they failed to prove suit property as ancestral property. All class 1 heirs of the deceased Motilal Jaiswal have equal and undivided share in the suit property. The Trial Court dismissed the suit on the ground that two daughters of the deceased Motilal Jaiswal are not joined as a party in the suit and thus suit suffered from principle of non-joinder of the parties. Even on operation of section 8 of the Hindu Succession Act sisters share can be separated during the preliminary decree and therefore merely non-joining of two daughters of deceased Motilal Jaiswal does not negate the claim that suit property is joint property of sons and daughters of the Motilal Jaiswal.

37. In view of above foregoing reasons, both the first appeals are allowed. Judgment and decree passed in Special Civil Suit number 130 of 1996 is hereby reversed. It is hereby held that class 1 heirs of deceased Motilal Jaiswal have equal share in the suit property and partition has to be effected accordingly. Suit is decreed accordingly. Registry to draw the preliminary decree and send to learned Trial Court for execution of it. Parties to bear their costs. The probate application No.33 of 1997 is hereby





dismissed. Interim relief, if any, stands discontinued. Record and proceedings, if any, be send back to learned Trial Court concerned.

Registry to maintain copy of this order in each matter.

SATISH

**(J. C. DOSHI,J)**