



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR.JUSTICE R. DEVDAS

CIVIL REVISION PETITION NO.550 OF 2025

C/W

WRIT PETITION NO.7348 OF 2025 (GM-CPC)

IN CRP No.550 OF 2025

BETWEEN

SMT. ANNIE THOMAS
D/O.LATE K.V.MAMMEN
AGED ABOUT 60 YEARS,
R/O NO.507, GROUND FLOOR,
8TH BLOCK, 1ST MAIN,
KORAMANGALA
BENGALURU-560 095

...PETITIONER

(BY SRI. REUBEN JACOB., SR. COUNSEL FOR
SRI. HARISH N.R., ADVOCATE)

AND

1 . SRI GEORGE MAMMEN
S/O.LATE K.V.MAMMEN
AGED ABOUT 59 YEARS,
R/O. NO.3403, WENTWORTH WAY
HIGHLAND VILLAGE
TEXAS, 75077
UNITED STATS OF AMERICA

REP. BY HIS GPA HOLDER

SRI.JOSE KOSHY
S/O.LATE.V.J.KOSHY
AGED ABOUT 57 YEARS
R/O.TP1 HARMONEY HOMES
4/2 HENNUR MAIN ROAD,
HRBR LAYOUT,
BENGALURU-560 043.

2 . SMT RENNIE JOSHI
W/O.KURIAN PUTHUR
AGED ABOUT 54 YEARS
VSRRA NO. 14. 1ST AVENUE
33/1844/E, SHOBHA ROAD
VENNALA, KOCHIEN,
KERALA-692028.

...RESPONDENTS

(BY SMT. ANUSHA G.N., ADVOCATE FOR R2
SRI. MURUGESH RAMAIAH A/W
SMT. PRIYA V.B.SHETTAR., ADVOCATE FOR R1)

THIS CRP IS FILED UNDER SECTION 115 OF CPC,
PRAYING TO SET ASIDE THE ORDER DATED 16.06.2025
PASSED ON I.A.NO.I IN OS.NO.25752/2024 ON THE FILE
OF THE 74TH ADDITIONAL CITY CIVIL AND SESSIONS
JUDGE, MAYOHALL UNIT, BENGALURU (CCH 75) AND ETC.

IN W.P.NO.7348 OF 2025

BETWEEN

MR. GEORGE MAMMEN
AGED ABOUT 60 YEARS
R/A 3403, WENTWORTH WAY,
HIGH LAND VILLAGE, TEXAS,75077,
UNITED STATES OF AMERICA.
REP. BY HIS GPA HOLDER
MR. JOSE KOSHY

S/O LATE V.J KOSHY,
AGED ABOUT 57 YEARS
R/A TP1 HARMONEY HOMES,
4/2 HENNUR MAIN ROAD,
3RD HRBR LAYOUT, BANGALORE 560043.

...PETITIONER

(BY SRI. MURUGESH RAMAIAH A/W
SMT. PRIYA V.B.SHETTAR., ADVOCATES)

AND

1 . MS. ANNE THOMES
D/O LATE K.V MAMMEN,
AGED ABOUT 56 YEARS,
R/AT 507, GROUND FLOOR,
8TH BLOCK, 1ST MAIN
KORAMANGALA,
BENGALURU 560095.

2 . MRS. RENNIE JOSHI
W/O KURAN PUTHUR,
AGED ABOUT 54 YEARS,
VSRRA NO.14, 1ST AVENUE,
33/1844/E, SHOBHA ROAD,
VENNALA, KOCHIN
KERALA-692028.

...RESPONDENTS

(BY SRI. JAJI GEORGE, ADVOCATE FOR R1
SMT. ANUSHA G.N., ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227
OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT
THE LEARNED LXXIV ADDL. CITY CIVIL AND SESSIONS
JUDGE, MAYO HALL, BENGALURU (CCH 75) TO
EXPEDITIOUSLY DISPOSE P & SC NO.25001/2014
CONVERTED TO O.S. NO.25752/2024 IN A TIME BOUND
MANNER IN THE INTEREST OF JUSTICE AND ETC.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED ON 03.02.2026 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THIS COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE R DEVDAS

CAV ORDER

(PER: HON'BLE MR JUSTICE R DEVDAS)

This Civil Revision Petition is filed by defendant No.1 in O.S.No.25752/2024, being aggrieved of the impugned order dated 16.06.2025, whereby application filed by defendant No.1 under Section 137 of Limitation Act (should be read as 'Article 137') seeking rejection of the plaint, was dismissed by the trial court.

2. For the sake of convenience, the parties shall be referred to in terms of their ranking before the trial court.

3. Undisputed facts are that the plaintiff had filed P & SC No.25001/2014 on 08.01.2014 seeking

grant of letters of administration with regard to the last Will and testament dated 25.07.1997 executed by late Sri K.V.Mammen, the father of the plaintiff, invoking Section 278 of the Indian Succession Act, 1925. The petition was allowed and letters of administration were granted to the petitioner therein by order dated 16.12.2015. However, one of the sisters of the plaintiff Mrs. Annie Thomas raised a challenge to the orders passed in P & SC No.25001/2014 by filing another petition in P & SC No.25025/2019 and the court revoked the letters of administration granted to the plaintiff, by order dated 06.11.2023 and restored P & SC No.25001/2014 and directed to the parties to appear in the said case without waiting for further notice. The Probate and Succession Case was converted into original suit in O.S.No.25752/2024. Defendant No.1 filed written statement and raised the issue of limitation and

thereafter filed an application in I.A.No.1 seeking rejection of the plaint on the ground that the suit is barred by limitation. It was contended by defendant No.1 that the provisions of the Limitation Act are applicable to probate proceedings and having regard to the residuary provision in Article 137 of the Limitation Act, a petition for grant of letters of administration should be filed within a period of three years from the date of death of the testator.

4. The trial court rejected the application on the ground that such an application filed under Section 151 of CPC r/w Article 137 of the Limitation Act cannot be entertained for the relief of rejection of plaint. Moreover, the issue regarding limitation, in the facts and circumstances of the case is a mixed question of law and facts and therefore the plaint cannot be rejected.

5. Learned Senior Counsel Sri Reuben Jacob, appearing for defendant No.1 submitted that a judgment of the Division Bench of this Court in the case of ***Sri Nanjavudootha Swamiji vs. Sri S.Linganna and others***¹ and a judgment of the Supreme Court in the case of ***Nikhila Divyang Mehta and another vs. Hithesh.P.Sanghvi and others 2025***², were cited before the trial court. The learned counsel would further submit that the Hon'ble Supreme Court in the case of ***Kunvarjeet Singh Khandpur vs. Kirandeep Kaur and others***³, has held that Article 137 of the Limitation Act, 1963 will apply to any petition or application filed under any Act to a civil court. It was held that an application under Sections 276, 278 and Section 264 for grant or revocation of probate or letters of administration is covered by Article 137 of Limitation Act. Learned

¹ OSA No.9/2024 dated 12.12.2024

² SCC OnLine SC 779

³ (2008) 8 SCC 463

counsel submitted that in subsequent judgments of the Hon'ble Supreme Court in the case of **Ramesh Nivrutti Bhagwat vs. Dr.Surendra Manohar Parakhe⁴** and in the case of **Sameer Kapoor and Anr. vs. State and Ors.⁵**, the said position of law is reiterated. That being the position, learned counsel for defendant No.1 submits that the trial court has fallen in error in not allowing the application in I.A.No.1 and not rejecting the plaint.

6. Insofar as the contention of the learned Counsel for plaintiff that since the defendant has filed the application seeking rejection of the plaint under Section 151 of the CPC read with Section 137 of the Limitation Act, and had submitted that such a provision will not empower the Court to reject the plaint, learned Senior Counsel for the defendant submitted that mere quoting of a wrong provision will

⁴ (2020) 17 SCC 284

⁵ (2020) 12 SCC 480

not debar the Court from considering the prayer made therein. In that regard, learned Senior Counsel placed reliance on ***P.K.Palanisamy Vs. N.Arumugham and Another***⁶ where the Apex Court held that only because a wrong provision was mentioned by the appellant the same, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It was further held that it is a well settled principle of law that mentioning of a wrong provision or non mentioning of a provision does not invalidate an order if the Court and/or statutory authority had the requisite jurisdiction therefor. The Apex Court also took note of a decision in the case of ***N.Mani Vs. Sangeetha Theatre (2004) 12 SCC 278*** where it was held as follows at paragraph 29:

⁶ (2009) 9 SCC 173

"29. *In N. Mani v. Sangeetha Theatre [(2004) 12 SCC 278] it is stated : (SCC p. 280, para 9)*

9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

7. Learned Senior Counsel therefore submitted that when the parties have understood the provision under which the relief is sought and the Court too has considered the prayer accordingly, although rejecting the application on other grounds, the contention raised on behalf of the learned Counsel for the plaintiff ought to be rejected.

8. Learned counsel for the plaintiff sought to support the impugned order passed by the trial court. Learned counsel submitted that the application in I.A.No.1 is filed invoking Section 137 of the Limitation Act (which should be read as 'Article 137') seeking rejection of the plaint and the trial court has rightly rejected such an application which does not empower the court to reject the plaint, when a specific provision under Order VII Rule 11 of the CPC enables rejection of plaint, only on certain grounds. Moreover, the only surviving witness to the disputed Will is required to be examined and cross-examined and at this stage such an application is filed, only with an ulterior motive, to prolong the case.

9. Heard the learned counsel for defendant No.1, learned counsel for the plaintiff and perused the petition papers.

10. It is noticeable that in case of **Kunvarjeet Singh** (supra), the issue considered was similar to the one on hand. The petition under Section 278 of the Succession Act, 1925 for grant of Letters of Administration was filed on 07.08.2002, while the testator had expired on 05.10.1995. The defendant has raised similar objection that the petition was time barred, having regard to Article 137 of the Limitation Act. However, it was noticed that one of the claimants had earlier filed a probate petition in the year 1996 and the same was withdrawn on 09.08.1999. Thereafter, the petition for grant of letters of administration was filed on 07.08.2002, within the period of three years. The Apex Court noticed a decision of the Madras High Court in the case of **S.Krishnaswami vs. E.Ramiah**⁷ and

⁷AIR 1991 Mad 214

extracted paragraph No.17 of the said judgment, which reads 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 letters 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 Article 137 of the Limitation Act, 1963."

11. Nevertheless, it was held that though the nature of the petition has been rightly described by the High Court, however 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, having regard to the law laid down in **Kerala SEB vs. T.P. Kunhaliumma**⁸. The

⁸ (1976) 4 SCC 634

same position is reiterated in **Sameer Kapoor** (supra) in paragraph No.17 which reads as follows:

"17. Therefore, considering the law laid down by this Court in Kunvarjeet Singh Khandpur [Kunvarjeet Singh Khandpur v. Kirandeep Kaur, (2008) 8 SCC 463] , it can be said that 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 letters of administration issued by a competent court is conclusive proof of the legal character throughout the world. That the proceedings filed for grant of probate or letters of administration is not an action in law but it is an action in rem. As held by this Court in Kunvarjeet Singh Khandpur [Kunvarjeet Singh Khandpur v. Kirandeep Kaur, (2008) 8 SCC 463] : (SCC p. 468, para 15)

"15. ... '16. ... (c) ... an application [for grant of probate or letters of administration] 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.' [**Ed.:** *As observed in Vasudev Daulatram Sadarangani v. Sajni Prem Lalwani, 1983 SCC OnLine Bom 54, para 16.] "*

(emphasis supplied)

Therefore, even if the will is probated by any court mentioned in Section 228 of the Act, right to get the letters of administration is a continuous right which can be exercised any time, 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."

12. However, in paragraph No.18 in **Sameer Kapoor** (supra) the application of the law having regard to the facts of the case it was held as follows:

"18. *Applying the law laid down by this Court in the aforesaid decision and the observations made hereinabove, the submission on behalf of the appellants that Probate Case No. 15 of 2001 filed by Respondent 2 for letters of administration under Section 228 of the Act, read with Section 276 of the Act is barred by law of limitation, cannot be accepted. At this stage, it is required to be noted that even in the plaint, it is specifically pleaded that after passing away of the father of the parties in the year 2000, the appellants started intermeddling with properties bequeathed to Respondent 2, which were situated in Delhi and, therefore, left with no option, he was compelled to apply for letters of administration. Therefore, even as per the pleadings in the application, the cause of action started from the date on which the appellants started intermeddling with the properties bequeathed to Respondent 2, after passing away of the father of the parties in the year 2000. Therefore, in the facts and*

circumstances of the case, both the learned Single Judge and the Division Bench have rightly refused to reject the application in exercise of powers under Order 7 Rule 11 CPC. In the facts and circumstances of the case and as observed hereinabove, it cannot be said that the application for letters of administration was clearly barred by the law of limitation which was required to be rejected in exercise of powers under Order 7 Rule 11(d) CPC. We are in complete agreement with the view taken by the High Court."

13. In Stark Contrast in the petition filed by the plaintiff seeking grant of Letters of Administration, nothing is stated regarding the delay and what prompted the petitioner to seek Letters of Administration in the year 2014, although the testator died on 08.02.2005, leaving behind a Will dated 25.07.1997. The petitioner has not stated that he was not aware of the Will left behind by the testator or that he recently came to know about the Will or that

the Will was not in the possession of the petitioner. What is more essential to notice is that though the petitioner has given the information regarding the natural heirs left behind by the testator, nevertheless they are not arrayed as party respondents to the proceedings. No notice was issued to the other legal heirs of the testator.

14. Applying the ratio laid down by the Apex Court in the matter of a petition filed under Section 278 for grant of Letters of Administration and Article 137 of the Limitation Act, being applicable for such petition, this Court is of the considered opinion that the petition/plaint was required to be rejected under Order VII Rule 11 of the CPC, as being barred by the law of limitation.

15. Accordingly, the Civil Revision Petition is **allowed**. The application filed by the defendant No.1

in I.A.No.1 seeking rejection of the plaint is allowed. As a consequence, the plaint in O.S.No.25752/2024 on the file of learned LXXIV Addl. City Civil and Sessions Judge, Mayo Hall Unit, Bengaluru, stands rejected.

16. In light of the plaint in O.S. No.25752/2024 being rejected in the abovementioned terms, the petition in W.P.No.7348/2025 stands **disposed of** as having become infructuous. The writ petition was filed seeking directions to the Trial Court to dispose of the case expeditiously.

Ordered accordingly.

In view of the above, pending I.As., if any, stand disposed of.

**Sd/-
(R. DEVDAS)
JUDGE**

KLY/JT
CT: JL