2026 INSC 602

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C.) No. 3371 of 2026)

DHIRAJ DUTTA ... APPELLANT(S)

VERSUS

ANIRBAN SEN & ORS. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave Granted.

2. Smt. Gouriprova Sen, inherited the properties of her husband Mr. Amulya Chandra Sen, by virtue of being his sole legal heir. Certain portion of these properties stood gifted to the

appellant by a deed[1]. Her *Will* was dated 9th July 1989 whereby the appellant, her nephew was made the sole executor and beneficiary. She died shortly thereafter on 8th October 1989. The transfer of properties in his name by virtue of this will is the genesis of the present dispute.

3. The appellant's application for probate of the said *Will*[2] was granted *vide* order dated 28th September 1995. Further proceedings[3] for necessary changes in the Revenue Record were initiated somewhere in 2010-11. As per the appellant, notices were served to the predecessor in interest of the respondent in these proceedings. As per the respondents, who are nephews-in-law of the testatrix and the only surviving members of the family of the testatrix's husband, however, they found out somewhere in 2019 consequent to which they filed suit for declaration and injunction[4] in which the appellant has undisputedly, filed his written statement. This suit is apparently pending before the jurisdictional Court. On 5th July 2022 the respondents herein filed an application under Section 263 of the Indian Succession Act 1925[5] seeking revocation[6] of the probate granted on 28th September 1995.

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[1] bearing no.4905 of 1978 dated 15th august 1978
[2] PLA No.238 of 1995
[3] O.A. No.1417 of 2012
[4] Title suit no.60 of 2019
[5] ISA
[6] G.A 02 of 2022

4. The learned single Judge in terms of order dated 16th June 2023 dismissed the application holding the same to be barred under the provisions of the Limitation Act 1963. On appeal[7], the learned Division Bench, taking a different view, allowed the appeal and as such, the matter stands before us. We are therefore, required to decide whether the application for revocation of the probate filed in 2022 is within limitation, or outside it, given the differing view of the Courts below.

5. The provision concerned with the revocation of probate under the ISA reads thus:

> "**263. Revocation or annulment for just cause.—**
>
> The grant of probate or letters of administration may be revoked or annulled for just cause.
> Explanation. —Just cause shall be deemed to exist where—
> (a) the proceedings to obtain the grant were defective in substance; or
> (b) the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case; or
> (c) the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently; or
> (d) the grant has become useless and inoperative through circumstances; or
> (e) the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Part, or has exhibited under that

[7] A.P.O No. 125 of 2023

Chapter an inventory or account which is untrue in a material respect.
Illustrations
(i) The Court by which the grant was made had no jurisdiction.
(ii) The grant was made without citing parties who ought to have been cited.
(iii) The Will of which probate was obtained was forged or revoked.
(iv) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.
(v) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.
(vi) Since probate was granted, a latter Will has been discovered.
(vii) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the Will.
(viii) The person to whom probate was, or letters of administration were, granted has subsequently become of unsound mind."

(emphasis supplied)

The ISA does not provide any limitation for grant of probate or to move an application for the revocation thereof and as such recourse must be made to Article 137 of the Limitation Act 1963. The same is as follows:

PART II—OTHER APPLICATION

137. Any other application for which no period of limitation is provided elsewhere in this Division.	Three years.	When the right to apply accrues

6. In light of these provisions, we are required to undertake a determination on facts. To restate for the purposes of ease, it is the appellant's case that the limitation would apply from 2013 when notice was served to the respondents in the mutation proceedings and on the contrary the respondents contend that their application for revocation of probate is within limitation since they acquired knowledge somewhere in 2019 only.

7. The question of limitation on revocation of probate was authoritatively dealt with by a judgment of this court in ***Lynette Fernandes v. Gertie Mathias***[8] and ***Ramesh Nivrutti Bhagwat v. Surendra Manohar Parakhe.***[9]

8. As to when "*the right to apply*" would accrue, that depends on the date from which the party making the application had knowledge. In this case, that would be the respondents. In 2013, when notice was served to them, that was regarding mutation proceedings initiated by the present appellant. In the revocation of probate application filed in 2022, it is submitted by the Respondents that notice was indeed served upon them with reference to the mutation proceedings but in effect, they chose to

[8] (2018) 1 SCC 271
[9] (2020) 17SCC 284

ignore the same, since they already enjoyed entries in their favour. The relevant extract of the application is as under:

> "9. In July, 2013, a copy of the original application being O.A. No.1417 of 2012 was served upon the said heirs of Gouriprova Sen, since deceased. But being heirs of said Gouriprova Sen, the names of Aswini and Shankar have been mutated in respect of the proprieties of said Gouriprova Sen since deceased. As the mutation has been made infavour of Aswini and Shankar, they did not contest the said original application. The Learned West Bengal Land and Land Reforms Tribunal dismissed the said original application. The Learned West Bengal Land and Land Reforms Tribunal dismissed the said original application. Against the said order Learned Tribunal, Dhiraj Dutta, the alleged legatee preferred writ petition being WPLRT No.103 of 2019 before the Hon'ble High Court Calcutta which was also dismissed from default."

9. The question now is whether these proceedings at the instance of the appellant amounts to constructive notice to the respondents regarding the grant of probate in his favour. From perusal of the judgments of this Court [See: ***Rajasthan Housing Board v. New Pink City Nirman Sahkari Samiti Ltd.***[10]**;** ***Dharmrao Sharanappa Shabadi v. Syeda Arifa Parveen***[11]**;** ***Ahmedabad Municipal Corpn. v. Haji Abdulgafur Haji Hussenbhai***[12]], following facets can be deduced regarding constructive notice:

[10] (2015) 7 SCC 601
[11] (2026) 3 SCC 460
[12] (1971) 1 SCC 757

(a) It is a deeming fiction within law that originated from equity and is distinguishable from actual notice as it is an inferral by law;

(b) It hinges on either wilful abstention or gross negligence. To understand what may constitute either of these two, see ***Haji Abdulgafur Haji Hussenbhai*** **(supra).**

(c) The question of whether or not something qualifies as constructive notice is either a question of fact or a mixed question of law and fact dependant on the facts and circumstances of each case;

(d) The standard to be applied in determining wilful abstention or gross negligence is that of a reasonably prudent man as applied in Indian conditions;

10. It is admitted by the respondents herein that notice was served but it is also a matter of record that they chose not to do anything. This cannot be termed to be the conduct of a reasonably prudent man. If a Court of law has sent someone a notice, the least that can be accepted is for them to make attempts to find out why the same may have been sent to them and what they would be required to do in regard thereto. This is more so the case when the respondents already had mutation entries in their favour and yet the notice received by them were in connection with mutation proceedings initiated by a third party. After all, if the mutation

proceeding by the appellant had succeeded there would be competing rights of equal stature regarding the same properties since it is well established that mutation proceedings do not confer any title. When the enjoyment of a particular property rests on such flimsy grounds, it can only be expected that they would attempt to go to the root of the matter and find out why the notice came to be issued in the first case. This was not done. It was entirely possible that the person who had initiated the subsequent mutation proceedings had a better claim over the property than the respondents. Yet no action was taken. We also notice that in the application for revocation of probate, when it comes to the time period between 2013 and 2019 when the title suit was filed, all that has been said is that the appellant attempted to threaten them and dispossess them of their right, title and interest. How the right and title came to rest with them, they are silent. How is it that the appellant threatened them nothing but more silence.

11. In these facts and circumstances, the notice in mutation proceedings would be deemed constructive notice. Attempts ought to have been made to figure out on what basis the mutation proceedings came to be filed, and the limitation as given under Article 137 would have applied from the day they would have found out that the said proceedings rested on probate of *Will*

granted to the appellant. At any rate, the same would not have been 2019 to fall within the prescribed limitation in 2022. The respondents' application for revocation of probate would hopelessly be time barred. Consequently, the judgment of the learned Division Bench had to be set aside and that of the learned Single Judge is ordered to be restored. All necessary consequences will follow.

Appeal is allowed and applications pending shall be disposed of. Costs will be made easy.

……..…….J.
(SANJAY KAROL)

……J.
(VIPUL M. PANCHOLI)

New Delhi;
May 29, 2026