* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment reserved on : 03 April 2025**
**Judgment pronounced on : 05 May 2025**

\+ **FAO 288/2023 & CM APPL. 58371/2023**

K.P.R. NAIR .....Appellant

Through: Mr. Sushil Salwan, Sr. Adv. with Mr. Bharat Deepak, Mr. Kaustubh Sinha, Mr. Tarun Kapoor & Mr. Ashutosh Kumar Singh, Advs.

versus

MEENAKSHI SARDANA & ANR. .....Respondents

Through: Mr. Sanjiv Kakra, Sr. Adv. with Mr. Akash Madan, Adv. for R-1.
Mr. Praveen Kumar & Mr. Kumar Shubham, Advs. for R-2.

\+ **FAO 290/2023 & CM APPL. 58392/2023**

K.P.R. NAIR .....Appellant

Through: Mr. Sushil Salwan, Sr. Adv. with Mr. Bharat Deepak, Mr. Kaustubh Sinha, Mr. Tarun Kapoor & Mr. Ashutosh Kumar Singh, Advs.

versus

SUNDER CHATHLI & ORS. .....Respondents

Through: Mr. Sanjeev Sindhwani, Sr. Adv. with Mr. Sanjay Dua & Mr. Akash Madan, Advs. for R1.
Mr. Praveen Kumar & Mr. Kumar Shubham, Advs. for R-2.

**CORAM:**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**J U D G M E N T**

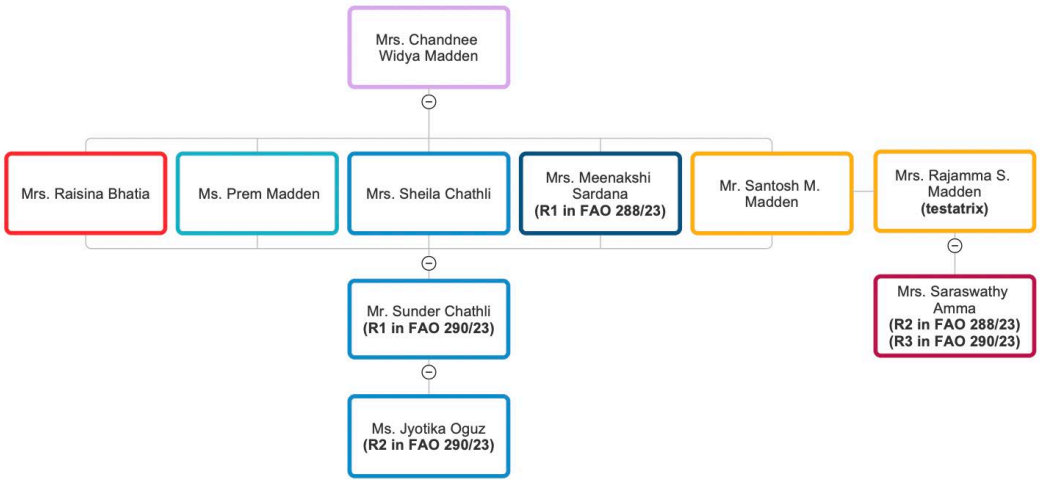
**DHARMESH SHARMA, J.**

1. These First Appeals have been preferred under Section 299 of the Indian Succession Act, 1925 ["**ISA**"] by the appellant herein who is the nephew and sole executor of the last Will and testament of Late Smt. Rajamma S. Madden ["**testatrix**"]. He is assailing the impugned judgment dated 30.05.2023 passed by the learned Additional District Judge-03, New Delhi District, Patiala House Courts, New Delhi ["**Probate Court**"] in Misc. DJ No. 25/2022 titled as "*Meenakshi Sardana v. K.P.R. Nair & Ors.*", whereby the learned Probate Court has allowed the application filed by the respondent No.1 herein under Section 263 of the ISA, thereby revoking the Letter of Probate granted *vide* order dated 25.11.2014 in P.C. No. 5/2014 in respect of the registered Will dated 23.10.2013 of the testatrix. Since the present appeals raise common questions of fact and law, they can be conveniently disposed of together by way of a common judgment.

**FACTUAL MATRIX:**

2. Before probing into the facts leading to the filing of the present appeals, it is necessary to first establish the genealogy of the parties involved. There is no dispute that late Mrs. Chandnee Widya Madden, had acquired two properties in her lifetime *viz.* (1) Property No. 11-A, Prithvi Raj Road, New Delhi, and (2) Property No. 21 and 21-A,

Tughlak Road, New Delhi, and upon her death, she left behind four daughters and one son, namely Mrs. Rasina Bhatia, Ms. Prem Madden, Mrs. Sheila Chathli, Mrs. Meenakshi Sardana and Mr. Santosh M. Madden respectively. Ms. Prem Madden remained unmarried and died on 11.01.1989. Mrs. Sheila Chathli married Mr. Sunder Chathli and they had a daughter Ms. Jyotika Oguz. Mrs. Sheila Chathli died on 12.01.2018 and Mr. Sunder Chathli died on 01.07.2021 and are survived by the abovenamed daughter, who is being represented in the present proceedings through her attorney Mrs. Meenakshi Sardana. On the other hand, Mr. Santosh M. Madden married Mrs. Rajamma S. Madden and he died issueless on 09.12.2006. Mrs. Rajamma S. Madden died on 07.12.2013 leaving behind no son or daughter or Class-1 legal heir, but she had one sibling/sister, namely Mrs. Saraswathy Amma, who is claimed to be her sole legal heir. The aforesaid position can be explained through the following family tree:



3. Upon the demise of Mrs. Chandnee Widya Madden on 20.10.1965, several disputes arose between her legal heirs regarding the division of the aforesaid two properties, however, upon the intervention of the Court, eventually the disputes were resolved in the following terms:

(1) The property bearing No. 11-A, Prithvi Raj Road, New Delhi devolved exclusively upon the son Mr. Santosh M. Madden.

(2) The property bearing No. 21 and 21-A, Tughlak Road, New Delhi devolved upon the above named four daughters in equal share i.e., 25% each. However, it is pertinent to note that upon the death of one of the daughters Ms. Prem Madden, by the operation of law, the remaining three sisters as well as one brother inherited her 25% undivided share in the said property in equal proportion i.e., 6.25% each.

4. Accordingly, when Mr. Santosh M. Madden died intestate on 09.12.2006, his widow Mrs. Rajamma S. Madden/testatrix became the sole and absolute owner of the residential free-hold property bearing No. 11-A, Prithvi Raj Road, New Delhi, and she also acquired 6.25% undivided right, title, share and interest in the lease-hold property bearing No. 21 and 21-A, Tughlak Road, New Delhi.

5. In her lifetime, Mrs. Rajamma S. Madden appears to have executed two Agreements to Sell dated 20.03.2010 and 19.10.2013 both in favour of one Mr. Om Prakash Arora, for the sale of the aforesaid two properties to the extent of her acquired share. Although no sale deed was ever executed or registered by Mrs. Rajamma S. Madden during

her lifetime in this regard, it is alleged that by way of her last Will and testament dated 23.10.2013, which was duly registered, she bequeathed the said two properties to the extent of her share, in favour of Mr. Om Prakash Arora and also distributed the balance sale consideration payable, among her sisters, brothers, nieces, nephews (including the appellant herein), friends and other relatives. Incidentally, the appellant herein, who is one of the nephews of the testatrix and beneficiaries under her alleged Will, was appointed by the testatrix/ Mrs. Rajamma S. Madden as the sole executor of her Will.

6. In the aforesaid backdrop, upon the demise of the testatrix on 07.12.2013, the appellant herein, being the sole named executor, filed a petition under Section 276 of the ISA bearing PC No. 5/2014 before the learned Probate Court for grant of probate of the registered Will dated 23.10.2013. In the said probate petition, the appellant herein impleaded only two parties *viz.* the State as the respondent No.1, and Mrs. Saraswathy Amma, the real sister of the deceased, as the Respondent No.2 therein.

7. Pursuant thereto, the notice of the probate petition was served on both the respondents in said probate proceedings, i.e., the State and Mrs. Saraswathy Amma (now deceased), and citation of the said probate petition to the public at large was duly published through the Court, thereby inviting objections, if any, of the public at large to the same. However, since no objection was received by the Court either from the State or from any other person, and upon Mrs. Saraswathy Amma filing

her 'No-objection' to the grant of probate, the said probate petition was allowed by the learned Probate Court *vide* judgment dated 25.11.2014 and Letter of Probate with copy of the Will annexed was granted and issued in favour of the appellant herein.

8. Accordingly, the assets of the testatrix were distributed among the beneficiaries as per the alleged Will dated 23.10.2013 of the testatrix, and *vide* order dated 04.09.2015, the learned Probate Court discharged the appellant/ sole executor from his duties upon noting that the compliances under Section 317 of the ISA had been made by the appellant herein.

9. The events that transpired thereafter bring us to the precipice of the issues raised herein. After a lapse of about 6 years from the date of grant of probate, the respondents herein who happen to be the sister-in-law and the husband of another sister-in-law of the testatrix, filed separate applications on 11.12.2020 and 01.04.2021 respectively, under Section 263 of the ISA bearing Misc. DJ Nos. 25/2022 and 26/2022 before the learned Probate Court, for revocation of the judgment dated 25.11.2014 allowing the probate of the registered Will dated 23.10.2013. The application bearing Misc. DJ No.26/2022 has been filed by Mr. Sunder Chathli, which is being contested by Mrs. Meenakshi Sardana on the basis of Power of Attorney dated 19.02.2021.

10. The prayer for revocation of probate of Will was sought primarily on the ground that in terms of Sections 15(1)(b), 15(2)(b) and 8(b) read

with Class II of the Schedule to the Hindu Succession Act, 1956 ["**HSA**"], the legal heirs of the husband of the testatrix who was a female Hindu, are entitled to succeed the estate of the testatrix. It was also contended that notice of the probate proceedings was never issued to the legal heirs of the husband of the testatrix i.e., Mr. Santosh M. Madden, by the appellant herein, as per Rule 3 of Chapter XXIX of the Delhi High Court (Original Side) Rules, 2018, and thus, the grant of probate of the alleged Will dated 23.10.2013 is materially defective for non-issuance of notice to necessary and proper parties, thereby vitiating the entire probate proceedings.

11. The appellant herein objected to the said application filed under Section 263 of ISA on various grounds *inter alia* challenging the same to be barred by limitation besides assailing the locus standi of the respondents herein; and discharge of the appellant as the executor herein *vide* judgment dated 25.11.2014 followed by order dated 04.09.2015.

**IMPUGNED JUDGMENT**

12. Suffice it to state that after hearing parties at length, the learned Probate Court allowed the applications filed by the applicants/respondents herein, under Section 263 of ISA *vide* common impugned judgment dated 30.05.2023, thereby revoking the Letter of Probate with the copy of the Will dated 23.10.2013 annexed, which was granted by it earlier *vide* judgment dated 25.11.2014 passed in PC No.

5/2014, besides reviving the proceedings in PC No. 5/2014 which are still *sub judice.*

13. In summary, the learned Probate Court *vide* impugned judgment dated 30.05.2023, found that the non-applicant/appellant herein i.e., the sole executor, could not establish anything on record to prove that the applicants/respondents herein had prior knowledge of the execution of the alleged Will of the testatrix, or the probate so granted. The learned Probate Court reasoned that in view of the non-issuance of notice and non-impleadment of the applicants/respondents herein to the probate proceedings, the right to file the applications under Section 263 of ISA accrued from the date of knowledge and not from the date of grant of probate. Accordingly, it was held that the applications at hand are maintainable for having been moved by the applicants/respondents herein well within the prescribed period of limitation of three years.

14. Pertinently, learned Probate Court *inter alia* opined that since the testatrix and her husband Mr. Santosh Madden did not leave behind any issue of their own, and since the husband predeceased the testatrix, therefore, as per Sections 15(1)(b), 8 and 9 of the HSA besides the Schedule annexed to the HSA, the subject properties would have devolved upon the heirs of the husband i.e., Mr. Santosh Madden, including the applicants/respondents herein. It was observed that since the alleged Will of the testatrix had disturbed this natural line of succession/ devolution, therefore, the non-applicants/respondents

herein should have been put to notice of the probate proceedings by the appellant herein as mandated by the settled law.

15. In view of the aforesaid, the learned Probate Court held that since the applicants/respondents (who were alive at the time of filing of the probate petition) were indeed necessary and proper parties to the probate proceedings, thus, the omission on the part of the appellant to implead them in the said proceedings amounts to material concealment from the Court. Therefore, the learned Probate Court found it fit to exercise the discretion vested with it by virtue of Section 263 of ISA to revoke the grant of probate dated 25.11.2014, which decision is challenged in the instant appeal.

**LEGAL SUBMISSIONS ADVANCED BY THE LEARNED SENIOR COUNSELS FOR THE PARTIES**:

16. In short, Mr. Sushil Salwan, learned senior counsel for the appellant has urged that the impugned judgment dated 30.05.2023 allowing the applications for revocation of probate of Will is liable to be set aside as the learned Probate Court failed to appreciate that the applications filed by the respondents herein are hopelessly barred by limitation as the period of limitation starts reckoning from the day of grant of probate and not from the date of knowledge. Learned senior counsel further relied upon the decision of this Court in **Snehansu Sen Gupta v. Sitangsu Sen Gupta**[1] and the decision of the Bombay High

[1] AIR 2013 Del 116

Court in **S.A. Modi v. Mrs. T.A. Rana**[2] to substantiate his contention that the belated filing of an application under Section 263 of ISA on the ground of omission to issue citations to the persons required to be apprised of the probate proceedings, does not beget an absolute right to claim revocation of probate of Will.

17. On merits, it was urged that the respondents herein have no *locus standi* to file the applications for revocation since Section 15(2)(b) of HSA is not applicable to the facts of the present case for the reason that Mrs. Rajamma S. Madden did not die intestate, and rather she left behind a registered Will. It was further contended that even otherwise, the testatrix had already disposed of the two subject properties during her lifetime by way of two Agreements to Sell executed in favour of Mr. Om Prakash Arora, thus, the estate of the testatrix consisted of only a part of the monetary consideration in lieu of the sale, which has since been distributed among the beneficiaries under the Will dated 23.10.2013, and not the immovable property itself.

18. Lastly, it was argued that the impugned notice inviting objections to grant of probate of Will which was duly published in 'The Statesman' newspaper on 15.02.2014 is a publication *in rem*, therefore, it covers the entire conspectus as regards the relatives of the testatrix and it is the applicants/respondents herein who should have been more vigilant and not slept on their rights for six years. Reliance in this regard has been placed on the decision of the Bombay High Court in **Uma Vithal**

[2] AIR 2004 Bom 353 (DB)

**Jhaveri v. Nikhil Vithal Jhaveri**[3]. Lastly, it was contended that the impugned judgment is liable to be set aside as it was passed by the learned Probate Court before service of notice of the applications under Section 263 of ISA to the legal heirs of the respondent No. 2 i.e., Mrs. Saraswathy Amma (since deceased).

19. *Per contra*, Mr. Sanjiv Kakra, learned senior counsel for the respondent No.1 in FAO 288/2023 i.e., legal heir of the husband of the testatrix, urged that the applications filed by them under Section 263 of ISA are not barred by limitation as the applicants/respondents herein derived knowledge of the alleged Will dated 23.10.2013 and the probate proceedings only in June 2020 when Mr. Om Prakash Arora filed a suit for partition with respect to the property situated in Tughlak Road and served notice of the same to the applicants/respondents herein. It was submitted that immediately thereafter in December 2020, the application for revocation was filed by the respondent No.1 in FAO 288/2023, therefore, the question of filing the application for revocation at a belated stage does not arise.

20. While drawing the attention of this Court to Section 263 of ISA and Illustration (ii) thereof, learned senior counsel pointed out that the mandate of the law is that while impleading parties to a probate petition, the petitioner has to assume that the testator died intestate and based on that assumption, those persons who would have acquired rights in the

[3] 2014: BHC-OS:4627

estate of the testatrix as per the general rules of succession, ought to be impleaded in the probate proceedings as necessary and proper parties. In view of the aforesaid, it was contended that since the heirs of the husband of the testatrix i.e., his three sisters, would have inherited the estate of the testatrix, a female Hindu, as per general rules of succession contained in Sections 15(1)(b) and 15(2)(b) of the HSA, thus, they should have been impleaded to the probate proceedings initiated by the appellant herein.

21. Additionally, it was urged that citing the sister of the testatrix in the probate proceedings instead of the legal heirs of the husband, is of no consequence whatsoever since the chain of succession in the present case stops at Section 15(2)(b) i.e., heirs of the husband, who were still alive at the time of filing of the probate petition, whereas the sister of the testatrix would've fallen under Section 15(2)(d) i.e., heirs of the father, thus, she holds no *locus* in the chain of succession applicable to the estate in question. While inviting the attention of this Court to Section 17 of the Limitation Act, 1963, learned senior counsel urged that a fraud has been played upon the Court as well as the respondents/applicants herein as regards obtaining probate as the same has been done without impleading the rightful legal heirs of the testatrix to the probate proceedings.

22. On the other hand, Mr. Sanjeev Sindhwani, learned senior counsel for the respondent No.1 in FAO 290/2023 i.e., legal heir of the sister-in-law of the testatrix, urged that even the publication dated

15.02.2014 made in The Statesman newspaper has been issued only *qua* the property at Prithvi Raj Road and makes no mention of the property at Tughlak Road, and thus, the said publication is also tainted on account of suppression of facts as well as fraud played by the appellant herein in conniving with Mr. Om Prakash Arora so as to illegally usurp the estate of the testatrix. Accordingly, it was contended that since fraud vitiates everything, the grant of probate dated 25.11.2014 has been rightly revoked by the learned Probate Court *vide* impugned judgment dated 30.05.2023.

23. In support of their submissions, learned senior counsels for the applicants/ respondents have relied upon the decisions in the cases of **Swaminathan v. Alankamony (dead) though LRs**[4], **Manibhai Amaidas Patel v. Dayabhai Amaidas**[5], **Yuv Rajnarain Gorwaney v. State**[6], **Seethalakshmi Ammal v. Muthuvenkatrama Iyenger**[7], **Basanti Devi v. Ravi Prakash Ram Prasad Jaiswal**[8], **Manju Puri v. Rajiv Singh Hanspal**[9], **Pallav Sheth v. Custodian**[10], and **A.V. Papayya Sastry v. Government of A.P.**[11].

**ANALYSIS & DECISION:**

[4] MANU/SC/0339/2022
[5] (2005) 12 SCC 154
[6] 2005 SCC OnLine Del 1207
[7] MANU/SC/0276/1998
[8] (2008) 1 SCC 267
[9] (2020) 19 SCC 127
[10] MANU/SC/0437/2001
[11] (2007) 4 SCC 221

24. I have given my thoughtful consideration to the submissions advanced by the learned counsels for the parties. I have also perused the relevant record of the case.

25. In order to decide the present appeals, it would be apposite to refer to Section 263 of the ISA, which is found in Part IX, Chapter-III titled 'Alteration and Revocation of Grants', which reads as under:

> "**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 willfully 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 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 later 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.

26. A bare perusal of the aforesaid provision would show that the grant of Probate or Letters of Administration may be revoked or annulled on demonstrating "just cause", which is explained to encompass various situations enumerated *vide* Explanation clause (a) to (e). The question that arises for determination before this Court is whether the grant was obtained fraudulently by making a false suggestion, or by concealment of some material fact from the Court; or whether the grant was obtained by means of an untrue allegation of fact that was essential or the core point of law irrespective of the fact whether such allegation was made in ignorance or inadvertently. The decision would rest on the proposition of law governing clause (b) and clause (c) and particularly in the light of illustration (ii), which provides that the grant which was made without citing parties who ought to have been cited, would result in revocation of the grant for just cause.

27. Reverting to the instant matter, it is an admitted fact that in the petition seeking Probate of the Will dated 23.10.2013 purportedly executed by the testatrix, the petitioner impleaded the State as respondent No.1 and the sister of the testatrix, namely Saraswathy Amma as respondent No.2, who has since died and sought to be represented through her legal heirs. *The pleadings categorically averred that the testatrix left behind no other legal heir except her*

*sister*. It is an admitted fact that the testatrix had acquired the estate of her deceased husband.

28. At this juncture, it would be appropriate to reproduce Section 15 of the HSA, which provides as under:

> "**15. General rules of succession in the case of female Hindus**.—(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,—
> (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
> (b) secondly, upon the heirs of the husband;
> (c) thirdly, upon the mother and father;
> (d) fourthly, upon the heirs of the father; and
> (e) lastly, upon the heirs of the mother.
> **(2) Notwithstanding anything contained in sub-section (1),—**
> (a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and
> (b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband."

29. A careful perusal of the aforesaid provision would show that in terms of sub-Section (1) to section 15, as a general rule, the property of a female Hindu dying intestate devolves: firstly, upon her sons and daughters including children of any pre-deceased son or daughter) and the husband; secondly, upon the heirs of husband; thirdly, upon the mother and father; fourthly, upon the heirs of the father; and lastly, upon the heirs of the mother. However, the general rule of succession is controlled by sub-clause (2) that provides that where a property is

inherited by a female Hindu from husband or from her father-in-law, the property shall devolve, in the absence of legal heir in the first class upon the heirs of the husband.

30. At the cost of repetition, since the testatrix inherited the estate of her deceased husband by virtue of sub-Section (2) (b) to Section 15 of the HSA, the property was supposed to devolve upon herself or her husband. That being the legal position, the plea advanced by the learned counsel for the appellant that the aforesaid provision shall not apply in a case where the Probate of a Will left behind by a female Hindu is instituted, cannot be sustained in law. It is well ordained in law that since the Probate proceedings are in the nature of a judgment in *rem,* the first and foremost legal requirement is that all parties who may have some legal right or other as regards genuineness or authenticity of the Will, should be impleaded in the Probate proceedings.

31. It is well settled that wherever a Will is propounded that has been left behind by a female Hindu, the first step is to presume that the testatrix has died intestate and then there should be a fact finding as to who would be the heirs concerned who ought to be impleaded as a party to the Probate or for that matter, petition for grant of Letters of Administration. Reference in this regard can be had to a decision in the case of ***Swaminathan v. Alankamony (dead) though LRs (supra)*** wherein the Supreme Court drew a distinction as between Section 276

*vis-à-vis* Section 278[12] of the ISA that enumerates the essential requirements of setting out the relevant averments and the details for grant of probate and Letters of Administration respectively.

32. It is pertinent to mention that the plea by the learned counsel for the appellant that unlike a petition under Section 278 of the ISA, there is no legal mandate to supply the details of the family or other relatives of deceased and their respective residences was brushed aside by the Supreme Court holding that grant under the aforesaid provision could be revoked or annulled in terms of Section 263 of the ISA. It was held that non-impleadment of parties in such proceedings, which ought to have been cited shall be deemed to be a 'just cause' for revocation or annulment of the grant.

33. Reference can also be invited to another decision by the Supreme Court in the case of ***Amaidas Patel v. Dayabhai Amaidas (supra)*** whereby in reference to Section 263 of the ISA, it was held as under:

> **"9.** This would clearly show that it is necessary to cite parties who would otherwise have an interest in the succession to the estate of the deceased. That would naturally include all the heirs of the

[12] **278. Petition for letters of administration**.—(1) Application for letters of administration shall be made by petition distinctly written as aforesaid and stating—
(a) the time and place of the deceased's death;
(b) the family or other relatives of the deceased, and their respective residences;
(c) the right in which the petitioner claims;
(d) the amount of assets which are likely to come to the petitioner's hands;
(e) when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode, or had some property, situate within the jurisdiction of the Judge; and
(f) when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.
(2) Where the application is to the District Judge and any portion of the assets likely to come to the petitioner's hands is situate in another State, the petition shall further state the amount of such assets in each State and the District Judges within whose jurisdiction such assets are situate.

> deceased. Besides, Section 283 gives power to the District Judge as regards the issue of citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate. Necessarily therefore the facts on the basis of which the District Judge is required to exercise his discretion must be fairly placed before him. In this case the respondent had done nothing of the sort as we have already noticed.
> **10.** The courts below also overlooked the fact that in their application for revocation the appellants had clearly stated that in other proceedings between the members of the family of Amaidas and the respondent the Will had been successfully disputed. In the circumstances, for the respondent to say that the grant was being opposed by "nobody" was misleading. The grant was obtained by concealing from the court something which was very material to the case. The appellants were entitled to be heard and doubtless the District Judge would have directed to issue of citations to each of Amaidas's heirs on intestacy under Section 283(1)(*c*) of the Act had the true facts been revealed by the respondent in his application for grant of probate. The advertisement in this case was wholly insufficient to patch up the gross lacuna."

34. Further, the issue in question also came to be decided by the learned Single Judge of this Court in the case of ***Yuv Rajnarain Gorwaney v. State (supra)*** wherein in the same context i.e., interpreting Section 263 of the ISA, reference was invited to Original Side Practice Direction No.4 relating to testamentary and intestate jurisdiction of the High Court, and in particular Rule (3), whereby it is provided as under:

> "3. In all applications for probate or for letters of administration with the will annexed, the petitioner shall state the names of the members of the family or other relatives upon whom the estate would have devolved in case of any intestacy together with their present place of residence."

35. In summary, it was reiterated that in determining whether a party is a necessary or proper in Probate proceedings, it should firstly be

assumed that the testator has died intestate and then the heir should be ascertained. Having ascertained as to who are the legal heirs, then all of them ought to be impleaded *de hors* the execution of the Will. It was further held as under:

> **"5.** Therefore, the Rule clearly prescribes that the applicant ought to have been named in the probate application. That was not done. However, the learned Counsel for the petitioner submits that he cannot be faulted on this ground inasmuch as he represents the executor of the Will in question and is an outsider and not a family member. He also submitted that a public notification was carried out in the newspaper as per Rules and that the applicant has come after five years despite being aware of the death of late Smt. Avinash Pandit and also being present in the cremation ceremony. Therefore, according to the learned Counsel for the petitioner, this application ought not to be entertained. The learned Counsel also states that in any event he does not admit the relationship between the applicant and the testator as disclosed by him."

36. Further, the Supreme Court in the case of ***Basanti Devi v. Ravi Prakash Ram Prasad Jaiswal (supra),*** again delved into Section 283(1)(c)[13] read with Section 263 of the ISA, and it was held as under:

[13] **283. Powers of District Judge**.—(1) In all cases the District Judge or District Delegate may, if he thinks proper,—
(a) examine the petitioner in person, upon oath;
(b) require further evidence of the due execution of the will or the right of the petitioner to the letters of administration, as the case may be;
(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.
(2) The citation shall be fixed up in some conspicuous part of the courthouse, and also in the office of the Collector of the district and otherwise published or made known in such manner as the Judge or District Delegate issuing the same may direct.
(3) Where any portion of the assets has been stated by the petitioner to be situate within the jurisdiction of a District Judge in another State, the District Judge issuing the same shall cause a copy of the citation to be sent to such other District Judge, who shall publish the same in the same manner as if it were a citation issued by himself, and shall certify such publication to the District Judge who issued the citation.

**18.** The provisions contained in sub-section (3) of Section 283 are mandatory in nature. Once the statutory requirements are found to have not been complied with, an application for revocation of the grant of probate would be maintainable in terms of Section 263 of the Act, apart from the fact that non-publication of citation could be one of the grounds to revoke the grant of probate. Explanation (*c*) appended thereto in a case of this nature would be attracted. The said provision 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*)-(*b*) * * *

(*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*) to (*e*) * * *"

**24.** It is now well settled that an application for grant of probate is a proceeding in rem. A probate when granted not only binds all the parties before the court but also binds all other persons in all proceedings arising out of the will or claims under or connected therewith. Being a judgment in rem, a person, who is aggrieved thereby and having had no knowledge about the proceedings and proper citations having not been made, is entitled to file an application for revocation of probate on such grounds as may be available to him. We are, therefore, of the opinion that the application for revocation of the grant of probate should have been entertained."

37. In the light of the above, at this juncture, it would be apposite to refer to the relevant decisive observations made by the learned Probate Court which read as under:

"**7.29** The present case is in stark contrast to the cases above. Here the primary ground raised by the applicants seeking revocation is that persons entitled to the property by the operation of Hindu Succession Act have been actively kept in the dark by their non impleadment by the propounder of the Will. It is the applicant's case that the probate has been obtained from the court by concealment of the interest of these persons in the property/estate. Such concealment

of persons vitally interested in the determination as to whether a probate should be granted or not amounts to fraud. While the applicants have pleaded and shown that the probate was obtained behind their backs, the non applicants have not been able to point to any fact by which they could claim that the applicants had knowledge of filing of the probate proceedings or of the grant of probate. As per Article 137 of the Limitation Act the date of limitation is 3 years from *"When the right to apply accrues"* which right accrued not when the probate was granted but when the applicants gained knowledge of the grant of probate and the fraud played upon them, the concealments made before the cou1t and the applications at hand have been filed within the prescribed time since gaining of the knowledge by the applicants. For similar reason ***Som Parkash (supra)*** **and** ***Pawan Kumar Sharma (supra)*** do not come to the rescue of the non applicants. Moreover both these case laws based upon completely distinct facts altogether. Neither any fraud, concealment was pleaded nor the same could be established. As far as ***Snehansu Sen Gupta (supra)*** is concerned, the facts of the said case were also different. In the said case the applicant merely claimed that he was close to the testator who had assured him that he shall get equal share in the estate. In the case at hand the applicants were necessary and proper parties, as discussed above in detail and their omission in the probate proceedings is unjustified and amounts to material concealment. Furthermore in the said case it was held in para 17 as under:-

> *"17. Clearly, the omission to issue citations to persons who should have been apprised of the probate proceedings would normally result in revocation but this is not an absolute right irrespective of the other considerations arising from the proved facts of a case.* "

**7.30** In the given facts and circumstances of the case, the discussion as above, it is a fit case to exercise the discretion vested with the court, by virtue of Section 263 of the Indian Succession Act 1925, to revoke the grant of probate. As regards ***S.A. Modi (supra)*** is concerned, one of the major reason why the Hon'ble Court did not agree with the applicant who sought revocation was that the Court did not believe that the applicant did not have any knowledge of the Will/probate and rather it was a case where the applicant had due knowledge but despite that he did not take any steps to find out the status of the Will or whether any probate in respect of the same has been obtained or not. As far as the discretionary power of the court

> is concerned, once there is a just cause, justifiable grounds for revocation of the probate and there is no other impediment in exercising the discretionary power, the same ought to be exercised in the interest of justice as well as to satisfy the court's conscience. Moreover the entire estate of the testatrix has not been administered and once revoked the natural consequences as per the law shall follow.
>
> **7.31** As far as the other grounds raised by the applicants are concerned, none of those grounds are available to the applicants for seeking revocation of the probate so granted, though they may be a ground to challenge the probate proceedings, the genuineness & authenticity of the Will sought to be probated. Same was also fairly conceded by Ld. Counsels for the parties during the course of arguments."

38. Unhesitatingly, the aforesaid observations are absolutely flawless. In summary, since the applicants/ respondents Mrs. Meenakshi Sardana and Ms. Sheila Chathli were alive at the time of filing of the Probate petition, by all means they should have been impleaded as a necessary and proper party to the Probate proceedings upon forming an assumption as if testatrix had died intestate. In other words, the applicants/sisters of the testatrix being Class II legal heirs, were indeed necessary and proper parties and should have been arrayed as such in the Probate petition. The plea raised by the learned counsel for the appellant herein that there was a delay of six years in filing the applications for revocation is hardly of any consequence since it is borne out from the record that the applicants/legal heirs of testatrix acquired knowledge of the agreement to sell dated 19.10.2013 as well as Will dated 23.10.2013 on receiving a copy of the suit bearing CS(OS) No. 162/2020 titled as '*Om Prakash Arora v. Meenakshi Sardana &*

*Ors.*' filed before the High Court of Delhi on 04.07.2020 seeking partition of the suit property at Tughlak Road, New Delhi on the basis of an agreement allegedly entered into with the testatrix for sale of her alleged 6.25% share in the suit property at Tughlak Road, New Delhi.

39. Be that as it may, if the conditions provided under section 263 of the ISA are fulfilled, the issue of limitation does not come into play at all. Reference in this regard can be invited to decision in the case of ***Pallav Sheth v. Custodian (supra)*** wherein it was observed as under:

> **"48.** The provisions of Section 17 of the Limitation Act are applicable in the present case. The fraud perpetuated by the appellant was unearthed only on the Custodian receiving information from the Income Tax Department, vide their letter of 5-5-1998. On becoming aware of the fraud, application for initiating contempt proceedings was filed on 18-6-1998, well within the period of limitation prescribed by Section 20. It is on this application that the Special Court by its order of 9-4-1999 directed the application to be treated as a show-cause notice to the appellant to punish him for contempt. In view of the abovestated facts and in the light of the discussion regarding the correct interpretation of Section 20 of the Contempt of Courts Act, it follows that the action taken by the Special Court to punish the appellant for contempt was valid. The Special Court has only faulted in being unduly lenient in awarding the sentence. We do not think it is necessary, under the circumstances, to examine the finding of the Special Court that this was a continuing wrong or contempt and, therefore, action for contempt was not barred by Section 20."

40. Interestingly, in the case of ***Manju Puri v. Rajiv Singh Hanspal (supra)***, the Supreme Court allowed the revocation of the Probate even after 29 years of the grant for the fact that the necessary parties had no knowledge of the Probate proceedings. The sum and substance of the matter is that the question of delay attributable to the applicants/

respondents/heirs of the Second Class as regards the testatrix is dispensable for the fact that they had not been joined in the Probate proceedings and were not aware of the execution of the Will.

41. Before parting with this case, the plea raised by the learned senior counsel for the appellant that the impugned order was passed even before the LRs of the deceased Mrs. Saraswathy Amma were brought on the record, does not cut any ice for the simple reason that the sister of the testatrix does not fall under Section 15(1)(b) of the HSA. There is no merit in the plea that if a Will is left by the testatrix, the matter would be governed by Section 15(1) of the HSA. All said and done, the impugned order does not go into the veracity of the Will. The veracity of the Will is yet to be tested by the learned Probate Court after hearing the contest put forth by the applicants/respondents i.e., Mrs. Meenakshi Sardana and Mr. Sunder Chathli.

42. Insofar as the decision in the case of ***Uma Vithal Jhaveri v. Nikhil Vithal Jhaveri (supra)***, relied upon by the learned senior counsel for the appellant, the same is clearly distinguishable since it was a case where a plea was taken by the objectors to the Probate of a Will on the ground that the citation by way of publication in the newspaper had not been served upon them. However, it was found that soon upon the death of the testator, the objectors were apprised by way of a legal notice that the deceased-testator had left behind a Will in favour of the petitioner, which was also replied to, and the Will was challenged. It was in the said backdrop that it was held that the petition for revocation under

Section 263 of the ISA was barred under Article 137 of the Limitation Act, 1963.

43. In view of the aforesaid discussion, this Court has no hesitation in holding that the impugned order dated 30.05.2023 passed by the learned Probate Court does not suffer from any illegality, perversity or incorrect approach in law or facts.

44. Accordingly, both the present appeals are hereby dismissed.

45. The pending applications also stand disposed of.

**DHARMESH SHARMA, J.**

**MAY 05, 2025**
*Sadiq*