

LIMITATION PERIOD FOR AN ADMINISTRATION SUIT

The Bombay High Court in its decision in ***Sajanbir Singh Anand and Ors. v. Raminder Kaur Anand and Ors., (2018) 3 BomCR 740*** held that there cannot be a straitjacket formula to determine the period of limitation for filing an administration suit. It was stated that the relevant Article of the Limitation Act, 1963 will be applicable pursuant to an analysis of the pleadings and prayers in a suit for administration of estate.

Facts: A suit was filed for administration of estate of the deceased (Mrs. Roop Kesharaj Sakraney) in accordance with her will and testament dated 14th May, 2001 (the "**said Will**"). The deceased was the wife of Defendant No. 1 while the Plaintiff No. 1 was the executor and one of the beneficiaries under the said Will. It was alleged by the Plaintiffs that the deceased died on 24th October, 2007 and the fact of the said Will was suppressed by the Defendants. The existence of the said Will came to light only in or about April, 2012. On failing to amicably resolve the issues between the parties, the suit was filed on 16th March, 2015.

Submissions: On limitation, the Plaintiffs submitted that the suit falls under the provisions of Article 106 of the Limitation Act, 1963 ("**the Limitation Act**") which provides the period of limitation to be 12 years when the legacy or share/s become payable or deliverable and hence the suit was filed within the period of limitation. Relying on the judgment in *Sadbuddhi Brahmesh Wagh and Ors. v. Sheela Mahabaleshwar Wagh and Ors., (2003) 6 Bom CR 787*, the Plaintiff further submitted that the Plaintiff's suit is governed by Article 110 on the premise that a suit for administration of the property of a deceased is a suit "*by heir excluded from joint family property to enforce a right to his share and that has to be filed within 12 years under Article 110 of the Limitation Act and when exclusion becomes known to plaintiff.*"

The Defendants on the other hand, contended that the period of limitation for filing the suit was three

years as provided by Article 113 of the Limitation Act from the date of death of the deceased i.e. 24th October, 2007.

Issues: The learned Single Judge framed the preliminary issue as "*whether the suit is barred by limitation?*"

When the matter was taken up for hearing, the Learned Single Judge could not agree with the view that a suit for administration of estate of a deceased is governed by Article 113 of the Limitation Act and is required to be filed within three years from the date of death even if it contains a prayer for partition and possession of share in an immovable property. Accordingly, the Learned Single Judge referred the following question to a larger bench:

"What is the period of limitation for filing of a suit for possession of movable as well as immovable property filed by one of the heirs against another heir for partition and separate possession of the inherited property?"

The Division Bench considering the question recast the question as:

"What is the period of limitation for filing of a suit for administration and partition of the property, both movable and immovable left by deceased? and whether there would be different periods for such a suit for immovable property and such a suit for movable property?"

Reference to the judgment in *Sadbuddhi Brahmesh Wagh and Ors. v. Sheela Mahabaleshwar Wagh and Ors.*, (supra) was made during the course of hearing wherein it was held that a suit for administration of property of a deceased is a suit “by heir excluded from joint family property to enforce a right to his share and that has to be filed within 12 years under Article 110 of the Limitation Act and when exclusion becomes known to plaintiff.”

However, the Division Bench did not agree with the findings in *Sadbuddhi Brahmesh Wagh and Ors. v. Sheela Mahabaleshwar Wagh and Ors.*, (supra) and stated that Article 110 of the Limitation Act, ex-facie, does not deal with a suit for administration of the estate of a deceased but deals with a suit by a person excluded from joint family property to enforce a right to share therein. It was further observed that Article 65 of the Limitation Act which deals with the possession of immovable property or any interest therein based on title was not brought to the notice of the Division Bench which decided *Sadbuddhi Brahmesh Wagh (supra)*. The Court accordingly referred the following issues to be decided by a larger bench.

- (i) *Whether Article 110 of the Limitation Act, 1963 has any application to a suit for administration of the estate of a deceased person?*
- (ii) *What is the period of limitation for filing of a suit for administration and partition of the property, both movable and immovable left by deceased? and Whether there would be different periods for such a suit for immovable property and such a suit for movable property?*

Judgment:

The three-judge bench of the High Court discussed the object of the law of limitation, which object is to prevent the taking away of what has long been

permitted or what may have been lost by a party's own inaction, negligence or laches. The Court reiterated the settled law that a plea of limitation is a mixed question of law and fact.

Whilst discussing the above principles in the context of an administration suit, the Court stated that *the classic aspect which qualifies any suit for being called an administrative suit is that the reliefs claimed involve the administration of the estate of the deceased*. The Court took note of the fact that the Limitation Act does not explicitly provide for a period of limitation for an administration suit. Accordingly, the period of limitation in a suit will depend on the cause of action and the nature of reliefs sought therein.

The Court also referred to Order XX Rule 13 of CPC which deals with decree in administration suit and stated that for an effective, meaningful and complete decree to be passed in administration suit, the period of limitation depends on the nature of the suit and the parties before the court.

On the application of Articles 106, 110 and 113 of the Limitation Act to the administration suit, the Court first referred to the well settled principles of the law of limitation viz., if two articles are wide enough to cover a given right of suit, the Court should lean in favour of the provision which will keep the right to suit alive in preference to a provision which will destroy it and that a specific article dealing with a specific subject is applicable in preference to a general and residuary article and held as follows:

- (i) With reference to Article 106, the Court held that Article 106 is applicable to a suit that is filed against an executor or an administrator or any person legally charged with the duty of distributing the estate. Accordingly, Article 106 may not apply to cases where a suit is not against an executor or administrator or some

other person legally charged with the duty of distributing the estate. The Court however, provided an instance where Article 106 may be applicable, viz., where a suit is filed by a legal heir for legacy or for a share of a residue bequeathed by a testator or for distributive share of the property of an intestate.

- (ii) With reference to Article 110, the Court while referring to the referral order of the Division Bench held that Article 110, *ex-facie*, does not deal with a suit for administration of the estate of a deceased but deals with a suit by a person excluded from joint family property to enforce a right therein. However, Article 110 may become applicable depending on the cause of action and the reliefs sought therein. For instance, if reliefs prayed for in a suit include administration of a joint family property along with the plaintiff's share therein or if the suit is to enforce a right to share in a joint family property alleging that exclusion from joint family property.
- (iii) With reference to Article 113, the court provided an instance where the said Article will be applicable viz., an administration suit by a creditor for recovery of his debt as no specific period is provided under the Limitation Act.

Whilst discussing the applicability of Article 110 to an administration suit, the Court also discussed a

situation where the Plaintiff claims administration of the estate of a deceased including movable and / or immovable property and whether different limitation period should be applicable to movable and immovable property. The Court held that the administration suit is essentially one where reliefs claimed relate to seeking administration of the estate of a deceased and it is immaterial if the estate involves movable and / or immovable property. Accordingly, the question of applying different periods for movable and immovable property would not arise. The Court stated that in fact, it may create an incongruous situation where different periods of limitation are prescribed for movable and immovable assets in an administration suit.

On an analysis of the various provisions of the Limitation Act, case law and settled legal principles, the Court held that using the term "administration suit" merely does not make a suit an administration suit. The aspect of limitation would have to be considered in the context of the reliefs tested against the facts of each case. Further, the onus will be on the party claiming the benefit of shorter period of limitation to establish that the case fell within the special rule limiting the period of limitation.

Conclusion: The Court in its decision has recognized the fact that the period of limitation for a suit for administration would depend on the nature of the suit, reliefs claimed and also the plaintiffs before the court. The Court rightly held that it is for this reason, the Limitation Act has not explicitly provided a period of limitation for such a suit.

The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice.