

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No:- MA No. 85/2014

Reserved on : 02.07.2026.
Date of Pronouncement: 08.07.2026.
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1. **Sushila Sharma (Age 75)**
w/o late Nagendra Nath Sharma
R/o D-87, Haus Khas, New Delhi-16
.... Appellant(s)/Petitioner(s)
2. **Lalima Awasthi (Age 50)**
W/o Sh. Rajiv Awasthi
C/o D-87, Haus Khas, New Delhi-16
3. **Poornima Sharma (Age 46)**
W/o Sh. Vishal Prashar
C/o D-87, Haus Khas, New Delhi -
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Through:- Ms. Zoya Bhardwaj, Advocate

V/s

1. **Mahindra Kumar Sharma**
S/o Late Kidar Nath Shastri
R/o Patel Chowk, Jammu
.....Respondent(s)
2. **Dr. Pran Nath**
S/o Late Kidar Nath Shastri
R/o APT-489, Pleasant Street, Brook Line,
Baston (Mass), USA.

Through:- Mr. Anuj Dewan Raina, Advocate for R-1.
Mr. Amit Khajuria, Advocate vice
Mr. Ankur Sharma, Advocate for R-2.

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

1. The deceased appellant, Nagendra Nath Sharma, now represented through his legal representatives, has challenged the order dated **11.11.2013** passed by the Court of the 1st Additional District Judge, Jammu (hereinafter referred to as "**the Probate Court**"), whereby the petition filed by respondent No. 1, Mahinder Kumar Sharma, under Section 62 of the Probate and Administration Act, 1977 (Samvat) (the then applicable State Act, which now stands repealed pursuant to the Jammu and Kashmir Reorganisation Act, 2019) was allowed.
2. Respondent No. 1 had sought the grant of probate in respect of the Will dated 24.12.1976, allegedly executed by the predecessor-in-interest of the parties, namely Late Shri Kidar Nath Shastri. By virtue of the impugned order, the Probate Court granted probate of the said Will. The principal ground of challenge is that the Probate Court lacked territorial jurisdiction to entertain and allow the petition, as neither was the testator residing within its territorial jurisdiction nor was the property forming the subject matter of the Will situated within such jurisdiction. It is further contended that although the testator died in the year 1980, the Will was sought to be probated only after a delay of approximately 19 years, during which period it remained exclusively in the custody of respondent No. 1.

3. It is further submitted that, under the terms of the Will, the mother of the parties was granted only a life interest, with the remainder to devolve equally upon the three sons of the deceased testator, namely Nagendra Nath Sharma (since deceased), Mahinder Kumar Sharma (respondent No. 1), and Dr. Pran Nath. Despite the demise of the mother in the year 1987, no steps were taken to obtain probate of the Will for several years thereafter, thereby casting serious doubt on the genuineness and authenticity of the alleged Will. It is also contended that the Will has not been proved in accordance with the requirements of law. During the course of arguments, learned counsel for the appellants further submitted that the deceased testator had not appointed any executor under the Will. Consequently, in terms of **Section 6 of the Probate and Administration Act**, probate could be granted only to an executor appointed by the Will. In the absence of such an appointment, the petition for probate itself was not maintainable. It is, therefore, submitted that the Probate Court misdirected itself in law and fell into manifest error in granting probate.
4. The appellants placed reliance upon the judgments of this Court reported as **AIR 2009 (1) JK (HC) 8: 2009 SLJ 464: AIR 2010 J&K 1**, *Thoru Ram v. Rattan Lal and Others*, and **AIR 2009 (1) JK (HC) 472: 2009 (1) KLJ 79**, *Rattan Mani v. Mohinder Kumar and Others*, to contend that probate cannot be granted in the absence of an executor appointed under the Will, particularly where the Will merely identifies beneficiaries without appointing any executor.

5. Learned counsel for the respondents, while controverting the submissions advanced on behalf of the appellants, argued that no objection regarding the maintainability of the probate petition was raised before the Probate Court. Consequently, such a plea, being raised for the first time in the present appeal, is an afterthought and is not liable to be entertained. On merits, it was submitted that the probate petition was instituted in the year 1999 and, after a full-fledged trial, the Probate Court, by the impugned order, rightly granted probate of the Will. It was further contended that the Probate Court, upon a comprehensive appreciation of the oral and documentary evidence, recorded a categorical finding that the Will was genuine, free from any suspicious circumstances, and had been duly proved in accordance with law. According to the respondents, the appellants failed to adduce any cogent evidence to discredit the genuineness of the Will or to rebut the evidence led by the propounder. It was, therefore, submitted that the findings recorded by the Probate Court are based on proper appreciation of the evidence and are neither perverse nor contrary to law, warranting no interference in the present appeal.
6. Insofar as the legal objection that probate could not have been granted in the absence of an executor appointed under the Will is concerned, learned counsel for the respondents submitted that this Court, in exercise of its appellate jurisdiction, is fully empowered to do complete justice by treating the proceedings as one for the grant of Letters of Administration. It was further submitted that the three beneficiaries

under the Will are the real brothers of the parties and that the property forming the subject matter of the Will is a residential house situated in Delhi. It was pointed out that respondent No. 2 has already conveyed that he has no objection to the Will being given effect to by the grant of appropriate relief. It was further argued that, during the lifetime of the testator and thereafter, only the predecessor-in-interest of the appellants and respondent No. 1 were in occupation of the said house. According to the respondents, after the demise of the testator and subsequently his widow, the predecessor-in-interest of the appellants adopted an obstructive stand and began disputing the validity of the Will with a view to deprive respondent No. 1 of the benefits flowing therefrom. It was, therefore, contended that the appellants have failed to substantiate their challenge to the Will and that the impugned order warrants no interference.

7. *Heard counsel for the parties and seen the record of the proceedings.*
8. From the material available on record, it is evident that the probate petition was instituted by respondent No. 1, Mahinder Kumar Sharma, before the Probate Court in the year 1999. At the threshold, the appellants filed an application seeking rejection of the probate petition on the ground that the Probate Court lacked territorial jurisdiction, as the property forming the subject matter of the Will was situated outside its jurisdiction. The said application was contested by respondent No. 1 and, by order dated 23.05.2002, the Probate Court rejected the objection. Aggrieved thereby, the appellants preferred a revision

petition before this Court, which also came to be dismissed. Thereafter, the appellants contested the probate petition on merits. Consequently, the issue of territorial jurisdiction already stands concluded by virtue of the order passed by this Court in the revision proceedings, which has attained finality. Accordingly, the contention advanced by the learned counsel for the appellants that the Courts at Delhi alone possessed jurisdiction is devoid of any legal merit. In any event, the evidence adduced during the probate proceedings clearly establishes that the deceased testator had his last fixed place of abode at Jammu, where the Will was executed and duly registered, thereby conferring territorial jurisdiction upon the Probate Court at Jammu.

9. In terms of Section 56 of the Probate and Administration Act, 1977 (Samvat), the District Judge is competent to grant probate of a Will where it appears from the petition that, at the time of his death, the testator had either a fixed place of abode or any property within the territorial jurisdiction of the Court. Section 62 of the Act prescribes the particulars required to be stated in a petition for probate. A perusal of the record reveals that respondent No. 1 had duly complied with the statutory requirements prescribed under the Act. Since the issue of territorial jurisdiction already stands concluded and has attained finality, it cannot be permitted to be reopened in the present appeal.
10. The Will executed by Late Shri Kidar Nath Shastri pertained to residential property bearing House No. D-87, Hauz Khas, Delhi. Although the testator had four sons and one daughter, he bequeathed

the said property, out of love and affection, exclusively in favour of his three sons, namely, **Nagendra Nath Sharma (since deceased), Mahinder Kumar Sharma (respondent No. 1), and Dr. Pran Nath.**

At the relevant time, Dr. Pran Nath was residing in the United States of America, whereas the other two beneficiaries were residing in the said house along with the testator.

11. The Will further stipulated that the wife of the testator would enjoy a life interest in the property and would remain in possession thereof during her lifetime, without any right to alienate, mortgage, or otherwise encumber the same. Upon her demise, the property was to devolve equally upon the aforesaid three beneficiaries. The Will was executed on 24.12.1976 and was duly registered before the Sub-Registrar, Jammu, on the same date. During the course of the trial, **PW-Vimla Sharma**, the sister of the parties, deposed that her father had executed the Will on 24.12.1976 and that it was registered at their residence in her presence. She further stated that, under the terms of the Will, the testator bequeathed a life interest in the property to his wife, who was not entitled to sell, mortgage, or otherwise alienate the property during her lifetime, and that, upon her demise, the property was to devolve in equal shares upon the three sons who were parties to the probate proceedings.
12. **PW-Om Parkash Goswami**, who was acquainted with the deceased testator, deposed that the Will had been drafted by **Shri Som Dev Bhat**. He further stated that the testator was a noted literary figure and the

author of two volumes of the book *Katha Sarit Sagar*, the first of which was published in the year 1975, while the second volume was published in March, 1979. **PW–Krishan Kumar**, one of the attesting witnesses to the Will, deposed that the testator was in a sound and disposing state of mind at the time of execution of the Will. He further stated that the Will was executed and registered at the residence of the testator and that he had signed the document as an attesting witness. The said Will was exhibited as **Ext. KK**.

13. During the course of hearing, learned counsel for the appellants fairly conceded that no proceedings had ever been initiated before any court of competent jurisdiction challenging the validity or genuineness of the Will. A perusal of the trial court record further reveals that the deceased appellant, **Nagendra Nath Sharma**, entered the witness box in support of his case and examined **DW–Narinder Dand**, **DW–Surya Anand**, and **Dr. Susheel Kumar Dand** as defence witnesses. Upon completion of the pleadings, the Probate Court had framed the following issues for determination:

1. *Whether the petition without attaching the original will with it is liable to be dismissed? OPR*
2. *Whether the petition without mentioning the value of the property is bad in law, if so what is its effect? OPR*
3. *Whether the petition without verification and certificate of one of the witnesses of the Will is liable to be dismissed? OPR*
4. *Whether the petition is time barred? OPR*
5. *Whether petition for non-joinder of the party is liable to be dismissed? OPR*
6. *Whether the petition without giving the detail of moveable and immovable property left by testator Pt. Kidar Nath Shastri in the State of J&K and other parts of the country is liable to be dismissed? OPR*
7. *Whether the Court has no jurisdiction to entertain the petition? OPR*

8. *Whether the Will dated 24.12.1976 was the last Will executed by Kidar Nath Shastri with sound mind?*

OPP

9. *Relief.*

14. During the course of the trial, the appellants did not press **Issue Nos. 1, 2, and 3**. The Probate Court recorded that these issues had become redundant in view of the subsequent rectification of the deficiencies pointed out in the probate petition. Likewise, **Issue Nos. 5 and 6** were also not pressed by the appellants and were accordingly deleted. As a result, only **Issue Nos. 4, 7, and 8** survived for adjudication. Upon appreciation of the oral and documentary evidence, the Probate Court categorically held that the appellants had failed to establish that any recital contained in the Will was false or fabricated. The Court further found that they had also failed to prove that the testator was not in a sound and disposing state of mind at the time of execution of the Will.
15. In view of the aforesaid factual discussion, the findings recorded by the Probate Court do not suffer from perversity or any manifest error warranting interference by this Court. Having heard learned counsel for the appellants and examined the record, this Court is of the considered view that the appellants have failed to demonstrate any infirmity, factual or legal, in the appreciation of evidence by the Probate Court. No material has been brought on record to establish that the findings are either contrary to the evidence or otherwise unsustainable in law. Indeed, the appellants have been unable to point out any factual lacuna or perversity in the impugned judgment. The principal contention urged on their behalf, and the only issue requiring consideration in the present

appeal, is that, in the absence of an executor appointed under the Will, the Probate Court could not have granted probate.

16. In support of the aforesaid contention, learned counsel for the appellants placed reliance upon the judgment of this Court reported as AIR 2009 (1) JK (HC) 8: 2009 SLJ 464: AIR 2010 J&K 1, *Tohru Ram v. Rattan Lal and Others*. In the said case, the beneficiary under the Will had sought the grant of probate on the premise that, being a beneficiary, he was entitled to maintain such a petition. Repelling the said contention, this Court held that the District Judge had committed an error in granting probate in favour of a beneficiary. Upon examination of the evidence, the Court found that the testator had not appointed or nominated any person as an executor under the Will. It was, therefore, held that, in the absence of an executor appointed by the testator, the law did not permit the grant of probate. Consequently, the order granting probate was held to be without jurisdiction and contrary to the statutory provisions, as probate can be granted only to an executor appointed under the Will and not to a mere beneficiary. The said legal position was reiterated by this Court in *Rattan Mani v. Mohinder Kumar and Others*, reported as AIR 2009 (1) JK (HC) 472: 2009 (1) KLJ 79, wherein it was held that a conjoint reading of the relevant provisions of the Probate and Administration Act makes it abundantly clear that probate can be granted only in favour of an executor appointed under the Will. In cases where the deceased has made a Will but has not appointed an executor, or where the executor

appointed is legally incapable of acting, has predeceased the testator, or dies before obtaining probate, the appropriate relief is the grant of Letters of Administration.

17. Learned counsel for the respondents, however, contended that although the Probate Court granted probate despite the absence of an executor appointed under the Will, such a defect is merely procedural in nature and can be appropriately remedied by this Court in exercise of its appellate jurisdiction by treating the proceedings as one for the grant of Letters of Administration. It was argued that this Court possesses ample power to mould the relief in order to do complete justice between the parties. However, in *Tohru Ram (supra)*, this Court declined to accept the said contention. While allowing the appeal, it held that the defect could not be cured by directly converting the probate proceedings into proceedings for grant of Letters of Administration at the appellate stage and, accordingly, remanded the matter to the learned District Judge for consideration of the case in accordance with law.
18. Learned counsel for the respondents, on the other hand, placed reliance upon the judgments reported as AIR 1963 Madras 456 and AIR 1963 Gujarat 32, and submitted that the principles enunciated therein have been approved by the Hon'ble Supreme Court in (2016) 13 SCC 253. It was contended that where a petition has been instituted seeking probate of a Will, the absence of an executor does not render the proceedings non-maintainable in their entirety. At the highest, it constitutes a procedural defect capable of being cured by permitting appropriate

amendment of the petition. According to the learned counsel, such a technical defect cannot be allowed to defeat the substantive rights of the parties, particularly when the validity and due execution of the Will have otherwise been established in accordance with law. It was, therefore, argued that a petition seeking the grant of probate can, in an appropriate case, be permitted to be converted into a petition for the grant of Letters of Administration with the Will annexed, as such conversion is merely procedural in nature and does not alter the substance of the controversy requiring adjudication.

19. Before discussing these legal issues, it is desirable to first examine the statutory position, the Probate and Administration Act, Svt. 1977, which was in vogue at the time when the probate proceedings were initiated happened to be the State Act of XXIX of Svt. 1977, which continue to operate until it was repealed by coming into force of the J&K Reorganization Act of 2019 which now stands at least replaced by the Indian Succession Act.
20. Section 3 of the Probate and Administration Act, 1977 (Samvat) defines "*probate*" to mean a copy of the Will certified under the seal of a Court of competent jurisdiction, together with the grant of administration to the estate of the testator. The expression "*executor*" means a person to whom the execution of the last Will of a deceased person is entrusted by way of appointment by the testator. The term "*administrator*" means a person appointed by a competent authority to

administer the estate of a deceased person where no executor has been appointed or is otherwise competent to act.

21. Under Section 6 of the Act, probate can be granted only to an executor appointed by the Will. Such appointment, in terms of Section 7, may be either express or implied. Section 8 provides that probate cannot be granted to a person who is a minor or is of unsound mind. Section 9 further stipulates that where several executors have been appointed, probate may be granted to all of them jointly or to such of them as may apply, either simultaneously or at different times. The grant of probate establishes the Will from the date of the death of the testator and validates all intermediate acts lawfully performed by the executor in that capacity. Insofar as Letters of Administration are concerned, Section 13 provides that the same cannot be granted to a person who is a minor or is of unsound mind.
22. In terms of Section 14, the grant of Letters of Administration vests in the administrator all the rights belonging to the deceased as effectively as if the administration had been granted immediately upon the death of the deceased. Section 16 carves out an exception by providing that where an executor has been appointed under the Will and has neither renounced the executorship nor been cited to accept or renounce the same, Letters of Administration shall not be granted to any other person. Section 18 further provides that where an executor renounces the executorship or fails to accept it, the Will may nevertheless be proved and Letters of Administration with the Will annexed may be

granted to the person who would have been entitled to administration in the event of intestacy.

23. Section 19 further provides that where the deceased has made a Will but has not appointed an executor, or where the executor so appointed is legally incapable of acting, refuses to act, or has died before the testator, a universal or residuary legatee may be admitted to prove the Will, and Letters of Administration with the Will annexed may be granted in respect of the whole estate or such part thereof as remains unadministered.
24. A conjoint reading of the aforesaid provisions leaves no manner of doubt that probate can be granted only to an executor duly appointed by the testator under the Will. Where no executor has been appointed, or where the executor is incapable of acting or otherwise unavailable in the circumstances contemplated by the Act, the appropriate relief is the grant of Letters of Administration with the Will annexed. The provisions of the Probate and Administration Act, 1977 (Samvat) are, in all material respects, *Pari Materia* with the corresponding provisions of the Indian Succession Act, 1925, and, therefore, judicial precedents interpreting the latter Act are of considerable persuasive value while construing the former.
25. A Division Bench of the Karnataka High Court, in MFA No. 3238 of 2019 (ISA), considered a case in which the trial Court had held the probate petition to be not maintainable. In that case, the deceased had executed a Will without appointing an executor, and the sole

beneficiary under the Will had also passed away. Thereafter, the beneficiary's wife filed a petition seeking probate of the Will. The trial Court, relying upon Section 276 of the Indian Succession Act, 1925, held that a petition for probate could be maintained only by an executor named in the Will and, since the appellant had not been appointed as an executor, probate could not be granted in her favour. Setting aside the order of the trial Court, the Division Bench held that, where the appellant was the sole beneficiary under the Will and no executor had been appointed by the testator, the petition could not be rejected merely on that ground. The Court observed as under:

“If the reasoning of the trial Court is accepted, then in all cases where no executor is named in the Will, probate cannot be granted and such Wills/codicils would be rendered completely ineffective or useless. The mischief can only be prevented by referring to Section 222(2), whereunder, if the executor is not named in the Will, the inference that could be drawn is that the legatee would become the executor since, without obtaining probate, the beneficiary would not be able to implement the Will and thereby give effect to the last wishes of the testator. The legatee/beneficiary is, therefore, by necessary implication, deemed to have been appointed as the executor of the Will”.

26. The Division Bench, upon a conjoint reading of Sections 222(2), 231, and 234 of the Indian Succession Act, 1925, concluded that the right to seek probate is not confined exclusively to an executor expressly named in the Will. Depending upon the facts and circumstances of a given case, and having regard to the scheme of the Act, a legatee or other person entitled under the Will may also be permitted to seek the appropriate testamentary relief where no executor has been appointed by the testator. Consequently, the Division Bench set aside the order of the trial Court dismissing the probate petition. Since the genuineness

and due execution of the Will had not been adjudicated on merits, the matter was remanded to the Probate Court for fresh consideration. The Probate Court was directed to entertain the petition at the instance of the appellant-legatee, treat the proceedings in accordance with law, and thereafter determine, on the basis of the evidence to be adduced, whether the Will was duly proved and whether the appellant was entitled to the grant of the appropriate testamentary relief.

27. A Division Bench of the Madras High Court, in *Govind M. Asrani v. Jairam Asrani*, reported as AIR 1963 Madras 456, held that the principal question arising in testamentary proceedings is the truth and genuineness of the Will. Whether the proceedings are for the grant of probate or for the grant of Letters of Administration with the Will annexed, any person having an interest in the estate is entitled to intervene and participate in the proceedings. The Division Bench further observed that although a grant of probate is distinct from a grant of Letters of Administration with the Will annexed, and the procedural requirements governing the two may differ, including the necessity of furnishing security, the ultimate adjudication regarding the validity and genuineness of the Will is common to both proceedings. Such an adjudication operates as a judgment *in rem* and is binding upon all persons claiming an interest in the estate of the deceased testator. The Court emphasised that procedural technicalities ought not to defeat the substantive rights of the parties where the real controversy concerns the due execution and genuineness of the Will.

28. A similar view was expressed by the Gujarat High Court in *Jadeja Pravinsinhji Anandsinhji v. Jadeja Mangalsinhji Shivsindhji*, reported as AIR 1963 Gujarat 32, wherein it was observed:

“An executor, in the capacity of an executor, has no personal interest in the estate of the deceased. The object of the executor in these proceedings is to obtain an adjudication, not of any dispute in which he is personally interested, but to propound the Will of the deceased for the benefit of those who claim an interest thereunder. It is, therefore, clear that an executor, in applying for probate, is not prosecuting a personal action but is acting for the benefit of all the beneficiaries under the Will. Consequently, the maxim *actio personalis moritur cum persona* has no application to such proceedings. If the executor fails in his duty, any person whom he represents is entitled to intervene and continue the proceedings, subject to the formal modification that the relief thereafter sought would be Letters of Administration with the Will annexed.”

29. The principles laid down in the aforesaid decisions of the Madras High Court and the Gujarat High Court were considered and approved by the Hon'ble Supreme Court in **Vatsala Srinivasan v. Shyamala Raghunathan**, reported as (2016) 13 SCC 253. In that case, the executor named under the Will died during the pendency of the testamentary proceedings. Thereafter, the sole legatee applied for the grant of Letters of Administration with the Will annexed and also sought amendment of the testamentary petition. An objection was raised that, upon the death of the executor, the proceedings had abated and could not be continued. The learned Single Judge rejected the objection, permitted the amendment, and directed that the proceedings continue as one for the grant of Letters of Administration. The said view was affirmed by the Apex Court and dismissing the appeal, it was held as under,

"We are in agreement with the view expressed by all the three High Courts. In the interest of justice, and for the aforesaid reasons, we dismiss the appeal. There shall be no order as to costs. Pending applications, if any, stand disposed of. We hope that the hearing before the Testamentary Court shall be expedited and the proceedings for grant of Letters of Administration shall continue in accordance with law."

30. The consistent legal position emerging from the aforesaid judicial pronouncement is that, where an executor has been appointed under a Will, it is the executor alone who is entitled to seek the grant of probate for the purpose of giving effect to the testamentary disposition. An executor does not claim any beneficial interest in the estate by virtue of such appointment; rather, he acts in a representative capacity to administer the estate in accordance with the wishes of the testator. Under Section 17 of the Probate and Administration Act, 1977 (Samvat), an executor may renounce the executorship either orally before the Court or by an instrument in writing. Once such renunciation is made in accordance with law, the executor is precluded from thereafter applying for the grant of probate.
31. In a situation where the sole executor appointed under the Will dies before obtaining probate, or otherwise becomes incapable of acting, probate cannot thereafter be granted in his favour. In such circumstances, the beneficiaries or other persons entitled under the Will are competent to seek the grant of Letters of Administration with the Will annexed, so that the testamentary intentions of the deceased may be duly implemented in accordance with law.
32. Likewise, where the deceased has executed a Will but has not appointed any executor, recourse may be had to Section 19 of the

Probate and Administration Act, 1977 (Samvat), which is *pari materia* with Section 232 of the Indian Succession Act, 1925. In such cases, the Court is empowered, in appropriate circumstances, to grant Letters of Administration with the Will annexed to the beneficiary or other person legally entitled to administer the estate. The same principle applies where the executor has renounced the executorship, refuses to act, is legally incapable of acting, or otherwise fails to accept the office. In all such situations, the beneficiary or legatee under the Will is entitled to seek the grant of Letters of Administration with the Will annexed, thereby ensuring that the wishes of the testator are carried into effect notwithstanding the absence or inability of an executor.

33. The aforesaid legal proposition also stands authoritatively affirmed by the Hon'ble Supreme Court in **Shambu Prasad Agarwal and Others v. Bhola Ram Agarwal, (2000) 9 SCC 714** (Civil Appeal No. 74 of 1997, decided on **25.08.1999**). In that case, the original applicant, who was a legatee under the Will, had instituted a petition seeking probate. During the pendency of the proceedings, he died, whereupon his legal heirs sought their substitution in the testamentary proceedings and also prayed for amendment of the petition by converting the relief from one for grant of probate to one for grant of Letters of Administration with the Will annexed. Both applications were rejected by the Probate Court, and the revision preferred thereagainst was also dismissed by the High Court. Reversing the judgments of the Courts below, the Hon'ble Supreme Court held as under:

**"5. We find that it is not disputed that Matadin Agarwal was a legatee under the will. It is true that Matadin Agarwal ought to have applied for issue of letters of administration and not for probate. However, this did not debar his heirs to get the probate petition amended. The trial Court rejected both the applications of the appellants on the ground that since the probate petition filed by the legatee related to his personal right, therefore no right accrued to the appellants for their substitution in his place. This view, according to us, is not correct. Matadin Agarwal, as stated above, was a legatee and not an executor under the Will. It is true that where an executor dies, his heirs cannot be substituted because the executor possessed personal right, but this is not applicable where the heirs of a legatee apply for issue of letters of administration. It is not disputed that today the appellants can file a petition for issue of letter of administration. Since considerable time has elapsed, we feel that the interest of justice demands that the proceedings should come to an end as early as possible and we should not dismiss this appeal merely on highly technical ground."*

34. The aforesaid decision unequivocally lays down that, while the office of an executor is personal in nature and, therefore, upon the death of an executor his legal heirs cannot be substituted in testamentary proceedings, a different principle applies where the original applicant is a legatee under the Will. In such a case, the legal heirs of the legatee are entitled to seek their substitution and to pray for amendment of the proceedings by converting a petition for probate into one for the grant of Letters of Administration with the Will annexed, where the circumstances so warrant. The Hon'ble Supreme Court has thus held that such a procedural defect cannot be permitted to defeat the substantive rights of the parties, particularly where the validity of the Will is otherwise capable of being adjudicated. The mere necessity of amending the nature of the testamentary relief sought cannot, by itself, constitute a ground for dismissal of the proceedings on technical considerations.

35. In view of the aforesaid legal position and the facts of the present case, the Will executed by the deceased testator has been duly proved to be genuine, and the finding recorded by the Probate Court in this regard cannot be said to be perverse. The objection regarding jurisdiction raised by the appellants also fails, as not only was the Will executed at Jammu, but the deceased testator was also last residing within the territorial jurisdiction of the Probate Court. Admittedly, the Will did not appoint an executor, as the testator created a life interest in favour of his wife, with the property to be apportioned equally amongst his three sons after her demise. One of the sons, namely Dr. Pran Nath, had also expressed his no-objection to the grant of probate. Although, I agree with the submission of learned counsel for the appellants that, in the absence of an executor, the appropriate remedy was to seek the issuance of Letters of Administration rather than probate, the question is whether such a procedural defect warrant remanding the matter to the trial Court for a fresh adjudication. The Division Bench of the High Court of Karnataka, in MFA No. 3238/2019 (ISA), *Smt. Rihana Parveen v. Nil*, remanded the matter to the trial Court to permit amendment of the petition, as the genuineness of the Will had yet to be determined.
36. In the present case, however, that stage has already been crossed. The Probate Court has examined the entire evidence in detail and has conclusively held that the Will is genuine. Furthermore, the appellants never challenged the Will by instituting appropriate civil proceedings,

which also reinforces the absence of any serious dispute regarding its genuineness. The mere fact that the Will remained unprobated for nineteen years cannot, by itself, constitute a ground to reject the proceedings, particularly when, until 1987, the mother of the parties, who enjoyed a life interest under the Will, was alive. It was only after her demise that the beneficiaries became entitled to seek administration and distribution of the estate in accordance with the Will.

37. During the course of hearing, it was brought to the notice of this Court that only the legal representatives of the deceased appellant and respondent No. 1 were jointly occupying the house in question. In these circumstances, the Court which granted probate was equally competent to issue Letters of Administration. Though the proper procedure required the respondents to seek Letters of Administration instead of probate, such a technical defect cannot be permitted to defeat the ends of substantial justice.

38. The Will was executed in the year 1976. The testator died in 1980, and the mother of the parties, who held a life interest, passed away in 1987. In these circumstances, remanding the matter to the trial Court merely to permit amendment of the petition by substituting a prayer for Letters of Administration in place of probate would unnecessarily prolong the litigation and subject the parties to further hardship. Both proceedings of the grant of probate and of Letters of Administration with the Will annexed, relate to the implementation and administration of the Will. The law does not prohibit a beneficiary from continuing the

proceedings and seeking formal conversion of the petition from one for probate to one for Letters of Administration, where the legal requirements otherwise stand satisfied. In support of this proposition, this Court places reliance on *Shambu Prasad Aggarwal v. Bhola Ram* and *Vatsala Srinivasan v. Shyamala Raghunath* supra. Accordingly, the appellants and respondents, being beneficiaries under the Will, are entitled to seek Letters of Administration for administering the estate in accordance with the testamentary disposition. The reliance placed by the appellant on aforesaid two decisions “supra” of this court and the view expressed therein cannot prevail once it is contrary to the law laid down by the Supreme Court.

39. In the aforesaid circumstances, remanding the matter to the trial Court would serve no useful purpose. Therefore, in order to do complete justice, and in the absence of any statutory provision to the contrary, this Court, in exercise of its inherent powers directs that the probate granted by the trial Court shall stand converted into Letters of Administration in favour of respondent No. 1, one of the beneficiaries under the Will, authorising him to administer the estate strictly in accordance with the provisions of the Jammu and Kashmir Probate and Administration Act, 1977.
40. To that extent, the impugned order passed by the trial Court shall stand modified. It is further directed that Letters of Administration, together with a copy of the Will annexed thereto, shall be issued in favour of respondent No. 1, authorising him to administer the estate in

accordance with the Will, subject to payment of the requisite court fee after the valuation of the property is assessed. In the event that probate has already been issued, the same shall stand recalled, and the court fee already deposited shall be adjusted towards the fee payable for the issuance of Letters of Administration. Any deficiency in court fee, if found payable, shall be deposited before the Court below.

41. Consequently, the appeal stands *disposed of* in the above terms. The parties shall bear their own costs. Copy be notified to trial Court for further compliance as aforesaid.

(SANJAY PARIHAR)
JUDGE

JAMMU
08.07.2026
Rahul Sharma

