

A T L A U T O K A

Probate Jurisdiction

Action No. 3 of 1980

Between :

GOTA RAM f/n Shiri Kisson as  
Guardian of PRAVEENA DEVI d/o  
Jagar Nath

Plaintiff

- and -

ARJUN f/n Bhagwan Din

Defendant

Mr. P. Prasad and Mr. Singh  
Mr. Sappoo

Counsel for the Plaintiff  
Counsel for the Defendant

J U D G M E N T

The plaintiff was 15 years old when this action was filed by her next friend Gota Ram.

PRAVEENA DEVI, the female plaintiff, alleges that her father, Jagar Nath, who died on 18th March, 1975 did not make ample provision for her maintenance.

Jagar Nath's will appointed his son Arjun as executor and left the income from his estate to his wife. Following her death the will directed bequests of \$1,000 each to the plaintiff who is described as his daughter and his grandson, and the residue absolutely to the above named Arjun.

Probate was taken out by Arjun on 4th April, 1978, and the value of the estate was more than \$53,000.00.

The claim, made under section 3 of the Inheritance (Family Provision) Order, Cap. 49 was filed on 26th November, 1980, i.e. more than 2½ years after probate was taken out.

Jagar Nath's wife died in 1976.

The defence filed an affidavit on 18th May, 1981 alleging that the plaintiff Praveena was not the natural daughter of the deceased Jagar Nath nor was she an adopted daughter.

It claims that the testator simply referred to her as "daughter" because she was a distant relative who lived in close association with his family. However, at the hearing the defence raised the issue that under the Act the plaintiff was time barred under section 4. By that section the court cannot make an order unless the application was made within six months of probate being granted.

There is no section which allows extensions of the period to be granted because of infancy, sickness, mental affliction, etc. In my respectful view this is a shortcoming in the Act which could lead to hardship and which the legislature may see fit to remedy. The English provisions have been amended to allow relief of the kind I have mentioned.

The defence objection succeeds.

The claim is dismissed having been made after the statutory period of six months under section 4 had expired. The plaintiff will pay the costs hereof.

LAUTOKA,  
13 March, 1982

(J. T. Williams)  
Judge