

**ORDER BELOW EX. 41 IN C.M.A. NO. 34 OF 2015.**

1. The applicants have filed this application to revoke the order passed in C.M.A. No. 26/1993 dated 18/6/2010 under the provisions of Sec. 263 of the Indian Succession Act.

2. The opponents have filed present application to review the order passed below application Ex.32 on 11/5/2017 containing the reasons assigned in para 5. The opponents submit that the order passed in C.M.A. No.26/93 on 18/6/2010 by the Hon'ble Court, however, it is mentioned in the order that the said C.M.A. is disposed of on 3/11/14 and then the applicants have filed main application on 21/5/15, in the result, it is held that the application was filed within a period of three years and in this regard, the provisions of Art. 137 of the Limitation Act discussed in the judgements cited in para 9 of different Hon'ble Courts, the application is required to be filed within a period of three years to revoke the order of probate. The opponents further submit that the applicants have filed this C.M.A. to revoke the order passed on 18/6/2010 in C.M.A. No.26/93 wherein para 9, the applicants have mentioned the same and also prayed the relief accordingly, notwithstanding, the order passed by the Hon'ble Court is against the facts on record and the application to revoke the probate is barred by limitation, therefore, present application is filed to review the order passed below Ex. 32 and pray to allow this application.

3. The applicants have filed their objection against present application at Ex.42, wherein they contend that to delay the adjudication of ad-interim injunction application Ex. 5 in C.M.A. No. 34/15, present application is filed by the opponents. They further contend that nowhere it is mentioned on page 5 in the order passed below Ex.32 that the judgement of C.M.A. No.26/93 is passed on 3/11/2014 and the Hon'ble Court has passed the order below Ex.32 keeping all the facts of judgements and record in mind. The applicants further contends that in accordance with the provisions of law, the appeal/revision can be filed against the order below Ex.32, but the provisions of review are not applicable to the present application. The applicants further contend that keeping them in darkness, a false probate is obtained and after getting the probate, most of the properties even the properties in which, the

applicants have legal right, have been alienated in high price showing very low price by the opponents before arrival of the decision of ad-interim injunction application Ex. 5 filed in this application as the suit properties are the ancestral properties. The applicants further contend that for the purpose of harassment, the present application is filed, in the result, the applicants pray to dismiss this application with awarding the cost of Rs. 50,000/-.

4. I have heard learned advocates of both sides. Both learned advocates have argued out the matter at length on facts and provisions of law in accordance with their respective matters.

First of all, I would like to reproduce the provisions of *Sec.114 Review-Subject as aforesaid, any person considering himself aggrieved-*

*(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred.*

*(b) by a decree or order from which no appeal is allowed by this Code or*

*(c) by a decision on a reference from a Court of Small Causes,*

*may apply for a review of judgement to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.*

5. Looking to record, the opponents' learned advocate preferred adjournment applications Ex.36 & Ex.37 on which, the learned advocate for the applicants has objected and requested to pass the order below Ex.5. Perusing the objections, this court has passed the order below Ex.36 & Ex.37, the adjournments were granted with condition to produce the order from the Appellate Court and till the day, the opponents have not produced the order of the Appellate Court.

6. Now, considering the facts of present application and above legal provisions, it seems that the order passed below Ex.32 is appealable and no any appeal is preferred or any appeal is allowed by this Code filed by the opponents against the order passed below Ex.32.

7. It also appears from the record that this Court has passed the order below Ex.32 on 11/5/17, the present application for review of order Ex.32 is filed on 30/8/2017 i.e. not within the period prescribed by law, so, in light of provisions of law, the present application is not tenable at law.

8. The opponents were at liberty to prefer an appeal before the Appellate Court against the order passed below Ex.32, even providing sufficient time, but have not preferred any appeal.

9. Considering the record, it appears that the applicants have filed present C.M.A. on 21/5/2015 along with ad-interim injunction application Ex. 5 and till the day, this application Ex. 5 is pending for decision due to above circumstances. The opponents have failed to prove that the order passed below Ex. 32 is review-able order by cogent legal aspects. Under the above discussion on facts and legal aspects, this court passes the following order in the interest of justice.

**ORDER**

The application Ex. 41 of the opponents is hereby ordered to be rejected with no order as to cost.

Signed and pronounced in open court today 07th day of November  
2017

Date : 07/11/2017.  
Porbandar.

(Nilesh Ashokbhai Ejner)  
GJ-00484  
Principal Senior Civil Judge  
Porbandar.