

CNR:MHAK110008372024**M.J.C. No.137/2024****Mamta Gupta ..v/s.. Sunita Gupta****.....ORDER BELOW EXH-10.....**(Passed On 27th March, 2025)

In a proceeding initiated by applicants for revocation of legal heirship certificate granted to non-applicants in M.J.C. No.114/2018, the non-applicant no.3 has filed preliminary objection asserting that this application is not maintainable as the appeal lies against such grievance. It is asserted by the non-applicant no.3 that this revocation application has been filed after lapse of 3 years which is beyond the period of limitation, the appeal has not been preferred by the applicants against such order and hence on this ground prayed to reject the revocation proceeding as not maintainable.

2. The applicants have filed their say and resisted the application on the ground that Section 390 r/w section 383 of the Indian Succession Act, 1925 gives recourse to file revocation proceeding and, therefore, the preliminary objection raised by the non-applicant no.3 is not tenable.

3. The learned counsel for both sides have argued in consonance with their application and reply respectively. Hence, I do not find it necessary to reiterate the same to avoid recurrence. The learned counsel for the applicant has placed reliance on the authority of the Hon'ble Bombay High Court in the case *Kusum Chandrakant Shankardas Vrs. Rajashri* wherein it is observed by the Hon'ble Bombay High Court that to maintain the revocation proceeding the applicant has to show three factors.

- i. There is a false suggestion or concealment of material particulars.
- ii. Such suggestion or concealment must be shown to have been made knowingly and
- iii. No impediment of the limitation.

4. The preliminary objection has been sought on the ground that there is no enabling provision which renders the applicant to take the recourse of revocation. At this juncture, it is pertinent to note that Section 383 of the Indian Succession Act, 1925 specifically provides the cases in which the revocation can be claimed by the applicant which are as follows:

- i. That the proceeding to obtain the certificate was defective in substance.
- ii. That the certificate was obtained fraudulently by making false suggestion or concealment of the fact from the Court of something material to the case.
- iii. The certificate was obtained by means of untrue allegations.
- iv. The certificate has become useless and inoperative through the circumstances and
- v. Decree or order has been passed by Competent Court of civil jurisdiction.

5. Inter alia, it is pertinent to observe here that the provisions given under the Indian Succession Act governing for granting of succession certificate are applicable to the proceeding initiated under the Bombay Regulation, 1827. When the revocation application is assessed it shows that they have specifically averred and pleaded that the non-applicants have concealed material facts from the Court as to the status of heirship attributable to these applicants also. Furthermore, it is also asserted that applicants being the legal heirs have been entitled for recognition as to their status, however this fact was concealed by the non-applicant while obtaining the legal heirship certificate.

6. Certainly, concealment of material facts amounts to playing fraud. When the applicants are claiming themselves to be the heir of deceased person in respect of whom the non-applicants have obtained the legal heirship certificate, certainly suppression of such facts amounts as material fact which gives ample recourse to the applicant to maintain the revocation

proceeding. In the supra citation, the Hon'ble Bombay High Court has clearly made observations that revocation proceeding can be entertained by the Court on the grounds mentioned therein. The supra authority certainly makes it clear that in a given circumstances, the revocation application can be entertained. Since in this revocation proceeding the applicants have also claimed the factor of fraud the revocation application appears to be maintainable.

7. The learned counsel for the non-applicant no.3 has argued on the point that revocation application cannot be placed before the same Court as the Court by which the legal heirship certificate is to be revoked has not been defined or given under Section 383. At this juncture, the question is no more res integra as to the Court which grants revocation certificate has only jurisdiction to revoke the same when the fraud is alleged and, therefore, such argument of the learned counsel for the non-applicant no.3 is not sustainable in the eyes of law.

8. Furthermore, the question of limitation has been assailed by the non-applicant no.3. At this juncture, it is suffice to observe here that the applicants have claimed the factor of fraud. In such circumstances, Section 17 of the Limitation Act would certainly come in picture and, therefore, the starting point of limitation will play the crucial role while determining such factor. At very initial stage the application of the applicant cannot be rejected on face value merely for a reason that it has been filed after 3 years. No doubt, the residuary article of the Limitation Act gets applicable to proceeding for which no limitation period is provided and 3 years period has been stipulated thereunder, however whenever Section 17 of the Limitation Act comes into picture the factor such as knowledge of fraud plays a decisive role in determining the period of limitation. Therefore, I am of the considered opinion that the revocation proceeding initiated by the applicant cannot be rejected on preliminary objection of the non-applicant no.3 and, therefore, the following order is passed.

:: ORDER ::

- i. The preliminary objection raised by non-applicant no.3 is hereby rejected.

Telhara.

Date : 27.03.2025

(Rahul A. Rannaware)

Joint Civil Judge (Jr. Dn.), Telhara

:: Certificate of Stenographer ::

"I affirm that the contents of this P.D.F. file are same word to word as per original Order."

Date	:	27.03.2025	
Checked & Signed by Presiding Officer on	:	27.03.2025	(Nikhil S. Shirsat) Stenographer-III Jt. C.J.J.D. & J.M.F.C., Telhara
Uploaded on	:	28.03.2025	

