

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
INTERIM APPLICATION NO. 2639 OF 2023
IN
TESTAMENTARY PETITION NO. 208 OF 2023**

Mantal Chandrakant Nayak ... Applicant/Petitioner

vs.

Chelabai Dinkarrao Nayak ... Respondent

Mr. J. S. Kini a/w. Mr. Aum J. Kini, i/b. S. G. Mahamuni for applicant/petitioner.

CORAM : MANISH PITALE, J.

DATE : 24th AUGUST, 2023

P.C. :

. Heard learned counsel for the petitioner. By this petition, the petitioner prays for grant of Letters of Administration with will dated 30.12.1959, as the petitioner claims to be the grandson and the beneficiary/legatee of the deceased.

2. It is stated in the petition that the will was executed by the grandmother of the petitioner i.e. Chelabai Dinkarrao Nayak at Mumbai. She had bequeathed her assets to her son Chandrakant Dinkarrao Nayak and Dr. Leena Chandrakant Nayak, who were the parents of the petitioner. It is submitted that Chelabai Dinkarrao Nayak i.e. the grandmother of the petitioner, expired on 13.05.1961. Copy of the death certificate is placed on record at Exhibit A, which records the name of the deceased as Chelabai Dinkarrao Nayak, indicating that Dinkarrao Nayak was her husband i.e. grandfather of the petitioner.

3. The petitioner has placed on record at Exhibit F, the death certificate of the said Dinkarrao Nayak, showing that he died on 07.09.1955.

4. The petitioner has also stated that his father i.e. Chandrakant Dinkarrao Nayak died on 13.04.2002 and copy of his death certificate is placed on record at Exhibit C. It is further submitted that the mother of the petitioner i.e. Dr. Leena Chandrakant Nayak died on 22.11.2016 and copy of her death certificate is placed at Exhibit D.

5. By relying upon the aforesaid documents, in the context of the aforesaid will, original of which is deposited in this Court, the petitioner has prayed for grant of Letters of Administration with the said will in his favour.

6. As regards the requirement of placing on record affidavit of at least one of the witnesses in the will, it is stated in the petition that both the witnesses have died and that the affidavit of the petitioner placed at page Nos. 19A to 19E of the petition may be treated as affidavit, contemplated under Rule 384 of the Bombay High Court (Original Side) Rules, 1980. It is submitted that in view of the circumstances pleaded in the petition and documents placed on record thereof, this Court may hold that the affidavit of the petitioner satisfies the aforesaid Rule and the present petition may be allowed in that context.

7. This Court has perused the petition and the documents filed therewith, as also the affidavit of the petitioner, at page Nos. 19A to 19E, filed alongwith the petition.

8. The copy of the will at Exhibit B clearly shows that the grandmother of the petitioner had bequeathed her interests and assets to the parents of the petitioner. The copies of the aforesaid death certificates placed on record on

behalf of the petitioner, also support the fact that as on today, the grandparents as well as parents of the petitioner have expired. The petitioner has specifically stated that he is the only heir of his parents and that in that light, the prayer made in the present petition may be granted.

9. The specific contention raised on behalf of the petitioner, in the context of Rule 384 of the aforesaid Rules, needs to be considered. Rule 384 reads as follows:

“384. **In absence of attesting witness, other evidence to be produced.** – If it is not possible to file an affidavit of any of the attesting witnesses, an affidavit of some other person, if any, who may have been present at the execution of the will shall be filed, but if no affidavit of any such person can be filed, evidence on affidavit shall be produced of that fact and of the handwritings of the deceased and attesting witnesses, and also of any circumstances which may raise a presumption in favour of due execution.”

10. Learned counsel for the petitioner has emphasized on the last limb of the said Rule, which permits this Court to take into consideration circumstances that may raise a presumption in favour of due execution of the will.

11. Perusal of the documents on record, shows that the death certificate pertaining to the grandmother of the petitioner specifically shows that her full name was Chelabai Dinkarrao Nayak, indicating that the name of her husband was Dinkarrao Nayak. Death certificate of Dinkarrao Nayak at Exhibit F mentions his address as the same that is found on the will at Exhibit B. It is significant that the death certificates of the parents of the

petitioner also show their address being the same, as specifically mentioned in the will of the grandmother of the petitioner. Copy of aadhar card on record also shows that the petitioner is residing at the very same address at Mumbai.

12. The petitioner is a dentist. His father was a doctor and his mother was also well-educated, being Ph.D.

13. With these circumstances brought to the notice of this Court and on the basis of the documents on record, this Court finds that the affidavit of the petitioner at page Nos. 19A to 19E filed alongwith the petition, satisfies the requirement of Rule 384 of the aforesaid Rules and that therefore, the prayer made on the basis of the statements made in the petition, is supported by the documents placed on record.

14. This Court also finds that the citation was duly published and all other compliances have been ensured by the petitioner in the present petition.

15. In view of the above, the petition is allowed in terms of the prayer made therein, which reads as follows:

“Letters of administration with the said Will annexed may be granted to him as the grandson and the beneficiary/legatee under the Will of the said deceased having effect throughout India.”

16. The petition is disposed of. Pending application also stands disposed of.

(MANISH PITALE, J.)