

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 13th November, 2024**

CALLED FOR COMPLIANCE :

23 TP/495/2024) Mr. Raghunath Gawde, Advocate for petitioner
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner namely Mahesh
) Vitthal Bagwe being sole legatee named under the Will
) executed by Suhasini Balkrishna Parab (herein after the
) same is referred to as “Testatrix”), for grant of Letters
) of Administration with Will annexed. Testatrix said to
) have died on 24.12.2022 at Mumbai. Petitioner filed the
) copy of death certificate (which is annexed to petition
) as Exhibit-A), identity proof of the testatrix [which is
) annexed to petition as Exhibit- A1), Will, petitioner's
) oath, Affidavits of legal heirs of the testatrix.
)
) 2. The petitioner has filed petition within prescribed
) limit as per Rule 382 of the Bombay High Court
) (Original Side) Rule, 1980 (for short “Rules”).
)
) 3. The testatrix has not appointed Executor to execute
) the Will. The petitioner is being sole legatee named
) under the Will. Hence, petition is tenable.
)
) 4. Petitioner stated that the testatrix left behind her last
) Will and Testament which was duly executed at
) Mumbai on 08.04.2022, in English language. Ld.
) Advocate for petitioner submits that the original Will
) No. 228 of 2024 is handed in separately for being filed
) and kept in a safe place in the Office of the
) Prothonotary and Senior Master, High Court, Bombay.
)
) 5. Petitioner states that parents of testatrix were
) predeceased to her and testatrix was survived by legal
) heirs shown in the paragraph No. 9 of the amended
) petition, as per the provisions of the Hindu Succession
) Act, 1956. Husband of testatrix namely Balkrishna
) Sonu Parab died on 13.09.1992 and his death certificate
) is annexed to the petition as Exhibit – “E”. Testatrix
) died as issue-less. Ld. Advocate for petitioner has
) carried out amendment in para No. 9 of the2

CONTD....

– 2 –

23 TP/495/2024

petition, wherein petitioner has stated on oath that there are no legal heirs of husband of testatrix as per section 8 and Class II entry IV to IX of the Hindu Succession Act, 1956. Also, there are no agnates and cognates to husband of testatrix. Testatrix has one brother and no sister. Testatrix's brother namely Vitthal Vishram Bagwe died on 20.10.2020 and copy of his death certificate is annexed to the petition as Exhibit – "F". Said Vitthal Bagwe died leaving behind his only son namely Mahesh Vitthal Bagwe – petitioner herein and his wife namely Vandana Vitthal Bagwe and had no daughter. Consent Affidavit of Vandana Vitthal Bagwe dated 20.10.2024 is on record. She has given her consents in the form of Affidavit, which is filed on the record by the petitioner and consented for the issuance of Letters of Administration with Will annexed in favour of the petitioner without justifying any surety in respect of her share in the estate of the testatrix. She has waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the testatrix other than mentioned in para No. 9 of the petition.

6. Affidavit of Service of General Citation is filed, stating that citation has been affixed on the Notice Board of the Hon'ble High Court, Bombay and notice board of the Collector's office on 28.03.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Rajesh Bhalchandra Sawant dated 17.06.2023, one of Attesting Witness to the Will, in the Form No.102 of the Bombay High Court (Original Side) Rules, 1980. Attesting Witness deposed that he was present and testatrix signed on the Testament papers in presence of his and another witness. According to him, all additions and alteration, in a Will, were existed at the time of execution and before signing the Will. Hence, there is sufficient compliance of the Rule 383 of the Bombay High Court (Original Side) Rules, 1980. Attesting Witness deposed that Will was read over, explained and interpreted in Marathi language to the testatrix3

CONTD...

– 3 –

23 TP/495/2024

on the date of execution of the Will. She was satisfied and then put her signature on the Will. Hence, there is sufficient compliance of Rule 419 of the Bombay High Court (Original Side) Rules, 1980. Will is duly registered before Joint Sub-Registrar, Mumbai City No. 2 under registration No. BBE-2/5690-2022. Attesting witness further deposed that at the time of execution of the will, testatrix was of sound and disposing mind, memory and understanding. Hence, enough evidence is on record to accept the execution of the Will and petitioner is succeeded to prove the execution of Will.

8. Properties mentioned in the schedule of the petition are referred in the Will. Ld. Advocate for petitioner submits that as mentioned in para No. 6 of the petition, which reads as under :

“That the Petitioner has truly set forth in Schedule No.I hereto annexed and marked Exhibit “C” all the property and credits which the deceased died possessed of or entitled to at the time of his death, which have or is likely to come to hands of the petitioner. So far as the petitioner has been able to ascertain or is aware, there are no property and credits other than what is specified in the Schedule attached to the petition”.

The Ld. Advocate for the petitioner submitted that properties available to the testatrix at the time of her death are mentioned in the Schedule – I of the petition.

9. As per requisition No. 1 raised in the order dated 18.07.2024, which reads as “To explain legal heirs of husband of testatrix as per rule 397 of the Bombay High Court (Original Side) Rules, 1980”.

Ld. Advocate for the petitioner has carried out amendment on 11.10.2024 and complied with the same.

10. As per requisition No. 2 raised in the order dated 18.07.2024, which reads as “In the Will, there is averment of executor”.

.....4

CONTD...

– 4 –

23 TP/495/2024

Ld. Advocate for petitioner has filed Affidavit of petitioner dated 05.09.2024 wherein he stated that there was typographical error as 'Executor' word has written but there is no any executor appointed under the Will. Statement made by the Ld. Advocate for petitioner is accepted.

11. As per requisition No. 3 raised in the order dated 18.07.2024, which reads as "Properties mentioned in the Will and not shown in the Schedule".

Ld. Advocate for petitioner has filed Affidavit of petitioner dated 05.09.2024 and stated on oath that he has found two Fixed Deposits which was added in the Schedule I of the petition by amending the petition. Also, he has given clarification in his Affidavit in para Nos. 3 to 6, for the properties, which are mentioned in the Will but not shown in Schedule I annexed to the petition.

12. Petitioner has executed the Administration Bond dated 15.03.2024 and 20.10.2024 in the prescribed format. Hence, following order:

ORDER

- 1) Petition is granted.
- 2) Office to issue Letters of Administration with Will annexed as per the provisions of the Indian Succession Act, 1925 to the petitioner and upon satisfaction that the administration Bond is properly executed, as per the Rules.
- 3) Before issuance of above said Letters of Administration with Will, the office to verify that there is no cross Petition is pending or caveat is filed. Office to act accordingly

13.11.2024

FIRST ASSISTANT MASTER