

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 22nd July, 2024

CALLED FOR COMPLIANCE :

25 TP/1068/2024) Mr. Shirish Mathkar, Advocate for petitioner

) **P.C.:** 1. Heard Ld. Advocate for petitioner. Upon perusal of
) the Will, it is noticed that testator has bequeathed his
) movable and immovable properties to his wife namely
) Usha Gandhi including “life interest” to his wife in a flat
) No. 022 and directed to transfer flat mentioned in
) Schedule I of petition on her name after his death.
) However, this petition is filed by son of the testator
) namely Bhavik Gandhi.

) 2. The relevant para Nos. 8 and 9 of the Will, which
) reads as under :

) “8. I hereby give devise and bequeath unto my son
) Bhavik Ramesh Gandhi the said ownership flat
) being Flat No. 022 IN ‘A’ wing of SUMERU CO-
) OPERATIVE HOUSING SOCIETY LIMITED
) building, situate at Plot No.7, Sardar Vallabhabhai
) Patel Nagar, Versova, Andheri (West), Mumbai –
) 400053 together with the membership rights and
) shares of the society and the furniture, fixture,
) fittings and belongings lying therein as also all my
) other assets and properties, movable and
) immovable, vested or contingent, of whatsoever
) kind or nature, of and belonging to me at the time
) of my demise (hereinafter referred to as “my flat
) and residuary estate”), to my wife Usha Ramesh
) Gandhi for her use and enjoyment during her
) lifetime and in the event of her predeceasing me or
) after her demise, whichever event occurs earlier, to
) my son, Bhavik Ramesh Gandhi for his absolute
) use and benefit. Should god forbid, my son Bhavik
) predecease me and my wife, then subject to the life
) interest of my wife, Usha, I give, devise and
) bequeath my flat and residuary estate to my younger
) son, Prashant for his absolute use and benefit

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9. I have executed and submitted to the Sumeru Co-op. Society, Nomination Form (Form No. 15-B) as required under society's Bye-laws No. 34. Pending the obtaining of Probate of this my Will, the Executors of this Will will help my wife in getting the shares and my interest in the said Flat No.A/022 transferred to my wife Usha R. Gandhi during her lifetime and after her on in her absence, to the name of my son Bhavik. My son Bhavik Gandhi or in the event of his predeceasing me, my son Prashant Gandhi, will have access to my bank accounts with ICICI bank and HSBC bank and shall pay all the utility bills, society bills, probate and funeral expenses and all other expenses from my said accounts".

3. Upon reading the above paras, it is noticed that testator wishes are as follows:

a) Testator had bequeathed "ownership" of the said flat to his son "Bhavik Ramesh Gandhi" after death of his wife.

b) Testator has bequeathed his flat and residuary estate to his wife Usha Ramesh Gandhi for her use and enjoyment during her lifetime.

c) After her to his son "Bhavik Ramesh Gandhi" – petitioner herein.

d) In absence of Bhavik Ramesh Gandhi to his younger son Prashant Gandhi.

e) As per paragraph No. 9 of the Will, it seems that testator during his lifetime made nomination of his wife by submitting nomination form (form No. 15-B) as per society's Bye-Laws. Further, he directed to Executors that pending the obtaining of Probate of his Will, help his wife in getting the share and interest in the flat transferred to his wife during her lifetime. After her or in her absence to petitioner herein.

4. However, Ld. Advocate for the petitioner submits that as mentioned in paragraph No. 8 of the Will, bequest is inter alia made in two folds i.e.3

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) flat No. 022 is bequeathed to son Bhavik Ramesh Gandhi
) as also residuary properties are bequeathed to his wife
) Usha Ramesh Gandhi. He further submits that in para 9
) of the Will, testator had made provisions of flat No. 022
) in pendency of obtaining Probate. Therefore, as per first
) part of para 8 of the Will, the said flat is bequeath to son
) as his one of the legatees and he has rightly filed the
) capacity of petitioner as Letters of Administration with
) Will.

) 5. Upon submissions made by the Ld. Advocate for the
) petitioner, it cannot be accepted because testator as of
) now bequeathed to his wife Usha Ramesh Gandhi.
) Furthermore, if it is considered that above paragraph
) Nos. 8 and 9 are in construed with each other then,
) paragraph No. 9 should be prevail as per section 88 of the
) Indian Succession Act, 1925, which reads as under :

) “Section 88 : The last of two inconsistent clauses
) prevails – Where two clauses of gifts in a Will are
) irreconcilable, so that they cannot possibly stand
) together, the last shall prevail”.

) 6. In view of the above, it is observed that the wish /
) desire of the testator is to transfer the said property to his
) wife during her lifetime and after her death the same
) shall be transferred to his son namely Bhavik Ramesh
) Gandhi. Hence, Learned Advocate for the petitioner to
) explain how petition is maintainable filed by present
) petitioner.

) S. O. to 05.08.2024.

22.07.2024

FIRST ASSISTANT MASTER