

Date: 13th August, 2024

29 TP/1068/2024) Mr. Shirish Mathkar a/w. Swati Mathkar, Advocate for
) petitioner

...2

29 TP/1068/2024

) as per the provisions of the Hindu Succession Act,
) 1956. Testator died leaving behind his wife namely
) Usha Gandhi and two sons namely Bhavik Ramesh
) Gandhi – petitioner herein and Prashant Ramesh
) Gandhi. Testator had no other son and daughter.
) Consent Affidavit of Usha Gandhi dated 16.10.2023
) and Prashant Gandhi dated 06.10.2023 are on record.
) They have given their consents in the form of Affidavit,
) which are 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 their shares in the
) estate of the testator. They have waived the service of
) Citation. The petitioner affirmed that there are no other
) legal heirs of the testator other than mentioned in para
) No. 7 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 26.04.2024. Notice to
) collector has been sent.
)

) 7. The petitioner has filed the Affidavit of Nilesh
) Ramesh Modi dated 26.12.2023, 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 testator 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 further
) deposed that at the time of execution of the Will,
) testator 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 5 of the3
)

29 TP/1068/2024

)
) petition, which reads as under :

) “That the Petitioner has truly set forth in Schedule
) No.I, hereto annexed and marked Exhibit “C”, the
) property which the deceased died possessed of or
) entitled to at the time of his death in Mumbai,
) which has or are likely to come to Petitioner’s
) hands. The other assets mentioned in the Will and
) not mentioned in the Schedule annexed to the
) petition have been transferred to the beneficiary
) thereof. Hence, the Petitioner as beneficiary is
) applying for limited grant to the extent of the
) property of the deceased situated in Mumbai”.

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

) 9. As per order dated 22.07.2024 explanation has
) been sought from the Advocate for petitioner as
) mentioned in para No. 6 of the said order, which reads
) as under :

) “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”.

) Ld. Advocate for petitioner has filed praecipe dated
) 2nd August, 2024 and explained maintainability of the
) petition in detail, which is accepted on following
) reasons :

) i) Said requisitions has been raised only to protect life
) interest of wife of the testator. But now, as mentioned in
) praecipe that petitioner has given oath to administer the
) estate of the deceased in accordance with the Will and
) therefore, petitioner is duty bound to act in accordance
) with Will. Also, it has been further clarifies that it does
) not mean that the flat will be transferred to petitioner’s
) name ignoring the life interest of wife namely Usha
) Ramesh Gandhi. Hence, statements are accepted.4

29 TP/1068/2024

) Since, life interest of wife of testator is fully protected
) by this statements.
)

) Ld. Advocate for petitioner further submits that as
) mentioned in praecipe that wife of the testator to whom
) a life interest has been given, has already filed her
) Consent Affidavit to give consent for the grant of
) Letters of Administration to the petitioner. I have
) peruse the said consent Affidavit dated 16th October,
) 2023, which was signed by her in English character and
) relevant paragraph Nos. 1 and 3 of the said Affidavits
) are reads as under :

) “1. That I am well aware that above Petitioner
) has filed the above Petition for Letters of
) Administration with Will annexed to the property
) and credits of the deceased herein viz. Ramesh
) s/o. Jagjiwandas Chunilal Gandhi, in the High
) Court of Judicature at Bombay in its Testamentary
) Jurisdiction.

) 3. That I hereby give my free and full consent that
) Letters of Administration with Will annexed to the
) property and credits of the deceased abovenamed,
) asked for, be granted to the Petitioner abovenamed
) and justifying surety for legacy, if any, be
) dispensed with. I hereby waive service of the
) Citation of the above proceeding upon me”.

) Hence, upon perusing Administrator’s oath of
) petitioner, consent Affidavit of wife of testator namely
) Usha Ramesh Gandhi, it seems that life interest of her
) is fully protected and petition is proceeded herewith.

) 10. Ld. Advocate for petitioner submitted that he has
) bracketed portions in praecipe wherein he has made
) statement regarding my jurisdiction regarding raising
) objection of petition should be considered as deleted.

) Above statement is accepted as, it is admitted fact
) that, I have delegated powers to raise objections, if any,
) in uncontested petitions.

) 11. Petitioner has executed the Administration Bond
) dated 17th June, 2024, in the prescribed format. Hence,

CONTD...

following order:

....5

– 5 –

29 TP/1068/2024)

)

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.

13.08.2024

FIRST ASSISTANT MASTER