

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 9th October, 2024

CALLED FOR COMPLIANCE :

17 TP/1616/2024) Ms. Mrunalini Panchal i/b. PS Legal, Advocate for
) petitioner

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) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being legatee named
) under the Will executed by M T Kochukunju (herein
) after the same is referred to as “Testator”), for grant of a
) Letters of Administration with Will annexed. Testator
) said to have died on 09.05.2023 at Mumbai. Petitioner
) filed the copy of death certificate (which is annexed to
) petition as Exhibit-A), identity proof of the testator
) (which is annexed to petition as Exhibit- A1), Will,
) petitioner's oath, Affidavits of legal heirs of the testator.

) 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 testator has appointed one Mr. K. C. Thomas
) (Kootampallil) as Executor of his Will. The said
) Executor has renounced his rights, title and interest of
) filing of Probate. He has filed his Affidavit dated
) 23.01.2024, which is on record. Hence, petitioner is
) being one of the legatees named under the Will, is
) entitled to file the present the petition.

) Ld. Advocate for petitioner submits that since sole
) Executor namely K. C. Thomas has renounced his rights
) of executorship. This petition is filed by one of the
) legatees named under the Will. However, earlier this
) petition was filed for Probate and not Letters of
) Administration with Will. Hence, Ld. Advocate for the
) petitioner has carried out amendment on 29.07.2024 and
) amended this petition from Probate to Letters of
) Administration with Will. Also, Administrator’s oath has
) been corrected accordingly.

Ld. Advocate for the petitioner undertakes to hand over the Administrator's oath to the Registry to keep the same alongwith the Will in a safe place in the Office of the Prothonotary and Senior Master, High Court, Bombay. The said undertaking is accepted. Office to verify.

4. Petitioner stated that the testator left behind his last Will and Testament which was duly executed at Mumbai on 24.05.2021, in English language. Ld. Advocate for petitioner submits that the original Will No. 607 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 testator were predeceased to him and testator was survived by legal heirs shown in the paragraph No. 8 of the petition, as per the provisions of the Indian Succession Act, 1925 applicable to Christians. Testator died leaving behind Sossamma Kochukunju – petitioner herein, Mukaladdyil Kochukunju Thomas - son, Mukaladdyil Kochunkunju Varghese - son, Mariamma Santosh Daniel – married daughter. Consent Affidavits of Mukaladdyil Kochukunju Thomas, Mukaladdyil Kochunkunju Varghese, Mariamma Santosh Daniel all dated 23.01.2024 are on record. Also, fresh Consent Affidavits of Mukaladdyil Kochukunju Thomas dated 07.10.2024, Mukaladdyil Kochunkunju Varghese dated 08.10.2024, Mariamma Santosh Daniel dated 05.10.2024 are also on record as earlier Consents were taken for Probate and not for Letters of Administration with Will. They have given their consents in the form of Affidavits, 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. 8 of the petition.

6. Affidavit of Service of General Citation is filed, stating that citation has been affixed on the Notice Board

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of the Hon'ble High Court, Bombay and notice3

17 TP/1616/2024

– 3 –

board of the Collector's office on 11.09.2024. Ld. Advocate for petitioner filed Affidavit of Service of Atul Madhukar Shimpi, Advocate Clerk dated 11.09.2024. He stated on that the citation dated 09.09.2024 has been displayed on the Notice of Board of Hon'ble Bombay High Court and Collector's office on 11.09.2024. Ld. Advocate for the petitioner to upload corrected Affidavit of Service by correcting year "2024" instead of "2014" in the said Affidavit. Notice to collector has been sent.

7. The petitioner has filed the Affidavits of Dr. Verghese Mathew and Ketan Jaisukhlal Gandhi both dated 23.01.2024, both are being Attesting Witnesses to the Will, in the Form No.102 of the Bombay High Court (Original Side) Rules, 1980. Attesting Witnesses deposed that they were present and testator signed on the Testament papers in presence of both of them. According to them, 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. They 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 relevant para No. 6 of the petition, which reads as under :

"That the Petitioner has truly set forth in Schedule – I hereto annexed and marked as Exhibit – "C" the details of immovable property which the deceased possessed of or entitled to at the time of his death, which have or are likely to come to her hands".

The Ld. Advocate for the petitioner submitted that properties available to the testator at the time of his

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17 TP/1616/2024

death are mentioned in the Schedule–I of the petition.

– 4 –

9. Ld. Advocate for petitioner submits that as per Will there are beneficiaries but they will be beneficiaries under the Will only after the death of the petitioner herein namely Joshua Verghese, Susan, Merin, Saino. Hence, Consent Affidavits of them are not necessary as testator has bequeathed his properties to Sosamma Kuchukunju and after her death beneficiaries will get the said properties as per the Will. Statement made by Ld. Advocate for petitioner is accepted.

10. Petitioner has executed the Administration Bond dated 29.08.2024, 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.

09.10.2024

FIRST ASSISTANT MASTER