

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 8th August, 2024**

CALLED FOR COMPLIANCE :

25 TP/2022/2024) Mr. Sudhir Yadav, Advocate for petitioner
)
) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
) This petition is filed by petitioner, being Sole legatee
) named under the Will executed by Taramatiben
) Kanaiyalal Vakharia (herein after the same is referred to
) as “Testatrix”), for grant of Letters of Administration
) with Will annexed. Testatrix said to have died on 9th
) May, 20023 at Vadodara, Gujarat. 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-A-1), Will, petitioner's
) oath, Affidavits of legal heirs of the testatrix.
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) 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”).
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) 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.
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) 4. Petitioner stated that the testatrix left behind her
) last Will and Testament which was duly executed at
) Vadodara on 22nd January, 2021, in English language.
) Ld. Advocate for petitioner submits that the original
) Will 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 Husband and parents of
) husband of testatrix have predeceased to her and
) testatrix was survived by legal heirs shown in the
) paragraph No.8 of the petition, as per the provisions of
) the Hindu Succession Act, 1956. Husband of the
) testatrix namely Kanaiyalal Prabhudas Vakharia died on
) 17th August, 1999 and his death certificate is annexed to
) petition as Exhibit-D. Testatrix died as issue-less.
) Parents of the husband of testatrix were predeceased to

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her. Testatrix's husband has only brother2

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namely Balkrishna Prabhudas Vakharia. Said brother-in-law of testatrix died on 26th November, 2020. He died leaving behind widow namely Manharbala Balkrishna Vakharia, three sons namely Jayesh B. Vakharia- petitioner herein, Hemant B. Vakharia and Hiten B. Vakharia. Testatrix had no other brother-in-law and no sister-in-law. Consent Affidavits of Manharbalal Balkrishna Vakharia, Hemant B. Vakharia and Hiten B. Vakharia all dated 15th July, 2024 are on record. They have given their consents in form of Affidavits, which are filed on the record by 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 testatrix. They have waived the service of Citation. The petitioner affirmed that there are no other legal heirs of the testatrix other than mentioned in paragraph no. 8 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 15th May, 2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Manan Dilipbhai Katariya dated 8th July, 2024, 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. Attesting Witness further deposed that Will was in English language, which was read over and understand by both witnesses and also by testatrix. After fully understanding the contents of the Will, testatrix has put her signature on the Will. Will is duly notarized before Jinendra B. Rana, Notary,

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Government of India. Attesting witness further deposed that at the time of execution of the Will,3

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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 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 properties and credits which the deceased died possessed or or entitled to at the time of her death, which have or are likely to come to the Petitioner’s hands”.

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 mentioned in para No. 5 of the Will, which reads as under :

“I direct that, before distributing my assets in accordance with this Will, all my debts, liabilities and monetary obligations including all testamentary expenses, costs, charges, expenses in respect to probate (if required) and other legal charges at the time of my death and also, the expenses for my funeral and all the expenses for the rituals performed after my death, be met out of my assets”.

Ld. Advocate for the petitioner submits that as mentioned in Administrator’s oath which was filed by petitioner on record, has undertaken to pay debts and liabilities of testatrix as per the Will.

10. Petitioner has executed the administration Bond dated 27th July, 2024, in the prescribed format. Hence, following order:

ORDER

1) Petition is granted.

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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.

08.08.2024

FIRST ASSISTANT MASTER