

**BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 10th October, 2024**

CALLED FOR COMPLIANCE :

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Mr. Nitin Ghaware, Advocate for petitioner

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1. Perused Petition. Heard Ld. Advocate for petitioners. This petition is filed by petitioners are being legatees named under the Will executed by Elizabeth Mangala Muthu (herein after the same is referred to as "Testatrix"), for grant of Letters of Administration with Will annexed. Testatrix said to have died on 14.02.2024 at Mumbai. Petitioners have 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.
2. The petitioners have 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 petitioners are being legatees named under the Will. Hence, petition is tenable.
4. Petitioners have stated that the testatrix left behind her last Will and Testament which was duly executed at Mumbai on 26th December, 2022, 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. Petitioners have stated that husband of testatrix was 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 Indian Succession Act, 1925, applicable Christian. The husband of testatrix namely Arul Pitchai Mothu predeceased to her on 23rd August, 2023. Testatrix died leaving behind four daughters and one son. Testatrix's four daughters are namely Florin A. Chettiar - Petitioner No.1, Rose L. Rajan - Petitioner

CONTD....

No.2, Juliet A. P. Muthu Chettiar - Petitioner No.32

24 TP/2714/2024

– 2 –

and Gracy Jignesh Patel - Petitioner No.4 and only son namely Michael A. P. Muthu Chettiar - Petitioner No.5. Petitioners have affirmed that there are no other legal heirs of the testatrix other than mentioned in para no. 8 of the Will.

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 23rd August, 2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Arokiaswamy Francis Chettiar dated 16th March, 2024, being 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 and explained to the testatrix in Marathi language by him and then testatrix signed on the Will. Hence, there is sufficient compliance of the Rule 419 of the Bombay High Court (Original Side) Rules, 1980. 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 - I of the petition is 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 have truly set forth in the Schedule – I hereto annexed and marked Exhibit “C” all the properties and credits which the said

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deceased died possessed of or entitled to3

24 TP/2714/2024

– 3 –

at the time of her death, which have or are likely to come to the Petitioner's hand. So far as the Petitioners have been able to ascertain or is aware, there are no property and credits other than what are specified in the schedule attached to the petition".

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

9. Ld. Advocate for petitioner submits that as per order passed by the Hon'ble Court in Testamentary Petition No. 2918 of 2023 dated 02.02.2024, the Hon'ble Court has directed the Registry that in such cases where all surviving legal heirs of the deceased are petitioners before the Court and right or interest of no other legal heir is required to be protected, the department shall not insist on furnishing Administration Bond. Hence, petitioner has not furnished Administration Bond in this matter. 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.

10.10.2024

FIRST ASSISTANT MASTER