

BEFORE : MR. DILIP S. GURAV,
FIRST ASSISTANT MASTER
Date: 1st October, 2024

CALLED FOR COMPLIANCE :

39 TP/2950/2024) Mr. Sameer Logade, Advocate for petitioner

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-) **P.C.:** 1. Perused Petition. Heard Ld. Advocate for petitioner.
-) This petition is filed by petitioner, being one of the
-) legatees named under the Will executed by Vitthal
-) Shankar Shetty (herein after the same is referred to as
-) “Testator”), for grant of Letters of Administration with
-) Will annexed. Testator said to have died on 08.05.2020
-) 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- B), Will, petitioner's oath, Affidavits of legal
-) heirs of the testator.
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-) 2. The petitioner has explained the delay in para
-) No.10 of the petition as per Rule 382 of the Bombay
-) High Court (Original Side) Rule, 1980 (for short
-) “Rules”).
-)
-) 3. The testator has not appointed Executor to execute
-) the Will. The petitioner is being one of the legatees
-) named under the Will. Hence, petition is tenable.
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-) 4. Petitioner stated that the testator left behind his last
-) Will and Testament which was duly executed at
-) Mumbai on 25.01.2016 in English language. Ld.
-) Advocate for petitioner submits that the original Will
-) No. 1183 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 Hindu Succession Act, 1956.
-) Testator died leaving behind his wife, two daughters and
-) one son. Testator’s wife namely Lalita Vitthal Shetty.
-) Testator’s two daughters are namely Pushpa Vitthal
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Shetty – petitioner herein and

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Sujatha Balkrishna Shetty. Testator's only son namely Suresh Vitthal Shetty. Consent Affidavits of Lalita Vitthal Shetty, Sujata Balkrishna Shetty and Suresh Vitthal Shetty all dated 07.03.2024 are on record. 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 of the Hon'ble High Court, Bombay and notice board of the Collector's office on 27.08.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Suma Mohan Gawda dated 07.03.2024, 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 she was present and testator signed on the Testament papers in presence of her and another witness. According to her, 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. Will is duly notarized before A. V. Shetty, Advocate and Notary, Brihan Mumbai under notary serial No. 16/2016. 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

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are referred in the Will. Ld. Advocate for petitioner submits that as mentioned in para No. 63

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of the petition, which reads as under :

“That the Petitioners have truly set forth in Schedule No.I, hereto annexed and marked as Exhibit ‘D’, all the property and credits which the deceased died possessed of or entitled to at the time of his death, which have or are likely to come to his hands”.

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.

Ld. Advocate for petitioner submits that as mentioned in para No. 7 of the petition on oath by the petitioner that some of the properties mentioned in the Will but not shown in the Schedule I of the petition were already disposed of by the testator during his lifetime.

9. Petitioner has executed the Administration Bond dated 26.08.2024, 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.

01.10.2024

FIRST ASSISTANT MASTER