

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

CALLED FOR COMPLIANCE :

58 TP/4118/2024) Mr. Anand L. Tiwari, 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 Rajeevi
-) Jayaram Shetty (herein after the same is referred to as
-) “Testatrix”), for grant of Letters of Administration with
-) Will annexed. Testatrix said to have died on 17th
-) February, 2016 at Bangalore. 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-B), Will, petitioner's
-) oath, Affidavits of legal heirs of the testatrix.
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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 testatrix 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 testatrix left behind her
-) last Will and Testament which was duly executed at
-) Mumbai on 21st March, 2003, in English language. Ld.
-) Advocate for petitioner submits that the original Will
-) No. 1624 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 husband of testatrix was
-) predeceased to her and testatrix was survived by legal
-) heirs shown in the paragraph No.9 of the petition, as per
-) the provisions of the Hindu Succession Act, 1956.
-) Husband of testatrix namely Jayaram Annaya Shetty
-) died on 15.12.2000 and his death certificate is annexed
-) to the petition as Exhibit “E”. Testatrix died leaving

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behind one daughter and two sons.

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Her two sons are namely Sandeep Shetty - petitioner and Deepak Shetty. Testatrix only daughter namely Arti Rajiv Datta. Consent Affidavits of Arti Rajiv Datta dated 5th July, 2024 and Deepak Shetty dated 19th June, 2024 are on record. They have given their consents in 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 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 para No. 9 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 6th September, 2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Irene Margaret Kunder dated 28th June, 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 testatrix 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. 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. Ld. Advocate for petitioner submits that as mentioned in para No. 6 of the petition, which reads as under :

“That the Petitioner has truly set forth in

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Schedule No-I, hereto annexed and3

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marked as Exhibit-"D", all the property and credits which the deceased died possessed of or entitled to at the time of her death, which have or are likely to come to his hands”.

9. Ld. Advocate for the petitioner submits that as mentioned in the will testatrix has bequeathed her movable and immovable properties to her three children namely Aarti Datta , Sandeep Shetty and Deepak Shetty in equal share.

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.

10. Petitioner has executed the Administration Bond dated 20th September, 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