

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

CALLED FOR COMPLIANCE :

31 TP/4173/2024) Ms. Seema Hunnurkar, 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 Nalini Bhaskar
) Shivalkar (herein after the same is referred to as
) “Testatrix”), for grant of Letters of Administration with
) Will annexed. Testatrix said to have died on 18.02.2006
) at Mumbai. 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-A1), 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. 9
) 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 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
) Mumbai on 17.06.1988, in Marathi language. Ld.
) Advocate for petitioner submits that the original Will
) No. 1651 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.
) Ld. Advocate for petitioner has filed her Affidavit dated
) 11.05.2024 and stated that she had translated Will into
) English language. She is conversant with both the
) languages viz. Marathi and English. Hence, translation
) annexed to the petition is true and correct. This is in
) compliance of order dated 10.01.2024 passed by the
) Hon’ble Court in Testamentary Petition No. 1263 of
) 2023.2

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5. Petitioner states that husband of testatrix were 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. Testatrix has two sons and four married daughters. Testatrix two sons are namely Vilas Bhaskar Shivalkar – petitioner herein and Kamlakar Bhaskar Shivalkar. Testatrix's daughters are namely Alka Prabhakar Mayekar and Savita Shantaram Mayekar, Anuradha Prakash Surve and Tejshri Tukaram Khot. One of the daughter of testatrix namely Alka Prabhakar Mayekar died on 26.04.2019, leaving behind her son namely Ajit Prabhakar Mayekar. Joint Consent Affidavit of Kamlakar Bhaskar Shivalkar, Ajit Prabhakar Mayekar, Savita Shantaram Mayekar, Anuradha Prakash Surve and Tejshri Tukaram Khot dated 11.05.2024 is 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 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. 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 12.09.2024. Notice to collector has been sent.

7. The petitioner has filed the Affidavit of Arun J. Jadhav dated 24.06.2024, 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.

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Hence, there is sufficient compliance of the Rule 383 of the Bombay High Court (Original Side) Rules, 1980. Will is duly registered before Sub-Registrar, Mumbai under registration No. PBBE/699/1988. 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 of the petition are 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 has truly set forth in Schedule No.I, hereto annexed and marked as Exhibit – “C”, 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 the petitioner’s hands”.

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

9. Ld. Advocate for petitioner submits that amount of Rs. 10,000/- is shown at Sr. No. I of Schedule I of the petition is amount which was rent receivable from tenants. She further submits that regarding capacity of petitioner, he is ‘sole legatee’ because the property mentioned in the Will in reference to other son namely Kamlakar Bhaskar Shivalkar was already transferred and not bequeathed in the Will. Statement made by the Ld. Advocate is accepted.

10. Petitioner has executed the Administration Bond dated 04.09.2024, 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.

10.10.2024**FIRST ASSISTANT MASTER**