

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
S.M.A. No. 252 of 2017

Date	Order with signature of Judge
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For hearing of main petition.

06.09.2019

Petitioner No. 2 is present in person.

1. Mrs. Hutoxy Cowasjee wife of Cyrus Cowasjee, (2) Mohammad Abdur Rahman s/o. Mohammad Naim-ur-Rahman, (3) Darius Bejonji Kandawalla s/o. Late Bejonji Merwanji Kandawalla, (4) Spenta Darius Kandawalla wife of Darius Bejonji Kandawalla and (5) Kairas Nader Kabraji s/o. Nadereshaw Kabraji filed this petition under Section 276 of the Succession Act, 1925 for the grant of Probate of the Will dated 04.06.2009 and Codicil dated 05.06.2009 in their names in respect of moveable properties including securities and shares as well as immovable properties left/ owned by Mrs. Vera Cowasjee Rustom Fakirjee (**“Deceased”**) wife of late Cowasjee R. F. Cowasjee, which are duly described in the Amended Schedule of Properties filed on 17.07.2019.

2. It is stated in the petition that the said deceased died on 28.08.2017 at Karachi, who was a member of Zoroastrian (Parsi) faith and the deceased in her life time had executed a **Will** on 04.06.2009 in presence of M/s. Khursheed Javed and Abdul Rehman (copy thereof is available at page No. 19 and 21 of the memo of petition), whereby the deceased appointed Darius Bejonji Kandawalla, Spenta Darius Kandawalla and Kairas Nader Kabraji as Executors of the Will; however, thereafter in addition of the Will dated 04.06.2009 and not in substitution, the deceased executed **Codicil** on 05.06.2009 in presence of M/s. M. Naim-ur-Rahman

and Khursheed Javed (copy thereof is available at page No. 23 to 55 of the memo of petition), whereby she appointed Mrs. Hutoxy Cowasjee and Mohammad Abdur Rahman as her Executors in respect of bequests left to the deceased by her elder brother Jashed Sohrab Katrak.

3. Petitioners No. 3 to 5 filed applications bearing C.M.A. No. 1443 to 1446 of 2017 to recuse them from acting as Executors of the estate of the deceased; however, since petitioner No 3 expired after filing the application, the same was dismissed while applications of petitioners No. 4 & 5 were allowed, vide order dated 04.09.2019, whereby it was ordered that the petitioners No. 1 & 2 shall remain as Administrators of the Will of the deceased, whereafter amended title was filed on 05.09.2019 arraying Mrs. Hutoxy Cowasjee and Mohammad Abdur Rahman as the petitioners.

4. Affidavits of witnesses of Will and Codicil, namely, M/s. Muhammad Abdur Rahman, Khursheed Javed and Muhammad Naim-ur-Rahman have been filed with this petition.

5. Notice of this petition was published in Daily "Jang" Karachi dated 18.10.2017; however, none has filed any objection to the grant of this petition, as per the reports submitted by the Deputy Registrar (OS) on 11.01.2018.

6. On 22.01.2018 legal heir of deceased, namely, Ardevan Cowasjee and on 12.03.2018 witnesses of the Codicil, namely Muhammad Naeem-ur-Rehman and Khursheed Javed appeared

before this Court and affirmed the contents of their affidavits and verified their signature thereon.

7. Petitioner No. 1 has been exempted from appearance vide order dated 24.05.2019. Today, the petitioner No. 2 is present and affirms the contents of memo of petition as well as his affidavit and verifies his signature thereon.

8. Since all other legal formalities/ requirements have been fulfilled, there is no impediment in grant of probate to the petitioners as the Executors of the Will and Codicil, therefore, the petition is allowed. The office is directed to issue probate in respect of movable properties including securities and shares as well as immovable properties as per details disclosed in the Amended Schedule of Properties filed on 17.07.2019, as per rules.

J U D G E

Athar Zai