



AN OVERVIEW OF WILL MANAGEMENT UNDER INDIAN LAW

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ABSTRACT

As one becomes older there is a requirement to facilitate the easy disbursement of one's possessions and properties to one's loved ones and dependants, so that there will be no legal battles among them. For this rationale, it is advisable that everyone with some possessions and properties should prepare a "WILL/TESTAMENTARY". Everybody likes to be clear in mind that the life he has led has been meaningful and is concerned about his possessions and properties after his demise. A person can ensure as to how his property should devolve and to whom it shall devolve, after his demise, through a Will. This prevents the addition of financial and legal grief to the emotional grief of loved ones will already be facing in case of one's absence. This research paper endeavors to analyze all the important aspects of Will/Testamentary. An attempt has been made to explore the basic tenets of a will and to discuss the process of registering the will. In this paper, researcher has tried to explore the pros and cons of registering the will and to discuss the requisite steps to be taken by the legal heir, after the will has been executed in his/her favour.

Keywords: WILL, Laws, Possessions ,Properties, Testator.

INTRODUCTION

Life is complex and challenging for every person. Most of us have the same primary goal in our financial lives - to build possessions and properties. We have to struggle hard to earn a living and accordingly plan out our future with investments and savings. When a person has created assets and investments out of his savings, it is but natural that one will want such decisions to have the right consequences. But have you ever thought about what will happen to this wealth in case we are not around to ensure it goes to our loved ones? All the hard work done by us in our life so far can be wiped clean in one instant; in case of one's unfortunate demise if one have not left a Will behind. There have been various instances of assets being detained by the Government or going into dispute for years, even decades, in the absence of a clear and obligatory Will. A Will is a sensitive topic to open up to. People are not at ease discussing a Will in India. Considerable misunderstanding prevails in the minds of even learned persons and some time even amongst Tax Practitioners as to the law of Wills in India. Every person who has possessions and properties and a family should make a Will whether he is young or aged. It is a mistaken impression in the minds of persons that one should make a Will only when he is old and not in good health. There is a misconception that if someone tells you to make a will, the person thinks that indirectly you are telling him that his end is near or that you are eyeing his property. If you die without preparing a WILL in India, your possessions and properties will then be distributed as per 'Hindu Succession Law'. A common delusion is to believe that all possessions and properties is automatically passed on to the spouse, because children and sometimes even relatives can stake a claim to the property. As one becomes older there is a need to facilitate the easy disbursement of one's possessions and properties to one's loved ones and dependants, so that there will be no legal battles among them. For this reason it is advisable that everyone with some possessions and properties should prepare a "WILL".

MEANING OF 'WILL'

A Will or Testament is a direction and a legal declaration by which a person, the testator, names one or more persons to manage his/her possessions and properties and provides for the transfer of his/her possessions and properties after his death. A Will can be made by anyone above 18 years of age in India. A Will is a statement made by a testator in the written form stating the manner in which his possessions and properties must be distributed after his death. A Will being a testamentary document comes into effect after the death of the testator and if the person dies without writing any Will then he is said to be have died intestate. The person in whose favour the testator bestows the benefits called beneficiary or legatee. A Will is otherwise called as Testament. One can make the will on plain paper in India. It's not legally essential to make the will on stamp paper.

HISTORICAL BACKGROUND OF WILLS

The origin and growth of Will amongst the Hindus is unidentified. However Wills were well known to the Mohammedans and contact with them during the Mohammedan rule, and later on with the European countries, was most likely responsible for the practice of substituting informal written or oral testamentary instruments with formal testamentary instruments. Will is a term emanating from the English Common Law. In common phraseology, it is known as desire. In other words a will is a parchment made following the law or a legal medium through which possessions and properties can be distributed to the legal heirs after the death of the executor or executrix. This is the only legal medium through which possessions and properties can be distributed among the legal heirs. One can write clearly and distinctly in whose favour the possessions and properties shall devolve. It has to be kept in mind that the Will shall become operational only after the death of the executor and in no circumstances it will become operational when he is alive. As the time passed,

the emergence of the Will became more popular, Indian Law which is governed under 'Section: 5' of "The Indian Succession Act, 1925" which provides different rules for intestate succession and testamentary succession in India. It applies to all the communities in India except Muslim community. In India there is a well developed system of succession laws that governs a person's property after his death. 'The Indian Succession Act 1925' applies expressly to Wills and codicils made by Hindus, Buddhists, Sikhs, Jains, Parsis and Christians but not to Mohammedans as they are largely covered by Muslim Personal Law.

STATUTES RELATING TO 'WILLS'

There are many laws which are dealing with the concept of 'Wills' as follows:

- Indian Registration Act, 1908
- Indian Succession Act, 1925
- Hindu Law (Hindus Personal Law)
- Muslim Law (Muslims Personal Law)

OBJECTIVES OF THE STUDY:

- To justify why making a Will is essential and who can Will.
- To explore the basic tenets of a Will .
- To discuss the process of registering the Will and pros and cons of registering the Will.
- To explore the essential steps which have to be taken into consideration while making a Will.
- To discuss the requisite steps to be taken by the legal heir, after the Will has been executed in his/her favour.

RESEARCH METHODOLOGY

The paper is a literature overview on WILL. The present study is descriptive in nature and is based on the secondary data collected from various websites, magazines, various text books and journals.

LIMITATIONS AND SCOPE FOR FURTHER STUDY

This study is based only on secondary data. Further research can be done on the basis of primary data through a questionnaire filled by people to know the depth of awareness about rules and laws about WILL and advantages of writing WILL in today scenario.

WHY MAKING A WILL IS ESSENTIAL?

We have not forgotten the Ambani family dispute over Reliance's properties and possessions. This happened because Dhirubhai Ambani didn't put down a WILL. One of the intellectual businessmen in the world didn't write a WILL leading to dispute among his sons. Make sure all of you have make a will and let the world know how your property and possessions should to be distributed after your demise.

After demise of the testator it becomes relatively convenient for the beneficiaries to obtain the property and possessions which has been left for them through the means of a Will, particularly when the beneficiaries are more than one. The division of property and possessions after demise of individual comes with many emotional grief. The minor differences can result in hurt emotions and recriminations. A Will may reduce family differences. Making a plan can give you peace of mind and prevent your family from quarreling over your property and possessions. Making a Will also prevents conflicts as far as property and possessions are concerned in the event of demise of the testator. Even if no Will has been made by the testator the property and possessions can be divided equally amongst the legal heirs. However, if one wants to split his property unequally then making a Will is absolutely indispensable. Sometimes associations and relations are so stressed that the testator

might want an individual to be deprived of the complete benefits arising from his wealth. This he can only do through the medium of a Will. It is for the reason that if he/ she is not deprived through the medium of a Will he/she can claim his/her share of the property and possessions after the demise of the testator. However it is significant to note that natural successors like wife, son and daughter have a rightful claim over the property and possessions of the testator. Suppose the testator wants to deprive his family of the property, then he must give specific reasons for doing so. If these reasons are not spelled out it might be a subject of dispute later on in a court of law.

Who can will?

In terms of having the competence to prepare a will, all and sundry cannot become a testator. There are certain rules and regulations which have to be kept in consideration to prepare the will. These rules and regulations are as follows:

- The testator must be of 18 years of age.
- She/he must not be mentally challenged. However, if a person loses her/his sense later on but he was not mentally challenged at the time of making the Will, that Will shall be valid in the eyes of the legislation.
- If the person is vocally challenged or visually impaired even then he/she can prepare a Will. However, he/she must be aware of the consequences of the Will.

BASIC TENETS OF A VALID 'WILL'

There are certain basic tenets which should be included in the instrument of Will such as :-

- **The Name of The Testator:** The name of the testator should be mentioned correctly without any error in initials, spelling or grammatical error so that it will not affect the instrument of Will. The name of the testator can also be clarified by going through his birth certificate or any school certificates.
- **Right To Appoint Legatee:** The testator is having unconditional authority to appoint any person as a legatee of a Will and legatee should execute the Will carefully and in accordance with the law.
- **To Take Effect After Demise:** A testator who is having authority to make the Will during his life span, but it will take effect only after his demise. A gift made by a person during his life span and will take effect during his life span, cannot be considered as a Will.
- **Revocability Under The Law:** In general a Will made by the testator can be cancel at any time during his life span and testator can choose any other person as his legatee. There may be probability where a testator wishes to bring some changes in the Will then he can make some required amendments in the prepared Will which is otherwise called as Codicil. A third party can not file a civil suit against the testator on the argument of cancellation of the Will. A Will made by the testator may be unalterable in some cases where an agreement is entered into opposing to the Will, may bind the testator.
- **Intention of The Testator supreme:** The testator of the Will has authority to cancel Will at any time which can only be proved by the desire of the testator that whether he is intending to cancel the earlier testamentary instruments made by him or he can utter in his Will that 'This is my last Will' then it can be assumed that all the previous testamentary instruments has been cancelled.

- **The Declaration to be ‘Last Will’:** A person as testator has power to make declaration of Will so many times but it is always the last will of testator which will prevail. The words “I declare this to be my last will” require not be stated in the instrument of the Will. Once the Will is prepared by the testator Inserting of words ‘Last and Only will’ at the time of death it can be assumed that all the earlier Wills will get cancelled and fresh Will has to be effected.
- **Subsequent ‘Will’:** Mere loss of the original Will does not operate a cancellation but it has to be inferring by the rigorous proof to prove its cancellation and a testator must show the authentic reasons for the loss of the Will. Once it is proved that an original will is lost, then ‘Subsequent Will’ will be applicable.

REGISTRATION OF ‘WILLS’

The registration of a Will is not compulsory according to the section 18 of the ‘Registration Act, 1908’. Once a Will is registered, it is a strong permissible proof that the suitable parties had been present before the registering officers and the latter had attested the same after. The procedure of registration begins when a Will instrument is submitted to the registrar or sub-registrar of jurisdictional area by the testator himself or by his authorized agent. Once the examination of Will instrument is done by the registrar and registrar is satisfied with all the documents, then the registrar will make the entry in the Register-Book by writing year, month, day and hour of such submission of the document and will issue a certified copy to the testator. In case if registrar denies to order Will to be registered then testator himself or his authorized agent can file a civil case in a court of law and court will pass judgment of registration of Will if court is satisfied with the proof submitted by the petitioner. A case can only be filed within 30 days after the denial of registration by the registrar. If the testator willing to withdraw the Will after the procedure of registration then a satisfactory reason has to be given to registrar, if satisfied he will order for the registration of Will.

THE PROS AND CONS OF REGISTERING A WILL

Registration of Will is not essential. However if a will is registered, the following benefits will arise:-

- In that case, a copy of the Will will remain with the office of the registry.
- In case there is tampering of the original Will, it can be compared with the Will kept in the office of the registry.
- In the case, the original Will is destroyed a certified copy can be obtained from the office of the registry.
- If a Will is made in reference to leasehold property before a probate is obtained, it will be appropriate to strike out a name or carry out an alteration.
- For reason of some disease if the testator is not capable to go to the registry office the registrar can come to the home of the testator and the registration of Will can be done at the home of the testator.

Be that as it may, there are some disadvantages of registering a Will.

1. In general, it is very straightforward to do amendments in a will but once a Will is registered it becomes practically unfeasible to make alterations to the Will.
2. A Will once registered is open to registration each time it is subject to amendments.

Although these difficulties do continue, if the testator feels that it is of his best concern to register the will, he can go ahead with the registration of the Will..

IMPORTANT POINTS TO BE KEPT IN MIND WHILE MAKING A WILL

- A Will can be hand-written or typed out. A Will should be straightforward, precise and understandable. Otherwise there may be difficulties for the legal heirs. Sometimes relatives and others legal heirs may try to misrepresent the interpretation of the Will for their own interest. It is all the time better to take the advice of a faithful advocate.
- No stamp paper is necessary. Write Will on superior quality solid white paper so it doesn't get distorted over a span of time. It should be stored in a plastic wrapper in full size, without folds.
- Note that one should keep just one additional copy of Will and stored independently from the original Will. The Will must be stored very securely in bank, in safe deposit box. One must also inform next of nearest and dearest, as to where one has stored will. Do not make many copies of Will.
- There must be date on the Will when it was written and if more than one Will is made, the one with the latest date on Will invalidate all the preceding ones. In fact, there should be a statement in the Will, invalidating all other subsequent wills. The pages should be numbered to avoid deception.
- The testator may display that he has the capacity to dispose of his or her property ("sound mind") and does so without restraint and willingly.
- The testator's signature must be placed at the end of the Will. If this is not observed any matter following the signature will be overlooked, or the entire Will may be invalidated if what comes after the signature is so material that ignoring it would conquer the testator's intentions.
- If there are too many amendments in the Will, it is better to get ready a completely new Will.
- If feasible, have the two witnesses be a doctor and a lawyer. A doctor signing a will, won't raise any question of you, being of unsound mind. The lawyer, will scrutinize the will and make sure one doesn't make stupid errors at the time of writing and doing sign on it.
- The attesting witnesses and his or her spouse should not be a beneficiary under the conditions of a Will. This might create vested interests and many times make Will unacceptable. Also, make sure the witnesses are younger than Will maker and not very old as one's will might be in effect for a number of years and one wants them to be present on this earth .
- In case of Hindus, it should be clearly declared if the property and possessions are inherited or not, because it makes so much difference, as no ancestral property and possessions can be assigned to anyone through a Will. All rights on inherited property and possessions are acquired by birth. So if one inherited a property from Father, one

cannot say in a Will, that one want to assign it to person X only. It will go to all one's legal heirs as it is "Inherited"

- The value of property and possessions often fluctuates, so it is better to state how much each beneficiary will receive, in percentage expressions rather than absolute numbers unless it is pure cash. The testator must undoubtedly identify himself as the maker of the Will and that a Will is being made; this is usually called "publication" of the Will, and is usually satisfied by the words "Last WILL and Testament" on the first page of the document.

CONCLUSION

Everybody likes to make sure that the life he has led has been meaningful and is concerned about his property and possessions after his demise. Creating a Will is rarely a pleasant task, and many people avoid it as long as possible. By its nature, a Will requires facing the vulnerability of life and personal mortality. However, dying without a Will puts the state in charge of making decisions, and a probate court's choices may not coincide with your own. Whether simple or complex, all valid Wills give some control over how personal property and possessions state is handled after your demise. Therefore, the importance of the Will cannot be underestimated and it should be the bounden responsibility of every grown-up person to make out a Will in a detailed and a crystal clear approach so that the beneficiaries can inherit the property and possessions both movable and fixed without going in for legal disputes or litigation. It is very tough task to write a WILL, but it is one of the wise decisions to take in life.

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