

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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A DETAILED STUDY ON TESTAMENTARY SUCCESSION AND WILL IN THE LAW OF PROPERTY IN INDIA

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ABSTRACT

In India the never ending dispute which goes and goes is always property dispute where here the dispute will not come to an end immediately. Under the scope of Property law, testamentary succession and will plays a vital role where here the person can decide the authority of the property after his disappearance like how his or her property will be distributed among the family members. In testamentary succession the process itself determines how the assets should be distributed among the heirs. In the following article going to cover the different scope of testamentary succession and will under property context.

INTRODUCTION

Indian succession act 1925 safeguards the provisions related to Testamentary and Will here section 57 – 191 of the Indian succession act delves about testamentary succession and Will provisions. The term ‘WILL’ has its roots from the latin word ‘Voluntas’. As per Section 2(h) of Indian succession act defined that will is a legal declaration of the intention of the testator regarding the disposal of the property after their demise. Will includes codicil which can be a voluntary disposition and can be made in writing. Section 30 of Hindu Succession act 1956 stated about testamentary succession where as Any¹ Hindu may dispose of by will or other testamentary disposition any property, which is capable of being so disposed of by him or by her, in accordance with the provisions of the Indian Succession Act, 1925 (39 of 1925), or any other law for the time being in force and applicable to Hindus.

¹ Indiankanoon: testamentary sucession

STRUCTURE OF WILL

According to section 63 of Indian succession act there must be a legal declaration which should be made by the testator. The testator should be competent enough to make the will unsound mind and minor are not accepted according to the act. Testator should explicitly choose the manager or person who can carry on the will after his or her demise where here the testator should not be forced. Also the testator can change or alter the provisions in the according to him during the lifetime as he or she has every right to change what may deem fit. As per Section 65 of Indian succession act specifies about the types of will namely Privileged Wills and Unprivileged Wills where here “Privileged wills” nothing but any individual who engaged in military sector or who are working as sea mariner then they can specifically dispose their properties through will and “Unprivileged wills” are typical wills which can be disposed by normal individuals who are not indulged in military activities.

The legal effect of the will comes in to place after the death of the testator and it can be revocable until the lifetime of the testator. The revocation of will have been specified under Section 70 of Indian Succession act and execution of will have been outlined under section 63 of the act where here the testator should affix his or her sign and mark towards the will and it should be attested by two or more witnesses. The testator must provide the personal acknowledgement of the witnesses.

According section 17 of Registration act the will does not need to be registered where the registration of will is not mandatory according to Indian succession act. Unregistered will is accepted in every circumstances and it does not eliminate the evidentiary value and also where the registered will doesn't prove purity of the will.

ADMISSIBILITY OF EVIDENCE

Admissibility² of evidence is for the purpose of construing the will where here the common law rules actually governing the admissibility of evidence when comes to the intention of the testator, direct extrinsic intention of the testator is not admissible where circumstantial extrinsic evidence is admissible as per the common law. While constructing a will every minute things are mattered here where leaving anything blank is considerable. A man can leave but leaving his only one will which is the net expression of his lifetime determines his true testamentary

² Theobald on Wills, 17th edition, 2010

intentions during his lifetime. The evidence is admissible only when the rules are in accordance. A document incorporated by a testator in a duly executed will or codicil becomes part of his will and where it is admissible in court for construction. If a testator uses any word or expression related to religious sect, trade or profession then that particular context is admissible in court. In most of the cases the armchair principle is applicable for instance so and so car should reach the person mentioned in the will by the testator where here the court can strongly presume that the testator has only one nephew so the mentioned product should reach the person. This principle is known as the armchair principle.

In ³the case where when construing the will the court should be entitled to put itself in the place of testator and consider all the material facts and circumstances the testator been there, also should check the evidentiary intention behind the writings of the testator in the will and stated that the words varies from the circumstances. If the testator⁴ obviously has to dispose then in that case the construing court must ascertain what the testator meant in the will and also what are all the other provisions guided by other provisions and circumstances including other personal variables of the testator weighing all these the court must consider certain things before rendering the verdict. Here the dictionary principle which is nothing but the phrases or any statement included in the will by the testator commonly have ordinary or technical meaning and not any additional or special meaning the presumption that it bears is ordinary or technical which is rebutted under dictionary principle and where in this circumstance court held that if any will has any secondary fact or special fact in it then that particular will doesn't make any sense. In⁵ this case where here B has made a will stating that his properties will be succeeded by his "children" after his demise here B have illegitimate child C . After days now after B's demise question arises for which children that is for legitimate children or illegitimate children who will acquire the property, where here the court contended that in the will as secondary phrase the testator mentioned that his "children" will succeed so in that the court can strongly presume that illegitimate child also falls under the category children so the illegitimate child of B can succeed the property as like legitimate child.

³ Allgood v. Blake; (1874)

⁴ Perrin v. Morgan; (1743)

⁵ Gill v. Shelley; (1831)

CONVERSION

In the context of conversion there must be a imperative trust. It is an imperative trust where here the provisions mentioned in the will is converted in to the equity of property after the demise of the testator. The trustees have the absolute power to convert but the property remains unchanged until the discretion takes place, it either can be converted in to realty or personalty and where the intention should be lawful. The fact is that the personalty which trustees have an option to convert is to given his heirs or other successors.

RECAPUTALATION OF TESTAMENTARY

As⁶ per the context of Section 30 and section 6 of Hindu Succession act where in this case it was contended that where the section expressly enables the coparcener to dispose his interest validly under the context of coparcenary property testamentarily in this case the legatee's interest is crystallised and where he or she may be an utter stranger to the family and the kartha of the family is entitled to deal with the coparcenary property. The court held that after the coparcener dies the property can be succeeded by his heirs.

Under section 63 of transfer⁷ of property rights it restricts the sale deed, lease, gift, mortgage there upon etc , and where the tenancy act does not provide any special place for inheritance as far testamentary succession is one permissible mode when comes to Hindu who dies after writing a will where here the will is not an instrument as like mortgage, lease, sale or gift.

As note of testamentary⁸ disposition in respect to section 30 of Hindu succession act normally reiterates the rule of survivorship in upon the death of coparcener under this proviso if there was no female or heirs of the class specified where such female relative or male relative of the class II specified then the died coparcener can devolve the property through testamentary or interstate succession where in this case it cant be acquired through survivorship and there was no will left by the coparcener. In⁹ accordance with the Banking Regulation Act 1949 the policy holder continues his interest by holding the policy in his lifetime and the nominee acquires no interest after the death of the policy holder the amount payable becomes the part of the succession which is governed under the purview of testamentary or intestate succession. One¹⁰

⁶ Veerashekhara varmaryar v. Amrithavalliammal & ors; 1973

⁷ Pravinbhai Bhilalbhai Ghor v. Rajivkumar gupta ; 1998

⁸ Sushilabhai Ramachandra Kulkarni v. Narayanarao Gopalrao Deshpande; 1974

⁹ Hanuman Prasad kemka v. State Bank of India; 2021

¹⁰ Nanak Ghatalia v. Urmila Ghatalia; 2015

important context should be beared in mind that even the will is registered the governing rules of the testamentary succession should not be relaxed.

Section 168¹¹ of Income tax act which states about executors where here they are the ones who administer the estate of the deceased they are specifically appointed by the court so in that sense the testamentary succession can not be made here. The male holder has two wives where he executed a will of his property and giving one share to each of his wives. The respondent is the daughter who is a ultimate beneficiary. After the death of the testator, one of his wife also died so here the other wife gave her share to the complete stranger who is not anyway related to the family. Here the life interest is absolutely converted to absolute interest and according to section 14(1) of Hindu Succession act the high court did not agree with this and held that widow cant get larger interest over the property.

Testamentary succession is one of the way which is commonly used for estate planning where the assets are distributed through a will and they are maintainable. The important objective in testamentary succession is that it will act only up on Will rather than inheritance act even though inheritance act governs it. Section 21¹² of Hindu succession act, states that if one person domiciled in India where the other person is not domicile in India then in this case where it states that it included in Class II of succession act it contended that general provisions relating to succession where it raising presumption that it affecting the succession which is also included testamentary succession so section 21 apply to the cases of succession where intestate and testamentary succession cant reject its progressions or principles.

As per Section 39¹³ of the Insurance act which actually concerned with the policy holder and the succession where here the section appropriately states that the policy insurance wholly , with or without consideration made by an endorsement up on the policy by the separate instrument which can be signed by the testator or assignor in this case the policy holder is alive then the policy matures it should be payable by the policy holder and not by the nominee even though he or she willingly attested their signature.

There¹⁴ was surrender of will from the mother to their daughters where one of the daughter

¹¹ Commissioner of Income tax v. P.Dhanalakshmi; 1994

¹² Jayantilal Mansukhlal Anr v. Mehta Chahanlal Ambalal, 16 march, 1966

¹³ Sarabati Devi v. Usha Devi AIR 258 of 1983

¹⁴ Kalidindi venkata subbaraju v. Chintalapati Subbaraju and Ors, 1968 AIR 947

who is a plaintiff where she stated that the will is executed and it is not categorized as valid where in this circumstance court stated that the respondent party have submitted the certified copy of the will which is valid in nature. So here the certified copy of the will is accepted as secondary evidence before the court. Will is also questionable when it comes before the light of suspicious manner where in the case of Indu Bala Bose and ors v. Manindra Chandra Bose that the signatures attested in the will lacks genuineness and where it reflects the testator's mind which is unnatural and unfair. If ¹⁵a testator is not in a mindful manner or not understanding the provisions mentioned in the will then he or she is not acceptable or competent to execute the will. Will is very much considerate to follow the provisions as per Article 14 and 21 of the constitution where here it should not be forced or made by any undue influence of the testator it should be accordingly followed as per the constitution then the will is not executable in nature. Will prevail over the procedural law namely criminal or civil procedural laws.

CONCLUSION

Testamentary Succession or Will it applicable to the family scenario where here it not only focuses on the lively person or the present person who is surviving but also the person who died knowingly or unknowingly who may or may not left a will after his or her demise. But it focuses more on the intention of the testator. The main few context which should be taken in to consideration is that the will should not be ambiguous in nature even though it is not deemed to be registered and when comes to succession it is all the way connected with property. When we look up on Will it completely focuses on the ability, competency of the person who is none other than the testator who is solely responsible in making the will. Will can be stated invalid when it doesn't cover the necessary provisions and when the legality of the will is questioned. More importantly will is not necessary to be attested with stamp duty and no stamp duty is required to execute the will. Testamentary succession has its place in every religion namely Hindu, Muslim, Christian and Parsi where here each community follows different provisions when comes to succession.

¹⁵ Venkatachala Iyengar v. BN Thimmajama AIR 728 1975