

Analysis shailesh haribhakti

The Way To A Clear 'Will'

A WILL IS LITERALLY THE LAST 'WILL' OF ANY PERSON expressing how to distribute his or her assets after death. Making a will is a necessary task; the procedure is simple and it is useful to plan affairs until the time existence ceases. The price one may pay for procrastination could be family feuds, post the event.

In this case, Manohar Joshi is a personification of many an Indian father who has disowned a child. That his family came to know of this after his death, is the cause of the ensuing turmoil. A striking feature is his insistence on confidentiality, which, though respected, must not obstruct his final wishes from being enforced. Hence, it is advisable to have an 'executor', who is duty bound to distribute the assets as per the will. One can also obtain a probate, which is the official evidence of an executor's authority. In fact, a probate is mandatory when a will is executed by a Hindu, Christian or Parsi pertaining to immovable property situated in Mumbai, Kolkata or Chennai.

Manohar Joshi has used his will as a tool to hurl the final blow of disownment. A will only has powers to distribute owned assets, and cannot govern beneficiaries' actions to stop them from gifting their legacy or even legating it. But this is a sensitive situation. The will may have a condition that makes certain beneficiaries devoid of a share in the inheritance if they traverse its conditions. A will cannot contain anything that restricts beneficiaries from compensating a disowned person out of their personal property.

The daughter's suit against the bank for willful concealment of facts would not form a strong case unless the bank's malafide intention behind the alleged concealment is proved in court.

The moot question arising is the enforceability of the will in view of its registration. In India, it is not compulsory to register wills, even if immovable property is involved. However, registration of the will by the testator himself is an evidence of its genuineness.

There are diverse statutes governing intestate laws in India. These laws have different stands in cases; like the will is not revoked upon the marriage of a Hindu, Sikh, Jain or Buddhist, but it is on that of a Parsi or Christian. For Muslims, there are certain restrictions. For instance,

a Muslim can bequeath only one-third of his property by will. The Hindus are by and large governed by the provisions of The Indian Succession Act, 1925.

A person has two options. One, is to keep a will under wraps and let final wishes unfold after death. This may put the entire property in jeopardy. The other option is to come to a compromise and enter into a 'family settlement', which is basically an agreement to divide the family property keeping family peace as the objective. Courts recognise this arrangement, and all transfers under the ambit of a family settlement do not attract capital gains tax.

The will is a personalised document and must be respected. To facilitate smooth implementation, it is necessary to outline each asset and to create the exact basis for each asset to be disposed of. Priority must be given to repaying liabilities and then the value should be passed on by the executors to the legitimate legatees.

The situation in this case is very hypothetical as generally banks have processes in place to trigger actions necessary to fulfill the banks' or trustees' obligations. It is highly unlikely that a banker cannot be contacted or that systems fail so miserably that an important fiduciary responsibility remains unfulfilled.

India has witnessed several high profile disputes arising out of contests over inheritance. What emerges is a clear lesson: everybody would do well to leave a clear will.

The laws of intestacy were made decades ago and are unsuitable for the 2010 Indian society. For example, if your marriage has broken down but no decree absolute of annulment or divorce has been pronounced until the date of your death, then, under the laws of intestacy, your surviving spouse inherits the whole or a share of your estate - totally against your wishes. Also, if a person is living with a partner sans a marriage, and dies intestate, the partner has no automatic lawful right to inherit anything from the deceased's estate.

The decision to make a valid and vivid will while you are still of sound mind salts away your family from the trauma of your property devolving upon them through intestate laws. A stitch in time can certainly save nine.

In summary:

- * Create and annually update your will
- * Nominate worthy executors
- * Disown or legate to whom you wish
- * Avoid conditionalities and be as transparent as possible
- * Think of how and through whom your assets can be best utilised
- * Think of the joy of giving to causes as opposed to individuals.

For smooth execution, outline each asset and the exact basis for disposing it

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