



TESTAMENTARY SUCCESSION



Testamentary succession means succession of a property according to the wish of the owner of that property. Wish expressed in definite and in written form is called 'Will'.

The concept of Will was unknown to the ancient or traditional Hindu Law. This might be due to the fact that the joint family system was prevalent in India until the end of the nineteenth century. Property was considered to be common to the family in the joint family system. So, disposing of the property by way of Will was inconsistent with the concept of joint family. We, therefore, do not find the concept of Will in ancient Indian literature or Law.

In spite of this, the English Courts had recognized the right of a Hindu to dispose of his self-acquired property by making a Will.

Today, anybody who is not a minor and an insane, can make a Will and can give away his self-acquired property to any person of his choice.

As anybody can make a Will, it is advisable that everybody who has some kind of property in his name, may make a Will to dispose of that property after his death.

Why It is advisable to make a Will?

It is because the owner of the property makes his wishes clear in his Will. So the property disputes are likely to be avoided.

The contents of the Will —

1. Testator (the person who makes a Will) should clearly state that this is his / her last Will.
2. He should state that he is making that Will by his own free will and not under anybody's pressure.
3. He should mention the names, addresses and relations of his family members.
4. Description of the property - movable and immovable.
5. Distribution of property in clear terms.
6. Doctor's certificate is necessary. He should clearly state that the testator is physically and psychologically fit to make a Will.
7. Two witnesses are necessary, before whom the testator is supposed to sign the Will. Their names, addresses, phone numbers have to be written alongside the testator's signature, and their signature also.
8. No Stamp Duty is required to be



Editorial...

Dear Readers,

Thank you for the response given to our Newsletter and the services offered by Anulom. We request you to give us feedback on the Newsletter and mention the topics you wish to have the information. We also welcome your Articles for our Newsletter.

We wish to thank Advocate Avinash Chaphekar for his valuable contribution to make these Newsletters authentic, informative and useful to the readers.

— Editor

paid. Some people do not get satisfied unless they write on the Stamp Paper. The Law does not prohibit them from using one.

9. Registration of Will is optional. But in some cases, it is advisable to register a Will. For example, if:
 - a) The testator has investments in shares,
 - b) The testator has many legal heirs and,
 - c) The relationship among the heirs is not cordial.
10. If a person is having an immovable property in his name, it is advisable that he / she may make a Will. If the Will is there, the process of transfer of property becomes smooth.

Intestate Succession

If a person does not make a Will, his property will devolve after his death, by succession. Devolution of property, in the absence of Will, is called intestate succession.

As a part of the codification of Hindu Personal Law, The Hindu Succession Act came into existence. The President of India gave his assent on 17th June 1956 to this Act to bring it into force.

Hindu joint family and Hindu Coparcenary are two different concepts. Joint family is an all-inclusive concept, whereas coparcenary includes only those persons who have obtained the right in the common property of the family by way of birth or adoption. The concept of coparcenary can be stretched up to three generations only, that is father, son grandson and great grandson. The fourth generation will come into picture, that is it will be included in coparcenary, after the death of the father.

In the old Hindu Law, according to Mitakshara school, only the male members are included in coparcenary. This was the position until the year 2005. But the Hindu Succession Act - 1956 was amended in 2005, and women were made the members of the coparcenary giving them equal right with men in coparcenary property of the family. The section 6 of the 1956 Act was completely changed. The Act clarifies that wherever there is the word 'Male', one should read as 'Male' and 'Female'. This change brings about a basic change in the formation of coparcenary. As mentioned earlier, only the father, son, grandson and great grandson had the right in the coparcenary property. But now, after the 2005 Amendment, father's daughter, son's daughter, son's son's daughter and son's son's son's daughter have also got the right in the joint property of the family, that is, coparcenary property.

If the coparcener acquires any property on his own, without any help from his joint family property, then this property exclusively belongs to him only. Such property will go to this child by succession.

Two sweeping changes have been introduced in the Mitakshara joint family system. Under section 30 of the Act,

a male Hindu may dispose off by Will, his undivided share in the coparcenary property. Another change is in section 6 of the Act, its proviso and explanation I reading together. According to this section, if a Hindu male dies intestate after the commencement of the Act, leaving behind him a female heir or a male claiming through a female daughter's son, his share in the coparcenary property shall go by succession under the Act.

Earlier, the female heirs would have got nothing in the coparcenary property and would have pass by survivorship to the other members of the coparcenary.

These are some of the principals of The Hindu Succession Act. The purpose of this article is to make the readers familiar with this Act. The system of devolution of property of a person - male or female - who dies without making a Will is not so simple. In day-to-day life, very complex situations arise that give rise to different interpretations of Law. the Law gives different charts showing how the property will devolve in a particular situation. And one has to find out his own position.

Scope and purpose of the Amendment Act of 2005

Preamble of the Act states that the Act is to amend and codify the Law relating to intestate succession among Hindus. Dr. B.K. Sharma states in his 'Hindu Law', "Being a consolidating statute, the Act is to be interpreted as containing complete form of the whole body of law on the subject it deals. Therefore, to the extent there is a provision in the Act with reference to any matter relating to succession, that must apply whatever be the position of old Law. The main scheme of the Act is to establish complete equality between male and female with regard to property rights and the rights of female are declared absolute, completely abolishing all notions of limited estate. Apart from giving the women absolute right over property, a large number of female heirs are let in the list of class I heirs of a Hindu male."

Another change introduced by the Act is that heirs having different relationships succeed simultaneously and female heirs taking simultaneously with the male heirs.

WHAT IS PROPERTY VALUATION?

The process of estimating the value of property is known as valuation. There are numerous methods of assessing the value of a property.

How do I estimate my property value?

5 ways to find out what your house is worth —

1. Enter your address into a home value estimator. ...
2. Ask a real estate agent for a free comparative market analysis. ...
3. Check your county or municipal auditor's website. ...
4. Identify trends with the FHFA House Price Index calculator. ...
5. Hire a professional appraiser.

What is valuation and its purpose?

The main purposes of valuation are as follows:

It is the technique of estimating and determining the fair price or value of a property such as a building, a factory or other engineering structures of various types,

land etc.

Six important Purposes of Valuation:

- **Buying or Selling Property**
When it is required to buy or sell a property, its valuation is required.
- **Taxation**
To assess the tax of a property, its valuation is required. Taxes may be municipal tax, wealth tax, Property tax etc, and all the taxes are fixed on the valuation of the property.
- **Rent Function**
In order to determine the rent of a property, valuation is required. Rent is usually fixed on the certain percentage of the amount of valuation which is 6% to 10% of valuation.
- **Security of loans or Mortgage**
When loans are taken against the security of the property, its valuation is required.

- **Compulsory acquisition**

Whenever a property is acquired by law; compensation is paid to the owner. To determine the amount of compensation, valuation of the property is required. Valuation of a property is also required for Insurance, Betterment charges, speculations etc.

- **Valuation of Building:**

Valuation of a building depends on the type of the building, its structure and durability, on the situation, size, shape, frontage, width of roadways, the quality of materials used in the construction and present-day prices of materials. Valuation also depends on the height of the building, height of the plinth, thickness of the wall, nature of the floor, roof, doors, windows etc. The valuation of a building is determined on working out its cost of construction at present day rate and allowing a suitable depreciation.

Six Methods of Valuation

1. Rental Method of Valuation
2. Direct Comparisons of the capital value
3. Valuation based on the profit
4. Valuation based on the cost
5. Development method of Valuation
6. Depreciation method of Valuation



How do valuations work?

The valuation process tells the owner what the current worth of their business is by analysing all aspects of the business, including the company's management, capital structure, future earnings and the market value of its assets.

How often should you get your house valued?

"We all know getting your home valued at different points in your life is important- especially if you're trying to sell or planning to sell in the future, but most people don't realise the need to re-value every 6 months or so to really reap the benefits."

Property valuation certificate is a legal document which certifies the details of the entry in the Register of Land Values. Property valuation helps to determine the fair market value of a property at the time of property sale or purchase.

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FEEDBACK FROM OUR SATISFIED CUSTOMERS...

With Anulom services it was an excellent experience. Co-operative people. Nice staff.

Specially thanks to Sonal and Anjali. Both are nice persons. Both know how to speak with customer. I will prefer to go with Anulom services to get a proper service.

— **POOJA CHAUDHARI**

I am really pleased with the rental agreement services provided by Anulom. Everything from draft agreement to biometric to police intimation, everything is super smooth at the convenience of home. Tejasvi from police intimation team did a fantastic job for completing the process in record time. Loved the overall process.

— **UMAR TOPIA**

My 1st experience with Anulom. They were very quick with initiating the process. Everything happened quickly. However due to govt holiday/issues, my rent agreement took some time. But the Anulom team was extremely helpful. Specially would like to mention Hitesh from their

Sales team, who went an extra mile ahead and helped me on a holiday. Thank u so much guys.

— **PRIYANKA JAIN**

Awesome work done by Tejasvi Marne. She kept both - tenant and owner - up to date with the progress. Police intimation, along with overall process was done within time.

— **HARSH VARDHAN**

The overall experience with Anulom was excellent. Ms. Amina from Anulom was always available for any questions or clarifications. She assisted in speeding up the tasks as well.

— **KEDAR PARKHI, THANE**

Ms. Aprosa from Anulom was very efficient and quick on the Registration process.

— **SUNIL ADLAKHA**

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