

## Will executed abroad for Indian property?

Estate of the deceased can only be administered after grant of probate or letters of administration by Indian courts

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### htestates LEGAL REMEDIES

The previous column had dealt with enforcement of wills that are executed in India and pertain to properties located within the country. In situations where it is compulsory to obtain probate or letters of administration as per requirements under the Indian Succession Act, the estate of the deceased can only be administered after such grant of probate or letters of administration by Indian courts.

This part of the series deals with cases where the deceased has executed his/her will outside India, setting out inheritance of properties that are located within India. When a will has been proved and deposited in a foreign court, and a properly authenticated copy of the will is produced in an Indian court, the latter may grant letters of administration or ancillary probate.

In such cases, a petition is required to be filed for grant of letters of administration/ ancillary probate by Indian courts.

Filing a petition for grant of ancillary probate is of immense importance because doing so enables administration of the properties of the deceased which are located within India. The object of filing this petition is to dispense with the need for producing the original will in Indian courts, where the will in question has already been deposited in a foreign court. For instance, probate courts in England retain every original will for which probate has been granted by it.

Once an Indian court accepts the grant of probate by the foreign court as valid, the foreign

probate forms the basis for the grant of ancillary probate in India. However, if Indian courts consider that there is a question to be decided relating to the validity of the will, the Indian court may try such questions before permitting administration of the properties of the deceased that are located in India.

For instance, in the case of Lila Kumari and others vs Laxmi Devi, the Punjab and

Haryana High Court determined whether or not probate of will granted by Oxford High Court in England could be reopened by the courts in India. In this case, the High Court observed that courts in India are empowered to examine and reconsider judgments of a foreign court if such judgments have legal infirmities.

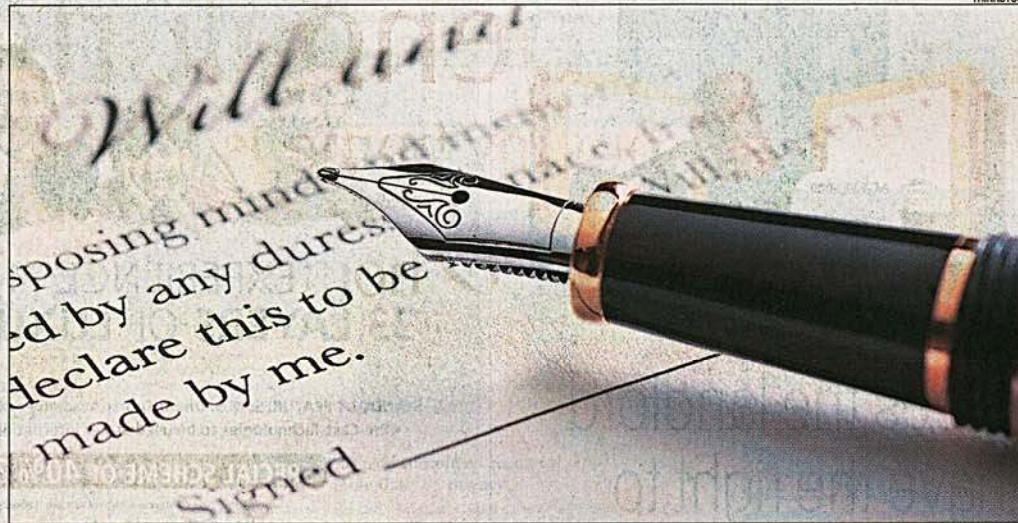
For instance, probate granted by a foreign court which has

been obtained by means of fraud or collusion of the parties, may indeed be challenged in the Indian court. Such foreign judgment (including foreign probate) shall not be considered as binding on Indian courts nor will it be enforceable in India.

In order to effectively administer the properties of the deceased that are located within India, it is important to bear in mind that probate granted by foreign

courts is also subsequently to be duly recognised and upheld by competent courts in India.

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LAW BOOK  
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My siblings and I have inherited a house from my mother who died intestate recently. Are there any stamp duty implications on our inheritance?

— Sabina Singh

Since your mother died intestate, you and your siblings have each inherited equal and undivided share in this house. Till such time you and your siblings continue having ownership of this jointly-owned property, no stamp duty implications would arise by merely having inherited this house.

However, if you and your siblings decide to demarcate each one's ownership by allocating specific portions of the house to each sibling by executing a partition deed of the inherited property, the appropriate stamp duty has to be paid on such partition deed.

record the family settlement which was previously arrived at between the parties and does not create any fresh rights and obligations of the parties, then such a document will not require to be registered, and is valid even if unregistered. However, whether the document is a settlement which would require registration or is only a record of a past settlement would depend on the nature of clauses contained.

The owner of a property that I have taken on rent wants me to file property tax for it. Is filing property tax the responsibility of the owner or the tenant?

— J.L. Thapar

Ownership of an immovable property comes attached with the owner's responsibility to make payment of certain dues with respect to the property owned, such as property tax. It is the owner's responsibility to make complete payment of his property tax on time. However, in case the lease deed executed between you and the lessor contains a term that the property tax is to be paid by you for the duration of the lease, then it will be your responsibility to make timely payment of property tax.

I am planning to purchase an under-construction flat in a residential project from the original allottee of the flat. What is the stamp duty payable?

There is absolutely no stamp duty payable on a mere transfer of an allotment of the flat by the present allottee of the flat in your favour.

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The tenant of my property is overstaying despite the fact that the lease term expired some weeks ago. I have given him numerous notices, asking him to vacate but to no avail. What should I do?

— Pulkit Kumar

Despite the fact that your tenant has not vacated the property even after expiration of the lease term and the notice period, you cannot forcefully evict the tenant. However, the way out for you is that you can seek eviction of the tenant by filing an eviction suit in the competent civil court having jurisdiction over the place where your property is located.

My parents, siblings and I had all entered into a family arrangement in 2001. We amicably resolved all our disputes and arrived at a settlement regarding the distribution of various properties held by our family members. Subsequently, after a few years, we decided to capture and put down our understanding in writing for the purpose of keeping it as a record. What is the validity of this document? Is it legal and binding?

— L.K. Grover

In case the document in question merely serves to