

# Keeping the peace among your heirs

To avoid family disputes at a later stage, it is advisable to clearly describe in your will the portions of the immovable property your children will inherit

**htestates****LEGAL REMEDIES**

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Matters pertaining to succession and inheritance of an individual's properties are classified in two categories – testamentary succession and intestate succession. An individual is said to die intestate if he has not executed any will. In testamentary succession, the distribution and inheritance of an individual's properties is carried out as per the terms stated in his/her will. In India, testamentary succession is governed by Indian Succession Act, 1925.

A will is executed with the intention to ensure that the dispute over property of an individual are dispelled or at least mitigated. Nevertheless, certain disputes may arise amongst the future beneficiaries, especially if immovable properties are distributed amongst more than one beneficiary. To avoid these disputes in such a situation there are certain points to be kept in mind while drafting a will.

In case an individual has an immovable property that can be divided into clear identifiable

and ascertainable portions, it is advisable to clearly describe who will get what portion of the immovable property in the will.

For instance, A owns a freehold three-storeyed bungalow that he wants to will in favour of his daughters, D1 and D2 and son S1. If the will says that the immovable property will be inherited equally by D1, D2 and S1 on the demise of A, then after the demise of A, dispute may arise as to who will get what portion. If there is no dispute and D1, D2 and S1 mutually divide the immovable property, they will have to execute a partition deed which is required to be appropriately stamped and registered.

Under the Indian Stamp Act, 1899, no stamp duty is payable on a will. Thus, a will can even be executed on a plain paper; however, on a partition deed appropriate stamp duty will have to be paid.

If A's will, clearly mentions that D1 shall get ground floor; D2 shall get first floor and S1 shall get second floor, it will serve a two-fold purpose. Firstly, it will ensure that after the demise of A, there is no dispute between the beneficiaries with respect to who shall have what portion. Secondly, the beneficiaries will not have to execute a partition deed and shall save stamp duty on the same.

It is also advisable to be very clear in the will about

the usage and maintenance of common areas and utilities in the immovable property; for instance, the terrace, parking space(s), lawn(s), sewage and water pipelines, etc. Further, the rights for further construction that may arise due to change in governmental policy should also be clearly defined. The share from any increase in the future in the floor area ratio that may enable the construction of a third floor should also be categorically devolved by A in his will between D1, D2 and S1 to avoid confusion.

Even though under Indian Registration Act, 1908, it is not mandatory to register a will as an unregistered will is considered to be a valid legal instrument, if it has been properly executed, it is preferable to register a will within one's lifetime.

Thus, a clear devolution of interest in different portions of immovable property amongst the beneficiaries in the will itself is advisable to avoid disputes in the future.

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