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Probate is an official proof

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When the person draws his Will his intention is to provide clear instructions to the executor about the manner of distribution of his estate/ assets/ properties after his demise to his beneficiaries. In certain states, the executor of the Will necessarily need to apply for and obtain a grant of probate by the court of law in order to legalize the Wil while in other states it is optional.

Probate as per The Indian Succession Act, 1925 ("Act"), is the copy of Will certified under the seal of the court of competent jurisdiction with the grant of administration to the estate of the testator (one who writes the Will).

In other words, it is an official proof that adds legal character to the Will.

A probate is completely different from the letter of administration which is granted when the Will doesn't name an executor or in cases when no Will has been left behind by the deceased.

In states where obtaining a grant of probate on the Will is optional, as soon as the testator dies and Will comes into light, it operates as a valuable instrument in favour of the beneficiary(ies) i.e. the person(s) in whose favour property is devolved by such Will. In general parlance, such beneficiary(ies) do not approach the court to obtain a probate but start enjoying the property as successor under the Will. Now, if such Will be declared by the court as null and void, right of such beneficiary(ies) in the property or properties under the Will, will be extinguished.

Therefore, in order to avoid such situations, generally beneficiaries apply for the grant of probate of the Will by the court of competent jurisdiction.

The District Judge has the power and authority to grant probate in all cases within his district.

The probate can only be granted only to an executor appointed under a Will. It is also pertinent to mention here that an executor cannot be compelled to obtain a probate of a Will. The right of an executor to apply for probate of the Will is personal to the executor.

He may renounce his right to obtain probate, viz. by renouncing his executorship. Further, several executors maybe appointed under a Will. In such a situation, the probate may be granted to all of them simultaneously or at different times.

To illustrate with an example, if A and B are executors of the Will then the probate can be granted to both of them at the same time. It may also be granted at different times, first to A and then to B or vice-versa.

The purpose to grant the probate of Will is to establish the Will from the death of testator and also to render all the intermediate acts of the executor valid. It has effect over all the property and estate of the deceased whether movable or immovable.

In case a codicil i.e. an addition or supplement to any part of the Will, is discovered after the grant of probate, then a separate probate of such codicil may be granted to the executor, if the executor remains the same as appointed under the Will.

However, if different executors are appointed by the codicil, the probate of the Will shall be revoked and a new probate will be granted of the Will and codicil together.

The grant of probate can be revoked or annulled if the proceedings to obtain the grant was defective or the grant was obtained fraudulently. A judgment rendered in a probate proceeding would not be determinative of the question of title if the probate has been obtained by fraud of material fact and the same can be subject-matter of revocation of grant. To illustrate with an example, the probate granted may be revoked if the existence of other heirs was concealed while making an application of probate. To sum up, the probate granted by the competent court is conclusive on the validation of the Will unless revoked in accordance with law.

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