



# Legal eagle: Where there is a will, there is a way

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Creating wealth is just one aspect of financial planning. However, it is complete only when one gets to decide what happens to his accumulated wealth after his demise. This is where the role of Wills come into play. A Will is a legal declaration of intention of a testator with respect to his property which he desires to be carried into effect after his death. It assures transfer of wealth in a manner and at that time as per his decision. It ensures that wealth is transferred to people he chooses, the interests of beneficiaries are protected for and aims at minimization of any future legal discords or disputes.

Since, there is no standard format for drafting a Will, many a times individuals draft/ write their own Wills, without any professional legal advice and assistance. Sometimes this “do-it-yourself” approach does not encapsulate the real intention of the testator, also many a times there may be paragraphs in the same Will that are ambiguous or conflicting in nature. Such Wills are then subject to challenge before the courts for interpretation.

A similar challenge was posed before the Supreme Court of India, in the matter of Madhuri Ghosh & others vs. Debobroto Dutta wherein the court dealt with the issue of legal validity of an absolute bequest made with respect to a certain property to certain persons as against a subsequent bequest made qua the same property later in the same Will to different persons.

In this case, the testator in his Will bequeathed immovable property i.e. house at Ram Bagh, Allahabad to his wife and daughter jointly. The Will further stated that after the death of the wife and the daughter, various other lineal descendants would become owners of specified parts of immovable property.

The Court held that where an absolute bequest has been made in respect of certain property to certain persons, then a subsequent bequest made qua the same property later in the same Will to other persons Will be of no effect.

In case of disposition of properties, if there is a clear conflict between what is said in one part of the document and in another where in an earlier part of the document some property is given absolutely to one person, but later on, other directions about the same property are given which take away from the absolute title given in the earlier portion, in such a conflict, the earlier

disposition of absolute title shall prevail and the later directions of disposition should be disregarded.

In this case, the Court laid down the legal principle that while interpreting a Will if a testator has bequeathed his absolute interest in the property in favour of a person, any subsequent bequest in the same Will which is repugnant to the first bequest would be invalid.

The Court held that the absolute bequest made in earlier part of the Will in favour of the wife and daughter would prevail over the subsequent bequest, in the same Will.

Thus, it is advisable to take assistance from legal professional to enable testator to draft his Will and capture the intent of the testator in an unambiguous manner.

A professional can understand the intricacies and complications of a bequest and can scrutinize the Will from a different perspective and protect testator and ensure that the inheritors get their rightful estate without any legal hassle and complication.

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