

Major grounds for challenging a Will are fraud, coercion, importunity

Amit Kolekar

My stepfather died recently, and he left me a 30% share in his property, 20% to charity, and 50% to his son from previous marriage. Can I claim an equal share in the property, i.e., 40%?

—Vipul Kumar

In terms of the Indian Succession Act, 1925, the provisions of testamentary succession are applicable to the Will if (i) made by Hindu, Buddhist, Sikh or Jain on or after the first day of September 1870, within the territories which at the date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; or (ii) made the Will outside those territories and limits, if it so far as relates to immovable property within those territories or limits.

We presume the property being referred to is a self-acquired property of your stepfather, who made a bequest under his Will in terms of the information provided by you.

The Will should be duly executed in the manner as set out under the Succession Act, i.e. signed by the testator (your stepfather) in the presence of two witnesses who should have also signed the Will in the presence of the testator and in the presence of each other. If the Will is executed in the manner legally prescribed, a challenge to the Will before a court of competent jurisdiction would have little scope.

The major grounds for challenging a Will are fraud, coercion and importunity which takes away the free agency of the testator. Unless it can be proved that your stepfather was not of sound mind and able body at the time of executing



ask mint LEGAL

his Will or that there was fraud or coercion by another at the time of execution of Will, once the Will is probated, then there can be no challenge or claim for additional share.

I am gifting my property to my daughter. How is stamp duty calculated on a property that is gifted?

—Satish Memon

The payment of stamp duty is governed under the Indian Stamp Act or the respective State Stamp Act depending on the nature of the property.

Let's assume you want to gift property situated in Maharashtra to your daughter, then the provisions of The Maharashtra Stamp Act, 1958 (as amended from time to time) would apply. In the state of Maharashtra, it would fall under Article 34 read with Article 25

of Schedule-I of the Maharashtra Stamp Act.

The calculation of stamp duty payable would be on the market value of the property which is the subject matter of the gift.

Let us assume that the property (situated in Maharashtra), which you desire to gift to your daughter, is a residential property or an agricultural land. Stamp duty payable in case of residential or agricultural property is ₹200 only, if the gift is made to a husband, wife, son, daughter, grandson, granddaughter or wife of a deceased son. So, if you wish to gift your residential property to your daughter, the stamp duty payable would be ₹200, irrespective of the market value of the property.

To read full answers, go to

www.livemint.com/ask-mintmoney

Amit Kolekar is associate partner, Rajani Associates. Queries and views at [mint-money@livemint.com](mailto:money@livemint.com)