

LATEST LEGAL ROUND UP RE SUCCESSION MATTERS

The short question is when a will is agreed to by all and not contested, would it still be required to be proved in accordance with law?

Ramesh Chand versus Suresh Chand decided on 1st September 2025

In this recent judgement, the Supreme Court dealt with how a will is to be proved in accordance with law. In this case, the court was dealing with a registered bill dated 16th May 1996 executed by the father of the parties. Section 68 of the Indian Evidence act was referred to which requires that a document which is required by law to be attested shall not be used as evidence until at least one attesting witness to the document has been called in evidence for the purpose of proving its execution. This is also in the case of a registered will.

Section 63 of the Indian Succession Act 1925 lays down the legal requirements for the execution of an unprivileged will, which is the standard type of will made by civilians in India; and provides that the testator (person making the will) must sign the will or affix a mark, and the signature must be placed so as to show the intention of giving effect to the will. The will must also be attested by at least two witnesses. Each witness should either actually see the testator sign the will, and each witness must sign the will in the presence of the testator.

Referring to two other judgements of the Supreme Court in the case of **H Venkatchala Iyenger vs B N Thimmajamma** and orders (1959) and **Meena Pradhan vs Kamala Pradhan** (2023), it was held that a will has to be proved like any other document, and with the special requirements of a test Teshan provided by section 363 of the Indian succession act. Section 63(c) provides that each of the witnesses must have seen the tester fix his mark to the will, and they are required to sign the will in the presence of the testator. Further, to prove a well, the testing witness needs to depose that he saw the test status sign the will, and that both the witnesses signed in the presence of each other.

A few Important takeaways from the above judgments:

1. It is important to have relatively young attesting witnesses so that they can testify to the execution of the will.
2. Even if a will is registered, it is still required to be proved in accordance with law by examining at least one of the attesting witnesses.

3. While registration of a will does not do away with proving a will, the registering authority could be called to testify as to the signature and disposition of the testator while registering the will.
4. The composite requirement of proving a will requires the propounder, i.e. the person relying upon the will to show that
 - a. The will was signed by the testator
 - b. The testator signed out of his free will
 - c. The testator was of sound mind
 - d. The testator understood the nature and effect of his disposition.
 - e. The testator signed in presence of two witnesses who signed in his presence **and** in the presence of each other.
5. The provisions of Section 63 of the Indian Succession Act and Section 68 of the Indian Evidence Act are mandatory and at least one attesting witness has to be called to prove the will.
6. There must be a minimum of two attesting witnesses and the law does not provide for a maximum number. Therefore, a will could also be attested by more witnesses.
7. When the only living witness omits to testify, such omissions cannot be cured by the evidence of other witnesses like a scribe of the will or a beneficiary. Therefore, the role of an attesting witness becomes extremely important.
8. A witness cannot be a beneficiary under the will and must be an independent party. In case both the attesting witnesses are not available due to death, incapacity or being untraceable, Section 69 of the Indian Succession Act comes into play which provides that will can be proved by establishing two things—first, that the attestation of at least one attesting witness is in their handwriting, and second, that the signature of the testator is in the testator's handwriting. This is usually by examining someone acquainted with their writing or through an expert. The Courts accept evidence from handwriting experts, associates or family members acquainted with the handwriting, or other documentary proof to meet the requirement of Section 69.