

PROBATE OF WILL DEED IN INDIA

What is Probate?

According to Section 2 of the Indian Succession Act, 1925, Probate means “the copy of a Will certified under the seal of a court of competent jurisdiction with a grant of administration of the estate of the testator”. It is nothing but a decree passed by a competent court declaring the legality/correctness and genuineness of the Will of the deceased.

Is it necessary to Probate a Will?

Under Section 219 of the Indian Succession Act, 1925, if the deceased has died intestate and was not a person belonging to any of the classes referred to in Section 218 (i.e, Hindu, Mohammedan, Buddhist, Sikh or Jain or an exempted person), those who are connected with him either by marriage or by consanguinity are entitled to obtain Letters of Administration of his estate and effects in the order and according to the rules framed in this section. Under Section 212(2) of the Indian Succession Act, 1925, Hindus, Muslims, etc. are not bound to apply for letters of administration (Probate). It is optional and not mandatory for these persons to seek probate of the Will.

Advantages of a Probated Will

Probate of a Will when granted, establishes the genuineness of Will from the death of the testator and renders valid all intermediate acts of the Executor as such.

What are legal consequences if the Will is not Probated?

If the Will which is required to be probated, under the Act, if not probated, has no legal sanctity and binding force.

What is the time frame within which a Will is to be Probated?

There is no limitation for grant of letters of administration or probate. Where the estate is in the possession of administrator there is no question of the Probate Court delivering the possession to him but the probate will be decisive only with regard to

the genuineness of the Will propounded and the right of the executor to represent the estate.

Who can apply for the Probate of a Will?

According to Section 222 of the Indian Succession Act, 1926, Probate shall be granted only to an Executor appointed by the Will. The appointment may be expressed or by necessary implication. In the absence of the Executor being named in the Will, the Legatees or the Beneficiaries under the Will could also seek probate of the Will.

Documents to be submitted for obtaining the Probate

- Original Will of the deceased.
- Title Deeds pertaining to the immovable property mentioned in the Will, if any.
- Documents pertaining to the movables, mentioned in the Will, if any.

Procedure to obtain Probate, when the legal heir is living in abroad?

Any person who is residing in abroad can file probate in India by granting power of attorney.

Conclusion

A probate is to be treated as conclusive evidence of the genuineness of a Will. In case any objections are raised by any of the heirs, a citation has to be served, calling upon them to consent. This has to be displayed prominently in the court. If no objection is received, the probate will be granted and then the Will can be executed.