

ESTATE PLANNING NEWSLETTER



We are pleased to share the May 2026 edition of our Estate Planning Newsletter, bringing to our readers updates and insights with the objective of keeping them abreast with the latest legal developments.

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Legislations, Amendments and Regulatory Updates

Repeal of Mandatory Probate¹

A significant change in law has been brought by the Repealing and Amending Act, 2025, consequent to which Section 213 of the Indian Succession Act, 1925 (“ISA”) dealing with mandatory probate of Wills executed by Hindus, Sikhs, Jains and Parsis in respect of immovable properties within the jurisdiction of the erstwhile presidency towns of Bombay, Calcutta and Madras has been repealed. Section 213, ISA barred any executor or legatee from asserting their rights before a court of law unless probate of the Will had first been granted by a court of competent jurisdiction in India in the erstwhile aforementioned presidency towns.

This noteworthy change in law brought about by the repeal of Section 213, ISA, would save the executor and/or the legatees from the rigours of procedural law that mandated obtaining probate as a statutory pre-requisite for establishing their rights under a Will.

Will Registration in Maharashtra²

The Government of Maharashtra has recently permitted the registration of Wills at any of the 517 sub-registrar offices across the State on payment of a nominal fee of Rs. 100. Previously, a testator was required to approach the sub-registrar exercising jurisdiction over their place of residence or the location of the property, which often caused procedural inconvenience.

The new measure removes these jurisdictional restrictions and allows testators to register their Wills at any sub-registrar office within the State at their convenience at a modest fee.

Registration of a Will is not mandatory under the Indian Registration Act, 1908, however, it is prudent to register Wills as it strengthens its authenticity and safekeeping and helps reduce the likelihood of disputes among legal heirs. The aforesaid registration of Wills across the State has made it easier and convenient for testators to register their Wills.



¹<https://www.indiacode.nic.in/bitstream/123456789/22046/1/a2025-37.pdf>

²<https://economictimes.indiatimes.com/wealth/plan/will-registration-at-rs-100-in-maharashtra-why-homeowners-in-cooperative-societies-senior-citizens-should-not-delay-estate-planning/articleshow/130958603.cms?from=mdr>

Recent Judicial Developments

2005 Amendment to the Hindu Succession Act Does Not Curtail Daughters' Pre-Existing Inheritance Rights³

The 2005 Amendment to the Hindu Succession Act, 1956 ("2005 Amendment") has provided equal rights to daughters and brought them at par as coparceners with sons in a Joint Hindu Family property governed by Mitakshara law. Further, Section 6(5) of the 2005 Amendment does not apply to a partition effected before the coming into force of the 2005 Amendment, where the partition took place either by a decree of court or a deed of partition duly registered under the Indian Registration Act, 1908. The Supreme Court has held that Section 6(5) of the Hindu Succession Act operates merely as a saving clause protecting pre-2004 partitions from the retrospective effect of the 2005 Amendment.

Facts-A person died intestate in 1985, survived by his wife, four sons, and three daughters. Subsequently, the four sons orally divided the family properties amongst themselves. This arrangement was later reduced to writing and registered as a Partition Deed in 2000, executed solely between the sons and their mother.

The three daughters were excluded from the said partition and were not made parties to the Deed. In 2007, the daughters approached the Court seeking partition and a 1/8th share each in the suit properties. They contended that since their father had died without leaving a Will (intestate), the estate ought to have devolved equally upon all Class I heirs in terms of Section 8 of the Hindu Succession Act, 1956.

The sons contended that the suit was barred by Section 6(5) of the 2005 Amendment as the Deed was executed before the 2005 Amendment came into force.

The Supreme Court held that Section 6(5) operates merely as a saving clause protecting pre-2004 partitions from the retrospective effect of the 2005 Amendment. The Supreme Court further held that the 2005 Amendment granting daughters coparcenary rights by birth does not take away or limit their independent right to inherit their deceased father's property as Class I heirs when he dies intestate. The Court clarified that a partition carried out among the sons alone cannot defeat the daughters' succession rights in the father's share of the property.

Mere Usage and Occupation of Property by a Family Member does not give Ownership Rights⁴

The appellant sister instituted a suit asserting co-ownership over a property in which the respondent brother had permitted the appellant to reside during the COVID-19 period to be close to their ailing mother.

Following the demise of the mother, the appellant allegedly refused to vacate the disputed property, claiming co-ownership therein and contending that the property had been acquired from joint family funds, thereby forming part of the joint family assets, and was subject to a family settlement in which the property was

³B.S. Lalitha & Others v. Bhuvanesh & Others, 2026 INSC 499, https://api.sci.gov.in/supremecourt/2024/44819/44819_2024_11_1502_71181_Judgement_15-May-2026.pdf.

agreed to be gifted to the appellant sister. However, the respondent contended that the property had been sold to him by the mother vide a registered Sale Deed executed in their favour to which the appellant sister was a witness.

The issue before the Delhi High Court was whether the suit property constituted a joint family asset or belonged exclusively to the respondent by virtue of the registered Sale Deed. The High Court ruled in favour of the respondent brother, holding that the appellant sister's claim premised on the alleged family settlement and contribution from joint family funds, even if otherwise maintainable, were liable to be adjudicated in the pending parallel partition suit. The Court held that the appellant's continued occupation of the property was unauthorised. The Court further affirmed that the Sale Deed unequivocally established the exclusive ownership of the respondent brother and the appellant sister failed to challenge the Sale Deed at every stage.

Mere exclusion of Natural heirs does not make a Will Suspicious; Will executed to interfere with the normal line of succession⁵

One B. Sheena Nairi, executed a Will shortly before his demise in 1983 bequeathing his properties to his respondent sister, Laxmi Nairthy, while also recording that he had already made adequate provision for his wife and children. Upon his death, his widow, the appellant and her children assailed the Will as forged and fabricated. The respondent

sister thereafter instituted a suit seeking a declaration of ownership and possession of the bequeathed properties relying on the Will.

The issue before the Supreme Court was whether the Will executed by B. Sheena Nairi was genuine and legally valid, or whether any suspicious circumstances existed to vitiate it.

The Supreme Court held that the Will stood validly executed and was also duly proved through the testimony of an attesting witness in conformity with the provisions of the Indian Evidence Act, 1872 and of the Indian Succession Act, 1925. Further, the Court observed that the mere exclusion of the wife and children from inheritance does not, by itself, render a Will suspicious, particularly where the testator has expressly recorded that sufficient provision has already been made for the natural heirs.

Rising Role of Mediators in Succession Disputes; Former CJI D.Y. Chandrachud Appointed Mediator in the ₹30,000 crore Sunjay Kapur Estate Dispute⁶

Following the demise of industrialist Sunjay Kapur in June 2025, a dispute arose concerning his estate, estimated at approximately ₹30,000 crore, and the "RK Family Trust." The contest principally lies between his mother, Ms. Rani Kapur, his widow, Ms. Priya Sachdev Kapur, and his children from his earlier marriage to Ms. Karisma Kapoor over the validity of a purported Will and the control of family assets. Ms. Rani Kapur alleged that the "RK Family Trust" and the related instruments had been fraudulently

⁴https://delhihighcourt.nic.in/app/showFileJudgment/NBK07042026RFA702024_164842.pdf

⁵Parvathi Nairthi (Dead) and Ors. v. Laxmi Nairthy (Dead) through LRS. and Ors., Civil Appeal No. 6859 of 2014, https://api.sci.gov.in/supremecourt/2013/7342/7342_2013_17_1501_71553_Judgement_21-May-2026.pdf.

brought into existence and approached the Delhi High Court contending their legality. Concurrently, the disputed Will, allegedly bequeaths almost the entirety of the estate to Ms. Priya Kapur, is challenged by Sanjay Kapur's children from his earlier marriage, namely, Miss Samaira Kapur and Master Kiaan Kapur, acting through their mother Ms. Karisma Kapoor.

The Delhi High Court, by way of interim relief, directed preservation of the estate and restrained any dealings therewith pending final adjudication, so as to safeguard the inheritance rights of the children Miss Samaira Kapur and Master Kiaan Kapur. The matter subsequently reached the Supreme Court, which, in its recent order, has referred the dispute to mediation and appointed former Chief Justice of India, Hon'ble Dr. Justice D.Y.

Chandrachud, as the mediator to facilitate an amicable resolution amongst the family.



Thank You for Reading!

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