

RECOGNITION OF CONCURRENT WILLS IN INDIA

With the growth of cross-border mobility, it is increasingly common for Indian citizens and Non-Resident Indians (NRIs) to hold various assets - including homes, bank accounts, business interests, and investments - across multiple jurisdictions. This raises a crucial question in estate planning: whether a person must rely on a single Will to govern all their assets, or if separate Wills can be made for different jurisdictions. A frequent concern is whether multiple Wills can legally coexist without inadvertently invalidating a previous one.

The legal framework for this issue is rooted in the Indian Succession Act, 1925, particularly Section 5. This section distinguishes between succession laws based on the nature and location of the property. It states that (a) succession to a deceased person's immovable property situated in India is regulated exclusively by Indian law, regardless of the deceased person's domicile at the time of death. Consequently, immovable property located in a foreign jurisdiction typically falls under that jurisdiction's succession laws; (b) succession to a deceased person's movable property is governed by the law of the country in which the person was domiciled at the time of his death.

This distinction often necessitates the preparation of separate Wills, particularly when dealing with immovable property outside India, to ensure proper administration under the relevant foreign domestic laws.

A common misconception is that creating a subsequent Will automatically nullifies all previous ones. However, Indian law recognizes the concept of 'concurrent Wills,' where a testator executes separate Wills to dispose of different sets of properties, often based on geographical location. For example, one Will may cover assets in India, and another may cover assets abroad.

Indian courts have consistently upheld the validity of concurrent Wills:

1. **Gujarat High Court:** In *H.H. Maharani Vijaykunverba Saheb v. Commissioner of Income Tax, Gujarat-III (1982)*, the court recognized two distinct Wills: one for assets in India and one for property in England, confirming that the law permits a person to make more than one Will for different items of property.
2. **Bombay High Court:** In *Vimla L. Rajani v. Asha Kanayal Bajaj 2012(4) ALL MR 718*, the court reiterated that creating multiple Wills for separate sets of assets is permissible, provided the Wills are not contradictory.
3. **Supreme Court of India:** In *Palanivelayutham Pillai v. Ramachandran (2000) 6 SCC 151*, the Supreme Court also upheld the validity of two separate Wills dealing with different sets of properties.

These judicial decisions establish that two Wills can validly coexist if each deals with a distinct, consistent set of assets and is not inconsistent with the other. The clarity of scope is the determining factor; for instance, if one Will explicitly governs assets situated only in India and the other exclusively covers property outside India, there is no inconsistency, and both Wills may operate independently.

In conclusion, the legal position is well-settled: a testator may execute separate, valid Wills for assets located in India and abroad as long as they are not inconsistent. This approach is vital for individuals with multi-jurisdictional holdings, as it offers clarity of intent, administrative ease, and smoother estate planning.

Authors:

Mr. Yogesh Bhatia, Partner - Corporate Practice Group
Mr. Tanmay Jha, Associate - Corporate Practice Group