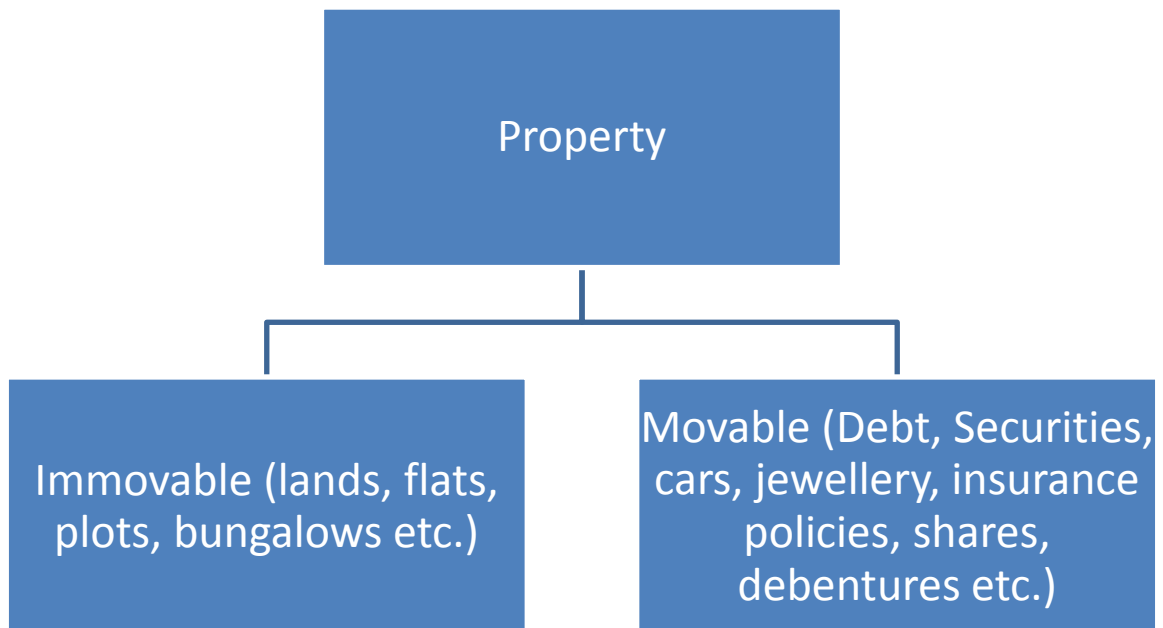


Probate, Letters of Administration,

Succession certificate and Heirship Certificate: Legal position

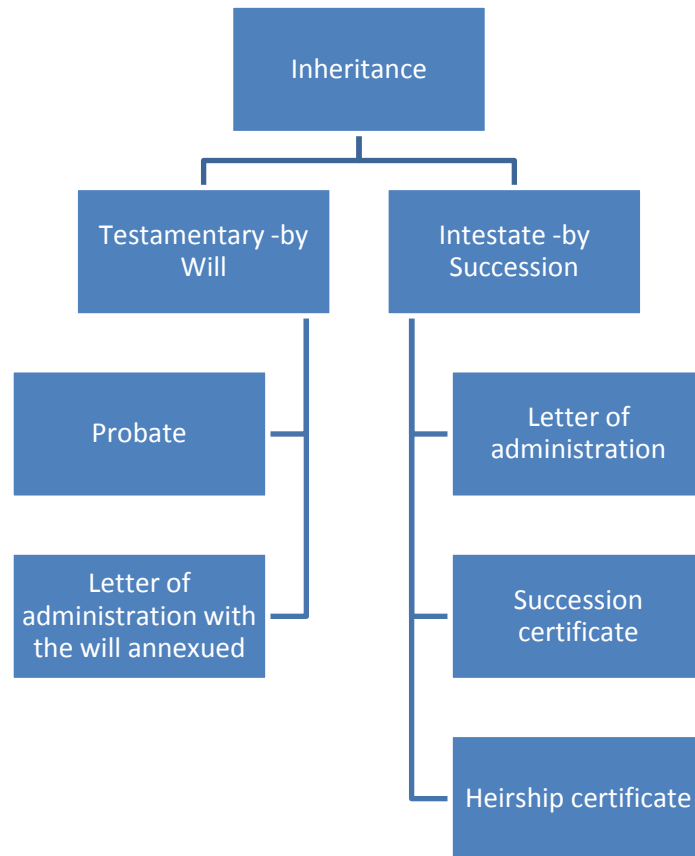
1. A person can own property by two modes; property can be self-acquired and/or can be inherited. If a property is inherited by Will it is called inheritance by Testamentary Succession. If a property is inherited without a Will it is called inheritance by Instate Succession.
2. Property needs to be and has to be managed and administered by some person. An owner of a property is primarily entitled to its administration. In case of the owner being a minor his natural guardian, lawfully appointed guardian, a next friend, the courts of law or any administrator so appointed by courts of law or trustees (in case of trust, where the minor is beneficiary) are the administrators of the property.
3. It is the duty of the administrator to manage and administer the property in hand in accordance of law, in the interest of and for the benefits of all who are legally entitled to right, title or interest in the property.
4. Inheritable property can broadly be divided into two categories as follows:



5. Property may also have encumbrances as loans, mortgages, dues to be paid etc.. It is the duty of the administrator to repay the loans, mortgages and satisfy the dues out of the same property and to make the property encumbrance free. It can be said that a property is always inherited with the assets and liabilities together.

6. There are mainly two modes of inheritance of a property/Estate
 - a) Intestate (by Succession)
 - b) Testamentary (by Will)
 - a) Intestate (by Succession): When a person dies intestate that is without executing a will then his property is inherited by his legal heirs as per and accordance with the law of succession. In India law of succession in the absence of will is governed by personal law of a party. That is to say if a party is Hindu, Buddhist, Sikh or Jains, Hindu Succession Act would be applicable. If a party is Muslim, Muslim personal law would be applicable. In case of Christians and Parsi Indian succession act will be applicable.
 - b) Testamentary (by Will): Testamentary succession is applicable in cases where a person makes a will. The legatee under the in such cases inherits the property bequeathed by the will to such legatee.

7. In case of inheritance of property a person who wants to administer and inherit the property has to follow procedure laid down in the law according to the facts and circumstances and the mode of inheritance. This procedure can broadly be understood with the help following tree diagram:



8. Indian Succession Act 1925 provides for provisions for execution of will and procedure for obtaining a probate, letters of administration with the will annexed, letters of administration without a will and Succession certificate. Under Indian Succession Act provisions relating to probate and Letter of administration are given under Part IX, section 217 to 369, and the provisions relating to succession certificate are given under Part X, section 370 to 390.
9. The provisions relating to Heirship certificate are given under Bombay Regulation 1827.

Each one of the above is described below:

1. Probate:

The provisions relating to Probate are applicable in which executors are appointed. Probate means copy of will certified under the seal of a court of competent jurisdiction with the grant of administration to the estate of the testator.

Probate is a certificate given by the court certifying the copy of will placed before the court, the existence and due execution of the will and the contents of the will as proved. The probate is granted only to an executor so appointed by and in the will. No person other than the named executor in the will can apply for probate in the courts of law. A Probate cannot be granted to any person who is a minor or is of unsound mind. In case the sole executor or sole universal or residuary legatee is a minor a letters of administration with the will annexed may be granted to the legal guardian or to any person as the court thinks fit until the minor attains the age of majority and then only a probate can be granted to such executor.

Probate of a will when granted by the court, establishes the existence, due execution and the contents of the will and also renders valid the acts of an executor done intermediately by him.

A petition for probate can be filed under section 276 which shall be made by filing an application with the will annexed and by stating the time of the testator's death, that it is his last will and testament and it was duly executed, the amount of assets likely to come in the hands of petitioner, that the petitioner is an executor named in the will, and that the deceased was residing or had a property within the jurisdiction of the court.

Section 279, 280 and 281 provide for additional procedure of verification to be followed by the petitioner. Section 282 provides that there shall be punishment for false averment in the petition and verification, the person making the averments and verification knowing and believing to be false shall be deemed to have committed an offence under section 193 of Indian Penal Code.

Section 281 of the Act states that a petition for probate shall also be verified by at least one of the witnesses to the will.

In some petitions for probate if the petition is opposed by any person or the will is challenged by any person and there is a contention as to the grant of probate of the will, the petition will be converted into a contentious case. Section 295 provides for a procedure in contentious cases which states that such Contentious cases shall attract the provisions of regular suit as per the Code of Civil Procedure 1908. In such contentious proceeding the petitioner for probate shall be the plaintiff and the person who opposes the grant shall be the defendant.

When it appears to the court from the facts and circumstances, the petition, the will, evidence laid and in case of contentious proceedings after hearing the parties that a probate of a will can be granted the court shall grant a probate under the seal of the court in the form given in schedule VI Indian Succession Act.

2. Letters of administration with the will annexed:

Generally speaking In case of wills where no executor is appointed any legatees under the will can apply for letters of administration with the will annexed. Letters of administration with the will annexed is granted under section 232 to the universal or residuary legatee when an executor is not appointed under a will or the appointed executor is legally incapable or refuses to act or has died before the testator or before the proving of the will, or in case the executor has died after having proved the will but before he has administered the estate or property of the testator. Under the circumstances mentioned above the universal or a residuary legatee who wants to obtain letters of administration with the will annexed, has to prove the will and then letters of administration with the will annexed may be granted to him for the whole or the part of the estate or property for which he has applied for.

Letters of administration with the will annexed cannot be granted to a minor or person of unsound mind. Letters of administration with the will annexed can be granted only to universal or residuary legatee under the will. Letters of administration with the will annexed can be granted to any person who would be otherwise entitled to administer the property of deceased person or can be granted to any other legatee having beneficial interest or the creditor, who in that case have to prove the will. Letters of administration with the will annexed can be granted to any person other than the universal or residuary legatee, only in case if the universal or the residuary legatee is not in existence or being in existence is not able to or does not wish to obtain letters of administration. Letters of administration with the will annexed cannot be granted to such any other person, until a citation is published

calling upon the next-in-kin, to accept or refuse letters of administration. In case the legatee being minor the letters of administration with the will annexed may be granted to the legal guardian of such minor or any other person as the court think fit until the minor legatee attains his majority.

A petition for letters of administration with the will annexed can be filed under section 276 and shall be made by filing an application with the will annexed along with petition and by pleading the time of the testator's death, that it is his last will and testament and it was duly executed, the amount of assets likely to come in the hands of petitioner, that in what capacity the petitioner is named in the will, and that the deceased was residing or had a property within the jurisdiction of the court.

Section 279 and 280 provides for additional procedure of verification to be followed by the petitioner. Section 282 provides for punishment for false averment in the petition and verification. The person making false averments and verification knowing and believing it to be false shall be deemed to have committed an offence under section 193 of Indian Penal Code.

In some petitions for letters of administration with the will annexed, if the petition is opposed by any person or the will annexed in the petition is challenged by any person and there is contention as to the grant of the letters of administration with the will annexed, the petition will be converted into a contentious case. Section 295 provides for a procedure in contentious cases which states that the proceeding in which there is contention shall take as nearly as may be the form of a regular suit according to the provisions of Code of Civil Procedure 1908. In such contentious proceeding the petitioner shall be the plaintiff and the person who opposes the grant shall be the defendant.

When it appears to the court from the facts and circumstances, petition application, the annexed will, the evidence laid and in case of contentious proceedings after hearing the parties that a letters of administration with the will annexed can be granted, the court shall grant a letters of administration with will annexed under the seal of the court in the form given in schedule VII of the Indian Succession Act.

The procedural provision relating to grant of Probate and Letters of Administration with the will annexed under Indian Succession Act are mostly identical.

3. Letters of administration:

Generally speaking any legal heir in the absence of a will can apply for Letters of administration in case of immovable property of the deceased and properties for which provisions relating to succession certificate are not applicable. Letters of administration is granted to any person who would be entitled to the whole or any part of the estate of the deceased according to law and rules of distribution of the property or estate in case deceased person dies intestate. The letters of administration once granted entitles the administrator to administer the property of the deceased.

Petition for letters of administration shall be made under section 278 of Indian Succession Act 1925. The petition application for grant of letters of administration shall be made by a written petition stating therein the time and place of the death of the deceased person, family or other relatives of the deceased and their respective residences, the right in which the petitioner claims, the amount of assets which are likely to come to the petitioner's hand for administration, and the fact that the deceased at the time of his death was resident of a place or had a property situated within the jurisdiction of the court where he has filed the petition.

The procedural provision relating to contentious proceeding applicable to probate and letters of administration with will annexed and letters of administration without the will are identical. The said provisions are given under section 295 of Indian Succession Act.

The letters of administration shall be granted under the seal of the court in the form set out in the schedule VII in the Indian Succession Act.

Letters of administration without a will is generally granted to the persons who have beneficial right or interest in the estate/property left behind by the deceased person.

4. Succession Certificate:

Generally speaking a legal heir in the absence of a will applies for a succession certificate in respect of movable properties of the deceased being mainly debts and securities. Provisions relating to Succession certificate are given under Part X of the Indian Succession Act 1925. Whereas a probate or letters of administration with the will annexed is granted when there exist a will or when a person is claiming administration of the estate/property belonging to the person who has died leaving behind a will (testamentary succession) and not intestate, a Succession certificate can only be granted to the legal heirs of the person who dies intestate. A succession certificate is a document certified by the courts of law certifying a person to be the successor of a deceased person. The succession certificate authorizes the holder of the certificate as a successor to realize debts and securities of the deceased person, although issuance of a succession certificate does not give right, title and interest solely to the applicant in the property of the deceased person nor does it determine the right, title and interest of the deceased person over any property. However the certificate only entitles the applicant successor to receive the deceased person's property for the purpose of management and administration in accordance with law.

Section 370 of the Act provides for granting of succession certificate by imposing a restriction on grant of certificate under the part. There are three restrictions imposed on the grant of succession certificate which are:

- a) That the property in respect of which the certificate is asked for must be a debt or security,
- b) It must not be in respect of any debt or security to which a right is required by section 212 to be established by letters of administration to person belonging to Hindu, Muhammandan, Buddhist, Sikh, Jain and Parsi religion.
- c) It must not be a debt or security to which a right is required by section 213 to be established by probate.

Section 372 of the Act provides for particulars to be mentioned in the application for the grant of succession certificate. The section states that the application shall be made by stating the time of the death of the deceased,

the ordinary place of residence of the deceased at the time of his death if the residence not being within the jurisdiction of the court to whom the application is made then the property of the deceased within those limits and jurisdiction, family and near relatives of the deceased with their respective residences, the right in which the petitioner claims, the absence of any impediment and restrictions provided under section 370 or so provided under any other acts and the debts and securities in respect of which the certificate is applied for. The application for the grant of Succession Certificate shall also be accompanied by deposit of court fees as payable under the Court Fees Act.

Section 372 (2) provides that if a petition contains any averments which are made by the person making and verifying the petition knowing and believing them to be false, the said person shall be deemed to have committed an offence under section 198 of the Indian Penal Code.

Further, there is a procedure provided under section 373 to be followed by the courts of law. The court shall fix a day for hearing, notice of the application shall be served, posted on some conspicuous part of the court premises and published, and shall decide in a summary manner the right to the certificate.

Once the court comes to the conclusion and decides to grant a certificate, section 374 of the Act provides for the contents to be mentioned in the certificate. The court while granting a certificate shall specify the debts and securities as set forth in the application for the succession certificate and thereby empower the person to whom the certificate is granted to receive interest or dividends, or to negotiate or transfer, or both to receive interest or dividends on and to negotiate or transfer the securities or any of them. The court may also extend the certificate to any other debt or securities which were originally not specified in the application for the succession certificate. The succession certificate or the extended certificate shall be granted in the form set forth in schedule VIII of the Indian Succession Act.

The effect of a succession certificate is provided under section 381 of the act and states that the succession certificate so granted by the courts in respect of the debts and securities specified therein shall be conclusive as

against the persons owing such debts or liable on such securities and shall also afford full indemnity to all such persons.

Section 384 provides for appeal against the order of court under this part which read with section 388 provides that an appeal shall lie to the High Court from an order of district Judge and in case if the power of district Judge is invested in the inferior courts to the district Judge the appeal shall lie to the district judge itself from the order of such inferior court.

5. It is further important to note that as per the Civil Manual, Civil Judge Senior Division has been vested with all the powers of District Court under the Indian Succession Act for issuance of above discussed certificates and to take cognizance of contested proceedings coming under their territorial jurisdiction.

6. Heirship certificate:

Generally speaking Heirship certificate is applied for by the legal heirs in the absence of a will of deceased for the purpose of certification by the court about the heirship of the deceased. The Heirship certificate is issued and granted under "Bombay Regulation VIII of 1827 Administration of Estate Regulation". The Regulation was enacted to provide for the formal recognition of heirs, executors and administrators, and for the appointment of administrators and managers of property by the court. When any person dies his legal heirs, executors and administrators automatically inherit and assume the administration and the management of the estate and property of the deceased. However sometimes the right, authority or the capacity of the legal heirs is challenged disputed or objected or in some cases just for convenience or to give confidence to the persons in possession of, or indebted to the estate/ property of the deceased and to deal with them a certificate of heirship needs to be obtained.

Section 2, 3 and 4 of the Regulations provides for the grant of the certificate and the procedure to be followed for the issuance of and grant of the certificate. Section 2 states that on an application by a desirous heir, executor or

administrator for the grant of a heirship certificate, the judge shall issue a proclamation, inviting all persons who dispute the right of the applicant to appear and file their objections within one month from the date of proclamation, in the absence of any sufficient objections the court will proceed to take proof and evidence from the applicant regarding his right and being satisfied, grant a heirship certificate in the form given in Appendix B of the Regulation. Grant of the certificate shall be declaring the applicant to be a recognized heir, executor or administrator of the deceased.

In case there is any objection to the right of the applicant the court shall fix a date for hearing and shall issue at least eight days' notice to the parties. The court may then hear and investigate the right claimed by the applicant and the objections posed by other party and shall examine the evidences and witness of both the sides and then decide to grant or to refuse to grant the issuance of heirship certificate.

Section 7 provides that the heir, executor or the administrator holding the heirship certificate shall be entitled to do all acts and grant all deeds as a competent legal heir, executor or an administrator can legally do and can also sue or obtain judgments in that capacity. However the section makes it clear that the certificate confers no right to the property nor does it finally determine a right nor does it effects or injures anybody's legal and better right then the person holding the certificate, but grant of certificate only indicates that the person holding it is in the legal management of the property of the deceased and so the person holding the certificate shall remain accountable to all those who are having interest in the property of deceased.

The court under the Regulation has been further bestowed with the power to appoint an administrator for the management for the time being to the deceased's property if there is no person to take charge or to assume the management or where the right to succession is under dispute or where the legal heirs are incompetent to take the management for the reasons being a minor, insane or having any other disqualification and even in a circumstances where a person has died intestate leaving behind property without any known heir the court may appoint an administrator.

7. Conclusion:

In the absence of a will Succession certificate is required for debts and securities and movable properties like provident funds, bank deposits, shares, loans etc. Again in the absence of will for the inheritance and administration of immovable property like land, buildings, plots etc. and properties like jewelry, etc. Letters of administration is required. Letters of administration with the will annexed is required in case there is a will left behind by the deceased however no executor is appointed by the deceased in the will or the executor has refused to be executor or has died. In cases of wills in which an executor is appointed the said executor is required to apply for a Probate. However Heirship certificate aims at mainly certifying and identifying the legal heirs. None of the documents give any right, title and interest to the applicant in the property of the deceased person except an authority to administer, inherit and deal with estate/property nor does the issuance of the document determine the right, title and interest of the deceased person over any property.