

What's in the will?

By Harry Kessaram

A will is a public document only after it has been admitted to probate in the Supreme Court. After probate, any member of the public can obtain a copy of a deceased's will on payment of a fee. Circumstances sometimes arise however where a person has a will and dies, but for some reason or other the will is never probated. What do you do if you suspect that you have been left something in the will?

What you can do is ask the person who you think may have the will to let you have a look. They may say they don't have it or alternatively that they do, but don't want to show it to you. If you are an heir of a deceased person, and it appears that there is no will (or at least that's what you're being told), you can apply for Letters of Administration of the deceased's estate which would give you authority to marshal the assets of the deceased and deal with them in accordance with how those assets are prescribed to be administered under the provisions of the Succession Act 1974. As every application for letters of administration must be advertised in the local paper three times at weekly intervals, it gives notice to any person in possession of a will for the particular deceased person to make the will known. Any attempt to deliberately conceal a will with intent to defraud is a criminal offence under Section 380 of the Criminal Code 1907 which is punishable on indictment with imprisonment for a term of two years, it being immaterial if the testator is living or dead.

A goodly number of people avail themselves of a service offered by most lawfirms whereby they will hold a client's will in safekeeping until such time as it is required. Such firms routinely answer questions from other lawfirms as to whether they hold a will for a particular dead person or not. The will is only released to the nominated executor or his attorney. It may be possible therefore to find out whether a will is in existence and perhaps who may have last had

control of it. But if the will hasn't been probated and you think you might be mentioned in it, what can you do at this point?

As far as legal manouevers go, there is provision in the Non Contentious Probate Rules (made pursuant to the Administration of Estates Act 1974) to get information about testamentary documents. Rule 42 enables an interested person to serve a citation on an executor to propound (or produce) the will. In the event no will is produced (or not produced with reasonable diligence) the citor can apply by summons for a grant of administration as if the will were invalid.

Under Rule 44, the Court may in a summary way order any person to produce and bring in to the Supreme Court Registry any testamentary paper or writing. The Court can also summon any person, where it appears that there are reasonable grounds for believing that he has the knowledge of a will, to come to court and answer questions in open court about the will. The Court can order the will to be produced and failure to comply will amount to contempt of court, for which imprisonment is the cure.

It's an unsettling feeling when you feel you may be being done out of an inheritance. Unfortunately, you never know whether you have something or not until you see the will. And if you have to invoke the assistance of a lawyer to get sight of a will in which it happens you aren't mentioned after all, then you're out of pocket the cost of the legal fees to boot. But then again there is the peace of mind that comes with certainty of knowing.

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