

LAW CRUMBS

When Property Changes Hands

The Law Reads Between the Lines

WILL VS. GIFTS VS. SETTLEMENT

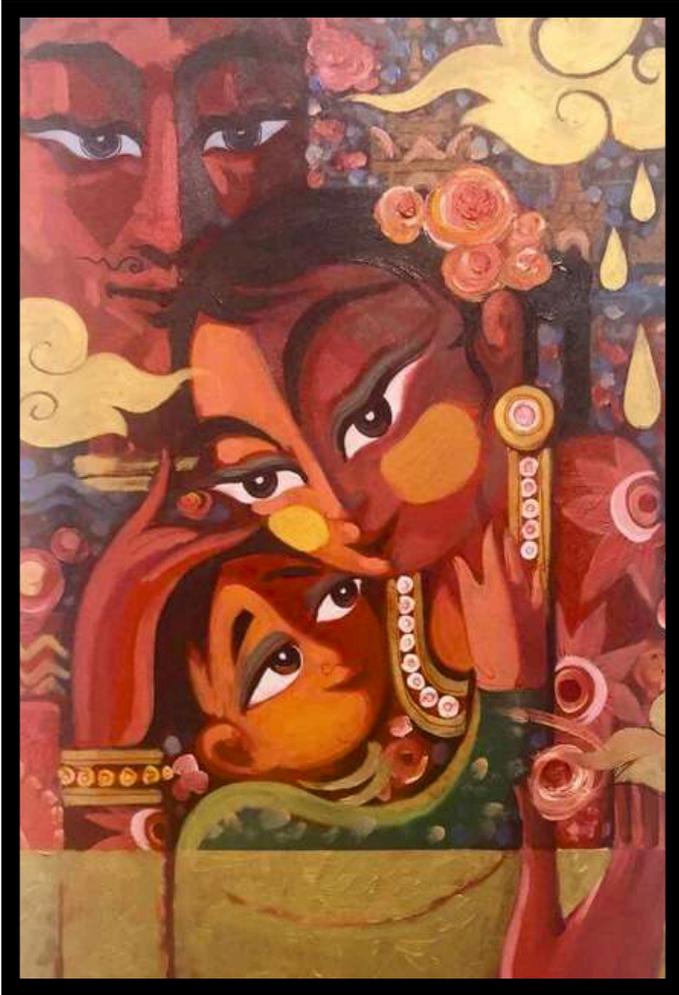


King Henry VIII, famous for his six wives, faced complex succession challenges. He gifted lands and titles, like to his son Henry FitzRoy, but securing heirs was difficult. His will outlined succession for his children amid uncertainty. Through royal deeds, he transferred church lands to nobles. Managing gifts, deeds, and wills was complicated by his marriages and the struggle for a clear heir, shaping Tudor inheritance and power.

INTRODUCTION

*“ The legacy is not what you leave
for your family. It’s what you leave
in them.”*

— Peter Strople



60%

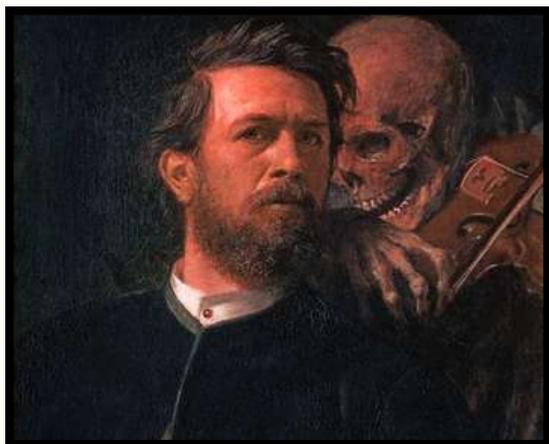
of intra-family
disputes in India
arise from unclear
or improperly
documented
succession
arrangements,
highlighting the
legal necessity for
intent to be
expressed through
precise and
enforceable form.

In families, succession is rarely just about assets. It is about memory, meaning and the quiet expectation that what is passed on will be preserved, honored and grown.

Whether it’s a home, farmland, or a family run business, the act of transferring it carries more than economic weight. It carries sentiment. Yet, when the instruments of that transfer are not chosen with legal precision, even the most sincere intention can sow confusion.

Gifts, settlements and wills may appear similar to the untrained eye. But in law, they operate on different planes. Each answers a separate question. Is the transfer immediate? Is it mutual? Does it take effect only after death?

UNDERSTANDING THE LEGAL ARCHITECTURE



WILL

A will is a testamentary document governed by the Indian Succession Act, 1925. It reflects the testator's intention to distribute property after death and creates no rights during their lifetime.

A valid will does not create any present legal interest. It is enforceable only if properly executed and not overridden by a later will or codicil. Courts often examine the clarity of language, consistency, and the testator's mental capacity at the time of execution.

A Person Male/ Female Dies



Without Making A will

Hindu,
Jain, Sikh,
Buddhist

Christian,
Parsi, Jew

Muslim



Hindu
Succession
Act, 1956

Indian
Succession
Act, 1925

Muslim
Law
(Shurriyat)

After Making A Will

Hindu, Jain, Sikh,
Buddhist, Jew
Christian, Parsi

Muslim



Indian
Succession
Act, 1925

Muslim
Law
(Shurriyat)



KEY LEGAL FEATURES

Posthumous Operation

A will takes effect only after the testator's death. No ownership rights are transferred during the testator's lifetime.

Revocability

It can be modified or revoked at any time before death, provided the testator remains competent.

Execution Requirements

Must be signed by the testator and attested by two witnesses who saw the testator sign the document.

Registration

Not mandatory under Indian law, but strongly recommended to avoid disputes and to strengthen its evidentiary value.

GIFT DEED

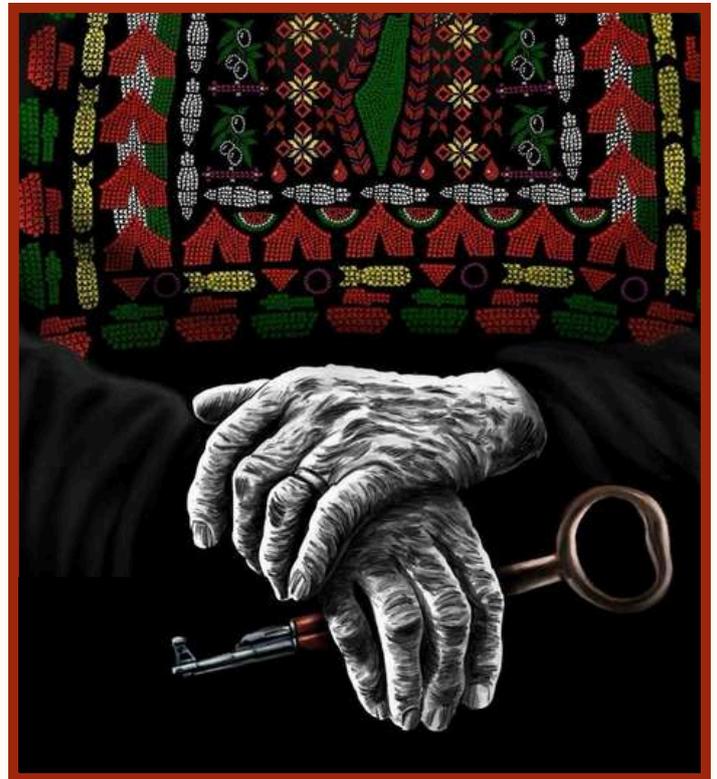
A gift is a *gratuitous transfer* of ownership from one person (donor) to another (donee), made voluntarily and without any monetary consideration. The essence lies in the donor's free will to part with the property immediately and **irrevocably**. The transfer must be **accepted by the donee during the donor's lifetime** for it to be valid.

ILLUSTRATIVE APPLICATION IN LAW

A father, during his lifetime, executes a registered gift deed transferring absolute ownership of a residential flat to his daughter. The deed clearly states that the transfer is being made voluntarily, without consideration, and out of natural love and affection. The daughter signs an acceptance clause within the document, takes symbolic possession, and begins managing the property, including paying property taxes and securing utilities in her name.

Despite this, years later, the father attempts to cancel the gift by executing a unilateral "revocation deed" without her consent.

Under Indian law, this cancellation is void ab initio. The gift was completed once acceptance was made during the donor's lifetime and the transfer was registered. The donor, having relinquished title and control, has no legal authority to revoke the gift unless the original transaction is proved to be the result of coercion, fraud, or undue influence. This would require a specific legal challenge and evidentiary burden.



ESSENTIAL LEGAL ELEMENTS

Voluntariness

01

The transfer must occur in praesenti (i.e., in the present). A future promise to gift is not valid under Section 122. If ownership is postponed or conditional upon the donor's death, the document is more likely a will.

The donor must act out of free consent, uninfluenced by coercion, fraud, or undue influence. Courts will examine the donor's capacity, mental state, and absence of pressure.

Present Transfer

02

Absence of Consideration

03

A gift must be made without expecting anything in return. Even moral obligations or promises do not qualify as consideration. If there is an exchange, even in kind, the transaction may be treated as a contract or sale, not a gift.

Acceptance is mandatory and must occur during the donor's lifetime. This can be express or implied, but without it, the gift fails. Courts have held that silence or inaction cannot constitute valid acceptance unless accompanied by conduct that implies it.

Acceptance by Donee

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Registration Requirement

05

Under Section 123, a gift of immovable property must be in writing and registered under the Registration Act, 1908. Oral gifts of immovable property have no legal validity, regardless of intent.

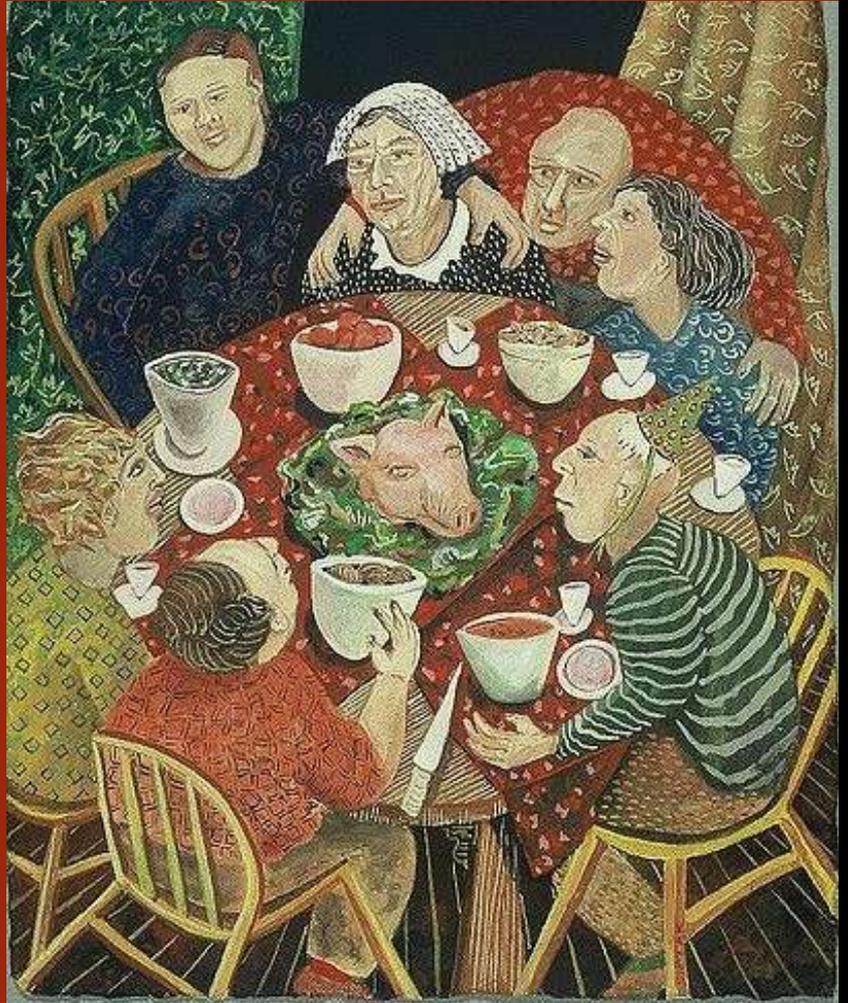
Irrevocability

06

Once a gift is executed, accepted, and registered (if required), it cannot be revoked, even if the donor later changes their mind. The only exceptions are if it was obtained by fraud, coercion, or undue influence, in which case it can be challenged under general contract law principles.

FAMILY SETTLEMENT

A family settlement is not defined in any statute but is a well-established legal concept in Indian jurisprudence. It functions as a mutual arrangement among members of a family to resolve current or anticipated disputes related to property, succession, or business interest, often without formal litigation. The primary objective is to secure family peace and preserve relationships, even where ownership rights are not strictly delineated under formal title.



ILLUSTRATIVE APPLICATION IN LAW

Following the death of a matriarch, her three children face potential disagreement regarding jointly held residential property and interests in the family's retail business. To avoid a protracted dispute, they agree to a distribution under which the eldest sibling receives full ownership of the property, the second retains exclusive control of the business, and the third receives a share in the income. This agreement is recorded in writing as a reflection of a prior oral understanding and signed by all parties.

Several years later, one party attempts to dispute the arrangement. A court, on review, upholds the family settlement, observing that the parties had acted upon the terms in good faith, derived benefit from the arrangement, and intended it as a final resolution. The court prioritises equity and family intent over formal registration

KEY LEGAL FEATURES



Mutual Consent

All parties must enter the settlement willingly. Any agreement tainted by coercion, fraud, or undue influence is not legally valid.

Scope

Covers ancestral, self acquired, or jointly held property, including interests in family businesses or movable assets.

Form

The law permits family settlements to be oral. If the terms are recorded in writing and intended to serve as a future reference or to affect title, the written document must be registered under the Registration Act, 1908. However, a memorandum simply documenting a prior oral understanding does not require registration.

Consideration Based on Equity

The legal system treats peace and mutual compromise as sufficient consideration. The absence of monetary exchange does not invalidate the arrangement. The intent to avoid future disputes and litigation carries legal weight.

Favorable Judicial Treatment

Courts favor such arrangements under the principle of special equity. As long as the settlement is fair, entered with full knowledge of the implications, and intended to avoid litigation, courts will uphold its validity even where technical lapses exist.

The Challenge of

COMPOSITE DOCUMENTS

Doctrinal Principle

“Postponement of possession is not postponement of ownership.”

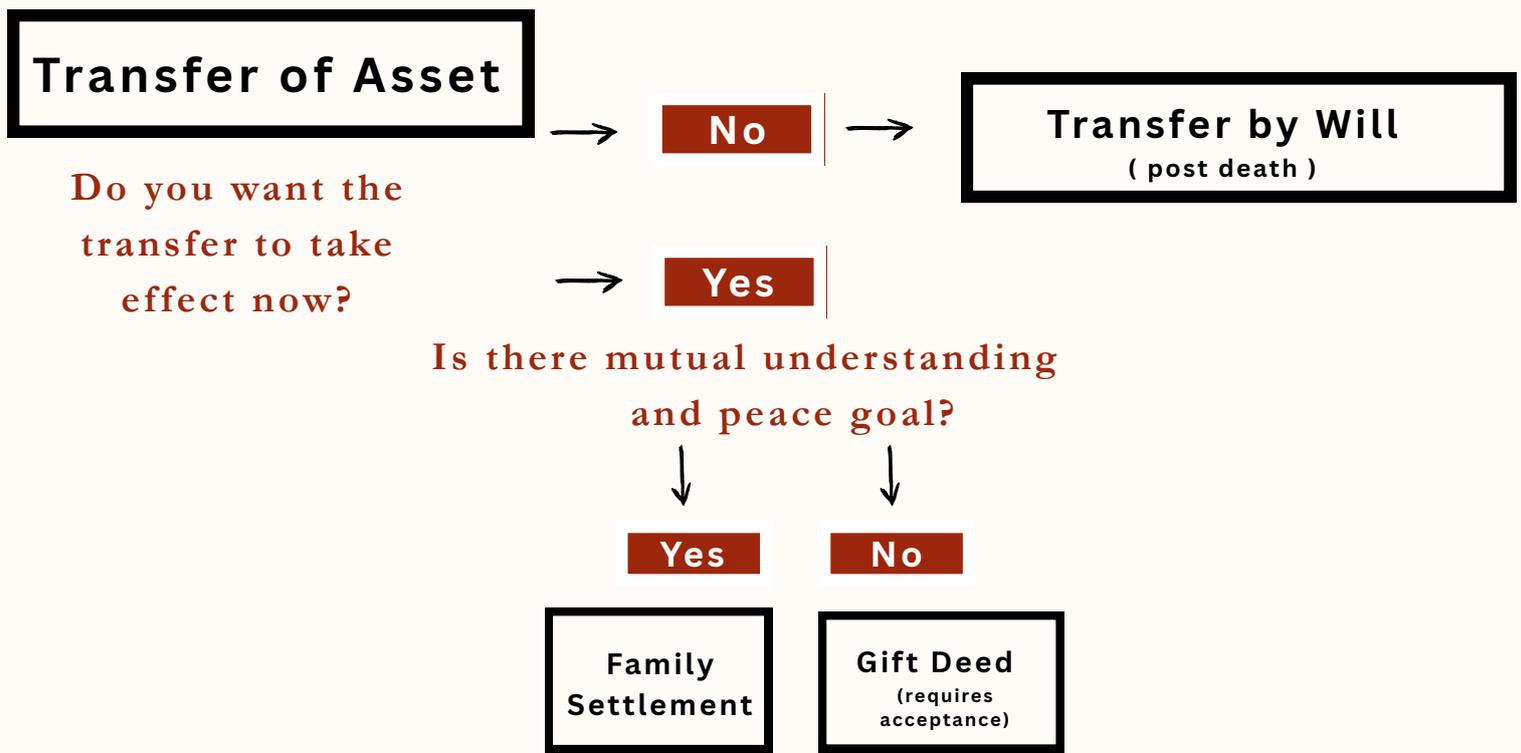
If the legal title vests today even if control remains with the transferor it is a present conveyance, not a will.

In practice, especially in intra-family dealings, documents often combine clauses that seem testamentary (like “after my death”) with clauses suggesting present transfer (like registration or immediate rights).

Indian courts apply the doctrine of severability, which allows separating testamentary and non-testamentary components:

1. **The present transfer clauses** (settlement) may be upheld if clearly expressed.
2. **The deferred clauses** (will) will take effect posthumously.
3. However, **registration** and **clear drafting** become crucial to enforceability.

CHOOSING THE RIGHT INSTRUMENT



INTERNAL CASE STUDY

by Gurinder & Partners

The following matter, handled by our firm, illustrates how layered legal planning, starting with a family settlement and culminating in a valid gift and a registered will, can secure both ownership and legacy while ensuring legal enforceability.

In 2012, A, who owned a property in Greater Kailash, and his brother B, who owned a property in Vasant Vihar, entered into an oral family settlement which was later reduced into writing. The essence of the arrangement was straightforward: A would gift his Greater Kailash property to B, and in return, B would transfer or gift his Vasant Vihar property to A. This mutual understanding, aimed at preserving familial harmony and resolving potential disputes, reflected the typical character of a family settlement as recognized by law where parties, in a spirit of compromise, agree to adjust their rights in respect of joint family or individually owned properties. Although such settlements do not require registration if they merely record an oral partition or arrangement, they must be registered if they themselves effectuate a transfer of rights.

Despite the written settlement and its clear terms, a dispute soon arose when B reneged on his commitment to transfer the Vasant Vihar property. Given that the settlement included an arbitration clause, A invoked the same, and proceedings commenced. After a full-fledged arbitration and exhaustive evidence from both sides, an award was passed directing both brothers to act upon their obligations and execute gift deeds in each other's favour. The arbitral award provided legal finality to the dispute and elevated the previously uncertain oral and written settlement into a binding, enforceable determination.

In compliance with the award, B eventually executed a gift deed transferring the Vasant Vihar property to A. This gift, in accordance with Section 122 of the Transfer of Property Act, 1882, was validly made in writing, duly signed, attested by two witnesses, and registered, thereby satisfying all legal requirements of a valid gift.

The act of gifting meant that B had divested himself of all right, title, and interest in the property during his lifetime, and A had become the absolute owner.

Having endured a protracted legal battle and aware of the uncertainties that can arise within family arrangements, A took immediate steps to secure the property for his only son. Rather than opting for another gift or sale, A chose to execute a will in favour of his son and got it duly registered. This allowed A to retain full control over the property during his lifetime while clearly expressing his testamentary intention to pass the property to his son upon his death. A will, being inherently revocable and operative only posthumously, gave A the comfort of flexibility, control, and clarity regarding succession.

A's conduct through the course of this matter reflects both legal prudence and personal foresight. He has experienced, firsthand, the intricacies and implications of a family settlement, the absolute nature of gifts, and the strategic use of a will in estate planning. What began as a simple understanding between two brothers evolved into a contested arbitration, a formal transfer of property through gift, and ultimately, a testamentary disposition aimed at protecting the next generation.

The family settlement, though initially met with resistance, was upheld and enforced through arbitration. The gift deed formalised the transfer, and the will has now safeguarded the future interests of his family. This case is a testament to the importance of proper documentation, timely legal intervention, and a layered approach to estate planning. A has emerged from this journey with his rights intact and his legacy secured.

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