

“प्रज्ञान”

Means of Wisdom

**I have a nomination in place  
I hold assets in joint name,  
Do I still need a Will?**



Anybody who owns an asset should get nomination done for all the assets and this should not be optional.

**But one needs to understand that a nominee is a mere custodian and may not be the ultimate beneficial owner.**

For e.g. Most of us would have a nominated some one as a nominee for the bank accounts.

In case of demise of an individual the bank will hand over the proceeds of the account to the nominee, with the basic assumption that the responsibility of identifying the ultimate beneficiaries lies with the nominee.

In case You have executed a will and the beneficiary of a specific bank account is someone else other than the nominee, then in this case the nominee is responsible to identify the executor or the beneficiaries of the will.

Upon the death of an owner, will the rights in the property be transferred to a nominee or the successor to the property? We examine what the current legal standing on the issue is, after a landmark judgement from the Bombay High Court.

A legal question that has been put to test time and again before various courts, whether the rights of nominees prevail over those of successors, in respect of various subjects of nomination, such as financial instruments, shares in a cooperative society, etc.

A division bench (two-judge bench) of the Bombay High Court, comprising Justice Oak and Justice Sayed, have upheld the rights of successors over nominees. The court stated that the nominees are appointed, to ensure that the subject matter of the nomination is protected, until the legal heirs or legal representatives of the deceased take appropriate steps, such as obtaining probate of the will of the deceased or letters of administration of the estate of the deceased, to claim their rights over it.

In 2016, the Bombay High Court laid to rest the position of a nominee versus a legal heir in relation to the shares of an Indian company.

The Court held that a nomination does not in fact, override the laws of succession in India. A nomination is made with a view to ensure that the estate of the deceased is protected until such time the legal representatives of the deceased can take appropriate steps towards succeeding to such estate.

Thus, the nominee of shares of an Indian company is not the legal owner of the shares and therefore, the legal heirs of the deceased shareholder would have a rightful claim over such shares.

You may hold your residential asset in joint name with your wife. Most of us assume that if the husband dies then the wife on an auto basis will become the owner. But that's not true.

In case if the husband dies intestate (without writing a will) then his share will devolve to his surviving class 1 legal heirs who are his wife, kids, and mother in equal proportion.

Now imagine a scenario that post his demise his mother also dies. If this gentleman has siblings and mother also dies intestate, then his siblings will become the beneficiaries of his estate because his mother's share will devolve on them.

It is always advisable to write a Will and cover your wishes. This will ensure that the rightful beneficiaries will receive their benefits.

Though it is not compulsory to register the Will in India , we strongly recommend anyone who is writing a will to register the same, to avoid any dispute in the future in case the original Will is not found or damaged. One can always get a copy from the government records.

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