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kcmHeirloom

Succession Planning

Lights, Camera, Will
Insights on Videotaping
Execution of Wills

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Background

Welcome to **kcmHeirloom**

Succession planning and family governance are more than just legal or financial matters—they shape the legacy of generations. **kcmHeirloom** is a dedicated publication offering insights into the complexities of succession planning, wealth preservation, and the stewardship of family assets. From 'The challenges of passing down a family business' to 'Selecting the best instrument for succession' or 'Steps which can be taken to ensure effectiveness of a will'—these are not just technical topics but real-life concerns that influence families, businesses, and legacies.

Through expert perspectives, case studies, and evolving best practices, we aim to provide clarity on key challenges and opportunities in sustaining family wealth across generations. Whether you are a business owner, trustee, or next-generation leader, **kcmHeirloom** will serve as a valuable resource for informed decision-making and enduring legacies. Stay engaged as we explore the legalities, principles and strategies that define lasting family wealth.

Proving wills and common litigation exposures

"Where there is a will, there is a legal dispute" – although this is often spoken in good humour, one cannot deny the truth in this. This is evidenced, in India as well as the West (USA, UK etc.), by the multitude of reported cases involving contested wills. Naturally, the person who authors their will (i.e., testator, testatrix) expects to pass on the property to the beneficiaries as per their wishes expressed in the wills. They would want to ensure effective disposition of property to proper heirs by taking all the necessary pragmatic steps to fortify the said will.

It becomes extremely crucial for us to understand the common grounds of contesting a will so that timely and appropriate steps can be taken by the testator to strengthen the will. Some common grounds of challenging wills are:

- a. The will is not genuine, i.e., it is forged (e.g., fraudulent addition in some blank space in the original will etc.).
- b. There is a lack of testamentary capacity – the testator should be one of sound mind and must understand the contents of the will.
- c. The will is obtained from the testator by undue influence, coercion or fraud.
- d. There are suspicious circumstances surrounding the will which are unable to satisfy the judicial conscience.
- e. There also remains a risk of the witnesses being bought out by the will contestants.
- f. For any ambiguity in the will, it is argued that the intent of the testator was in favour of the will contestant and so the will should be construed accordingly.

Traditionally, wills have been proven by written (documents) and spoken (witness examinations/testimony) evidence. With the rapid progress in technology, cameras have become extremely accessible and easy to use for almost every person. In this piece, we highlight how a proper video recording can prove to be an extremely potent tool for proving wills as well as for ensuring proper posthumous disposition of property. Key considerations to prepare strong video evidence in this respect are also highlighted for the benefit of readers.

Audio-visual recordings as evidence to prove wills in India

With advent of the Information Technology Act, 2000, a well-prepared video recording of the 'will execution ceremony'¹ can serve as an excellent source of evidence when the need arises. A video recording of the execution of will also significantly assists the court in satisfying its judicial conscience pertaining to the validity/genuineness of the will. The hon'ble Delhi High Court, in the case of *Sayari Kumari v. State & Ors.*², specifically observed that "...the making of the video of the execution of the last Will in the present case has made the task of the Court easier in arriving at its conclusion as to its genuineness." The court also validated the legal admissibility of video recordings as evidence by relying on authoritative judicial precedents³ and the provisions of Information Technology Act, 2000. Hence, from a legal perspective video recordings are valid evidence and not only recognised but also encouraged by the courts as such.

¹ The event of signing of the will by the testator

² Sayar Kumari Vs. State and Ors. MANU/DE/2629/2009 dated 09.10.2009

³ State of Maharashtra v. Prafull B. Desai MANU/SC/0268/2003: AIR 2003 SC 2053; Sube Singh v. State of Haryana MANU/SC/0821/2006: AIR 2006 SC 1117; Rajendra Singh Rana v. Swami Prasad Maurya MANU/SC/0993/2007: AIR 2007 SC 1305

Hints from the courts to ensure proper videotaping

Well-prepared video evidence can be used to prove (among other things) – the testator's testamentary capacity; that there was no undue influence or coercion; the presence of witnesses at the time of execution; testator's intent; genuineness of the will. We may take hints in this regard from the judiciary's observations in various cases involving video recording of execution of wills.

The hon'ble Delhi District Court⁴ has, in one of its case⁵, extensively analysed the video recordings which were presented before the court as evidence for proving the will. The court observed that while the petitioners claimed that recordings were made on 26 February 2019, the metadata⁶ and filename indicate that the recordings first came into existence on 23 September 2019. The court found this sufficient to disregard as reliable evidence. In view of multiple gaps in proving the will (especially, the testamentary capacity) and the video evidence (which apparently, worked against the petitioners), the court ultimately held against the petitioners. Although the video evidence appeared dubious to the court, it still went on to analyse the video recordings and made very interesting comments leading to a trail of clues as to what good video evidence should comprise of –

- Video recording of a will execution would be most effective if in the said video, the testator's appearance is convincing. That

⁴ District court decisions are not binding on other courts but have a high persuasive value. Especially when these decisions are based on sound reasoning and legal analysis.

⁵ Upendra Singh & Anr. vs . State & Ors. dated 10.05.2023, CNR No. DLST01-006681-2019 (Delhi District Court)

⁶ This includes, the time & date of creating a file, name of the file's creator, last modified date etc. In simple terms, the details you get when you right-click on a file and select 'properties' in the floating menu.

is to say, the 'optics', should preferably reflect the true facts regarding the testator. For instance, it may be the case that the testator is genuinely of sound mind in all respects but is bed-ridden due to advanced age or suffers from some disability which makes their appearance 'weaker'. In such instances, such optics may be exploited by a will contestant during trial. Sufficient safeguards must be incorporated in the video evidence when using video evidence in such a case. It is worth noting that observations were made in a 1989 case⁷ decided by the Ohio appellate court where the appearance of the testator in the video was mentioned as one of the factors leading to the rejection of probate.

- The video needs to be recorded in one take. No do-overs are allowed. If one were to record multiple takes, it becomes tricky – what would they do with the bad take? Erase it, conceal it? Multiple recordings may work against the desired intent. Further the storage device should also be secure and reliable. Metadata of the files should be preserved and there should be no editing/tampering of any sorts with the file.
- The primary focus should be on ensuring that – (i) the testator is in sound mental condition and knows what he is doing and, (ii) the testator knows and understands the contents of the will. For this, the testator must first introduce/identify himself and then read out his will to the recording camera prior to execution. He should also state that he understands the will and agrees with its provisions.

⁷ Trautwein v. O'Brien, No. 88AP-616, 1989 WL 2149, at *1 (Ohio Ct. App. Jan. 12, 1989)

- d. In addition to this, the video recording should also capture the witnesses present during execution and all other persons (if possible, even they should identify themselves by name). The venue for execution of will should be proper (i.e., it should not be in a setting like a hospital – as was done in the Delhi District Court's case referred earlier).
- e. The notary public officer should be present in the video recording and should notarize the will (make entry in the notary register, issue receipt for notary fees etc.) in the video recording itself.
- f. It must be ensured that there are no suspicious circumstances surrounding the execution of the will (e.g., a beneficiary in the will getting substantial benefit should not be the one playing a major role in getting the will executed, being a witness etc.). For this the entire location and the people present ought to be adequately captured in the video. It may also be showed, to the best possible extent, that the video recording is being made voluntarily without any external pressures/influences.

In another case⁸, the hon'ble Calcutta High Court analysed the video evidence for proving of the will but the question that arose was – whether the document which was appearing in the video was in fact the document which was being presented and claimed as being the testator's will before the court. Though the findings are interesting, what is relevant here is the fact that it is important that the will is not only read out by the testator in the video, but also the will document is also shown clearly so that there remains no doubt about which document is shown in the video.

⁸ Nirmal Kumar Saha & Anr vs Dipankar Saha & Ors [AIRONLINE 2018 CAL 630, dated 17.05.2018]

Most likely objections and issues with audio/visual evidences

Of course, the most obvious claim which could be made is that the video recording may be alleged by the opposing party to be a fake. This should be easy to counter with the support of other traditional evidence and safeguards. Accordingly, such video evidence may be viewed as one of the arrows in your quiver – and, considering the weight such evidence carries, a golden arrow.

The opposition may also claim that the video recording was tampered/edited/altered. A similar claim can also be made for documentary evidence (i.e., a doctored will, a forged sign etc.). However, for video evidence this issue can be addressed to some extent by having the time (HH:MM:SS) & date continuously appearing (updating in real time) in the recording footage itself. Ensure that the video is stored only in one place and the storage device/cloud has security features which record each and every access, modification etc. ('audit trail'). It may not eliminate the risk explained here, but this sure helps in mitigating the risk to a large extent.

And what about deepfakes!

What if the opposition produces a will execution video recording which is a deepfake? Deepfakes are AI-generated synthetic media in which visuals or audio are manipulated to create deceptively realistic content⁹. It is difficult to make out, through the naked eyes, if such audio-visual content is genuine or fake. It has the potential to substantially mislead the viewers. There are technological antidotes¹⁰ to this and deepfakes may also be identified with professional help, but one cannot deny the fact that such sophisticated fake evidence would prove a real menace to legal trials – not only for will contests but for any trial whatsoever. In fact, the courts are already vigilant as to this aspect and are looking for corroborating evidence where the audio/visual evidence appears dubious¹¹. Thus, detecting a deepfake is the main challenge which can be addressed (like any other fake evidence) by ensuring availability of sufficient corroborating evidence. It must be noted that this in no way impairs the usefulness of a genuine video evidence of will execution ceremony supported by the necessary traditional (written/spoken) evidence. If anything, the possibility of deepfakes strengthens the case for having a proper video recording done at the time of will execution.

⁹ <https://www.forbes.com/councils/forbestechcouncil/2025/02/10/deepfakes-can-damage-businesses-heres-how-to-fight-back/>

¹⁰ <https://www.turing.ac.uk/blog/what-are-deepfakes-and-how-can-we-detect-them>; <https://ccoe.dsci.in/blog/deepfake-detection>; <https://us.norton.com/blog/emerging-threats/what-are-deepfakes>; <https://www.media.mit.edu/projects/detect-fakes/overview/>

¹¹ <https://www.ndtv.com/india-news/not-just-pics-prove-adultery-by-evidence-delhi-high-court-amid-deepfake-menace-5846608>

Conclusion

It is said that "*a will speaks from the grave*". With video evidence, there is a possibility for the testator/testatrix to actually speak after death. The Karnataka High Court in one of its recent judgements has suggested the legislature to mandate recording of will execution in the sub-registrar's office so there is a valuable and unambiguous evidence available for the courts to decide the facts. The local authorities in Delhi had already planned and taken some steps in this direction. This would indeed be a welcome step.

Wills are most popularly used estate/inheritance planning instruments since they are easy to use and implement. The only downside is the sword in the form of a will contest hanging on the neck of the testator's wishes. This sword may be significantly blunted by the force of proper protections and precautions at the time of execution of the testator's will and, the creation of a good video recording is indeed likely to prove helpful for this. Such video recording not only gives support at the time of a will contest but it also has a psychological impact on the testator leaving him satisfied to a great extent that his will shall be carried out. The rapid advancement in technology, requires us to think differently and act proactively in all areas including and especially inheritance planning.

¹² Para 21, Smt. Indiramma (wife of Karibappa) vs Smt. Hampamma (wife of Late Kumarappa), RFA No. 100008 of 2019 dated 20.11.2024

¹³ <https://m.economictimes.com/news/politics-and-nation/registration-of-will-to-be-videotaped-in-capital/articleshow/19516359.cms>

About **kcmHeirloom**

kcmHeirloom KCM Heirloom is a specialized publication by the Succession Planning team at K C Mehta & Co LLP, focused on inheritance planning, estate structuring, and family business governance. It explores key challenges, evolving regulations, and best practices in wealth succession, offering valuable insights for families, business owners, and trustees.

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