

Testator's intentions are key to interpretation of general revocation clauses, rules EWCA

Synopsis: The England and Wales Court of Appeal (EWCA) has ruled that a revocation clause in a Will made by Hartar Sangha in 2016 revoked his 2007 Will in full, rather than simply the portion dealing with his assets in India.

Date published: 28.06.2023

What is a “revocation” clause?

A revocation clause is usually found at the beginning of your Will and states that you revoke all former Wills and Codicils and that this is your last Will. This is an important part of your Will, as, without it, there could be doubt as to whether you truly intended to revoke any former Wills you may have made.

In general, when making a new Will, you are changing its provisions and so it is important to clarify that only the provisions of your most recent Will should take effect at the time of your death.

The case

The late Hartar Singh Sangha died on 3 September 2016 in Chandigarh, Punjab, India aged 72 leaving substantial assets both in England and in India.

He left two families by two different women, Jaswinder Sangha and Diljit Sangha. After the deceased passed away, a quarrel arose over his final two Wills.

He made a Will in 2007 dealing with both his English and Indian assets. He made another Will in 2016 which disposed only of his Indian assets. This was declared to be his last Will and contained a revocation clause revoking "all such previous documents". The question is whether this was effective to revoke the 2007 Will in its entirety, or only effective to revoke the 2007 Will to the extent that it dealt with his Indian assets.

The 2007 Will had left his Indian and UK assets to Jaswinder, failing her, to their son. The 2016 Will did not mention the deceased's English assets but divided his Indian assets into four equal shares between his sister Jagpal Sangha, Diljit Sangha and their son Sundeep, and Jaswinder's son Harbiksun. This Will also contained a general revocation clause stating, 'This is my last and final Will and all such previous documents stand cancelled'.

The question was whether that revocation clause revoked the 2007 Will completely or only in relation to the Indian assets, as it did not mention the English assets.

The outcome

The first case was heard in 2021 where the England and Wales High Court (EWHC) found that the 2016 Will's plain words of revocation could not be clearer and that all other Wills were cancelled, there being nothing to sufficiently contradict them.

This resulted in an intestacy in relation to the assets in England. However, this was appealed which was heard in 2022.

In the subsequent appeal, the Court found that the revocation clause in the 2016 Will revoked only the part of the 2007 Will that dealt with the deceased's Indian assets. The rest of the 2007 Will was therefore valid in disposing of his English assets.

This was also appealed and now the EWCA has given it final judgment. It stated that the general revocation clause is strong evidence of the testator's intention to revoke all previous Wills, challenging it requires a heavier burden of proof which has not been met here. Therefore, the revocation clause stands and the Indian assets are dealt with by his 2016 Will and his English assets will be subject to the rules of intestacy.

The judgment serves as a compelling reminder that a comprehensive assessment of the testator's intentions is pivotal in navigating the interpretation of general revocation clauses.

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