By ALBERTINA ALMEIDA

Where There is A Will, There is a Way

In view of emerging situations in Goa regarding the application of family laws of Goa, it strikes me that we need to look at how the expression ‘where there is a will, there is a way’ needs to be looked at in its actual context of a literal ‘will’.

The provision in Goa’s family laws that not more than half of the property can be willed away as one likes is a provision that possibly draws inspiration from the Muslim law that provides that not more than a third of one’s property can be willed away by a person. One would have thought that such a provision in the family laws of Goa could have helped to take care of any exclusionary tendencies in the parents, given that the pre-disposition for willing away immoveable assets to the male children is very much prevalent. So also, what is prevalent is the pre-disposition to exclude the daughter-in-law by not willing property to the son whose estranged wife she might be.

The concept of mandatory heirs as prevalent in Goa’s laws implies that if a couple or one of them, have descendants (children) or ascendants (that is parents) if childless, some of the property has to devolve to these descendants or ascendants as the case may be. It seems to be both laudable and condemnable, in the same breath. At one level, one wonders why wealth should be consolidated within the family, and why should a person who has children or parents be compelled to leave some of his properties to his family only. But at another level, knowing that the general trend is to let one’s property devolve on one’s family, the point is to build in safeguards to ensure that the property is not willed away selectively, by excluding, for instance, on the basis of gender or on the basis of ability.

Yet one finds that parents find ways to will away properties only to their sons, and at best compensate their daughters with some money. This is because of the patrilocal character of our society. Similarly, one finds that if the son has strained relations with his wife, then the parents make an underhand agreement with the said son, but do not officially will anything to him, because what he gets will then be co-owned with his wife, the daughter-in-law, as per the matrimonial property regime of communion of assets which is the default regime prevailing in Goa.

What is worse is that after the death of the testator, that is, the person making the will, the person in whose favour the will is made, applies and manages to get the survey records transferred in his name (mutation), even though the parents have willed away more than the disposable quota (how much the law allows them to will away) to him. In this, there is a fault with the mutation process, because a will even if validly executed actually or on the face of it, can still be declared null and void to the extent of the excess of the disposable quota. Therefore, it is necessary that no mutation should be carried out until the deed of succession

coupled with deed of partition of properties among the heirs is carried out, or inventory proceedings are carried out, where the will is acknowledged and accepted, or found to be null and void because it wills away excess property, that is, either all or more than half of the property.

This means that the authorities seized with the mutation must have clear knowledge of the family law. Neither most local authorities, nor the IAS officers are versed with the Goa family laws. They must be provided with a special tutorial on the Goa laws by a competent law practitioner. Otherwise, we can only have chaos upon chaos. Already, there is some chaos, because the system of inscription was discontinued at some point. The most recent notification requiring the Sub-Registrar who registers Deeds of Sale to also be the mutation authority may be welcome in the sense that it offers the lay person a one stop facility, instead of going to one office to sign the Deed of Sale and to another for the mutation (transfer). But this can make sense only if the Sub-Registrars have the knowledge of the family laws, and are equipped to handle mutation applications.

That apart, there are other road blocks. For instance, the property stands in the name of an ancestor in the Form I and XIV (survey record) and has not been transferred (mutated) in the name of the successors. It has also again and again been held even by the apex Court that the survey record is not a record of ownership. But based on the title documents, that is, the ownership documents, the sale deed can be executed. So is the Sub-Registrar going to be the adjudicating authority to determine who are the heirs of the person in whose name the Form I and XIV stands? The question remains as to how will this automatic linking follow, except and unless a Special Officer is posted at the Office of the Sub-Registrar who is duly equipped and empowered to decide such matters, like the Mamlatdars were, who will look not only at the Deeds of Sale, but prior title documentation in case the property does not stand in the name of the vendor in the survey records.

All these issues are not surmountable. There is a way. There has to be political will that has to be judiciously applied, Mere tweaking of changes does not help. It has to be carried through with due rules, visualization and making someone responsible and accountable for implementing any new rules. Already, even the Goa Succession, Special Notaries and Inventory Proceeding Act, 2012, has not been implemented in its totality, although it came into effect in 2016. So while people can find ways to circumvent the law, based on social biases, good governance can stop this circumvention in its tracks.

(First published in *O Heraldo*, dt: 13 November 2021)