

Bequeath of Tenancy rights under WILL

Tenant – Section 7(15) of RCA

Tenant means any person by whom or on whose account rent is payable for any premises and includes:

- a) Such person (i) who is a tenant (ii) who is a deemed tenant (iii) who is a sub-tenant ..(iv) who has derived title under a tenant (v) to whom interest in premises has been assigned or transferred as permitted
- b) A person who is deemed to be a tenant under Section 25
- c) A person to whom interest in premises has been assigned or transferred as permitted under section 26
- d) In relation to any premises, when the tenant dies, any member of the tenant's family, who
 - i) where they are let for residence, is residing with the tenant at the time of his death or in the absence of such member, any heir of the deceased tenant, as may be decided, in the absence of agreement, by the court

Explanation: The provision of this clause for transmission of tenancy shall not be restricted to the death of the original tenant, but shall apply even on the death of any subsequent tenant, who becomes tenant under these provisions on the death of the last preceding tenant

Section 26 of RCA

Notwithstanding anything contained in any law for the time being in force, but subject to any contract to the contrary, it shall not be lawful for any Tenant to sub-let or give on licence the whole or any part of the premises let to him or to assign or transfer in any other manner his interest therein

Who is Heir

- A person who inherits property, whether real or personal
- The person appointed by law to succeed to the estate in case of intestacy (dying without a will)
- A person who succeeds, by the rules of law, to an estate in lands, tenements or hereditaments, upon the death of his ancestors, by descent and right of relationship
- One who would receive his estate under statute of descent and distribution

Interpretation under RCA

- Legislative prescription is first to give protection to members of the family of the tenant residing with him at the time of his death
- When Tenant is in occupation of the premises the tenancy is taken by him not only for his own benefit but also for the benefit of his family residing with him.
- Therefore, protection should be extended to the members of the family who were participants in the benefit of the tenancy and for whose needs as well the tenancy was originally taken by the tenant.
- Therefore, such family members were given first priority to the heirs.
- It is not the heirship but the nature of claim that is determinative
- Statutory tenancy is personal to the tenant
- Heir is different from the Legatee as even a stranger may have to be inducted as a tenant as there is no embargo upon a stranger being Legatee
- In section 26 – the words ‘assign’ or ‘transfer’ is qualified by the words ‘in any other manner’. This indicates that ‘transfer’ has been used in a generic sense so as to include transfer by testament also
- Only interest that can be inherited can be legally bequeathed
- Heritability of the Tenancy after determination of the tenancy is protected by the RCA

HUF Property and WILL

Section 6(3) of Hindu Succession Act, 1956 (amended on 9 Sep 2005)

Where a Hindu dies after the commencement of the HSA Act, 2005, his interest in the property of a Joint Hindu family governed by the Mitakshara law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship and the coparcenary property shall be deemed to have been divided as if a partition had taken place and....