

NOTE: Details of this case, including the names of individuals, have been omitted or changed to protect the confidentiality of the data.

Chronology of Events

James, a hotel owner, was the son of the decedent, David, and his father's death was the first time that James was involved in an estate settlement process. This was a particularly difficult undertaking for James, as David had lived with James's family for the 11 years prior to his death. Before moving to Florida permanently in 2006, David had spent his entire life in India working as a farmer and owning a number of properties that included a large mango grove. The proceeds earned from these farming activities allowed David to live a comfortable life in his later years and he enjoyed nearly 30 years of retirement before he passed away. Although his death was not unexpected as he was 88 years old, David's passing still took his family by surprise as he was perfectly healthy in the months leading up to his death.

David had spent all but the last 11 years of his life in India so the entirety of his estate, apart from some personal items he owned while he lived in the United States, were located near his hometown in India. He was father to five adult children, two sons and three daughters, who all have families of their own, and of these five children, both of his sons and his eldest daughter have lived in the United States for over 20 years each. His youngest daughter was the caretaker of David's property and assets in India after he moved to Florida. These five children, of which James was the youngest, and their families were the parties who would inherit from David's estate. David did not have any other living relatives who were to receive property after he died. His wife, Valerie, had passed away 15 years before David's death.

Because the use of formal wills and estate plans is relatively uncommon in India, where access to legal services is limited, David did not have a formal plan in place at the time of his

death. According to James, it is more customary in India to make intentions known informally to those who will receive property rather than creating a written plan. He made his intentions known to his five children and there was an understanding between the siblings that those intentions would be carried out. David intended, as is traditional custom in India, that his property would be split between only his two sons and their families and that none of it would be given to his daughters. According to James, in his and his wife's families, the father's property was traditionally inherited by his sons and the sons would then take on the responsibility of dividing it up between any sisters they had. David's only property included his farmland and mango grove, two homes, and some personal items which were all located overseas in India. There were no formal estate proceedings that were started because David had no written, formal estate plan. The only action that his children needed to take was transferring real estate titles and bank account ownership into his sons' names.

At the time of David's death, all of his children had very good relationships with each other and remained very close throughout, and after, the estate settlement process. As a result of the understanding between the siblings, no lawyers were brought in to help with the process. The most important thing to each of David's children was to ensure that their father's goals were met and that the process was carried out smoothly since there was no written will or formal plan in place to dictate what should happen. Despite David's precarious desire to essentially "cut out" his daughters from the inheritance (despite them being legally entitled to such inheritance), the children were able to complete the process of transferring property over to the sons without involving any lawyers or courts.

James explained that the entire process of transferring property and splitting the proceeds from the sale of certain pieces of land took about eight months and around \$7,000 to complete.

Although the law provides for daughters to inherit a portion of their father's estate, custom and local practice allows them waive their right to the property. In order to prevent fraud in such a case, all of the siblings have to be physically present when the daughters sign away their right to the inheritance, so James and his two siblings that reside in the United States had to travel to India and physically complete all of the paperwork in person.

James's sister, the one who had been caretaker of David's property, started the transfer process prior to her siblings arriving in India from the United States to expedite as much of it as possible. The process began with a formal application to the local government signed by all five of David's children to allow the property title to pass to them. It was at this time that the daughters signed away their entitlement and the property was then allowed to be transferred to the sons. Since David's youngest daughter had been caretaker of his property during the 11 years in which he lived in Florida, she knew where all of his property (including the real estate and any bank accounts) was located.

There was no real negotiation between any of David's children regarding whether his daughters should or should not relinquish their rights to the inheritance because the priority for all of the children was to follow through on the desires that David had for his property. David had intended for his property to be passed down to James and his older brother and his daughters were aware of and had already agreed to allow that to happen. The prospect of involving the courts did not come up because no one had conflicting ideas about what should happen to David's estate. If any of David's daughters felt that they were being deprived of their legal entitlements, the issue was never discussed outwardly because, as James explained, this was just the way things are done in India. Despite knowing that legally each of David's children had a right to inherit a portion of his property, tradition dictated that it should pass only to the sons so

that was how it was done in James's family as well. Outwardly, everyone was satisfied regarding the settlement of the estate because they followed through on the intentions that their father had for his property. According to James, all of the siblings were understanding and cooperative and that without everyone's willingness to do what David wanted, it could have been a very different, protracted situation. James confessed that while he was satisfied with the outcome of the settlement process, he was quite dissatisfied with the process itself as it involved him and his whole family having to physically go to India and everyone having to be present in front of a government official in order for his sisters to sign off on their brothers getting the entire inheritance.

Possible Alternative Explanations

In this case, because I interviewed only James and received his perspective on the whole process, it is impossible to know whether his comments about everyone being satisfied with the outcome of the process were true. Maybe it is true that James's sisters really were perfectly content with the way the system works and truly wanted to fulfill their father's desires, but without speaking to them directly, there is no way of knowing that for sure.

Insights

In speaking to James about the way the laws of intestate succession work in India, I learned both about how similar the laws are to those of the United States and also about how much more weight is given to custom and tradition over there than it is here.

Per James's explanation, normal intestate succession laws have in fact been codified in India but because tradition is given precedence, the laws tend to fall into the background. This happens because there is no uniform enforcement of the laws across the various state and local governments and also because many people who live in remote villages or small towns do not

have access to information about their legal rights. Furthermore, legal services may not be widely available or people may not have access to courts to enforce their rights. As a result, the old customs and traditions are blindly followed under the pretense of “this is how it has always been done, so we should continue doing it this way.”

India is also home to a historically very patriarchal society and, despite recent moves to increase gender equality in certain areas of the law, this has created an almost obligatory complacence among female heirs to relinquish their right to inherit from their family members’ estates. It is the norm to allow only the male heirs to take by intestate succession and leave it up to them to decide whether they want to give any portion of their inheritance to their sisters. However, if one actually examines the codified laws of succession in India, it is easy to find corollaries to American laws of intestate succession and similar rules. This is a significant departure from the cultural practices, so it is easy to see why the laws are disregarded in favor of tradition.

Comparing the customs that are followed in India to the way the process works here in the United States, it is difficult to imagine giving more weight to rituals and traditions than to the actual statutory laws that have been enacted. With the variety of cultures and ethnicities of the people living here, allowing each individual family to be held to different standards would create unimaginable chaos.

Handling Cases in the Future

If I were to handle a case like this again in the future, I would definitely recommend that the testator create a formal, written plan outlining the goals he has for his estate. Even though in James’s case, he and his siblings were in agreement about what should happen to the property, it is easy to imagine cases where the siblings disagree or try to cut the female siblings out through

the use of fraud or duress. Creating a written plan that expresses the testator's exact desires would circumvent such issues and allow the intentions of the decedent to be carried out properly.