

Estate planning: What is a settlement deed? Can it override a will? We explain

Estate planning is crucial for family clarity after one's passing. Here's all you need to know about a settlement deed, why it is prepared, how it functions alongside a will, and what key factors to consider before opting for one.

[Jocelyn Fernandes](#)

Updated 15 Apr 2026, 05:36 PM IST



Under Indian law, a settlement is any written, non-testamentary disposition, (other than a Will or codicil) in respect of movable or immovable property. (Pexels / Representative Image)

Estate or succession planning is a necessary step to ensure future clarity for your family, even when you are no longer with them. Here, it is important to provide clear steps for your heir(s) when the legal document is executed.

Today, we will discuss what a [settlement](#) deed is, why it is prepared, how it functions alongside a will, and what key factors you should consider before opting for one.

What is a settlement deed?

According to Tanmay Patnaik, Partner Private Client at Trilegal, a family settlement deed is a binding document laying down terms of an arrangement / settlement reached amongst family members which may relate to division of family and business [assets](#), continuing rights over such assets, etc. “It is a legally binding contract among its signatories and enforceable in a court of law,” he added.

Shabnam Shaikh, Partner at Khaitan & Co noted that under the Indian Stamp Act, a settlement or written, non-testamentary disposition, may be made:

(i) in consideration of [marriage](#),

(ii) for the purpose of distributing the property of the settlor among family members or persons for whom the settlor wishes to make provision, including dependents, or

(iii) for any religious or charitable purpose.

Patnaik added that the implementation may be immediate or structured over a period of time.

“Accordingly, the parties may provide for phased transfers or realignment of rights and interests, subject to mutually agreed timelines, conditions precedent, or milestone-based triggers, to ensure a smooth and commercially feasible transition,” he said.

In what circumstances is a settlement deed required?

Adesh Nandal, Advocate at Jotwani Associates, a person should consider executing a settlement deed, in the following circumstances:

Resolution of Family Property Disputes: Settlement deeds are commonly used to resolve existing or potential disputes among family members regarding property distribution. The Supreme Court has laid down the essentials of a family settlement, requiring that the arrangement must be bona fide, voluntary, and for resolving family disputes through fair and equitable division of properties.

- They want to fix the distribution of certain [properties](#) while they are alive rather than leaving everything to a will.
- There is a possibility of conflict between children, siblings, or relatives about who will get which property.
- There is already some tension or disagreement in the family and everyone wants a binding, written understanding to “settle” matters.

Avoiding Probate and Testamentary Disputes: Unlike a Will, a settlement deed does not require [probate](#) and is not subject to challenge on testamentary grounds (such as lack of testamentary capacity or undue influence in execution).

Ancestral Property Distribution: Where joint family property requires division among coparceners or family members without resorting to litigation, a settlement deed provides an amicable mechanism.

Immediate Transfer with Retained Life Interest: When a settlor wishes to transfer ownership immediately to a family member (typically [children](#)) while retaining the right to enjoy the property (including income, possession, or usufruct) during their lifetime.

Succession Planning for Blended Families: Settlement deeds are effective tools where the settlor wishes to provide for specific family members in a defined manner, overriding default succession laws.

Can a settlement deed override or supersede a will?

According to Shaikh, the key difference is the purpose and timing of each document. “A will governs only those assets that form part of a person’s estate at the time of their demise. [Property](#) that has already been transferred or settled during the individual’s lifetime through a valid settlement deed or gift deed does not form part of the estate and is therefore not governed by the Will,” she noted.

Adding that a settlement deed in effect “prevails over a will, as a person cannot bequeath any property over which legal ownership has already been parted with during their lifetime”.

Nandal concurred, noting that in *NP Saseendran v. NP Ponnamma* (2025) the [Supreme Court](#) held that “a valid settlement deed transfers ownership immediately during the settlor’s lifetime, so any conflicting Will; whether prior or subsequent; is ineffective to the extent of the settled property”.

“The key test is whether rights vest immediately (settlement) or upon death (Will). Even if the settlor retains a life interest, the deed remains irrevocable and prevails over a Will,” he noted.

Patnaik also added that courts in India generally uphold [family settlement](#) deeds “to promote finality and avoid family disputes, provided they are bona fide and not vitiated by fraud, coercion, undue influence or misrepresentation”. It added that any disputes in the Will are often resolved through out-of-court settlements or consent terms between the parties.

Estate planning: Top things to keep in mind for settlement deed

- Shaikh noted that since a settlement deed involves transferring ownership during one’s lifetime, one should be confident about permanently parting with control over the property.
- She noted that if the settlor relies on the property for residence, income, or [financial security](#), the deed should clearly reserve rights of residence, income, or maintenance.
- Settlement deeds involving immovable property must be properly stamped and registered, she added.
- Patnaik noted that when listing assets and identifying parties, note any pre-existing or ‘possible’ title or claim each party has, as this strengthens the validity of the arrangement.
- He also noted that ensuring all relevant and affected family members are parties to the deed to avoid future challenges. “Include appropriate clauses to ensure the settlement is binding and intended to be a full and final [resolution](#) of claims,” he added.
- Nandal noted the need for consistency and alignment between a settlement deed and your will. “Assets covered by the settlement deed should not also be casually dealt with in the will. The testator should clearly separate which properties are covered by the deed, and which will be governed by the will,” he stated.
- He added that it is important to think beyond ownership and consider practical aspects, such as [family dynamics](#), residency needs, need for separation of property in case of sale, and how common spaces will be shared. “Recording these understandings in the deed reduces scope for friction,” as per Nandal.

Disclaimer: *This story is for educational purposes only. The views and recommendations made above are those of individual experts and not of Mint. We advise readers to check with certified experts before making any decisions.*