

## A personal Brexit - can where you die undo your Will?

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The case of *Kohli v Proles* shows how the obscure concept of domicile can be a critical factor in inheritance disputes.

In England your Will is usually the last word on what happens when you die. But the 1975 Act gives certain people the right to challenge a Will for not making reasonable provision for them. However, the deceased must have been 'domiciled' in England or Wales at death. So, if someone who has lived here many years spends their last days in their country of origin (or emigrates), could that render the Court powerless to override their Will?

### **The peculiar circumstances**

Mr Kohli was born in India. In 2002 his entrepreneurial aspirations took him to England where he established a number of businesses. His wife, however, remained in India with their children at their matrimonial home. Mr and Mrs Kohli visited each other from time to time. Their children eventually moved to England for university.

In 2012 Mr Kohli had an intimate relationship with a Ms Proles and they had a child of their own, Amelie. She said Mr Kohli promised he would apply for British citizenship, but it turns out he never did.

In 2014 Mr Kohli's right to remain in England expired. In the same year medics diagnosed him with mouth cancer. Unfortunately, the cancer spread and was beyond treatment. In 2015 Mr Kohli decided to return to India knowing he would not be permitted to return to England. He died a month later having left nothing in his will to Ms Proles or his infant daughter.

Ms Proles started proceedings in England asking the Court for financial provision from Mr Kohli's estate for Amelie. Mrs Kohli claimed that the Court had no right to consider the issue because her husband had died domiciled in India not England (either because he had never chosen to be domiciled in England instead of India or, if he had, because he abandoned that choice when he returned to India to die).

### **Master Clark's decision**

In determining 'domicile' the Court will consider all the circumstances that relate to a person's connection to the country in question.

Chancery Master Clark decided Mr Kohli was domiciled in England when he died. His default domicile of origin (India) had been trumped by his domicile of choice (England) from 2010. He had not abandoned/changed that choice in 2015 by returning to India to die.

Mrs Kohli asked Justice Mann in the High Court for permission to appeal the Master's decision alleging several flaws in the judgment.

### **Justice Mann's decision**

The Judge agreed with the Master that Mr Kohli had chosen to be domiciled in England from 2010. The real issue for the Judge was whether, having done so, Mr Kohli abandoned/changed that choice when he chose to return to India knowing he was terminally ill and no longer had a right to remain in England.

If you choose to be domiciled in England, as both the Master and Judge concluded was Mr Kohli's intention, that has usually been understood to be your choice about where you wish to end your days. But here the Master decided that it was not inconsistent for Mr Kohli to be domiciled in England yet choose to spend his last days in India.

The Judge agreed with the Master's statement that '*Where, for practical purposes, a person has no life left to live, then a decision to go to his/her country of origin to die, is not a decision to spend any significant part of one's life ('the end of one's days') in that country – it is a decision that the specific event of his/her death should be in that country.*'

Ultimately, the Judge saw no fundamental flaw in the Master's decision-making or reasoning which would have changed the outcome. So he refused Mrs Kohli permission to appeal. This means the Court does have the power to hear Amelie's claim under the 1975 Act.

### **Lessons?**

It seems unlikely (although not impossible) that Mr Kohli's choice to spend his last days in India was driven by estate planning (or a desire to frustrate Ms Proles from whom he was estranged).

But decisions about where you spend your final days can have a profound impact on which country's succession law applies on your death and, therefore, on those who are left behind.

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