**SUIT TO COMPEL A REFUND BY A PERSON TO WHOM AN EXECUTOR OR ADMINISTRATOR HAS PAID A LEGACY ETC**

Nature of grievance:

**Suit under the Indian Succession Act,1925 (39 of 1925), sections 360 or Sec. 361**, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets: For the recovery of money by creditors and other claimants, against the estate of the deceased person – A Suit may be filed under the Indian Succession Act,1925, section 360 of Sec. 361, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets, within three years, from the date of the payment or distribution of assets, under Article 46 of the Indian Limitation Act, 1963.

Reliefs prayed:

(As may be appropriate and applicable to the facts of one’s case)

a)     That the Defendant be ordered and decreed to refund Rs.\_\_\_\_\_\_\_, as per particulars of Claim, annexed to the Plaint (Exhibit “\_\_\_\_\_”);

b)     That the Defendant be further ordered and decreed to pay interest on the Suit amount, @18% from the date of filing of Suit, till date of judgment; and further interest @18 / 12 / 6 % from the date of judgment till payment;

c)     The Hon’ble Court be pleased to declare that \_\_\_\_\_\_\_\_\_\_\_  (declaration, in the absence of which the rights of the Plaintiff may be frustrated); (as may be applicable to the facts of the case)

d)     The Defendants be permanently injuncted from acting (permanently restrained from doing of certain acts), such acts which would otherwise frustrate the rights of the Plaintiffs, or such acts, which would otherwise run contrary to the rights of the plaintiff; (as may be applicable to the facts of the case)

e)     The Defendants be ordered and decreed by way of Mandatory Injunction to \_\_\_\_\_\_\_\_\_\_ “perform certain acts”; (as may be applicable to the facts of the case)

Interim and Ad-Interim Reliefs: Pending the hearing and final disposal of the Suit, the Hon’ble Court so as to prevent the ends of justice from being defeated, be pleased –

f)      That pending the hearing and final disposal of the above suit, the Hon’ble Court, in the due exercise of their powers u/s 94 and O.38 of CPC, 1908, issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison; (as may be applicable to the facts of the case)

g)     That pending the hearing and final disposal of the above suit, the Hon’ble Court, in the due exercise of their powers u/s 94 and O.38 of CPC, 1908, direct the defendant to either (i) furnish security to produce any property belonging to him and to place the same at the disposal of the Court or (ii) order the attachment of his property, or, (iii) furnish the bank guarantee for the Suit amount or (iv) deposit the Suit amount in the Court;

h)     That pending the hearing and final disposal of the above suit, the Hon’ble Court, in the due exercise of their powers u/s 75 and O.26 of CPC, 1908, be pleased to appoint Court Commissioner, to hold a scientific, technical, or expert investigation; or to perform any other ministerial act; (as may be applicable to the facts of the case)

i)       Interim/ad-interim reliefs in terms of prayer clauses \_\_\_\_\_\_\_ as aforesaid.

j)       Such further and other reliefs as this Hon’ble Court may deem fit and proper in the circumstances of the case as may be necessary.

Material facts of the case:

The Plaintiffs, most respectfully submit that, having regard to the nature of reliefs prayed for in this Suit, the following facts become germane to the controversy herein; And, the reasonable satisfaction of the existence or the non existence, as the case may be, of these facts, may entitle the Plaintiffs the judgment in their favour. The chronology / chain of events, which has led to the present situation, and has constrained the Plaintiffs to seek certain Reliefs from this Hon’ble Court. [In the chronology / chain of events, the following facts should be set out in clear terms, at appropriate juncture.]

1.      The facts showing that the Plaintiffs have had certain claim of money against the deceased person:

2.      The facts showing that the said claims have not been duly satisfied by the said deceased person:

3.      The facts showing that the Defendants have obtained share in the estate of the said deceased person:

In Money Claim Suits, to claim interim relief, “of arrest of the Defendant to cause him to furnish security for his appearance, pending the disposal of the Suit”, any one of the facts must be shown to have exist –

1.      Facts and circumstances showing that, with intent to delay the plaintiffs, or to avoid any process of the Court or to obstruct or delay the execution of any decree which may be passed against him, the defendant has absconded or left the local limits of the jurisdiction of the Court:

or

2.      Facts and circumstances showing that, with intent to delay the plaintiffs, or to avoid any process of the Court or to obstruct or delay the execution of any decree which may be passed against him, the defendant is about to abscond or leave the local limits of the jurisdiction of the Court:

or

3.      Facts and circumstances showing that, with intent to delay the plaintiffs, or to avoid any process of the Court or to obstruct or delay the execution of any decree which may be passed against him, the defendant has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof:

or

4.      Facts and circumstances showing that, with intent to delay the plaintiffs, or to avoid any process of the Court or to obstruct or delay the execution of any decree which may be passed against him, the defendant is about to leave India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree which may be passed against the defendant in the suit:

In Money Claim Suits, to claim interim relief of “directing the Defendant to furnish security for certain sum of money, either by furnishing the bank guarantee or by depositing the said sum of money in the Court”, or to effect the conditional attachment of his immovable property, pending the disposal of the Suit”, any one of the facts must be shown to have existed.

1.      Facts and circumstances showing that, with intent to obstruct or delay the execution of any decree which may be passed against him, the defendant is about to dispose of the whole or any part of his property:

or

2.      Facts and circumstances showing that, with intent to obstruct or delay the execution of any decree which may be passed against him, the defendant is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court:

[To claim any relief in the nature of declaration] The facts showing that the Plaintiff is entitled to some legal position, or to some property, or to some right of any nature whatsoever; and the facts and circumstances showing that the Defendant is doing some act by which the Defendant deny such rights of the Plaintiffs;

[To claim any relief in the nature of permanent injunction] The facts showing that the Plaintiff is entitled to some legal position, or to some property, or to some right of any nature whatsoever; and the facts and circumstances showing that the Defendant is doing some act by which the Defendant interferes with such rights of the Plaintiffs;

[To claim any relief in the nature of mandatory injunction] The facts showing that the Defendant is under obligation under the law or under the contract, to perform certain acts, which he is neglecting to do, and the Courts can compel performance of such acts, and the performance of such acts are essential pending the final disposal of the Suit, and the failure of performance of such acts may render the Suit infructuous.

Any other factual averments, having regard to the nature of Reliefs claimed.