

# Major rules of a minor's property

Any transfer of property by guardians of young wards, without the permission of a court, can be challenged by the minor or his/her representative



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**LEGAL REMEDIES**

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A minor (ie a child under the age of 18 years or 21 in case of appointment of guardian) may be the owner of immovable property devolved on him/her through inheritance from a deceased person or through a gift or purchase in the name of a minor by the guardian. Owing to the legal incompetence of a minor, the management of the

property is the duty of the guardian, ie a person caring for the minor and his or her property.

Though the minor is the owner of the property and the guardian is legally competent to manage the property, mortgage or create charge (have a right over the property to recover amounts to the extent entitled) on the minor's property or transfer by way of sale, gift, exchange it, there are certain restrictions. Often sale and transfer of a property owned by a minor is made by the guardian without realising that such

sale or transfer is voidable at the instance of such a minor. In case of a minor who is Hindu as defined under the law, provisions of the Hindu Minority and Guardianship Act, 1956, will govern the transfer of the minor's property.

In 2013, in the case of Saroj v Sunder Singh and others, the Supreme Court observed that to sell, gift, exchange, mortgage or create charge on the immovable property the prior permission of the appropriate court is essential.

In this case, the appellant and her two sisters were

minors when their father expired and the land devolved upon their mother and three of them, equally. Thereafter, while the daughters were still minors, the mother sold the entire property. One of the daughters preferred a suit seeking cancellation of the sale deeds for the sale of the land.

In the trial court, the mother claimed that she sold the land to take care of and fulfill the requirements of the minor daughters and for the proper maintenance of the daughters. The trial court upheld the argument preferred by the mother.

Thereafter, in appeal, the High Court also, upheld the judgment of the trial court.

Aggrieved by the judgments, the daughter appealed to the Supreme Court. Going through the provisions of the Hindu Minority and Guardianship Act, 1956, the apex court observed that the natural guardian of the minor has power to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realisation, protection or benefit of the minor's estate, etc. However, the Act clearly provides that no

immovable property of the minor or part thereof can be transferred by way of sale, gift, exchange or otherwise without obtaining prior written permission of the court.

The Supreme Court observed that though it was stated that the property had been sold for the proper benefit of the minors, their protection, education and marriage, there was nothing placed on record to suggest that previous permission of the court was obtained by the natural guardian before transfer by sale in question. Hence, the sale deeds executed by the mother shall become voidable at the instance of the daughters.

Thus, the court of law, at its sole discretion, may permit the transfer of the minor's property by his guardian to any third party subject to adherence to and observance of certain restrictions and conditions. Any transfer of property of a minor without the prior permission of the court of law can be challenged at the instance of the minor or any person at his or her behest. Such transactions are voidable. It is left to the minor to agree or disagree to such transfers without the prior permission of the court of law. He may exercise his option on attaining majority and within three years of coming to know of such a transfer.

Thus, it is imperative for guardians of minors to keep in mind these restrictions while managing and dealing with the immovable property of minors.

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**LAW BOOK**

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I am entering into a deal to purchase a flat in Gurgaon. The owner of the flat has currently leased it out to a family and the lease is due to expire by the end of next year. How can I ensure that the tenant pays the rent to me and not to the previous owner after I purchase the flat?

- Ashmit Kapur

After completion of the sale in your favour, you will automatically step into the shoes of the previous owner. However, you can also enter into a tripartite agreement with the previous owner, -lessee for attornment of this -existing lease in your favour so as to ensure that all -benefits/entitlements under the current lease accrue to you upon execution of the sale deed.

I have taken an apartment on lease in Janakpuri in Delhi and have signed the lease deed provided by my -landlord. In the deed there is no provision regarding payment of property tax. Now the lessor is asking me to pay property tax for the apartment. Can he do so?

- Bidisha Chaliha

As per the Delhi Municipal Corporation Act, 1957 the owner of any land/building is primarily liable to pay -property tax.

My brother is claiming a share in a property that was acquired by

me. He is claiming that it is a joint family property. He has also filed a case before the Delhi High Court against me and has obtained a stay order. I am in urgent need of funds. Can I sell the property?

- Niharika Dey

If the court has passed a stay/restrain order, restraining you from transferring property, you are not entitled to sell the property without permission from the high court.

I recently got a lease deed registered. If the property details are not correctly mentioned in the deed, is it possible for me to get the error rectified now?

- Sanchita Shah

Once a document is registered, any additions, omissions, rectifications and modifications in the document can be possible only through a rectification deed. Further, a rectification deed must be duly registered with the concerned sub-registrar.

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