

Can outsiders claim joint possession of co-owned homes?

Outsiders buying a share in a joint family home can get possession of their share by filing a case for possession and claiming separation

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Any immovable property jointly owned becomes a co-owned property and its owners become co-owners. In most cases, joint family properties are jointly owned by several family members, each having an undivided share. A co-owner of a property is entitled to two basic rights – joint possession of the property and the right to get his or her share partitioned to be in a position to enjoy his own share separately and without interruption or interference by his other co-owners.

The fact that a joint property

has not been divided and owned by several co-owners does not affect the right of a co-owner to convey his interest or share in the house to an outsider. When one co-owner transfers his share in the joint property, the buyer stands in the shoes of the seller or co-owner, gets his rights and entitlements and is subjected to the same liabilities as that of the co-sharer selling his share.

It has often been seen that a co-owner sells his undivided share in the joint family house to a person who is not a member of the joint family (ie an outsider/stranger). Care should be taken by an outsider while purchasing a share of a co-owner of a property. Remember, there is no provision under the Transfer of Property Act, 1882, which says that a co-sharer must only sell his/her share to another co-sharer. The Act says that the outsider/stranger purchasing a share of a joint family house

gets no right to joint possession or common enjoyment of the house.

The Act emphasises on protection of interest and privacy of joint Hindu family homes. The objective is to prevent the intrusion of strangers into the family homes, which are allowed to be occupied by the members of the family alone in spite of the transfer of a co-owner's share to a stranger/outsider.

The stranger/outsider buying a share in a joint property is debarred by law from exercising his right to joint possession over the house. However, he can get possession of his share in the joint family house by filing a case for possession and claiming separation of his share.

This has also been held by the courts in India time and again. In the Gautam Paul versus Debi Rani Paul and others case, the Supreme Court, inter alia, also affirmed the above proposition.



CO-OWNERS' RIGHTS SIMPLIFIED

- The fact that a joint property has not been divided and is owned by several co-owners does not affect the right of a co-owner to convey his interest or share in the house to an outsider
- When one co-owner transfers his share in the joint property, the buyer stands in the shoes of the

seller or co-owner, gets his rights and entitlements and is subjected to the same liabilities as that of the co-sharer selling his share

- The stranger/outsider buyer is debarred by law from exercising his right to joint possession in a Hindu undivided family home which is one of the main

incidents of co-ownership of property.

- The transferee (stranger/outsider) does not become entitled to joint possession or other common or part enjoyment of the joint family home simply by purchasing a portion thereof from a co-owner.

Thus, the transferee (stranger/outsider) does not become entitled to joint possession or other common or part enjoyment of the joint family home simply by purchasing a portion thereof from a co-owner. However, he would have the right to enforce a partition of his share if he files a suit for the same in court.

It is important to note that

in such a case when a stranger/outsider buyer files a suit for partition of his share in the joint family house, the provisions of the Partition Act come into play. According to these provisions, a co-sharer has a pre-emptive to purchase the share sold to an outsider/stranger. We will discuss this right of pre-emption of a co-

sharer in the next article.

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