

# Co-owners can buy share of outsiders seeking partition of family property

Section 4 of The Partition Act, 1893, says that any member who has an undivided share in a joint family property can buy the share of an outsider seeking partition and separate possession

Sunil Tyagi  
htestates@hindustantimes.com

**A**ny property jointly owned, becomes a co-owned property and its owners become co-owners. A co-owner is entitled to the basic right of joint enjoyment or possession of the property.

The fact that a joint property has not been divided and is owned by several co-owners, does not curtail the right of a co-owner to give his share to an outsider.

Often a co-owner sells his undivided share to a person who is not a member of the joint family (ie an outsider). However, mere transfer or sale of a co-owner's share doesn't entitle an outsider to take possession of the property.

The Transfer of Property Act, 1882, says that an outsider purchasing a share of a joint family house has no right to joint possession or common enjoyment of the house.

However, he will have the right to enforce a partition of his share if he files a suit for the same in court. He can also get separate possession of his share in a joint family house. In such a scenario,

## RIGHTS OF CO-OWNERS AND OUTSIDERS

- Co-owners of an undivided family can buy an outsider's share only when the outsider seeks partition and separate possession of the share sold to him or her
- An outsider will have the right to enforce a partition of his share if he files a suit for the same in court
- He can also get separate possession of his share in a joint family house
- This can cause inconvenience to other co-owners of the undivided family as an outsider will get their family property
- It is for this reason that the court has granted protection to other members of the undivided family
- This protection is given under Section 4 of The Partition Act, 1893, to the co-owners of the undivided family.

inconvenience can be caused to other co-owners of the undivided family as an outsider will get their family property. It is for this reason that the legislature has granted protection to other members of the undivided family.

This protection is given under Section 4 of The Partition Act, 1893, to the co-owners of the undivided family. The section says that when an outsider files a suit for partition and separate possession of the undivided share is transferred to him by a co-owner of an undivided family, any other

members of the family, who have an undivided share in the house, can buy the outsider's share.

In such a scenario, the court values the share of the outsider and directs the other co-owner, who is willing to buy the share, to pay such value to the outsider. After payment of such value, the outsider will no longer be the co-owner and cannot claim partition and separate possession of his share in the house.

A co-owner of an undivided family property can transfer his share to an outsider. However, the



ISTOCK

other co-owners of the family are protected and have the option of buying the share from the outsider.

Another question that needs to be addressed is whether a co-owner can claim and buy a share sold by his family member to an outsider even if the outsider has not made any claim for partition and separate possession of his share.

The Supreme Court has clarified the legal position in the October 2000 judgment of *Gautam Paul vs Debi Rani*. The

court held that other co-owners of an undivided family can buy an outsider's share only when the outsider seeks partition and separate possession of the share sold to him or her.

*The author is a senior partner at Zeus Law, a corporate commercial law firm. One of its areas of specialisations is real estate transactional and litigation work. If you have any queries, email us at ht@zeus.firm.in and htestates@hindustantimes.com.*