

Home truths: Transfer of property by a co-owner



An immovable property which is jointly owned by two or more persons is called a jointly-owned property and joint owners are often referred to as the co-owners of the property. The co-owners may either have ownership of undivided share in the property or may be the owners of a specified percentage of such jointly-owned property. It is extremely important that at the time of the sale-purchase transaction of such jointly-owned properties, the buyer remains vigilant and cautious because when the property is owned by number of persons, any agreement to sell, lease, transfer or the sale deed of such jointly-owned property needs to be executed by all the co-owners of the property. However, a co-owner is free to transfer or deal with his share of such jointly owned property.

In this regard, an interesting matter came up for the consideration of the Supreme Court wherein the agreement to sell the entire jointly-owned property was executed by two brothers who were the co-owners of the property along with their three sisters. The said property was jointly inherited by the two

brother and three sisters. The prospective buyer of the jointly-owned property prayed for the enforcement of specific performance of the agreement to sell. The SC held that in absence of sisters being parties to any agreement, the buyer can at best obtain undivided interest of two brothers in the property. However, it is pertinent to mention here that the apex court further clarified that the right of specific performance of the agreement against the two brothers cannot be invoked by the buyer to force partition on the sisters who were not parties to the agreement of sale.

In another similar case, a husband and wife had each half share in a property and the agreement to sale for the sale of entire property was executed by husband alone.

In this case, the SC held that buyer is not entitled to seek specific performance of the agreement to the extent of half share of the wife and there is no impediment for the enforcement of the agreement against the husband to the extent of his half share in the property.

There have also been numerous instances where the sale deed of a co-owned property has been executed only by one of the co-owner. In such cases, that have come up for consideration of courts of law on various occasions, it has been held that when the property is owned by a num-

ber of persons, sale of property in its entirety by one would not invalidate the entire sale but the sale of the property would only be valid only to the extent of the share of such co-owner in the property. Further, even if a co-sharer who is in exclusive possession of the jointly-owned property transfers the entire property, the other co-sharers continue to be in constructive possession of such jointly-owned property and continue to be the co-sharers of the property transferred. It has also been held that an undivided share of the co-sharer may be subject matter of sale, but possession cannot be handed over to the buyer unless the property is partitioned by metes and bounds amicably or through mutual settlement or by decree of the Court.

Therefore, it is of utmost importance that when one contemplates the sale-purchase of a jointly-owned property, the concurrence of the other co-owners is obtained to ensure that the sale-purchase transaction of such jointly-owned property is legal and binding on all of the co-owners.

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