

Owners can be partially restrained from selling property

Conditions such as restricting sale of property to only family members are valid in the eyes of the law

htestates LEGAL REMEDIES

Sunil Tyagi
htestates@hindustantimes.com

The previous column discussed how conditions imposing an absolute restraint (except in certain cases) on sale or transfer of property were considered void by courts. This week we will talk about specific terms and conditions which restrain owners from selling or transferring property that courts hold valid. Such conditions are referred to as partial constraints.

The courts have held on multiple occasions that a condition in the sale deed that restricts a sale or transfer of the property from the family's ownership is valid and that such a condition is partial. That's because it forbids only alienation to strangers, leaving the buyer free to make any transfer to any person within the ambit of the family. To illustrate it with an example, A (the owner), sells a property to his brother B (the buyer) for ₹1 lakh and puts a condition in the sale deed that B can't sell that property outside their family without making an offer to other family members first. This condition does not make an absolute restriction on the alienation of property. The buyer, in this case B, can still sell the property after making an offer to family members. Such a condition may be a

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- The courts have held that a condition in the sale deed that restricts a sale or transfer of the property from the family's ownership is valid and that such a condition is partial
- When a seller imposes a condition that the buyer of his property has to make an offer to him (seller) first if he intends to sell it later, it's considered to be partial restraint on the buyer, and is an enforceable and valid condition
- Restriction not to transfer the property to a particular person is seen as partial restraint and can be included in the sale deed

partial restriction on the alienation of property and valid and enforceable in the eyes of law.

At the same time, however, if A had stipulated the condition that B had to sell the property to the family members at a price much less than the market value of the property, it would have made the condition an absolute restraint and, therefore, an invalid and void condition.

Similarly, when a seller imposes a condition that the buyer of his property has to make an offer to him (seller) first if he intends to sell it later, it's considered to be partial restraint on the buyer, and is an enforceable and valid condition.

Restriction not to transfer the property to a particular person

is seen as partial restraint and can be included in the sale deed. A seller can lawfully restrain the buyer from selling the property in future to one particular person or persons. For example, A (seller) sells his property for ₹1 lakh to B (buyer) and includes a condition in the sale deed that if B intends to sell the property in future, he may sell it to anyone except C (third party). Such a restraint may be considered to be a perfectly legal and valid condition in the sale deed.

These conditions which impose partial restrictions on the buyer can be inserted into a sale deed and would hold good but due care should be taken and it should be borne in mind that these conditions don't become absolute in any manner by restraining the owner from alienating the immovable property absolutely.

It is pertinent to mention here that in case any of the conditions are held to be an absolute restraint and subsequently void, the sale deed would not be held void in its entirety but would be held unenforceable only to the extent of that condition and the rest of the sale deed would still stand to be a valid agreement between the buyer and the seller of the property.

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