

Owners free to transfer or dispose of property, conditions don't apply

Selling or transferring property is an inherent right of every owner, which cannot be denied to him or her by imposition of restrictive conditions

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Execution and registration of sale deed for an immovable property transfers and conveys absolute title of the property in favour of the buyer. However, in certain cases, when a sale deed for an immovable property is being executed, the concerned parties incorporate certain conditions in the document that impose restrictions or constraints on the right of the buyer to sell or transfer the property.

The Transfer of Property Act, 1882 deals with such restrictions or constraints. Any condition or limitation restraining the buyer from parting with or disposing of his interest in the property is void according to the act. Two exceptions to this rule are:

■ In the case of a lease where

such restriction or condition is imposed for the benefit of the lessor, and

■ Where a property is transferred to or for the benefit of a woman who is not a Hindu, Muslim or Buddhist, with a condition that she shall not have power during her marriage to transfer or create any encumbrance in the sale of property transferred to her

The above mentioned rule has been incorporated into the Act to encourage sale and purchase of property without restriction on future transfer. It is based on the basic principle that transferring a property cannot be separated from giving the beneficial ownership of the property to the transferee/buyer. Therefore, the condition by which an absolute restraint is imposed against the transfer of that property is considered to be void. Selling or transferring the property is an inherent right of every owner and restrictive conditions cannot be imposed on him or her.

One of the examples of abso-

lute restraint can be where A (owner of a property) agrees to sell it to B (the buyer) for ₹1 lakh. While executing of the sale deed, A puts a condition in the sale deed that if B ever intends to part with or sell or transfer the house in the future, B must sell the house to A or heirs of A and to no one else. Such a condition would fall in the category of absolute restraint as it affects the beneficial enjoyment of the house by B. Beneficial enjoyment of the house by B includes his right to sell it or dispose it in any other way.

The consistent view of the courts has been that an absolute restraint is void but a partial restraint is not.

For applicability of this rule, two essential conditions are required:

- There must be a transfer of property and
 - There must be a condition which absolutely restrains the transferee/buyer from alienation/transfer of such property
- This rule applies to only



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those conditions which impose an absolute condition on the alienation/ transfer of property. However, there may be certain conditions, which partially restrain the right of the owner of the property to alienate/transfer the property. Such

specific conditions which partially restrain the owner from alienating/ transferring the property have been held to be valid by various courts on various occasions.

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