

Preventing division of joint property

HOUSE DIVIDED No one can transfer undivided interest in a joint property without taking into account the preferential right of co-heirs

htestates legal remedies

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Under the Hindu law of succession, if a person dies without leaving a will (intestate), his or her property devolves upon the class I legal heirs in equal proportion. By virtue of such inheritance, they become joint owners of such property. Complications may arise when one of them decides to alienate or transfer or sell his or her inherited undivided interest in the immovable property to a stranger. Undivided ownership interest in property means that share of the ownership in the property is identified but not demarcated till its partition or separation from other shares of such property. Till then, each co-heir jointly owns property with others.

Section 22 of the Hindu Succession Act, 1956, confers a preferential right on the remaining co-heir(s) or co-owner(s) to acquire such undivided interest in that property. The purpose of conferring a preferential right

to co-heir(s) is that strangers or outsiders need to be kept out to maintain the integrity of the property. It is a remedial measure to moderate inconvenience resulting from transfer to an outsider by a co-heir of his or her undivided interest in immovable property that was inherited along with other co-heirs.

The courts of law have on various occasions held that a statutory duty is cast on the transferor-heir to give notice of his intention to transfer his undivided interest. In cases where it is shown that the transferee has purchased the property without any notice regarding the same given to the remaining class-I co-heirs, the transfer could still be challenged after it was completed.

Other co-heirs can enforce their preferential right under the Act to acquire the transferred undivided interest by filing a regular civil suit before the competent civil court. Also, since the right to claim preference over a property in terms of a statute ordinarily is a weak right, a suit by the co-heirs for claiming such a right can be filed within one year from the date of sale of property and not later. It is pertinent to remember here that this special preferential right under the Act can be availed only for a joint property. In case a partition has taken place between the co-heirs resulting in division of the jointly owned property through specific or respective allotment or demarcation of share to each co-heir, such preferential right shall not exist anymore. Each co-heir shall then have the lib-

PREFERENTIAL RIGHT AND SECTION 22 OF THE HINDU SUCCESSION ACT

The conditions necessary for invoking Section 22 of the Hindu Succession Act are:

An interest in any immovable property of a person who has died without making a will is transferred to two or more heirs specified in class I of the schedule

- One of the heirs proposes to transfer his/ her undivided interest in such inherited property or business

- In such a case, the other heirs shall have preferential right to acquire the undivided interest proposed to be transferred

When can division of property be challenged?

Let's say father of A and B dies without leaving any will. A and B, the only class-I heirs of their father, will inherit half of the undivided share each in the house. Now if A decides to transfer his undivided interest to C without offering the same to B, the transfer can be challenged as B has been denied his preferential right to acquire the undivided share in the joint property

erty to transfer their respective demarcated/ partitioned share without any restriction to offer it first to other co-heirs.

Therefore, it can be said that under the Act, a co-heir cannot transfer his undivided interest in the jointly owned property that he inherited with other co-heirs, without reference to the preferential right of the co-heirs till



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such property is jointly owned. The law which provides for inheritance by co-heirs under class-I, limits the freedom of disposal of jointly owned immovable property. When the transfer is in violation of the above said provision, the remedy available for the other co-heirs will be to seek intervention of the court to enable them to acquire the right

which has been transferred away by the other co-heir in violation of the Act.

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htestates cheque book HARSH ROONGTA

My father owned land that was recently acquired by the government. We will be paid by the government in lieu of the land acquired by them under the land acquisition Act? Do we need to pay tax on that or declare the amount as part of his income tax return?

- Samir Pathak

Compulsory acquisition by the government is considered as a transfer and you will need to pay capital gains tax

on the basis of the amount paid by the government. But if the asset is agricultural land located at least 8 km away from an urban centre, it is not counted as a capital asset and no capital gains tax is payable on it.

I plan to buy an apartment in Mumbai for ₹18 crore. The total cost of the unit including stamp duty, VAT, brokerage, club mem-

bership, development charges is ₹2.35 crore to ₹2.4 crore. I want to know if the bank will give a loan for the total amount and not just the cost of the flat. I had bought a 1BHK earlier on a 15-year home loan and foreclosed it in 10 years.

- Swaroop Nath

Assuming you have sufficient income to justify the amount of loan, you will be eligible for 75% of the agreed value of the property (ie 75% of ₹1.80 crore which is ₹1.35 crore). It is possible that some banks may include the club membership (if it is transferable to a new buyer) and development charges in the cost and hence you could

be eligible for a larger loan. Since you are likely to have a good credit score (as you have prepaid an earlier loan) and sufficient income to justify a larger loan, you can consult a housing finance expert to find an innovative solution to get you better loan eligibility. This could be a loan against another property or even an unsecured loan from the same lender.

My friend applied for a home loan of ₹50 lakh to purchase a newly built-up flat with a housing finance company in Howrah, West Bengal. All the processes are almost complete and he has received loan

approval through an SMS. The lender has asked him to find a guarantor on his behalf. Is it mandatory? Is there any statutory guideline/rule from the RBI or any concerned authority on the same?

- Dipesh Goel

Life insurance is not mandatory as per guidelines from National Housing Board. However, it is in your own interest to take a term insurance to ensure that your family inherits the property and not the home loan in the event of your death during the loan term. You can buy a single premium term insurance policy from any insurer (not necessarily LIC) for the

loan tenure. However, if you buy it from LIC it is possible that LIC housing finance may lend you the money for the one time premium and recover it in easy EMIs with the home loan.

So though the term insurance policy from LIC may be expensive it may be more convenient and easy to pay for. Just make sure that you buy a term insurance policy and not an investment cum insurance policy.

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htestates law book SUNIL TYAGI

I am a 45-year-old woman and have a 75-year-old neighbour. She has been living alone ever since her husband died last year. Although she is the owner of the flat she does not have a regular source of income. She suffers from diabetes and other ailments and it is getting difficult for her to survive without any kind of assistance from anyone. We as neighbours do our bit for her but her sons who are well settled, live separately and do not even visit or care for her. Is there any option available to her so that she may live comfortably?

- Shikha Swarup

As she is a senior citizen, she can opt for a reverse mortgage of the property she owns whereby she shall receive a regular stream of income from a lender (a bank or a financial institution) against the mortgage of her home/flat. She shall continue to reside in the property till the end of her life and receive a periodic payment on it from the lender. After her demise, the bank will give an option to her heirs to settle the loan along with accumulated interest, without sale of property. If the heirs are unable to settle the loan, the bank will opt to recover the same from the sale proceeds of the property. Any extra amount, after settlement of the loan with accrued interest and expenses, through the sale of the property, will be passed on to the legal heirs.

My grandfather gifted his self acquired residential property to my father by executing an irrevocable gift deed in favour of my father. Would such a gift be considered to be my father's ancestral property and do the other legal heirs of my grandfather have a share in the residential property gifted to me by my grandfather after his demise?

- Sagar Mehta

As your father has obtained your grandfather's property by way of a gift, it is not considered as an ancestral property. The other legal heirs do not have any right in the gifted property as the absolute ownership of the property has been transferred by your grandfather in favour of your father.

I have an independent floor in Delhi that has been leased out. The tenant has now further leased the house to a third party without my knowledge or consent and claims that he is entitled to sub-let. Can a tenant sub-let the property given to him on lease without the consent of the lessor?

- Tarun Raha

It is not clear whether the terms of your lease deed expressly prohibit sub-letting by the lessee. If there is no express prohibition in the lease deed on sub-letting the whole/any part of the premises, the lessee is entitled to sub-let the leased premises. In case your lease deed prohibits, sub-letting then you can seek remedy for breach of terms and conditions of the lease deed.

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