



## Property and Succession: An Overview

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### Abstract

The paper discusses about frequent problems that are faced by people in India regarding property disputes. Every day in India many disputes related to property arise which is why there are many experts in the field of property and succession matters. Succession means when a property gets transferred to another person via family lineage. Many family's problem arises while deciding share of property within family members. Law helps in resolving such disputes via Hindu succession act, Family law and special acts for different religion residing in India or having Property in India but residing out of India.

The article will discuss such legal and general life problems that are faced by people while resolving the disputes and for them the people resort to means of legal advice or arbitration options. For e.g., In Case of Dispute when Co-owner or his legal Heir claim Their Share in the Property, When the seller enters into an agreement to sell or receive the earnest money or advance money. Later, he refuses to perform his part of the contract and approaches another buyer and takes consideration from him, Due to delays in the delivery of possession of flats by developers to buyers and some other types of disputes.

**Keywords:** Hindu succession act, Family law and special acts, Heir, dispute.

### CASE OF A DISPUTE WHEN CO-OWNER OR HIS LEGAL HEIR CLAIM THEIR SHARE IN THE PROPERTY:

1. Which law governs it and the procedure of law governing it?

- Considering the property to be immovable property then Transfer of property act, 1882 deals with transfer of property in co-ownership. Section 44 of the act states that any co-owner (when property is owned by two or more) can transfer his interest in the property at any time to anyone who is competent and in order to bring the interest of the transferee the property can go under partition. This means that even under dispute any partner can sell his share of property to another person legally.
- Now talking about survivorship, the, if any co-owner dies then right of the property will be transferred to the legal heirs of the co-owner and not to the remaining surviving owners of the property.
- If the property belongs to a joint Hindu family, then it follows the rules of the personal laws, then survivorship will depend on whether it is in case of presence of will or in absence of it.

### Which Court Should the Parties Approach?

- Now it depends on whether the dispute is a family co-ownership dispute i.e. if the co-owners were husband and wife or if the co-owners were from a undivided Hindu family

then the case is related to partition then they will have to move to the family court either at the place of their residence or at the place where the property is situated.

- If it is commercial dispute defined under Commercial Courts Act 2015 when the immovable property is used for trade and commerce, then the parties can go to a commercial court.
- If the dispute is a civil dispute, then the parties can file a suit as a civil case then the parties will have to move to a civil court under whose jurisdiction the property is situated if the owners reside in multiple cities. They can move to the highest level for appeal against a civil court order i.e., to the Supreme Court of India over property disputes.

### Manner to Resolve the Dispute?

- Dispute can be resolved either by moving to the court of competent jurisdiction with the matter or by personally entering into an agreement between the parties to the dispute regarding each co-owners respective share in the property.
- The dispute could be related to any matter if for instance, the dispute is related to division of share then share will be decided on the basis of each owner's contribution in the property with reference to funding and if that share is nowhere available or they parties did not enter

into any agreement while buying the property as to who contributed how much, then shares will be considered to be equally divided among them.

**What Relief is Available?**

- The co-owner or his legal heir will get that much amount of property as much has been funded by the respective co-owner. According to section 45, 46 and 47 of TPA, the respective proportionate share of fund contributed by the co-owners in the property will decide how much hold does each co-owner has with respect to the share. The amount of share of fund contributed will be passed on to them in case any dispute arises while transferring the property.

**B. When the seller enters in to an agreement to sell or receive the earnest money or advance money. Later, he refuses to perform his part of the contract and approaches another buyer and takes consideration from him.**

**1. WHICH LAW GOVERNS IT AND WHAT ARE THE PROVISIONS IN IT?**

- Section 54 of TPA defines sale as “a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.”, so if the buyer has paid the advance money he is entitled to specific performance under section 16 of specific relief act 1963 and not part performance under section 53A of TPA as possession has not been taken yet.
- The parties can also claim for breach of contract under Indian contract act.

**Which court shall the parties’ approach to?**

- The parties shall approach to the relevant state court or district court where their immovable property is situated if nothing contrary to this is mentioned in their agreement.

**Manner to Resolve the Dispute:**

- The party can move to the court under section 12 of specific relief act, 1963 which is specific performance of part of contract and seller must compensate the loss caused by him due to not performing his part and breaching the agreement.

**RELIEF Available:**

- according to section 55(6)(b) the seller has to refund the amount he has taken as advance money, or he will be compelled for specific

performance if he does not do so then he has to bring recession decree from court.

- They can have remedies available for breach of contract i.e., Compensator damage, Injunction if the other buyer has not yet taken possession, Specific performance or can demand the nominal damages if specific performance is not granted.

**Due to delays in the delivery of possession of flats by developers to buyers**

**What Laws Govern it and What are the Provisions under it?**

Insolvency and Bankruptcy Code, Indian Contract Act, Consumer Protection Act 1986, Real Estate (Regulation And Development Act) 2016, NCLT (National Company Law Tribunal) all these acts and provisions deals with matter of delayed possession of flats by builders, property dealer, contractor etc. the details will be discussed further.

**Which Court Can the Parties Approach?**

As per the Consumer Protection Act, there are three mechanisms for seeking assistance based on the amount of compensation. Three repair mechanisms:

- District Consumer Disputes Resolution Committee: Disputes up to Rs 20,000 are referred to it.
- State Committee for Resolution of Consumer Disputes: Disputes between Rs. 20 lakh rupees. It has 2 crores.
- National Consumer Disputes Resolution Committee: This is a dispute with a claim of more than Rs 20 lakh.

Under Indian Contract Act 1872

The purchaser of immovable property may also bring general action under the Indian Contract Act 1872, specifically for damages or performance, in a court of competent jurisdiction.

**Under Dispute Redressed Commission**

If an apartment is purchased but the acquisition is delayed, the affected buyer can file a complaint in the appellate court depending on the value of the apartment and the amount of damage. The SDRC handles disputes ranging from Rs 20 lakh to Rs 1 crore, of which over Rs 1 crore is processed by the NDRC.

**Resolution Method**

First, send a legal notice to the builder, seeking reimbursement of the amount paid, as well as interest and/or damages.

- "The buyer may also file a 'deficiency of Service' complaint against a developer within the meaning of the Consumer Protection Act 1986"
- The buyer of the apartment should file a written complaint with the competent consumer dispute court established by law, depending on the value of the property or the amount of damage caused.
- Complaint can also be filed under RERA (real estate regulator of your respective state claims your reimbursement along with interest or loss. Under RERA, dispute can be resolved in any amount, i.e., no restriction and has its own appeal to the appellate board to settle immovable property disputes.

#### Available Remedies:

If the buyer/applicant will necessarily enter the property after a few months or years, he can seek compensation for the money he will spend on renting out another house. This applies if you are buying a home for the first time or your building is being renovated.

- If the buyer has invested his money elsewhere, the buyer can claim damages for the opportunity missed by the buyer.
- The buyer can also claim legal cost if the buyer needs to go to court to get legal protection.
- According to RERA, delay in owning an apartment will require the developer to pay 10% of the value of the property. There are three forums that injured home buyers can use to resolve their grievances: RERA, Consumer Forum and NCLT.

**When a Will or gift deed is made in favour of one of the legal heirs, in such cases, other legal heirs may challenge the process of transfer of property on the ground that the Will or gift deed is not valid in the eyes of law.**

**What laws govern it and what are the provisions under them?**

The Indian succession act 1925 talks about validity of a will and the grounds of challenging it and that who can challenge it. Section 122 of the transfer of

property act, 1882 mentions Gift and further provisions mentions more details on valid gift. In order to make gift deed valid it should be registered under section 17 of TPA. Section 123 makes unregistered gift deed to be an invalid transfer.

#### **In case of a dispute to which court the parties may approach?**

Because it is a property and family dispute then parties can approach to the civil court of competent jurisdiction which can be decided based on pecuniary interests and territorial interests of the parties. The party who is challenging the validity of the gift deed or the will can fill a suit for declaration. They can approach to family court as well for handling the matter of dispute.

#### **Means of Resolution of the Dispute:**

The parties can seek for resolution of the dispute by challenging the validity of gift deed or the will by filing the suit in a civil court on any relevant ground of invalidity of will mentioned under section 59, 61, 89, 124 and 127 of Indian succession act and under section 122 of transfer of property act challenging the validity of the gift deed, Or by revocation of the will under section 62 and 70 of ISA.

- Grounds on which gift deed can be challenged:
  - Coercion
  - Fraudulent transfer of the gift deed
  - Involuntary consent
  - Undue influence by use of dominant position by donee
  - The donor if of ill health mentally or physically.
  - It the gift involves consideration.
  - Gift deed was not registered.

#### **Remedies**

Even if the will or the deed can be challenged by the other legal heirs, they can only challenge it on the grounds mentioned above but it can be proved by the testator whether or not the grounds are supportive of truth. If he has signed them with his free consent, without undue influence or threat and is legally capable and understands the nature of it then no remedies are available for remaining legal heir. But if the deed is not registered then the parties can ask for injunction restraining the registration of the deed in the court.

When a third party purchases an inherited property without the knowledge that it is an inherited property.

**What laws govern it and what are the provisions therein?**

Under section 44 of TPA the person to whom co-owner will send his share which enjoy all the rights and will bear all the liabilities as well but when there was a dispute and that was not informed to the buyer neither the fact that the property was inherited was disclosed then it would make up a case of Cheating under IPC, fraudulent representation of facts and concealment of material facts under Indian contract act (section 17) and Indian penal code (Section 421).

**Jurisdiction**

- Again the jurisdiction will lie to the civil court where the party filling for suit resides or where such property sold is situated so it will be based on pecuniary or territorial jurisdiction.

**Means for redressed:**

- in such cases when there is dispute or not even if the sale was held to be a valid sale, without getting physical demarcation of his undivided share the buyer will not be able to acquire the property's possession in physical mode.
- The buyer will have to file a suit under section 4 of partition act, for obtaining decree of partition, because the buyer deserves his right.

**Remedies:**

- The buyer was not informed about the nature of the property i.e., it is ancestral then he will have discretion that whether he would want to continue it then he can ask for partition or want to cancel the purchase so he can file a suit for revocation of his sale deed and claim for compensation and damages. He can claim all the rights associated with it.
- So if there is a dispute ongoing with the property for e.g. loan or mortgage then that will also be transferred to the buyer with the property if he chooses to keep it. Similarly, if there is a suit ongoing over the property or the property is on lease then that will also be transferred.
- The buyer can claim the sale to be void on the grounds of concealment of material facts which leads to fraud, section 17 of Indian contract act.

The dispute arising over easement rights, wrong representation by the seller.

**Which laws govern it and what are the provisions?**

- Easement rights are defined under Section 4 of TPA and section 25 of limitation act, 1963 and Indian Easement act, 1882.
- **For wrong representation by the seller** under Indian contract act (section 17) and Indian penal code (Section 421).

**Jurisdiction:**

- Law suit for injunction can be filled in the civil court and if in some case easement could give rise to trespass then suit can be filled in the civil court according to territorial jurisdiction.
- In misrepresentation of fact suit can be filled either for claiming the monetary damage or for rescinding the contract i.e., to be status quo ante in

**Means and Remedies for resolving such dispute:**

- If an easement right is under dispute, then it can be challenged under sections 37- 48
- Under section 35 injunction to restrain disturbance to easement can also be filled by the easement right holder. And suit for compensation of damage due to disturbance can also be filled under section 33.
- Under section 19 of Indian contract act, the misrepresentation made by the seller makes the contract voidable. So now it is at the discretion of the buyer whether to rescind the contract or insist for the performance of the contract as said by the seller via section 73 and 75 of Indian contract act and section 30 and 40 of specific relief act.

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