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POSSESSION UNDER INDIAN LAW: AN ANALYSIS

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ABSTRACT

Possession is prima facie evidence of ownership. It is said so because if a person has physical relationship with the property, then it is presumed that he is the owner of the property. The aim of this research work is to find out various aspects of possession as it is part of various subjects like transfer of property act, jurisprudence, law of torts, etc. Also, there is a brief discussion about the types of possession along with the modes of acquisition of such possession, in this article. There are various jurisprudential theories which very well apply to possession. There are various cases related to it with the remedies provided under Indian statutes, in this article. The targets of this article are all the classes of society as every person needs to be aware about it because it is the common issue related to property prevalent in various societies including Indian society as well.

MEANING OF POSSESSION

Possession means physical relation of a person to have control over a thing. In the beginning, man use things for daily purposes but later he realized the need of storing these things for future. Also, he started feeling the need of preserving them from other human beings and to assert his right over those goods. So, from there, the idea of possession emerged and the law provides for rules related to possession in order to safeguard their property.

If we refer to the words of great exponents on possession, then, Bentham said defining the concept of possession in law is like defining the geometric conception of roundness. Absolute roundness cannot be defined and is nowhere to be found. Markby defined it as the determination to exercise physical control over a thing on one's own behalf coupled with the

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capacity of doing so. Sir Henry Maine defined it as physical detention coupled with the intention to hold the thing detained as one's own. Salmond said the possession of a material object is the continuing exercise of a claim to the exclusive use of it.²

Also, possession is prima facie evidence of the title of ownership.³

In the case of Superintendent v. Remembrance R, court said that the definition of possession can be different in different contexts and it is next to impossible to give a uniform definition of possession which can apply on every situation.⁴

In the case of merry v. green, the plaintiff purchased a bureau from an auction but there was some money in the secret drawer and vendor has possession over it. Plaintiff found that money and keeps it with him and in doing so he infringed the right of possession of the vendor. So, it was held that the plaintiff was guilty of larceny or theft

There is a difference between jus possidendi and jus possessionis. Jus possessionis means the right to continue to possesses. If I give something to my servant then he will only have physical possession over it and no legal right. Jus possidendi means having the element of animus i.e., intention in it. Robber or finder of the goods can also have such right.⁵

POSSESSION IN FACT AND IN LAW

1) Possession in fact

It consists of two elements of possession. They are-

i) The Corpus Possessionis

It is the physical control over the thing. It consists of power to use and to hold that thing. Also, it includes the power to exclude others from using it. So, basically there is physical relation of possessor to the res (object) and possessor relation to the rest of the world.

ii) The Animus Possidendi

2. Dr.S.R.Myneni, jurisprudence(legal theory), Asia law house, 2nd edition

3. V.D.Mahajan, jurisprudence & legal theory, Eastern book company, 5th edition

4. www.legalservicesindia.com last accessed on 4.11.18 at 6:15 p.m.

5. V.D.Mahajan, jurisprudence & legal theory, Eastern book company, 5th edition

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It is the intention to hold that thing and to exclude external interference but here exclusion is not absolute as owner of a land can exclude trespasser but not the person who has legal right over that land.⁶

2) Possession in law

It means possession of any property in the eye of law which means such possession is recognized and protected by law.⁷

ACQUISITION OF POSSESSION

a) By taking

The possession over a thing can be acquired by taking away the thing without the consent of the previous possessor. It can be rightly or wrongfully taken away. For an example, when a thief steals a watch then it is acquisition of property but in a wrongful manner.

b) By delivery

Here, the possession is taken from the previous possessor with his consent for that particular thing. There can be actual or immediate transfer or there can be no actual handling of that thing. This is actual or constructive delivery respectively.

c) By operation of law

The third mode of acquiring the possession from one person is through operation of law. For an example, after the death of the person, the things in possession of that person are given to his legal heirs.⁸

POSSESSION IN ANCIENT INDIAN LAW

Ancient Indian law related to possession was based on dharma. The possession was denoted by the term bhoga which means physical control over that property without any external interference. Ownership was denoted by the term swam which means that a particular thing belongs to a particular person.

Possession was controlled by Holy Scriptures previously. For legal possession, either you have the title under Hindu scriptures or if you have possession with no title then it should be continued for three generations.⁹

SAVIGNY'S THEORY OF POSSESSION

According to him, possession is based on two things i.e., corpus possessionis and animus domini. By corpus possessionis, he meant effective physical control. He further categorized it

⁶ Dr. Veena Madhav Tonapi, jurisprudence, Universal law publishing, 2nd edition

⁷ V.D. Mahajan, jurisprudence & legal theory, Eastern book company, 5th edition

⁸ Dr. S.R. Myneni, jurisprudence (legal theory), Asia law house, 2nd edition

⁹ Dr. S.R. Myneni, jurisprudence (legal theory), Asia law house, 2nd edition

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into two i.e., commencement of possession and retention of possession. The commencement of possession is the physical control to use that thing and to exclude external interference whereas the retention of possession is the ability to reproduce that power on will.

By animus domini, he meant the mental element i.e., intention to hold that thing and to exclude others from using it. It explains that why the tenant, borrower and agent does not have any possession in roman law.¹⁰

IHERING'S THEORY OF POSSESSION

According to him the person who hold the property are owners and possession was attributed in order to make interdicts available. He questioned that why roman law protect possession by means of interdicts. He answered it that to give the advantageous position to the owner whenever there is a dispute related to the title of that thing or property.

SALMOND'S THEORY OF POSSESSION

According to him, only possession of fact should be taken into consideration and possession of law is fictitious. He further added that possession of physical object is corporeal possession and possession of rights is incorporeal possession. He also talked about corpus possessionis and animus possidendi. Corpus possessionis deals with relation of possessor to the thing and the relation of possessor to other persons. For possession, both the above-mentioned element should be present.¹¹

POSSESSORY REMEDIES UNDER INDIAN LAW

The Indian legislatures have taken into consideration the possessory remedies in the Indian statutes. Some of them are-

- Specific Relief Act, 1963

Section-5 provides for recovery of immovable property whoever proves the better title to that property.

Section-6 provides recovery of such property through a suit.

- Code of Criminal Procedure, 1973

Section-145 provides for the procedure whenever there is breach of peace because of some dispute over land or water.

Section-456 provides for restoration of possession over immovable property by court's order whenever any person by criminal intimidation or criminal force has disposed someone else immovable property.

10. Dr. S.R. Myneni, jurisprudence (legal theory), Asia law house, 2nd edition

11. Dr. S.R. Myneni, jurisprudence (legal theory), Asia law house, 2nd edition

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- Sales of Goods Act, 1930

Section-47 provides for some situations in which the unpaid seller who is in possession of some goods can retain it until the payment of price is made in those mentioned situations.

Section-48 provides to unpaid seller to exercise his right of lien (right to retain goods until due payment is made) in case of part delivery.

- Indian Contract Act, 1872

Section-168 provides the right to finder of goods to sue for specific reward offered.

Section-169 provides the right to finder of goods to sell that thing, if the owner is not found.¹²

INDIAN CASES RELATED TO POSSESSION

In the case of Sukhlal & Others v. Ashok Kumar Raghuwansi, court said that even the person has no physical possession but his de jure possession deemed to continue.¹³

In the case of Gunwantal v. State, court observed that possession need not be physical but it can be constructive.¹⁴

In the case of Smt. Krishnawati v. Hans Raj, court stated that if husband and wife lived together and if one of them has ownership of a house and gave permission to the other to carry a business in it then it would be a clear inference that the owner had let out a part of premises.¹⁵

KINDS OF POSSESSION

1. Corporeal and incorporeal possession

Corporeal possession is the possession or control over the material or tangible things whether movable or immovable.

Incorporeal possession is the possession or control over the immaterial or intangible thing.

2. Mediate and Immediate possession

When something is in possession through somebody else or some agent, it is mediate possession.

When something is in possession directly or personally, it is immediate possession.

3. Concurrent or duplicate possession

When two or more persons have the same thing in possession but their claims are not adverse to each other.

4. Adverse possession

12. www.legalsevicesindia.com last accessed on 4.11.18 at 6:15 p.m.

13. <https://indiankanoon.org> last accessed on 4.11.18 at 6:30 p.m.

14. AIR 1972 SC 1756

15. <https://indiankanoon.org> last accessed on 4.11.18 at 6:30 p.m.

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The possession of a person over thing of another person due to the possession acquired over that thing from long period of time.¹⁶

5. Constructive possession

It can be understood by an example i.e., if there are some goods in my warehouse then by handling the key of the warehouse, the goods are in the constructive possession.¹⁷

WHY POSSESSION IS PROTECTED BY LAW

- Protection of possession aids criminal law by securing peace in the society.
- Possession is protected as a part of law of tort like possession is protected from fraud.
- Possession is protected as a part of law of property and provide various remedies related to it.¹⁸

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