

## POSSESSION:

According to Salmond, "in the whole range of legal theory, there is no conception more difficult than that of possession".

Possession is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical and precise definition of possession uniformly applicable to all situations in the context of all status.

The Roman law had its main aim to protect ownership and it was in this connection that the law regarding the position developed. The Roman law was mainly concerned with developing a theory to distinguish detention and possession from each other. It was called as "possessio" or "possession" civilis.

## A POSSESSOR HAD TWO ADVANTAGES:

First, he had a right to protection by the possessory interdicts.

Second, after the expiry of the prescribed period, the possessor could acquire ownership.

## ELEMENTS OF POSSESSION :

There are two elements of possession and those are the corpus of possession and animus are the intention to hold possession.

The two demands must be present in the case of possession and neither of them alone is sufficient to constitute possession.

According to Holland, "a moment's reflection must show that possession in any sense of the term must imply firstly some actual power over the object possessed and secondly some amount of will to avail oneself of that power". He further added that "the romance by whom this topic was created, treated with great fullness or subtlety describe these essential of possession by the terms corpus and animus respectively.

- a) The first source is the physical power of the possessor which like savings are of the view that possession means an intention coupled with the physical power to exclude all persons from the use of that material object.
- b) Another source is the personal presence of the possessor himself. In protection there may also be personal presence without any real power of exclusion.
- c) Another measure of security is custom. There is a tendency among human beings to follow established usage and this is an important source of de facto security and possession.

- d) another measure of security may be secrecy. If a man wants to keep a thing safe from others he may keep it hidden.
- e) Respect for right full claim is also a measure. A right full claim will readily obtain that general acquiescence which is essential to de facto security.
- f) Another measure of security is the manufacture of the animus domini. The visibility of the claim is another element in de facto security of its enjoyment.

## CORPUS OF POSSESSION:

Corpus means that there exists such physical power or physical contact of the possession in relation to the thing possessed so as to give rise to the reasonable assumption that other people will not interfere with it. It can be considered under two heads:

Relation of the possessor to other persons.

Relation of the possessor to the thing possessed.

2) relation of the possessor to other person:

A person is in possession of a thing when the facts are such to create a reasonable expectation that he will not be interfered with the use of it. He must have some sort of security for the acquiescence and not inferior with other persons.

The measure of security is that which normally and reasonably satisfies the animus domini. The following are the sources from which such measure of security can be derived.

3) relation to the possessor to the thing possessed :

According to Salmond, "the necessary relations between the possessor and the thing possessed is such as to admit of his making such use of it as accords with the nature of the thing and of his claim to it."

Paton is also of the same view he says that "in corpus there are two elements:

- 1) The possessor's physical relation to the res --- object
- 2) The relation of the possessor to the rest of the world.

4) corpus depends upon the nature of the thing:

Ancona vs Rogers:

A was permitted to put goods in a room of B - goods kept there locked and key taken away - A was held to be in possession of the room.

## ANMUS POSSIDENDI:

- 1) Animus possidendi or the subjective element in possession is the intent to appropriate to oneself the exclusive use of the thing possessed the animus is possidendi the conscious intention of the individual to exclude other from the control of an object.
- 2) According to Holland, “to some possibility of physical control, there must at any rate for the commencement of possession be super added a will to exercise such control.
- 3) There are certain aspects of animus possidendi have to be consider:
  - a) The animus possidendi is not necessarily a claim of right it may be consciously wrong full. The thief has a possession not less real than that of true owner.
  - b) The claim of the possessor may be exclusive. He must intend to exclusive other person from the use of the things possessed. However, the exclusion need not be absolute.
  - c) The animus domini need not amount to a claim intent to use the thing as owner .the animus possidendi need not be claim to the use of the thing at all as in the case of a pledge or a bailer with a lien.
  - d) The animus possidendi need not be claim on ones own behalf it may even through servant, agent or trusted.
  - e) The animus possidendi need not be specified but may be merely general . a general intent with respect to a class of things is sufficient to confer possession of the individual object belonging to that class even though their individual exercise is unknown .

## POSSESSION IN FACT AND IN LAW:

- 1) Possession is divided into two categories:
  - Possession in fact
  - Possession in law
- 2) Possession in fact is actual or physical possession. It is a physical relation to a thing. Possession in law means possession in the eyes of law it means a possession which is recognised and protected by law.
- 3) Generally a person who is in de—facto possession of a thing also comes to have de—jure possession however sometimes possession may exist in fact and not in law eg: servant holds for master .
- 4) According to keeton, “ possession in law and possession in fact are not invariably loterminure , although very frequently they are.”
- 5) Roman lawyers used :
  - Possession naturalis ( possession in fact)

## Possession civilis ( possession in law)

### SAVINGS THEORY OF POSSESSION:

- 1) Both the corpus of possession and the animus possidendi must be present to constitute possession.
- 2) By corpus is meant an effective physical control of the object. By animus is meant the mental demand or the intention to hold the object as owner against all other.
- 3) Savings theory explain as to why the tenant ,the borrower and the agent had no possession in Rome law they had no animus domini as they did not intend to hold the object in their own rights.

### CRITICISM:

- 1) He wrongly assumed that 'corpus' and 'animus' which were required for accusations constituted possession itself he did not make the change in the conception of possession which took place later.
- 2) Roman law did not protect a possession acquired unlawfully the possession by theft was not protected in law. A person who lost a possession by way of violence was still in possession.

### IHERING THEORY OF POSSESSION:

- 1) Ihering's theory is more objective and it is a sociological approach to possession.
- 2) He takes up the question as to why Roman law protected possession by means of interdicts. The answer according to him is that persons holding the property in majority of the cases would be owners and possession was attributed to such owners so that interdicts might be available to them.
- 3) This theory is more in consonance with Roman law and this theory is flexible. It explains those cases which the savings theory didn't.

### CRITICISM:

- 1) It looks at possession from the point of view of interdicts and therefore it is incapable of explaining the cases where law refused possessory rights to the persons who were in effective control.
- 2) The case in which the person did not look like an owner but for certain purposes law recognised them to be in possession cannot be explained by inhering theory.

### ACQUISITION OF POSSESSION:

- 1) TAKING:

It implies an act exclusively on the part of the person who takes the possession .

It is done with out the concent of the previous possessor .

Takings is original or derivative. The original takes place when the object has no previous owner as re nullics (catching a wild animal) wnen the possession has the owner already it is called derivative.

## 2) DELIVERY OR TRADITIO:

Delivery means the voluntary requirement of possession by one person in favour of another it is acquired by consent and co operation of previous owner.

Deliver may be actual or constructive in actual delivery immediate possession is given to the transfer constructive delivery is that which is not direct or actual.

The two categories of actual delivery are based on whether a person return mediate possession are not.

There are three kinds of constructive delivery.

Tradition brevi manu

Constitution possessorium

Attornment

## OPERATION ON LAW:

This happens when, as a result of law, possession changes in hands

For eg: if a person dies the possession of his property is transferred to his legal representatives.

## RES NULLIUS:

The first finder of a thing has a good title to that thing against all but the true owner

It is immaterial if the thing is found on the property of another purson.

The rule dose not apply if the owner of the property on which the thing is found is in possession of the thing itself and the property.

The same is the case if the finder finds the thing as the servant or agent of another person.

The rule also does not apply if the possession of one thing war got through trespass or other wrong ful act.

## KINDS OF POSSESSION:

### 1) Immediate and mediate possession:

Immediate possession is also called direct possession and mediate possession is also called as indirect possession.

Salmond speaks of three types of mediate possession his first mediate possession a one that is acquired through agent or servant. The second mediate possession is with a person who hold it on my behalf and who

is bound to hand over on demand in the third category the mediate possession is with one person but he is bound to return the same after a certain period or fulfillment of certain conditions

**In English law this distinction is not of great use the English law favours exclusiveness of possession and it grants possession to one person and one person along at the time.**

#### CORPOREAL AND INCORPOREAL:

Corporeal possession is the possession of a material object and incorporeal possession is possession of anything than the material object.

Corporeal possession is possession of a thing and incorporeal possession is possession of a rights.

#### REPRESENTATIVE POSSESSION:

Owner has possession of a thing through an agent or servant.

The real possession is that of actual owner and not that of representative.

The essential of representative possession lies in the fact that the master has the animus to exercise control over the thing.

#### CONCURRENT POSSESSION:

Possession may be in the hand of two or more persons at the same time claim which are not adverse and which are not mutually destructive & admit of concurrent realism.

In the case of concurrent possession, mediate and immediate possession may exist in respect of the same thin.

#### DERIVATIVE POSSESSION:

The holder of the thing combines in himself both the physical and mental element which constitute legal possession.

A creditor has a derivative possession of the thing pledged to him.

## CONSTRUCTIVE POSSESSION:

It is not actual possession it is a possession in law and not possession in fact.

Handing over the key to the tenant.

## ADVERSE POSSESSION:

To be adverse. Possession must be an invasion of ownership of another.

It should be actual exclusive and adequate in continuity and publicity.

The act of possession must be exercised without violence without stealth and without permission.

The conception of adverse possession is very important in law because when it is had the period said down by law it extinguishes the title of the true owner and creates a title in the adverse possessor.



