

A Study on Possession and Ownership in Comparison

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Abstract: *The notions of ownership and possession, which are factual and legal concepts, respectively, are compared in this paper. It draws inspiration from a variety of publications and articles. This research paper examines the idea of ownership from the viewpoints of both modern law, which addresses acquiring ownership, and ancient Hindu law. Additionally, we have shed light on the traits, crucial components, categories, and methods of obtaining both possession and ownership. The contrast between these key ideas is then eventually discussed in the study*

Keywords: Ownership, Possession, Comparative Study, Characteristics

I. INTRODUCTION

Possession and ownership have a close relationship with one another. While the other idea is legally legal, the first is factual. These two ideas work together to control each person's property rights. Possession and superior title to a property or item by one person that results in the loss of possession by another is the foundation of the ownership idea. Therefore, assessing how ownership and possession relate to one another is seen to be just as important as comprehending the concepts of ownership and possession and using them to precisely and properly resolve legal issues. To put it simply, the concepts of possession and ownership will be seen as defining a condition, an act, or the right to possess. However, these two ideas have distinct meanings in legalese. Therefore, the idea of possession and ownership will be covered in this research, with a focus on a comparative analysis of the two concepts.

II. LITERATURE REVIEW

Stern, stephanie & lewinsohn-zamir, daphna. (2020). Ownership and possession.

The psychological meaning of possession and ownership, as well as other people's viewpoints on them, are the main topics of this article. It examines the link between ownership and possession, including the theories of first possession and adverse possession, and focuses on an individual's possession of intangible rights. It also discusses how free they are to utilize their property and how they should refrain from doing so.

Merrill, thomas. (2015). Ownership and possession.

According to this article, possession is a fundamental idea in both common and civil law that may be compared to ownership and possession using viewpoints from the fields of law, economics, psychology, and history. Additionally, this article sheds light on property jurisdiction, adverse possession, and possession from first possession. The writers of this page have studied possession laws in a number of different nations, including the United States, the United Kingdom, China, Japan, Taiwan, France, Israel, Italy, and Austria, among others.

Rostill, luke. (2021). Possession, relative title, and ownership in english law.

The relativity of title concept and the idea that possession is a source of title are two essential ideas in English property law that are clarified in this article. It has discussed how judges, professionals, and scholars have interpreted these ideas differently. The concept of possession, the kind of title obtained by possession, and the reasons for title relativity are the primary topics of this article.

Popov, danica. (2011). The qualified possession turns into ownership. Zbornik radova pravnog fakulteta, novi sad.

This article describes how possession is the first indication of ownership, using Serbian law as support. It also discusses the two types of adverse possession that can result in ownership ordinary and extraordinary adverse possession and highlights the differences between them in a number of areas, including the ownership title, the effect after the allotted time has passed, and more.

Aikhenvald, alexandra & dixon, r.m.w.. (2013). Possession and ownership.

The author discusses the connection between possession and ownership in this article, which primarily focuses on the linguistic perspective of ownership and possession, particularly on how these concepts are expressed in language and the land in relation to societal structures. Additionally, the expression of possession, such as integration and predictive possession, is the emphasis of this essay.

III. RESEARCH PROBLEM

Ownership and possession are the most closely connected concepts under the umbrella of property, which has existed since the dawn of human society. Although the terms ownership and possession are quite similar in everyday speech, they have different legal meanings that are used in a variety of rare situations. Numerous legislative legislation and regulations, such as the Land Reforms Act and the Sale and Transfer of Land, affect the right of ownership. Ownership is the de jure recognition of a claim to a specific piece of property. Possession is the objective reality of ownership. Possession of a right is the de facto relationship of continuous exercise and enjoyment, as opposed to the de jure connection of ownership.

RESEARCH QUESTIONS

- i) Whether the ownership and possession are same?
- ii) Under which grounds the ownership and possession differs?

HYPOTHESIS

Possession and ownership are quite comparable in situations when the owners are the rightful proprietors of the item and have complete control over it. It is believed that the possessor possesses the title of the property more than anybody else, with the exception of the owner, and possession refers more to having physical control over an item or piece of property. These forms of possession and ownership, which originated in ancient property law, are significant in the present era. Possession and ownership vary in that the former is only a legal term, while the latter is entirely about having the right to hold the item.

SCOPE OF THE STUDY

This study's goal is to comprehend ownership and possession in terms of its components, traits, acquisition, and varieties. While possession refers to the actual custody, control, or occupation of an item with a clear purpose of ownership, ownership refers to a set of rights granted to an individual to use and enjoy the property.

OBJECTIVES OF THE STUDY

- To understand the difference of ownership and possession
- To know about the modes of acquisition of ownership and possession
- To understand the characteristics and elements of ownership and possession

IV. RESEARCH METHODOLOGY

Since the study primarily involves the inflow of data from several sources, it will adhere to the doctrinal approach. The majority of the sources are secondary. We have reviewed as many books, journals, papers, and speeches by prominent legal scholars from India and other countries as we could. The most significant sources are original books and articles

written by prominent experts on the corresponding philosophies. The following techniques will be used to meet the study's goals and gather the required data. Additionally, a number of case laws pertaining to building, both Indian and foreign, are cited.

OWNERSHIP

Jurists has been characterised ownership, in a different number of ways. Here over everyone believe that the ownership or position of something physical is the broadest or the largest power that can be exercised over something.

Hibbert is the jurist who claims that ownership includes four categories of rights:

1. The right to utilise something
2. The right to prevent others from utilising the item
3. The authority to destroy it

As per blacks' law, dictionary, ownership is referred as a set of rights to use and enjoy the property, including the right to transmit it to others. So thus, it is said that ownership, as an official way or a legal acknowledgement to claim a particular item of property. Hibbert I'm other hand says that the earth can't be destroyed no one has the Right to destroy it as no one has the ownership of the earth.

AUSTIN'S DEFINITION OF OWNERSHIP:

Austin argues that ownership is more powerful right, than possession and it is an absolute right.

ELEMENTS CONSISTING OF OWNERSHIP:

1. If you own a property, you have all the rights to possess in it.
2. If you own property, you have all the rights to dispose the land or property.
3. If you own a property, you're entitled to the property forever.
4. The rem against the rights is available.

When British left India, India was divided into two Pakistan and India and had 562 siyasats. In 1970, Indira Gandhi gave away all the property to royal wajeefa. As time passed the zamindar system was vanished. And made a question mark to the people who owned the property and for how long. Under the accordance with acquisition law, the property is taken under the control of the law and end the possession of the owners by paying compensation and everything is done under the public interest.

CRITICISM ON AUSTIN'S DEFINITION:

Numerous authors and jurists criticized Austin's notion of ownership for how he interpreted it. He is criticized for holding the erroneous belief that ownership is comprised of a single right. However, this includes the right to use and enjoy the property, among other rights. Sometimes the owner retains ownership even after giving up some of his rights.

ANCIENT HINDU LAW AND OWNERSHIP

Ancient jurists had broader perspectives on how to get property ownership. Manu, an ancient Hindu, said that there are seven ethical methods to get property: inheritance, gain, acquisition, conquering, application, employment of labor, and accepting presents from appropriate others. Gautama also mentioned these seven methods of obtaining ownership, and he made some modifications to the list that Manu had compiled. Hindus claim that everyone is aware of Narada's identity. claims that there are twelve different ways to get wealthy. He also states that three of these ways are universal and available to all members of the caste, while the other methods are reserved for members of certain castes. All of these money-making techniques are appropriate for different castes, but they should not be used outside of dire situations.

CHARACTERISTICS OF OWNERSHIP

Ownership is considered to be the most important, limiting, and dominating. No one else has any stake in the property; the owner is the only owner. Additionally, the property right may be subject to certain limitations, which are set by the

government. The whole power to rent out his place rests with the landlord or property owner. It now comes with restricted possession, where there may be required restrictions that are imposed on proprietorships as well as easements of the particular land.

There's a chance that any national or governmental problems or crises may result in limitations on the property and its owners. The government had complete control over where any owner might be found and how much they could be compensated. By designating an expert to supervise them, the government must have the right to know about the charges made by the property owners.

The government is fully authorized to assign certain responsibilities to property owners. if these evaluations are not conducted. The government therefore has complete power to assume the role of the property, which is to comprehend the amount of money owing to it.

A single person is not solely responsible for the property. Thus, he ought to be eligible to bequeath his possessions to his heir. The owner has the right to divide the land, and he has the right to carry out this activity for as long as he lives. There may be some rights and obligations placed on unsound people and newborns when it comes to the transfer of property. They lack the mental capacity to comprehend and appreciate the consequences of their actions, making them incapable of entering into the agreement.

TYPES OF OWNERSHIP

1. Corporeal and incorporeal ownership:

Corporeal ownership talks about the ownership of tangible objects which or material goods were as incorporeal ownership talks about their rights and position of the property. Yeah, intangible property's ownership is also known as incorporeal property ownership. House, table, auto mobile car etc comes under corporal ownership, where incorporeal ownership includes trademarks, copyrights and patents.

2. Trust and beneficial ownership:

When two persons own the same piece of property, they are required to utilize it for each other's advantage. Thus, this kind of duty falls under trusteeship. The ownership of whoever is known as trust ownership. The term "beneficiary ownership" refers to the individual who gains an advantage from the property. It just discusses the ownership of the trust, which is only a formality and not a significant matter. This indicates that the trustee's ownership of the property is just notional. He is legally permitted to utilize someone else's property for the benefit of the true owner.

3. Legal and equitable ownership:

Equitable ownership, commonly referred to as ownership recognized by the legal system's standards, is the ownership recognized by equity rules and in contrast to legal ownership. In contrast to legal ownership, equitable ownership is a right in personam, and the equity acts are in personam in this case. it is an in rem right. In this case, there may be two owners at the same time: the equitable owner and the legal owner.

4. Vested and contingent ownership:

Vested ownership refers to situations in which the owner's title is already perfect. In nature, it is absolute. The recipient of a gift or present under a gift deed DONEE has a vested interest in the property until the DONER, the property's owner, passes away. The land may be transferred once the contributors die away. These days, property ownership is referred to as contingent possession, which is not absolute. The ownership is faulty and, in certain cases, becomes absolute.

MODES OF ACQUISITION OF OWNERSHIP

Generally, ownership can be acquired in two ways, they are.

- i) Original mode
- ii) Derivative mode

ORIGINAL MODE

Res nullis is the legal term for when someone acquires ownership of a piece of property that has no owner. No one should claim ownership of such property or item. acquiring possession of such an item via employment, admission, or specification. For instance, the registry land was taken by someone, but it has no owner.

DERIVATIVE MODE

An original owner or prior owner sells the property to the current owner is in the form of Derivative mode. It is not a relationship of ownership, only a transfer of existing ownership, where the buyer obtains the ownership from the seller. For example, A person purchases a land from another person after completing the formalities.

POSSESSION

Jurists define possession according to their own personal convictions. It is the most basic relationship between humans and objects, according to Salmond. Henry Maine defined "interaction with an object that includes the exclusion of other people from enjoying it" as follows. The concept of possession was expounded by the Indian Supreme Court in B. Gangadhar v. Ramalingam (1995) 5 SCC 238. For objective realization, ownership equates to possession.

It is the dispute between a de facto assertion of a claim to a particular piece of property and its de facto counterpart of ownership. De facto relationship of continuous pleasure and exercise, de jure link of ownership. Possession is the actual exercise of a claim to a particular piece of property. It is the most common form when the allegations are made. The shape outward is where the claims are most visible. Possession is the state in which an item or thing is physically controlled. The term "possession" has no exact meaning. Therefore, it is challenging to define possession in law. It is a genuine and legitimate legal idea.

ELEMENTS OF POSSESSION

It is in two fundamental elements:

- i) Corpus
- ii) Animus

CORPUS POSSESSION

It denotes 2 things:

- a) it is the physical relationship with the object or res.
- b) the rest of the world for the possessor's relationship.

A man whatever he owns, must have some physical touch with the reasonable expectations where others will not interfere in that. Which means others should not interfere the possessors right to use or enjoy with the object or the property.

THE PHYSICAL POWER OF THE POSSESSOR

The physical power of the possessor over an object in his possession which works as an assurance. Others couldn't interrupt the possession it is an assurance. To avoid the interference of other person an owner can built gate, walls etc.,

PERSONAL PRESENCE OF THE POSSESSOR

Personal presence is enough to keep ownership to the possessor. Fight intervention for his physical power is lack. For example, some of rupees in a child's hand prove its possession even he couldn't have his physical power to do.

SECRECY

It is the most effective way to keep one's possessions safe and concealed while avoiding outside influences and meddling from others. Wrongful ownership claims are valid or stop others from interfering with someone else's legal possession.

ANIMUS POSSIDENDI

Possession of this kind is not synonymous with juxtaposition. Such power is exerted by desire, which also suggests the potential for physical control. It is the aspect of possession that is mental.

Classical Roman jurists recognized two levels of power over a had object. These variables represent the animus context of the factor in legal possession.

The acquirors does not have the right with the property even it deliberately wicked. The owner of a stolen goods is less genuine than the possession of rightful owner of the goods.

The sole ownership of the object must have possession of the possessor. To keep others from using and enjoying the item is the intention of the possessor. The exclusion dies not have to be completed.

As the owner he does not have the intention to utilize the items accompanied by a claim. The ownership of a pledged items has the pledgee and wants to keep the custody as a security and his obligation is paid.

The animus of the possessor does not have to be his own. A servant, an Agent, trustee, bailee. For example, the possessor does not maintain his goods for his own use. But for someone's benefit.

The animus must be broad; not to be. For example, a man who caught a lot of fish in his but don't know the counting. Similarly, a person thought to own the library books but couldn't know the existence.

The animus is merely general, may not be specific. For instance, a man who caught the fish in his net is the possessor, but don't know about the number of fishes. The same thing happens in the library also. A person who owns receptacle should be possessor of the contents in the receptacle.

TYPES OF POSSESSION

These are the most important types of Possession.

- Corporal possession
- Incorporeal possession
- Mediate possession
- Immediate possession
- Constructive possession
- Adverse possession
- De facto possession
- De jure possession

CORPOREAL POSSESSION

Materialistic or physical manifestation having objects perceive our senses are called corporal possession. So, material, or tangible objects used to clime this because it is the persistent exercise. For example, Car, Pen, Cycle, House, etc.

INCORPOREAL POSSESSION

It is the object which our senses cannot perceive and don't have physical or materialistic manifestation is called Incorporeal Possession.

MEDIATE POSSESSION

The Possession of a thing or object through a friend or an Agent is called Mediate Possession also it is called as Indirect Possession. For example, if a landlord let his house to a tenant, the tenant should handover the house whenever the landlord needs it. So, through the tenant the landlord has the mediate possession of the house.

IMMEDIATE POSSESSION

The property or a thing possessed by the possessor himself is called Immediate possession or Direct possession. For example, When the possessor buys a notebook and keep that note with himself. So, the notebook is in the immediate possession by himself.

CONSTRUCTIVE POSSESSION

Without having actual possession or change of the material the authority over an object is called constructive possession. It is the possession by law but not by fact. For example, if a driver wants to give the key to the owner, then the driver is not the authority possession of the car.

ADVERSE POSSESSION

It is a possession without legal title, for a certain period, become an acknowledgement to the owner over an object or thing is called Adverse possession. Informally it is called as "squatter's rights". The possessor needs to prove intention to keep it absolutely of some property is adverse possession. Without possessing, paying the liability, and claiming the property, is not sufficient. For example, unused piece of agricultural land or continuous use of private land.

DE FACTO POSSESSION

It is a possession, which is not legally recognized, but in really exists. It is the Latin word with the meaning of 'In fact'. For example, de facto husband and wife are not really married but live like a husband and wife.

DE JURE POSSESSION

'In law', lawful, legitimate or matter of law is the meaning of De jure in Latin. It is legally recognized possession but not in really. It is juridical possession in the eyes of law. For example, an owner of the house could allow a man to live in a house but not intended for good.

MODES OF ACQUISITION OF POSSESSION

There are three modes in which we can acquire possession, they are.

- By Taking
- By Delivery
- Operation of law

I) By taking

Without a consent of the previous owner, it may be right or wrong an acquisition possession will occur. For example, as Keeton says, where an inn-keeper seizes the goods of his guest, who has failed to pay his bill, there is acquisition of possession by rightful taking. But where a thief steals something, he acquires possession wrongful taking. It is a thing must be already possession of some other person, it is not necessary. For example, a thing belonging to no one., A wild animal or a bird.

II) By delivery

With the consent of previous owner, it is the acquisition of possession with two types as

- a) Actual
- b) Constructive

A thing's actual transfer or physical transfer from one person's hand to another person's hand. It has two kinds, one where the owner lends his thing to other with mediate possession. Another is the owner sells the thing to other does not retain with mediate possession. This is known as Actual delivery. If there is no actual or direct possession transfer with the thing is called constructive. It is with three kinds, 1) Traditio Brevi Manu A person who has the immediate possession already to give up the possession. For example, selling a thing to a person who has hirer and already having the immediate possession. The transferee who has the corpus is only the animus.

CONSTITUTUM POSSESSORIUM

Here immediate possession remains with the transferee, and the mediate possession is transferred as the opposed to tradition brevi manu. For example, a person buys a scooter from a hiring person and give that scooter to him for the same purpose. So, the immediate possession is still with the selling person, and the first person got its possession through constructive delivery.

ATTORNMENT

While immediate possession in the hands of third person doing the transfer of mediate possession is this delivery. For example, A person selling his goods to the third person when the goods were in second person's warehouse. So, the second person accepting goods for the third person.

OPERATION OF LAW

A possession can be acquired by the operation of law like in case of succession and in adverse possession.

COMPARISON BETWEEN OWNERSHIP AND POSSESSION

Salmond argues that the difference between possession and ownership is obvious: possession is in actuality, while ownership is in rights. Possession is the promise of reality, and ownership is the assurance of the law. Possession always entails ownership, while ownership does not necessarily entail possession. For example, a renter is not the real owner of a house; they just have access to it. In contrast, the landlord is legally entitled to both direct and indirect possession of the property. To put it simply, ownership is a set of legitimate rights. Possession is just prima facie evidence and does not prove ownership.

Inhering asserts that ownership is the de jure acknowledgment of the claim, whereas possession is the de facto exercise of the claim. Ownership is the soul, possession is the body, and the body's presence is essential to the soul's realization, according to Dr. Asthana. When someone owns something, they have the only right to use it and may stop others from using it in the same or a similar way. However, if a person is the owner of a piece of property and the possessor is not the owner, they may use these rights since ownership is absolute and unconditional, while possession is conditional.

Ownership grants proprietary rights, such as the capacity to sell or transfer the property to another person, in addition to possessory rights, such as the power to use the property. Thus, ownership does not provide proprietary rights; it merely confers possessory rights. As a result, it is more difficult to transfer something that you own than one that you only own. The claim that possession is connected to reality and ownership to law is not entirely true. Ownership is not the same as possession, which includes some rights that belong to the person in charge. Salmond reduced ownership to the idea that it has no legal protection, which isn't always the case, such when the "finder keeper" principle is used.

II. CONCLUSION

Therefore, after finishing this investigation, we discovered that the notion of ownership was first selected by the ancestors and that, as human civilization advanced, it changed into the concept of possession. At the moment, the possession is seen to have external significance in connection with ownership. Legally speaking, possession and ownership are not the same, despite the fact that they often seem to be. This project is explained and illustrated in the aforementioned chapters. The principles of possession and ownership were discussed. Following a careful analysis of a comparative analysis of possession and ownership, the techniques of acquisition were also discussed and addressed.

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