



A COMPARATIVE STUDY ON OWNERSHIP AND POSSESSION

Harshini. A, Nandhini PS and Tejaswini KS, BA.LLB (Hons),

Alliance School of law, Alliance University, Bengaluru.

ABSTRACT

This paper is a comparative study of ownership and possession which is a factual and legal concept respectively and has drawn sights of concepts of ownership and possession from various books and articles. In this research paper, the concept of ownership has been studied through the perspectives of Ancient Hindu Law and Modern Law which talks about acquisition of ownership. And we have thrown light on the characteristics, essential elements, types, and modes of acquisition of both ownership and possession. Then finally the paper mentions the distinction between these major concepts.

KEYWORDS: Ownership, Possession, Comparative Study, Characteristics.

CHAPTER-1

1.1.INTRODUCTION

The Ownership and the Possession are interrelated deeply with each other. The one concept is factual, and the other concept is strictly legal. These both concepts are governing the individual's rights of the property together. The Ownership concepts flows from that of the possession and the better title's proof over a property or a thing by one that leads to the possession's loss of thing by another. So, evaluating the interrelation between the ownership and possession is considered as essential as to understand the concept of ownership and possession clearly and apply them to solve the legal problems accurately and correctly. In the simple terms both concept ownership and the possession will be seemed to define an act or a state or right of owning. But in the legal terms the meaning of these both concepts were different. So, in this project the concept of the ownership and the possession will be discussed mainly the comparative study between the ownership and possession will be considered.

1.2. LITERATURE REVIEW

1)Stern, Stephanie & Lewinsohn-Zamir, Daphna. (2020). Ownership and Possession.

This article focuses on the psychological significance of ownership and possession and perspectives of different people on them. It focuses on the possession of individual's possession on intangible entitlements and analyses the relationship between ownership and possession, including doctrines of first possession and adverse possession. It also talks about the extent of freedom to use their property and the restraint from using it.

2)Merrill, Thomas. (2015). Ownership and possession.

This article says possession is a key concept in both common and civil law and can be viewed from the perspectives of law, economics, psychology, and history and used to compare between ownership and possession. This paper also provides insights regarding possession from first possession, adverse possession, and property jurisdiction. The authors of this article have examined laws about possession from various other countries like USA, UK, China, Japan, Taiwan, France, Israel, Italy, Austria etc.

3)Rostill, Luke. (2021). Possession, Relative Title, and Ownership in English Law.

This article throws light on two fundamental principles of English property law- the principle of relativity of title and the principle that possession is a source of title. It has mentioned the different interpretations of these principles by judges, practitioners, and academics. This article mainly focuses on definition of possession, nature of title acquired through possession and grounds of relativity of title.

4)Popov, Danica. (2011). The qualified possession turns into ownership. Zbornik radova Pravnog fakulteta, Novi Sad.

This article explains how possession is the prima facie evidence of ownership and draws insights from Serbian law and how the two kinds of adverse possession ripen into ownership, namely ordinary and extraordinary adverse possession, and sights the difference between in several aspects like the title of ownership, effect at the expiration of the prescribed period etc.

5)Aikhenvald, Alexandra & Dixon, R.M.W.. (2013). Possession and Ownership.

In this article the author explains about the relationship between the possession and ownership and this article mainly focuses on the linguistic perspective of ownership and possession especially on the linguistic expressions of ownership and possession in the land, language, in relation with the societal structures. And this article also focuses on the expression of possession like predictive, incorporation possession.

1.3. RESEARCH PROBLEM

The concept of Property has been in existence since the existence of human civilization, and the most related concept under property is ownership and possession. Ownership and possession are quite similar in layman's language but have distinct legal definitions that are quite distinguished and are used in extensive uncommon circumstances. The right of ownership is subjected to many statutory laws and regulations example, sale and transfer of land, land reforms act. De jure acknowledgement of a claim to a particular property is known as ownership. The objective realization of ownership is possession. In contrast to the de jure relationship of ownership, possession of a right is the de facto relationship of continued exercise and enjoyment.

1.4. RESEARCH QUESTIONS

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

1.5. HYPOTHESIS

Ownership and possession are quite similar where the owners have the absolute rights to the property and legitimate owner of the property or an object. Possession is more of possessing or having a physical control over an object or a property, it is said that the possessor has the title of the property than anyone else expect owner. These modes of ownership and possession play an important role in modern times, which as the emergence from ancient property law. The ground difference between the ownership and possession, possession is all about having the right to possess the object and in ownership it is exclusively legal concept.

1.6. SCOPE OF THE STUDY

The scope of this study is to understand the ownership and possession by the elements, characteristics, acquisition and its types. Ownership means a set of rights given to a person to use and enjoy the property whereas the possession means if any object has the physical custody, control, or occupancy with a definite intention of ownership.

1.7. 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

1.8. RESEARCH METHODOLOGY

The research will follow the doctrinal method as it is mostly influx of data from various places. The sources are mostly secondary. We have consulted as many sources as possible of books and Journals and different articles and lectures of leading legal thinkers from India and around the world. Original articles and books by leading thinkers on the respective ideologies are the most important all the sources. The following methods will be relied upon to fulfil the objectives of the study and collection of necessary data. In addition, various case laws both Indian and Foreign are referred which involves the construction.

CHAPTER- 2

2.1. 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:

Austin's definition for ownership was criticised by many jurists and writers for his interpretation of possession. They criticise him that it was a false way to believe that the ownership consists of single right. But which consists of more than one right which include the right to use and enjoy the property. At times when the owner gives Some of his ownership rights, the ownership remains to him.

2.2. ANCIENT HINDU LAW AND OWNERSHIP

Jurists of ancient times has wider ideas on how to acquire ownership of the property.

According to ancient Hindu, Manu said that there are seven moral ways to acquire the ownership: inheritance, gain, purchase, conquest, application, employment of the work and acceptance of gifts from suitable people. These seven ways of acquiring ownership are also spoken by Gautama and did some changes in the list which was written by Manu.

According to Hindu everyone knows who Narada is, he. Argues that there are twelve ways of acquiring wealth in which he has also mentioned that three modes are general that is universally open to all the caste people and the rest modes of acquiring wealth is for rest are for the specific castes.

Using all these methods of acquiring money are suitable for various castes but it's wrong to use outside the extreme circumstances.

2.3. CHARACTERISTICS OF OWNERSHIP

1. Ownership is said to be the supreme, dominant, and limited. The property owner is the sole owner and nobody else have the interest in the property. There also might be specific restrictions on the right of the property, and those restrictions are the command of the government. The property owner or the landlord has the whole authority to rent out his space. At this moment, it comes with constrained possession, where there might be necessary limitations which is force on to proprietorship comes too, have an easement of the specific property.
2. It's possible that if there is any governmental or national issues or crisis which will lead to certain restrictions on the property owners and the property. The government had the whole authority to direct any owner's location and give any compensation. The government has to hold right to know about the runs charge by the property owners by assigning an expert to oversee them.
3. The government has whole rights to provide certain tasks to the owners of the property. If these assessments are not made. Then the government has the whole authority to take the position of the property that is to understand the money owed to the government.
4. The responsibility of the property doesn't end with single individual. So, he should be qualified to leave his property to his successor. He has the right to do this work during his lifespan and the owner has the right to distribute the property. When it comes to transferring of the property, there might be some rights and duties obliged or imposed over unsound individuals and new-borns. As they are not competent to enter into the agreement as they won't be able to understand and value the effects of their action.

2.4. 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:

Those ownership talks about when the property is possessed by two people where they must use it for the benefit of the other. So, this kind of responsibility comes under trustee. Whose ownership is referred as trust ownership. beneficiary ownership talks about the person who benefits from the property who is also known as beneficiary. It just talks about the trust ownership, which is simply a formality, not a substantive issue. This says that the trustee only has the nominal ownership of the land. He has the right to legally use the property that belongs to someone else on the advantage of the real owner.

3. Legal and equitable ownership:

The ownership, which is acknowledged, by equity rules and which is opposed to legal ownership this is known as equitable ownership also defined as ownership that is recognised by the rules of legal system. Here, the equity actions are in personam, equitable ownership is a right in personam as compared to legal ownership. Which is a right in rem. So here, there might be two owners simultaneously, one is the legal owner and another one is equitable owner.

4. Vested and contingent ownership:

Vested ownership talks about the circumstances where title of the owner is already flawless. That is absolute in nature. In a gift deed DONEE, the person to whom the gift or the present is given has vested interest in the property until the death of the owner's property that is DONER. Later after the donors, passing the donee may transfer the land. Now the possession of the property is known as contingent possession which is not absolute in nature. The ownership is flawed and becomes total under certain circumstances.

2.5. MODES OF ACQUISITION OF OWNERSHIP

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

i)Original mode

ii)Derivative mode

i)Original Mode

A person obtains the ownership of a property, that property does not have an owner is called res nullis. The ownership of such property or thing should not claim by anyone. Obtaining the ownership of such thing through specification or occupation, admittance. For example, A person took the registry land, but it does not have an owner.

ii)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.

CHAPTER-3**3.1. POSESSION**

Possession defined by jurists based on their personal beliefs. According to Salmond's, it is the most fundamental interaction between man and things. "Interaction with an object that includes the exclusion of other people from enjoying it", is the definition by Henry Maine. Indian supreme court, B.Gangadhar v. Ramalingam (1995) 5 SCC 238 elaborated the notion of Possession. Ownership for objective realization is possession. It is the claim between de facto counterpart of ownership and de facto statement of a claim to a specific piece of property. De jure connection of ownership de facto relationship of ongoing exercise and enjoyment. A claim to a specific piece of property for the actual exercise is known as possession. Where the claims are made it is the most typical form. Where the claims are most manifested, it is the form outward.

An object or a thing have a physical control, then it is called Possession. There is no precise definition about possession. So, in law it is difficult to define Possession. It is a legal concept and real.

3.2. ELEMENTS OF POSSESSION

It is in two fundamental elements:

- i) Corpus
- ii) Animus

i) 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 method with efficiency to avoid the interference and external influence of others and to secure in one's possession and maintains in a hidden area.

Wrongful ownership claims legitimate or prevents others from interfering others with lawful possession.

ii) Animus Possidendi

This type of possession does not imply juxtaposition. To desire exert such power and imply the possibility of bodily control. It is the mental component of possession.

Two levels of authority over a possessed thing acknowledged by classical Roman jurists. Animus context of the factor in legal possession the factors are.

- 1) 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.
- 2) 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.

3) 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.

4) 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.

5)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.

6) 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.

3.3. TYPES OF POSSESSION

These are the most important types of Possession.

i)Corporal possession

ii)Incorporeal possession

iii)Mediate possession

iv)Immediate possession

v) Constructive possession

vi)Adverse possession

vii)De facto possession

viii)De jure possession

i)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.

ii)Incorporeal Possession

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

iii)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.

iv) 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.

v) 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.

vi) 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.

vii) 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.

viii) 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.

3.4. MODES OF ACQUISITION OF POSSESSION

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

i) By Taking

ii) By Delivery

iii) 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.

- 2) 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.

- 3) 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.

iii) Operation of law

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

4.COMPARISON BETWEEN OWNERSHIP AND POSSESSION

According to Salmond, possession is in fact while ownership is in rights, making the distinction between the two clear. The assurance of the law is ownership, and the guarantee of the realities is possession. Ownership may not always include possession, but possession always includes ownership. For instance, a tenant merely has access to a home; they are not the true owners. The landlord, on the other hand, has the legal right to ownership and indirect possession of the property. In essence, ownership is a collection of rights, all of which are real. Possession is not proof of ownership; it is merely prima facie evidence.

According to Ihering, Possession is a de-facto exercise of the claim and ownership is the de-jure recognition of the claim.

According to Dr.Asthana, Ownership is the soul and possession are the body and the existence of the body is necessary for the realization of the soul.

When someone has possession of something, he or she has an exclusive right on it and can prevent others from exercising the same or similar rights on it. However, since ownership is absolute and unconditional as opposed

to possession, which is conditional, these rights may be exercised by a person if he is the owner of that property, and the possessor does not own the property.

In addition to possessory rights, like the ability to use the property, ownership also confers proprietary rights, such the ability to sell or transfer the property to another party. Therefore, possession only confers possessory rights and not proprietary rights. Because of this, it is harder to transfer something when it is owned than when it is only in your possession.

It is not totally accurate to say that ownership is tied to law while possession is related to fact. Possession includes some rights that belong to the person who oversees the thing, but they are not the same as ownership. Salmond reduced possession to the proposition that it lacks any legal security, which is untrue in some circumstances, such as when the "finder keeper" theory is used.

Although ownership and possession can coexist, they are not mutually exclusive. They overlap in multiple places, and one is only a subset of the other. Both notions pertain to the purchase of property and are recognized under the law to confer specific rights and obligations.

5. CASE LAWS

1) Merry v. Green (1847) 7 M & W 623¹

In this case, the plaintiff bought a table from the respondent in an auction. He found a purse in a secret drawer of the table and had money in it. The money belonged to the seller, but the petitioner chose to keep it to himself.

The issues raised in this case were-

- i) Whose purse it was?
- ii) Whether the plaintiff is authorized to keep it to himself?

The court declared him guilty because the seller was ignorant and unaware about the money in the purse kept in the secret drawer. So, the petitioner cannot have possession on the purse and cannot possess the contents present in the secret drawer.

2) South Staffordshire Waterworks Co. v. Sharman (1896) 2 QB 44 [GOLD RING CASE]²

In this case, the plaintiff owned a pond on their land and hired the defendant to clean the pond. During the process of cleaning, the defendant found gold rings in the bottom of the pond belonging to the petitioner.

The issue raised in this case was whether the defendant can take ownership of the found gold rings from the bottom of the pond?

The court ruled out the judgement saying, the possession of rings will be the petitioner's because the owner of the pond is the petitioner, and the defendant cannot acquire title.

3) Bridges v. Hawkesworth (1851) 21 LJ QB 75 [BANK NOTE CASE]³¹

A person handed over a bundle of notes to a shopkeeper which he found under the stairs of the shopkeeper's shop and told him to submit it to the owner. Even after trying the shopkeeper couldn't find the real owner and kept it to himself. And the person who found the notes filed a case against the shopkeeper.

The issue raised in this case was to whom the bundle of notes belongs to?

In the judgement of this case, the doctrine of res nullis was applied, which means the person who first found it will keep it.

6. CONCLUSION

As a result, after completing this study, we learned that in the beginning, the ancestors had chosen the concept of ownership, which had evolved into the concept of possession with the advancement of human civilization. Presently, the possession is regarded as having exterior importance in relation to ownership. Although ownership and possession frequently appear to be the same, they are not in legal terms. The chapters stated above in this project explain and demonstrate it. Ownership and possession concepts were covered in this discussion. After thoroughly examining a comparative examination of ownership and possession, the methods of acquisition were also covered and addressed.

7. REFERENCES

1. Shekhar M and Author: Mayank Shekhar Mayank is a student at Faculty of Law, "Relation between Possession and Ownership" (*Legal Bites - Law And Beyond* May 20, 2020) <<https://www.legalbites.in/relation-between-possession-and-ownership/>> accessed April 30, 2021
2. RajRAS, "Law Basics: Ownership and Possession" (*RajRAS* February 12, 2021) <<https://www.rajras.in/law-basics-ownership-and-possession/>> accessed April 30, 2021
3. "JURISPRUDENCE PROJECT.docx" (*Scribd*) <<https://www.scribd.com/document/444865132/JURISPRUDENCE-PROJECT-docx>> accessed April 30, 2021
4. Taitlin, Anna. (2019). The genesis of concepts of possession and ownership in the civilian tradition and at common law: how did common law manage without a concept of ownership? Why Roman law did not. 10.4337/9781781955222.00022.
5. Aikhenvald, Alexandra. (2012). Possession and ownership: A cross linguistic perspective. 10.1093/acprof:oso/9780199660223.003.0001.
6. 'Concepts Of Property, Ownership And Possession' (*Legalserviceindia.com*, 2021) <<http://www.legalserviceindia.com/legal/article-2655-concepts-of-property-ownership-and-possession.html>> accessed 20 April 2021

1. S. C. 10 L. J. M. C. 154
 2. 2 QB 44
 3. 21 LJ QB 75

7. Shekhar M, 'Relation Between Possession And Ownership' (*Legal Bites - Law And Beyond*, 2021) <<https://www.legalbites.in/relation-between-possession-and-ownership/#modes>> accessed 22 April 2021
8. 'Possession: Meaning, Definition And Kinds Of Possession' (*Srdlawnotes.com*, 2021) <<https://www.srdlawnotes.com/2017/02/possession.html#:~:text=%22Possession%22%20literary%20means%20physical%20control,to%20exercise%20that%20physical%20control.>> accessed 20 April 2021
9. us A and others, 'Difference Between Ownership And Possession || Jurisprudence ||' (*Lawnotes4u*, 2021) <<https://www.lawnotes4u.in/2019/04/difference-between-ownership-and-possession-in-jurisprudence.html>> accessed 30 April 2021