

The Attributes of the Concept's Possession and Ownership

Dr. Bhagyashree Manohar Deshpande

Assistant Professor, Bharati Vidyapeeth Deemed University, New Law College, Pune, India

Abstract---- Human life would be virtually next to impossible without the concepts of possession and ownership and hence every legal system strives to protect the concepts. The concept of ownership is regarded as a complex of rights that is why it is often stated that ownership is bundle of rights, as various rights are included in the rights of ownership. Ownership includes even the right to destroy or alienate the property. The concept of possession is a factual and a legal concept. The factual possession is the prima-facie evidence of possession. The concept of possession also includes various rights with the exception of possessing a legal title and hence possession is considered to be nine points in law. The subject matter as well as the various types of ownership and possession are dealt here in.

Keywords--- Possession, Ownerships, Possession in fact, Possession in law, Immediate possession, Mediate possession, Corporeal possession, Incorporeal possession

I. INTRODUCTION

The study of jurisprudence deals with various aspect of law such as the object of law, the subject of law, the source of law, the validity and the function of law. To put it in other words jurisprudence deals with the nature of law and deals with the various concepts of law. Now one would like to know what concepts are included in the study of jurisprudence. Those concepts which form the base or the fundamental structure of every legal system; such as rights, duties power, liability, legal personality, justice, possession and ownership. All these concepts constitute an integral part of the law as the law revolves around these concepts. For instance, the law strives to protect rights and duties, it also confers powers and liability, and above all the object of the law is to achieves justices. So also, the concepts of ownership and possession are of vital importance and hence are included in the study of jurisprudence.

The concepts of ownership and possession are age old concepts and are mostly originated along with the mankind.

- The concept of ownership.

In simple words ownership involves the legal title of the goods, chattel, land, rights etc. ownership is regarded as valid only if the owner has legal proof. Hence the nucleus of ownership is the legal aspects, and in the absence of its ownership cannot be said to exist.

- i. The essential characteristics of ownership.
 - The right to possess: - The first essential characteristic of ownership is that the owner has the

right to possess the goods or the land or the chattels which he owns. The owner has the first and the exclusive right to possess what he owns and this right available against the whole world. This means that nobody has a better right to possess what the owner owns than the owner himself.

- The right to use and enjoy the goods which are owned by the owner. Once the owner owns the goods, chattels, land etc. Then he has the right to use and enjoy what ever he owns. According to Hohfeld this right to use and enjoy the property falls in the bracket of 'liberty' which is regarded as rights in a wider sense. The ownership is a legal right however the method or the procedure or the manner or the way in which the owner to going to use and enjoy that property or the goods is the exclusive liberty of the owner himself. No other person can question the exercise of such liberty and the only limitation is that such a liberty should be exercised within the four corners of the permissible limits of law.
- It is also important to note that the right of ownership includes the right to alienate what the owner owns.

The owner has exclusive right to sale, or dispose or destruct or destroy what the owner owns. For instance, the owner of the right to freedom of speech and expression may use this right by choosing to keep silent.

- The concept of ownership is considered to be indeterminate in the point of time. The classic feature of the right to ownership is that it is almost

International Journal of Engineering Research in Computer Science and Engineering (IJERCSE)

Vol 4, Issue 6, June 2017

everlasting in duration that is till the owner chooses to be the owner. To put it in other words the owner remains to be the owner till he does not alienate his right to property. No person neither any law can compel a legal owner to extinguish his right of ownership except for legal cause.

- The remarkable feature of the right of ownership is that it includes all the residuary rights. This means that the right to ownership includes the right to possess, the right to use and enjoy, the right to alienate and apart from these rights all the other rights which are called as the residuary rights. It is not feasible to identify and enumerate all the rights which are included in the right to property so it has been stated that the right to ownership includes all the residuary rights, and hence the right to ownership it said to be a bundle of rights. When a person said to be the absolute owner then the following two aspects prevail –1) The title of the thing which is owned is legally undisputable.
- 2) Such an owner has all the rights of ownership which are allowed by law.
- ii. Subject matter of ownership.
- The prime subject matter of ownership consists of material objects such as land, chattels or goods.
 - The subject matter of ownership can also be a legal interest in somebody else's property for example due debts on the property, shares in a company, patents, copy rights and the interest in the trust funds or benefits.
 - The subject's matter of ownership can also be animals, plants, vegetation.
- iii. Modes of acquiring ownerships.
- There are two modalities of acquiring ownership
 - By the virtue of operation of law. This means that when a person buys goods or land then he gets a legal title of ownership, the law confers the ownership on such a person which is called as ownership by virtue of operation of law.
 - By virtue of some act or event. In the cases where the person becomes an owner by way of a gift or by the virtue of the document of will, such a beneficial person becomes the owner by virtue of the act of some person making a gift or a will deed.
- iv. Types of ownership.
- Sole ownership and co-ownership – When a person owns the land or the chattels individually it is called as sole ownership. In such a situation the ownership is not by shared by two or more than two people.

When a thing or any land is owned by at least two people at the same time or such persons own the same

thing simultaneously it is called as co-ownership. For example, the partners of a company are said to be co-owners.

The co-ownership is of two types which are as follow.

- 1) Ownership is common. In ownership in common the right of a dead owner descends to his successors like any other inheritable right.
- 2) Joint ownership on the death of any one of the two joint owners his right of ownership dies with him; and the survivor becomes the sole owner by virtue of his right of survivorship.
 - Trust and beneficial ownership.

In the case of the trust ownership, it is divided among the trustees and beneficiary. The trustees have right of ownership regarding the management and the maintenance of the trust. The beneficiary of the trust is the owner of all the beneficial rights.

- Legal and equitable ownership.

When the ownership is due to the virtue of operation by law such an ownership is called as legal ownership. When the ownership is due to the principles of equity then such an ownership said to be equitable ownership.

- Vested and contingent ownership.

The ownership is called as vested ownership when the owner title is legally perfect. A contingent ownership is said to be an imperfect title which is capable of being perfect on the fulfilment of a condition; as such an ownership depends upon contingency it is called as contingent ownership.

- The concept of possession.

The concept of possession is very essential for human life because without possession any person will not be able to perform many activities; because for a person even to eat food, first he has to acquire possession of that food. Hence the concept of possession deals with a basic relationship between a human being and things.

- i. Meaning of possession. The meaning of the term possession is very wide and hence an apt or concise meaning would be difficult to state. In simple word possession means to physically acquire or hold any object or material thing. As the possession includes the physically acquiring of an object, it is said to be factual possession. Even though possession is a factual concept some time it is also a legal concept.
- ii. Modes of acquiring possession. There are two modalities of acquiring possession which are as follows.
 - Taking – means actually physically taking the possession of the goods which may be in the possession of another of person. The 'Taking' mode of acquiring possession involves the absence of

International Journal of Engineering Research in Computer Science and Engineering (IJERCSE)

Vol 4, Issue 6, June 2017

consent of previous possessor.

- Delivery – This mode of acquiring possession involves the consent of the previous possessor. This mode of acquiring possession includes two sub modes. 1) possession by actual delivery through transfer of immediate possession. 2) constructive possession that is some act is done to signify the transfer of possession.
- iii. Types of possession.
 - Possession in fact and possession in law.

Possession in fact – Possession in fact deals with the basic physical relationship between man and object. This type of possession includes physical control over the object which can be physically possesses. If the physical control over the object is lost then the possession in fact is also lost. The amount or the extent of control to be exercised depends upon the nature and the object. To control the object means that the person who has the possession is fact has the power to exclude the other from possessing it. Such a type of possession is called as “corpous possessions” accordingly to Salmond.

Possession in law – it means that by the virtue of law a person is said to be in possession even if he does not have the factual possession have of that object. Possession in law is a legal concept, and it is acquired by legal procedure. Possession in law also includes the legal rights of the possessor. Generally, the possessor is said to be in the possession of all the things and objects which are in the possessed land are said to be in the possession of the possessor of the land; whether he has the knowledge or does not have the knowledge those things.

- Immediate and mediate possession.

In law one person may possess a thing or an object on account for another person. The possession held by one person on behalf of another person, such a possession is called as immediate or mediate possession.

Immediate possession – It means that the possessor has got the actual physical possession the goods and hence it is called as direct possession.

Mediate possession – It means that a person holds or possesses the goods on behalf of another person and hence it is called as mediate possession. There are three kind of mediate possession which are as follows.

- 1) When a person possesses the object through his agents or servant.
- 2) When the landlord possesses the premises, which are given on a rent to a tenant.
- 3) When a person will get the possession when a particular condition is fulfilled.

- Corporeal possession and incorporeal possession.
Corporeal possession means the physical possession of

an object or things. The subject matter of corporeal possession is necessarily the tangible things or objects.

Incorporeal possession involves the possession of rights, powers, privileges, liberties, offices, dignities etc. incorporeal possession generally is considered as a legal concept.

II. CONCLUSION

The concept of possession and ownership are the most basic concepts on which every society is based upon. The concept of ownership is a legal concept but concept of possession is both a legal as well as factual concept. The notion of possession has existed even in the pre legal state. Possession deals with the factual relationship between the person and objects. It is comparatively a narrower concept in relation to the concept of property; as it does not include the legal title. Ownership denotes a legal relationship between a person and object. Ownership is a wider concept than the concept of possession because the right of ownership includes various rights along with the legal title. Ownership can be proved only legally. The concept of ownership involves the rights in re-propria and concept of ownership involve rights in re-aliena. Human life is possible and sustainable because of the concept of ownership and possession.

REFERENCES

- [1] P. J. Fitzgerald., *Salmond on Jurisprudence*. (Universal law publication)
- [2] Ronald Dworkin., *Law's Empire*. (Harvard University press)
- [3] George Whitecross Paton., *A textbook of jurisprudence*. (Clarendon press)
- [4] John Finnis., *Natural Law and Natural Rights*. (Oxford university press)
- [5] Richard A. Posner., *The Problems of Jurisprudence*. (Harvard University press)