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Possession:

Introduction

“Possession” is a polymorphous term which may have diverse importance in various aspects. It is difficult to work out and draw a totally consistent and exact meaning of “possession” relevant to all circumstances with regards to all statutes. It is the most troublesome and complicated to define the “word” which fits in the definition clause of, estimate it and different speculations have been made about it. The courts in their choices on “possession” have not pursued any biased definition. This has made the origination a very confounded one. In this way, “possession” is a subject of extraordinary scholarly intrigue. In the meantime, it is of most extreme pragmatic significance. Thus, obtaining possession of the property is far easier than to define the word “possession” in its real sense.

In law, possession is the control a person intentionally exercises toward a thing. Like ownership, the possession of anything is commonly regulated by country under property law. In all cases, to possess something, a person must have an intention to possess it. A person may be in possession of some property (although possession does not always imply ownership).

Meaning of “Possession”

To comprehend the idea, we should initially need to comprehend the historical background of the word, i.e., the significance of the word in its root, in its history.

“Pollock says that having physical power over a thing which establishes possession.”

Savigny, in his hypothesis of possession, says that the pith of physical possession is to be found in the physical intensity of rejection. The first is “corpus” for example is the physical capacity to have a thing out of the blue.

Savigny Theory of Possession:

Savigny, based on the content of Roman Jurist Paul, said that there are two elements of possession:

- 1) Corpus possessions “commonly known as ‘corpus’
- 2) Animus Domini “known as ‘animus ‘.

Corpus :

By corpus is implied a compelling physical control of the object. Savigny clarifying it says: the physical intensity of managing the subject promptly and of barring any remote office over it is the factum which must exist in each obtaining of possession.

This quick physical power isn’t important to proceed with the possession, as was required to offer ascent to it, and proceeding with possession depends rather on the consistent intensity of duplicating the first relationship freely. For this reason, we don’t lose possession by unimportant non-appearance structure of the subject, which we have once appropriated to ourselves, in spite of the fact that the physical connection in which we currently remain to it, would not have gotten the job done in the

primary case to get possession.

At the end of the day, as per Savigny, the quintessence of possession is to be found in the physical intensity of prohibition. He sees that the “corpus possessions” might be of two sorts, proportionately as it identifies with the initiation or maintenance of possession.

The corpus required initiation of possession in the present or real physical intensity of utilizing the thing oneself and of barring every single other individual from the utilization of it, while the “corpus” required for the maintenance of possession once procured may comprise simply in the capacity to duplicate this power voluntarily.

Consequently, for instance, I get possession of a pony when I take him by the harness or ride upon him or have him in my quick nearness, with the goal that I can anticipate all different people from meddling with me. However, no such prompt physical connection is important to hold the possession so required. I can put the horse in the stable or let it eat in the field but then be in possession of him, in a much as I can take him by the harness when I wish and use him to the avoidance of others.

Animus:

Animus basically means the mental element or the aim to hold the possession as proprietor against all others. In simple words, it is a cognizant aim to avoid others from the objective aim of possession.

Without the mental element, there can be no possession.

Savigny’s hypothesis discloses with respect as to why the occupant, the borrower, and the operator had no possession “of the articles, objects so let, loaned or endowed to manage them” in Roman law.

They had no “animus domini” as they didn’t plan to hold the object in their very own right. Be that as it may, Savigny’s hypothesis neglects to clarify those cases where Roman law had given the possessory right “the privilege to get or recuperate possession” to the people who were not the proprietors of the item or property.

Savigny said that those cases were abnormalities and recommend that they were the cases of “derivative possession”.

Pollock’s Theory of possession:

Pollock, a distinguished legal adviser, said that “in common speech, a man is said to have or to be in possession of anything which he has a clear control, or from the utilization of which has the evident intensity of excluding others.

From the above mentioned, clearly, Pollock laid pressure, not on “hostility” yet “accepted” control, which he defined as physical control. The general intent is adequate. The decrease of possession to a general standard, for example, “true” control has, be that as it may, drive Pollock to confront certain troubles. His hypothesis is an express inability to explain how hirelings have “custody” for certain reasons and “possession” for other people.

Further, genuine it is, that possession need not just a physical control over the “res ” itself, yet in addition the capacity to reject other physical control to prohibit others may be exceptionally significant factor in crude and lawless society however, the more settle the network, the less significant is real physical powers in obtaining possession. In this manner, the kid has no

physical capacity to reject the hoodlum. However, in any case, he has possession except if the miscreant really takes it from him.

Essentials for acquiring valid possession:

There are two modes of acquiring possession i) Delivery and ii) Possession.

Delivery:

Delivery completes voluntary act from one person to another. The transferor gives actual position to the transferee. It is usually a lawful mode of possession. Delivery may be actual or constructive. In actual delivery the thing is physically delivered.

Taking:

Taking implies an Act exclusively on the part of the person who physically takes the Possession. It is acquisition of the Possession without the consent of previous Possessor. It is the possession without the consent of the Possessor. Sometimes it is said to be unilateral act. Transferee acquires the possession without the knowledge or consent of the former Possessor of the thing. It is usually possessio-civilis. It may or may not be lawful. If it is lawful then it is legal possession. i.e. possessio-juri.

Conclusion:

Possession is the most basic relation between man and a thing. Possession is prima facie a proof or an evidence of ownership there is no fixed or precise definition of possession because it is legal as well factual concept. The four essentials of possession are subject matter of possession, physical control, intention and knowledge. Possession is nine points in law and law provides remedies to person having possession.