

What is the summary and speedy remedy provided by the Specific Relief Act, for a party dispossessed of immovable property to recover possession?

Can also title be determined along with this remedy?

Recovery of possession of property is the subject matter of sections 5 to 8 of the Specific Relief Act. The relevant provisions are described in Chapter 2 of this Act.

Property may be divided on the basis of nature into two. No.1 is moveable and No.2 is immovable. Act provides for different provisions for recovery of possession of both types of property. The provisions related to immovable property must first be explained.

Recovery of possession of Immovable property

Section 5 and 6 of the Specific Relief Act, 1963 provide methods for recovery of possession of the certain specific immovable property.

Section 5 of Specific Relief Act, 1963 provides that a person entitled to the possession of any specific immovable property may recover it in the manner prescribed by the Code of Civil Procedure.

"A person entitled to the possession of the specific immovable property can recover it in the manner provided by the Code of Civil Procedure, 1908".

The essence of this section is "TITLE "i.e. the person who has better title is a person entitled to the possession. The title may be of ownership or possession. Thus, if X" enters into peaceful possession of land claiming his own although he might have no title, still he has the right to sue another who has ousted him forcibly from possession because he might have no legal title but at least has a possessory title.

It is a well settled principle of law that a person, who has been in a long continuous possession of the immovable property, can protect the same by seeking an injunction against any person in the world other than the true owner. It is also a settled principle of law that owner of the property can get back his possession only by resorting to due process of law. It states that a suit for possession must be filed having regard to the provision of the Code of Civil Procedure.(Or.xxi, R.35,36)

For a valuable understanding of this section it becomes quintessential to glance at the provisions of section 110 of the Indian Evidence Act which states the burden of proof as to ownership. This section enunciates that when there emerges a question of ownership of possession the burden of proving that the person is not the owner lies on the person who affirms in converse. It is also important to note at this point that the possession holds good against the whole world except the true owner

Jagdeesh vs Nawab Saeed Ahmad the court observed that ... the plaintiff is suing for ejection can succeed on the strength of his own title.

Ejectment suit based on possessory title

Sec.6 of the Specific Relief Act clearly states that When a person is deprived of possession of his immovable property, the person may either sue himself or any other person may also sue to recover possession of his property.

Significant changes have been made by amending section 6 in 2018.

Sec 6 read as:.

Suit by person dispossessed of immovable property.—(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person through whom **he has been in possession** or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought-

- After the expiry of six months from the date of dispossession.
- Against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of the decree under this section is allowed.

(4) Nothing in this section shall bar any person from suit to establish his title to such property and to recover possession thereof.”

Sec.6 is only applicable if the plaintiff proves:

1. That he is in juridical possession of the immovable property in dispute.
2. That he had been dispossessed of without his consent and without due process of law.
3. That dispossession took place within six months from the date of suit.

Section 6 was introduced to expeditiously resolve matters hence, there shall lie no appeal against any order or decree in any suit instituted under this section, nor shall any review of such decree or order be allowed -Section 6(3). This clearly emphasizes that the order or decree passed under this section is a case decided and only Revision as under Section 115 of the Code of Civil Procedure, 1908 shall be allowed. However, institution of suit under this section does not bar the aggrieved party to seek relief under Section 5 for the recovery of property on the basis of title.

The object of section 6 of the Specific Relief Act

Rudraprayag vs. Narsingh Rao the court held that to discourage people from taking the law into their own hands, however good their title may be.

Vali Mohammed versis Ayodhya Court said that to provide summary and speedy remedy through the medium of Civil Court for the restoration of possession to a party disposed by another within 6 month of its position, living them to fight out the question of their respective titles in a competent court if they are so advised."

Pollock and Mulla hold the view that Section 6 proposes a fundamental principle of law. This principle is expressed in the following word:

"Disputed rights are to be decided by the due process of law and not otherwise and existing peaceable possession will be protected against disturbance without regard the question of its origin.,"

Similarly, Justice Ghosh said in the

Tarki Mohan vs. Ganga Prasad case...

" Real object of legislature in engrafting the section into the Specific Relief Act was to provide speedy remedy for the class where a person in physical possession of Distinction of property is forcibly dispossessed from it against his will and consent."

The summary remedy by section is applicable alike to a person whether he be a tenant or an owner of the land when he is ejected without the course of law.

The crux of section 6 rests on two things.

The only thing to be proved in this respect is that he was in physical possession at the time of disposition.

It should be noted that possession must have been judicial that is possession recognised by law. Thus trespasser who has been dispossessed cannot sue under this section.

Distinction between Section 5 and 6

Section 5 the plaintiff has to file a long drawn regular suit for ejectment while section 6 summary remedies provided by way of relief.

Section 5 sought has to be based on titled. Thus proof of title prima facie required despite that the sec.6 claim sought has to be based on possession. Thus no proof of title is required.

The period of limitation under Section 5 is 12 years from the date of dispossession while in section 6 is only six month from the date of dispossession.

Dr. Lalit Kishore Srivastava

Asst.Prof.Guest Faculty(Law)

Lucknow University

