

In suits will attract  
article 64 and



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In *Naran Bahara v. Mohan Majhi*, (AIR 1985 Ori. 40), it has been held that under the Limitation Act, 1963, all suits for possession of immovable property have been brought under two categories namely, (i) suits based on the right of previous possession and not on proprietary title and (ii) the suits based on proprietary title. The first class of suits will attract Article 64 and the suits based on title will be governed by Article 65 and the time under Article 64 runs from the date when the possession of the defendant becomes adverse.

The suit under Art. 64 must be brought within 12 years of the date of dispossession. The burden of proving date of dispossession is on the plaintiff who, in order to succeed, must prove that dispossession was not prior to 12 years of the date of filing of the suit.

In *Chapsibhai v. Purushottam*, (AIR 1964 Bom. 287), it has been held that under Article 64 the plaintiff need not prove ownership and it is enough if he proves possession within 12 years. Article 64 is restricted to the suits for possession or dispossession or discontinuance of possession.

In order to bring a suit within the purview of the Art. 64, it must be shown that the suit is in form as well as in substance based on the allegation of the plaintiff having been in possession and having subsequently lost the possession either by dispossession or by discontinuance. In *Bhusan Lai v. Suresh*, (AIR 1987 All. 25), it has been held that Art.

64 does not apply to any suit which in form or in substance is a suit for possession based on title. It is restricted to suits based only on possession. In *Taja Bibi v. Ghulam Mohammed*, (AIR 1961 J&K 82), it has been held that the

plaintiff cannot succeed under Art. 64 unless he makes out not only that he has possessory title over the property but also that he was in possession within 12 years next prior to the filing or the institution of the suit.

He is bound to prove that he or his predecessor-in-interest was in possession within the period of 12 years next prior to the commencement of the suit and failing this he is out of cause. In *Seshrao v. Jashwant*, (AIR 1969 Bom.

429), it has been held that when the lessee is and after his death his heirs are entitled to be in judicial possession even after the expiry of the lease, the heirs of the lessor cannot dispossess them forcibly. In such a case, the heirs of lessee can file a suit for possession within 12 years of such dispossession and to such suit Art. 64 is attracted. Possession is the visible possibility of exercising physical control over a thing with the intention of doing so, either against all worlds or against all the world except certain persons. Possession may take various forms. In *Gunwant Lai v. State*, (AIR 1972 SC 1756), it has been held that there are two varieties of possession— (i) Actual or real possession; and (ii) constructive possession. Therefore, possession need not be physical possession but can be constructive having power and control over the thing.

In *V. Satyanarayana v. Manumayamma*, (AIR 1967 SC 174), the Supreme Court has held that for the purpose of Art. 64, the possession is either actual possession or possession through a tenant who may have paid either voluntarily or through the decree of the Court to a person claiming possessory title. In *Manhoo Lai v. Malloo*, (AIR 1964 All. 213), it has been held that possession may be acquired by force or by anyone who has no title.

So, the animus needed for possession is present even when somebody takes forcible possession with the intention to exercise physical power over it. In *Asha Ram v. Ram Chandra*, (AIR 1939 All. 161), it has been held that actual user without animus possidendi is no possession under the law. So, mere tethering or grazing cattle or storing logs or manure by one person on the land of another is not possession of such land. In order to attract Art.

64, the plaintiff filing a suit for recovery of possession on the basis of his previous possession has to prove that while in possession he has been dispossessed. The expression 'Dispossession' applies when a person comes in and drives out another from possession. It imports ouster; a driving out of possession against the will of person in actual possession. Dispossession implies some amount of force or fraud.

In *Lakshminarayan v. Vithaldas*, (AIR 1962 MP 31), it has been held that there can be no dispossession unless there is a termination of the previous possession of a person followed by actual possession by another. So, unless a person takes possession of the another there can be no dispossession by that person.

Art. 64 signifies the relief for possession on dispossession and not discontinuous of possession by the plaintiff accompanied by possession of another. The term 'discontinuance' implies a voluntary act and abandonment of possession followed by the actual possession of another. In a case falling under Art. 64, the plaintiff must at the outset show that he had been in possession within 12 years before suit, and cannot rest merely on a proof of title. When a plaintiff sues for possession on the basis of

dispossession, the burden lies on him to show that the date of his dispossession or discontinuance of possession was within 12 years of the suit. Basing adverse possession as the root of title of a suit for title may be filed and it will be governed by Art. 64 of the Limitation Act, 1963.

In a suit under Art. 64, it is not for the defendant to raise and prove adverse possession in order to show that the suit is time barred and it is the plaintiff who has to prove possession and dispossession within a period of 12 years prior to the suit. Under the Art. 64, the limitation starts from the date of dispossession of the suit and land the onus is upon the plaintiff to prove that he was dispossessed within a period of 12 years from the date of commencement of the suit for recovery of possession. If the original owner does not come forward and assert his title by process of law within the period of limitation, his right is extinguished and the person in possession acquires absolute title.