

1. Introduction:

No one can be turned out or thrown out otherwise than in due course of law. if a person who is disposed from property otherwise than in due course of law, he can file a suit for recovery of possession such immoveable property. Sec 8 and 9 relates to the recovery of possession of immoveable property. person who have been illegally and unauthorisely dispossessed, relief of reinstatement to such person is provided in Sec. 9 such person need not to prove his title. in Sec 8 remedy is provided for such person.

2. Relevant provisions:

Sec. 8, 9 specific relief act 1877.

3. Definition of possession:

Salmonds:

"Possession is continuing exercise of a claim to the exclusive use of a material objection."

Salmond has explained it that possession is a vital relationship which needs protection from every system of law.

4. Evidence of possession:

Following have been held prime facie

Evidence of possession

(i) Entry in khewat

(ii) Existence of possession before displacement by act of God e-g earthquake.

(iii) Grant of lease.

(iv) Realization of rent.

(v) Handing over key of the premises.

(vi) Registration of title deed.

5. Procedure of recovering possession of immovable property:

I. Regular procedure:

If any person is dispossessed without his consent he may file a long-drawn regular suit on the basis of title under Sec. 8 of specific relief act according to Sec. 8 of specific relief act.

'A person entitled to the possession of specific immovable property may recover it in the manner prescribed by the code of civil procedure.

(i) Essential of Sec. 8:

(i) Strength of possessory title.

(ii) Proof of prior possession.

(iii) Forcible dispossession.

II. Summary procedure:

Summary procedure for recovery of the possession of immovable property is

provided in Sec. 9 of the specific relief act.

'If any person is dispossessed without his consent of immovable property without property otherwise than in due course of law, he or any person claiming through him, may be suit, recover possession there of notwithstanding any other title may be setup in any other suit.

(i) Essential of summary procedure u/s of specific relief act:

(i) The plaintiff must have possession of immovable property.

(ii) He must have been enjoying the possession from the last 6 months, before being forcibly dispossessed.

(iii) He must have been forcibly dispossessed otherwise in due course of law.

(iv) Dispossession must be without the consent of person.

(ii) Exceptions:

Following are exceptions to Sec. 9,

(i) No suit can be brought against action of central or provincial government.

(ii) No suit can be brought against decree of the court.

(iii) No review or appeal shall lie against such an order of restoration of possession.

(iv) No one can be restrained from establishing his title of possession in the court of law.

(iii) Object of Sec. 9:

It's object is to discourage people from taking the law into their own hands, however good their title may be.

(iv) Nature:

Summary procedure under Sec. 9 provides a speedy remedy under specific relief act.

Case law

2004 YRL 105

It was held that summary procedure have been provided under no Sec. 9 to person dispossessed from immoveable his consent. person coming under this Sec. is required to show that he had actual physical possession of immoveable property from which he was dispossessed without his consent by defendant with in six months prior to the institution of the suits.

6. Difference between section 8 and section 9:

I As to nature:

Sec 8 is not summary proceeding.

Sec. 9 is summary proceeding.

II. As to title:

Title of property must be proved for recovery of possession of immovable

property.

Title of property under sec. 9 is not required to proved.

III. As to limitation:

Limitation for filing of suit u/s 8 is 12 years.

Limitation for filing a suit u/s 9 is 6 months with in the time of dispossession.

IV. As to remedy:

Sec 8 provides general remedy.

Sec. 9 provide quick remedy for possession of property.

7. Conclusion:

To conclude I can say that Sec. 8 and Sec. 9 of specific relief act provided alternative remedies and they are mutually exclusive. a plaintiff can not combine suit. under Sec. 8 claim is based on the title whereas claim is based on possession in Sec. 9 .