



# Mains Evaluation



**MAINS QBANK**

**Q.1) 'Limitation bars the remedy, but does not destroy the right.' Discuss and state the exception if any. [HJS 1988, JJS 2014]**

**Ans:**

**Limitation bars the remedy but not the right**



**John Austin**

**"A right has to be a perfect right but once the bar of limitation applies, the right becomes unenforceable and hence it is a substantive law right without any remedy"**

- The law of limitation **bars the remedy** in a court of law but it **does not extinguish the right** of the party i.e., the right continues to exist.
- The parties can **settle their claim** outside the court of law.

- If the right can be enforced by some other lawful means then the Limitation Act will **not come as a roadblock**.
- The object is to make sure that **litigants are vigilant in seeking their remedy** regarding any claim and to help **bona fide claims**.
- It intends at **imposing a bar after a certain period of time** to institute a suit, appeal, or application to enforce an existing right.
- It does **not aim at giving a right where there is none** or extinguishing the right where it exists.

### Bombay Dyeing and Manufacturing Co. Vs State of Bombay

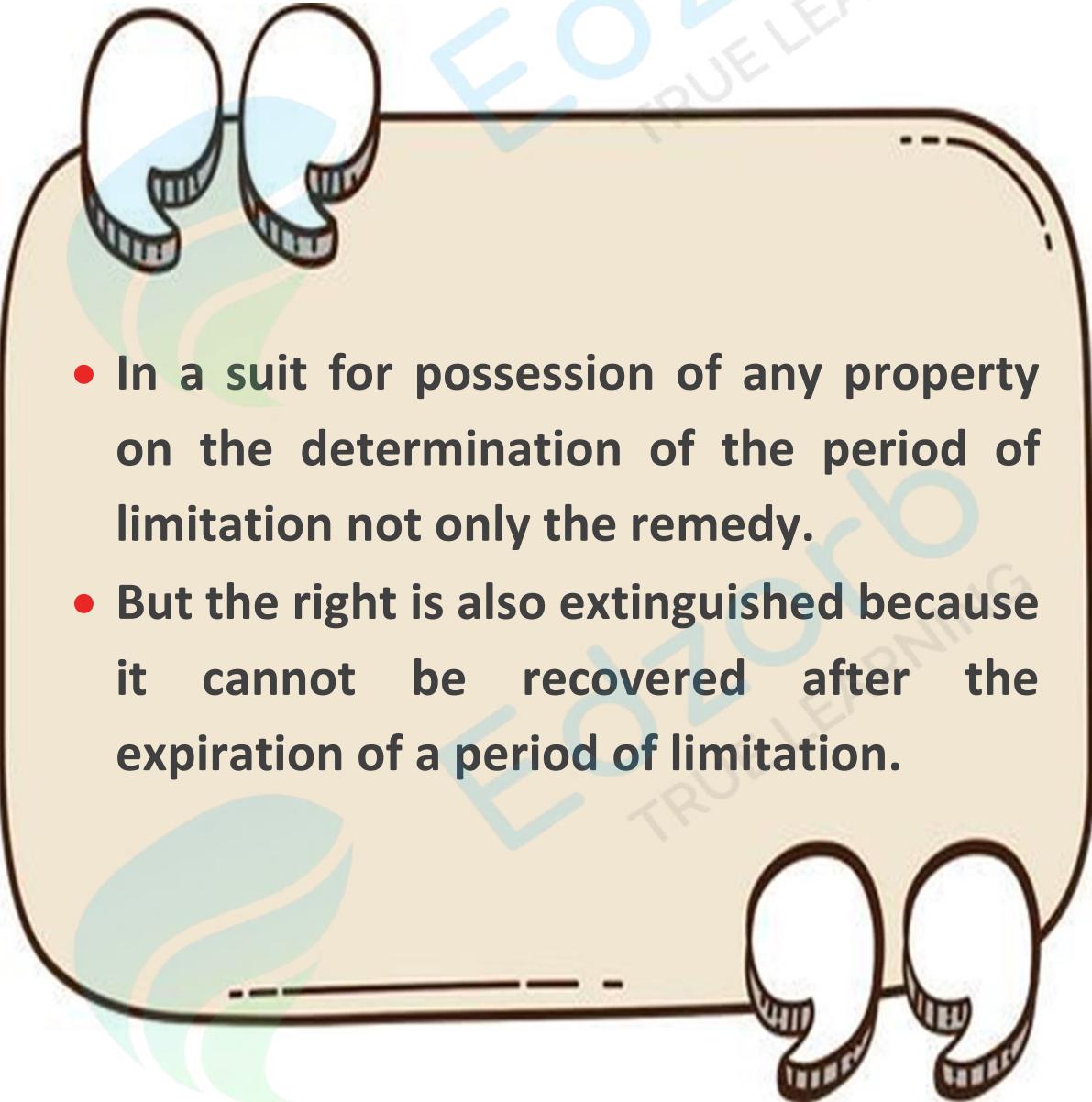
AIR 1958 SC 328

Held:

- **Lapse of time** does not extinguish the right of a person.
- Limitation **bars the remedy** and does not extinguish the right.

## Exceptions to this rule

- **Section 27 of the Act** is an exception to this rule by which not only the remedy but the right is also extinguished.



## **First National Bank Ltd. Vs Seth Sant Lal**

**AIR 1959 PH 328**

### **Held:**

- The debt **does not cease** to be debt because its recovery is barred by the statute.
- The **right continues** to exist though the remedy is time barred.

## **Babua Ram Vs State of U.P.**

**(2006) 5 SCC 35**

### **Held:**

- The rules of limitation are **not meant to destroy the rights** of any person.
- They are meant to see that the plaintiff does not resort to **dilatory tactics**.

**Reference:** C. K. Takwani, Civil Procedure with Limitation Act, 1963, 9<sup>th</sup> Ed., 2021.

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## **Q.1) Define adverse possession? [PJS 1995, PJS 2003]]**

**Ans:**

### **Introduction**

- The doctrine of **adverse possession** states that a person who is not holding the title to the land **but holding the possession of the land** owned by someone else for a considerable period may acquire a valid title to it.
- Given that the adverse owner is in **possession for a sufficient period as per the Limitation Act**.
- In India, any person in possession of a property for a period of **more than 12 continuous years** may claim unfavorable possession of the property

### **Extinguishment of right to property**

- It is a well-established principle that the **limitation bars the remedy and not the right**.
- **Section 27** is an **exception to this principle**.
- It provides that at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

- It is based on the principle of **public policy** and **expediency**.
- This section lays down the **rule of substantive law**.
- It provides that if the owner whose property is encroached upon, allows his right to be barred by law of limitation, his title extinguishes in favor of the party in possession.
- This section is confined to suits for possession and does not apply to a suit by a mortgagee for recovery of the money due to him by the sale of the mortgaged property.

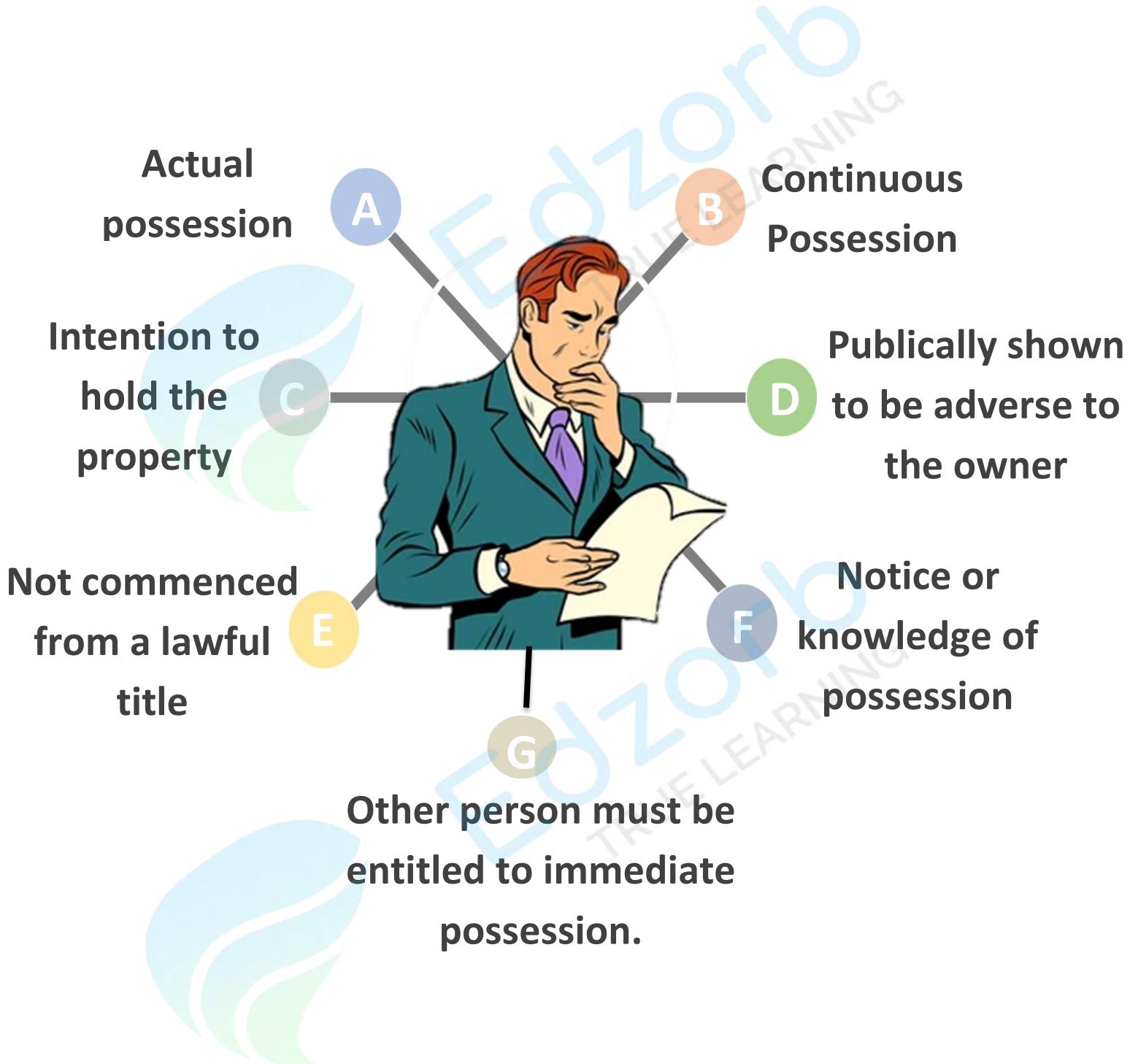
### Din Dayal Vs Rajaram

AIR 1970 SC 1019

#### Held:

- This principle is of **general application** and it is **not confined to suits or applications** to which the period of limitation is prescribed under the Limitation Act.
- In this **not only the ownership** of one person is extinguished but another person acquires ownership by **adverse possession**.

# Essentials of adverse possession



## Application of Section 27 of the Limitation Act

- Where the plaintiff has filed the suit for recovery of possession based on title, it is for the **defendant to prove the adverse possession.**
- **Section 25 and 26** deals with the direct acquisition of rights to easement but **Section 27** deals with the **indirect acquisition of the ownership of corporeal property.**
- It only provides for the **extinction of the right to property** where a suit for recovery of possession is not filed within the period mentioned in the Act.
- It applies to persons who are out of possession and seeks to recover possession, but not to the case of a person who is still in possession of the property.

**Ajit Chopra Vs Sadhuram**

**AIR 2000 SC 212**

**Held:**

- Even if the execution of the decree is barred by limitation that **does not debar the landlord filing a suit for recovery of possession based on title.**

## Ravinder Kaur Grewal Vs Manjit Kaur

(2019) 8 SCC 308

### Held:

- Any person, who has perfected title by way of adverse possession, **can file a suit for restoration of possession in case of dispossession.**
- The court held that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.

## Mallikarjunaiah Vs Nanjaiah

2019 INSC 0424

### Held:

- **Mere continuous possession** howsoever long it may have been qua its true owner is **not enough to sustain the plea** of adverse possession
- It has to be further proved that such possession was **open, hostile, exclusive** and with the **assertion of ownership right** over the property to the **knowledge of its true owner.**

**Reference:** C. K. Takwani, Civil Procedure with Limitation Act, 1963, 9<sup>th</sup> Ed., 2021.

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Ques 1

~~\* rule 25  
Convenie  
maxim  
vigilantibus  
non  
dominibus  
jura subvenient~~

Sec. 21(1) of Code of Civil Procedure provides that, no objection as to place of suing will be allowed by an appellate or revisional court unless following conditions are satisfied:

Court of first instance

1. The objection was taken at first instance in court
2. It was taken at earliest possible opportunity and in cases where issues are settled at or before settlement of issues; and
3. There has been consequent failure of justice

Ques 2.

~~\* provision  
vising  
Art. 169, 335,  
338, 340,  
341 & 342~~

Reservation of posts in government services is a broad and infamous subject. The basis of reservation was always to bring every class of people on equal footing mainly on financial and social aspects. So the basis and limit of reservation should still be the financial status as discrimination on caste and class level has been decreased but financial gap has been increased from past recent years.

\* Indira  
Sathyay  
case  
+ Balaji  
VS  
State of  
Uttar  
Pradesh  
9.

Ques 3

No, a re mandamus order cannot confer jurisdiction on the subordinate court when such court originally do not have such power. It is settled principle that no appellate court can confer jurisdiction on a subordinate court, however high appellate court may be as, jurisdiction of a court is determined by statute. In case of Venkatakrna v Angathayamal it is held that

(1)

2  
3



an appellate court remanding a case to an inferior court cannot confer jurisdiction on court if it inherently lacked the same.

Ques 4

A suit is of civil nature if the principal question therein relates to the determination of a civil right and its enforcement.

It is subject matter of suit which determines whether it is suit of civil nature or not.

In a suit in which right to property or to an office is contested whether it is of civil nature or not, what needs to be determined is whether it entirely depends on religious rites or ceremonies or not?

If its decision does not entirely depends on religious rites or ceremonies it is a suit of civil nature.

(i) Right to take out religious procession is a suit of civil nature

$\frac{115}{3}$

(ii) Right of Pardanashin lady to observe parda is a suit of civil nature

(iii) Right to franchise is a suit of civil nature

Ques 5

Doctrine of res judicata applies between co-defendant only if plaintiff claimed any relief and he cannot get his relief without trying and deciding a case between the co-defendants. However it has been

reiterated that requisite conditions should be fulfilled to apply principle of res judicata as between defendant and that are:



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- 1) There must be conflict of interest between the defendants concerned
- 2) It must be necessary to decide the conflict in order to give the reliefs which plaintiff claims.
- 3) the question between plaintiff & the defendants must have been finally decided.
- 4) the co-defendants were necessary or prospect parties in former suit. (Govindamal by LRs vs Vaidyanathan)

### section 10 CPC

#### Res judicata

- suit <sup>was</sup> finally decided by competent court
- In this a case is heard & finally decided
- Subsequent suit on same subject matter is prohibited
- Objective is to prevent multiple litigation

#### Res judicata

- In this suit is finally heard & decided which cannot be presented further as a suit
- Object is to prohibit multiplicity of litigation
- It is result of judgment of court

#### Res subjudice

- A suit which is pending in a competent court
- In res subjudice, case is pending in court
- Subsequent suit on same subject matter is stayed.
- Objective is prohibition of concurrent jurisdiction

#### No Estoppel

- In this a person cannot be allowed to change his position if he makes another to believe in good faith -
- Its object is to protect right of such person who acts in good faith
- It is based on act of parties

→ Sec 111(1A)  
→ Pickard  
JLS  
Scars

Maxims  
Pemo dicitur nisi proponatur  
b. i. s. Victoria  
Eadem causa  
Pro una est  
Seth Kinsella  
Manusher Lal



Ques 24 (a) Right of private defence of property extend to causing of death

Such right of private defence of property extending to cause death is dealt under Sec 103 of Indian Penal Code. It permits a person to extend its right of private defence to cause death only under certain circumstances as mentioned under the provision of the Code. Such circumstances are

1. When robbery is committed
2. When offence of housebreaking by night is committed
3. When mischief by fire is committed on any building; tent or vessel, which is used as human dwelling or as a place for the custody of property
4. If when theft, mischief or house breaking, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be consequence, if such right of private defence is not exercised.

This right commences as soon as a reasonable apprehension of danger to body arises from an attempt, or threat to commit offence, although offence may not have committed but not until there is that reasonable apprehension. The right last as long as reasonable apprehension exist  
*Prima Martin v. State of Kerala.*

*S.  
104  
P S. 103  
Should also  
be mentioned*

\*  
 Case law  
 without  
 principal  
 useless

(S. 105)



(d) missing 9.

And in case person refuses to such transfer, he has to relinquish all the benefit so transferred and such benefits shall be reverted back to transferor or his representative

Such property is reverted back when

- transfer is gratuitous
- transfer has before election died or became incapable of fresh transfer
- In all cases where transfer is for consideration

Owner of property has choice either to elect by express mode or impliedly from contract.

Express election is final & conclusive in nature

In case where owner has full knowledge of circumstance and he being aware of his duty to elect accepts the benefit, it is implied that he has chosen in favour of transaction

But such owner has to signify his confirmation or dissent from transfer within 1 year after date of transfer.

There are certain exceptions to it -

# this doctrine is based on equity. If two rights are endowed on a person under any instrument in a manner that one right is more preferable than other, he is bound to elect on those only one of them.

This doctrine is based on maxim - qui approbat non reprobatur which means one cannot approve

Principle  
Cooper v/s  
Cooper  
Landmark  
Case of  
election

Show of  
motions  
by CP

## Remarks:-

- ① Answer not in Answer format rather in notes format.
- ② Don't copy things from Internet.  
The answer on Internal & External aid are exact copy.
- ③ Missed out or left of Questions.
- ④ Next time copies won't be evaluated if they are not in Answer format.
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