particular suit in respect of office is one for possession of such office depends upon the relief claimed in the plaint and the circumstances of the case. If, in substance, the suit must be regarded as one for possession of a hereditary office, this article would apply.[3] Therefore a suit for a declaration of the plaintiff's right to an office and for possession would be governed by this article though a declaration has been asked for.[4]

Suit for injunction. A suit for an injunction restraining the defendant from obstructing the plaintiff in the enjoyment of the office,[5] or a suit for injunction directing the defendants to produce their accounts, is not one for possession of the office.[6]

5. Adverse possession of defendant. The plaintiff's right to recover a hereditary office could not be barred unless the defendant is found to have been in adverse possession for twelve years.[7] The question whether the defendant's possession in any particular case has been adverse to the plaintiff is one of fact.[8] If the possession is permissive it is not adverse possession which would bar the right of the plaintiff.[9]

Interruption of possession. A decree that a person in possession of an office has no title thereto does not interrupt the running of the time in favour of such person.[10]

Possession must be as hereditary holder of office. A person merely in possession as trustee cannot get a prescriptive right to a hereditary trusteeship unless he was in possession as a hereditary trustee to the knowledge of the real owner of the property.[11]

Tacking predecessor's possession. The defendant is entitled to tack on the adverse possession of his predecessor to that of his own in establishing a plea of prescription.[12] But the possession of one independent trespasser cannot be tacked on to that of another.[13]

6. Adverse possession of hereditary office--what is. Where the defendant performs the duties of the office and also receives the profits thereof, the defendant is in possession of the office.[14] But the mere possession of properties attached to an office,[15] or receipt of emoluments without reference to the performance of duty of the office is not possession of the office.[16] Where, however, one of the joint holders of an hereditary office is excluded from

3. 24 Cal. 83 (DB) + 24 Mad. 39 (DB) + 19 Mad. L. Jour 257 (DB).
4. 24 Cal. 83 (DB).
5. AIR 1941 Mad. 81 = II.R 1941 Mad. 275 (FB).
6. AIR 1917 Mad. 407 (DB).
7. AIR 1916 Mad. 88 (DB) + 10 Ind Cas. 95 (DB) (Mad.).
8. AIR 1923 Mad. 88 = 46 Mad. 525 (DB).
9. AIR 1916 Mad. 642 (DB) + 9 Mad. L. Jour 93 (DB).
10. 1911-1 Mad. W. N. 99 (DB) + AIR 1923 Mad. 88 = 46 Mad. 525 (DB).
11. AIR 1928 Mad. 263 (DB).
12. AIR 1919 Mad. 292 (DB) + II.R (1951) 2 Cal. 209 (DB).
13. 23 Mad. L. Jour 134 (DB) + AIR 1935 Mad. 449 (DB).
14. 3 Ind. Cas. 8 (DB) (All.).
15. AIR 1916 Mad. 465 (DB).
16. 10 Ind. Cas. 573 (Mad.) + AIR 1959 S.C. 798.

performing the duties by reason of his minority and not by reason of any overt act of the joint holder, but he has been throughout receiving part of the profits of the office by cultivating the land of the idol in lieu of service of *puja*, he must be held to be partially in possession of the office under the explanation to Art. 124 and therefore there can be no adverse possession of the office by the joint holder.[17]

The mere performance of the duties of an office by somebody else without receiving the emoluments of the office cannot be adverse possession of the office.[18] But where no emoluments are attached to the office, the mere performance of the duties of the office, by the defendant is sufficient to constitute adverse possession by him.[19]

Co-trustees and adverse possession. Where the management of a temple was vested in two branches of a family who managed it by rotation. The junior branch, subsequently discontinued possession and the members of the senior branch were managing the temple for nineteen years adversely to the members of the junior branch. It was held that the rights to the office of the junior branch were barred and extinguished by such adverse possession. As between the members of the senior branch itself; it was held that each of the members must be deemed to have discharged the office on behalf of himself and on behalf of the other members of the senior branch, and as such, the management of one was not adverse to the other.[20]

7. Defendant obtaining letters of administration to office. A person obtaining letters of administration as heir to the *shebait* of a Hindu temple, if he is not the real heir, stand in a fiduciary position towards the person who is really legally entitled to the office, and cannot set up the bar of limitation against the latter.[1]

8. Suit for property attached to office. Where the right to the possession of the immovable property is not attached to the office but only a right to a share of the revenues of such property, the office-holder is not entitled to possession of the property.[2] Where the right to the possession of immovable property is attached to the office and if the right to possession of the office is barred, the right to possession of the immovable property also would be barred.[3] Similarly where a right to receive profits is attached to a hereditary office and the right to such office is barred, the plaintiff cannot recover any profits that might have accrued within the period of limitation.[4]

Suit for office, and property attached thereto based on title by adoption. A suit for the possession of immovable property attached to the office of *shebait* of a

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17. AIR 1953 Him. Pra. 91
18. AIR 1941 Mad. 81 = ILR 1941 Mad. 275 (FB).
19. AIR 1935 Mad. 449 (DB).
20. 29 Mad. 283 = 33 Ind. App. 139 (P.C.).
1. 25 Cal. 354 (DB).
2. AIR 1921 P.C. 97 = 43 Mad. 665 = 47 Ind. App. 191.
3. 23 Mad. 271 = 27 Ind. App. 69 (P.C.) + AIR 1956 Mad. 399 = ILR 1956 Mad. 1144 (DB) + AIR 1941 All. 1 = ILR 1940 All. 815 (DB). (The same principle would apply in the case of movable property).
4. 9 Bom. H C R 260 (DB) + 7 Mad. 337 (DB).

temple is governed by this article even though the plaintiff bases his title to the office on an adoption to an heir of the founder.[5]

9. Starting point of limitation. Time runs from the date on which the defendant takes possession of the office adversely to the plaintiff,[6] and the plaintiff's right to the office would be barred after the expiry of twelve years from the date when the defendant takes adverse possession.[7] But where there is no proper person entitled to an office and competent to sue, the mere fact that the defendant is in possession of the office is not sufficient to start time running.[8]

10. Section 28 and this Article. Where a suit for possession of an office is barred under this article, the right to the office itself would be extinguished under S. 28 and cannot be received subsequently by re-entry into possession.[9] In such a case the person in possession would acquire a prescriptive right to the office.[10]

11. Bar to right to office applies to successors also. Where the rights of an office-holder are barred by adverse possession, the successors of the former would also be barred, in the absence of fraud or collusion from claiming any right to the office.[11] Thus where a trusteeship devolves on a Hindu widow and the offices adversely possessed against her by the defendant, the reversioner does not get a fresh right to sue the person in adverse possession.[12]

125.	Suit during the life of a Hindu or Muhammadan female by a Hindu or Muhammadan who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her remarriage.	[13][Twelve years]	The date of the alienation.

5. 25 Cal. 354 (DB).
6. 27 All. 513 (DB).
7. 23 Mad. L. Jour 134 (DB) + AIR 1918 Pat. 570 = 3 Pat. L. Jour 327 (DB) + 12 Bom. H C R 172 (DB).
8. 18 Ind. Cas. 373 (DB) (Mad.).
9. 23 Mad. 271 = 27 Ind. App. 69 (PC).
10. AIR 1918 Mad. 183 (DB) + 11 Cal. L. Jour 2 (DB) + AIR 1918 Pat. 570 = 3 Pat. L. Jour 327 (DB) + 21 Mad. 278 (DB).
11. AIR 1931 Mad. 505 + AIR 1956 Mad. 399 = ILR 1956 Mad. 1144 (DB) + AIR 1918 Mad. 675 = 41 Mad. 4 (DB).
12. 28 Mad. 197 (DB).
13. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

Synopsis

1. Scope and applicability.
2. Declaratory suit by reversioner is a representative suit.
3. Suit by remote reversioner.
4. Suit by adopted son.
5. 'Land'--meaning of.
6. Alienation--meaning of.
7. Alienation must be by female.
8. Alienation by guardian of minor.
9. Alienation by female in Punjab.
10. Starting point of limitation.

1. **Scope and applicability.** The object of allowing a reversioner to bring a declaratory suit is the protection of the interest of the person or persons who may eventually turn out to be the heir or heirs.[14] But it is not necessary that a person bringing a declaratory suit should be one entitled to succeed to the absolute estate.[15]

Suit not filed within lifetime of female. For application of this Article it is necessary that the suit must be brought during the life of the female alienating the land.[16] But a reversioner is not bound to sue for a declaration during the lifetime of the female, that her alienation is void.[17] He may wait till the female is dead and thereafter sue for the recovery of possession of the property by avoiding the sale.[18] It must however be noted that a declaratory suit not falling within this article even though brought by a reversioner, would be governed by Art. 120 and not by this article.[19]

Suit for relief other than stated in Article. A suit to fall under this article, should be one to have the alienation declared void except for the life of the female who made the alienation. A suit for any other relief is not governed by this article.[20] Therefore a suit for possession would not be governed by this article.[1]

Suit by reversioner not competent. Where the possession of the female is by virtue of a grant or transfer made *inter vivos* or by virtue of a bequest irrespective of her being a Hindu or Muslim female as such, this article has no application.[2] Where on the death of a Hindu female the property is to go absolutely to another female, a third person who under the Hindu law is in the position of a reversioner

14. 29 Mad. 396 (FB)+AIR 1919 Mad. 911=41 Mad. 659 (FB)+AIR 1924 P.C. 247=46 All. 831=51 Ind. App. 381.
15. 1906 Punj. Re. No. 72, p. 273 (DB).
16. AIR 1935 Pat. 256 (DB)+1902 Punj. Re No. 84, p. 337 (DB)+AIR 1915 Mad. 800=38 Mad. 396 (DB).
17. 29 Mad. 390 (FB)+AIR 1956 Mad. 15=ILR 1956 Mad. 182 (DB)+12 Cal. W N 857 (DB)+AIR 1920 Lah. 500 (DB)+AIR 1925 Bom. 9=48 Bom. 654 (DB)+AIR 1922 Pat. 615=2 Pat. 125 (SB).
18. AIR 1940 All. 433 (DB)+AIR 1956 Pat. 292 (DB)+AIR 1937 Pat. 105 (DB).
19. AIR 1933 All. 856 (DB)+AIR 1930 Bom. 545=54 Bom. 837 (DB)+20 Cal. 906 (DB)+26 Mad. 488 (DB)+30 Mad. 402 (DB)+AIR 1927 Nag. 193.
20. 16 Ind. Cas. 547 (DB) (Cal.)+AIR 1950 Pat. 218=29 Pat. 209 (DB)+AIR 1947 Lah. 290 (DB).
1. 33 Bom. 88 (DB).
2. AIR 1947 Lah. 290 (FB)+AIR 1950 Pat. 447 (DB) (AIR 1936 Pat. 323, *Followed*)+AIR 1936 Pat. 323=15 Pat. 151 (DB)+AIR 1936 Pat. 535 (DB)+AIR 1924 Cal. 481=51 Cal. 101 (DB).

to the former female, cannot sue for a declaration of the invalidity of her alienation and such a suit, if brought, will not be governed by this article.[3]

Suit by survivor. Where two or more daughters of a class inherit their father's estate jointly with a right of survivorship and to any one of such daughters alienates the property so as to affect the right of survivorship of the other daughter, the latter may bring a suit for declaration and such a suit will be governed by this article.[4]

2. Declaratory suit by reversioner is a representative suit. A suit by a reversioner impeaching an alienation by a Hindu widow is a representative suit on behalf of all the reversioners, and all of them have but a single cause of action arising on the date of the alienation.[5] There is only one starting point of limitation in the case of all reversioners and not a fresh start of limitation as each successive reversioner becomes entitled to sue.[6] Where the next reversioner fails to bring a declaratory suit within the limitation allowed by this article, the cause of action for such a suit expires at the end of the period, and is not revived in favour of one who is since born.[7]

3. Suit by remote reversioner. Remote reversioner may bring a suit where the next reversioner is herself a female entitled to a limited estate,[8] or if the presumptive reversioner refuses without sufficient cause to sue, or precludes himself from suing by his own act or colludes, or colludes with the widow or was concerned in the act alleged to be wrongful.[9] Thus where a widow alienated along with the mother of her husband, a certain property, and the reversioner sued to declare it void; it was held that Art. 125 applied to the case even though the mother who joined with the widow in the alienation was the person who would have succeeded if the widow had died at the time of the institution of the suit.[10] It is however to be noted that where a declaratory suit is permitted to be brought by a remote reversioner, it should be instituted within six years from the date of the alienation under Art. 120.[11]

Joining remote reversioner in suit. There is nothing to preclude a remote reversioner from joining or asking to be joined in the action brought by the presumptive reversioner, or even obtaining the conduct of the suit on proof of

3. AIR 1918 Mad. 1299 = 40 Mad. 818 (DB).
4. AIR 1922 Cal. 459 (DB).
5. AIR 1924 P.C. 247 = 46 All. 831 = 51 Ind. App. 381 + AIR 1925 P.C. 272 = 47 All. 883 = 28 Oudh Cas. 352 = 52 Ind. App. 398 + AIR 1922 All. 301 = 44 All. 19 (FB) + AIR 1952 Mad. 495 + AIR 1950 Pat. 447 (DB).
6. AIR 1918 Mad. 911 = 41 Mad. 659 (FB). (28 Mad. 57, 36 Mad. 570, AIR 1915 Mad. 800 and AIR 1917 Mad. 30, *Overruled*) + AIR 1915 All. 130 = 37 All. 195 (DB) + 14 Bom. 512 (DB) + 12 Cal. W. N. 857 (DB).
7. AIR 1919 Mad. 363 (DB) + AIR 1933 Lah. 524 (DB) + 1907 Pun Re No. 108, p. 504 (DB) + 15 Suth W R 1 (DB).
8. 32 Cal 62 + AIR 1925 Lah. 156.
9. AIR 1925 P.C. 55 = 52 Ind. App. 100 = 47 All. 158 = 27 Oudh Cas. 334 + AIR 1919 Mad. 911 = 41 Mad. 659 (FB).
10. AIR 1937 Lah. 760 + AIR 1957 Andh Pra 280 (DB). (AIR 1937 Lah. 760, *Rel. on.*).
11. AIR 1915 All. 130 = 37 All. 195 (DB) + AIR 1933 All. 856 (DB) + 32 Cal. 473 (DB) + AIR 1941 Cal. 41 = II.R (1941) 1 Cal. 234 (DB) + AIR 1925 Lah. 654 = 6 Lah. 405 (DB) + AIR 1928 Lah. 932 = 10 Lah. 237 (DB) + AIR 1924 Oudh 381 = 27 Oudh Cas. 173.

laches on the part of the plaintiff reversioner or collusion between him and the widow or other female whose acts are impugned.[12]

4. Suit by adopted son. This article covers the case of an adopted son suing for a declaration in respect of an alienation by the widow made before the adoption.[13]

5. 'Land'--meaning of. The word "land" includes a house and its site.[14] Where there is a sale of a house, the presumption is that the house is sold with its site.[15] But a house alone was held to be not land.[16]

Incorporeal rights. The word "land" does not include incorporeal rights such as the equity of redemption in immovable property.[17]

6. **Alienation--meaning of.** By alienation of land is meant a transfer of land whereby a distinct title is conferred on the alienee.[18] The alienation may be made in any manner and not necessarily, by a formal document. It is sufficient that the female does an act which results in the transfer of the estate.[19]

It has been held that an alienation includes a transfer of land whereby a distinct title is conferred on the alienee, or a mortgage or hypothecation of immovable property,[20] or the creation of an occupancy right,[1] or a perpetual lease,[2] or a gift.[3] Where a Hindu widow in collusion with one of the presumptive reversioners fraudulently put into possession the son of that reversioner and also got his name entered in the Land Registration Office in order to injure the interest of the presumptive reversioners or the future heirs, such an act must be regarded as an alienation by the widow. In such a case it is open to the next reversioners to question the alienation after the death of the widow. But if the reversioners bring a suit during the lifetime of the widow challenging the alienation, they must bring a suit within twelve years prescribed by Art. 125 from the date of the alienation which must be taken to be the date when the alienee entered into possession.[5] The withdrawal by a widow of the defence to an action on a mortgage executed by her husband is not an alienation.[6]

12. AIR 1915 P.C. 124 = 38 Mad. 406 = 42 Ind. App. 125.
13. 8 Mad. L. Time. 121 (DB).
14. 1904 Pun. Re. No. 32, p. 112 (DB) + AIR 1920 Lah. 424 = 1 Lah. 69.
15. AIR 1922 Lah. 98 = 2 Lah. 5 (DB).
16. AIR 1914 Lah. 408 = 1914 Pun. Re. No. 70 (DB).
17. 1913 Pun. L. R No. 29, p. 109 = 1912 Pun Re No. 108 (DB).
18. 33 All. 356 = 38 Ind. App. 87 (P.C.).
19. AIR 1930 Lah. 9 (DB) + AIR 1952 Mad. 495 + AIR 1955 Pat. 292 (DB) + 19 All. 524 (DB) + 29 All. 239 (DB) + AIR 1919 Mad. 706 (DB) + AIR 1928 Lah. 832 = 10 Lah. 237 (DB).
20. 33 All. 356 = 38 Ind. App. 87 (PC).
1. AIR 1924 P.C. 247 = 46 All. 831 = 51 Ind. App. 381.
2. AIR 1915 Lah. 159.
3. AIR 1934 Nag. 103.
4. 11 All. 253 (DB).
5. AIR 1955 Pat. 292 (DB).
6. AIR 1919 Mad. 706 (DB).

Devolution on succession. A devolution of property by succession, such as by an adoption made by a Hindu widow,[7] or a gift by a sonless Hindu widow of her deceased husband's estate to her daughter who is the next reversioner,[8] or a compromise in the nature of a family arrangement entered into by a widow which binds the reversioners though not parties thereto, provided it is bona fide, is not an alienation.[9]

Alienation of life interest only. Where a widow alienates her life interest only in the property, the reversioner has no cause of action.[10]

Remarriage by widow. Where a widow has, alienated property without legal necessity and the widow remarried after the alienation a suit by a reversioner to challenge the alienation is governed by this Article.[11]

7. Alienation must be by female. This Article applies only to those cases where an alienation has been made by a female. A confirmation of a past alienation not made by the female,[12] or a sale of property in execution of a decree is not an alienation made by the widow.[13] Thus a sale of the mortgaged property in execution of the mortgage decree does not give a fresh cause of action.[14] But where a female herself, without intervention of Court sold a mortgaged property subsequent to the mortgage, and where a declaratory suit to impeach the sale is brought more than twelve years after the date of execution of the mortgage, the plaintiff reversioner will be precluded from questioning the mortgage.[15]

Where a Hindu widow or other limited owner gives some immovable property to a member of her family whom she wants to support and provide for, and such member transfers the property, a declaratory suit by presumptive reversioners will be one not governed by this article.[16]

8. Alienation by guardian of minor. In case of an alienation by the guardian of a minor time for a suit to obtain a declaration that it is voidable, begins to run from the date of alienation and not from the date when the alienation is either renewed or ratified by the minor after attaining majority.[17] Where a Hindu mother alienated property as guardian of her minor son, the alienation was not one made by a female. After the death of the son the mother succeeded as an heir. A reversioner sued to impeach the earlier alienation, the suit, was not governed by this article.[18]

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7. 1886 All. W.N. 244 (DB).
8. 11 All. 253 (DB) + 4 All. L. Jour 677.
9. 33 All. 356 = 38 Ind. App. 87 (PC). (29 All. 287 *Reversed*) + AIR 1914 P.C. 44.
10. 8 Mad. L. Tim. 320 (DB) + AIR 1925 Mad. 941.
11. AIR 1960 Pat. 564 (DB).
12. AIR 1925 Mad. 919 + AIR 1919 Mad. 363 (DB).
13. AIR 1919 Mad. 706 (DB) + 14 Bom. 512 (DB).
14. 1894 All W N 134 (DB) + AIR 1952 Cal. 473 = ILR (1953) 1 Cal. 208 (DB) + AIR 1925 Mad. 567 (DB). (AIR 1924 Mad. 617, *Reversed*) + 6 Cal. L. Jour 20 (DB) + AIR 1922 Nag. 197 = 18 Nag. L R 42.
15. 1911 Pun. L R No. 190, p. 705 = 1911 Pun Re. No. 33 (FB) + AIR 1932 Mad. 97 (DB).
16. AIR 1919 All. 175 = 41 All. 492 (DB).
17. AIR 1931 Mad. 274.
18. 18 Mad. 193 (DB).

9. Alienation by female in Punjab. Where the property is non-ancestral *qua* the plaintiff a suit for a declaration that an alienation is not binding on the plaintiff reversioner would be governed by this article.[19] Thus a suit by certain members of the proprietary body of the village who were entitled to succeed to the property of the widow according to custom, to declare that an alienation by the widow will not affect their reversionary rights was governed by Art. 125.[20]

10. Starting point of limitation. Under this Article limitation runs from the date of the alienation.[1] In other words time begins to run from the date of registration of the deed.[2] But where the person entitled to institute a declaratory suit has, by means of fraud, been kept from the knowledge of such right by the widow or the alienee, then as against the widow or the alienee claiming through her, such person is entitled to the benefit of S. 18.[3]

126.	By a Hindu governed by the law of the Mitakshara to set aside his father's alienation of ancestral property.	[4][Twelve years]	When the alienee takes possession of the property.

Synopsis

1. Applicability and scope.
2. "To set aside."
3. "His father's alienation."
4. "Alienation"--meaning of.
5. Ancestral property.
6. "Takes possession."
7. Starting point of limitation.
8. Effect of failure to sue within limitation.

1. Applicability and scope. The Article applies to a suit by the son of the alienor. A suit for partition and possession by a Court auction-purchaser of an undivided interest of a co-parcener in a joint Hindu family is governed by Art. 138 and not by this articles.[5]

2. "To set aside." The words "set aside" imply a prayer for immediate relief and not a mere declaration.[6] Therefore a suit by a son against the alienee from his father for possession of the property alienated,[7] or to challenge some of the terms

19. AIR 1933 Lah. 945.
20. AIR 1938 Lah. 457.
1. AIR 1923 Lah. 53 (DB)+AIR 1955 Pat. 292 (DB)+16 Ind. Cas. 547 (DB) (Cal.). (Limitation does not run from the date when the plaintiff acquires knowledge of the material facts)+14 Mad. L. W 208+1896 Pun Re No. 26, p. 71.
2. PLD 1977 Lah. 595=1977 Law Notes 356.
3. AIR 1915 All. 130=37 All. 195 (DB)+16 Ind. Cas. 547 (DB) (Cal.)+AIR 1922 Nag. 197=18 Nag. L. R. 42.
4. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
5. AIR 1955 Mad. 202=ILR 1955 Mad. 981 (DB).
6. AIR 1914 Lah. 408=1914 Pun. Re. No. 70 (DB)+AIR 1923 Lah. 268=3 Lah. 426 (DB)+AIR 1918 Mad. 19=41 Mad. 650 (DB).
7. AIR 1914 Lah. 370=AIR 1915 Pun. Re. No. 14 (DB). (Only opinion expressed, no definite decision given on the point).

of the mortgage,[8] or a suit for redemption of a usufructuary mortgage made by the father is not a suit to set aside an alienation.[9]

3. "His father's alienation." In order that this article may apply, the plaintiff must be the son of the person who alienated the property.[10] It has been held that a suit be an adopted son to set aside his adoptive father's alienation will be governed by this article.[11] A son in the mother's womb at the time, of the alienation is to be regarded as a son born at that time.[12] Therefore time will run from the date of the alienee's taking possession and not from the birth of the after-born son.[13]

Daughter, suit by. A suit by a daughter to set aside an alienation by her father is governed by this article.[14]

Transferee from son, suit by. A suit by a transferee from the son for possession of the property alienated is governed by this article.[15]

Suit by other relations. A suit by a son's son or other member of the family for possession for the alienee is not governed by this article.[16]

Alienation jointly by father and another. The mere fact that another person joined with the father in the alienation will not render this article inapplicable.[17]

Alienation by father as guardian of minor sons. The fact that the father has purported to alienate ancestral property as guardian of the minor son will not take the case out of the article.[18] But an alienation by the father acting as guardian of his son, of property belonging exclusively to the son, is not governed by this article.[19]

4. "Alienation"--meaning of. The word "alienation" would include a sale or a usufructuary mortgage.[20] Even as allotment of a share on partition to a perfect stranger may be regarded as an alienation which can be impeached by the son.[1]

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8. AIR 1925 Oudh 678 + AIR 1932 Oudh 66 = 7 Luck 505 (DB).
9. AIR 1925 Oudh 678.
10. AIR 1954 Pepsu 52 = ILR 1953 Patiala 166.
11. AIR 1928 Oudh 348 (DB).
12. AIR 1935 Mad. 839 = 58 Mad. 886 (FB) + AIR 1948 Bom. 150 = ILR 1947 Bom. 750 (DB) + AIR 1915 All. 65 = 37 All. 162 (DB) + AIR 1929 Lah. 254 = 10 Lah. 713 (DB).
13. AIR 1925 P.C. 33 = 52 Ind. App. 69 = 47 All. 165 = 27 Oudh Cas. 343 + AIR 1957 Andh Pra 386 + 1946 Jaipur L. R. 136 (DB).
14. 1891 All. W.N. 109 (DB).
15. AIR 1918 Mad. 19 = 41 Mad. 650 (DB).
16. AIR 1940 Bom. 136 = ILR 1940 Bom. 109 (DB). (Suit by son's son--Article 146 applied) + 6 Bom. L. R. 925 (DB)
17. AIR 1927 All. 54.
18. AIR 1918 Mad. 178 (DB) + 54 Mys. ILC.R. 480 (DB) + AIR 1952 Mys. 1 = ILR 1952 Mys. 29 (DB).
19. AIR 1921 Mad. 425 (DB) + AIR 1929 Mad. 313 (DB).
20. AIR 1921 Oudh 196 = 24 Oudh Cas. 330 (DB).
1. 40 Cal. 966 = 40 Ind. App. 213 = 10 Nag. L. R. 1 (PC).

Alienation would not include a simple mortgage,[2] or a sale in which no possession is transferred to the alienee,[3] or a Court sale in execution of a decree against the father, of ancestral property.[4]

Consideration not necessary. An alienation need not be one for a consideration but may be a gift,[5] or a bequeathing of property by will.[6]

Alienation without notice of limited power of alienor. The applicability of the article does not depend upon the question whether the alienee has taken the property with or without notice of limited power of the alienor.[7]

5. Ancestral property. The word "property" includes both movable and immovable property.[8] The property gifted by a father to a son cannot be regarded as "ancestral property" within this article where it cannot be so regarded under the Hindu law.[9] Where the father represented to the alienee that the alienated property is not ancestral, a suit by the son to set aside the alienation will fall within this article if, in fact the property is ancestral.[10]

6. "Takes possession." This article does not apply where the alienee has not taken possession of the property.[11] It is however to be noted that in this Article possession is not necessarily physical possession,[12] and the Article applies even where only symbolic possession has been taken. The words "takes possession" will include cases where the alience takes possession by redeeming a mortgage with possession.[13]

7. Starting point of limitation. Starting point of limitation is the date when the alienee takes possession of the property alienated.[14] This has been done to avoid so far as possible difficult questions of notice.[15]

8. Effect of failure to sue within limitation. Where the only person or all the persons entitled to sue to set aside an alienation of the father's property fails or fail to do so within the period prescribed, his or their right is extinguished and the property ceases to be a family property.[16] Thus where a sale was executed for a pre-existing mortgage and twelve years after the vendee took possession a suit for redemption was filed; it was held that the suit was not maintainable.[17]

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2. AIR 1927 All. 702 = 50 All. 163 (DB).
3. AIR 1929 All. 750 (DB) + AIR 1928 Bom. 383 (DB).
4. AIR 1926 Mad. 1190 (DB).
5. AIR 1918 Mad. 19 = 41 Mad. 650 (DB).
6. AIR 1928 Oudh 348 (DB).
7. AIR 1918 Mad. 19 = 41 Mad. 650 (DB).
8. 6 All. L. Jour 614.
9. AIR 1929 Mad. 313 (DB) + AIR 1934 Lah. 397.
10. AIR 1918 Mad. 19 = 41 Mad. 650 (DB).
11. AIR 1929 Lah. 14 + AIR 1954 Pepsu 52 = ILR 1953 Patiala 166 + AIR 1951 Punj. 341.
12. AIR 1914 Lah. 370 = 1915 Pun Re. No. 14 (DB). (Sale deed on 3rd August. 1893--Vendee paid *kharif* revenue for 1893--*Held* that the vendee took possession on the date of sale).
13. AIR 1918 Mad. 19 = 41 Mad. 650 (DB).
14. AIR 1915 Mad. 1107 (DB) + AIR 1924 Oudh 205.
15. AIR 1918 Mad. 19 = 41 Mad. 650 (DB).
16. AIR 1916 All. 356 = 38 All. 126 (DB) + AIR 1924 All. 677.
17. 112 Ind. Cas. 151 (DB) (Oudh).

127. By a person excluded from joint family property to enforce a right to share therein.	[18][Twelve years]	When the exclusion becomes known to the plaintiff.

Synopsis

1. Scope.
2. Person--meaning of.
3. Joint family property.
4. Partition of joint family property.
5. Conversion of co-parcener to other faith.
6. Exclusion.
7. Onus of proof of exclusion.
8. To enforce a right to share.
9. Suit to reopen partition.
10. Starting point.
11. Suit by minor.
12. Section 28 and this Article.

1. Scope. This article provides limitation for a suit brought by a person excluded from joint family property, whether movable or immovable.[19] Therefore this Article will apply only if the plaintiff has been excluded from the joint family property.[20] It has been held that to bar the plaintiff under Art. 127, three questions will have to be considered, namely, (*i*) whether the claimant to a share was excluded from the joint family property; (*ii*) if so excluded, when the exclusion took place; and (*iii*) when the exclusion, if any, became known to the claimant. The point to be noticed is that time will not begin to run against the person until he became aware that he was excluded from claiming a right to a share in the properties.[1]

Joint family firm. A suit by a person for his share in the assets of a firm on the ground that the firm was a joint family property is governed by this article. Article 106 has no application to such case.[2]

2. Person--meaning of. The word 'person' does not include a stranger. Therefore this article is not applicable to a suit between one member of a joint family and an alienee who is in possession of the property by virtue of a transfer made by another member of the joint family.[3] Similarly the article does not apply to a suit brought by a stranger to the family against any member of the joint family.[4]

3. Joint family property. The words "joint family property" is to be understood in the technical sense known to the Hindu law. The article does not apply to a suit by members of a Muslim family for recovery of shares in

18. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
19. 5 All. L. Jour 614 + AIR 1942 All. 267 = ILR 1942 All. 578 (DB) + 14 Cal. W. N. 221 (DB) + AIR 1937 Bom. 202 (DB).
20. 13 All. 282 (FB) + AIR 1955 Madh B 148 = ILR 1955 Madh B 239 (DB) + 15 Oudh Cas. 111 (DB) + 5 Cal. 938 (DB) + 24 Cal. 309 (DB) = 5 Bom. L. R. 355 + AIR 1936 Nag. 80 = 31 Nag. L. R. (Supp.) 191 (DB).
1. AIR 1965 Madras 200 + AIR 1963 Pat. 108 (DB).
2. AIR 1942 P.C. 13 = ILR 1942 Kar (PC) 33.
3. 6 Beng. L. R. 530 (PC) + AIR 1940 Bom. 136 = ILR 1940 Bom. 109 (DB) + 23 Bom. 137 (FB).
4. 34 Mad. 402 (DB) + 18 Cal. 642 (DB) + AIR 1917 Pat. 393 + 11 Cal. L. R. 312.

immovable property of a deceased Muslim ancestor in the possession of the defendant.[5] But where a particular Muslim family has, by custom adopted the Hindu law of joint family, this article might be applied to a suit brought by a person excluded from the family property to enforce his right to share thereto.[6] Thus *M*, a Kutchi Memon disinherited one *K*, of his two sons in 1907 and thereafter made a will leaving his entire property to *S*, his other son *M* died in 1909 and *K* in 1911, *S* remained in exclusive possession of the property after *M's* death. *K's* widow sued *S* in 1939 for partition and possession of half share of *M's* estate in the hands of *S*. It was held that since after the death of *M* his son, *S*, was in exclusive possession of the property and *S's* possession was, on the facts of the case, adverse to that of the widow's husband, the suit brought by *K's* widow for partition having been instituted after a lapse of 12 years was clearly out of time by reason of Article 125, Limitation Act.[7]

Presumption as to joint family property. The normal state of every Hindu family is joint and the presumption is, until the contrary is proved, that every such family is and continues to be joint.[8] But the strength of the presumption must necessarily vary with every case.[9] Where it is proved or admitted that a Hindu family possesses joint property, the presumption is that all the property of which they are possessed is joint.[10] But there is no presumption that a joint family possesses any joint property and the burden of proving, in an action for partition of joint family property, that any particular item of property is joint is primarily on the plaintiff.[11] The burden is not discharged by merely showing that many years ago plaintiff's and defendant's ancestors were joint, leaving the Court to presume from this that any property of which the defendant may be possessed at the time the suit is brought is joint family property.[12] Where the property is found to have been in the exclusive possession of the defendant for upwards of twelve years, the defendant has a prima facie right to it. If the plaintiff wants to bring his case within the operation of this article he is bound to show that the property was the property of an existing joint family on the date when the cause of action accrued.[13]

Possession of one member. Possession of one member of a joint family is possession of all the members. Thus where *A*, one of the two brothers *A* and *B* forming a joint Hindu family is in possession, the other brother *B* must be deemed to be in possession through *A*.[14]

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5. AIR 1963 Pat. 108 (DB) + 13 All. 282 (FB) + AIR 1917 Bom. 254 = 41 Bom. 588 (FB) + 22 Cal. 954 (FB) + AIR 1918 Cal. 471 (DB) + 1888 Pun. Re. No. 89, p. 235 + 1902 Pun Re. No. 30, p. 115 (DB) + 15 Mad. 60 (DB) + 23 Mad. 583 (DB) + 5 Nag. L. R. 41 + AIR 1921 Sind 177 = 16 Sind L. R. 25 (DB).
6. AIR 1917 Bom. 254 = 41 Bom. 588 (FB) + 12 Mad. 380 (DB) + AIR 1921 Sind 177 = 16 Sind L R 25 (FB).
7. PLD 1950 Sind 131 = PLR 1948 Sind. 17.
8. 12 Moo. Ind. App. 523 = 3 Beng. L R 13 (PC).
9. AIR 1929 P.C. 8 = 56 Ind. App. 13 = 53 Bom. 213.
10. 9 Bom. L. R. 595 (PC) + 3 Cal. 315 (PC).
11. AIR 1929 P.C. 1.
12. 9 Cal. 237 (DB) + 11 Bom. 216 (DB) + 11 Bom. 221*n*.
13. 6 All. 442 (DB) + 9 Cal. 237 (DB) + 3 Bom. H C R (AC) 170 (DB) + AIR 1933 Bom. 386 (DB) + 1913 Pun L. R No. 116, p. 418 (DB).
14. AIR 1943 Oudh 177 = 18 Luck. 439 (DB).

4. Partition of joint family property. Partition consists in a division by which the proportion of each co-parcener with respect to all or any of the joint property is fixed.[15] Where a person who is excluded from the joint family property seeks partition of his share in the joint family property by enforcement of his share therein the suit is governed by this article.[16]

When it is admitted or proved that a partition has already taken place, the presumption is that all the joint family property was divided and the person alleging that the family property in the exclusive possession of one of the members after such partition is liable to be partitioned, has to make good his allegation by proof.[17] It is further to be noted that where the status of jointness is put an end to, the family does not remain a joint family within the meaning of this article and even if the property in possession of such family is not actually divided by metes and bounds, a suit to recover possession of the plaintiff's share in such property is not governed by this article.[18]

Severance of status. Partition by division of property into specific shares is to be distinguished from partition by division of title.[19] All that is necessary for a severance of the joint status is a definite and unambiguous intimation by a member of the joint family of his intention to separate himself from the family and to enjoy his share in severalty.[20]

Partial partition. A partition may be partial either in respect of the property or in respect of the persons making it.[1] It is open to the members of a joint family to make a partition of a part of the joint estate, while retaining their status as a joint family and holding the rest as the properties of a joint undivided family.[2] Where from evidence it can be held that the parties intended to sever, then the joint status of the family is determined, and with regard to any partition of the estate which remains undivided, the presumption is that the members of the family hold it as tenants-in-common unless and until a special agreement to hold it as joint tenants is proved.[3] In other words the property does not lose the character of joint family property and a suit to enforce a right to share in such property will fall within the scope of this article.[4]

Suit for profit. Where there has been a disruption of the status of jointness of a Hindu family, and on the division of the joint family properties a portion of the

15. 11 Moo Ind. App. 75 (PC) + 30 Cal. 738 + 30 Ind. App. 139 (PC).
16. AIR 1952 All. 105 (13 All. 282 (FB) *Distinguished*).
17. 3 Cal. 315 (PC).
18. AIR 1931 P.C. 48 = 58 Ind. App. 106 = 27 Nag. L R 131 + AIR 1943 Bom. 419 + AIR 1922 Mad. 150 = 45 Mad. 648 (FB).
19. AIR 1916 P.C. 104 = 43 Cal. 1031 = 43 Ind. App. 151 = 12 Nag. L. R 113.
20. AIR 1916 P.C. 104 = 43 Cal. 1031 = 43 Ind. App. 151 = 12 Nag. L. R 113 + AIR 1922 P. C. 201 = 45 Mad. 489 = 49 Ind. App. 168.
1. 11 Moo Ind App. 75 (PC) (Partial as to property) + AIR 1925 P.C. 49 = 52 Ind. App. 83 = 48 Mad. 254 (Partial as to persons).
2. AIR 1922 P.C. 201 = 45 Mad. 489 = 49 Ind. App. 168.
3. AIR 1924 Bom. 31 = 47 Bom. 773 (DB). (Decision in 18 Bom. 611 held doubtful in view of AIR 1916 P.C. 104) + AIR 1943 Bom. 419 + AIR 1923 Lah. 497 = 4 Lah. 252 (DB) + AIR 1932 Oudh 144.
4. AIR 1923 Lah. 569 (DB) + 18 Mad. 418 (DB) + 11 Bom. 216 (DB) + AIR 1927 Oudh 499 (DB).

movable property is, by consent of all the quondam co-parceners, left in management of a member of the family, a suit by one of such co-parceners for an account of the property left in such management is governed by Art. 89 and not by this article.[5]

5. Conversion of co-parcener to other faith. By conversion of a co-parcener to another faith a separation is caused immediately.[6] But possession of the family property by converted member is not adverse to the other co-parceners.[7]

6. Exclusion. It is a general principle of law that in the case of co-owners and joint tenants, the possession of one is in law the possession of all.[8] the exclusion contemplated by Art. 127 is a conscious and deliberate act amounting to a denial of the right of the particular member concerned to have any properties of the joint family.[9] Therefore an intention to exclude is an essential element in exclusion.[10] Moreover a member of the joint family must have notice of exclusion because the period prescribed under Art. 127 will begin to run against him only from the date when the exclusion becomes known to him.[11] Thus the sole occupation by the joint family by some of the members will not amount to ouster of other members or adverse possession against them until there has been disclaimer of the plaintiff's title and notice thereof to the plaintiff either direct or to be inferred from notorious acts and circumstances.[12]

Whether a person has been excluded from joint family property must depend largely upon the facts of a particular case.[13] Where the plaintiff attempted to get his name entered as against joint family property during settlement proceedings but was unsuccessful. Subsequently the plaintiff again failed to get mutation of his name entered in respect of the property; it was held that there was exclusion of plaintiff from joint family property.[14] But where in a suit for partition of joint family property, the defence was that the plaintiff's father was expelled from the family and that he had received his share of the property. The evidence established that he re-appeared in the village where the family resided, that he took up his abode in the village and that he was recognised as a member of the family. It was held that no case of exclusion from the joint property could be made out.[15] Where one member of the family was in receipt of one part of an estate and another in receipt of another part of the estate. They gave accounts, the one to the other, in respect of the excess of receipts over their respective rights. It was held, that there was no exclusion.[16] Where in a litigation between *A* and *B*, members of

5. AIR 1930 P.C. 18.
6. AIR 1916 Lah. 43=1916 Pun Re No. 57 (DB).
7. AIR 1924 Lah. 479.
8. AIR 1918 P.C. 1=1918 Pun Re No. 64+AIR 1926 P.C. 100=53 Ind. App. 220=48 All. 529=29 Oudh Cas. 316=1 Luck 389.
9. AIR 1958 Ker. 178=ILR 1958 Ker. 389 (FB).
10. AIR 1929 P.C. 231=53 Bom. 699=56 Ind. App. 316+AIR 1943 Oudh 177=18 Luck 439 (DB)+AIR 1942 All. 267=ILR 1942 All. 518 (DB).
11. AIR 1958 Ker. 178=ILR 1958 Ker. 389 (FB).
12. 1958 Ker. L J 489 (DB).
13. AIR 1929 P.C. 231=56 Ind. App. 316=53 Bom. 699+AIR 1943 Oudh 177=18 Luck 439 (DB).
14. AIR 1952 All. 105.
15. 16 Cal. W N 466.
16. 19 Suth W R 231 (PC).

a joint Hindu family, *A* denies *B's* right to possession of a portion of the joint property and *B* wins the case on the plea that the suit property forms part of joint family property in which he has an equal interest with *A*, the denial by *A* of *B*'s title to the suit property does not amount to *B's* "exclusion".[17]

Long absence of member. The long absence of a member from the family would not, by itself, establish his exclusion from property.[18]

Participation in profits. Where a member is in receipt of some payment from the family property, there cannot be said to be any exclusion.[19] But non-participation in the profits of the property would not, by itself, be sufficient to establish exclusion from the family property.[20] Thus refusal to accept an offer of a monthly allowance on the ground of its inadequacy does not amount to exclusion.[1] Where *N*, a member of the joint family voluntarily left after the death of his parents, to live with his maternal-uncle. He was not turned out. He went with the consent of the eldest male member of the family. The members of the joint family did not, however, subscribe anything for his maintenance or marriage expenses. It was held that *N* was not excluded from the joint family property.[2]

Management by one member. The mere fact that the member of the joint family in whose name the properties were purchased was in possession of the properties or was leasing them by himself would not amount to proof of exclusion of the other members of the joint family.[3]

Suit to enforce rights under partition deed. Where a partition deed in unambiguous terms declared the substantive rights of the plaintiff's branch and the defendants' branch each to a moiety in the suit properties and the provision was made only for postponement of division by metes and bounds till after the death of one of the parties to the agreement. It was held that the suit to work out the rights declared under the partition deed was not governed by Art. 127, there being no ouster of the plaintiffs for over the statutory period of twelve years.[4]

7. **Onus of proof of exclusion.** Where the plaintiff establishes that the family was joint at some time and possessed also joint property, it is for the defendant, in the suit by the plaintiff to enforce a right to share therein, to show that the plaintiff was excluded to his knowledge for more than twelve years before the suit.[5] The heaviness of the burden will depend upon the facts and circumstances of each case.[6] Where there was evidence on the record that the deceased plaintiff

17. AIR 1943 Oudh 177 = 18 Luck 439 (DB).
18. 3 Mad. H C R 99 (DB). (Though such fact would be of great evidentiary value) + AIR 1927 Mad. 595 (DB).
19. AIR 1926 P.C. 100 = 53 Ind. App. 220 = 48 All. 529 = 29 Oudh Cas. 316 = 1 Luck 389.
20. 20 Mad. L. Jour 364 (DB) + AIR 1958 Ker. 178 = ILR 1958 Ker. 389 (FB) + Madh B L J 1955 H C R 1858 + 11 Bom. 365 (DB) + 9 Ind. Cas. 425 (Oudh) + AIR 1916 Nag. 19.
1. 35 All. 80 = 40 Ind. App. 40 = 16 Oudh Cas. 129 (PC).
2. AIR 1929 P.C. 231 = 53 Bom. 699 = 56 Ind. App. 316.
3. 1958 Ker. L. J 489 (DB).
4. AIR 1956 Mad. 405 = ILR 1956 Mad. 1116 (DB).
5. AIR 1965 Mad. 200 + AIR 1929 P.C. 231 = 53 Bom. 699 = 56 Ind. App. 316 + AIR 1926 P.C. 100 = 53 Ind. App. 220 = 48 All. 529 = 29 Oudh Cas. 316 = 1 Luck. 389 + 1888 Bom. P. J. 3, reprint p. 1 (DB).
6. AIR 1929 P.C. 8 = 56 Ind. App. 13 = 53 Bom. 213.

never received any share out of the income of the two mines after the death of the deceased, and that the deceased plaintiff never participated in management, control or in the income of the two mines which were exclusively run, managed and controlled by the two sons of the deceased and their successor in title until filing of the suit. The plaintiff was not able to show that the deceased plaintiff became aware of her exclusion from the joint property only within 12 years of the filing of present suit. There was ample evidence on record to show that the plaintiff was aware that she was not given her due share in the two mines left by the deceased. The suit for declaration and accounts was held to be barred by time.[7]

8. To enforce a right to share. The expression "to enforce a right to share" would include not only a right to enforce a right to common enjoyment of the family property, but also a right to claim actual possession of a share by partition.[8] A suit for a mere declaration of a right to joint family property or for such a declaration and injunction, is not a suit to "enforce a right to share" in the joint family property and this Article will not apply to a suit like that.[9]

9. Suit to reopen partition. A suit to re-open a partition and to re-adjust the shares of the parties thereto on the ground of mistake is governed by Art. 96 and not by this article.[10]

10. Starting point. Limitation is to be computed from the time when exclusion from the joint family property first becomes known to the plaintiff.[11]

11. Suit by minor. Where the date of knowledge is not shown by the defendant to be beyond twelve years of the suit, the suit will not be barred by the mere fact that it was filed more than three years after the plaintiff's attaining majority.[12]

Knowledge of guardian as to exclusion. Where there is a guardian, knowledge of the guardian should be imputed to the minor.[13]

12. Section 28 and this Article. Where a suit is barred under this article, the right to the property itself gets extinguished under S. 26.[14]

128.	By a Hindu for arrears of maintenance.	[15][Twelve years]	When the arrears are payable.

7. 1981 CLC 503.
8. AIR 1929 P.C. 231=56 Ind. App. 316=53 Bom. 699+AIR 1929 P.C. 1+AIR 1926 P.C. 100=53 Ind. App. 220=48 All. 529=29 Oudh Cas. 316=1 Luck. 389+5 Bom. 48=7 Ind. App. 191 (PC)+11 Cal. 777=12 Ind. App. 112 (PC)+8 Ind. Cas. 512 (FB) (Mad.).
9. AIR 1935 Pesh. 95.
10. AIR 1931 Mad. 707=54 Mad. 883 (DB)+AIR 1960 Cal. 381.
11. 11 Cal. 777=12 Ind. App. 112 (PC)+AIR 1965 Mad. 200.
12. 2 Oudh Cas. 348+AIR 1952 All. 105+AIR 1929 All. 302 (DB).
13. AIR 1920 Mad. 793 (DB)+AIR 1960 Andh Pra 213 (DB)+ILR (1954) 4 Raj. 145+AIR 1952 Orissa 31 (DB).
14. 8 Cal. 919 (PC).
15. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for

129. By a Hindu for a declaration of his right to maintenance.	[15][Twelve years]	When the right is denied.

Synopsis of Articles 128, 129

1. Scope.
2. "By a Hindu."
3. Arrears of maintenance.
4. Right to maintenance.
5. Starting point of limitation.
6. Defence to suit for maintenance.

1. Scope. These articles apply only where the maintenance is claimed not on the basis of contract but on the basis of status of the plaintiff under Hindu law.[16] Whether the suit is based upon Hindu law or upon a contract is to be determined from the nature of the plaint.[17]

A suit for arrears of maintenance by a widow against her husband's brother, fixed by a mutual agreement is allowed only for the arrears of three years.[18]

Articles 128 and 129--difference between. A right to maintenance is a right which accrues on the happening of a certain event, and is not recurring right but is a constant one till the happening of some other event which determines it. On the other hand, a right to recover arrears of maintenance is a recurring right unless maintenance is fixed by the parties at one consolidated sum.[19]

2. "By a Hindu." The words "by a Hindu" should be taken to mean "by a person claiming under the Hindu law".[20] A suit for maintenance brought by one who is not a Hindu is not within these articles.[1] It is to be noted that a person might continue to possess status of a Hindu even if he becomes a member of a *Brahmo Samoj* or accepts the religious persuasion of the Sikhs or the Jains or at time worships with the Buddhists.[2]

Person not entitled to maintenance. A maintenance suit brought by one who though a Hindu is not entitled to maintenance under the Hindu law is not within these articles.[3]

3. Arrears of maintenance. The grant of arrears is a matter within the discretion of the Court and the Court may for sufficient reasons refuse to award any arrears, or may award arrears at a rate lower than that fixed for payment in the future.[4] Where the wife was living apart from the husband for a long time, and she alleged immorality and cruelty on husband's part but it was not proved. It was held that separate residence must be without justification and maintenance was

16. 23 Cal. 645 (DB). (A claim for maintenance based solely on contract will be governed by Art. 115 or 116) + AIR 1936 Pat. 158 (DB) + AIR 1915 Cal. 550 (DB).
17. AIR 1934 Pat. 99 = 12 Pat. 869 (DB) + AIR 1936 Mad. 573.
18. AIR 1924 Nag. 176.
19. 3 Bom. 415 = 6 Ind. App. 114 (PC).
20. 25 Cal. 645 (DB) + 2 Bom. 624 (FB) + AIR 1936 Pat. 158 (DB).
1. AIR 1919 Bom. 37 (DB).
2. 31 Cal. 11 = 30 Ind. App. 249 = 1903 Pun. Re. No. 84 (PC) + AIR 1922 P.C. 197 = 49 Cal. 310 = 48 Ind. App. 553 = 11 Low Bur Rul. 155.
3. AIR 1915 Cal. 550 (DB).
4. 21 All. 183 (DB) + AIR 1918 Bom. 122 = 43 Bom. 66 (DB) + 18 Mad. 403.

refused.[5] Delay in preferring a claim is one of the circumstances that disentitle a widow to claim arrears of maintenance.[6]

Wrongful withholding necessary. It is for the defendant who sets up the bar of limitation to prove denial at a time beyond the period prescribed.[7] The withholding of maintenance may be proved by any circumstances which would amount to a refusal of maintenance.[8] Non-payment of maintenance coupled with a denial of the plaintiff's right to maintenance may become a sufficient proof of wrongful withholding to entitle the plaintiff to claim arrears of maintenance.[9]

Period of claim. Arrears of maintenance can be claimed for any number of years within the period of limitation, unless abandonment or waiver is expressed or can be implied from the circumstances of the case.[10] It is not necessary to prove a demand for each year's maintenance as it became payable.[11]

4. Right to maintenance. Future maintenance awarded by a decree when falling due, can be recovered by execution of that decree without further suit.[12]

5. Starting point of limitation. Limitation under Article 129 begins when the right is denied. A right is denied when there is a formal and final refusal on the part of the defendant of the right of the plaintiff for maintenance.[13] It is for the defendant who sets up the bar of limitation to prove the denial at a time beyond the period prescribed.[14]

6. Defence to suit for maintenance. Even where the suit to establish a right to maintenance is barred, a defence of a right to maintenance will not be barred.[15]

130. For the resumption or assessment of rent-free land.	[16][Twelve years]	When the right to resume or assess the land first accrues.

Synopsis

1. Scope.
2. Right of resumption of land.
3. Denial of liability to assessment.
4. "Right first accrues."

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5. AIR 1928 P.C.187.
6. AIR 1920 Lah. 306 = 1919 Pun Re No. 147 (DB).
7. AIR 1914 Mad. 457 (DB).
8. 6 Ind. App. 114 = 3 Bom. 415 (PC).
9. 24 Mad. 147 = 27 Ind. App. 151 (PC).
10. AIR 1928 Mad. 561 (DB) + 21 Mad. L. Jour 706 (DB) + 1864 Suth W R (Gap) 3 (DB) + AIR 1934 Pat. 99 = 12 Pat. 869 (DB). (However, it must first be proved that the plaintiff is entitled to maintenance under the general Hindu Law).
11. 24 Mad. 147 = 27 Ind. App. 151 (PC). (While a demand is allowed to be prima facie evidence of need on the plaintiff's part, it is not in a demand that the right to obtain the arrears of maintenance is rooted).
12. 19 Cal. 139 (FB).
13. 20 Bom. 181 (DB) + 12 Mad. 347 (DB).
14. AIR 1914 Mad. 457 (DB).
15. AIR 1924 Cal. 364 (DB).
16. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

5. Bar under this article--effect.

1. Scope. This article has no application unless the tenure in question is found to be rent-free tenure.[17] A suit for the assessment of land presumably liable to be assessed is not covered by this article.[18] Where the land is not rent-free and the relationship of landlord and tenant exists, mere non-payment of rent for a period does not bar the landlord's right to have the rent assessed and to recover it from the tenant.[19]

2. Right of resumption of land. In suits for resumption of land granted to the defendant for life, the right to resume arises on the death of the grantee.[20] But where a landlord has the option of resuming certain land and unequivocal demand for possession so as to operate as a final election of the landlord to re-enter, constitutes the starting point of limitation for an action for resumption.[1]

Land granted for service. In the case of lands granted for service, the refusal or incapacity to perform the service,[2] or when the services of the person are dispensed with gives a cause of action for resumption.[3] It would however be necessary to establish that on the terms of the grant it was resumable by remission of service.[4] It is to be noted that the mere non-performance of the service does not by itself make the possession of the holder adverse to the plaintiff.[5]

Grant for a purpose. A grant rent-free for a particular purpose cannot be resumed so long as the purpose continues and no right of resumption or assessment can arise in the meanwhile.[6]

Void grant. Where a grant of land making the grantee exempt from the payment of the Government revenue is void under law, the land is resemble.[7]

3. Denial of liability to assessment. The cause of action may arise upon a distinct notice of the tenant's claim to hold the land rent-free.[8] Thus where at the preparation of the Record-of-Rights the defendant's claim to hold the lands without payment of rent was overruled, it was held that a suit for assessment of rent, instituted more than twelve years after the above infructuous claim was not barred.[9] But where in the Record-of-Rights the tenant was entered as a settled *raiyat* and no rent had been assessed, it was held that limitation ran from the date of publication of the Record-of-Rights.[10]

17. AIR 1919 Cal. 885 (DB) + AIR 1923 Cal. 392 (DB).
18. AIR 1919 Cal. 989 (DB).
19. AIR 1923 Cal. 392 (DB) + 40 Cal. 173 (DB) + AIR 1921 Bom. 175 = 45 Bom. 638 (DB).
20. AIR 1924 Pat. 298 (DB).
1. AIR 1924 Pat. 449 = 3 Pat. 320 (DB).
2. AIR 1929 Pat. 433 = 9 Pat. 425 (DB).
3. 22 Cal. 338 (DB).
4. 1 Bom. 586 (DB).
5. AIR 1922 Pat. 541 = 1 Pat. 292 (DB) + 23 Bom. 602 (DB).
6. 39 Cal. 439 (DB).
7. 2 All. 545 (FB).
8. AIR 1926 Cal. 883 (DB) + 39 Cal. 453 (DB). (A hostile claim to the knowledge of the plaintiff is such notice) + AIR 1933 Pat. 596.
9. AIR 1918 Cal 784 (DB).
10. 16 Cal. W N 929 (DB).

4. "Right first accrues." Limitation starts running when a cause of action for resumption of assessment has arisen in favour of a particular person and the plaintiff, succeeding to such person,[11] or the mere recognition of the plaintiff's right to resumption contained in a *wajib-ul-urz* does not give plaintiff a new starting point.[12] But a decree declaring certain lands to be liable to resumption and assessment in a prior suit between the parties gives new starting point for a subsequent suit for actual assessment.[13]

5. Bar under this article--effect. A suit for assessment must be brought within twelve years of the date on which the land became liable to assessment.[14] The effect of not suing within the period is to create rights by adverse possession in a party who has proved possession of the lands without any stipulation for rent over the said period,[15] and a tenant is not precluded from asserting adverse possession in respect of land which was not part of his tenure originally but which was later accretion held by him adversely to the plaintiff.[16] A suit to resume or to levy assessment on rent-free lands is a suit really for possession within the meaning of S. 28.[17] Where there is a claim of adverse possession in respect of a limited interest as a tenant, a claim for assessment of rent will not be barred except as provided by this article and Art. 131.[18]

Tacking of limitation. The different periods in respect of two different claims cannot be tacked on to raise a plea of adverse possession in a suit for assessment of rent.[19]

131.	To establish a periodically recurring right.	[20][Twelve years]	When the plaintiff is first refused the enjoy-ment of the right.

Synopsis

1. Scope.
2. Suit for recovery of arrears of payment periodically due.
3. Suit against co-sharers or rival claimant of right.
4. "Periodically recurring right."
5. Right to turn of worship.
6. Enhancement of rent, suit for.
7. Right to maintenance.
8. Starting point of limitation.

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11. 23 Suth W R 24 (DB) + 15 Suth W R 436 (DB) + 3 Mad H C R 67 (DB).
12. 2 Agra 189 (DB).
13. 16 Cal. 449 (DB) + 16 Cal. 450*n* (DB).
14. 1896 Bom. P. J 729 (DB).
15. AIR 1915 Cal. 835 (FB) + 14 Moo Ind App. 345 (PC).
16. 16 Cal. W R 235 (DB).
17. AIR 1921 Bom. 303 = 45 Bom. 694 (DB).
18. AIR 1926 Cal. 883 (DB).
19. AIR 1934 Pat. 31 (DB).
20. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. Scope. Article 131 of the Limitation Act in *jagir* matters will be applicable only to those cases where the claim is made against the Government.[1] Thus where a plaintiff claims to be entitled to receive a certain percentage on the revenue collections of certain villages every year but the Government refuses to pay contending that he is only entitled to a fixed annual payment, a suit for a declaration by the plaintiff that he is entitled to a percentage of the collections will be one within this article.[2]

Consequential relief need not be claimed. It is not necessary for the application of this article that the suit must include a prayer for consequential relief.[3]

Suit not filed within time, effect. Where the plaintiff has been refused enjoyment of his periodically recurring right and he does not sue for the establishment of such right within the period of limitation, his right will be extinguished under S. 28.[4] Thus where a right to receive annuity is repudiated a suit to recover arrears brought more than twelve years after the repudiation is governed by this article and not by Article 123, and the right will be extinguished by such delay in filing the suit.[5]

Right to sue depending on other right. Where the plaintiff's recurring right depends on some other right which is extinguished under S. 28, the recurring right also will be extinguished,[6] a decree declaring an annual allowance to be a charge on the property but not directing the sale of the property in enforcement of the claim, being a declaratory one, a suit has to be brought on its basis, but it is possible that the right of suit may become barred and the original decree declaring the charge may thus be extinguished as against the defendant against whom the right of suit has become time-barred.[7]

2. Suit for recovery of arrears of payment periodically due. Where the plaintiff is entitled to a certain annual or other periodical payments and the suit is for the recovery of arrears of such payments, this article will not apply.[8] Thus a suit for recovery of rent,[9] or a suit to recover arrears of pay or salary,[10] or a suit for recovery of wages is not governed by this article.[11]

Suit for declaration of right and arrears. Where a suit is brought for declaration of a right to certain periodical payments as well as for recovery of

1. PLD 1960 Karachi 385 = PLR 1959 (1) W.P. 1302.
2. AIR 1934 P.C. 108 = 58 Bom. 306 = 61 Ind. App. 190. (*Confirming* AIR 1932 Bom. 319).
3. AIR 1937 Mad. 303 + 7 Mad. 341 (DB).
4. 1883 Pun Re No. 106. p. 330 (DB).
5. AIR 1947 Pat. 47 = 25 Pat. 311 (DB).
6. AIR 1935 Mad. 377 (DB) + AIR 1938 Mad. 47 (DB).
7. AIR 1957 All. 575.
8. AIR 1937 All. 57 = ILR 1937 All. 140 (DB) + AIR 1959 Ker. 1 (FB) + AIR 1957 All. 575 + AIR 1953 Trav-Co. 193 = ILR 1952 Trav-Co. 241 (DB) + 34 All. 246 (DB) + AIR 1931 Bom. 189 = 55 Bom. 193 (DB) + AIR 1917 Bom. 10 = 42 Bom. 277 (DB) + AIR 1929 Lah. 872 = 11 Lah. 99 + AIR 1921 Lah. 121 = 2 Lah. 243 (DB) + AIR 1919 Oudh 84 = 22 Oudh Cas. 345 + AIR 1936 Pat. 158 (DB) + AIR 1926 Pat. 205 = 5 Pat. 249 (DB).
9. AIR 1935 Mad. 682 (DB).
10. AIR 1947 F.C. 23 = 1947 F C R 89 = II.R 1947 Kar. (FC) 52.
11. AIR 1936 Mad. 149 + 1951-2 Andh W R 117.

arrears; this article will only apply to the former relief and not to the latter.[12] Where the suit for the establishment of the plaintiff's right is time-barred under this article, his claim for the arrears also will be time-barred and the plaintiff cannot evade the operation of this article by framing his suit merely as one for the recovery of arrears.[13] But where the plaintiff has already obtained a decree against the defendant establishing his right and such decree is in force he is entitled to a decree for arrears of payments.[14]

3. Suit against co-sharer or rival claimant of right. Where the suit is for the establishment of a right to periodical payments, this article applies whether the defendant is the person originally liable to pay or is a co-sharer who has received payment from that person.[15] But a suit against a person for a declaration that the plaintiff is entitled to receive certain annual payments direct from the Government and not through the defendant is governed by Art. 120 and not by this article.[16]

4. "Periodically recurring right." To fall under this Article the right must be a recurring right,[17] and the right must recur periodically. "Periodically" means "at regular recurring intervals" (Oxford), or "occurring at regular intervals" (Chambers). Thus unless the right occurs at regular, fixed or specified intervals, it cannot be a periodically recurring right. The period may not be strictly mathematical. For instance, a particular right may accrue after five years, then after ten years and then after fifteen years, and yet it would be periodical. But where the time regarding the accrual of the right is unspecified and cannot be forecast or fixed, the right cannot be said, to be a periodically recurring right. The right may arise perpetually at specified intervals or after a number of years and cease thereafter.[18] One view is that a perpetual right to receive year after year a particular sum of money is not a periodically recurring right.[19] But the other view is that periodically recurring right can be a perpetual right. What has to be examined is whether the right accrues at specified intervals. The question whether amount claimed in enforcement of the right is a variable or a fixed sum is not material.[20] It has been held that a suit by a *Mutawalli* for a declaration that he is entitled to receive *Yeomiah* allowance attached to the office of *Mutawalli* is governed by this article.[1] Similarly this Article applies to a suit for recovery of possession of a right to manage periodically, affairs of deity and its properties.[2]

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12. 1906 Pun Re No. 83. p. 303 (DB) + AIR 1957 All. 575 + AIR 1937 All. 57 = ILR 1937 All. 140 (DB) + 15 Bom. 135 (DB) + AIR 1931 Bom. 189 = 55 Bom. 193 (DB).
13. AIR 1941 Pat. 116 (DB) + AIR 1941 Pat. 201 + 15 Mad. 161 (DB) + AIR 1937 All. 57 = ILR 1937 All. 140 (DB) + 5 Bom. 68 (DB) + 15 Bom. 135 (DB) + 5 Cal. 949 (DB).
14. 9 Bom. 111 (DB) + 15 Bom. 135 (DB) + AIR 1917 Pat. 364 (DB).
15. 34 Bom. 349 (DB) + 15 Bom. 135 (DB) + AIR 1919 Oudh 84 = 22 Oudh Cas. 345 + 24 Suth W R 385 (DB).
16. 13 Mad. L. Jour 267 (DB).
17. AIR 1921 Bom. 175 = 45 Bom. 638 (DB) + AIR 1952 Cal. 76 = ILR (1952) 2 Cal. 150 + AIR 1919 Mad. 31 (DB) + 4 Cal. 683 (DB) + AIR 1923 Cal. 392 (DB).
18. AIR 1965 Orissa 138 (DB).
19. AIR 1945 Mad. 20 + AIR 1957 Trav-Co. 284.
20. AIR 1957 All. 575.
1. AIR 1941 Mad. 428 = ILR 1941 Mad. 587 (DB). (AIR 1939 Mad. 570, *Reversed:* AIR 1920 Mad. 447, held *overruled* by AIR 1934 P.C. 108).
2. AIR 1961 Patna 293 (DB).

Right need not vest in different persons. It is not necessary for a right to be a periodically recurring right that it must vest at one time in one person and at another time it must pass on to somebody else. Even if the right continues to accrue to the same person but such accrual takes place at fixed intervals of time, it would be a case of a periodically recurring right and not a constant or continuous right.[3]

Suit for declaration that plaintiff is not liable. Where the plaintiff only seeks to establish that he is not liable in respect of a certain periodical right claimed by the defendant against him,[4] or that the plaintiff is only liable to pay a certain sum periodically to the defendant and not the higher sum claimed by the defendant the suit is not governed by this article.[5]

Suit for relief other than that of declaration. There is a difference so far as the question of limitation is concerned, between a suit to establish a periodically recurring right and a suit to recover payment on the basis of that right. A suit of former description is governed by Art. 131 whether the right is charged on any property or not. But a suit to recover payment is governed by various other Articles such as, Arts. 102, 110, 116, 132.[6] Similarly a suit to establish the plaintiff's right under a certain lease to hold land as a permanent tenant at a fixed annual rent does not come within this article.[7]

5. Right to turn of worship. A *palla* or right to worship an idol in turn is a periodically recurring right within the meaning of this article.[8] But an exclusive and perpetual right of worship is not a recurring right and it is not covered by this Article.[9]

6. Enhancement of rent, suit for. The plaintiff's right to enhancement of the payments which he is entitled to receive periodically from the defendant was held to be a 'periodically recurring right'.[10]

7. Right to maintenance. A right of maintenance cannot be strictly called a periodically recurring right but is a constant right.[11] Thus this Article applies to a suit to establish a right to an annual cash grant for maintenance.[12]

8. Starting point of limitation. Limitation runs from the time the plaintiff is first refused the enjoyment of his right.[13] Such refusal is not confined to actual enjoyment but extends to refusal of claim when it is intended to be exercised.[14]

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3. AIR 1957 All. 575.
4. 1 Bom. L R 373 (DB) + AIR 1914 Mad. 534 = 37 Mad. 322 (DB).
5. 33 Mad. 171 (DB) + 12 Mad. L. Jour 126 (DB).
6. AIR 1957 All. 575 (AIR 1936 Mad. 704 and AIR 1914 Mad. 377 (FB), *Dissented from*) + AIR 1965 Orissa 138 (DB).
7. 1 Bom. L R 373 (DB).
8. 8 Cal. 807 (DB) + 4 Cal. 683 (DB).
9. 4 Cal. 683 (DB).
10. AIR 1939 Pat. 54[illegible] DB). (Claim to enhanced rent) + AIR 1916 Pat. 120 = 2 Pat. L. Jour 124 (DB) + 21 Bom. 394 (DB) + 6 Cal. W N 360 (DB) + 10 Mad. L. Jour 114 (DB) + AIR 1926 Bom. 345 (DB).
11. AIR 1921 Lah. 121 = 2 Lah. 243 (DB) + (1865) 2 Mad. H C R 36 (DB).
12. AIR 1962 M P 257 (DB) + AIR 1934 P. C.108 + AIR 1941 Mad. 428.
13. AIR 1941 Pat. 201 + ILR (1952) 1 Cal. 288 + 9 Mad. L. Jour 57 (DB).
14. AIR 1965 Orissa 138 (DB).

To constitute a 'refusal', there must be a definite demand and refusal. The mere fact that the plaintiff has not exercised his right is not enough.[15] Moreover the person refusing must be the person capable of excluding the plaintiff's from enjoyment of the right claimed for such a person alone is capable of exercising an act of adverse possession. In other words, the refusal in order to entail the heavy penalty of complete loss of right to a party must be an effective refusal and not an ineffective one. The latter kind of refusal can be safely ignored.[16] Where in a suit brought by the charge-holders to enforce their charge on the property, the subsequent mortgagees of the same property deny the existence of the charge on the property, the defence of the suit by them coupled with the subsequent withdrawal of the suit by the charge-holders is a refusal of the enjoyment of the right by the plaintiffs of that suit by the defendants or their predecessors-in-interest to protect the mortgagee rights which they then possessed in the properties and the benefit of that refusal is available to them even when later on they obtained full rights as owners in those very properties.[17] When *A* was entitled to receive from Government 1 rupee 5½ annas per cent of yearly revenue collections in certain villages, the Government, without authority substituted in 1889 a fixed allowance to be paid to *A* and was paying it to *A*. In 1900 *A* applied to the Government that he should be given 1 rupee 5½ annas per cent of yearly assessment and not a fixed allowance. The Government refused the application in 1913 and *A* sued the Government in 1923 for a declaration of his right to receive allowance on percentage basis. It was held, that starting point under this article for the suit was, refusal by Government in 1913 and that the suit was not time barred.[18]

Right not capable of enjoyment. Where the right itself is not capable of enjoyment the enjoyment of the right cannot be refused.[19]

Limitation begins with final refusal. Where the plaintiff is once refused the enjoyment of his right but the dispute is compromised and the plaintiff's right is again recognized, limitation will run only from the subsequent refusal of enjoyment of the right.[20] A subsequent refusal of enjoyment, of a right is destructive of its previous establishment in earlier litigation. Thus, a fresh cause of action having arisen, the earlier decisions recognising the existence of the right can afford no protection to the plaintiff who has to bring a suit within 12 years of the refusal of the enjoyment of the right either directly seeking a declaration that the right existed or getting adjudication on this point by making it an ancillary issue in a suit for recovery of arrears of money.[1]

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15. AIR 1926 Cal. 883 (DB)+AIR 1957 All. 575+AIR 1957 Trav-Co. 284+AIR 1953 Hyd. 229=ILR 1953 Hyd. 271 (DB)+1957 Ket. L. Tim 315 (DB)+AIR 1951 Cal. 385 (DB)+AIR 1951 Cal. 330 (DB)+AIR 1921 Bom. 175=45 Bom. 150 (DB)+AIR 1935 Cal. 744 (DB)+AIR 1914 Lah. 242 (DB)+1901 Pun Re No. 108. p. 380+AIR 1918 Mad. 1=41 Mad. 374 (FB)+109 Ind. Cas. 85 (Nag.)+3 Oudh Cas. 351 (DB)+AIR 1926 Pat. 340=6 Pat. 51 (DB)+AIR 1937 Pat. 96 (DB).
16. AIR 1957 All. 575.
17. AIR 1957 All. 575.
18. AIR 1934 P. C. 108=58 Bom. 306=61 Ind. App. 190.
19. AIR 1939 Pat. 548 (DB).
20. 24 Suth W R 385 (DB).
1. AIR 1957 All. 575.

Successor, when limitation begins for. Where the first refusal of enjoyment of the right has been made when the plaintiff's predecessor-in-title was entitled to the right, limitation will run from such refusal and there will be no fresh starting point after the plaintiff succeeds to the right.[2]

Burden of proof. The burden of proving that more than twelve years before the suit there was a demand and refusal of the enjoyment of the plaintiff's right is on the defendant.[3] But where after refusal of the enjoyment of the right the plaintiff exercises that right by receiving voluntary payments under it or by enforcing payment by a suit, the plea of limitation based on refusal of enjoyment will be obliterated. In these circumstances, it is incumbent on the plaintiff to establish the subsequent payment or realisation under the right.[4]

132.	To enforce payment of money charged upon immovable property. [5][*Explanation.*--For the purpose of this article-- (*a*) the allowance and fees respectively called *malikana* and *haqqs*, and (*b*) the value of any agricultural or other produce the right to receive which is secured by a charge upon immovable property, [7][and (*c*) advances secured by mortgage by deposit of title deeds]. shall be deemed to be money charged upon immovable property.	[5][Twelve years]	When the money sued for becomes due.

2. 10 Mad. L. Jour 114 (DB).
3. AIR 1914 Cal. 32 (DB) + AIR 1957 All. 575.
4. AIR 1957 All. 575.
5. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
6. Subs. by the Indian Limitation (Amendment) Act, 1927 (1 of 1927), S. 4 (1), for the original *Explanation*.
7. Ins. by the Transfer of Property (Amendment) Supplementary Act, 1923 (21 of 1923), S. 9.

Synopsis

1. Scope.
2. "To enforce payment."
3. "Charged."
4. Vendor's lien, suit to enforce.
5. Mortgage by Hindu father.
6. Suit by mortgagor for contribution against other mortgagors.
7. S... by non-redeeming mortgagor for his share.
... substituted ...rity.
...laim for interest due under mortgage.
10. Suit against surety for mortgagor.
11. Suit to enforce right obtained by subrogation.
12. Renewal of mortgage.
13. Person interested not made party to mortgage suit.
14. Suit against trespasser.
15. Suit for personal decree.
16. Immovable property--what is.
17. "When the ...ued for becomes due."
18. Mortgage for ... certain with default clau...
19. Suspension or revival of cause of action.
20. Failure to sue on mortgage in time--effect.

1. Sco... ...er to apply this Article the suit must be one to recover money out of the ...movable property charged and not from the defendant personally.[8] If no relief is claimed by the plaintiff against the property, Art. 132 does not apply.[9]

Mortgage suits. This article applies to all suits for sale or foreclosure in respect of ... The Article applies not only to a suit against the mortgagor but also to ... the mortgagor's representati...[11] A payment made by one of the several co... of the deceased Muslim mortgagor on his own behalf and not as agent of the ...er co-heir cannot save limitation under Art. 132 against the ...r co-heirs.[12]

...im in one suit. Where a single suit comprises both a claim ... immovable property and a claim to enforce the personal covenant contained in the mortgage document, one of the claims may be barred but not the other.[13]

Limitation fixed by local or special law. Where a period of limitation is prescribed by a special or local law for a suit which would otherwise fall within this article, the ...st be brought within the period so fixed by the special or local law.[14]

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8. 7 All. 502 = 12 Ind. App. 12 (PC) + 20 Cal. 79 = 19 Ind. App. 234 (PC). (Charge not binding on estate--Article does not apply.).
9. AIR 1959 ... (FB). (Suit for arrears of Thiruppuvaram--Art. 120 and not Art. 132 applies).
10. 30 Mad. 426 = 33 Ind. App. 186 (PC) + AIR 1960 Bom. 411 (DB). (Anomalous mortgage--Suit for foreclosure--Art. 132 and not Art. 120 or Article 147 applies) + AIR 1942 Mad. 628 = ILR 1942 Mad. 851 (DB) + AIR 1946 Bom. 499.
11. AIR 1917 Mad. 880 (DB) + AIR 1924 Rang. 204 = 1 Rang. 724 (DB).
12. AIR 1957 Pat. ... (Section 21 does not apply to such a case--*See Notes* under S. 21).
13. 7 All. ... App. 12 (PC).
14. 4 Cal. L. Jour. 553 (DB) + AIR 1939 Oudh 57 = 14 Luck. 467 + AIR 1935 Mad. 378 + AIR 1938 Nag. 202 = ILR 1940 Nag. 493 + 10 Mad. 62 (DB).

2. **"To enforce payment."** These words will include suits for foreclosure and suits for sale.[15] Thus a suit by a principal against his agent to enforce a charge on immovable property treated to secure the monies which might be found due from the agent on taking accounts will be governed by this article.[16] Similarly time for a suit for foreclosure will run from the date fixed for payment of money in default of which foreclosure is to be made.[17] It has been held that Article 147 is not applicable to a suit for foreclosure by a mortgagee by conditional sale. That article is limited in its application only to mortgages in the English form, Article 132 is applicable to the case.[18]

Suit on mortgage after sale in execution. A property under mortgage was sold in execution of a decree against the mortgagor. The mortgagee filed an application in the execution Court for setting aside the sale on the ground that as the property had been mortgaged to him it could not be attached and sold in execution of a decree against the mortgagor. The executing Court dismissed the application on the ground that it had no jurisdiction to entertain a claim under Order 21, Rule 58, C.P.C. after the execution sale had taken place. The mortgagee then filed a suit for enforcing his mortgage. It was held that the suit was not barred by limitation under Art. 11 even though it was instituted after the expiry of one year from the date of the order of dismissal of the claim application for setting aside the sale because the suit did not fall under O. 21, R. 63, Article 132 governed the suit.[19]

Suit for possession. The words "to enforce payment" do not include suits for possession or for confirmation of possession.[20]

3. **"Charged."** The word "charged" is not limited to a charge such as is referred to in S. 100 of the Transfer of Property Act.[1] In this Article the word 'charge' includes a mortgage.[2] It also includes a charge created by agreement and charge arising by operation of law.[3] Similarly where a decree makes a certain sum of money a charge on immovable property, a suit to enforce such charge is within the purview of this article,[4] and a suit to enforce a charge created by an award would be governed by this article.[5]

Other instances. This article applies to a suit to enforce maintenance allowance charged on immovable property,[6] or a suit to enforce payment of

15. AIR 1917 Mad. 232 (DB) + AIR 1933 Oudh 81 (DB).
16. AIR 1941 Cal. 257 (DB) + AIR 1920 Cal. 848 (DB).
17. AIR 1933 Oudh 81 (DB).
18. AIR 1963 Gujerat 112 + ILR 30 Mad. 426 (PC).
19. AIR 1964 Madhya Pradesh 158 (DB) + AIR 1937 Nag. 170 + AIR 1942 Mad. 41 (FB) + AIR 1955 Bom. 397.
20. 27 Cal. 185 (DB) + 7 Cal. W. N 11 (DB). (Confirmation of possession).
1. 67 Ind. Cas. 939 (DB) (Lah.) + AIR 1924 Rang. 204 = 1 Rang. 714 (DB) + AIR 1926 Mad. 141.
2. 34 Ind. App. 186 = 30 Mad. 426 (PC) + AIR 1947 Bom. 152.
3. AIR 1943 Bom. 21.
4. 164 Ind. Cas. 921 (DB) (Cal.) (Compromise decree) + AIR 1921 Lah. 292 (DB) + 7 Oudh Cas. 108.
5. AIR 1928 Bom. 264 (DB).
6. 9 Cal. 945 = 10 Ind. App. 45 (PC) + AIR 1936 Mad. 573 + 164 Ind. Cas. 921 (DB) (Cal.) (Compromise decree creating charge for maintenance).

money charged by a document on immovable property,[7] or a suit to enforce a charge created by a security bond,[8] or a suit by a municipality to enforce a charge on buildings or land in respect of taxes.[9]

Instances where Article does not apply. This Article does not apply to a suit for money spent by a trustee out of his own pocket for the purposes of the trust,[10] or a suit for a share of mortgage money received by a co-owner of property who has mortgaged the same;[11] or a suit by a Hindu widow for recovery of money which she expended in discharge of her husband's debt;[12] or a suit by a vendee of property for recovery of monies paid by him as per direction in the sale-deed being set aside.[13]

4. Vendor's lien, suit to enforce. A claim to recover unpaid purchase money personally from the vendee does not fall under this article.[14] But a suit by a vendor of immovable property for recovery of the unpaid purchase money by enforcement of the charge on the property is governed by this article,[15] and time for a suit by the vendor for unpaid purchase money will run from the date of sale.[16] Where however the payment of price is postponed to a further date, time under this article will run not from the date of sale but from such future date.[17]

Suit for extra purchase price payable in certain eventuality. Where the vendee was to pay an extra amount to the vendor towards the sale price if as a result of settlement proceedings the profits of the village sold increased; it was held that the suit for recovery of the extra amount brought within 12 years from the date of increase in profits was within time.[18]

Encumbrance not paid by vendee, suit for recovery of money. Where a certain portion of the consideration is reserved in the hands of the vendee, for paying to an encumbrancer, limitation to recover the same from the vendee or his representative-in-interest by enforcing the charge on the property in his hands commences from the date on which the encumbrancer or the mortgagee executes his decree.[19]

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7. AIR 1934 P.C. 119. (Royalties charged upon lease hold interest) + 15 Cal. 66 = 14 Ind. App. 137 (PC) (Will directing devisee to repay debt and interest from property of testator) + AIR 1934 Mad. 1 = 57 Mad. 218 (DB). (Money charged under security bond) + 46 Mad. L. Jour 55 (NRC). (Security bond by guardian--Time runs under this article from the date of the ward attaining majority).
8. AIR 1963 Cal. 12.
9. AIR 1939 All. 510 + AIR 1943 Bom. 21.
10. AIR 1916 Mad. 57 = 38 Mad. 260 (DB). (Article 120 applied). (*See* however 1931 Cal. 493 (DB)).
11. 22 Ind. Cas. 959 = (1913) 1 Upp Bur Rul 178. (Such suit is not maintainable at all).
12. AIR 1928 Mad. 820 = 51 Mad. 815 (DB).
13. AIR 1923 Mad. 392 (DB).
14. 22 Bom. 846 (DB).
15. AIR 1934 All. 525 (DB) + 30 All. 172 (FB) + AIR 1954 Mad. 508 = ILR 1954 Mad. 484 + AIR 1949 All. 555 = ILR 1949 All. 692 (DB) + AIR 1936 All. 870 (DB) + AIR 1924 Mad. 854 + 29 Mad. 305 (DB) + 22 Bom. 846 (DB) + AIR 1933 Lah. 109 = 14 Lah. 380 (DB) + AIR 1933 Oudh 33 = 8 Luck. 185 (DB).
16. AIR 1936 All. 870 (DB) + AIR 1957 Trav-Co. 221 + AIR 1924 Mad. 854.
17. 1950 Trav-Co. L. R. 140 (DB).
18. AIR 1949 All. 555 = ILR 1949 All. 692 (DB).
19. AIR 1954 Mad. 729 (AIR 1944 Mad. 330, *Rel. on.*).

5. Mortgage by Hindu father. Where a Hindu father executes a mortgage in favour of a third person, a suit by such third person to enforce the mortgage, whether against the father or against the sons on whom such mortgage is binding, is governed by this article.[20]

6. Suit by one mortgagor for contribution against other mortgagors. The right of contribution is quite independent of the right of subrogation conferred by section 92, T.P. Act. While considering the question of limitation in such cases, the important point for consideration would be "what is the nature of the claim in the suit"? That is to be decided on the allegations in the plaint. If the allegation in a plaint indicate that it is a suit to enforce right similar to those of the mortgagee, in that case it is obvious that the plaintiffs cannot have higher rights than the mortgagee, even though the plaintiff may have a right of subrogation. If, however, the allegations in the plaint indicate that the plaintiff is seeking to enforce his right to claim contribution, along with his right to enforce the charge arising in his favour under section 100 of the Transfer of Property Act, the starting point of limitation would obviously be different and that would be the date on which the plaintiff in such a suit made payment and redeemed the mortgage.[1]

Article 132 applies to a suit to enforce a charge created in favour of a redeeming co-mortgagor in regard to his right of contribution under S. 82, Transfer of Property Act and the limitation starts from the date of payment by the co-mortgagor.[2] Under S. 95 of the Transfer of Property Act as amended in 1929, the right of the redeeming mortgagor is that of a subrogee to the rights of the mortgagee and hence a suit for enforcement of such right of subrogation must be brought within a period of twelve years from the date when the mortgage fell due.[3]

7. Suit by non-redeeming mortgagor for his share. A suit against a co-mortgagor, who has redeemed a mortgage and is thus subrogated to the rights of the mortgagee by the non-redeeming mortgagor for redemption, would be governed by Article 148 of the Limitation Act, provided the period of 60 years prescribed thereunder has not expired from the date when the property was mortgaged by all of them. In case the said period has expired then the co-mortgagor would still be able to recovery his share of the property by filing a suit within 12 years under Article 132 of the Limitation Act and for this purpose the period of limitation would commence from the date when the property was redeemed by the co-mortgagor.[4]

8. Suit against substituted security. The principle of this article would apply to all cases of substituted security.[5] Therefore this article applies to suits to

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20. 29 All. 544 (DB) + 11 Mad. 413 (DB) + 17 Cal. W.N. 1022 (DB).
1. AIR 1964 Bombay 284 + AIR 1934 Pat. 612 = 13 Pat. 356 (DB) + AIR 1918 Pat. 322 (DB) + AIR 1932 All. 250 (DB) + AIR 1928 All. 241 = 50 All. 569 (DB). (AIR 1926 Cal. 166, *Dissented from*) + AIR 1936 Mad. 500 + 32 All. 708 (FB) + AIR 1935 Oudh 245 = 10 Luck. 690 (DB) + AIR 1942 Oudh 449 (DB) + AIR 1931 Cal. 251 = 58 Cal. 1167 (FB).
2. AIR 1957 Mys. 1 = ILR 1956 Mys. 129 (FB). (47 Mys. H C R 337. *Overruled*) + AIR 1950 Pat. 174 = 28 Pat. 955.
3. AIR 1931 Cal. 251 = 58 Cal. 1167 (DB) + AIR 1948 Nag. 256 = ILR 1947 Nag. 668.
4. PLD 1972 Peshawar 78 (DB).
5. 41 Cal. 654 = 41 Ind. App. 45 (PC). (Surplus sale proceeds) + AIR 1925 Oudh 215 (DB) + 33 Cal. 92 (DB) + AIR 1917 Mad. 880 (DB) + 1 Ind. App. 106 (PC).

enforce payment of mortgage money out of the substituted security.[6] Where *A*, a mortgagee, obtained a decree for sale of the mortgaged property against *B*, the mortgagor. He subsequently mortgaged the decree to *C*. Thereafter he purchased the mortgaged property in satisfaction of his mortgage. *C* then filed a suit against *A* to enforce his mortgage out of the property which *A* had purchased from *B* in satisfaction of the decree. It was held that the suit was governed by this article.[7] But the Article does not apply where the suit is not for enforcement of payment out of substituted security but is a suit for damages and compensation. Thus where a casuarina plantation was mortgaged to the plaintiff. The defendant with the connivance of the mortgagor cut and removed trees standing on the land. The plaintiff sued defendant for recovery of the value of the trees. It was held that the suit was not one for enforcement of payment of mortgage money out of the substituted security but was one for damages or compensation for depreciation of security and was not, therefore, governed by this article.[8] Similarly where *A* received from *B* money due by him under a mortgage to *C*, a suit by *C* against *A* for recovering the money so received by him was not a suit to recover money charged upon immovable property within the meaning of this article.[9]

Starting point of limitation. Time for a suit to enforce payment of mortgage money from out of substituted security will begin to run from the date when the money becomes due under the mortgage and not when the security is substituted.[10]

9. Claim for interest due under mortgage. Interest due on the contract of mortgage is in the absence of any contract to the contrary a charge on the estate.[11] The amount awarded as reasonable compensation for breach of penal clauses in a mortgage deed relating to interest has been held to be, for purposes of limitation, a portion of the mortgage money,[12] and a suit to enforce the payment of interest charged on the mortgaged property would be governed by this article.[13]

Principal and interest. Where the interest is accessory to the principal, a suit for interest is barred if a suit for the principal would be barred.[14] Where a claim for the principal is not barred, a claim for interest will not be barred even though it may extend to more than twelve years before the date of the suit.[15] But where the interest is payable annually and the principal in certain number of years, a claim for interest would be barred after 12 years from the date of default though

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6. AIR 1938 All. 513 (FB). (Land acquisition) + 31 Cal. 745 (DB). (Sale for arrears of revenue) + AIR 1926 Mad. 343 + AIR 1916 Nag. 84 = 12 Nag. L. R. 90 + AIR 1923 Mad. 76 = 45 Mad. 827 (DB).
7. AIR 1917 All. 309 = 39 All. 74 (DB).
8. AIR 1917 Mad. 880 (DB).
9. AIR 1916 Mad. 524 (DB).
10. 27 Cal. 180 (DB) + 3 Cal. L. Jour 52 (DB) + AIR 1938 All. 221 = ILR 1938 All. 513 (FB).
11. AIR 1924 P.C. 183 = 5 Lah. 425 = 51 Ind. App. 377.
12. AIR 1915 Oudh 31 (DB).
13. AIR 1936 Lah. 530 (AIR 1924 Lah. 273 (DB), held *overruled* by AIR 1924 P.C. 183) + 2 Ind Cas. 111 (Cal.). (Interest payable in kind) + AIR 1925 Lah. 182 (DB) + AIR 1916 Mad. 78 (DB) + 22 Bom. 107 (DB). (Claim for interest is not restricted to the period fixed for payment) + 24 Cal. 699 (FB). (Case relating to *post diem* interest) + AIR 1923 Nag. 181.
14. AIR 1935 Lah. 516 (DB).
15. AIR 1934 Mad. 695 = 58 Mad. 266 (DB).

the claim for the principal might not have been barred.[16] Similarly where a claim to recover the principal personally is barred, a claim to interest thereon for six years immediately preceding the suit is not barred.[17] Thus where covenant for payment of interest in mortgage bond was an independent and separate agreement, a breach of such covenant gives rise to an independent cause of action and the mortgagee may be entitled to a personal decree for interest even though a suit for a personal decree for principal may be barred by limitation. But the mortgagee will not be entitled to interest falling due after the mortgage debt has become irrecoverable.[18]

10. Suit against surety for mortgagor. A suit against surety for mortgagor to enforce his liability as a surety is not one to enforce payment of "money charged on immovable property".[19]

11. Suit to enforce right obtained by subrogation. A suit by a person for recovery of money by enforcing the rights obtained by subrogation will be governed by this article and the *terminus a quo* for such a suit will be the date on which money became due under the mortgage paid off.[20] Thus where a person is subrogated to the rights of mortgagee by paying off the mortgage decree time for a suit by him to enforce his rights will run from the date of payment of the decree.[1] In other words where a charge is created by decree in a mortgage suit in favour of the person paying other mortgages on the same property, a suit by charge-holder within 12 years of the decree is within time though after 12 years from the date of payment or due dates of mortgages paid off.[2]

12. Renewal of mortgage. Where a mortgage is renewed by another, the starting point of limitation for a suit on the latter mortgage would be the date on which such mortgage falls due and not the date on which the earlier mortgage falls due.[3]

13. Person interested not made party to mortgage suit. When a person interested is not made a party to a mortgage suit, a subsequent suit against him is governed by this article. Time would run from the date on which the money would be due under the mortgage.[4] Thus where a mortgagee did not make the purchaser of equity of redemption a party to his suit for redemption though alienation of

16. 2 Ind. Cas. 111 (Cal.).
17. AIR 1928 Lah. 653 (DB) + AIR 1930 Lah. 737.
18. AIR 1946 Lah. 97 = ILR 1945 Lah. 355 (FB).
19. AIR 1927 Mad. 945 + AIR 1960 Andh Pra. 210.
20. 39 Cal. 527 = 39 Ind. App. 68 (PC) + AIR 1951 Mad. 802 (DB). (AIR 1945 Mad. 500 and AIR 1927 Mad. 631, *Rel. on.*) + AIR 1945 Mad. 500 + AIR 1943 Pat. 305 = 22 Pat. 187 (DB) + AIR 1945 Cal. 194 = ILR (1947) 1 Cal. 313 (DB) + AIR 1937 Nag. 402.
1. AIR 1936 All. 33 = 58 All. 602 (FB) + AIR 1936 All. 578 = 58 All. 1056 (FB) + AIR 1926 Nag. 84 = 24 Nag. L R 92 (DB). (AIR 1917 Nag. 152 = 13 Nag. L R 217, *Overruled*). (*But see* AIR 1956 Pat. 414 (FB).
2. AIR 1944 P.C. 85 = ILR 1944 All. 654 = ILR 1945 Kar. (PC) 12 = 71 Ind. App. 153 + AIR 1946 Mad. 423 (DB).
3. AIR 1935 Mad. 64 = 58 Mad. 270 (FB) + AIR 1918 Mad. 1327 (DB) + 8 Cal. W. N. 385 (DB).
4. AIR 1931 Mad. 542 (DB) + AIR 1955 Trav-Co. 152 (DB) (AIR 1936 Mad. 70, *Dissented from*) + AIR 1948 Mad. 105 (DB) + AIR 1928 Rang. 189 = 6 Rang. 397 (DB) + AIR 1933 All. 908 = 56 All. 134 (DB) + AIR 1931 All. 466 = 31 All. 1023 (FB) + AIR 1935 Cal. 139 = 62 Cal. 75 (DB) + AIR 1933 Cal. 912 = 60 Cal. 1193 (DB) + AIR 1922 Bom. 334 (DB).

equity of redemption was known to the mortgagee. The mortgagee purchased property in auction-sale of decree. Taking of possession was obstructing by the purchaser of equity of redemption and a suit was brought by the auction-purchaser against the redemption purchaser. It was held that cause of action arose when mortgage money became due and not when possession was obstructed.[5] Where the person interested is made a party to the same suit but after more than 12 years of the date when the mortgage money became due, the suit is barred against him.[6]

14. Suit against trespasser. A suit for the enforcement of the mortgage against a third person who has entered on the mortgaged property subsequent to the mortgage and has been in possession adversely to the mortgagor, is governed by this article.[7] The suit is not barred by the fact that he has perfected his title by prescription against the mortgagor.[8]

15. Suit for personal decree. A suit claiming a personal decree in respect of money due under the mortgage is not governed by Art. 132 but by Art. 116 or Art. 120.[9] But the period of limitation for personal remedy against the mortgagor in a mortgage transaction is twelve years from the date of dispossession.[10] Thus where the date of the mortgage deed, (othi deed) was 28th July, 1943. The period of repayment in the mortgage deed was three years. It was alleged that the mortgaged property was leased back to the mortgagor on the basis of a tenancy from year to year. But, at the end of the first year no rent was paid, nor possession of the property surrendered. The suit for the recovery of the sum due upon the mortgage was filed on 29th July, 1958. It was held that the suit was not barred by limitation since the mortgagee was entitled to wait for a period of 12 years after the date fixed for payment in the mortgage deed before filing the suit on the personal covenant for recovery of the mortgage money.[11]

16. Immovable property--What is. Under this Article immovable property includes a house apart from the site on which it is built;[12] standing trees;[13] the right of a landlord to recover rents and profits from his tenant;[14] usufructuary mortgage right in immovable property,[15] and jagir income, such income being a "benefit to

5. AIR 1965 Andhra Pradesh 235 (DB) + AIR 1933 Cal. 912.
6. AIR 1948 Pat. 420 (DB).
7. AIR 1916 Mad. 990 = 39 Mad. 811 (FB) + AIR 1917 Mad. 880 (DB) + AIR 1914 All. 95 = 36 All. 567 (FB).
8. AIR 1918 Cal. 933 = 44 Cal. 425 (DB). (Reverting on Letters Patent Appeal AIR 1916 Cal. 311) + AIR 1916 Mad. 990 = 39 Mad. 811 (FB) + AIR 1924 Oudh 19 (DB).
9. AIR 1954 Hyd. 41 = ILR 1953 Hyd. 642 (DB). (On facts held that Art. 132 does not apply--But Art. 116. applies) + 23 Cal. 397 (DB) + AIR 1923 Lah. 23 (DB) + AIR 1934 Pat. 624.
10. AIR 1955 Trav-Co. 207 + AIR 1963 Mad. 342.
11. AIR 1963 Madras 342.
12. AIR 1926 Mad. 343.
13. 1887 All. W. N. 59 + 9 Ind. Cas. 478 (All). (Grove of mango trees).
14. 7 All. 120 (DB). (*Dissenting from* 5 Bom. 463) + AIR 1916 Oudh 176 = 18 Oudh Cas. 380 + AIR 1938 Pat. 16 (DB) + 3 Nag. L. R. 104. (*Dissenting from* 3 Nag. L. R. 81).
15. AIR 1927 Lah. 373 (DB).

arise out of land".[16] But it does not include a decree on a mortgage,[17] or a right to a turn of worship in a temple.[18]

17. "When the money sued for becomes due." The question when the money sued for 'becomes due' has necessarily to be decided with reference to the terms of the particular document in question.[19] Thus in case of a mortgage to secure payment of rent reserved by lease, time runs from the decree for rent.[20]

Capacity to collect must be looked to. The term 'when the money becomes due' in Art. 132 should be construed with reference to the capacity of the chargeholder to collect the unpaid money.[21] Under Article 132 the mortgagor can be sued for the money when the same becomes due and the money becomes due when both the mortgagor and the mortgagee can sue for redemption and for realisation of the money respectively. Mortgage money becomes due the moment a mortgage debt is incurred and a deed is executed, unless otherwise stipulated.[1]

Time fixed for payment in mortgage deed. Where a period is fixed for payment, time would run from the date so fixed.[2] Thus where there is a stipulation in the mortgage deed that money would be payable, say after 4 years after the date of the execution, and in such cases before the expiry of the period, the money does not become due, the limitation will not run under Article 132 before the expiry of 4 years.[3] Where a mortgage fixed a date of payment and subsequent thereto the mortgagor became insolvent. It was held that time ran from the date so fixed in the document and the order of adjudication did not give a fresh cause of action.[4]

No time fixed for payment. Where the deed fixes no time for payment, time will run from the date of the deed.[5] Where a mortgagee made a sub-mortgage in favour of a third person and subsequently redeemed it. He then sued the mortgagor for the mortgage money and claimed that limitation must be reckoned from the date of redemption of the sub-mortgage. It was held that the redemption did not furnish a cause of action.[6]

Where in a mortgage no period for redemption was fixed, the main terms were that the mortgagor was to remain in possession of the land but was to pay to

16. 1894 Pun Re No. 4, p. 6 (DB).
17. AIR 1917 All. 309 = 39 All. 74 (DB).
18. AIR 1919 Cal. 671 = 46 Cal. 455 (DB).
19. AIR 1930 P.C. 188 = 57 Ind. App. 194 = 54 Bom. 495. (*Held* on facts that money did not become due until demand was made) + 1954 All. L. Jour 336 (DB).
20. AIR 1921 All. 301 = 43 All. 539 (DB).
21. AIR 1958 Mad. 185.
1. PLD 1964 Dacca 36 = PLR 1963 Dacca 172 = 15 DLR 143 (DB) + AIR 1963 Punjab 25 (DB).
2. AIR 1928 All. 159 = 50 All. 328 (DB) + AIR 1960 Bom. 411 (DB) + AIR 1960 Cal. 409 + AIR 1931 All. 537 (DB) + 7 Mad. 308 (DB) + AIR 1922 Oudh 102 + AIR 1929 Oudh 214 (DB).
3. PLD 1964 Dacca 36 = PLR 1963 Dacca 172 = 15 DLR 143 (DB).
4. AIR 1918 Mad. 1122 (DB).
5. PLD 1987 Lah. 295 = PLJ 1987 Lah. 255 = 1987 LN 372 + 1987 CLC 1954 = KLR 1987 CC 514 + AIR 1941 Sind. 158 = ILR 1941 Kar. 124 (DB) + AIR 1959 Punj. 249 = ILR 1959 Punj. 254 + AIR 1955 Cal. 194 = ILR (1926) 2 Cal. 822 (DB) + 1954 All. L. Jour 336 (DB) + 20 Cal 269 (DB) + AIR 1927 All. 499 (FB) + AIR 1921 Mad. 624 (DB) + AIR 1915 Oudh 111 = 18 Oudh Cas. 86 + AIR 1926 Lah. 225 (DB).
6. 25 Mad. 220 (FB).

the mortgagee interest at a certain rate which was payable for a whole year, and year by year, in default of payment of interest for one year or more years the mortgagee was to have the option of either realising the interest due alone or realising the principal plus the interest due by proceeding against the mortgaged property. It was held that the mortgagor could not have redeemed the mortgage until at least one year had expired. If the mortgagor had wanted to redeem the mortgage within days, or even hours of the execution, by that time some small sum would have become due as interest and he would certainly have been met with a plea that he would have to wait until at least one full year's interest was due. In fact although it had not been clearly expressed in the terms of the mortgage the intention of the parties was that the mortgage was to subsist for at least one year before either any right of enforcement or redemption accrued. Hence starting point of limitation was not the date of the mortgage but a date one year after the execution of the mortgage.[7]

Mortgage money payable on demand. Where the mortgage money is payable on demand, time would run from the date of the document.[8]

Breach of covenant by mortgagor. Where the mortgagee is deprived of the mortgage security or where he is not secured in his possession of the mortgaged property or where possession is not delivered to him as agreed, the claim maintainable by the mortgagee is one for compensation and the period of limitation for a suit to recover the mortgage money is governed by Art. 120 of the Limitation Act and runs from the date of destruction or deprivation of the mortgage security and not from the date when the mortgage money is repayable.[9] Thus where *A* makes a mortgage with possession in favour of *B* and the mortgagee is subsequently dispossessed, time for a suit by the mortgagee for sale of the property would run from the date of dispossession.[10] Similarly where a mortgagor covenants to give possession of the mortgaged property in default of payment of the mortgage money on a particular date and commits default in such payment, time for a suit to enforce the mortgage was held to run from the date of failure to give possession.[11]

Assignment of equity of redemption by mortgagor. A mortgagor whose interest in the equity of redemption is transferred by assignment, sale or otherwise to another person, is not a "person liable to pay the debt" within the meaning of S. 20. Part payment made by him towards principal or interest therefore does not extend the period of limitation for enforcement of the mortgage against the transferee of the equity of redemption. If by transfer or assignment of his interest the mortgagor has lost all his interest in the mortgaged property, part payment

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7. AIR 1963 Punjab 25 (DB) (AIR 1959 Punjab 249 *Reversed*).
8. AIR 1919 All. 56=42 All. 70 (DB)+AIR 1934 Mad. 644 (DB)+AIR 1928 Rang. 189=6 Rang. 297 (DB)+21 Mad. 139 (DB)+AIR 1933 Rang. 188=11 Rang. 328 (DB). (Unless condition of demand is an integral part of contract of mortgage)+AIR 1934 Rang. 51+AIR 1927 Sind. 151.
9. AIR 1964 Supreme Court 1295+ILR 21 Mad. 242.
10. AIR 1930 Cal. 703 (DB). (Cause of action is not suspended till date stipulated for payment in bond)+AIR 1956 Pat. 312 (DB)+AIR 1922 All. 197 (DB)+AIR 1928 Pat. 582=8 Pat. 68 (DB).
11. AIR 1926 All. 551 (DB).

will not extend the period of limitation, for on the date of payment he is not "the person liable to pay" the mortgage debt.[12]

Personal covenant to pay. Where in a mortgage there is a personal covenant to pay, the cause of action for enforcement of the security as well as the personal covenant is the same, namely, the date when the money becomes due on the expiry of the term fixed.[13] Where *B* executes a mortgage in favour of *A*. The mortgage deed purports to be possessory mortgage. It also contains a specific covenant to repay the mortgage amount within five years. *B* fails to put *A* in possession. In such a case as the mortgage-deed specifically provides a personal covenant to pay. *A* may either exercise his option under S. 68 (1)(*d*), T.P. Act or may act under the terms of the personal covenant itself. If the option is exercised by him under S. 68 (1) (*d*), T.P. Act the mortgage amount becomes due and *B* will have to submit to a decree for the payment of the said amount. If the option is not exercised by *A*, the amount cannot be said to be due and *B* will have to wait for the expiration of the stipulated period before he can redeem the property.[14]

Several advances secured by one mortgage. If a transfer of an interest in immovable property is made to secure advances already made and to be made, there is in such a case one mortgage covering all such advances and the limitation under this article runs from the date of the last advance.[15]

18. Mortgage for a term certain with default clause. Where the wording of the document is one giving an option to the mortgagee to insit upon the whole amount being paid in case of the default mentioned in the document, time does not begin to run immediately on the default and the mortgagee can waive the benefit reserved for him under the document.[16] Where the mortgagee exercises his option to enforce the mortgage on default, by demanding payment of the mortgage-money, time runs from the date of the default.[17] When once the mortgagee has exercised his option to enforce the exigibility clause and definitely treats the cause of action as arising on the earlier date in the plaint, he must abide by it and will not be allowed to amend his plaint so as to show the cause of action as arising on the later date.[18]

Mortgage payable in instalments. Where a mortgage is payable in instalments on default of any one instalment and the mortgagee is entitled to recover the entire sum, the cause of action in respect of each instalment was different from that in respect of the other instalments or in respect of the entire sum, the plaintiff could recover all the instalments falling due without 12 years of the suit.[19]

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12. AIR 1964 Supreme Court 1295 + AIR 1940 Mad. 470 (FB).
13. AIR 1936 Sind 14 = 29 Sind L. R. 361 (DB) + AIR 1934 All. 397 = 56 All. 954 (FB).
14. AIR 1954 Bom. 407 = ILR 1954 Bom. 717 (DB). (AIR 1932 P.C. 207. *Rel. on*; AIR 1947 Bom. 152. *Overruled*).
15. AIR 1955 Cal. 194 = ILR (1956) 2 Cal. 822 (DB).
16. AIR 1939 Pat. 433 = 18 Pat. 459 (FB) + ILR (1956) 6 Raj. 1023 (AIR 1932 P.C. 207 *Rel. on*) + AIR 1947 All. 7 + AIR 1944 Mad. 172 + AIR 1945 Oudh 70 (DB) + AIR 1939 Nag. 242 = ILR 1939 Nag. 515 (DB) + AIR 1938 Mad. 836 (DB) + AIR 1939 Cal. 26 + AIR 1934 All. 534 = 56 All. 921 (DB) + AIR 1936 Sind. 14 = 29 Sind L. R. 361 (DB) + AIR 1933 Oudh 66 = 8 Luck. 242 (FB) + AIR 1934 All. 397 = 56 All. 954 (FB).
17. AIR 1934 Oudh 473 (DB) + AIR 1928 Mad. 637 (DB).
18. AIR 1949 Nag. 103 = ILR 1948 Nag. 370 (DB).
19. AIR 1935 Pat. 383 = 15 Pat. 1 (DB).

Interest payable yearly. In case of a mortgage fixing a time for redemption the stipulation regarding time is for the benefit of the mortgagee. If a default clause making the entire mortgage money repayable on failure to pay interest in any year is incorporated in the bond, the entire money does not become 'due' automatically on the mortgagor's default in payment of interest and mortgagor cannot take advantage of his own default and repay the amount before the time stipulated. The mortgage money in such cases becomes due, only when the mortgagee in exercise of his option takes steps to call for the entire amount. Once the mortgagee exercises his option and calls for the entire mortgage money, the stipulated term goes out of the contract with the result that the right of the mortgagor to redeem and the right of the mortgagee to enforce the security would both accrue and the mortgage money becomes then due within the meaning of Article 132 of the Limitation Act.[20]

19. Suspension or revival of cause of action. Where a claim has been satisfied out of Court or through Court and that arrangement is later on annulled by a decree of the Court, the obligee would get a fresh cause of action for the original claim.[1] Similarly where a conveyance of portion of mortgaged property in discharge of a claim under a mortgage subsequently turns out to be inoperative, the mortgagee gets a fresh cause of action and the suit instituted within twelve years of such cause of action is in time.[2]

Where mortgaged property is submerged under water the period of limitation for a suit to enforce the mortgage is not suspended because though he cannot bring the property to sale, he can sue for the mortgage money under S. 68, T. P. Act.[3]

20. Failure to sue on mortgage in time--effect. Even though the right to enforce the mortgage security may be barred under this article, the right of the mortgagee is not extinguished.[4] Therefore a subsequent mortgagee whose right to sue for recovery of money under his mortgage is barred by limitation under this article can, nevertheless, sue for redemption of a prior mortgage.[5] Similarly a prior mortgagee in possession may set up his mortgage as a shield against a subsequent mortgagee who is suing on his mortgage, although the period of limitation for the enforcement of the prior mortgage may have expired.[6]

One mortgagee holding two distinct mortgages. Where a defendant-mortgagee is in possession under a usufructuary mortgage and also holds a simple mortgage,

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20. AIR 1962 Mysore 5 (DB)+AIR 1932 P.C. 207+AIR 1955 Cal. 194.
1. AIR 1952 Trav-Co. 347=ILR 1952 Trav-Co. 49 (DB).
2. 1 Cal. L. Jour 337 (DB).
3. AIR 1933 Pat. 693.
4. AIR 1933 Bom. 25 (DB)+AIR 1923 Bom. 199=47 Bom. 652 (DB)+27 Cal. 185 (DB)+1890 Pun. Re. No. 147, p. 472 (FB)+AIR 1919 Mad. 59=41 Mad. 1043 (DB)+AIR 1914 Lah. 344 (DB).
5. AIR 1933 Bom. 25 (DB).
6. AIR 1931 Oudh 157 (DB)+AIR 1935 Oudh 411=11 Luck 270 (DB)+AIR 1929 Mad. 465 (DB).

he cannot in a suit for redemption of the usufructuary mortgage, claim that the simple mortgage should also be redeemed.[7]

[8]* * * * * * * * * * * * * *

134. To recover possession of immovable property conveyed or bequeathed in trust or mortgaged and afterwards transferred by the trustee or mortgagee for a valuable consideration.	[9][Twelve years]	[10][When the transfer becomes known to the plaintiff].

Synopsis

1. Scope.
2. Suit to recover possession.
3. Conveyed or bequeathed in trust.
4. Property comprised in Hindu, Muslim or Buddhist religious or charitable endowment.
5. Transfer must be for valuable consideration.
6. Transfer must be valid.
7. Execution sale.
8. "Goods faith."
9. Nature of transfer by mortgagee contemplated by this article.
10. "Mortgagee."
11. Mortgage, if should be with possession.
12. Property retransferred to mortgagee.
13. Starting point of limitation.
14. Transfer by mortgagee before date of redemption.
15. Suit not brought within limitation--effect.

1. Scope. The article should be construed according to clear words used.[11] Any person claiming the benefit of this section should clearly show that he fills the position of the person contemplated by this section as a person who ought to be protected.[12] This article applies to a suit against the representative of a transferee as well as to a suit against a transferee.[13]

7. AIR 1918 Mad. 1332+AIR 1935 Oudh 213=10 Luck 481 (DB). (Unless there is contract to the contrary)+AIR 1932 All. 558 (DB)+AIR 1930 All. 416=52 All. 539 (DB)+AIR 1926 Lah. 633 (DB).
8. Article 133 omitted by the Indian Limitation (Amendment) Act, 1929 (1 of 1929), S. 3.
9. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
10. Subs. by the Act. 1 of 1929, S. 3; for "the date of the transfer".
11. AIR 1942 Pesh. 39 (DB). (No question of *bona fides* or notice of the transferee arises under article)+AIR 1954 Trav-Co. 317 (DB).
12. 14 Moo Ind App 1 (PC). (Based on S. 5 of the Act of 1859, corresponding to this article)+2 Ind. App. 48 (PC). (*Reversing* 5 Suth W R 253)+AIR 1919 Mad. 972=40 Mad. 1040 (FB)+1958 Ker. L. J. 182+AIR 1954 Trav-Co. 317 (DB).
13. AIR 1919 Mad. 972+40 Mad. 1040 (FB).

Suit by beneficiary of trust. A suit by a beneficiary for possession of immovable property transferred by the trustee is governed by this article and not by Art. 120.[14]

2. Suit to recover possession. The transfer contemplated by the article is a transfer with possession.[15] The Article will also apply to a transfer without possession where subsequently the transferee gets possession of the property.[16] The article applies to suits for recovery of possession. A suit for redemption is a suit for recovery of possession within this article.[17] The remedy for the enforcement of the right under Ss. 62 and 63 of the Trusts Act granted to the beneficiary could only be by a suit not only for declaration but also for direction as to delivery of possession of the trust property to a receiver or administrator appointed by the Court. For such a suit the article that would apply is Art. 134.[18] But this article applies to a suit against the representative of a transferee as well as to a suit against a transferee because it is not a suit for possession.[19]

3. Conveyed or bequeathed in trust. The expression "conveyed or bequeathed in trust" must be taken in the same sense as "vested in trust for a specific purpose" in S. 10. This article only applies to cases of express trusts.[20]

4. Property comprised in Hindu, Muslim or Buddhist religious or charitable endowment. The property of a Hindu or Muslim religious or charitable endowment is not property conveyed or bequeathed in trust within the meaning of this article.[1]

5. Transfer must be for valuable consideration. Where the transfer is for a valuable consideration, a suit for the recovery of the property from the transferee is not governed by S. 10 and is not exempt from the bar of limitation. Such transfers are governed by this article.[2] Ordinarily to constitute a valuable consideration it is not necessary that the consideration should be adequate.[3] But the article will not apply to a transfer for an alleged consideration which is inserted nominally to serve as a cloak to cover a gift.[4]

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14. AIR 1952 Bom. 106 = ILR 1952 Bom. 226 (DB).
15. AIR 1919 Mad. 972 = 40 Mad. 1040 (DB) + AIR 1954 Trav-Co. 317 (DB). (AIR 1919 Mad. 972 (FB) *Foll*) + AIR 1947 Cal. 461 (DB) + 29 All. 471 (DB) + 23 Bom. 614 (DB) + AIR 1933 Mad. 533 (DB) + AIR 1938 Mad. 394 + AIR 1926 Oudh 594 = 1 Luck. 529 (DB) + AIR 1925 Rang. 377 = 3 Rang. 367 (DB) + AIR 1921 All. 389 = 43 All. 164 (DB).
16. AIR 1919 Mad. 972 = 40 Mad. 1080 (FB) + AIR 1920 Cal. 379 = 47 Cal. 566 (DB) + 118 Ind. Cas. 659 (All).
17. AIR 1927 All. 807 + AIR 1919 Mad. 972 = 40 Mad. 1040 (FB) + AIR 1926 Oudh 547 = 1 Luck. 423 = 29 Oudh Cas. 353 (FB) + AIR 1957 Mad. 192 + AIR 1955 Nag. 145 = ILR 1955 Nag. 100 (FB).
18. ILR 1954 Mad. 537 (DB). (AIR 1918 Mad. 464, *Foll.*).
19. AIR 1949 Mad. 972 = 40 Mad. 1040 (FB).
20. AIR 1922 P.C. 123 = 48 Ind. App. 302 = 44 Mad. 831.
1. AIR 1922 P.C. 123 = 48 Ind. App. 302 = 44 Mad. 831 + 33 Mad. 265 (FB).
2. AIR 1918 Bom. 183 (DB) + AIR 1953 Mys. 84 = ILR 1933 Mys. 419 (DB). (33 Cal. 511 *Foll.*) + 4 Cal. 897 (DB) + AIR 1940 Cal. 228.
3. AIR 1919 Lah. 209 = 1919 Pun Re No. 99 (DB) + 23 Cal. 536 (DB).
4. AIR 1922 P.C. 123 = 48 Ind. App. 302 = 46 Mad. 831.

Burden of proof of valuable consideration. It is for the transferee to prove that the transfer in his favour was for valuable consideration and in denial of the mortgagor's title.[5]

Gift. The article will not apply to cases of gift.[6] Where *A*, trustee of a house, in defiance of the trust, gifts it away as his own property to *B*, his wife, who occupies the said house in her capacity as donee and subsequently sells it to *C* (a third party) for valuable consideration, a suit by the beneficiaries claiming under the trust against *C* and *B* for the recovery of the alleged trust property would be governed for the purposes of limitation neither by S. 10 nor by Art. 134 but by Art. 144.[7] But where a gift is made in return for valuable consideration, it will come under this Article. Thus a "gift by a trustee of trust property in return for services rendered or to be rendered by the donees in connection with the trust temple is for a valuable consideration.[8]

Exchange. An exchange of one land for another is a transfer for a valuable consideration, though it may turn out subsequently that the land exchanged has to be surrendered to a third party claiming in his own right.[9]

6. **Transfer must be valid.** This Article will apply only where the alleged transfer is a valid transfer in law. Where, there is no transfer but the alleged transferee only states that though the property stands in his name it really belongs to the alleged alienee and he has no objection to the municipal authorities transferring the property to the name of the alleged alienee, there is no transfer for this article to operate.[10]

7. **Execution sale.** Article 134 applies only if a mortgagee in possession has purported to sell the property as such. Where the mortgaged properties were sold in court-auction at the instance of a sub-mortgagee, the mortgagor not having been made a party, the mortgagee did not sell, much less purport to sell, the mortgaged property. Hence, Art. 134 would not apply to a subsequent suit brought by the mortgagor for redemption of the mortgaged property.[11] Similarly where in execution of a decree against a trustee the trust property was sold in auction to a suit for possession against the auction-purchaser this article did not apply.[12]

Transfer of property by auction-purchaser. Where a property is sold in a Court auction in execution of a decree against a mortgagee, the auction-purchaser must be considered to be only a mortgagee for the purposes of this article. If transfer by the auction-purchaser is by private treaty, to a third person a suit for possession

5. AIR 1954 Trav-Co. 317 (DB) + 1958 Ker L J 182.
6. 13 Ind. Cas. 375 (Upp Bur) + 6 Bom. L R 38 (DB).
7. AIR 1961 Allahabad 434.
8. AIR 1918 Bom. 183 (DB).
9. 30 Mad. 316 (DB).
10. AIR 1930 Mad. 298 (DB).
11. AIR 19611 Madras 413.
12. AIR 1923 P.C. 175 = 46 Mad. 751 = 50 Ind. App. 295 + 25 Mad. 99 (FB). (12 Mad. 316. *Overruled*) + AIR 1954 Mad. 650 = II.R 1954 Mad. 664 (DB) + 68 Mad. L W 417 + AIR 1952 Mad. 844 + AIR 1947 Cal. 461 (DB) + AIR 1955 All. 339 (DB).

against the transferee would be governed by this article.[13] But where the auction-purchasers purported to purchase not the limited mortgage interest but the whole interest in the property, they acquired ownership in the suit properties and not a limited mortgage interest and therefore could not be called mortgagees within the meaning of Art. 134, and this Article will not apply.[14]

8. "Good faith." The article applies only to a transferee from a mortgagee who has taken the transfer in good faith.[15] The protection of the article will be denied to a purchaser who has actual knowledge of the transferor's real interest.[16] When a transferee for valuable consideration is in possession and time has begun to run against the plaintiff, subsequent knowledge of the transferee of the transferor's limited rights will not prevent the time running in favour of the transferee.[17]

Transferee from trustee. In the case of a transferee from a trustee want of good faith on the part of the transferee is immaterial.[18]

Burden of proof. Initial onus of proof of time of knowledge of transfer is on the plaintiff. If the plaintiff proves this, onus is shifted to the transferee to prove that the transfer was before twelve years of the suit and the plaintiff had knowledge of it.[19]

9. Nature of transfer by mortgagee contemplated by article. Where the mortgagee purports to transfer the property as owner of it and not merely as a mortgagee, this article will apply.[20] This article does not apply where a mortgagee merely purports to transfer his rights as mortgagee.[1] Where a mortgagee has

13. AIR 1930 All. 417+AIR 1954 Mad. 650=ILR 1954 Mad. 664 (DB)+AIR 1955 All. 339 (DB). (Auction-purchaser of mortgagee rights)+AIR 1915 All. 422+AIR 1918 Mad. 1201 (DB).
14. AIR 1952 Mad. 844 (AIR 1921 All. 389, *Foll;* AIR 1918 Mad. 1201, *Disting*).
15. 19 Bom. 140 (DB)+AIR 1925 Bom. 417 (DB)+AIR 1931 Lah. 464 (DB)+AIR 1924 Lah. 468 (DB)+24 Mad. 471 (FB)+AIR 1926 Sind. 145=20 Sind. L R 277.
16. 53 Mys H C R 193 (DB) (21 Mys C C R 184, *Rel. on.*).
17. AIR 1922 Bom. 234=46 Bom. 903 (DB).
18. AIR 1931 Cal. 113=58 Cal. 234 (DB)+AIR 1955 Nag. 145=ILR 1955 Nag. 100 (FB)+AIR 1920 Cal. 379=47 Cal. 866 (DB)+AIR 1918 Mad. 984=40 Mad. 745 (DB)+1898 Bom. P J 97 (DB)+AIR 1924 Oudh 44=26 Oudh Cas. 197+AIR 1919 Oudh 313+95 Ind. Cas. 699 (DB) (Lah.).
19. AIR 1942 Pesh. 39 (DB).
20. AIR 1926 Oudh 547=29 Oudh Cas. 353=1 Luck 423 (FB)+AIR 1929 P.C. 158=51 All. 367=56 Ind. App. 192+AIR 1956 S.C. 706=1959 S C R 479 (defendant has got affirmatively to prove that mortgagee or his successor-in-interest has transferred larger interest than justified by mortgage)+AIR 1959 Punj. 2323+AIR 1958 Pat. 230=37 Pat. 79+1958 Ker L J 182+AIR 1954 Mad. 650=ILR 1954 Mad. 664 (DB). (Transfer by mortgagee must be in his assumed character as owner and not as mortgagee)+AIR 1952 Bom. 217 (DB). (Where transferee is able to prove that what mortgagee was transferring to him was a larger interest than that given by mortgage or at any rate an interest unencumbered by the mortgage, he (the transferee or alienee) would be protected)+AIR 1952 Mad. 844. (Article 134 applies to a conveyance by a mortgagee of an interest larger than he himself has in the property).
1. AIR 1929 P.C. 158=56 Ind. App. 192=51 All. 367+AIR 1958 S.C. 479+AIR 1959 Punj. 561=ILR 1959 Punj. 2323+AIR 1955 Nag. 145=ILR 1955 Nag. 100 (FB)+AIR 1954 Trav-Co. 317 (DB)+AIR 1955 All. 339 (DB)+8 J & K L R 128 (DB)+1958 Ker L J 182+6 Beng L R 530 (PC)+AIR 1941 Mad. 666 (DB).

transferred mortgaged property, the mortgagor can show that the deed, though of absolute transfer, was really of mortgagee rights.[2]

Only possession taken from mortgagee by third party. Where there is no transfer by the mortgagee and he merely suffers another to take possession of the mortgaged property, this article does not apply to the suit against the latter.[3]

Sale by mortgagor. Where the guardian of a minor mortgagor sold the equity of redemption without any legal necessity. The transferee redeemed the mortgagee and obtained possession from the mortgagee. The minor on attaining majority sued to set aside the sale and for possession. It was held that this article did not apply.[4]

10. "Mortgagee." This article will apply to a suit against an alleged transferee from a mortgagee only where it is shown that at the time of the transfer there was a subsisting mortgage on the property and that the transfer was made by the mortgagee.[5] Where a transfer by a mortgagee purported to be a transfer of the absolute title, this article is not rendered inapplicable merely because at the time of the transfer the mortgagee thinks hat he is the absolute owner.[6] A mortgagee, who got a decree against the mortgagor by which possession was ordered to be given to the mortgagee till the debt is paid off, continues to be a 'mortgagee' and the Article applies to a transfer by him.[7] Where a mortgage was executed in 1873, and there was a provision in it that if it was not redeemed within two years, the property should become the absolute property of the mortgagee. Notwithstanding this provision the mortgagee continues to be such even after the period fixed for redemption. Therefore this Article applied to a transfer by such mortgagee.[8]

Successor of mortgagee. The term mortgagee will include the successors in title of the original mortgagee.[9]

Suit by puisne mortgagee. *A*, a prior mortgagee, sued on his mortgage without impleading *B*, a puisne mortgagee, and obtained a final decree, for foreclosures; *A* then sold the property to *C*. In a suit by *B*, the puisne mortgagee to enforce his rights against the property in the hands of *C*, it was held that this article did not apply to the suit.[10]

Transfer by submortgagee. A transfer by a submortgagee is not a transfer by a mortgagee within he meaning of this article.[11]

11. Mortgage, if should be with possession. Where a mortgagee is not entitled to possession under or by virtue of his mortgage, but obtains possession

2. AIR 1945 Oudh 258 (DB).
3. 7 Low Bur Rul. 97.
4. AIR 1932 Bom. 23.
5. AIR 1917 Oudh 290 = 20 Oudh Cas. 164.
6. AIR 1929 P.C. 158 = 51 All. 367 = 56 Ind. App. 192.
7. 19 Bom. 140 (DB).
8. AIR 1941 Mad. 666 (DB).
9. 53 Mys H C R 193 (DB) + AIR 1954 Mad. 650 = ILR 1954 Mad. 664 (DB) + AIR 1955 All. 339 (DB).
10. AIR 1914 All. 63 = 36 All. 327 (DB).
11. AIR 1927 All. 177.

subsequently in some other way and then transfers the property to a third person, and the mortgagor sues such third person for possession, this article applies.[12]

12. Property retransferred to mortgagee. A sale by a mortgagee believing himself to be owner, and subsequent repurchase by him does not affect a redemption suit by the mortgagor on the point of limitation.[13] A mortgagee cannot improve his position by purporting to transfer the mortgaged property to a third person and subsequently getting a re-transfer of the same from the transferee and a suit for redemption of the mortgage by the original mortgagor would be governed by Art. 148 and not by this article.[14]

13. Starting point of limitation. Where a trustee alienated trust property in derogation of the trust and a suit was brought for the recovery of the property by his successor (appointed by himself), limitation began to run under this article from the date of knowledge of the succeeding trustee.[15]

Right barred prior to amendment. Where a right to sue had accrued under the unamended Article and had become time-barred under that article, it cannot be revived in consequence of the amendment.[16]

Suit by minor. Time under this article runs when the transfer becomes known to the plaintiff. In the third column of this article there is no reference to the majority or minority of the plaintiff. It cannot, therefore, be said that the plaintiff's knowledge of sale during his minority is no knowledge at all and that the computation of the time must be made, not from that date, but from the date of his attaining majority. The combined effect of sections 6 and 8 is to enable the plaintiff who has been dispossessed during his minority to file a suit within three years of his attaining majority or within the usual period of time ordinarily allowable to a major whichever is longer.[17]

14. Transfer by mortgagee before date of redemption. If in defiance of his contractual and statutory liability the mortgagee repudiates the mortgage, the mortgagor cannot be bound by the terms of the mortgage, and he cannot be expected to wait for the expiry of the term before he can seek his remedy against a person, who asserts title adverse to him.[18] Therefore where on the date of the transfer by a mortgagee, the period fixed for redemption had not expired, this article will not apply to a suit for possession against the transferee by the mortgagor.[19]

15. Suit not brought within limitation--effect. Where a suit for possession of property transferred by the trustee or mortgagee is not brought within the period prescribed by this article, the transferee will not acquire by prescription a higher title to property than he has prescribed for.[20]

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12. AIR 1929 P.C. 158=51 All. 367=56 Ind. App. 192.
13. AIR 1923 Bom. 20=44 Bom. 848 (DB).
14. AIR 1919 Oudh 150=22 Oudh Cas. 72.
15. AIR 1940 Mad. 920 (DB). (Point conceded by counsel).
16. AIR 1955 All. 339+53 Mys. H C R 193 (DB).
17. AIR 1953 Mys. 84=ILR 1953 Mys. 419 (DB).
18. AIR 1955 All. 339 (DB) (AIR 1919 Mad. 972 (FB) and AIR 1938 Mad. 394, *Explained*).
19. AIR 1938 Mad. 394+AIR 1919 Mad. 972=40 Mad. 1040 (FB).
20. AIR 1937 Cal. 305=ILR (1937) 2 Cal. 242 (DB)+24 Mad. 471 (FB).

[1][134-A. To set aside a transfer of immovable property comprised in a Hindu, Muhammadan or Buddhist religious or charitable endowment made by a manager thereof for a valuable consideration.	Twelve years	When the transfer becomes known to the plaintiff.
134-B. By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration.	Twelve years	The death, resignation or removal of the transferor.
134-C. By the manager of a Hindu, Muhammadan or Buddhist religious or charitable endowment to recover possession of movable property comprised in the endowment which has been sold by a previous manager for a valuable consideration.	[2][Twelve years]	The death, resignation or removal of the seller.

Synopsis

of

Articles 134-A, 134-B and 134-C

1. Scope.
2. Retrospective effect of articles.
3. Article 134-A--Suit to set aside alienation.
4. Article 134-B.

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1. Articles 134-A, 134-B and 134-C ins. by Act, 1 of 1929, S. 3.
2. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

5. "Manager'--meaning of.
6. Transfer for valuable consideration.
7. Sale in execution of decree against manager.
8. "Death resignation, or removal of the transferor."
9. Acquisition of prescriptive title by alienee.

1. Scope. The property of a Hindu, Muslim or Buddhist religious or charitable endowment is not alienable except for legal necessity.[3] Where the leases were found not to have been granted for legal necessity, they could be set aside even during the tenure of office of the *shebaits*. Where the lessees did not make *bona fide* enquiries to satisfy themselves that there was justifiably-necessity on the part of the Committee to make the grant or that the grant was made with the consent of the majority of the *shebaits* or that the three members of the Committee had title to make the grant. Nor was it possible to hold that the lessees were *bona fide* transferees for value without any notice of defect of title of the Committee who granted the leases, Article 134-A of the Limitation Act would apply to the case.[4]

2. Retrospective effect of articles. These articles apply to all suits instituted after their coming into force although the transfer sought to be avoided by the suit might have been made before the coming into force of the articles.[5] But the articles do not apply to suits already instituted on the date of their coming into force.[6]

3. Article 134-A--Suit to set aside alienation. The phrase "to set aside a transfer of immovable properties" must be given a very generous meaning to cover not merely cases of voidable transactions but of void transactions as well effected by the manager of endowed property having no title to the same.[7]

Article 134-A does not contemplate a case of possession against the alienee. Even though no decree for possession can be given in a suit challenging an alienation, limitation for the suit would be 12 years under Art. 134-A.[8] Where *A*, the *mahant* of an idol, granted permanent lease of temple lands to *B*, *B* obtained a decree for possession against the tenants, *C*, the succeeding *mahant*, sued *B* for permanent injunction restraining him from dispossessing plaintiff from the lands. It was held that substantial relief claimed in the suit was to set aside the transfer of immovable property by his predecessor and was governed by Art. 134-A.[9]

Wakif taking possession as Mutwalli. When a *wakif* has declared that he has entered upon possession as *mutwalli*, his position becomes that of a trustee and this article applies and residuary Article 120 need not be invoked.[10]

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3. 36 Cal. 1003=35 Ind. App. 148 (PC)+AIR 1917 P.C. 33=40 Mad. 709=44 Ind. App. 147.
4. AIR 1963 Calcutta 647.
5. AIR 1937 Cal. 305=I.L.R (1937) 2 Cal. 242 (DB)+AIR 1937 Lah. 9 (DB)+AIR 1942 Bom. 138+AIR 1944 Cal. 211 (DB). (Right vested in *shebait*--Art. 134-B bars right of *shebait* as well as of deity).
6. AIR 1915 P.C. 44=57 All. 159=62 Ind. App. 47+AIR 1933 P.C. 77=61 Ind. App. 50=56 All. 111+AIR 1946 Cal. 473=I.L.R (1946) 2 Cal. 38 (DB).
7. AIR 1961 Calcutta 411.
8. AIR 1961 Cal. 411.
9. AIR 1938 Lah. 752 (DB).
10. AIR 1947 Lah. 117=I.L.R 1946 Lah. 300 (DB).

When transfer becomes known to the plaintiff. In order to bring a case within the mischief of Art. 134-A it is not enough that anyone in the family of the plaintiff must have known of the alienation. What the article contemplates is the actual knowledge of the person himself who goes to Court as plaintiff.[11] In the case of a representative suit brought on behalf of the general body of worshippers or persons interested in an institution the knowledge of the plaintiff must be understood to refer only to the knowledge of the plaintiffs *eo nomine* on record and not to the knowledge of every individual member of the community.[12] Where a suit is brought on behalf of an idol to set aside an alienation of the property of the idol the knowledge of the *mahant* amounts to knowledge of the idol.[13] The initial onus of proving that the transfer became known to the plaintiff within twelve years of the suit is on the plaintiff.[14]

4. Article 134-B. Where manager of Hindu religious institution makes alienation of property of the institution for a valuable consideration and the succeeding manager sues for possession impeaching that alienation. There is an interval of time between death, resignation or removal of previous manager and election or appointment of succeeding manager, the suit will be governed by this article and not by Art. 144.[15]

Void transfer. Art. 134-B applies only to a voidable transfer.[16] A transfer which is void *ab initio* is in the eye of law no transfer at all and hence will not come within the scope of Article 134-B. Moreover, that Article refers to transfer made by a manager of an endowment. If a person transfers property treating it as his own private property, it is difficult to hold that merely because he happens to be the manager of the endowment on the date of the transfer and the property is the property of the endowment such transfer should come within the scope of that Article. Thus the applicability of either Art. 144 or Art. 134-B would depend on whether the transfer which is sought to be set aside is void *ab initio* or only voidable at the instance of the succeeding manager. Where the transfer is void *ab initio* Art. 144 would apply.[17] In such cases limitation will commence to run immediately and not from cessation of term of office of alienating manager.[18] If the sales or the transfers are void *ab initio* then the transferees' possession since the date of the transfer becomes adverse from the date of the transfer inasmuch as the transferees had no right in respect of the properties at all. They were mere trespassers; and if by a continuous period of 12 years they have matured their rights, then the rights would be available not only as against the transferor but also against the whole world including the deity.[19]

Alienation of his office by manager. Article 134-B was enacted only with the object of providing a specific article of limitation to a class of cases as those

11. AIR 1951 Orissa 255 (DB).
12. AIR 1940 Mad. 81.
13. AIR 1938 Lah. 752 (DB).
14. AIR 1938 Lah. 470 + AIR 1947 Mad. 3 = ILR 1947 Mad. 253 (DB).
15. AIR 1941 Mad. 449 = ILR 1941 Mad. 599 (FB).
16. PLD 1968 Dacca 701 (DB).
17. AIR 1965 Patna 390 (DB) + AIR 1961 Orissa 102 (DB).
18. AIR 1938 Mad. 60 (DB) + AIR 1938 Mad. 415 (DB) + AIR 1946 Cal. 473 = ILR (1946) 2 Cal. 38 (DB).
19. AIR 1961 Orissa 102 (DB).

arising under the Hindu, Muslim a Buddhist religious or charitable endowments, where the manager for the time being has alienated the property of the institution for valuable consideration, and was not intended to make any change in the law with regard to alienation of the office of the manager or office of trusteeship, which would be governed by Art. 124.[20]

5. 'Manager'--meaning of. The term "manager" referred to in th Article should be interpreted to mean manager appointed either by a Court or by a body constituted under the deed of endowment with power to make such appointment.[1] Thus a suit by committee of management appointed by the Court on the removal of a previous manager will be one by a "manager" within the meaning of these articles.[2] In some decisions, it has been held that the manager contemplated by these articles is not necessarily a *de jure* manager but also includes a *de facto* manager.[3]

Transfer by Manager after repudiating that position. Where the property was wakf and the alienor was the manager, the fact that while selling the property, the alienor described it as his private property would not take the case out of the purview of Art. 134-B.[4]

6. Transfer for valuable consideration. For a transfer to come within the scope of this Article, it must have been for a valuable consideration though the consideration is otherwise inadequate. In this context it must be noted that the expression "valuable-consideration" is not synonymous with "adequate consideration."[5] But where the consideration is absolutely or ridiculously inadequate this Article does not apply. Thus where the head of a *mutt* granted a permanent lease of certain lands belonging to the *mutt* on a quit rent of rupees twenty-four a year, it was observed that it would be ridiculous to hold that the rent reserved was "valuable consideration" within the meaning of Article 134.[6] It has been held that a mortgage[7] and a lease is a transfer for a valuable consideration within the meaning of Art. 134-B.[8]

7. Sale in execution of decree against manager. Articles 134 and 134-B have no application to an execution sale and where property belonging to a religious endowment has been sold in execution of a decree in respect of loan incurred by the manager not for any justifying necessity, adverse possession under Art. 144 begins when the auction-purchaser obtains effective possession of the property and not from the date of the death of the manager.[9] The above decision illustrates the principle that where the alienation of the endowment property takes place in

20. AIR 1956 Mad. 399 = ILR 1956 Mad. 1144 (DB).
1. PLD 1954 Dacca 104 = PLR 1952 Dacca 378 = 5 DLR 383.
2. AIR 1937 Lah. 660.
3. AIR 1941 Mad. 449 = ILR 1941 Mad. 599 (DB) + AIR 1933 P.C. 75 = 12 Pat. 251 = 60 Ind. App. 124 = AIR 1935 P.C. 44 = 57 All. 159 = 62 Ind. App. 47.
4. 1986 Dhaka LR 45 (DB) + AIR 1949 East Punj. 233 (DB).
5. AIR 1953 S.C. 514 = 1954 S C R 235.
6. AIR 1922 P.C. 123 = 48 Ind. App. 302 = 44 Mad. 831.
7. AIR 1937 Lah. 660.
8. AIR 1937 Cal. 305 = ILR (1937) 2 Cal 242 (DB).
9. AIR 1950 P.C. 44 = 29 Pat. 279 = 77 Ind. App. 42 + AIR 1963 Mad. 213 (DB).

negation of the trust, it is void *ab initio* and the adverse possession of the alienee commences immediately.[10]

8. **"Death, resignation, or removal of the transferor."** It is not the cessation of trusteeship generally that matters for purposes of the application of Art. 134-B, it must be the cessation of trusteeship by means of the three events referred to in the third column of the Article, e.g. death, resignation or removal. So when a suit is brought by a person appointed as a trustee by the Hindu Religious Endowments Board for recovery of trust property alienated by the previous trustee, in the absence of proof that any of the three events referred to in the third column of Art. 134-B occurred more than 12 years prior to the date of the suit, it should not be treated as barred by time even though the trusteeship of the prior trustee might be alleged to have ceased very much earlier.[11]

End of tenure of office. Limitation would begin to run from the date on which the tenure of office of the transferor ends. Where a *mahant* of a *mutt* disposed of all the property of *mutt* dedicating it to deity of another sect, this act determined the tenure of office of the *mahant* and time under Art. 134-B ran from the date of such disposal.[12]

Death of transferor. Limitation begins to run from the death of the transferor. The right to bring a suit to set aside an invalid alienation by a *shebait* does not revive on the death or removal of each succeeding *shebait.*[13] Thus where *A*, the *mahant* of a *mutt*, transfers for consideration certain property belonging to the *mutt* and dies. *A* is succeeded by *B*. *B* does not sue for recovery of property from the alienee. *B* is succeeded, on his death, by *C*. Limitation for a suit by *C* will commence to run from the death of *A*, the alienating *mahant*, and not from the death of *B*, the plaintiff's immediate predecessor-in-office.[14] But where *A*, the manager of a religious endowment, grants permanent lease of property belonging to an endowment. *A* dies and is succeeded by *B*. *B* grants a fresh lease to take effect in continuation of lease granted by *A*. *B* dies and is succeeded by *C*. Limitation for suit for possession by *C*, *B's* successor-in-office, will commence to run from the death of *B* and not from the death of *A*, because in this case *B* was the transferor whose transfer is being challenged by *C*.[15]

9. **Acquisition of prescriptive title by alienee.** Where a suit for possession of property improperly alienated by manager of an endowment is not brought within the period prescribed by Art. 134-B, the alienee who obtained possession under the transfer will acquire, under S. 28, a title to the property.[16] For the purpose of acquisition of perspective title by alienee it is immaterial whether the manager of the property sold the property as manager or in his personal capacity. Time will begin to run only from the date of his death, resignation or removal from office

10. AIR 1938 Mad. 60 (DB).
11. AIR 1952 Mad. 171.
12. AIR 1938 Pat. 143 (DB).
13. AIR 1944 Cal. 211 (DB).
14. AIR 1938 Mad. 415 (DB) + 21 Cut L. Tim. 187.
15. AIR 1922 P.C. 123 = 48 Ind. App. 302 = 44 Mad. 831 + AIR 1936 P.C. 183 = 59 Mad. 809 = 63 Ind. App. 261.
16. 1986 Dhaka LR 45 (DB) + AIR 1937 Cal. 305 = ILR (1937) 2 Cal. 242 (DB) + AIR 1934 Mad. 624 (DB) + AIR 1938 Mad. 415 (DB).

and if a suit is brought by a succeeding mutwalli or manager within 12 years of that event, no title will pass by prescription.[17] It is to be noted that Article 134-B has no application in terms of prescriptive title. The entire onus was on the transferee to establish that he has acquired prescriptive title by being in possession for more than twelve years prior to the date of dispossession.[18]

135.	Suit instituted in a Court [19][other than a High Court] by a mortgagee for possession of immovable property mortgaged.	[20][Twelve years]	When the mortgagor's right to possession determines.

Synopsis

1. Scope.
2. Suit against person claiming through mortgagor.
3. Suit by puisne mortgagee.
4. Starting point of limitation.
5. Mortgage by conditional sale.

1. Scope. To fall under this Article, a mortgagee must sue for possession in the capacity of a mortgagee. Where he sues in any other capacity this Article does not apply. Thus where a mortgagee leases mortgaged property to the mortgagor as his tenant and subsequently sues the mortgagor for ejectment, this article does not apply. Article 139 would apply to the case.[1] Where a mortgagee by conditional sale is entitled under the instrument to possession only after the foreclosure. He forecloses the mortgage and thereafter sues the mortgagor for possession, Article 144, and not this article applies.[2] Similarly where a mortgagee gets possession under the mortgage but the mortgagor subsequently dispossesses the mortgagee or gets into possession with the permission of the mortgagee and then refuses to vacate it, a suit by the mortgagee for possession would not be governed by this article.[3]

Suit must be for possession. The Article applies to suits for possession. Where the instrument of mortgage recites that possession has been given to the mortgagee, a suit by the mortgagee for possession which in fact had not been given is not a suit for specific performance of a contract and is governed only by this article.[4] Where the instrument of mortgage stipulates that the mortgagor

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17. 1986 Dhaka LR 45 (DB).
18. AIR 1963 Orissa 127.
19. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
20. Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), S. 3 and Second Sch. (with effect from the 16th October, 1955), for "not established by Royal Charter".
1. 18 Ind. Cas. 899 (All)+AIR 1953 Hyd. 231=ILR 1953 Hyd 331 (DB)+31 All. 318 (DB)+AIR 1920 Lah. 217+1890 Pun Re No. 174, p. 346 (DB).
2. AIR 1918 Lah. 198=1918 Pun Re No. 79 (DB)+AIR 1926 Lah. 302 (DB)+10 Cal. 68 (DB).
3. 9 Nag. I R 179+27 Cal. 185 (DB).
4. 7 Ind. Cas. 646 (All.)+1883 Pun Re No. 134, p. 409 (DB).

should give possession to the mortgagee, a suit for possession in enforcement of this stipulation may be regarded as a suit for specific performance of a contract governed by Art. 113. But the article that must be taken to govern such a case is this article and not Article 113.[5] This Article does not apply to a suit by a simple mortgagee for sale of the mortgaged property,[6] or to a suit for foreclosure by a mortgagee by conditional sale who is not entitled, under the mortgage, to possession.[7] Where the mortgagee suing for foreclosure and possession relinquishes the prayer for foreclosure and therefore is not entitled to possession and can claim only the mortgage money, this article will not obviously apply.[8] A suit for a declaration is not one for possession, and the Article does not apply to it.[9]

2. Suit against person claiming through mortgagor. The article would apply to suits against persons deriving title from the mortgagor.[10] But it would not apply to a suit against a stranger not deriving any title from the mortgagor.[11]

3. Suit by puisne mortgagee. Where a puisne mortgagee sues the prior mortgagee in possession and the mortgagor for redemption and recovery of possession, this article does not apply.[12] Even where at the time of the second mortgage the property is in the possession of the first mortgagee and the second mortgagee redeems the first mortgage and then sues for possession, this article does not apply to the suit.[13]

4. Starting point of limitation. Where, under the mortgage, the mortgagee is entitled to possession, and the mortgagor is in possession on the date, time begins to run from the date of the mortgage itself.[14] The fact that subsequent to the mortgage, possession of the property was taken by a prior mortgagee[15] or that the land became submerged and was taken possession of by the mortgagor on its reappearance, will not stop time running from the date of the mortgage.[16]

Possession with prior mortgagee. Where on the date of the mortgage possession is with a prior mortgagee, time will run only from the date when possession is recovered by the mortgagor from the prior mortgagee.[17]

Possession held by mortgagor under agreement. Where the mortgagor is in possession after the mortgage under an agreement, limitation under this Article would commence only when the mortgagor loses his right to possession under the agreement. Thus where under terms of a mortgage, the mortgagee was entitled to

5. 1884 All. W N 123 (DB) + 1890 Pun Re No. 96, p. 286 (DB).
6. 30 Mad. 426 = 34 Ind. App. 186 (PC) + AIR 1914 All. 95 = 36 All. 567 (FB) + 19 Mad. 249 = 23 Ind. App. 32 (PC) + AIR 1916 Mad 990 = 39 Mad. 811 (FB).
7. 20 Cal. 269 (DB).
8. AIR 1954 Hyd 41 = ILR 1953 Hyd 642 (DB).
9. 1908 Pun Re No. 57, p. 287.
10. 16 Cal. 693 = 16 Ind App. 85 (PC) + AIR 1916 Mad. 990 = 39 Mad. 811 (FB).
11. AIR 1919 Lah. 133 = 1919 Pun Re No. 117.
12. 1911 Pun Re No. 143, p. 534.
13. AIR 1919 Lah. 402 (*Following* 1894 Pun Re No. 38, p. 106 (DB) + AIR 1920 Lah. 504).
14. 1888 All. W. N. 15 (DB).
15. AIR 1924 Lah 740 = 4 Lah. 90 (DB).
16. AIR 1925 Lah. 627.
17. AIR 1933 Bom. 439 = 57 Bom. 593 (DB) + AIR 1922 Lah. 91 (DB) + AIR 1920 Lah. 504 + 1 All. 325 = 4 Ind. App. 15 (PC).

possession and the mortgagor was continuing in possession as tenant under the agreement, limitation for a suit for possession by the mortgagee will start from the date when the mortgagor's right to remain in possession under the agreement comes to an end.[18] Similarly where the mortgage deed provides that the mortgagee would be entitled to take possession on default by the mortgagor in payment of the mortgage money or of the interest due, time will run only from the date of default.[19] But if the mortgagee accepts payment of such defaulted interest either in cash or by execution of a *sarkhat* in his favour, the original cause of action is discharged and limitation will commence to run only when a fresh default occurs.[20]

Mortgagee's option to take possession. Where the mortgagee has an option under the mortgage to take possession or to take some other remedy, the mortgagee's right to possession cannot be said to be determined so long as the mortgagee has given no intimation of the exercise of his option to take possession of the property.[1]

5. Mortgage by conditional sale. A proceeding under the Bengal Regulation for foreclosure is not barred as long as the mortgage subsists.[2] Where the mortgage is without possession a suit by the mortgagee as owner of the mortgaged property brought within twelve years of the foreclosure proceedings under the Bengal Regulation will be within time.[3]

Where in a mortgage by conditional sale the mortgagee being entitled to possession does not get it and fails to sue for possession within the period of limitation prescribed by this article, his right gets extinguished by the operation of S. 28 and he can no longer sue for possession.[4] He is also debarred from suing for foreclosure.[5] Where the foreclosure proceedings were taken after the twelve years prescribed for a suit for possession, it was held that a subsequent suit for possession as owner on the basis of such foreclosure was barred.[6] But where the mortgage takes steps to foreclose with the period prescribed by this article and in such proceedings the right to redeem is foreclosed but after the expiry of the period prescribed, the mortgagee becomes the owner and, as such, is entitled to a period of twelve years under Article 144 from the date of foreclosure, to sue for possession.[7]

18. 1950 All. W R 284.
19. AIR 1930 Lah. 327 (DB) + AIR 1950 All. 526 + 8 Oudh Cas. 286 + 40 Pun L R 48.
20. AIR 1950 All. 626.
1. AIR 1919 Oudh 217 (DB).
2. AIR 1938 Lah. 809 = 1908 Pun Re No. 57.
3. AIR 1938 Lah. 800.
4. 16 Cal. 693 = 16 Ind. App. 85 (PC).
5. 9 Oudh Cas. 147 (DB) + 8 CPLR 83 + 10 All. L. Jour 338 (DB).
6. AIR 1917 Lah. 441 + 1912 Pun L R No. 237, p. 751 (DB).
7. 1895 Pun Re No. 90, p. 427 (FB) + 6 Cal. 566*n* (DB) + 6 Cal. 564 (DB) + 9 Ind. Cas. 1038 (Oudh) + AIR 1945 Sind. 242 = ILR 1943 Kar. 315 (DB).

136:	By a purchaser at a private sale for possession of immovable property sold when the vendor was out of possession at the date of the sale.	[8][Twelve years]	When the vendor is first entitled to possession.

Synopsis

1. Suit must be for possession.
2. "When vendor was out of possession."
3. Starting point of limitation.

1. Suit must be for possession. Where possession cannot be sued for without first setting aside a certain order of Court, a suit for possession brought after the period of limitation applicable to a suit for setting aside the order will be time-barred.[9]

2. "When vendor was out of possession." The expression "possession" in this article includes constructive possession as well as actual possession.[10] Thus a sale of his share of joint property by a co-owner not in actual possession is not a sale by a vendor who is out of possession where there has been no ouster by the other co-owners.[11] But where one co-owner has been ousted from the joint property and the other co-owners are holding the property adversely, a sale by him to a third party will be one by a person who is out of possession of his share and will be governed by this article.[12]

Vendor obtaining possession after sale. Where, after the sale, the vendor gets possession of the property, a suit by the purchaser against the vendor for possession of the property is not within this article.[13]

Official Receiver. Under the Provincial Insolvency Act. 1920, when the Court appoints a Receiver, it may remove any person in whose possession or custody any property of the insolvent is, from possession or custody thereof, if the insolvent himself has a present right to do so. It is the duty of the Official Receiver as soon as possible after the adjudication, to take possession of all his property. Where in insolvency proceedings the official receiver impugns a transfer by the insolvent which is set aside by the order of the Court, after the order of adjudication the insolvent cannot be said to be in possession of the property previously transferred; he has only custody. In a suit for possession by a subsequent transferee from the official receiver it must be held that the official receiver was not out of possession

8. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
9. 26 Bom. 730 (DB).
10. AIR 1934 Rang. 223+2 Nag. L. R. 32.
11. 1911-2 Mad. W. N. 175 (DB)+AIR 1918 Cal. 68 (DB)+AIR 1934 Bom. 273=58 Bom. 410+AIR 1921 Bom. 77 (DB)+AIR 1916 All. 19.
12. 1922-2 Mad. W. N. 175 (DB)+11 Cal. 680 (DB)+28 All. 479+AIR 1915 Mad. 1146 (DB).
13. 5 Ind. Cas. 273 (All)+15 Bom. 261 (DB)+12 Cal. 197 (DB)+13 Bom. 424 (DB).

on the date of the sale to the plaintiff but was in possession of property through the insolvent. Article 136 will not govern the suit.[14]

Purchaser at Court auction. A suit for partition and possession by a Court auction-purchaser of an undivided interest of a co-parcener in a joint Hindu family is governed by Art. 138 and not by Art. 120 or Art. 127 or Art. 135 or Art. 137 and therefore a suit brought within twelve years from the date when the sale became absolute would be within time.[15] Where *A* purchases certain property in Court auction and obtains formal delivery of such property. He then sells the property to *B*. *B* sues for possession. It has been held that this article does not apply to such cases.[16]

3. Starting point of limitation. Limitation begins to run under this article from the date when the vendor is first entitled to possession.[17] The expression "when the vendor is first entitled to possession" relates to the circumstances under which the vendor came to be out of possession on the date of the sale and therefore the starting point of limitation under the article is the date when the vendor is first entitled to possession with reference to such circumstances.[18] Thus where *A* contracts with *B* for the purchase of certain property belonging to *B* but of which *B* is not in possession. *B* refuses to complete the sale and it takes five years for *A* to have the sale completed. Limitation for a suit for possession by *A* begins to run from the date when *B* was first entitled to possession. The delay in the completion of the sale cannot postpone the starting point of limitation.[19] Where *A*, a Hindu reversioner, becomes entitled to a certain property on the death of a widow. The property is at that time in the possession of a third party. *A* sells the property to *B*, limitation for a suit for possession by *B* begins to run from the date of the death of the widow.[20] In the case of a sale of the equity of redemption in property which has been mortgaged with possession to a third party, limitation for a suit for possession by the vendee will begin to run under this article from the date of redemption.[1]

Successive vendor. Where there have been successive vendors who have all been out of possession, the term "vendor" in the third column of the article refers to the first in the series of vendors who have been out of possession.[2]

137.	Like suit by a purchaser at a sale in execution of a decree when the judgment-debtor was out of	[3][Twelve years]	When the judgment-debtor is first en-titled to possession.

14. AIR 1963 Kerala 176.
15. AIR 1955 Mad. 202 = ILR 1955 Mad. 981 (DB)
16. 25 Bom. 275 (DB).
17. AIR 1938 Cal. 790 (DB).
18. 23 All. 442 (DB).
19. AIR 1929 Nag. 298.
20. 8 Cal. W N. 535 (DB) + AIR 1950 Cal. 506 (DB).
1. 1906 Pun Re No. 130, p. 489 (DB) + 1893 All. W N. 67.
2. AIR 1914 Cal. 733 (DB).
3. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

possession at the date of the sale.

Synopsis

1. Scope.
2. Suit for possession.
3. Purchase at a sale in execution of decree.
4. Judgment-debtor must be out of possession.
5. Starting point of limitation.
6. Symbolic delivery of possession to auction-purchaser.
7. Burden of proof.

1. Scope. This article applies both where the sale was held after attachment of the property and where there was no attachment.[4]

Possession under this article means actual and not constructive or symbolical possession.[5] Moreover the reference is to the possession to be obtained by the auction-purchaser after sale. Where the auction-purchaser has once obtained possession, this article will cease to apply and a suit for possession by him based on a subsequent cause of action will not be governed by this article.[6]

Possession of auction-purchaser. The article only applies to cases where the auction-purchaser sues as representing the interest of the judgment-debtor.[7] Where on the date of an execution sale a trespasser is in possession, but subsequently the judgment-debtor ejects him and gets possession, a suit by the auction-purchaser for possession against the judgment-debtor will not be governed by this article.[8]

Mortgage decree. Article 137 does not apply to sales in execution of mortgage decrees.[9]

Objection to sale upheld by Court. Where the period of limitation for a suit to set aside an order in favour of the defendant under O. 21, R. 99, Civil P.C. has expired, the suit for possession also will be barred.[10]

Exclusion of time. This article is subject to the provisions of S. 16.[11]

2. Suit for possession. This Article applies only to a suit for possession. It is not applicable to a suit for redemption of the property.[12] Where the suit is for payment of a certain sum of money and in default of payment, for possession, this article does not apply.[13]

4. AIR 1939 Mad. 456 = ILR 1939 Mad. 803 (SB).
5. AIR 1943 Mad. 413 + AIR 1947 Bom. 206 = ILR 1947 Bom. 228.
6. AIR 1918 Lah. 62 = 1918 Pun Re No. 76 + AIR 1916 Pat. 324.
7. AIR 1922 Cal. 544 (DB) + AIR 1923 Mad. 160 (DB) + AIR 1916 Oudh 221.
8. 33 All. 224 (DB) + 15 Bom. 261 (DB).
9. AIR 1950 Cal. 92 = ILR (1950) 2 Cal. 498 (DB) + AIR 1958 Ker 22 = ILR 1957 Ker 724 (FB).
10. AIR 1924 All. 495 = 46 All. 693 (FB).
11. AIR 1917 Cal. 802 (DB).
12. 1889 All. W N. 135 (DB).
13. AIR 1921 All. 301 = 43 All. 539 (DB).

3. Purchaser at a sale in execution of decree. The expression "purchaser at a sale in execution" include a decree-holder purchaser and this article will apply to a suit for possession by such purchaser also.[14] The article applies to a suit by a person claiming through an execution purchaser as well as to a suit by an execution purchaser himself.[15] But a suit by a stranger purchaser of the shares of co-parceners is the joint family to enforce possession against the co-parceners falls under Art. 144 and not under this Article or Art. 138.[16]

4. Judgment-debtor must be out of possession. This Article applies only where the judgment-debtor was out of possession at the time of auction sale. Where the property is in the possession of mortgagee of the judgment-debtor the latter cannot be said to be out of possession,[17] and the Article does not apply. Similarly *A*, *B* and *C* were mortgagors of a certain property, *B* and *C* redeemed the property and were in possession of the property, ready, however, to handover to *A* his share on receipt of his proportionate portion of the mortgage-money. *A*'s share in the property was sold in execution of a decree against him and was purchased by the plaintiff. It was held that this article did not apply to a suit for possession of the plaintiff.[18]

5. Starting point of limitation. Limitation under this article begins to run from the time when the judgment-debtor is first entitled to possession.[19] Thus where *A* sells to *B* a certain property but remains in possession after the sale. The property is sold in execution of a decree against *B* and is purchased by *C*. Limitation for a suit for possession by *C* runs from the date of the sale by *A*.[20] Where on the date of the auction sale the property is in the possession of a mortgagee, limitation for a suit for possession by the auction-purchaser will run from the date of the redemption of the mortgage.[1] Where *A* has a life-interest in certain property and *B* is entitled to the remainder. *B*'s interest in the property is sold in execution of a decree against him and is purchased by *C*. Limitation for a suit for possession of the property by *C* runs from the date of the death of *A*.[2]

6. Symbolic delivery of possession to auction-purchaser. Where symbolic delivery of possession has been made to the auction-purchaser under circumstances which render such symbolic delivery effective as against the third party in possession of the property, this article will not apply to a suit for actual possession brought by the auction-purchaser.[3] But where the third party in possession is in no way bound by the decree in which symbolic possession is

14. AIR 1922 Cal. 544 (DB).
15. AIR 1914 Cal. 527 (DB).
16. AIR 1955 Mys. 13 = ILR 1954 Mys. 361 + AIR 1958 Ker. 22 = ILR 1957 Ker. 724 (FB).
17. AIR 1930 Cal. 15 = 56 Cal. 1130 (DB).
18. AIR 1938 Rang. 65.
19. AIR 1947 Bom. 206 = ILR 1947 Bom. 228 + 1888 All. W. N. 156 (DB) + AIR 1922 Cal. 544 (DB) + AIR 1925 Mad. 1140 + 21 Suth W. R. 282.
20. 11 Cal. 229 (DB).
1. 20 Bom. 557 (DB) + 1888 Bom. P J 157, reprint, p. 85.
2. AIR 1923 Bom. 415 (DB).
3. AIR 1918 Lah. 62 = 1918 Pun Re No. 76 + AIR 1916 Pat. 324 + 25 Bom. 275 (DB) + AIR 1930 Cal. 15 = 56 Cal. 1130 (DB) + AIR 1937 Pat. 13 = 15 Pat. 272 (DB).

delivered, the symbolic possession will not furnish a fresh starting point of limitation for a suit for possession against him.[4]

7. **Burden of proof.** Where the plaintiff shows that the judgment-debtor was in possession within twelve years of the suit, the burden is on the defendant to show that such possession was really on his own behalf.[5]

138.	Like suit by a purchaser at a sale in execution of a decree, when the judgment-debtor was in possession at the date of the sale.	[6][Twelve years]	The date when the sale becomes absolute.

Synopsis

1. Scope.
2. Suit must be for possession.
3. Purchaser.
4. Judgment-debtor must be in possession on date of sale.
5. Auction-purchaser must not have obtained possession previously.
6. Symbolic possession obtained by auction-purchaser.
7. Suit must be against judgment-debtor.

1. **Scope.** This article is not limited to stranger auction-purchaser. It applies to a decree-holder auction-purchaser as well.[7]

The fact that an application for delivery of possession would have been time-barred is no bar to a suit for possession.[8] Therefore a dispute between the auction-purchaser (stranger or decree-holder) and the judgment-debtor, relating to the delivery of possession of property sold in execution of the decree does not relate to execution, discharge or satisfaction of the decree. A suit by the auction-purchaser for delivery of possession in such a case is not barred by the provisions of section 47.[9]

Exclusion of time. Under S. 16 in computing the period of limitation under this article, the time during which a proceeding for setting aside the sale was prosecuted must be excluded.[10] But the time during which the further execution of the decree in execution of which the property was purchased, was stayed cannot be excluded under S. 15 of the Act.[11]

4. 27 Mad. 262 (DB)+21 Ind. Cas. 765 (DB) (Mad)+21 All. 269 (DB)+16 Cal. 530 (FB)+AIR 1922 Bom. 2=46 Bom. 932 (DB)+1883 All. W. N. 192 (DB).
5. 4 Bom. 89 (DB).
6. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
7. AIR 1944 Lah. 402=ILR 1945 Lah. 252 (FB).
8. 29 All. 463+AIR 1955 Cal. 369=ILR (1955) 1 Cal. 295 (DB)+AIR 1926 All. 120+9 Cal. 602 (DB)+1893 Pun Re No. 92, p. 364 (DB)+12 Cal. 169 (DB)+AIR 1918 Pat. 546.
9. AIR 1965 Orissa 2+AIR 1955 All. 49 (FB)+AIR 1924 Bom. 429 (FB)+AIR 1932 Pat. 80.
10. AIR 1917 Cal. 802 (DB).
11. AIR 1954 Trav-Co. 383=ILR 1954 Trav-Co. 924.

Suit barred by statute. Where a suit for possession is barred by a statute, this Article cannot create a right of suit.[12]

2. **Suit must be for possession.** This article applies to a suit for possession. It would apply only where the person in possession has resisted the attempt of the auction-purchaser to take possession.[13] A suit for possession alleging that the transfer from the judgment-debtor under which the defendant claims to be in possession is fraudulent and collusive, is not a suit for setting aside the transfer but is one for possession.[14]

3. **Purchaser.** An assignee of the auction-purchaser will be included in the term "purchaser".[15]

4. **Judgment-debtor must be in possession on date of sale.** This article only applies where the judgment-debtor was in possession on the date of execution sale.[16] Where the property is in the possession of a third party under a fraudulent and collusive transfer by the judgment-debtor, the property must be deemed to be in the possession of the judgment-debtor himself and a suit for possession of the property will be governed by this article.[17]

Burden of proof. The burden of proving whether the judgment-debtor was or was not in possession on the date of the sale is on the plaintiff.[18]

5. **Auction-purchaser must not have obtained possession previously.** Where the auction-purchaser has once obtained possession of the property under sale but subsequently loses it and sues for recovery of possession again, the article does not apply to such suit.[19] Thus where, after the execution sale, the judgment-debtor vacates the land and re-enters on it after some time, a suit for possession by the auction-purchaser will not be within this article.[20] Similarly where after the sale in execution, the parties enter into an amicable settlement under which the judgment-debtor continues in possession of the property as the auction-purchaser's licensee, this article will not apply to a suit for possession which the auction-purchaser may subsequently bring.[1]

6. **Symbolic possession obtained by auction-purchaser.** Where an auction-purchaser has obtained formal or symbolic possession after the auction sale, a suit by him to obtain actual possession would be governed by Art. 144 and not by this Article,[2] the delivery of symbolic possession will give a fresh starting point of

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12. AIR 1944 Cal. 328 (DB).
13. 1887 All. W. N. 92 (DB).
14. 6 All. 75 (DB) + 1884 All. W. N. 88 (DB) + AIR 1937 Pat. 331.
15. 23 Bom. 246 (DB) + 31 Cal. 681 (FB) + 18 Mad. 144 (DB) + 15 Mad. 331 (DB).
16. AIR 1938 Cal. 790 (DB) + AIR 1915 Mad. 1150 (DB) + AIR 1918 Cal. 659 (DB).
17. 6 All. 75 (DB) + AIR 1947 Bom. 206 = ILR 1947 Bom. 228 + 1884 All. W. N. 88 (DB).
18. AIR 1914 Cal. 527 (DB) + AIR 1918 Cal. 983 (DB).
19. 6 DLR 539 + AIR 1924 All. 844 + AIR 1952 Trav-Co. 86 = ILR 1951 Trav-Co. 383 (DB) + 25 Bom. 275 (DB) (*Overruled* on another point in 14 Ind Cas. 447 (FB) + 12 Bom. 678 (DB) + AIR 1918 Lah. 62 = 1918 Pun Re No. 76 + AIR 1932 Pat. 145 = 11 Pat. 165 (DB) + AIR 1916 Pat. 324.
20. AIR 1917 Cal. 802 (DB).
1. AIR 1930 Cal. 586.
2. AIR 1946 Pat. 202 (DB) + AIR 1923 Cal. 138 (DB) + AIR 1953 Mys. 35 = ILR 1953 Mys. 51 + AIR 1952 Nag. 246 = ILR 1951 Nag. 334 + AIR 1950 Assam 50 = ILR (1949) 1 Assam 33 (DB) + AIR 1922 Cal. 176 (DB) + AIR 1930 Lah. 823 + AIR 1926 Lah. 35 + AIR 1927 Mad. 849 (DB) + AIR 1945 Mad. 484 + AIR 1922 Bom. 27 = 46 Bom. 710 (DB) + AIR 1923 Pat. 76 = 24 Cri. L. Jour 279.

limitation to the auction-purchaser to sue for possession.[3] Where in execution of his money decree *A* attached certain property of his judgment-debtor *B* on 29-3-1928, *B*, during the subsistence of the attachment, sold the property by private sale to *C* on 15-11-1928 and put *C* in possession. In execution sale *A* himself purchased the property and also obtained symbolical possession of it through Court on 23-4-1932. *A* died and his son *D*, being unsuccessful in obtaining mutation of the property in his name sued *C* for possession. It was held, that since *C* was in possession for more than 12 years anterior to the institution of the suit, the claim was barred by limitation either under Art. 138 or Art. 144 of the Limitation Act.[4]

7. Suit must be against judgment-debtor. The article only contemplates case where the auction-purchaser sues the judgment-debtor or those claiming under him.[5] Therefore where pending attachment of certain property the judgment-debtor mortgages certain property with possession to a third party and the property is subsequently sold in execution of the decree, a suit for possession by the auction-purchaser against the mortgagee will be governed by this article.[6]

8. Starting point of limitation. The date of confirmation of the sale is the date from which limitation begins to run under this article.[8]

139.	By a landlord to recover possession from a tenant.	[8][Twelve years]	When the tenancy is determined.

Synopsis

1. Scope.
2. Relationship of landlord and tenant.
3. Landlord--meaning of.
4. Tenant--meaning of.
5. Suit must be by landlord, against tenant.
6. "When the tenancy is determined."
7. Determination by efflux of time.
8. Determination by notice to quit.
9. Surrender of tenancy.
10. Forfeiture of tenancy.
11. Abandonment of tenancy.
12. Effect of bar under the Article.
13. Nature of tenant's possession.
14. Special or local law.
15. Tenancy-at-will.
16. Permanent tenancy.
17. Void lease, possession under.
18. Encroachment by tenant.
19. Pleadings.

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3. AIR 1917 P.C. 197+16 Cal. 530 (FB)+AIR 1924 P.C. 144=51 Cal. 631=51 Ind App. 293+AIR 1921 All. 9=43 All. 520 (FB)+AIR 1957 Nag. 24=ILR 1956 Nag. 754 (DB)+AIR 1950 Assam 50=ILR (1949) 1 Assam 33 (DB).
4. AIR 1958 All. 850 (DB).
5. 35 All. 432 (DB)+AIR 1955 Mys. 13=ILR 1954 Mys. 361+AIR 1954 Sau 113+AIR 1922 Cal. 176 (DB)+AIR 1916 Pat. 324+AIR 1919 Pat. 207=4 Pat. L. Jour 463 (DB)+AIR 1916 Mad. 430 (DB)+AIR 1929 Cal. 250=56 Cal. 616 (DB).
6. AIR 1926 Mad. 966 (DB)+AIR 1925 Mad. 338.
7. AIR 1916 Pat. 396+AIR 1951 Cal. 481=ILR (1949) 1 Cal. 378 (DB)+AIR 1916 Pat. 100.
8. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2, and First Sch., for "Ditto".

1. Scope. Article 144 is a general article and this, a special one and hence this article should be applied in preference to Art. 144.[9] Therefore where it was found that possession of the defendants was permissive, Art. 142 or Art. 144 ceased to have any application. As the suits were for ejectment of the tenants on the extinguishment of their leasehold rights, Art. 139 of the Limitation Act applied.[10]

Suit must be for possession. Art. 139 of the Limitation Act by its very terms applies only to a suit for possession and not to a suit for recovery of money.[11]

Adverse possession. This article does not refer to adverse possession and does not in any way take away the effect of S. 116, Evidence Act.[12]

2. Relationship of landlord and tenant. In order that this article may apply there must have been a relation of landlord and tenant between the parties.[13] A lease executed by an agent is one by the principal and therefore, a suit for possession by the principal on the termination of such lease will be governed by this article.[14] Where there is no relationship of landlord and tenant this Article does not apply. Representatives of tenant on sufferance who enter into possession at his death are not tenants.[15]

3. Landlord--meaning of. The term landlord includes a transferee from the landlord. Therefore a suit by a transferee from the landlord against the tenant for possession will be governed by this article.[16]

Successor of landlord. A person competent to transfer property only for the period of his lifetime grants a lease for a term extending beyond his life. On his death, the lease automatically terminates and his successor becomes entitled to sue the quondam tenant for possession. The suit by the successor is not governed by this article.[17] Where the successor with the knowledge that the lease granted by his predecessor ended with the latter's life permits the quondam tenant to continue in possession, and receives rent during his lifetime, it may be inferred that the successor continued the tenancy.[18]

Several landlords. Where there are several landlords, one of them can sue after the termination of the lease, for possession of the property.[19]

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9. PLD 1968 Dacca 701=19 DLR 705 (DB)+AIR 1935 Bom. 382 (DB)+AIR 1949 Bom. 137=ILR 1949 Bom. 135 (DB)+25 Mad. 507 (DB).
10. 1974 SCMR 45.
11. AIR 1961 Allahabad 518.
12. AIR 1945 Pesh. 16 (DB).
13. AIR 1929 P.C. 99=56 Ind. App. 119=56 Cal. 1003.
14. AIR 1935 P.C. 59.
15. 31 Mad. 163 (DB).
16. AIR 1922 All. 423 (DB).
17. AIR 1936 P.C. 183=63 Ind. App. 261=59 Mad. 809.
18. AIR 1922 P.C. 123=44 Mad. 831=48 Ind. App. 302.
19. AIR 1927 Bom. 192=51 Bom. 149 (DB)+AIR 1929 Pat. 433=9 Pat. 425 (DB). (But the tenancy must have been determined by all the landlords).

4. Tenant--meaning of. A lease is transferable as well as heritable.[20] Therefore the word "tenant" would, except in the case of *istimrari mokarrari* leases include his representative.[1] *Istimrari mokarrari* leases are for life and not heritable.[2]

The representative of a tenant holding over the estate after his death is a 'tenant' within the meaning of this article and a suit against such person will be governed by this article and not Article 144.[3] But where a tenancy-at-will is determined at the death of the tenant; if his son holds over he is merely a wrong-doer and his possession becomes adverse to the landlord.[4]

Sub-tenant. A sub-tenant is covered by the word tenant, so far his relations with the tenant are concerned and a suit by the tenant to recover possession from his sub-tenant is governed by this article.[5]

5. Suit must be by landlord, against tenant. Where a mortgagee with possession leases back the mortgaged property to the mortgagor for a term of years and after the expiry of such term sues the mortgagor for possession, the suit will be governed by this article.[6] Where the plaintiff purchased half field and the vendor remained in possession under the lease. After the expiry of lease the vendor held over and sold the entire field, the plaintiff's suit for joint possession is governed by Article 144 and not by this article because the suit is not filed against a tenant.[7]

6. "When the tenancy is determined." Where the lease is not a terminable one, this article does not apply.[8]

Termination of lease necessary for landlord to sue for possession. A landlord's right to sue his tenant for possession arises only on the determination of the tenancy.[9] Section 116 of the Transfer of Property Act is material in considering the question as to when the tenancy was determined within the meaning of Art. 139 of the Limitation Act.[10] It has been held that a lease granted by a mortgagor with possession in the course of his management does not terminate on the redemption of the mortgage.[11] The lease granted by a Hindu widow in possession of her widow's estate does not *ipso facto* come to an end on her death but is only voidable by the next inheritor of the estate.[12] Where an *istimrari mokarrari* lease is granted to two persons jointly, the death of one of them does not put an end to the lease as regards half the share in the land leased. The lease does not terminate

20. AIR 1938 Nag. 506=ILR 1940 Nag. 269 (DB)+112 Ind. Cas. 651 (Lah)+AIR 1932 Lah. 586=13 Lah. 432 (DB).
1. AIR 1919 Cal. 586 (DB).
2. AIR 1928 P.C. 146=55 Ind. App. 212=7 Pat. 649.
3. 33 Mad. 260 (DB)+AIR 1925 Mad. 446.
4. AIR 1938 Nag. 506=ILR 1940 Nag. 269 (DB)+AIR 1964 M.P. 207 (DB).
5. AIR 1964 M.P. 207 (DB).
6. 18 Ind Cas. 899 (All.)+AIR 1953 Hyd. 231=ILR 1953 Hyd. 331 (DB)+31 All. 318 (DB)+AIR 1920 Lah. 217.
7. AIR 1921 Bom. 462 (DB).
8. 27 Bom. 515 (DB).
9. AIR 1935 P.C. 59+18 All. 440 (FB).
10. 1959-2 Andh W R 561 (DB).
11. AIR 1916 Mad. 911 (DB)+1918 Mad. 887 (DB).
12. 34 Cal. 329=34 Ind. App. 87 (PC).

till the death of the survivor, and therefore limitation for a suit under this Article does not begin on the happening of the foregoing happenings.[13]

7. Determination by efflux of time. A tenancy for a term of year will determine on the expiry of the term and no notice to quit or other formality is necessary for the determination of the tenancy.[14] Where it is established that a settlement is made annually by the landlord with the tenant, the tenancy terminates at the end of each year.[15] If the lessee holds over after the expiry of the term of lease and if no subsequent arrangement is arrived at between the lessor and the lessee creating a new tenancy, time begins to run under Article 139 of the Limitation Act against the lessor from the date of expiry of the term of lease.[16]

Renewal of tenancy. Tenancy may be renewed under the circumstances mentioned in S. 116 of the Transfer of Property Act.[17] Where no circumstances mentioned in S. 116 of the Transfer of Property Act are established, a suit by the landlord against the tenant would be barred after twelve years from the expiry of the term of the tenancy.[18] Where a lease which was determined by efflux of time provided that if the lessee did not vacate on the expiry of lease, he would pay enhanced rent but the lessee did not pay any rent at all after the expiry of the lease. It was held that the lease had not been renewed and for an ejectment suit, the date of determination of the lease would be the starting point of limitation.[19]

Where a tenancy is renewed, a landlord is entitled to sue for possession only on the termination of such renewed lease in the manner provided by law,[20] and a suit for possession by the landlord can be brought at any time within twelve years of the determination of the renewed lease.[1]

8. Determination by notice to quit. A notice to quit or of an intention to quit is a formal expression of the will of the party giving the notice that the tenancy shall terminate.[2] Where the tenancy has been formally terminated by a notice but the tenant dies thereafter and his heir continues in possession, a suit to evict him brought more than twelve years after the notice to quit will be barred by limitation.[3] But that does not mean that a notice once given is final. The notice may be withdrawn or ignored by the agreement of parties. Thus if a landlord serves a notice to quit on a tenant and, instead of taking further steps to evict him, accepts rent from him for a period of more than twelve years, the tenant cannot, if the landlord subsequently institutes an ejectment suit, take the plea that

13. AIR 1917 Cal. 746=43 Cal. 332 (DB)+AIR 1925 Pat. 228 (DB).
14. AIR 1940 Lah. 410 (DB)+AIR 1956 Assam 20=II.R (1955) 7 Assam 535 (DB)+7 Cal. 710 (DB)+7 Cal. L. Jour 615 (DB)+AIR 1934 Nag. 67=30 Nag. L. R. 155 (DB).
15. AIR 1929 Pat. 444 (DB).
16. 22 DLR 102 (DB)+AIR 1965 Orissa 11.
17. AIR 1921 Cal. 741=48 Cal 359 (DB).
18. 22 DLR 102 (DB)+AIR 1940 Lah. 410 (DB)+27 Mys. L. Jour 123 (DB)+22 Bom. 893 (DB)+AIR 1926 All. 584 (DB)+AIR 1922 All. 318=44 All. 583 (DB)+AIR 1927 Bom. 650 (DB). (18 Bom. 256 (DB). treated as *overruled*).
19. AIR 1965 Orissa 11.
20. AIR 1935 P. C. 59.
1. AIR 1956 Assam 20=II.R (1955) 7 Assam 535 (DB).
2. AIR 1918 P.C. 102=46 Cal. 458=45 Ind. App. 222.
3. AIR 1964 M.P. 207 (DB).

he has acquired a right to remain in occupation of the property by adverse possession.[4]

Construction of notice. The principles governing the construction of a notice to quit laid down by English cases are equally applicable to cases arising in India and they establish that notices to quit, though not strictly accurate or consistent in the statements embodied in them, may still be good and effective in law; that the test of their sufficiency is what they would mean to a stranger ignorant of all the facts and circumstances touching the holding to which they purport to refer, but what they would mean to tenants presumably conversant with all those facts and circumstances; and, further, that they are to be construed not with a desire to find faults in them which would render them defective, but to be construed *"ut res magis valeat, quam pereat".*[5]

Notice of eviction from part of tenancy. A notice to quit calling upon the tenant to quit a portion only of the demised land is not valid and will not have the effect of determining the tenancy.[6]

Mode of delivery of notice. A notice must be delivered to the tenant in one of the modes specified in the Civil Procedure Code. A mere advertisement in the newspaper cannot take the place of notice.[7] A notice by post is presumed to reach the addressee if its posting is proved and the presumption is still stronger in the case of a registered letter, whosoever may sign the acknowledgment.[8]

9. Surrender of tenancy. The surrender of a lease before the expiry of the term of the lease cannot determine under-leases.[9]

10. Forfeiture of tenancy. In cases not governed by the Transfer of Property Act, a disclaimer of title by the tenant or a breach of condition by him would not by itself determine the tenancy without any act on the part of the landlord showing the intention to determine the lease.[10] There can be no forfeiture by disclaimer in cases not governed by the Transfer of Property Act, unless the disclaimer is in matter of record and unless the elements of estoppel are present.[11]

11. Abandonment of tenancy. Under the Transfer of Property Act and the general law, abandonment by itself will not put an end to a tenancy unless it amounts to a surrender, express or implied, which necessarily involves the consent of the landlord.[12]

12. Effect of bar under the Article. Where a suit is barred under this article, the landlord's right to the property is extinguished under S. 28.[13]

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4. AIR 1941 Pat. 495.
5. AIR 1918 P.C. 102=46 Cal. 458=45 Ind. App. 222.
6. AIR 1918 P.C. 102=46 Cal. 458=45 Ind. App. 222.
7. 7 Bom. 474 (DB).
8. AIR 1918 P.C. 102=46 Cal. 458=45 Ind. App. 222.
9. 10 Suth W R 384 (DB).
10. AIR 1941 Lah. 248=II.R 1942 Lah. 252 (DB)+AIR 1929 Oudh 529=4 Luck 549 (DB)+24 Mad. 246 (DB)+AIR 1926 Cal. 193 (DB)+AIR 1914 Mad. 564=37 Mad. 1. (DB)+AIR 1924 Lah. 389.
11. AIR 1935 Bom. 41=59 Bom. 194 (DB).
12. AIR 1916 Cal. 454.
13. PLD 1968 Dacca 701=19 DLR 705 (DB)+AIR 1922 P.C. 184.

13. Nature of tenant's possession. The possession of a tenant during the period of his tenancy is only permissive.[14] It is not adverse to the landlord.[15] A tenant who has been let into possession by his landlord cannot deny his landlord's title, however defective it may be so long as he has not openly restored possession by surrender to the landlord.[16] An assertion of a right by the tenant inconsistent with that of the landlord under the terms of the lease, would be protanto a disclaimer of title.[17] He cannot acquire, by the operation of the Law of Limitation, title as owner or any other title inconsistent with that under which he was let into possession.[18] In other words where certain persons come into possession as tenants they cannot acquire proprietary title by adverse possession unless adverse possession had been asserted by them to the knowledge of their landlords.[19] Similarly a person who is, in fact, in possession of land under a tenancy or occupancy title cannot by a mere assertion in a judicial proceeding and the lapse of six or twelve years without that assertion having been successfully challenged, obtain a title as an under-proprietor to the land.[20]

Non-payment of rent--effect. The mere failure of the tenant to pay rent cannot make his possession adverse to the landlord.[1]

After determination of tenancy. Where a tenant holds over after the determination of the tenancy and the landlord has not assented to such holding over by receipt of rent or otherwise, the possession of the tenant under such circumstances is wrongful.[2] But such possession is not adverse to the owner.[3] Therefore where the defendant in a suit for possession pleaded that his possession had been adverse to the plaintiff for the statutory period and at the same time relief on Art. 139 as barring the plaintiff's suit it was observed that the appellant's plea of adverse possession was inconsistent with the application of Art. 139 which relates to the case of a landlord suing to recover possession from a tenant.[4] Where however the defendants being the legal representatives of the tenant holding over are not tenants on sufferance but hold the property under an independent title of their own, then Art. 139 would not apply at all.[5] Where after the landlord

14. 6 Cal. 311 (DB)+AIR 1953 Pepsu 101.
15. 3 Suth W R 73=Beng. L R (Supp Vol) 182 (FB)+29 Cal. 518=29 Ind. App. 104 (PC)+AIR 1959 Pat. 500+AIR 1957 All. 346+AIR 1934 All. 722. (Tenant cannot hold adversely in the landlord by the mere fact of encroachment).
16. AIR 1915 P.C. 96=37 All. 557=42 Ind. App. 202.
17. 27 Bom. 515 (DB)+AIR 1925 Oudh 601+AIR 1925 Oudh 751.
18. AIR 1941 Cal. 33+AIR 1952 Pat. 43+AIR 1949 Nag. 265=ILR 1948 Nag. 978+AIR 1941 Pat. 495+AIR 1923 P.C. 205=47 Bom. 798=50 Ind. App. 255.
19. AIR 1953 Pepsu 101+AIR 1951 All. 634.
20. AIR 1923 P.C. 118=50 Ind. App. 202=26 Oudh Cas. 231=45 All. 419.
1. AIR 1922 P.C. 272=49 Ind. App. 399=2 Pat. 38+2 All. 517 (FB)+AIR 1948 Mad. 275=ILR 1948 Mad. 757 (FB)+ILR (1952) 1 Cal. 288+AIR 1953 Orissa 92+AIR 1933 Pepsu 101.
2. 28 Bom. L. R. 1357 (DB)+AIR 1960 Pat. 156+AIR 1939 Lah. 455+AIR 1925 Pat. 17=25 Cri L. Jour 919 (DB)+21 Mad. 153 (DB)+AIR 1927 Bom. 192=51 Bom. 149 (DB)+AIR 1927 All. 821+AIR 1924 Cal. 445 (DB)+AIR 1917 Mad. 901=39 Mad. 54 (DB).
3. AIR 1925 All. 698+AIR 1917 Mad. 735 (DB)+18 Bom. 507 (DB)+31 Mad. 163 (DB)+18 Bom. 253 (DB)+AIR 1928 Cal. 546=56 Cal. 15 (DB)+AIR 1917 Cal. 498 (DB)+AIR 1915 Mad. 345 (DB).
4. AIR 1934 P.C. 77=61 Ind. App. 50=56 All. 111+AIR 1940 Lah. 410 (DB).
5. AIR 1954 All. 475=ILR (1955) 1 All. 622 (DB).

demanded payment of rent and also the arrears for three years and thereby assented to the tenant's continuing in possession, which gave rise to a fresh tenancy in accordance with the provisions of S. 166 of the Transfer of Property Act and the tenants repudiated the tenancy and set up an adverse title, it was held that a fresh cause of action arose in landlord's favour to file a suit for possession of property on the basis of title within 12 years of the repudiation of title under Art. 144, the cause of action arising on the date of repudiation of the landlord's title and that Art. 139 was not applicable.[6]

Order of ejectment passed against tenant. When an order of ejectment from a property is made against a tenant his possession over it therefore becomes hostile and unauthorised and if the possession is not obtained by the owner or the landlord from the tenant within twelve years of the date of decree, then he loses his right to execute the decree and the tenant can set up a claim of adverse possession.[7]

Adverse possession against tenant--effect. Possession adverse against a tenant cannot be adverse against the landlord until the termination of the tenancy.[8]

14. Special or local law. Where a special or local law prescribes a period for suits for possession by a landlord against a tenant this article will not apply.[9]

15. Tenancy-at-will. A tenant-at-will is not a mere trespasser.[10] He is always in by right; but a tenant on sufferance holds over by wrong after the expiration of a lawful title.[11]

Termination of tenancy. A tenancy-at-will is determinable at the will of either the landlord or the tenant.[12] No previous notice is necessary before bringing a suit for ejectment, of a tenant-at-will,[13] and the landlord may file ejectment suit straightaway without serving any notice of ejectment on him.[14] Where tenants-at-will stopped paying *batal* to the landlord, a suit by the landlord, for their ejectment will be governed by this Article. Art. 142 or 144 has no application to the case.[15]

16. Permanent tenancy. No suit will lie to eject a permanent tenant on the basis of a notice to quit.[16]

Proof of. Where in a suit for ejectment the defendant sets up a permanent tenancy, the onus is upon him to substantiate his claim.[17]

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6. AIR 1954 All. 475=ILR (1955) 1 All. 622 (DB).
7. 1990 MLD 83.
8. AIR 1960 Pat. 392 (DB).
9. AIR 1938 All. 213+29 Ind. Cas. 474 (DB) (All)+18 Cal. L. Jour 597 (DB).
10. 8 Moo Ind App 43 (PC).
11. 22 Bom. 893 (DB).
12. AIR 1926 Sind. 71=21 Sind L. R. 185 (DB).
13. 6 DLR 577+AIR 1938 Nag. 506=ILR 1940 Nag. 269 (DB)+2 Mad. 346 (DB).
14. 6 DLR 577+8 Moo Ind. App. 43 (PC).
15. 1974 SCMR 45.
16. AIR 1927 All. 342+AIR 1917 Cal. 236 (DB).
17. AIR 1920 P.C. 67=43 Mad. 567=47 Ind. App. 76 (Mere proof of long possession is not sufficient to discharge the onus)+AIR 1929 P.C. 156=52 Mad. 549=56 Ind. App. 248+AIR 1948 Mad. 275=ILR 1948 Mad. 757 (FB).

17. Void lease, possession under. Where a person enters on a property under a void lease, his possession would be adverse to the owner to the extent of the right in the assertion of which the property is possessed.[18] But where under the belief that the lease is valid the owner goes on receiving rent from the tenant, a suit by the owner for possession against the person who enters on the property under the invalid lease will be governed by this article.[19]

18. Encroachment by tenant. A tenant encroaching upon other property of the landlord does not merely by reason of such encroachment, become a tenant of such property also and the landlord can sue him in ejectment.[20] If a tenant continues in possession of the property encroached upon for twelve years, he will acquire over such property the same rights of tenancy as he had over the land originally demised and a suit by the landlord for ejecting him will be barred.[1] If the tenant has been holding the land for twelve years in the assertion that it forms part of the original holding and that he is not liable to pay any additional rent, he acquires by prescription a right to hold the land without any additional liability for rent.[2]

Adverse possession of land of third person. A tenant encroaching upon an adjoining land belonging to a third party and obtaining it by adverse possession obtains it for the benefit of the landlord who gets a title to the land encroached upon.[3] But in that case no additional rent could be claimed by the landlord in respect of the land encroached upon.[4] A tenant continuing in possession of the property encroached upon can prescribe for a higher title provided that he has asserted such title to the knowledge of the landlord for the statutory period.[5]

19. Pleadings. A defendant in a suit for possession can plead in the alternative both tenancy and the bar of limitation.[6]

140. By a remainderman, a reversioner (other than a landlord) or a devisee, for possession of immovable property.	[7][Twelve years]	When his estate falls into possession.	

18. AIR 1941 Cal. 33+64 Ind. Cas. 756 (Cal.)+AIR 1928 Bom. 377+25 Mad. 507 (DB)+AIR 1937 Mad. 126.
19. 22 Bom. 1+13 Suth W. R. 267 (DB).
20. 25 Cal. 302 (DB)+2 Cal. L. Jour 125 (DB).
1. AIR 1928 Pat. 63 (DB)+AIR 1947 All. L Jour 667+31 Mad. 163 (DB)+AIR 1917 Pat. 471=2 Pat. L. Jour 596 (DB)+AIR 1929 Lah. 469+35 Mad. 618 (DB)+AIR 1925 Cal. 193 (DB)+AIR 1918 Cal. 154 (DB)+AIR 1926 Oudh 393=1 Luck. 469 (DB).
2. 16 Cal. W. N. 235 (DB)+AIR 1928 Pat. 63 (DB)+AIR 1929 Lah. 469.
3. AIR 1919 Cal. 378 (DB)+53 Cal. W. N. 879+AIR 1935 Cal. 771=63 Cal. 497 (DB)+AIR 1928 Lah. 351.
4. AIR 1928 Cal. 142 (DB).
5. AIR 1939 Pat. 587 (DB)+AIR 1921 Cal. 577 (DB)+AIR 1917 Cal. 469 (DB).
6. AIR 1914 Cal. 173 (DB)+AIR 1926 Cal. 364 (DB).
7. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

Synopsis

1. Scope.
2. "Remainderman."
3. "Reversioner."
4. Landlord, suit for possession.
5. Suit by successor of remainderman.
6. Suit must be for possession of immovable property.
7. Starting point of limitation.
8. Burden of proof.

1. Scope. This article applies to a suit by a remainderman, reversioner or devisee for possession of immovable property to which the plaintiff is entitled as such remainderman reversioner or devisee.[8] Thus where *A* grants by his will a life estate to *B* with remainder to *C* but during the currency of the life estate in favour of *B*, *D* wrongfully takes possession of the property, *C*'s suit against *D* will be governed by this article and *C* will be entitled to a period of twelve years from the time when his estate falls into possession on the death of *B*.[9] *A* mortgaged certain property to *B* and then by will, devised the property for life to *C* with remainder to *D*. During the currency of *C*'s life-estate, *B* transferred the property for consideration to *E*. *C* failed to sue for possession during his lifetime and after his death *D* sued *E* for possession. It was held that the case was governed by this article and not by Art. 134 and that *D* had a period of twelve years from his estate falling into *E*'s possession within which to bring his suit questioning the absolute title claimed by *E* under the transfer.[10] Where the suit is based on a cause of action which has already accrued to the person from whom the remainderman, etc., derives his title, this article will not apply.[11]

Possession, nature of. Word "possession" in Arts. 140 and 141 is not qualified to mean any particular type of possession. It bears wider connotation to cover any type of possession in the light of facts of a given case.[12]

Suit by legal heir. Article 140 does not apply to suit for possession by a legal heir inheriting estate of deceased.[13]

Adverse possession against life tenant. Adverse possession against a life tenant will not bar the reversioner or remainderman succeeding to the estate on the death of the life-tenant.[14]

Suit against representative of life-tenant. On the death of the life-tenant a suit by the remainderman or reversioner for possession against the representative of the life-tenant who may be continuing in possession will be within this article.[15]

Possession of remainderman. Where property is granted by way of remainder, etc., to two or more persons and one of them takes possession, his

8. AIR 1925 Pat. 68 (FB).
9. 12 Cal. 594 (DB).
10. AIR 1929 P.C. 158=56 Ind. App. 192=51 All. 367. (*Reversing* AIR 1925 All. 707).
11. AIR 1929 P.C. 158=51 All. 367=56 Ind. App. 192.
12. NLR 1986 Civ. 209=PLD 1986 Pesh. 10=PLJ 1986 Pesh 25.
13. PLD 1982 AJ&K 19=NLR 1982 AC 128.
14. AIR 1935 Cal. 702=63 Cal. 155 (DB)+AIR 1924 Pat. 721=3 Pat. 880 (DB)+95 Ind. Cas. 18 (Nag.)+AIR 1927 Nag. 104=22 Nag. L R 175.
15. 1912 Mad. W N. 669 (DB).

possession will be deemed to be on behalf of all in the absence of evidence of ouster, and a suit for possession by the others will not be governed by the article.[16]

Suit, against whom lies. A suit coming within this article may be against anybody who is in possession of the immovable property.[17]

Plea of limitation, when may be raised. Plea of limitation being legal right could be raised in every civil matter even if such plea was not taken in plaint.[18]

2. **"Remainderman."** A person to whom property is given by way of a contingent remainder will be also a remainderman within the article.[19] Thus where in a partition in a joint Hindu family certain properties are allotted to the father for life, to be divided among the sons after his death, the sons have a vested remainder in the properties.[20] But where a Hindu widow alienates her husband's property without any legal necessity and then adopts a son, the adopted son acquires a complete and absolute title to the alienated property immediately on adoption and not merely as a remainder.[1]

3. **"Reversioner."** The terms "remainderman", etc., in this article are used in the technical sense which they have under the English Real Property Law.[2] The term "reversioner" only applies to a donor or his representative to whom the remainder of an estate reverts, such remainder not having been disposed of by the donor.[3] A Hindu widow adopts a son. On disputes arising between the widow and the son, an arrangement is entered into under which the widow is to have property left by the widow's deceased husband for life. A suit for possession of the property by the adopted son or his representative after the death of the widow will be a suit by a reversioner within this article.[4] Where the widow is entitled to hold the estate for her life under an ante-adoption agreement made with the natural father of the adopted son. A suit for possession of the property by the adopted son or his representative after the death of the widow, will be a suit by a reversioner within this article.[5] Where *A* is entitled to an estate on the death of *B* to whom a prior estate in the same property has been given, *B's* suit for possession will be within this article although *B's* estate may not be life-estate in the strict sense of the term.[6] Where *A*, a Hindu, grants by his will an estate to *B*, his widow, for life with remainder to any son that may be adopted by her. She adopts a son, but the adoption set aside as invalid. On the death of the widow, the plaintiff claims the estate as the heir of *A*. The plaintiff claims not as reversioner within the meaning of this article.[7] The article applies only where a person first succeeds to a property

16. 5 Mad. L. Tim. 103.
17. AIR 1930 Lah. 430 (DB).
18. PLD 1986 Pesh. 30.
19. AIR 1929 P.C. 158=56 Ind. App. 192=51 All. 367. (An equity of redemption can be conferred by way of a remainder).
20. AIR 1923 Bom. 415 (DB).
1. AIR 1918 Mad. 469=41 Mad. 75 (FB). (26 Mad. 143 (DB). *overruled.*)
2. 1895 Pun Re. No. 18, p. 69 (FB)+AIR 1924 Pat. 721=3 Pat. 880 (DB).
3. 26 Mad. 143 (DB)+AIR 1924 Pat. 721=3 Pat. 880 (DB)+21 Bom. 646 (DB)+1895 Pun Re No. 18, p. 69 (FB)+AIR 1918 Lah. 21+19 Bom. 809 (DB).
4. AIR 1921 Cal. 687 (DB).
5. AIR 1935 Cal. 702=63 Cal. 155 (DB).
6. 65 Ind. Cas. 826 (DB) (Cal.).
7. AIR 1924 Pat. 721=3 Pat. 880 (DB).

as an heir and not to cases where after succeeding to a property as heir he grant the property to another by way of a limited interest and becomes entitled to the property again on the termination of such interest.[8]

4. **Landlord, suit for possession.** A suit by a landlord for recovery of possession against his tenant on the termination of the tenancy will not fall within this article.[9] But a suit by a landlord for possession against a third party who has dispossessed the tenant will be within this article.[10] Therefore where a tenant has abandoned the tenancy and a third person gets into possession and claims to hold it adversely both to the landlord and the tenant, the landlord's suit for possession against such third party must be brought within twelve years of such third party entering into possession.[11]

5. **Suit by successor of remainderman.** This article applies to a suit by the successor of the remainderman who claims as representing the interest of such remainderman, etc.[12]

6. **Suit must be for possession of immovable property.** A suit for possession by a remainderman, etc., alleging that the instrument under which the defendant is holding the property is not binding on the plaintiff, is governed by this article and not by Art. 91.[13] Similarly a suit for possession by a remainderman, etc., challenging the adoption under which the defendant claims to be in possession, is governed by this article and not by Article 118.[14] Where setting aside of an instrument is necessary before possession can be obtained, the suit though framed as one for possession must be treated as one to set aside the instrument.[15]

7. **Starting point of limitation.** The question as to when the defendant's possession became adverse to the plaintiff as not relevant under this article.[16] The starting point of limitation is the date when the estate falls into possession.[17] Where successive life-interests have been created, the remainderman or reversioner will be in time if he institutes the suit for possession within twelve years of the death of the last life-tenant.[18] Where a landlord sues a third party who has dispossessed his tenant, for possession, limitation for the suit will commence to run from the date when the tenancy expired.[19] Under the Hindu law, the right of a devisee under a will accrues immediately on the death of the testator and no limitation for a suit by such devisee for possession of immovable property devised to him will run from the death of the testator.[20]

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8. AIR 1914 Lah. 458 (DB).
9. 37 Cal. 674 (DB).
10. 9 Cal. 367 (DB) + AIR 1922 Cal. 544 (DB).
11. 1912 Mad. W. N. 669 (DB).
12. AIR 1921 Cal. 687 (DB) + AIR 1922 Bom. 337 (DB) + 5 Mad. L. Tim. 103.
13. 27 Cal. 156 = 26 Ind. App. 216 (PC) + 1903 Pun Re No. 56, p. 246 (FB).
14. 21 Bom. 159 = 1897 Pun Re No. 55, p. 243 + 14 Cal. 401 (DB).
15. AIR 1929 Mad. 313 (DB).
16. AIR 1916 Bom. 300 = 40 Bom. 239 (DB).
17. 9 Cal. 934 (FB) + AIR 1931 Oudh 177 + 14 Mad. 495 (DB).
18. AIR 1935 Cal. 702 = 63 Cal. 155 (DB).
19. 8 Suth W R 135 (DB) + 9 Cal. 367 (DB).
20. 14 Cal. 801 = 14 Ind. App. 168 (PC) + AIR 1931 P.C. 196 = 10 Pat. 851 = 58 Ind. App. 279.

8. Burden of proof. The burden of proving that the suit has been brought within twelve years from the date on which the estate fell into possession is on the plaintiff.[1] Where plaintiff never remained in possession of property a suit brought after statutory period of 12 years was barred by limitation.[2] Where the plaintiff claims as a remainderman or reversioner entitled to possession on the termination of a life-estate the burden of proving that the life-tenant died within twelve years of the suit is on the plaintiff.[3] Where the suit is brought within twelve years of the termination of the limited estate, the burden is on the defendant to prove that limitation began to run when the last full owner was in possession so as to avoid the operation of this article.[4]

141.	Like suit by a Hindu or Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female.	[5][Twelve years]	When the female dies.

Synopsis

1. Scope.
2. "Like suit."
3. Property not held as heir.
4. "Hindu or Muslim."
5. "Entitled."
6. "On the death of female."
7. Suit by transferee from a Hindu, etc.
8. Remarriage of widow.
9. Surrender by widow.
10. Immovable property.
11. Suit must be against person in possession.
12. Validity of alienation immaterial.
13. Adverse possession against female--effect.
14. Adverse possession against last male owner.
15. Alienations by female.
16. Limited owner setting up full title.
17. Suit involving declaration as to adoption.
18. mistake as to shares of reversioners.
19. Redemption of mortgage made by last male holder.
20. Onus of proof.
21. Starting point of limitation.
22. Local and special laws.

1. Scope. The article is restricted to suits by plaintiff whose title and right, as the heir, to sue for possession, accrue upon the death of a female holding a woman's qualified estate under the Hindu or Muslim law.[6] In order to claim the

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1. AIR 1916 Bom. 300=40 Bom. 239 (DB).
2. PLD 1986 Pesh. 30.
3. AIR 1922 Lah. 124 (DB).
4. AIR 1935 Cal. 702=63 Cal. 155 (DB).
5. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".
6. AIR 1924 Pat. 721=3 Pat. 880 (DB).

benefit of the Article the plaintiff must prove that there was a qualified estate in a Hindu or a Muslim female that he was entitled to possession after her death as the heir of the last male holder, and that having regard to the existing law, he was entitled to possession on the date of the suit.[7] Article 141 is inapplicable when time has commenced to run against the last full owner, as in such a case it continues to run and is not suspended or arrested by the fact that the owner is succeeded by a female entitled to a woman's qualified estate; after the statutory period has run out. All persons claiming through the owner are barred.[8]

Hindu female. It is only on the death of the Hindu female succeeding to the last male owner that the succession opens for the Hindu reversioner and he become entitled to get possession of the property.[9] In other words plaintiff's cause of action is the death of the female,[10] and a decree passed in a suit under Art. 141 must be on the basis that the possession of the transferee from the widow was unlawful ever since the widow died.[11]

Muslim female. Limited estates of Muslim female under custom stand finally abolished under the W.P. Muslim Personal Law (Shariat) Application Act, 1962. As to life interest existing previously the right to inherit property commences from the point of time when the life interest terminates. When this happened even he who had life interest only became entitled to inherit property according to Shariat. This means that all heirs who are entitled to inherit the property according to Shariat, are entitled to claim inheritance from the point of time on which life interest ceases.[12] It follows that even where a limited owner has alienated property. The heirs are not bound to challenge the alienations during her lifetime. They can seek possession of alienated property or her death within the period specific in the Article.[13]

A limited estate held by a Muslim female under a will is governed by this Article. Thus where a Muslim died leaving a will by which certain properties were bequeathed to *A* to be enjoyed by her during her lifetime and after *A*'s death some of them were to go to *B* and some of them where to go to *C*. Within six years of *A's* death *B* brought a suit for declaration of title and possession of the properties bequeathed to him against the alienee of the property. It was held that the suit was governed by this Article and not by Art. 142 and was not barred by limitation when there was no evidence to show that *A* was not in possession till her death.[14]

Adverse possession. Prescription does not run against a party under disability or who is unable to act.[15] Therefore where this article, applies, no question of adverse possession arises.[16]

7. AIR 1924 Pat. 721 = 3 Pat. 880 (DB).
8. AIR 1964 Andhra Pradesh 326 (DB) + AIR 1922 Mad. 59 + AIR 1921 Mad. 272.
9. AIR 1938 P.C. 254 = ILR (1938) 2 Cal. 653 = 32 Sind. L. R. 918 = 65 Ind. App. 365 + AIR 1953 S.C. 125 = 1953 S.C.R. 503 + AIR 1954 Pepsu 85 = ILR 1954 Patiala 44 (DB).
10. AIR 1925 P.C. 127 = 21 Nag. L. R. 127.
11. AIR 1952 S.C. 109 = 1951 S.C.R. 655.
12. PLJ 1974 S.C. 65 + PLD 1970 Peshawar 150 (DB).
13. PLJ 1974 S.C. 65.
14. ILR 1954 Mys. 212.
15. AIR 1928 Oudh 155.
16. AIR 1940 Mad. 102.

Forum for decision as to applicability of Article. The question as to the applicability of this Article should be decided after due inquiry by the trial Court.[17]

Punjab Limitation (Custom) Act, effect of repeal of. After the enforcement of the Act, 1 of 1920 the provisions of the Act were made applicable to the suits to which Article 141 of the Limitation Act was applied. The period of limitation for a suit for possession where a declaratory decree was obtained was reduced to three years. The Act was repealed subsequently and the question before the Court was whether the repeal revived the period of limitation under Art.141, and thus the suit which had become time barred under Act, 1 of 1920 stood revived. It was held that the suit barred by limitation under the Punjab Act would not be revived by its repeal.[18]

2. "Like suit." Words "like suit" show that this article is to be read along with Art. 140.[19] It is an extension of Art. 140 with special reference to persons succeeding to an estate upon the cessation of the peculiar estate of a limited owner under the Hindu law.[20] The language of Art. 141 does not require that a suit by a Hindu for the possession of property left by a Hindu female must be founded on some rule of Hindu law.[1] The application of this article has been extended to Muslims also but the strict idea of reversioners which is to be found in Hindu law cannot be said to be applicable to Muslims. It is, therefore, necessary, according to the import of the language as well as logic, that Article 141 should be applicable to those suits which are analogous to the suits which are the subject-matter of Article.140.[2]

The words "like suit" cannot imply 'that the suit must be in respect of an estate created in the same way as the estate upon whic'_ the estate in remainder or reversioner contemplated by Art. 140 leans or that it must be an estate characterized by the same incidents which attach to such a particular estate.[3] Thus where one sister obtains possession of the whole property from a stranger on the death of her mother and another sister sues her for her share, the suit will be governed by Art. 144.[4] Similarly the article will not apply where some of the co-heirs get into possession after the death of the female, as their possession will be presumed to be on behalf of all.[5] Where *A, B* and *C* entered into a compromise by which they left certain property to *D*, a Hindu widow (who was not entitled to it as an heir), after whose death it was to revert to them. *A* after *D's* death sued for possession of his share of the property; this Article did not apply to the suit.[6] A

17. PLD 1966 Azad J & K 59.
18. PLD 1974 Lah. 458.
19. PLD 1970 Pesh. 150 (DB) + AIR 1918 Oudh 32 = 21 Oudh Cas. 1 (DB).
20. AIR 1916 Bom. 300 = 40 Bom. 239 (DB).
1. AIR 1959 Punj. 123 = ILR 1958 Punj. 2258 (DB).
2. PLD 1970 Peshawar 150 (DB).
3. AIR 1916 Oudh 50 = 18 Oudh Cas. 289 (DB).
4. 64 Ind. Cas. 462 (All).
5. AIR 1951 J&K 21 = 10 J & K L R 26 (DB). (Article 141 contemplates that the person against whom the suit is brought is a total stranger who got into possession of the property).
6. AIR 1914 Lah. 458 (DB). (*But see* AIR 1934 Bom. 110 = 58 Bom. 280 (DB) + AIR 1935 Cal. 702 = 63 Cal. 155 (DB).

suit for a declaration of right to property;[7] or a suit for the construction of a will or codicil is not within this article.[8]

3. **Property not held as heir.** This Article applies even where a female is not in possession but holds in some other capacity.[9] Thus where certain properties were given to a Hindu widow by a compromise decree to belong to her for life and to revert to *A* after her death *A's* heirs instituted a suit for possession of the property within twelve years of the death of the widow but beyond twelve years of alienation made by her in breach of the condition against alienation; it was held, that Articles 142 and 143 did not apply to the suit.[10] It has been held that this Article applies where a female is in possession not as an heir but under an award,[11] or by virtue of having acquired limited estate by adverse possession,[12] or by custom.[13]

4. **"Hindu or Muslim."** The "Hindu or Muhammadan" contemplated by this article may be a male or a female.[14] The word 'Hindu' in this article must be taken to mean not only a person who is ethnologically a Hindu but also a person who has the legal status of a Hindu and is governed in the matter of inheritance by the Hindu law.[15]

5. **"Entitled."** The word "entitled" means "entitled independently of the right of the Hindu or Muhammadan female".[16] Therefore a suit by an heir for possession of the property inherited by him from the female who was full owner of the property is not governed by this article.[17]

Suit for possession. This article merely refers to a suit for possession and does not suggest that the reversioner has got to set aside any transaction before he becomes entitled to possession.[18]

Mortgaged property. A suit for redemption would not be barred under this article even though it was filed more than twelve years after the death of the female.[19] But a suit by the reversioner for possession only, without asking for redemption is not maintainable nor is it governed by Art. 141.[20]

Suit against person holding adversely to widow. A suit for possession against a person holding adversely to the widow is not governed by this Article. Thus where a widow has validly let out the property to a tenant-at-will who holds over and the

7. AIR 1930 Bom. 545 = 54 Bom. 837 (DB) + AIR 1936 Lah. 835.
8. 20 Cal. 906 (DB).
9. AIR 1930 Oudh 481 (DB).
10. 8 Cal. 224 = 8 Ind. App. 210 (PC).
11. AIR 1937 All. 268 (DB).
12. AIR 1934 Oudh 190 = 9 Luck. 484 (DB).
13. AIR 1937 Oudh 4 = 12 Luck. 592 (DB) + 1892 Pun Re No. 31, p. 123 (FB).
14. 3 Nag. L. R. 35 + AIR 1952 Bom. 395 = ILR 1952 Bom. 621 (DB) + AIR 1916 All. 47 = 38 All. 117 (DB) + AIR 1937 All. 188.
15. AIR 1946 Nag. 277 = ILR 1946 Nag. 159 (DB).
16. AIR 1918 Oudh 32 = 21 Oudh Cas. 1 (DB) + AIR 1923 Oudh 185 = 26 Oudh Cas. 133 (DB).
17. 10 All. 343 (DB) + AIR 1918 Oudh 32 = 21 Oudh Cas. 1 (DB) + AIR 1923 Oudh 185 = 26 Oudh Cas. 133 (DB) + AIR 1918 Bom. 142 = 42 Bom. 714 (DB).
18. AIR 1939 Mad. 824 = ILR 1939 Mad. 917 (DB).
19. 1888 Pun Re No. 10, p. 23 (DB).
20. 11 All. L. Jour 179.

reversioner sues for possession after the death of the widow, this article will not apply and time will not run from the death of the widow but from the date when an adverse title is set up by the tenant.[21]

6. **"On the death of female."** This Article would apply only to suits for possession on the death of a female who held the property. After the death of the adoptive father there was a compromise between his widow and the adopted son in 1916 by virtue of this compromise, the adopted son put the widow in possession of the land to enjoy the produce of the land for her life. In the compromise, there was a stipulation that the widow should not sell or mortgage the property. The widow sold the land to defendant in 1924. After the death of the widow in 1942, the adopted son brought a suit in 1943 against the defendant for possession. It was held, that as the life estate was created in favour of the widow the right to sue accrued on the death of the widow under this Article.[1] Where title of property has already passed to the plaintiff, on the death of the female, a mere suit for possession would not be governed by this Article. Thus a suit by the adopted son for possession of the property got on the death of the adoptive mother is not within this article.[2] Similarly a suit by a son adopted by the last full owner for possession on his death, would be governed not by this article but by Art. 144.[3]

Alienation by widow before adoption. Alienation by Hindu widow before adoption is not good till the lifetime of the adoptive mother so as to enable the adopted son to take advantage of this article and file a suit within twelve years of her death.[4]

Adverse possession against widow. Adverse possession against a widow can be adverse to the son adopted by her only from the date of his adoption.[5] Where *Y* was in adverse possession of the estate inherited by *A* and *B* for more than twelve years, *Y* would get absolute title to interest of *A* and *B* in property under S. 28 and *B* cannot, after *A*'s death, contend that as to *A*'s share she got fresh right to sue for possession.[6]

7. **Suit by transferee from a Hindu, etc.** This Article applies to a suit by transferee from reversioner entitled to possession on the death of a Hindu or Muslim female.[7]

8. **Remarriage of widow.** Remarriage of a limited owner amounts to her civil death. Therefore a suit by the next reversioner for possession of property on

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21. 1906 Pun Re No. 90, p. 32.
1. ILR 1954 Madh-B 155.
2. AIR 1918 Mad. 469=41 Mad. 75 (FB) (*Overruling* 26 Mad. 143)+AIR 1928 Oudh 155+33 Bom. 88 (DB)+19 Bom. 809 (DB)+2 Cal. L. Jour 87 (DB).
3. 1904 Pun Re No. 3, p. 15 (6 Mad. L. Jour 188, *Dissented from*).
4. AIR 1918 Mad. 469=41 Mad. 75 (FB)+33 Bom. 88 (DB).
5. 26 Mad. 143 (DB). (*Overruled* on another point in AIR 1918 Mad. 469=41 Mad. 75 (FB)+19 Bom. 809 (DB)+AIR 1921 Nag. 111=17 Nag. L. R. 18 (DB)+2 Bom. L. R. 411 (DB)+2 Cal. L. Jour 87 (DB).
6. AIR 1915 Cal. 234 (DB). (Letters Patent Appeal *Affirming* AIR 1915 Cal. 232).
7. 14 Ind. Cas. 71=1912 Pun Re No. 52 (DB)+AIR 1916 Mad. 709 (DB)+20 All. 42 (DB)+AIR 1922 Mad. 59=45 Mad. 370 (DB)+AIR 1915 Cal. 629 (DB)+AIR 1920 Pat. 291 (DB)+AIR 1934 Lah. 633+AIR 1936 Oudh. 340.

the ground of remarriage of the widow would be governed by Art. 141.[8] But where alienation by the widow is not for legal necessity and she remarries after it. She has broken the condition under which she held the property. Therefore Art. 143 would apply to a suit by the reversioner for possession.[9]

9. **Surrender by widow.** Where a Hindu female owning a limited estate under the Hindu law surrenders her estate to the next reversioner, she effaces herself from the succession as if she had died and the inheritance is accelerated in favour of the next reversioner.[10] A suit by the surrenderee for possession of the estate surrendered is not governed by this article,[11] and there is no difference in principle whether the surrenderee is a male or female reversioner.[12] Thus where *A*, a Hindu widow surrenders her estate in favour of her daughter *B*, *B* dies before *A*. The next male reversioner brings a suit for possession of property, the cause of action would be death of *B* and not death of *A*.[13] Where a Hindu widow allows a portion of the property to remain in possession of another claimant in pursuance of a compromise decree and subsequently surrenders the entire estate in favour of the reversioner, the cause of action for a suit to recover possession of the property given under the compromise decree arises to the reversioner on the date of the surrender and he need not wait until the actual death of the widow.[14]

Alienation of property before surrender. One view is that where it is not a condition precedent to the maintainability of the suit for possession after the death of the female that the plaintiff should have obtained a declaration as to the invalidity of the alienation,[15] the suit for possession will be governed by this Article.[16] But the other view is that as there is acceleration of inheritance in favour of the reversioners by reason of surrender by a Hindu widow, and they become competent to recover possession of the properties alienated by the widow even in that case by evicting the alienees and are not bound to wait till the widow actually dies that is to say, the starting point of limitation is the date of the surrender, and not the death of the widow.[17] Thus where a Hindu widow allows a portion of the property to remain in possession of another claimant in pursuance of a compromise decree and subsequently surrenders the entire estate in favour of the reversioner, the cause of action for a suit to recover possession of the property given under the compromise decree arises to the reversioner on the date of the surrender and he need not wait until the actual death of the widow.[18]

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8. AIR 1915 Nag. 57=11 Nag. L. R. 86+AIR 1930 Lah. 294 (DB).
9. AIR 1960 Pat. 564 (DB).
10. AIR 1919 P.C. 75=47 Cal. 466=46 Ind. App. 259+AIR 1934 P.C. 105=61 Ind. App. 200=57 Mad. 749+10 Cal. 1102 (FB).
11. 12 Ind. Cas. 431 (Lah).
12. AIR 1934 P.C. 105=61 Ind. App. 200=57 Mad. 749.
13. AIR 1924 All. 166=46 All. 59 (DB). (*Approved in* AIR 1934 P.C. 105)+AIR 1931 Mad. 218 (DB). (*Affirmed in* AIR 1934 P.C. 105).
14. AIR 1952 All. 875 (DB).
15. 31 Bom. 1 (DB)+AIR 1915 Bom. 242=40 Bom. 51 (DB)+AIR 1923 Pat. 122=2 Pat. 217 (DB)+34 Cal. 329=34 Ind. App. 87 (PC)+1902 Pun Re No. 84, p. 337+AIR 1918 Mad. 659 (DB)+3 Nag. L. R. 35.
16. AIR 1915 Mad. 656 (DB).
17. AIR 1957 Mad. 90 (DB) (AIR 1954 S.C. 61, *Followed*)+AIR 1960 Andh Pra 222 (DB)+AIR 1957 Andh Pra 945 (DB) (Such a suit is governed by Art. 144 and not by this article).
18. AIR 1952 All. 875 (DB).

Part of property not surrendered. Where surrender was made by a female reserving some property to herself for maintenance. On her death a suit brought by an their for possession of such property would be governed by this article.[19]

10. Immovable property. This Article does not apply to suits to recover movable property.[20] Thus the Article would not apply to suit for recovery of a right of *malikana*,[1] or money into which immovable property is converted.[2] Shebaitship is property of a peculiar and anomalous character, and it is difficult to say that it comes under the category of immovable property as it is known in law. A suit for possession of a *shebaiti* right is governed by Art. 124 and not by this Article.[3]

An interest of a mortgagee of immovable property is immovable property.[4] Similarly a share in the partnership of a ginning factory is immovable property and the Article applies to suits for its recovery.[5]

11. Suit must be against person in possession. A suit by a Hindu reversioner for possession against the alienee from a Hindu female who is dead, is within this article.[6] But if, on the death of the female no one was in possession but several years later, the defendant got into possession, a suit by the reversioner will be governed by this Article.[7]

12. Validity of alienation immaterial. It is not a condition precedent to the maintainability of a suit for possession after the death of the female that the plaintiff should have obtained a declaration as to the invalidity of the alienation.[8] Therefore though he who may be termed as a presumptive reversionary heir has a title to challenge an alienation at its inception, he need not do so, he is entitled to wait till the death of the widow has affirmed his character which might have been defeated by birth or by adoption.[9] The fact that a suit for declaration that alienation by a female limited owner is void except for her life has been allowed to be barred under Art. 125 will not affect the maintainability of a suit for possession after the death of the female.[10] Similarly where a reversioner filed a claim in execution proceedings against a widow in her lifetime and the claim was dismissed. He failed to file a suit to set aside the claim order within one year: the failure did not bar his suit for possession filed after the death of the female.[11]

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19. AIR 1931 Mad. 218 (DB). (*Affirmed* by the Privy Council in AIR 1934 P.C. 105).
20. 23 Bom. 725=26 Ind. App. 71 (PC)+AIR 1954 Nag. 319=ILR 1954 Nag. 692 (DB).
1. AIR 1929 P.C. 166=56 Ind. App. 267=51 All. 439.
2. AIR 1918 Pat. 548 (DB)+10 Bom. L R 210.
3. AIR 1953 S.C. 125=1953 S C R 503.
4. AIR 1927 Oudh 218 (DB).
5. AIR 1931 All. 225 (DB).
6. 2 Cal. L. Jour 144 (DB)+33 Cal. 257 (DB)=AIR 1918 Lah. 288+11 Ind Cas 372 (DB) (Lah.)=1882 Pun Re No. 141, p. 411. (Article 114 does not apply)+1892 Pun Re No. 110, p. 380+AIR 1937 Pat. 105 (DB)+AIR 1918 Mad. 659 (DB)+10 Suth W R 276 (DB).
7. AIR 1932 Cal. 504 (DB).
8. 31 Bom. 1 (DB)+AIR 1915 Bom. 242=40 Bom. 51 (DB)+AIR 1923 Pat. 122=2 Pat. 217 (DB)+34 Cal. 329=34 Ind. App. 87 (PC)+1902 Pun Re No. 84, p. 337+AIR 1918 Mad. 659 (DB)+3 Nag. L. R. 35.
9. AIR 1918 P.C. 196=42 Mad. 523=46 Ind. App. 72.
10. 29 Mad. 390 (FB)+12 Cal. W. N. 857 (DB)+2 Suth W R 271 (DB)+1882 Pun Re No. 15, p. 55.
11. 20 Bom. 801 (DB).

13. Adverse possession against female-effect. A decree against any female, even other than a widow holding a woman's estate by inheritance under the Hindu law binds her reversioners.[12] Such decree even when founded upon the Law of Limitation would be binding on the reversioners.[13] But it must have been fairly and properly obtained in suit in which a question of title is in issue and not merely a question of her possession during her life.[14]

No decree obtained. In the absence of any decree or other act in law against a female holder, the bar by adverse possession against her would not operate as a bar against the reversionary heirs. Such heirs will be entitled to sue within time prescribed by this article.[15] The reversioner's right to recover possession would not be affected by the fact that the widow was out of possession for more than 12 years. The adverse possession of the third person would be against the widow only.[16] Thus where *S*, a Muslim made a will of his self-acquired property. Under the will his wife was given a life estate and one *W* was to take the property after her death. After the widow's death a suit was brought by *W* for possession against *M* and *B* claiming to be in adverse possession against the widow. The period of adverse possession against the widow could not be made use of in defeating the title of *W*.[17]

14. Adverse possession against last male owner. Where adverse possession commences to run against the last male owner himself, the intervention of the limited estate will not prevent time running and will not enable the reversioner coming after the limited owner to say that he got a fresh cause of action on the death of the owner of limited estate.[18] Therefore if the last full owner himself was dispossessed and time began to run against him, the operation of the Law of Limitation would not be arrested by the fact that, on his death, he was succeeded by his widow.[19] Where during the minority of *D*, who was the sole owner of the suit property his mother sold the property in 1918, representing that it was her own property. *D* died as a minor in 1921 and his mother died in 1947. In 1953, the step-sister of *D* instituted a suit for possession of the property. It was held (*i*) that the sale of property by the mother being not as *D*'s guardian but as her own was initially void against *D* and there could be no question of setting aside the transfer. To such a suit, Art. 44, would not apply. As the purchaser obtained possession during the lifetime of *D*, the absolute owner and was in possession since then he prescribed a title against everybody who claimed through *D*. The purchaser was

12. AIR 1917 P.C. 95=45 Cal. 590=45 Ind. App. 35+9 Moo Ind. App. 539 (PC).
13. 21 Cal. 8=20 Ind. App. 183+AIR 1925 P.C. 249=52 Ind. App. 322=48 Mad. 883.
14. AIR 1938 P.C. 254=65 Ind. App. 365=ILR (1938) 2 Cal. 653=32 Sind. L. R. 918+AIR 1946 Oudh 213 (DB).
15. PLD 1958 Dacca 174=9 DLR 658+AIR 1929 P.C. 166=56 Ind. App. 267=51 All. 439+AIR 1957 Pat. 482=36 Pat. 715 (DB)+AIR 1954 Nag. 319=ILR 1954 Nag. 692 (DB)+ILR 1954 Madh B 288+AIR 1952 Bom. 395=ILR 1952 Bom. 621 (DB)+AIR 1943 Nag. 213+AIR 1942 All. 175=ILR 1942 All. 259 (DB)+AIR 1961 Ker 247 (DB).
16. AIR 1962 Patna 337 (DB).
17. PLR 1949 Lah. 737 (DB)=AIR 1949 Lah. 252.
18. AIR 1941 Lah. 271 (DB)+AIR 1941 Cal. 632 (DB)+AIR 1922 Mad. 59=45 Mad. 370 (DB)+AIR 1929 All. 419+AIR 1930 Bom. 545=54 Bom 837 (DB)+AIR 1935 Cal. 702=63 Cal. 155 (DB)+AIR 1924 Lah. 292+AIR 1925 Oudh 729+AIR 1942 Oudh 303+AIR 1925 Pat. 68 (FB).
19. AIR 1943 P.C. 83=II.R 1943 Kar. (PC) 69.

not prescribing title against the mother of *D*, the limited owner after *D*'s death but against *D* who was the absolute owner, the plaintiff could not claim the benefit of Art. 141, as the possession of the alience was adverse to the last male holder even during his lifetime.[20]

15. Alienations by female. Where the female limited owner has made an alienation a reversioner can sue for possession within two years of her death. The fact that the alienation was without necessity is immaterial.[1]

16. Limited owner setting up full title. The possession of a limited female owner is not adverse to the reversioner.[2] She cannot set up adverse title to herself or do anything prejudicial to the interests of the reversionary heirs of her husband.[3] The contention that where a widow or daughter behaves as if she is a full owner and claims adversely to the estate, she will perfect a title by adverse possession if no suit is brought within twelve years of the date of the commencement of such possession, is wrong.[4] Therefore a limited female owner cannot acquire full title to the property by adverse possession and the reversioner can sue for possession under this article.[5]

17. Suit involving declaration as to adoption. If it is in substance a suit for a declaration that an adoption is invalid, the mere fact that the reversioner ignores the adoption and bases his right on some other act consequential on the adoption will not enable him to escape the period of limitation, for the adoption would be in the way of his getting consequential relief.[6] But a suit by a reversioner for possession after the widow's death, involving the decision as to the validity of an adoption of the defendant by the widow, would be governed by this article, and not Article 118.[7] Where a Hindu widow adopted *B* and the widow was to be in possession until her death. After the death of widow, *B* sued for possession; this article and not Article 119 governed the case even though the defendants denied the adoption which had to be affirmed before possession could be given to the plaintiff.[8] Where a Hindu widow was entitled to possession on the death of her mother, and she filed a suit for partition of her share but the defendant took up the defence of adoption, the suit, was held to be governed by this Article and not Art. 118.[9]

18. Mistake as to shares of reversioners. Where *A*, a Hindu widow, died and *B* and *C*, the reversionary heirs, succeeded to the estate. They were entitled to equal shares, but under mistake of law took unequal shares. *B* who had got

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20. AIR 1965 Mysore 278+AIR 1961 Mys. 193+AIR 1943 Cal. 203+AIR 1954 S.C. 263.
1. 8 Cal. 224=8 Ind. App. 210 (PC)+AIR 1925 P.C. 127=21 Nag. L. R. 127+1950 Ker L. Tim. 416 (DB).
2. AIR 1939 Oudh 17.
3. 30 Cal. 305=30 Ind. App. 41 (PC).
4. AIR 1961 Kerala 247 (DB).
5. AIR 1961 Kerala 247 (DB)+AIR 1936 Pesh. 119 (DB).
6. AIR 1958 Bom. 270=ILR 1958 Bom. 656 (DB).
7. AIR 1924 P.C. 137=51 Ind. App. 220=48 Bom. 411+AIR 1931 P.C. 84+AIR 1954 Nag. 319 (DB).
8. AIR 1934 Bom. 110=58 Bom. 280 (DB).
9. AIR 1960 Pat. 452 (DB).

smaller share such *C* for equalising the share. It was held that the suit was governed not by Art. 96 but by this Article.[10]

19. Redempting of mortgage made by last male holder. Where *A*, a male owner of property, mortgages the same to *M* with possession and subsequently dies leaving a widow *B*. During lifetime of *B*. *M* transfers property to *N* absolutely. *C*, the reversionary heir of *A*, after *B*, files a suit for redemption and possession, more than twelve years after transfer by *B*; that suit is not governed by this article but by Art. 134.[11]

20. Onus of proof. The plaintiff must prove that he is the nearest reverisioner, and that the female died within twelve years of the suit.[12] Where a reversioner files a suit for possession prima facie within twelve years of the death of the female and the defendant pleads that the last full owner had been dispossessed and time ran from that date. It is for the defendant to establish his allegation.[13]

21. Starting point of limitation. Property vests in the reversioner only on the death of the female.[14] Therefore time runs from the death of the female.[15] This starting point is not affected by the mere fact that a wrong person has been suing as reversioner. Thus where during the lifetime of a Hindu widow, *A* alleging himself to be a reversioner filed a suit for a declaration that alienation by the widow was not valid. That suit was dismissed on the ground that *A* was not the reversioner, but *B*. After the death of the widow, *B* filed a suit as reversioner for possession. The suit was dismissed in 1961 on the ground that he was not a reversioner. *A*'s son sued for possession more than twelve years after the death of the widow but within twelve years of 1961. Limitation began to run from the death of the widow.[16]

Remote reversioner suit by. Property vests in the reversioner only on the death of the female.[17]

Several female limited owners. Where there are more females than one inheriting the property of the last male owner jointly, the words "Where the female died" after the death of all the female co-heirs".[18] Where there are successive female owners time will run against the reversioner from the death of the last female owner.[19] Where a testator made a provision for the junior widow,

10. AIR 1920 Nag. 106.
11. AIR 1921 Mad.272 = 44 Mad. 951 (DB).
12. AIR 1924 P.C. 136.
13. AIR 1935 Cal. 702 = 63 Cal. 155 (DB) + AIR 195[illegible]cal. 506 (DB).
14. AIR 1939 Nag. 260 = ILR 1939 Nag. 264 + AIR 1915 Nag. 109 = 11 Nag. L R 116.
15. PLD 1968 Dacca 847 = 20 DLR 593 + AIR 1940 Mad. 102. (Decision doubted in (1941) 2 Mad. L. Jour 406 + 14 Moo Ind. App. 67 (PC) + AIR 1960 Pat. 452 (DB) + AIR 1959 Punj. 123 = ILR 1958 Punj. 2258 (DB) + AIR 1952 Pat. 166 = 30 Pat. 1085 (DB).
16. AIR 1923 Mag. 108 (DB).
17. AIR 1939 Nag. 260 = ILR 1939 Nag. 264 + AIR 1915 Nag. 109 = 11 Nag. L. R. 116.
18. 31 All. 557 = 36 Ind. App. 210 = 13 Oudh Cas. 183 (PC) + AIR 1961 Bom. 171.
19. 11 Cal. 791 (DB) + AIR 1952 Bom. 395 = ILR 1952 Bom. 621 (DB) + 23 Cal. 460 (DB) + AIR 1921 Mad. 24 = 44 Mad. 131 (DB) + AIR 1923 Mad. 168 (DB) + 3 Nag. L. R. 35 + 20 Nag. L. Jour 278.

and she remained in possession until her death, cause of action for the suit for possession was held to arise only after her death.[20]

Surrender of interest by one female in favour of another. There can be no acceleration of the estate of the reversioner by transactions between the co-widows without the knowledge and consent of the reversioners.[1] But where the transactions are known to the reversioner they will affect his rights. Thus where *A* and *B* co-widows inherited jointly certain property, *A* forfeits her interest in favour of *B* and *B* gets the whole estate. The reversioners' cause of action will arise on the death of *B* even though *A* survives *B*.[2]

22. Local and special laws. Under section 29, this article will not apply even if the case is one falling within its purview, where a special period of limitation has been prescribed therefor by any special or local law.[3]

142.	For possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the posses-sion.	[4][Twelve years]	The date of the dispossession or disconti-nuance.
144.	For possession of immovable property or any interest therein not hereby otherwise speci-ally provided for.	[4][Twelve years]	When the posses-sion of the defendant becomes adverse to the plaintiff.

Note:- **Article 143 has been given at the end of commentary on Article 142 and 144 because these two Articles require to be dealt with together.**

Synopsis to Articles 142, 144

1. Scope and applicability.
2. Suit must be for possession.
3. Possessory title, suit on.
4. Proprietary title, suit on.
5. "Immovable property."
6. Interest in immovable property.
7. "Plaintiff"--meaning of.
8. "Has been dispossessed or has discontinued possession."
9. "Possession"--what is.
10. Possession of part, it is possession of whole.
11. Possession of house is possession of site.
12. Possession follows title.

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20. AIR 1945 P.C. 113=ILR 1945 Kar.(PC) 230.
1. AIR 1921 Mad. 246=43 Mad. 855 (DB).
2. AIR 1917 Lah. 435 (DB).
3. 13 All. 108 (DB).
4. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

13. Adverse possession--what is.
14. Possession by Hindu female.
15. Possession under temporary arrangement between members of a family.
16. Possession in lieu of dower.
17. Possession in lieu of maintenance.
18. Holder of life estate, possession of.
19. Person under disability, possession of property of.
20. Possession of insolvent.
21. Possession of mortgagor.
22. Mortgagee, possession of.
23. Possession of co-mortgagee.
24. Possession of co-mortgagor.
25. Possession of co-owners.
26. Alience from co-owner, possession of.
27. Licensee from co-owner, possession of.
28. Partition among co-owners--effect.
29. Adverse possession by co-owner against strangers.
30. Abandonment by co-owner.
31. Relinquishment by co-owner.
32. Co-heirs.
33. Suit for possession or partition by one co-owner against another.
34. Trust property, adverse possession by trustee.
35. Alienee from trustee adverse possession by.
36. Right to perform worship, adverse possession of.
37. Religious endowment, adverse possession of property of.
38. Easement, no adverse possession by.
39. Vendee and vendor, adverse possession of.
40. Possession taken by mistake.
41. Actual possession of wrong-doer necessary.
42. Surface and subsoil rights in land.
43. Possesssion of seashore.
44. Permissive possession.
45. Possdsssion of agents, servants, etc.
46. Husband or wife, possession of.
47. Tenant, possession of.
48. Encroachment by tenant.
49. Invalid transaction, possession under.
50. Inalienable property, adverse possession of.
51. Rights not recognized by law, adverse possession of.
52. Possession of owner, if can be adverse to himself.
53. Possession must be continuous.
54. Break in adverse possession, effect of.
55. Symbolical possession, if interupts adverse possession.
56. Decree does not interrupt adverse possession.
57. Attachment--effect of, on adverse possession.
58. Decision as to boundary--effect.
59. Subsequent assertion of different title by defendant.
60. Submerged land.
61. Possession of receiver.
62. Court of Ward, possession of.
63. Abandonment of possession.
64. Revenue sale, adverse possession against purchaser.
65. Dispossession of wrong-doer by another.
66. Possession must be open.
67. Possession is not adverse to person not having present right of possession.
68. Trust property, adverse possession by stranger.
69. Adverse possession against mortgagor.
70. Adverse possession against mortgagee.
71. Adverse possession against tenant.

72. Onus of proof.
73. Onus of poof in cases falling under Article 142.
74. Onus of roof in cases falling under Art. 144.
75. Declaratory suits, onus of proof.
76. Starting point of limitation under Art. 142,
77. Starting points in suits falling under Article 144.
78. Defendant made party after limitation.
79. Tacking of possession.
80. Effect of adverse possession.
81. Title, the adverse possessor acquires.
82. Evidence of adverse possession.
83. Plea of adverse-possession.
84. Adverse possession, if question of law or fact.
85. Adverse possession by or against State.
86. Adverse possession by or against public.
87. Special or local law applicable.

1. Scope and applicability. Article 144 is a residuary article and applies only to suits for possession of immovable property to which no other article is applicable.[5] Thus where a contract for lease has been executed under which the lessee is entitled to be put in possession of the land leased but he is not put in possession, and sues for possession under his lease, the suit is really one for specific performance of the contract and Article 113 would apply. But where, the lease is a registered one, Article 144 and not Article 133 of the Limitation Act would apply. The reason being that the rights acquired by the lessee are really rights which might be enforced by a suit for possession.[6] But where some other provision is applicable, Article 144 does not apply. Thus where in a representative suit under O. 1, R. 8 for declaration of plaintiff's right in *gairmazruaam* land and for removal of encroachment made on it by defendant and for injunction restraining them from committing any encroachment the wrong complained of is a continuing wrong and case fell under S. 23, Art. 144 or 142 or 120 had no application.[7] Where a suit is for partition on the ground that certain properties were wrongly allotted to the share of the plaintiff really belonged to a third party who obtained a decree for possession of these properties from the plaintiff, is governed by Art. 96 and not Art. 127 or Art. 144.[8] Where a transaction is a mere "agreement to lease" its specific performance will be governed by Art. 133, but in case the transaction is a "lease" itself, then Art. 144 will apply.[9] Where a landlord files a suit for recovery of possession after expiry of lease, the suit is governed by Art. 139, therefore Art. 144 does not apply.[10] But Art. 139 does not apply to a suit for ejectment of a tenant-at-will, therefore Art. 144 applies to such a suit.[11] To a suit by Court auction-purchaser to obtain possession of property sold in execution

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5. PLD 1953 B J 10+AIR 1949 Bom. 137=ILR 1949 Bom. 135 (FB)+AIR 1931 P.C. 48=58 Ind. App. 106+AIR 1940 Mad. 798=ILR 1940 Mad. 953 (FB)+AIR 1928 All. 467=51 All. 101 (FB)+AIR 1930 Nag. 300+AIR 1929 Cal.93 (DB)+AIR 1933 Lah. 91+AIR 1925 Pat. 216 (DB)+AIR 1960 Mys. 83+AIR 1958 Raj. 256=ILR (1957) 7 Raj. 865 (DB)+AIR 1958 Raj. 206+AIR 1955 Pat. 386 (DB)+68 Mad. L. W 417+AIR 1954 Sau 113.
6. PLD 1960 Azad J & K 32.
7. AIR 1957 Pat. 448 (DB).
8. AIR 1960 Cal. 381. (Time runs when plaintiff is dispossessed).
9. AIR 1960 Madh Pra 138.
10. PLD 1968 Dacca 701=19 DLR 705.
11. 6 DLR 577.

of a mortgage decree, Art. 142 does not apply. Article 137 which is a specific Article for suit for recovery of property by auction-purchaser, does not apply to a purchaser at sale held in execution of the mortgage decree; the residuary Art. 144 therefore applies to it.[12] Therefore in such cases dismissal of a suit as time barred without a conscious application of Article 142 or 144 would be illegal.[13]

Articles 142 and 144 applicability. The practical and convenient distinction between the two articles is this--Article 142 is applied to suits where the cause of action is dispossession from, or discontinuance of possession of, immovable property, whereas Article 144 would apply where the cause of action for the suit is based on the plaintiff's title to immovable property. Under Article 142, the plaintiff must prove dispossession from, or discontinuance of possession of immovable property within twelve years preceding the date of the suit. But under Article 144, the plaintiff must bring his suit within twelve years from the date when the possession of the defendant becomes adverse to the plaintiff.[14] Unlike Article 142, it is not necessary that the owner may have been in possession at any stage, though such possession does not *ipso facto*, result in non-application of this article. The starting point, for this Article is the time when the possession of the other party become adverse. Thus there can be cases where initially the possession of the other party may be legal and with due acknowledgment of the title of the true owner, but subsequently it may become adverse. In order to attract Article 142 it is to be shown that dispossession or discontinuance of possession has taken place. To constitute dispossession, there must in every case be positive acts which can be referred only to the intention of obtaining exclusive control.[15]

Different set of facts is required for application of Article 142 or Article 144.[16] If Art. 142 is applicable to a case, Article 144 cannot be applied to it.[17] Article 142 applies only where the plaintiff, while in possession, has been dispossessed or has discontinued possession.[18] It is necessary that there must be a prayer, express or implied, for dispossession of the defendant from the property.[19] In order to establish such a discontinuance of possession it must be shown that the owner has withdrawn with the intention of abandoning the property and that the gap has been filled by another person who has come in to occupy in consequence of such withdrawal.[20] In other words a person can be dispossessed or discontinue his possession only when another person enters on the property in the possession

12. AIR 1958 Ker. 22 = ILR 1957 Ker 724 (FB).
13. NLR 1989 UC 260.
14. PLD 1989 SC AJ&K 45 = KLR 1989 CC 255 = NLR 1989 SCJ 474 + 1985 CLC 2012 = NLR 1985 Civ. 566 + PLD 1978 Kar. 27 + PLD 1977 Quetta 75 = PLJ 1977 Quetta 629 + 1976 LN 814 + PLD 1974 Kar 235 = PLJ 1974 Kar. 57 (DB).
15. PLD 1977 Quetta 75 = PLJ 1977 Quetta 629 + 1976 Law Notes 814.
16. NLR 1989 UC 260.
17. AIR 1934 All. 993 = 57 All. 278 (FB) + AIR 1940 Mad. 798 = ILR 1940 Mad. 953 (FB) + AIR 1960 Mys. 83 + AIR 1958 Pat. 530 + AIR 1955 Pat. 386 (DB) + AIR 1954 Pat. 368 + AIR 1940 Oudh 134 = 15 Luck 157 (DB) + AIR 1940 Sind. 49 = ILR 1939 Kar. 793 (DB) + AIR 1926 Mad. 181.
18. PLD 1953 BJ 10 + AIR 1940 Oudh 134 = 15 Luck 157 (DB) + AIR 1958 Pat. 530 (Considerations which arise in a suit governed by Art. 144 do not govern such a case) + 1954 All. W R (HC) 565 + AIR 1947 Sind. 69 + AIR 1940 Sind. 49 = ILR 1939 Kar. 793 (DB).
19. AIR 1958 Punj. 187 = ILR 1958 Punjab 822 (DB).
20. PLD 1960 Karachi 428 = PLR 1960 (1) Karachi 248.

of the plaintiff and such entry itself is adverse to the former, that is, in contravention to his title.[1]

Suit on title. Article 142 is not restricted to suits based on possessory title only.[2] It is not in every case in which the plaintiff is out of possession and is seeking possession by means of a suit that Article 143 becomes applicable, nor has the plaintiff to prove in every case that he was in possession within 12 years prior to the institution of the suit. The existence of the two Articles, *viz.* Article 142 and Article 144 dealing with substantially the same matter though applying in slightly different circumstances ought not to present much difficulty because in actual practice where an owner of property claims possession his suit would be defeated only if it is shown that he has been excluded by the possession of another person not necessarily the same for the statutory period.[3] Thus what the plaintiff has to prove under Art. 142 is not only that he has a title to the property but also that he was dispossessed or that he discontinued possession within 12 years next before the suit.[4]

Allegation as to dispossession. Ordinarily where the plaintiff himself alleges possession and dispossession, it may generally be sufficient to bring the case under Article 142.[5] But where the facts showed that there was no dispossession. Article 144 was applied.[6]

One view is that whether Art. 142 or Art. 144 applies to a case depends solely on the pleadings of the parties,[7] and that Art. 142 cannot apply to a case in which the plaintiff does not allege is his plaint his possession and dispossession,[8] and further that where the defendant denies that the plaintiff was ever in possession,

1. AIR 1942 Nag. L. Jour 99+17 Ind. Cas. 606+8 Nag. L. R. 163+AIR 1931 P.C. 186=58 Ind. App. 29=10 Pat. 407+AIR 1954 Pat. 368+AIR 1954 Trav-Co. 60=ILR 1953 Trav-Co. 886 (FB)+AIR 1953 Madh-B 28=ILR 1953 Madh-B 155.
2. AIR 1958 Raj. 265=ILR (1957) 7 Raj. 865 (DB).
3. PLD 1960 Karachi 428=PLR 1960 (1) Karachi. 248.
4. AIR 1960 Mys. 83.
5. AIR 1941 Cal. 193 (DB)+AIR 1957 All. W R (HC) 567+AIR 1957 Trav-Co. 14=ILR 1956 Trav-Co. 452 (DB)+AIR 1955 Mad. 369 (DB)+AIR 1954 Trav-Co. 449 (DB). (Where even though the plaintiff brought the suit on the strength of his title he has definitely alleged in the plaint that his possession of the property discontinued when according to him the defendant's possession commenced on the strength of the oral lease granted to him but the lease is found to be false the case is one of admitted discontinuance of possession while the plaintiff was in possession on the strength of title.)+AIR 1950 Bom. 346+AIR 1948 Oudh 351+42 Pun L R. 531 (DB)+AIR 1939 Cal. 354 (DB)+AIR 1939 Bom. 322 (DB)+AIR 1934 Pat. 593+AIR 1938 Bom. 210+AIR 1935 Lah. 507+AIR 1935 Mad. 947+AIR 1917 Nag. 7=14 Nag. L. R. 82+AIR 1935 Oudh 88=10 Luck 513 (DB)+AIR 1925 Pat. 68 (FB)+AIR 1918 Low Bur 131+AIR 1934 All. 993=57 All. 278 (FB)+AIR 1938 Oudh 214+AIR 1933 Rang. 48.
6. AIR 1929 Cal. 297=56 Cal. 914 (DB)+AIR 1957 Trav-Co. 14=ILR 1956 Trav-Co. 452 (DB).
7. PLD 1957 Lah. 43=PLR 1957 (1) W.P. Lahore 287+AIR 1932 Oudh 46=7 Luck. 250 (DB)+AIR 1950 Pat. 484 (DB)+AIR 1937 Sind 226=30 Sind. L. R. 472 (DB)+AIR 1934 Oudh 21 (DB)+AIR 1934 Lah. 576 (DB).
8. PLD 1957 Lah. 43=PLR 1957 (1) W.P. Lah. 287+AIR 1939 Bom. 322 (DB)+AIR 1952 Nag. 188=ILR 1949 Nag 883+AIR 1941 Lah. 241+AIR 1939 Lah. 172+AIR 1934 Oudh 21 (DB)+AIR 1916 Low Bur 48=8 Low Bur Rul 264+AIR 1934 Nag. 36=30 Nag. L. R. 284+AIR 1933 Nag. 274=30 Nag. L. R. 18+AIR 1935 Pesh. 133 (DB).

Art. 142 cannot apply.[9] But the other view is that the fact that the plaintiff does not allege dispossession in his plaint cannot render Article 142 inapplicable if the facts show otherwise,[10] and that the plaintiff cannot, by framing a suit as if there was no dispossession, avoid the operation of Article 142.[11] According to the latter view to ascertain which of the Arts. 142 and 144 applies, it becomes necessary to consider the facts and circumstances admitted or proved in the case and the mere fact that the plaintiff does not allege dispossession in his plaint cannot render Art. 142 inapplicable if the facts show that the defendant must have entered on the land in the possession of the plaintiff and that such entry must have been adverse from the beginning.[12]

Where plaintiff was never in possession. A plaintiff who was never in possession but has acquired a title which entitles him to possession and brings a suit for possession, then the limitation would be governed by Article 144 of the Limitation Act.[13] Thus where *A* transfers his property to *B* but fails to deliver possession to him and *B* consequently sues *A* for possession the case is not one under Art. 142 and Art. 144 may apply.[14] Where reformed land was not physically possessed by plaintiff but by fiction of law it was held to have been in his possession till it was fit for possession. No question of discontinuance arises. The suit is governed by Article 144 and not by Art 142.[15] Similarly Art. 144 applies to a suit for possession by a creditor entitled to it on default of payment by the debtor,[16] and to a suit by an adopted son for the recovery of immovable property; the starting point is the date of his adoption.[17]

Defendant not entering on possession adversely to plaintiff. The test to see whether Art. 142 applies to a case is to ascertain whether the defendant entered on the property while the plaintiff was in possession and whether such entry was from the beginning adverse to the plaintiff.[18] In order to ascertain whether the entry was from the beginning adverse to the plaintiff, it is necessary to consider the facts and circumstances admitted or proved in the case.[19] Where the plaintiff is in possession and the defendant has entered on the property under a right consistent with the title of the plaintiff the entry itself is not in contravention of the plaintiff's title though by reason of subsequent events, his possession may become adverse to the plaintiff. Article 142 will not apply and Article 144 may

9. AIR 1934 Pat. 593.
10. AIR 1963 Mysore 1 (FB) + 8 Luck 624 + 17 Cal. 137 = 16 Ind. App. 148 = 1890 Pun Re No. 23 (PC) + AIR 1940 Oudh 134 = 15 Luck. 157 (DB) + AIR 1939 Cal. 354 (DB) + AIR 1937 Nag. 129 = ILR 1937 Nag. 254 + AIR 1934 All. 993 = 57 All. 278 (FB) + AIR 1927 Lah. 236 + AIR 1919 Pat. 207 = 4 Pat. L. Jour 463 (DB) + AIR 1933 Rang. 413.
11. AIR 1963 Mysore 1 (FB) + AIR 1940 Mad. 798 = ILR 1940 Mad. 953 (FB) + AIR 1940 Oudh 134 = 15 Luck. 157 (DB) + AIR 1930 Lah. 330 = 29 Mys L. J 141 (DB).
12. AIR 1958 Manipur 47.
13. PLD 1953 B. J. 10.
14. 1911 Pun L. R. No. 234, p. 877 + AIR 1922 All. 410 (DB) + AIR 1924 Cal. 394 (DB) + AIR 1930 Lah. 914 + 31 Mad. 51 (DB) + AIR 1920 Nag. 199 + AIR 1933 Oudh 363 (Suit by lessee for possession of property leased) + AIR 1930 Oudh 310.
15. AIR 1939 Cal. 354 (DB).
16. 16 Bom. 172 (DB).
17. AIR 1915 Mad. 539 (DB).
18. 8 Nag. L. R 163.
19. AIR 1946 Pat. 185 (DB) + AIR 1956 Pat. 533 + 7 Sau L. R 70 + AIR 1953 Pat. 267.

apply.[20] Where the plaintiff alleges that the defendant's entry was not adverse to him but the defendant denies it and the plaintiff cannot prove his allegation, it may be taken that there is discontinuance of possession. The Article applicable to the case is Art. 142 and not 144.[1] Thus where the plaintiff alleges that the defendant took possession as a lessee but the defendant denied it and the plaintiff failed to prove the lease; it was held that the case falls under Art. 142. It is a case of dispossession when the plaintiff was in possession on the strength of his title.[2]

Movable property. Article 142 and 144 do not apply to suits for possession of movable property. Therefore where a suit was brought for ejectment of defendant from a house where he had trespassed. The plaintiff was found to have no title to the land on which the house stood. It was held that the house apart from the land must be considered as movable property and the suit falls under Art. 49. The plaintiff is entitled only to compensation for the materials which were his and he cannot avail himself of 12 years' limitation for this purpose.[3]

Perfection of title by adverse possession. The normal period within which a person who obtains possession of immovable property and holds it adversely as against the trust owner can perfect his title to such property is 12 years. If within a period of 12 years from the commencement of such adverse possession, the true owner does not institute a suit for recovery of possession of the property from the party in wrongful possession, the title of the real owner will be extinguished and the party in wrongful possession will acquire a title to such property by prescription on the completion of the said period of 12 years. The effect of Art. 47 read with S. 28 is to recognise an exception to the normal rule. In a case governed by Art. 47 and S. 28 shorter period of three years ... sufficient to extinguish the title of the true owner.[4] But where adverse possession does not go back to more than 12 years from the date of suit, no title accrues to plaintiff.[5]

Articles 120 & 142. Where the plaintiff alleged that he was in possession of the land in dispute and had been dispossessed within twelve years of the filing of the suit. The fact that the contention urged by him had been accepted by the two Courts, as well as the High Court would clearly attract to the suit filed by him, Article 142 of the Limitation Act and not Article 120 thereof, which is the residuary Article.[6]

Evacuee property vested in Federal Government. Where a person had purchased property from a non-Muslim prior to independence but the sale was not confirmed after the departure of the Hindu owners the land in question had become vested in the Federal Government. Adverse possession could not, in law,

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20. AIR 1928 Cal. 582 (DB)+AIR 1959 Madh Pra. 23+AIR 1953 Madh-B 28=ILR 1953 Madh-B 155+AIR 1950 Pesh. 31+1887 All. W. N. 91 (DB)+1931 Mad. W. N. 856+AIR 1926 Mad. 849. (Reversed on another point in AIR 1930 Mad. 430+AIR 1938 Mad. 8=ILR 1938 Mad. 220 (DB)+AIR 1928 Oudh 155+AIR 1933 Cal. 102 (DB)+AIR 1939 Nag. 7.

1. AIR 1958 Manipur 47.
2. AIR 1957 Trav-Co. 223+AIR 1957 Raj. 261+AIR 1957 Trav-Co. 310.
3. AIR 1959 Assam 236.
4. 1985 CLC 619=PLJ 1985 Pesh. 22=NLR 1985 CLJ 154+PLD 1956 Dacca 277=PLR 1954 Dacca 171=6 DLR 215=AIR 1958 Ker. 178=ILR 1958 Ker 389 (FB).
5. 1975 SCMR 27.
6. 1981 SCMR 765=NLR 1980 SCJ 467.

be claimed by the petitioners against the Government merely because they were in possession of the disputed land for more than 12 years.[7]

2. **Suit must be for possession.** Articles 142 and 144 apply only to suits for possession.[8] In order that a suit may be one for possession it is necessary that there must be a prayer in the plaint for the dispossession of some one from the property claimed.[9] Thus a suit by the alienee from a Hindu co-parcener for possession of immovable property by way of substitution falls under Art. 144 and not Art. 116.[10] To a suit for possession of property on the ground that its sale was a sham transaction, Article 144 and not Art. 91 applies.[11] But a suit for a mere declaration of right to property is not a suit for possession.[12] Similarly a suit for pre-emption is not governed by Art. 144.[13]

Possession must be primary relief. Article 142 and 144 do not apply where the relief of possession is not the primary relief claimed.[14] Thus a suit for the redemption of a usufructuary mortgage involving a consequential prayer for possession is not governed by Art. 144 but by Art. 148.[15] But where the primary relief claimed is that of possession this Article applies.[16] Thus a suit for possession and for cancellation of a document, which the plaintiff is not bound to ask for,[17] or a suit for possession and mesne profits and for correction of an entry in the Record-of-Rights is a suit for possession within Arts. 142 and 144.[18] A suit for possession and the removal of trees planted on the lands is governed by the twelve

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7. 1979 SCMR 365.
8. PLD 1957 Lah. 99=PLR 1957 (1) W.P. 552+AIR 1940 Sind. 49=ILR 1939 Bom. 322 (DB)+AIR 1936 Oudh 387=12 Luck. 371 (DB)+AIR 1931 Pat. 436 (DB)+AIR 1923 Lah. 672+AIR 1918 Cal. 26[illegible]B)+20 All. 519.
9. 20 All. 25 (FB)+AIR 1951 Trav-Co. 232=ILR 1951 Trav-Co. 194 (FB)+AIR 1931 Mad. 707=54 Mad. 883 (DB)+AIR 1917 Mad. 407 (DB)+9 Oudh Cas. 292 (DB).
10. AIR 1957 Andh Pra. 572 (DB).
11. AIR 1939 Lah. 544=ILR 1940 Lah. 546 (DB).
12. 20 All. 35 (FB)+AIR 1951 Trav-Co. 232=ILR 1951 Trav-Co. 194 (FB)+AIR 1949 Ajmer 23+AIR 1930 Bom. 61=54 Bom. 4 (DB)+AIR 1932 Cal. 842 (DB)+AIR 1926 Lah. 437=7 Lah. 210 (DB)+62 Cal. 921+AIR 1931 Bom. 369=55 Bom. 447 (DB)+2 Oudh Cas. 79 (DB).
13. 24 All. 17=28 Ind. App. 248 (PC).
14. 15 Cal. 58=14 Ind. App. 148 (PC)+ILR (1955) 1 All. 772+AIR 1952 Cal. 689=ILR (1953) 1 Cal. 106+AIR 1951 J&K 25=10 J & K L R 47 (DB)+AIR 1951 Trav-Co. 232=ILR 1951 Trav-Co. 194 (FB)+AIR 1929 Mad. 313 (DB)+AIR 1937 Cal. 500 (DB). (Suit for cancellation of deed)+AIR 1917 Cal. 610 (DB). (Sale by guardian being only voidable, the ward cannot get possession without getting sale set aside. Suit governed by Article 44)+AIR 1935 Mad. 1 (Suit to set aside alienation made during minority of adult members of co-parcenary--Prayer for possession included--Article 44 applicable)+28 Mad. 423 (DB)+AIR 1921 Lah. 25+AIR 1915 Mad. 1055=16 Cri. L. Jour 176 (DB)+AIR 1932 All. 108=53 All. 738 (DB)+AIR 1919 Pat. 134.
15. 14 All. 1=11 All. 423 (FB)+ILR 1953 Trav-Co. 48 (DB).
16. AIR 1954 Mad. 961=ILR 1954 Mad. 939 (FB)+AIR 1953 All. 406=ILR (1954) 2 All. 675 (DB)+AIR 1952 Pat. 421 (DB). (Redemption by mortgagor--Interference by mortgagee--Suit for declaration and confirmation of possession or in the alternative for recovery of possession, either Art. 142 or Art. 144 applies)+AIR 1952 Pat. 201+AIR 1952 Pat. 143 (DB)+AIR 1951 Madh B. 40.
17. AIR 1939 All. 348 (DB)+ILR (1955) 1 All. 772+AIR 1953 Mad. 611=ILR 1955 Mad. 398 (DB)+14 Mad. 26 (DB)+AIR 1930 Cal. 748+AIR 1929 All. 879=52 All. 110 (DB)+AIR 1922 Lah. 386 (DB)+AIR 1928 Nag. 151+30 Cal. 433 (DB).
18. AIR 1919 Pat. 423.

years' rule.[19] Where a lease was granted but possession was not given by lessee, a suit by the lessee for possession was governed by Article 144.[20] Where gallery of a person encroached on the land of another person and the latter brought a suit against the former for injunction and possession of land beneath the gallery, the suit was not governed by Art. 120, but by Art. 142.[1] Where dispossession was effected by a public servant in a suit for possession the order of the public servant is not necessary to be set aside: Art. 144 governs the suit.[2] Where land belonging to two persons was reserved for grazing. One of them appropriated it as his exclusive property, a suit by the other for injunction and joint possession was governed by Art. 144.[3]

Form of suit immaterial. It is not always the form of the relief claimed that will determine the real character of the suit.[4] Where the real and primary relief claimed is that of possession this Article applies whatever the form of the suit may be. Thus the Article would apply to that suit where A claimed to be a trustee of a mutt and entitled to possession and prayed that he might be enabled to collect the rents from the hands of a Receiver appointed by the Court,[5] or to a suit for a declaration that a pathway was a public pathway and for an injunction to remove an obstruction thereto,[6] or to a suit for a declaration that the plaintiffs were entitled to collect the rents and an injunction restraining the defendants from collecting them,[7] or to a suit for assessment of fair rent, where the defendant enters on plaintiff's land and is in occupation of it.[8] Where the plaintiff claimed title and possession to property, a suit for declaration of title owing to adverse mutation order and for confirmation of possession, and defendant denied plaintiff's title and alleges adverse possession for forty years. It was held, that the suit was for possession within Art. 144, Art. 142 and Art. 120 did not apply.[9] Where the arbitrators having authority, divided and allotted immovable properties to various disputants. The award is one creating an interest in immovable properties. A suit for the recovery of such immovable property was based on title derived from the award and the Article applicable was Art. 144 and not Art. 120.[10]

19. AIR 1941 Oudh 45 = 16 Luck. 223.
20. AIR 1938 All. 429 (DB).
1. AIR 1939 Nag. 197 = ILR 1939 Nag. 580.
2. AIR 1928 Mad. 1246 (DB).
3. AIR 1939 Lah. 315 + 16 Cal. W. N. 1073 (DB) + AIR 1935 Mad. 449 (DB). (Plaintiff declared entitled to certain land under award--Suit to recover by plaintiff is governed by Article 144 and not by Article 113) + 23 Mad. 593 (DB) + AIR 1927 Nag. 400.
4. AIR 1929 Mad. 313 (DB) + AIR 1951 Madh B. 40 + AIR 1946 Pat. 185 (DB).
5. AIR 1919 P.C. 62 = 43 Mad. 253 = 46 Ind. App. 204.
6. AIR 1921 Cal. 4005.
7. AIR 1933 Bom. 26 (DB).
8. AIR 1915 Cal. 590 (DB) + 45 Cal. W N 126 (DB).
9. AIR 1949 Assam 75.
10. AIR 1949 Bom. 64 = ILR 1948 Bom. 610 (DB) + AIR 1948 Bom. 101 = ILR 1948 Bom. 309 (FB).

3. Possessory title, suit on. Possession is a heritable and transferable right.[11] It is prima facie evidence of title against all persons except the true owner.[12] Therefore a person in possession of another's property can always maintain such possession against everyone except the owner,[13] and if dispossessed by another person can recover the possession from such person, on the sole ground of his prior possession, except as against the true owner.[14] Where the respondent is in possession of a well on the area owned by the Government, even though such possession has not been perfected into one of title as against the Government so long as the Government has not challenged the possession of the area of the well, it is not open to the appellant who has no title of his own to the well to interfere with such possession. Hence the possessory title of the respondent should be protected.[15]

Suit within six months of dispossession. If the plaintiff proves prior possession and dispossession within six months of the suit, and such dispossession is otherwise than in due course of law he will be entitled to recover possession irrespective of the question of proprietary title.[16]

Suit beyond six months of dispossession. In suits on possessory title where the plaintiff proves his possession beyond six months of the suit, S. 142 applies and the plaintiff will be entitled to succeed as against all persons except the true owner. Therefore, the defendant in such cases has to show that he has got a better title to the property than the plaintiff.[17] Where the plaintiff brought a suit for declaration of her title to the suit lands and for possession on the allegation of dispossession by the defendant who had no title to the lands in suit and who were not in possession at any time before they forcibly dispossessed the plaintiff. The plaintiff succeeded in proving his possession within twelve years of the suit. It was held that

11. AIR 1939 Cal. 723 (DB) + AIR 1921 All. 389 = 43 All. 164 (DB) + AIR 1919 All. 43 + 3 Cal. 224 (DB) + AIR 1952 Pat. 314 = 30 Pat. 1007 (DB).
12. 20 Cal. 834 = 20 Ind. App. 99 (PC) + AIR 1958 Mad. 497 + 1957 B L J R 637 (DB) + AIR 1954 Mad. 208 + AIR 1952 Pat. 314 = 30 Pat. 1007 (DB) + AIR 1951 Pat. 483 (DB) + AIR 1949 Nag. 403 = ILR 1949 Nag. 755 + 1907 App. Cas. 73.
13. AIR 1965 Mad. 348 (DB).
14. AIR 1914 All. 54 = 36 All. 325 (DB) + AIR 1958 Mad. 497 + 1958 Andh L T 197 + 1957 B J L R 637 (DB) + AIR 1956 Pat. 308 (DB) + AIR 1956 Raj. 171 = ILR (1956) 6 Raj. 342 (DB) + 1955 B L J R 20 + AIR 1951 Pat. 483 (DB) + AIR 1947 Pat. 444 + 8 Bom. 371 (DB) + AIR 1924 Bom. 178 (DB) + AIR 1927 Cal. 931 + AIR 1930 Cal. 113 = 57 Cal. 170 (DB) + 8 Suth W R 386 (DB). (Such a suit is not barred by section 9, Specific Relief Act) + 41 Pun. L R 672 + AIR 1927 Lah. 11 (DB) + AIR 1932 Mad. 32 + AIR 1914 Nag. 55 = 10 Nag. L R 188 + AIR 1925 Nag. 32 + AIR 1935 Oudh 268 = 10 Luck 659 + AIR 1929 Pat. 601 = 8 Pat. 351 (DB) + AIR 1937 Pat. 418 (DB) + AIR 1927 Rang. 203 = 5 Rang. 154 (DB) + 1907 App. Cas. 73 + 15 Mad. 315 (DB). (*Following* 7 Bing 346 + 813 R R 503).
15. AIR 1965 Madras 348 (DB).
16. 5 Bom. L R 264 (DB) + 1902 Pun Re. No. 78, p. 308 (DB) + 26 Mad. 514 (DB).
17. 12 DLR 708 + 12 All. 46 + 25 Bom. 287 + 5 Bom. L R 264 (DB) + AIR 1933 Pat. 6 = 11 Pat. 701 (DB) + AIR 1927 Mad. 1185 + AIR 1930 Oudh 374 + AIR 1916 Pat. 172 = 2 Pat. L. Jour 61 (DB) + 1906 App. Cas. 569 + 20 Cal. 834 = 29 Ind. App. 99 (PC). (But it has been held in the following cases that apart from S. 9 of the Specific Relief Act, 1877, a suit will not lie at all on a possession title) + AIR 1936 Bom. 201 (DB) + AIR 1947 Cal. 434 + AIR 1918 Bom. 153 = 42 Bom. 357 (DB) + AIR 1925 Cal. 122 (DB) + AIR 1934 Cal. 561 = 61 Cal. 419 (DB) + AIR 1925 Pat. 625 = 4 Pat. 510 (DB) + AIR 1919 Upp Bur 21 = 3 Upp Bur Rul 125.

the suit was not barred by limitation and the plaintiff was entitled to succeed in the suit on the basis of possessory title.[18]

Non-occupancy title, suit based on. A suit for possession by a non-occupancy raiyat who has been dispossessed from his holding otherwise than in execution of a decree was held to be governed either by Art. 120 or by Art. 142 and not by Art. 3.[19]

4. Proprietary title, suit on. To a suit brought on the basis of title, Article 142 was not applicable.[20] The suit for possession contemplated by Art. 144 is one by a person entitled to possession as owner against a person in possession without title. A suit by a person who is not owner is not governed by Art. 144.[1] Where a suit is based on title alone, and the defendant sets up a plea of adverse possession, the Article applicable would be Article 144, which provides twelve years' limitation for suits for recovery of possession of immovable property, the starting time being the date from which the possession of the defendant becomes adverse to that of the plaintiff.[2] Where a claim of adverse possession set up by appellant was resisted by respondents within twelve years of the institution of the suit as per evidence of appellant. Question of adverse possession loses all importance.[3] Where in a suit for declaration of title to land the plaintiff asserted in the plaint that he had been in possession and occupation of the suit land, but in the relief clause prayed in the alternative that if he be deemed to have been dispossessed of the suit land by reason of earlier proceedings under S. 144, Criminal P.C., he should be put in possession thereof and granted mesne profits. The tenant-defendant did not deny the title of the plaintiff but claimed that the plaintiff settled the land on him and that he had acquired occupancy rights therein. Neither the plaintiff nor the defendant alleged dispossession or discontinuation of possession of plaintiff. It was held that as the defendant not only admitted title of the plaintiff but also admitted that he derived possession from the plaintiff as a tenant, the case must proceed on the defendant's plea, and for the purpose of deciding whether Art. 142 or 144 applied, it must be assumed that the plaintiff had not been dispossessed or had not discontinued his possession within the meaning of Art. 142, for neither the plaintiff nor the defendant alleged dispossession or discontinuation of possession, and on the facts it was Art. 144 and not Art 142, that applied.[4]

Possession within 12 years must be proved by plaintiff. Where the owner remained in possession of property and enjoyed profits accruing therefrom, the question of adverse possession by his successor or someone else, held, would not arise.[5] When the plaintiff files a suit on title and asks for possession, he cannot succeed on the basis of his title alone unless he is able to establish that he has been in possession within 12 years of the suit.[6] Where grandfather of owner had

18. AIR 1963 Patna 450 + AIR 1956 Pat. 308.
19. 31 Cal. 647 (FB). (Such a suit is for the establishment of title).
20. 1985 CLC 1082 (SC AJ&K).
1. AIR 1931 P.C. 196 = 58 Ind. App. 279 = 10 Pat.851 + AIR 1952 Pepsu 46.
2. PLD 1988 AJ&K 1 + PLD 1962 Peshawar 124 (DB).
3. PLD 1989 SC (AJ&K) 38 = PLJ 1989 SC (AJ&K) 14 = NLR 1989 SCJ 293 = 1989 PSC 487.
4. AIR 1965 Supreme Court 575.
5. PLD 1986 Lah. 194 = PLJ 1986 Lah. 275 (DB).
6. AIR 1963 Mys. 1 (FB) + 1958 Ker L J 1346 + AIR 1960 Mad. 312 (DB).

been out of possession of property for a period of more than 12 years and same had not been claimed by his successors, within the statutory period. Suit for possession thereof, subsequently, would be barred by limitation.[7] But where the possession of the defendant is permissive in character being under pure licence, it is consistent with continuance of plaintiff's title in spite of such possession whatever may be its duration. In such a case unless the defendant succeeds in establishing that his possession has matured into title by reason of his adverse possession for over 12 years he cannot prevent the plaintiff from obtaining possession exclusive or joint as the case may be of the property by means of a suit.[8] Suit by plaintiff having title to property and showing that his predecessor-in-interest was in possession of suit property within 12 years would be within limitation.[9]

Suit based on proprietary title and dispossession. Article 142 is not restricted to suits based on possessory title only. Where the plaintiff has prayed for possession on dispossession of the defendant and although she has alleged that she was the proprietor of the property in suit, she has also said that she was in possession of the property when she was forcibly dispossessed by the defendant, the suit comes within Art. 142.[10] Thus where a suit for possession of land was based on plaintiff's title and there was no allegation as to when and how the defendant came into occupation and by what right, but the plaintiff later asserted his prior possession in the witness box. It was held that Art. 142 applied and therefore Art. 144 did not come into play and the plaintiff was bound to prove his possession within 12 years.[11] It is however to be noted that in such cases if the plaintiff fails to prove his title he cannot be given any relief under Art. 142.[12]

Attachment of land under S. 145, Cr.P.C. Where land was purchased by defendant in 1959. Such land remained attached under the provisions of S. 145, Cr.P.C. from 1960 to 1973. A suit for possession on the basis of title filed in 1980 would be well within time as the period during which land remained attached would be excluded for computing period of limitation.[13]

Permissive possession of defendant alleged. Where a plaintiff suing on proprietary title alleges that defendant's possession was permissive, it is a question of fact whether the defendant's possession is permissive in origin and character and the plaintiff, seeking to eject the defendant, relying upon such a fact, has to assert and prove it. He cannot simply by omitting to assert anything beyond title

7. PLD 1988 AJ&K 1 = PLJ 1988 AJ&K 1 = NLR 1988 AC 169.
8. AIR 1961 Madhya Pradesh 179.
9. NLR 1989 UC 263.
10. AIR 1950 Raj. 265 = ILR (1957) 7 Raj. 865 (DB) + 16 Cal. 473 = 16 Ind. App. 23 (PC) (Suit was based on title and dispossession--Article 142 was applied) + AIR 1940 Mad. 798 = ILR 1940 Mad. 953 (FB). (AIR 1925 Mad. 834 and AIR 1927 Mad. 287, *Overruled*) + AIR 1940 Sind. 48 = ILR 1939 Kar. 793 (DB) + AIR 1940 Oudh 134 = 15 Luck. 157 (DB) + AIR 1941 Oudh 415 (AIR 1937 Oudh 328, held not good law) + AIR 1938 Bom. 210 + 17 Cal. 137 = 1890 Pun Re No. 23 = 16 Ind. App. 148 (PC) + AIR 1934 All. 993 = 57 All. 278 (FB) + AIR 1936 Pat. 147. (Facts show that Article 142 was applied to the case) + AIR 1935 Lah. 507 + AIR 1926 Cal.1166 (DB) + AIR 1925 Nag. 370 + AIR 1915 Bom. 92 = 39 Bom. 335 (DB).
11. AIR 1961 Madhya Pradesh 179.
12. PLD 1972 Quetta 47.
13. 1988 CLC 2403.

seek to take advantage on the ground of his title by suggesting that every possession with anybody else than the title-holder should be presumed to be permissive.[14] Where it is proved that the possession of the defendant was permissive in origin, Article 142 or 144 would not apply on the mere allegation that tenancy rights of defendant had been extinguished. To such a case Art. 139 was applicable.[15] Where a plaintiff files a suit for ejectment of the defendant from the land in suit on the basis of his title on the allegation that the defendant was his tenant, who had not paid any rent and had refused to vacate the land and the allegation of tenancy denied by the defendant is not proved, the suit virtually amounts to one for possession on the ground of dispossession by the defendant and would be governed by Art. 142, Limitation Act and not by the residuary Art. 144. It is for the plaintiff to establish under Art. 142 that his dispossession took place within 12 years of the suit. Otherwise he cannot get relief. It does not matter in that suit whether the defendant pleaded adverse possession or not. The burden will be on the plaintiff to prove that his suit was in time and mere proof of title will not be sufficient to give a decree for possession against the stranger in possession.[16] The plaintiff brought a suit for ejectment of the defendant and for possession of the house on the basis of his title under a sale deed, on the allegation that he had orally permitted the defendant to occupy it on the express understanding that he would vacate the premises whenever the plaintiff asked for it, but that he had failed to do so in spite of repeated demands. The defendant denied the title of the plaintiff's vendor and also that he was put in possession by the plaintiff. The story of oral entrustment and permissive possession of defendant was found to be false. It was held that the suit was governed by Art. 142 and not by Art. 144 and in order to succeed in the suit the plaintiff was bound to show not only that he had title to the property but also that he or his predecessor-in-title was in possession of the house within twelve years next prior to the institution of the suit. The plaintiff having failed to prove his possession within twelve years of the suit, the suit was liable to be dismissed as barred by limitation.[17]

Auction--purchaser, suit for possession by. A suit by an auction--purchaser who has obtained formal delivery of possession, is a suit by him as an owner, Art. 144 and not Art. 138 applies to it.[18] Thus a suit for possession by an auction-purchaser of a particular joint family property described with boundaries in his sale certificate, sold in enforcement of a decree obtained by a creditor against the manager of the family, is governed not by Art. 120 but by Art. 144.[19] Where the auction-purchaser in execution of a mortgage decree was given not actual but symbolic possession and he brought suit for recovery of possession neither Article 137 nor Article 142 applied as against the defendant who was not a party to the mortgage suit or to the proceedings in execution of the decree. The only Article on which the defendant could rely was Article 144 which threw on him the onus of showing that he had been in possession of the property adversely to the plaintiffs

14. AIR 1961 Madhya Pradesh 179.
15. 1974 SCMR 46.
16. AIR 1962 Manipur 36 + AIR 1963 Mys. 1 (FB) (AIR 1959 Mys. 227 *overruled*).
17. AIR 1961 Jammu and Kashmir 82 + 8 Moo Ind App 199 (PC) + ILR 16 Cal. 473 (PC) + ILR 17 Cal. 137 (PC) + 25 Mad. L J 95 (PC) + AIR 1940 Mad. 798 (FB) + AIR 1935 Lah. 475 (FB) + AIR 1954 Trav-Co. 449.
18. AIR 1946 Pat. 202 = 24 Pat. 717 (DB).
19. AIR 1946 Bombay 192.

for twelve years before the suit.[20] Where the judgment-debtor continued in possession after the possession of the property was delivered to the decree-holder in execution of the decree. It was held that the decree-holder and judgment-debtor no longer jointly held the property after the possession was delivered to the former under Order 21, Rule 35, C.P. Code and the possession of the judgment-debtor became adverse with effect from the date when possession was delivered to the decree-holder, and therefore a suit for possession brought by the decree-holder after more than twelve years of the adverse possession would be time-barred.[1]

Proprietary title not proved. Where a suit is based on proprietary title as well as dispossession of plaintiff and proprietary title is not proved, Art. 142 would not apply to the suit.[2] Where a person's claim of ownership in a judicial proceeding on the basis of adverse possession is held to be unfounded from the very date of the institution of the suit, such a person cannot be allowed later on to change the character of his possession. If the possession at the time of the institution is not permissive, the nature of the possession will continue to be so and limitation would not stop running against the true owner.[3]

5. "Immovable property." The expression "immovable property" covers standing trees,[4] a jagir income arising out of land,[5] an agreement to grant a lease,[6] arrears of land revenue or cess,[7] and proceeds of the sale of immovable property.[8]

Materials of house. Materials of standing house are immovable property.[9] But where the plaintiff does not own the land on which the house is built, the material used in the house is movable property. Thus where plaintiff sued a trespasser for ejectment from a house; but it was found that the land on which the house was built did not belong to him, it was held that the suit falls under Art. 49 and the plaintiff was entitled only to compensation for the materials which were his and he cannot avail himself of 12 years' limitation for this purpose.[10]

Space above land. The space above land belonging to the owner of the land is immovable property capable of being adversely possessed.[11] Any projection like a *chajja* or a balcony which overhangs another person's land would amount to trespass upon the interests of the immovable property of another and consequently that itself constitutes an immovable property. That being so a person

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20. 8 DLR 181.
1. PLD 1964 Peshawar 247.
2. PLD 1972 Quetta 47 (But see AIR 1961 Orissa 100 and 1970 DLC 453).
3. PLD 1990 SC (AJ&K) 1.
4. 19 Bom. 207 (DB)+AIR 1952 All. 310. (For purposes of the Limitation Act, immovable property would include trees attached to land, whether sold for purposes of being enjoyed as fruit trees or of conversion into timber.)+3 All. 435 (DB)+1884 Pun Re No. 112, p. 320 (DB)+AIR 1958 Pat. 66+AIR 1914 Low Bur 241=8 Low Bur Rul 64 (DB).
5. 1894 Pun Re No. 4, p. 6 (DB).
6. 22 Suth W. R. 287 (DB).
7. 10 Mad. 115 (DB).
8. AIR 1918 Pat. 548 (DB).
9. AIR 1923 Lah. 150+8 Mad H C R 100 (DB).
10. AIR 1959 Assam 236.
11. AIR 1934 All. 1054=57 All. 353 (DB)+AIR 1949 Mad. 826+1947 All L W 38 (DB)+45 Cal. W N 17+29 Mad. 511 (DB)+AIR 1916 Mad. 613=38 Mad. 6 (DB)+AIR 1925 Bom. 335.

can acquire a title by adverse possession by a projecting balcony.[12] It is to be noted that an owner of a house acquires a proprietary right by adverse possession to the space occupied by the projecting roof and other projections projecting on the land of an adjoining owner. He however acquires no right to the space below or above the projection.[13]

A suit for injunction for the removal of a balcony would be governed by Art. 120 if there is no claim for a decree for possession of the land under the balcony but if there is a prayer for such a decree, the suit would be governed by Article 142.[14]

Hindus, rights of. Where the question concerns the rights of Hindus the expression "immovable property" should be taken to include whatever the Hindu law classes as immovable, although they are not so the ordinary acception of the word.[15] Thus in case of Hindus a right to a hereditary office with emoluments attached thereto,[16] or a right to birth,[17] or a right to officiate at funeral ceremonies of Hindus,[18] or *pala or tun* of worship,[19] or a right of exclusive worship of an idol is immovable property.[20]

6. Interest in immovable property. Under Act. 144 right by adverse possession is created both in the immovable property of "any interest therein not hereby otherwise specially provided for". Obviously the framers of the law recognised two rights, a right for possession of immovable property and the other, a right relating to any interest in such immovable property. The two are not synomous, while the first relates to the immovable property itself, the second relates to the benefits arising out of it.[1] Article 142 is limited to suits for possession of immovable property. Art. 144 includes in addition suits for possession of interest in immovable property. Scope of Art. 144 is wider than that of Art. 142.[2] Therefore a suit for the possession of an interest in immovable property would be governed not by Article 142 but by Article 144.[3] A suit by a share-holder of a company for recovery of property of the company is a suit for recovery of possessory interest in immovable property and to it the residuary Art. 144, if not Art. 142, applies.[4]

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12. AIR 1964 Allahabad 193 + AIR 1934 All. 1054.
13. AIR 1957 Nag. 2 = ILR 1956 Nag. 727 (DB). (Adjoining owner is entitled to build above or below the projecting roof provided no damage is caused to projecting roof).
14. AIR 1939 Nag. 197 = ILR 1939 Nag. 580.
15. 1 Ind. App. 33 (PC) + 6 Bom. 546 (FB). (Allowance granted to temple out of certain assessment by *sanad* held immovable property).
16. 9 Bom. HCR 99 (DB) + 10 Bom. 149 (DB).
17. 1908 Pun Re No. 34, p. 203.
18. 10 Cal. 73 (DB).
19. AIR 1919 Cal. 671 = 46 Cal. 455 (DB).
20. 4 Cal. 683 (DB).
1. AIR 1964 Allahabad 193.
2. AIR 1950 P.C. 44 = 77 Ind. App. 42 = 29 Pat. 279.
3. 14 Cal. L. Jour 572 (DIB) + AIR 1952 Pat. 201 (DB). (Right to collect lac from lac-bearing trees) + AIR 1932 Cal. 300 = 59 Cal. 344 + AIR 1923 Pat. 58 = 1 Pat. 674 (DB).
4. AIR 1960 Mad. 410 = ILR 1960 Mad. 407 (DB).

Fishing rights. An exclusive right of fishery is an interest in immovable property.[5] But a right of fishery which does not exclude the owner or other persons from fishing, is only an easement.[6]

Grazing rights. Where the plaintiffs claim only a grazing right in land admittedly owned by the defendants, their claim is to an interest in immovable property and not the property itself. A suit for the exercise of that right and for removal of any obstruction to the use of it shall have to be regarded as one for possession of an interest in immovable property. Since a suit of this nature is not otherwise specially provided for in the schedule, it must fall under the residuary Art. 144.[7]

Instances of interest in immovable property. The following rights have been held to be interests in immovable property; a right to collect assessment of lands endowed in favour of a shrine,[8] a right of occupancy tenant in the land,[9] a right to levy summary cess land,[10] a right to a watercourse;[11] a right to collect rent of property,[12] a right to rear and appropriate lac from lac bearing trees.[13]

Adverse possession of interest in immovable property. There can be adverse possession of a limited interest in the property.[14] Thus were immovable property is mortgaged under some form of mortgage under which the mortgagor is entitled to periodical accounts or payments from the mortgagees, the mortgagor's interest is capable of being adversely possessed and an equity of redemption may be said to be an interest in immovable property which can be acquired by adverse possession.[15] But where a usufructuary mortgagor, has nothing more than a bare right to redeem vested in him, such right cannot be adversely possessed.[16]

7. "Plaintiff"--meaning of. The plaintiff for the purpose of Art. 142 means not only the plaintiff who brings the suit but also his predecessor-in-interest. Thus where the plaintiff claims a right to property through another and the latter was dispossessed or the possession of the defendant became adverse to the latter, the date of dispossession of the plaintiff or the date when the possession became adverse to the plaintiff, would be the date on which his predecessor-in-title was dispossessed or on which the defendant's possession became adverse to the predecessor-in-title.[17]

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5. AIR 1932 Cal. 300 = 59 Cal. 344 + AIR 1951 Nag. 382 = ILR 1951 Nag. 199 (DB) + AIR 1930 Mad. 679 + AIR 1923 Pat. 58 = 1 Pat. 674 (DB).
6. AIR 1937 Nag. 38 + AIR 1921 Bom.417 = 45 Bom. 80 (DB).
7. AIR 1958 Punj. 187 = ILR 1958 Punj. 822 (DB).
8. AIR 1933 Bom. 26 (DB).
9. 1876 Pun. Re. No. 19, p. 25 (DB).
10. 36 Bom. 174 (DB).
11. 4 C P L R 16.
12. AIR 1941 Pat. 219 (DB) + AIR 1926 Bom. 345 (DB).
13. AIR 1952 Pat. 201 (DB).
14. PLD 1949 P.C. 209 = 3 DLR 393 + AIR 1942 Bom. 268 = ILR 1942 Bom. 595 (DB).
15. 32 Cal. 296 = 32 Ind. App. 23 (PC).
16. AIR 1916 All. 79 = 38 All. 411 (DB) + AIR 1935 All. 174 + AIR 1920 Lah. 300 = 1 Lah. 549 (DB) + AIR 1915 Mad. 1150 (DB).
17. AIR 1930 Cal. 474 (DB) + AIR 1957 Pat. 155 (DB) + AIR 1925 Oudh 729 + AIR 1926 Pat. 192 = 5 Pat. 441 (DB) + AIR 1919 Mad. 798 = 41 Mad. 749 (DB).

Limited owner is not predecessor-in-interest. A limited owner cannot be considered to be a predecessor-in-interest of a plaintiff who takes from him as full owner. Thus for the purposes of Art. 142 dispossession or a discontinuance of possession by an adoptive mother is not one by the adopted son.[18] Similarly a reversioner succeeding to an estate held by a limited owner or a person succeeding to another in the event of a contingency, does not claim through the other.[19] For him limitation begins on the date on which the right to possession accrues to him. Thus a reversioner, upon surrender of the estate to him by the widow has immediate right to sue for possession of the whole of the estate in respect of which the widow effaced herself, and limitation will begin from the date of surrender by the widow.[20]

Property held as remuneration for services. In a suit for possession of land appertaining to a village service holding to which the plaintiff as *patwari* is entitled, time runs against the plaintiff only from the date of his appointment as *patwari*.[1]

8. "Has been dispossessed or has discontinued possession." In the case of dispossession a person comes in and drives out the others from possession; there is discontinuation of possession where the person in possession goes out and is following into possession by others.[2]

Under Article 142 the period of limitation for possession of immovable property when the plaintiff, while in possession of the property, has been dispossessed from, or has discontinued possession of is twelve years from the date of dispossession or discontinuance of possession.[3] In order that Art. 142 is attracted the plaintiff must initially have been in possession of the property and should have been dispossessed by the defendant or some one through whom the defendants claim or alternatively the plaintiff should have discontinued possession.[4] Where there has been in fact, a cessation of possession, the question of intention is immaterial, but in determining whether there has been discontinuance of possession intention cannot altogether be left out of account.[5]

Dispossession of plaintiff. Where the suit is one for recovery of possession on the allegation of dispossession it has to be decided only on proof of prior possession within 12 years of the suit by the plaintiffs and dispossession. The presumption of title based upon long possession had no place in consideration of the issue in the suit.[6] The only requirement under Art. 142 is that the plaintiff

18. 2 Cal. L. Jour 87 (DB).
19. 40 Cal. 173 (DB).
20. AIR 1957 Andh Pra 945 (DB).
1. 10 C P L R 78.
2. 1942 Nag. L. Jour 99 + AIR 1957 Hyd. 15 = ILR 1956 Hyd. 585 (DB) + AIR 1956 Madh B. 166 = ILR 1956 Mad. B. 296. (Article has no applicability where the plaintiff is in constructive possession of the property) + AIR 1951 Orissa 183 = ILR (1949) 1 Cut 804 (DB) + AIR 1949 Cal. 546 = ILR (1945) 2 Cal. 623 (DB) + 14 Ch. D. 537 = 49 L J Ch. 473 + AIR 1939 All. 257 = 1939 All. 454 (DB) + AIR 1939 Cal. 354 (DB) + AIR 1939 Nag. 7 + AIR 1938 Sind 198 = ILR 1939 Kar. 111 (DB) + AIR 1926 Pat. 130 = 5 Pat. 80 (DB) + 35 Bom. 79 (DB) + AIR 1922 Mad. 59 = 45 Mad. 370 (DB).
3. PLD 1974 Kar. 235 = PLJ 1974 Kar. 57.
4. AIR 1965 Supreme Court 1553.
5. AIR 1925 Cal. 981 (DB).
6. PLD 1969 Dacca 132 (DB) + PLD 1961 Dacca 259 (DB) + PLD 1962 Pesh. 124 (DB) + PLD 1953 B J 10 + 19 DLR 745 + 24 Cut. L. Tim. 345.

should prove to the satisfaction of the Court the fact of his having been in possession within twelve years of the institution of the suit. There is no question of proving possession as owner.[7] Where the plaintiff does not prove that his dispossession took place within 12 years of the suit, his suit will be barred by limitation under Art. 142.[8]

Dispossession--what is. Mere acts of trespass by the defendant are not enough to show that the plaintiff's possession has terminated if he has been enjoying the property in such manner as it is capable of being enjoyed.[9] To defeat a title by dispossessing the former owner, acts must be done which are inconsistent with his enjoyment of the soil for the purposes for which he intended to use it, and therefore it is necessary to look at the position in which the former owner stands towards the land, as well as to the acts done by the alleged dispossessor.[10] The possession of the defendant must be actual, visible, exclusive, hostile and continuous during the statutory period in order to constitute a bar. A mere trespass does not constitute adverse possession whatever may be its duration. The party who gets into possession must assert his right to the land and use it in a manner such as the nature of the land permits as if he was the owner thereof and doing this openly to the exclusion of everyone else particularly the true owner. And even when these elements are established the right of the person who claims by adverse possession must be limited particularly in the case of an open waste land to that portion only which is in his actual possession, of which he has a foothold and which he occupies in fact.[11]

Dispossession occurs where a person is completely ousted from his right to catch fish in water on his own land by a definite act of aggression by another party.[12] Resistance offered by one of several persons in possession to another of such persons in his attempt to get separate possession of his share amounts to dispossession of the latter.[13] Similarly taking exclusive possession of land whether communal or not is not continuing trespass within the meaning of S. 23 but is dispossession of the character dealt with in Article 142 and 144.[14] But taking away a crop from the lands of a party does not amount to his dispossession.[15]

Plea of dispossession. Under Art. 142, it is not necessary that the plaintiff should say in so many words that he was actually in possession of the property in dispute and had been dispossessed therefrom by the defendants. What is necessary is whether on the allegations of fact made by him it is alleged to follow as a necessary inference that he alleged possession and dispossession. Where the plaintiff in his plaint had stated that he was the owner of the land in dispute and had been paying its land revenue and that the defendants got into possession

7. AIR 1964 Bombay 287.
8. 1982 Dhaka L R (SC) 275 + 1970 DLC 453.
9. 28 W R (Eng.) 452 + 36 Cal. 28 + AIR 1930 Oudh 304 + AIR 1929 Lah. 71 + AIR 1926 Pat. 130 = 5 Pat. 80 (DB) + AIR 1925 Lah. 53 (DB).
10. 1969 SCMR 547 + AIR 1917 P.C. 18 = 44 Cal. 858 = 44 Ind. App. 104.
11. 1969 SCMR 547 + PLD 1960 Karachi 428 = PLR 1960 (1) Karachi 248.
12. AIR 1917 Pat. 528 = 2 Pat. L. Jour 289 (DB).
13. AIR 1929 Cal. 297 = 56 Cal. 914 (DB).
14. AIR 1939 Nag. 145.
15. AIR 1958 Orissa 58 (DB).

forcibly in Kharif 1952. It was held that Art. 142 and not Art. 144 applied to the case.[16]

Suit on property title. Where the plaintiff has prayed for possession on dispossession by the defendant and although she has alleged that she was the proprietor of the property in suit, she has also said that she was put in possession by the defendant, the suit comes within Art. 142.[17] But if in such a case the plaintiff fails to prove title he cannot claim any relief on ground of dispossession within 12 years.[18]

Discontinuance of possession. Where a person of his own volition gives up possession of property a discontinuance of possession takes place. Thus where *A* executes a transfer in favour of *B* and delivers to him the possession of the property transferred, the case is one of discontinuance of possession by *A*.[19] When the plaintiff alleges that the defendant was put in possession as his licencee or that defendant's possession was permissive but it was not proved that the possession was permissive the case will be one of discontinuance of possession and Art. 142 would apply.[20] It is necessary, even to constitute a discontinuance of possession, that the termination of the man's possession must be followed by the actual possession of another.[1] It implies that all indications of occupation have been withdrawn.[2] A mere ceasing by the person in possession to occupy or enjoy the property is not a discontinuance within the meaning of this article.[3]

Tenant, possession of. Making over possession to a tenant, though under an invalid lease, does not amount to discontinuance within the meaning of Art. 142.[4] Similarly a person who has been collecting rents from the tenants in a zamindary cannot be said to be ousted from possession until a claim of such person for recovery of rent has failed. The fact that another person was realising rent from tenants did not by itself constitute ouster.[5] Even bringing of a suit for rent against a person in possession is not an attempt to disturb possession of a party.[6] But where the proprietor was prevented from collecting the rent from his tenants; it was held that the case was one of dispossession.[7]

Possession held in different capacity. A *wakif*, who continues in possession as a *mutawali* after execution of the Wakfnama, does not discontinue possession. It is

16. AIR 1963 Punjab 393 (AIR 1935 Lah. 475 (FB) *relied on*).
17. AIR 1958 Raj. 265 = ILR (1957) 7 Raj. 865 (DB) + AIR 1968 Punjab 415 (FB) + AIR 1935 Lah. 475 (FB) + AIR 1958 Pat. 386 (FB).
18. PLD 1972 Quetta 47.
19. AIR 1938 Nag. 335 = ILR 1939 Nag. 1 (FB) + AIR 1918 P.C. 180 = 46 Cal. 694 = 46 Ind. App. 60 + AIR 1932 P.C. 55 = 59 Ind. App. 130 = 11 Pat. 272.
20. AIR 1962 M.P. 31 + AIR 1958 Manipur 47.
1. AIR 1962 M.P. 31 + 35 Bom. 79 (DB) + AIR 1914 Upp Bur 44 + AIR 1923 Cal. 1 = 50 Cal. 49 (DB) + AIR 1919 Mad. 8 (DB) + AIR 1921 Pat. 36 = 5 L. Jour 592 (DB) + AIR 1930 Lah. 303 (DB).
2. AIR 1962 Madhya Pradesh 31 + AIR 1939 Cal. 354.
3. AIR 1917 P.C. 18 = 44 Cal. 858 = 44 Ind. App. 104 + AIR 1934 Bom. 207 = 59 Bom. 397 (FB). (AIR 1921 Pat. 36, *Followed*) + AIR 1954 Pat. 368 + AIR 1939 All. 257 = ILR 1939 All. 454 (DB).
4. AIR 1952 Pat. 46 = 30 Pat. 964 (DB).
5. AIR 1941 Pat. 219 (DB).
6. AIR 1929 Cal. 417 (DB).
7. AIR 1915 Cal. 727.

only a change in the character of possession. Article 142, therefore does not apply.[8]

Resumption of possession. Where the possession granted under an agreement is resumed under the terms of the agreement or by arrangement there is neither dispossession nor discontinuance within the meaning of Art. 142.[9]

Possession retaken after loss of title by adverse possession. Under Art. 142 the plaintiff has to prove two things: (1) his title to the land in dispute, and (2) his possession of the same within 12 years of the institution of the suit. It was found that originally, the plaintiff was the owner of land.[10] But he lost possession after the defendants had been in adverse possession for more than 12 years the plaintiff re-entered in possession. It was held that on dispossession he cannot assert title on basis of possession.[11] But the other view is that once the person having title regains possession. It becomes rightful possession and wipes out the prior period of absence of possession and once he loses possession again, there is dispossession within Art. 142. The forcible entry into possession by him may render him liable to a criminal prosecution; but that is a very different thing. Once possession held by him is rightful possession and such possession is within the period of twelve years of the date of the suit, the requisites of a subsisting title in a suit in ejectment are fulfilled.[12]

Defendant must be in possession. For the application of Articles 142 and 144 it is necessary that the defendant must be in possession on the date of the suit.[13]

9. "Possession"--what is. A possession in fact may be either in respect of corporeal property or in respect of incorporeal right such as a right to an office, a dignity, or a monopoly. In either case, however two elements must exist in order to constitute possession in fact. The *animus possidendi* is recognized as constituting possession in the eye of law, and the second element is actual possession of property. The former is a mental element and consists in the intent to possess. The latter is the physical element and consists in the concrete realisation of the intent by actual user of the thing sought to be possessed.[14] Thus bare occupation and possession are two different things. Possession does not necessarily include occupation. It comprises a right to possess and a right and ability to exclude others together with the *animus possidendi*, that is, knowledge, desire and intention to use, if needed, of these rights.[15] In other words mere acts of trespass without any intent to possess do not constitute adverse possession.[16] Where though foundations were laid, the land was never enclosed, it does not

8. AIR 1942 Cal. 180 (DB).
9. AIR 1947 Sind. 69.
10. AIR 1963 Punjab 393.
11. AIR 1963 Punjab 393 + 1957 Raj. L W 433 + AIR 1925 Oudh. 20.
12. AIR 1965 Kerala 177.
13. AIR 1928 Oudh 155 + AIR 1926 Cal. 1166 (DB).
14. AIR 1951 Orissa 183 = ILR (1949) 1 Cut 804 (DB).
15. AIR 1941 Nag. 357 = ILR 1942 Nag. 564 (DB) + AIR 1940 Mad. 236 + AIR 1914 Sind. 119 = 8 Sind L R 331 (DB) + AIR 1925 Pat. 210 = 3 Pat. 915 + AIR 1934 All. 883 + AIR 1922 Lah. 59 + 1900-1 Ch. 19 + 8 Oudh Cas. 177 (DB).
16. PLD 1960 Kar. 428 = PLD 1960 (1) Kar. 248 + AIR 1934 Pat. 565 (DB) + 7 Bom. 323 (DB) + AIR 1935 Cal. 760 (DB) + AIR 1923 All. 340.

amount to an unequivocal assertion of an intention to appropriate the land.[17] But the position is different where there is intention to possess coupled with acts of possession. Thus in the case of jungle land which produces nothing but self-grown trees and a seasonal crop of wild grass, sporadic invasions and the grazing and carrying away of grass and the cutting of firewood do not amount to adverse possession.[18] Ordinarily insignificant acts of user do not establish title, but when one party to the suit is Government and the acts are sufficiently important, the land in question being open site in front of a house in a village neither surveyed nor measured, title by adverse possession can be established.[19]

Waste land. In case of waste land adverse possession must be limited to that portion only which is in the actual possession of the person concerned and on which he has a foothold.[20] Thus the tying and grazing of cattle by a person without title on vacant or waste land, do not constitute possession.[1] Planting of trees on another person's land,[2] or mere occupation of banjar land by a tenant, in the shape of staking cowdung erecting a katcha hut and the like, does not amount to adverse possession against the landlord.[3] Where, therefore, in respect of land described as *ghair mumkin rait* the evidence regarding the extent of the area enclosed by means of a hedge was discrepant and where *R* had all along been shown as its owner in *jamabandis* and even in *khasra girdawaris*, it was held that even if *A* claiming adverse possession had raised some kind of hedge round it, it would hardly be of any consequence so as to make his possession adverse to that of *R*.[4] But where with the intention of taking possession of a strip of a waste land belonging to the plaintiff, defendant deposited earth excavated from a tank and cut the trees thereon. It was held, that the acts of the defendant amounted to ouster of the plaintiff.[5] For the same reason though d[illegible]ping of rubbish, tethering of cattle, etc., would not prove adverse possession but in conjunction with the fact that the defendant enclosed the land with a wall it is sufficient proof of adverse possession.[6]

17. AIR 1939 All. 161 = ILR 1939 All. 217 (DB).
18. AIR 1930 P.C. 281 = 11 Lah. 638 = 57 Ind. App. 273. (*See also* AIR 1957 Manipur 15). (Adverse possession by raising certain plants, is not sufficient for maturing title by adverse possession) + AIR 1955 Mad. 542 (The mere putting of the zinc sheet over a wall by the defendant is not sufficient to establish that the defendant did so in virtue of the possession of the wall to give title to the land by adverse possession) + Madh B L J 1955 H C R 845. (Mere throwing of heap of rubbish on the piece of land) + AIR 1938 Lah. 324. (Waste land--Building of temporary *chhappar* surrounded by ordinary enclosure of bushes--Not adverse possession) + AIR 1926 Mad. 235. (Act of sweeping the land occasionally by the municipality--Not adverse possession).
19. AIR 1916 Bom. 296 = 40 Bom. 392 (DB).
20. PLD 1960 Kar. 428 = PLR 1960 (1) Kar. 248.
1. AIR 1939 All. 161 = ILR 1939 All. 217 (DB) + AIR 1934 Lah. 960 (DB). (Non-payment of rent makes no difference) + AIR 1918 Cal. 844 (DB) + AIR 1916 Nag. 90 = 13 Nag. L R 25 + AIR 1937 Lah. 492 (DB) + AIR 1934 Mad. 274 (DB).
2. AIR 1922 All. 50.
3. AIR 1917 All. 415.
4. PLD 1967 Lahore 1051.
5. AIR 1920 Cal. 757 (DB).
6. AIR 1929 Lah. 526 (DB).

Mere intention to possession. The mere existence of the *animus possidendi* without actual user does not constitute possession.[7] Therefore the mere entry of a piece of land in the Revenue Records as Government waste does not transfer possession to the Government.[8]

Constructive possession. Constructive possession is really the right to take physical possession.[9] Where the plaintiff is only in constructive possession or possession in law of the property, there can be no dispossession or discontinuance of possession.[10]

Mortgagor, possession of. Possession may be corporeal as well as incorporeal and from this it follows that adverse possession can also be corporeal or incorporeal. Possession means the enjoyment of whatever right is possible in the circumstances in relation to that right. If the owner mortgages the land with possession to somebody else the mortgagee is in actual physical possession. The owner is only left with the equity of redemption. The mortgagor cannot enter upon actual possession of the land whenever he wants to, because he has parted with his possession to the mortgagee. He can redeem the land in accordance with the terms of the mortgage. If somebody else, to his knowledge, exercises this right then it may be said that his rights have been interfered with by someone else but if he continues undisturbed in the possession of this right, it cannot be said that a trespasser has come and taken adverse possession of his rights. Where a stranger asserts that he is the owner to the knowledge of the mortgagor, this assertion is not by itself sufficient to disturb the right of the mortgagor because mere assertion has never been held to amount to adverse possession.[11]

Submerged land. The owner of a submerged land is deemed to be in possession of the land though he is not in actual possession of it.[12] Where land belonging to *A* was submerged and on reformation it was occupied by *B*. It was held that *A*'s suit will be governed by Article 142 and not by Art. 144.[13]

Subsoil. The owner of a land, who has parted with the surface rights therein is deemed to be in possession of the subsoil, though he is not in actual possession of it.[14] But a third person may without right work mines in the subsoil and this would clearly be actual adverse possession.[15]

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7. AIR 1929 Pat. 685 = 9 Pat. 447 (DB) + AIR 1927 Cal. 117 (DB). (*Reversed* on another point in AIR 1930 P.C. 113) + AIR 1933 Nag. 202 = 29 Nag. L R 167.
8. 7 Sind. L R 169 (DB) + 10 Ind. Cas. 363 (DB) (Cal.) + 11 All. L. Jour 179 + AIR 1919 Oudh 80 = 22 Oudh Cas. 369.
9. AIR 1931 P.C. 162 = 58 Ind. App. 228 = 59 Cal. 80.
10. AIR 1929 Lah. 596 (DB) + AIR 1956 Madh B 166 = ILR 1956 Madh B 296.
11. AIR 1959 Punj. 147 = ILR 1959 Punj. 385 (FB).
12. 9 Cal. 744 (FB) + AIR 1960 Pat. 237 + AIR 1941 Cal. 192 (DB) + AIR 1921 Pat. 234 = 5 Pat. L. Jour 632 (DB).
13. 7 Cal. 225 (DB) + AIR 1939 All. 626 (DB) + AIR 1926 Cal. 1166 (DB).
14. AIR 1931 P C 162 = 58 Ind. App. 228 = 59 Cal. 80.
15. AIR 1931 P.C 162 = 58 Ind. App. 228 = 59 Cal. 80 + AIR 1925 P.C. 42 = 4 Pat. 244 = 52 Ind. App. 109.

Common land. A mere act of possession without ouster of the co-owner is not sufficient possession for the purpose of these Articles. Thus planting of trees on common land is not adverse possession.[16]

Nature of possession. As regards the *corpus possession*, the nature of the requisite possession must vary with the nature of the subject possession. The possession must be a kind of possession of which the particular subject is susceptible.[17]

Title and possession. Where two persons do acts in assertion of their possession over land adversely to each other, the person who has the title is in actual possession and the other a trespasser.[18] It follows that mere residence with allottee of property would not create any right in such property, unless person claiming such right could prove that his possession therein was hostitle or adverse to that of allottee of property. Co-possession with allottee could not render such possession adverse to allottee.[19]

10. Possession of part, if is possession of whole. In the case of rightful owner proof of actual possession of a part of the property will prove his possession of the whole except portions in the actual possession of another.[20]

Trespasser, possession of. In the case of a trespasser, claiming adverse possession against the owner, the trespasser will not be deemed to be in possession of the whole of a property merely because he is in possession of a part of it.[1] Therefore a trespasser's adverse possession must be confined to the area actually occupied by him.[2] What constitutes actual possession of the whole property by a trespasser depends on the circumstances of each case.[3] It is however clear that mere constructive possession on the part of a person will not enable him to prescribe for a title by adverse possession.[4]

Possession of part of survey number. Adverse possession of a part of land of a defined survey number may be a piece of evidence for adverse possession of the whole, if possession of part of land is in relation to assertion of whole survey number, but every possession of a portion of a survey number cannot constitute

16. AIR 1927 Lah. 416.
17. AIR 1934 P.C. 23=61 Ind. App. 78=61 Cal. 262. (Possession of bichury)+AIR 1922 P.C. 181=48 Ind. App. 395=44 Mad. 883. (Possession of forest land)+AIR 1917 P.C. 18=44 Ind. App. 104=44 Cal. 858+AIR 1950 Him. Pra. 6.
18. 10 Cal. L. Jour 527 (DB).
19. PLD 1987 Kar. 567.
20. 26 Bom. 410 (DB)+164 Ind. Cas. 452 (DB) (Cal.)+AIR 1938 Pat. 222=17 Pat. 210 (DB)+24 Cal. 256 (DB).
1. 24 Cal. 256 (DB)+AIR 1951 Pat. 502 (DB)+AIR 1951 Pat. 160 (DB). (A person in possession under an invalid lease is a mere trespasser)+63 Cal. 300 (DB)+AIR 1919 Cal. 782 (SB)+AIR 1930 Lah. 303 (DB)+AIR 1914 Mad. 380 (DB)+AIR 1936 Oudh 207+AIR 1936 Oudh 387=12 Luck. 371 (DB)+AIR 1931 Pat. 436 (DB)+AIR 1936 Pat. 33=13 Pat. 517 (DB).
2. 63 Cal. 300 (DB)+AIR 1959 Punj. 147=ILR 1959 Punj. 385 (FD)+AIR 1930 Lah. 303 (DB)+AIR 1930 Oudh 374+AIR 1926 Pat. 385 (DB)+AIR 1927 Oudh 209.
3. AIR 1948 P.C. 76 (AIR 1942 Cal. 1 *Affirmed*).
4. AIR 1939 Mad. 456=ILR 1939 Mad. 803 (SB)+35 Cal. 961 (DB)+AIR 1935 Cal 760 (DB)+AIR 1928 Oudh 470+AIR 1930 Pat. 20 (DB).

adverse possession for the entire land.[5] Possession of a part by a trespasser will be evidence of possession of any other part also, where the two parts are so closely connected that the possession of either of them can be treated as possession of the other.[6] Thus where a tract of land with a defined boundary has been throughout claimed by a person as owner and acts of ownership have been done upon various portions of it, such acts are evidence of possession of the whole.[7] Where the defendants, worked certain quarries belonging to the plaintiff in all parts of the land openly without objection or opposition, it was held that they worked the quarries in such a way as to prove possession of the whole.[8] Where land was used by defendants for holding a religious fair without let or hindrance and they built shops, temples and arenas as well as laid pipes on certain portion while the rest lay vacant, the defendants were held to be in possession of the whole land.[9]

Mines. In the case of mine there is no presumption that possession of a part of the seam infers possession of the whole seam, much less of all the seams in the mineral field.[10]

11. Possession of house is possession of site. The possession of a house is also the possession of the site on which that house stands.[11] Thus where the plaintiff in a suit for possession of land on which a house in possession of another stands has failed to prove his own possession within the statutory period he is out of Court, and it is not necessary to consider the defendant's evidence. Once it is found that the suit is barred under Art. 14, there is no obligation cast upon the defendants to prove that they had held the land at any stage.[12] Conversely it has been held that a house must be held to be the absolute property of the party who holds the soil on which it stands.[13]

12. Possession follows title. Possession is presumptive evidence of title until the contrary is shown.[14] It is prima facie a good title against all but the true owner.[15] Therefore a person in established possession can defend his possession even without establishing title in himself against all persons except the rightful owner.[16] But in absence of any evidence on record to establish adverse possession, mere possession over land for any length of time or non-payment of rent, in absence of other required ingredients was not sufficient to prove adverse possession.[17]

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5. 1985 CLC 1259 (DB).
6. AIR 1942 Cal. 1 = ILR (1941) 2 Cal. 434 (DB) + AIR 1924 Cal. 855 + 51 Cal. 669 (DB).
7. AIR 1927 Lah. 753 + AIR 1925 Sind. 201 (DB) + 34 Mad. 353 (DB).
8. AIR 1927 Cal. 956 + 55 Cal. 35 (DB).
9. AIR 1942 All. 1 = ILR 1942 All. 1 (DB).
10. AIR 1946 Cal. 123 (DB)
11. 7 Mad. L. Tim. 309 (DB).
12. AIR 1962 Madhya Pradesh 31 + AIR 1956 All. 207 + AIR 1956 Assam 111.
13. AIR 1953 Punj. 220 (DB).
14. 6 Bom. 215 (FB) + 10 Moo Ind App. 47 (PC) + AIR 1956 Raj. 171 = ILR (1956) 6 Raj. 342 (DB).
15. 6 Bom. 215 (FB) + AIR 1922 All. 277 + 1912 Mad. W. N. 707 (DB) + 118 Ind. Cas. 680 (Nag.) + AIR 1925 Mad. 1021.
16. 1981 CLC 1411 (Kar).
17. PLD 1989 Lah. 333 = PLJ 1989 Lah. 232.

Where the question is as to who was in possession of a piece of land, the presumption is that the true owner was in possession as possession follows title.[18] Where land is left vacant and no one is in possession, the possession is presumed to be with the owner.[19] In the case of open, waste or jungle lands, which do not admit of enjoyment by acts of ownership in the same manner as other property the owner is presumed to be in possession.[20]

Where there is no plea that the owner was not in possession, he is presumed to be in possession.[1] Similarly where there is no evidence of any acts of ownership, the person having title is presumed to be in possession.[2] Where the evidence is equally strong on both sides, the presumption of possession is in favour of the person having title.[3] No such presumption can be drawn where evidence is equally unworthy of credit.[4] But in the following cases the presumption has been applied even in cases where the evidence was unsatisfactory on both sides.[5]

Presumption arises only where there is evidence of possession. The presumption that possession follows title cannot be called in aid by the plaintiff where he has not adduced any evidence of possession at all or when his evidence is quite unworthy of credit. But where the evidence is not altogether valueless, the probabilities of the case and the presumption can be called into aid for the purpose of holding that the plaintiff has succeeded in proving his case of possession within 12 years before the suit.[6] But the presumption should not be applied where the plaintiff has to prove his possession at a particular time.[7]

Presumption is one of fact. The presumption that possesssion follows, title is one of fact and not of law and the Court has a discretion to draw it or not having

18. PLD 1983 Kar. 510 = PLJ 1983 Kar. 250 + PLD 1974 Kar. 235 = PLJ 1974 Kar. 57 + AIR 1934 Bom. 207 (FB) + AIR 1941 Oudh 436 (DB) + AIR 1941 Lah. 241 + AIR 1933 Cal. 199 (DB) + AIR 1917 Pat. 471 (DB).
19. AIR 1939 All. 257 (DB).
20. PLD 1974 Kar. 235 = PLJ 1974 Kar. 57 + 1970 DLC 453 + PLD 1967 1051 (Vacant, desert land) + AIR 1944 Pat. 74 + 32 Pat. 1017 (Land under water or unfit for cultivation) + 7 Sau L R 70 (House falling after creation of mortgage--Presumption is that mortgagee continues in possession of open site.) + AIR 1954 Mad. 797. (Vacant building sites.) + AIR 1954 Nag. 245 = ILR 1954 Nag. 332 (DB) + AIR 1951 Trav-Co. 246 + AIR 1948 Pat. 408 + AIR 1922 Bom. 243 = 46 Bom. 920 (DB) + AIR 1941 Oudh 45 = 16 Luck. 223 + AIR 1937 Nag. 129 = ILR 1937 Nag. 254 + AIR 1936 Lah. 208 = 17 Lah. 449 (DB) + AIR 1938 Mad. 454 (DB) + 13 Bom. L. R. 806 (PC) + AIR 1928 Cal. 104 (DB) + AIR 1937 Pat. 422 (Land incapable of continuous user.) + AIR 1938 Oudh 214 + AIR 1965 Pb. 415 (FB).
1. AIR 1926 Nag. 197.
2. AIR 1934 Bom. 207 = 58 Bom. 397 (FB) + AIR 1919 Pat. 207 = 4 Pat. L. Jour 463 (DB) + AIR 1937 Nag. 129 = ILR 1937 Nag. 254.
3. AIR 1923 Cal. 228 (DB) + AIR 1958 Pat. 562 (AIR 1922 Pat. 432 and AIR 1921 Pat. 237 (FB). *Rel. on.*) + AIR 1925 Cal. 1230 (DB) + AIR 1922 Pat. 432 = 2 Pat. 1 (DB).
4. AIR 1922 Cal. 557 (DB) + AIR 1954 Orissa 189 + AIR 1923 Cal. 303 = 24 Cri. L. Jour 141 (DB) + AIR 1916 Pat. 309 = 1 Pat. L. Jour 146.
5. AIR 1931 Mad. 644 = 54 Mad. 622 (DB) + AIR 1952 Pat. 303 + AIR 1948 All. 56 + AIR Mad. 420 + AIR 1928 Cal. 765 (DB) + AIR 1919 Pat. 207 = 4 Pat. L. Jour 463 (DB) + AIR 1922 Pat. 432 = 2 Pat. 1 (DB)
6. AIR 1958 Pat. 562. (AIR 1921 Pat. 237 (FB) and AIR 1922 Pat. 432. *Rel. on.*).
7. AIR 1915 Cal. 675 (DB).

regard to the circumstances of the case.[8] Possession will not follow title where there is definite evidence to the contrary.[9] Thus where all circumstances are such as to render it natural for an owner in possession of land to exercise manifest acts of enjoyment thereof during a given period and he fails to prove such facts the presumption may not be drawn.[10] It follows that the presumption cannot arise in the case of lands which are capable of being used for cultivation. When it has been shown that it was utilised for cultivation by the defendants within the period of 12 years, that would amount to the defendants having enjoyed the land for a certain portion of the period of 12 years prior to the suit and the plaintiffs not having exercised any acts of enjoyment. The fact that for a period neither the plaintiff nor the defendants used the land for cultivation, could not make the land uncultivable and change the nature of the land as one which cannot be enjoyed. The fact that the defendants have not been able to show continuous possession within 12 years prior to the date of the suit only disentitles them to any acquisition of title by prescription by adverse possession. It does not absolve the plaintiffs from showing that they have been in possession within the period of 12 years by making use of the property, if the property is capable of being enjoyed in any particular manner.[11]

False evidence of title. Where the owner alleges definite acts of ownership and fails to prove them, the presumption does not necessarily apply.[12] Where the evidence let in by the person having the title is totally false and unreliable the Court is not bound to draw the presumption, that possession follows title.[13] The presumption of possession arising from title is not available where the land is capable of actual possession by cultivation or otherwise, and there is no evidence of possession or the evidence adduced is unworthy of credit. But, this presumption is available in all cases (1) where the evidence is equally strong and apparently equally well balanced on both sides so that it is difficult to determine where the truth lies; (2) where the evidence on both sides is weak or unsatisfactory, but not valueless or wholly incredible; (3) where the land is of such a peculiar nature that the evidence of actual user and enjoyment in the ordinary manner could hardly be expected, *e.g.*, lands which are waste, jungle, *parti, gora* submerged underwater or any other kind of land incapable of cultivation. To this extent the general rule laid down by the Full Bench in AIR 1921 Pat 237 (FB) must be deemed to be modified, and in such cases the plaintiff can succeed on the strength of his title alone.[14]

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8. AIR 1927 Mad. 509+AIR 1956 Him. Pra. 50+AIR 1923 Bom. 361 (DB)+AIR 1940 Cal. 185 (DB)+AIR 1921 Pat. 158=5 Pat. L. Jour 724 (DB)+AIR 1915 Cal. 834 (DB).
9. AIR 1947 P.C. 15=73 Ind. App. 223=ILR 1946 Nag. 917=ILR 1947 Kar. (PC) 78+20 Suth W R 25 (PC)+3 All. L. Jour 363 (PC).
10. AIR 1926 Oudh 528+AIR 1937 Nag. 129=ILR 1937 Nag. 254+AIR 1922 Cal. 557 (DB)+AIR 1918 Cal. 544 (DB).
11. AIR 1954 Mad. 797.
12. AIR 1939 All. 257=ILR 1939 All. 454 (DB)+AIR 1923 Cal. 286 (DB)+AIR 1922 Cal. 557 (DB)+AIR 1951 Trav-Co. 246.
13. 26 Cal. 114 (DB)+AIR 1921 Pat. 237=6 Pat. L. Jour 478 (FB)+AIR 1958 Pat. 562 (AIR 1921 Pat. 237 (FB) and AIR 1922 Pat. 432, *Rel. on*)+AIR 1922 Cal. 557 (DB)+AIR 1931 Mad. 282.
14. 1970 DLC 453+AIR 1958 Pat. 388=37 Pat. 373 (FB). (34 Pat. 235, *Overruled;* AIR 1950 Pat. 484. *Approved;* Observations in AIR 1945 Pat. 453. held obiter and not binding)+AIR 1963 Orissa 29.

Submerged land. Where land is submerged the law will regard the owner as in possession.[15] In such cases constructive possession is with the true owner though immediately prior to the diluviation physical possession had been with the adverse claimant.[16] Where the question was as to who was in possession of submerged land to which plaintiff had proved title, the Privy Council observed; "It was unnecessary for the plaintiff's to prove 'actual possession' in the sense of occupation after the submergence, as their possession in law continued until they were dispossessed".[17]

'Banjar' land. In the case of *banjar qadeem* lands, possession follows title. The vendees of such land became co-sharers with other owners from the date of their purchase and as such no question of adverse possession could arise in the absence of any evidence of any definite act of ouster.[18]

Adverse possession against Government. The principle that possession is presumptive evidence of title, until contrary is shown avails even against the Government.[19] Therefore a party in actual peaceful possession of immovable property cannot be turned out by Government by force or show of force. If Government thinks it has superior title or better right to possession, it is open to them to bring an appropriate action and secure his eviction in accordance with law.[20]

Title claimed on ground of abandonment. Article 142 clearly speaks of dispossession or discontinuance of possession. Dispossession refers to actual physical dispossession. Such a dispossession involves collusion and expulsion. As for discontinuance of possession it seems clear that the expression has not been used in the sense of mere abandonment. An abandonment simpliciter does not disentitle the owner because constructive possession must, in spite of a mere abandonment or non-user, remain with the owner. On such abandonment therefore there must be intrusion by another. Unless there is such intrusion there is no one against whom the owner has to defend his title. There has therefore to be an abandonment without *animus revertendi* followed by some body else obtaining actual possession.[1]

13. Adverse possession--what is. Term "adverse possession" has not been defined anywhere in the statute. "Adverse possession" in judicial concept means possession of a person over land belonging to some other person, in his own right, in denial of the right of that true owner openly and continuously for more than twelve years.[2] The rule of adverse possession is based on the principle of "might is right". Use of might or force results in usurpation, ravishing, rapacity and destruction. The concept of adverse possession is obviously adverse to the principle of equity, justice and good conscience. Superior Courts of the State and

15. AIR 1941 Cal. 193 (DB)+AIR 1941 Pat. 422=20 Pat. 497 (DB)+AIR 1939 All. 626 (DB)+AIR 1939 Cal. 354 (DB)+AIR 1915 Oudh 204=18 Oudh Cas. 43.
16. AIR 1931 P.C. 162=58 Ind. App. 228=59 Cal. 80.
17. AIR 1929 P.C. 225=56 Ind. App. 305.
18. 1976 SCMR 436.
19. AIR 1951 Madh B 114.
20. AIR 1958 Punj. 325 (DB).
1. PLD 1960 Karachi 428=PLR 1960 (1) Karachi 248.
2. PLD 1987 AJ&K 79.

Pakistan have considered it immoral for it has its origin in brute force. The history of the concept is traced to premedieval times. But with the passage of time and organization of society into rule of law, it gained mandate of law to set at rest the status of long time possession, particularly in absence of claims of true owners of properties.[3] Prescription may be defined as the effect of lapse of time in creating and destroying rights. It is the operation of time as a vesting fact. It is of two kinds namely (1) positive or acquisitive prescription, and (2) negative or extinctive prescription. In positive prescription it is a title of right, *e.g.*, exercising easementary right for over a prescribed period, but in negative prescription it is a divestitive fact, *e.g.*, prescription of title by adverse possession and limitation. Extinctive prescription or the limitation of action causes not a transfer of right but merely the loss of a remedy. In both forms of prescription fact and right to possession and ownership tend to coincide. It is thus that adverse possession which may arise from dispossession or discontinuance of possession extinguishes the right of the true owner, provided it fulfils certain requirements.[4]

Possession in order that it be treated as adverse must be open continuous and hostile and unless all those ingredients are available in relation to a particular claim of possession such possession cannot be deemed to be adverse.[5] The adverse possession must not merely be a trespass, but for unmistakable ouster of the real owner, there should be some overt act, under such circumstances of notoriety which clearly posts him with the knowledge of invasion of rights.[6] The constituent conditions of adverse possession are that is must be actual, visible, exclusive, continuous and hostile to the knowledge of the actual owner. The plea of adverse possession being devoid of moral and equitable consideration, is allowed on the strength of strict and sound proof. If any one of the constituent conditions is lacking in evidence the plea is outright rejected. It is for this reason that Courts have always insisted on cogent and positive evidence in support of adverse possession.[7] Where possession of plaintiffs over land, was continuous, exclusive and adverse it would create right of ownership by way of prescription.[8] The possession required must be adequate in continuity in publicity and in extent to show that it is possesssion adverse to the competitor,[9] and the possession must be *nec vi nec clam nec precario* that is peaceful open and continuous.[10] Such possession was to be open, hostile and to knowledge of person entitled to

3. PLD 1983 SC (AJ&K) 89 = NLR 1983 AC 294 = PLJ 1984 SC (AJ&K) 108.
4. AIR 1958 Mad. 497 + AIR 1957 Manipur 15 + AIR 1953 Madh B 28 = ILR 1953 Madh B 155 + AIR 1942 Cal. 233 = ILR (1941) 2 Cal. 298 (DB).
5. 1990 MLD 164.
6. 1990 CLC 155 + 1980 CLC 22 + PLD 1976 Quetta 23 = PLJ 1976 Quetta 18.
7. 1984 CLC 2351 + PLD 1983 SC (AJ&K) 89 = NLR 1983 AC 294 + PLD 1981 SC 262 = PLJ 1981 SC 662 = 1981 Law Notes 434.
8. 1983 CLC 1029.
9. 1982 CLC 1309 = NLR 1982 SCJ 441 + 1980 CLC 22 + PLD 1974 Kar. 235 = PLJ 1974 Kar. 57 + PLD 1968 Dacca 447 + AIR 1964 Punjab 187 (DB) + 27 Ind. App. 136 + AIR 1934 P.C. 77 + AIR 1937 PC 69 + AIR 1935 P.C. 36 + AIR 1957 S.C. 314 + AIR 1941 Sind. 50.
10. PLD 1974 Kar. 235 = PLJ 1974 Kar. 57 + PLD 1968 Lah. 954 + PLD 1967 Pesh. 304 + PLD 1968 Dacca 498 + AIR 1934 P.C. 23 = 61 Ind. App. 78 = 61 Cal. 262 + AIR 1957 S.C. 314 = 1957 SCR 195 + AIR 1957 Manipur 15 + 52 Pat. 353 (DB) + AIR 1948 Oudh 54 = 22 Luck. 93 (DB) + AIR 1919 P.C. 62 = 43 Mad. 253 + 46 Ind. App. 204 + AIR 1935 P.C. 36 = 14 Pat. 327 = 62 Ind. App. 40.

possession.[11] It is unnecessary that real owner should have actual knowledge of the adverse possession so long as it is open and capable of being known by parties interested in the property,[12] or that the owner should be shown to have protested that his rights were being violated and that the possession went on adversely to his protests.[13] Where the defendant by payment of land revenue of *J* deceased plaintiff coupled with the enjoyment of produce as an owner had made him fully alive to the fact that he had been holding the property adversely and in total disclaimer of his title. The settled possession of the defendant as trespasser spread over a sufficiently long period and was acquiesced in by the true owner, therefore, it shall have to be considered as acquiescence of the adverse nature of his possession.[14]

If the possession has been obtained on a misrepresentation and the legal formalities relating to mutation of proceedings have not been fully complied with on account of a misrepresentation, then the law will not help the wrong-doer; more so if the misrepresentation concerns the absentee interested party who is a widow living in another village. Mere sanction of mutation at widow's back without any notice to her clearly cannot by itself establish the starting point of adverse possession.[15] Where the rightful successor was staying in a different village and did not know of the death of the person in possession and in secret mutation proceedings the name of another was substituted in the place of the deceased the possession of such other person is not adverse to the successor.[16]

Possession must be hostile. Expression "adverse possession" means hostile possession, that is a possession which is expressly or impliedly in denial of the title of the true owner.[17] A person may be in possession of land, but if he does not assert any hostile title thereto and if his acts with regard to the disputed land do not evidence an intention to claim hostile title then such a person cannot be said to be in adverse possession of the land in dispute. From this follows the rule that permissive possession of land cannot constitute adverse possession, whether the permission is express, or implied form the circumstances of the case.[18] Therefore a person, who based his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed.[19] In other words the possession must be by a person holding the land on his own behalf or on behalf of some person other than the true owner, the true owner having a right to

11. PLD 1987 AJ&K 57 + 1980 CLC 937 = PLJ 1980 Lah. 250 (DB).
12. AIR 1941 Mad. 866 + AIR 1957 Trav-Co. 14 = ILR 1956 Trav-Co. 452 (DB).
13. AIR 1919 P.C. 62 = 43 Mad. 253 = 46 Ind. App. 204.
14. 1980 CLC 169 (SC AJ&K).
15. AIR 1964 Punjab. 187 (DB).
16. AIR 1960 Punj. 485 (DB).
17. 1982 PSC 641 (SC Ind) + PLD 1983 Kar. 510 = PLJ 1983 Kar. 250 + PLD 1974 Kar. 235 = PLJ 1974 Kar. 57 + PLD 1968 Dacca 447 + AIR 1964 Punjab 187 (DB) + AIR 1951 Orissa 183 (DB) + AIR 1914 All. 547 (DB) + AIR 1959 Punj. 561 (DB) + AIR 1957 Pat. 155 (DB) + AIR 1954 (A J & K) 25 (DB) + AIR 1938 Lah. 440 (DB).
18. 1983 CLC 2961 + PLD 1977 Quetta 75 = PLJ 1977 Quetta 629 + PLD 1974 Kar. 235 = PLJ 1974 Kar. 57 (DB).
19. 1983 CLC 2961 + AIR 1935 P.C. 53 + AIR 1959 Punj. 561 (DB). (Adverse possession is an aggressive act.) + 14 All. L. Jour 3 + AIR 1951 Hyd. 137 (DB) (Son-in-law living in portion of the house along with the family of his father-in-law--Not in adverse possession of the house).

immediate possession.[20] In order to assert hostility he has to set up his claim by specifically indicating the time from which adverse possession has commenced and his possession from that day should be open without any effort to effect concealment. Not only this there must be an ouster and that too of which the owner has knowledge.[1] A mere assertion by defendants in a suit for possession that they have constructed the house without objection would not by itself establish adverse possession.[2] Where the respondent has not shown, by affirmative evidence that he asserted his open and hostile title from the time of coming into possession. His possession no doubt was actual and physical and the attempts of the plaintiff to show that it was interrupted proved fruitless. But hostility of his possession as against the title of the owner was not visible. The onus of asserting such title lay entirely upon him. The first time when such hostile title became open and visible was when he claimed ownership of the property in response to the ejectment application brought by the appellant in 1969. It is from that stage that the possession would be counted adverse to the title of the true owner. The limitation would therefore start running from that point of time. As such the suit is very much within time.[3] Where evidence on record showed that respondents had retained possession of disputed land since 1945 on a genuine belief that they were going to inherit the same as heirs of last full owner. Adverse possession, if it all in the said land, was to be considered to have commenced from 1954 and not 1945.[4] Where a wife was in possession of land allegedly gifted to her by her husband for a period of 22 years and the husband alleged that he had not delivered possession to her under the gift. It was held that the possession of wife in view of plea of the husband, was hostile to husband's interest and amounted to capturing possession. Conditions for acquisition of ownership through adverse possession, in the circumstances were satisfied.[5] The possession of the defendant was held adverse to the plaintiff, inasmuch as the plaintiff had stood by while the defendant continued to possess in practical contravention of the plaintiff's alleged right.[6] Where the defendant had been in possession of a site in a town for over 60 years without any acknowledgment of the title of the plaintiff and the origin of possession was unknown, the defendant was held to have acquired title by adverse possession.[7]

Possession must be irreconcilable with rights of owner. The person in possession must claim as of right as against the true owner,[8] and his acts should be irreconcilable with the rights of the true owner.[9] Therefore if a party claims adverse possession over suit land, it will have to show to the satisfaction of Court that opposite party had lost his interest of ownership over that land for all that

20. PLD 1964 Dacca 498 = PLR 1965 Dacca 177 = 15 DLR 628 (DB) + AIR 1939 Bom. 322 (DB) + 4 Cal. 455 (DB) + 9 Mad. 244 (DB) + AIR 1939 Bom. 1 = ILR 1939 Bom. 173 (DB).
1. PLD 1976 Lah. 923.
2. NLR 1990 SCJ 9.
3. PLD 1977 Quetta 75 = PLJ 1977 Quetta 629.
4. 1987 SCMR 1280.
5. PLD 1970 Lahore 502.
6. AIR 1919 P.C. 62 = 43 Mad. 253 = 46 Ind. App. 204.
7. AIR 1942 Oudh 427 (DB).
8. AIR 1953 Cal. 544 + AIR 1933 Oudh 462 + AIR 1930 Lah. 991 = 11 Lah. 410 (DB) + AIR 1939 Mad. 564.
9. AIR 1938 Mad. 454 (DB).

period of adverse possession.[10] But where possession of *A* is consistent and reconcilable with the title of *B*, it cannot be adverse to *B*.[11] Thus where the owner is not prevented from using the property in the way in which it is intended to be used, there can be no adverse possession.[12] The mere fact that the defendant claims that he had grown trees on the land belonging to the plaintiff would not prove that he was in adverse possession of the land. The trees being admittedly on the strip of land belonging to the plaintiff, he was to be considered as their owner and a bare word of the petitioner, without any cogent evidence on the subject, could not deprive the owner of those trees.[13]

Knowledge of owner, if necessary. All that the law requires is that the possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective as to bring it to the specific knowledge of the owner. Such a requirement may be insisted on only where an ouster of title is pleaded.[14]

Permissive possession when becomes adverse possession. Adverse possession is an aggressive act. Before permissive possession can be converted into adverse possession. To do so there should be disclaimer of owner's title of such a character and so open that the real owner must be presumed to know that possession adverse to his title has been taken. Nothing but a clear, unequivocal and notorious disavowal of the title of the owner will render the possession, however long continued, adverse to him.[15] Therefore if possession is permissive and not antagonistic to the owner, it cannot ripen into title by adverse possession,[16] irrespective of the fact whether the permission was express or implied.[17] If it is found that a person came into possession of the land as tenant or it was otherwise permissive, non-payment of share of produce or rent to the landlord would not render the nature of the possession hostile to the owner, because in such case possession being peaceful cannot be termed as hostile or notorious. In some cases the landlord may be satisfied to continue the tenancy even by accepting the actual Land Revenue as rent or even without demanding the same. Therefore, in such circumstances, it cannot be said that the possession of the tenant has become hostile to the landlord.[18] Tenant-families which under custom are allowed to reside on the land, at no stage acquire a right to reside on the land, but are given an immunity from being evicted by the landlord as long as they continue to serve him. It was clear that petitioner plaintiffs were in possession of *ihata* as mere licensees. No title by adverse possession could be claimed on the basis of such possession.[19] A revocable licence cannot give the licensee any title by adverse possession unless he remains in possession after the

10. PLD 1988 Pesh. 1 = PLJ 1988 Pesh. 1 = NLR 1988 CLJ 61.
11. AIR 1923 All. 399 + AIR 1926 Oudh 198 + AIR 1932 Oudh 46 = 7 Luck. 250 + AIR 1938 Cal. 117.
12. AIR 1928 Mad. 193 (DB).
13. 1979 SCMR 481.
14. 1982 PSC 641 (SC Ind).
15. AIR 1959 Punj. 561 = ILR 1959 Punj. 2323 (DB).
16. PLD 1983 Kar. 510 = PLJ 1983 Kar. 250 + PLD 1977 Quetta 75 = PLJ 1977 Quetta 629 + AIR 1958 Punj. 335 (DB).
17. PLD 1983 Kar. 510 = PLJ 1983 Kar. 250.
18. 1990 CLC 155.
19. 1983 CLC 2961 (Lah).

licence is revoked.[20] It is however to be noted that once a person has come into possession adversely to the true owner, the mere consent of the true owner will not affect the question whether the person holds his possession in contravention of the right of the owner.[1]

Possession must be wrongful. Adverse possession is possession which is wrongful.[2] Where a woman having no right to possession of land, held the land for more than 12 years and exercised proprietary right on the same and enjoyed income thereof to the exclusion of appellants. It was held that she can be said to have entered upon land without any right and since she remained in possession without objection by petitioners or their predecessors, her possession would be deemed to be adverse in character.[3] It is however to be noted that mere unlawful possession is not adverse possession. It is adverse only when adverseness of the trespasser's claim is within the knowledge of the owner and sanctioned by his acquiescence. There must be expressed or implied denial of title of true owner and *animus* of exclusive ownership.[4] Where possession can be referred to a lawful title, it will not be considered to be adverse.[5] A person entering into possession and having a lawful title to enter cannot divest himself of that title by pretending that he had no title at all and claim adverse possession.[6] Where a receiver has been appointed, possession of a party to the suit thereafter is as custodian for Court and cannot be adverse to other parties to the suit during the period of receivership.[7] It is to be noted that in the absence of evidence possession is presumed to be lawful rather than unlawful.[8] But where the circumstance under which possession was assumed are known, the presumption that possession must be attributed to a lawful title when it is possible will not be drawn.[9]

Possession must be exclusive. The possession of the wrong-doer must be exclusive.[10] But that does not mean that the defendant must always actually physically oust true owner from occupation as exclusive possession means only ouster from all the rights that constitute possession in law.[11]

Intention of parties. Possession in order to qualify as adverse constitutes the physical act of user coupled with the *animus* to hold it as owner.[12] Therefore in deciding whether the alleged acts constitute adverse possession the *animus* of the

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20. AIR 1963 Allahabad 119.
1. 17 Cal. W. N. 595 (SB).
2. 27 Bom. 408 (DB) + 163 Ind. Cas. 347 (Cal.).
3. PLD 1984 Pesh. 134.
4. AIR 1959 Madh Pra. 23.
5. AIR 1914 P.C. 243 + AIR 1959 Ker. 172 = ILR 1959 Ker. 5 (DB) + 54 Mys. H C R 199 (FB) + AIR 1952 Nag. 188 = ILR 1949 Nag. 883 + AIR 1951 Orissa 183 = ILR (1949) 1 Cut. 804 (DB) + AIR 1940 Sind. 50 = ILR 1940 Kar. 534 + AIR 1942 Nag. 75 = ILR 1942 Nag. 781 (DB).
6. 110 R R 107 + 4 Cal. 327 (DB) + AIR 1914 P.C. 243.
7. AIR 1960 Cal. 533 (DB).
8. AIR 1918 P.C. 1 = 1918 Pun. Re. No. 64.
9. AIR 1947 P.C. 15 = 73 Ind. App. 223 = ILR 1947 Kar. (PC) 78 = ILR 1946 Nag. 917.
10. AIR 1932 Oudh 46 = 7 Luck 250 (DB) + AIR 1948 Oudh 54 = 22 Luck. 93 (DB) + AIR 1937 Sind. 78 + AIR 1919 Cal. 240 (DB) + AIR 1938 Mad. 454 (DB) + 1939 All W. R. (CC) 300.
11. AIR 1941 Nag. 357 = ILR 1942 Nag. 564 (DB).
12. PLD 1978 Kar. 27.

person doing those acts should be taken into consideration and ascertained from the circumstances of each case,[13] because the requirements to make possession adverse may vary according to the facts and circumstances of a particular case or the relationship between the parties. Under certain circumstances particular acts may amount to ouster of others but if there is certain relationship between the parties such acts may not in other case amount to dispossession or ouster. In determining the question of adverse possession the Court has to take into consideration the facts of each case and the circumstances under which the right by adverse possession is claimed.[14] Where there is already title in one party, it cannot be readily inferred that the physical acts of user were done with the intention of defeating that title or of laying claim to land already vested in another. So long as the property vested in the Custodian the occupation of the property in suit by the defendants cannot be held to be in adverse possession.[15]

Possession must be effective. Adverse possession must be effective possession. It cannot be established by mere word of mouth.[16] Where the acts alleged do not constitute effective possession of all the interest claimed, they would obviously not constitute adverse possession.[17] Thus possession by a person who entered on Government land with the hope that it may be registered in his name is not adverse possession but only precarious possession and cannot avail against the Government or a person acquiring title from Government.[18] Similarly to pay house-tax by itself does not create adverse possession because under the Local board Rules an occupier also can be made liable to pay house-tax. But rent or revenue on land is collected from the person in possession of the property. Mere payment of rent is, therefore, an unequivocal act which would be sufficient to attribute hostile intention or assertion of a hostile title amounting to adverse possession in law.[19]

14. Possession by Hindu female. Possession by a female heiress under Hindu law, of property inherited by her is not adverse to the reversioners.[20] The contention that where a widow or daughter behaves as if she is a full owner and claims adversely to the estate, she will perfect a title by adverse possession if no suit is brought within twelve years of the date of the commencement of such possession, is wrong except where a decree has been obtained fairly and properly and without fraud and collusion against the Hindu female heir in respect to a property held by her as a limited owner, the cause of action for a suit to be instituted by a reversioner to recover such property either against an alienee from

13. AIR 1964 All. 383 + AIR 1944 Oudh 250 = 19 Luck. 531 (DB) + AIR 1948 All. 31 + AIR 1923 Mad. 11 (DB) + AIR 1926 Cal. 568 (DB) + AIR 1940 Mad. 236.
14. AIR 1964 Allahabad 383.
15. PLD 1978 Kar. 27.
16. PLD 1970 Dacca 407 (DB).
17. AIR 1928 Cal. 882 (DB) + AIR 1929 Lah. 625 + AIR 1916 All. 79 = 38 All. 411 (DB) + 24 Bom. 435 (DB). (Denial of title is insufficient) + 1912 Mad. W N 63 (DB). (Do--Specially when the owner does not know about the denial).
18. AIR 1957 Ker. 141 = ILR 1957 Ker. 454 (DB).
19. 24 Cal. L. Tim. 345.
20. AIR 1943 Mad. 445 = ILR 1943 Mad. 831 (FB) + 30 Cal. 303 = 30 Ind. App. 41 (PC) + 23 Cal. 942 (PC) + AIR 1926 P.C. 96 = 35 Ind. App. 201 = 53 Cal. 298 + AIR 1952 Cal. 473 = ILR (1953) 1 Cal. 208 (DB) + ILR 1950 Nag. 589 (DB) + AIR 1949 Bom. 80 = ILR 1949 Bom. 843.

the female heir or a trespasser who held adversely to her accrues only on the death of the female heir. There is no reason to hold that the position is in any way different where the widow or daughter has attempted to destroy the property by her own hostile possession and that the reversioners in such a case are bound to sue within twelve years of the commencement of the adverse possession and not within twelve years of her death.[21]

Possession without any right to possession. Where a Hindu female who is only entitled to maintenance and not to possession obtains possession, such possession will be adverse to those entitled to possession unless they show that the possession was the result of some arrangement between them.[22] In other words, the presumption in such a case is that the possession of the widow is in her absolute right, unless it is established that she was in possession under some arrangement or there was anything to show that she entered into possession with a clear indication of her possession being the possession of a widow's estate.[1] Thus where the widow of a co-parcener in a Hindu joint family was in possession of the family property in assertion of absolute ownership; it was held that her possession was adverse to the other members of the joint family.[2] The rule that adverse possession maintained for the statutory period vests the possessor with title thereto, is applicable to the case of a widow who holds possession of the land which vests in her as her *stridhan* or which she acquires in any manner other than by inheritance to her husband or to the relatives of her husband.[3] Where a Hindu widow is living a life of adulterous intercourse with her paramour even during the lifetime of her husband, it has been held that she forfeits her right to residence in his house and she is not entitled to inherit the property left by her husband. And if after the death of the husband his widow enters into possession of that house, her possession is wrongful and if continued for the duration of more than twelve years may ripen into full title by adverse possession.[4]

Widow expressly prescribing for limited interest. Where a Hindu female who has no right to possession gets into possession she will prescribe for a absolute title to the property, unless, it is shown that she was in possession under some arrangement with the owners or that she was prescribing only for a limited interest.[5] In other words where she enters into possession without being an heir or having any right, her possession is in her absolute right and she acquires absolute

21. PLD 1968 Dacca 847 = 20 DLR 593 + AIR 1961 Kerala 247 (DB) + AIR 23 Cal. 460 + AIR 1929 P.C. 166 + AIR 1953 S.C. 125.
22. AIR 1924 P.C. 121 = 5 Lah. 192 = 51 Ind. App. 171 + AIR 1958 SC 199 = 1958 SCR 948 = ILR 1958 Punj. 807 (229 Cal. 664 (PC) *Rel. on*) + 29 Cal. 664 = 29 Ind. App. 132 (PC) + AIR 1925 P.C. 132 + AIR 1959 Bom. 504 = ILR 1958 Bom. 797 + AIR 1956 (J&K) 36 (DB) + AIR 1939 Bom. 261 (DB).
1. AIR 1963 Patna 356 (DB).
2. AIR 1947 Bom. 1 = ILR 1946 Bom. 1003 + AIR 1919 P.C. 60 = 42 All. 152 = 46 Ind. App. 197 + 2 Mad. 23 = 5 Ind. App. 206 (PC) + 22 Cal. 445 = 22 Ind. App. 25 (PC).
3. AIR 1958 Punjab. 485 (DB).
4. AIR 1956 Bom. 140.
5. AIR 1929 Oudh 215 (DB) + AIR 1925 P.C. 127 = 21 Nag. L. R. 127 + AIR 1959 Andh Pra 79 = ILR 1958 Andh Pra. 730 (FB) (AIR 1955 Hyd. 3 (FB). *Overruled*) + AIR 1958 All. 101 (DB) + AIR 1957 Ker. 287 (DB) + AIR 1957 Madh B 138 (DB) + AIR 1955 All. 630 = ILR (1956) 1 All. 195 (DB) + 57 Pun L R 356 + 1953 B L J R 479 + AIR 1952 All. 190 + AIR 1949 All. 458.

title by adverse possession, unless, at the time she enters into possession, or even subsequently, she makes any statement making it perfectly clear that she is taking possession of the property as her widow's estate or she enters into possession under some arrangement with the rightful owner.[6] If no such statement is made the presumption is that where a Hindu female without title enters into possession of property. Her possession is adverse only to the extent of a limited interest in the property.[7] Thus where a Hindu widow entered into possession as heiress of her husband and a posthumous son was born. It was held that her adverse possession against the son must be considered as relating only to a widow's estate under Hindu law.[8] Where a Hindu widow, on a mistaken view of law, is recorded as the preferential heir of her step-grandson, she not being the legal heir, her claim is adverse from the very start, but if from the inception she claims a widow's estate, she prescribes for a widow's estate and not an absolute estate.[9] Where a Hindu daughter enters into possession of her father's property under a will giving her only a limited estate and the will is invalid she will acquire only a limited estate by adverse possession.[10]

Remarriage of widow, possession after. Where a Hindu widow in possession of her deceased husband's property, forfeits her rights to the property on remarriage but continues in possession, her possession would be adverse to the reversioners only in respect of a limited estate.[11] The position would however be different if the widow changes her *animus* after remarriage and claims as absolute owner. In such a case it is for the widow to show that she had asserted and declared her absolute rights and was possessing adversely as absolute owner in order to prescribe for absolute ownership. Very cogent evidence is necessary to show that she afterwards asserted title as absolute owner.[12]

15. Possession under temporary arrangement between members of a family. Where possession is given to one of the co-heirs by the other heirs as a temporary arrangement, his possession is not adverse to the other co-heirs. Thus where *A*, one of the heirs of a deceased Muslim, sued the other heirs for recovery of a share of the property left by the deceased propositus. Pending the litigation, the question with regard to the relinquishment of a certain share in favour of *A* was agreed to, by all the heirs, to be referred to arbitration. No reference was, however, actually made, but for several years subsequent to the agreement a certain fixed sum out of the profits of the estate continued to be paid to *A*. It was held by the Privy Council that the agreement was merely a provisional one, that no title was thereby conferred on *A* with regard to the alleged share in the estate,

6. AIR 1963 Patna 356 (DB).
7. AIR 1925 All. 330 (DB) + 1912 Mad. W. N. 515 + AIR 1929 Bom. 333 (DB).
8. AIR 1924 P.C. 121 = 5 Lah. 192 = 51 Ind. App. 171.
9. 24 Cut L Tim. 259.
10. AIR 1937 All. 197 (DB) + 91 Mad. 321 (DB).
11. AIR 1964 Orissa 25 + AIR 1935 Lah. 537 (DB) + AIR 1959 Mys. 81 = ILR 1958 Mys. 552 (DB). (In the absence of proof of change in animus, she prescribes as limited owner). + AIR 1957 Madh Pra 238. (She does not become absolute owner without any assertion of absolute title on her part.) + AIR 1957 Orissa 237 = ILR 1956 Cut 529 + AIR 1954 Orissa 212 (DB) + AIR 1927 All. 274 + AIR 1925 All. 366 + AIR 1929 Lah. 327 + AIR 1933 Oudh 92 = 7 Luck. 320 (DB) + AIR 1957 M.P. 238.
12. AIR 1964 Orissa 25 + AIR 1946 Bom. 193 + AIR 1957 Orissa 237 + AIR 1954 Orissa 212 (DB).

and that the subsequent payments could not make out a case of adverse possession for *A*.[13] Similarly where *A* transferred property collusively in the name of *B* in order to save the property from *A*'s creditors; it was held that *B's* ostensible possession was not adverse to *A*.[14] Where an heir holds land in pursuance of a mutual working arrangement whereunder each of the heirs has to hold land in turn, there is no adverse possession.[15]

Widow, possession of. Where a widow is in possession under a family arrangement, her possession is not adverse to other members of the family.[16] Thus possession by a Hindu female under agreement with her step-son is not adverse to the latter.[17] Similarly the rule that adverse possession maintained for the statutory period vests the possessor with title thereto, is applicable to the case of a widow who holds the possession of the land which vests in her as her *stridhan* or which she acquires in any manner other than by inheritance to her husband or to the relatives of her husband.[18]

When possession under arrangement becomes adverse. Possession under an arrangement becomes adverse when the right to possession comes to an end but the person in possession refuses to vacate the property. Thus where *B* was in possession under an agreement to surrender the land to *A*; it was held that this possession at the time of the agreement to surrender was not adverse to *A*, but that it became adverse when *B* refused to surrender the land as agreed upon.[19] Where there was a partition between co-widows *A* and *B* in 1895. A deed of partition was executed by *A* and addressed to *B* giving absolute right of ownership to *B* and her heirs over her share. Death of *B* in 1897. After *B's* death her share was enjoyed by her daughters. There was an adoption by *A* in 1925. It was held that partition of widow's interest was not limited to joint life of *A* and *B* but was to continue during the lifetime of surviving widow. Adoption by *A* put an end to widow's interest of both *A* and *B* and possession of *B's* heirs became adverse from the date of adoption.[20]

16. Possession in lieu of dower. Where a Muslim widow obtains possession of her husband's estate peaceably and without force or fraud, she can retain possession till her dower-debt is paid. The right is not the same as that of a mortgagee to possession. The possession in lieu of dower is not adverse to the heir, who can on payment of the dower, get back the property.[1] This is so even where the husband's heirs have not consented to it but offered it.[2] But the possession of the widow will become adverse where though she is in possession partly as an heir and partly as a creditor for dower debt; yet she asserts a hostile title.[3]

13. AIR 1925 P.C. 70.
14. AIR 1919 Oudh 420 = 22 OUdh Cas. 222 (DB).
15. AIR 1935 Low Bur 36.
16. AIR 1923 All. 25 = 45 All. 1 (DB).
17. AIR 1932 All. 361 = 54 All. 472 (DB).
18. AIR 1958 Punj. 485 (DB).
19. 25 Suth W R 521 (DB).
20. AIR 1947 Bom. 140 (DB).
1. AIR 1925 P.C. 63 = 52 Ind. App. 145 = 47 All. 250 + AIR 1939 All. 348 (DB).
2. 10 Beng. L R 45 (PC).
3. AIR 1917 Pat. 320.

Widow dispossessed--remedy. A Muslim widow who entered into peaceful possession in lieu of her dower but was dispossessed by an heir of the husband, can sue under S. 9 of the Specific Relief Act. She cannot maintain a suit for possession based on her title arising from prior possession.[4]

Death of widow, suit for possession by heirs. Where a widow who was in possession in lieu of dower dies, her heir can sue the trespasser within the time prescribed by Articles. 142. An heir is not bound to sue within 6 months under Art. 3.[5]

17. Possession in lieu of maintenance. Possession of a person under an agreement, in lieu of maintenance for his life, is not adverse to the person entitled after his death.[6] But when the possession has ceased to be in lieu of maintenance the possession becomes adverse to the real owner. Thus where *A* was in possession under a grant for maintenance from *B* who obtained a decree for resumption of the grant but did nothing further. *A* continued in possession. It was held that the possession of *A* from the date of the decree was adverse to *B*.[7] Where a deceased male-holder of lands granted a portion of them to his mother in lieu of maintenance and the remaining lands to his widow. The mother by a deed of settlement gave possession of those lands to the brothers of the late male-holder. The widow was not a party to the deed and there was nothing to indicate from the articles that there was a binding arrangement between her and the mother that the latter should hold these lands as an absolute estate. The widow alienated those lands and the surviving settlee had the possession of them for a few years after the death of the mother. It was held that the possession of the settlee though might satisfy the requirements of Art. 142 as to the settlee's possession within 12 years prior to his suit for possession of those lands from the alienees from the widow who were in admitted possession of them on the date of suit, was yet not sufficient to confer the right to remain in possession of them as against the vendees of the widow.[8]

18. Holder of life estate, possession of. A limited owner in possession not exercising any right adverse to heirs of last full owner, cannot take the plea of adverse possession.[9] Where a woman governed by Hindu law enters on the estate as a qualified heir she cannot subsequently prescribe adverse possession to an absolute title to it as against the last owner's reversionary heirs.[10] The mere fact that the life estate holder asserts that he has an absolute estate will not make his possession adverse.[11] Even where a Hindu widow having life estate entered into a compromise enlarging her interest into absolute interest and the widow gave away the property by will. As the compromise was not binding on the reversioners, a suit by a reversioner for possession need not be filed during life-time of the

4. AIR 1927 All. 534 = 50 All. 86 (DB).
5. AIR 1944 All. 36 = ILR 1944 All. 68 (DB).
6. AIR 1925 P.C. 132 + 54 Mys. H C R 199 (FB) + AIR 1946 Pat. 55.
7. AIR 1928 P.C. 165.
8. AIR 1951 Mad. 608.
9. 1985 CLC 821 = NLR 1985 CLJ 144 + PLD 1978 Lah. 483.
10. AIR 1946 Nag. 277 = ILR 1946 Nag. 159 (DB).
11. AIR 1928 Oudh 67.

widow. A suit for possession filed within 12 years after the widow's death is not barred.[12]

Adverse possession of limited interest. There can be an adverse possession of a limited interest. Therefore a person who not only occupied the property held by the owner of the limited interest but also claimed exclusive title at the time of attestation of mutation, may claim title by adverse possession at the end of the period of twelve years.[13]

19. Person under disability, possession of property of. The law presumes that whosoever enters into possession of a property belonging to a minor does so on behalf of the minor and such possession continues with him for and on behalf of that minor. No Court will ever countenance a person having entered into possession of a property on behalf of a minor setting up his own title thereto during such possession. He cannot do so until, after the minor attains majority, he does something to change that possession into a wrongful one.[14] For the same reason a person who enters into possession of minor's property, in a fiduciary capacity will not be allowed to set up an adverse title.[15] Therefore the possession of guardian is presumed to be not adverse to the minor.[16] Where a person maintains an orphan and occupies her house, the possession is not adverse to the orphan.[17] But possession of a guardian is adverse to a minor if it is proved that he entered into possession on his own behalf adversely to the minor.[18] A person getting into possession as guardian continues to hold on behalf of the ward even after the ward attains majority.[19] But a person entering on the property of a person under disability under circumstances rendering such possession one on behalf of the latter, can make his possession adverse by asserting a hostile title by some overt act after the disability has ceased.[20]

Insane person, possession against. There can be no adverse possession against an insane person or a nit-wit.[1]

Adverse possession against minor. It cannot be said as a general proposition that there can be no adverse possession of property which belongs to a minor during the continuance of his minority. Where a person gets into possession of minor's property not with a view to protect the minor and manage his property or as a guardian, but on his own account, without recognizing the right of the minor, his possession of the property is adverse to the minor even during his minority.[2] Where a mere stranger between whom and the person under disability, there is no

12. AIR 1958 Cal. 447 (DB).
13. PLD 1981 BJ 11.
14. AIR 1962 Mysore 3.
15. AIR 1941 Nag. 357 = ILR 1942 Nag. 564 (DB).
16. AIR 1938 Nag. 89 + AIR 1957 Pat. 213 + AIR 1956 Hyd. 107 = ILR 1956 Hyd. 339 + AIR 1953 Mys 49 = ILR 1952 Mys. 49 (DB) + AIR 1938 Mad. 513 (DB) + 110 R R 107 + AIR 1929 P.C. 55 = 7 Rang. 4 + AIR 1932 P.C. 81 = 59 Ind. App. 74 = 54 All. 93.
17. 1978 SCMR 139.
18. AIR 1925 Oudh 61 (DB).
19. 17 Eq. 378 + 35 Bom. 79 (DB) + 110 R R 107.
20. AIR 1962 Mys. 3 + 35 Bom. 79 (DB) + 8 Ind. Cas. 728 (Oudh) + AIR 1933 Bom. 287 = 57 Bom. 488 (DB) + AIR 1933 Nag. 387 = 30 Nag. I. R 88.
1. 1980 CLC 937 = PLJ 1980 Lah. 250 (DB).
2. 1984 CLC 1240 + 1941 Pat. 219 (DB).

antecedent relationship, enters on the property of such person his possession can be adverse to such person.[3] Thus where the guardian conveyed the minor's property to a stranger, who purchased it *bona fide.*, his possession would be adverse from the date of his entry on the property. [4] But where minor's brother (not his guardian) conveyed property to a stranger in which the minor had a share. It was held that the stranger's possession could not be adverse to the minor until he attained majority.[5] It is to be noted in this context that although minority or insanity of the owner will not prevent limitation running against him, he will be entitled to an extended period of limitation under Ss. 6 and 8.[6] If the minor does not bring a suit for possession within this extended period, *i.e.*, 3 years of his attaining majority, the person in possession acquires title by prescription.[7]

Co-owner in possession. The question whether the possession of a co-owner, which must be to the knowledge of another co-owner for being adverse to the latter can be adverse to a minor co-owner depends on the age of the minor and other circumstances in each case. Minority in itself does not negative knowledge.[8]

Setting aside alienation by 'de facto' guardian. Article 44 applies to a suit by a minor to set aside an alienation of his property by his guardian where such alienation is voidable; but where it is void Art. 44 does not apply.[9] In the latter case the remedy of the minor is to sue for possession and the suit will be governed by Art. 144.[10]

20. Possession of insolvent. Possession of property by an insolvent after his adjudication and before his discharge cannot be adverse against the Official Receiver or Assignee.[11]

21. Possession of mortgagor. Possession of a simple mortgagor or of his transferee cannot be adverse to the mortgagee.[12] Where a co-mortgagor redeemed mortgaged property. His possession would become that of a charge holder. Suit by other co-mortgagor would be hit by Art. 144 and that too when possession of defendant/co-mortgagor is adverse only on assertion of exclusive title by him.[13]

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3. AIR 1945 Bom. 63+AIR 1957 Pat. 213+AIR 1956 Hyd. 107=ILR 1956 Hyd 339+AIR 1948 Nag. 253=ILR 1948 Nag. 874+AIR 1941 Nag. 357=ILR 1942 Nag. 564 (DB)+110 R R 107+AIR 1922 Mad. 12=45 Mad. 361 (DB)+AIR 1933 Bom. 287=57 Bom. 488 (DB)+AIR 1941 Sind. 50=ILR 1940 Kar. 534.
4. AIR 1930 Mad. 708.
5. AIR 1940 Cal. 589.
6. AIR 1945 Bom. 63+Madh B L J 1955 II C R 1128+AIR 1950 Pat. 191+AIR 1948 Oudh 351.
7. 1984 CLC 1240.
8. AIR 1932 Bom. 23+AIR 1941 Pesh. 65+AIR 1924 P.C. 137=48 Bom. 411=51 Ind. App. 220+AIR 1920 Mad. 793 (DB).
9. AIR 1962 Orissa 17+AIR 1948 Oudh 125=23 Luck. 58. (*Overruled* on another point in AIR 1949 All. 545 (FB)+AIR 1936 Mad. 346 (DB)+AIR 1943 Cal. 203 (DB)+AIR 1945 Pat. 298 (DB).
10. AIR 1926 Mad. 457=49 Mad. 768 (DB)+5 Cal. 363 (DB)+AIR 1918 Nag. 20=15 Nag. L R 55+ILR-1954 Mys. 7+29 Mys. L J 54 (DB).
11. AIR 1914 Mad. 238+AIR 1916 Mad. 415 (DB).
12. AIR 1916 Oudh 232=18 Oudh Cas. 369.
13. NLR 1989 Civ. 225.

Mortgagee entitled to possession. When the mortgagee has become entitled to possession but he is not allowed to take possession by the mortgagor or his alienee the possession of the latter persons becomes adverse to the mortgagee. Thus where the mortgagee was entitled to take possession of the mortgaged property on default by mortgagor to make payment stipulated in the mortgage deed. It was held that the possession of the mortgagor from the date of default would be adverse to the mortgagee.[14] If after the occurrence of the default contemplated, a third person obtained a money decree against the mortgagor, purchased the property himself and got possession. It was held that his possession was adverse to the mortgagee.[15]

Suit by mortgagee. The mortgagee can sue on his mortgage, even though his right to possession may be barred by reason of the adverse possession of the mortgagor for twelve years.[16]

22. Mortgagee, possession of. Where a mortgagee not entitled as such to possession, enters into possession without title, his possession is adverse to the mortgagor from the date of his entry.[17] Where after executing a simple mortgage the mortgagee was given possession by the mortgagor by an arrangement between them, in discharge of the mortgagee debt, oral sale was not established but there was sufficient evidence to establish an arrangement between the parties whereby the mortgagee took possession as owner, the mortgagor's claim to redeem is barred by limitation when the mortgagee has more than 12 years possession subsequent to the date of arrangement.[18] Where, however, though the mortgage was not in possession yet possession was given to the mortgagee under an invalid sale; the mortgagee entered into possession thereunder but held the property claiming only as a mortgagee. It was held that this possession was not adverse to the mortgagor.[19]

Mortgagee entitled to possession. A mortgagee entitled to possession under the mortgage cannot, during the subsistence of the mortgage, convert his possession, by assertion or unilateral act, into one adverse to the mortgagor.[20] The possession of the mortgagee must be referred to the title which he has as mortgagee and he cannot be permitted to discared his title as mortgagee and claim to be in wrongful possession.[21] The mere fact that the mortgagee has been discharged by payment will not render the possession of the mortgagee adverse to

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14. 8 Beng. L R 104 (PC).
15. 8 Beng. L R 122 (PC).
16. 21 Ind. Cas. 773 (DB) (Mad).
17. AIR 1941 Nag. 141 = II.R 1941 Nag. 244 (Entry as purchaser) + AIR 1956 Hyd. 107 = ILR 1956 Hyd. 339 + AIR 1931 Oudh 69 (DB) + AIR 1934 Lah. 902 = 16 Lah. 12 (DB).
18. AIR 1958 Andh Pra. 541 (DB).
19. AIR 1937 Lah. 837 (DB).
20. PLD 1965 Lah. 611 + 1862 Suth W R 37 (FB) + 32 Cal. 296 = 32 Ind App 23 (PC) + AIR 1960 S.C. 85 = 1960 (1) S C R 693 + AIR 1959 Pat. 230 (DB) + 1958-2 Andh W R 301 + AIR 1957 Ker. 175 = ILR 1957 Ker. 492 (DB) + AIR 1957 Ker. 48 = ILR 1957 Ker. 35 (DB) + AIR 1957 Mad. 192 + AIR 1956 Bom. 237 + AIR 1956 Hyd. 107 = ILR 1956 Hyd. 339 + 33 Pat. 955 + ILR 1954 Trav-Co. 1349 + AIR 1954 Trav-Co. 165 = ILR 1953 Trav-Co. 871 (DB) + AIR 1953 All. 147 (DB) + AIR 1947 Cal. 461 (DB) + AIR 1940 Pat. 45 (DB) + AIR 1941 Nag. 141 = II.R 1941 Nag. 244 + AIR 1928 All. 726 = 50 All. 986 (FB).
21. AIR 1925 All. 133 = 47 All. 73 (DB) + 33 Pat. 955.

the mortgagor from the date of discharge.[1] On satisfaction of mortgage the possession of mortgagee does not *ipso facto* turn out to be a trespass. It shall continue as permissive possession. Even non-payment of rent will not affect its character. In order to succeed, a trespasser whether actual or by implication, like other cases, has to prove strictly the necessary conditions constituting the adverse possession.[2] It is open to a mortgagee in possession, before or after the extinguishment of the mortgage, to set up an adverse claim by denying the mortgage, by asserting a title in himself, and by disavowing the idea of holding for and in subservience to the mortgagor. But a mortgagee remaining in possession of the mortgaged premises after the extinguishment of the mortgage, without any open or express repudiation of the relation created by the mortgage, is not in contemplation of law, holding adversely to the mortgagor, whatever may be his secret intention. His possession in such a case is presumed to be in subordination to the legal title.[3] Where however the mortgagee sets up an adverse title the position is different. Thus where *A* was entitled to possession of *B's* property until certain moneys were paid back to him. Subsequently, in settlement proceedings instituted by *B*, *A* set up adverse title to the property. It was held that from that date the possession of *A* became adverse to *B*.[4] As between the mortgagors and the mortgagees entitled to possession, neither exclusive possession by the mortgagees for any length of time short of the statutory period of 60 years nor any acquiescence by the mortgagor not amounting to a release of the equity of redemption would be a bar of defence to suit for redemption.[5]

Co-owners of mortgagor, adverse possession against. Where a person enters into possession as mortgagee, he cannot claim title by adverse possession against the co-owners of the mortgagor, who have interest in the property to redeem the same.[6]

Mortgagee made owner by agreement. A mortgagee in possession cannot convert his possession as mortgagee into possession as absolute owner by unilateral acts. But bilateral acts of parties, though invalid to convey title on dates of those transactions, would operate to give adverse possession, which if continued for statutory period would ripen into goods title.[7] Thus where the mortgagor sells the equity of redemption to the mortgagee in possession under his mortgage, but the sale is found to be invalid, the possession of the mortgagee from the date of the sale becomes adverse to the mortgagor.[8] Where the defendant mortgagees were in possession of suit lands as purchasers since 1917 and asserted their rights as purchasers since 1919-20 even though the sale was invalid for non-compliance with provisions regarding registration. It was held that the mortgagees acquired a

1. PLD 1983 SC (AJ&K) 89 + AIR 1926 All. 136 + AIR 1930 Cal. 15 (DB) + 34 All. 261 (DB).
2. PLD 1983 SC (AJ&K) 89 = NLR 1983 AC 294.
3. AIR 1959 Punj. 561 = ILR 1959 Punj. 2323 (DB).
4. 33 All. 125 = 38 Ind. App. 23 = 14 Oudh 95 (PC).
5. AIR 1957 Ker. 175 = ILR 1957 Ker 492 (DB) + PLD 1965 Lah. 611.
6. AIR 1969 Mys. 39 = ILR 1958 Mys. 239.
7. AIR 1963 S.C. 70 + AIR 1962 Pat. 189 (DB) + AIR 1957 Pat. 502 = 36 Pat. 753 (DB).
8. AIR 1928 All. 726 = 50 All. 986 (FB) + 21 Bom. 424 (FB) + AIR 1956 Sau 110 + AIR 1949 Pat. 197 = 26 Pat. 717 (DB) + AIR 1928 Rang. 182 = 6 Rang. 276 (DB) + AIR 1925 Mad. 566 (DB) + AIR 1921 Mad. 82 = 44 Mad. 253 (DB) + AIR 1921 Oudh 124 = 24 Oudh Cas. 155 + AIR 1930 Lah. 71 + AIR 1926 Oudh 145 + AIR 1930 Bom. 135 = 53 Bom. 676 (DB).

title as absolute owners of the lands, by 1932.[9] Where the plaintiff was the purchaser of land in auction sale held in 1900 in execution of a decree for rent against the owner. The sale was confirmed but possession was not delivered. There was usufructuary mortgage executed by the owner in favour of the defendant. In 1944 the mortgagor sold the equity of redemption to the defendant. In 1951, the plaintiff auction-purchaser brought a suit for declaration of title and recovery of possession. It was held that the plaintiff was entitled to a decree for redemption because the defendant continued as usufructuary mortgagee upto 1944 and the suit having been instituted in 1951, his right to redeem was not extinguished. Express relief for redemption was, however, necessary and in the circumstances of the case amendment of plaint was allowed.[10] Similarly though an unregistered deed of assignment of the equity of redemption in favour of the mortgagee is ineffective to transfer forthwith title to the equity of redemption, yet it can be admitted for the collateral purpose of proving the consent of the mortgagor to the mortgagee to deny the title of the mortgagor thereafter, and to assert ownership in himself against the mortgagor.[11]

Equity of redemption sold to mortgagee by unauthorised person. Where a third person who has no right to equity of redemption purports to sell it to the mortgagee the mortgagee's possession cannot become adverse to the mortgagor.[12] Thus if the owner of the mortgaged property is a minor at the time of entering into the transaction of sale with the mortgagee, the possession of the mortgagee which is lawful at its inception cannot become adverse to the minor who is in law incapable of giving consent to the arrangement entered into with the mortgagee.[13] Where *A*, a Muslim, mortgaged to *B* properties with possession in 1885 for ten years. *A* died subsequently leaving a minor son *C* as heir, *X*, as *de facto* guardian of *C*, sold the equity of redemption to *B* in 1889. It was held that *B's* possession was not adverse to *C* till the expiry of the term of the mortgage.[14]

Possession after satisfaction of mortgage. Where he Court passes a decree that the mortgage is satisfied and that the mortgagor is entitled to immediate possession, the possession of the mortgagee after the date of such decree is adverse.[15] Where an alienee from the mortgagor redeems the mortgage but the mortgagee refuses to give up possession, his possession becomes adverse and the alienee can recover possession within 12 years of the redemption of the mortgage.[16]

Possession under void mortgage. Where an person is in possession under a void mortgage, his position is not that of a trespasser. His position, though not strictly that of a mortgagee under the provisions of the Transfer of Property Act, is nonetheless analogous to it. Although the mortgage of occupancy holding is not permitted under law, yet the creditor who enters into possession under the invalid mortgage cannot prescribe to any title or right different from or greater than

9. AIR 1962 Patna 198 (DB).
10. AIR 1962 Patna 177 (DB).
11. AIR 1964 Kerala 179+AIR 1963 S.C. 70+AIR 1962 Kerala 164 (FB).
12. AIR 1917 Nag. 33+11 Oudh Cas. 1 (DB).
13. AIR 1963 Supreme Court 70.
14. 34 All. 213=39 Ind. App. 49=15 Oudh Cas. 49 (PC).
15. AIR 1914 All. 242+AIR 1922 Mad. 407 (DB).
16. AIR 1963 S.C. 454.

those created under the invalid transaction through which he was inducted to the property. Hence he can be ejected by a Civil Court.[17]

Burden of proof of adverse possession. Where a mortgagee sets up adverse possession against a mortgagor, the onus is on the former to show when and how the possession became adverse.[18]

23. Possession of co-mortgagee. Where an indivisible mortgage is made in favour of a number of co-mortgagees, and one of them pays off the others and remains in possession of the whole property, his possession is not adverse to the mortgagor.[19]

24. Possession of co-mortgagor. The position of a co-mortgagor who redeems the whole of the mortgaged property is that of a charge-holder and a suit by another co-mortgagor for possession of his share is governed by Article 144 and not by Article 148. The possession of such co-mortgagor becomes adverse only when there is any open assertion of an exclusive title by him.[20]

25. Possession of co-owners. There could be no question of adverse possession amongst co-sharers.[1] In case of a joint holding, all the co-sharers shall be deemed to jointly own and possess every inch of the joint estate and a co-sharer cannot set up an adverse possession against one co-sharer in the joint holding allowing other co-sharers to retain joint possession of the holding to the extent of their shares.[2] The possession for whatever length of time of one co-owner, who is entitled as a co-owner, to be in possession is not adverse to the other co-owners,[3] unless clear ouster is proved,[4] or such co-sharer fully established that his possession was open, continuous and hostile to knowledge and exclusion of other co-sharers.[5] But a plaintiff setting out to prove actual joint possession and failing to do so cannot subsequently rely on the principle that the possession of one co-owner is the possession of all the co-owners.[6] Mere uninterrupted possession of one co-owner is not adverse to the other co-owners.[7] Thus if in a joint property one co-owner absents himself for a number of years but his wife resides on the property, it is evidence of non-exclusion of the absentee co-owner

17. AIR 1963 Allahabad 535.
18. AIR 1926 Oudh 517 + 17 Ind. Cas. 913 (Low Bur) + 9 Nag. L R 179.
19. AIR 1923 Lah. 366 (DB).
20. PLD 1974 S.C. 71 = PLJ 1974 S.C. 128 + PLD 1964 Peshawar 154 + AIR 1965 Punjab 351. (*But see* AIR 1964 Mad. 281 (FB).
1. 1984 SCMR 906 = 1984 PSC 1117 + 1984 CLC 1211.
2. 1984 CLC 984 = PLJ 1984 Pesh 28 = 1984 Law Notes 431.
3. 1990 CLC 164 + 1988 CLC 2403 + PLD 1985 Quetta 105 = NLR 1985 Civ. 521 = PLJ 1985 Quetta 87 (Possession for 50 years) + PLD 1976 Lah. 923 + PLD 1975 Pesh. 71 = PLJ 1975 Pesh 169 + 1970 SCMR 604 + 21 DLR SC 444 + PLD 1967 Dacca 811 (DB) + PLD 1961 Kar. 165 (DB) + PLD 1967 Pesh. 290 + PLD 1961 (AJ&K) 29 + PLD 1964 Dacca 498 (DB) + PLD 1960 (AJ&K) 70 + AIR 1944 P.C. 24 + AIR 1957 S.C. 314 + AIR 1956 S.C. 548 + AIR 1939 P.C. 63 + AIR 1931 P.C. 48 + AIR 1933 Lah. 705 (FB) + AIR 1928 All. 467 (FB).
4. PLD 1975 Pesh. 71 = PLJ 1975 Pesh. 169.
5. 1985 CLC 1134 = NLR 1985 AC 284.
6. AIR 1926 Cal. 589 (DB).
7. 1990 CLC 164 + 1982 CLC 653 = NLR 1982 Civ. 318 = 1982 LN 55 + 1970 SCMR 604 + PLD 1967 Dacca 811 (DB) + AIR 1944 Lah. 58 (DB) + AIR 1918 P.C. 277 + AIR 1960 Bom. 50 (DB) + AIR 1956 Bom. 555 (DB) + AIR 1941 Lah. 144 (DB) + AIR 1941 Lah. 307 (DB) + AIR 1918 P.C. 1.

and the fact that the wife is entitled to the property also in another capacity makes no difference.[8] But where possession has continued for a considerable period of time exclusively with one co-owner and *prima facie* to the exclusion of other or others, this principle can hardly be applied.[9] As a matter of fact an ouster may, in a proper case, be presumed where one co-owner has been in sole enjoyment of the property for a very long time.[10]

Ouster of co-owner. There can be no adverse possession by a co-sharer against other co-sharers unless there is ouster or exclusion of other co-sharers by some overt act in the manner of open hostile assertion of one's title to the exclusion of others, to their knowledge. Mere possession, however long it may be, or non-payment of share of produce or absence of names in the Record-of-Rights, would not be sufficient to constitute adverse possession.[11] To enable one of the co-sharers to acquire title by adverse possession as against the other co-sharers, he must expressly repudiate the title of other co-sharers,[12] his possession must be of such actual, open, notorious, exclusive and hostile character as to amount to an ouster or exclusion of the other co-sharers. Moreover, such possession must be for a continuous period of at least 12 years in assertion of a hostile title to the knowledge of the co-sharers against whom title by adverse possession is claimed. Such knowledge may be proved directly or inferentially.[13] In other words if there is ouster or something equivalent to it, the possession of one co-owner will be adverse to the others.[14] A person cannot be a tenant-in-common with a person whom he never recognises as a co-sharer or co-tenant, rather he asserted title hostile to him, and his possession will he hostile to other co-owners.[15] But if there is no ouster or exclusion, the possession of one co-owner is not adverse to others,[16] and unsuccessful attempts to assert title are not enough to constitute adverse possession.[17]

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8. AIR 1927 Mad. 111.
9. AIR 1958 Pra. 209 (DB).
10. AIR 1939 Bom. 322 (DB) + AIR 1956 Bom. 204 (DB) + AIR 1936 Cal. 106 (DB) + AIR 1937 Lah. 890 = ILR 1938 Lah. 367 + AIR 1927 Mad. 595 (DB) + AIR 1933 Nag. 340 = 29 Nag. L R 350 (DB) + AIR 1929 Pat. 624 (DB) + AIR 1941 Rang. 111 + AIR 1940 Rang. 141 + AIR 1941 Sind 50 = ILR 1940 Kar. 534 + AIR 1919 PC 44 = 46 Ind. App. 215 + 9 L J Q B (NS) 288.
11. 1990 CLC 164.
12. 1974 SCMR 427.
13. 21 DLR (SC) 444.
14. PLD 1960 (AJ&K) 803 + PLD 1968 Kar. 165 (DB) + AIR 1942 Nag. 75 = ILR 1942 Nag. 781 (DB) + AIR 1957 S.C. 314 = 1957 SCR 195 + AIR 1956 S C 548 + AIR 1959 Pat. 523 + AIR 1958 Andh Pra. 48 = ILR 1957 Andh Pra. 686 (DB) + AIR 1958 Orissa 160 + AIR 1958 Pat. 530 + 1958 B L J 111 (DB) + AIR 1957 Pat. 534 (DB) + ILR 1955 Cut. 45 + ILR 1954 Punj. 719 + ILR ((1949) 1 Assam 163 + AIR 1954 Andh 17 + AIR 1942 Bom. 44 = ILR 1942 Bom. 14 (DB) + ILR 1941 Lah. 343 (PC) + 10 Moo Ind App 511 (PC).
15. PLD 1964 Dacca 498 = PLR 1965 Dacca 177 = 15 DLR 628 (DB).
16. PLD 1984 SC (AJ&K) 120 = 1984 SC (AJ&K) 80 + PLD 1960 (AJ&K) 70 + PLD 1967 Dacca 811 (DB) + AIR 1944 Lah. 58 (DB) + AIR 1942 Bom. 44 = ILR 1942 Bom. 14 (DB) + AIR 1942 Nag. 75 = ILR 1942 Nag. 781 (DB) + AIR 1939 All. 732 + AIR 1937 All. 124 (DB) + AIR 1957 Andh Pra 40 + AIR 1956 Madh B 56 (DB) + AIR 1956 Mad. 405 = ILR 1956 Mad. 1116 (DB) + AIR 1955 Nag. 126 = ILR 1955 Nag. 321 (DB) + AIR 1954 Andh 17 + AIR 1954 Nag. 223 = ILR 1954 Nag. 457 (DB) + 1954 Raj L W 488 + AIR 1953 Him Pra 25 + AIR 1952 Pat. 268 + AIR 1951 Nag. 355 = ILR 1952 Nag. 65 + AIR 1965 Assam 16.
17. AIR 1918 P.C. 339.

Where ouster is otherwise established, it is not affected by affirmation of right to applications for partition by the other co-owners.[18]

What is ouster. To able one of the co-sharers to acquire title by adverse possession as against the other co-sharers, his possession must be of such an actual, open, notorious, exclusive and hostile character as to amount to an ouster or exclusion of the other co-sharers.[19] The test of an ouster is whether the co-owner in possession has openly and unequivocally and to the knowledge of the other co-owners, denied their title to the property.[20] Physical eviction is not necessary to constitute ouster.[1] In other words any resistance preventing a co-sharer from obtaining possession is an ouster.[2]

Ouster necessarily implies assertion of hostile title to the knowledge of the party concerned. In the case of a co-sharer, the possession by the co-sharer even over the entire land, can be referable to his right as a co-sharer and thus mere possession of the land will not constitute ouster and mere possession of the land for over 12 years will not amount to adverse possession.[3] The question as to whether ouster has been proved to the knowledge of one party or the other would depend upon the facts and circumstances of each case.[4] The Knowledge of the co-owner about the denial of their title by a co-owner need not be proved by direct evidence but may be inferred from the circumstances of the case.[5] Therefore a co-owner in exclusive possession for the statutory period of twelve years, in denial of title of other co-owner to their knowledge, acquires title by prescription if he is able to establish ouster. Ouster would not only mean physical ouster of co-owner but would also include exclusion of other co-owners from the enjoyment of

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18. PLD 1967 Pesh. 290=PLR 1968 (1) W.P. 263+AIR 1925 Lah. 183+AIR 1914 Lah. 284=1914 Pun. Re. No. 45 (DB).
19. 21 DLR (SC) 444.
20. 1970 SCMR 604+PLD 1967 Dacca 811 (DB)+PLD 1961 Kar. 165 (DB)+PLR 1961 Pesh. 9=PLR 1961 (2) W.P. 790 (DB)+21 DLR (S.C.) 444+PLD 1960 AJ&K 70+AIR 1947 Pat. 99=24 Pat. 412 (DB)+AIR 1957 SC 314=1957 SCR 195+AIR 1956 S C 548+AIR 1958 Andh Pra. 48=ILR 1957 Andh Pra. 686 (DB)+AIR 1958 Andh Pra. 19 (DB)+AIR 1958 Orissa 160+AIR 1958 Pat. 530+1958 B L J R 111 (DB)+AIR 1957 Andh Pra. 40+AIR 1957 J&K 19 (DB)+1957 M P C 265+AIR 1956 Bom. 555 (DB)+1956 Andhra W R 137 (DB)+ILR (1954) 4 Raj. 145+ILR 1951 Patiala 171+1953-2 Mad. L. Jour 241+ILR (1955) 1 All. 772+1954 Mad. W N 448+1954 All W R (H C) 406+AIR 1954 Pat. 491+AIR 1954 Punj. 14 (DB)+AIR 1954 Sau 113+AIR 1952 Pat. 123=30 Pat. 351 (DB)+AIR 1951 J&K 21=10 J&K L R 26 (DB)+AIR 1951 Sau 73 (DB)+AIR 1950 East Punj. 252 (DB)+AIR 1950 Mad. 680=ILR 1950 Mad. 1084 (DB)+1947 Rang L R 359 (DB)+AIR 1946 Nag. 235=ILR 1946 Nag. 312+45 Bom. L R 104 (DB)+AIR 1943 Oudh 54+AIR 1942 Lah. 135+AIR 1934 All. 193=56 All. 582 (DB)+AIR 1923 All. 291 (DB)+AIR 1929 Bom. 323=AIR 1936 Cal. 106 (DB)+AIR 1935 Cal. 195=62 Cal. 305+AIR 1934 Lah. 456=15 Lah. 907+AIR 1932 Lah. 143 (DB). (AIR 1931 Lah. 339, *Followed*)+AIR 1918 Mad. 19=41 Mad. 650 (DB)+AIR 1933 Nag. L. R. 350=29 Nag. L R 350 (DB)+AIR 1941 Oudh 415+AIR 1924 Oudh 266=27 Oudh Cas. 77+AIR 1936 Pat. 136 (DB)+AIR 1936 Pesh. 24+AIR 1935 Pesh. 97+AIR 1919 Low Bur 107=10 Low Bur Rul 45 (DB)+AIR 1963 Cal. 520.
1. AIR 1928 Cal. 216=55 Cal. 396 (DB)+AIR 1921 Cal. 647 (DB).
2. AIR 1920 Cal. 610=47 Cal. 182 (DB).
3. AIR 1965 Assam. 16.
4. AIR 1963 Patna 108 (DB).
5. AIR 1930 Cal. 466 (DB)+1953-2 Mad. L Jour 241+AIR 1926 Cal. 881 (DB)+AIR 1928 Mad. 652+AIR 1941 Sind 50=ILR 1940 Kar. 534.

usufruct of property through brazen denial of their title. Defendant having remained in such possession for more than twelve years over suit property without let or hindrance on behalf of other co-sharers, acquired prescriptive title thereto. Plaintiffs title got extinguished on expiry of statutory period of limitation.[6] Adverse possession of co-sharer, however, would be fully proved where party against whom such adverse possession was claimed admitted forcible possession thereof for more than statutory period and refusal of such possessor to hand over the same despite repeated demands.[7] Where however there is nothing to show that there was assertion of hostile title by the co-sharer in possession to the knowledge of other co-sharers there is no ouster. Thus an assertion made by one of the co-sharers in actual possession as a witness in civil proceedings to which other co-sharers are not parties is not assertion of hostile title on the part of all the co-sharers in actual possession.[8] Where *A* and *K* sold land to *H* and there was a recital in sale-deed that one *M* (not party to sale-deed) has no share in the land, such recital was not binding on *M* who claimed to be co-sharer of *A* and *K*, and *H* cannot claim that *M* having been not in possession of land for a long period her right and interest in property were lost by adverse possession.[9]

Proof of ouster. Evidence sufficient to establish adverse possession by a stranger may be totally insufficient to prove ouster by a co-owner.[10] The burden of proving ouster is on the person claiming to replace the lawful title of a co-sharer by his adverse possession and there must be evidence of open assertion of hostile title coupled with exclusive possession and enjoyment of one of them to the knowledge of the other so as to constitute ouster.[11] Mere occupation or enjoyment or management of joint property by one co-sharer does not constitute adverse possession as against other co-sharers, unless there is a disclaimer of the latter's title by open assertion of a hostile title by the former, or unless there is actual ouster or some acts equivalent to ouster. The requirement to make possession adverse vary according to peculiar facts and relationship of parties and other like circumstances, in which the adverse possession commences. The acts which *prima facie* are acts of dispossession may under peculiar circumstances fall short of evidencing any kind of ouster. They may be susceptible to another explanation, bear some other character or have some other objects when placed in *juxtaposition* with some other facts and circumstances. Many acts which would be clearly adverse and might amount to dispossession as between a stranger and a true owner of land, would between joint owners naturally bear a different construction. The entry on, and possession of, land under the common title of one co-owner will not be presumed to be adverse to the other. That will ordinarily be held to be for the benefit of the co-owners for the reason that the possession of one co-owner is rightful possession and does not imply hostility as would be implied in a case of possession of a stranger.[12]

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6. 1989 CLC 791 = NLR 1989 CLJ 321.
7. PLD 1987 AJ&K 79.
8. AIR 1932 Lah. 143 (DB).
9. 1970 SCMR 604.
10. AIR 1942 Nag. 75 = ILR 1942 Nag. 781 (DB) + AIR 1921 Cal. 647 (DB) + AIR 1924 Oudh 266 = 27 Oudh Cas. 77.
11. AIR 1963 Cal. 520 (DB).
12. PLD 1961 Azad J. & K 29.

To prove adverse possession by a co-owner his conduct must be unequivocal and inconsistent with his character as co-owner.[13] Adverse possession of a co-sharer against other co-sharers would be fully proved where party against whom such adverse possession was claimed admitted forcible possession thereof for more than statutory period and refusal of such possessor to hand over the same despite repeated demands.[14] Thus where the defendant co-sharers were in sole possession of suit land for about 30 years in assertion of their own right within knowledge of the plaintiff, and the plaintiff never paid rent or participated in enjoyment of usufruct of the tenancy and he admitted in written statement that defendants were in possession in assertion of their own right without any objection from the plaintiff. It was held that ouster of the plaintiff was established and right, title and interest of the plaintiff in such land was extinguished by adverse possession.[15]

A co-sharer in possession can convert his possession into adverse possession by an overt act showing unequivocally to the co-sharers that in future he intends to hold for himself alone.[16] Unless that is done positively the co-sharers in possession cannot claim title by adverse possession. It is not possible to affect the possession of other co-sharers by any secret intention in their mind.[17] Even though ouster at any particular moment is not proved, it is open to the Court to find that there has been ouster for the statutory period.[18]

Instances of ouster. In the following cases one co-owner was held to have dispossessed other co-sharers and thus he held adversely to the other co-owners. Where *A* and *B* were co-owners of certain property and *A* began to collect the rents of the land to the exclusion of *B* on the ground of exclusive title;[19] where two brothers constituting a joint Hindu family separated but a particular property not actually divided, was being enjoyed by one branch exclusively. They were in sole possession and in receipt of profit of the property. They denied the title of the other branch in revenue proceedings.[20] Where a co-owner applied for a certificate to the property of the last owner as well as his son to the exclusion of his widow, and to her knowledge and got possession.[1] Where *A* and *B*, were co-owner landlords of certain non-transferable occupancy holding. *B* purchased in execution the holding and entered into possession and held it adversely to *A*.[2] Where an individual proprietor planted trees and built enclosure around the common land and held it adversely to the other co-owners from the date of building the enclosure.[3]

13. AIR 1921 Cal. 647 (DB)+AIR 1920 Cal. 610=47 Cal. 182 (DB)+AIR 1935 Lah. 63 (DB)+55 Mad. L. Jour 223+AIR 1923 Oudh 449 (DB)+AIR 1927 Oudh 6+AIR 1938 Sind 132=ILR 1939 Kar. 18 (DB)+AIR 1929 Sind. 212=23 Sind L R 461 (DB).
14. PLD 1989 AJ&K 79.
15. 1969 DLC 130=21 DLR 511.
16. PLD 1967 Peshawar 290=PLR 1968 (1) W P 263.
17. AIR 1958 Ker. 58 (DB)+AIR 1963 Cal. 520 (DB)+AIR 1964 Pat. 510.
18. AIR 1927 Mad. 595 (DB).
19. AIR 1916 P.C. 96=43 Cal. 660.
20. AIR 1931 P.C. 48=27 Nag. L R 131.
1. 13 Bom. 276 (DB).
2. AIR 1924 Cal. 45=50 Cal. 487 (DB).
3. AIR 1927 Lah. 416.

A co-sharer's possession became adverse when he rebuilt a house making it *pukka*.[4] Where two brothers *A* and *B* were the only members of a joint Hindu family. *B* was adjudicated a lunatic in 1874. The manager and later on the Court of Wards took exclusive possession of 8-anna share in the joint family property as the separate property of *B* and dealt with it as his exclusive property for over 12 years up to *A's* death in 1903 to the knowledge of *A*. In 1897 *A* sold his half share to *B* and the entire property was thenceforth managed by the Court of Wards on behalf of *B* and after *B's* death in 1902 on behalf of his widow *C* until 1920, when they handed it over to *C*. In a suit by *A's* heirs claiming possession of the entire estate, instituted in 1936; it was held that the possession of *B's* share by the manager and the Court of Wards and subsequently by *C* was adverse to *A* from 1874 and the suit was clearly barred.[5]

Instances where no ouster effected. A mere demand for partition by one co-owner and a refusal of such demand by the co-owner in possession;[6] or the mere fact that a co-owner alienates a portion of the joint property;[7] or the mere fact that a co-sharer leaves the house;[8] or the mere fact that a co-sharer brought a suit to eject a trespasser;[9] or the fact that the name of one co-owner alone is entered in the revenue paper is not sufficient to constitute ouster of other co-sharer.[10] Among the Muslims, the women being *pardanashin* ladies do not go out and assert their right to the property left by their deceased father and ordinarily the property in the Record-of-Rights or the Municipal Records is mutated in the name of the male heirs of the deceased. Therefore this fact alone cannot lead to the conclusion that there was any ouster of the female co-sharers whose names are not found in the Record-of-Rights.[11] Where a *lambardar* grants lease of waste land, there is no ouster of co-sharers though there is dispossession, unless their proprietary title is questioned. Granting of lease being within the power of the Lambardar it must be presumed that he had leased the land on behalf of the proprietary body.[12] Where a suit is brought by one co-sharer for a declaration that a certain portion of joint property is exclusively his, no hostile overt act is committed before the suit. A decree rejecting his claim but directing that property could not be partitioned until contribution by other co-sharers to certain expenditure incurred by him. There is no mention of time limit. In the circumstances exclusive possession by him for 12 years after the decree could not be adverse possession.[13]

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4. AIR 1917 Lah. 271.
5. AIR 1950 P.C. 142 = 1949 F C R 715.
6. AIR 1942 Lah. 135 + AIR 1938 Bom. 250.
7. AIR 1943 Pesh. 17 + ILR 1954 Patiala 171 (DB) + AIR 1935 Cal. 144 + 24 Cal. W N 1057 (DB).
8. AIR 1941 Rang. 111.
9. AIR 1929 Oudh 337.
10. PLD 1990 SC 1 + PLD 1961 Kar. 165 (DB) + PLD 1960 AJ&K 70 + AIR 1922 All. 399 (DB) + 1957 M P C 265 + 20 Cut L Tim 602 + AIR 1961 J&K 21 = 10 J&K L R 26 (DB). (Mere mutation on the part of a co-owner in his favour would not constitute ouster of the other co-owners + AIR 1929 Oudh 337 + AIR 1941 Nag. 141 = ILR 1941 Nag. 244 + AIR 1941 Nag. 243 = ILR 1942 Nag. 608 + AIR 1928 Rang. 95 + AIR 1929 Sind. 212 = 23 Sind L R 461 (DB) + 9 Ind Cas 425 (Oudh).
11. PLD 1961 Karachi 165 (DB).
12. AIR 1950 Nag. 107 = ILR 1950 Nag. 218.
13. AIR 1937 Lah. 65 (DB).

Non-payment of rent after partition does not amount to ouster or adverse possession against other co-sharers. Possession is not adverse unless there is express repudiation of title of other co-sharers.[14]

Exclusive possession by one share does not amount to adverse possession by him.[15] Exclusive appropriation by one co-sharer of part of joint land to his own use by erection of a permanent structure does not amount to adverse possession.[16] But where the co-sharer has built his residential house on the land, it amounts to an assertion of hostile and exclusive title to the knowledge of the other co-sharer.[17]

Non-participation in profits. Mere non-participation in the profits of the property by one co-owner and exclusive possession by the other will not constitute adverse possession.[18] But non-participation in the rents and profits for a considerable length of time taken with other circumstances may lead to an inference of ouster.[19] Thus ouster in suitable cases can be presumed from non-participation in the profits of the land for a long period of time affecting different generations under such circumstances that denial could not be proved but could only be inferred.[20] It has been held that appropriation by a co-owner of the whole income of other's share amounts to ouster of the latter.[1] The fact that the defendant has resisted a former suit for profits by the plaintiff and that the latter has not received any profits shows adverse possession.[2] Similarly where one co-sharer was in exclusive and long enjoyment of property and other co-owners did not participate in profits, the co-sharer in possession sold the property as his own without protest from other co-sharers, an inference of ouster was justified.[3]

Person becoming co-owner after entering into adverse possession. Where a person already in possession in assertion of a hostile title subsequently becomes a

14. 1974 SCMR 427.
15. PLD 1985 Quetta 105 = PLJ 1985 Quetta 87 = NLR 1985 Civ. 521.
16. AIR 1950 Pat. 511 (DB).
17. AIR 1934 Lah. 84.
18. PLD 1990 SC 1 = 1990 CLC 164 + PLD 1987 AJ&K 79 + PLD 1985 Quetta 105 = PLJ 1985 Quetta 89 + PLD 1961 AJ&K 29 + PLD 1961 Kar 165 (DB) + PLD 1960 (AJ&K) 70 + AIR 1964 Pat. 510 + AIR 1947 Pat. 99 = 25 Pat. 412 (DB) + AIR 1957 S.C. 314 = 1957 SCR 195 + AIR 1963 Cal. 520 (DB) + AIR 1963 Pat. 108 (DB) + AIR 1957 Andh Pra 40 + AIR 1956 Bom. 555 (DB) + AIR 1956 Madh B 56 (DB) + AIR 1955 Nag. 242 = ILR 1956 Nag. 242 (DB) + ILR 1951 Patiala 171 + 1953-2 Mad. L. Jour 241. (To constitute adverse possession there must be something more than mere exclusive participation of profits) + 1954 Mad W N 448 + AIR 1954 Pepsu 114 = ILR 1953 Patiala 605 (DB) + AIR 1958 Andh Pra 19 (DB) + AIR 1958 Ker 58 (DB) (Non-participation in profits for 26 years) + AIR 1958 Pat. 530 + 1958 B L J R 111 (DB) + AIR 1950 East Punj. 252 + AIR 1950 Mad. 680 = ILR 1950 Mad. 1084 (DB) + AIR 1943 Nag. 321 = ILR 1944 Nag. 17 + AIR 1944 P.C. 24 = ILR 1944 Kar (PC) 170 + AIR 1940 All. 428 + 19 Suth W R 231 (PC). (One co-owner receiving rents of one part of an estate and another co-owner receiving rents of another part.) + AIR 1940 Mad. 785 (DB) + AIR 1941 Nag. 343 = ILR 1942 Nag. 608 + AIR 1940 Rang 141.
19. AIR 1961 Mysore 244 (DB).
20. AIR 1958 Andh Pra 48 = ILR 1957 Andh Pra. 686 (FB).
1. AIR 1943 Pat. 48 = 21 Pat. 710 (DB).
2. 17 All. 423.
3. AIR 1936 Nag. 282 = ILR 1937 Nag. 242.

co-owner, his possession does not cease to be adverse where he continues to assert a hostile title and exercises exclusive possession.[4]

Co-owner deriving possession from party in adverse possession. Where a third party is in adverse possession of property and one of the co-owners obtains possession from him under a lease or transfer, his possession is adverse to that of the other co-owners.[5] Similarly where one co-owner acting on his own behalf recovers common property from a trespasser his possession is adverse to the other co-owners.[6]

Ouster from part of joint property. Adverse possession of a co-owner may extend to a portion only of the common property.[7] Thus where the disputed parcels of the joint properties do not form one property, the fact that the defendant has ousted the plaintiff as regards one of the parcels does not show that his possession of the other parcels was in assertion of an exclusive and hostile title.[8] Similarly where a stranger enters into possession claiming to be a fractional owner, his possession must be considered to be adverse to the real owner.[9]

Possession under ineffective transfer. Where a co-owner executed a deed of gift in favour of the other co-owners who were in actual possession, and neither of the parties did anything to obtain registration of the deed and both parties treated it as a dead letter, the character of the possession of the donees remains the same as it was before the contemplated gift and the donor should be deemed to have been in constructive possession through the donee.[10]

Partition. A partition between co-owners in exclusive possession does not amount to ouster or denial of title of the other co-owner not in possession.[11] The adverse possession by a stranger against the co-owners of a property is not interrupted by a partition among the co-owners.[12]

In the case of Muslim families, a partition of their shares without reference to them does not go to prove their ouster from their rights.[13]

Decree for partition. Before the award decree which sought to bring about severance in status, the parties were recorded as co-sharers half and half. Land in actual possession was, however, not in accordance with that proportion. Same state of affairs continued after the decree. No execution of the award decree was taken. No change in possession in accordance with the award resulted. It was held that, the severance in status which was sought to be made by the award decree not having been brought about, the decree remained a dead letter and it must be taken that the joint status continued.[14]

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4. PLD 1950 Sind 152 + AIR 1919 P.C. 44 = 43 Mad. 244 = 46 Ind. App. 285 + AIR 1949 Sind 12 = ILR 1947 Kar. 224 (DB) + 1947 Rang. L. R. 359 (DB) + AIR 1940 Mad. 102.
5. AIR 1934 Cal. 356 = 60 Cal. 406 (DB) + AIR 1921 Cal. 616 (DB).
6. AIR 1921 Lah. 163.
7. AIR 1924 Mad. 741 + AIR 1951 Nag. 259 = ILR 1950 Nag. 160 (DB).
8. 1 Ind. Cas. 252 (DB) (Cal.) + AIR 1931 All. 193 (DB).
9. AIR 1934 Pat. 485 (DB).
10. AIR 1951 J&K 27 = 9 J&K L R 85.
11. AIR 1938 Nag. 89.
12. AIR 1920 Oudh 147 (DB).
13. AIR 1941 Nag. 343 = ILR 1942 Nag. 608.
14. AIR 1962 Punjab 412.

Joint family property. Where the eldest member of the joint Hindu family was in possession and looking after the management of the joint family property, he would be deemed to be in such possession on behalf of the family, unless there was any overt act on his part to indicate in an open manner that his possession amounted to denial of any interest of the other members.[15] But where the manager representing the joint family denied rights of the co-owner, the possession of a junior member does not enure for the benefit of the co-owner in repelling the plea of adverse possession by the manager, he will be deemed to be holding in his own right alone.[16]

Where one co-parcener holds separate property of another in exclusive possession, his possession is adverse to the co-owner. Thus where *A* and *B* were two Hindu co-parceners. *A* died leaving *C* as his heir; *B* took possession of the separate property of *A*. The possession of *B* was adverse to *C*.[17]

Co-sharer occupying more than his share of property. Unequal possession by any one or more of the co-sharers is not adverse to the other co-sharers so far as that possession is in excess of the share to which the co-sharer or co-sharers would be etitled to on partition, unless open or hostile act on his part with regard to their possession of the land in excess of their share has been proved which may amount to the ouster of other co-sharers.[18] Where one of the heirs of a deceased person comes to occupy more than his share to the exclusion of the rightful heir of the excess share and alienates it and such alienation is accepted by the latter, the possession of the former is adverse to the latter.[19]

Lease of property by co-owner. Where one co-owner leases his share to another, the original relationship of the parties as co-owners is revived on the termination of the lease and the possession of the quondam lessee is *prima facie* one on behalf of both the co-owners.[20]

Partnership property. A partner cannot claim adverse possession of partnership property, except where he has exclusive, open and hostile possession as against the real owners. But he cannot achieve this result merely by saying that he was a partner of the firm and the immovable property was being treated as property of the firm. Whatever other incidents may arise from such a situation, it cannot be the basis of a plea of adverse possession against a partner.[1]

Persons not co-owners--position of. The principle that possession of one co-owner cannot be adverse to the other co-owners applies only to co-owners. Where the parties are not co-owners the principle does not apply. Thus where *A* transfers to *B* and *C* land to which *A* is not entitled. *B* and *C* do not become co-owners of the land and the principle that the possession of one co-owner is the possession of all is not applicable to them.[2] Similarly where the customary law heirs of the deceased were in possession of the estate when N.-W.F.P. Muslim

15. AIR 1962 Patna 204 (DB).
16. AIR 1941 Sind 50 = ILR 1940 Kar. 534.
17. AIR 1919 Oudh 154 (DB).
18. AIR 1962 Punjab. 412.
19. 94 Ind. Cas. 550 (Lah.).
20. AIR 1934 Bom. 219 (DB).
1. PLD 1963 Karachi 209 = PLR 1962 (1) W.P. 53.
2. AIR 1939 All. 732. (Suit for partition does not lie).

Law (Shariat) Application Act, came into force in 1935. The law being retrospective in nature Muslim Law heirs of the deceased were entitled to a share of the property but they did not ask for possession within twelve years. After wards they asked for it. It was held that the customery law heirs were in possession as owners in their own right, and not as co-heirs with the plaintiffs who were to all intents and purposes hostile to the plaintiffs. Their possession cannot be deemed to be the possession of co-owners or co-heirs with the plaintiffs, because their entry into possession in 1928 was not as co-heirs or co-owners but was an entry in their own right.[3] Where on death of owner of property and also of his widow, Jirga of the area took away half of his property and allowed the other half to remain with land-owner's mother, by way of maintenance. Upon the death of landowner's mother in 1938, her share was also taken over by the Jirga and distributed amongst its members according to local *Riwaj*. Plaintiff brought a suit for possession of property in question on basis of being a collateral of original land-owner who had died, issuless in 1907. It was held: Members of Jirga had not only taken over the property in question but also divided it among themselves and were thus in adverse possession with reference to those who were entitled to succeed to the estate of original land-owner. Plaintiff's father's suit in respect of property in question having been dismissed in 1939, plaintiff could not contend that he being co-sharer of property, plea of adverse possession could not be canvassed against him. Trial Court and High Court were thus right in holding that plaintiff's suit was hit by the bar of limitation.[4]

Plaintiff denying status of co-sharer of defendant--effect. Where plaintiff denied status of defendants as co-sharers, such plaintiffs could not take benefit of defendant's possession on basis of co-sharership. Defendant's possession could be in their own right in a way adverse to plaintiffs making it necessary that such plaintiffs should have been dispossessed within twelve years preceding the suit.[5]

Ousted co-sharer, position of. Once it is held that the possession of a co-sharer has become adverse to the other co-sharer as a result of ouster, the mere assertion of his joint title by the dispossessed co-sharer will not interrupt the running of adverse possession. He must actually and effectively break up the exclusive possession of his co-sharer by re-entry upon the property or by resuming possession in such manner as it is possible to do. *A* mere mental act on the part of the person dispossessed unaccompanied by any change of possession cannot effect the continuity of adverse possession of the co-sharer. If may also check the running of time if the co-sharer who is in exclusive possession acknowledges the title of his co-owner or discontinues his exclusive possession of the property.[6] The fact that the name of the ousted co-sharer is recorded in the revenue papers as co-sharer will not prevent the running of limitation against him.[7] Adverse possession of a person against a sole co-parcener is goods against the co-parcenary. An adoption made by a widow of another co-parcener after the rights of the co-parcenary have become barred by 12 years' adverse possession cannot give the adopted son any right to recover possession of the co-parcenary property from

3. PLD 1961 Peshawar 9 = PLR 1961 (2) W.P. 790 (DB).
4. 1990 SCMR 114.
5. 1986 CLC 2261 = PLJ 1986 Lah. 400 = NLR 1986 Rev. 137.
6. AIR 1954 S.C. 337 = 1955 S C R 131.
7. 17 All. 423 + AIR 1924 Lah. 389 + AIR 1914 Lah. 284 = 1914 Pun Re No. 45 (DB).

him.[8] Where one co-owner acquires title by adverse possession to the share of the other also, an abandonment of possession by the former will not revive the title of the latter.[9]

Interruption of adverse possession. The adverse possession of a co-owner is not interrupted by the mere fact that a decree is passed in favour of another co-owner establishing latter's right as co-owner.[10] But where the decree in the above case is a consent decree, the possession of the co-owner who is in possession becomes admittedly one on behalf of all the co-owners.[11]

Where one co-owner is in adverse possession against one of the other co-owners but not against the others, his possession will lose that character if that other co-owner transfers his share to the co-owner against whom adverse possession is not claimed. Thus where *A*, *B* and *C*, are three co-sharers in a house. *A* is in adverse possession against *C* but not against *B*. *C*'s share is transferred to *B*. The adverse possession by *A* of such share ceases.[12]

Burden of proof. The onus of proving ouster is on the co-owner who alleges ouster.[13] A person who has taken benefit under a will and has administered the will as the person authorised under the direction and order of a Court as an Administrator of that will, cannot be allowed to turn round and say that the person who made that will had no capacity to make the disposition by that will. Such an administrator cannot be allowed to approbate and reprobate the will and blow hot and cold. Further even those who derive title from such administrator to the properties, left and administered by that administrator and devolving subsequently on them, cannot be permitted to take a point that the testator had no capacity to dispose by a will such properties.[14] But where the suit is based upon title and possession within 12 years it is for the plaintiffs to prove their possession within the statutory period.[15]

Interference in joint possession. When a co-owner alleges that he is in joint possession with the defendants but the defendants interfere with the plaintiff's right and when in such circumstances a co-owner sues, the Article applicable is not Art. 142 but Art. 144. If the suit is not based on possession and dispossession, then Art. 142 does not apply. If the suit is based on joint possession of the plaintiff with the other defendants but he plaintiff alleges interference with the plaintiff's right or joint possession by the defendant, to such a case Art. 144 would apply.[16]

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8. AIR 1950 P.C. 43.
9. AIR 1923 Lah. 362 (DB).
10. PLD 1967 Pesh 290 = PLR 1968 (1) W.P. 263 + AIR 1914 Lah. 284 = 1914 Pun Re No. 45 (DB) + 99 Ind. Cas. 956 (Lah.).
11. AIR 1923 Cal. 252 (DB).
12. AIR 1931 Lah. 251.
13. 19 Suth W R 231 (PC) + AIR 1957 S. C. 314 = 1957 S C R 195 + AIR 1942 Nag. 750 = ILR 1942 Nag. 781 (DB) + 3 Agra 241 (SB) + AIR 1941 Sind. 50 = ILR 1940 Kar. 534 + AIR 1933 Sind 317 = 27 Sind L R 101 (DB) + AIR 1963 Cal. 520 (DB).
14. AIR 1963 Calcutta 520 (DB).
15. 24 Cut L Tim. 345.
16. AIR 1958 Pat. 530.

Dispossession of co-sharer by stranger. Where a co-owner in possession on behalf of all the co-owners is dispossessed by a stranger, the possession of the stranger is adverse to all the co-owners.[17]

'Shamlat' land. Adverse possession could not be claimed in respect of Shamlat land.[18]

26. Alienee from co-owner, possession of. The possession of the alienee from a co-owner is, by itself not adverse to the other co-owners.[19] It becomes adverse only where there is an ouster of such co-owners.[20] When an assertion of adverse title to the whole is brought to the knowledge of the co-sharer and it is accompanied by his ouster and exclusion, adverse possession would then commence as against him. It will be necessary for the transferee to establish that the denial of the title and ouster were brought to the knowledge of the other co-owner and in absence of any such proof, he would not be able to perfect his adverse possession. He cannot acquire adverse possession simply on the ground that the transferor co-sharer who lawfully remained in possession of the entire property had transferred the whole property to him.[1] Where the co-owner in possession of the entire joint property transfers the same and the transferee not only enters into possession of it but carries out repairs and some constructions in it without any objection or hindrance from the other co-owners, the acts of the transferee amount to setting up a hostile title and ouster of the other co-owners, if it is proved that the co-owners had knowledge of the extent of the share transferred. Consequently where after the transferee has perfected his title by adverse possession, a co-sharer transfers his share to another, a suit for partition by such transferee against the previous transferee from the co-owner who was in exclusive possession is barred by limitation.[2] Where a brother sold certain property to a stranger claiming sole ownership of the property whereas the property belonged to him as well as his two minor brothers. The purchaser remained in possession of the property openly, exclusively and in assertion of his own title on mutation of his name and payment of rent due thereon. The minors took no step to assert their title thereto for as long as 21 years even after they had attained majority. It was held that the alienee had acquired title as owner by adverse possession.[3] In the case of mortgage with possession of the whole property by a co-owner, the possession of the mortgagee operates as an ouster of the other co-owners and to their knowledge, and the person in possession is not the mortgagee of the co-owners who have been ousted. Therefore, the other co-

17. AIR 1919 Cal. 55 (DB) + AIR 1927 Cal. 457 (DB).
18. PLD 1983 Pesh. 223 = 1983 CLC 51.
19. AIR 1930 Oudh 475 (DB) + AIR 1959 Assam 15 (DB) + AIR 1958 Pat. 530 + AIR 1957 Pat. 534 (DB). (Co-owner's heir does not stand on a better footing than an assignee) + AIR 1954 Punj. 124. (If one of the co-sharers makes a gift of specific properties in his possession, the transfer will make the donee as much a co-sharer as the donor is) + 55 Mys. H C R 156 (DB) + AIR 1941 Lah. 307 (DB) + AIR 1939 Sind. 315 = ILR 1939 Kar. 597 (DB) + AIR 1940 All. 428 + AIR 1935 Lah. 651 + AIR 1924 Mad. 741 (DB) + 51 Cal. L. Jour 424 + AIR 1932 All. 393 = 54 All. 628 (DB) + AIR 1927 Mad. 111.
20. AIR 1941 Lah. 307 (DB) + AIR 1959 Assam 15 = ILR (1957) 9 Assam 465 (DB) + 55 Mys HCR 156 (DB) + AIR 1943 Pat. 48 = 21 Pat. 10 (DB) + AIR 1940 All. 428.
1. AIR 1959 Assam 15 = ILR (1957) 9 Assam 465 (DB).
2. AIR 1964 Allahabad 425.
3. 21 DLR (SC) 444.

owners cannot sue for redemption as persons interested in the equity of redemption beyond 12 years of the possession of the mortgagee.[4] Where five sisters and two brothers are co-owners and on the death of two of the sisters, the remaining three sisters possessed and enjoyed the land belonging to the dead sisters. Later on they mortgaged the entire land in their possession and openly delivered possession to the mortgagee. It was held that the mortgagee held the property belonging to the deceased sisters adversely to the brothers, and perfected his title to their share after 12 years.[5]

Adverse possession against alienee. The mere fact of alienation of the interest of the alienor-co-sharer will not amount to either ouster or impress possession of the co-sharer with the character of adverse possession. Mere non-participation in the receipts from immovable property or mere inaction in respect of it for any length of time on the part of one or more of the co-sharers is not regarded as amounting to ouster or as investing the possession in the hands of one of the co-sharers with an adverse character. An alienee from a co-sharer, more especially when he is a Muslim, cannot be regarded as standing on a special footing different from the position of his alienor. Like the co-sharer who was the alienor, the alienee also is not barred by time because for over 12 years he took no action either to share possession of the property or income therefrom or sue for partition.[6] Thus where *A* is in possession of joint property of *A* and *B*, but *B*, though not in possession actually has not been ousted by *A*, *A's* possession is not adverse to *B* or the alienee of *B*'s share if the alienee though entitled to possession is not put into possession.[7] But where the alienee is not entitled to possession the possession of non-alienating co-parceners becomes adverse from the date of sale.[8] There was no legal bar for the auction-purchaser to file a suit for partition even without obtaining delivery of possession either actual or symbolic. Thus there cannot be any question of computing the period of limitation from the date of symbolic delivery of possession. There is no specific provision in the Limitation Act which prescribes limitation for suits of this nature. There are, however, authorities to show that such suits are governed by Art, 144 of the Limitation Act. The possession of other co-sharers, *viz.*, the non-alienating members of the family cannot be deemed to be in possession on behalf of the alienee. If such co-sharers are in possession of the property even after the sale they must be held to have done so adversely to the alienee. Even the possession of the alienor himself will also affect adversely the purchaser from the date of the sale. Limitation would run from the date of confirmation of the sale and not from the date of symbolical possession under Order 21, Rule 96, C.P.C. as he was not entitled to any such possession under the Hindu Law.[9]

Alienee not entitled to possession. Where alienee is not entitled to be put into possession, he cannot rely on the ordinary rule that the possession of one co-

4. AIR 1963 Kerala 249 + AIR 1942 Mad. 622 (FB) + AIR 1960 Kerala 27.
5. AIR 1963 A. P. 121.
6. AIR 1963 Madras 84 (DB) + AIR 1928 Lah. 952 + AIR 1932 All. 393.
7. AIR 1934 Bom. 273 = 58 Bom. 410 + AIR 1956 Orissa 111 = ILR 1956 Cut 405 (DB) + AIR 1954 Sau 113 + AIR 1929 Cal. 250 = 56 Cal. 616 (DB) + AIR 1928 Lah. 957 + AIR 1916 Mad. 430 (DB) + AIR 1916 All. 19.
8. AIR 1962 Orissa 147 + AIR 1964 Orissa 43 (DB).
9. AIR 1964 Orissa 43 (DB) + AIR 1962 Orissa 147.

owner is the possession of all and hence the possession of other co-owners cannot help him. Moreover the possession of the other co-owners cannot be adverse to the alienee, because adverse possession denotes exclusion, and if the alienee is not entitled to possession, he cannot be excluded.[10] Where an alienee from a co-owner is not entitled to possession but he is put in possession, his possession is adverse to the co-sharers. Thus where some of the Muslim co-sharers make a usufructuary mortgage of some specific property, possession of the mortgagee is adverse from the date of his entry.[11] Similarly where the alienee from a co-owner is not entitled to joint possession with the other co-owners but is entitled only to a right to partition, as in the case of an alienee from a Hindu co-parcener, the possession of the alienee will be adverse to the other co-parceners.[12]

27. Licensee from co-owner, possession of. The possession of a licensee from a co-owner is adverse to the other co-owner.[13]

28. Partition among co-owners. Once partition takes place, the status of co-owners ceases and they become individual holders. But the possession of co-sharers after partition would not become adverse to the co-sharers to whom the property was allotted on partition until the former expressly repudiated the title of the latter.[14]

Hindu co-parceners. The position of Hindu joint family is slightly different. Where property belonging to a Hindu joint family was left undivided at a partition and it remained in possession of one of the co-parceners. It was held that his possession is that of a co-owner and not adverse to him.[15] Similarly where a partition deed in unambiguous terms declared the substantive rights of the plaintiffs' branch and the defendants' branch each to a moiety in the suit properties and the provision was made only for postponement of division by metes and bounds till after the death of one of the parties to the agreement; it was held that after the partition deed the plaintiffs and the defendants were in the position of co-owners and the general presumption was against ouster.[16]

Partition gives starting point of limitation. Where joint property is partitioned, the partition provides starting point of limitation for the purpose of these articles, and any previous adverse possession by one of the co-owners is washed away. Thus where one co-owner held the entire property adversely to the other and there was a partition before expiry of statutory period and the co-owner in possession still continued his possession. It was held that the partition gave a fresh starting point of limitation for filing a suit for possession by the co-owner who has been kept out of possession.[17] It is to be noted in this content that under the law in force in the State of Jammu and Kashmir it is the date of the preparation of the instrument of partition from which the period of limitation starts against the co-

10. AIR 1939 Bom. 322 (DB).
11. AIR 1942 Mad. 622 = ILR 1943 Mad. 15 (FB).
12. AIR 1940 Bom. 136 = ILR 1940 Bom. 109 (DB) + AIR 1939 All. 518 + 17 Bom. 84 (DB).
13. AIR 1924 Cal. 693 = 51 Cal. 135 (DB) + 1891 Bom. P J 53 (DB).
14. 1983 CLC 699 + 1968 SCMR 1040.
15. AIR 1924 Mad. 113 (DB) + AIR 1929 Mad. 27 + AIR 1917 Pat. 613 (DB) + 32 Mad. 191.
16. AIR 1956 Mad. 405 = ILR 1956 Mad. 1116 (DB).
17. AIR 1920 Oudh 223 + AIR 1924 Lah. 83.

sharer and not from the date mentioned in the instrument of partition for the partition to take effect.[18]

Property of third person allotted in partition. A suit for partition on the ground that certain properties were wrongly allotted to the share of the plaintiff really belonged to a third party who obtained a decree for possession of those properties from the plaintiff is governed by Art. 96 and not Art. 127 or Art. 144.[19]

29. Adverse possession by co-owner against stranger. Where one co-owner is in adverse possession of adjacent property of a stranger, the possession is on behalf of all the co-owners and all of them acquire title to the property.[20]

30. Abandonment by co-owner. Where one co-owner abandoned his share of joint property, subsequent possession of the same by the other is not on behalf of both but exclusively for himself.[1]

31. Relinquishment by co-owner. Where a co-owner relinquishes his rights in joint property and the deed of relinquishment, is found to be invalid, the possession of other co-owner is adverse to the one relinquishing his share.[2]

32. Co-heirs. The possession of one co-heir is *prima facie* not adverse to the other co-heirs.[3] The mere fact that one of the co-heirs is not in actual possession of joint family property or that the receipts relating to the property are being granted in the name of the other co-heirs cannot by itself, in the absence of evidence as to open assertion of hostile title coupled with exclusive possession and enjoyment by the heirs in possession to the knowledge of the non-possessing heir, established the ouster of the co-heir not in possession.[4] Where a brother and sister inherited the estate of their deceased father. The fact that sister used to receive something with regularity from her brother was rightly treated by High Court as corroboration of her assertion that she used to receive share of produce, and the assertion that her brother had acquired title by adverse possession could not be accepted.[5]

The possession of one co-heir of a Muslim is not adverse to the other co-heirs.[6] Thus in a Muslim family, the action of the brothers in getting the property recorded in their own names to the exclusion of the sisters cannot afford a ground for setting up adverse possession until the knowledge of their right as well as their

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18. AIR 1956 J&K 25 (DB).
19. AIR 1960 Cal. 381. (Time runs when plaintiff is dispossessed).
20. AIR 1931 Lah. 232.
1. AIR 1916 Cal. 99 (DB).
2. AIR 1917 All. 47 = 39 All. 696 (DB).
3. 1988 CLC 631 + 1985 CLC 821 = NLR 1985 CLJ 144 + 1984 CLC 984 = PLJ 1984 Pesh. 28 = 1984 LN 431 + AIR 1914 P.C. 243 + AIR 1944 P.C. 24 + PLD 1957 S.C. (Ind.) 251 = AIR 1957 S.C. 314 + AIR 1940 Cal. 93 (DB).
4. AIR 1964 Patna 510 + AIR 1950 Pat. 298 + AIR 1936 Pat. 136.
5. 1984 SCMR 1444.
6. 1988 CLC 631 + PLD 1970 Pesh. 110 + 1970 SCMR 499 + AIR 1928 All. 467 = 51 All. 101 (FB) + AIR 1951 J and K 21 = 10 J and K L R 26 (DB) + AIR 1939 Cal. 723 (DB) + AIR 1929 Bom. 141 (DB) + AIR 1921 Bom. 56 = 45 Bom. 519 (DB) + AIR 1926 Cal. 480 (DB) + AIR 1929 Lah. 464 = 10 Lah. 849 (DB) + AIR 1929 Lah. 195 = 10 Lah. 842 + AIR 1916 Mad. 1207 (DB) + 34 Mad. 74 (DB) + AIR 1933 Nag. 27 = 28 Nag. L. R. 282 + AIR 1929 Oudh 521 = 4 Luck. 261 + AIR 1925 Oudh 241 + AIR 1925 Sind. 207 = 18 Sind L R 149 (DB).

ouster is brought home to the ladies concerned.[7] The mere non-participation in the profit of the property by one co-heir and exclusive possession by the others will not be sufficient to constitute adverse possession.[8] Nothing short of ouster or something equivalent to ouster can bring about that result. If there is no ouster or exclusion, the possession of one co-sharer is not adverse to the other. The test whether there is an ouster is to see if the co-heir in possession has openly and unequivocally and to the knowledge of the other co-heir denied his title to the property.[9] The position is however different where some heirs took possession as heirs under custom, and subsequently Muslim Law heirs of the deceased owner sought possession in that capacity because in that case heirs under customs would he deemed to be holding adversely to the Muslim Law heirs.[10]

Suit by heir in adverse possession. Where a person is in possession as co-heir and he brings a suit to make a claim by adverse possession against the other heirs, Art. 144 applies.[11]

Suit for possession by co-heir. Distinct shares devolve on Muslim heirs on the death of the propositus. Therefore all of them are presumed to have taken their legal shares although possession still remains joint. If, therefore, the co-owner in actual possession dispossesses any one of the other co-owners. The suit that is brought for recovery of possession is not a suit for a distributive share of the property of all estate, but is a suit to recover possession of the defined, though undivided, share of the co-owner in the possession of the other co-owners. Such a suit falls under the general Art. 144 and limitation begins to run from the date when the defendant's possession became adverse.[12]

Death of co-heir, effect. Where certain property is inherited jointly by two persons and enjoyed as tenants-in-common, the co-ownership does not cease by the death of one of them. The legal representative of the deceased becomes co-owner with the surviving co-owner.[13]

Person not heir taking possession as heir. Where a person in possession who is not heir at law of the deceased takes possession as heir, his possession is adverse to the real heirs. Thus where an alleged daughter of the deceased remained in possession of his property on his death and remained in possession for more than twelve years, whereafter the real heirs of the deceased brought a suit for possession of the land. The Court held that the alleged daughter was not a legitimate daughter of the deceased but as she had been in possession of the land for more than 12 years though she was not entitled to it in her own right, she had become owner of it by reason of adverse possession.[14] Similarly where the property of a nephew on his death was wrongly mutated to the name of 'S' his widow *chachi* under some misconception of the law of inheritance. But it was later on found that she was not an heir and that she had been alienating and occupying

7. 1984 SCMR 1444 + AIR 1958 Madh-Pra 209 (DB).
8. 1970 SCMR 499 + PLD 1970 Pesh. 110.
9. PLD 1970 Peshawar 110 + PLD 1957 S.C. Ind. 251.
10. PLD 1974 S.C. 207 = PLJ 1974 S.C. 132 + 1984 L N 334.
11. AIR 1944 Pesh 45 (DB).
12. PLD 1952 Pesh 70 + AIR 11951 J & K L R 26 (DB).
13. AIR 1950 Mad 680 = II.R 1950 Mad 1084 (DB).
14. PLD 1962 Lahore 531 (DB).

the property without any legal right for more than 12 years. It was held that as the possession of *S* was open and hostile, she had become full owner of the property after the lapse of twelve years of her entry into the property.[15] Where the customary law heirs of the deceased were in possession of the estate when W.P. Muslim Personal Law (Shariat) Application Act, came into force in 1935. The law being retrospective in nature Muslim Law heirs of the deceased were entitled to a share of the property but they did not ask for possession within twelve years. Later on they asked for it. It was held that the customary law heirs were in possession as owners in their own right, and not as co-heirs with the plaintiffs who were to all intents and purposes hostile to the plaintiffs. Their possession cannot be deemed to be the possession of co-owners or co-heirs with the plaintiffs, because their entry into possession in 1928 was not as co-heirs or co-owners but was an entry in their own right, and if they had remained in possession for 12 years they could not be dispossessed by the real heirs of the deceased.[16]

33. Suit for possession or partition by one co-owner against another. When representative possession of one co-owner of the whole property subsequently becomes adverse to other co-owners, a suit by the later for joint possession or partition is governed by Article 144.[17] Thus a suit by an auction-purchaser for possession of property described in the sale certificate granted in execution of a decree against Manager of a joint Hindu family is governed by Art. 144.[18]

Suit for partition. Although an alinee from an undivided co-parcener is not entitled to joint possession with the other co-parceners nor is he entitled to separate possession of any portion of the family property, nevertheless, he is entitled to obtain possession of that part of the family property which might fall to the share of the alienor at a partition. The suit that he files therefor would be a suit for a general partition praying that he be put in possession of that portion of the family property which may be allotted to his vendor. Hence a suit by an alienee of an undivided interest of a co-parcener in joint family property for partition and possession is a suit for possession of immovable property or an interest therein and is governed by the residuary article, *viz.*, Art. 144 and not by Art. 120 or Art. 136.[19] Thus where a gift deed with respect to the joint family property was executed in favour of *G*, by *J's* uncle as *Karta* of his branch and not as *J's* guardian, and *J* after attaining majority, sold his share to *P*, *G's* possession would become adverse to *J* from the date of the execution of the gift deed and not from the date of his attaining majority. Hence, a suit filed by *J's* transferee for

15. PLD 1965 Peshawar 178 (DB).
16. PLD 1961 Peshawar 9 = PLR 1961 (2) W.P. 790 (DB) + PLD 1970 Pesh. 110.
17. 1973 L N 461 + AIR 1943 Bom. 419 + AIR 1933 Lah. 705 = 14 Lah. 267 (FB) + AIR 1932 Oudh 122 (DB) + AIR 1932 All. 512 = 54 All. 916 (DB) + 21 Mad. 153 (DB) + AIR 1920 Mad. 763 = 43 Mad. 288 (DB) + AIR 1936 Pat. 68 (DB) + 5 Bom. L R 742 (DB) + 1892 Bom. P J 202. reprint p. 279 (DB). (Suit of share by partition--Article 144 and not Art. 142 applies) + AIR 1935 All. 774 + AIR 1923 Cal. 356 (DB) + AIR 1920 Pat. 634 + AIR 1920 Bom. 26 = 44 Bom. 943 (DB).
18. AIR 1946 Bom. 192 (DB).
19. AIR 1961 Andhra Pradesh 279 (DB) + AIR 1960 Bom. 50 (DB) + AIR 1957 A.P. 572 + AIR 1953 Mad. 288.

partition and possession of the property he has purchased, will be governed by Art. 144 and not by Art. 44 of the Limitation Act.[20]

Co-owner in joint possession dispossessed by others. Where all the co-owners of a property have been in joint possession but subsequently one of them is dispossessed or discontinues his possession, a suit by the latter for joint possession or partition will come under Article 142.[1]

34. Trust property, adverse possession by trustee. Any person who stands in a fiduciary relation to others cannot acquire title by adverse possession against such others.[2] Therefore a trustee cannot, by setting up his own title to the trust property, acquire by adverse possession a title to the property.[3] This is so even where he is only a *quasi* or constructive trustee.[4] Thus the managers of religious endowments cannot acquire title by adverse possession of the endowment property.[5]

Invalid trust. Where the trust or wakf is invalid, the trustee or Mutwalli is in possession for the rightful owner and his possession is not wrongful and adverse to such owner.[6]

Adverse possession how taken by trustee. No one who is in the position of a trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf either to the trust or to its representatives until he has obtained a proper discharge from the trust by redelivery.[7] The principle does not imply that there is any perpetual bar against the pleading of adverse possession by a person in possession under such circumstances. What is implied is that the foundation of it must be the assertion of an hostile title, by a redelivery of the property obtained on a fiduciary basis, or at least some clear declaration which has that effect.[8] Thus a *Mutawalli* appointed under *wakfnama* can claim *wakf*

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20. AIR 1960 Orissa 151 = ILR 1960 Cut 71 (DB). (AIR 1941 Sind. 50 and AIR 1940 Cal. 589, *Not Foll.*).
1. AIR 1925 Rang. 233 (DB) + AIR 1934 All. 993 = 57 All. 278 (FB) + AIR 1938 Lah. 241 = ILR 1938 Lah. 558 + 5 Oudh Cas. 6.
2. 2 Bom. 388 (FB). (Executor cannot acquire title by adverse possession) + AIR 1953 Mad. 842 (DB) + AIR 1950 All. 316 (DB) + AIR 1921 Pat. 166 = 6 Pat. L. Jour 273 (DB) + AIR 1933 Cal. 295 = 60 Cal. 54 (DB) + AIR 1963 Mad. 353 (DB).
3. 19 All. 277 = 24 Ind. App. 10 (PC) + AIR 1948 P.C. 76 + AIR 1956 S.C. 713 + AIR 1953 Mad. 750 (DB) + AIR 1953 Mys. 25 = ILR 1953 Mys. 107 (DB) + AIR 1959 Andh Pra 180 = ILR 1958 Andh Pra. 665 (DB) + AIR 1950 All. 316 (DB) + AIR 1938 Nag. 335 = ILR 1939 Nag. 1 (FB) + 38 Ind. App. 129 = 34 Mad. 257 (PC) + AIR 1940 Cal. 501 = ILR (1940) 2 Cal. 464 (DB) + AIR 1941 Nag. 181 (DB) + AIR 1946 Nag. 401 = ILR 1946 Nag. 518 (DB) + 2 Bom. 388 (FB).
4. AIR 1938 Nag. 335 = ILR 1939 Nag 1 (FB) + AIR 1941 Nag. 181 (DB) + AIR1930 Mad. 563 + 21 All. 329 (DB).
5. AIR 1932 Lah. 603 (DB) + AIR 1954 S.C. 69 = 1954 S C R 407 (Shebaits) + AIR 1954 Mad. 258 (DB) + AIR 1954 Orissa 78 = ILR 1953 Cut 697 (DB) + AIR 1951 Orissa 255 (DB) + AIR 1957 Andh Pra 824 (DB) + AIR 1948 Mad. 72 = ILR 1948 Mad. 46 + AIR 1927 Mad. 50 (DB) + AIR 1935 Nag. 35 = 31 Nag. L R 188 (DB) + 7 All. L Jour 1095 (DB).
6. AIR 1940 All. 365 = ILR 1940 All. 425 (DB). (21 All. 329 and 27 All. 320 (PC) (*Relied on*) + AIR 1940 Cal. 501 = ILR (1940) 2 Cal. 464 (DB).
7. PLD 1947 P.C. 239 - AIR 1963 Madras 353 (DB) + AIR 1947 Lah. 117 = ILR 1946 Lah. 300 (DB).
8. AIR 1965 Madras 353 (DB).

property by adverse possession by repudiating this mutawalliship. Limitation will run from the date of such possession.[9]

Person wrongfully holding as trustee–adverse possession by. A person who is not a lawfully appointed trustee is not a trustee in fact and his possession is adverse to the trust. Thus where by a deed of Wakf executed in 1900 the executant provided that after her death her daughter *B* would be the *mutwalli*, that after *B*'s death *B*'s eldest son *A* would be the *mutwalli* and in case he was incompetent or unable to carry out the functions for any other reason, then her other sons *M* and *Z* in order of seniority would be mutwallis. After becoming the mutwalli *B* executed a will with respect to her property as also the *waqf* property. By the will half the *waqf* property was bequeathed to *M* and the other half to *Z* and both were made *mutwallis* of their respective shares. *B* died in 1916 and shortly after her death the three sons agreed among themselves to abide by the terms of the will. *Z* died in 1940 and in his place his son *H* began to act as *mutwalli* of half the property. In 1944 the *waqif* as plaintiff 1 and *M* as plaintiff 2 brought a suit against *H* for a declaration that the entire property was in the possession of *M* as *mutwalli*. *H* having no concern with mutwalliship and that the plaintiff be put in possession of the moiety share in the property which was recorded against the name of *H*. It was held that the suit was barred by time as *M* got a right to claim mutwalliship in 1916 when *A* did not agree to act as *mutwalli*.[10]

35. Alienee from trustee, adverse possession by. A suit for possession against a transferee for valuable consideration of the trust property from the trustee is governed by the ordinary period of limitation.[11]

Alienee from co-trustee. Where part of a property of a religious endowment was alienated by one of the co-trustees to a stranger, a suit by the other co-trustee to recover it is governed by Article 144. Alienation is not valid for the lifetime of the transferor.[12] But where the alienee purports to come in as a co-sharer, his possession is not adverse to others unless ouster is proved.[13]

36. Right to perform worship, adverse possession of. The right to a particular kind of worship in a Hindu temple can be acquired by prescription. The right of worship is divisible, and acquisition of a right to perform a minor worship does not give a right of major worship to the person.[14]

Co-shebaits are co-owners in the shebait right. Where *shebaits* have been in possession on the basis of *palas* and one *paladar* is in possession of the *pala* of another *paladar* under an invalid transfer and in open assertion of a hostile title, the possession of the *palas* becomes adverse.[15]

37. Religious endowment, adverse possession of property of. Religious institutions of Hindus, Muslims or Buddhists are recognised as juridical persons

9. AIR 1942 Cal. 1 = ILR (1941) 2 Cal. 434 (DB).
10. AIR 1952 All. 1011 (DB).
11. AIR 1923 P.C. 175 = 50 Ind. App. 295 = 46 Mad. 751.
12. AIR 1933 Bom. 26 (DB).
13. AIR 1935 Cal. 641 (DB).
14. 18 Ind. Cas. 475 (DB) (Mad.).
15. ILR (1951) 2 Cal. 209 (DB).

capable of holding property.[16] They can acquire property by adverse possession,[17] and also lose property by adverse possession of a stranger.[18] Thus as a material object or property, and not as an institution, a Hindu idol or a Muslim mosque can itself be acquired by adverse possession.[19]

Manager of endowment. Property can be said to belong to an institution as a juridical person only in the ideal sense and the possession and management must necessarily be entrusted to some person as its manager.[20] Such person is only the manager and custodian of the institution.[1] He is not a trustee in the strict sense of the term.[2] But he is deemed to be a trustee by S. 10. As such and even apart from it by virtue of his fiduciary position, such a manager cannot set up adverse possession with regard to the properties of the institution and acquire title to them on his own behalf by prescription.[3]

Adverse possession of office of Manager. Where a stranger enters into possession of endowed property claiming to be its manager, he does not acquire adverse possession of the property. The right as manager alone is acquired after twelve years.[4]

Alienation of office of Manager. Where the alienation is of the office of the manager. It is void *ab initio* and the adverse possession of the transferee will begin as soon as he takes possession of the office and the endowed properties under the transfer.[5] But where founder of a religious endowment also happens to be the first *shebait* of the endowment, then a relinquishment by him of his office of *shebait* in favour of a third person not named in the deed of endowment is not void *ab initio* but is valid till the lifetime of the founder and the cause of action for a suit, by the *shebait* named in the deed, for possession of the endowed properties will only arise on the death of the founder.[6]

Alienation of endowed property by manager. Where the alienor acts in negation of the rights of the trust or deity, the transaction is void *ab initio* and

16. AIR 1941 Mad. 449 = ILR 1941 Mad. 599 (FB) + 23 Cal. 536 (DB) + AIR 1914 Oudh 255 (DB).
17. AIR 1923 Cal. 142 = 50 Cal. 292 (DB) + AIR 1914 OUdh 255 (DB).
18. AIR 1940 P.C. 116 = ILR 1940 Lah. 493 = ILR 1940 Kar. (PC) 251 = 67 Ind. App. 251 + AIR 1937 P.C. 185 = ILR (1937) 2 Cal. 447 = 31 Sind L R 538 = 64 Ind. App. 203 + AIR 1950 Assam 92 (DB) + AIR 1949 East Punj. 141 = ILR 1948 East Punj. 113 (DB) + AIR 1949 Orissa 1 (DB) + AIR 1948 All. 195.
19. AIR 1940 P.C. 116 = ILR 1940 Lah. 493 = ILR 1940 Kar. (PC) 251 = 67 Ind. App. 251 + AIR 1938 Lah. 369 (FB).
20. 23 Cal. 536 (DB) + 2 Ind. App. 145 = 4 Bang L R 450 (PC).
1. AIR 1922 P.C. 123 = 48 Ind. App. 302 = 44 Mad. 831 + AIR 1921 P.C. 105 = 42 All. 609 = 42 Ind. App. 224.
2. AIR 1922 P.C. 123 = 48 Ind. App. 302 = 44 Mad. 831 (AIR 1916 P.C. 256, *Explained*) + AIR 1941 Mad. 449 = ILR 1941 Mad. 599 (FB) + 33 Mad. 265 (FB).
3. AIR 1949 Cal. 538 + AIR 1957 Trav-Co. 269 = ILR 1956 Trav-Co. 684 (DB) + AIR 1954 Mad. 258 (DB) + AIR 1953 Mad. 842 (DB).
4. 6 All. 1 = 10 Ind. App. 90 (PC) + AIR 1919 P.C. 62 = 43 Mad. 253 = 46 Ind. App. 204 + AIR 1940 Mad. 208.
5. 23 Mad. 271 = 27 Ind. App. 69 (PC) + 37 Ind. App. 147 = 37 Cal. 885 (PC) + AIR 1943 Pat. 289 = 22 Pat. 133 (DB).
6. AIR 1953 Pat. 151 = 31 Pat. 382 (DB).

possession is adverse from the date of transfer.[7] Thus where the manager of the properties of an institution was not purporting to sell or transfer the property of the juridical person as manager but was purporting to make the transfer as owner in his own personal right, the transfer was void *ab initio* and time would run against the institution even from the date of the transfer.[8] But where the Manager transfers the property as such Manager for valuable consideration the suit is governed by Article 134-B and not by 144 even though there is an interval between the predecessor vacating the office and his successor's appointment.[9] Where the manager purports to transfer the property as manager the possession of the transferee, where the transfer is made without legal necessity, does not become adverse to the institution till the death, resignation or removal of the transferor and hence a suit for possession against him within twelve years of such death, resignation of removal will be in time.[10] An alienation of endowed property by the manager or *shebait* by way of sale or permanent lease is valid during his term of office and the possession of the alienee is not adverse until the alienating manager or *shebait* ceases to be such by death, retirement or otherwise.[11]

Auction-purchaser of endowed property. In the case of the execution sale of debutter property it is not the date of death of the incumbent of the Mutt but the date of effective possession as a result of the sale from which the commencement of the adverse possession of the purchaser is to be computed for the purposes of Art. 144.[12] Thus where an undivided share in an estate belonging to a religious institution is sold in execution of a decree in respect of a loan incurred by Manager without legal necessity, a suit by the succeeding Manager claiming title to the property against the auction-purchaser will be governed by Art. 144 and not Art. 134-B and the possession of the auction-purchaser becomes adverse from the date of his entering into possession and not from the death, removal or resignation of the previous manager.[13] Similarly where in a suit against the *Mahant* by a creditor for recovery of debts incurred by the *Mahant* the idol is not properly represented the decree passed is null and void against the idol under Art. 142, and the succeeding *Mahant* can bring a suit for possession within 12 years of the date on which the auction-purchaser takes effective possession.[14]

Starting point of limitation. Where a stranger has taken possession of the endowed property, his possession was adverse from the date of entry. If the

7. AIR 1946 Cal. 473 = ILR (1946) 2 Cal. 38 (DB) + AIR 1942 Cal. 1 = ILR (1941) 2 Cal. 434 (DB).
8. AIR 1938 Nag. 60 (DB) + ILR (1953) 5 Assam 503 (DB) + AIR 1955 Assam 23 = ILR (1954) 6 Assam 242 (DB) + AIR 1963 Mad. 213 (DB).
9. AIR 1941 Mad. 449 = ILR 1941 Mad. 599 (DB).
10. AIR 1935 P.C. 44 = 62 Ind. App. 47 = 57 All. 159 + AIR 1933 P.C. 75 = 12 Pat. 251 = 60 Ind. App. 124 + AIR 1957 Trav-Co. 269 = ILR 1956 Trav-Co. 684 (DB) + AIR 1954 Orissa 239 = ILR 1954 Cut 390 (DB) + AIR 1941 Mad. 449 = ILR 1941 Mad. 599 (FB) + AIR 1941 Pat. 354 (DB).
11. AIR 1946 Cal. 473 = ILR (1946) 2 Cal. 38 + AIR 1942 Mad. 641 = ILR 1943 Mad. 61 (DB) + AIR 1947 Mad. 3 = ILR 1947 Mad. 253 (DB).
12. AIR 1965 Supreme Court 1966 + AIR 1950 P.C. 44 + AIR 1923 P.C. 175.
13. AIR 1950 P.C. 44 = 77 Ind. App. 42 = 29 Pat. 279.
14. AIR 1957 All. 77 = ILR (1956) 1 All. 421 (DB).

manager is succeeded by another, no fresh starting point is given for limitation against the stranger. Art. 134-B and not this article applies to the case.[15]

Division of property by co-trustees. Where joint trustees divide the property between them and apply the rents and profits to their own use. Such use will not make their possession adverse to the institution.[16]

38. Easement, no adverse possession by. The acts, which can be referred to an easement right on the part of the person doing them, cannot be considered to be adverse to the true owner, and cannot constitute dispossession of the true owner.[17] The question whether the acts alleged were referable to the right of property or possession or were acts of mere right of easement independent of possession will depend upon the facts and circumstances of the particular case.[18]

39. Vendee and vendor, adverse possession of. Where a vendor continues in possession even after the sale, his possession is adverse to the vendee from the date of sale.[19] Even where the owner of property executed a fraudulent transfer with some ulterior motive but continued in possession of the property for more than twelve years, he was entitled not only to confirmation of possession but to recover possession if he subsequently lost it even though the fraud intended to be effected was effected.[20] Where a vendor remained in possession of all the property after selling part of the property under a rent note in respect of the portion sold and the vendor held over even after the expiry of the lease and sold all the property to another. A suit by the vendee of the half portion for joint possession with the subsequent vendee is governed by Art. 144.[1] Even where the property is in the possession of a third person at the time of sale and the vendor obtains possession subsequently from that person, adverse possession against the vendee commences only from the date when the vendor gets possession.[2] In such cases the remedy of the vendee is by a suit for possession to which Art. 144 applies.[3]

Vendee in possession under rescinded agreement of sale. Where agreement of sale was terminated by mutual agreement and vendor failed to get back possession. Respondent remained in possession and for more than 12 years held land in his own right and in adverse possession against vendor/owner. The vendee was held to have acquired an indefeasible title.[4]

Property sold in possession of mortgagee. Where property in possession of a usufructuary mortgagee was sold. There was no adverse possession by the vendor

15. AIR 1938 Cal. 81 (DB) + AIR 1956 S.C. 713 + AIR 1935 Mad. 483 (DB) + AIR 1922 Oudh 24 + AIR 1936 Mad. 188 (FB) + AIR 1930 Cal. 673 (DB) + AIR 1943 Pat. 289 = 22 Pat. 133 (DB) + AIR 1938 Lah. 369 (FB).
16. AIR 1933 Cal. 295 = 60 Cal. 54 (DB).
17. AIR 1920 Pat. 38 (DB) + AIR 1953 Nag. 205 = ILR 1952 Nag. 668 (DB) + 31 Mad. 528 (DB) + AIR 1944 Pat. 261 = 23 Pat. 115 (DB).
18. 8 Suth W R 343 (DB) + 3 Suth W R 73 (FB).
19. 13 Bom. 424 (DB) + 11 Cal. 229 (DB) + 1 Agra 110 (DB) + 1893 Bom. P J 491, reprint p. 649 (DB).
20. AIR 1919 Pat. 447.
1. AIR 1921 Bom. 462 (DB).
2. 13 Bom. 424 (DB).
3. 9 Ind. Cas. 238 = 1911 Pun Re No 18.
4. 1985 CLC 695.

against the vendee till the mortgage was redeemed and possession was obtained by the vendor.[5] Where the property was sold successively to different persons, the second purchaser who redeemed and entered into possession holds adversely to the first purchaser as from the date of his possession and not from the date of sale.[6]

Starting point of limitation. Limitation for a suit for possession will start only when the vendee acquires a right to immediate possession. Thus where there is sale and delivery of certain property, and there was a subsequent exchange for another item of property which was declared afterwards in a suit by a third person not to belong to the vendor, the vendee's right to sue for recovery of the original item accrues only from the date of declaration negativing vendor's title to the other property.[7]

Sale not completed, possession of vendee. Where property is delivered under a contract of sale but the sale itself is not completed, a person to whom delivery is made does not hold it adversely to the person handing it over to him.[8]

40. Possession taken by mistake. Even though a person enters into possession of a property in the honest belief that it is his and has no intention of depriving the lawful owner of his property, his possession will be adverse to the lawful owner.[9] Thus where the property of a nephew on his death was wrongly mutated to the name of '*S*' his widow *chachi* under some misconception of the Law of Inheritance. But it was later on found that she was not an heir and that she had been alienating and occupying the property without any legal right for more than 12 years. It was held that as the possession of *S* was open and hostile, she had become full owner of the property after the lapse of twelve years of entry into the property.[10] The ignorance of true owner as to his rights to the property trespassed, will not affect the trespasser's possession being adverse.[11] The mere fact that the plaintiff did not specially claim title by adverse possession is no reason to disentitle him to the decree which he is otherwise entitled to.[12]

Possession taken by mutual mistake. Even where the possession is had and allowed under mutual mistake, possession by the person who has no right will be adverse to the rightful owner.[13] But the position of co-owners is different and where on partition amongst co-owners a co-owner, due to mistake, takes possession of a plot not allotted to him at partition and they continue in possession even after discovery of the mistake; their possession is not adverse but only permissive.[14]

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5. 1887 All W N 103.
6. 14 Ind. Cas. 513 (Lah.).
7. 16 Suth W R 270.
8. 1877 Bom. P J 184.
9. 7 DLR 94 + AIR 1964 Punjab 451 + AIR 1937 Lah. 811 + 1954 Ker. L. Tim 195 + AIR 1918 Nag. 84 + AIR 1930 Mad. 679 + AIR 1925 Rang. 111 = 1 Rang. 492.
10. PLD 1965 Peshawar 178 (DB).
11. AIR 1936 Pat. 179 (DB) + AIR 1920 Mad. 295 (DB).
12. 7 DLR 94.
13. 17 Cal W N 595 (SB) + 28 Bom. 87 (DB).
14. AIR 1922 Oudh 152 + AIR 1928 Bom. 287 (DB).

Possession given by mistake of owner. Possession obtained under mistake of law of the persons entitled can be adverse to them.[15]

41. Actual possession of wrong-doer necessary. The theory of constructive possession applies only to the rightful owner and not to a trespasser.[16] A trespasser cannot acquire any title by prescription on the ground of constructive possession.[17] Therefore for the statute of limitation to operate the rightful owner should have no possession,[18] and there must be actual possession of person claiming as of right by himself or by persons deriving title from him.[19] Any title which may be acquired by adverse possession will by strictly limited to what had actually been so possessed.[20] Where the defendant is in possession of some land which is not identified with the land in dispute in the suit; the plea of adverse possession should be rejected.[1]

42. Surface and subsoil rights in land. A person in adverse possession of land will acquire not only a title to the surface but also to the subsoil.[2] But a person can acquire adverse possession of the subsoil without acquiring any rights as to the surface, because adverse possession of one stratum is not necessarily adverse possession of another stratum.[3]

Tenant's rights. Where a zamindar makes a grant of a permanent tenure to another, the presumption is that only surface rights are thereby granted and that the zamindar remains in constructive possession of the subsoil.[4]

Mines. Even though it may not be necessary for the purpose of establishing adverse possession over a coal mining area to carry on mining operation continuously for a period of 12 years, continuous possession of the mining area and the mine would be a necessary ingredient to establish adverse possession.[5] Adverse possession must be strictly proved. Where what was proved was that the two inclines originally opened in a coal mine were worked in 1917 or 1918 by the predecessor-in-interest of the appellants, there were no mining operation till 1923 when they were restarted and were continued till 1926 \, that the operations ceased in 1926 and were recommended in 1931 and carried on till 1933 when they ceased again till 1939 and whether they were carried on in 1939 or not was not quite clear but there were no operations from 1939 when they were recommenced by the appellant. It was held, that intermittent working of the mine in the manner and for the period described above was wholly insufficient to establish possession

15. AIR 1949 Sind. 12 = ILR 1948 Kar. 224 (DB).
16. AIR 1939 Mad 456 = ILR 1939 Mad 803 (SB) + AIR 1951 Pat 160 (DB) + ILR (1951) 2 All 278 (DB) + AIR 1935 Pat 254 (DB).
17. 18 Cal L Jour 274 (DB) + AIR 1915 Cal 464 (DB) + 1942 Nag L Jour 375 + AIR 1947 Cal 41 = ILR (1946) 2 Cal 509 (DB).
18. 29 Ind App 104 = 29 Cal 518 (PC) + 18 Cal L Jour 274 (DB).
19. 29 Ind App 104 = 29 Cal. 518 (PC) + AIR 1942 P.C. 47 = ILR 1942 Kar. (PC) 122 + AIR 1941 Pat. 422 = 20 Pat. 497 (DB) + AIR 1935 Cal. 760 (DB).
20. AIR 1931 P.C. 186 = 10 Pat. 407 = 58 Ind App 29.
1. AIR 1932 P.C. 126.
2. 1901-1 Ch 738.
3. AIR 1931 P.C. 162 = 58 Ind App 228 = 59 Cal. 80.
4. AIR 1931 P.C. 89 = 58 Ind App 125 = 58 Cal. 1187 + AIR 1931 P.C. 162 = 58 Ind App 228 = 59 Cal. 80.
5. AIR 1958 S.C. 434 = 1958 SCR 1402 = 37 Pat. 985.

which would constitute adverse possession or would lead to an inference of adverse possession in favour of the appellants. During the period when there were no mining operations no kind of possession of the appellant had been proved and hence the presumption of law is not rebutted that during the period when the operations had ceased to be carried on, the possession would revert to the true owner.[6]

In the case of mines there is no presumption in law that the possession of a part of a seam infers possession of the whole seam, much less the seams in a mineral field in which part of a seam has been worked.[7] Therefore where the plot in dispute formed a unit of property wholly distinct from the *touzi* in which mining operations were carried on and which belonged to a different proprietor; it could not be said that by carrying on such operations in the latter area a title was asserted to the sub-soil of the disputed plot. The fact that one continuous seam of coal ran under both the units was of no consequence.[8] Though in the case of mineral fields actual physical occupation of the entire field is not possible it is necessary that the working of the mine also should be so general as to indicate that the defendant has taken possession of the whole mineral field.[9] Where the defendant wrong-doers in assertion of their rights sank three pits at different points at their discretion and they also erected bungalows for employees and brought plants on the land; adverse possession of the whole mineral field was established.[10]

43. Possession of seashore. Where the area in dispute is definitely part of the seashore immediately adjacent to the actual ocean, no one can claim that land as his property as against the State, even if there is a document of title in its support. But fisherman are entitled to exercise their customary rights therein, in regard in drying fish, keeping boats and fishing nets, without let or hindrance, as a kind of easement on account of long enjoyment of such rights; in respect of the said land. Such acts do not constitute adverse possession in law.[11]

44. Permissive possession. Possession is never considered adverse if it could be referred to lawful title.[12] Permissive possession will not enable the possessor to obtain a title by adverse possession.[13] The mere fact that the document granting the permission is not valid, will not make the possession other than permissive.[14] The question whether possession is permissive or not depends upon the circumstances of the particular case.[15] It is not necessary that the permission

6. AIR 1958 S.C. 434 = 1958 SCR 1402.
7. AIR 1931 S.C. 186 = 10 Pat 407 = 58 Ind App 29.
8. ILR (1953) 2 Cal. 301 (DB).
9. AIR 1935 Pat. 33 = 13 Pat. 517.
10. AIR 1931 P.C. 186 = 58 Ind App 29 = 10 Pat. 407.
11. AIR 1963 Madras 74.
12. 1985 CLC 2238.
13. PLD 1988 Cal 588 (DB) AIR 1934 P.C. 67 = 12 Rang. 238 + AIR 1934 P.C. 77 = 61 Ind App 50 = 56 All. 111 + AIR 1958 Punj. 335 = ILR 1957 Punj. 1739 (DB) + ILR 1954 Madh B 140 + AIR 1951 S.C. 247 = 1951 SCR 431 = 30 Pat. 871 + AIR 1949 Mad. 815 + AIR 1943 Cal. 143 + AIR 1942 Pat 325 + AIR 1940 Pat. 438 (DB).
14. AIR 1925 Mad. 1279 + AIR 1956 All. 639.
15. AIR 1938 Nag 506 = ILR 1940 Nag 269 (DB) + AIR 1954 Tripura 21 + ILR 1954 Cut 461 + AIR 1950 All 528 + AIR 1922 Oudh 152 + AIR 1923 All 140 = 44 All 726 + AIR 1925 Nag 81 + AIR 1930 All 410.

should be express. It may be implied from the facts and circumstances of the case.[16]

Possession permissive in origin. A possession permissive in its origin would be presumed to continue so unless something occurred to make it adverse.[17] Possession of a service holder is a permissive possession and it cannot be adverse to the true owner, unless there is a refusal to perform service or a claim to hold the land free of service.[18] Where according to the terms of the compromise decree, whenever the plaintiff paid a sum of Rs. 140 to the defendant, the plaintiff would be put in possession of the property in suit and till such payment by the plaintiff the defendant was to remain in possession of the property. More than twelve years after the compromise decree the plaintiff paid Rs. 140 into Court and applied for execution of the decree seeking possession over the property. It was held that the defendant's continuance on the property so long as the payment was not made by the plaintiff was to be treated as permissible under the decree. The defendant's possession could not, under the circumstances, be treated as adverse to the plaintiff.[19] For permissive possession to turn into adverse possession there must be clear and affirmative evidence to establish the change in the permissive character of possession.[20]

More long user by the permissive occupant is not sufficient to change the character of the permissive possession into adverse possession.[1]

The possession of a licensee is not adverse generally. A licensee could not claim adverse possession against licensor unless such licensee hands over vacant possession of the premises and subsequently enters upon the same under hostile title.[2] But where the licensee assumes or arrogates to himself the right of transferring the subject of the licence which in fact he cannot transfer, this surely involves an assertion of an absolute title and consequently a denial of the title of the actual owner. In such a case the possession of the transferee must be unlawful from the date of its inception.[3] A suit against a person who entered on the property with the permission of the plaintiff, but whose possession has become adverse to the plaintiff, would be governed by Art. 144 and not by Art. 142.[4]

Permissive possession of part of property. Where permissive possession is shown in respect of a portion of the property, it can be presumed in respect of the rest unless the contrary is proved.[5] Thus a tenant occupying adjoining vacant land

16. 55 Mys H.C.R. 201 (DB).
17. AIR 1928 Cal 582 (DB) + 1959 Ker L T 291 + AIR 1956 Nag 11 = ILR 1955 Nag 842 (DB) + AIR 1955 Nag 221 = ILR 1956 Nag 5 (DB) + AIR 1954 Nag 391 = ILR 1954 Nag 692 (DB) + AIR 1954 Trav-Co 297 + AIR 1952 Manipur 8 + AIR 1922 All 411 (DB) + AIR 1926 Sind L R 71 = 21 Sind L R 185 (DB) + 1943 Pat W N 34 + AIR 1947 Pat 99 = 25 Pat 412 (DB).
18. AIR 1960 Mys 185.
19. AIR 1962 Allahabad 431 (DB).
20. 2 N.W. P.H.C.R. 16 (DB) + AIR 1921 Oudh 124 = 24 Oudh Cas 155.
1. AIR 1921 All. 294 (DB) + AIR 1924 Lah. 315.
2. PLD 1986 Quetta 198 (DB).
3. AIR 1951 All. 626.
4. AIR 1933 Cal. 102 + AIR 1953 Madh B 28 = ILR 1953 Madh B 155.
5. AIR 1927 Oudh 582 (DB) + AIR 1930 Lah. 437.

of the zamindar for purposes ancillary to agriculture will be deemed to be in such occupation with implied permission of the zamindar.[6]

Origin of possession adverse to owner. Possession adverse in its origin cannot become permissive by reason of subsequent events.[7] Where the evidence showed that the plaintiff took possession without the consent of the landlords and he remained in possession without payment of any rent and the landlords took no steps to assert their rights as against him for a period of fifteen years and the evidence was supported by the entries in the Revenue Records. It was held, that the plaintiff did not possess by any derivative title but in contravention of the alleged rights, of the proprietors and his possession was adverse.[8] The fact that the plaintiff has been sued for a number of years short of the statutory period of twelve years will not raise a presumption that the defendant was in possession with the plaintiff's consent.[9]

Precarious possession. Possession by a person who entered on Government land with the hope that it may be registered in his name is not adverse possession but only precarious possession and cannot avail against the Government or the person acquiring title through Government.[10]

Burden of proof. Possession of a person other than the owner is prima facie adverse until the contrary is proved,[11] and the burden of proving permissive possession is upon the party alleging the same.[12] But where the possession is shown to be permissive in its origin the onus is on the permissive occupant to show when and how his possession became adverse,[13] and there must be clear and affirmative evidence to establish the change in the permissive character of possession.[14]

45. Possession of agents, servants, etc. The possession of a thing through a servant, bailiff or other representative is possession of the principal not fictitiously or constructively but really and directly.[15]

Possession of agent. Possession of an agent or one who is in possession at the request of another is not his own or independent possession.[16] It is permissive possession.[17] Therefore no question of adverse possession by the agent arises.[18] An

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6. AIR 1923 All. 140 = 44 All. 726 (DB).
7. AIR 1929 Pat 117 = 8 Pat. 549 (DB). (*Reversed* on another point in AIR 1932 P.C. 55).
8. 57 Pun L R 57.
9. AIR 1950 All. 528.
10. AIR 1957 Ker. 141 = ILR 1957 Ker. 454 (DB).
11. 1912 Mad. W N 669 (DB) + 55 Mys H.C.R. 201 (DB) + 21 Ind Cas 765 (DB)(Mad.) + AIR 1932 Oudh 135 (DB) + AIR 1928 Lah. 959.
12. AIR 1920 Lah. 475 (DB) + AIR 1949 All. 289 + 55 Mys. H.C.R. 201 (DB) + AIR 1929 Rang. 153 = 7 Rang. 85 + 11 Bom 221 + 2 Bom L R 410 (DB) + AIR 1933 Nag. 112 = 29 Nag. L R 48 + AIR 1929 Rang. 170.
13. 2 N W P H C R 16 (DB) + 1959 Ker. L T 291 + 20 Cut L Tim 319 + 1 Ind Cas 806 (DB) (Mad) + AIR 1919 Mad. 215 (DB) + AIR 1925 Sind 36 + 1893 Bom. P J 249 reprint p. 520 (DB).
14. 2 N W P H C R 16 (DB) + AIR 1921 Oudh 124 = 24 Oudh Cas 155.
15. 1958 Ker L T 159.
16. AIR 1939 P.C. 63 + 42 Mad L W 62 (PC).
17. AIR 1926 Nag. 286 + 9 Cal. W N 663 (DB).

agency may be express or implied, and hence where the possession of a person can be traced to an implied agency, such possession cannot be treated as adverse.[19] Where a Hindu widow was in possession of the property in her own right under her husband's will and there was no evidence to show that the person who was managing the property, at any time claimed the property exclusively to himself and adversely to the widow, it cannot be said that, by simply getting one or two rent-notes executed in his own favour, he divested the widow of her possession and control over the entire property and his possession was adverse to the widow. As long as it is not shown that he retained the rent of the property to himself or refused to account for it to the widow in open assertion of his own right, the arrangement would amount to a mere convenience. His possession was permissive in nature and he acted in managing the property as an agent of the widow.[20] An agent cannot by a mere wish or volition change the character of his possession.[1] Therefore if the representative changes his mind and determines to hold the property on behalf of himself, strictly speaking, the possession of the principal is gone. But mere repudiation of agency to the knowledge of the principal is not sufficient. The repudiation of the former capacity as manager or agent must be followed by some overt act of dealing with the property as his own.[2]

So long as the agency continues the character of the agent's possession is not altered.[3] Where agency has terminated, the possession of the erstwhile agent thereafter is not on behalf of the principal but on his own account.[4] Therefore an agent after an open and notorious disavowal of the agency can acquire title by prescription.[5] The disavowal of agency should be distinct;[6] to the knowledge of the principal,[7] and accompanied by some overt act amounting to active assertion of adverse title.[8]

Possession by agent of third person's property. In the case of a trespass by an agent into another's property, clear and cogent evidence should be forthcoming that trespass was committed in the interest of the principal before the latter can benefit from it.[9]

Servant, possession of. Possession of a servant stands on the same footing as that of an agent.[10]

Licensee, possession of. Where a person took the plea that he was a licensee of the Government or at any rate was residing in the area in his occupation with

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18. PLD 1977 Quetta 36 = PLJ 1977 Quetta 658 = 1977 Law Notes 557.
19. 1868 Pun Re No. 104, p. 265 + AIR 1928 Rang. 13 = 5 Rang. 576 + AIR 1924 Bom. 469 (DB) + 13 Cal. L. R 328 + AIR 1917 Pat. 393 (DB) + 20 Suth W R 330.
20. AIR 1963 Madhya Pradesh 348 (DB).
1. 12 Bom. 322 (DB) + 3 Bom L. R 673 (DB) + AIR 1944 Nag. 20 = ILR 1943 Nag. 726 + AIR 1943 Pat. 48 = 21 Pat. 710 (DB).
2. 1958 Ker L. T 159.
3. 1884 Pun Re No. 94, p. 268 (DB).
4. AIR 1928 Nag. 284 = 24 Nag L. R 148 = 29 Cri L Jour 902 (Case under S. 145 Criminal P.C).
5. AIR 1918 Mad 183 (DB) + 16 Mad 456 (DB).
6. 17 Bom 755 (DB).
7. 1931 Mad W N 856.
8. AIR 1916 Bom 68 = 41 Bom 315 (DB) + AIR 1914 Bom 296 = 38 Bom 53 (DB).
9. AIR 1937 Lah 552 = ILR 1937 Lah 276 (DB).
10. 12 Bom 322 (DB) + 11 Suth W R 333 (DB) + 1878 Bom P J 186 (DB).

the permission of Government which admittedly was then owner of the entire areas. He could not claim adverse possession against the Government or the Society, which was a grantee of land from Government.[11]

46. Husband or wife, possession of. Where a husband and wife are in joint possession, the possession of one cannot be adverse to the other.[12]

Husband in possession of wife's property. Husband's possession of his wife's property while living together is not adverse to the wife.[13] Thus where a husband sells his property to his wife in lieu of dower but he continues in possession, his possession is not adverse to the wife.[14] In certain special circumstances a husband's possession may become adverse to the wife but in that case a person pleading that the possession of the husband over the property of his wife is adverse has a very heavy burden to prove his allegation.[15]

Wife in possession of husband's property. Wife holding possession on behalf of her husband during his absence cannot acquire adverse possession against him.[16] Even where a wife has acquired possession from her husband under a share sale deed in her favour, the possession cannot be adverse to her ostensible vendor, *i.e.*, the husband because in such a case her possession is really possession not on her own account but possession of her husband.[17]

47. Tenant, possession of. A tenant cannot dispute his landlord's title while in possession under the agreement of tenancy and his possession is not adverse to the landlord.[18] Thus a person entered in *jamabandi* as tenant cannot claim adverse possession against the owner.[19] If it is found in a case that a defendant was originally brought on to the property as a tenant, section 116 of the Evidence Act., 1872, would come into play, estopping the tenants from denying the title of the landlord during the continuance of the tenancy. A tenant cannot set up in himself a hostile title against his landlord, without first surrendering the possession of the property and unless he does so and regains the possession in his own right hostile to the landlord, he cannot successfully set up the plea of adverse possession, he shall be presumed to be in permissive possession of the property on behalf of the landlord and possession of purposes of limitation will be deemed to be that of the landlord.[20] Therefore where a person's claim of ownership in a judicial proceeding on the basis of adverse possession is held to be unfounded from the very date of the institution of the suit; such a person cannot be allowed later on to change the character of his possession. If the possession at the time of the institution is not permissive the nature of the possession will continue to be so and the limitation

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11. PLD 1976 Kar. 836 (DB).
12. AIR 1928 Nag 275.
13. 24 Suth W R 274 (DB) + AIR 1948 Nag 328 = ILR 1948 Nag 824 + 25 Suth W R 542 (DB).
14. AIR 1916 Bom 159 = 41 Bom 5 (DB).
15. AIR 1948 Nag 328 = ILR 1948 Nag 824.
16. 4 Cal. 327 (DB) + AIR 1947 P.C. 19 = ILR 1947 Kar. (PC) 85 = ILR (1947) 1 Cal. 32 = 73 Ind App 246 + 1956 Andh W R 137 (DB).
17. AIR 1949 Mad 114 (DB).
18. PLD 1978 SC (AJ&K) 33 = NLR 1978 Civ 242 + PLD 1962 Pesh. 124 (DB) + AIR 1935 P.C. 59 + AIR 1958 Punj 335 (DB) + AIR 1956 Nag. 11.
19. PLD 1978 SC (AJ&K) 33 = NLR 1978 Civ 242.
20. PLD 1988 Pesh 1 = PLJ 1988 Pesh 1 = NLR 1988 CLJ 61 + PLD 1962 Peshawar 124 (DB).

would not stop running against the true owner.[1] The mere non-payment of rent or discontinuance in the payment of rent by the tenant cannot by itself create adverse possession,[2] because it raises no presumption of adverse possession or lead to the inference that it was due to a repudiation of the landlord's title. Non-payment of rent may be due to several reasons, as for example, the sheer inability of the tenant to pay rent or smallness of the amount of rent which the landlord does not bother to collect.[3] Even where the tenant without the knowledge of the landlord pays rent to a third person there is no ouster of the landlord and limitation does not run against him. He must be deemed to be in possession through the tenant up to the date when the lease expired by efflux of time.[4]

Illegal occupant paying rent. A person who has come to occupy property but paid rent to the landlord till two years before he made a claim of title by adverse possession, and he did not at any time make any attempt to pay rent and taxes of the property was entitled to succeed in the claim.[5]

Occupancy rights, adverse possession of. A trespasser can acquire occupancy rights by prescription against another occupancy tenant.[6] But when the occupancy tenant put the tenant-at-will in possession of the land in the course of making an arrangement for cultivation and payment of the rent to the landlord, then the possession of the tenant-at-will would be permissive and the possession of such a tenant could not by any stretch of imagination, be considered as adverse under the law.[7] Occupation without a contract of lease of another person's land will be nothing but usurpation or trespass, unless the owner of the land is prepared to accept such occupation as tenancy. There is no law in the country which converts such trespass into a right of tenancy. If such possession is to ripen into tenancy, it can be done only by adverse possession for the statutory period of 12 years claiming tenancy right, just as in order to get full title to the property there must be full title.[8] It is further to be noted that a person who is in possession of land under a tenancy or occupancy title cannot by a mere assertion in a judicial proceeding and the lapse of six or twelve years without that assertion having been successfully challenged, obtain a title as an under-proprietor to the lands.[9] A landlord can claim extinguishment of occupancy rights by adverse possession but for that very clear evidence is required which should lead one to no other conclusion except the one that the possession of the landlord was not in pursuance of any other circumstance except that the occupancy tenant had abandoned it or that his possession to these rights was open, hostile and adverse to the tenant.[10]

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1. PLD 1990 SC (AJ&K) 1.
2. 1987 CLC 1255 + 1982 CLC 1877 (1) + PLD 1978 SC (AJ&K) 33 = NLR 1978 Civ 242 + AIR 1961 M.P 93 + AIR 1922 P.C. 272 (20 Cal. 173, *Approved*) + AIR 1948 Mad. 275 (FB).
3. AIR 1962 Allahabad 604.
4. AIR 1961 Madhya Pradesh 93 + AIR 1942 Nag. 108 + AIR 1925 P.C. 97
5. 1981 SCMR 767.
6. PLD 1962 Azad J & K 11.
7. PLD 1963 Pesh. 49 = PLR 1963 (1) W.P. 29.
8. AIR 1962 Tripura 1.
9. 52 Mad. L Jour 226 (PC) + AIR 1923 P.C. 118 = 50 Ind App 202 = 26 Oudh Cas 231 = 45 All. 419.
10. PLD 1963 Peshawar 49 = PLR 1963 (1) W.P. 29.

Tenant for life, possession of heirs of. Tenancy for life though transferable is not heritable. Therefore where after the death of a life-tenant his heirs were in possession and they paid no rent, their possession was held to be adverse to the owner.[11]

When tenant is in adverse possession. The mere fact that a person enters as a tenant does not preclude him from acquiring title against his landlord by adverse possession. It can operate as an ouster if he abandons the idea of holding as tenant and sets up and asserts an exclusive right in himself. He must either give notice of his claim or his possession should be accompanied by some overt act asserting an ownership of such an open, notorious and hostile character as not to be easily misunderstood. Mere declarations are not enough.[12] In order to constitute adverse possession against the *zamindar*, it is not enough to prove that the defendant has been cultivating the land because in a large estate it is impossible for the landholder to keep a watch over every fugitive act of encroachment upon waste lands or unoccupied lands lying within the estate. There should therefore be not only possession, but it must also be shown that the possession was adverse to the interests of the land-holder.[13]

Transferred evacuee property. Where evacuee property was transferred to a person by the Settlement Department, a statutory tenancy was created under the statute and the cause for any action in that respect was to arise only after issuance of the requisite statutory notice, and the sitting tenant could claim to be in adverse possession only from the date of such notice.[14]

48. Encroachment by tenant. Where a tenant encroaches upon land belonging to his landlord but outside the limits of his tenancy, the possession of encroached lands is adverse to the landlord.[15] Where the tenant was in adverse possession of his landlord's land claiming an absolute right in the land he would acquire by prescription an absolute title to the land.[16] A tenant need not show that he set up a right of tenancy in the encroached lands to the knowledge of the landlord in order to establish right of tenancy by prescription.[17] Tenant claiming absolute title to additional land of his landlord must prove some act to show that his intention was to assert such title, as otherwise it will be presumed that he asserted only the right to tenancy.[18] It follows that a tenant's claim to an absolute title to the encroached lands must have been made to the knowledge of the landlord as the tenant encroaches prima facie in his character as tenant, and therefore the landlord is entitled to treat him as such till he has notice of a repudiation of such character and an assertion of a hostile title.[19]

Actual possession necessary. Adverse possession can be established only by actual physical possession. A tenant cannot claim to have been in adverse

11. AIR 1943 Bom. 148 (DB).
12. AIR 1958 Punj. 335 = ILR 1957 Punj 1749 (DB).
13. 21 Cut L. T 250.
14. 1981 SCMR 105.
15. AIR 1929 Pat. 624 (DB) + 16 Cal. W N 634 (DB).
16. AIR 1926 Cal. 883 (DB) + AIR 1930 Cal. 579 = 57 Cal. 371 (DB).
17. 35 Mad 618 (DB). (*Dissenting from* 31 Cal. 397).
18. 35 Mad. 618 (DB) + 2 Cal. L. Jour 125 (DB) + 22 Suth W R 246 (DB) + AIR 1944 Pat. 109.
19. 2 Cal. L. Jour 125 (DB).

possession of the waste lands merely by reason of such acts as the cutting of grass and grazing of cattle thereon.[20]

Encroachment on third person's land. When a tenant takes possession adversely to some person other than his landlord without assertion of any tenancy right, he does not become a tenant of that person and the mere fact that the other person takes no steps to recover rent from the encroaching tenant does not amount to an acquiescence on his part creating a tenancy in favour of the encroacher.[21] Such encroachment enures for the benefit of landlord unless tenant proves that he intended to hold it for himself.[1] But where the tenant attorns to the person on whose land he has encroached, no adverse possession results of which his landlord can take benefit.[2]

49. Invalid transaction, possession under. Possession under colour of an inoperative transfer is adverse to the true owner.[3] In the following cases possession of transferee under void instruments was held to be adverse to the true owner. Where the possession was under a void gift;[4] where it was given under an unregistered gift by person in wrongful possession;[5] where the possession was under a void usufructuary mortgage;[6] where the possession was under an unregistered sale deed;[7] where the tenant had settled on land under an unregistered *patta*;[8] where the possession of the purchaser was under a void sale deed;[9] or where the possession under a void trust deed is adverse to the author of the trust.[10]

Subject of adverse possession. The right acquired by a person under an invalid transfer will only be the right purported to be transferred.[14]

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20. 31 Cal. 397 (DB).
21. AIR 1957 Cal. 67 (DB).
1. AIR 1935 Cal. 771 = 63 Cal. 497 (DB) + 53 Cal. W N 879 + AIR 1933 Nag. 112 = 29 Nag. L R 48 + 63 Cal. 300 (DB).
2. 63 Cal. 300 (DB).
3. AIR 1941 Cal. 541 = ILR (1941) 2 Cal. 44 (DB) + AIR 1951 S C 469 = 1952 S C R 43 + AIR 1957 Bom. 79 = ILR 1956 Bom. 844 (DB) + AIR 1957 Manipur 15 + AIR 1957 Pat. 157 (DB) + AIR 1956 Pat. 308 (DB) (Void lease) + AIR 1956 Sau 110 + AIR 1953 Pat. 365 (DB) + AIR 1951 Pat. 160 (DB). (A person in possession under an invalid lease is a mere trespasser) + AIR 1948 Oudh 9 = 22 Luck 308 + AIR 1941 Cal. 33 + AIR 1941 Oudh 454 + 23 Mad. 271 = 27 Ind. App. 59 (PC) + 34 All. 289 (PC) + AIR 1957 Mad. 194 (DB) + AIR 1957 Pat. 37 (DB) + 21 Cut L Tim 78 + ILR (1953) 5 Assam 503 (DB) + 1953 B L J R 479 + AIR 1954 Trav-Co. 60 = ILR 1953 Trav-Co. 886 (FB) + AIR 1953 All. 501 (DB) + AIR 1952 Orissa 203 = ILR 1952 Cut 81 (DB) + AIR 1957 Pat. 321 (DB) + AIR 1949 Pat. 197 = 26 Pat. 717 (DB) + AIR 1933 Bom. 209 (DB).
4. AIR 1919 P.C. 44 = 43 Mad. 244 = 46 Ind. App. 285 + AIR 1956 Pat. 308 (DB).
5. PLD 1989 Pesh. 127 = PLJ 1989 Pesh. 29 = NLR 1989 Civ. 242 + AIR 1941 Pat. 219 (DB).
6. AIR 1941 Mad. 217 (DB) + AIR 1964 Orissa 258.
7. AIR 1941 Nag. 72 (DB).
8. 22 Pat. L Tim. 200 (DB).
9. 1989 CLC 1547 + PLD 1960 Kar 625 = 1960 (1) KLR 545 (Sale by minor--void--Possession of alienee is adverse) + AIR 1918 P.C. 180 = 46 Cal. 694 = 46 Ind. App. 60 + AIR 1965 Pat. 390 (DB).
10. 36 Bom. 214 + AIR 1942 P.C. 64 = ILR 1942 Kar (PC) 116 = 69 Ind. App. 137 + AIR 1943 Sind 134 = ILR 1943 Kar. 166.
14. AIR 1930 Oudh 75 + AIR 1951 S.C. 469 = 1952 S C R 43 + AIR 1957 All. 346 + AIR 1956 Pat. 308 (DB) + 21 Cut. L. Tim. 78 + AIR 1960 Pat. 316 + AIR 1959 Pat. 164 (DB) + AIR 1938 Pat. 479 (held obiter and not correct) + AIR 1958 Raj. 102 = ILR (1958) 8 Raj. 126

Transfer of life estate. Where a person *A* holding life estate transfers his rights to *B* the transfer is good during the lifetime of *A* but void beyond his lifetime, the possession of *B* is adverse to *A*'s representatives after his death.[15] Similarly where property is transferred to a person for his life, the possession of his representative after his death will be adverse to the transferor,[16] and for a suit by the person entitled to it on transferree's death or on the happening of a contingency governed by Art. 144 time will run from the death of transferee or the happening of the contingency.[17] Similarly where an estate for life is forfeited and sold by the Government, a suit by the person entitled to it after the death of the holder for life is governed by Art. 144.[18]

Adverse possession, when begins. Adverse possession begins only when the transferee acquires possession of the property and not from the date of the void transfer.[19] Thus where a leased property is gifted by unregistered deed by the lessor with directions to the tenant to pay rent to the donee who was in receipt of the rent; the donee to whom the tenant attorned was not in adverse possession to the landlord till the expiry of lease.[20] Where the transfer is voidable and not void and the transferee enters into possession, his possession is not adverse till the transfer is set aside.[1]

Suit for possession against a transferee--limitation for. Where a person enters into possession under a void transfer the transfer need not be set aside as a condition precedent to the institution of a suit for possession and so although the

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(DB). (Invalid usufructuary mortgage) AIR 1938 Pat. 479, *Dissented from* 1955 Raj. L W 190, *Foll.*) + AIR 1957 Mad. 73 (DB) + AIR 1952 Pat. [illegible] = 30 Pat. 997 (DB) + AIR 1952 Pat. 46 = 30 Pat. 964 (DB) + AIR 1957 Pat. 245 (DB) + AIR 1957 Pat. 213 + 1955 Raj. L W 190. (Mortgagee in possession under an unregistered mortgage) + AIR 1953 Orissa 17 = ILR 1952 Cut. 493 (DB) + AIR 1950 Orissa 213 = ILR 1950 Cut. 50 (DB). (Person entering into possession under void mortgage--He acquires rights of mortgagee by prescription) + AIR 1949 Pat. 124 (DB) (Possession under invalid lease--Rights of lessee are acquired by prescription) + AIR 1930 Mad. 264 (DB). (Possession under void mortgage--Only the right of mortgage can be acquired) + AIR 1915 Bom. 102 = 39 Bom. 358 (DB) + AIR 1921 Mad. 410 = 44 Mad. 946 (DB) + AIR 1927 All. 311 + AIR 1935 All. 578 + AIR 1933 Pat. 288 + AIR 1941 Cal. 541 = ILR (1941) 2 Cal. 44 (DB). (Possession under void lease--Only the right of lessee can be obtained) + 21 Bom. 509 (DB) + AIR 1930 Bom. 448 + AIR 1935 All. 458. (Possession under void trust only the right of trustee can be acquired) + AIR 1943 Bom. 366 = ILR 1943 Bom. 495 (DB) + AIR 1942 Cal. 180 (DB) (*Munvalli's* possession under void *wakf* will be for the benefit of persons entitled to the property on the contingency of *wakf* becoming void) + AIR 1924 Nag. 73 (DB). (Possession as adopted son under an invalid adoption--Only such right as an adopted son could be acquired).

15. AIR 1922 P.C. 123 = 44 Mad. 831 = 48 Ind. App. 302 + AIR 1936 P.C. 183 = 63 Ind. App. 261 = 59 Mad. 809.
16. 1900 Pun L R No. 110, p. 437.
17. AIR 1919 Nag. 52 + 11 All. L. Jour 179 + 1892 All. W N. 26 + AIR 1925 Oudh 307 = 27 Oudh Cas. 301 + 40 Cal. 173 (DB).
18. AIR 1952 Lah. 45.
19. AIR 1941 Oudh 172 (DB) + AIR 1925 Lah. 239 + AIR 1924 Pat. 341 + 21 Mad. 169 (DB) + AIR 1932 Cal. 115 (DB) + AIR 1923 Cal. 428 (DB).
20. 19 Mad. L Jour 255 (DB).
1. AIR 1917 Bom. 235 (DB).

period of limitation for a suit to set aside the transfer has expired, a suit for possession against the transferee will not be barred.[2]

50. Inalienable property, adverse possession of. There can be no title by adverse possession to property the transfer of which is prohibited by law.[3] Where no custom is pleaded and there is not Act of the legislature conferring permanent rights on an occupant and the settlement on which he relies is prohibited by statute, no right of permanent tenancy can be acquired by prescription by such an occupant.[4] Similarly the tenant of a *zamindari* estate to which the incident of inalienability attaches, cannot acquire permanent tenancy rights by prescription against the landlord.[5] Lands in Military Cantonment areas cannot be acquired by prescription.[6]

Where the property is not inalienable under the law adverse possession of it can be acquired. Thus the land granted for service but not attached to an office, in the sense that it is not attached to performance of service may be acquired by adverse possession.[7] Similarly the transfer of non-transferable occupancy holding is not prohibited as such, but its transfer entitles the landlord to re-enter. The transaction is void and the possession of the transferee is adverse from its inception and if he remains in possession for the statutory period both the tenant and the landlord are barred but the transferee acquires only tenancy rights.[8] Where in such a case the landlord did not take steps to recover the property within 12 years, the transferee acquired the right of a tenant and landlord's right to recover *khas* possession became barred in the absence of any fraud committed by the transferee which prevented the fact of the transfer coming to the knowledge of landlord.[9]

51. Rights not recognised by law, adverse possession of. No right which is not recognised by law can be acquired by prescription.[10] Thus a right of fishery by a person as a member of the public to fish in a non-tidal river is not recognized by law, and cannot be acquired by adverse possession.[11] But as a joint tenancy with rigths of survivorship is recognized in Hindu Law in a co-parcenary between members of an undivided Hindu family, it can be acquired by adverse possession by a stranger to the family.[12]

52. Possession of owner, if can be adverse to himself. Normally a person cannot prescribe with regard to his own property.[13] But where the owner under a

2. 13 Cal. L Jour 277 (DB) + AIR 1919 Low Bur 53 = 9 Low Bur Rul 186 (DB) + AIR 1945 All. 367 = ILR 1945 All. 494 (DB).
3. AIR 1923 P.C. 205 = 47 Bom. 798 = 50 Ind. App. 255 + AIR 1935 Mad. 914 = 59 Mad. 51 + AIR 1928 Pat. 603 = 7 Pat. 566 + AIR 1938 Bom. 316 = ILR 1938 Bom. 465 + AIR 1942 Bom. 138.
4. AIR 1952 Pat. 43 + AIR 1953 Pat. 190 = 32 Pat. 124 (DB).
5. AIR 1949 Nag. 265 = ILR 1948 Nag. 978.
6. 36 Bom. 1 = 38 Ind. App. 204 (PC) + AIR 1922 All. 57.
7. AIR 1941 Mad. 217 (DB) + AIR 1917 Mad. 947 (DB).
8. AIR 1951 Orissa 235 = ILR 1950 Cut 589 (DB).
9. AIR 1940 Cal. 477 (DB).
10. 28 Bom. 399 (DB) (4 Bom. L R 797. *Rel on.*).
11. 1891-2 Ch. 678.
12. AIR 1923 Mad. 11 (DB).
13. 163 Ind. Cas. 347 (Cal.).

misconception thinks that the property belongs to another and comes into possession under the latter, he holds property for him and his possession is adverse to himself. Thus where *A* is in possession of his own land, under a lease from *B* believing it to belong to *B* who asserts a title thereto. *A*'s possession would be *B*'s possession and consequently adverse to *A*.[14] Where a co-owner who was dispossessed by a third party subsequently came into possession under a lease from the adverse possessor who remained in possession for 12 years; title of both co-owners was extinguished.[15] Where *A*, *B* and *C* were joint owners of certain property. *A* created a usufructuary mortgage of the whole property in favour of *X* as his self-acquired property. Subsequently *C*'s share was purchased by *X*. A suit was filed more than twelve years after the vendor had been ousted from possession. It was held that the suit was barred.[16] A person becoming owner after entering into adverse possession. Where a person is in possession originally adverse and continuously asserted as such under a hostile title is not interrupted by the mere fact that the adverse possessor becomes a co-sharer with the heirs of owner.[17]

53. Possession must be continuous. Adverse possession in order to confer title to the property on the possessor, must be continuous for the statutory period.[18] Where an owner is once shown to have been in possession it may be presumed that the possession continued till it is shown to have been interrupted.[19] Where a person in possession of property failed to establish that he held such property in adverse possession, suit against him, held, could not be barred by limitation.[20] If a person is found to hold the land as tenant at the time he institutes the suit for adverse possession, the pendency of the suit in the Court for more than twelve years would not change the character of the possession as adverse which was premature where the suit was filed.[1] But it is to be noted that the presumption of continuity is prospective rather than retrospective.[2] Continuous possession does not mean that proof of acts of possession must cover every moment of the requisite period.[3] The fact of possession may be continuous though several acts of possession are at considerable intervals and as to how many acts will infer the fact is a question of proof and presumption independent of prescription.[4]

54. Break in adverse possession, effect of. Where there is a break in the adverse possession of the wrong-doer, limitation ceases to run against the lawful

14. 29 Cal. 518 = 29 Ind. App. 104 (PC).
15. AIR 1921 Cal. 616.
16. 14 Cal. 674 (DB).
17. PLD 1950 Sind. 152.
18. PLD 1983 Kar. 510 = PLJ 1983 Kar. 250 + PLD 1978 SC (AJ&K) 33 = NLR 1978 Civ. 242 + PLD 1974 Kar. 235 + PLJ 1974 Kar. 57 + AIR 1923 Lah. 35 + AIR 1920 Cal. 288 (DB) + AIR 1959 Punj. 561 (DB) + AIR 1956 Cal. 350 (DB) + AIR 1934 Pat. 485 (DB) + AIR 1942 Pat. 99 (DB) + AIR 1918 All. 102 (DB).
19. 7 Sind L R 169 (DB) + AIR 1954 S. C. 355 = 1955 SCR 51.
20. 1988 CLC 186.
1. PLD 1990 SC (AJ&K) 1.
2. AIR 1927 Nag. 37.
3. AIR 1934 P.C. 23 = 61 Ind. App. 78 = 61 Cal. 262.
4. AIR 1939 Bom. 405 (DB).

owner of the property.[5] Thus there can be no continuance of adverse possession when the land is not capable of use and enjoyment as adverse possession must rest upon *de facto* use and occupation.[6]

A break in continuity of possession may be caused by *vis major* in which case limitation will cease to run against the true owner.[7] Where the true owner affects re-entry on property sufficient to destroy exclusive possession of trespasser before expiry of statutory period, the latter's adverse possession is interrupted.[8]

Intention of defendant. Where there is discontinuance in possession as a fact it operates as a break in the continuity without regard to the intention of the trespasser to return or not.[9] Thus where the defendant in adverse possession was ousted by the plaintiff who was the true owner and the defendant obtained possession again by a decree under S. 9, Specific Relief Act. Adverse possession of the defendant started only from the date of his possession under the decree.[10]

How interruption may be effected. Acts of possession not sufficient to constitute adverse possession as against another may, when done by the true owner be sufficient to destroy the legal adequacy and exclusiveness of possession in a trespasser and may amount to interruption of his possession.[11] But even then re-entry by the true owner must be more than formal and must be effective to divest the trespasser of his possession and revest it in the owner.[12] Interruption in adverse possession is not effected by the mere unyoking of the trespasser's bulls and preventing him from ploughing the land on one occasion or even the cutting away of his crops,[13] or by the owner staying as a guest with the possessor;[14] or by the owner directing his steward to pull out a stone from the wall of the hut built by the trespasser and to remove a portion of the fencing;[15] or by payment of land revenue for the land,[16] or by supplying of materials by owner for the repair of the house in the trespasser's possession.[17] Where actual raising of coal is temporarily suspended on account of exigencies of trade, it does not mean cessation of all mining activity and abandonment of possession. Adverse possession is not interrupted by temporary suspension.[18] Where the possession of one Hindu brother is adverse to another brother on the death of the latter, if his sons live with the former and on his death with his sons who looked after their property

5. PLD 1979 SC (AJ&K) 33 = NLR 1978 Civ. 242 + RLD 1974 Kar. 235 = PLJ 1974 Kar 57 + AIR 1938 Sind. 132 (DB) + AIR 1939 Pat. 364 (DB) + AIR 1956 Cal. 350 (DB) + AIR 1934 Pat. 485 (DB) + AIR 1925 Cal. 981 (DB).
6. AIR 1917 P.C. 18 = 44 Cal. 858 = 44 Ind. App. 104 + AIR 1941 Pat. 422 = 20 Pat. 497 (DB).
7. 29 Cal. 518 = 29 Ind. App. 104 (PC) + AIR 1942 Cal. 233 = ILR (1941) 2 Cal. 298 (DB).
8. AIR 1928 Cal. 563 + AIR 1957 Manipur 13 + AIR 1928 Cal. 882 (DB) + AIR 1924 All. 844.
9. AIR 1935 Cal. 760 (DB).
10. 9 Cal. W N 1061 (DB).
11. AIR 1922 P.C. 181 = 44 Mad. 883 = 48 Ind. App. 395 + AIR 1950 Him Pra 6.
12. AIR 1942 Cal. 1 = ILR (1941) 2 Cal. 434 (DB) + 35 Mad. 231 (DB) + AIR 1920 Oudh 73 (DB) + AIR 1931 Cal. 25 = 57 Cal. 796 (DB) + 37 Bom. 37 (DB).
13. 1921 Mad. W N 74.
14. AIR 1923 Mad. 633 (DB).
15. 9 C B 714.
16. AIR 1919 Oudh 177 = 21 Oudh Cas. 324.
17. 1866 Pun Re No. 58, p. 82.
18. AIR 1959 Cal. 195 (DB).

there was no break in the continuity of adverse possession.[19] But it is to be noted that where adverse possession is claimed by one co-sharer against another co-sharer acts of possession to even a small degree are enough to interrupt co-sharer's adverse possession.[20] A suit for partition and rendition of accounts by a co-sharer against the co-shares in adverse possession was sufficient assertion of title. No right by adverse possession would accrue after such assertion of title.[1]

Admission by trespasser of title of owner. If, before the expiry of the statutory period the trespasser admits the rightful owner's title, his possession ceases to be adverse.[2] But an admission of the plaintiff's title made under a mistake of fact will not interrupt the adverse possession of the person making such admission.[3]

Property vesting in adverse possessor. The legal consequence of the property adversely claimed vesting in the person so claiming by inheritances is to put an end to the adverse possession running against the owner.[4]

55. Symbolic possession. if interrupts adverse possession. Symbolic possession obtained by a decree-holder in execution of a decree in respect of immovable property in possession of the judgment-debtor, is a valid possession in the eye of law and operates as a breach in the continuity of possession of the judgment-debtor,[5] and willl put an end to the adverse possession of the defendant.[6] A legal representative of a party to the record is as much bound by every estoppel binding on his predecessor and when there is no legal obligation on the decree-holder to implead the legal representatives of the judgment-debtor at the stage of delivery of possession a symbolical delivery of possession in favour of the decree-holder will interrupt not only the possession of the parties to the record but of strangers also.[7]

Third party in adverse possession. Though delivery of symbolical possession to a decree holder or auction-purchaser puts an end to the adverse possession of the judgment-debtor or his representative yet it cannot put an end to the adverse

19. AIR 1933 Nag. 270.
20. AIR 1959 Pat. 523.
1. 1975 SCMR 27.
2. AIR 1928 Lah. 317 (DB) + AIR 1956 Bom. 625 + AIR 1925 Cal. 193 (DB).
3. AIR 1937 Lah. 811.
4. AIR 1942 Mad. 106 = ILR 1942 Mad. 42.
5. AIR 1961 Assam 120.
6. 19 Suth W R 101 (PC) + AIR 1937 Nag. 24 = ILR 1956 Nag. 754 (DB) + AIR 1955 Pat. 158 (DB) + AIR 1954 Punj. 124 (DB) + AIR 1953 Mys. 35 = ILR 1953 Mys. 51 + AIR 1953 Pat. 173 + AIR 1953 Pat. 110 + AIR 1952 Punj. 290 + AIR 1950 Cal. 92 = ILR (1950) 2 Cal. 498 (DB) + AIR 1948 Pat. 416 = 27 Pat. 267 (DB) + AIR 1933 All. 173 = 55 All. 173 (DB) + 21 Bom. 98 (DB) + AIR 1922 Bom. 27 = 46 Bom. 710 (DB) + AIR 1944 Pat. 77 = 22 Pat. 513 (DB) + AIR 1932 Pat. 151 = 11 Pat. 165 (DB) (21 All. 269, *Dissented from*) AIR 1930 Cal. 15 = 56 Cal. 1130 (DB) + AIR 1930 Cal. 455 (DB) + AIR 1935 Lah. 612 (DB) + AIR 1941 Lah. 428 + AIR 1943 Mad. 698 = ILR 1944 Mad. 147 (FB) + AIR 1945 Mad. 484 + AIR 1914 Nag. 14 = 10 Nag. L R 60 + AIR 1929 Nag. 298 + AIR 1928 Oudh 8 = 3 Luck 130 (DB) + AIR 1926 Lah. 35 + AIR 1950 Assam 50 = ILR (1949) 1 Assam 33 (DB) + AIR 1950 Pepsu 22 = 1 Pepsu L R 153 + AIR 1949 Lah. 252 = Pak. L R 1949 Lah. 737 (DB) + AIR 1922 Cal. 176 (DB) + AIR 1923 Cal. 371 (DB) + 17 Mad. L Jour 598 (DB) + AIR 1927 Mad. 849 (DB) + AIR 1923 Pat. 76 = 24 Cri. L. Jour 279.
7. AIR 1954 Mad. 760 = ILR 1954 Mad. 1206 (DB).

possession of third parties.[8] Thus where a vendee was put in possession at a private sale of attached property. There was an auction sale in execution and the auction-purchaser was given symbolic possession. The possession of the vendee at the private sale is adverse to the auction-purchaser since the time the vendee was put in possession. If the vendee was in possession for more than 12 years anterior to institution of the suit by auction-purchaser, the suit is barred either under Art. 138 or Art. 144.[9] Where a transferee under an invalid alienation of land in the occupation of *ryots* obtained a decree for possession against the vendor and was given symbolic delivery of possession. A transferee will be deemed to be in adverse possession against the vendor from the date of such delivery, unless the judgment-debtor continues to collect the rents and profits from the *ryots*.[10]

Suit for possession by person who was given symbolic possession. Where in execution of a decree symbolic possession is delivered of immovable property to the person entitled to possession thereof, and such a person brings a suit for recovery of actual possession, the symbolic possession is to be deemed equivalent to actual possession as against the judgment-debtor or his representatives and the suit will be deemed to have been brought in time if it has been brought within twelve years from the date of the symbolic possession. The delivery of symbolic possession is the line of demarcation between possession precedent and possession subsequent.[11] Where symbolic possession was given of land which was in occupation of *ryots*, the plaintiff can sue for possession within 12 years from the date on which defendant dispossesses him by collecting rents and profits from the *ryots*.[12] Similarly where the defendant continued in possession after the symbolic delivery of the land, he was in actual possession, the plaintiff's suit for actual possession should be instituted within 12 years of the date of such delivery.[13] Where a suit is brought by the decree-holder for actual possession within two years of obtaining such symbolic possession there can be no adverse possession by the judgment-debtor for the statutory period as contemplated under Art. 144 of the Limitation Act.[14]

Title perfected by adverse possession prior to delivery of symbolic possession. Where on the date of the symbolic delivery the defendant has already perfected his title to the property by adverse possession, such title is in no way affected by the symbolic delivery and a suit for possession will be barred although it is instituted within twelve years of such delivery.[15]

Sale for arrears of revenue. Where under sales for arrears of revenue the auction-purchaser is given symbolic possession, he can bring his suit for actual possession against the defaulting proprietor at any time within twelve years of

8. 5 Cal. 584 (FB) (*Approved in* 16 Cal. 530 (FB)) + AIR 1917 P.C. 197 + AIR 1937 P.C. 69 = 16 Pat. 258 = 31 Sind L. R 242.
9. AIR 1958 All. 850 (DB).
10. AIR 1915 Mad 145 (DB).
11. AIR 1961 Himachal Pradesh 18 + AIR 1948 Pat. 416 + AIR 1950 Pepsu 22.
12. 5 Cal. 584 (DB).
13. AIR 1947 All. 296. (After twelve years the remedy as well as the right are lost) + AIR 1936 Pesh. 7 (DB) + AIR 1931 All. 234 + AIR 1928 All. 412 = 50 All. 813 (DB) + AIR 1914 Cal. 630 (DB) + 2 Bom. L. R 407 (DB).
14. AIR 1961 Assam 120.
15. AIR 1925 Oudh 20 (DB).

such symbolic delivery of possession.[16] It must however be noted that delivery of symbolic possession at a sale for arrears of revenue will not affect the rights of third parties.[17]

Sale of undivided interest in joint family property. There can be no delivery, either symbolic or actual in pursuance of the sale of an undivided interest in joint family property. The auction-purchaser cannot get the benefit of a fresh cause of action by any symbolic delivery which could not in law have been made to him.[18]

56. Decree does not interrupt adverse possession. A decree for possession emphasises claim of plaintiff to be true owner and shows that defendant is in adverse possession alleging hostile title and interest.[19] The decree establishing the right of the plaintiff to possession does not interrupt the adverse possession of the defendant.[20] Thus where a decree was passed subsequent to the commencement of adverse possession in favour of adverse possessor recognising his title to a part of the property the decree did not convert his adverse possession into that of a tenant-in-common.[21]

Decree for possession. Adverse possession is a question of fact and it cannot be said that a decree which remains unexecuted and unenforced has on account of some fiction of law the effect of physically dislodging a person claiming adverse possession. Whether a decree is for declaration or for possession, it just puts emphasis on the fact, that a particular person is in adverse possession and the real owner is out of possession. The fact of adverse possession becomes more pronounced after a decree and the shape of things can be changed only by actually dislodging the person in adverse possession by seeking execution. In the absence of any steps in that direction on the part of the decree-holder, whether the decree be for possession or declaration, the adverse possession will continue.[1]

Decree resulting in dispossession set aside. Where there is an interruption of defendant's adverse possession due to erroneous decree which is subsequently reversed and there is no interruption between the two periods of possession the entire period may be taken as continuous. If the total period comes to the prescribed period the defendant is entitled to the benefit of the entire period including that during which he had been out of possession due to erroneous decree.[2]

16. AIR 1917 Cal. 213 = 44 Cal. 412 (DB) + AIR 1928 Cal. 870 (DB).
17. AIR 1925 Cal. 82 (DB).
18. AIR 1955 Mad. 288 = ILR 1955 Mad. 1278 (DB).
19. PLD 1987 SC 130 = PLJ 1987 SC 142 = NLR 1987 SCJ 213 = 1987 PSC 265 = 1987 Law Notes 189.
20. PLD 1987 SC 130 = 1987 PSC 265 = PLJ 1987 SC 142 = NLR 1987 SCJ 213 + AIR 1923 P.C. 175 = 50 Ind. App. 295 = 46 Mad. 751 + AIR 1957 Trav-Co. 32 + ILR 1956 Trav-Co. 755 (FB) + AIR 1956 Sau 110 + AIR 1951 Ajmer 1 + AIR 1951 Trav-Co. 32 (DB) + AIR 1942 Bom. 44 = ILR 1942 Bom. 14 (DB) + AIR 1944 Pat. 77 = 22 Pat. 513 (DB).
21. AIR 1929 Lah. 524 (DB).
1. PLD 1990 SC (AJ&K) 1 + PLD 1968 Peshawar 125 = PLR 1969 (2) W.P. 635 + AIR 1923 PC 175 + AIR 1939 Bom. 400 + AIR 1923 Mad. 88 (2) + AIR 1937 Lah. 602 + AIR 1930 Lah. 472 + 45 P R 1914 + AIR 1936 All. 466 + 9 Ind. Cas. 795 + AIR 1948 Bom. 149 (DB).
2. AIR 1960 Raj. 304 = ILR (1960) 10 Raj. 194 (DB).

Decree may serve as proof of previous possession. Where a suit is brought for possession of lands in actual occupation of third parties a former decree obtained by the plaintiff showing that on the date of decree the plaintiff was in possession would save limitation.[3]

Compromise decree. Where there has been a compromise decree and admission of title of the plaintiff and acceptance of the permissive character of the defendant's possession, the adverse possession of the defendant is terminated and continuance of his possession after the decree is permissive.[4]

57. Attachment--effect of, on adverse possession. An attachment of immovable property does not interrupt the adverse possession of the property.[5] But where the party in adverse possession filed a claim petition and it was dismissed and thereafter he did not file a suit within one year to protect his rights, he was precluded from pleading that he was in adverse possession on the date of the order.[6] But where the attachment was raised subsequently the adverse order on the claim petition ceased to be effective and the adverse possessor was not precluded from contending that he was in possession on the date of the order, although he had not questioned the order by means of a suit within one year under Art. 11.[7] Thus where after dismissal of claim petition the sale was set aside and the decree was subsequently otherwise satisfied, an omission to file a suit under Art. 11 will not preclude the claimant from pleading his prior adverse possession.[8]

Attachment under S. 146, Cr.P.C. Where possession is with true owner on the date of the attachment under S. 146 of the Criminal Procedure Code, the attachment does not amou.. to dispossession of the true owner.[9] Therefore although the true owner may frame his suit as one for possession, it must be treated as one for declaration of title and will not be governed by Article 142 or by Article 144.[10]

58. Decision as to boundary--effect. A decision of the Revenue Authorities as to the boundaries of lands cannot have the effect of dispossessing as a fact any party who is in possession, and cannot constitute an interruption of possession.[11]

59. Subsequent assertion of different title by defendant. The subsequent assertion of a different title by the defendant does not give the plaintiff any fresh cause of action.[12]

60. Submerged land. Where land, which became submerged, reforms and can be identified as having formed part of a particular estate, the owner of that

3. AIR 1914 Cal. 630.
4. AIR 1950 Orissa 250 (DB).
5. AIR 1939 Mad. 456 = ILR 1939 Mad. 803 (SB) + AIR 1943 Mad. 425 = ILR 1943 Mad. 696 (DB) + AIR 1926 Oudh 43.
6. 8 Mad. 506 (DB).
7. AIR 1957 Mad. 44.
8. AIR 1939 Mad. 456 = ILR 1939 Mad. 803 (SB).
9. AIR 1916 Cal. 751 (DB) + 26 Mad. 410 (DB).
10. AIR 1922 Cal. 419 + 49 Cal. 544 (DB) + AIR 1916 Cal. 751 (DB) + 26 Mad. 410 (DB).
11. AIR 1923 Mad. 29 (DB) (AIR 1919 Mad. 779 (FB). *Dist*) + AIR 1932 Mad. 310 (DB) + AIR 1939 Mad. 61 + AIR 1942 Pat. 42 + AIR 1920 Bom. 215 (DB).
12. 1 Ind. App. 335 (PC).

estate is entitled to it.[13] The person claiming the reformed land should have been, before submersion, entitled to it and the onus will be on him to show that he had a subsisting title to the property on the date of the submersion.[14]

Title acquired by adverse possession. Where a person claims to have been in adverse possession for the required period of the land after its reformation, no question arises as to the true owner being entitled to it.[15] Thus where title by adverse possession was acquired of the reformed land and it once again submerged and again reformed. Title to it will be that of the person who acquired title to it by adverse possession.[16]

Possession during submersion. Title as well as possession in law would be considered to be in the true owner during the period of submersion.[17] Thus possession in law would be deemed to vest in the true owner provided he had a subsisting title on the date of submersion irrespective of whether he was or was not in possession on such date.[18] In other words where true owner was not in possession on the date of submersion but had a subsisting title, the possession of any person who was occupying the land at that time wrongfully would terminate.[19]

Duration of submersion. No rational distinction could be drawn between a case where the re-flooding was seasonal and occurred for several months in each year and a case where the submergence continued for several years at a time.[20] But where the land is submerged few days every year without interfering with the usual cultivation thereof the adverse possession of a trespasser is not affected.[1]

61. Possession of receiver. Mere appointment of a Receiver without his taking actual possession will not interrupt adverse possession of the wrong-doer.[2] The possession by receiver is for the benefit of the true owner.[3] Where a receiver takes possession of property *pendente lite* his possession is on behalf of the person who is ultimately found entitled to it.[4] It would operate as a dispossession of the wrong-doer who was in possession on the date of the appointment so that the wrong-doer cannot, for the purpose of computing the period of limitation, count

13. 3 Cal. L Jour 560 (PC) + AIR 1935 P.C. 125 + 13 Moo Ind App 467 (PC).
14. AIR 1935 P.C. 125.
15. 3 Cal. 796 (PC) + 54 Cal. W N 265 (DB) + AIR 1921 Cal. 277 (DB).
16. 3 Cal. 796 (PC) + AIR 1951 Pat. 420 = 28 Pat. 631 (DB) + AIR 1927 Oudh 519.
17. AIR 1965 All. 313 + AIR 1917 P.C. 18 = 44 Cal. 858 = 44 Ind. App. 104 + 29 Cal. 518 = 29 Ind. App. 104 (PC) + AIR 1960 Pat. 237 + AIR 1953 Pat. 267 + AIR 1941 Cal. 193 (DB) + AIR 1941 Pat. 422 = 20 Pat. 497 (DB).
18. AIR 1965 All. 313 + AIR 1930 P.C. 198 + 54 Cal. W N 265 (DB) + AIR 1939 All. 257 = ILR 1939 All. 454 (DB) + 3 Cal. L. Jour 316 (DB) + 1906 Pun. L R No. 158, p. 521 (DB).
19. AIR 1941 Cal. 193 (DB) + AIR 1931 P.C. 162 = 59 Cal. 80 = 58 Ind. App. 228 + 29 Cal. 518 = 29 Ind. App. 104 (PC) + AIR 1939 Mad. 456 = ILR 1939 Mad. 803 (SB) + AIR 1936 Oudh 387 = 12 Luck. 371 + AIR 1941 Pat. 422 = 20 Pat. 497 (DB).
20. AIR 1917 P.C. 18 = 44 Cal. 858 = 44 Ind App 104.
1. AIR 1940 Pat. 131 (DB) + AIR 1949 Cal. 335 = ILR (1948) 2 Cal. 101 (DB) + AIR 1942 Pat. 341 = 21 Pat. 441 (DB) + AIR 1933 Pat. 468 + AIR 1917 Oudh 330 = 19 Oudh Cas 374 (DB).
2. AIR 1924 Cal. 118 (DB).
3. AIR 1914 P.C. 243 = 1912 App Cas 230.
4. AIR 1926 Cal. 385 = 52 Cal. 914 (DB) + AIR 1924 Cal. 600 (DB) + AIR 1927 Mad. 61 (DB) + AIR 1936 Oudh 387 = 12 Luck 317 (DB) + AIR 1928 Pat. 260 = 7 Pat. 319 (DB) + AIR 1919 Mad. 8 (DB) + AIR 1928 Oudh 155.

the period of his possession before the Receive took possession.[5] The doctrine of Receiver's possession being that of the successful party cannot be pushed to the extent of enabling a person who was initially out of possession to claim the tacking on of Receiver's possession to his subsequent adverse possession.[6] Where a party retained possession after appointment of receiver the possession of the party thereafter is as custodian for Court and not adverse to other parties to the suit during the period of receivership.[7]

Adjudication order set aside, effect on possession of receiver. Where the adjudication order is annulled but the Insolvency Court does not make any order under S. 37 of the Provincial Insolvency Act vesting property in the Official Receiver, the position is that the situation becomes as before the adjudication and the quondam insolvent gets back his property saddled with all the debts. But if he does not take back the possession which still remains with the Official Receiver, the possession of the latter does not become adverse to the quondam insolvent. He holds the property on behalf of the rightful owner. If the Receiver sells the property the possession of the purchaser becomes adverse to the quondam insolvent from the date of the sale but his suit for possession filed within 12 years is not barred.[8]

62. Court of Ward, possession of. Where a Court of Ward assumes charge of an estate and files an interpleader suit, its possession from the date of decree declaring one person to be the rightful owner is on behalf of such person.[9] Thus where a lunatic brother held property openly and continuously against his sane joint brother. To a claim by the sane brother, Article 127 applies. Where on death of the lunatic brother the Court of Ward retained possession for his widow. Article 144 applied to the suit.[10]

63. Abandonment of possession. The question of abandonment by an owner must be considered with reference to local circumstances and conditions.[11] An abandonment simpliciter does not disentitle the owner because constructive possession must, in spite of a mere abandonment or non-user, remain with the owner. On such abandonment therefore there must be intrusion by another. Unless there is such intrusion there is no one against whom the owner has to defend his title. There has therefore to be an abandonment without *animus revertendi* followed by some body else obtaining actual possession.[12] Thus where the owner leaves the land in the possession of strangers for over 20 years and lives away cultivating other lands, it constitutes abandonment.[13]

5. AIR 1928 Pat. 260 = 7 Pat. 319 (DB) + AIR 1927 Mad. 61 (DB) + 2 Cal. L Jour 602 (DB).
6. AIR 1957 S.C. 314 = 1957 SCR 195.
7. AIR 1960 Cal. 553.
8. AIR 1952 Mad. 179 (DB). (AIR 1919 Mad 8 *Rel. on*).
9. AIR 1931 Oudh 177.
10. AIR 1942 All. 267 (DB).
11. 1906 Pun L R No. 158, p. 521 (DB).
12. PLD 1960 Karachi 428 = PLR 1960 (1) Karachi 248.
13. 1913 Pun L R No. 72, p. 281.

Abandonment by trespasser. Where a trespasser abandons possession before the expiry of the statutory period the rightful owner is in the same position in all respects as he was before the intrusion took place.[14]

64. Revenue sale, adverse possession against purchaser. In the case of a purchase at a revenue sale the right of the purchaser to possession of the auction-purchased property does not accrue directly or immediately upon his auction-purchase. His right accures only after the sale becomes final and conclusive.[15] Where the purchaser at a sale sued for possession and the defendant claimed adverse possession from a date long before the sale; it was held that the interest of defaulting owner is not sold at a revenue sale but the interest of the State subject to payment of assessment and therefore time commenced to run only from the date of sale that the suit was within the period of limitation.[16]

65. Dispossession of wrong-doer by another. The possession does not become revested in the rightful owner on the dispossession of the first wrong-doer by the second and also such a dispossession is not the dispossession of the true owner.[17] Therefore even if the person claiming title by adverse possession had been dispossessed from a certain portion of the land by another trespasser and ultimately recovered possession, such dispossession would not be deemed to constitute a break in his possession.[18]

66. Possession must be open. In order to acquire a title by adverse possession there must be possession which is overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening.[19] It is not necessary to prove actual knowledge of the adverse possession on the part of the owner.[20] Thus where the plaintiff laid claim and proved title to a mine in which the defendants were carrying operations; it was for the defendants to prove that their possession was open.[1]

Possession must be effective. Only effective possession counts as adverse possession. Where possession is of an ineffective character such as tying cattle, etc., though the character of the possession can be improved by an assertion of

14. AIR 1926 Pat. 130=5 Pat. 80 (DB).
15. AIR 1959 Cal. 78 (DB).
16. AIR 1914 P.C. 82+1955 Ker L T 198.
17. 35 Bom. 79 (DB).
18. AIR 1942 Cal 1=ILR (1941) 2 Cal. 434 (DB).
19. PLD 1968 Dacca 447+19 DLR 912 (DB)+AIR 1934 P.C. 23=61 Ind. App. 78=61 Cal. 262+32 Pat. 353 (DB)+AIR 1952 Assam 34=ILR (1951) 3 Assam 387 (DB)+AIR 1951 Orissa 235=ILR 1950 Cut 589 (DB)+AIR 1950 Him Pra 8+1950 All. L Jour 84+53 Cal. W N 879+AIR 1941 Mad. 449=ILR 1941 Mad. 599 (FB)+AIR 1941 Oudh 436 (DB)+AIR 1942 Mad. 725+AIR 1947 Pat. 99=25 Pat. 412 (DB)+AIR 1944 Pat. 74+AIR 1942 Bom. 317 (DB)+AIR 1941 Sind. 53=ILR 1940 Kar 534.
20. AIR 1934 P.C. 23=61 Ind. App. 78=61 Cal. 262+AIR 194. Mad. 449=ILR 1941 Mad. 599 (FB)+32 Pat. 353 (DB)+AIR 1950 Him. Pra. 8+1950 All. L. Jour 84+53 Cal. W. N. 879+AIR 1941 Mad. 866+AIR 1941 Nag. 311=ILR 1941 Nag. 691+AIR 1941 Sind 50=ILR 1940 Kar. 534+AIR 1944 Nag. 20=ILR 1943 Nag. 726.
1. AIR 1935 P.C. 36=14 Pat. 327=2 Ind. App. 40+AIR 1946 Cal. 123 (DB).

title to it by the defendant, he must prove that owner had knowledge of such assertion or circumstances from which such knowledge could be inferred.[2]

67. Possession is not adverse to person not having present right of possession. Possession cannot be adverse against a person who is not entitled to possession.[3] Therefore the period of 12 years necessary for perfecting title by adverse possession does not start running in favour of the trespasser against the true owner until such time as the true owner has right to immediate possession.[4] Thus a suit by the adopted son for possession of the properties of the adoptive father from a person who has entered into possession before the date of the adoption whether as an alienee or as a wrong-doer would be governed by Art. 144 and not by Art. 142.[5] Article 119 has no application to a suit by the adopted son for possession of the adoptive father's property.[6]

Adverse possession against limited owner. The possession of an alienee from the holder of a life-estate of the property alienated cannot be adverse to the person entitled to possession on the termination of the life-estate, till the estate falls into possession.[7] Thus where *A* is entitled to a life estate in certain land and *B* is entitled to the remainder the possession of transferee from *A* does not become adverse to *B* before *A*'s death.[8] Where *M*, a Muslim left by will properties to *A* to be enjoyed by her during her lifetime, some of them to go thereafter to *B* and some to *C* there was suggestion or evidence that *A* was not in possession or had lost possession at the time of her death. It was held, that *B*'s right to possession did not arise until *A*'s death and Art 141 and not Art. 142 was to be applied.[9] Similarly adverse possession against a Hindu female heir is of no avail against the reversionary heir who succeeds to the estate of the last full owner on the reversion opening on the death of the last limited heir.[10] Where a person claimed possession of a property adversely to that of a limited owner such as Hindu widow the right of the riversioner of the widow to sue for recovery of possession commences only from the date of the death of the widow.[11] Possession of an alienee from the mother, holder of maintenance grant which continues for a few years after the death of the holder, would not confer upon the alienee the right to remain in possession of the properties as against the alienee from the widow who would be

2. 1912 Mad W N 68 (DB).
3. AIR 1928 All. 726=50 All. 985 (FB)+AIR 1959 Pat. 230 (DB)+ILR 1954 Trav-Co. 1349+26 Bom. 617 (DB)+37 Bom. 64+AIR 1937 Cal. 343 (DB)+AIR 1916 Pat. 93=1 Pat. L. Jour 293 (DB)+AIR 1916 Mad. 990=39 Mad. 811 (FB)+1911 Pun L No. 34, p. 174=191 Pun Re No. 28 (FB)+12 Oudh Cas. 45 (DB)+AIR 1946 Oudh 213+AIR 1942 All. 175=ILR 1942 All. 259 (DB)+AIR 1928 Cal. 250 (DB)+AIR 1941 Nag. 72=ILR 1942 Nag. 145 (DB)+AIR 1940 Sind. 195+AIR 1939 Nag. 260=ILR 1939 Nag. 624+AIR 1930 Pat. 562 (DB)+AIR 1928 Lah. 250 (DB).
4. PLD 1963 Lahore 606.
5. AIR 1921 Nag. 111=17 Nag L R 18 (DB)+19 Bom. 809 (DB).
6. 26 All. 40 (DB).
7. AIR 1919 Nag. 52+AIR 1946 P.C. 59=ILR 1946 Kar (PC) 24+AIR 1955 Mad. 177=ILR 1955 Mad. 1232 (DB)+AIR 1954 Pepsu 85=ILR 1954 Patiala 44 (DB)+AIR 1952 Nag. 133=ILR 1952 Nag. 597 (DB)+ILR 1950 Nag. 589 (DB)+AIR 1949 Nag. 265=ILR 1948 Nag. 978+AIR 1942 All. 402=ILR 1942 All 871+AIR 1924 Mad. 201 (DB).
8. 1 Bom. 535*n* (DB)+AIR 1921 Cal. 687 (DB).
9. ILR 1954 Mys. 212.
10. AIR 1952 Bom. 395=ILR 1952 Bom. 621 (DB).
11. AIR 1963 Pat. 337 (DB).

competent to deal with the suit properties after the death of the holder, of maintenance grant.[12] Where during the minority of *D*, who was the sole owner of the suit property, his mother sold the property in 1918, representing that it was her own property. *D* died as a minor in 1921 and his mother died in 1947. In 1953, the step-sister of *D* instituted a suit for possession of the property. It was held that the only Article applicable to the facts of the case was the residuary Article, *viz.*, Article 144 and the plaintiff's suit instituted 33 years after the death of *D* was clearly barred by time.[13]

Mortgage. The mere fact that the mortgagees have been paying surplus profits for a period of 12 years to a person who was once the owner of part of the equity of redemption, should not be construed as taking way from the purchasers of the equity of redemption the right to redeem inherent in them under the provisions of the Limitation Act for a period of 60 years in a case where it was not open according to the terms of the mortgage for the mortgagor to sue separately for the recovery of the surplus profits every year.[14]

Executor. The limitation for a suit by executor for declaration of his right to possession under the will and for recovery of possession starts from the date of the testator's death. Whether such a suit is governed by Art. 142 or by Art. 120 as one by a person who is claiming only the right to manage the property and not title to it, the limitation starts when the right to possession accrues and not when the probate is granted to him by the Court.[15]

Adopted son. Adverse possession against the widow will not be adverse against the adopted son but will become adverse to him only from the date of his adoption, when for the first time, he becomes entitled to possession.[16]

68. Trust property, adverse possession by stranger. Possession by a stranger who is in possession of trust property claiming it to be his own will be adverse to the trust and a suit for possession against the stranger after twelve years from the commencement of the adverse possession will be barred by limitation.[17] Where a trustee and another are in adverse possession of the trust property, the trustee cannot perfect his title to the property but the stranger can acquire title to the extent of his enjoyment.[18]

Stranger in possession as trustee. A stranger in possession of trust property claiming to be a trustee himself does not hold the property adversely to the trust itself, but he will acquire the right of a trustee after the statutory period.[19]

Transferee from trustee. Where a trustee transfers property without legal necessity the transfer is good and effective so long as he continues to be manager. Limitation runs from the date when he ceases to be manager. The transfer,

12. AIR 1951 Mad. 608.
13. AIR 1965 Mysore 278.
14. AIR 1951 Mad. 384 (DB).
15. AIR 1954 Pat. 175 = 31 Pat. 993 (DB).
16. AIR 1925 Bom. 402 = 49 Bom. 604 (DB) + 2 Cal. L. Jour 87 (DB) + 2 Bom. L R 411 (DB) + AIR 1928 Oudh 155 + AIR 1921 Nag. 111 = 17 Nag. L R 18 (DB).
17. AIR 1916 Mad. 130 (DB).
18. AIR 1942 Mad. 699 + AIR 1943 Mad. 558 = ILR 1944 Mad. 98 (DB).
19. 6 All. I = 10 Ind App 90 (PC).

however would be void if he transfers the property as his own property and not as property of deity. In such cases limitation runs from the date of the transfer.[20] Thus where trustee of a house, in defiance of the trust, gifts it away as his own property to *B*, his wife, who occupies the said house in her capacity as donee and subsequently sells it to *C* (a third party) for valuable consideration, a suit by the beneficiaries claiming under the trust against *C* and *B* for recovery of the alleged trust property would be governed for purposes of limitation neither by S. 10 nor by Art. 134 but by Art. 144 and the starting point of limitation would be the date of gift-deed by *A* in favour of *B* on which day her possession of the house became adverse to the beneficiaries. The period of *B*'s adverse possession can be tacked to that of *C*'s adverse possession in his capacity of a bona fide purchaser without notice.[1]

Suit by trustee for recovery of property. Where a suit by the predecessor of the manager is barred, a suit by the succeeding manager is also barred.[2]

Adverse possession against one co-trustee. Where one of the co-trustees in management is dispossessed a trespasser's possession for statutory period will bar the right of the trustee dispossessed as well as his co-trustees.[3]

69. Adverse possession against mortgagor. Where adverse possession against a mortgagor commenced before the mortgage the mortgagee is also bound and his mortgage will be extinguished when the trespasser completes his title by adverse possession. But where the mortgage is prior to the adverse possession and the mortgagee is not entitled to present possession under the deed, adverse possession against mortgagor will not bind the mortgagee.[4] In other words the mortgagee cannot be affected by the adverse possession which commences after the creation of his mortgage under which he is not entitled to possession.[5] Where there is mortgage of property the possession of which was taken over by the collector for arrears of revenue prior to execution of the mortgage and the collector handed over the property subsequent to the mortgage to a rival claimant to it who was subsequently found not entitled. It was held that the rival claimant's possession commenced only after the mortgage and could not bar a suit for sale by the mortgagee brought within 12 years of such possession.[6]

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20. AIR 1957 Trav-Co. 269 = ILR 1956 Trav-Co. 684 (DB).
1. AIR 1961 Allahabad 434.
2. AIR 1942 Bom. 138.
3. 34 Mad. 284 (DB) + 27 Mad. 192 (DB).
4. AIR 1940 Mad. 798 = ILR 1940 Mad. 953 (FB) + AIR 1960 Mad. 312 (DB) (AIR 1940 Mad. 198, *Rel. on*) + AIR 1952 Tripura 30 + AIR 1953 Nag. 4 = ILR 1952 Nag. 238 + 34 All. 640 (DB) + AIR 1930 Cal. 313 (DB) + 25 All. 35 (DB) + 18 Mad. 342 (DB) + AIR 1928 Lah. 499 (DB) + AIR 1920 Nag. 279 = 15 Nag. L R 154 + 9 Ind. Cas. 990 (DB) (All).
5. AIR 1941 Nag. 72 (DB) + AIR 1956 S.C. 593 = ILR 1956 Mys 152 = 1956 SCR 451 + AIR 1958 Ker. 22 = ILR 1937 Ker 724 (FB) + AIR 1950 Cal. 92 = ILR (1950) 2 Cal. 498 (DB) + AIR 1944 Pat. 261 = 23 Pat. 115 (DB) + AIR 1918 Cal. 933 = 44 Cal. 425 (DB) + 35 Mad. 231 (DB) + 9 Nag L. R 191 + AIR 1928 Cal. 250 (DB) + AIR 1931 Pat. 64 = 10 Pat. 234 (DB) + AIR 1923 Mad. 160 (DB) + 12 Oudh Cas. 45 (DB) + AIR 1937 Pat. 13 = 15 Pat. 372 (DB) + AIR 1927 All. 309 + 1901 Pun Re No. 10, p. 40.
6. 5 All. 1 = 9 Ind. App. 99 (PC).

Property in possession of mortgagee. Title to equity of redemption cannot be acquired by adverse possession when the land is in actual possession of the mortgagee.[7]

70. Adverse possession against mortgagee. A person may by asserting hostile title against a mortgagee also assert a hostile title against the mortgagor, and this may perfect his title to the equity of redemption. Adverse possession of the equity of redemption must be referable to some acts or dealings with the equity as distinct from the subject-matter of the mortgage.[8] Thus where the mortgagee is in possession and mortgagor is entitled to a portion of rents and profits, a third person asserting a hostile claim like receiving such rents and profits is in adverse possession of the mortgagor's right of the equity of redemption.[9] Similarly where a stranger renews a usufructuary mortgage in assertion of his own title in the equity of redemption he will be in adverse possession of the equity of redemption against the mortgagor from the date of such renewal.[10] Where certain property was usufructuarily mortgaged on 8-6-1974 for a term of 68 years. On 28-12-1880, the mortgagor assigned the equity of redemption to the plaintiff. The daughter's son of the original mortgagor, in spite of the assignment of the equity of redemption, filed a suit in 1925 for redemption of the mortgage. This suit was compromised in 1927. As per the terms of the compromise; half the hypotheca was taken by the mortgagee in discharge of the mortgage and the other half was retained by the daughter's son of the original mortgagor. The plaintiff was aware of the compromise. It was held that the assertion of title by the daughter's son of the original mortgagor was hostile to the plaintiff. The possession of half the hypotheca by the daughter's son and his permitting the mortgagee to be in possession of the other half to the knowledge of the plaintiff was a clear assertion of title adverse to him.[11]

Person dispossessing mortgagee. Where a third person who had dispossessed the mortgagee in possession, remained in possession of the mortgaged property for more than twelve years by asserting a hostile and independent title not only against the mortgagee but also against the mortgagor to his knowledge, he acquired full title not only against the mortgagee but also against the mortgagor with the result that the mortgagor could not claim redemption.[12] Similarly the possession of a person who pays off a usufructuary mortgagee and gets into possession is adverse to the mortgagor.[13]

Mere dispossession of mortgagee does not create title hostile to mortgagor. The possession of the trespasser ousting usufructuary mortgagee is adverse to the mortgagee and after lapse of twelve years, the trespasser will acquire the rights of the usufructuary mortgagee.[14] Where the mortgagee is in possession, the mere

7. AIR 1959 Punj 147=ILR 1959 Punj 385 (FB).
8. AIR 1945 Oudh 260=20 Luck 356 (DB).
9. AIR 1940 Bom. 225=ILR 1940 Bom. 458 (DB)+6 Cal. W N 601 (DB)+AIR 1923 Pat. 592 (DB)+AIR 1935 All. 542.
10. 28 Bom. 87 (DB).
11. AIR 1954 Andh 1.
12. PLD 1987 AJ&K 62=PLJ 1987 AJ&K 34+AIR 1960 Pat. 43+AIR 1960 Pat. 474.
13. AIR 1926 Cal. 752 (DB)+AIR 1960 Pat. 474+AIR 1936 Mad. 308+1883 All. W N 178 (DB)+AIR 1924 All. 834+19 Bom. 276 (DB).
14. 12 Bom. H C R 180 (DB)+1955 B L J R 235.

dispossession of the mortgagee by a third person does not make his title adverse to the mortgagor for that he has to do some overt act to show that he is holding adversely to the mortgagor. Where the mortgagee was in possession and the mortgagor was not entitled to any share in the actual enjoyment of property, possession of the person who ousts the mortgagee is not adverse to the mortgagor.[15] In such cases adverse possession against the mortgagor commences only where he redeems the mortgage and thus obtains a right to possession. Therefore, a suit for possession filed by the owner within twelve years of redeeming the property was not barred by limitation.[16]

Onus of proof. The onus of proving that the possession of a trespasser who dispossesses a usufructuary mortgagee in possession is adverse both to the mortgagor and to the mortgagee, is on the person setting up adverse possession.[17]

71. Adverse possession against tenant. A landlord who has let out property to a tenant cannot sue for possession of the property during the currency of the lease.[18] Where during the continuance of a lease the tenant is dispossessed by a third party who enters into possession of the property, the possession of such third party cannot be adverse to the landlord so long as the lease continues.[19] Thus a suit by the landlord for possession against the trespasser will not be barred by limitation if it is brought within twelve years of the termination of the lease although more than twelve years may have elapsed from the time when the trespasser first entered into possession.[20]

Possession adverse to tenant. Although the landlord's interest will not be affected by adverse possession against the tenant, latter's interest can be acquired by adverse possession by a third party,[1] and where the tenant's interest has been acquired by adverse possession for the statutory period by a third party, the landlord in whose favour the tenant relinquished his rights cannot recover possession from the trespasser.[2]

Adverse possession against landlord. It is true, the possession of a trespasser of land let out on lease does not become adverse as against the lessor until the

15. AIR 1935 All. 542+1957 Raj. L W 433+AIR 1957 All. 82+1955 B L J R 235+AIR 1953 Pepsu 101+AIR 1952 Mys. 119=ILR 1952 Mys. 351+AIR 1950 Pepsu 7=1 Pepsu L R 180+AIR 1935 Lah. 315=16 Lah. 724 (DB)+AIR 1929 Pat. 639=9 Pat. 32 (DB)+1941 Pat. W. N. 68+AIR 1923 All. 11+AIR 1925 Bom. 465=49 Bom. 539 (DB)+AIR 1924 Cal. 357 (DB)+AIR 1921 Bom. 295=45 Bom. 661 (DB).
16. 1979 SCMR 409.
17. 1930 Mad. W N 1148+AIR 1952 Mys. 119=ILR 1952 Mys. 351+18 Bom. 51 (DB)+1898 Pun Re No. 6, p. 8+AIR 1922 Bom. 94 (DB).
18. AIR 1940 Nag. 49=ILR 1940 Nag. 348 (FB)+AIR 1926 Mad. 18+18 All. 440 (FB)+AIR 1924 Cal. 900 (DB)+AIR 1917 Mad. 760=39 Mad. 1042 (DB).
19. AIR 1940 Nag. 49=ILR 1940 Nag. 348 (FB)+AIR 1960 Pat. 392 (DB)+1957 Jab. L J 192+AIR 1948 Cal. 71=ILR (1946) 2 Cal. 344+AIR 1948 Pat. 274=26 Pat. 278 (DB)+AIR 1914 Bom. 296=38 Bom. 53 (DB)+AIR 1918 Cal. 584 (DB)+AIR 1919 Cal. 586 (DB)+AIR 1921 Lah. 17+AIR 1921 Bom. 38=45 Bom. 1001 (DB)+AIR 1931 Pat. 89=9 Pat. 877 (DB)+AIR 1938 Pat. 220 (DB)+AIR 1922 Cal. 87=47 Cal. 948 (DB).
20. 29 All. 593 (DB)+AIR 1948 Cal. 71=ILR (1946) 2 Cal. 344+13 Cal. 101 (DB)+10 Cal. 57 (DB)+AIR 1926 Mad. 849 (*Reverse on* another point in AIR 1930 Mad. 430+19 Bom. 138 (DB)).
1. AIR 1921 Bom. 38=45 Bom. 1001 (DB)+AIR 1933 Pat. 269.
2. AIR 1917 Cal. 644 (DB)+26 Cal. 460 (DB).

termination of the lease. But this proposition is subject to the qualification that at no stage has the trespasser openly set out an adverse title to that of the owner. Where the lessor allows 12 years to elapse from the assertion of the hostile title, the title of the trespasser becomes indefeasible not only against the tenant but also against the lessor. There can be no better instance of setting up an adverse title than a case where, in a suit for recovery of rent by the landlord against the tenant and the trespasser, the latter being impleaded as a party on the ground that he had been let into possession of the property by the tenant the trespasser denies the title both of the landlord and the tenant.[3] Where the landlord's right to receive rent is interfered with and a third party collects such rents from the tenant in assertion of his own right, the landlord's interest is in the adverse possession of the third party who can acquire the landlord's interest by adverse possession for the statutory period.[4]

Person in possession not holding under a valid lease. Where the person in possession is not holding under a valid lease, possession of a trespasser who dispossessed him will be adverse to the landlord.[5] Similarly where a tenant is in possession under a void lease, and he is dispossessed by a third person, the possession of the third person is adverse to the landlord from the moment of his entry into possession.[6] When a non-transferable holding is transferred in its entirety, the possession of the transferee is adverse from its very inception and if the transferee remains in possession for over twelve years, the title of the tenant is completely extinguished. The landlord's right to recover the same is also similarly extinguished if he does not enforce his right to re-enter within the period of limitation. In such a case the adverse possessor acquires tenancy rights.[7]

Adverse possession commencing prior to lease. Where the land is in possession of a trespasser at the time of execution of a lease, the limitation *vis-a-vis* the trespasser commences from the date of his possession. No fresh period of limitation is created in favour of landlord from the date of the lease.[8]

Occupancy tenancy. It cannot be said that when the period of prescription against an existing occupancy tenant is different from the period of limitation against the landlord, a holder in adverse possession may be a trespasser *qua* the landlord and may yet claim a right to be substituted for the existing occupancy-tenant for the enjoyment of the latter's right.[9]

72. Onus of proof. In a case of adverse possession, onus of proof lies on the plaintiff seeking title by adverse possession.[10] The plaintiff should prove a better title than that of the defendant.[11] The plaintiff must prove extinguishment of title of the defendant and creation of a new title in him by adverse possession.

3. AIR 1963 Punjab 37.
4. AIR 1919 Bom. 45 (DB) + AIR 1959 Ker. 368 + AIR 1922 Cal. 87 = 49 Cal. 948 (DB).
5. 10 Cal. W N 343 (DB).
6. AIR 1937 Rang. 180 (DB).
7. AIR 1951 Orissa 235 = ILR 1950 Cut 589 (DB).
8. AIR 1915 Cal. 675 (DB).
9. NLR 1979 Rev. 43.
10. 1987 SCMR 1295 + 1975 SCMR 250.
11. AIR 1939 P. C. 201 = ILR 1939 Kar. (PC) 350 + AIR 1937 P.C. 69 = 16 Pat. 258 = 31 Sind L R 242 + 1955 B L J R 20 + 1954 All. L. Jour 671 + AIR 1941 Oudh 436 (DB).

Weakness of the evidence of the defendant cannot lend any support to the plaintiff who must succeed on the strength of his own case.[12] The plaintiff in addition to proving a better title, either proprietary or possessory, must also prove that such title has not been extinguished by lapse of time.[13] Under Article 142 the plaintiffs are to prove possession at any time within 12 years from the date of institution of the suit whereas under Article 144, the onus is on the defendants to show that the plaintiff's title has been extinguished by adverse possession for more than 12 years.[14] On such proof being given, the burden shifts to the defendant, who is then required to prove that his possession became adverse to that of the plaintiff more than twelve years before the date of the suit.[15]

A party who sets up a title by adverse possession, has to affirmatively prove his or her possession for over the statutory period and that his entry was with intention to assert such title.[16] Presumptions and probabilities cannot be substituted for evidence. Adverse possession has to satisfy necessarily the tests of adequacy, continuity, exclusiveness and publicity. The party, who asserts this, has necessarily to bear out his case with reference to these necessary elements. To say that when enjoyment for over 50 years was accepted, it would be tantamount to an enjoyment for over 60 years is wrong. The law cannot be interpreted that way.[17]

Revenue record, entries in. Mere entries in the revenue record were not sufficient to prove adverse possession of a part.[118]

Open, waste land, possession of. A very onerous burden is placed on the person who claims title by adverse possession to open and waste land. Such person must give clear, full and definite evidence relating to different points of time for the whole of the statutory period requisite for completing title by adverse possession. The evidence must be of acts which must establish that such person was, in fact, in adverse possession of the land. Further, the acts which are sufficient to constitute possession of the real owner may not be sufficient to constitute possession in the trespasser. Mere user of the land cannot be taken as definite assertion of proprietary rights and does not constitute adverse possession. There must be some definite quality in the possession before it can be called adverse.[19]

Permissive possession of defendant. Where in a suit for ejectment the plaintiff admits possession of the defendant and averse that possession is either permissive or as a tenant, he must establish the fact so asserted by him in order to entitle him to a judgment in his favour before the defendant is called upon to adduce

12. 1980 CLC 22.
13. AIR 1920 Pat. 256+32 Pat. 1017+1954 Ker L Tim 644+AIR 1954 Orissa 189+AIR 1953 Pat. 97 (DB)+AIR 1950 Trav-Co. 46=1949 Trav-Co. L R 80 (DB)+28 All. 760 (DB)+10 Cal. 577 (DB)+AIR 1918 Cal. 983 (DB)+AIR 1922 Lah. 432 (DB)+AIR 1920 Nag. 9 (*Following* 15 Bom. L R 445 (PC))+AIR 1917 Oudh 330=19 Oudh Cas. 374 (DB)+6 Nag. L R 160+17 Ind Cas 518 (All).
14. PLD 1976 Kar. 836 (DB)+PLD 1976 Quetta 23=1977 LN 557+PLD 1975 Pesh 60=PLJ 1975 Pesh 26+1971 DLC 775+19 DLR 745+PLD 1974 Kar. 235=PLJ 1974 Kar. 57 (DB).
15. PLD 1974 Kar. 235=PLJ 1974 Kar. 57 (DB).
16. PLD 1983 Kar. 510=PLJ 1983 Kar. 250+AIR 1962 MP 518.
17. AIR 1962 Andhra Pradesh 518.
18. 1987 SCMR 1295.
19. PLD 1983 Kar 510=PLJ 1983 Kar 250+PLD 1974 Kar. 235=PLJ 1974 Kar. 57 (DB).

rebutting evidence. If he discharges that onus and makes out a case which entitles him to the relief claimed, the onus shifts on to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same.[20] Where, however, it is admitted or found as a fact that the plaintiff has title to the suit land and is entitled to recover *khas* possession and the defendant asserts tenancy rights, permanent or temporary, and claims to hold the land in suit under the plaintiff by grant, contract, custom, prescriptive possession or by other means, the burden is on the tenant defendant to prove that he has the right of occupancy which he claims, and to such case the rule of law enunciated by the Full Bench in AIR 1921 Pat 237 has no application.[1]

Evidence, let in on both sides. Where evidence has been let in by both sides it cannot matter subsequently by which party it was given.[2]

Judgment not 'inter partes'. A judgment not *inter partes* cannot, in a suit for possession alter the burden of proof as between rival claimants in the suit.[3]

Delay in filing suit. A plaintiff whose suit is within the period of limitation need not show that he had sufficient cause for not filing the suit earlier.[4]

73. Onus of proof in cases falling under Article 142. In cases falling under Article 142 the plaintiff will have to prove that he was in actual or in constructive possession within twelve years of the suit.[5] The burden of proving the date of dispossession or discontinuance of possession under Art. 142 is on the plaintiff who, in order to succeed, must show that the dispossession or discontinuance of possession was not prior to 12 years before the suit was filed. The plaintiff cannot claim to be in constructive possession on the ground that she and the defendant are co-sharers, when in the plaint the plaintiff has stated that she was dispossessed by the defendant. If Art. 142 applies, it is not for the defendants to prove ouster and it cannot be said that unless the defendants do so, the plaintiffs are deemed to be in constructive possession within 12 years of the suit.[6]

Permissive possession of defendant alleged. Where the possession of the defendant is permissive in character being under pure licence, it is consistent with continuance of plaintiff's title in spite of such possession whatever may be its duration. In such a case unless the defendant succeeds in establishing that his possession has matured into title by reason of his adverse possession for over 12 years, he cannot prevent the plaintiff from obtaining possession exclusive or joint

20. AIR 1958 Pat. 386=37 Pat. 373 (FB) (34 Pat. 235, *Overruled;* AIR 1921 Pat. 237 (FB), *Distinguished*--AIR 1950 Pat. 484, *Approved*).
1. AIR 1958 Pat. 386=37 Pat. 373 (FB). (34 Pat. 235, *Overruled.* Observations as to onus of proof in AIR 1945 Pat. 453, held obiter and not binding, AIR 1950 Pat. 484, *Approved*).
2. 1971 DLC 455+AIR 1917 P.C. 18=44 Cal. 858=44 Ind. App. 104+AIR 1958 Manipur 47.
3. AIR 1937 P.C. 69=16 Pat. 258=31 Sind L R 242.
4. AIR 1930 All. 193=52 All. 501 (FB).
5. NLR 1981 UC 193=1981 CLC 462+PLD 1974 Kar. 235=PLD 1974 Kar. 57 (DB)+1971 DLC 455+1971 DLC 776+PLD 1953 B J 10+PLD 1956 Dacca 277=6 DLR 215+PLD 1969 Dacca 132=19 DLR 912 (DB)+PLD 1958 Lah. 99+AIR 1963 Mys. 1 (FB)+AIR 1940 Mad. 798 (FB) (AIR 1925 Mad. 834 and AIR 1927 Mad. 287. *Overruled*)+AIR 1935 All. 993+42 Pun L R 497+42 Pun L R 531 (DB)+AIR 1933 Sind. 279 (FB)+AIR 1940 Sind 49 (DB).
6. 1987 SCMR 1791+1985 CLC 2012=NLR 1985 Civ 566+AIR 1958 Pat. 530.

as the case may be of the property by means of a suit. But it is a question of fact whether the defendant's possession is permissive in origin and character and the plaintiff, seeking to eject the defendant, relying upon such a fact, has to assert and prove it.[7] Where the allegation of permissive possession proves false, Art. 142 applies. Thus if a person having title to the property sues for possession of the suit property on the allegation that the defendant was his tenant but fails to establish the tenancy pleaded, then it follows that he must have either been dispossessed or that he had discontinued his possession prior to the suit. Where a plaintiff pleads permissive possession and the defendant admits his possession but denies that he is in permissive possession (in either case the defendant's possession being admitted), if the plaintiff fails to establish his case, then it follows that the defendant's possession was without the consent of the plaintiff. From the time the defendant holds the property without the consent of the plaintiff, the plaintiff must be deemed to have been dispossessed. In such a case, law requires the plaintiff to establish that he was in possession of the suit property within 12 years from the date of the suit. Otherwise his rights get barred under Art. 142.[8]

Where in a suit for possession based on title an alleged oral lease in favour of the defendant is found to be bad, the case is one of admitted discontinuance of possession while the plaintiff was in possession on the strength of title and as such it is for the plaintiff to prove that he has subsisting title to the property on the date of the suit. In cases of this nature the defendant in admitted possession of the property is not obliged to lead evidence to prove that his possession has been hostile for the statutory period. The onus which is thrown upon the plaintiff to prove possession prior to the time when he was admittedly dispossessed and at some time within 12 years before the commencement of the suit can be said to be discharged only by proving such acts of ownership as are natural under the existing conditions of the property.[9] Where the plaintiff brought a suit for ejectment of the defendant and for possession of the house on the basis of his title under a sale deed, on the allegation that he had orally permitted the defendant to occupy it on the express understanding that he would vacate the premises whenever the plaintiff asked for it, but that he had failed to do so in spite of repeated demands. The defendant denied the title of the plaintiff's vendor and also that he was put in possession by the plaintiff. The story of oral entrustment and permissive possession of defendant was found to be false. It was held that the suit was governed by Art. 142 and not by Art 144, and in order to succeed in the suit the plaintiff was bound to show not only that he had title to the property but also that he or his predecessor-in-title was in possession of the house within twelve years next prior to the institution of the suit. The plaintiff having failed to prove his possession within twelve years of the suit, the suit was liable to be dismissed as barred by limitation.[10]

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7. AIR 1961 Madhya Pradesh 179.
8. AIR 1963 Mysore 1 (FB)+AIR 1962 Mys. 36+AIR 1938 Mad. 415+AIR 1960 Mys. 83.
9. AIR 1957 Trav-Co. 223+AIR 1957 Trav-Co. 310.
10. AIR 1961 Jammu and Kashmir 82+AIR 1935 Lah. 475 (FB)+AIR 1940 Mad. 798 (FB)+8 Moo Ind App 199 (PC)+ILR 16 Cal. 474 (PC)+ILR 17 Cal 137 (PC)+25 Mad. L J 95 (PC)+AIR 1954 Trav-Co. 449.

Discharge of onus. The question whether the plaintiff has proved that he was in possession and has thus discharged the onus lying on him is one of fact.[11] The plaintiff need not prove the actual date of dispossession, provided it is shown to have happened within twelve years of the suit.[12] Where the plaintiff proves dispossession or discontinuation of possession within 12 years the burden of proving that he has better title to retain possession shifts to the defendant.[13] It must however be noted that proof of proprietary title in the plaintiff will not, by reference to the principle that possession follows title, shift the burden of proof on to the defendant to show that the plaintiff was not in possession within twelve years of the suit.[14] Therefore a plaintiff cannot simply by omitting to assert anything beyond his title seek to take advantage on the ground of his title by suggesting that every possession with any body else than the title-holder should be presumed to be permissive.[15]

Possession need not be as owner. A person may claim a right other than that of ownership by prescription, therefore it is not necessary that every plaintiff in a suit under Art. 142 must allege that he was in possession as owner within 12 years of the suit. The only requirement under Art. 142 is that the plaintiff should prove to the satisfaction of the Court the fact of his having been in possession within twelve years of the institution of the suit. There is no question of proving possession as owner and it is enough for the plaintiff to prove the fact of his having been in possession within twelve years.[16]

Possession under trespasser. The mere fact of physical possession held by the plaintiff within statutory period is not sufficient for the purpose of Art. 142 if it is traceable not to an *animus* on his part to exercise it in assertion of his own right but to the sufference of the person in wrongful possession.[17]

74. Onus of proof in cases falling under Art. 144. In cases falling under Article 144 the plaintiff must show; that he is owner of the disputed property.[18] Where a plaintiff sues for possession on the basis of established title, he need not prove that he was in possession within 12 years of the suit.[19] But when defendant pleads adverse possession plaintiff must prove his possession within twelve years and if he fails he goes out of the Court. Merely, by proving his title, he does not

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11. AIR 1939 All. 626 (DB)+AIR 1941 Cal. 193 (DB)+34 All. 612 (DB)+AIR 1950 Pat. 484 (DB)+AIR 1948 Mad. 420+AIR 1927 Nag. 37+AIR 1922 Bom. 243=46 Bom. 920 (DB)+AIR 1937 Pat. 422+AIR 1917 Cal. 79 (DB).
12. 15 Suth W R 178 (DB)+AIR 1934 Lah. 245+AIR 1936 Mad. 919+ILR 1937 Mad. 147+AIR 1940 Sind 49=ILR 1939 Kar. 793 (DB).
13. 1971 DLC 776+AIR 1924 Cal. 977 (DB) (*e.g.* by showing adverse possession for 12 years)+1942 Oudh W N 281+3 Bom. L R 246 (DB)+1879 Pun Re No. 102, p. 276.
14. AIR 1962 Manipur 36+AIR 1938 Mad. 415+AIR 1947 Bom. 300+16 Cal. 473=16 Ind. App. 23 (PC)+15 Bom. L R 445 (PC)+AIR 1940 Mad. 798=ILR 1940 Mad. 953 (FB) (AIR 1925 Mad. 834 and AIR 1927 Mad. 287, *Overruled*)+AIR 1921 Pat. 237=6 Pat. L. Jour 478 (FB)+AIR 1955 Mad. 542+AIR 1954 Trav-Co. 449 (DB)+AIR 1953 Assam 19 (AIR 1934 Oudh 21 *Not foll.*)+AIR 1949 Mad. 673+AIR 1947 Pat. 475+AIR 1940 Sind 49=ILR 1939 Kar. 793 (DB)+AIR 1946 All. 389=ILR 1946 All. 178 (DB).
15. AIR 1961 Madhya Pradesh 179.
16. 1981 CLC 1411+AIR 1964 Bombay 287.
17. AIR 1951 Mad. 356.
18. 1981 CLC 1411+PLD 1974 Kar. 235=PLJ 1974 Kar. 57+AIR 1920 Low Bur 175 (DB).
19. PLD 1983 Kar. 510=PLJ 1983 Kar. 250+1981 CLC 1411+1979 SCMR 481.

become entitled to possession.[20] If in such a suit the plaintiff proves his title he is entitled to a decree unless the defendant succeeds in establishing his adverse possession for a period of more than 12 years.[1] In such cases the burden lies on defendant to show as to from which date, how, and by which overt acts he perfected his title as alleged and plaintiff's suit could not be dismissed as time-barred for not showing in his plaint the date from which he was dispossessed by defendant.[2] Ordinarily in a suit for ejectment the plaintiff must prove his antecedent title and possession within the statutory period; but cases may arise where possession may be inferred only from title and other circumstances of the case, even though the evidence may not conclusively establish actual physical possession. The presumption of possession arising from title is not available where the land is capable of actual possession by cultivation or otherwise and there is no evidence of possession or the evidence adduced is unworthy of credit. It is however available in all cases, where the evidence is equally strong and apparently equally well balanced on both sides so that it is difficult to determine where the truth lies. The statutory period of possession has to be proved before institution of suit. It would not be affected by possession of the defendant by trespass after institution of the suit.[3]

Permissive possession of defendant. The plaintiff must under Art. 144 show that the defendant's title is only derivative, permissive or not inconsistent with his title.[4] Where a person has entered into possession as a licensee, his possession continues as such unless the licencee is revoked or he changes it into adverse possession, and therefore the onus is on him to establish that his possession was adverse to the knowledge of the owner and with his acquiescence.[5] If the plaintiff fails to prove the allegation that defendant's possession was permissive and also that he was in possession within 12 years of the suit, his suit must be dismissed.[6]

When onus shifts to defendant. Where the plaintiff lays the foundation for applicability of Art. 144, the onus is on the defendant to prove that he has been in adverse possession for more than 12 years before suit.[7] In other words the burden shifts to the defendant to show that his possession became adverse more than twelve years before the suit after the plaintiff had shown his ownership and that the defendant's possession was inconsistent with his title;[8] and for computing 12

20. 1980 CLC 169 (SC AJ&K).
1. PLD 1978 Kar. 27.
2. 1979 SCMR 481 + PLD 1983 SC (AJ&K) 89.
3. AIR 1963 Orissa 29.
4. AIR 1931 P.C. 186 = 10 Pat. 407 = 58 Ind. App. 29 + 32 Pat. 1017 + 1954 Ker. L Tim 644 + 1942 Nag. L. Jour 431.
5. AIR 1959 Madh Pra. 23.
6. 1943 All W N 328.
7. PLD 1967 Pesh. 304 + AIR 1950 Pat. 484 (DB) + AIR 1957 Trav-Co. 14 = ILR 1956 Trav-Co. 452 (DB) + AIR 1955 Ajmer 28 + 7 Sau L. R 70 + AIR 1954 Orissa 51 + AIR 1953 Pat. 267 + AIR 1952 Pat. 201 (DB) + AIR 1952 Pepsu 46 + AIR 1951 All. 626.
8. AIR 1965 S.C. 1553 + AIR 1917 P.C. 18 = 44 Cal. 858 = 44 Ind. App. 104 + AIR 1934 P.C. 77 = 61 Ind. App. 50 = 56 All. 111 + AIR 1940 Mad. 798 = ILR 1940 Mad. 953 (FB) + AIR 1934 All. 993 = 57 All. 278 (FB) + AIR 1958 Raj. 265 = ILR (1957) 7 Raj. 865 (DB) + AIR 1942 Bom. 268 = ILR 1942 Bom. 595 (DB) + AIR 1941 Lah. 241 + AIR 1946 Pat. 185 (DB).

years he can avail of the possession of any person or persons through whom he claims.[9]

75. Declaratory suits, onus of proof. In a suit for confirmation of possession by declaration of title, the plaintiff must shew not only that he is in possession but also that he has title.[10] Where he proves such title, it is for the defendant to show that the title has been lost by the plaintiff by his adverse possession of property for the statutory period.[11] Therefore where in a suit by the plaintiff claiming to be the rightful heir for declaration and possession of property, the defendant claims to be in possession on the basis of an adoption deed, the burden is not on the plaintiff to disprove the fact or validity of the alleged adoption. It is sufficient if the plaintiff establishes his own case and treats the adoption as of no effect.[12]

Person claiming title by adverse possession. Where a person sues for a declaration of title to property on the ground that he has acquired such title to it by adverse possession for the requisite period, the onus is on him to show his adverse possession for the statutory period,[13] and further that such possession had all the qualities of adequacy, continuity and exclusiveness which should qualify such adverse possession.[14] Entries in relevant columns of revenue record produced by and relied upon by both sides did not show that respondents' plaintiffs' predecessors-in-interest had been in possession of specific land in dispute. Respondents, in the circumstances could not be considered to be in possession of land in dispute, much less in adverse possession thereof.[15]

Submerged land. Where *A* claims title to land which has been reformed after submersion, the onus is on him to show that he was the owner thereof before the submersion.[16]

76. Starting point of limitation under Art. 142. In a suit falling under Article 142, time runs from the date of dispossession, where the suit is based on dispossession.[17] Therefore absence from the place where the disputed land was situated would not entitle the appellant to file a belated suit as under Article 142 a suit for recovery of possession of land in adverse possession of another person was to be filed within 12 years from the date of adverse possession and not from the date of knowledge of such possession.[18] Where *R* purchased on 1-9-1943 a house from *D* the owner, and the house was in occupation of a tenant *K* who set up a

9. AIR 1965 S.C. 1553.
10. 19 Suth W N 282 (DB) + AIR 1941 Nag. 357 = ILR 1942 Nag. 564 (DB).
11. AIR 1917 All. 130 + AIR 1942 Cal. 233 = ILR (1941) 2 Cal. 298 (DB).
12. AIR 1951 Madh B 40.
13. AIR 1930 P.C. 281 = 11 Lah. 638 = 57 Ind. App. 273 + AIR 1942 P.C. 47 = ILR 1942 Kar. (PC) 122 + AIR 1916 P.C. 21 = 39 Mad. 617 = 43 Ind App. 192 + AIR 1944 Nag. 20 = ILR 1943 Nag. 726.
14. AIR 1922 P.C. 181 = 48 Ind. App. 395 = 44 Mad. 883 + AIR 1945 All. 121 = ILR 1945 All. 75 (DB).
15. PLD 1981 SC 302 = PLJ 1981 SC 683.
16. AIR 1935 P.C. 125.
17. 16 Cal. 473 = 16 Ind. App. 23 (PC) + AIR 1958 Pat. 530 + AIR 1957 All. 77 = ILR (1956) 1 All. 421 (DB) + AIR 1950 Assam 71.
18. PLD 1977 Quetta 79 = PLJ 1977 Quetta 626.

hostile title on 7-6-1944. A suit for possession by *R* on 30-1-1956 was held to be within time.[19]

Where, after dispossession, the owner succeeds in getting back possession but is again dispossessed time for a suit for possession will run from the second dispossession.[20] Even a forcible dispossession of the wrong-doer by the true owner will prevent the running of time and that this would be so even if the wrong-doer should get back possession from the plaintiff in pursuance of a decree under S. 9 of the Specific Relief Act, 1877.[1]

Discontinuance of possession. Where the suit is based on discontinuance of possession time run from the date of such discontinuance.[2]

Dealings between defendants. Where the plaintiff has been dispossessed and defendants are in adverse possession, subsequent transactions between the defendants themselves will not give a fresh starting point.[3] Thus where the prior sale deed in favour of *A* was followed by a subsequent sale-deed in favour of *B* which was duly registered. The prior sale deed was registered after the second sale deed. In a suit for recovery of possession by *A* against *B* limitation runs from the date of sale in favour of *A* and not from the date of registration of his sale deed because absence of registration did not disentitle *A* to bring a suit for possession.[4]

Knowledge of adverse possession. Article 144 did not provide for computation of period of limitation from date of knowledge of owner but from date of possession becoming hostile, open and adverse to owner.[5] A person cannot be permitted to urge for the purpose of saving the bar of limitation, that either business or compulsion took him far away from the country; and that therefore there was no opportunity or means for him to know that a trespasser had occupied his property in his absence. The fact that he was not actually aware of the fact that other persons were in adverse possession of the property is also irrelevant. The test is whether he exercised due vigilance in regard to what was happening. Due vigilance will not cover a case where a person is so negligent of his own interest during his absence abroad as to leave no one to look after his properties. If certain persons in whom he places implicit faith act against his interest, it will not cover the requirements of the statute.[6]

77. Starting point in suits falling under Article 144. The question when the possession of the defendant becomes adverse to the plaintiff is one of fact to be decided with reference to the facts and circumstances of each case.[7] In a suit falling under Art. 144, time runs from the date when the possession of the

19. PLD 1968 Supreme Court 342=20 DLR (SC) 286.
20. AIR 1965 Kerala 177+AIR 1925 Cal. 270+AIR 1956 Madh B 166=ILR 1956 Madh B 296+AIR 1929 Nag. 129+33 Cal. 821 (DB)+AIR 1933 Lah. 22.
1. 9 Cal. W N 1061 (DB)+5 Bom. 387+AIR 1942 Mad. 728=ILR 1943 Mad. 122 (DB).
2. AIR 1918 P.C. 180=46 Cal. 694=46 Ind. App. 60+AIR 1954 Pat. 368.
3. 1 Ind. App. 335 (PC).
4. AIR 1958 Pat. 193.
5. 1984 CLC 2351.
6. AIR 1963 Madras 137.
7. AIR 1923 Cal. 734=50 Cal. 577 (DB)+AIR 1952 Pat. 201 (DB)+1913 Pun L R No. 75, p. 288 (DB)+1910 Pun Re No. 20, p. 589 (DB)+3 Mad. 212 (DB).

defendant becomes adverse to the plaintiff,[8] and not from time of acquisition of title or interest of plaintiff,[9] provided the true owner is not under disability and is capable of suing.[10] Thus where under a grant each grantee has to hold property for life. On the death of the heir next heir is to take as heir of grantee and not as heir of his predecessor limitation starts against the heir when his title accrues on the death of previous heir.[11] Where the defendant was in possession in pursuance of an agreement of sale, but subsequently the plaintiff refused to honour the agreement. It was held that the adverse possession would commence from the date when the plaintiff refused to abide by the agreement and the earlier possession being permissive could not be tacked with it. As 12 years had not elapsed from the date of breach of agreement, suit for possession by the plaintiff could not be resisted by a plea of adverse possession.[12]

Evacuee property. Where at the time of demarcation of the plot in dispute, the Deputy Settlement Commissioner observed by order, dated 20th December, 1961 that the petitioner/defendant had wrongfully taken over possession of the plot bearing No. 3512/1 transferred to the respondent/plaintiff instead of plot bearing Khasra No. 3512/2. Thereafter, the Permanent Transfer Deed was also issued on 30th April, 1963. The period of limitation for instituting a suit for possession would commence from 20th December, 1961 when the factum of the alleged wrongful possession of the plot in dispute, came to the knowledge of respondent/plaintiff, because from that date at least the possession of the defendant had become hostile and adverse.[13] Where appellants' predecessor was allotted a plot in 1951. Respondent encroached upon it in 1952 by raising permanent construction and boundary wall. That amounted to hostile, overt and notorious act of dispossessing owner and he acquired title by, adverse possession when hostile possession, continued for more than 12 years.[14]

Litigation between parties during adverse possession. Neither a provision of law enacted nor any case-law is available which could attract or warrant suspension of that period towards calculating the period of limitation which was spent in a previous litigation between the parties where plaintiff was a claimant of title of the land in suit by adverse possession against the defendant who was the true owner of the land in suit. The owner of the land in dispute took no steps for recovery of possession which he was entitled to take within 12 years from the ouster or the disclaimer established in a previous suit. Therefore no benefit for the period spent in previous litigation started by the opposite-party to set up adverse possession could be given to the owner of the property who took no steps for possession within the time prescribed by law as way for bringing a suit for

8. PLD 1983 SC (AJ&K) 89+PLD 1976 Lah. 923+PLD 1964 Dacca 498=15 DLR 628 (DB)+AIR 1941 Pat. 219 (DB)+AIR 1923 Lah. 642 (DB)+AIR 1933 Bom. 217 (DB)+AIR 1917 Lah. 236 (DB).
9. PLD 1983 SC (AJ&K) 89=NLR 1983 AC 294.
10. PLD 1964 Dacca 498=PLR 1965 Dacca 177=15 DLR 628 (DB).
11. AIR 1946 P.C. 59=ILR 1946 Kar. (PC) 24+AIR 1946 P.C. 165=ILR 1946 Lah. 569=ILR 1946 Kar (PC) 138.
12. 1980 CLC 1785.
13. 1984 CLC 1258=PLJ 1984 Lah. 38=1984 Law Notes 17.
14. 1984 CLC 2351.

possession of his property was open to him and there was nothing to preclude him from doing so within limitation prescribed for such a suit.[15]

Defendant's possession after suit. Possession after suit cannot be reckoned in computing the period of the defendant's adverse possession.[16]

Religious institutions. Where the Manager of a religious institution has alienated the property of the institution and his successor seeks to take back its possession, if Art. 144 applies to the case the starting point of adverse possession is the death, resignation or removal of the manager and not the date of the election or the appointment of his successor.[17]

Trustee, alienation by. Where *A*, trustee of a house, in defiance of trust gifts it away as his own property, to *B* his wife, who occupies the said house in her capacity as donee and subsequently sells it to *C* (a third party) for valuable consideration a suit by the beneficiaries claiming under the trust against *C* and *B* for recovery of the alleged trust property would be governed for purposes of limitation neither by S. 10 nor by Art. 134 but by Art. 144 and the starting point of limitation would be the date of gift-deed by *A* in favour of *B* on which day her possession of the house became adverse to the beneficiaries. The period of *B*'s adverse possession can be tacked to that of *C*'s adverse possession in his capacity of a bona fide purchaser without notice.[18]

Joint family property, alienation of. Where a co-parcener alienates his undivided share in joint family property the starting point of limitation for a suit by the alienee for partition and possession would be the date of his purchase from which date the possession of the non-alienating co-parcener could be said to be adverse to the alienee.[19] But where the suit is for possession of undivided interest of a separated member of a Hindu family the suit must be filed not within 12 years from the date of purchase but within 12 years from the date on which title is actually denied.[20] A co-parcener born after the alienation by a co-parcener in excess of his power does not get a separate cause of action and even as against him time runs from the date on which the alienee's possession becomes adverse to the co-parcenary estate.[1]

Fraud by defendant. Where the respondent was kept away from knowledge of their right to file suit because of appellants fraud. Time for purpose of limitation was to be computed from the date of discovery of fraud.[2]

Mortgagee. Time against a mortgagee who was not entitled to immediate possession of property where the mortgage was executed prior to the adverse possession against mortgagee commenced, begins to run only from the date when the mortgagee becomes entitled to immediate possession.[3]

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15. 1980 CLC 1957 (AJ&K).
16. AIR 1916 Mad. 415 (DB).
17. AIR 1941 Mad. 449 = ILR 1941 Mad. 599 (FB).
18. AIR 1961 Allahabad 434.
19. AIR 1961 Andh Pradesh 279 (DB).
20. AIR 1960 Bom. 50 = ILR 1959 Bom. 898 (DB).
1. AIR 1940 Bom. 136 = ILR 1940 Bom. 109 (DB).
2. 1979 CLC 663.
3. AIR 1944 Nag. 370 = ILR 1944 Nag. 743 (DB) + AIR 1944 Pat. 268 = 23 Pat. 115 (DB).

Reversioner. Where a Hindu widow having life estate entered into a compromise enlarging her interest into absolute interest and the widow gave away her property by will. The compromise was not binding on the reversioner and limitation for a suit by him for possession starts from the date of the widow's death. The reversioner need not bring a suit during the lifetime of the widow.[4]

Auction-purchaser. For the purpose of a suit by a Court auction-purchaser is to obtain possession of property sold in execution of a mortgage decree time runs from the date of Court sale.[5] But in the case of a purchase at a revenue sale the right of the purchaser to possess the auction-purchased property does not accrue directly or immediately upon his auction-purchase. His right accrues only after the sale becomes final and conclusive.[6]

Minor or lunatic, suit by. In cases where it is clear that the person entering into possession was under no duty to the lunatic or minor and entered into possession for his own benefit and in assertion of a title hostile to that of the lunatic or minor, limitation would begin to run from the date when he so took possession, though the lunatic or minor would be entitled to file a suit within 3 years from the date when his disability ceases or the period of twelve years from the date of dispossession, whichever ends, later.[7] Thus where a Hindu joint family consisted of co-parceners some of whom were minors. Property belonging to the co-parcenary was alienated by the manager and the natural guardian of the minors was made a party to the alienation. The minors after lapse of three years after attaining of majority but within 12 years from the date of the alienation filed a suit for setting aside the sale and for recovery of possession of the alienated property from the transferees. It was held that the suit was not barred by limitation as Art. 144 and not Art. 44 applied to the suit.[8]

Rights relating to land, suit for. To a suit for exercise of grazing rights in defendant's land and removal of obstruction Article 144 applies and the cause of action is deprivation of the plaintiff's right.[9]

Fraud by defendant. Where by their fraud the defendant kept the plaintiff out of knowledge of his right to sue. The time for the purpose of limitation shall be computed from the date of discovery of the fraud by the plaintiff.[10]

Decree holder not executing decree. After the lapse of the period of limitation prescribed for the execution of a decree obtained by a person, the adverse possession of the party in possession starts automatically and if he is able to retain his possession after the period of limitation which was to be availed of by the decree-holder and that for not being availed of by him, possession still continued of the judgment-debtor for a period of more than 12 years without the consent of the decree-holder, then he would be entitled to a decree for adverse possession.[11]

4. AIR 1958 Cal. 447 (DB).
5. AIR 1958 Ker. 22 = ILR 1957 Ker. 724 (FB).
6. AIR 1959 Cal. 78 (DB).
7. PLD 1954 Dacca 104 = PLR 1952 Dacca 578 = 5 DLR 383.
8. AIR 1964 Madras 352 (DB).
9. AIR 1958 Punj. 187 = ILR 1958 Punj. 822 (DB).
10. 1980 CLC 205.
11. PLD 1980 AJ&K 26.

78. Defendant made party after limitation. If a person in possession is added as defendant more than twelve years after the accrual of the cause of action, the suit will be barred as against him.[12] But where a defendant is impleaded in proper time but claims his share of the suit property in a written statement submitted twelve years after the cause of action, his claim will not be barred by limitation.[13]

79. Tacking of possession. Where the suit is one governed by Art. 1 a succession of wrong-doers claiming through one another can defeat the right of the owner by tacking on the period of their adverse possession, though the possession of each one of them has been only for a period of less than twelve years.[14] Thus a mortgagor, for the purpose of the Limitation Act, can avail himself of or take on to his own adverse possession the adverse possession of his mortgagee.[15]

Independent trespasser. Where the wrong-doers are independent trespassers on the property their possession cannot be tacked on together for the purpose of computing the period of limitation under Article 144.[16] Thus where consequent to a dispute as to title of property the collector took possession to secure Government revenue. Surplus profits and possession of property subsequently was handed over to one of the claimants. The other claimant who was found to be owner sued for possession; it was held that for the purposes of computing the period of limitation the person to whom possession was given by Collector cannot tack on his period of possession to that of Government.[17] Similarly where the judgment-debtor never had anything more than an immature title which came under suspension before it matured; the auction-purchaser derives no benefit by tacking his period of possession to the suspended possession of the judgment-debtor.[18]

Suit governed by Article 142. Where a suit is governed by Article 142, continuous adverse possession for the statutory period, though by a succession of persons not claiming under one another, bars the true owner from suing for possession.[19]

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12. AIR 1927 Cal. 216=54 Cal. 114 (DB)+15 Mad. 19 (DB)+1913 Mad. W N 134 (DB).
13. AIR 1929 Bom. 345=53 Bom. 472.
14. PLD 1971 Pesh. 140+PLD 1962 A. J & K. 11+AIR 1965 S.C. 1553+AIR 1964 Pat. 31 (DB)+AIR 1919 Pat. 176+AIR 1957 Pat. 37 (DB)+AIR 1953 Assam 19+29 Mys. L J 54 (DB)+ILR (1951) 2 All. 278+AIR 1950 Pat. 191+AIR 1935 Mad. 449 (DB)+AIR 1926 All. 697 (DB). (Transferee of the trespasser)+AIR 1940 Oudh 184+91 Ind. Cas. 556 (Mad)+AIR 1923 Rang. 261=1 Rang. 176+19 Bom. 620 (DB)+AIR 1921 All. 389=43 All. 164 (DB)+9 Oudh Cas. 230+AIR 1915 Oudh Cas. 50=18 Oudh Cas. 289 (DB)+AIR 1932 Cal. 300=59 Cal. 344+3 Cal. L. J 53*n* (DB)+AIR 1946 Bom. 193.
15. AIR 1934 P.C. 23=61 Ind. App. 78=61 Cal. 262.
16. PLD 1953 Dacca 243=PLR 1952 Dacca 378+PLD 1962 A J & K 11+AIR 1965 S.C. 1553+AIR 1917 P.C. 18=44 Cal. 858=44 Ind App 104+AIR 1934 P.C. 23=61 Ind. App. 78=61 Cal. 262+AIR 1953 Pat. 267+AIR 1951 Orissa 248=ILR 1950 Cut 532 (DB)+AIR 1948 Oudh 54=22 Luck 93 (DB)+AIR 1947 Bom. 206=ILR 1947 Bom. 228+AIR 1943 Oudh 91=18 Luck 346 (DB)+AIR 1946 Bom. 193+AIR 1946 Mad 281.
17. 5 All. 1=9 Ind. App. 99 (PC).
18. AIR 1944 All. 17=ILR 1943 All. 892 (DB).
19. 1972 SCMR 34+PLD 1964 Dacca 655=16 DLR 56+AIR 1962 Madhya Pradesh 31+AIR 1939 Bom. 322+ILR (1951) 2 All. 278+29 Mys. L J 141 (DB)+AIR 1949 Mad. 673+AIR 1939 Lah. 217=ILR 1939 Lah. 399+1913 Mad W N 134 (DB)+AIR 1917 Nag 7=14 Nag. L.

Possession of all trespassers must be adverse to owner. In order to complete a title by adverse possession by tacking on the periods of two or more persons, the possession of each of those persons must have been adverse to the true owner.[20]

Precarious possession does not qualify as adverse possession. Possession to qualify for title by adverse possession must not be mere precarious possession. Where a person has derived title from Government and he tacked possession in expectation of registration in his favour his possession is not adverse but only precarious. Such possession cannot be tacked to the possession subsequent to registration of property in favour of the plaintiff.[1]

80. Effect of adverse possession. Where *A* is in adverse possession of land belonging to *B* for a period of twelve years or more, *B*'s title is extinguished and *A* gets good title to the land.[2] The true owner whose title has been extinguished by adverse possession is not remitted to his title by his dispossessing the adverse possessor.[3] Therefore if the former dispossesses the latter, the latter can sue the former for possession and the suit cannot be resisted on the ground that he was rightly in possession and had title.[4]

Rights necessary to principal right. Where the principal right to sue for possession is extinguished under S. 28, rights accessory thereto will also be extinguished.[5]

81. Title, the adverse possessor acquires. The nature and effect of possession must depend upon the nature and extent of the rights asserted by the conduct or the express declaration of the person in possession.[6] Thus where *A* and *B* are in possession of property belonging only to *A* as the joint property of *A* and *B*. Enjoyment by *B* is adverse to *A*, so far as his separate right thereto is concerned; if *A*'s suit for separate possession is barred, his right to separate possession would be barred.[7] A party entering into possession of a property under an alienation which does not purport to effect an absolute transfer in the property, would in the event of that transfer turning out to be invalid obtain by continued possession a prescriptive title only to that limited right.[8]

R 82+AIR 1921 Bom. 48=45 Bom. 570 (DB)+AIR 1931 Oudh 177+AIR 1930 Lah. 809+AIR 1922 Mad. 59=45 Mad. 370 (DB).

20. AIR 1938 Lah. 187 (DB)+AIR 1918 Cal. 532 (DB)+33 Bom. 317 (DB)+AIR 1915 Mad. 121 (DB)+AIR 1923 Cal. 82 (DB)+AIR 1934 Pat. 31.
1. AIR 1957 Ker. 141=ILR 1957 Ker. 454.
2. AIR 1942 Pat. 188 (DB)+AIR 1941 Cal. 223=ILR (1940) 2 Cal. 393 (DB)+AIR 1927 Mad. 244+AIR 1920 Nag. 51=16 Nag. L. R 87+11 Moo Ind App 345 (PC)+AIR 1955 Pat. 292 (DB)+AIR 1953 Madh B 184 (DB).
3. AIR 1925 Oudh 20 (DB)+AIR 1953 Madh B 184 (DB)+AIR 1920 Cal. 800 (DB)+AIR 1928 Nag. 280+6 Cal L Jour 621 (DB).
4. 24 Mad. 387=28 Ind. App. 81 (PC)+11 Moo Ind. App. 345 (PC).
5. AIR 1940 P C 116=ILR 1940 Lah. 493=ILR 1940 Kar. (PC) 251=67 Ind App 251+AIR 1940 Cal. 65.
6. PLD 1968 Dacca 701+AIR 1939 Cal. 354 (DB)+AIR 1950 All. 496+AIR 1920 Oudh 228+5 Bom. L. R. 186 (DB)+1902 Pun L R No. 140, p. 614 (DB)+AIR 1916 Mad. 718=38 Mad. 1 (DB)+AIR 1914 Mad. 477=37 Mad. 373 (DB)+AIR 1946 Bom. 193.
7. 24 Mad. 387=28 Ind. App. 81 (PC).
8. AIR 1959 Ker. 172=ILR 1959 Ker 5 (DB).

Hindu widow. Where a Hindu woman claiming only a limited estate entered into wrongful possession of the property to which she was not entitled. She became entitled only to a limited interest in the property adversely possessed.[9] But where there is no evidence to show that she intended to take only as a limited owner she prescribes for absolute title and it is for him, who claims an exclusive title, to show that possession arose in some way which had preserved his right.[10] The property does not become an accretion to her husband's estate unless it is shown that she took adverse possession of the property as representing her husband's estate.[11]

Tenant, adverse possession by. If the trespasser has been in adverse possession claiming limited interest of a tenant, he shall, if the adverse possession is otherwise complete, acquire a tenancy right subordinate to the right of the person against whom he claims adverse possession. In such a case the landlord's possessory right is extinguished, but his proprietary interest, that is, his right to receive rent for the land remains unaffected.[12] This is so even when the owner treats the person in possession as a trespasser but the latter claims to be a tenant for a period of twelve years.[13] When initially a person was inducted upon the land as a lessee, his possession will not be regarded as that of a licensee on the instrument of lease being inoperative, payment of rent notwithstanding. He cannot acquire by prescription a right higher than the right which the instrument of lease purported to convey to him. The transaction was admittedly a transaction of lease and therefore when he entered into possession under a void lease, he can acquire only the right of a lessee by prescription.[14]

Manager, trustee or mutwalli, adverse possession of. Where a person is in possession claiming to be a manager, trustee or Mutwalli of an institution, he takes only in that capacity.[15]

Mortgagee. A mortgagee remaining in possession of mortgaged property after extinguishment of mortgage within any open or express repudiation of the relation created by the mortgage is not in contemplation of law holding adversely to the mortgagor, whatever may be his secret intention. His possession is presumed to be in subordination to the legal title.[16] Even if a person has entered into possession as

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9. AIR 1928 Nag. 329+38 Pat. 1109 (DB)+AIR 1949 Bom. 80=ILR 1949 Bom. 843+AIR 1946 Nag 277=ILR 1946 Nag. 159+AIR 1942 All. 42+AIR 1946 Bom. 193+AIR 1933 All. 822 (DB)+AIR 1914 Bom. 47=38 Bom. 227 (DB)+AIR 1914 Nag. 81=10 Nag. L R 35+AIR 1926 Oudh 497 (DB)+AIR 1928 Oudh 227+AIR 1928 Pat. 220=7 Pat. 163 (DB).
10. AIR 1957 Ker. 86=ILR 1957 Ker. 287 (DB).
11. AIR 1959 Bom. 504=ILR 1958 Bom. 797.
12. PLD 1968 Dacca 701=19 DLR 705 (DB)+AIR 1928 P.C. 146=7 Pat. 642=55 Ind App. 212+AIR 1936 P.C. 183=63 Ind App 261=59 Mad. 809+ILR (1952) 1 Cal. 288 (DB)+AIR 1919 Cal. 782 (SB)+AIR 1942 Cal. 233=ILR (1941) 2 Cal. 298 (DB)+AIR 1941 Cal. 541=ILR (1941) 2 Cal. 44 (DB)+22 Pat. L Tim 200 (DB)+AIR 1940 Pat. 131 (DB).
13. PLD 1971 Kar. 553.
14. AIR 1957 Pat. 321 (DB).
15. AIR 1928 Mad. 268 (DB)+AIR 1914 Mad. 477=37 Mad. 373 (DB)+AIR 1930 All. 866 (DB).
16. AIR 1959 Punj. 561=ILR 1959 Punj. 2323 (DB).

a mortgagee under a void deed, he acquires by prescription title as a mortgagee.[17] Where a person is in possession as mortgagee under unregistered mortgage and there is no assertion of absolute title, he acquires status of a mortgagee by adverse possession for 12 years by prescription.[18] It is to be noted in this context that a plea of adverse possession by mortgagee must be specifically raised in written statement and necessary state of facts pleaded.[19]

Stranger taking possession of mortgaged property. Where a stranger entered into adverse possession of property burdened with simple mortgage, he only prescribed for the interest of the mortgagor, *i.e.*, the right to redeem.[20]

82. Evidence of adverse possession. Where the evidence as to possession is conflicting the Court should rely on the presumption that possession follows title in the case of vacant land.[1] Acts sufficient to constitute possession in the owner may not be sufficient to constitute possession in the trespasser.[2] Where adverse possession was claimed on basis only of entries in revenue record. Defendant-respondents otherwise lead no reliable evidence to prove any open and overt act of hostility to convert their possession as adverse to plaintiff to his knowledge and necessary ingredients of adverse possession were not proved by them. Their claim was rejected.[3] Where the question of acquisition of title by adverse possession has to be determined, clear, full and definite evidence relating to different points of time should be required.[4] An inference of adverse possession may be drawn from circumstances, such as long possession and the absence of proof of licence or agreement between the owner and the occupier.[5] Where the defendant had in an earlier suit taken the plea that his possession was permissive and not hostile, it would be sufficient evidence to negate his plea of adverse possession during that period in a subsequent suit.[6]

Relations between parties. Act alleged to create adverse possession must be scrutinized in the light of the relations between the parties.[7] Where the parties are close relations very much more and better and stronger evidence of positive character is necessary to establish title by adverse possession in favour of one of them.[8]

Oral evidence. Acts giving rise to the inference of possession may be proved by oral evidence.[9] But no importance can be attached to the evidence of witnesses

17. AIR 1960 Raj. 1 = ILR (1959) 9 Raj. 1121 (DB). (AIR 1958 Raj. 102, *Overruled:* View in AIR 1938 Pat. 479, held obiter and *Dissented from*).
18. AIR 1959 Pat. 164 (DB). (Observations in AIR 1938 Pat. 479, held obiter and not correct) + AIR 1960 Raj. 1 = ILR (1959) 9 Raj. 1121 (SB).
19. AIR 1959 Pat. 230 (DB).
20. AIR 1941 Nag. 72 = ILR 1942 Nag. 145 (DB).
1. PLD 1967 Lahore 1051.
2. AIR 1938 Mad. 454 (DB) + AIR 1927 Cal. 313 = 28 Cri. L. Jour 343 (DB).
3. 1987 CLC 916.
4. AIR 1938 Cal. 31 (DB) + AIR 1952 J&K 24 = 10 J & K L R 186 (DB).
5. AIR 1931 All. 323 + AIR 1949 All. 289 + AIR 1939 Bom. 405 (DB) + AIR 1933 Sind 279 = 27 Sind L R 341 (FB) + 23 Mad. 10 = 26 Ind. App. 210 (PC).
6. 1976 Dhaka L R (SC) 85.
7. AIR 1939 Pat. 399 + 1913 Mad W N 674 (DB) + AIR 1934 Pesh 7 (DB).
8. AIR 1955 Mys. 33 = ILR 1955 Mys 227.
9. 9 Suth W R 155 (DB).

who come and swear simply that the land was in the possession of somebody or the other.[10]

Revenue record. Entries is revenue Registers to the effect that a party is in possession are evidence that such party was in possession on the date of the entry.[11] It must however be noted that entries in Revenue registers by themselves do not operate to extinguish title of the owner unless adverse possession for the statutory period is established.[12] Plea of adverse possession was not capable of being sustained in absence of evidence on record.[13] In another case it was held that where there was a claim of ownership on basis of adverse possession for 12 years, inference drawn in favour of claimants on basis of entries in lagan column in preference to entries in cultivation column of revenue records was not warranted.[14]

Realization of rent. The realization of rent of a particular property is evidence that the person realising it was in possession of such property.[15]

Payment of revenue. Payment of revenue may or may not be an act of ownership.[16]

Unregistered documents. An unregistered document in respect of a transaction which has only to be made by a registered document may be referred to as explaining the nature and character of the possession thenceforth held by a party to the transaction.[17]

Fishery, possession of. The mere appropriation of fish from a tank may not necessarily constitute adverse possession of the tank; but acts such as subletting, mortgaging, re-excavation of the tank, or the expenditure of large sums of money in clearing silt, are acts obviously of proprietary character constituting adverse possession.[18] In the case of a claim of adverse possession of a fishery right in a particular part of a river, evidence of acts of possession in parts of the river adjoining the part actually in dispute is admissible provided there is common character of locality between the different parts.[19] Thus invasion of one riparian owner of the river beyond the *medium filum aquae* is an invasion not only of the fishery right but of the entire corporeal hereditament of which the fishery right is a part. The granting of leases and licenses to fishermen coupled with fishing in the waters of the river by the lessees and licensees is a very powerful evidence of adverse possession.[20]

Trees, adverse possession of. Where the question is of rights to trees, the same kind of evidence in proof of adverse possession as in the case of lands

10. AIR 1921 Pat. 234 = 5 Pat. L. Jour 632 (DB).
11. PLD 1971 Pesh 140 + 11 Suth W R 35 (PC) + AIR 1922 Oudh 98.
12. 1976 SCMR 69 = PLD 1977 Lah. 429 + AIR 1939 Lah. 313 + AIR 1928 Lah. 516 (DB).
13. PLD 1986 Lah. 399 = PLJ 1986 Lah. 481 = 1986 Law Notes 1014.
14. NLR 1986 CLJ 20.
15. AIR 1940 Bom. 225 = ILR 1940 Bom. 453 + AIR 1923 Nag. 95 + 10 Cal. 1112 (DB).
16. AIR 1923 Nag. 95 + 17 Suth W R 490 (DB).
17. AIR 1919 P.C. 44 = 43 Mad. 244 = 46 Ind. App. 285 + AIR 1950 Orissa 213 = ILR 1950 Cut 50 (DB) + AIR 1941 Nag. 72 = ILR 1942 Nag. 145 (DB).
18. AIR 1917 Cal. 644 (DB).
19. AIR 1934 P.C. 23 = 61 Ind. App. 78 = 61 Cal. 262.
20. AIR 1951 Nag. 382 = ILR 1951 Nag. 199 (DB).

cannot be expected. The rights of cutting and removal of trees will necessarily be exercised intermittently.[1]

83. Plea of adverse possession. Where the original suit was based on ownership by purchase of property some fifty years ago, but subsequently the plaint was sought to raise an alternative plea of ownership by adverse possession. It was held that the two pleas were not inconsistent and therefore, amendment could be permitted in law.[2] When a person sues on the ground of title he can, without more, show that he got the title by adverse possession.[3] In a suit for partition on the ground that the plaintiff was entitled to property under a particular document of title and also that he was in joint possession upto a particular time, where title is not proved; he could rely upon the plea that he had acquired right to property by adverse possession.[4] In such a case it is for him to make the necessary pleadings and to establish in accordance with those pleadings the fact that he had perfected his title by adverse possession.[5]

Where the plea of adverse possession was neither made out in plaint nor the question was raised either directly or indirectly in the issues and the question resolved itself into one of law upon facts admitted or proved beyond controversy, the Court should entertain it, if the case arises on facts stated in the plaint and does not take the defendant by surprise.[6] But where the plaintiff seeks to reopen the matter and the material on record is not sufficient to prove his belated plea of adverse possession, the Court should not allow him to do so. Thus where the plaintiff's plea in the plaint was that he purchased the land and was in possession for 15 years before suit but did not mention in the plaint the date of the purchase and when he produced the sale deed; it was seen that he could not have been in possession for more than 12 years on the date of the suit he should not be allowed to let in evidence orally that his purchase was earlier.[7]

Appeal, whether plea may be raised in. The plea of adverse possession is not always a legal plea. Indeed, it is always based on facts which must be asserted and proved. A person who claims adverse possession must show on what date he came into possession, what was the nature of his possession, whether the factum of his possession was known to the legal claimants and how long his possession continued. He must also show whether his possession was open and undisturbed. These are all questions of fact and unless they are asserted and proved, a plea of adverse possession cannot be inferred from them. Therefore, in normal cases an appellate Court will not allow the plea of adverse possession to be raised before it.[8] Thus where the plaintiff has not based his title on adverse possession, nor is the question raised in the issues nor any evidence let in, it cannot be pleaded for

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1. AIR 1939 Bom. 405 (DB).
2. PLD 1965 Pesh. 223.
3. AIR 1931 All. 670.
4. 24 Mad. 387=28 Ind. App. 81 (PC).
5. AIR 1960 Manipur 16.
6. 12 Cal. L Jour 459 (DB)+AIR 1949 Sind. 12=ILR 1947 Kar. 224 (DB)+6 Cal. L. Jour 621 (DB)+AIR 1919 Cal. 339+AIR 1933 Lah. 25=13 Lah. 677 (DB)+AIR 1925 Mad. 1005 (DB)+10 Pat. L Tim 207 (DB).
7. AIR 1960 Manipur 16.
8. 1984 CLC 1093+AIR 1959 Punj. 147=ILR 1959 Punj. 385 (FB).

the first time in appeal.[9] But a person may succeed on a title by adverse possession pleaded for the first time in the Court of Appeal, if such case arises on the facts stated in the plaint and the defendant is not taken by surprise.[10]

Plea in defence. A plea of adverse possession in defence must be taken in the written statement. Where that is not done and subsequently the plea is raised, it cannot be considered.[11] A defendant who sets up a title and also pleads limitation may succeed on question of limitation even if he is unable to prove his title.[12] A party pleading prescriptive title must state all the material facts on which the plea has been based. A plea in defence that the suit is barred by time, without stating the facts, is vague.[13] Where the plaintiff pleads title and the defendant denies it and sets up adverse possession, he cannot subsequently rely upon a licence or its revocation but must fail if he is unable to establish adverse possession.[14]

Adverse possession of mortgagor's right to redeem In the absence of a specific plea in the written statement with respect to acquisition of a perfected title by adverse possession in derogation of the mortgagor's right to redeem, the defendants cannot be permitted to rise as bar to the suit for redemption a plea of absolute title founded upon adverse possession.[15]

84. Adverse possession, if question of law or fact. Possession,[16] or the extent of the possession,[17] or the question whether a person has been dispossessed of certain property is a question of fact.[18] The question whether possession is adverse or not is sometimes one of simple fact, but may be a question of law or a mixed question of law and fact.[19] There is no hard and fast rule either way, namely, that a finding as to adverse possession must always be considered to be a pure question of fact, or that it must always be treated as a mixed question of fact and law. It really depends in each case on the nature of the basic facts from which the ultimate inference or conclusion is to be drawn. It is possible to visualise a case in which such a finding would be a pure finding of fact involving no legal inference, and cases are also conceivable, which may by no means be rare, where it may be a mixed question of law and fact, liable to the interfered with in second appeal, provided of course, the necessary error of law in drawing the inference is made

9. 1984 CLC 1093+AIR 1939 Pat. 636=18 Pat. 590 (DB)+AIR 1952 Nag. 188+AIR 1952 Pepsu 46+AIR 1940 Rang. 136+AIR 1927 Lah. 522+AIR 1924 Lah. 468+5 Low Bur Rul 82 (Rang)+10 Pat. L. Tim 53 (DB)+AIR 1926 Bom. 40=49 Bom. 847 (DB)+AIR 1934 All. 692+5 Mad. L Tim 262 (DB)+AIR 1933 Bom. 26 (DB)+AIR 1917 Cal. 817 (DB)+AIR 1924 Cal. 245 (DB)+AIR 1935 Oudh 387=11 Luck 82.
10. AIR 1926 Pat. 192=5 Pat. 441 (DB)+32 Pat. 353 (DB)+14 Cal. 592 (DB)+6 Cal. L. Jour 621 (DB).
11. 1983 SCMR 13.
12. PLD 1965 Pesh. 223+7 Bom. 96 (DB)+7 Cal. W N 294 (DB).
13. AIR 1949 Nag. 265=ILR 1948 Nag. 978.
14. AIR 1919 All. 403=41 All. 669 (DB).
15. AIR 1959 Pat. 230 (DB).
16. AIR 1931 P.C. 186=10 Pat. 407=58 Ind. App. 29+AIR 1958 Pat. 530+ILR (1953) 3 Raj. 585+AIR 1942 Pat. 325.
17. AIR 1931 P.C. 186=10 Pat. 407=58 Ind. App. 29.
18. AIR 1937 Lah. 656+AIR 1958 Pat. 530+AIR 1956 Bom. 204 (DB).
19. PLD 1976 Quetta 23=PLJ 1976 Quetta 18+PLD 1968 Pesh. 125 (Adverse possession is question of fact)+19 Ind App 48 (PC)+AIR 1941 Oudh 436 (DB)+AIR 1944 P.C. 24.

out,[20] Whether on the facts found an inference can be fairly drawn that such possession is adverse, is one of law.[1] But the question whether a person sets up adverse claim is a question of fact.[2]

85. Adverse possession by or against State. There is no difference as regards the requisites of adverse possession between adverse possession against the State and adverse possession against a private person except that, in the former case, a much longer period of adverse possession is necessary in order to acquire title.[3] In case of state land, to constitute an adverse possession, possession must be actual, visible, exclusive, hostile and continued during time necessary to create a bar under the Limitation Act, 1908 and if any of the elements is lacking claim of adverse possession will be defeated. Therefore, possession simpliciter by an unauthorised occupant of Government land does not result in adverse possession. Even an entry as to the adverse possession in the revenue record would not be sufficient evidence to prove adverse possession of Government land.[4] Where the question is one of adverse possession against the State, Arts. 142 ad 144 must be read with Article 149 and therefore no adverse possession can be effectively pleaded against the State for a period of less than sixty years.[5]

State may acquire title by adverse possession. The State can, like any other party, acquire title by adverse possession for twelve years.[6]

86. Adverse possession by or against public. The public cannot acquire by prescription any land as against the person entitled to it but can acquire, if at all, a right of user, by grant or dedication which may be express or implied from user.[7] There can be ouster of public and a suit for possession by public.[8] Similarly the public may lose its rights of user over property where a person has been in adverse possession thereof against the person in whom the ownership is vested for the statutory period.[9] But where in respect of Town Hall and Reading Room belonging to the public there was no duly Elected Committee, Secretary and President in existence, it was held that adverse possession would not commence and limitation would not start running in favour of the plaintiff who was in possession of the property belonging to the Town Hall.[10]

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20. AIR 1964 Punjab 187 (DB)+AIR 1933 Lah. 25+AIR 1936 Lah. 741.
1. AIR 1941 Oudh 436 (DB)+AIR 1958 Punj. 335=ILR 1957 Punj. 1739 (DB)+AIR 1929 Pat. 590 (DB)+AIR 1926 Lah. 482+33 Cal. L Jour 344 (DB)+AIR 1934 All. 288+AIR 1926 Nag. 129+AIR 1938 Sind 132=ILR 1939 Kar. 18 (DB)+AIR 1937 All. 429+AIR 1920 Lah. 293=1919 Pun Re No. 170+AIR 1938 Cal. 117+AIR 1931 Oudh 381+AIR 1942 Mad. 725.
2. AIR 1933 Oudh 462+AIR 1933 Lah. 721=14 Lah. 302 (DB)+AIR 1942 Mad. 725.
3. AIR 1934 P.C. 23=61 Cal. 262=61 Ind. App. 78.
4. 1985 CLC 1259 (DB).
5. PLD 1951 Lah. 459=PLR 1951 Lah. 768+AIR 1916 P.C. 21=39 Mad. 617=43 Ind App 192+AIR 1951 S.C. 469=AIR 1952 SCR 43+AIR 1950 All. 43=ILR 1950 All. 1188 (DB)+AIR 1949 Nag. 403=ILR 1949 Nag. 755.
6. 3 Cal. W N 99 (DB).
7. AIR 1923 Mad. 624=47 Mad. 116 (DB)+AIR 1936 Oudh 207.
8. AIR 1940 Pat. 106+AIR 1955 Pat. 1=33 Pat. 690 (SB)+AIR 1939 Nag. 145.
9. AIR 1916 Mad. 613=38 Mad. 6 (DB)+25 Mad. 635 (DB).
10. AIR 1955 Andh 212.

87. Special or local law applicable. Where any special or local law prescribes for any suit for the possession of immovable property, a period of limitation different from the period prescribed therefor by this Act, the period prescribed by the special or local law will apply to the suit and not the period prescribed by this Act.[11]

143.	Like suit, when the plaintiff has become entitled by reason of any forfeiture or breach of condition.	[12][Twelve years]	When the forfeiture is incurred or the condition is broken.

Synopsis

1. Scope.
2. Forfeiture of tenancy.
3. Interest other than tenancy--forfeiture of.
4. Remarriage of Hindu widow--forfeiture on.
5. Forfeiture for breach of condition.
6. Onus of proof.
7. Waiver of forfeiture.
8. Breach of condition imposed by S. 119, Transfer of Property Act.
9. Starting point of limitation.

1. Scope. This article applies to suits against any person who is in possession if it is based on a forfeiter or breach of condition.[13] Thus where there is an alienation by a widow which is not for legal necessity and the widow remarries after the alienation, to a suit by the next reversioner Article 143 is applicable and period of twelve years runs from the date of forfeiture of widow's estate upon her re-marriage.[14] But where no penalty is prescribed for a forfeiture, this Article does not apply. Thus where after the death of the adoptive father there was a compromise between his widow and the adopted son in 1916. But virtue of this compromise, the adopted son put the widow in possession of the land to enjoy the produce of the land for her life. In the compromise, there was a stipulation that the widow should not sell or mortgage the property. The widow sold the land to the defendant in 1924. After the death of the widow in 1942 the adopted son brought a suit in 1943 against the defendant for possession. It was held that as there was no consequence of forfeiture prescribed for breach of conditions embodied in the compromise, Art. 143 did not apply, and the right to sue therefore did not accrue on the date of sale, and that under Art. 141, the suit was within time.[15]

Where the suit is not based on a forfeiture or breach of condition, this Article does not apply. Thus this article does not apply to a suit framed in tort,[16]

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11. AIR 1950 All. 439.
12. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2, and First Sch., for "Ditto".
13. AIR 1930 Mad. 430 (DB). (AIR 1926 Mad. 849, *Reversed*) + AIR 1922 Mad. 290 (DB).
14. AIR 1960 Pat. 564 (DB).
15. ILR 1954 Madh B 155.
16. 26 Cal. 564 (FB).

or to a suit where S. 10 is applicable.[17] Where a tenant converted his agricultural holding to a non-agricultural purpose, Art. 32 applies to a suit for his ejectment and compensation by landlord, Article 143 does not apply.[18]

2. Forfeiture of tenancy. Some overt act on the part of the landlord showing his intention to determine the tenancy is necessary before the tenancy is determined.[19] The tenancy must have determined before the date of suit by the overt act of the landlord specified in S. 111 of the Transfer of Property Act.[20] On the cause of forfeiture happening in cases not governed by S. 111 of the Transfer of Property Act, though the landlord has an option to take advantage of his right or not, the election is not a condition precedent to the right of action and may be manifested by the institution of the suit.[1] Even where forfeiture itself gives rise to an action for possession at once, Art. 143 would apply.[2]

Article 139 and this Article. To a suit by a landlord against his tenant, in a case governed by S. 111 (*g*) of the Transfer of Property Act, for possession on the ground that there has been forfeiture of tenancy, Article 139 and not this Article applies.[3] Where a lessee, in a case not governed by the Transfer of Property Act, denied the landlord's title more than twelve years before the suit but the landlord had determined the lease by notice within twelve years of the suit, Art. 139 applied to the case.[4] But where the tenancy is determined within twelve years of the suit but cause of forfeiture occurred more than twelve years before the suit, Art. 143 was applicable.[5]

Forfeiture for misuse of land. A suit against an occupancy tenant by the landlord on the ground that the former diverted the land to non-agricultural purposes is governed by Art. 32 and not by Art. 143.[6]

Forfeiture for breach of condition of alienation. Where a landlord sued an alienee from his tenant for possession on the ground that the tenant forfeited his tenancy by reason of alienation in breach of conditions of tenancy, Art. 143 applied to the case.[7]

Denial of landlords' title by tenant. This Article applies where the tenancy is forfeited by denial of landlord's title by the tenant. In such cases the denial must be unequivocal and clear, and to the knowledge of the landlord,[8] and forfeiture by denial of the landlord's title must have occurred before the suit is instituted.[9] Where the act or contention of the tenant does not amount to denial of landlord's

17. 14 Mad. 1 (DB).
18. AIR 1948 Nag. 20=ILR 1947 Nag. 286.
19. AIR 1926 Cal. 193 (DB)+AIR 1920 Cal. 866 (DB)+24 Mad. 246 (DB)+AIR 1941 Lah. 248 (DB).
20. AIR 1937 Mad. 295+AIR 1920 Cal. 866 (DB)+AIR 1918 Cal. 969=45 Cal 469 (DB).
1. 34 Mad. 161 (DB)+AIR 1937 Mad. 295.
2. AIR 1937 Mad. 295.
3. AIR 1937 Mad. 295.
4. 24 Mad. 246 (DB).
5. 11 Cal. W N 661 (DB)+AIR 1926 Cal. 193 (DB).
6. AIR 1948 Nag. 20=ILR 1947 Nag. 286.
7. AIR 1920 Cal. 866 (DB).
8. 41 Mad. L. Jour 525 (DB).
9. AIR 1919 P.C. 1=49 Ind. App. 109.

title this Article would not apply. Thus where a tenant admits that he holds as tenant of the person who claims to be his landlord, but disputes the terms of the tenancy, and sets up terms more favourable to himself, he does not, though he fails in establishing a more favourable tenancy, deny the landlord's title as may work a forfeiture.[10]

No relationship of landlord and tenant. This Article does not apply where the relationship of landlord and tenant does not exist and title of the owner is denied by a stranger.[11]

3. Interest other than tenancy--forfeiture of. This Article is not necessarily restricted to landlord and tenant.[12] Thus an interest owned by persons other than tenants, can be forfeited by rules of law or by reason of express conditions, positive or negative and this Article applies to such cases.[13]

4. Remarriage of Hindu widow--forfeiture on. This Article does not apply where the forfeiture has occurred on the remarriage of a Hindu widow.[14] Similarly where an award provided that *A* was to be in possession of certain property for her life, that *B* was to get the same after *A's* death, but if *A* became unchaste. *B* would be entitled to take possession of properties at once. *A* became unchaste. *B* sued for possession within twelve years of *A's* death but beyond twelve years of date of her unchastity. The suit was governed by Art. 141 and not by this article.[15]

5. Forfeiture for breach of condition. Where a property is held by a person under the condition, that if he did not fulfil certain conditions, the property will stand forfeited, this Article would apply to the forfeiture. Thus where *A* made a gift to *B* on condition that *B* should maintain and render certain services to *A* and that *A* would be entitled to re-enter on the gifted property on the breach of the condition. *B* failed to maintain *A* and render the stipulated services. To a suit by *A* for possession, this article was applicable.[16] Where *A* made a will bequeathing a house to *B* for life with remainder to *C* with the condition that *B* should not leave the house and if he did so, *C* would be entitled to possession at once. On *B's* leaving the house, *C* sued for possession within twelve years of *B's* death, but more than twelve years after he left the house. It was held that the suit was barred.[17] Similarly where *A* sold property to *B* who agreed to pay *A's* fees annually, in default *A* was entitled to possession of a portion of the land sold. *B* failed to pay the dues. A suit by *A* for possession was governed by this article.[18] Where the *wajib-ul-arz* provided for forfeiture if a resident of village left the village, a suit for possession based on such forfeiture was governed by Art. 143.[19]

6. Onus of proof. Where forfeiture is sought to be enforced, the party alleging it must prove that there was a positive provision for forfeiture. It cannot

10. AIR 1919 P.C. 1 = 46 Ind. App. 109.
11. 18 Cal. L. Jour 553 (DB) + AIR 1930 Cal. 165 = 57 Cal. 289 (DB).
12. AIR 1935 Cal. 779.
13. AIR 1935 Cal. 779.
14. AIR 1930 Lah. 294 (DB) + AIR 1928 Cal. 714.
15. AIR 1937 All. 268 = I.L.R 1937 All. 424 (DB).
16. Ind Rul 1932 Lah. 645.
17. AIR 1920 Cal. 682 (DB).
18. 4 All. 493 (DB). (Time ran from the date when *B* first failed to pay fees).
19. 1883 Pun Re No. 180, p. 554.

be presumed or inferred, when the deed between the parties is silent on the point,[20] and where there is no rule of law attaching forfeiture to a particular act.[1] Thus where in a lease there is a condition against alienation by a tenant, but no provision for re-entry on breach of the condition, a mere breach of condition would not operate as forfeiture.[2] Where a grant is made with a condition of performance of service attached to it, the mere fact of non-performance of the service is not sufficient to show that the land granted was forfeited to grantor.[3]

7. Waiver of forfeiture. A person in whose favour a right of forfeiture arises can waive the forfeiture. The effect of the waiver is to wipe off or bar the right of action which arises in favour of a person on the forfeiture.[4] Where after the waiver there is a fresh cause of forfeiture, a person in whose favour it arises can take advantage of it and bring his action for relief on the basis of such forfeiture.[5]

8. Breach of condition imposed by S. 119, Transfer of Property Act. Where there was a contract of the same nature as is specified in section 119 of the Transfer of Property Act, it was held that a suit based thereon was governed by Art. 143.[6] Where *A* and *B* exchanged properties, but *A* was subsequently deprived of the property got in exchange. *A* sued *B* for possession under S. 119, T. P. Act. The suit would be governed by Art. 143.[7]

9. Starting point of limitation. In cases of forfeiture the starting point of limitation is the date on which the act entailing forfeiture is done or a condition is broken which results in forfeiture. Thus where forfeiture takes place by reason of alienation by tenant, the starting point of limitation is the date of alienation and not the date on which the tenant surrendered possession to the transferee.[8] The date on which the plaintiff acquires knowledge of the acts which would occasion the forfeiture or constitute the breach of the condition is not the starting point.[9]

Successive forfeitures. In case of successive forfeitures it is open to a landlord to rest his claim for recovery of possession on the foot of forfeiture on the latest act of denial of title or the breach of the conditions of the lease.[10]

144. Please see notes under Articles 142 and 144.

145. Against a depository or pawnee to recover movable property deposited or pawned.	Thirty years	The date of the deposit or pawn.

20. 7 Suth W R 209 (DB).
1. 8 Cal. 224=8 Ind App 210 (PC).
2. 26 Mad. 157 (DB).
3. AIR 1914 Cal. 4 (FB)+AIR 1919 P.C. 1=46 Ind App 109.
4. AIR 1937 Mad. 295.
5. AIR 1916 Lah. 403+AIR 1922 Mad. 290 (DB)+AIR 1937 Mad. 295.
6. AIR 1920 Mad. 812=42 Mad. 690 (DB).
7. 30 Mad. 316 (DB).
8. AIR 1936 Lah. 394=17 Lah. 403 (DB)+AIR 1920 Cal. 866 (DB).
9. AIR 1916 Lah. 104+AIR 1922 Mad. 290 (DB)+AIR 1930 Mad. 430 (DB).
10. AIR 1960 Andh Pra 166.

Synopsis

1. Scope and applicability.
2. Movable property.
3. "Deposit and depository"--meaning of.
4. Articles 49 and 145.
5. Suit against heir of depository.
6. Starting point of limitation.

1. Scope and applicability. The key to the interpretation of Article 145 is furnished by this Article starts from the date of the deposit or pawn. In other words, one of the criteria to judge whether or not Article 145 applies is to see whether in a given case the cause of action arose on the very date of deposit or pawn. If the cause of action arose after the deposit, whether it was a case of movable property *in specie* or not Article 145 cannot be said to be applicable. This article does not govern a suit for refund of deposit made for fulfilment of a contract. When the amount is deposited, as security for due performance of the contract, it cannot be said that the cause of action for return of the deposit arose on the date of the deposit. The deposit in such a case is meant to serve a dual role. The deposit is made as a part payment and also as a motive for proper performance of the contract. The limitation will run obviously from the happening of the given contingency, that is, performance or non-performance of the contract, which must be later than the date of the deposit. If, however, the contract is void, then undoubtedly the proper article applicable is Article 145 for the simple reason that to sustain the claim for refund, the contract cannot be invoked.[11] For the same reason this article does not apply to a suit for the return of money deposited with an employer as security for good conduct.[12]

2. Movable property. The words "movable property" in this article do not include money.[13] But where the specific coins handed over were to be returned, they were movable property.[14]

Government securities. Government securities are movable property.[15]

3. "Deposit and depository"--meaning of. A deposit of movable property is a particular form of bailment of goods.[17] It is in the nature of *depositum* in Roman Law and does not include other classes of bailment.[18] Thus where in execution movable property was attached under O. 21, Rr. 44 and 45 of the Civil P.C. and put into custody of *sapurdar*. *A* objected to the attachment and the Court upheld the objection and ordered the *sapurdar* to return the property to the objector. It

11. AIR 1962 Patna 372 (DB).
12. AIR 1939 Pat. 688 (DB).
13. 16 All. 256 (DB)+AIR 1950 Hyd. 202 (DB)+Madh B L J 1955 HCR 444+AIR 1944 All. 241=II.R 1944 All. 554 (DB)+AIR 1914 Mad. 4 (DB)+AIR 1915 Mad. 717 (DB)+AIR 1919 Lah. 322=1919 Pun Re No. 4+1882 Pun Re No. 74. p. 212+24 Suth W R 415 (DB)+AIR 1962 Pat. 372 (DB)+28 Ind App 227 (PC)+AIR 1938 P.C. 110+AIR 1909 Pat. 688.
14. AIR 1919 All. 102=41 All. 643 (DB)+AIR 1919 Lah. 322=1919 Pun Re No. 4+1882 Pun Re No. 74. p. 212+16 All. 256 (DB).
15. AIR 1938 P.C. 110=32 Sind L R 426.
17. AIR 1921 Cal. 416+33 Mad. 56 (DB).
18. 16 Cal 25 (DB)+18 Cal. 234 (DB). (*Overruled on* another point by 20 Cal. 51 (FB)+AIR 1914 Mad. 51=37 Mad. 175+92 I C R 107=2 L R Raym 909+AIR 1914 Mad. 4 (DB)+AIR 1919 Lah. 322=1919 Pun Re No. 4 (Deposit of money is not within article)+AIR 1930 Oudh 395=6 Luck 80 (DB)+4 Bom. HCR (AC) 155 (DB).

was held that the order created relation of depositor and depository between objector and *sapurdar* and a suit by *A* for recovery of the property from the *sapurdar* was governed by this article.[19] Where *A* and *B* referred a dispute to arbitrators and both deposited ornaments with *C* upon condition that whoever of them failed to act upon the decision should lose his ornaments. The decision was fully carried out. *A* sued *C* for the return of his ornaments. *C* was held to be a depository within the meaning of the article.[20] Where *A* entrusted a jewel to *B* to procure a loan for *A*. *B* pledged the jewel and obtained the loan. After the loan was paid off *B* got back the jewel and retained possession of it. On *B*'s refusal to return the jewel to *A*, the latter sued *B* for its recovery. The suit was governed by Article 49 and not by this article.[1]

The deposit contemplated by Art. 145 is a deposit which must so far as possible be approximated to a pawn as the expression 'depository' in Art. 145 must take colour from the expression that follows, *viz*., 'pawnee'. The deposit to which Art. 145 applies is only that deposit where there is an element of entrustment, which may be as security for a debt as in a pawn, or safe custody as in a deposit. In the case of a deposit made for the performance of a contract, the deposit does not become returnable until the happening of a certain contingency. Hence, it is neither an entrustment as security for a debt nor an entrustment purely for safe custody.[2]

Suit against depository of depository. A suit by the depositor for recovery of the deposit from the depository of the original depository will not be governed by this Article.[3]

Money of minor in custody of his guardian. Where a *de facto* guardian took charge of the minor's property including a certain sum of money and subsequently he executed a receipt acknowledging that the money remained in *amanat* with him; a suit by the minor to recover that money from him was not governed by this Article as there was no deposit in law. It was money had and received for the minor's use and therefore the proper Article applicable was Art. 62.[4] The mere fact that a person who is acting as a manager of a minor's estate had to deposit the realizations of the estate in the State treasury in the minor's account does not make him a depository or pawnee in respect of such amounts within the meaning of Art. 145.[5]

4. Articles 49 and 145. Article 145 is a special one providing for suits for recovery of specific movable property deposited or pawned.[6] Therefore Article 49 cannot be applied to cases falling under this article.[7] Where Government promissory notes were left by *A* with *B* either as security for loan taken by *A* from *B* or for safe custody. In either case a suit by *A* against *B* for recovery thereof

19. AIR 1924 Nag. 12.
20. 1895 Bom. P J 322 (DB).
1. 35 Mad. 636 (DB).
2. AIR 1960 Bom. 404 = ILR 1959 Bom. 151 (DB) + AIR 1962 Pat. 372 (DB).
3. AIR 1940 Lah. 254.
4. AIR 1922 Cal. 230 = ILR (1949) 2 Cal. 557.
5. AIR 1954 Sau 35.
6. AIR 1921 Cal. 416 + 33 Mad. 56 (DB) + AIR 1928 Rang. 309 = 6 Rang. 547 (DB).
7. AIR 1923 Mad. 578 (DB).

would be governed by Article 145 and not by Article 49.[8] Where this article applies to a case, the mere fact that a demand for the property has been refused, would not bring it within Art. 49.[9]

Deposit for due performance of contract. A suit for the return of a deposit made by the plaintiffs for the due performance of a contract, which deposit by its very nature was to serve both the purpose of a part payment and an earnest, does not fall under Art. 145.[10]

Recovery of money value of goods deposited. The main relief claimed by the plaintiff was the recovery of certain sum which represented the price of the goods deposited and the interest on the same. The alternative relief also did not relate to the specific goods that were deposited. All that the plaintiffs wanted was the delivery of goods of a like or similar quality. Further the entire evidence of the plaintiffs was to the effect that all the goods had been sold by defendant No. 1 and the price kept with him. It was held that such a suit could not be described to be a suit for the recovery of specific movable property deposited or pawned. Article 145 or Article 49, therefore, had no application.[11]

5. Suit against heir of depository. This article will apply to a suit against the legal representative of the depository or pawnee.[12] Thus where *A* makes a deposit with *B* and *B* dies. A suit against the heir of *B* would be governed by this article.[13] Where jewellery was deposited with a friend for use in a wedding. The friend died and a suit for recovery of the jewellery was filed against his heir. It was held that the mere fact that friend was allowed to use jewellery did not take the transaction out of the category of deposit.[14]

6. Starting point of limitation. Time under this article runs notwithstanding a contract between the parties fixing a time before which the depositor or pawner could not recover the property from the bailee.[15]

146.	Before a [16](High Court) in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immovable property mortgaged.	[17][Thirty years]	When any part of the principal or interest was last paid on account of the mortgage-debt.

8. AIR 1938 P.C. 110 = 32 Sind L. R 426.
9. AIR 1916 Cal. 869 (DB) + AIR 1934 Cal. 87 = 61 Cal. 119 (DB) + 26 Bom. 420 (DB) + 33 Mad. 56 (DB) + AIR 1928 Rang. 309 = 6 Rang. 547 (DB).
10. AIR 1960 Bom. 404 = ILR 1959 Bom. 151 (DB) + AIR 1962 Pat. 372 (DB).
11. AIR 1957 All. 553 (DB).
12. AIR 1925 Mad. 185.
13. AIR 1921 Cal. 416 + AIR 1934 Cal. 87 = 61 Cal. 119 (DB).
14. AIR 1930 Lah. 913 (DB).
15. AIR 1919 Mad. 972 = 40 Mad. 1040 (FB).
16. Subs. by the Central Laws (Statute Reform) Ord., 1960 (21 of 1960) S. 2 and Second Sch. (with effect from the 14th October, 1955), for "Court established by Royal Charter".
17. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

Synopsis

1. Applicability.
2. Payment, who may make.

1. Applicability. In view of provision in column 3, the article is applicable to only those cases where some part of the principal or interest has been paid.[18]

2. Payment, who may make. The only person by whom a payment can be made is the mortgagor or some person in privity of estate with him, or the agent of one of them.[19]

146-A. By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	[20][Thirty years]	The date of the dispossession or discontinuance.

Synopsis

1. Applicability and scope.
2. Public street or road.
3. Starting point of limitation.
4. Bar under Article--effect.

1. Applicability and scope. This Article does not apply to a suit for ejectment by a private person against another in respect of a specified field, although the field has been recorded as part of a thoroughfare and *shamil-i-deh*,[1] or to a suit for possession of State lands entrusted to local authority for management.[2]

2. Public street or road. In a suit for possession brought under this article there must be a finding by the Court whether the land in question formed part of the public road.[3] A too narrow construction cannot be put upon the expression "public street or road".[4] Therefore the article cannot be reasonably restricted to streets or roads formed by the Municipality on lands belonging to or acquired by it in proprietary right.[5] In order to establish that a road is a public road, it is sufficient if acts of user by the public are shown to have been acquiesced in by the owner of the land.[6] Where ownership of a road is unknown dedication of it to

18. 3 Bom. 312 (DB).
19. 11 App. Case. 639=55 I. J P C 75.
20. Subs. by the Repealing and Amending Act, 1923 (11 of 1923). S. 2 and First Sch., for "Ditto".
1. 1913 Pun I. R No. 2, p. 5=1912 Pun Re No. 124.
2. AIR 1934 Lah. 960 (DB).
3. AIR 1957 Pat. 321 (DB).
4. AIR 1928 Cal. 485 (DB).
5. 25 Mad. 635 (DB).
6. 6 Cal. I. R 282.

public will be presumed from proof of its user by public.[7] In such cases ownership, at the time of dedication is immaterial.[8]

3. Starting point of limitation. Open assertion of hostile title by the defendant is not necessary to make time run under this article.[9]

4. Bar under Article--effect. A Municipality cannot give up the rights of the public in the street or affect their rights by any act of their own, but this will not affect the capacity of a person in hostile possession to acquire rights which would affect the public.[10] Thus after a suit for possession of a public street or road is barred by limitation under this article, the local authority cannot remove the encroachment under the power given to it by the statute.[11]

Part X. Sixty Years

147. By a mortgagee for foreclosure or sale.	Sixty years	When the money secured by the mortgage becomes due.

1. Scope. This article is confined to that class of mortgages in which the suit may be brought for foreclosure or sale in the alternative and suits in respect of all other mortgages are governed by Article 132.[12] Thus where a Hindu father executed a mortgage of joint family property to secure an antecedent debt. The mortgage was executed not as manager of the joint family nor for family necessity. A suit upon the mortgage against the sons after their father's death is not barred by three years or six years period of limitation. A suit brought within sixty years of due date is within time.[13]

English mortgages. The article would apply to English mortgages in only those provinces to which the Transfer of Property Act does not apply and to anomalous mortgages which provide for the remedy of foreclosure or sale in the alternative.[14]

Amendment suggested. The Court found itself lacking in jurisdiction to declare Article 147 of the Limitation Act repugnant to the injunctions of Islam, but at the same time could not refrain from hoping that the Government of Pakistan, in its anxiety to bring the Statute Book of the country in conformity with the tenets of Islam as enjoined by the Holy Quar'an and Sunnah, would deem it fit to re-examine the Law of Limitation in the light of discussion of the law in this

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7. AIR 1917 Mad. 122 (DB).
8. 35 Mad. 28 (DB).
9. AIR 1941 Pesh. 76.
10. 19 Mad. 154 (DB)+AIR 1919 Cal. 807 (DB).
11. AIR 1922 Bom. 111=46 Bom. 335 (DB)+AIR 1955 Punj. 185=ILR 1955 Punj. 1057 (AIR 1936 Lah. 187. *Dissented from*)+AIR 1920 Bom. 9 (DB)+AIR 1941 Pesh. 76+AIR 1915 Sind 4=9 Sind L R 1 (DB).
12. 30 Mad. 426=34 Ind. App. 186 (PC)+AIR 1960 Bom. 411 (DB)+AIR 1942 Mad. 628=ILR 1942 Mad. 851 (DB).
13. AIR 1946 Bom. 499.
14. AIR 1938 Nag. 112=ILR 1938 Nag. 91 (DB).

judgment and would not hesitate to bring about desirable changes therein by suitable legislation.[15]

148. Against a mortgagee to redeem or to recover possession of immovable property mortgaged.	[16][Sixty years]	When the right to redeem or to recover possession accrues: Provided that all claim-to redeem arising under instruments of mortgage of immovable property situate in lower Burma which had been executed before the first day of May, 1863, shall be governed by the rules of limitation in force in that Province immediately before the same day.

Synopsis

1. Scope.
2. 'Mortgagee.'
3. Redeeming co-mortgagor, position of.
4. Adverse possession by mortgagee against mortgagor.
5. Transfer of equity of redemption to mortgagee.
6. Invalid foreclosure proceedings--effect.
7. Mortgage providing that on default of payment within fixed time, mortgagee would become absolute owner of property.
8. Mortgagee purchasing mortgaged property in contravention of O. 34, R. 4, C.P.C.
9. Void mortgage.
10. Extinction of mortgage by order or decree of Court.
11. Abandonment of land by mortgagor.
12. To redeem or recover possession.
13. Accession to mortgaged property.
14. Starting point of limitation.
15. This Article and Article 134.

15. PLD 1981 Pesh. 46 (Sh. B.).
16. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

16. This Article and Article 126.
17. Suit by puisne mortgagee for redemption of prior mortgage.
18. Suit by execution purchaser of equity of redemption.
19. Suit by quondam minor.
20. Burden of proof.
21. Laches of mortgagor.
22. Effect of bar of limitation.

1. Scope. This article applies to all kinds of mortgages.[17]

Rights of purchaser of equity of redemption. A person purchasing equity of redemption from the mortgagor steps into the shoes of the mortgagor and has a right to redeem the mortgage within sixty years. This right cannot be taken away by any admission made by the original mortgagor against the interest of the plaintiff.[18] Where the property was mortgaged by *A* to *B* who subsequently created a sub-mortgage in favour of *C*, *D* purchased the rights of *A* and thereupon he paid the mortgage amount of *C* and sought possession from him. It was held that rights of *B* continued undisturbed by the payment and *D* could not seek possession by suing *C* without impleading and redeeming mortgage in favour of *C*. Limitation for redeeming mortgage in favour of *C* remained sixty years from the date of the mortgage.[19]

Amendment, suggested. The Court found itself lacking in jurisdiction to declare Article 148 of the Limitation Act repugnant to the injunctions of Islam, but at the same time could not refrain from hoping that the Government of Pakistan, in its anxiety to bring the Statute Book of the country in conformity with the tenets of Islam as enjoined by the Holy Qur'an and Sunnah, would deem it fit to re-examine the Law of Limitation in question in the light of discussion of the law in this judgment and could not hesitate to bring about desirable changes therein by suitable legislation.[20]

Mortgage entered as sale in revenue record. Where suit land was mortgaged by respondent's predecessor but revenue entries incorrectly showed the land to have been sold off. A suit for declaration of entries to be incorrect and for ordering recording of correct entries was governed' by Art. 148 and the suit filed within 60 years was well within time, moreso when period of 20 years for which land was mortgaged had to be added to the period of 60 years.[1]

2. 'Mortgagee.' 'This article applies only to a suit against a mortgagee.[2] The article does not apply to a suit against a charge-holder.[3]

17. 13 Beng LR 177 (PC). (Usufructuary mortgages)+AIR 1927 Lah. 828. (*Lekha mukhi mortgages*)+1989 Bom. P.J. 326 (DB). (Usufructuary mortgages)+AIR 1924 Mad. 736 (English mortgage).
18. 1974 SCMR 332.
19. PLD 1974 Pesh 119=PLJ 1975 Pesh. 4.
20. PLD 1981 Pesh. 46 (Sh. B.).
1. 1979 SCMR 492.
2. AIR 1926 Cal. 910 (DB)+AIR 1916 Oudh 128+AIR 1924 Oudh 169.
3. AIR 1931 Lah 744=12 Lah. 671 (DB)+AIR 1919 Cal. 634=46 Cal. 111+AIR 1921 Mad. 326 (DB)+AIR 1922 All. 410.

The term "mortgagee" in this article includes any person who has acquired the rights of a mortgagee.[4] It is to be noted that where a third person who has no interest in the equity of redemption voluntarily pays off a mortgage, he cannot thereby obtain the rights of the mortgagee.[5] But where he pays off a mortgage in the *bona fide* belief that he is entitled to the equity of redemption, he is subrogated to the rights of the mortgagee.[6]

Partial failure of consideration for mortgage. Where there is partial failure of consideration for a mortgage. The mortgage is valid to the extent of consideration that has not failed. The possession of a mortgagee under such mortgage is in his capacity as a mortgagee.[7]

3. Redeeming co-mortgagor, possession of. Where the provisions of T.P. Act do not apply, the co-mortgagor who paid off the mortgage liability obtains principally a right to contribution. He obtains by way of subrogation the security possessed by the mortgagee to the extent necessary for realising the excess amount paid by him from out of the mortgaged property or the other co-mortgagors. In a case where the mortgage is a possessory one, the redeeming co-mortgagor will obtain possession of the entire mortgaged property from the mortgagee on redemption. In such a case on his obtaining contribution from his co-mortgagors, he should, in justice, deliver possession of the properties belonging to the mortgagor. In other words, his right to obtain contribution will raise a corresponding obligation to deliver possession of the property on payment by each one of the co-mortgagors of his share of the mortgage money. Therefore so long as the right to contribution subsists in the redeeming co-mortgagor, the non-redeeming co-mortgagor will have a corresponding right to pay up his share and get delivery of possession of his properties. This is plain equity and will exist independently of the fact whether or not the right of contribution which the redeeming co-mortgagor has against the other co-mortgagors amounts to a mortgage.[8]

There will be two periods within which a non-redeeming mortgagor can obtain his property from his co-mortgagor who had redeemed it, the first is based on the rule of subrogation and the second is that correlative obligation in the redeeming co-mortgagor to give up the property belonging to his co-mortgagor on being paid the money due by him. In the former case where the mortgage is possessory, the period of limitation will be governed by Art. 148.[9] A suit against a co-mortgagor, who has redeemed a mortgage and is thus subrogated to the rights of the mortgagee by the non-redeeming mortgagor for redemption, would be governed by Article 148 of the Limitation Act, provided the period of 60 years

4. AIR 1934 All. 946 (Assignment) + AIR 1920 Bom. 350 = 44 Bom. 614 (DB) + AIR 1954 Mad. 650 = ILR 1954 Mad. 664 (DB) + AIR 1936 Pat 60 (DB) + AIR 1925 Sind 167 = 19 Sind L.R 268 (DB).
5. AIR 1924 All. 834 + AIR 1936 Mad 308.
6. AIR 1937 Mad 451 (DB).
7. 35 Mad 114 (DB).
8. AIR 1964 Madras 269 (FB).
9. PLD 1972 Pesh. 78 (FB) + AIR 1964 Madras 269 (FB) + AIR 1964 Mad 281 (FB) + AIR 1938 Oudh 127 = 14 Luck 71 (DB) + ILR 1955 Punj. 1062 + ILR 1953 Trav-Co 48 (DB) (10 Trav LJ 468 and 14 All. 1 *Rel. on*) + AIR 1953 Mad 366 + AIR 1930 Nag. 300 = 27 Nag. L R 152 + AIR 1941 Pat. 147 = 19 Pat. 938 (DB) + AIR 1934 All. 946 + AIR 1933 All. 228 (DB).

prescribed thereunder has not expired from the date when the property was mortgaged by all of them.[10] In the case of a suit against a co-mortgagor who has redeemed a mortgage, limitation under the article will begin to run from the date when the right to redeem the mortgage accrued and not from the date when the defendant co-mortgagor paid off such mortgage and become subrogated to it.[11]

Mortgagor not redeeming mortgage. Where a usufructuary mortgage is satisfied out of the rents and profits of the property, and thereafter the property is taken possession of by one of several co-mortgagors, a suit by the other co-mortgagors for the recovery of their shares from him is not governed by this Article.[12]

4. Adverse possession by mortgagee against mortgagor. A mortgagee cannot during the subsistence of the mortgage, convert the nature of his possession into that of a full owner, merely by asserting his absolute title to the property.[13] Even a mere order in mutation proceedings entering the name of the mortgagee as proprietor does not change the character of his possession.[14] Where a mortgagee in possession allows Government revenues to fall into arrears and at the sale for arrears which ensues, purchases the property himself, he does not thereby lose his character as mortgagee and his possession continues to be that of a mortgagee.[15] Where a mortgagee having under the mortgage a power of sale out of Court, purchases the property himself at the sale, it has been held that the sale is void and the mortgagee's possession after the sale is only that of a mortgagee.[16]

Position of mortgagee after satisfaction of mortgage debt. The mere fact that a mortgage has been discharged out of the usufruct of the property or otherwise, does not alter the character of the possession of the mortgagee who continues in possession after such discharge.[17] Similarly the continuance in possession of a mortgagee after the expiry of the term of the mortgage is only in his character as mortgagee.[18]

Decree of Settlement Court declaring mortgagee to be owner. A decree of a Settlement Court declaring the mortgagee to be the owner of the property has the effect of altering the character of his possession.[19]

5. Transfer of equity of redemption to mortgagee. Where equity of redemption is transferred to a mortgagee by the mortgagor, the character of

10. PLD 1972 Peshawar 78 (FB) + AIR 1964 Mad 269 (FB).
11. PLD 1972 Pesh. 78 (FB) + AIR 1964 Mad 269 (FB) + 14 All. 1 (FB) + ILR 1953 Trav-Co 48 + AIR 1953 Sau 43 + AIR 1922 All. 410 (DB) + AIR 1943 Bom. 191 (DB) + AIR 1941 Pat. 147 = 19 Pat 938 (DB).
12. 16 Oudh Cas 163 + 20 All. 182 (DB).
13. PLD 1982 Rev. 36 = NLR 1982 Rev. 185 + PLD 1971 Lah. 77 + 32 Ind App 23 (PC) + 22 Ind App 183 (PC) + AIR 1957 Ker. 175 (DB) + AIR 1940 Pat. 45 (DB).
14. AIR 1925 All. 34 (DB) + AIR 1926 Oudh 594 = 1 Luck 529 (DB) + 72 Ind Cas 989 (Pesh) + 120 Ind Cas 789 (DB) (Lah).
15. 1898 Bom. P J 97; reprint p. 380 (DB) + AIR 1956 Orissa 61 = ILR 1955 Cut 697 (DB).
16. AIR 1929 Bom. 24.
17. AIR 1926 Bom. 40 = 49 bom 847 (DB) + AIR 1951 Nag. 366 = ILR 1950 Nag. 68 + AIR 1926 All. 136 (DB) + AIR 1930 Cal. 15 = 56 Cal. 1130 (DB) + AIR 1926 Cal. 910 (DB) + 37 Mad L. Jour 6 (N.R.C.) (DB) + AIR 1924 All. 522.
18. 1883 Bom. P J 370 (DB) + 20 All. 115 + 6 Mad. 339 (DB).
19. 7 Oudh Cas 259 (DB) + AIR 1920 Oudh 302 = 23 Oudh Cas 269 (DB).

mortgagor's possession is changed, and he holds as full owner against any one having a claim on the property. If his possession in that capacity continues for 12 years or more he becomes entitled to ownership by adverse possession. But before the expiry of that period, he can be ousted from possession. Where the plaintiff was the purchaser of land in auction sale held in 1906 in execution of a decree for rent against the owner. The sale was confirmed but possession was not delivered. There was a usufructuary mortgage executed by the owner in favour of the defendant. In 1944 the mortgagor sold the equity of redemption to the defendant. In 1951, the plaintiff auction-purchaser brought a suit for declaration of title and recovery of possession. It was held that the plaintiff was entitled to a decree for redemption because the defendant continued as usufructuary mortgagee upto 1944 and the suit having been instituted in 1951, his right to redeem was not extinguished. Express relief for redemption was, however, necessary and in the circumstance of the case amendment of plaint was allowed.[20]

Where the equity of redemption in the mortgage is transferred to the mortgagee by one of the co-mortgagors, the possession of the mortgagee as regards the other co-mortgagors is only that of a mortgagee and a suit by such co-mortgagors will be governed by this article.[1]

Invalid transfer of equity of redemption. Invalid transfer of equity of redemption by a mortgagor in favour of a mortgagee does not effect the character of mortgagee's possession and does not take out of the purview of this Article a suit by the mortgagor for the recovery of the property from the mortgagee.[2]

Transfer of equity of redemption by unauthorized person. Where the mortgagee obtains a transfer of the equity of redemption from a third party who is not authorized to transfer it, the mortgagee's possession is not affected by such transfer and continues to be only possession held as mortgagee.[3] Thus where after the mortgagor's death, his alleged adopted son transferred equity of redemption to the mortgagee, the adoption was held to be void and the rightful heir or mortgagor can sue for redemption of mortgage within the period of sixty years given by this article.[4] Where equity of redemption was sold to the mortgagee by the guardian of a minor mortgagor and the latter failed to sue to set aside the sale within three years of his attaining majority. He cannot thereafter sue to redeem the mortgage within a longer period under this article.[5]

Contract to sell equity of redemption. A mere contract to sell the equity of redemption in favour of a usufructuary mortgagee will not be sufficient to alter the character of the possession of the mortgagee.[6]

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20. AIR 1961 Patna 177 (DB).
1. AIR 1940 Oudh 97=15 Luck 175+11 Bom. LR 1145 (DB)+AIR 1923 Lah. 74+AIR 1935 Lah. 924+AIR 1920 Bom 20=44 Bom. 848 (DB)+14 Mad 38 (DB).
2. 1912 Pun L R No. 138, p 423+AIR 1934 Lah. 902=16 Lah 12 (DB)+AIR 1915 Mad 573=38 Mad 1158 (DB)+AIR 1914 Mad 489=37 Mad 423 (DB).
3. 29 All. 640 (DB)+1 All. 655 (DB)+21 Bom. 793 (DB)+AIR 1916 Lah. 336 (DB)+15 Oudh Cas 39+AIR 1936 Lah 753 (DB)+AIR 1917 Nag 33.
4. AIR 1916 Lah. 336 (DB).
5. AIR 1925 Lah 619=6 Lah. 447 (32 All. 392, *dissented from*)+AIR 1920 Bom. 1=44 Bom. 742 (FB).
6. AIR 1925 Oudh 114=28 Oudh Cas 100 (DB).

6. **Invalid foreclosure proceedings--effect.** Where a mortgagee, not entitled to possession under a mortgage, took possession as a result of invalid foreclosure proceedings, his possession will be under a claim of ownership and a suit against him for the recovery of property will not be governed by this article.[7] Where the mortgagee is already in possession as mortgagee, subsequent foreclosure proceedings which turn out to be invalid will not convert his possession into one held as full owner.[8]

7. **Mortgage providing that on default of payment within fixed time, mortgagee should become absolute owner of property.** The provisions contained in section 60 of the Transfer of Property Act are in the nature of a statutory right to redeem the property in cases where the transaction falls within the definition of a mortgage as spelt out in the various clauses of section 58. Irrespective, therefore, of a stipulation contained in the mortgage deed that if the mortgage is not redeemed within a specified period the land will stand sold to the mortgagee, the right of redemption shall continue in view of the statutory provisions specially enacted by the legislature to keep alive the right of the mortgagor to redeem the property. Section 60 affirms the right of redemption in all mortgages and recognises a right of redemption in mortgages by conditional sale.[9] But where in pursuance of a clause in the mortgage deed the mortgagor himself consents that the mortgagee should hold the property as owner from a certain date, and the mortgagee accordingly begins to hold the property as owner, his possession will not be that of a mortgagee but under a claim of full ownership.[10]

8. **Mortgagee purchasing mortgaged property in contravention of O. 34, R. 4, C.P.C.** Where a mortgagee purchased mortgaged property in execution of a money decree for the mortgage debt, such sale is invalid under Order 34, Rule 14, Civil P. C. and does not deprive the mortgagor of his right to redeem.[11] But if the sale is not set aside by an application made within the period prescribed by Article 166, the sale would be binding on the mortgagor and he cannot thereafter sue to redeem the mortgage.[12]

9. **Void mortgage.** Where a person enters into possession of property under a void mortgage, a suit by the mortgagor for recovery of property against him as trespasser will not be within this article.[13] A person entering into possession under a void mortgage can prescribe only for mortgagee's title to such property,[14] and a suit against him as mortgagee can be brought within the period prescribed by this

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7. AIR 1928 All 197 (DB)+27 Pun L. R 235+AIR 1925 Lah. 53 (DB).
8. 23 Cal. 228=22 Ind App 183 (PC).
9. PLD 1971 Lahore 77+9 Bom. HCR 79 (FB)+AIR 1919 Bom. 146=43 *bom.* 869 (DB)+AIR 1923 Lah. 71+AIR 1914 Lah. 350=1914 Pun Re No. 94 (DB) 6 Mad 339 (DB).
10. AIR 1914 Mad 578=37 Mad 545 (DB)+AIR 1922 Oudh 133=25 Oudh Cas 83 (Db).
11. 32 Cal. 296=32 Ind App 23 (PC).
12. AIR 1920 Cal. 363=47 Cal. 377 (FB).
13. 7 Mad L Jour 11 (DB)+AIR 1930 Nag. 26.
14. AIR 1924 Mad 292=47 Mad 203 (DB)+AIR 1924 Mad. 720+AIR 1929 Nag. 115.

article.[15] The time will run after the expiry of 12 years from the date when possession was taken under such mortgage deed.[16]

Where a person who has taken possession under a void mortgage, purchases the property within 12 years, of his taking possession, his possession from the date of sale is as owner of the property.[17]

10. Extinction of mortgage by order or decree of Court. The mere fact that a decree for redemption has been passed against a mortgagee does not alter his character as mortgagee and a second suit for redemption against him (assuming such a suit to be maintainable) is only a suit against a mortgagee and so is governed by this article.[18]

11. Abandonment of land by mortgagor. Where a mortgagor sues for the redemption of the mortgaged land within the period of limitation prescribed by this article, the suit is maintainable although the land had previously been abandoned by the plaintiff.[19]

12. To redeem or recover possession. A suit to redeem a usufructuary mortgage involves also a prayer for possession and is substantially a suit for possession.[20] Where deposit of mortgage money is made a usufructuary mortgage remains a mortgage till a decree for redemption is obtained, and therefore a suit for possession in the circumstances, amounts to a suit for redemption and is governed by Art. 148 for the purpose of limitation.[1] Where a dispute as to the amount due on a mortgage is referred to arbitration, and the Arbitrator determines the amount and directs the mortgagee to be in possession for a certain number of years, a suit for redemption by enforcing the award would be governed by this article.[2] Where a person is made to sign by misrepresentation a sale deed as a mortgage deed, a suit by him for redemption on the ground that the sale under the circumstances is void is governed by this article.[3]

13. Accession to mortgaged property. An accession to mortgaged property to which the mortgagor is entitled on redemption is not property mortgaged, and hence, the mortgagor's suit for such accession is not governed by this article.[4]

14. Starting point of limitation. Section 148 provides for the filing of suit for redemption within 60 years from the date when the right of redemption accrues to the mortgagor and the initial burden is on him to prove his subsisting mortgage.[5]

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15. AIR 1927 All. 311+AIR 1921 Mad 410=44 Mad 946 (DB)+23 Ind Cas 195 (Mad)+AIR 1936 Pat. 63+AIR 1932 All. 259 (DB).
16. AIR 1960 Raj. 1=ILR (1959) 9 Raj. 1121 (SB) (AIR 1958 Raj. 102, *Overruled;* AIR 1938 Pat. 479, *Dissented from*).
17. AIR 1925 Mad 1020 (DB).
18. AIR 1923 Bom. 300=47 bom 692 (DB)+15 Mad. 366 (DB)+1909 Pun LR No. 135, p. 521+AIR 1918 Bom. 1=43 Bom 334&477 (FB).
19. AIR 1917 Lah. 461.
20. AIR 1914 Cal. 894 (DB)+AIR 1924 Mad. 292=47 Mad. 203 (DB)+AIR 1936 Pat. 63+AIR 1946 All. 400 (DB).
1. AIR 1960 Pat. 51.
2. AIR 1923 Rang. 108=4 Upp Bur Rul 124.
3. 13 Ind Cas 375 (Upp Bur.).
4. AIR 1917 Lah. 430.
5. NLR 1988 CLJ 394.

Where a mortgage deed provides a period for the payment of the mortgage money, the mortgagors' right to redeem the mortgage will arise only after the expiry of the period and not before.[6] Even where the time fixed for redemption under a mortgage deed is very long after the date of the mortgage, the right of redemption cannot arise before, its expiry unless the cause fixing the term of the mortgage is held to be a clog on the equity of redemption, or is, for some other reason, held not binding on the mortgagor.[7] Where it was provided in the Sale Deed dated 2-10-1982 transferring the mortgagor rights that for 15 years, thereafter there was to be no right of redemption. It meant that uptil 2nd October, 1907 there was no right of redemption and that the said right was to accrue only on 2nd October, 1907. Counting sixty years from that date the right of redemption was available upto 2nd October, 1967, and a suit for redemption filed earlier than that date would be within time.[8] Where the mortgagor was entitled to redeem in *Jeth* of any year for ten years. If it was not redeemed within ten years, the mortgagee was to become its owner. A suit for redemption instituted more than sixty years after the first of *Jeth* succeeding the date of mortgage was held to be barred by time.[9]

Submortgage, creation of. The date of creation of sub mortgage is a necessary element in the context of the starting point of limitation in a suit for redemption, therefore, it must be specifically pleaded and proved. No presumption can be drawn in favour of the defendants of their having remained in possession as sub-mortgagees for more than 60 years in the absence of date of creation of sub-mortgage for the first time in their favour. All presumptions under the law, unless otherwise provided, must be drawn in favour of the rightful owner of the land and he would be deemed to be in possession of it free from all encumbrances.[10]

Evacuee property. Limitation time of 60 years for redemption of mortgage relating to evacuee property ceased running on 1-3-47 when property stood vested in Custodian by operation of law. It restarted only after date of allotment of mortgaged evacuee property under Settlement Laws. Transferee under Settlement Laws cannot avail of benefit of Art. 148 and S. 28 in case after exclusion of time between 1-3-47 and date of transfer total period does not exceed 60 years.[11]

No date fixed for redemption. Where no date is fixed in mortgage deed for payment of the mortgage money, the right to redeem accrues immediately on the execution of the deed.[12] Where after the death of the mortgagor mutation was attested by the Revenue Officer on the basis of the statement of the sons of the mortgagor, the limitation for a suit for redemption of the mortgage started from the date when mutation was attested.[13]

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6. NLR 1984 AC 160 = 1984 CLC 309 SC (AJ&K) + PLD 1979 SC (AJ&K) 74 = PLJ 1979 SC (AJ&K) 1 + AIR 1914 P.C. 36 + AIR 1940 All 29 (DB) + AIR 1932 All 155 (DB) + AIR 1936 Oudh 130 (DB).
7. 3 Mad. HCR 363 (DB) + 10 All. L. Jour 157 (DB).
8. 1980 SCMR 146.
9. AIR 1937 All. 32 + AIR 1943 Oudh 425.
10. NLR 1988 CLJ 394.
11. NLR 1988 CLJ 23 = PLD 1987 Pesh 125 = PLJ 1987 Pesh 176.
12. PLD 1979 SC (AJ&K) 74 = PLJ 1979 SC (AJ&K) 1 + 40 Ind. App. 74 (PC) + AIR 1953 All 620 (DB) + 110 Ind Cas 560 (DB)(All) + AIR 1919 Lah. 20 (DB).
13. 1970 SCMR 633.

Sale of mortgagee rights. Time of 60 years for redemption of mortgagee rights in case of sale of mortgagee rights starts afresh from date of sale of mortgagee rights.[14]

Satisfaction out of rents and profits of mortgaged property. Where a usufructuary mortgagee is authorized to pay himself the mortgage money from the rents and profits of the property, the rights of the mortgagor to recover possession of the property accrues when the mortgage money is so paid.[15] Even where a term is fixed for payment of mortgage money but the mortgage is discharged out of usufruct of property before the expiry of the term, limitation runs from the date of discharge.[16] Thus where a mortgage was executed on 1st August, 1878 and the mortgagor was to enter into possession if money was not paid within 4 years, the starting point of limitation for a suit for redemption was 1st August, 1882.[17]

15. This Article and Article 134. This article provides a period of sixty years for redemption of a mortgage and Art. 134 cuts down that period to twelve years when there is a transfer by the mortgagee. Article 134 is therefore an exception to this Article.[18] Article 148 applies to a suit for possession or for redemption against a mortgagee against the heirs of the mortgagee, against persons to whom the mortgagee's interest only has been transferred, against persons who have purported to purchase the property but without paying valuable consideration therefor and against persons who have purchased the property with notice of the mortgage and are thus estopped from denying the mortgagor's title. The burden of proving that the transferee had notice of the mortgage and that he was estopped from denying the mortgagor's title must be on the plaintiff. To all other suits for possession of immovable property, where the property was transferred by a mortgagee in possession to a transferee for valuable consideration Art. 134 is applicable and in such a suit it is not necessary for the defendant transferee to prove that he is a transferee in good faith.[19] It follows that normally speaking, a suit for redemption of a mortgaged property would be governed by Art. 148 and a mortgagee or a transferee from the mortgagee of his (mortgagee's) rights would not be able to contend that any lesser period of limitation than sixty years would apply to a suit for redemption. Where however the mortgagees purport to convey to transferees larger interest than what they have got under their mortgage deeds, and mortgagor files a suit for redemption against the mortgagee impleading the transferee as party and the alienee or a transferee is in a position to establish that he took the mortgaged property for valuable consideration and without notice of the fact that what the mortgagee was conveying to him was merely the mortgagee's right, title and interest therein, but that the transfer or conveyance to him of the property was under circumstances which would lead to the conclusion that the mortgagee was transferring to him not merely the mortgagee's rights but

14. NLR 1989 Civ. 225.
15. 16 Mad. 486 (DB) + ILR 1954 Madh B 28 + 35 All. 227 (PC) and Civil Revn. No. 88 of 1950 (Madh B). *Distinguished*) + AIR 1953 All. 620 = ILR (1954) 1 All 691 (DB) + AIR 1915 Mad. 481 (DB).
16. AIR 1914 P.C. 36 = 36 All. 195 = 41 Ind App 84 + AIR 1918 Oudh 432 (DB).
17. AIR 1951 All. 392 (DB).
18. AIR 1954 Mad 650 = ILR 1954 Mad 664 (DB) + AIR 1954 Trav-Co 317 (DB).
19. AIR 1951 All. 167 = ILR 1952) 2 All. 7 (FB).

a larger interest than that given by the mortgage or at any rate an interest unencumbered by the mortgage, he (the transferee or alienee) would be protected, and he would be entitled to the benefit of Art. 134.[20] Where a usufructuary mortgage was executed on 1-9-1881. The plaintiff purchased equity of redemption under the sale deed dated 9-7-1941. The widow of the original mortgagee executed a usufructuary mortgage in 1917 in favour of the defendant alleging to be absolute owner and not as mortgagee and subsequently sold it to the defendant in 1925. A suit for redemption was filed on 4-8-1941. The plaintiff or his predecessor had no knowledge of the transfer of absolute title by the widow of the original mortgagee. The suit was held not barred either under Art. 134 or Art. 148.[1]

16. This Article and Article 126. Where a Hindu son sues to set aside a mortgage of joint family property executed by his father and not to redeem the mortgage, the Article applicable is Article 126 and not this article.[2] Where the sons have not sued to set aside the sale of equity of redemption to the mortgagee within the period of twelve years under Article 126, they cannot sue to redeem the property, taking advantage of the longer period of limitation allowed by this article.[3]

17. Suit by puisne mortgagee for redemption of prior mortgage. The article applies to a suit by a puisne mortgagee to redeem a prior mortgage.[4] Thus where a prior mortgagee sues to enforce his mortgage without impleading the puisne mortgagee and the latter thereafter sues to redeem the prior mortgage, this article will apply to the suit.[5] Where a superior mortgage is for a certain period, which is only for the benefit of the mortgagee to keep possession of the property for that period, it does not in any way shorten the period within which the mortgagee can file a suit for redemption of a pre-existing mortgage which he is directed in the mortgage deed to redeem, such latter period being the period during which the mortgagor himself could file a suit for redemption.[6]

18. Suit by execution purchaser of equity of redemption. Where the equity of redemption under a usufructuary mortgage is sold in execution of a decree against the mortgagor, a suit by the purchaser in execution for redemption and possession of the mortgaged property is governed by this article and not by Article 137.[7] The mere fact that the mortgagees have been paying surplus profits for a period of 12 years to a person who was once the owner of part of the equity of the redemption, should not be construed as taking away from the purchasers of the equity of

20. AIR 1952 Bom 217 (DB).
1. AIR 1951 All. 167 = ILR (1952) 2 All. 7 (FB).
2. AIR 1921 Oudh 196 = 24 Oudh Cas 330 (DB).
3. 112 Ind Cas 151 (DB) (Oudh).
4. AIR 1933 Lah. 503 = 14 Lah 596 (DB + AIR 1935 Oudh 139 = 10 Luck 531 (DB) + AIR 1929 Cal. 609 = 57 Cal 704 (FB) + AIR 1937 Nag. 205 = ILR 1937 Nag. 367 + AIR 1926 Pat. 337 = 5 Pat 513 (DB) + AIR 1923 All 271 = 45 All. 268 (DB).
5. AIR 1934 All. 946 + AIR 1953 Bom. 405 = ILR 1954 Bom 10 (DB) + AIR 1948 Mad 412 + AIR 1923 All. 271 = 45 All 268 (DB) + AIR 1933 Bom 25 (DB) + AIR 1926 Pat. 337 = 5 Pat. 513 (DB) + AIR 1937 Nag. 205 = ILR 1937 Nag. 367.
6. AIR 1952 Trav-Co 386 (DB).
7. 1889 All. W N 135 (DB).

redemption, the right to redeem inherent in them, under the provisions of the Limitation Act for a period of 60 years.[8]

19. Suit by quondam minor. Suit by quondam minor for possession of property alienated by his guardian or for redemption of a mortgage by the guardian is governed by Art. 44 and not by Art. 148.[9]

20. Burden of proof. Once a mortgage has been created it will remain in existence till it is brought to a termination either by operation of some law or by agreement of parties and if it remains unredeemed for the period of limitation provided for by the Limitation Act it matures into ownership. If the mortgage has not been redeemed for a period of sixty years, it is for the mortgagor to prove that due to certain circumstances such as a novation of mortgage or the creation of an additional charge resulting in the discharge of the previous mortgage, the title of the mortgagee has not matured into full ownership. Where he cannot prove it the title of the mortgagor is established.[10] In this context it must be remembered that the plaintiff must specify the date of the mortgage. Merely alleging that the mortgage is about 40 years old is not enough.[11]

21. Laches by mortgagor. Laches of a mortgagor in taking no steps for many years to enforce his alleged rights may afford evidence against existence of those rights, but cannot estop him from asserting them, if they do exist, at any time within the period of sixty years allowed by this article.[12]

22. Effect of bar of limitation. Where a suit for recovery of possession of the mortgaged property from the mortgagee is barred under this article, the right of the mortgagor to the property is extinguished under section 28, and the mortgagee becomes the owner of the property.[13] A petition under section 10 of the West Pakistan Redemption and Restitution of Mortgaged Lands Act, 1964, will not be competent if the mortgagor has allowed the period of limitation prescribed under Article 148 of the Limitation Act to expire, because his substantive right will in such an event be extinguished in the mortgaged property on the principle of extinctive prescription embodied in section 28 substantively resulting in the creation of a right and title in the mortgagee who may be in its possession.[14] A suit for redemption of a mortgage would be barred by limitation on application of the principle of *res judicata*, wherein a prior suit for redemption between the same parties, it had been heard and decided that that suit was time barred with reference to Art. 148 of the Limitation Act.[15]

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8. AIR 1951 Mad 384 (DB).
9. AIR 1959 Punj 313 = ILR 1959 Punj. 912.
10. PLD 1966 Supreme Court 267.
11. AIR 1950 All. 88 = ILR 1951 All. 117.
12. 14 Beng. L R 386 = 2 Ind App 48 (PC) + 23 Cal. 228 = 22 Ind App 183 (PC).
13. AIR 1925 Bom. 339 (DB) (27 Cal. 1004 = 27 Ind. App. 103 (PC) *Relied on.*) + AIR 1933 All. 21 = 54 All. 975 (DB).
14. PLD 1972 Lah. 682 (DB).
15. AIR 1963 Madras 226 (DB) + AIR 1930 Cal. 47 + AIR 1953 Mad. 32 + ILR 21 Mad. 18 + AIR 1950 Cal. 135 + AIR 1959 Orissa 122 + AIR 1955 Trav-Co. 9 (FB).

149.	[16][Any suit by or on behalf of the [17][Federal Government] or any Provincial Government [18][except a suit before the [19][Supreme Court] in the exercise of its original jurisdiction].	[20][Sixty years]	When the period of limitation would begin to run under this Act against a like suit by a private person.

Synopsis

1. Scope.
2. "A like suit".
3. Suit by or on behalf of the Government.
4. Suit by Municipality.
5. Suit by person deriving title from Government.
6. Acquisition of title by adverse possession against Government.
7. Special or local law.
8. Starting point of limitation.

1. Scope. The Article applies to all suits by the Government.[1] Even though the Article prescribes a longer period for a suit instituted by Government than for a similar suit instituted by a private person, the reasonable construction to be put upon the Article is that the benefit of the Article can be claimed by the Government only when the claim was alive on the date when the Government acquired the right to commence an action in respect of the same. The Article cannot be invoked in respect of a claim which had become barred by limitation prior to the date on which the Government acquired the right to institute suits for the enforcement of the same.[2]

Suit must be by State. To come within this Article the suit must be by the State and not by a State aided institution. Thus where a suit is filed by a bank which is called a State Bank in a loose sense but which really belongs to the category of 'State aided' or 'State controlled' or 'State patronised' Bank for recovery of monies advanced by it to its debtors, it is not a suit by or on behalf of the Government and as such is not governed by this Article.[3]

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16. The original words "Any suit by or on behalf of the Secretary of State for India-in-Council" have been successively amended by the A.O., 1937, and the A.O. 1949, to read as above.
17. Subs. by P.O. 4 of 1975.
18. Ins. by the Indian Limitation (Amendment) Act, 1937 (14 of 1937), S. 2.
19. Subs. by the P.O., 1961 (1 of 1961), Art. 2 and Sch. (with effect from the 23rd March, 1956, for "Federal Court".
20. Subs. by the Repealing and Amending Act, 1923 (11 of 1923), S. 2 and First Sch., for "Ditto".

1. AIR 1915 Bom. 552*n* (DB).
2. AIR 1954 Trav-Co. 451 = ILR 1954 Trav-Co. 267 (DB).
3. AIR 1954 Vindh Pra 1.

Appeals and applications. This Article does not apply to applications and appeals by Government.[4]

Suits against Government. Suits against the Government are not within this article.[5]

2. "A like suit". The expression "a like suit" does not mean "an identical suit". A like suit means a suit of a similar character, and the Court has to see whether in the Limitation Act there is an article under which a suit of a similar character can be brought by a private person and what is the limitation and the starting point of limitation, for it.[6] Article 149 does not posit that a suit described therein should have been maintainable at the instance of a private party; it assumes its maintainability and, on that basis, refers to the appropriate article of the Limitation Act for the limited purpose of ascertaining the starting point of limitation.[7] Thus though a suit for arrears of tax cannot be instituted by a private person, yet the Article assumes its maintainability and on that basis, refers to the appropriate Article of the Act for the limited purpose of asc ining the starting point of limitation.[8]

3. Suit by or on behalf of the Government. This Article applies to Government as much as other citizens unless its application is excluded under some other law partly or wholly.[9] When a suit for recovery of a statutory cess is filed by the Federal Government, the period of limitation of 60 years under Art. 149 should be computed from the date when the right to sue accrues, which right to sue arises when the defendants refuses to pay the cess when demanded.[10] Where the Government has advanced loans while acting in its functions, purposes, Art. 149 applies to a suit for recovery of the amount so advanced.[11] Where certain land was acquired by the Government under the Land Acquisition Act for the Railway. Before it was handed over to the Railway Company, the defendant entered into possession of the land. It was held that the suit against the defendant for recovery of land must be by Federal Government and not by Railway Company and that it would be governed by this Article.[12]

Delay by Government--condonation of. In civil matters, delay in filing appeals or petitions, save in exceptional cases should not be lightly condoned, for a valuable right has accrued to the other party of which it cannot be deprived except for very substantial reasons. To make departments of Government exception to this rule would be placing a premium on the negligence and want of proper diligence in public offices. It is pertinent to observe that where Legislature considers it necessary to make the Government an exception to the ordinary rule of limitation, it always makes express provision in that behalf.[13]

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4. AIR 1940 Cal. 455 = I.L.R (1940) 1 Cal. 216 (DB) + 4 Mad. 155 (DB) + AIR 1926 Cal. 1064 = 53 Cal. 561 (DB) + 7 Bom. 552*n* (DB).
5. 19 Mad. 165 (DB).
6. AIR 1958 Madh Pra 425 (DB).
7. AIR 1962 Supreme Court 1281 + AIR 1964 Kerala 121 (FB).
8. AIR 1964 Kerala 121 (FB).
9. KLR 1984 Rev. C 9 = PLD 1984 Kar. 28 (DB).
10. AIR 1962 Supreme Court 1281.
11. PLD 1960 Dacca 604 = 12 DLR 218.
12. AIR 1937 Pat. 568 (DB).
13. 1974 SCMR 38.

4. Suit by Municipality. A suit by a Municipal Committee is not governed by this article.[14] Thus where Government land has been entrusted to a Municipality for management and the Municipality sues in respect of the land as forming part of a highway, the suit is not governed by this article.[15]

5. Suit by person deriving title from Government. This article does not apply to a suit by a person deriving title from the Government.[16] Where *A* obtains lease of certain land from the Government. He is deprived of possession of land by *B*. *A*'s suit for possession against *B* is not governed by this article.[17] The mere fact that in a suit possession of land by a transferee from the Government, the latter is joined as a co-plaintiff will not make this article applicable.[18] But in such cases this Article will apply so far as the rights of the Government are concerned, though this article will not apply so far as the transferee is concerned.[19]

6. Acquisition of title by adverse possession against Government. A title to immovable property can be acquired by adverse possession against the Government in the same way as against a private person.[20] A person claiming title adversely to the Government must prove adverse possession for a period of sixty years or more.[1] Where *A* was in adverse possession of certain land belonging to the Government and after recovering possession the Government granted the land to *B*; *A* sued *B* for possession on the ground that he had acquired prescriptive title to the land and that he had been wrongly deprived of possession. It was held that he could not succeed unless he proved that at the time when he was deprived of possession of land by the Government, he had been in adverse possession against the Government for sixty years.[2] Where land included in a cantonment was found in possession of private persons in 1877. A claim was made by such persons that they were owners of land. There were innumerable transfers thereafter by such persons as owners. The Government was itself a party to some of them. The possession was held to be adverse to the Cantonment Board and it had matured into full title in 1937.[3]

Burden of proof. In a suit against the State for a declaration of title based on adverse possession, the burden of proving his possession for the statutory period is on the plaintiff. Proof of mere long continued possession for of time, unless such possession clearly amounted to adverse possession for a period of 60 years, is not enough for establishing the hostile title of the plaintiff.[4] The well-known conditions which constitute adverse possession are to be proved by the same standard of evidence as it is required in any other case of adverse possession. The

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14. 19 Mad. 154 (DB).
15. AIR 1948 Lah. 153 (DB).
16. AIR 1924 Cal. 394 (DB)+AIR 1926 Mad. 1155 (DB)+AIR 1917 Lah. 201=30 Mad. 245 (DB)+AIR 1946 Nag. 246.
17. 32 Cal. 129=31 Ind. App. 203 (PC).
18. 28 Mad. 505 (DB).
19. 18 Suth W R 130 (DB).
20. PLD 1978 Lah. 1228=PLJ 1978 Lah. 475=1978 LN 613+9 Mad. 285 (DB). (*Affirmed in* 15 Mad. 101 (PC).
1. 19 Cal. 312=19 Ind. App. 69 (PC)+AIR 1924 P.C. 150=51 Ind. App. 257=47 Mad. 572+AIR 1926 Lah. 436 (DB).
2. AIR 1927 Mad. 1082.
3. AIR 1950 All. 43=II.R 1950 All. 1188 (DB).
4. 1983 CLC 966 (SC AJ&K)+AIR 1964 Orissa 233+AIR 1916 P.C. 21.

nature of the claim of adverse possession being devoid of equitable and moral consideration, Court have always insisted on strict and cogent evidence as proof in support of the plea of adverse possession.[5] The proof of adverse possession for a shorter period will not shift the onus to the Government to show that possession had been continued for full period of sixty years.[6] But where the plaintiff's possession over a period of time has been established, the burden of proving that the plaintiff had no right to remain in possession by reason of the fact that the Government are owners would be on the Government.[7]

7. Special or local law. Where a special period of limitation is prescribed under a special or local law, a suit by the Government under that law would be governed by it and not by this Article. Thus it was held that a suit by the Government against the Karachi Municipality, in a matter covered by S. 167 of the Bombay District Municipalities Act of 1901, must be brought within the period of limitation of six months under that section.[8]

8. Starting point of limitation. The vesting of the right in the State is of no consequence in determining the period of 60 years prescribed under the Article, which period has necessarily to be computed from the date on which the claim became enforceable.[9] Thus when a suit for recovery of a statutory cess is filed by the Central Government, the period of limitation of 60 years under Art. 149 should be computed when the right to sue accrued. The right to sue accrued when the defendants refused to pay the cess when demanded.[10]

SECOND DIVISION-APPEALS

Description of Appeal	Period of Limitation	Time from which period begins to run
150. Under the Code of Criminal Procedure, 1898 from a sentence of death passed by a Court of Session [11][or by a High Court in the exercise of its original Criminal Jurisdiction].	Seven days	The date of the sentence.

1. Scope. The word 'appeal' in this Article is not used in a general sense. It is an appeal 'under the Code of Criminal Procedure'. It must, therefore, mean a

5. 1983 CLC 966 (SC AJ&K).
6. 1983 CLC 966 (SC AJ&K) + AIR 1964 Orissa 233 + AIR 1916 P.C. 21 + AIR 1949 Nag. 403.
7. AIR 1960 Andh Pra. 134.
8. AIR 1931 Sind. 55.
9. AIR 1954 Trav-Co. 451 = ILR 1954 Trav-Co. 267 (DB). (21 Trav L J 972, *Held* not correct).
10. AIR 1962 Supreme Court 1281.
11. Added by the Criminal Procedure Amendment Act, 1943 (26 of 1943), S. 8.