



A Comparative Study of the Position of Preemption in Proving Ownership in Iranian and Egyptian Law

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Abstract: Priority of possession in the legal systems of Iran and Egypt, although it originates from different foundations, ultimately pursues a common goal, which is to consolidate ownership and maintain social and economic stability. In Iranian law, this institution originates from the jurisprudential and rational rule of "Yad", according to which, whoever possesses property is presumed to be its owner unless proven otherwise. The Yad rule is accepted as a legal principle in Articles 30, 31 and 35 of the Civil Code and considers possession to require two elements: material (control over property) and spiritual (intention to own). This possession, if continuous, clear and unambiguous, is considered proof of ownership, although in Iran, unlike Egypt, it does not cause possession and has only a probative role. In the Egyptian legal system, prior possession is defined in the form of the passage of acquired time (Articles 827 and 828 of the Civil Code) and can directly cause possession, provided that there is good faith, continued legitimate possession and sometimes a valid document. While in Iran, the passage of time is not accepted in ownership and is only effective in proving the right, in Egypt, the passage of time and the continuation of possession are considered as legal reasons for the transfer of ownership. However, both systems share in protecting the legitimate possessor and establishing stability in legal relations: Iran through claims of aggressive possession, nuisance and obstruction of rights, and Egypt through the system of limitation of time. Therefore, in both systems, pre-possession or the rule of hand is not only considered a sign of ownership, but also an important tool for reducing property disputes and ensuring the legal and economic security of society, although Iranian law considers it as a positive evidence and Egyptian law considers it as a cause of possession.

Keywords: pre-possession, rule of hand, proof of ownership, acquisitive time, Iranian law, Egyptian law

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Introduction

Humans have exploited nature in various ways since ancient times. Today, due to the increase in population, accumulation of wealth, complexity of legal relations, ownership and its types have taken on new concepts. Today, too, the value and importance of property ownership is determined by the extent of exploitation of its benefits. In fact, without such a goal, ownership of objects (movable and immovable) will not have a rational concept and meaning. In fact, an object that does not have financial and spiritual benefits is not considered property and its ownership will not make sense in terms of legal relations. However, property or objects that have material and spiritual value due to the benefits contained in it are so important in terms of ownership that there are several assumptions in Iranian regulations to prove it. In general, from a legal point of view, possession is a measure of

ownership, not a reason. That is why domestic lawyers, according to the interpretation of the civil law, call it "the measure of possession".

The issue of possession and its proof in ownership is also connected from a customary perspective, and from a customary perspective, each is considered an indication and a proof of the existence of the other. For this reason, the Civil Code in Article 35 actually considers possession as ownership as a proof of ownership. It seems that this latter clarification was expressed based on Imami jurisprudence. Of course, we should not believe in an inviolable connection between possession and ownership. This is because in some cases, a person's possession is not the reason and result of his ownership. For this reason, the second paragraph of the latter article states: "Unless it is proven otherwise." Regarding the latter paragraph, some Imami jurists also believe that if the owner of the property admits his lack of knowledge and does not know whether the property in his hands belongs to him or not, the latter rule does not apply.

So far, the discussion of possession as a proof of ownership has been expressed. However, prior possession, considering the type of acquisition of property, continuation of possession, transfer of property or benefits of property, has a conceptual and rational difference from current possession in terms of its relationship with current ownership from a legal perspective. Precedence literally means precedence and advance. (Moin, 2015: below Precedence) and in terms of the concept of establishing the right by preempting the original permissions without the intention of possession or preempting common interests such as roads and mosques, endowments. (Jafari Langroodi, 2013: 453)

The legal nature of the right of preemption in possession is a legal and unilateral act that is based on intention or, so to speak, *iqaa*. For this reason, the creation of the right of priority is dependent on the intention of benefit and as long as the previous person does not intend to benefit, the said right will not be realized. Some jurists have also expressed the latter issue with the example that if a person is sitting in a public market without the intention of acquiring, the right of preemption will not be created for him. (Muhaqq Damad, 1/1395:286)

Therefore, one of the most important effects of the right of pre-emption for the former possessor is the ownership of possession and pre-emption of the said object in relation to others. For this reason, neglecting to maintain and develop the objects in the hands of the former possessor is not permissible, because otherwise the ownership of possession is lost from him and someone else can take possession of it. Also, from a legal perspective, it is possible to prove the right of pre-emption in proving ownership with the Emirates and the testimony of witnesses. (Shams, 3/1401:109)

Although pre-emption is considered as one of the ways to prove ownership, there is no difference between movable and immovable in civil law. This is important to the extent that in most countries based on Islamic law, based on the laws of Western countries, especially France, pre-emption as proof of ownership no longer has the same value and validity as before. Part of Egyptian law was also based on Sunni Islamic jurisprudence. Although there have been some fundamental changes in the civil law of this country in the past few decades. But some of its cases, especially regarding ownership of movable and immovable property, also have aspects of Islamic law. Islamic jurists and jurists in Egypt have also dealt with the proof of ownership in various chapters due to ownership and also pre-possession. However, because the basis of Islamic law in Iran is based on Shiite jurisprudence and Egypt is based on Sunni jurisprudence, it seems that in addition to the existing Islamic similarities, there are also some important differences.

In Iran, the registration of ownership of real and legal persons with respect to immovable property is registered in institutional offices called the "National Real Estate and Documents Registration Organization". Thus, many registration laws are mandatory and the first condition for accepting the application of individuals based on real estate registration is to prove their ownership of the property in question. For this reason, having the applicant's ownership possession has also been determined as one of the current procedures for registration experts. In terms of existing procedures and decisions issued in general and specialized courts regarding the proof of ownership, in some cases, we have encountered conflicting decisions regarding the proof of ownership. Some judges, citing the first paragraph of Article 35 of the Civil Code, have considered pre-possession as a solid reason for proving ownership, while others, citing the second paragraph and some existing jurisprudential rules, have only referred to its being an indication. Therefore, a jurisprudential and legal examination of this issue from various aspects is necessary in order to achieve a consistent procedure.

Theoretical foundations and research background

Conditions for validity of pre-emption

As soon as the material and spiritual elements are provided, possession is realized, but this possession can only be the source of the effects resulting from it if it has the characteristics mentioned in the laws. Conditions are mentioned sporadically in the Civil Procedure Code, which include: previous possession as the owner (Article 746 of the Civil Procedure Code) and not by force or coercion (Article 749 of the Civil Procedure Code) and implicitly in Article 763 of the same law, which states that "if the current possessor proves his previous possession, his possession is considered continuous...", it refers to continuity. However, in French law and in Article 2229 of the French Civil Code, the conditions of possession are clearly stated. Article 2229 of the French Civil Code states: "In order to use the passage of time, the owner must have continuous, uninterrupted, peaceful, unambiguous possession and ownership".

However, sometimes possession, even if it has the aforementioned characteristics, cannot be the source of all legal effects, and therefore, in French legal books, possession is divided into two groups: "defective possession" versus "beneficial possession" on the one hand, and "good faith possession" versus "bad faith possession" on the other.

1-Esmaili, (1400) in his article entitled "Explanation of proof of ownership in Iranian judicial practice", first examined the legal relationship of ownership and the types of legal relationships leading to ownership. In fact, the author has expressed the elements of ownership in various ways, including: the right to use; the right to exploit, the right to evict, and finally, prior possession. Finally, the author has addressed the aspects that have caused disagreement about the admissibility of claims related to proof of ownership. Regarding the pre-possession relationship, the author has stated his findings as follows: Given the number of legal relationships and their complexity, it is not correct to deny or accept this claim outright. Although the principle must be considered inadmissible, the ability to file a claim to prove ownership can be defended as an exception and in some special legal situations.

2- Roohi Yousefi, (1400) in his thesis entitled "Property Possession and Its Conflict with Ownership", has considered the approach of Iranian civil law. The author stated in his findings that "in legal possession, material or practical authority over something in such a way that the holder of that authority can legally interfere with that thing. This term is used in contrast to aggressive or illegal and illegitimate possession. In legal possessions, and with reference to Article 747 of the Civil Procedure Code, possession can often be considered evidence of ownership and, in most cases, the only proof of ownership because in cases of dispute between two people, neither of whom has an official document, it is the claimant of illegal possession who must present evidence to prove his point".

Effects of preemption and the limits of its application

Introduction

In law, pre-possession is of such importance that the legislator cannot remain indifferent to it, even if this intervention is in conflict with the law and reality. The intervention of the legislator in this field means establishing regulations related to possession and determining independent effects for it, regardless of whether the possessor actually has an objective right to the property being possessed or not.

The basic question is: what reasons can justify the legislator's protection of this apparent situation that may be in conflict with the legal reality? In response to this question and to justify the legal approach in the two cases (whether the possessor is the owner or not), different arguments have been presented.

In the case of a possessor who is the owner, it has been argued that since the possessor is usually the real owner of the property, it is logical to be protected in this respect. However, this justification alone is not sufficient, because the person who wants to benefit from this privilege must prove his ownership in the event of a dispute - a difficult matter in practice. In contrast, possession is presumed by itself, and the possessor, after establishing his possession, becomes the defendant in property claims, transferring the burden of proof to the claimant. For this reason, Ehring, a prominent German jurist, describes the role of possession as: "Possession is the leading fortress and impenetrable fortification of property." Thus, by recognizing the effects of possession, the law actually protects the true owner.

Possession and control of property

Since in most cases, the owner is considered the possessor of the property, possession is considered as a proof of ownership. This proof is relative and it is possible to prove the opposite, provided that the possession in question is free from defects. It is necessary to emphasize that this proof does not apply to the possessor whose malicious intent has been proven, because the condition for applying the proof of possession is the ignorance of the possessor regarding the origin of the possession, and this ignorance is removed by proving malicious intent.

The proof of possession includes two basic elements:

1. The existence of property (whether movable or immovable) under the control of a person
2. Lack of knowledge of whether this possession is as ownership (i.e. on the person's own account) or on the account of another

In cases where there is judicial doubt in this regard, according to Article 747 of the Code of Civil Procedure, such possession is considered as possession on the person's own account (ownership), unless the contrary is proven.

Another situation is conceivable where there is knowledge of possession as ownership (i.e. possession has been achieved on the person's own account), but the actual ownership of the possessor is not established. In other words, it is not clear whether the possessor acquired the property through legal means or not. In this case, Article 35 of the Civil Code states that we assume such possession to be correct and due to legal reasons, unless proven otherwise. Therefore, the provisions of Article 35 mean that whenever it is proven that there is possession as ownership (not on the account of another, such as possession by a tenant), but the ownership of the possessor itself is not certain, from a legal perspective we consider him the owner, unless proven otherwise. Article 36 of the Civil Code complements this view.

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The Concept and Basis of Preemption in Iranian Law

In Iranian law, possession is known as "proof of ownership." Article 35 of the Civil Code states: "Possession as ownership is proof of ownership unless proven otherwise." In the meantime, the concept of "prior possession" (prior possession) becomes important when two or more people claim ownership of a property for which there is no official document or a conflicting document has been presented. In Iranian law, current possession (possessor during dispute) is accepted as a legal proof of ownership (Katouzian, 2019, p. 124). However, in cases where prior possession conflicts with current possession, the rule of "istishab" and "proof of possession" are challenged. Iranian judicial practice mainly focuses on "current possession" unless the claimant of prior possession can prove his ownership with stronger evidence (such as a prior ordinary document or witness testimony) (Shahidi, 2018, p. 89). In other words, in Iranian law, prior possession alone, without being accompanied by a "cause of ownership," does not have absolute probative power to overcome current possession.

The Egyptian Law Approach to Preemption

In Egyptian civil law, the principle of "possession" (possession) is of particular importance. Article 958 of the Egyptian Civil Code provides for the protection of the possessor to prevent chaos and maintain public order (the "dawaa' wa'yid" lawsuit). However, in the matter of proving ownership, the Egyptian legal system makes a clear distinction between "material possession" and "legal possession" (Al-Sanhouri, 2000, vol. 9, p. 45). In Egypt, the rule of "possession in movables is the document of ownership" (possession in movables is the document of ownership) is accepted as a principle, but in immovable property, prior possession acts as a "parameter of ownership". If an individual can prove that his "prior possession" was based on a legal reason (such as sale or inheritance), this prior possession can prevail over subsequent possession (Morsi, 2015, p. 212). In other words, Egyptian law pays more attention to the "origin of possession" (cause) than to the time of possession, and considers prior possession valid if it reveals entitlement.

Comparative analysis and conclusion

A comparison of Iranian and Egyptian law shows that both legal systems are influenced by jurisprudential teachings (especially Maliki and Hanafi jurisprudence in Egypt and Imami jurisprudence in Iran). However, there are key differences in this regard:

1.The role of emirates: In Iranian law, current possession is recognized as established emirates and “priority of possession” can only be relied upon if there is a complementary reason (proof of prior entitlement). However, in Egyptian law, prior possession, relying on its origin (religious or legal reason), carries more weight in proving ownership.

2. Public order: In Egypt, protection of the “current possessor” is pursued more intensively to maintain public order in order to prevent violent conflicts (immediate protection). In contrast, in Iranian law, the approach of the courts is more focused on “proof of entitlement” than simply protecting the status quo (Safaei and Ghasemzadeh, 2020, p. 156.)

As a result, it can be said that in both countries, "priority of possession" alone (without documentary or causal support) is not a conclusive proof of ownership, but in Egyptian law, its argumentative weight is more flexible in judicial practice if the "legitimacy of possession" is proven in addition to temporal precedence, compared to Iranian law.

Conclusion

A comparative analysis of the position of pre-emption in proving ownership

A comparative study of the status of “prior possession” in the legal systems of Iran and Egypt shows that although both legal systems are rooted in Islamic jurisprudential traditions and value “possession” as a manifestation of ownership and a tool for public order, in the transition from tradition to modernity, they have adopted different approaches in dealing with the interference of “prior possession” and “current possession”.

.1The originality of current possession versus prior possession:

In both legal systems, “current possession” (current possession) as a measure that indicates entitlement enjoys legal privileges. In Iranian law, Article 35 of the Civil Code, with an approach based on Imami jurisprudence, considers possession as a measure that is valid until proven otherwise (with stronger evidence). In Egyptian law, the civil law (influenced by the French legal system) also protects the current possessor with a functionalist perspective so that transactional security and public order are not compromised. Therefore, “prior possession” is not considered as an “independent and sufficient proof” in either system; rather, it merely serves as a basis for strengthening other evidence (such as judicial or evidentiary evidence.)

.2Separation in the basis of validity of prior possession:

The fundamental difference is that Egyptian law, in conflicts between possessors, is more inclined to examine the “quality and cause of possession” (legal possession). In Egypt, courts give weight to prior possession by examining whether the prior possession was based on a contract or a religious reason. In contrast, the Iranian judicial system focuses more on “evidence of current possession” and places a very heavy burden of proof on the claimant of “prior possession” to prove the opposite of the appearance of current possession. In other words, Iranian law in this confrontation more sanctifies the “status quo”, while Egyptian law tries to assess the “legitimate origin” alongside the temporal precedent.

.3Final suggestions:

The result of this research indicates that in order to improve judicial practice in Iran, it is possible to view “priority of possession” not as an independent rule, but as a “parameter that reveals the cause” in property claims with a stronger position by taking advantage of the Egyptian experience. Especially in cases where there is no official document, Iranian courts can administer justice more accurately by “analyzing the cause of prior possession” and distance themselves from relying solely on “current possession” (which is sometimes due to usurpation or aggression.)

In short, while both legal systems consider prior possession to be weak on its own, Egyptian law has been more dynamic in using prior possession as a tool to discover the truth (along with legal cause); A model that can be examined in the reform or interpretation of Iranian judicial practice.

The present study aimed to explain the position of "precedence of possession" in proving ownership, and compared the legal systems of Iran and Egypt. The results of this study show that although both legal systems are influenced by Islamic jurisprudence in their basic principles and the importance of "possession" as a manifestation

of domination, they have adopted distinct approaches in the operational and judicial positions in dealing with the interference of "precedence of time" and "current situation."

1. The priority of current possession as a security measure:

In both legal systems, "current possession" has a superior position as a basis for maintaining "transactional security" and "public order". In Iranian law, Article 35 of the Civil Code, relying on the appearance of the present, considers current possession as a measure of ownership, and in Egyptian law, protecting the current possessor through the rules of "hyazeh" (possession) is considered a means to prevent chaos and illegal self-help. Therefore, pre-emption alone does not have the power to break the presumption of actual possession in either of these two systems.

2. Difference in the analysis of the nature of the "cause:"

The fundamental difference is that the Egyptian legal system, using the teachings of modern civil law, makes a more precise distinction between "material possession" and "legal possession" (hayazat al-qanuniyyah). In Egyptian law, pre-emption has double evidentiary value only when its "origin" and "cause" are also legitimate; in other words, Egypt assesses pre-emption in connection with "cause". In contrast, Iranian law operates more on the basis of traditional rules of proof (amarah and binah) and pre-emption is often placed in the heavy shadow of actual possession.

3. Final conclusion:

The general conclusion is that "pre-emption" has a "supplementary" role in both countries, not a "founding" one. That is, prior possession does not prove ownership by itself, but if it is accompanied by other evidence, it can turn the tables in favor of the claimant. However, Egyptian law, with a dynamic approach, has provided more tools for the court to examine the "nature of prior possession" (in terms of the legality of the cause). Finally, it is suggested that the Iranian legal system, looking at the capacities of the Egyptian law doctrine, reinterpret "prior possession" in its judicial practice not as a simple claim, but as "evidence for discovering the cause of ownership" in order to move away from relying solely on "current possession" which may result from aggressive domination and move towards discovering the documentary and contractual truth.

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