Subject Name: SRA

Topic Name: Recovery of Immovable Property

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Contrasting Procedures under Sections 5 and 6

Secs. 5 and 6 of the SRA deal with the acquisition of Immovable Property. According to Sec. 5, the rightful possessor of a specific immovable property can reclaim it following the procedures outlined in the Code of Civil Procedure, 1908. This typically involves initiating a suit for ejectment based on ownership rights within a 12-year window from the date of dispossession.

Upon obtaining a court decree, the actual possession can be regained by enforcing the decree as per Order XXI, Rr. 35 and 36. Therefore, a case under Sec. 5 follows standard legal proceedings, requiring the plaintiff to demonstrate superior title.

Sec. 6, on the other hand, provides a swift and specialised recourse for individuals ousted from immovable property. To file a suit under this section, certain conditions must be met:

(i) the claimant must have been in possession,

(ii) the dispossession must have occurred involuntarily,

(iii) it must involve immovable property,

(iv) the dispossession must be unlawful, and

(v) the suit must be initiated within six months of the dispossession.

There are limitations to initiating a suit under Sec. 6:

(a) it cannot be filed beyond six months from the date of dispossession,

(b) it cannot be directed against the Government, and

(c) no appeals or reviews are permitted against the orders or decrees issued in such suits.

Nonetheless, this section does not hinder anyone from suing to validate their ownership and reclaim possession of the property.

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Safeguarding Possession: The Role and Implications of Section 6

The essence of Sec. 6 is to deter unauthorised evictions, emphasising that contested property rights should be resolved through legal channels rather than through vigilantism, regardless of the strength of one's claim to ownership. The reinstatement of possession under Sec. 6 does not prejudice the ultimate determination of rights, which must be adjudicated in a court of law.

Importantly, Sec. 6 does not delve into title disputes; rather, it focuses solely on evidence of possession. Consequently, even if the defendant holds a superior title, they cannot contest the plaintiff's claim to regain possession if the plaintiff substantiates their allegation.

Sec. 6 mandates that the plaintiff must possess at least a possessory title at the time of eviction, indicating legal possession rather than mere trespassing. Legal possession implies actual possession with the intention of maintaining it.

However, it's crucial to note that 'juridical possession' doesn't necessarily equate to 'lawful possession'. The protection offered by the court is not for the possession itself, which might be contentious, but safeguards against forceful dispossession, reflecting the principle that even with a strong title, forcible eviction is impermissible.

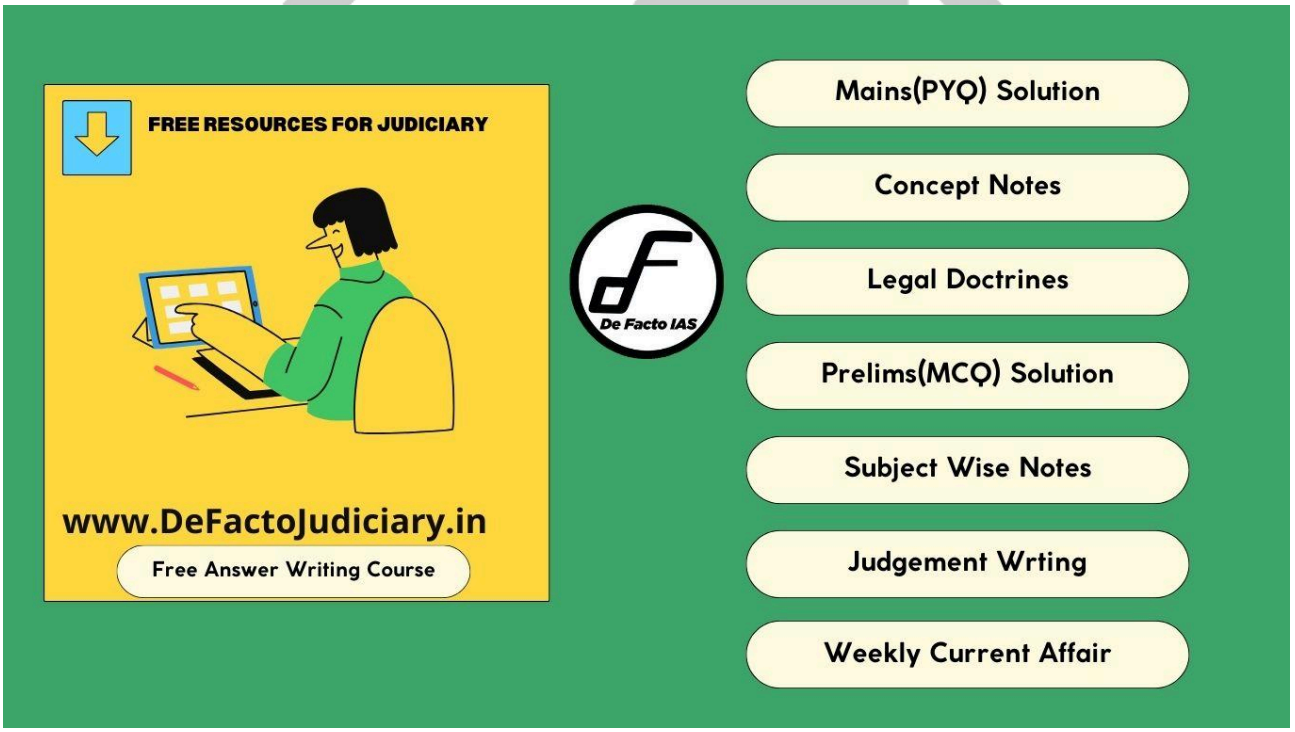
Sec. 6 states that even landlords, as true owners, cannot resort to self-help eviction tactics. Indian law does not sanction landlords to re-enter the premises extrajudicially. While Sec. 6 discourages forcible evictions, it doesn't assert that the possession of the evicted individual is lawful per se. For instance, a landlord who loses possession due to the eviction of their tenant is entitled to seek remedy under Sec. 6.

Jurisdictional Limits and Relief in Section 6 Cases

When possession is assumed by the State Government, the petitioner cannot lodge a grievance until they establish their superior title to the property, thereby warranting entitlement to possession [R.C. Indra Kumar Pvt. Ltd. v State of Orissa AIR 1972 Ori 40].

In cases where possession was granted gratuitously, the owner retains the right to reclaim possession even without the knowledge of the occupant. For instance, in Mallick v Ajoy Kumar Roy (2000) 4 SCC 119, the owner lawfully dispossessed a garage user who was utilising the property owned by their sister.

The rationale behind the prohibition on granting relief beyond recovery of possession in a Sec. 6 suit is rooted in the restriction on examining title matters in summary possession suits under this section. However, if relief other than possession recovery can be rightfully granted without delving into matters beyond the scope of the section, such relief would not be deemed jurisdictionally improper.



Differences between Sections 5 and 6

The disparity between Sec. 5 and Sec. 6 is stark. Sec. 5 permits an individual with rightful entitlement to specific immovable property to initiate a suit for its recovery, adhering to the procedures outlined in the Code of Civil Procedure. Consequently, a suit under this section hinges on establishing ownership rights.

In contrast, Sec. 6 furnishes a swifter recourse for individuals who have been ousted from immovable property, without necessitating the establishment of title.

These sections are mutually exclusive, offering alternative and distinct remedies. Thus, a plaintiff cannot simultaneously pursue both remedies. However, if a plaintiff or defendant fails under Sec. 6, they can subsequently seek recourse under Sec. 5 to validate their ownership and reclaim possession.

Sec. 6 necessitates the plaintiff to merely demonstrate prior possession and subsequent dispossession by the defendant within six months of filing the suit. This remedy provided by Sec. 6 is supplementary, allowing the dispossessed party to still assert their title in a regular court of law, even if the suit is filed beyond six months from the dispossession.

A suit solely based on possession remains admissible even after the expiration of the six-month period. Additionally, a suit grounded in prior possession can be filed within 12 years under Sec. 5, where the burden of proving title lies with the defendant.

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