

CHAPTER 60:02

TITLE TO LAND (PRESCRIPTION AND LIMITATION) ACT

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4 **Cap. 62:02** *Title to Land (Prescription and Limitation)*

CHAPTER 60:02

1953 Ed.
c. 184

TITLE TO LAND (PRESCRIPTION AND LIMITATION) ACT

62 of 1952

An Act to make provision for prescription and limitation in respect of titles to land and for purposes connected therewith.

[31ST DECEMBER, 1952]

Short title.

1. This Act may be cited as the Title to Land (Prescription and Limitation) Act.

Interpretation.

2. (1) In this Act—

“action” includes any proceeding in a court of law;

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“Court” means the High Court;

“land” includes any easement, profit *a prendre*, servitude or other right over immovable property or connected therewith;

“rent charge” means any annuity or periodical sum of money charged upon or payable out of land.

(2) For the purposes of this Act a person shall be deemed to be under a disability while he is an infant or of unsound mind.

(3) For the purposes of the last foregoing subsection but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind—

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(a) while he is detained in the Mental Hospital under section 12 or section 13 of the Mental Hospital Ordinance; or

(b) while he is receiving treatment as a voluntary patient in the Mental Hospital under section 14 of the Mental Hospital Ordinance; or

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(c) while he is being dealt with as a lunatic under section 179 of the Criminal Law (Procedure) Act.

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(4) A person shall be deemed to claim through another person if he became entitled through, under or by the act of that other person to the right claimed.

(5) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land, or, in the case of rent-charges, to distrain for arrears of rent, and references to the bringing of such an action shall include references to the making of such an entry or distress.

(6) References in this Act to the possession of land shall in the case of rent-charges be construed as references to the receipt of the rent, and references to the date of dispossession or discontinuance of possession of land shall in the case of rent-charges be construed as references to the date of the last receipt of rent.

3. Title to land (including State land or Government land) or to any undivided or other interest therein may be acquired by sole and undisturbed possession, user or enjoyment for thirty years, if such possession, user or enjoyment is established to the satisfaction of the Court and was not taken or enjoyed by fraud or by some consent or agreement expressly made or given for that purpose:

Title by prescription to land.

Provided that except in the case of State land or Government land, such title may be acquired by sole and undisturbed possession, user or enjoyment for not less than twelve years, if the Court is satisfied that the right of every other person to recover the land or interest has expired or been barred and the title of every such person thereto has been extinguished.

4. (1) The Court may make a declaration of title in regard to the land or interest in—

Declaration of title.
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(a) any action brought by or against the owner thereof or any person claiming through him or in which all the parties interested therein are before the Court; or

(b) any application under section 35 or 37 of the Deeds Registry Act; or

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- (c) any application by a judgment creditor; or
- (d) any application under the rules of court,

and may order that the land or interest be passed to and registered in the name of the person who has so acquired such land or interest.

(2) A Commissioner of Title may hear and determine such matters in respect of which a judge of the High Court has power to exercise jurisdiction under this Act as may be assigned to him by the Chief Justice, and for that purpose shall be vested with and may exercise the powers of a judge of the High Court.

(3) Any order of a Commissioner of Title made in pursuance of the jurisdiction conferred on him by subsection (2) shall be deemed to have been made by a judge of the High Court.

Limitation of actions to recover land.

5. No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

Accrual of right of action in case of present interests in land.

6. (1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the present date of the dispossession or discontinuance.

(2) Where any person brings an action to recover any land of a deceased person, whether under a will or on intestacy, and the deceased person was on the date of his death in possession of the land or, in the case of a rent-charge created by will or taking effect upon his death, in possession of the land charged, and was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of his death.

(3) Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him, or to some person through whom he claims, by a person who, at the date when the assurance took effect, was in possession of the land or,

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in the case of a rent-charge created by the assurance, in possession of the land charged, and no person has been in possession of the land by virtue of the assurance, the right of action shall be deemed to have accrued on the date when the assurance took effect.

7. (1) Subject as hereinafter in this section provided, the right of action to recover any land shall, in a case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or interest claimed, be deemed to have accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest.

Accrual of
right of action
in case of
future
interests.

(2) If the person entitled to the preceding estate or interest, not being a term of years absolute, was not in possession of the land on the date of the determination thereof, no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

(3) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

(4) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred under this Act, no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

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Accrual of right of action in case of forfeiture or breach of condition.

8. A right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken:

Provided that, if such a right has accrued to a person entitled to an estate or interest in reversion or remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession, as if no such forfeiture or breach of condition had occurred.

Accrual of right of action in case of certain tenancies.

9. (1) A tenancy at will shall, for the purposes of this Act, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

(2) A tenancy from year to year or other period, without a lease in writing, shall, for the purposes of this Act, be deemed to be determined at the expiration of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

(3) Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than five dollars is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

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(4) Subsections (1) and (3) shall not apply to any tenancy at will or lease granted by the State.

10. (1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”) and where under the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

Right of action not to accrue or continue unless there is adverse possession.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to accrue unless and until the land is again taken into adverse possession.

(3) For the purposes of this section—

(a) possession of any land subject to a rent-charge by a person (other than the person entitled to the rent-charge) who does not pay the rent shall be deemed to be adverse possession of the rent-charge; and

(b) receipt of rent under a lease by a person wrongfully claiming, in accordance with subsection (3) of the last foregoing section, the land in reversion shall be deemed to be adverse possession of the land.

11. For the purposes of this Act, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right of action to recover the land.

No right of action to be preserved by formal entry or continual claim.

12. For the purposes of the provisions of this Act relating to actions for the recovery of land, an administrator of the estate of a deceased person shall be deemed to claim as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration.

Administration to date back to death.

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Extinction of title after expiration of period.

13. At the expiration of the period prescribed by this Act for any person to bring an action to recover land, the title of that person to the land shall be extinguished.

Limitation of actions to recover rent.

14. No action shall be brought, or distress made, to recover arrears of rent or damages in respect thereof, after the expiration of three years from the date on which the arrears became due.

Limitation of actions in respect of trust property.

15. (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject as aforesaid, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

(3) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

Limitation of action claiming estate of a deceased person.

16. Subject to section 15(1), no action in respect of any claim to the estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of twelve years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in

respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

17. If on the date when any right of action accrued for which a period of limitation is prescribed by this Act the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of three years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired:

Extension of
limitation
period.

Provided that—

(a) this section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;

(b) when a right of action which has accrued to a person under a disability accrued, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person;

(c) no action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims;

(d) this section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any enactment, except where the action is brought by an aggrieved party.

18. Where there has accrued any right of action to recover land and the person in possession of the land acknowledges the title of the person to whom the right of action has accrued, the right shall be deemed to have accrued on and not before the date of acknowledgment.

Fresh accrual
of action on
acknowledg-
ment.

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Formal provisions as to acknowledgments and part payments.

19. (1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment.

(2) Any such acknowledgment as aforesaid may be made by the agent duly authorised in writing of the person by whom it is required to be made under section 18 and shall be made to the person or to an agent of the person whose title is being acknowledged.

Effect of acknowledgment on persons other than the maker.

20. (1) An acknowledgment of the title to any land by any person in possession thereof shall bind the acknowledgor and his successors in possession during the ensuing period of limitation, but not any other person.

(2) An acknowledgment by one of several personal representatives of any claim to the estate of a deceased person or to any share or interest therein shall bind the estate of the deceased person.

Postponement of limitation period in case of fraud or mistake.

21. Where, in the case of any action for which period of limitation is prescribed by this Act, either—

(a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;
or

(b) the right of action is concealed by the fraud of any such person as aforesaid; or

(c) the action is for relief from the consequences of a mistake,

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it:

Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting any property which—

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(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or

(ii) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

22. For the purposes of this Act, any claim by way of set-off or counter-claim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counter-claim is pleaded.

Provisions as to set-off or counter-claim.

23. Nothing in this Act shall affect any equitable jurisdiction to refuse belief on the ground of acquiescence or otherwise.

Acquiescence.