

Chapter Six: Other Rights in Rem

6.1 Introduction

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6.2 Right of Recovery

6.2.1 Definition, source and scope

Definition:

According to black's Law dictionary:

recovery. 1. The regaining or restoration of something lost or taken away. 2. The obtainment of a right to something (esp. damages) by a judgment or decree. 3. An amount awarded in or collected from a judgment or decree.

According to Oxford Advanced Learners Dictionary (lexical defn.) recovery is:

The act or process of regaining or repossession of something lost;

A return to normal health;

A return to former status or

A renewed growth after a slump (economy).

Ethiopia,

Right of recovery is a right of a person to recover a thing sold by an owner from the buyer by paying the price and costs the latter has incurred. See Art 1386 of the Civil Code. In other words, right of recovery is a right where by its beneficiary can force the buyer of a thing to sell it to him.

➤to keep things within a certain group of persons, such as a family or joint owners b/c of the economic or social value immovable things have among the society.

➤to keep a property among persons who have close relationship, in cases of joint owners, and keep strangers out there by securing peace and co-operation.

Allowing strangers to acquire a share in a jointly owned thing may create problems in the administration of the thing, as almost all decisions have to be made by majority or unanimous vote of joint owners, which may become very difficult if a person who does not get along with the joint owners allowed to

Source of right of recovery

- It always the result of legal provisions. It may not arise from contract, will or any other source.
- It is a right personal to the beneficiary and hence cannot be transferred to another person, nor can creditors of the beneficiary exercise it on his behalf. See Arts 1387 and 1397 of the Civil Code.

• **Relatives by consanguinity**; According to Arts 1389 and 1394/2/ of the Civil Code relatives by consanguinity of the seller of an immovable thing have the right to force the purchaser of such immovable, against payment of the price he has paid, to sell it to them. See also Arts 1124 and 1125 of the code.

• **Joint Owners** shall have a right of recovery where one of the joint owners sells his share of right in thing jointly owned. See Art 1260, 1261, 1388 and 1394 of the Civil Code. Joint owners exercise their right of recovery jointly and acquire equal rights in the share recovered. However, where one or more of the joint owners are not willing to exercise a right of recovery, such right shall accrue to the other joint owners. See Arts 1393 and 1262 of the Civil Code.

➤ The beneficiary of a right of recovery must declare his intention to buy the thing or usufruct within two months from the date he is informed of the transfer of ownership or usufruct to a new owner or usufructuary, (if he is notified). See Art 1400. However, if he is not notified, then he may exercise his right within a period of one month from the date the joint owners knew of the transfer.

➤ On the other hand, where the right is exercised by relatives, the beneficiary must declare his intention to exercise his rights within six months from the date of transfer of possession.

Such declaration of intention to buy/ exercise a right of recovery/ must be accompanied by securities, which may be in the form of pledge, mortgage or personal guarantee to secure the payment of the price and other expenses. See Art 1403.

According to Art 1398 of the Civil Code, a right of recovery may be exercised where the owner sells the thing or where creditors of the owner attach the thing, but may not be exercised where the owner transfers the thing gratuitously, for instance, where the owner donates the thing.

However, Art 1407/1/ indicates that right of recovery may be exercised even where the thing is transferred without consideration. Furthermore, excluding right of recovery in cases where the thing is transferred gratuitously will also be against the purpose of granting right of recovery discussed

However, a right of recovery, whoever the beneficiary may be, cannot be exercised in the following circumstance;

1. Where the buyer is himself a beneficiary of right of recovery, i.e., where the property is sold to a blood relative of the seller or a joint owner. (Art 1395 and Arts 842-851).
2. Where the immovable sold is situated in a town planning area or it consists mainly of a dwelling house or building. This prohibition particularly applies in cases of the right of recovery of relatives. (Arts 1535, 1536 and 1396).
3. Where the thing is expropriated. According to Art 1399 of the Civil Code, a beneficiary of a right of recovery cannot force a public authority or any other organ that has a power to expropriate private

Effect of right of recovery

The new owner or usufructuary shall transfer the thing or usufruct to the beneficiary of right of recovery up on of receipt of the price where he acquired the thing for consideration or the value of the thing where he acquired the thing on donation. See Arts 1406, 1407, 1408 and 1409 of the Civil Code. The person who is forced to transfer a thing to the beneficiary of right of recovery shall also have the right to be reimbursed with;

- Expenses of purchase and legal interest. /Art 1408/1/

- Legal interest on the price or value of thing from the date of payment of the price and or incurring of expense. /Art 1408/2/

Loss of right of recovery

The right of recovery shall be extinguished where the beneficiary fails to declare his intention to exercise his right, to recover the thing, within two months from the date when he is informed of the transfer of ownership or usufruct, if he was informed, or within one month from the date he knew of the transfer, where the beneficiary is a joint owner. (Art 1401/1/).

Relatives who have a right of recovery shall lose their right where they fail to declare their intention to exercise the right within a period of six months from the date they