Analysis of Bona Fide Acquisition Under Possession Reformulation

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Abstract

The system of bona fide acquisition of movables is a very important system in civil law since modern times. However, in modern society, the further development of concept delivery makes the phenomenon of separation between possession and ownership become more and more universal. There is a potential conflict between possession reform and the announcement of property right of property as a sign of delivery, which has been brought up again in civil law circles. Based on the measure of interest and value analysis, on the possession case of bona fide acquisition system is discussed and reflection, in under the bona fide possession of the application, the modified say. With a view to China's ongoing property rights legislation to benefit.

Key words: possession modification, bona fide acquisition, publicity

I INTRODUCTION

(1) possession modification is an alternative delivery rather than a genuine delivery; it does not have the elements of publicity and therefore does not have the effect of public notice and public trust.

Since China's "civil law" promulgated, the legislative system of civil law consisted of two points on the system of property rights, the legal rules of real right change adopted public principle\(^1\), but in the real estate establishment, alteration, transfer and elimination of the legal rules of the unified "chattel delivery system, the actual delivery, simple delivery, indication delivery and possession are provided in the" delivery "system, constitute a general delivery system. But in these Provisions, no legal consequences of different delivery modes are distinct regulations, that led to the "delivery" system cannot relative to the demonstrative principle, resulting in possession of legal rules applicable to the problem.

Under possession reformulation, the transferor and the transferee agreement that they would not actual delivery, but the transferee by direct possession into indirect possession, the delivery of substitute, the possession of the state and the dominating relations of people did not change, the objective status of third people to know this right relationship, so that under possession reformulation, the assignee is not direct possession, but indirect possession. The non-public characteristics of indirect possession decide that the legal requirement of public ownership can’t be publicized, and the public trust based on publicity can’t be produced, so it does not have the effect of resisting the bona fide third party.

The distinction between direct possession and indirect possession makes the possession reformulation theoretically reasonable. Although the possession reformulation make the subject matter of indirect possession, but not actually on the collar tube of force, and this collar force is not only highlight the key of real property ownership, but also decided to change whether they have the key effect of publicity and public trust. With a view of indirect possession has publicity function, possession reformulation of indirect possession is made

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outside the transfer of ownership of the mark. The changes but indirect possession caused by the status of the rights is not third people know, so I think that if indirect possession has the role of publicity, the publicity of chattel delivery through the principle will lose value. the transeree of the possession reformulation as the right people do not have the collar force, although the return to claim, but is often achieved by renting or borrowing and other legal relations, there is a relative, does not have the right of publicity effect, others do not know no legal obligation awareness.

(2) If admit the public trust of the possession reformulation, it will means against the basic logic of the legal relation of possession reformulation is.

From the analysis of logic, the person transferring into direct possession in the possession reformulation, the assignee's possession is indirect possession. in the same legal relationship, The parties concerned as the counterpart may not at the same time with the publicity effect, more do not have the effect of public credit, otherwise it will produce a logical contradiction which is that each other can against each other. According to the principle of presumption of right of possession, the possessor claims that he has the right of possession as content in the possession, and assumes that the possessor enjoys the right. When the assignor claims that the subject matter is entitled to the ownership of the subject matter, the direct possession of the subject matter is sufficient to cause the trust of the third party other than the assignee to be the owner's effect. In recognition of direct possession has the effect of publicity and public trust at the same time, the logic has negated the effect of indirect possession of public trust so far, as the indirect possession of possession reformulation, the demonstrative validity in logic is denied. In the case of lack of public trust and publicity, the system of bona fide acquisition has been divided in the academic circles.

II The Bona Fide Acquisition and Possession Reformulation

China's "property law" 106th, 108 provisions of the system Stipulated the bona fide acquisition. In terms of movable property, the right to dispose of the property at a reasonable price transfer to the assignee, and has been delivered to the transeree, if the transeree get the immovable property in good faith, the bona fide assignee obtains movable property, the original rights on the realty destroyed. With the rapid development of commodity economy, the system has become an indispensable system.

In the legislation and doctrine of bona fide acquisition, it is generally required that the assignor deliver the movable property to the buyer. However, the delivery of movable property, in addition to actual delivery, there are conceptual delivery methods. The purpose of the conceptual delivery is to simplify the delivery transfer of real estate, the Assignor has the right to transfer the applicable prerequisite; punishment and the assignor to the situation is different, in reality, real estate is still delivered by the assignor of direct possession under the bona fide acquisition can be set up, this is controversial.

Making the possession reformulation adopt the bona fide acquisition, the transeree will have access to the possession of the goods, but the matter is still under the direct possession of the unauthorized person. At this point, what is the priority of the bona fide transeree and the original owner? Or the person who does not have the right of disposition to sell the property again by possession, which priority shall be given to two or more bona fide persons before and after the acquisition? These problems will make the legal relationship into confusion inevitably. There are different opinions in theory about whether bona fide assignee can obtain the ownership of movable property by way of possession reformulation, mainly in the following theories:
The first one is negative theory. That is to say, the assignee acquires the movable property in the form of possession, and sometimes the application is not obtained in good faith. There are two reasons for it. First, the real rights of the right holder should be regarded as continued before the chattel is delivered. Therefore, the assignor may not refuse to request the return of the subject to the assignor who still holds the object. Two, although the system of bona fide acquisition aims to protect the bona fide third party, it should also balance the protection of the transaction security and the protection of the former owner's right of access, so as to make a choice. Change of occupancy in the possession of the transfer mode is not clear, this is not clear to deprive the rights of indigenous rights, longitudinal to safeguard the security of transactions, but on the rights of indigenous people was too harsh, because the original owner and assigns trust to the assignor based on the situation, so it is difficult to say the original rights of human need more protection than assignee, it is only through the possession to bona fide acquisition.

The second is affirmative. It is considered that the transfer of possession is not the essential element of bona fide acquisition theoretically, but the transfer of possession in the legislation of property right change formalism is only the prerequisite for the change of property right. In the meaning of legislation, transfer of possession is against elements of the alteration of real right, possession reformulation is a special way of share transfer, it must also play a role in the corresponding legislative case of the change of real right or public confrontation, without any reason to exclude it. since no reason to be excluded. Moreover, the system of bona fide acquisition is possessed by the trust of the transferor, and the protection of bona fide assignee, to ensure the safety of transactions for the purpose, only acknowledge the change of possession in good faith, to fully protect the safety of transactions, not the same without the assignee for sometimes possession transfer mode, the bona fide assignee suffered different results.

The third is compromise. It is believed that the assignee has the property right of movable property, but the acquisition of this right can only be determined after the actual delivery of the subject matter, therefore, it is uncertain. That is, in the assignee and the original obligee’s, the person who has acquired the real object of the subject has obtained the ownership, the ownership of the original owner, and the loss of the property in the period when the assignor continues to occupy the movable property. If the original owner first acquired the property of possession, the transferee of the loss of ownership; on the contrary, if the transferee first acquired the property of real possession, the determination of ownership, and the rights of indigenous people certainly lose its ownership.

The fourth is shared loss theory. It said that pure eclecticism is easy to cause the first unfair phenomenon, does not meet the fair principle, civil law advocates therefore, although it should be according to who first obtained possession, who first obtain the right to decide, but lose the rights of people to achieve the rights of the people, have the rights of the people should share the loss of rights of the losses, in order to be fair.

The fifth is the type theory. It distinguishes several types and processes them at different standards. Professor Suzuki Luya of Japan believes that the system of bona fide acquisition of movable property, based on the intention of protecting the moving security, should be affirmed and admitted that the transferee in good faith has obtained the right. But It will adopt eclectic theory in the double assignment (The original owner or the assignor first transfers the possession in a way of possession, and then transfers it to C in the form of possession), who first made the possession that made the right person. The reason is: in the occasion of except double assignment, is the original ownership of quiet safety and the goodwill of human dynamic security trade-offs, in full compliance with the original intention of the establishment.
of the system of bona fide acquisition should be affirmed. However, in the case of double assignment, the first, second or even more transferee is in the same legal status, and they are all symbols of transaction security. Therefore, ownership should be determined by the acquisition of the actual possession. [4]

III The Evaluation of Each Theory

First, the defects of the negative theory: first of all, in the case of the reason, in the realm of private sacred law of civil rights, there must have a reasonable basis that the system of sacrificing the ownership of the original right holder can exist and continue. It is to protect the safety of transactions, in order to seek social and economic prosperity, continued transactions are not broken, the law was forced to sacrifice the interests of the original owners. Thus, on the basis of admitting the reasonable system of bona fide acquisition, the original obligee’s interest was sacrificed will have a reasonable basis. Its rationalization is based on the private ownership of transactions security, that is, "static safety"<"moving security." that is quiet safety<move safety. Then all the system design should be based on it, otherwise, the system of bona fide acquisition is not respected. Secondly, in the light of the reason two, the application of bona fide acquisition is unfair to the original obligee, and the application of bona fide acquisition in the case of direct delivery is unfair to the original obligee. On the surface, the theory of negation reflects the spirit of measuring the interests of civil law. It is actually a mistake in grasping the theoretical basis of good faith acquisition, thus fundamentally endangering the system of bona fide acquisition. [5]

Secondly, the defects of eclectic theory: it based on the affirmation basically, admitted possession of bona fide acquisition effect can occur, but the rights of bona fide acquisition shall be determined the subject matter of the reality before delivery, the assignee shall obtain the object of real possession, the original owner is not sure to lose its ownership, the transferee people are not sure to obtain ownership. In the case of double dealing, likewise, the two Assignee does not have the right to claim or lose ownership. This system design is good, but the problem is that the ownership to where go to? Is the original owner and the assignee has, or the subject matter as ownerless? Compromise is difficult to justify at this point, the defect is to balance the rights of indigenous people and goodwill assignee's interests too, compromise, resulting in destruction of the harmony of legal system. What's more, the eclectic theory says that whoever gets the real possession, who will first gets the ownership, which tends to lead to a strong injustice. It's a robber theory. Therefore, compromise is not enough.

Thirdly, the defect of the sharing the damage: defects exist in disregard of the rights of indigenous people and the interests of bona fide third conflicting reality, in an attempt to balance the spirit will subject to the conflict between losses equally, the pursuit of a perfect harmony without principles, this is only an ideal state. As Zheng Yefu said in the book, "if conflicts are objective, making them open, clear and institutionalized will be the least expensive and most profitable adjustment.". On the contrary, pursuing the same interest constantly, is to give up "inconsistent" positive regulation of the objective existence. [6] the bona fide acquisition system is the way that pursuit of a kind of legal regulation on the minimum cost, maximum profit, and it is not negative price.

Fourthly, the typological evaluation: the doctrine thought, the system of bona fide acquisition of movable property emphasizes protecting the movable security should be affirmed. the transferee in good faith acknowledges the right of the transferee. But in the case of double assignment, we adopt a compromise to say who gets the reality first and who owns the right. It is easy to come to such a theoretical dilemma: when the second bona fide assignee
has not yet appeared, the first bona fide transferee has acquired the ownership of the subject matter, thereby denying the ownership of the original owner. And when second the transferee appeared, and denied the first bona fide assignee of ownership, but at the same time, a second ownership and the assignee has not made the subject matter, because the two bona fide transferees, who first obtained the real possession of the subject matter, who can obtain the ownership of the subject matter? So, in this case, this type that made compromise errors in the two bona fide assignee have not made real possession, where is the ownership? [7]

Fifthly, the affirmation and insufficiency of typology.

First of all, the typology affirmed the possession reformulation mode can apply the bona fide acquisition system, in this regard, one of the reasons of it is definitely worth affirmed is the transaction security theory [8]. The system of bona fide acquisition has shaken the divine principle of ownership which is extreme individualism. The system of bona fide acquisition is the most active dynamic system in real law, its theoretical foundation is to maintain the transaction security, which affirmed the possession can be applicable to the case, can make the market to the main subject matter of the public credibility of trust but, more secure transactions, which is conducive to maintaining the prosperity of market economy, and promote economic development. In addition, the current law of identify the conceptual delivery is based on the value of the convenient transaction, if it can be sure of the efficient way of trading and maintenance, will greatly improve the social productive forces [9].

Secondly, both the original obligee and the assignor have their own transaction behavior based on the reliance of the unauthorized possessor, and to some extent, both sides have certain faults. However, because the subject matter has been occupied by the unauthorized person, the original obligee has greater reliance on it. It is precisely this false trust that leads to subsequent rights disputes. Even if the Assignor has wrongly trusted the person who has no right to dispose of it, it is due to the reliance on the publicity effect of the unauthorized person, so relatively speaking, the fault of the original obligee is greater than that of the assignee. Therefore, when the two kinds of trust need protection at the same time, due to the lesser degree of the assignee's fault, we should pay more attention to protecting the interests of the assignee. At this level, it should be admitted that the system of bona fide acquisition can be applied in possession.

The advantage of typology is that it only affirms that possession changes can be applied to bona fide acquisition, but there is no explicit provision for double or multiple transfers. The defect is that, the Professor Lu You of Japanese advocated above, f double assignment should be used to compromise that will appear fault phenomenon in the power of multiple assignment occasions, If the two assignee cannot obtain the actual possession in good faith, then the ownership of the ownership is unknown.

IV Conclusion

We have discussed the rationality and shortcomings of the affirmation, therefore, I think we can make the following changes: firstly, admit that possession reformulation can apply the bona fide acquisition system, the assignee shall obtain the ownership of the subject matter, Even the unauthorized person assigns the rights to others, as long as it is not delivered, it cannot destroy the first assignee who has claimed ownership. Therefore, if the transferor actually give the subject matter to the first assignee except the assignee, The first assignee can only claim breach of contract or tort liability to the unauthorized person. (The reason of we can claim tort liability is that in the case of recognition that possession can be applied in good faith, the bona fide transferee has become the owner of the property, so when his indirect possession is infringed, the right of tort can be called to the tort liability).
Reference


