

Book VII.
Title XXIX.

Concerning prescription (usucapion) by a party acting in place of heir.
(De usucapione pro herede.)

Dig. 41.5; Bas. 50.5.

7.29.1. Emperor Antoninus to Zoilus.

Since acquisition of a prescriptive title (of the property of an inheritance) by one acting as heir, is not permissible, neither you mother, whose heir you are, nor yourself, can acquire slaves by such method.
Promulgated at Rome June 25 (215).

Note.

Formerly any person might take possession of an inheritance when no heir had done so, and acquire title by prescription within one year. Gaius 2.52.53. Neither good faith nor color of title was required. The reason for such speedy acquisition of title in this manner was, as Gaius 2.55, tells us, that the ancients wished heirs to enter on an inheritance with all speed, so that they might perform the sacred rites for the deceased, and so that creditors might have someone who would satisfy their claims. But a senate decree was passed under Hadrian prohibiting the acquisition of a prescriptive title in this manner against the true heir. Gaius 2.57. A person might, however, take possession as heir, and acquire a prescriptive title against person who were not in fact heirs. Hunter 269-270; 1 Roby 227-228. The mere fact, that property belonged to an inheritance, did not bar a prescriptive title. If a man claimed the property as purchaser, he might obtain title by prescription. C. 7.34.4. Only if he claimed it as heir - or as mere occupant - he could not acquire such title. In other words, a claim as heir gave no color of title - was not a justus titulus - as against the true heir.

7.29.2. Emperors Diocletian and Maximian and the Caesars to Marina.

The law is that when there are heirs, no prescriptive title to property (of the inheritance) can be acquired by anyone as heir (pro herede).

7.29.3. The same to Diocletianus.

Possession by one as heir of property of an absent person, falsely thought to be dead, is of no avail.¹

7.29.4. The same to Serapionus.

The period of prescription does not run in the absence of good title (vero titulo), and is (without such title) of no advantage to the possessor or his heir, nor will the claim of an owner be barred by lapse of a long time under the pretence that the property belongs to an inheritance which, in fact, belongs to another.
Given December 26 (294).

Note.

¹ [Blume] i.e. No prescriptive title can be acquired in such case. Bas. 50.5.7.

It is stated in D. 41.5.3, that it was held by the majority that where an heir took possession of the property of another, believing it (in good faith) to belong to the inheritance, he might acquire title thereto by prescription. The case contemplated in the present law (C. 7.29.4), was evidently one where no such honest belief existed.