

Book VII.
Title XXXIV.

In what cases ordinary prescription (of a long time) does not apply.
(De quibus causis cessat longi temporis praescriptio.)

7.34.1. Emperors Diocletian and Maximian to Marcellina.

If the man to whom you gave a farm for cultivation, thereafter, by the aid of your stepmother, stole the documents by which ownership in you may be proven, he cannot base his claim of prescription on that alone.

Note.

The documents here referred to doubtless were the documents showing the leasing of the property. The tenant could not change the situation under which he held the property. He could not dispute his landlord's title. C. 7.32.5.

7.34.2. The same Emperors and the Caesars to Dionysius.

When the three years prescription¹ applies in a matter involving the ownership of slaves, inquiry in to prescription of a long time (ten or twenty years) is superfluous.

7.34.3. The same to Apollinarius.

One who is in exclusive possession of property owned in common, is not protected by lapse of (the ordinary) time (for prescription), so as to prevent his co-owner from claiming his portion (in an action to divide an inheritance), or suing in an action of partition, since neither an action to divide an inheritance, nor the (ordinary) action to partition, is barred by the prescription of a long time.

Given at Sirmium April 1 (294).

7.34.4. The same to Livia.

The prescription of a long time cannot injure those claiming an inheritance. But that does not apply to those who do not claim as heir or as mere possessor, but who are in possession of property which belongs or did belong to an inheritance, as purchaser, donee or pursuant to any other (similar) title, since an action for the inheritance (as such) cannot be brought against them.

Note.

As also shown in note to C. 7.29.1; C. 6.30.8; C. 3.31.7, prescription did not apply where an inheritance was claimed by an heir, against one in possession as heir. But that was not true, as shown here, where a man claimed property belonging to an inheritance as purchaser etc., i.e. under an independent title. It applied only when a man was in possession as heir (pro herede) or as mere occupant (pro possessore). A mere occupant was considered simply as a plunderer. D. 5.3.11.1. And a petition to recover an inheritance lay against him as well as against a man who was in possession claiming as heir, but not against anyone else. D. 5.3.9.

¹ [Blume] The law says when usucapion applies, then etc. This usucapion can mean nothing else than the three years' prescription - formerly one year's. This is the meaning given to the law in Bas. 50.12.2.

7.34.5. The same to Zosimus.

If, as you aver, you cured, at your expense, a slave-boy, not abandoned, but wounded by the enemy, thinking him to be free, you cannot set up the defense of prescription against his owner who reclaims him and who offers you the amount paid out.²

² [Blume] No possession was taken of the boy as owner in good faith.