

2023 Regular Session

HOUSE BILL NO. 220

BY REPRESENTATIVE PRESSLY

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PROPERTY/IMMOVABLE: Provides relative to actions to determine ownership or possession

1 AN ACT

2 To amend and reenact Civil Code Articles 531 and 3440 and Code of Civil Procedure
3 Articles 1061, 3651, 3653 through 3655, 3656(A), 3657 through 3662, and 3669,
4 relative to actions to determine ownership or possession; to provide with respect to
5 petitory actions, possessory actions, actions for declaratory judgments to determine
6 ownership, and similar proceedings; to provide for proof of ownership of
7 immovables; to provide with respect to precarious possession; to provide for
8 reconventional demands; to provide with respect to cumulation of actions; to provide
9 with respect to disturbances in fact and in law; to provide with respect to possession
10 and admissibility of title; to provide for relief and appeals; and to provide for related
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Civil Code Articles 531 and 3440 are hereby amended and reenacted to
14 read as follows:

15 Art. 531. Proof of ownership of immovable.

16 One ~~who claims~~ claiming the ownership of an immovable against another
17 who has been in possession of the immovable for one year after having commenced
18 possession in good faith and with just title or who has been in possession of the
19 immovable for ten years ~~must~~ shall prove that he has acquired ownership from a

1 previous owner or by acquisitive prescription. ~~If neither party is in possession~~ In all
2 other cases, he need only prove a better title.

3 Revision Comments - 2023

4 (a) The 2023 revision of this Article changes substantially the burden of
5 proof imposed upon a person claiming the ownership of an immovable against
6 another who is in possession. Prior to the revision, this Article provided that in such
7 cases, the claimant's burden of proof was to prove that he had acquired ownership
8 from a prior owner or by acquisitive prescription. This burden of proof, which has
9 often been characterized as the requirement of proving "title good against the world,"
10 applied even when the defendant was a usurper who had no title at all. See Pure Oil
11 Co. v. Skinner, 294 So. 2d 797 (La. 1974). Application of that rule could lead to
12 obvious inequities by allowing a usurper who was in possession for only one year to
13 prevail against a party who might have been in possession for many years previously
14 under a title that suffered from only minor defects. See Pure Oil Co. v. Skinner, 294
15 So. 2d 797, 799 (La. 1974) (Summers, J., dissenting).

16 (b) The 2023 revision narrows the circumstances in which the person
17 claiming ownership must prove that he acquired ownership from a prior owner or by
18 acquisitive prescription. As revised, the Article provides that this onerous burden
19 of proof applies only when the defendant has been in possession for one year after
20 having commenced possession in good faith and with just title or when the defendant
21 has been in possession for ten years, regardless of whether in good faith or with just
22 title. Where neither of these circumstances applies, the burden imposed upon the
23 claimant is merely to prove a better title than that of the defendant.

24 (c) The good faith and just title mentioned in this Article are identical to the
25 good faith and just title necessary to start the running of the acquisitive prescription
26 of ten years under Article 3475. "Good faith" is used in this Article with the
27 meaning given in Articles 3480 and 3481. By the express wording of this Article,
28 the defendant's good faith is measured only at the commencement of his possession.
29 This is analogous to the rule that applies under Article 3482 for purposes of the
30 accrual of the acquisitive prescription of ten years.

31 (d) The 2023 revision does not change the rule that a common author in title
32 is presumed to be the previous owner. See Article 532; Weaver v. Hailey, 416 So.
33 2d 311 (La. App. 3 Cir. 1982). The presumption is rebuttable. See Article 532,
34 comment (b).

35 * * *

36 Art. 3440. Protection of precarious possession

37 Where there is a disturbance of possession, the possessory action is available
38 to a precarious possessor, such as a lessee ~~or a depositary~~, against anyone except the
39 person for whom he possesses.

40 Section 2. Code of Civil Procedure Articles 1061, 3651, 3653 through 3655,
41 3656(A), 3657 through 3662, and 3669 are hereby amended and reenacted to read as
42 follows:

1 Art. 1061. Actions pleaded in reconventional demand; compulsory

2 A. The defendant in the principal action may assert in a reconventional
3 demand any causes of action ~~which he~~ that the defendant may have against the
4 plaintiff in the principal action, even if these two parties are domiciled in the same
5 parish and regardless of connexity between the principal and reconventional
6 demands.

7 B. ~~The defendant in the principal action,~~ Except as otherwise provided in
8 Article 3657, and except in an action for divorce under Civil Code Article 102 or 103
9 or in an action under Civil Code Article 186, the defendant in the principal action
10 shall assert in a reconventional demand all causes of action that ~~he~~ the defendant may
11 have against the plaintiff that arise out of the transaction or occurrence that is the
12 subject matter of the principal action.

13 * * *

14 Art. 3651. Petitory action

15 The petitory action is one brought by a person who claims the ownership of,
16 but who ~~is not in possession~~ does not have the right to possess, ~~of~~ immovable
17 property or ~~of~~ a real right therein, against another who is in possession or who claims
18 the ownership thereof adversely, to obtain judgment recognizing the plaintiff's
19 ownership.

20 Comments - 2023

21 According to the Civil Code, possession is a matter of fact, but the right to
22 possess arises from possession for over a year and, once acquired, is lost if the
23 possessor is evicted and does not recover possession within one year of the eviction.
24 Civil Code Articles 3422 and 3434. For purposes of this Chapter, Code of Civil
25 Procedure Article 3660 defines "possession" as possession in fact, rather than the
26 right to possess, but this Article, among others, used the term "in possession" where
27 the right to possess, rather than factual possession, was intended. The 2023 revision
28 of this Article clarifies that a petitory action is brought by one who does not have the
29 right to possess. A person who still has the right to possess even though he might
30 have lost actual possession within the past year should bring a possessory action
31 against the person who evicted him, rather than a petitory action under this Article.

32 * * *

1 Art. 3653. Same; proof of title; immovable

2 A. To obtain a judgment recognizing his ownership of immovable property
3 or real right therein, the plaintiff in a petitory action shall:

4 (1) Prove that he has acquired ownership from a previous owner or by
5 acquisitive prescription, if the court finds that the defendant is has been in possession
6 ~~thereof; or~~ for one year after having commenced possession in good faith and with
7 just title or that the defendant has been in possession for ten years.

8 (2) Prove a better title thereto than the defendant, ~~if the court finds that the~~
9 ~~latter is not in possession thereof~~ in all other cases.

10 B. When the titles of the parties are traced to a common author, ~~he~~ the
11 common author is presumed to be the previous owner.

12 Comments - 2023

13 (a) The 2023 revision of this Article changes substantially the burden of
14 proof imposed upon the plaintiff in a petitory action when the defendant has the right
15 to possess. Prior to the revision, this Article provided that, if the defendant in a
16 petitory action was in possession, the plaintiff's burden of proof was to prove that he
17 had acquired ownership from a prior owner or by acquisitive prescription. This
18 burden of proof, which has often been characterized as the requirement of proving
19 "title good against the world," applied even when the defendant was a usurper who
20 had no title at all. See Pure Oil Co. v. Skinner, 294 So. 2d 797 (La. 1974).
21 Application of that rule could lead to obvious inequities by allowing a usurper who
22 was in possession for only one year to prevail in a petitory action against a party who
23 might have been in possession for many years previously under a title that suffered
24 from only minor defects. See Pure Oil Co. v. Skinner, 294 So. 2d 797, 799 (La.
25 1974) (Summers, J., dissenting).

26 (b) The 2023 revision narrows the circumstances in which the plaintiff in a
27 petitory action must prove that he acquired ownership from a prior owner or by
28 acquisitive prescription. As revised, the Article provides that this onerous burden
29 of proof applies only when the defendant has been in possession for one year after
30 having commenced possession in good faith and with just title or when the defendant
31 has been in possession for ten years, regardless of whether in good faith or with just
32 title. Where neither of these circumstances applies, the plaintiff's burden in the
33 petitory action is merely to prove a better title than that of the defendant.

34 (c) The good faith and just title mentioned in this Article are identical to the
35 good faith and just title necessary to start the running of the acquisitive prescription
36 of ten years under Civil Code Article 3475. "Good faith" is used in this Article with
37 the meaning given in Civil Code Articles 3480 and 3481. By the express wording
38 of this Article, the defendant's good faith is measured only at the commencement of
39 his possession. This is analogous to the rule that applies under Civil Code Article
40 3482 for purposes of the accrual of the acquisitive prescription of ten years.

41 (d) The 2023 revision does not change the rule that a common author in title
42 is presumed to be the previous owner. See Civil Code Article 532; Weaver v.

1 Hailey, 416 So. 2d 311 (La. App. 3 Cir. 1982). The presumption is rebuttable. See
2 Civil Code Article 532, comment (b).

3 (e) Prior to its 2023 revision, this Article contained another example of the
4 use of the term "possession" with a meaning different from that given to the term in
5 Article 3660. See, e.g., Griffin v. Daigle, 769 So. 2d 720 (La. App. 1 Cir. 2000)
6 (explaining that the words "in possession" as formerly used in this Article required
7 that the defendant have had corporeal possession for at least one year or civil
8 possession for the same period of time preceded by corporeal possession). This
9 inconsistency in terminology was eliminated in the 2023 revision.

10 Art. 3654. Proof of title in action for declaratory judgment, concursus,
11 expropriation, or similar proceeding

12 When the issue of ownership of immovable property or of a real right therein
13 is presented in an action for a declaratory judgment, or in a concursus, expropriation,
14 or similar proceeding, or when the issue of the ownership of funds that are deposited
15 in the registry of the court and ~~which~~ that belong to the owner of the immovable
16 property or of the real right therein is so presented, the court shall render judgment
17 ~~in favor of the party~~ as follows:

18 (1) ~~Who~~ If the party who would be entitled to the possession of the
19 immovable property or real right therein in a possessory action has been in
20 possession for one year after having commenced possession in good faith and with
21 just title or has been in possession for ten years, the court shall render judgment in
22 favor of that party, unless the adverse party proves that he ~~has acquired ownership~~
23 ~~from a previous owner or by acquisitive prescription; or~~ would be entitled to a
24 judgment recognizing his ownership in a petitory action under Article 3653(A)(1).

25 (2) ~~Who~~ In all other cases, the court shall render judgment in favor of the
26 party who proves better title to the immovable property or real right therein, ~~when~~
27 ~~neither party would be entitled to the possession of the immovable property or real~~
28 ~~right therein in a possessory action.~~

29 Comments - 2023

30 The 2023 revisions to this Article are intended to conform the burden of
31 proof in a declaratory judgment action or other proceeding in which ownership is at
32 issue to the burden of proof that applies under revised Article 3653 in a petitory
33 action. As with a petitory action, if one party has been in possession for one year
34 after having commenced possession in good faith and with just title or has been in
35 possession for ten years, even in the absence of good faith or just title, that party will
36 prevail, unless the adverse party proves that he acquired ownership from a prior
37 owner or by acquisitive prescription.

1 Art. 3655. Possessory action

2 The possessory action is one brought by the possessor or precarious possessor
3 of immovable property or of a real right therein to be maintained in his possession
4 of the property or enjoyment of the right when he has been disturbed, or to be
5 restored to the possession or enjoyment thereof when he has been evicted.

6 Comments - 2023

7 The 2023 revision of this Article recognizes and complements a previous
8 amendment to the Civil Code granting a precarious possessor, such as a lessee, the
9 right to bring a possessory action against anyone other than the person for whom the
10 precarious possessor possesses. See Civil Code Article 3440.

11 Art. 3656. Same; parties; venue

12 A. A ~~plaintiff in a~~ possessory action ~~shall~~ may be brought by one who
13 possesses for himself. A person entitled to the use or usufruct of immovable
14 property, and one who owns a real right therein, possesses for himself. A ~~predial~~
15 ~~lessee~~ possessory action may also be brought by a precarious possessor against
16 anyone except the person for whom he possesses ~~for and in the name of his lessor,~~
17 ~~and not for himself.~~

18 * * *

19 Comments - 2023

20 (a) The 2023 revision of this Article recognizes and complements a previous
21 amendment to the Civil Code granting a precarious possessor, such as a lessee, the
22 right to bring a possessory action against anyone other than the person for whom the
23 precarious possessor possesses. See Civil Code Article 3440.

24 (b) The statement in this Article that a usufructuary possesses for himself
25 means that the usufructuary has standing to bring a possessory action and does not
26 imply that a usufructuary can prescribe against the naked owner without taking the
27 steps required to terminate precarious possession under Civil Code Articles 3439 and
28 3478.

29 Art. 3657. Same; cumulation with petitory action ~~prohibited~~ or declaratory
30 judgment action; conversion into or separate petitory action by defendant
31 reconventional demand or separate suit asserting ownership or title

32 A. The plaintiff ~~may~~ shall not cumulate the possessory action with either the
33 petitory and the possessory actions in the same suit or plead them in the alternative,
34 and when he does so he waives the possessory action or a declaratory judgment

1 action to determine ownership. If the plaintiff ~~brings~~ does so, the possessory action;
 2 ~~and without dismissing it and prior to judgment therein institutes the petitory action;~~
 3 ~~the possessory action is abated~~ does not abate, but the defendant may object to the
 4 cumulation by asserting a dilatory exception. If, before executory judgment in the
 5 possessory action, the plaintiff institutes the petitory action or a declaratory judgment
 6 action in a separate suit, the possessory action abates.

7 B. When, ~~except as provided in Article 3661(1)-(3);~~ the defendant in a
 8 possessory action asserts title in himself, in the alternative or otherwise, ~~he~~ the
 9 defendant does not thereby ~~converts the suit~~ convert the possessory action into a
 10 petitory action, ~~and judicially confesses~~ or judicially confess the possession of the
 11 plaintiff in the possessory action, but the defendant's assertions of title shall be
 12 considered in defense of the possessory action only for the purposes stated in Article
 13 3661(B).

14 C. Unless the plaintiff in the possessory action seeks an adjudication of his
 15 ownership, the defendant shall not file a reconventional demand asserting a petitory
 16 action or declaratory judgment action to determine ownership. If, before executory
 17 judgment in a possessory action, the defendant therein institutes a petitory action or
 18 a declaratory judgment action to determine ownership in a separate suit he files
 19 against the plaintiff in the possessory action, the ~~plaintiff~~ defendant in the ~~petitory~~
 20 possessory action judicially confesses the possession of the ~~defendant therein~~
 21 plaintiff in the possessory action.

22 Comments - 2023

23 (a) The 2023 amendment of this Article preserves the rule of noncumulation
 24 of the possessory and petitory actions and expands the rule to prohibit cumulation
 25 of the possessory action with a declaratory judgment action to determine ownership.
 26 At the same time, the amendment lessens the consequences for the plaintiff of an
 27 improper cumulation and eliminates the judicial confession of the plaintiff's
 28 possession that previously arose from the defendant's assertions of title in a
 29 possessory action.

30 (b) Prior to the 2023 amendment of this Article, if the plaintiff cumulated the
 31 possessory action with the petitory action, the possessory action simply abated.
 32 Under the revised Article, when the plaintiff cumulates the possessory action with
 33 a petitory action or with a declaratory judgment action to determine ownership, the
 34 possessory action does not abate, but the defendant has the right to object to the
 35 improper cumulation by filing a dilatory exception. See Article 926(A)(7). Upon

1 sustaining the exception, the court may order separate trials or may order the plaintiff
2 to elect which action he desires to pursue, as provided in Articles 464 and 465. If not
3 raised through a timely dilatory exception, the objection of improper cumulation is
4 waived. See Article 926(B).

5 (c) If, rather than cumulating the possessory action with a petitory or
6 declaratory judgment action, the plaintiff in the possessory action files a separate
7 action to determine ownership while the possessory action is pending, the possessory
8 action abates, but the plaintiff by doing so makes no confession of the defendant's
9 possession.

10
11 (d) Prior to the 2023 revision, the consequences for a defendant who asserted
12 title in himself in response to a possessory action were grave. Not only did his
13 assertions of title convert the possessory action into a petitory action in which he
14 became the plaintiff, but they also constituted a judicial confession of the other
15 party's possession, thus triggering the onerous burden under Article 3653 of proving
16 title good against the world. This harsh penalty has been removed. The defendant's
17 assertions of title in a possessory action no longer convert the action into a petitory
18 action or constitute a judicial confession of the plaintiff's possession; however, the
19 defendant's assertions of title are considered in defense of the possessory action only
20 for the limited purposes specified in Article 3661(B)(1) through (3). Thus, the
21 defendant cannot divert the focus of a possessory action from the issue of possession
22 to the often more complicated issue of ownership through the simple expedient of
23 injecting issues of ownership in his pleadings.

24 (e) Unless the plaintiff in a possessory action has sought an adjudication of
25 his ownership, the defendant is not permitted to assert a claim of ownership by
26 reconvention. If the defendant asserts ownership by instituting a separate suit before
27 judgment in the possessory action becomes executory, he judicially confesses the
28 possession of the plaintiff in the possessory action. This judicial confession does not
29 arise, however, if it is the plaintiff in the possessory action who institutes the
30 separate suit to determine ownership while the possessory action is pending and the
31 defendant reconvenes in that separate suit to assert his own claim of ownership.

32 Art. 3658. Same; requisites

33 To maintain the possessory action the ~~possessor must~~ plaintiff shall allege
34 and prove ~~that~~ all of the following:

35 (1) ~~He~~ The plaintiff had possession or precarious possession of the
36 immovable property or real right therein at the time the disturbance occurred;

37 (2) ~~He~~ The plaintiff and his ancestors in title, or the person for whom the
38 plaintiff possesses precariously and that person's ancestors in title, had such
39 possession quietly and without interruption for more than a year immediately prior
40 to the disturbance, unless evicted by force or fraud;

41 (3) The disturbance was one in fact or in law, as defined in Article 3659;
42 and

43 (4) The possessory action was instituted within a year of the disturbance.

1 Comments - 2023

2 The 2023 amendments to this Article recognize that a precarious possessor
3 may bring a possessory action. The precarious possessor himself need not have
4 exercised his precarious possession for a full year prior to the disturbance; it suffices
5 if the person for whom he possesses precariously, or that person's ancestors in title,
6 have had possession for a year.

7 Art. 3659. Same; disturbance in fact and in law defined

8 A. Disturbances of possession ~~which~~ that give rise to the possessory action
9 are of two kinds: disturbance in fact and disturbance in law.

10 B. A disturbance in fact is an eviction, or any other physical act ~~which~~ that
11 prevents the possessor of immovable property or of a real right therein from enjoying
12 his possession quietly, or ~~which~~ that throws any obstacle in the way of that
13 enjoyment.

14 C. A disturbance in law is the occurrence or existence of any of the
15 following adversely to the possessor of immovable property or a real right therein:

16 (1) The execution, recordation, or registry, or continuing existence of record
17 after the possessor or his ancestors in title acquired the right to possess, of any
18 instrument ~~which~~ that asserts or implies a right of ownership or right to the
19 possession of the immovable property or ~~of~~ a real right therein, ~~or any.~~

20 (2) The continuing existence of record of any instrument that asserts or
21 implies a right of ownership or right to the possession of the immovable property or
22 a real right therein, unless the instrument was recorded before the possessor and his
23 ancestors in title commenced possession.

24 (3) Any other claim or pretension of ownership or right to the possession
25 thereof of the immovable property or a real right therein, whether written or oral,
26 except when asserted in an action or proceeding, ~~adversely to the possessor of such~~
27 property or right.

28 Comments - 2023

29 (a) The 2023 amendments to this Article clarify when a disturbance in law
30 must arise, in relation to the time that the plaintiff enters into possession or acquires
31 the right to possess, in order for the disturbance to form the basis of a possessory
32 action.

1 (b) Under Subparagraph (C)(1) of this Article, the plaintiff in a possessory
 2 action or his ancestors in title must have acquired the right to possess before the
 3 execution, recordation, or registry of an instrument that is claimed to constitute a
 4 disturbance in law. Thus, the plaintiff cannot complain that a previously recorded
 5 instrument, such as a prior conveyance in favor of the defendant, constitutes a
 6 disturbance in law of his possession. Similarly, under Subparagraph (C)(2), the
 7 continuing existence of record of an adverse instrument does not constitute a
 8 disturbance in law if the instrument was recorded before the possessor and his
 9 ancestors in title commenced possession.

10 (c) The temporal difference between Subparagraph (C)(1) (which refers to
 11 the time the plaintiff acquired the right to possess) and Subparagraph (C)(2) (which
 12 refers to the earlier point in time at which the plaintiff commenced possession) is
 13 intentional. Until the plaintiff has been in possession for one year, he is not entitled
 14 to complain of any kind of disturbance in law. After the one-year period has
 15 accrued, the plaintiff is entitled to complain of the execution and recordation of new
 16 adverse instruments, as Subparagraph (C)(1) provides, and may also complain of the
 17 continuing existence of record of instruments that were recorded during that one-year
 18 period and that, on account of their continuing existence of record after the accrual
 19 of the one-year period, constitute a continuing disturbance of his possession. In no
 20 event is the plaintiff permitted to claim that an instrument recorded before he
 21 commenced possession is a disturbance of his possession.

22 (d) The reason that the continuing existence of record of an adverse
 23 instrument constitutes a distinct disturbance in law is to prevent a possessor from
 24 losing the right to complain of an instrument that was recorded after he commenced
 25 possession but more than one year before he brings the possessory action. Without
 26 such a rule, his right to bring the possessory action would be lost under Article
 27 3658(4) for failure to institute the action within one year of the recordation of the
 28 instrument, even though he may have had no reason to suspect that an adverse
 29 instrument had been recorded. Because the continuing existence of record is a
 30 continuing disturbance, the one-year prescriptive period under Article 3658(4) for
 31 bringing a possessory action complaining of this disturbance in law effectively does
 32 not commence to run under these circumstances. See *Roy O. Martin Lumber Co.,*
 33 *Inc. v. Lemoine*, 381 So. 2d 915 (La. App. 3 Cir. 1980). See also *Ree Corp. v.*
 34 *Shaffer*, 260 So. 2d 307, 313 (La. 1972) (Tate, J., concurring).

35 Art. 3660. Same; possession

36 A. A person is in possession of immovable property or of a real right therein,
 37 within the intendment of the articles of this Chapter, when ~~he~~ the person has the
 38 corporeal possession thereof, or civil possession thereof preceded by corporeal
 39 possession by him or his ancestors in title, and possesses for himself or precariously
 40 for another, whether in good or bad faith, or even as a usurper.

41 B. Subject to the provisions of Articles 3656 and 3664, a person who claims
 42 the ownership of immovable property or of a real right therein possesses through his
 43 lessee, through another who occupies the property or enjoys the right under an
 44 agreement with him or his lessee, or through a person who has the use or usufruct
 45 thereof to which his right of ownership is subject.

1 Comments - 2023

2 The 2023 amendment of this Article retains the rule that, for purposes of this
3 Chapter, "possession" means possession in fact, rather than the right to possess,
4 except where the right to possess is expressly stated. Consistent with the changes
5 made to Articles 3655, 3656, and 3658, the amended Article recognizes that
6 precarious possession for another person constitutes possession for purposes of this
7 Chapter.

8 Art. 3661. Same; title not at issue; limited admissibility of evidence of title

9 A. In the possessory action, the ownership or title of the parties to the
10 immovable property or real right therein is not at issue.

11 B. No evidence of ownership or title to the immovable property or real right
12 therein shall be admitted except to prove any of the following:

- 13 (1) The possession thereof by a party as owner;.
- 14 (2) The extent of the possession thereof by a party; ~~or~~ and his ancestors in
15 title.
- 16 (3) The length of time in which a party and his ancestors in title have had
17 possession thereof.

18 Comments - 2023

19 The 2023 amendment to this Article clarifies that a person is entitled to use
20 evidence of ownership for purposes of proving not only the extent of his own
21 possession, but also the extent of possession of his ancestors in title. See Civil Code
22 Article 3442.

23 Art. 3662. Same; relief ~~which~~ that may be granted successful plaintiff in judgment;
24 appeal

25 A. A judgment rendered for the plaintiff in a possessory action shall:

- 26 (1) Recognize ~~his~~ the plaintiff's right to the possession of the immovable
27 property or real right therein, and restore him to possession thereof if he has been
28 evicted, or maintain him in possession thereof if the disturbance has not been an
29 eviction;.
- 30 (2) Order the defendant to assert his adverse claim of ownership of the
31 immovable property or real right therein in a petitory action to be filed within ~~a delay~~
32 ~~to be fixed by the court not to exceed~~ sixty days after the date the judgment becomes
33 executory, or be precluded thereafter from asserting the ownership thereof, if the

1 plaintiff has prayed for ~~such~~ this relief and this relief is not precluded by Paragraph
2 B of this Article, ~~and~~

3 (3) Award ~~him~~ the plaintiff the damages to which he is entitled and for
4 which he has prayed ~~for~~.

5 B. A judgment in a possessory action shall not grant the relief described in
6 Subparagraph (A)(2) of this Article against the state or against a defendant who
7 appeared in the action only through an attorney appointed to represent him under
8 Article 5091.

9 C. A suspensive appeal from the judgment rendered in a possessory action
10 may be taken within the delay provided in Article 2123, and a devolutive appeal may
11 be taken from ~~such~~ the judgment only within thirty days of the applicable date
12 provided in Article 2087(A).

13 Comments - 2023

14 (a) Among the substantive changes made to this Article by the 2023 revision,
15 Subparagraph (A)(2) provides that the delay within which the losing defendant can
16 be ordered to file a petitory action, where that relief was prayed for by the prevailing
17 plaintiff, is fixed in all cases at sixty days. This relief is not available against a
18 defendant who appeared in the action only through an attorney appointed to represent
19 him under Article 5091. Nevertheless, the prevailing plaintiff is not without a
20 remedy to obtain a determination of ownership when the defendant has appeared in
21 the possessory action in that manner; the plaintiff can institute his own declaratory
22 judgment action against the defendant and, depending on the circumstances, may be
23 entitled to have an attorney again appointed to defend the absentee defendant in the
24 declaratory judgment action.

25 (b) The 2023 revision removes the constitutional infirmity in this Article
26 noted by the Supreme Court in Todd v. State, through Dept. of Natural Resources,
27 456 So. 2d 1340 (La. 1983), amended 474 So. 2d 430 (La. 1985), in which the court
28 held that, although a possessory action can be brought against the state, the relief
29 allowed under Subparagraph (A)(2) of this Article is a form of liberative prescription
30 that cannot run against the state under Article XII, Section 13 of the Constitution of
31 Louisiana.

32 (c) A judgment rendered in violation of Paragraph B of this Article is subject
33 to annulment under Article 2004.

34 * * *

35 Art. 3669. Possessory action unavailable between owner of mineral servitude and
36 owner of dependent mineral royalty

37 In the event of a dispute between the owner of a mineral servitude and the
38 owner of a mineral royalty burdening or alleged to burden the servitude in question,

1 the possessory action is unavailable to either party, and the only available real action
 2 is the petitory action. The burden of proof on the plaintiff in ~~such an~~ the petitory
 3 action is ~~that which must be borne by the plaintiff in a petitory action when neither~~
 4 ~~party is in possession~~ to prove a better title than that of the defendant.

5 Comments - 2023

6 Prior to its revision in 2023, this Article provided that the plaintiff's burden
 7 of proof in a petitory action contemplated by this Article was that which applies
 8 when neither party is in possession. Rather than following this indirect approach, the
 9 2023 revision states more plainly and directly what the burden of proof is in such an
 10 action: it is to prove a better title.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 220 Reengrossed

2023 Regular Session

Pressly

Abstract: Provides with respect to actions to determine ownership or possession.

Present law (C.C. Art. 531) requires a person claiming ownership of an immovable against another in possession to prove that he acquired ownership from a previous owner or by acquisitive prescription.

Proposed law imposes the burden of proof provided by present law only when the other person has been in possession for one year in good faith and with just title or has been in possession for 10 years, otherwise, the burden of proof is better title.

Present law (C.C. Art. 3440) provides that the possessory action is available to a precarious possessor, such as a lessee or a depositary.

Proposed law deletes the incorrect reference to depositaries found in present law.

Present law (C.C.P. Art. 1061) requires the defendant in the principal action to reconvene in all causes of action that arise out of the same transaction or occurrence but provides for certain exceptions, such as in actions for divorce or for disavowal.

Proposed law adds to the exceptions provided by present law the filing of a reconventional demand asserting a petitory action or declaratory judgment action to determine ownership under Art. 3657.

Present law (C.C.P. Art. 3651) provides that a petitory action is brought by a person who is not in possession of immovable property or a real right therein.

Proposed law changes present law to clarify that a petitory action is brought by a person who does not have the right to possess immovable property or a real right therein.

Present law (C.C.P. Art. 3653) sets forth the burden of proof that must be satisfied by the plaintiff in a petitory action and requires the plaintiff to prove that he acquired ownership from a previous owner or by acquisitive prescription if the defendant is in possession of the immovable.

Proposed law imposes the burden of proof provided by present law only when the defendant has been in possession for one year in good faith and with just title or has been in possession for 10 years, otherwise, the plaintiff's burden of proof is better title.

Present law (C.C.P. Art. 3654) provides that the same burden of proof that must be satisfied by the plaintiff in a petitory action also applies to an action for a declaratory judgment or a concursus, expropriation, or similar proceeding.

Proposed law changes present law to impose the burden of proving acquisition of ownership from a previous owner or by acquisitive prescription when the adverse party has been in possession for one year in good faith and with just title or has been in possession for 10 years, otherwise, the burden of proof is better title.

Present law (C.C.P. Art. 3655) provides that a possessory action is brought by the possessor of immovable property or a real right therein.

Proposed law adds to present law that a possessory action may also be brought by a precarious possessor.

Present law (C.C.P. Art. 3656(A)) provides that a possessory action shall be brought by one who possesses for himself and specifies that a predial lessee does not possess for himself.

Proposed law changes present law to allow a possessory action to be brought by a precarious possessor, such as a lessee, against anyone except the person for whom the precarious possessor possesses, in accordance with the Civil Code.

Present law (C.C.P. Art. 3657) prohibits the cumulation of possessory and petitory actions and provides that a plaintiff who improperly cumulates these actions or institutes a petitory action waives the possessory action. Present law further provides that a defendant who improperly asserts title in the possessory action or institutes a petitory action judicially confesses the possession of the plaintiff in the possessory action.

Proposed law expands present law to prohibit cumulation of a possessory action with either a petitory action or a declaratory judgment action to determine ownership.

Proposed law changes the consequence provided by present law for improper cumulation by the plaintiff, instead providing that the defendant may object by asserting a dilatory exception. Proposed law also changes the consequence when the defendant improperly asserts title in the possessory action, instead limiting the defendant's assertions of title to those matters that may be considered in the possessory action under Art. 3661.

Proposed law retains the consequence provided by present law when the defendant institutes a separate petitory action or declaratory judgment action to determine ownership, requiring the defendant to judicially confess the possession of the plaintiff. Proposed law also prohibits the defendant from filing a reconventional demand asserting claims of title unless the plaintiff seeks an adjudication of ownership.

Present law (C.C.P. Art. 3658) sets forth the items that must be proven by the plaintiff in a possessory action.

Proposed law retains present law but recognizes that a possessory action may also be brought by a precarious possessor.

Present law (C.C.P. Art. 3659) provides with respect to disturbances in law and in fact.

Proposed law retains present law but clarifies when a disturbance in law must arise in order for the disturbance to form the basis of a possessory action.

Present law (C.C.P. Art. 3660) provides for a definition of "possession" for purposes of present law.

Proposed law retains present law but adds that precarious possession also constitutes possession for purposes of proposed law.

Present law (C.C.P. Art. 3661) provides that no evidence of ownership or title to immovable property or a real right therein shall be admitted in a possessory action except under certain circumstances, such as to prove the extent of possession by a party.

Proposed law retains present law but adds that evidence of ownership or title may also be admitted to prove the extent of possession by a party's ancestors in title.

Present law (C.C.P. Art. 3662) sets forth the relief that may be granted to a successful plaintiff in a possessory action, including ordering the defendant to assert his claim of ownership within a delay not to exceed 60 days or be precluded thereafter from doing so.

Proposed law fixes the delay provided by present law at 60 days and also provides that this relief is not available against the state or against a defendant who appeared in the action only through an attorney appointed to represent him under Art. 5091.

Present law (C.C.P. Art. 3669) provides that the burden of proof in an action between the owner of a mineral servitude and the owner of a mineral royalty is that which must be borne by the plaintiff in a petitory action when neither party is in possession.

Proposed law clarifies that the applicable burden of proof is to prove better title.

(Amends C.C. Arts. 531 and 3440 and C.C.P. Arts. 1061, 3651, 3653-3655, 3656(A), 3657-3662, and 3669)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.