

Acquiring Ownership of Property through Possession in Good Faith: Exploring its Dimensions and Scope of Application

A Case Comment

Beza Dessalegn^{*}

1. Introduction

This case comment is inspired by a binding decision rendered by the Federal Supreme Court Cassation Division which held that the right of ownership over ‘businesses’ can be transferred through possession in good faith. Before directly embarking upon the summary of the facts and analysis of the ruling, the commentary provides for preliminary notes on property law to give a general highlight into the foundations of ownership right. It also in a brief way discusses classification of objects of property as it is indispensable to the analysis of the case at hand. That is then followed by a discussion into the realm of possession in good faith in order to elucidate its scope of application. Afterwards, a case brief of the decision and an analysis of the same is made in the context of examining whether acquisition of ownership through possession in good faith is really applicable to ‘businesses’. Finally, the discussions made are summarized and the case comment ends with brief concluding remarks.

2. Preliminary Notes

The subject matter of property or property law can be traced as far back as the Roman times in which they equated it to both physical objects in space and to economic interests understood as rights having a pecuniary value and

^{*} Lecturer at Hawassa University, College of Law and Governance, School of Law. I would like to acknowledge that I am highly indebted to Hiruy Wubie(Gondar University), Bisrat Mulugeta(Dilla University) and Mesganaw Kifelew(Hawassa University) for the constructive criticisms they have supplied to this case comment. E-mail: bezadesy@yahoo.com

protected by law.¹⁴ Property law is particularly concerned about the relationship of persons with respect to things. In this parlance, property rights exist within the context of a given set of events and realities in which there must exist a subject matter which could be tangible or intangible over which property rights are located.¹⁵ Hence, property law limits and delimits objects or things in relation to which property rights may be exercised and their classification, the types of rights which are considered as property, how property rights are acquired, transferred, extinguished, the specific rights and obligations of the right holder and the comparative obligations of others towards the holder.¹⁶

Property law generally aspires to put a legal ground for principles, policies and rules by which disputes are to be resolved and transactions may be structured. In the strict legal sense, property refers to a person's right over a thing. In this sense, things are not property but they are objects over which property rights can be held by a person.¹⁷ This can be further corroborated by the expression "things are not property rather they are objects over which property rights can be held." Rights emanating from things or goods are thus regarded as objects of property.

The right to property is an exclusive right to use the thing and to claim it from any person who might have unlawfully taken it away. That is why such an entitlement over the property creates a '*right in rem*' as opposed to '*right*

¹⁴ H.C. Dunning, *Property law of Ethiopia*, AAU Law Library Unpublished Material, P 1.

¹⁵ Muradu Abdo, *The Subject Matter of Property Rights: Naming and Meaning*, Ethiopian Journal of Legal Education, Vol. 2, No. 2, September 2009, p.119.

¹⁶ For an in depth discussion of such rights See, Muradu Abdo, *The Subject Matter of Property Rights*, supra note 2, p. 121.

¹⁷ Muradu Abdo, *Ethiopian Property Law: A Text Book*, School of Law, Addis Ababa University, September 2012, P 14

in personam' which usually applies to rights arising out of law of obligations.¹⁸

Book III Title IV of the Civil Code primarily governs the Ethiopian context of the relationship that exists between persons with respect to things or objects.¹⁹ However, the Civil Code is not the only legal framework regulating the notion of property in Ethiopia. In addition to it, we have the lease holding proclamation, the condominium proclamation, expropriation of land holdings for public purposes and payment of compensation proclamation as well as some provisions from the Commercial Code, the Criminal Code, the Family Codes and the various directives and regulations issued for the implementation of the various proclamations. It should not also be forgotten that the Constitution of the Federal Democratic Republic of Ethiopia (FDRE) provides the policy as well as the legal framework in which property law is to be understood and interpreted.²⁰

As reiterated above, property law has its own realm of application. Not every transaction, right or liability relating to physical objects is within the ambit of its application. Obligations arising between persons especially those which create a '*right in personam*' are depending upon the circumstances governed by law of contracts, torts or laws of inheritance as the case may be.

At this juncture, a distinction should be made between patrimonial legal rights and extra patrimonial rights. Patrimonial rights simply connote those rights which can be assessed in monetary terms while the later refer to all rights which cannot be quantified in terms of money. In our legal framework we find land and natural resources as extra commercium as per Article 40(2)

¹⁸ Ibid, pp. 20-26.

¹⁹ The provisions beginning from Article 1126 up to Article 1674 of the Civil Code govern such relationships.

²⁰ Article 40 of the FDRE Constitution provides for such a framework.

of the FDRE Constitution as they are out of the reach of the private domain when it comes to private ownership.

Articles 1126 up to 1139 of the Civil Code tell us in some fashion what ‘things’ (‘goods’ in the expression of the Civil Code) under Ethiopian law are and also help us to understand which things may be considered as objects of property in Ethiopian property law.²¹ Article 1126 simply states that ‘goods’ are either movable or immovable without defining what ‘goods’ are. It also uses the terms ‘goods’ and ‘things’ interchangeably, even though in the strict legal sense their meanings are quite distinct.²²

As will be discussed in the subsequent sections Article 1126 has also assimilated incorporeal things like securities to bearer and electricity to refer to corporeal chattels. From this it can be inferred that objects of property under the Civil Code are movables and immovables including those that have been assimilated to corporeal chattels only. Having laid down this preliminary understanding about law of property and objects of property, let us now see the issue of classification.

3. Classification of Objects of Property

It is a common feature of any intelligible study to undertake classification in a scientific way. However, classification of object of property in the Ethiopian legal framework transcends this objective and has a wider set of implications in the transfer, acquisition and abandonment of the right of property over objects. The category in which a certain ‘good’ is classified is imperative as to which law is applicable to the modality of its acquisition and

²¹ Some go on to argue that ‘goods’ within the context of the Civil Code should be taken to mean anything that is capable of appropriation thereby setting the boundaries for objects of property. See, Muradu Abdo, *The Subject Matter of Property Rights*, supra note 2, p.133.

²² For a discussion of the distinction between ‘goods’ and ‘things’, See, Muradu Abdo, *Ethiopian Property Law: A Text Book*, supra note 4, pp. 37-50.

transfer including abandonment of the right of objects of property. The Civil Code seems to have undertaken the classification of goods in a two tier system as primary and subsidiary classification of goods. The primary classification that the Code adopts is by classifying goods as movable and immovable based on the two criteria which are the physical notion of mobility and the legislative fiction it has created.²³ Things which are classified as movables are ones that have a material existence and can move themselves or be moved by man without having to lose their individual character.²⁴ The Code designates the term corporeal chattels for such goods. The Code goes on and classifies certain intangible things as corporeal chattels by creating a legislative fiction.²⁵ It is obvious that things in such a category are only to be perceived by the human intellect and are devoid of material existence.

On the other side of the primary classification there exist immovable things otherwise explained as things having relative fixity. The Code by way of enumeration mentions land and buildings as immovable properties.²⁶ From this classification one can also discern the relative disparity of the law applicable to each undertaking in circumstances of transaction. For example, contracts of mortgage (with the exception of businesses') and antichresis can only be concluded over immovable properties.²⁷ The requirements of registration and authentication in transferring ownership of an immovable²⁸ and acquisition of ownership through usucaption²⁹ are not applicable to

²³ H.C. Dunning, *Property law of Ethiopia*, supra note 1, p. 6-8.

²⁴ Article 1127 of the Civil Code.

²⁵ Articles 1128 and 1129 of the Civil Code mentions securities to bearer and natural forces of an economic value which have been mastered by man as the outstanding examples.

²⁶ Article 1130 of the Civil Code.

²⁷ See Articles 3042, 3044, 3045 and 3117 of the Civil Code.

²⁸ See Article 1723 of the Civil Code.

²⁹ Article 1168 of the Civil Code.

movable properties. In contrast, transfer of ownership upon delivery³⁰ along with acquisition of ownership through possession in good faith³¹ and occupation³² are not applicable to immovables at all. At this point it is visible that the purpose of classification clearly goes beyond the law of property.

Under the subsidiary classification of goods there exist a set of numerous classifications which have been designed to complement the primary classification of goods.³³ The subsidiary classification of goods includes corporeal and incorporeal, consumable and non-consumable, fungible and non-fungible, divisible and indivisible, principal and fruits, public domain property and private domain property, collective and personal assets, single and collective, present and future properties, as well as ordinary and special movables.³⁴ For the sake of this case comment discussion will only be made on the subsidiary classification of movables into ordinary and special in the coming sections, as these ones are crucial to the case at hand.

4. Acquisition of Ownership

Ownership is the supreme judicial manifestation of the enjoyment and disposal of property.³⁵ This has also been described by the Civil Code as the widest right that may be had on a corporeal thing.³⁶ An owner may do whatever he wants with his property subject to the limitations imposed by the law. This includes the right to *usus*, *fructus* and *abusus* to the extent of

³⁰ Transfer of ownership for ordinary corporeal chattels is effected through delivery or transfer of possession see Article 1193 of the Civil Code.

³¹ Article 1161 of the Civil Code.

³² Article 1151 of the Civil Code.

³³ Muradu Abdo, *Subsidiary Classification of Goods under Ethiopian Property Law: A Commentary*, Mizan Law Review, Vol. 2, No. 1, p. 52.

³⁴ Muradu Abdo, *Subsidiary Classification of Goods*, supra note 20, p. 52.

³⁵ H.C. Dunning, *Property law of Ethiopia*, op.cit. P. 23.

³⁶ Article 1204(1) of the Civil Code.

abandonment. This right is exclusive in the sense that it is something ascribed to the owner only.

Acquisition of ownership could be completed in two ways. The first is original ownership in which a person acquires ownership of a corporeal thing which has never been owned before or has been totally abandoned by a former owner. The second mechanism is through derivative ownership whereby the current owner derives his ownership from a previous owner in accordance with the legal requirements. According to the Civil Code, there are four modalities of acquiring ownership, which are occupation, possession in good faith, usucaption and accession.

Occupation, which is one of the primitive forms of acquiring ownership over, requires the corporeal chattel to be without a master accompanied by possession that need actual control and intention by the possessor to own the property.³⁷ In case of possession in good faith, four cumulative requirements should be fulfilled before ownership could be acquired. Article 1161 of the Civil Code states ‘whosoever in good faith enters for consideration into a contract to acquire the ownership of a corporeal chattel shall become the owner thereof by virtue of his good faith when he takes possession of such chattel [emphasis added]. Usucaption, which is otherwise known as acquisitive prescription, is another mechanism of acquiring ownership over immovable properties. Usucaption which means taken by usage entitles a possessor who has paid tax for fifteen consecutive years relating to the ownership shall acquire ownership right over it.³⁸ The final mechanism is accession, which refers to the addition of property to another.³⁹ It could be

³⁷ Article 1161 of the Civil Code.

³⁸ Article 1168 of the Civil Code.

³⁹ The provisions beginning from Article 1170 up to 1183 of the Civil Code deal with Accession.

immovable over an immovable, movable over a movable, or movable over an immovable. Accession could be through union in which one property unites or mixes with the other property or accession through separation, which is when a property is added upon separation like in the case of a principal yielding fruits. Having stated this about the recognized modes of acquiring ownership under the Civil Code, let us now narrow down our discussion to acquiring ownership through possession in good faith.

5. Possession in Good Faith: It's Scope of Application

It is a common rule in Roman as well as Common law that the transferee can take no better title than his transferor as the maxim “nemo dat quod non habet” states.⁴⁰ However, this principle is superseded in circumstances of acquiring ownership through possession in good faith provided a contract for consideration for transferring the ownership is made over a corporeal chattel in good faith and the transferee has taken possession of the corporeal chattel as a result. This literally means the transferee can have a better title than the transferor. This is because it is stated that the transferee shall retain the corporeal chattel even though the transferor had no valid title.⁴¹ At this point one is tempted to inquire why such a privilege exists for such an acquirer. This question can be examined from the vantage point of the requirements of possession in good faith.

The scope of application or to which types of ‘goods’ possession in good faith applies is beneficial in exploring its dimensions. To start from the simplest of issues, let us dwell a little into collective exploitation of

⁴⁰ H.C. Dunning, *Property law of Ethiopia*, supra note 4, p. 55.

⁴¹ Article 1161(2) of the Civil Code. However, it should be noted here that in circumstances where the corporeal chattel has been lost or stolen it could be traced back to its owner warranting restitution of the property as provided under Article 1165.

property.⁴² Under collective exploitation of property a subsidiary classification of goods as property forming part of the public domain or private domain is adopted by the Civil Code.⁴³ The basis for such a subsidiary classification is of no doubt driven by the policy consideration that goods forming part of the public domain deserve extraordinary fortification as they are destined for the use of the public.⁴⁴ In the presence of such a safeguard, the law distinctively states that property whether movable or immovable which forms part of the public domain may not be acquired by possession in good faith or usucaption.⁴⁵

As stated under Article 1161(1), possession in good faith is only applicable to corporeal chattels. In our discussion made in the preceding sections we have seen that corporeal chattels equate with movable properties.⁴⁶ We have also mentioned that under subsidiary classification of ‘goods’ movable properties are sub-divided into ordinary and special movables, which is explored further in the next section.

5.1. Dichotomy of Movables as Special and Ordinary

Many issues of acquisition and transfer of ownership relating to corporeal chattels are answered by the dichotomy of movables as ordinary and special. There is no explicit mention of the dichotomy of corporeal chattels into ordinary and special, rather recognition of the division can be inferred from some provisions of the Civil Code.⁴⁷ These provisions by way of an implicit connotation show one that there exist movable properties which have been accorded special place by the legislature. In doing so, the provisions of the

⁴² The provisions beginning from Articles 1444 up to 1488 provide the rules on how goods forming part of the public domain shall be governed.

⁴³ Article 1444 of the Civil Code.

⁴⁴ Article 1445 of the Civil Code.

⁴⁵ Article 1455 of the Civil Code.

⁴⁶ Article 1127 of the Civil Code.

⁴⁷ Articles 1186(2), 2267(2), and 3047(2) are exemplary in this regard.

Civil Code and other separate legislations have singled out a number of movables as special movables warranting separate legal protection especially when it comes to how ownership is to be transferred and acquired over them. Muradu Abdo mentions three compelling reasons for the special attention accorded to them.⁴⁸ The first reason he mentions is the economic value that is attached to them. The second one is security reasons warranting tight control of goods like firearms and the third is the need to ensure continued enjoyment by debtors after such things are given in the form of security.

Coming to the perplexing issue of dichotomy, the simplest way of distinguishing between ordinary and special movables is following the rule that every movable which has not been classified by the law as a special movable is an ordinary one.⁴⁹ However, this would have the danger of being too simplistic to underpin, as many separate legislations apart from coining out the separate legal requirements do not explicitly name corporeal chattels as special movables. Hence, this would require us to make a further in depth analysis of the matter.

Ordinary movables ownership is transferred by mere delivery accompanied by a contract or other valid causes as the case may be. The moment the person takes possession of the object, ownership is transferred.⁵⁰ However, with regard to special movables such an acquisition or transfer shall be accompanied by registration. As all special movables have certificate of title or title deed, their acquisition cannot be made without registration and to some extent authentication of the contract transferring ownership.⁵¹ Such a

⁴⁸ Muradu Abdo, *Subsidiary Classification of Goods*, supra note 20, p. 79.

⁴⁹ Ibid, p. 80.

⁵⁰ Article 1186(2) cum. Article 1193(1) of the Civil Code.

⁵¹ For example, Ships are registered in accordance with the Maritime Code, motor vehicles are registered in accordance with, Motor Vehicle and Trailer Regulation, legal notice and construction machineries are registered in accordance with registration

move by the legislature clearly has the purpose of encouraging swift market transactions for transacting ordinary movables at the same time enhancing efficiency by reducing transaction cost. Moreover, it would practically be impossible to award each and every ordinary movable with a certificate of title thereby requiring registration and authentication for each of their market operation.

However, in connection with special movables the legislator is driven by a policy consideration that they deserve special protection due to their special significance while at the same time maintaining their swift marketability in the economy. For the purpose of maintaining this objective, the legislator makes sure that separate legislations govern their acquisition and transfer.

Coming back to our starting point, the term corporeal chattels as envisaged under Article 1161(1) of the Civil Code refers to ordinary movables only. As stated in the preceding paragraphs the law governing the acquisition and transfer of ownership of special movables is governed by separate legislations.

6. Case Brief of the Federal Supreme Court Cassation Division⁵²

The case first arose at the Addis Ababa City First Instance Court in which the present Cassation Division respondent (W/o Berekenesh Shewarege) who was a plaintiff at the beginning of the suit sued the Addis Ababa City Administration, Woreda 22 Kebele 04 Administration, and Ato Wosene

and control of Construction machineries proclamation. In addition, The FSC Cassation Division in the case of W/o Asnakech W/Mariam vs Ato Alemayehu Ahemed file no 24643 gave a binding interpretation that authentication is a requirement for the transfer of ownership of a motor vehicle through a contract. It should also be noted here that these laws provide that the particular special movable's ownership shall only be evidenced by the certificate of title awarded to it from the relevant authority.

⁵² The full version of the FSC Cassation Division is found in የፌዴራል ጠቅላይ ፍርድ ቤት ስበር ችሎት ውሳኔዎች፣ ቅጽ 8, ገጽ 321-323, ገዳር 2003.

Tsega who are second, third, and fourth respondents respectively at the cassation suit and who were first, second and third defendants respectively at the First Instance Court. The point of contention was a ‘business’ located in a house located at Addis Ababa City Woreda 22 Kebele 04 house no 596 which is registered as a house for undertaking ‘business.’ The first respondent claimed that the house was registered in her name for undertaking business before and after the government issued a directive for such type of houses. The contract relating to the house was concluded between the first respondent on the one side and second and third respondents on the other. However, the later, by defying their contractual obligations, concluded another business contract over the house with the fourth respondent. The second respondent claims that this amounts to an illegal dispossession and sued the second, third, and fourth respondents for possessory (legal) action. The court held that the first respondent possessed the house over a legal business contract before and after the issuance of the government directive. This entails that the rest of the respondents had no right justifying their interference in the house. The Court stated that the action they took is an unlawful deprivation of the possessory right of the second respondent and hence ordered for the restoration of the house to the first respondent.

Afterwards the present petitioner (Ato Yalew Dilnesawe) presented himself as a party in opposition to the judgment as per Article 358 of the Civil Procedure Code and sought the Court to review the judgment on the following grounds. He argued that he concluded a sale of business contract over the house located at Woreda 22 Kebele 04 on Yekatit 16 1992 E.C. with the fourth respondent for which he has acquired a business license. However, as per the judgment rendered by the Court, he is being forced to relinquish the house to the first respondent. Therefore, he pleaded to the Court for the setting aside of the judgment which affected his interests.

The Court after examining the arguments of both sides opined that the contract concluded over the house by the first respondent was still in force before and after the issuance of the directive over business houses by the government. In addition, the present petitioner same has not sought any kind of invalidation of the contract. This shows that the fourth respondent had no legal ground to conclude a business contract over the same house with the petitioner. This in effect gives rise to no legal right over the house to the petitioner. Hence, the Court stated that it has affirmed its previous decision upholding the right of the second respondent and dismissed the plea of the petitioner. Discontented by the decision, the petitioner lodged its appeal in the city Court Cassation Division, which was rejected.

The petitioner as a final resort submitted his petition to the Federal Supreme Court (FSC) Cassation Division. The Cassation Division accepted the plea of the petitioner and summoned all the parties for a review of the lower courts' judgment. In its reasoning, the Court opined that the present petitioner in buying the business situated in the stated house by a sale of business contract from the fourth respondent took all the necessary precautions to make sure that the fourth respondent had a legal right over it. He even went to check for the existence of any encumbrance over the house in which the business is conducted at the Acts and Registration Office. This shows that even if the contract which was concluded by the second and third respondents with the fourth respondent for the sale of the business to the present petitioner was illegal, it would not impair any right the petitioner would have on the house as he is a person who entered into the sale of the business contract with the fourth respondent in good faith. The Court went on to state its argument that, as stipulated under Article 1161 of the Civil Code a person who entered into a contract for the acquisition of ownership over a corporeal chattel if she/he took possession of the object and entered into a contract for the same in good

faith shall be regarded as the owner thereof. As business is recognized as an incorporeal movable as per Article 124 of the Commercial Code, this would automatically subject it to the application of Article 1161.

Therefore, as the petitioner possessed the house as a result of a business contract concluded in good faith, the FSC Cassation Division decided that the ruling rendered by the lower courts did not take into account the stipulation provided under Article 1161 of the Civil Code and ordered that it be set aside and instructed that the business located under the Addis Ababa city Woreda 22 Kebele 04 House no 596 shall stay with the petitioner as he acquired it through possession in good faith from the fourth respondent.

7. Analysis of the Ruling

It is interesting to note from the decision of the FSC Cassation Division that it rested its ruling on the argument that business is an incorporeal movable and so long as it is a movable property the scope of application of acquisition of ownership through possession in good faith automatically applies to it. Therefore, the accuracy of the ruling entirely depends on whether 'businesses' could be categorized under the subsidiary classification of ordinary movables for acquisition of ownership through possession in good faith.

As stated in the previous sections, the simplest way of distinguishing a certain corporeal chattel as ordinary or special movable is looking at whether it has been designated as special or not by the legislature. In this regard, the provisions of Article 124-209 of the Commercial Code set for how they should be dealt and transacted with. These provisions sufficiently show that businesses are to be treated separately from the provisions of the Civil Code. But, the FSC Cassation Division to applied Article 1161 of the Civil Code because of the stipulation provided under Article 124 of the Commercial

Code, which defines business as an **incorporeal movable consisting of all movable property brought together and organized for the purpose of carrying out any of the commercial activities specified under Article 5 of the Code.** The problem was the FSC Cassation Division simply singled out and took the term ‘incorporeal movable’ for granted at face value and cross referred it with the provisions of possession in good faith without a thorough analysis of its components.

A deeper insight into the constituent elements of business reveals that it is composed of both corporeal and incorporeal elements.⁵³ The corporeal elements are equipments or goods in which the business is carried out.⁵⁴ The incorporeal elements are goodwill, trade name, special designations, patents, copyrights and rights like leasing the premises in which the trade is carried on.⁵⁵ It is clear from the outset that incorporeal rights are not governed by the provisions of Book III of the Civil Code dealing with goods as they have their own separate legislations dealing with the acquisition and transfer of such type of rights.⁵⁶

Further evidence which rules out businesses from being understood as ordinary corporeal chattel is the duty of registration. Any person or business organization carrying out commercial activities is duty bound to be registered.⁵⁷ As business is an incorporeal movable set up for the purpose of carrying out commercial activities it is a requirement that it be registered.⁵⁸ As discussed earlier, registration is one of the distinguishing features between an ordinary and special movable. Apart from business being

⁵³ Article 127 and 128 of the Commercial Code.

⁵⁴ Article 128 of the Commercial Code.

⁵⁵ Article 127 of the Commercial Code.

⁵⁶ See for example Articles 148 and 149 of the Commercial Code.

⁵⁷ Article 100 of the Commercial Code.

⁵⁸ Article 124 of the Commercial Code.

required to be registered at the time of its establishment, registration is still a requirement when that business is let out for hire or when it is sold.⁵⁹ The law states that in circumstances of business being let out for hire or sell, the name of the purchaser or lessee can only be registered after the name of the former is cancelled from the register.⁶⁰ It can easily be deduced from that, acquisition and transfer of ownership right over a business by simple delivery corroborated by a contract even with the existence of good faith as stated in the requirements of possession in good faith is not possible. This is because the law unequivocally requires the system of registration in transferring ownership of business from one to the other. Even in the mild cases of hire of a business, for the purpose of protecting the rights of third parties, the law requires the publication of the lease contract⁶¹ and eventually the owner of the business who let out for hire of his business shall cause his name to be struck off and the lessee shall cause his name to be entered in the commercial register.

The purpose behind the stipulation of registration over business is clear: for one thing the legislator has taken due recognition of the economic significance business plays in the country's economy and deduced that it deserves special attention and protection. Moreover, if there is a system of registration, there would be no debate about whether the party was in good faith at the time of the transaction or not over the business. What the contracting party needs to simply do is go on to check for the existence of any encumbrances or previous dealings over the property he intends to transact upon. This way the law ascribes protection for such parties by providing them with a mechanism to check into what they are about to do.

⁵⁹ Article 102 of the Commercial Code.

⁶⁰ Ibid.

⁶¹ Article 195 of the Commercial Code.

Hence, it offers no consolation by accepting their plea of good faith in such circumstances.⁶²

The fact that business is a special movable is not that much hard to figure out. Even a simple look at Articles 171-193 which stipulates for mortgage of business would have been sufficient. The recognition that a business is a special movable, one can argue, has elevated it to the status of an immovable property for it to be subject to mortgage as a security device as opposed to many special movables which are subject to pledge when it comes to using them as a means of security devices. Needless to mention, once a mortgage is established over a certain property the encumbrance follows the property irrespective of into whosoever hands it falls upon.⁶³ The simplistic assumption to equate business as an ordinary movable by taking the term that business is an incorporeal movable has led to the application of the provisions of possession in good faith over business by the FSC Cassation Division.

Coming back once again to the case at hand, the petitioner claimed that he bought the business from the fourth respondent. He in effect claimed that he himself secured it from the second and third respondents. Therefore, he should not have been allowed to get hold of the business as an acquirer through possession in good faith. This is because the protection available to him was to go and check on the commercial register⁶⁴ for encumbrances if any over the business he wanted to transact upon. In doing so, he could have

⁶² However, it goes without saying that the practical application of these purposes of the law are severely handicapped by the inefficient and clumsy registration system that we have in place at the moment. But, that shouldn't be taken as a justification for giving an interpretation which is far from the spirit and purpose of the law. It should always be the case that the law dictates the practice and not the other way round.

⁶³ Article 190 of the Commercial Code.

⁶⁴ The organization of commercial registers is found legislated from the provisions of Articles 86-93 of the Commercial Code.

found out the existence of a previous contract. If, however, the petitioner having taken all these precautionary measures entered into the contract and the commercial register did not provide him with the relevant information, then the one at fault and to be sued would be the office of the commercial register and not the first respondent.⁶⁵

8. Concluding Remarks

The Ethiopian judicial system has taken a novel step towards bringing consistency and uniformity of judgments by making interpretations of law rendered by five judges at the cassation level of the FSC to have a binding effect on the Court rendering them and subsequently to all subordinate courts.⁶⁶ To date, the FSC has done an arduous task of publishing and distributing hundreds of binding decisions in thirteen volumes. These decisions by far have settled many controversies and divisions which have bedeviled the judiciary in dealing with long overdue debates.

In spite of this, judgments given by the FSC Cassation Division have at times been inconsistent and incongruent with one another.⁶⁷ A decision given at one time has been undermined or rendered useless by a decision given at a later occasion. This has been exemplified by the numerous decisions the Cassation Division has given on the single issue of interpreting Article 1723 of the Civil Code.⁶⁸

⁶⁵ It is a general principle of extra contractual liability that whosoever has caused damage to another by an offence shall compensate the damage he has caused as stated under Article 2028 of the Civil Code.

⁶⁶ Proclamation 454/2005, A Proclamation to Re-amend the Federal Courts Proclamation 25/1996, Article 2(4).

⁶⁷ See, Yoseph Aemero, የፍትሐብሔር ክርክሮች ሂደት፡ፈተናዎች እና ተስፋው, in Yazachew Belew (ed.), *The Resolution of Commercial/Bussiness Disputes in Ethiopia: Towards Alternatives to Adjudication?*, Ethiopian Business Law Series, Vol. V, December 2012, P. 15-18.

⁶⁸ Ibid.