

EFFECT OF CLAIM OF ADVERSE POSSESSION IN DECLARATORY SUIT

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Adverse Possession:

Adverse possession is a doctrine under which a person in possession of land owned by someone else may acquire valid title to it, so long as certain common law requirements are met, and the adverse possessor is in possession for a sufficient period of time, as defined by a statute of limitations. Adverse Possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that persons title, which provides that no person shall make an entry or distress, or bring an action to recover any land or rent, but within twelve years next after the time when the right first accrued and does away with the doctrine of adverse possession. Adverse possession is commenced in wrong and is aimed against right. Plea of Adverse Possession is not a pure question of law but a blended one of fact and law.

Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. It is important to know the dictum observed by Privy Counsel in ***Secretary of State for India vs Debendra Lal Khan [(28) AIR 1934 PC 23]***, wherein it was observed that *“the ordinary classical requirement of adverse possession is that it should be “nec vi, nec clam, nec precario” and the possession required must be adequate in continuity, in publicity and in extent to show that possession is adverse to the competitor. The meaning of three catchy words nec vi – without force/not by force; nec clam – without secrecy/not by stealth; nec precario – without permission/not by license of owner. The basic/primary requirement of adverse possession is “Animus Possidendi”/an intention to possess”*.

The adverse possession is recognized way back during Mahabharatha. Kauravas planned to send pandavas to vanavasa for 12 years. As such, we can say how it was recognized at that time.

Occupying does not confer ownership in normal course. The occupant can claim property title in case of an adverse possession. In such cases, it is presumed that the possession was permissible and started legally, unless proved otherwise. The essential requirement of possession under adverse possession is that the possession should not have been obtained by force or through unauthorised means.

The pleas of title and adverse possession are mutually inconsistent and the latter does not begin to operate until the former is renounced. Possession of one co-sharer is possession of all co-sharers in law and it cannot be adverse to them, unless there is a denial of their right to their knowledge by the person in possession and exclusive and ouster following thereon for the statutory period. Co-owner in exclusive possession cannot render his possession adverse to the other co-owner, but if a co-owner fails to asserts his right for considerable length of time his right may extinguish by lapse of time.

In ***Cheedella Padmavathi & Others vs Cheedella Lakshminarasimha Rao (died) per LRs. & Others*** reported in **2015(5) ALT 634**, it was held that a person pleading adverse possession has no equities in his favour, since he is trying to defeat the rights of the true owner, thus it is for him to clearly plead and establish all facts necessary for adverse possession.

Property ownership is certainly desired by all of us, but this coveted position comes with a lot of complexities. Though it is often believed that the law is tilted in favour of the 'haves', many legislation prevalent in our country prove otherwise. One such law is the Limitation Act.

The Limitation Act:

The Limitation Act, 1963, is a key piece of legislation, elaborating on adverse possession. The Act prescribes a period – 12 years for private properties and 30 years for government-owned ones – within which you have to stake claim on your property. Any delay may lead to disputes in the future.

The principle on which the Limitation Act is based is that 'limitation extinguishes the remedy, but not the right'. This means that in case of an adverse possession, the original owner may have the title over the property but he loses the right to claim such right through a court of law.

Article 65 is an independent Article applicable to all suits for possession of immovable property based on title i.e., proprietary title as distinct from possessory title. Article 64 governs suits for possession based on possessory right. 12 years from the date of dispossession is the starting point of limitation under Article 64. Article 65 as well as Article 64 shall be read with Section 27 which bears the heading – “Extinguishment of right to property”. It lays down: “At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished.”

That means, where a cause of action exists to file a suit for possession and if the suit is not filed within the period of limitation prescribed, then, not only the period of limitation comes to an end, but the right based on title or possession, as the case may be, will be extinguished. The section assists the person in possession to acquire prescriptive title by adverse possession. When the title to property of the previous owner is extinguished, it passes on to the possessor and the possessory right gets transformed into ownership. [Section 27] is an exception to the well accepted rule that limitation bars only the remedy and does not extinguish the title. It lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy. It means that since the person who had a right to possession has allowed his right to be extinguished by his inaction, he cannot

recover the property from the person in adverse possession and as a necessary corollary thereto, the person in adverse possession is enabled to hold on to his possession as against the owner not in possession.

The time period:

For this law to apply, the time period is calculated from the date the claimant is in possession of the property of the owner. The possession should be continuous, unbroken and uninterrupted for the entire duration. The claimant must have the sole possession of the property. However, the limitation period does not include the one during which there is pending litigation between the owner and the claimant. However, there are also certain exceptions to this rule. If the owner of the property is a minor, or of unsound mind, or serving in the armed forces, the property occupant cannot claim adverse possession.

Some essential requirements to be proved for claiming under adverse possession are:

Hostile possession: The intention of the possessor of the property must be to acquire rights through means of adverse possession. These rights are acquired at the expense of the rights of the original owner. There must be an express or implied denial of the owner's title by the possessor. Constructing a boundary wall around the property can be means of asserting this possession.

Public knowledge:The public at large must be aware about the possession of the claimant. This condition is put in place so that the actual owner has adequate means to know that someone is in possession of his property and gets reasonable time to act. However, one is not bound to inform the original owner about it.

Actual possession:There must be actual possession throughout the period of limitation. Physical acts like harvesting crops, repairing the building, planting trees, erection of shed, etc, could be means through

which actual possession can be determined. The possessor could not claim possession over the property without being physically possessing it.

Continuity: The possessor must be in peaceful, unbroken, uninterrupted and continuous possession of the property. Any break in the possession will extinguish his rights.

Exclusivity: The possessor must be in sole possession of the property. The possession cannot be shared by different entities or persons for the claimed time duration.

It is well settled law that before a party can succeed in establishing title on the basis of adverse possession, a plea to that effect must be specifically raised. It is observed by Hon'ble Apex court that, " It would be imperative that one who claims possession must give all such details as enumerated hereunder. They are only illustrative and not exhaustive.

- a) who is or are the owner or owners of the property;
- b) title of the property;
- c) who is in possession of the title documents
- d) identity of the claimant or claimants to possession;
- e) the date of entry into possession;
- f) how he came into possession - whether he purchased the property or inherited or got the same in gift or by any other method;
- g) in case he purchased the property, what is the consideration; if he has taken it on rent, how much is the rent, license fee or lease amount;
- h) if taken on rent, license fee or lease - then insist on rent deed, license deed or lease deed;
- i) who are the persons in possession/occupation or otherwise living with him, in what capacity; as family members, friends or servants etc.;

j) subsequent conduct, i.e., any event which might have extinguished his entitlement to possession or caused shift therein; and

k) basis of his claim that not to deliver possession but continue in possession.”

Mere long possession of defendant for a period of more than 12 years without intention to possess the suit land adversely to the title of the plaintiff and to latter's knowledge cannot result in acquisition of title by the defendant to the encroached suit land. A possession is adverse only if in fact one holds possession by denying title of the lessor or by showing hostility by act or words or in cases of trespassers as the case may be as against lessor or other owner of the property in question.

Cases:

There have been landmark judgments on adverse possession.

The case of Karnataka Board of Wakf Vs. Government of India & ors ((2004) 10 SCC 779) clarified the features of adverse possession. It states that the onus is on the claimant to establish the necessary facts and evidence to claim property title.

A person claiming adverse possession has to show the following before the court:

- I. The date of possession
- II. The nature of the possession
- III. The possession was known to public
- IV. The duration of the possession
- V. The continuity of the possession

The legal position and principles governing adverse possession:

As observed by the Hon'ble Supreme Court of India in the case of **Karnataka Board of Wakf Vs. Government of India & ors [(2004) 10 SCC 779]**, in the eye of law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner

even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts rights over it and the person having title omits or neglects to take legal action against such person for years together.

“The process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner” as held in **Amrendra Pratap Singh vs. Tej Bahadur Prajapati [(2004) 10 SCC 65]**.

The essential requisites to establish adverse possession are that the possession of the adverse possessor must be neither by force nor by stealth nor under the license of the owner. It must be adequate in continuity, in publicity and in extent to show that the possession is adverse to the paper owner.

In **Annasaheb vs B.B.Patil [AIR 1995 SC 895]** Hon'ble Apex court held that-

“Adverse possession means a hostile possession which is expressly or impliedly in denial of title of the true owner. Under Article 65 of the Limitation Act, burden is on the defendants to prove affirmatively. A person who bases his title on adverse possession must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed. In deciding whether the acts, alleged by a person, constitute adverse possession, regard must be had to the animus of the person doing those acts which must be ascertained from the facts and circumstances of each case. The person who bases his title on adverse possession, therefore, must show by clear and unequivocal evidence i.e. possession was hostile to the real owner and amounted to a denial of his title to the property claimed.”

In **T. Anjanappa & others Vs Somalingappa & another [(2006)7 SCC 570]** Hon'ble Apex court held that -

“It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner.

....

Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their

being in hostile possession and the question of denying title of the true owner do not arise.”

In **Chatti Konati Rao and other’s vs Palle Venkata Subba Rao [(2010) 14 SCC 316]** Hon’ble Apex court in para 14 of the judgment held that-

“The plaintiff is bound to prove his title as also possession within twelve years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of twelve years thereafter.”

In the **State of Haryana vs Mukesh Kumar & others [AIR 2012 SC 559]** in 2010, the Supreme Court decided in favour of the actual owner of the property and said that the law of adverse possession was archaic and should be seriously looked into. It added that in adverse possession, a trespasser who is actually guilty was able to gain legal title over the property. The court found the legal system rewarding an illegal act baffling.

Permissive possession is not adverse till the defendant ascertain adverse possession as held in **Sheodhari Rai & Others Versus Suraj Prasad Singh & Others [AIR 1954 SC 758]**.

In **T. Anjanappa & others Vs Somalingappa & another [(2006)7 SCC 570]** Hon’ble Apex court held that -

“It is well recognized proposition in law that mere possession however long does not necessarily means that it is adverse to the true owner.

Obviously, the requirements of proving adverse possession have not been established. If the defendants are not sure who is the true owner the question of their being in hostile possession and the question of denying title of the true owner do not arise.”

The plea of adverse possession is a double edged sword:-

Any plea of adverse possession contains an admission that the opposite party is the owner of the property, but the said title of the opposite

party has been extinguished because of the open hostile possession with animus by the claimant for the statutory period. Therefore, by pleading adverse possession a party admits the initial title of the opposite party which however is said to be extinguished. See. See also. *Uppara Anjinappa's case infra. In Union of India v. Vasavi Co-op. Housing Society Ltd. (1) 2014 ALT (Rev.) 28 (SC) = AIR 2014 SC 937*, it was held that The plea of adverse possession is a double edged sword. In suit for declaration of title, the burden is squarely on the plaintiffs to prove their title and also their possession and enjoyment of the suit schedule property. The learned counsel for the respondents/ defendants cited a judgment which reiterated the position of law that is well-settled. See also *Uppara Anjinappa (died) and others Vs. T. Khasim Sab (died) per Legal representatives & Ors.- 2018 (5) ALT 511*. In many suits for declaration of suit, the parties usually heavily relies on revenue records. But, it is well-settled law that the revenue records by themselves cannot be treated as documents of title. However, the fact remains that both under Section 35 of the Indian Evidence Act and because of the fact that they are the result of a physical exercise done on the land, they do have a certain evidentiary value, particularly the 1929 Resettlement Register. It was held in *Seelam Mallaiah (died) per LRs. and others Vs. P. Narasinga Rao (died) per LRs. and others - 2017 (3) ALT 228*, de-exhibited from the record Ex.A-1, agreement to sell, shall hold good but, since Ex.A-3 is de- exhibited from the record, the plaintiffs cannot claim possession of the suit property w.e.f. 5-3-1988, as recited in Ex.A-3.

Conclusion:

Adverse possession is a one of the method for acquiring title to the real property by possession for a statutory period under certain conditions. The said period is governed by statute. Under this doctrine, the person may establish his ownership against the true owner after the fulfillment of all legal requirements. The owner of the property must have actual knowledge of adverse possession. The word continuity means regular uninterrupted of the occupancy land. As per the Article 6 & 65 of the Limitation Act, the prescribed period is 12 years and the prescribed period in case of Government is 30

years. The starting point of limitation begins from the expression of hostile animous amounting to denial of title of the real owner to his knowledge. The onus lies on the party to set up the title on the basis of adverse possession. Presumption and probabilities cannot be substituted for the evidence.

Even the adverse possessor can file a suit for declaration and relief of injunction on the strength of his adverse possession as was held in decision reported between **SARASWATHI BHAGATH .v. ESWARAMMA @ LAKSHMAMMA died L.R.s** reported in [2016 (4) ALT 17]. Extinguishment of right to property is not exercised within 12 years from the date of cause of action accrued, to a person U/s.27 of Limitation Act, he would lose his right of remedy under Limitation Act and the right of title to such property extinguishes and it vests in the person who is in possession of the property.

Adverse possession can be a basis for the reliefs claimed in a suit filed by persons calcimining adverse possession, it need not always be used as a SHIELD or DEFENCE.

The term "Possession" has to be understood as "Possession of such character which the property is capable of". Possession constitutes good title as against all, except the true owner. The presumption that possession follows title applies in a case where neither of the parties had established their possession, but when of the parties had established the title. The concept of adverse possession may be understood as such possession commencing in "wrong" and being continued as against "Right".

To constitute adverse possession, possession must be hostile, open, actual and continuous. Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party, affected can be found. Where plea of adverse possession is not raised in the pleadings, no amount of proof can substitute pleadings.
