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## AN ANALYTICAL STUDY ON THE CONCEPT OF ADVERSE POSSESSION OF IMMOVABLE PROPERTY WITH REFERENCE TO SUPREME COURT DECISIONS

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### *Abstract*

Adverse possession is a very old concept of law and it is recognized by many countries. It is not a positive right; it is a negative or consequential right. This concept is useful but it is often criticized on the ground that it protects and confers right upon wrongdoers. The concept of adverse possession is a way in the aspect that it gives ownership of land to the person who use the land continuously and effectively. The land which is being used is more valuable land than idle. The possessor who improves the land has a more valid claim to the land than the true owner who never cares the land. The supreme court of India has delivered many landmark judgments regarding adverse possession. This paper is going to analyze the legal and factual aspects of adverse possession and views of supreme court of India for favor the concept and against the concept.

**Keywords:** Possession, Adverse possession, Ownership, Animus possidendi, Acquisition of title, Supreme Court

### INTRODUCTION

One of the methods of acquisition of title is by way of adverse possession. The claim of rights in relation to property initially starts with wrong and ends with right in the concept of adverse possession. The claim of right relating to property on the basis of possession has been recognized in all legal systems. Uncontested and continuous possession for a specific period, hostile to the rights and interests of true owner is considered to be one of the legally recognized modes of acquisition of ownership. The prescription of periods of limitation for

recovering possession of true owner is the essence of the law of adverse possession.

### ADVERSE POSSESSION – LEGAL POSITION IN INDIA

The statute does not define adverse possession. It is a common law concept. The period of limitation has been prescribed statutorily under the law of limitation in Article 65 as 12 years. The limitation Act 1963 does not define the concept of adverse possession nor anywhere contains a provision that the plaintiff cannot sue based on adverse possession. The plea of adverse

possession was governed by Article 64 and 65 of the Limitation Act 1963.

It is important to note that the starting point of limitation of 12 years is counted from the point of time “when the possession of the defendants becomes adverse to the plaintiff”. Article 65 is an independent Article applicable to all suits for possession of immovable property based on title. Article 64 governs suits for possession 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 deals extinguishment of right to property. Section 27 is an exception to the well accepted rule that limitation bars remedy and does not extinguish the title. It lays down a rule of substantive law by declaring that after the lapse of period, the title ceases to exist and not merely the remedy (1964)1MLJ,161.

Article 65, Schedule 1 of the Limitation Act 1963, lays down a limitation period of 12 years for a suit of possession of immovable property or any interest based on the title. The period for limitation for the Government, however is 30 years by virtue of article 112. The law of adverse possession was summed up by the Judicial committee of the Privy council in *Perry-Vs-Clissold* (1907 AC73, at 79), where it was observed that if a rightful owner does not claim his right against a possessor within a given time, his ownership right stands extinguished.

Article 65 of the Limitation Act read as hereunder:

Description of suit Period of limitation Time from which period begins to run Article 65. For possession of Twelve years. When the possession immovable property or of the defendant any interest therein becomes adverse to based on title.

Explanation. — For the purposes of this article—

(a) where the suit is by a remainderman, a reversioner (other than a

landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the case may be, falls into possession;

(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment debtor who was out of possession.

In India, the law recognize possession, persons are not permitted to take law in their hands and dispossess a person in possession by force as observed in [Lallu Yashwant Singh v. Rao Jagdish Singh](#) [AIR 1968 SC 620] by Supreme Court. The suit can be filed only based on the possessory title for appropriate relief under the [Specific Relief Act](#) by a person in possession. Articles 64 and 65 both are attracted in such cases as held by Supreme Court in *Desh Raj Vs. Bhagat Ram* (2007) 9 SCC641.

In *Nair Service Society Ltd. v. K.C. Alexander*, AIR 1968 SC 1165 it was held that if rightful owner does not commence an action to take possession within the period of limitation, his rights are lost and person in possession acquires an absolute title.

The adverse possession requires all the three classic requirements to coexist at the same time, namely, *nec vi* i.e. adequate in continuity, *nec clam* i.e., adequate in publicity and *nec precario* i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it.

Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi (will to exercise control on the property) under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

#### **PRINCIPLES AND CONCEPTS OF ADVERSE POSSESSION**

The prescription of periods of limitation for recovering possession is the essence of the law of adverse possession. Right to sue before court is barred by law on limitation of prescribed time. The conditions necessary for the acceptance of a claim based on adverse possession have been laid down basically by way of Judge made law. The basic principles for adverse possession is that the title of the land should not be kept in abeyance, rival rights of ownership between paper owner and actual possessor exists and it is presumed that the true owner abandoned his right, the possessor who occupied the land and enjoyed for a specific time. Many exceptions to the concept of adverse possession based on legal relationship between the title holder and the person in actual possession are also recognized by law. Mere permissive possession and constructive possession does not constitute adverse possession. Mutation of municipal records does not attract adverse possession (AIR 1964SC5). Possession without a clear intention to exercise right over the property is not considered as adverse possession. The essential requirements 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 true owner. It must be adequate in continuity, exclusive, uninterrupted, public and hostile from interruption, a will to exercise control on the property (animus possidendi) and in extent to show that the possession is adverse to the title owner.

The concept of adverse possession relates to the process of acquisition of title by the person in possession of the property despite not being the owner. If the possessor remains in continuous possession of the property for 12 years with the knowledge but without permission or interference of the owner, the title of the property vests with the possessor.

Adverse possession was explained by the Supreme Court in *Amarendra pratab singh-Vs- Tej Bhahadur pradapati* (2004)10 SCC 65 as, “ A person, though having no right to enter into possession of the property of someone else, does so and continues in possession setting up title in himself and adversely to the title of the owner, commences prescribing title into himself and such prescription having continued for a period of 12 years, he acquires title not on his own but on account of the default or inaction on the part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter’s title.”

Article 65, Schedule 1 of the Limitation Act 1963, lays down a limitation period of 12 years for a suit of possession of immovable property or any interest based on the title. The period for limitation for the Government, however is 30 years by virtue of article 112. The law of adverse possession was summed up by the Judicial committee of the Privy council in *Perry-Vs-Clissold* (1907 AC73, at 79), where it was observed that if a rightful owner does not claim his right against a possessor within a given time, his ownership right stands extinguished.

It was again clarified in Karnataka Wakf Board-Vs- Government of India that the question of adverse possession is a mixed question of fact and law as a trespasser needs to prove a continued possession of more than 12 years with animus possidendi against the true owner. Again, clarified that, an owner would be deemed to be in possession of a property so long as there is no intrusion. Nonuse 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.

#### **BURDEN OF PROOF IN RESPECT OF ADVERSE POSSESSION**

The burden of proof in respect to adverse possession is on the person who claims title by way of adverse possession. As per Article 142 and 144 respectively of the Limitation Act, 1908 in a suit, the plaintiff (that time only plea of adverse possession could be taken only by defendant) had to prove that he had the title and had been in the physical possession of the property since last 12 years. But under the Limitation Act, 1963 the burden has now shifted. Now true owner just has to prove ownership and the onus shifts on the person claiming title by way of adverse possession.

#### **POSITION OF LAW IN ABROAD**

The acquisition of land under the concept of adverse position is recognized in all common law jurisdictions such as UK, US, Germany, France, Spain, Hungary, Netherlands, Poland and Australia. The essential requirements of adverse possession are almost same. But the period of limitation differs from country to country.

#### **PLEA OF ADVERSE POSSESSION TO HAVE A FRESH LOOK**

Some legal scholars in foreign countries have pleaded for abolition of adverse possession describing it as

legalized land theft and a means of unjust enrichment. It has also been pointed out that there is no certainty in the law of adverse possession and the courts in several cases have wrestled with the meaning of the expressions- actual, continuous, open, hostile and exclusive possession.

The Supreme Court in State of Haryana -Vs- Mukesh Kumar and others stated, People are often astonished to learn that a trespasser may take the title of a building or land from the true owner in certain conditions and such theft is even authorized by law. The theory of adverse possession is also perceived by general public as a dishonest way to obtain title to the property.

Under the head of the plea Adverse possession, the state which is in charge of protection of life, liberty and property of people, permitted to grab the land and property of its own citizens is a question. In Hemaji's case, "the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This is substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner".

The Supreme Court in State of Haryana -Vs- Mukesh Kumar and others stated, "If the protectors of law became the grabbers of the property, then people will be left with no protection and there would be a total anarchy in the entire country and also viewed that adverse possession must be arrested without further loss of time in the larger public interest. No government Department,

Public undertaking and much less the Police department should be permitted to perfect the title of the property by involving the provisions of adverse possession and grab the property of its own citizens in the manner that has been done in this case.”

Further, the Hon’ble Supreme Court gave certain suggestions that in case the law of adverse is not abolished then the Parliament might simply require adverse possession claimants to possess the property in question for a period of 30 to 50 years, rather than a mere 12 years. Such an extension would help to ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotected owners lose title. The Hon’ble Supreme Court vide this judgment recommended the Union of India to consider either to make necessary amendments concerning the law of adverse possession or abolish it for good.

A fresh look in *Ravinder Kaur Grewal-Vs-Manjit Kaur* (2019 SCC ONLINE SC 975) Supreme court held that the Article 65 off Limitation Act, 1963 not only enables a person to setup a plea of adverse possession as a shield as a defendant but also allows a plaintiff to use it as a sword to protect the possession of immovable property or to recover it in case of dispossession. The plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under Limitation Act 1963 to sue on aforesaid basis in case of infringement of rights of a plaintiff.

#### **CONCLUSION AND SUGGESTION**

The above legal and factual and the views expressed by the Supreme Court need to devise some special measures for protection of properties under adverse possession. Adverse possession initially starts with wrong and ends with right. Hence the plea for abolition of adverse possession may be describing it as legalized land theft and a means of unjust

enrichment. But the total abolition of adverse possession would initiate practical problems affecting people and the persons who take care of property may have no title.

The Supreme Court of India, has pointed out in the case of *Hemaji Waghaji vs. Bhikhabhai Khengarbhai and State of Haryana Vs. Mukesh Kumar* that ‘Law of adverse possession which ousts an owner on the basis of inaction with in limitation is irrational, illogical and wholly disproportionate. The Court while asking the Government of India to reconsider the law of adverse possession further held, the law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

The five-bench judgment of Supreme Court in *Justice K.S. Puttaswamy (Retd) vs Union of India* on 26 September, 2018 “If an enactment puts limitation on a constitutional right and such limitation is disproportionate, such a statute can be held to be unconstitutional by applying the doctrine of proportionality”. As per Article 300A of Constitution of India, right to property is a valuable constitutional right. When it is a constitutional right, the doctrine of constitutional proportionality may be applied to evaluate the concept of adverse possession.

Adverse possession has become a handy tool to the relatives and neighbors to occupy the NRI’s properties. The need to devise some special measures for protection of properties owned by NRIs. The consultation paper of Law Commission of India regarding adverse possession, discussed the above points and also released questionnaire in this regard.

The principles governing adverse possession and its proof should be provided explicitly in a statute and enlarge the present period of limitation of 12 years and 30 years. The NRI's would be more handicapped than resident Indians by reason of application of law of adverse possession. So, longer period of limitation has to be fixed in respect of the property owned by NRI's.

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