



ADVERSE POSSESSION: THE LAW AS IS

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In the previous volume of our newsletter, "BRIEFORIA" (ref. *IN PROPERTY LAW, REGISTRATION REIGNS SUPREME*, by Adv Rajneesh Sood and Adv Mukul Joshi, Brieforia, Volume 2, Page 27.), we had briefly discussed the consistent position of law taken by the Hon'ble Supreme Court of India, namely that ownership title is superior to possession, no matter how long the occupant has been in possession³ Pursuing the tussle between ownership title and possession, we have tried to explain the concept of adverse possession in this article, to show how, in a very special set of circumstances, possession can, in fact, supersede ownership title.

UNDERSTANDING ADVERSE POSSESSION

Adverse possession means an individual having acquired rights of ownership over a particular property by virtue of being in possession of the said property for more than a specific number of years, and where the possession was hostile to the owner's title, and the owner, despite such possession being openly and commonly known to the world at large, never really cared to raise objection to such possession. Thus, "adverse possession means hostile possession, that is possession which is expressly in denial of title of the true owner."⁴ The principle of adverse possession inheres "that a person in possession of land in the assumed character of the owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished and the possessory owner acquires an absolute title."⁵

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³ *IN PROPERTY LAW, REGISTRATION REIGNS SUPREME*, by Adv Rajneesh Sood and Adv Mukul Joshi, Brieforia, Volume 2, Page 27.

⁴ *Gaya Prasad Dixit v. Nirmal Chander*, AIR 1984 SC 930

⁵ *Perry v. Clissold* [1907] A.C. 73

“A plea of adverse possession is founded on the acceptance that ownership of the property vests in another against whom the claimant asserts a possession adverse to the title of the other. Possession is adverse in the sense that it is contrary to the acknowledged title in the other person against whom it is claimed.”⁶

ESSENTIALS FOR ESTABLISHING ADVERSE POSSESSION

The threshold limit for claiming adverse possession under Indian law is generally 12 years.⁷ However, the mere fact of possession of the property for over 12 years does not in itself enure the benefit of adverse possession to the party so claiming. “Mere possession of a property for a long term without proving the same with cogent evidence to be hostile against the true owner, would not itself divest the rightful owner from his claim over the property.”⁸ **The Supreme Court in *Karnataka Board of Wakfs v. Govt. of India and Ors.***⁹ clearly stated that “a person who claims adverse possession should show:

- (a) on what date, he came into possession,
- (b) what was the nature of his possession,
- (c) whether the factum of possession was known to the other party,
- (d) how long his possession has continued, and
- (e) his possession was open and undisturbed.”¹⁰

These essentials are based on the principles of the “nec vi, nec clam, nec precario” upon which the claim of adverse possession rests. These expressions represent the requirement of the claim of possession to not only be hostile, but also be “peaceful, open and continuous.”¹¹

HOSTILE CLAIM VERSUS PERMISSIVE POSSESSION

⁶ M Siddiq (D) Thr Lrs v. Mahant Suresh Das & Ors 2019:INSC:1231

⁷ Part V- Suits Relating To Immovable Property, Schedule, The Limitation Act, 1963.

⁸ Gurpreet Singh and Ors. Vs. Neelam Dutt and Ors. 2024:DHC :9727

⁹ 2004:INSC:276

¹⁰ Ibid.

¹¹ Ibid.

Since, hostile claim is the essence of adverse possession, the person claiming adverse possession can't simultaneously plead ownership rights in the property. The principle of law is that where, in its origin, the possession was permissive (where the titled owner of the property has permitted the person to take possession of the property), the presumption will be that it continued to be of the same character until something occurred to make it adverse.¹²

In a case where the appellant claimed to have simultaneous coparcenary rights in the property, along with the plea of adverse possession, the Delhi High Court held that "Such mutually destructive pleas are not permissible in a coherent pleading and must be rejected."¹³ The position of law is very clear on this aspect that permissive possession can never become adverse possession unless there is a clear, unequivocal repudiation of the title of the true owner to his knowledge. "Possession commencing with the permission of the owner or under his authority does not become transformed into an adverse one by a mere change in the mental attitude of the person in possession."¹⁴ In a case where the party claiming adverse possession had come into possession of the property in dispute pursuant to an agreement of sale, the Hon'ble Supreme Court held that a person in permissive possession cannot claim adverse possession unless he establishes that his possession became hostile to the knowledge of the true owner.¹⁵

It is crucial to note that the permission need not be express and may be implied from the facts and circumstances of the case.¹⁶

JUDICIAL TREND IN ADVERSE POSSESSION

The burden of proof in the adverse possession disputes lies heavily on the party claiming ownership and this burden of proof is stringent. Adverse possession is not a pure question of law but a blended one of fact and law, requiring strict proof of hostile animus and continuity.¹⁷ Since, "the concept of adverse possession contemplates a hostile possession i.e. a possession which is expressly or

¹² Sheodari Rai v. Suraj, AIR 1954SC 778 : (1972) 4 SCC 274

¹³ Kalyan Dass **Vs.** Praveen Chawla 2026:DHC :319

¹⁴ Ambu Nair v Secretary of State, (1942) 51 IA 257 : ILR 47 Mad 572, 582 (PC)

¹⁵ Mohan Lal v. Mirza Abdul Gaffar AIR 1996 SC 910

¹⁶ Daryasingh Harisingh v. Kalma Nihala, AIR 1961 MP 179

¹⁷ Munichikkanna Reddy v. Revamma AIR 2007 SC 1753

impliedly in denial of the title of the true owner”¹⁸ it is clear that for a person to claim adverse possession has to prove that not only was he in possession, but he also maintained a hostile possession which was openly known to the world at large.

Adverse possession, though recognised in law, is narrowly construed by courts and demands strict, unequivocal proof of hostile, open, and continuous possession. Judicial trends reflect caution, ensuring that lawful ownership is not displaced except in clear, compelling, and well-substantiated circumstances. The extremely demanding burden of proof for establishing adverse possession and the harsh requirements it imposes have rendered this provision a mere abstraction today.

The rule of adverse possession has been repeatedly criticised by the Hon’ble Supreme Court of India. In a scathing observation in Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others,¹⁹ the Supreme Court called the law of adverse possession “irrational, illogical and wholly disproportionate.”²⁰ The bench, comprising Justice Harjit Singh Bedi and Justice Dalveer Bhandari criticised the law of adverse possession for giving “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.”²¹

In writing the landmark judgment titled, State of Haryana v. Mukesh Kumar and Others²² Justice Dalveer Bhandari explained the law of adverse possession in the following words- “Adverse possession allows a trespasser - a person guilty of a tort, or even a crime, in the eyes of law - to gain legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible.”²³

¹⁸ Shri Uttam Chand (D) Through Lrs. V. Nathu Ram (D) Through Lrs. & Ors. Civil Appeal No. 190 of 2020

¹⁹ (2009) 16 SCC 517

²⁰ Ibid.

²¹ Ibid.

²² (2011) 10 SCC 404

²³ Ibid

LAW COMMISSION ON ADVERSE POSSESSION

In view of the directions of Hon'ble Supreme Court in the judgment in Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan and Others (*Supra 18*) the Law Commission made a detailed scrutiny of the law of adverse possession through the May 2023 Report²⁴ formulated by Mr. Justice K.T. Sankaran. The Law Commission through the said report justified "adverse possession as a welfare law and on grounds of morality"²⁵. This justification primarily relies on the article titled "The Moral Paradox of Adverse Possession: Sovereignty and Revolution in Property Law", Larissa Katz (2010).

While the recommendations and suggestions have been noted and perused in the report by Mr. Justice K.T. Sankaran, the same report was published with its dissent note authored by Dr. Niten Chandra and Dr. Reeta Vashishtha in their respective capacities as Ex- Officio Member Secretaries of Law Commission. The dissent note has pleaded "to strike off this provision of adverse possession from the Law of Limitation."²⁶ The authors of the dissent note have principally relied on the recommendations of the Supreme Court's decision in State of Haryana v. Mukesh Kumar and Others (*Supra 21*) to mould the law of adverse possession according to the reality of the day. The recommendations made by the Hon'ble Supreme Court can be broadly summed up as follows:

- To either amend or abolish the law of adverse possession,
- If not abolished, then creating a legal requirement of compensation to the title owners by the adverse possessor as per the prevalent market rate, and
- A longer statutory period to limit the remedy to those who are "most intimately connected with the land" (*Supra 21*) so that only the "passive and unprotective owners lose title" (*Supra 21*).

The said dissent note has also elaborated upon how the "idea of adverse possession is repugnant to the Fundamental Duties enshrined in the Constitution and must be abolished."²⁷

²⁴ Report No. 280, *The Law On Adverse Possession*, 17th May 2023

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/06/2023060190.pdf>

²⁵ Report No. 280, *The Law On Adverse Possession, Dissent Note*, 17th May 2023

<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2023/06/2023060174.pdf>

²⁶ Ibid.

²⁷ Ibid.

While the Law Commission report and the dissent note forward some very promising arguments both for or against the law of adverse possession, it is important for us to keep in mind that the Law of Limitation still recognises the adverse possession as a perfectly fit and applicable provision, although the Supreme Court has, through its judgments as seen above, narrowed its applicability in such strict and harsh confines of the heaviest possible burden of proof (refer to the essentials laid down in *Karnataka Board of Wakfs v. Govt. of India and Ors*) that the adverse possession is practically very difficult to prove.

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