

ADVERSE POSSESSION: FROM SHIELD TO SWORD, THE LAW GREW UP



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Published : August 15, 2020

Adverse Possession is a concept wherein a person (squatter) acquires a prescriptive title over a property owned by another person (true/paper owner) who loses his right, title and interest in the property due to his inaction to remove/evict the squatter within a statutory limitation period. After the statutory limitation period is over, title of the true/paper owner over the property extinguishes and he is barred from initiating any legal proceeding to repossess/reclaim his property and the person possessing the property acquires good title over that property.

Historical Background

Adverse Possession is a very old concept and is often criticised as irrational, illogical and wholly disproportionate^[1] since it protects and gives benefit to a wrongdoer. It appeared in the Code of Hammurabi approximately 2000 years before Christ era. Law 30 contained a provision "*If a chieftain or a man leaves his house, garden, and field and someone else takes possession of his house, garden and field and uses it for three years; if the first owner returns and claims his house, garden, and field, it shall not be given to him, but he who has taken possession of it and used it shall continue to use it.*" However, there was an exception to the said rule for a soldier captured or killed in battle and the case of the juvenile son of the owner.

In Roman times, Possessor or user of the land was considered to have a greater "ownership" of the land than the titled owner. The maxim *Vigilantibus Et Non Dormientibus Jura Subveniunt* in Roman law which means that "the law comes to the assistance of those who are vigilant with their rights, and not those who sleep on their rights" comes in support of adverse possession.

A line of thought was also evolved in UK that the person who possesses the land and produces something of ultimate benefit to the society, must hold the best title to the land. Revenue laws relating to land were enacted in the spirit to confer the title on the actual tiller of the land. The Statute of Tenures enacted in 1660 ended the feudal system and created the concept of the title. The adverse possession remained as a part of the law and continue to exist.

The concept of adverse possession has a root in the aspect that it awards ownership of land to the person who makes the best or highest use of the land. The land, which is being used is more valuable than idle land, is the concept of utilitarianism. The concept thus, allows the society as a whole to benefit from the land being held adversely but allows a sufficient period for the "true owner" to recover the land.

If a former owner neglects and allows the gradual dissociation between himself and what he is claiming and he knows that someone else is caring by doing acts, the attachment which one develops by caring cannot be easily parted with. The bundle of ingredients constitutes adverse possession.

As against rights of the true/paper owner, in the context of adverse possession, there evolves a set of competing rights in favour of the adverse possessor who has, for a long period of time, cared for the land, developed it, as against the owner of the property who has ignored the property. Modern statutes of

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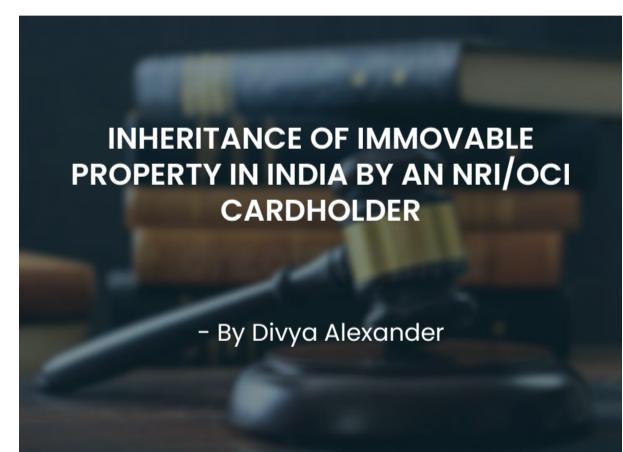
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limitation operate, as a rule, not only to cut off one's right to bring an action for the recovery of property that has been in the adverse possession of another for a specified time but also to vest the possessor with title. The intention of such statutes is not to punish one who neglects to assert rights, but to protect those who have maintained the possession of property for the time specified by the statute under claim of right or colour of title.^[2]

Statutory Provisions

Section 3 of the Limitation Act, 1963 ("the Act") talks about bar of limitation^[3]. It says that every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed by the court on the ground of limitation even if that defence has not been raised in that plea. The term "prescribed period" is defined under Section 2(j) of the Act as the period of limitation computed in accordance with the provisions of the Act^[4].

Section 27 of the Act is as follows^[5]:

"Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished."

This section talks about extinguishment of right to property. It says that if the person having the right to possession allows his right to be barred by the limitation of law, his title itself is extinguished in favour of the party who is in possession.^[6] The section assists the person in possession to acquire prescriptive title by adverse possession.^[7] The statutory limitation period for possession of immovable property or any interest therein based on title is twelve years as provided for under Article 65 of the Schedule to the Act.^[8] So, if a squatter is in possession of a property for a continuous period of twelve years, the real owner's right to that particular property will be extinguished by the operation of the law, and the squatter will acquire the title of the same. The limitation period begins the moment, the possession of the other person (squatter) becomes adverse to the true/paper owner.^[9] The squatter acquires the title not on his own but on account of the default or inaction on part of the real owner, which stretched over a period of twelve years results into extinguishing of the latter's title.^[10]

The provision under Section 27 of the Act is an exception to the rule that a limitation statute is a statute of repose and ordinarily bars a remedy but does not extinguish a right. 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.^[11]

Nature of the Title

The passing of title from true/paper owner to the adverse possessor is not a conveyance or a transfer by will, but rather, a transfer through operation of law.

The principle of adverse possession does not operate as simply as it sounds. In fact, there are many requirements to be fulfilled by the squatter in order to establish his title to the property. The conditions necessary for the acceptance of a claim of adverse possession have mostly been laid down by way of Judge-made law. A person claiming title by adverse possession has to prove three "necs": *nec vi, nec clam and nec precario*. In other words, he must show that his possession is adequate in continuity, in publicity and in extent.^[12] It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period.^[13]

Also, mere continuous possession does not entitle a person to take the plea of adverse possession. It is now a well settled principle of law that mere possession of the land would not ripen into possessory title for the said purpose. The possessor must first accept the title/ownership of the true/paper owner over the suit property to take the plea of adverse possession.^[14] The possessor must also have *animus possidendi* and hold the land adverse to the title of the true owner.^[15]

Evolution of Concept in India

The understanding of law relating to adverse possession has evolved in recent times and it has been reiterated time and again by the Apex Court that there is a need to take a fresh look at the law of adverse possession.^[16]

In 2012, the Law Commission of India ("the Commission") came up with a consultation paper-cum-questionnaire^[17] wherein it invited suggestions from general public in relation to law relating to adverse possession in India but no recommendations have yet been made by the Law Commission. The Commission stated therein that there was a need to strike a balance between the pros and cons of the law of adverse possession. The Commission also mentioned that:

"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... 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 question as to whether Article 65 to the Schedule of the Act enables a person to file a suit for declaration of title came up before a two-judge bench of Hon'ble Supreme Court in the case of **Gurudwara Sahib v. Gram Panchayat Village Sirthala and Anr.**^[18] In this case, the Appellant, *inter alia*, sought declaration of title over the suit property on the ground of adverse possession. The Hon'ble Supreme Court, while dismissing the plea of Appellant, upheld the decision of Hon'ble High Court of Punjab & Haryana in **Gurudwara Sahib Sannauli v. State of Punjab**^[19] wherein the Hon'ble High Court had stated that "even if the Plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the Appellant and Appellant is arrayed as Defendant that it can use this adverse possession as a shield/defence."

The view expressed in Gurudwara Sahib (supra 18) was further relied upon by the Apex Court in its subsequent decisions in **State of Uttarakhand v. Mandir Shri Laxman Sidh Maharaj**^[20] and **Dharampal (Dead) through L.Rs. v. Punjab Wakf Board**^[21]. Thus, pursuant to Gurudwara Sahib (supra 18) the settled position was understood to be that a party cannot seek any declaration of title/ownership over a property by taking the plea of adverse possession and the plea of adverse possession can only be used as a defence in proceedings initiated against it, i.e., a plea of adverse possession can be only used as a shield and not as a sword.

Later on, the legal position laid down by Gurudwara Sahib (supra 18) along with the subsequent decisions which relied on it, were overruled by a three-judge bench of the Hon'ble Supreme Court in the case of **Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.**^[22] wherein the court went into great detail with respect to the concept of adverse possession and even traced back its history. It observed that the possessor who maintains and improves the land has a more valid claim to the land than the owner who never visits or cares for the land.

The court took into consideration several of its previous decisions and various other decisions of Privy Council, High Courts and of English courts and observations made in Halsbury Laws of England based on various decisions, wherein suits for protection, restoration or recovery of possession or declaration of title on the ground of adverse possession were held to be maintainable.

With respect to Gurudwara Sahib (supra 18), the court noted that the various decisions including that of the larger bench having contrary views were not placed before the court for consideration. It further noted that the judgment was based upon the proposition of law which was not disputed and observations were recorded without giving any reason and therefore, a 'decision based upon concession' cannot be treated as precedent

The court observed that the expression "title" in the opening part of Article 65 to the Schedule of the Act would include the title acquired by the plaintiff by way of adverse possession.

The court went on to opine that adverse possession confers a perfected right which cannot be defeated on re-entry except as provided in Article 65 to the Schedule of the Act itself and held that once the 12 years' period of adverse possession is over, even the true/paper owner's right to eject him is lost and the possessory owner (*i.e.*, the squatter) acquires right, title and interest possessed by the true/paper owner as the case may be, and thereupon, it can be used, not just as a shield but also as a sword by the plaintiff (*i.e.*, the possessory owner/ the squatter) within the meaning of Article 65 to the Schedule of the Act and accordingly, a plea of acquisition of title by adverse possession can be taken by plaintiff (*i.e.*, the possessory owner/ the squatter) under Article 65 to the Schedule of the Act and there is no bar under the Limitation Act, 1963 against a plaintiff to prevent an action being brought by such plaintiff in respect thereof.

While conclusively establishing a squatter's right and settling the legal position in relation to adverse possession, the court however clarified that in case of encroachment upon properties reserved for public utility, where a plea of adverse possession is raised, it is desirable that rights should not accrue as it may cause harsh consequences on the general public and further stated that the legislature should make it clear in the Act that no rights can accrue by adverse possession in case of such properties.

Conclusion

The concept of adverse possession has always been looked upon in a negative manner as being prejudicial to the true/paper owner of the property and unjust enrichment for a squatter. It confers negative and consequential right which is effected only upon somebody else's positive right to access the court being barred by operation of law. Right of the true/paper owner is extinguished and simultaneously, competing rights evolve in favour of adverse possessor, *i.e.*, the squatter.

The present conclusive legal position provided for by the Hon'ble Supreme Court in Ravinder Kaur Grewal (*supra*) has been further relied upon by the Hon'ble Supreme Court in recent decisions of **Mohammed Yusuf and Ors. v. Rajkumar and Ors.**^[23] and **Gurtez Singh v. Zora Singh (Dead) through L.Rs. & Ors.**^[24]

With the passing of the decision of Ravinder Kaur Grewal (*supra*), it is possible that a fresh flood of litigations may now be instituted by persons who till now only had the option of using the plea of adverse possession as a defence/shield but can now even initiate the attack, *i.e.*, suit for declaration of title, through the sword of Adverse Possession.

It is suggested that the Indian legislature should, on the lines of law relating to adverse possession provided for in other countries like UK, Australia, USA, New Zealand, etc., expressly provide for concrete principles governing adverse possession and the evidentiary claims in respect thereof, in a statute as per the suggestions given by the Hon'ble Apex Court in Ravinder Kaur Grewal (*supra*) so as to ensure that such further litigations which may arise are decided within the framework of a clearly enunciated law on adverse possession, which law must also sufficiently cover exceptions, if any, to such provisions, for instance, in respect of property owned by minors or held in trust for such minors, properties reserved for public use, etc.

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[1] See Hemaji Waghaji v. Bhikhabhai Khengarbai, AIR 2009 SC 103; State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404.

[2] American Jurisprudence, Vol. 3, 2d, p. 81.

[3] Section 3, Limitation Act, 1963.

[4] Section 2(f), Limitation Act, 1963.

[5] Section 27, Limitation Act, 1963.

[6] Ganga Govind Mandal v. The Collector of Twenty Four Parganas, (1967) 11 M.I.A. 345.

[7] U.N. Mitra's Law of Limitation & Prescription, 13th edition, 2011. Vol. I, revised by Justice S.A. Kader, p. 732.

- [8] Article 65, The Schedule, Limitation Act, 1963.
- [9] *Supra* note 2.
- [10] Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors, A.I.R. 2004 S.C. 3782.
- [11] Valliamma Champaka v. Sivathanu Pillai (1964) 1 MLJ, 161 (FB); Prem Singh v. Birbal, (2006) 5 S.C.C. 353.
- [12] See Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors., Civil Appeal No.7764 of 2014; Karnataka Board of Wakf v. Government of India, (2004) 10 SCC 779; Balkrishan v. Satyaprakash & Ors., (2001) 2 SCC 498; S.M. Karim v. Bibi Sakina [1964] 6 SCR 780; P. Lakshmi Reddy v. L. Lakshmi Reddy, AIR 1957 SC 314; Kshitish Chandra Bose v. Commissioner of Ranchi, AIR 1981 SC 707.
- [13] S.M. Karim v. Bibi Sakina [1964] 6 SCR 780; Parsinni v. Sukhi (1993) 4 SCC 375; D. N. Venkatarayappa v. State of Karnataka (1997) 7 SCC 567.
- [14] Dagadabai (Dead) by L.Rs. v. Abbas, (2017) 13 SCC 705; M. Siddiq (D) thr. L.Rs. v. Mahant Suresh Das and Ors., (2020) 1 SCC 1.
- [15] Annakili v. A. Vedanayagam, (2007) 14 SCC 308; Karnataka Board of Wakf v. Government of India, (2004) 10 SCC 779.
- [16] P.T. Munichikkanna Reddy & Ors v. Revamma And Ors, (2007) 6 S.C.C. 59; Hemaji Waghaji v. Bhikhabhai Khengarbai, AIR 2009 SC 103; State of Haryana v. Mukesh Kumar, (2011) 10 SCC 404.
- [17] Law Commission of India, *Consultation Paper-cum-Questionnaire on Adverse Possession of Land/Immovable Property*, para no. 2.2 > (Last retrieved on 30.03.2020).
- [18] (2014) 1 SCC 669.
- [19] (2009) 154 PLR 756.
- [20] (2017) 9 SCC 579.
- [21] (2018) 11 SCC 449.
- [22] Civil Appeal No. 7764 of 2014, decided on 7th August 2019.
- [23] 2020 (1) KLT 756.
- [24] Civil Appeal No.8424 2009, decided on 26th February, 2020.

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