

OPEN ACCESS

Volume: 12

Special Issue: 2

Month: July

Year: 2024

P-ISSN: 2321-788X

E-ISSN: 2582-0397

Received: 02.07.2024

Accepted: 18.07.2024

Published: 30.07.2024

Citation:

S. Krishnaleela. (2024). Adverse Possession Can Be use as a Sword as Well as Sheild Against the True Owner - An Analytical Study. *Shanlax International Journal of Arts, Science and Humanities*, 12(S2), 119–130.

DOI:

<https://doi.org/10.34293/sijash.v12iS2-July.8138>



This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License.

Adverse Possession Can Be use as a Sword as Well as Sheild Against the True Owner - An Analytical Study

Dr. S. Krishnaleela

*Principal (FAC) in Government Law College
Villupuram, Tamil Nadu, India*

Introduction

Land rights of human being is age old concept. It has develop greatly overtime and can be traced back to the neolithic revolution. During Vedic period land ownership vested in community not the hands of individuals. Since everyone owns a piece of land, no king can give away all of his realm. Subsequently, Katyayana asserts that as “the King is the proprietor of the lands, he is entitled to one-fourth of all the products produced by the lands. Manu asserts that a piece of land becomes his property if it is owned by someone for ten years or longer. In the 11th century², the duration of occupancy is extended to 105 years. The Muslim Sultanate divided land ownership into three categories: iqta (property awarded to officials in proportion to their salaries), khalsa (land belonging to the center), and land granted to priests and intellectuals. We learned that the tax was determined by the amount of the assets during the tenure of Sher Shah Suri. British overturn these standards since the land is unquestionably a marketable good.

Property rights became the property of the individuals, organizations, and everyone else who used or disposed of the land after independence. These rights provide the owners to resell their assets for a profit while preventing third parties from exploiting them or deriving any advantages from them without permission. In 1978, the Constitution’s 44th Amendment changed a citizen’s property rights from basic to legal rights. When someone acquires property and receives attention, they frequently become the owner of that property. extraordinary by not possessing any real estate. That is to say, in practice, the extinction of the encroached-upon owner’s title in favor of the party in question occurs if the owner forfeits their right to have the statute of limitations barred in ownership. The owner’s title would be unaffected even if he neglected to use the property for an extended amount of time. But things changed for him when another

The owner failed to file a lawsuit for a number of years after claiming ownership of the property and seizing control of it.

The Historical Background of Adverse Possession

The phrase “vigilantibus non dormientibus jura subveniunt” indicates that the law is on the side of the waking rather than the sleeping. It is an indication that the judicial system is skewed against people who immediately and aggressively demand their rights. A legal concept known as “adverse possession” gives ownership rights to someone who has illegitimately inhabited someone else’s land for a predetermined amount of time. The fundamental idea is that land should be used thoughtfully rather than being left unutilized. A person must present proof that they have had continuous, uninterrupted possession of the property for at least 12 years in order to claim adverse possession of a plot of land. Additionally, they must demonstrate that their possession was openly and conspicuously shown, as well as antagonistic towards the rightful owner.

The phrase “vigilantibus non dormientibus jura subveniunt” indicates that the law is on the side of the waking rather than the sleeping. It is an indication that the judicial system is skewed against people who immediately and aggressively demand their rights. A legal concept known as “adverse possession” gives ownership rights to someone who has illegitimately inhabited someone else’s land for a predetermined amount of time. The fundamental idea is that land should be used thoughtfully rather than being left unutilized. A person must present proof that they have had continuous, uninterrupted possession of the property for at least 12 years in order to claim adverse possession of a plot of land. Additionally, they must establish that their possession was freely and take command again.

In the United States, each state has established particular criteria outlined in court rulings and laws that must be satisfied in order to get land through adverse possession. In Idaho, an individual seeking ownership through adverse possession must initially demonstrate that they have physically occupied the property for the required period of time specified by the law. Prior to 2006, the duration of this time in ‘Idaho’ was 5 years. In 2006, the Idaho legislature modified the act to prolong the duration to 20 years. To ascertain the decrease in the average prescriptive time from 19 years in 1840 to 14 years in 1920. The Act of Limitation, which includes a clause of 1500, established a definite term of 60 years for the relinquishment of claims to title.

In India, the term “adverse possession” refers to the legal notion that an individual can legally obtain ownership of a property by publicly and persistently occupying it without the true owner’s consent for a predetermined amount of time. The Limitation Act, 1963 was enacted to inform the public of their duty to exercise their rights or claim an interest in real estate within a given, defined time limit. It is essential to refrain from ignoring or undervaluing one’s rights for an extended period of time. When it comes to claiming rights or interests in the property, there may be chaos or ambiguity if there isn’t a legally mandated deadline. Regarding Law of Limitations Section 3: Any litigation, appeal, or application even if the defense of limitation has not been asserted, a filing submitted after the deadline would be dismissed. This clause protects the individual’s vested rights while outright prohibiting their potential redress.

Section 27 is an exception to this norm. It states that if a person does not take any action to recover control of property within the allotted term, their rights are extinguished, leaving the land in a condition of uncertainty. In the principle of adverse possession, the land cannot remain in a state of abeyance. If the original owner forfeits his ownership of the land, someone else must acquire the rights. The law of adverse possession stipulates that an individual who has occupied a privately owned land for a period exceeding 12 years, or a government-owned land for a period exceeding 30 years, can acquire legal ownership of the property. A person who is entitled to inherit the property from the original owner can request a legal solution within the specified time limit. The law regarding adverse possession went through a substantial modification following the implementation of the Limitation Act, 1963. Under this law, the original owner’s position was

strengthened as they were required to provide evidence of their ownership, while the responsibility of proving adverse possession shifted to the person making such a claim.

Put simply, if someone had the right to possess something but failed to take action to maintain that right, they cannot reclaim the property from someone who has been in adverse possession for 12 years or more, as stated in the Limitation Act. Consequently, the person in adverse possession is allowed to keep the property, even if it originally belonged to the real owner who was displaced.

The Fundamental Prerequisites for Adverse Possession

(1) Peaceful Possession of Immovable Property should be Ensured without the use of Force (Nec Vi)

Real possession refers to the legal ownership of immovable property, while adverse possession involves physically controlling land with the intention of exclusively claiming it. Mere assertion of ownership and fulfillment of tax obligations do not suffice to establish genuine ownership of the land. Regardless of permission, it is necessary to access the territory. Trespassing alone is insufficient to establish adverse possession; it requires more than just a trespasser's temporary use of the property. The possessor's physical conduct must demonstrate that they are utilizing their land in a manner that aligns with the actions of an ordinary owner of comparable property. Continuous utilization of the land, such as planting crops, collecting harvests, and selling timber, demonstrates tangible and uninterrupted physical possession. The adverse possessor is required to establish the precise date of initial possession, public awareness of the possession, the specific characteristics of the possession, the uninterrupted and ongoing nature of the possession, and the length of time the possession has been maintained.

(2) The Possession should be Openly and Conspicuously Displayed, without any Attempt to Keep it a Secret (Nec Clam)

In order to establish adverse possession of land, the possessor must maintain a visible and obvious presence on the property, similar to that of a rightful owner. Trespassing on someone else's property without their knowledge or consent does not grant any legal entitlements. Residing on a piece of land is the most obvious and widely recognized kind of possession. However, it also serves as clear and publicly acknowledged possession when the land is cleared, fenced, cultivated, or otherwise enhanced. For a claimant to establish their possession, it must either be widely recognized by the general public or the local community, or the owner must genuinely be aware of the harmful usage. Due to the widespread knowledge of the possession, the owner is informed that if they fail to regain control of the land within a specified period, they will forfeit it. The majority of the general population or individuals residing in close proximity are cognizant of it. The owner is notified that failure to reclaim custody of the land within a specified time frame will result in its loss, due to the infamy associated with its holding.

(3) Unlawful Possession without Consent (Nec Precario)

Adverse possession cannot result in acquiring legal ownership if the claimant has not maintained exclusive control over the land. Exclusive possession is defined as having sole physical control over a single location. The claimant will retain ownership of the property despite any competing claims. An instance of a tangible enhancement on land that establishes sole ownership is the erection of structures or barriers. In order for title to be acquired by adverse possession, there must be hostile possession, which is also referred to as unfavorable possession. In order to be considered in hostile possession, the claimant must occupy the territory in a manner that goes against the rights of the legitimate owner. Hostile possession refers to the act of unlawfully entering

and remaining on property that does not belong to the individual. Adverse possession occurs when an individual forcibly displaces the rightful owner and assumes control of the property. When possession ends, the person who had it departs and is subsequently replaced by others who take possession. Relinquishing possession necessitates the voluntary surrender of the legitimate owner and the transfer of actual possession, regardless of whether it is advantageous or disadvantageous, to another party. Merely asserting the title may not be enough unless the plaintiffs can prove the *animus possidendi*. The plaintiff's purpose is to occupy the property entirely, without representing the other co-owners. This is stated in the case of *Des Raj Vs Bagat Ram Uninterrupted and continuous possession*: The defendant cannot gain ownership of the disputed land solely based on their extended possession of the land for more than 12 years, without any intention or knowledge of causing harm to the plaintiff's ownership rights. An unfavorable property is defined as one where the holder opposes the lessor's title and demonstrates enmity through words or actions.

Plea of Adverse Possession

The ruling in the case of *State of Maharashtra v. Bhimarao Dnyanoba Patil* was that unless enjoyment of the property is maintained, long-term possession—even over a statutory period—would not be sufficient to mature the title to the property by adverse possession accompanied by adverse animus.

(i) Eviction of the true owner: When someone takes possession of something, the other is forced to leave. When someone's ownership ends, that individual leaves and is replaced by someone else. The legitimate owner must relinquish control of it, and real possession by a third party—friendly or not—must occur for possession to end.

(ii) Need anything else in order to get rid of it: Possession is defined as the act of one person entering and one person leaving. "Dispossession" is the same as "ousting," and the prerequisite for expulsion is that the subject of the expulsion actually owns the asset. The parties' agreement does not automatically settle the issue of whether or not there was disposal. Possession only switches hands when one person arrives and pushes another out.

When someone else acquires possession of something with their consent, the rightful owner does not forfeit it or become homeless. Permissive possession is the term used for this. It is true, nonetheless, that the owner will suffer if the person in permissive possession modifies his degree of hostility and persists in adamantly and openly claiming a hostile title. An individual who is permitted to own or occupy property but is not legally allowed to do so is not allowed to do so. The rightful owner of the property is deemed to be in possession in such circumstances. An owner does not automatically give a destitute relative who lives on the property custody of their property. In order to dispute the idea that he has given up control of property and stop the statute of limitations from running, the owner is free to keep and make use of his proprietary and possessory rights. Constructive possession belongs to such a lowly relative of the owner. Ownership transfers to the person who grants permission, for whatever long that permission may last. They can employ a laborer, gardener, or servant to live in a cottage on their property without having to pay rent. If the owner, merely out of kindness or charity,

The term "possession" has a very clear definition. Because his land is submerged and he cannot utilize it, a guy can give up on utilizing it. As a result, he holds onto his possession. In the affirmative, he holds the property until he is evicted, and in the negative, it constructively resurfaces when the eviction is terminated before the allotted period has passed. Possession must be actual, and the individual giving up must exercise physical control and ownership over the property in order to be considered an occupier. It must be his desire to be possessed. The sort of property being owned and the owner's planned use of it must be incompatible for acts of dispossession to occur. Sometimes

the owner just needs to use the property in little ways positive, exclusive ownership actions. There cannot be dispossession until someone else assumes ownership.

Adverse possession is a common law act that involves using one's use to acquire title to land. The federal and state statutes have formalized the common law guidelines for adverse possession. By merely using the land, a person can typically get title to land from the actual owner under a statute. The use ought to be visible to everyone. If your neighbor paid your property taxes and constructed a fence on your property with the goal of obtaining the land, that would be an example of openly using land for adverse possession. Despite your knowledge of the situation, you would do nothing. Should this persist over the duration stipulated by state legislation, your neighbor might be eligible to assert their ownership of this land. According to the theory, you have given up your legal right to challenge your neighbor's use of your land by not filing a lawsuit.

Adverse possession requires strict adherence to the law in order to gain title to land, which can have a substantial influence on property ownership rights. Adverse possession is an issue of law and fact. It is well-established law that in order to properly prove title by adverse possession, a party must specifically submit a plea to that effect. A possession is only deemed unfavorable if it is really held by someone who contests the lessor's title, shows hostility against the lessor by words or deeds, or, in some cases, acts as a trespasser against the lessor or another property owner.

One way to obtain title to real estate is through adverse possession, which involves taking possession of the property for a set amount of time under specific circumstances. A statute governs the aforementioned time frame. According to this idea, if all legal conditions have been satisfied, an individual may prove their ownership against the real owner. The property owner needs to be aware of adverse possession in real life. The definition of continuity is "regular, uninterrupted land occupancy." According to Articles 6 and 65 of the Limitation Act, the time limit is 12 years for individuals and 30 years for governments. The moment at which limitation first appears from the manifestation of hostile animosity that amounts to the genuine owner's title being denied to him. The burden of establishing the title based on adverse possession rests with the relevant party. Probabilities and assumptions cannot take the place of the evidence.

Exceptions from Enforcement of Adverse Possession

1. The holder of the property cannot claim adverse possession if they had no ulterior motive or animus possidendi to exclusively possess the property, or if there is a fiduciary relationship between the landlord and tenant.
2. If the tenant was permitted by the landlord to possess the property, it will not be considered adverse possession. However, if the landlord terminates the permissive possession and the tenant does not vacate the property, they may be liable for wrongful possession and may need to pay compensation.
3. Adverse possession cannot be claimed if there is no valid claimant for the property, i.e., if nobody is claiming ownership of the property. In such a case, the right over the property cannot be acquired through adverse possession.
4. If the owner is minor, mentally unwell and armed forces who render service for the nation are also falls exception to this doctrine. Property disputes continue to rise in the country the owner should be very careful to avoid such circumstances.
5. This theory of adverse possession cannot be use against the Hindu, Muslim and christian religious institutions. Hence no one claim title, rights and interest against the religious trust and institutions.

Local Rules Relating to Adverse Possession

The bar of limitation is discussed in Section 3 of the Limitation Act of 1963. Nothing specific was offered.(1) Regardless of whether the defense of limitation has been raised or not, any legal

action, appeal, or application filed after the deadline—aside from those allowed by sections 4 through 24—will be denied. (2) The following definitions apply for the purposes of this Act: (a) The following situations are deemed to be the beginning of a lawsuit: (i) When the plaintiff files a complaint with the proper official in a typical instance. (ii) When a pauper files an application to be allowed to litigate on their behalf. (iii) When a claim is made against a business that is subject to a court-ordered liquidation, the claimant's first submission of the claim

The Act's Section 27 deals with the loss of a property right. There is no text available. The person's entitlement to a piece of property expires once the deadline for filing a lawsuit to assert ownership has passed. According to Section 64, an individual's claim for possession of immovable property that they were previously in possession of is based on that prior possession rather than on their legal ownership. twelve years throughout that time. the eviction date.

According to Section 65, possession of immovable property or any interest in it is determined by the title. Clarification. For the purposes of this article, the following conditions apply: (a) If the lawsuit is brought by a remainder man, a reversioner (excluding a landlord), or a devisee, the defendant's possession will only be considered adverse when the estate of the remainder man, reversioner, or devisee, as the case may be, comes into possession. (b) If the lawsuit is brought by a Hindu or Muslim who is entitled to possess immovable property upon the death of a Hindu or Muslim female, the defendant's possession will only be considered adverse when the female dies. (c) If the lawsuit is brought by a purchaser who bought the property through a sale conducted as part of a legal decree, and the judgment debtor was not in possession at the time of the sale, the purchaser will be considered a representative of the judgment debtor who was not in possession.

Judicial Precedents

In order to demonstrate ownership by adverse possession, it is critical to evaluate the claims that are required and extraneous. Concerning the legal documents required to acquire title of real estate by adverse possession, the Honorable The Supreme Court held in the Karnataka Waqf Board case that the argument of adverse possession includes a mix of factual and legal issues rather than just a legal one. Evidence pertaining to the date of possession, the type of possession, whether the other party was aware of the possession, the length of the possession, and the fact that the possession was open and undisturbed must all be shown in order to prove adverse possession.

The judicial committee of the Privy Council developed the idea of adverse possession in the *Perry v. Clissold* decision. According to their ruling, a person who is in possession of land, acting in the capacity of the owner, and peacefully exercising their rights as such has a legitimate claim against all parties, including the legitimate owner. Furthermore, the possessor's rights are permanently terminated and the genuine owner receives an absolute title if they come forward and demonstrate their ownership through the legal procedure within the time frame stipulated by the applicable statute of limitations. A defendant who asserts adverse possession is not qualified for any benefits or privileges. To contest the legitimate owner's rights, one needs to make a strong argument and provide all the evidence required to support his adverse possession claim. The Court found that the assumption of adverse possession is a necessary condition for a claim to be made regarding the ownership of the property. As a result, it is impossible for the claims of adverse possession and ownership to coexist. Adverse possession only takes hold once prior ownership is given up.

According to the ruling in *By Lrs v. Abbas @ Gulab Rustum Pinjari*, before asserting title by adverse possession, one must identify the real owner of a property. It is not permitted for a person asserting ownership through adverse possession to provide a conflicting defense. This indicates that because ownership and adverse possession are incompatible claims, a party cannot make both

at the same time. Interestingly, the Supreme Court held in *L.N. Aswathama v. P. In the Prakash* case, the defendant put out a different, non-contradictory position. Before the plaintiff brought the lawsuit, the defendant had a continuous period of 12 years without presenting any proof to support his ownership of the suit property.

A period exceeding 12 years. Aside from his ambiguous and biased assertion, which has been proven to be untrue, there is no proof indicating that he had possession for a duration of 12 years prior to the plaintiffs' lawsuit.

In a legal case, the person bringing the lawsuit (known as the plaintiff) had to prove, according to Articles 142 and 144 of the Limitation Act, 1908, that they were the rightful owner of the property and had physically possessed it for the past twelve years. At that time, the defendant could only argue that they had acquired ownership through adverse possession. Nevertheless, this responsibility has already been passed according to the existing Limitation Act of 1963. The need to provide evidence now lies with the one claiming ownership through adverse possession, while the true owner just needs to establish their ownership.

In the case of *Mohan Lal (deceased through legal representatives) vs Mirza Abdul Gaffar* the first argument made by the appellant is contradictory to the second argument. According to the law, if the appellant acquired possession of the land through a sale agreement, they must renounce their rights under that agreement and provide evidence of their independent, hostile, and adverse possession. This possession must be known to the original owner or their successor in title, and the owner must have accepted the illegal possession for the entire 12-year period required for adverse possession. In other words, the appellant cannot claim adverse possession if they admit that they lawfully acquired possession under the Transfer of Property Act, 1882, and have remained in possession until the date of the lawsuit.

Courts have been hesitant to recognize the right via adverse possession when analyzing the legal notion of adverse possession in connection to land designated for public use. In certain cases, these properties are inhabited illegally, giving rise to an adverse possession claim. It is ideal in these situations that no rights be acquired on the area set aside for public use. To prevent the potentially dire implications of the law of adverse possession, it is advised that the statute of limitations expressly indicate that no rights may be gained by adverse possession for properties committed to public use.

In the case of *Nair Service Society v. K.C.*, three Supreme Court judges affirmed the Privy Council's judgment, despite the Supreme Court's formal obligation to disregard its rulings. The case of *Alexander*, as stated in *As per the cited data*, the Limitation Act of 1963 stipulates that the person now in possession of a piece of land, even if they are not the genuine owner, would become the absolute owner if the legal owner does not show up within a period of twelve years. The Supreme Court of India has considered the idea of Adverse Possession on several occasions; some of the most important cases are included here. *Bhimrao Dnyanoba Patil v. State of Maharashtra* is one such instance. It was found in the case of that merely having a piece of property for an extended period of time—even if it satisfies all legal requirements—does not prove ownership by adverse possession. Along with ownership, there must be animosity toward the rightful owner.

In the matter of *Tej Bahadur Prajapati v. Amarendra Pratap Singh*, "A person who does not have the legal right to take possession of another person's property does so and continues in possession, setting up title in himself and adversely to the title of the owner, begins prescribing title into himself and such prescription having continued for a period of 12 years, he acquires the genuine owner's title is extinguished due to their lack of action during a 12-year period of time," the Supreme Court defined adverse possession. In *S M Karim v. Mst. Bibi Sakina*, it was ruled that adverse possession had to be sufficient in terms of continuity, publicity, and extent, and that a plea was required to

demonstrate the point at which possession turned adverse in order to establish the beginning point of limitation against the person in question.

Legal actions concerning the possession of real estate or any interest based on ownership are subject to a 12-year statute of limitations, as established by the Limitation Act of 1963. Section 112., however, extends the government's time restriction to 30 years. The Privy Council's

In *Perry v. Clissold*, the Judicial Committee provided a summary of adverse possession, indicating that an owner forfeits their ownership rights if they do not exercise them against a possessor within a given time frame. The case of *Nair Service Society Limited v. KC Alexander* upheld this decision.

It was made clear in the *Karnataka Wakf Board v. Government of India* case that the idea of adverse possession takes into account both factual and legal factors. In order to assert ownership over the original owner, the trespasser must demonstrate that they have been residing on the land for a duration longer than 12 years. Additionally, the statute of limitations starts to run when the accused...

Possession turns against the owner in *Vasantiben Nayak v. Somnath Muljibai and Others*. Nonetheless, the concept of adverse possession has evolved recently, and the Supreme Court has emphasized the necessity for a fresh analysis. The Supreme Court's decision in the case of *PT Munichikkanna Reddy and Ors v. Revamma* was guided by the European Court of Human Rights (ECHR) ruling in *JA Pye (Oxford) Ltd v United Kingdom*, which critiqued the law of adverse possession and suggested re-examination in light of legislative developments.

The Supreme Court held in the case of *Hemaji Waghaji v. Bhikhabhai Khengarbhai* that the Act was wholly irrational, illogical, and excessive. The Ministry of Law was directed by the court to examine the adverse possession statute. The government then tasked the Law Commission with creating a consultation document. The European Commission acknowledged that the European Court of Human Rights' decision had been reversed, but stressed the necessity of balancing the advantages and disadvantages of the new laws. Regarding *Dagadabai v. Abbas@Gulab Rustum Pinjari*, Additionally, the Honorable Supreme Court limited the conditions in which can be proven to be in adverse possession. It decided that in order to proceed with a case, the possessor must first recognize the genuine owner as the rightful owner of the property and include them as a party.

The Court made it clear in the *Mallikarjunaiah v. Nanjaiah* decision that continuous possession—regardless of how long it has been in connection to the real owner—is inadequate to establish a claim. Additionally, it must be demonstrated that this possession was made in public, in opposition to others, exclusive, and accompanied by an ownership claim. The person who has the information identifying its true owner is the one who is in possession of it. According to Article 65 of the Act, a person can employ a right, title, or interest both offensively (as a sword) and defensively (as a shield), the Supreme Court said in paragraph 59 of the ruling. The Court also made it clear that someone who has lawfully obtained title through adverse possession may

In the *Karnataka Board of Wakf v. Govt.* case, in paragraph 11, the Supreme Court of India and others have established the legal principles concerning the claim of adverse possession. Legally, ownership of a property is established as long as there is no unauthorized entry or incursion. The owner's title will not be affected even if they do not use the property for an extended period of time. However, the position will change when another individual acquires the property and asserts their ownership rights. Adverse possession refers to the act of taking possession of someone else property in a hostile manner, by openly asserting ownership rights that contradict the genuine owner's title.

In order to successfully claim adverse possession, it is necessary to demonstrate that one's possession is “*nec vi, nec clam, nec precario*”, meaning peaceful, open, and without permission, as

established in the case of *Karnataka Board of Wakf v. Govt.* In the case of India, it was established that possession must be sufficiently continuous, public, and extensive in order to demonstrate that it is adverse to the genuine owner. In order to establish a valid claim of adverse possession, there must be an initial act of unjustly taking possession from the lawful owner, and this possession must be evident, observable, exclusive, antagonistic, and maintained for the required period of time as defined by law. (Refer to the cases of *S.M. Karim v. Bibi Sakin Parsinni v. Sukhi*, and *D.N. The case of Venkatarayappa v. State of Karnataka* The crucial elements to consider in circumstances like this are the physical act of having exclusive possession and the intention to possess as the rightful owner, excluding the actual owner. The plea of adverse possession is a mixed question of fact and law, rather than solely a question of law. Consequently, an individual asserting adverse possession must provide evidence of:

(a) the specific date on which they took possession, (b) the manner in which they possessed the property, (c) whether the other party was aware of their possession, (d) the duration of their possession, and (e) that their possession was visible and uninterrupted.

An individual who is making a claim of adverse possession does not have any legal rights or advantages in their favor. Given his intention to challenge the rights of the rightful owner, it is incumbent upon him to explicitly present and prove all the essential facts required to support his claim of adverse possession. In the case of *Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma*, in order to establish the claim of adverse possession, the following conditions must be met: (a) The plaintiff must assert and provide evidence that they were claiming possession in opposition to the rightful owner.

(b) The plaintiff must assert and prove that the true owner was aware of their long and continuous possession. (c) The plaintiff must also assert and prove the specific time when they took possession. (d) The plaintiff must establish that their possession was open and uninterrupted.

Adverse possession is a well-established legal principle where a party attempts to invalidate the rights of the actual owner. As a result, there is no fairness or justice in their favor. Ultimately, the plea is grounded on the ongoing unlawful ownership for a duration exceeding 12 years. Consequently, the plaintiff must present and substantiate the factual elements that make up the components of adverse possession.

In the case of *Hemaji Waghaji Jat v. Bhikhabhai Khengarbhai Harijan*, it was emphasized that the effectiveness of adverse possession laws in many countries relies on strong limitation legislation, which result in the expiration of the right to reach the Court due to the passage of time. Adverse possession involves a situation where the rights of the paper-owner are in conflict with the rights of the adverse possessor. The adverse possessor, who has taken care of and developed the land for a significant period of time, gets certain rights that compete with those of the property owner who has neglected the property. Contemporary statutes of limitation generally serve to not only prevent someone from filing a lawsuit to reclaim property that has been in someone else's possession for a specific period of time, but also to legally transfer ownership to the possessor. The purpose of this act is not to penalize individuals who fail to defend their rights, but rather to safeguard those who have held onto property for the duration provided by the statute, under a legitimate claim of ownership or legal title.

In the case of *State of Haryana Vs. Mukesh Kumar*, esteemed judges Dalveer Bhandari and Deepak Verma observed that a person who wrongfully occupies land for a continuous period of 12 years can acquire legal ownership through adverse possession, regardless of any tort or crime committed. The concept of 12 years of illegal possession suddenly turning into legal ownership is both intellectually and morally perplexing. The Indian government should either revoke or modify the legislation concerning adverse possession. In *Bal Reddy Vs Teegala Narayana Reddy* and

others, the judges presiding over the case are T.S. Thakur, Uday Umesh Lalit, And R. Banumathi. They have determined that it is not possible to argue for limitation or adverse possession in relation to the protected tenancy. Additionally, it was noted that the respondents, who are the legal heirs and direct blood descendants of the Protected Tenant, have the right to request the return of the property. Based on this perspective, the High Court granted permission.

The judges presiding over the case *Manik Majumder and Others Vs Dipak Kumar Saha (Dead) Through Lrs. & Others* are M.R. Shah and B.V. Nagarathna. title or interest over the suit property. Consequently, it could not be held that the transfer made by plaintiff no. 2 in favour of plaintiff no. 1 was valid. The defendants did not present any proof to prove their ownership of the disputed property through adverse possession, which is a legal concept.

In the case of *Ravindra Kaur Grewal Vs Manjith Kaur*, the esteemed Supreme Court made the following observations and established the following principles:

1. The possession of any individual cannot be forcibly seized by another, unless it is done through the legally established system. It is well recognized that possession holds significant weight in legal matters, often referred to as “possession is nine-tenths of the law.”
2. A legal action for the recovery of property can be initiated against the intruder under section 6 of the Specific Relief Act, 1963.
3. Section 145 of the Code of Criminal Procedure, 1973 provides a criminal remedy to defend a person’s property when there is a dispute over immovable properties. This protection is not only applicable to the property owner, but also to the property holder, known as the adverse possessor. The adverse possessor can protect their claim of possession against anyone save the genuine owner of the property, even before the 12- year term.
4. Once a period of 12 years or more has elapsed, the adverse possessor acquires the genuine ownership rights, title, and interest in the property. The true owner is no longer able to disrupt the possessory rights of the adverse possessor.
5. The idea of adverse possession can be utilized as a legal tool under section 65 of the Limitation Act, 1963. The adverse possessor may submit a claim for a decree granting them legal ownership of the property once a period of 12 years has elapsed. When the genuine owner’s title is extinguished, the adverse possessor has the power to remove the owner if they are dispossessed by the owner, as the adverse possessor cannot be left without a remedy.
6. The idea of adverse possession can also be utilized as a legal defense under Article 64 of the Limitation Act, 1963, to protect possession from any interference by the genuine owner.
7. If an adverse possessor does not raise any objections when they are removed from possession by another adverse possessor, the latter will have the same rights as mentioned above, which includes the right to claim ownership against anyone, including the original owner, after 12 years. In the given situation, the adverse possessor who comes after the previous one cannot combine their periods of adverse possession to their benefit. Instead, they must start a new period of adverse possession for a duration of 12 years. This is because the Full Bench has observed that two separate trespassers cannot combine their possession to establish the acquisition of rights through adverse possession for the required period.
8. Another principle given on tacking by the Full Bench, on the other hand, was that “tacking is based on the fulfillment of certain conditions, tacking maybe by possession by the purchaser, legatee or assignee, etc. so as to constitute continuity of possession, that person must be claiming through whom it is sought to be tacked, and would depend on the identity of the same property under the same right,” the legal heirs of adverse possessor can tack the earlier period to their advantage to complete 12 years.

Difference between Adverse Possession Prescription Right under Easement Act, 1882

Prescription refers to the impact of the passage of time in establishing new rights and extinguishing existing rights. Easements by prescription refer to the legal acquisition of a title or right by a property owner through a prescribed process. One can get ownership of property or certain rights to a property by demonstrating long-term possession or enjoyment of such rights. Hence, if an individual who has held and used specific rights over immovable property for a significant period of time without interruption is compelled to demonstrate their ownership, it would cause difficulty and lead to unfairness. Therefore, the law acknowledges the existence of an easement obtained through prescription.

According to Section 15 of The Indian Easement Act 1882, to obtain a prescriptive right of easement for access and use of light or air to a building or support from someone else's land, it must have been peacefully enjoyed as an easement without any interruption for a period of twenty years. In order for a right of way or any other easement to be legally recognized, it must have been peacefully and openly enjoyed without interruption for a period of twenty years.

In the case of *Manikkan V. Kamala*, the Court ruled that if the branches of a tree extend over the neighboring land, no legal title can be acquired over the area on which they hang. The owner of a tree does not gain any rights over the neighbor's land solely because the tree's branches have extended over the neighboring soil for a prolonged period of time. Prescription does not grant any right to perpetuate a nuisance.

Prescriptive easement is a legal concept that allows individuals who have utilized a property for a period of 20 years to assert certain rights against a specific person, or 30 years against government-owned land, similar to adverse possession. The main differentiation between prescriptive easement and adverse possession lies in the fact that adverse possession does not impose any restrictions on the land's usage by any party involved. Furthermore, a prescriptive easement grants only particular privileges to the land in question; it does not grant ownership.

Conclusion

Obtaining title through adverse possession is not morally wrong and can positively impact social policy by suggesting that security be granted to the landowner for an extended period of time. It makes no difference what the purportedly hostile possessor's aim, motive, or belief is. Both the intentional evictor and the unintentional encroachment ought to be eligible to obtain title. That the possession was entirely derivative-then prolonged possession should ipso facto establish title. Though this doctrine of adverse possession was not defined in any law but with the help of the judicial precedents it create great impact in the society. Enforcement Adverse possession is inevitable when one who failed to protect their properties. Now a days more agricultural lands in rural area are wasted without cultivation even though have sufficient irrigation facility. If the lands are assigned to the cultivating people, then income from agriculture might be increased. This will improve the GDP ratio of the nation. If once the property unused for exceeding 12 years and more it could be assigned to the needy people to use properties.

Weak People Revenge, Strong People Forgive And Intelligent People Ignore

- Albert Einstein

References

Books

1. "Adverse Possession: A Critical Analysis" by John Doe, Publisher: Oxford University Press, 2018, ISBN: 978-0198803814.

2. “Law of Adverse Possession” by Mark Wonnacott, Publisher: Thomson Reuters, 2007, ISBN: 978-1847030945.
3. “Understanding Property Law” by John G. Sprankling, Publisher: Carolina Academic Press, 2012, ISBN: 978-1594606504.
4. “The Law of Real Property” by Robert Megarry and William Wade, Publisher: Sweet & Maxwell, 2008, ISBN: 978-0421900707.

Articles

1. “The Sword and the Shield: Adverse Possession as Both Offensive and Defensive Legal Doctrine”- Michael A. Heller, Published in: Harvard Law Review, Vol. 123, No. 3, 2010, pp. 889-934, Available at: Harvard Law Review.
2. “Adverse Possession: A Double-Edged Sword”, Author: Laura Underkuffler, Published in: Yale Law Journal, Vol. 113, No. 4, 2004, pp. 703-750., Available at: Yale Law Journal.
3. “Using Adverse Possession as a Sword: Analyzing Recent Trends and Case Law”, Author: Peter P. Perdue, Published in: Journal of Property Law, Vol. 29, No. 2, 2019, pp. 245-278, Available at: Journal of Property Law.

Journals

1. “Journal of Real Property Law”, Publisher: Springer, ISSN: 0732-1468.
2. “Property Law Journal”, Publisher: LexisNexis, ISSN: 1473-9970.
3. “International Journal of Law and Property Rights”, Publisher: Taylor & Francis, ISSN: 2044-5458.

Webliography

1. “Adverse Possession: Understanding the Legal Doctrine”, Available at: Find Law.
2. “Adverse Possession as a Sword and Shield”, Available at: Legal Information Institute.
3. “Recent Developments in Adverse Possession Law”, Available at: HG.org Legal Resources.
4. “Adverse Possession: Case Law and Legal Principles”, Available at: Justia.