

AN ANALYSIS ON LAW OF ADVERSE POSSESSION IN INDIA

NIVETHITHAAS

SYMBIOSIS LAW SCHOOL, HYDERABAD

ABSTRACT

*Adverse possession is a doctrine under which a person may acquire valid title to a land in possession that is owned by someone else. In order to make a claim on the Law of Adverse possession, the person who is in possession needs to establish certain elements and requirements. The possession should be “actual, open, notorious, exclusive, hostile, continuous and uninterrupted.” If a person, who is claiming adverse possession, establishes and proves all the above said elements, then his adverse claim of property might be successful. This doctrine is recognized in almost all the countries of the world. The concept and the elements of this law are the same, but there is no uniformity in the limitation period. The Limitation Act, 1963 talks about the law of adverse possession in India. Even though it does not explicitly talk about the doctrine of adverse possession, it sets down a limitation period for the suit to be instituted. The time period specified in the Limitation Act, 1963 is “12 years” and this time period begins “when the possession of the defendant becomes adverse to the plaintiff”. Indian Courts have given its views about this law, in its judicial pronouncements, which change from time to time. The scope of this study extends in analysing the principle of adverse possession in India. There is an overall analysis on the law with a detailed analysis on the necessary elements that are to be fulfilled with the help of cases. More emphasis will be placed on the rulings which have been given by the Indian courts. A detailed study in this will help the readers to understand the concept of adverse possession and to come to a conclusion as to whether this concept is a boon or bane to the individuals in the society.*

**Keywords:** Property rights, Possession, Ownership, Title holder, Trespasser, Adverse Possession.

## INTRODUCTION

We live in a society, where everything is governed by law. It is necessary for the court and the government to protect the lives and interests of the people through law and order. Each and every individual is bound to respect them and if any injustice happens to them, they have a right to seek relief from the court of law. Law not only protects the lives of the people but also all the institutions that are affiliated with them. One such institution that is connected to all people's life is their *property*. After their life and reputation, one thing that people value the most is property. According to Anderson and Parker, "Property consists of goods and services that society gives an individual or group of individuals the exclusive right to possess, use and dispose of".<sup>1</sup> In other words, it is a thing that is owned and possessed by a person. Properties that are owned by the people are protected by the law with certain rules and regulations. It is the most complicated and extensive field of law. These laws frame the rights, duties, responsibilities, claims, and commitments of the parties who are involved with any kind of property. Of these, possession is one of the most important concepts.

Whenever any "immovable property" is in question, the concept of possession holds a significant place. Possession is a right which does not subject to ownership. It means having physical control over a particular property. But usually, the word possession is used to suggest that someone who possesses an object is most likely the owner of it.<sup>2</sup> A possessor is also protected by law even if he is not the owner of the property. The practice of claiming rights and interests of a property on the basis of possession is being recognized in all the legal systems. One such claim based on possession is *adverse possession*. Adverse possession is a doctrine under which a person may acquire valid title to a land in possession that is owned by someone else. In order to acquire title under adverse possession there are various requirements that are to be fulfilled under law.<sup>3</sup> In other words, the law of adverse possession acts as a reminder for all the owners of the property to be aware of their rights and interests in the property. For a specific period, if the original owner of the property leaves his property unattended and is not aware of his right, then

---

<sup>1</sup> Terry Anderson & et.al, *Land Quality, Land Rights, and Indigenous Poverty*, 143 *JOURNAL OF DEVELOPMENT ECONOMICS* (2018), <https://doi.org/10.1016/j.jdeveco.2019.102435>.

<sup>2</sup> Lambert & Shackman, *Legal Possession: What Does It Mean?* *NEW YORK LAW JOURNAL* (Aug. 1, 2019).

<sup>3</sup> *Id.*

this doctrine is applied. If all the required essentials are shown in the claim with proper evidence, then the possessor can be successful in taking over the property.

This doctrine is recognized in almost all the countries of the world. The concept and the elements of this law are the same, but there is no uniformity in the limitation period. The law of adverse possession has seen various developments and the Apex Court has given various standings regarding this law. This law of adverse possession, which has various debates and discussions all over the world, is one of the controversial topics. Hence, the author found the need to research this topic.

## LAW OF ADVERSE POSSESSION IN INDIA

Adverse possession is a doctrine under which a person may acquire valid title to a land in possession that is owned by someone else. In order to acquire title under adverse possession there are various requirements that are to be fulfilled under law.<sup>4</sup> In India this specific period is determined by the Limitation Act, 1963. The time period specified in the Limitation Act, 1963 is “12 years” and this time period begins “when the possession of the defendant becomes adverse to the plaintiff”.<sup>5</sup> In the case of **Amarendra Pratap Singh v. Tej Bahadur Prajapati**<sup>6</sup>, the principle of adverse possession was defined 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 part of the real owner, which stretched over a period of 12 years results into extinguishing of the latter’s title.”*

---

<sup>4</sup> Lambert & Shackman, *Legal Possession: What Does It Mean?* NEW YORK LAW JOURNAL (Aug. 1, 2019), <https://www.law.com/newyorklawjournal/2019/08/01/legal-possession-what-does-it-mean/?slreturn=20210117150752>.

<sup>5</sup> The Limitation Act, art. 65.

<sup>6</sup> (2004) 10 SCC 65.

From this definition, it can be understood that even though if a person is not the owner of the property, but he enters into it and takes possession of someone else's property adversely due to the real owners inactivity and also the real owners failure to file a suit for recovery of it within 12 years, then the adverse possessor will become the real owner of the property by way of adverse possession.

## CONCEPT OF ADVERSE POSSESSION WITH REFERENCE TO THE LAW OF LIMITATION

The Limitation Act, 1963 talks about the law of adverse possession in India. According to **Article 65, Schedule 1 of the Limitation Act, 1963**, "the limitation period for a suit for possession of immovable property or any interest therein based on title is 12 years."<sup>7</sup> The time from which the period begins is "when the possession of the defendant becomes adverse to the plaintiff".<sup>8</sup> This Article 65 can be read with **Section 27** of the Limitation Act. This section says that: "*At the determination of the period hereby limited to any person for instituting the suit for possession of any property, his right to such property shall be extinguished.*" This means that, when there exists a cause of action/reason to file a suit for possession and if it is not filed by the owner or the title holder for possession within the given limitation period, then there arises certain problems. Because of this, the limitation period comes to an end. Adding to this, the right of the person who has the title/ possession will also be extinguished. When the right of the owner extinguishes on the tile of the property, then it passes to the person who is claiming possession and "the possessory right gets transformed into ownership". Thus, this section gives an origin to the law of adverse possession.

In the case of **Valliamma Champaka v. Sivathanu Pillai**<sup>9</sup>, it was stated that "*Section 27 is an exception to the well accepted rule that limitation bars only the remedy and does not extinguish the title. It lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy.*" This means that as the title owner of the property was inactive and has allowed his right to possession to be extinguished, he can't take

---

<sup>7</sup> The Limitation Act, art. 65.

<sup>8</sup> The Limitation Act, art. 65.

<sup>9</sup> (1964) 1 MLJ, 161 (FB).

away the property from the person who is in possession adversely. This person, who has taken the adverse possession, has the right to keep hold of his possession against the real title owner of the property who is not in possession. The above said rule is for the individual's private property alone. On the other hand, the period of limitation for any government property for any suit is 30 years. This is covered under **Article 112<sup>10</sup>, Schedule I of the Limitation Act**. The legal position relating to the procurement of the title to a property by adverse possession was indicated in the case of **Perry v. Clissold<sup>11</sup>** by the Judicial Committee of the Privy Council. It stated that;

*"It cannot be disputed that a person in possession of land in the assumed character of owner and exercising peaceably the ordinary rights of ownership has a perfectly good title against the entire 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 for ever extinguished and the possessory owner acquires an absolute title."*<sup>12</sup> In other words, it is stated that, the person who is in possession of a property for a long period of time and looks like an owner to the property in the eyes of the world but not the original owner, can be considered as the original owner of the property. If the original owner of the property does not come and claim his title for a specific period of time, then his right of ownership will be extinguished and the adverse possessor will acquire the title. The above said ruling by the Judicial Committee in the case of **Perry v. Clissold<sup>13</sup>** was also accepted by the Indian Apex Court in **Nair Service Society Ltd. v. K.C.Alexander<sup>14</sup>**. The person who is claiming adverse possession should show that his possession was *"actual, open, notorious, exclusive, hostile, continuous and uninterrupted and was obtained without any force"*.

## **ELEMENTS OF ADVERSE POSSESSION**

In order to make a claim on the Law of Adverse possession, the person who in possession need to establish certain elements and requirements. The prime requirement of adverse possession is *"Animus Possidendi"* in other words *"intention to possess"*. In the case of **Secretary of State**

<sup>10</sup> The Limitation Act, art.112

<sup>11</sup> (1907) AC 73, at 79.

<sup>12</sup> Perry v. Clissold, (1907) AC 73, at 79.

<sup>13</sup> (1907) AC 73, at 79.

<sup>14</sup> AIR 1968 SC 1165.

for **India v. Dabendra Lal Khan**<sup>15</sup>, the Privy Council observed that, the standard requirement of the law of adverse possession is “*nec vi, nec clam, nec precario*” and the possession must be continuous, public and the owner must know that the possession is adverse. The meaning of three words “*nec vi* – without force/not by force; *nec clam* – without secrecy/not by stealth; *nec precario* – without permission/not by license of owner.”<sup>16</sup> Possession over the property by an adverse possessor should not be by force or stealth or under the owner’s license. The possession should be “*actual, open, notorious, exclusive, hostile, continuous and uninterrupted.*” These important elements are explained in detail.

**i. ACTUAL**

There should be an actual possession of the property throughout the limitation period. In the case of **T.Anjanapa & ors. v. Somalingapa & Anr.**,<sup>17</sup> it was stated that “*Adverse possession consists of actual occupation of the land with the intent to keep it solely for oneself.*” The possessor who is claiming the property adversely should show that he has actual possession over the property in question. Without actually possessing the property, a person cannot claim adverse possession just by claiming the land or paying the taxes. A trespasser’s mere entry into the property will be insufficient. To establish adverse possession there should be more than a short-term usage. The person who adversely possesses the property must express that he is exercising the domain over the land that a normal owner of the property would do. In other words, “*the possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the statute of limitation*”.<sup>18</sup> An actual possession can be determined by some of the physical acts like living in the property, repairing the building, harvesting crops, planting trees, constructing the site, cutting and selling timber, etc. Hence, it is important to note that without physically possessing a property, a possessor cannot claim adverse possession over it.

---

<sup>15</sup> (28) AIR 1934 PC 23.

<sup>16</sup> *Secretary of State for India v. Dabendra Lal Khan*, (28) AIR 1934 PC 23.

<sup>17</sup> (2006) 7 SCC 570.

<sup>18</sup> *T.Anjanapa & Ors. v. Somalingapa & Anr.*, (2006) 7 SCC 570.

ii. OPEN AND NOTORIOUS

The adverse possessor must show himself as a real owner of the property in the eyes of the entire world. Legal rights won't be given to that possessor who is occupying the property of another person secretly.<sup>19</sup> Cleaning, improving, cultivating, fencing and clearing are some of the examples of an open and notorious possession. More than this actually residing in the property is the most open and notorious possession of all. In the case of **Meenakshi Sundarammal v. Subramania Ayyar**<sup>20</sup> it was stated that, "*The owner must have actual knowledge of the adverse use, or the claimant's possession must be so notorious that it is generally known by the public or the people in the neighbourhood.*" This condition prevails because the actual owner of the property has adequate resources to have the knowledge that someone is in possession of his property. This open and notorious possession will also make the owner aware that if he does not recover the possession within the specified time, then he will lose the property forever.<sup>21</sup> But, here it is important to note that the adverse possessor is not bound to inform about his possession to the real owner.

iii. EXCLUSIVE

The adverse possessor must exclusively possess the property that he is claiming. He should physically occupy the land and hold it as his own property. Some of the examples for exclusive possession are staying in the property, constructing a house, fencing, etc. In the case of **Krishan Lal alias Kishan v. Vidhya Wati & Ors.**,<sup>22</sup> it was stated that "*the possession cannot be shared by different entities or persons for the claimed time duration.*"

iv. HOSTILE

The person who is adversely claiming the property must have the intention to possess the suit property adversely to the title of the real owner. Mere possession of property by the possessor for a long time without any intention to claim it adversely can't result in the attainment of the title of

---

<sup>19</sup> *Barna Giri v. Rajkishore Giri*, AIR 1983 Ori. 107.

<sup>20</sup> AIR 1955 Mad. 369.

<sup>21</sup> *Asghar Ali v. Govind Lal*, AIR 1964 All. 195.

<sup>22</sup> (1995) Supp. (4) SCC (488).

the encroached suit property. The possessor must expressly or impliedly deny the title of the owner.<sup>23</sup> As a result of adverse possession, the title by the possessor will become an actual title, if the possessor occupies the property for the whole statutory period in the manner that is required by law.

## v. CONTINUOUS AND UNINTERRUPTED

In order to claim the land through adverse possession, all the elements of adverse possession must be met throughout the statutory period. The possessor who is claiming the property adversely must be in continuous, unbroken and uninterrupted possession of the property. If there is any break in the possession or if the continuity in possessing the property is lost, then the rights of the possessor will be extinguished. In the case of **Netyam Venkataramanna & Ors. v. Mahakali Narasimhan**<sup>24</sup>, it was held that *“the statutory period, or ‘statute of limitation’, is the amount of time the claimant must hold the land in order to successfully claim adverse possession. A possession is adverse only if in fact one holds possession by denying title of the lessor or by showing hostility by act or words or in cases of trespassers as the case may be against the lessor or other owner of the property in question.”* From this it can be understood that the person who is adversely claiming the property must have the intention to possess the suit property adversely to the title of the real owner. Mere possession of property by the possessor for a long time without any intention to claim it adversely can't result in the attainment of the title of the encroached suit property.<sup>25</sup> Even in the case of **Bhimrao Dhanyanoba Patil v. State of Maharashtra**<sup>26</sup>, it was held that Animus Possidendi is a very important element to constitute an adverse possession. It also states that even if a person is in possession of a property over the statutory period, he would not get the title of the property adversely, as he did not have any intention to claim the property in adverse possession.

Therefore if a person, who is claiming adverse possession, establishes and proves all the above said elements, then his adverse claim of property might be successful.

---

<sup>23</sup> *Subbiah Chetti v. Veerajinnu Ammal & Ors.*, AIR 1979 Mad. 87.

<sup>24</sup> AIR 1994 AP 244.

<sup>25</sup> *Pappathi Ammal & Ors. v. Nataraja Naicker*, 1998 AIHC 199 (Mad).

<sup>26</sup> 2003 (1) Bom. L.R. 322.



**JUDICIAL PRONOUNCEMENTS RELATING TO THE LAW OF ADVERSE  
POSSESSION**

With regards to the law of adverse possession there are various landmark judgments in India. In the case of **Munshi Manzoor Ali Khan & Ors. v. Sukhbasi Lal & Ors.**,<sup>27</sup> the SC stated that the time period specified in the Limitation Act, 1963 is “12 years” and this time period begins “when the possession of the defendant becomes adverse to the plaintiff”. In the case of **Amrendra Pratap Singh v. Tej Bahadur Prajapati**<sup>28</sup> it was held that “*the process of acquisition of title by adverse possession springs into action essentially by default or inaction of the owner*”. In the case of **Annakili v. A.Vedanayagam**<sup>29</sup> it was observed that “*Mere long possession, it is trite, for a period of more than 12 years without anything more does not ripen into a title*”.

Indian courts have various other pronouncements which speak about the elements that are required to constitute. Justice Hidayatullah in the case of **S.M.Karim v. Bibi Sakina**<sup>30</sup> observed that “*adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found.*” In the case of **T.Anjappa & Ors v. Somalingappa & Anr**<sup>31</sup>, the court stated that the possessor who is claiming the property adversely should show that he has actual possession over the property in question. In the case of **Annasaheb v. B.B.Patil**<sup>32</sup> it was stated that the possessor must expressly or impliedly deny the title of the owner in order to constitute hostile possession which is a main ingredient for adverse possession. It also states that the possessor who is claiming the property adversely must show unequivocal evidence that he was in hostile possession. Similarly, in the case of **Chatti Konati Rao & Ors. v. Palle Venkata Subba Rao**<sup>33</sup>, the court stated that mere possession of property by the possessor for a long time without any intention to claim it adversely can't result in the

---

<sup>27</sup> AIR 1974 SC 706.

<sup>28</sup> (2004) 10 SCC 65.

<sup>29</sup> 2008 (2) SCJ 218.

<sup>30</sup> AIR 1964 SC 1254.

<sup>31</sup> (2006) 7 SCC 570.

<sup>32</sup> AIR 1995 SC 895.

<sup>33</sup> (2010) 14 SCC 316.

attainment of the title of the encroached suit property. The Supreme Court in the case of **Kshitish Chandra Bose v. Commissioner of Ranchi**<sup>34</sup> stated that the adverse possessor must exclusively possess the property that he is claiming. He should physically occupy the land and hold it as his own property. In **Smt. Sharadamma & Ors. v. N. Basappa & Ors**<sup>35</sup>, a learned single judge of HC held that the adverse possessor must show himself as a real owner of the property in the eyes of the entire world. He also stated that legal rights won't be given to that possessor who is occupying the property of another person secretly.

**Karnataka Board of Wakf v. GOI**<sup>36</sup> is one of the landmark cases, in which the Supreme Court has stated various important comments on the law of adverse possession in India. Firstly, it stated that as long as there is no intrusion/ invasion in the property of a person he would be deemed to be the real owner and to be in possession of the property. Even if the owner is not using his land for a very long time, it will not create any problem to his title. But, it will be problematic to the owner, if any other person enters into the property, takes possession over it and claims the title of the property and even then if the real title owner did not take any legal action against that possessor till the end of the limitation period. In the **Karnataka Wakf case**<sup>37</sup>, the features of the law of adverse possession were also clarified by the apex court. Adding to this, it also states that it is the claimant who should provide all the needed facts and evidence in order to claim the title of the property through adverse possession. Therefore, the claimant while claiming the property adversely should show the court; "(i) the date of possession, (ii) the nature of the possession (iii) the possession was known to the public and the other party (iv) the duration of the possession and (v) the continuity of the possession."

The Supreme Court of India, in two of its below mentioned recent judgments has shown its disagreement with regards to the law of adverse possession. In the case of **Hemaji Waghaji Jat v. Bhikabhai Khengarbai Harijan & Ors.**<sup>38</sup>, the SC states that "*the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly*

---

<sup>34</sup> AIR 1981 SC 707.

<sup>35</sup> AIR 1996 Kar. 189.

<sup>36</sup> (2004) 10 SCC 779.

<sup>37</sup> Karnataka Board of Wakf v. GOI, (2004) 10 SCC 779.

<sup>38</sup> AIR 2009 SC 103.

*disproportionate.*” It also states that the law of adverse possession is really harsh and rude to the real owner of the property and on the other hand it is benefiting the dishonest person who has acquired the possession of the property illegally.

Even in the case of **State of Haryana v. Mukhesh Kumar & Ors**<sup>39</sup>, the Apex Court showed its disagreement on the law of adverse possession. It commented that “*the law of adverse possession was archaic and should be seriously looked into. It added that in adverse possession, a trespasser who is actually guilty was able to gain legal title over the property. The court found the legal system rewarding an illegal act baffling.*”

From the above mentioned precedents, it can be seen that there are mixed views relating to the law of adverse possession and this view of the judges is changing from time to time.

## CONCLUSION AND RECOMMENDATIONS

To conclude, it might seem paradoxical that the statute tries to sanction a non-conscientious title holder by rejecting its claim; however, on the other hand, the same law honours a wrongdoer and an offender by affirming its name by unlawful ownership, if his possession meets the conditions provided. The actual purpose in legislation is not to discipline the one or recompense the other. Although for eternity a society need not be troubled. The legislation also sets a deadline of 12 years for conflicts and disputes to be resolved before the title. The law of adverse possession on the basis of limited intervention that drives out the owner is unfair, illogical and totally disproportionate. The existing statute is very harsh for the actual owner and an incident for a fraudulent guy who took ownership of the real owner's land illegally. The law does not favour any person who takes ownership of the owner's property clandestinely in violation of the law. It is recommended that the Parliament should consider the abolition of the Statute of Adverse Possession or at least to amend or modify law in the broader interest of the public. If the state and common man, both in a welfare state and according to statute, have the same rights and rules, why can no adverse possession be asserted over government territory, and why only the

---

<sup>39</sup> 2011(10) SCC 404.

land of common man is permitted to be maintained in accordance with the same law? If the statute is to be retained in accordance with Parliament's knowledge, so at least the legislation should compel the title owners to be compensated with the common market cost of the land or property concerned by those who own the property adversely. Parliament may actually mandate the claimants of the adverse possession to own the property for 30 to 50 years instead of 12. A longer legislative tenure will also lower the rate of negative ownership suits and guarantee that only the more closely related claimants inherit the land while only the most vulnerable and unprotected owners are deprived of their rights. Based on the discussions above, it can be concluded that this out-dated statute has to be reworked because it runs counter to justice. The rule of adverse possession often leads to cases in which real owners of immovable goods are displaced solely because of their inactivity or misery or some other excuse that they cannot reach the Court in order to take advantage of redress under the law. Therefore, it can be concluded that the law of adverse possession is *boon* for the person who becomes the owner of a property through adverse possession and *bane* for the original title holder of the property.