

Adverse possession as mode of acquisition of property

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Abstract: *The methodology which is adopted by the researcher to study about the doctrine of adverse possession as mode to acquire the property belongs to the other person. With the help of Adverse possession a trespasser acquire the property without paying any compensation or consideration to the owner of the property. There is need to need to discard such kind of the doctrine or there is need to enhance the period of time in a reasonable manner in order to claim the property on the basis of the doctrine of Adverse possession*

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Introduction

Adverse possession is one mode to acquire the property belong to other person. The possession of property by a person is adverse to every other person having, or claiming to have a right of possession by virtue of a different title. Possession to be adverse must be an invasion of the ownership of another. The concept of adverse possession is based on the maxim “nec vi, nec calm, nec precario” which means without violence, without stealth, without permission. If a person has

obtained the possession of immovable property of other person without using violence in a peaceful manner, without the permission of the owner of the property and openly with out hiding that particular fact from the entire world, and if he maintain his possession over the property continuously uninterrupted for the statutory period, then he would be entitled to maintain his possession over the property on the basis of the doctrine of adverse possession. The reason behind property to the trespasser on the basis of adverse possession is that, in case owner of the property failed to maintain his possession over the property and some other person even though trespasser maintain his possession of over the continuously uninterrupted for statutory period.

Elements establishing Adverse Possession

1. Actual Possession: Adverse possession comprised of actual control over the property not merely physical presence over the property. Adverse possessor is required to some acts which shows that the

property is in the actual possession of the adverse possessor like harvesting crops, cutting trees, fencing etc. Merely payment of taxes does not show that the adverse possessor is in the actual possession of the property.

2. Exclusive possession: Adverse possessor must be in the exclusive possession over the property. Exclusive possession means sole physical control over the property. The adverse possessor must hold the property as his own property and prevent other from interfering in the exercise of his right over the property.

3. Open and Notorious: Possession over the property must be open and notorious to the world at large, so that it is message to all the person that, some other person other than owner of the property is in the possession of the property. A person not in hidden or covert manner may claim the property on the basis of adverse possession. Any person all of sudden appear on your property cannot claim the property on the basis of adverse possession. Purpose of this particular element is that in case true owner of the property or the person interested in the property come to know about the property simply by visiting the property, in case they failed to take care

about their property and some other person is enjoying his possession over that particular property continuously uninterrupted for statutory period then entitled to claim the property on the basis of adverse possession.

4. Hostile : This is one of the most important element to claim the property on the basis of adverse possession. Possession over the property by adverse possessor must amount to be the invasion of the rights of the owner over that particular property. The statutory period should count from the date when the possession over the property become hostile. For example if a wife without any legal authority executed any document in respect of the property owned by the husband and other person obtain the possession of the property under such a document, then possession over the property by the possessor amount to be the invasion of the rights of the owner over that particular property.

5. Continuous & Uninterrupted: All elements of adverse possession must be met at all times through the statutory period in order for a claim to be successful. The adverse possessor must enjoy the possession over the property continuously

and uninterrupted through the statutory period. In case of breakage of period or total period of possession is less than the period prescribed by the statute than a person is not entitled to claim the property on the basis of adverse possession. In India as per Limitation Act 1963, the statutory period is 12 years to claim the property on the basis of adverse possession.

Judicial Analysis of Adverse possession

In the case of *S.M. Karim Vs. Mst. Bibi Sakina AIR1964SC1254*, the facts are Syed Aulad Ali had purchased the suit properties on May 28, 1914 at a court sale, benami in the name of his son-in-law Hakir Alam. The reason for the benami purchase was that under the rules of the Darbhanga Raj where Syed Aulad Ali was employed, persons serving in certain capacities were prohibited from purchasing at court sales. The sale certificate was issued in the name of Hakir Alam who was then living with Syed Aulad Ali. On January 6, 1950, Syed Aulad Ali sold the property to his son the present appellant and Hakir Alam sold the property in his turn to Bibi Sakina . Both S.M. Karim and Bibi Sakina claim their rights over the same property. Appellant contended that the title of Hakir Alam was extinguished

by long and uninterrupted adverse possession by Syed Aulad Ali and after him by the Appellant. The court held that the purchase by Syed Aulad Ali, benami in the name of his son-in-law Hakir Alam Ali, continued in possession of the property but it does not say that this possession was at any time adverse to that of the certified purchaser. Hakir Alam was the son-in-law of Syed Aulad Ali and was living with him. There is no suggestion that Syed Aulad Ali ever asserted any hostile title against him or that a dispute with regard to ownership and possession had ever arisen. 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. Merely possession of the property for more 12 years does not establish adverse possession over the property.

In the case of *Bhim Singh and Ors.* (supra) and *Kanak Ram and Ors. v. Chanan Singh and Ors.* MANU/PH/0125/2007 : (2007) 146 PLR 498 wherein it was held that a person in adverse possession of immovable property cannot file a suit for declaration claiming ownership and such a suit was not maintainable.

In the case of *State of Haryana Vs. Mukesh Kumar and Ors. MANU/SC/1147/2011*, question before the court was-Whether the State, which is in charge of protection of life, liberty and property of the people could be permitted to grab the land and property of its own citizens under the banner of the plea of adverse possession? The court held that - *No Government Department, Public Undertaking, and much less the Police Department should be permitted to perfect the title of the land or building by invoking the provisions of adverse possession and grab the property of its own citizens.*

In the case of *R.Hanumaiah & another V Secretary to Government of Karnataka, Revenue Department and others AIR 2011*, the court held that In order to oust or defeat the title of the Government, a claimant has to establish: (1) A clear title which is superior to or better than the title of the Government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the Government. (2) To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire

period necessary to create a bar under the law of limitation.(3) Claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the Government, as held by the Apex court.

In the case of *M Durai v. Muthu(2007) 3SCC 114*, court held that once the plaintiff who is not in the possession of the immovable property proved before the court that he is the owner of the property and entitled to get back the possession of the property from the defendant who is in the possession of the property , the burden is shifted on the defendant to established that he is entitle to maintain his possession over the property on the basis of adverse possession. Once the defendant established that he is enjoying the possession over the property continuously uninterrupted period of more than 12 years as adverse possessor then suit become time barred and court may dismissed the suit.

In the case of *Thakur Kishan singh v. Arvind Kumar(1994) 6 SCC591*, court held that in case of permissive possession like licensee, lessee, tenant, servant etc. the holder of the property after the expiry of statutory period of 12 years is not entitle to claim the property on the basis of adverse

possession. To claim the property on the basis of adverse possession the possessor must enjoy the possession over the property without the consent of the owner of the property.

Effects of Adverse possession

In case if any person enjoy possession over the immovable property belongs to the other person as adverse possessor than after the expiry of twelve years the interest of true owner in the property divested and created in favour of the person who is in the possession of the property as adverse possessor. If true owner of the property who is not in the possession of the property filed a suit against the person who is in the possession of the property to recover the possession of the property, once the person who is in the possession of the property established he is enjoying the possession over that particular property as adverse possessor continuously unintrupped for a period of more than twelve years, the suit become time barred and the court may dismissed the suit.

Conclusion

The doctrine of Adverse possession allows a trespasser to obtain legitimate title over the property which he has illegally possessed for 12 years. The adverse

possessor of the property without paying any compensation or price for the property gets a valid title in the property. The period of 12 years is not logical, proportionate and small in comparison of the time period prescribed in the other countries to claim the property on the basis of adverse possession. There is need to extend the period up to 30 -50 years, in place of 12 years to claim the property on the basis of Adverse possession. A longer statutory period would also decrease the number of case on basis of adverse possession and also protect the person who by mistake or due to any other reasons failed to take care of his property for some period of time.

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