

## UNVEILING THE LAW OF ADVERSE POSSESSION IN INDIA BY THE SUPREME COURT

### Introduction:

An adverse possession is a result of continuous use of a land, which another person has title to, with an intention of possessing it as one's own.

It thereby gives a person a right to claim a legal title over the land, who possesses or resides on another person's land, for a substantial period of time. If successful in proving adverse possession, the claimant is not required to pay the owner for the land.

### Meaning/Explanation:

The Statute does not define adverse possession as such, but the same has been explained in some of the Supreme Court judgments. The Supreme Court in ***P.T. Munichikkanna Reddy v. Revamma<sup>i</sup> (2007)***, has explained Adverse Possession as: *"Adverse possession in one sense is based on the theory or presumption that the owner has abandoned the property to the adverse possessor on the acquiescence of the owner to the hostile acts and claims of the person in possession."*

It further added, *"Efficacy of adverse possession law in most jurisdictions depend on strong limitation statutes by operation of which right to access the court expires through efflux of time. As against rights of the 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. Statute of 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 statute 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."*

The Supreme Court in the case of ***Nair Service Society Ltd. v. K.C. Alexander<sup>ii</sup> (1968)***, relied on the case of ***Perry v. Clissold<sup>iii</sup>*** for the meaning of Adverse Possession. It said, *"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 all the world but the rightful owner. And if the rightful owner does not come forward and assert his title by the process of law within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished, and the possessory owner acquires an absolute title."*

Thus, in other words adverse possession is the legal process whereby a non-owner occupant of a piece of land is able to gain title and ownership of that land after a certain period of time (depending upon prevailing statute). The claimant of the land, the possessor, must demonstrate

several criteria that have been met before the court can allow his/her claim on subject property by way of adverse possession.

### **What is the time limit under which adverse possession can be claimed?**

Article 65 of the Limitation Act provides for period of 12 years to claim title over the immovable property. However, the count of 12 years starts when the possession of the defendant becomes adverse to the plaintiff.

The Supreme Court of India in the case of *Karnataka Board of Wakf v. Government of India*<sup>iv</sup> (2004) observed that, “*in the eye of the law, an owner would be deemed to be in possession of a property as long there is no intrusion.*” Thus, under section 27 and section 65 of the Limitation Act, the right of the original owner of the land extinguishes if he does not interfere within the specified time limit.

In *Nair Service Society (supra)* (1968), the Supreme Court had held that if rightful owner does not commence an action to take possession within the period of limitation, his rights are lost and person in possession acquires an absolute title.

However, the time limit differs when the property is a private property, then the suit against adverse property can be filed within 12 years under Article 65 of schedule 1 and when property is owned by government then *under* Article 112 of schedule 1 of the Limitation Act the limit of filing suit against adverse property is within 30 years.

The Supreme Court in the matter of *Vidya Devi v. State of Himachal Pradesh and Others*<sup>v</sup> (2020) gave judgment in favor of an old widow woman whose property had been seized by the Himachal Pradesh government for construction of a road but, failed to pay compensation for 52 years. The government took the plea of adverse possession.

The bench presided by the Hon’ble Justice Indu Malhotra pronounced that, “**A welfare state cannot be permitted to take the plea of adverse possession, which allows a trespasser i.e. a person guilty of a tort, or even a crime, to gain legal title over such property for over 12 years. The State cannot be permitted to perfect its title over the land by invoking the doctrine of adverse possession to grab the property of its own citizens**”.

Thus, it was made clear that although the doctrine of adverse possession is given in favor of those who occupy the land for a specific period which is prescribed under the Limitation Act, 1963, there is an exception to this doctrine which cannot be misused for one’s personal motive or gain. The law of adverse possession is justifiable to those who take care of the land for a long period of time and by adverse possession they can gain ownership over the same.

### **Conundrum in respect of doctrine of adverse possession:**

**Earlier: A plea of adverse possession was held to be used only as a defence/shield:**

The question for consideration was brought before two-Judge Bench of the Supreme Court in ***Gurdwara Sahib v. Gram Panchayat Village Sirthala & Anr.***<sup>vi</sup> (2014), wherein it held that a party arrayed as defendant in proceedings initiated against it, can only use the plea of adverse possession as a shield/defence. The two-Judge Bench arrived at its decision by relying on Punjab & Haryana High Court's decision in ***Gurdwara Sahib Sannauli v. State of Punjab***<sup>vii</sup> (2009). This court (Punjab & Haryana High Court) had in turn relied upon its previous decision made in ***Bhim Singh and Ors. v. Zile Singh and Ors.***<sup>viii</sup> (2006), which held that "no declaration can be sought by a plaintiff about ownership based on adverse possession as such plea is available only to a defendant against the plaintiff."

The two-judge bench of Supreme Court relying on ***Gurdwara Sahib Sannauli (supra)*** noted that there cannot be 'any quarrel' to the extent that the judgments of courts below are correct and without any blemish. "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", the two-judge bench held in ***Gurdwara Sahib (supra)***.

It is important to note the observations made in ***Bhim Singh & Ors. (supra)***, by the Punjab & Haryana High Court, as the same had led to the decision of Supreme Court in ***Gurdwara Sahib (supra)***. In ***Bhim Singh & Ors. (supra)***, the plaintiffs had filed a suit for declaration and injunction claiming ownership based on adverse possession. The Defendants contended that plaintiffs were not in possession. The Punjab & Haryana High Court held in its para 11:

"11. Under Article 64 of the Limitation Act, as suit for possession of immovable property by a plaintiff, who while in possession of the property had been dispossessed from such possession, when such suit is based on previous possession and not based on title, can be filed within 12 years from the date of dispossession. Under Article 65 of the Limitation Act, a suit for possession of immovable property or any interest therein, based on title, can be filed by a person claiming title within 12 years. The limitation under this Article commences from the date when the possession of the defendant becomes adverse to the plaintiff. In these circumstances, it is apparent that to contest a suit for possession, filed by a person on the basis of his title, a plea of adverse possession can be taken by a defendant who is in hostile, continuous and open possession, to the knowledge of the true owner, if such a person has remained in possession for a period of 12 years. It, thus, naturally has to be inferred that plea of adverse possession is a defence available only to a defendant. This conclusion of mine is further strengthened from the language used in Article 65, wherein, in column 3 it has been specifically mentioned: "when the possession of the defendant becomes adverse to the plaintiff." Thus, a perusal of the aforesaid Article 65 shows that the plea is available only to a defendant against a plaintiff. In these circumstances, natural inference must follow that when such a plea of adverse possession is only available to a defendant, then no declaration can be sought by a plaintiff with regard to his ownership on the basis of an adverse possession."

This decision of two-judge Bench in ***Gurdwara Sahib (supra)*** (2014) was later relied on in two Supreme Court judgments, namely, ***State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj***<sup>ix</sup> (2017) and ***Dharampal (dead) through LRs v. Punjab Wakf Board***<sup>x</sup> (2017). In all

the three judgments of the Supreme court, there is no discussion on the aspect whether the plaintiff can take the plea of adverse possession. The proposition was not even contested, and the earlier binding decisions were also not placed for consideration of the court.

**Now: A plea of adverse possession- a sword:**

The Supreme Court by overruling its earlier decisions has clarified in its recent judgment, ***Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors.*<sup>xi</sup> (2019)** that a plea for restoration of possession in case of dispossession can be used as a sword by a plaintiff as well as a shield by the defendant, who has perfected the title by virtue of adverse possession. As there was no independent consideration of the question, whether the plaintiff can take the plea of adverse possession, the court decided to examine mainly the decision in ***Gurdwara Sahib (supra)* (2014)**. For the same, the court went into the genesis of the decisions made by the Punjab & Haryana High Court. The court noted that the High Court had proceeded with the observation, the plea of adverse possession is available as a defence to a defendant, on the basis of Article 65 of the Act.

Article 65 of the Act:

Description of suit	Period of limitation	Time from which period begins to run
65: For possession of immovable property or any interest therein based on title.	Twelve years.	When the possession of defendant becomes adverse to the plaintiff.

The court observed that the conclusion reached by the Punjab and Haryana High Court is based on an “inferential process” because of the language, “When the possession of defendant becomes adverse to the plaintiff”, used in Article 65 of the Act. The court noted that nowhere in the act it suggests that suit cannot be filed by the plaintiff for possession of immovable property or any interest therein based on title acquired by way of adverse possession. The article 65 of the Act expresses limitation of 12 years runs from the date, when the possession of the defendant becomes adverse to the plaintiff. ***“There is absolutely no bar for the perfection of title by way of adverse possession whether a person is suing as the plaintiff or being sued as a defendant. The inferential process of interpretation employed by the High Court is not at all permissible. It does not follow from the language used in the statute,”*** the Court observed.

While deciding the question of law, the court took into consideration umpteen number of decisions made by Supreme Court, in the past, and various other decisions of Privy Council, High Courts and of English courts and observations made in Halsbury Laws based on various decisions, in which it is indicated that suit can be filed by plaintiff on the basis of title acquired by way of adverse possession or on the basis of possession under Articles 64 and 65. However, these decisions of larger and coordinate benches were not placed before the two-judge bench while deciding the case, ***Gurdwara Sahib (supra)* (2014)**.

The court noted, *“There is no bar under Article 65 or any of the provisions of Limitation Act, 1963 as against a plaintiff who has perfected his title by virtue of adverse possession to sue to evict a person or to protect his possession and plethora of decisions are to the effect that by virtue of extinguishment of title of the owner, the person in possession acquires absolute title and if actual owner dispossesses another person after extinguishment of his title, he can be evicted by such a person by filing of suit under Article 65 of the Act. Thus, the decision of Gurdwara Sahib v. Gram Panchayat, Sirthala (supra) and of the Punjab & Haryana High Court cannot be said to be laying down the correct law. More so because of various decisions of this Court to the contrary.”*

The court, thus, overruled the decision in *Gurdwara Sahib (supra) (2014)* as well as other subsequent judgments of the Supreme Court, which relied on it, in the matter of *State of Uttarakhand v. Mandir Shri Lakshmi Siddh Maharaj (supra) (2017)* and *Dharampal (dead) through LRs v. Punjab Wakf Board (supra) (2017)*.

The court further noted that a suit can be filed based on the possessory title under article 64 of the Act. The law never intends a person who has perfected its title to be deprived of filing suit under Article 65 to recover possession and to render him remediless. The court also clarified its stand on cases where the land is sold away by the owner after the extinguishment of his title, a suit can be filed by a person who has perfected his title by adverse possession to question alienation and attempt of dispossession.

The court also added that law of adverse possession does not qualify only a defendant for the acquisition of title by way of adverse possession, it may be perfected by a person who is filing a suit.

Thus, the Supreme Court held,

*“We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession”.*

#### **Essential criteria for claiming adverse possession:**

A person who is claiming to be in adverse possession of the land, needs to prove in the court of law certain essential criteria as under:

- There must be immovable property.



- The nature of possession must be visible, hostile, and in continuity without any intrusion for the period specified under the Limitation Act.
- Adverse possession cannot be claimed for a short period of time under Article 65 of the Limitation Act.
- The intention of possession of the land must be accompanied by the intention of owning the right of the ownership by such possession. In ***Bhimrao Dnyanoba Patil v. State of Maharashtra, 2003<sup>xii</sup>***, the court held that, unless enjoyment of the property is accompanied by adverse animus, mere possession for a long period even over a statutory period, would not be sufficient to mature the title to the property by adverse possession.
- When a person comes and captures a land for a specific period of time he is taking away the ownership from the rightful owner. Thus, there should be dispossession of ownership by adverse possession.

However, when the owner of the land or property permits someone to stay on the land or property for as long as they want for any reason whatsoever, such other person cannot claim subject land or property by way of adverse possession. For instance, when the owner of a property allows his domestic help or driver to stay in a cottage without paying any rent than in such case the domestic help or driver or any person staying with the permission of the landlord cannot claim his title over the land or property.

The Supreme Court in its recent judgment, ***Ravinder Kaur Grewal (supra)*** stated that the plea of adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec-vi i.e. adequate in continuity, nec-clam i.e., adequate in publicity and nec-precario i.e. adverse to a competitor, in denial of title and his knowledge. “*Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it*”, the court said.

The court further added that adverse possession cannot be decreed on a title which is not pleaded. The court also held that the long possession by trespasser cannot be considered as adverse possession. The possession by trespasser is construed to be on behalf of the owner, and therefore, his possession does not constitute adverse possession. In fact, trespasser’s possession can be taken by the owner at any point of time.

The court also clarified that adverse possession is heritable and there can be tacking of adverse possession by two or more persons, such as a purchaser, legatee or assignee claiming through the person first in possession, as the right is transmissible one.

### **Conclusion**

Thus, doctrine of adverse possession is to safeguard the interest and rights of the possessor, who looks after the property and protects it. It is possessor, who has superior claim over the

land than the owner who neither visits or cares for it. If a rightful owner does not make an effort to claim his possession within the specified period of limitation, his rights are lost to the person in possession, who will then acquire an absolute title of the property.

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- i (2007) 6 SCC 59
  - ii AIR 1968 SC 1165
  - iii (1907) AC 73 (PC)
  - iv (2004) 10 SCC 779
  - v (2020) SCC OnLine SC 14
  - vi (2014) 1 SCC 669
  - vii (2009) 154 PLR 756
  - viii (2006) 3 RCR Civil 97
  - ix (2017) SCC OnLine SC 1130
  - x (2017) SCC OnLine 1226
  - xi (2019) 8 Supreme Court Cases 792
  - xii (2002) SCC OnLine Bom 732 : AIR 2003 Bom 80 : (2003) 3 Bom CR 150 : (2003) 105 (1) Bom LR 322