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# ADVERSE POSSESSION VIZ-A-VIZ THE EVICTION SUITS

## A Introduction:

1. Adverse possession is a principle of law by which relates to the process of acquisition of title by the person in possession of the property despite not being the owner by virtue of his being in possession for sufficient time as given in Limitation Act, 1963 (in short “**Limitation Act**”).
2. Basically, a mechanism which has the effect of allowing a trespasser to acquire title to land and to displace the rights of the ‘paper-owner’/ original owner, solely for the reason on account of in-action by the original owner.
3. Perfectly defined by the Hon’ble Supreme Court in Amarendra Pratap Singh vs. Tej Bahadur Prajapati [(2004) 10 SCC 65] 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.”
4. If a trespasser to a property remains in possession of that piece of property for a continuous period of twelve years, then by the operation of the law of limitation, the real owner’s right to that property will be extinguished and the title will pass on to the trespasser.
5. The time period of 12 years to start to operate from the moment the trespasser takes adverse possession of the true owner’s property:
  - a Same is based on facts and circumstances of each case.
  - b The time can be said to start when the Owner became entitled to enforce his legal right.
  - c Relied upon T. Anjanappa vs. Somalingappa [2006 7 SCC 570]
6. The basis of establishment of Adverse Possession are to be clearly stated in the pleadings accompanied by

the documents, which are required to be proved, since the concept of Adverse Possession is against the Law of equity. [Bhagwati Prasad v. Chandramaul; (1966) 2 SCR 286]

## B Legal Provisions dealing with the sphere of Adverse Possession:

1. Limitation Act provides for the time period under which a person has to take actions to enforce/initiate its legal remedy, which if not done, within prescribed time shall be barred from enforcement.
2. Section 3 of the Limitation Act specifically bars the Court from taking cognizance of any suit, which is beyond the prescribed period even if the issue of limitation is not taken as a defence.
3. The law of limitation bars the remedy but not the right, however an exception to the general rule is based on Section 27 of the Limitation Act.
  - a Section 27 states that if a Person fails to file suit for recovery of possession within 12 years, despite having knowledge, then his right to recover property stands extinguished
  - b If such situation occurs, a true owner extinguishes his ownership over the property. But at the same time property cannot be left without owner.
  - c It must be in name of any other person or any other person must be entitled to have right over it.
  - d This situation gives origin to the concept of adverse possession.
4. The Section 27 read with Article 65 establishes the law of adverse possession.
  - a Article 65 of Schedule I
    - The prescribed limitation period is 12 years for filing of suit for possession or any right
    - For suits based on title.
    - Independent Article applicable for suits for possession based on title
  - b However, it is clarified that Article 64, Schedule I deals



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with possessory right, i.e. rights arising out of possession, i.e. easement right, etc.

- The prescribed limitation period is 12 years for filing of suit for possession.
- For suits not necessarily based on title.
- Time starts when the plaintiff was first disposed of the property.

5 Thus, section 27 read with Article 65 clearly establishes that on the expiry of twelve years, the title of the true owner to his property extinguishes and the person/ trespasser/ defendant acquires the title to the property. However, the same is subject to fulfilment/establishment of certain prerequisites.

6 The limitation for recovery of possession by the Government is 30 years as per the Article 112, Schedule I of Limitation Act.

#### C Necessary Elements to constitute Adverse Possession:

- 1 Property: The property must be ascertained/identified.
- 2 Actual and Exclusive Possession of the Property:
  - a The possession of the property must be actual and not declaratory/name-shake/etc., implying the property was in continuous use.
  - b Possession must be actual, visible, exclusive, hostile and continued during the time necessary to create a bar under the statute of limitation.
  - c Mere paying of taxes, etc. without actually being in possession is insufficient.
  - d Physical acts must show that person is exercising right over the land like an ordinary owner of land would exercise
  - e Physical improvement of property, like repairs, etc. is evidence of exclusive possession. [Amrendra Pratap Singh vs. Tej Bahadur Prapapati; (2004) 10 SCC 65]
- 3 Continuous & uninterrupted Possession: The possession has to be continuous (for more than 12 years) but the proof of each and every moment is not requisite. [Karnataka Board of Wakf- Vs.- GOI; [(2004) 10 SCC 779]
- 4 Animus possidendi, i.e., the intention to possess the property with exclusion to others.
  - a Possession with intention to ouster the real owner
  - b Not adverse when intention is missing even though in possession for more than 12 years
  - c Intention within knowledge/notice of real owner
  - d It should be open and notorious, meaning the person should possess openly like the whole world to see
  - e Actual residence on the Property is the most open form of adverse possession
  - f This puts the Owner to caution that unless legal remedy sought, the Property shall be lost to adverse possession.
- 5 The essentials are to established by the person claiming the adverse possession and he is bound to proof the same on the basis of facts and circumstances and documents
- 6 In Karnataka Board of Wakf- vs.- GOI [(2004) 10 SCC 779], the Hon'ble Supreme Court held that the person who shows adverse possession must show on facts/pleadings/ documents that:

“(a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed.”

#### D Rent Control Act and Adverse Possession- Inter-Linkage:

- 1 Enquiry in eviction suit limited to existence of Landlord-Tenant relationship

2 Decision on Plaintiff's title and/or that of adverse question beyond the scope of the powers of court under Rent Control Act and the proper court for deciding title is the one under Civil Procedure Code, 1908 (in short “CPC”)

3 Eviction suit only to be under Rent Control Act, if, landlord tenant relationship is there.

a Now, when no landlord-tenant relationship under Rent Act, the Plaintiff can file a suit for recovery of possession under the Transfer of Property Act and Civil Procedure Code.

b In these suits under CPC, the Court empowered to decide the question of title as well as that of adverse possession.

4 The Court under Rent Control could not go into the findings on the title and nor can decree for title can be pronounced by the Courts, since the same would constitute exceeding its powers under Rent Act [Tribhuvanshankar v. Amrutlal; (2014) 2 SCC 788]

5 Now, supposing the eviction suit is dismissed for the reason that no landlord-tenant relationship, the Plaintiff can always approach the courts under CPC for suit for Declaration of Title and Possession.

6 The question of title of Property can be examined incidentally but not germane and cannot be decided in eviction suit as the same maybe required to establish the privity of contract of tenancy. [Ranbir Singh (Dr) vs. Asharfi Lal; (1995) 6 SCC 580]

#### E Conclusion: Facts/ Documents to establish Adverse Possession:

1 The establishing of title by Adverse Possession is not only difficult but shall also require proper proof and evidences is presented before the Hon'ble Court the trail. The same is more so important since the person claiming Adverse Possession, is claiming it against the real Owner.

2 Some of the facts/ documents considered by the Court while dealing with the cases of adverse possession is reproduced herein below for illustrative purpose and for proper understanding as to what documents/ information may and may not assist in establishing the Adverse Possession.

3 When Adverse Possession Allowed

a Vasantiben Prahladi Nayak v. Somnath Muljibhai Nayak [(2004) 3 SCC 376

- Hostility, continuity and uninterrupted possession and right of exclusive ownership proved by payment of revenue cess from 1940 and property taxes.

- Names of persons claiming Adverse Possession recorded in the revenue records and also in grant of permission by the Panchayat to construct the compound wall

4 When Adverse Possession Not Allowed

a Karnataka Board of Wakf- Vs.- GOI [(2004) 10 SCC 779]

- The owner must establish the origin of the title through the sale deeds, gift deed, etc.

- Entry in the Register of the Ancient Protected Monuments treated as valid proof of title of Owner.

- Pleadings should clearly state the origin of title of the property by the Owner

- All facts as to the right to adverse possession should be pleaded at the first stage of pleadings and if not done can prove fatal to the case of person claiming adverse possession.

- The intention of holding the property in adverse possession to be gathered on from the pleadings.

5 To summarize some of the documents and facts necessary for establishing the adverse possession are enlisted herein below. However, the Court shall adjudicate on plea of adverse possession on the basis of facts and circumstance of each case.

- a Manner of possession of Property by defendant.
- b All Notices, municipal receipts, property tax bills, etc. in favour of Defendant.
- c Permissions for repairs done and/ or construction carried on in the name of Defendant.
- d Letters, etc. written to the government department for change in name for payment of property taxes, etc.
- e Oral evidences of the neighbors
- f Penalty notices, etc. issued in the name of the defendant at the disputed Property.
- g All Pleas of Adverse Possession is to be raised at the first instance
- 6 To conclude, the backbone of claiming the title by Adverse Possession completely rests upon the pleadings which should be attempted to be such that the essential of the Adverse Possession are clearly established and proved at the stage of trail.