



GOVERNMENT OF INDIA
LAW COMMISSION OF INDIA

THE LAW ON ADVERSE POSSESSION

Dissent Note

Report No. 280

May, 2023

**RECOMMENDATIONS ON THE LAW OF ADVERSE POSSESSION BY DR. NITEN CHANDRA,
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The report on adverse possession formulated by Mr. Justice K.T. Sankaran of the Law Commission seeks to justify adverse possession as a welfare law and on grounds of morality. In the Article titled "the Moral Paradox of Adverse Possession: Sovereignty and Revolution in Property Law", Larissa Katz (2010) justifies adverse possession on the analogy of *coup d'état* which is riddled with self-contradictions. The author correctly holds that adverse possession is successful only where it is peaceful, open and notorious. In law also, these are the necessary ingredients of adverse possession. However, none of these characteristics is shared by *coup d'état* because *coup d'état* has to be necessarily violent and turbulent. Supreme Court has in overwhelming majority of cases decided matter against the claims of adverse possession. Supreme Court has rarely allowed the extinction of the proprietary right of the true owner on the ground of adverse possession. In a few cases, the Supreme Court has underscored the contradictory nature of the law and considered it irrational, illogical and disproportionate. In the following four cases the court has urged the Ministry of Law & Justice to review the law. A brief analysis of the four judgements of Supreme Court is given below that throws light on the tenuous, insidious and contradictory character of the claim of adverse possession:

1. HEMAJI WAGHAJI JAT V. BHIKHABHAI KHENGARBHAI HARIJAN & ORS.

BENCH & STRENGTH– 2 judges bench consisting- Justices Dalveer Bhandari, H S Bedi


JUDGEMENT DATE– 23rd September, 2008

CITATION–2009 SCC 16 1073

BACKGROUND– A disagreement over a plot of agricultural land is at the center of the lawsuit. Hemaji Waghaji Jat, the plaintiff, asserted adverse possession to claim title of the land, claiming to have had exclusive and continuous possession of it for more than 12 years.

The plaintiff's claim was contested by the defendants, Bhikhabhai Khengarbhai Harijan and others, who asserted that they were the true owners of the property. They argued that because the plaintiff's possession was supported by a tenancy agreement, it was permissive and not hostile.

The appellant, who was the plaintiff before the trial court, filed a suit for declaration of permanent injunction to hold and declare that the plaintiff is the lawful owner and occupier in respect of land of Survey No. 66/3 measuring 6 acres and 11 gunthas located in the



boundaries of Village Yavarpura, Taluka Deesa. The appellant also included that the plaintiff of this case be allowed to possess and use the land described in Survey No. 66/3, which measures 7 acres 10 gunthas and is located within the boundaries of the Village Yavarpura, without interference from the defendants or any of their agents, servants, or family members, and to grant a permanent stay order preventing the defendants from forcibly entering the said land and grant any other relief which is deemed fit and proper along with the award of the entire cost of this suit on the defendants.

The trial court determined that the appellant had owned the land for 70 years and had purchased it for Rs 75 from Gama Bhai Gala Bhai in the year 1925. As a result, by adverse possession, the appellant acquired ownership of the subject property.

The learned District Judge came to the firm opinion that the appellant in this instance had failed to prove that the subject land was actually purchased by him after listening to the solicitors for the parties and reviewing the case's whole record. Pure judgements of fact continue to be immune from challenge before the High Court on second appeal, and the first appellate court continues to function as a final court of facts.

The High Court determined that the respondents had amply demonstrated their ownership of the subject property. The High Court rejected the appellant's appeal that was filed.

LAWS INVOLVED-

Article 64 and 65 of The Limitation Act, 1963.

ISSUES-

- Whether the appellant became owner of the suit property by adverse possession?
- Whether the possession of one co-heir is considered as possession of all the co-heirs?
- Whether long possession is necessarily adverse possession?
- Whether the law of adverse possession violates Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms?
- Whether the law of adverse possession places premium on dishonesty?

CONTENTIONS OF PARTIES

1. Plaintiff (Appellant):

- The plaintiff claimed adverse possession of the land, asserting that they had exclusive and continuous possession of the property for more than 12 years.
- They argued that they had acquired ownership of the land through adverse possession and should be recognized as the lawful owner and occupier.
- The plaintiff sought a permanent injunction to prevent the defendants from interfering with their possession and use of the land.

- They presented evidence of their alleged purchase of the land in 1925 and argued that the trial court correctly determined their ownership based on adverse possession.
2. Defendants (Respondents):
- The defendants disputed the plaintiff's claim of adverse possession, asserting that they were the true owners of the land.
 - They contended that the plaintiff's possession was permissive, supported by a tenancy agreement, and therefore not hostile.
 - The defendants argued that the plaintiff failed to prove their actual purchase of the land and that their claim of adverse possession should be rejected.
 - They presented evidence to demonstrate their ownership of the property and opposed the plaintiff's request for a permanent injunction and possession.

JUDGEMENT-

The Supreme Court ultimately decided to dismiss the civil appeal with costs of Rs. 25,000. The appellant pleading adverse possession has no equities in his favour. It is up to him to make a convincing argument and establish all the evidence required to prove his adverse possession because he is attempting to thwart the rights of the real owner.

Additionally, Court held that *"there is an urgent need of fresh look regarding the law on adverse possession. We recommend the Union of India to seriously consider and make suitable changes in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law."*

PRINCIPLES LAID DOWN-

Obiter dicta

- The Court observed that a person pleading adverse possession has no equities in his favour. It is on to him to make a convincing argument and establish all the evidence required to prove his adverse possession because he is attempting to thwart the rights of the real owner. Although it is not required that there be proof that the hostile possessor actually informed the genuine owner of the latter's hostile behaviour, the possession must be open and hostile enough to be known by the parties interested in the property.
- The Court further noted that the law of adverse possession is exceedingly severe for the true owner and advantageous for a dishonest person who had unlawfully seized the true owner's property. A person who illegally takes possession of another person's property should not profit from the law in any way. In essence,



this would imply that the law supports the illegal behaviour of a flagrant trespasser or someone who has wrongfully seized ownership of another person's property.

Ratio Decidendi

- The Supreme Court's judgment was based on the following reasons:
- Permissive possession: The Court further noted that the law of adverse possession is exceedingly severe for the true owner and advantageous for a dishonest person who had unlawfully seized the true owner's property. A person who illegally takes possession of another person's property should not profit from the law in any way. In essence, this would imply that the law supports the illegal behaviour of a flagrant trespasser or someone who has wrongfully seized ownership of another person's property.
- Lack of exclusive possession: The plaintiff was unable to demonstrate exclusive possession of the land, according to the court. Exclusive possession denotes that the possessor, and not anyone else, including the actual owner, has sole authority and control over the property. The court found that the plaintiff did not possess the land exclusively since other parties also have rights to it.
- Failure to prove open and continuous possession: Adverse possession requires open and continuous possession, which means that the possession must be known to the public, ongoing, and visible for the required amount of time. Due to gaps and breaks in his occupation of the land, the Court determined that the plaintiff's possession was not open and continuous.
- Absence of hostility: Adverse possession requires open and continuous possession, which means that the possession must be known to the public, ongoing, and visible for the required amount of time. Due to gaps and breaks in his occupation of the land, the Court determined that the plaintiff's possession was not open and continuous.

SIGNIFICANCE-

This case is important because it clarified India's legal framework on adverse possession. According to the Supreme Court, one must show exclusive possession, open and continuous possession, and possession for the required statutory duration in order to establish adverse possession of real estate. The case upheld the rule that permissive possession or possession under a relationship of trust or guardianship prohibits the

allegation of adverse possession. It clarified the conditions and standards for proving adverse possession as a legitimate legal claim in India. The Supreme Court did acknowledge the urgent need for a review of the legislation on adverse possession and advised the Union of India to take appropriate legal action.

2. RAM NAGINA RAI & ANR V/S DEO KUMAR RAI (DECEASED) BY LRS & ANR

BENCH- 2 Judges Bench consisting of Justice Hon'ble Mr. Justice N.V. Ramana Hon'ble Mr. Justice Mohan M. Shantanagoudar

JUDGMENT DATE: 21 August, 2018

CITATION: (2019) 13 SCC

Background- The plaintiffs argue that the disputed house belonged to them, as evidenced by the khata recorded in their ancestor's name. Due to a friendly relationship between the defendants' ancestor and the plaintiffs' ancestor, the defendants were allowed to occupy the house while the plaintiffs' ancestor was away. The defendants changed the khatian without informing the plaintiffs, falsely showing their possession of the property. Despite numerous requests, the defendants refused to hand over the property, leading to the lawsuit. The defendants claim ownership based on adverse possession, citing their ancestor's relationship with the plaintiffs' grandfather and asserting that the suit is barred by limitation.

LAWS INVOLVED- Article 65 of The Limitation Act, 1963

ISSUES-

- The defendants got khatian changed without notice to the plaintiffs, showing to be in possession of the disputed house.
- The defendants contended that they had perfected the title by adverse possession and therefore the plaintiffs are not entitled to recover the possession of the suit

JUDGMENT- While rejecting the claim of defendant in regard to ownership by adverse possession that as per Section 65 of Limitations the adverse possession should be thoroughly communicated at least impliedly to the actual owner of the property. His hostile attitude should be open to the knowledge of the real owner.

In light of the above observations, the Court finds that there is no absolute requirement to deem the mere possession of the suit property by the defendants to amount to adverse possession over the suit property. This would be in clear violation of the basic rights of the actual owner of the property. There is nothing on record to show that the defendants' permissive possession over the property became adverse to the interest of the real owner,



at any point of time. On the contrary, the records reveal that the permissive possession of the defendants continued till the filing of the suit.

The defendants have relied upon certain paid tax receipts and khatian extracts. The Trial Court has, on facts, specifically found that these documents do not disclose the khatian and plot number, and even the tax receipts do not relate to the suit house. Also, the chaukidari receipts (A1 to A16) do not contain the khatian of the suit house.

RATIO DECIDENDI

The Court also observed that Union of India should undertake a serious and thoughtful examination of the legal framework governing adverse possession and implement appropriate changes. This recommendation stems from the belief that the current law fails to adequately address the complexities and implications associated with adverse possession.

The significance of this observation was also underscored by the Court in a subsequent judgment, *State of Haryana v. Mukesh Kumar*. In this case, the Court expressed the view that the law of adverse possession warrants a comprehensive re-examination. The Court went on to emphasize that the right to property extends beyond being merely a constitutional or statutory right—it is a fundamental human right that merits utmost consideration.

3. RAVINDER KAUR GREWAL V MANJIT KAUR

Bench and Strength- 3 Judge Bench Arun Mishra, SA Nazeer and MR Shah, JJ

Judgement date- 7 August, 2019

Citation- (2019)8 SCC 729

Background-

The plaintiff claimed title to the suit lands on the following grounds : (1) Since 1915 he and his predecessors in interest were in adverse possession of the lands, and on the expiry of 12 years in 1927, he acquired prescriptive title to the lands under [s. 28](#) read with [Art. 144](#) of the [Indian Limitation Act](#), 1908

(2) By the resumption proceedings and the grant of the ryotwaripatta a new tenure was created in his favour and he acquired full ownership in the lands; and

(3) In any event, he was in adverse possession of the lands since 1928, and on the expiry of 12 years in 1940 he acquired prescriptive title to the lands under [s. 28](#) read with [Art. 134B](#) of the Indian Limitation Act, 1908.

We are of the opinion that the first contention of the plaintiff should be accepted, and it is, therefore, not necessary to consider the other two grounds of his claim.

In the suit the plaintiff based his claim in respect of plot No. 1735, Ward No. 1 of Ranchi Municipality on the ground that he had acquired title to the land by virtue of a hukumnama granted to him by the landlord as far back as April 17, 1912 which is Ex.18. Apart from the question of title, the plaintiff further pleaded that even if the land belonged to the defendant municipality, he had acquired title by prescription by being in possession of the land to the knowledge of the municipality for more than 30 years, that is to say, from 1912 to 1957.

Laws involved- Article 65 Adverse Possession

Issues-

Whether a person claiming the title by virtue of adverse possession can maintain a suit under [Article 65](#) of [Limitation Act](#), 1963 for declaration of title and for a permanent injunction seeking the protection of his possession thereby restraining the defendant from interfering in the possession or for restoration of possession in case of illegal dispossession by a defendant whose title has reason been extinguished by virtue of the plaintiff remaining in the adverse possession or in case of dispossession by some other person. In other words, whether [Article 65](#) of the Act only enables a person to set up a plea of adverse possession as a shield as a defendant and such a plea cannot be used as a sword by a plaintiff to protect the possession of immovable property or to recover it in case of dispossession. Whether he is remediless in such a case? In case a person has perfected his title based on adverse possession and property is sold by the owner after the extinguishment of his title, what is the remedy of a person to avoid sale and interference in possession or for its restoration in case of dispossession?

Contention of parties-

Judgment-

When we consider the law of adverse possession as has developed visàvis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession.

Resultantly, we hold that decisions of [Gurudwara Sahab v. Gram Panchayat Village Sirthala](#) and decision relying on it in [State of Uttarakhand v. Mandir Shri Lakshmi](#)



SiddhMaharaj and Dharampal (dead) through LRs v. Punjab Wakf Board cannot be said to be laying down the law correctly, thus they are hereby overruled. We hold that plea of acquisition of title by adverse possession can be taken by plaintiff under Article 65 of the Limitation Act and there is no bar under the Limitation Act, 1963 to sue on aforesaid basis in case of infringement of any rights of a plaintiff.

Let the matters be placed for consideration on merits before the appropriate Bench.

Ratio Decidendi

The adverse possession requires all the three classic requirements to coexist at the same time, namely, adequate in continuity, adequate in publicity and 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. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonym with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and the large concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.

4. STATE OF HARYANA VS. MUKESH KUMAR AND OTHER'S

Bench and Strength – Justice Dalveer Bhandari and Justice Deepak Verma² Judge Bench

Judgement date- 30 September, 2011

Citation- (2011) 10 SCC 404

Background- The State of Haryana had filed a Civil Suit through the Superintendent of Police, Gurgaon, seeking a relief of declaration to the effect that it has acquired the rights of ownership by way of adverse possession over a piece of land measuring 8 biswas.

The other prayer in the suit was that the sale deed dated 26th March, 1990, mutation no. 3690 dated 22nd November, 1990 as well as judgment and decree dated 19th May, 1992, passed in Civil Suit No. 368 dated 9th March, 1991 are liable to be set aside. As a consequential relief, it was also prayed that the defendants be perpetually restrained from interfering with the peaceful possession of the plaintiff (petitioner herein) over the suit land. For the sake of convenience we are referring the petitioner as the plaintiff and the

respondents as defendants. It was specifically denied that the plaintiff ever remained in possession of the suit property for the last 55 years.

Laws involved- Article 64 Adverse Possession

Issues-

1. Whether plaintiffs have become owner of disputed property by way of adverse possession?
2. Whether sale deed 26.3.1990 and mutation no. 3690 dated 22.11.90 are null and void as alleged?
3. Whether defendants are entitled for possession of disputed property?

Contention of parties-

In the written statement, the defendants raised a number of preliminary objections pertaining to estoppel, cause of action and mis-joinder of necessary parties. It was specifically denied that the plaintiff ever remained in possession of the suit property for the last 55 years. It was submitted that the disputed property was still lying vacant

Judgement-

In our considered view, there is an urgent need for a fresh look of the entire law on adverse possession. We recommend the Union of India to immediately consider and seriously deliberate either abolition of the law of adverse possession and in the alternate to make suitable amendments in the law of adverse possession. A copy of this judgment be sent to the Secretary, Ministry of Law and Justice, Department of Legal Affairs, Government of India for taking appropriate steps in accordance with law

This Special Leave Petition is dismissed with costs of Rs.50,000/- (Rupees Fifty Thousand only) to be paid by the State of Haryana for filing a totally frivolous petition and unnecessarily wasting the time of the Court and demonstrating its evil design of grabbing the properties of lawful owners in a clandestine manner. The costs be deposited within four weeks from the date of pronouncement of this judgment. In this petition, we did not issue notice to the defendants, therefore, we direct that the costs be deposited with the National Legal Services Authority for utilizing the same to enable the poor litigants to contest their cases.

Obiter Dicta-

The Parliament must seriously consider at least to abolish "bad faith" adverse possession, i.e., adverse possession achieved through intentional trespassing.

Ratio Decidendi



There was no pleading qua denial of title of the defendants by the plaintiff, so much so that the specific day when the alleged possession of State allegedly became adverse against the defendants has not been mentioned in order to establish the starting point of limitation could be ascertained.

If the protectors of law become the grabbers of the property (land and building), then, people will be left with no protection and there would be a total anarchy in the entire country.

The revenue records of the State revealed that the disputed property stood in the name of the defendants. It is unfortunate that the Superintendent of Police, a senior official of the Indian Police Service, made repeated attempts to grab the property of the true owner by filing repeated appeals before different forums claiming right of ownership by way of adverse possession.

Adverse Possession in Other Countries

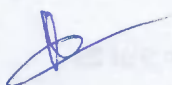
1. Italy

In Italy one of the ways of acquiring a property is by means of adverse possession aka "usucapione". This ancient form of owning a property goes back to Roman law. The aim is to make sure that no land or property within the nation is left deserted and abandoned, therefore anyone acting and using the property as if he/she were the owner for over twenty years, uncontested, can then claim the property.

The essential aspect is what in Latin is described as behaving utidominus, i.e. deciding and undertaking all actions as if one were the owner of the property: looking after the property, undertaking necessary maintenance and also paying taxes. These are aspects that can fulfil the utidomunis requirements.

According to the Supreme Court of Justice "Corte di Cassazione", continued and undisturbed public possession must be demonstrated by those who claim to have acquired the good by adverse possession. The expression "having owned for over twenty years" is too generic and is not sufficient to prove Italian usucapione. Claiming one has acted as the owner for twenty years, does not fulfill the essential adverse possession requirements, so one must provide the Court with exact time on when the adverse possession started as well as file all proof that the property was publicly looked after as if one had been the owner.

2. France



Adverse possession French law permits the acquisition of title to land by prescription over a 30 year period if there is: '...continuous and uninterrupted, peaceful, public and unequivocal possession, and in the capacity of an owner' Article 2229C Civ. The notion of possession is satisfied if two elements are present, the claimant bearing the onus of proof, of objective physical possession such as an owner would have; and the subjective intent to exercise the material mastery on his own behalf, rather than on behalf of another.

Effect of good faith upon the period of prescriptive title Where the person has come into possession of a 'just title' in good faith, good faith being presumed, the period for prescriptive title will be reduced by 10 years to 20, or by 20 years to 10, depending upon whether the true owner lives in the territory of the Court of Appeal within which the land is situated, Article 2265. However, if a seller of land acquired it in bad faith, a good faith purchaser will need to demonstrate prescriptive title over the full 30year period. The effect of prescriptive title is retroactive in the sense that the possessor is considered to be the owner from the first day of possession and all acts from that day will be valid. No compensation is payable to the original owner under French law.

3. Spain

The Spanish Civil Code recognizes the capacity to acquire ownership by 'acquisitive prescription' over everything that can be possessed. Under Article 1941: Possession must be exercised under claim of ownership, and must be public, peaceful and uninterrupted. Not only must the claimant intend to possess as the owner or holder as of right but also the facts must demonstrate that possession is held as the putative owner.

The limitation period for acquisitive prescription varies depending upon whether the:

- adverse possession is in 'good faith' and with 'just title'
- property is a moveable or immovable Ordinary acquisitive possession

where the possession is in good faith and the claimant has a 'just title' the acquisitive possession is described as 'ordinary'. While good faith will be presumed, it is necessary for the possessor to prove just title

- in the case of immovables, inscription under the Land Register Act will be sufficient; ownership can be prescribed by ordinary Acquisitive Possession of ten years for persons who are present and twenty years for absentees (i.e. residing in a foreign country)
- in respect of movables, possession in good faith ranks as title; Movables may be acquired after three years uninterrupted possession in good faith and after six years without any need to show good faith.

Extraordinary acquisitive possession may be achieved by proof of possession and does not require either good faith or just title. For both movables and immovables, the necessary period is 30 years. As civil law is not unified in Spain, different rules may pertain in the Autonomous Communities. Catalonia has for example introduced Articles 531-24 and 531-27 which makes no distinction between ordinary and extraordinary possession, permitting acquisitive possession under a claim of right that is public, peaceful and uninterrupted. Neither proof of title nor good faith are required. Title may be acquired by adverse possession of three years for movables and twenty years for immovables. No compensation is available for someone who loses their title to property after expiry of a limitation period, though it remains possible for persons who are incapacitated to sue their legal representatives for negligence.

4. Netherlands

The Dutch Civil Code recognizes the right to acquire title to land by adverse possession through the doctrines of acquisitive and extinctive prescription as follows:

- Acquisitive prescription under article 3:105(1) provides that the adverse possessor of land acquires title when the right of action to terminate the adverse possession expires.
- Extinctive prescription terminates the right of action of the rightful owner after a nominated period. Role of good faith If a person has held uninterrupted possession and has acted in good faith, he may acquire ownership after 10 years (Article 3:99(1)). Where good faith is proven to be absent, an uninterrupted possession may give the possessor title after twenty years. (Article 3:105(1)). Good faith is presumed and its absence must be proven. No right of compensation is granted to the person whose title has been extinguished under these rules. There are no cases that have developed the jurisprudence on these rules by the Dutch courts.

5. Sweden

Swedish law recognizes ownership by 'adverse possession' of land under Chapter 16 of the Real Property Code once a person other than the rightful owner has been registered as an owner in the land register or 'lagfart'. A limitation period of 20 years applies, after which the possessor of property is held to have a better right to the land than the original owner. Time runs from the moment someone other than the rightful owner has received lagfart. Proof of good faith is not required. Where the possessor bought the property or received it as a gift or through barter, and did not know and could not have been expected to know of the real owner's prior right, the limitation period is reduced to 10 years. By contrast with adverse possession after 20 years, application of the 10year rule requires a demonstration of good faith. As regards Compensation, Swedish law does not recognize a right to compensation for loss of immovable property under the law of adverse possession. An exception to the lack of compensation arises under Chapter 18 where title

may not be acquired in good faith if the real owner was forced to give up their property. An owner may be entitled to compensation from the government for loss of title if the claim is made within 10 years of the entry of title into the land register.

6. Germany

German land law provides for two different methods of acquiring property by way of adverse possession.

1. Acquisition by possession by person registered A person, who has been registered in the land register as the owner of a piece of land without having obtained ownership, acquires ownership thereof, if he has been registered as such for thirty years and during that time he has been in proprietary possession of the land. Under § 900 BGB (German Civil Code), Possession does not have to be in good faith, and the reason or motivation for the possession is irrelevant.

2. Acquisition by proprietary possession and cancellation proceedings. The owner of a piece of land may, if for thirty years the land has been in the proprietary possession of another, be excluded from his rights by means of public summons. [...] If the owner has been registered in the land register, the public summons is permissible only if he is dead or has disappeared and no registration in the land register which requires the owner's consent has been made within thirty years. § 927 BGB, 10 The acquisition of property under § 927 does not apply to a person who is inaccurately registered in the land register. Rather, it facilitates acquisition of property by a person who is not registered in the register, but who has held proprietary possession of the land for thirty years.

Neither method of adverse possession requires proof of good faith on the part of the possessor. Adverse possession is even possible where the possessor is in bad faith, e.g. when he knowingly takes over bequeathed land that did not belong to the deceased. Good faith being irrelevant, the only decisive point is the entry situation in the land register. This principle can be compared to the situation with regard to moveable property, where acquisition by adverse possession is only possible if the possessor is and was in good faith in relation to his right of possession, see § 937 (2) BGB.

Under German law, the acquisition of property by adverse possession does not trigger any right to compensation for the person who loses title to land. Moreover, the notion of unjust enrichment will also not provide any basis for a claim. Similarly, tort law principles do not help the former owner, because the act of property acquisition was itself lawful and inconformity with the code.

7. New Zealand

New Zealand law recognizes the rights of an adverse possessor depending upon whether the land is registered or unregistered.

Title to unregistered land can be extinguished after 12 years of adverse possession Limitation Act 1950; the period is extended to 60 years where the action to recover land is brought by the Crown; while the Limitation Act does not apply to Maori customary land, a 12 year limitation period applies if an action to recover such land is brought against the Crown; certain categories of land, including land held for public works, cannot be affected by adverse possession.

Where the land is registered, the adverse possessor can apply for a certificate of title after 20 years under the Land Transfer Amendment Act 1963; a certificate will be granted unless another person establishes a better title. The Act does not apply to Crown land, Maori land, local authority land, land held in trust for public purposes and land possessed by virtue of an erroneous boundary marker or change of watercourse. Evidence of good faith is not a legislative requirement under the laws of New Zealand. No provision is made for loss of title under adverse possession.

8. Poland

The Polish Civil Code permits the acquisition of ownership by adverse possession in Articles 172 – 176, as a legal instrument which corrects the differences between the legal status and the actual state of affairs. In order to acquire ownership by way of adverse possession two conditions must be met; uninterrupted possession as an autonomous possessor (i.e. the possessor must act “as the owner”); and a defined period of time must lapse.

Limitation periods for adverse possession of real property are:

- 20 years, when possessor is in good faith;
- 30 years, when possessor is in bad faith.

However, if the owner of the land against whom the period of adverse possession is running is a minor, the period of possession cannot give rise to ownership of the land until two years after the original owner has become an adult.

The good faith of the possessor is not a condition for acquiring ownership; it only affects the length of the limitation period (see above). The Polish Civil Code does not define the term “good faith”; instead it is treated as a blanket clause. Polish law does not provide for any form of compensation for someone who loses their proprietary title by way of adverse possession after the expiry of the limitation period.

9. Thailand



In Thailand, individuals or entities that are eligible to hold ownership of land under the Land Code Promulgating Act, B.E 2497(1954) can acquire it by means of purchase, hire-purchase, gift, or inheritance. But there is one more way to obtain ownership of landed property, which does not require consent from the previous owner: adverse possession, colloquially known as “squatters’ rights.”

The difference between ownership and mere possession is that in the latter case, a person is exercising intentional control over a property, without necessarily being the legal owner. An example of possession would be if you borrowed your friend’s car for a weekend trip; you are in possession of the car during that trip, but your friend still remains the owner of the car.

Adverse possession occurs when a third party acquires the title to a legal owner’s real property without the legal owner receiving any compensation or engaging in any contract. The third party acquires ownership rights by holding the property for a specific period of time, in a manner that conflicts with the original owner’s rights. This common-law concept of obtaining ownership through possession, known in ancient Roman law as “usucapio,” has found its way into the laws of many civil-law countries, including Thailand’s Civil and Commercial Code (CCC).

10. United Kingdom

A new law was put in place that is Land Registration Act 2002 wherein the old rules i.e. the Land Registration Rules 2003, were still applicable if it could be proved that the necessary use and time qualified by the 12 October 2003. According to the law, an adverse possessor can claim a piece of land unregistered for ten or more years. But, first, the registered title holder must be notified of the adverse possessor’s claim to the property. Then the titleholder is given two years to reject this claim.

However, if the titleholder does nothing, the adverse possessor can legally own the property. The whole point of this process is to ensure that the original owners of a property would not lose it without being notified of the situation.

The main change was the amendments of time restrictions against the indolent paper owner with:

- (a) for unregistered land the old rules of 12 years are not changed, but
- (b) by Section 96 of the Act the two restrictions requiring the need for action
 - (i) for a title owners’ recovery of land and
 - (ii) actions for redemptions were retained in relation to registered land and
- (c) Schedule 6 para 1 reserves the special protection for the Crown and the Duchy by maintaining the 60 years for protection they have.



The Land Registration Act 2002 has created a new regime that applies only to registered land. This new regime is set out in Schedule 6 to the Act. It makes it more likely that a registered proprietor will be able to prevent an application for adverse possession of their land being completed. Adverse Possession of registered land for 12 years of itself will no longer affect the registered proprietor's title after 10 years' Adverse Possession, the squatter will be entitled to apply to be registered as proprietor in place of the registered proprietor of the land on such an application being made the registered proprietor (and certain other persons interested in the land) will be notified and given the opportunity to oppose the application if the application is not opposed by 'opposed' we mean that a counter notice is served; Giving counter notice to the registrar, response to notice.

Prior to the coming into force of the Land Registration Act 2002, a squatter could acquire the right to be registered as proprietor of a registered estate if they had been in adverse possession of the land for a minimum of 12 years. However, the doctrine of adverse possession did not fit easily with the concept of indefeasibility of title that underlies the system of land registration. Nor could it be justified by the uncertainties as to ownership which can arise where land is unregistered; the legal estate is vested in the registered proprietor and they are identified in the register. Instead, or at the same time, the registered proprietor may object to the application on the ground that there has not been the necessary 10 years' adverse possession; Objecting to the squatter's application for the implications of such an objection. The squatter will be registered as proprietor in place of the registered proprietor of the land, if the application is opposed, it will be rejected unless either it would be unconscionable because of an equity by estoppel for the registered proprietor to seek to dispossess the squatter and the squatter ought in the circumstances to be registered as proprietor the squatter is for some other reason entitled to be registered as proprietor the squatter has been in adverse possession of land adjacent to their own under the mistaken but reasonable belief that they are the owner of it, the exact line of the boundary with this adjacent land has not been determined and the estate to which the application relates was registered more than a year prior to the date of the application. in the event that the application is rejected but the squatter remains in adverse possession for a further 2 years, they will then be able, subject to certain exceptions, to reapply to be registered as proprietor and this time will be so registered whether or not anyone opposes the application.

11. Australia

Rights in relation to land are, as a matter of constitutional law, determined by the laws of the respective States and Territories of Australia. While the laws of the Australian Capital Territory and the Northern Territory do not recognize any loss of title to land by adverse

possession, each of the States will recognize a proprietary interest held under adverse possession, depending upon whether the land is registered.

Where the land is not registered, an action by the real owner to recover it may be brought only within limitation periods of either 12 years (NSW, Queensland, Western Australia and Tasmania) or 15 years (Victoria and South Australia). Once the statutory period has expired, the title of the person dispossessed will be extinguished and their cause of action lost.

In respect of registered land, the registered owner holds the land subject to any rights of an adverse possessor. In those jurisdictions 11 where the period of possession has extinguished the title of the registered proprietor, the adverse possessor may apply for registration of title. The legal position of the adverse possessor is less favourable where the Crown has an interest. The right of the Crown to land cannot be affected by adverse possession in Qld., WA and Victoria. A limitation period of 30 years applies to adverse possession in NSW and Tasmania. Good faith is not a necessary or sufficient condition for the acquisition of title by adverse possession. There are no rights to compensation for the original owner who loses title under adverse possession.

Like in the state of Victoria the law applicable is Limitation of Actions Act 1958. In order to adversely possess another party's land, possession of the land must be for a minimum of 15 years. Section 8 provides no action shall be brought by any person to recover any land after the expiration of fifteen years from the date on which the right of action accrued to him.

Roads and reserves – Where the area claimed includes a road, reserve or easement, evidence of 30 years of non-use will need to be supplied, if the title is to issue free from the encumbrance.

If the encumbrance is an easement, the applicant will need to prove that the easement has not been used for 30 years, in order to allow its removal.

No adverse possession against the Crown. Section 7 of the Limitation of Actions Act 1958 essentially provides that the right title or interest of the Crown to or in any land shall not be in any way affected by reason of any possession of such land adverse to the Crown, whether such possession has exceeded sixty years or not.

Rail Track: No adverse possession against Victorian Rail Track Section 7A of the Limitations of Actions Act 1958 provides that land prescribed by the Rail Corporation Act 1996 shall not be affected by any adverse possession claims irrespective of the period of adverse possession.



Water Authorities: No adverse possession against water authorities. Section 7AB provides that adverse possession of any length does not affect water authorities.

Council Land: No adverse possession against a Council. Section 7B of the Limitation of Actions Act 1958 exempts council land from claims of adverse possession. This refers to Torrens Land only and claims against general law land may still be possible.

Common Property: No adverse possession of common property under an Owners Corporation. Section 7C of the Limitations of Actions Act 1958 provides that common property under an Owners Corporation is not affected by any adverse possession irrespective of the length of time.

12. Ireland

Adverse Possession is derived from statute law, the law relating to limitation of actions which is now enshrined in the Statute of Limitations, 1957. A trespasser on someone's land may, if the trespass continues without disturbance for the statutory limitation period, become the owner of the land possessed. What appears extraordinary is that the legal system seems to be sanctioning and rewarding the committal of a civil wrong, without any question of compensation being paid to the dispossessed owner. Indeed, in some jurisdictions trespassing on land has been made a criminal offence, yet it has been held that this does not prevent the offender from invoking the doctrine to claim title to the land in question.

13. Canada

Rights in relation to land in Canada are regulated by the laws of the states and provinces and will vary depending upon whether the land is registered or unregistered. Under the law of Ontario, for example, while adverse possession is recognized after 10 years in respect of unregistered land, adverse possession does not apply to registered land (Land Titles Act, RSO 1990). Where an action to recover land is brought by the Crown, by contrast, a 60 year limitation period applies. No time limitation applies in respect of waste or vacant land of the Crown. Similarly, time will not run in respect of any road allowance or public highway if the freehold is vested in the Crown or public body. Evidence of good faith or lack of it will not affect the right to title to land under adverse possession. There is no provision for compensation for loss of title under adverse possession.

As regards law in Alberta, on December 15, 2022, the Property Rights Statutes Amendment Act came into effect and abolished adverse possession claims, otherwise known as "squatter's rights," against private landowners. Prior to this Act, only public land, municipal land, and irrigation districts were protected from adverse possession claims.

Adverse possession allowed a person or a “squatter” who had occupied the registered owner’s land for at least 10 years to potentially claim ownership of that land. The person was able to apply to a court to claim legal ownership over the lands, and if successful, it led to the transfer of the legal title to that person.

For over a decade, advocates and past governments have been encouraging the abolition of adverse possession in order to protect Albertan’s property rights. The Property Rights Advocate Office recommended abolishing adverse possession in its 2016 annual report. The Alberta Law Reform Institute reviewed adverse possession law and in April 2020, provided the government with seven recommendations to end squatter’s rights. The Alberta Law Reform, in their April 2020 report, listed nine cases of adverse possession court cases in the eight years leading up to 2020. However, the number of adverse possession cases may be more if there were additional disputes or cases that were not made public. The MLA Select Special Committee on Real Property Rights held extensive public consultations and received multiple requests to abolish adverse possession such that the committee included a recommendation to abolish adverse possession in its June 2022 report.

Adverse possession was problematic since it created stress for landowners about the possibility of losing their land and needing to monitor and protect it to prevent another from taking possession of it. Adverse possession arose in several situations, whether it was a mistakenly placed fence or a squatter occupying vacant land. However, with the introduction of the Act, the registered owner can now commence an action to regain possession of their land at any time and the squatter is barred from claiming adverse possession.

The Act also brought about changes to the following legislation in Alberta:

1. *Land Titles Act* – Allows individuals who have been previously granted ownership for adverse possession to retain ownership of the land.
2. *Law of Property Act* – Abolishes adverse possession by removing any rights in the land that could have been previously acquired by adverse possession. Additionally, the amendments grant the courts powers to make decisions regarding lasting improvements on lands under the belief that the land was theirs or for buildings that encroach on adjacent properties.
3. *Limitations Act* – Removes the 10-year limitation period for a registered owner to reclaim possession over the property. As a result, if someone is possessing land for which they are not the registered owner, the property owner can get a court order to regain possession at any time.

Thus, the Alberta government has finally given private landowners the same protections once reserved only for the government. With the introduction of the Act, landowners can seek to protect themselves and rely on additional remedies provided by the Courts where improvements or buildings are at issue. The introduction of this Act also brings the

province of Alberta in line with other jurisdictions including British Columbia, Saskatchewan, Manitoba, Ontario, New Brunswick, and the Yukon.

Fundamental Duties and Adverse Possession

Article 51 (A) embodies the duties of every citizen to safeguard and respect public property. This Article may be seen as below:

51A. Fundamental duties: It shall be the duty of every citizen of India

- (a) to abide by the Constitution and respect its ideals and institutions, the national Flag, and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement

When every citizen has the Fundamental Duty to safeguard and respect public property, raising of the plea of adverse possession against government property is in a stark derogation of this important Article of the Constitution. It may be observed that this Article was incorporated in the Constitution by the 42nd Amendment in 1976 much later than the incorporation of the idea of adverse possession in 1908 in the Limitation Act. The Chapter of Fundamental Duties in the Constitution provides the critical foundation for the sustainable progress and stability of the Indian social system and acts as a bulwark against social disorganization. Citizens of India have to be educated and informed about their Fundamental Duties so that the sanctity of the Indian society and polity is maintained. Ministry of Law and Justice undertakes dissemination of the significance of fundamental duties across the country. The idea of adverse possession wherein the citizen of India can openly and notoriously occupy government property and be rewarded by fruition of his proprietary right with mere lapse of time is antithetical to the Fundamental Duties laid down in the Constitution and erodes the very foundation of peaceful coexistence which the Fundamental Duties aim to accomplish. It is needless to say that the idea of adverse possession is repugnant to the Fundamental Duties enshrined in the Constitution and must

be abolished. Its abolition causes no prejudice to right of any citizen, particularly the poor and disadvantaged sections. Government has manifold statutory mechanisms and schemes for providing land and other support to the weaker sections of the society. To rely on adverse possession law for welfare is anomalous in as much as laws for settlement of Government land to the poor already exist. The law of adverse possession holds no merit, serves no social purpose, casts avoidable burden of litigation on the already over-burdened machinery of the Courts with heavy costs to all stakeholders.

Directive Principles of State Policy and Adverse Possession

It will be necessary to make a reference to the Directive Principles of the State Policy incorporated in the part IV of the Constitution of India. Article 39 (b)& (c) and Article 48A reads as under :

Article 39. Certain principle of policy to be followed by the state -The State shall, in particular, direct its policy towards securing—

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

Article 48A. Protection and improvement of environment and safeguarding of forests and wildlife --The State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

The Terms and reference of the 22nd Law Commission may be recalled as under:

4. The terms of reference of the Twenty-second Law Commission shall be as under:

4 D. Examine the existing laws in the light of Directive Principles of State Policy and to suggest ways of improvement and reform and also to suggest such legislations as might be necessary to implement the Directive Principles and to attain the objectives set out in the Preamble of the Constitution.

4. F. Revise the Central Acts of general importance so as to simplify them and to remove anomalies, ambiguities and inequities.

The law of adverse possession is in glaring opposition to the Directive Principles Of State Policy as enumerated in Article 39 (b)& (c) and Article 48A of the constitution of India . Article 39 (b)& (c) contain the objective of building of a welfare society and an egalitarian social order in the Indian Union. The State is to direct its policy in such a manner as to secure distribution of ownership and control of material resources of community to subserve the common good, and to ensure that the operation of economic system does not result in concentration of wealth and means of production to common detriment. The report needs to be examined in the light of Directive Principles of State Policy as given under the terms of reference of the twenty-second Law commission. The law of adverse

possession is an archaic colonial law viewed in the context of the Directive Principles referred here since adverse possession fetters the ability of the State to promote the ideals enshrined in the Directive Principles. If plea of adverse possession succeeds against the State, common good suffers since adverse possession does not set limit on the extent of land nor its purpose nor the income level of the occupant claiming adverse possession of Government land.

Consultation with other Ministries and Departments

The Commission has not consulted the relevant Ministries of the Government of India and States from where useful inputs could have been received. In the absence of the inputs of the Ministries of Government of India and the State Governments the benefit of broad-based deliberation have been avoidably curtailed.


SUMMING UP


It must be remembered that the Law of Adverse Possession is empirically shown not to promote the cause of the adverse possessor, as seldom the courts have ruled in favour of adverse possession because of the contradictory requirement of the nature of possession to be peaceful as well as hostile and notorious. However, because of the mere existence of such a law the true owners have been subjected to avoidable and expensive litigation running over generations by unscrupulous persons who are not averse to fraud and forgery. This has saddled the already over-burdened machinery of the courts with avoidable work to the misery of the litigants. The morality argument propounded by Larissa Katz (2010) basing on the analogy of *coup d'état* is not only contradictory but ridiculous. If the law of adverse possession is struck off from the Limitation Act it will not hinder anybody's right nor will it cause any neglect of land resources as has been argued in the Report. We cannot be oblivious of the fact that today land prices are sky rocketing in the country both in rural and urban areas without any respite for the land buyers. In such a situation any argument that land is not put to proper use by the landowners does not have any merit, since land can be easily monetized. So, neither the morality argument nor the proper use argument warrants the continuation of the law of adverse possession. In an over-populous country like India where land is scarce, the law of adverse possession only promotes false claims under the colour of adverse possession which ultimately does not stand judicial scrutiny. It may also be observed that all the States have laws for providing land to the landless. Under this law the poor obtain proprietary rights in a manner authorised by law. To argue that adverse possession helps the poor and protects their rights in a welfare State and therefore such law of adverse possession cannot be abolished, holds no water since every State has a law for the settlement of government

land with the poor which is the proper welfare legislation for the poor. To claim that adverse possession protects the rights of the poor ignores the abuse of the law by land mafias, builders and powerful interest groups who are not disqualified to claim adverse possession under the present law. Considering the aforesaid grounds it can be concluded that law of adverse possession serves no useful purpose considering the enactment of land laws in all the States for the welfare of the poor and the possibility of fraudulent claim of adverse possession as is established by large number of cases where courts have declined the claim of adverse possession. The sentiment of the Court needs to be appreciated when it took the unusual step of urging the Ministry of Law & Justice to review the Law of Adverse Possession considering its inherent contradictions and recognizing that the law places a premium on dishonesty. In several other countries, this law has been modified or abrogated. It therefore, needs to be appreciated that it is an appropriate moment to strike off this provision of adverse possession from the Law of Limitation.

References:

1. The Moral Paradox of Adverse Possession, Larissa Katz (2010).
2. Practice Guide 4: Adverse Possession of Registered Land, Government of UK.
3. Supreme Court Judgments on Adverse Possession.
4. Reports of Law Commission of India, New Delhi.


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