

WORKSHOP Dtd 09.01.2016

Conclusion of topic on Law relating to adverse possession

We now discussed an important topic of an adverse possession. I am concluding the said topic .

INTRODUCTION

“ The justification for the law of adverse possession is quoted as that possession is “nine points of the law”.

1. The concept of adverse possession contemplates a hostile possession i.e. the possession which is expressly or impliedly in denial of the title of the true owner to the knowledge of the true owner and claiming the title as an owner in himself by the person claiming to be in adverse possession. In other words such hostile possession shall not be secret and person in adverse possession must not acknowledge the title of the true owner but has to deny the title of the true owner. The adverse possession must be capable of being known by the parties interested in the property, though it is not necessary that there should be evidence of the adverse possessor actually informing the real owner of the former's hostile action. This shows that the possession must be **nec -vi nec-clam nec- precario i.e. in continuity, in publicity and in extent.**

SOURCES OF ADVERSE POSSESSION IN INDIAN LEGAL SYSTEM

2. The law on adverse possession is contained in the Indian Limitation Act. Article 65, Schedule I of The Limitation Act

prescribes a limitation of 12 years for a suit for possession of immovable property or any interest therein based on title. It is important to note that the starting point of limitation of 12 years is counted from the point of time “when the possession of the defendants becomes adverse to the plaintiff”. Article 65 is an independent Article applicable to all suits for possession of immovable property based on title i.e., proprietary title as distinct from possessory title. Article 64 governs suits for possession based on possessory right. 12 years from the date of dispossession is the starting point of limitation under Article 64. Article 65 as well as Article 64 shall be read with Section 27 which bears the heading –“Extinguishment of right to property”. Section 27 of the Law Of Limitation is an exception to the well accepted rule that limitation bars only the remedy and does not extinguish the title. It lays down a rule of substantive law by declaring that after the lapse of the period, the title ceases to exist and not merely the remedy.

3. Permissive possession is not hostile possession. It is however true that, if the person in permissive possession changes his animus and continues to hold with an open and continuous assertion of a hostile title, his possession becomes adverse to the owner.

4. POSSESSION OF THE CO-OWNERS:-

The possession of the co-owner will be deemed to be the possession of all even if some co-owners are not in actual possession. Therefore the possession of the co-owner cannot be considered adverse to the other co-owners. If there is ouster or something equivalent to it, then the possession of the co-owner will be adverse to others. The same principle applies to co-sharers **in a**

Hindu Joint Family as there is a community of interest and unity of possession among all members of joint family and every co-parcener is entitled to joint possession .

5 . MERE POSSESSION AND LONG POSSESSION for 100 years– is not adverse possession. .

(Annakili V/S. A.Vedanayagam & others (AIR 2008 SUPREME COURT 346).

6. **PRINCIPLE OF TACKING.**

In view of the principle of tacking if someone derives a title from a person in adverse possession he can tack the period of adverse possession enjoyed by earlier person so as to complete his title as an owner by adverse possession for a total period of 12 years.

(Gurbinder Singh & another Vs. Lal Singh & another, AIR 1965 SC 1553) .

During interact session the following points were raised.

Point No.1:- Whether the possession of mortgagee can be treated as adverse possession?

Ans-- The possession of the mortgaged property is to be given to mortgagee by mortgage transaction . Therefore it is permissive possession. It cannot become adverse possession as the mortgagee cannot assert hostile title against the true owner i.e. mortgagor. In this regard we can see the following ruling in the case of, **Soni Lalji Jetha (deceased) through his LRs v. Soni Kalidas Devchand & Ors., AIR (1967) SC 978 : [1967] 1 SCR 974.** wherein, it is held that

“ A mortgagee in possession under the terms of mortgage

cannot, by merely asserting rights of ownership in the mortgage property, convert his possession as mortgagee into possession hostile to the mortgagor. But the mortgagor can sell the mortgage property to his mortgagee and thereby put the mortgagee's estate to an end and thereafter all the right, title and interest in the property would vest in the mortgagee. Such a sale would be valid and binding and thereafter the character of possession as a mortgagee would be converted into possession as an absolute owner. Even if such a sale is held to be voidable and not binding on a subsequent purchaser, the character of possession based on assertion of absolute ownership by the mortgagee does not alter, and if such possession continues throughout the statutory period it ripens into a title to the property.”

In view of above ruling, it is hereby concluded that the mortgagee cannot assert hostile title in mortgaged property against the mortgagor.

Point No.2:- As per ruling in case of Gurudwar Sing Vs. Gram Panchayat Shirtala MANU/SC/0939/2013, the suit for declaration of the relief of ownership by adverse possession is not maintainable. In the circumstances, how an adverse possessor can become owner, eventhough he proved his adverse possession?

Ans- In this regard the Hon'ble Principal District Judge made clear that, a suit for declaration of title by adverse possession is not maintainable. Though he can not get declaration of his ownership. However if the true owner did not file suit for possession within 12 years as per Article 65 of the Limitation Act, his right in immovable property extinguishes as per Section 27 of the Indian Limitation

Act, . Thus an adverse possessor becomes owner of said property by virtue of law of adverse possession. He only cannot get relief of declaration to that effect as laid down by the Hon'ble Supreme Court in Gurudwar Sing's case. Thus it is concluded that an adverse possessor becomes owner of property by law of adverse possession even though he has no right to get relief of declaration.

Point No.3:- When two judgments of the Hon'ble Supreme Court of equivalent bench are inconsistent one, then which judgment will prevail?

Ans- The Hon'ble Principal District Judge has nicely guided on this point by referring the following judgments of the Hon'ble Supreme Court,

- 1. Siddharam Mhetre vs State Of Maharashtra in CRIMINAL APPEAL NO. 2271 of 2010 decided on 2 December, 2010**
- 2. Central Board Of Dawoodi Bohra vs State Of Maharashtra Writ Petition (civil) 740 of 1986 ,on 17 December, 2004**
- 3. Union Of India & Anr vs Raghubir Singh, 1989 SCR (3) 316**
- 4. Rattiram & Ors vs State Of M.P.Tr.Insp.Of Police in CRIMINAL APPEAL NO. 223 OF 2008,on 17 February, 2012.**

In view of above rulings it can be concluded that an earlier judgment of the Hon'ble Supreme Court of equivalent bench will prevail.

Point No.4:- What has to be done by adverse possessor for proving adverse possession?

Ans - In this regard after discussion it is hereby concluded that, the following points are to be pleaded and established by adverse possessor.

- i) Adverse possessor must deny the title of true owner.
- ii) His possession must be adequate in continuity ,in publicity and in extent that it is adverse to the owner.
- iii) He must have claim the title to the immovable property himself openly, i.e.
 - a)He must have made attempt to enter his name to record of rights.
 - b)He must have paid the tax of the property to government as owner.
- iv) The possession must be actual, visible, hostile and continued during the period of 12 years.
- v) Animus possedendi is necessary, as his intention of adverse possession must be within notice and knowledge of the real owner.

Point No.5:- Whether it is necessary to frame an issue of limitation, when there is plea of adverse possession?

Ans- When the suit for possession on the basis of title is filed under Article of 65 of the Limitation Act and the defendant took plea of adverse possession. In such circumstances, it is essential to frame an issue of limitation alongwith an issue of adverse possession,

since cause of action for suit for possession is different than the plea of adverse possession taken by the defendant.

Point No.6:-

Whether it is necessary to frame an issue of adverse possession ,when plea is taken in one sentence by defendant that, “he has become owner of suit property by adverse possession as he has been possessing it for 12 years”.

Ans- It has to be noted that, it is necessary to plead the date of adverse possession. In this regard the Hon'ble Apex Court has also held in case of *S.M.Karim Vs. Mst.Bibi Sakina (AIR 1964 SUPREME COURT 1254)* that,

“Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found .”

In view of above ratio laid down by the Hon'ble Supreme Court, mere one sentence in pleading not sufficient raising plea of adverse possession. The Hon'ble Principal District Judge also guided on this point and expressed her view that, unless there is pleading consisting ingredients of adverse possession, no issue to that effect can be framed. Thus it is hereby concluded that an issue of adverse possession can not be framed unless there is sufficient pleading consisting ingredients of adverse possession. A vague sentence is not suffice for framing said issue.

CONCLUSION

7. In concluding today's toic I must refer the recent judgement in **Hemaji Waghaji v Bhikhabhai Khengarbhai AIR 2009 SC 109** , the Honble Supreme Court ultimately observed as under:

"32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

8. Considering this recent view of the Honble Supreme Court in cases of **Hemaji Waghji and State of Haryana Vs. Mukesh Kumar AIR 2012 SC 559** ,the Court should be extremely slow in defeating the rights of the title holder unless and until the defendants lead strong and satisfactory evidence to establish adverse possession.

Thus the topic of law relating to adverse possession is hereby concluded.

(R.V.Lokhande)

Date:- 09/01/2016.

Civil Judge,S.D., Barshi.