

**DISTRICT COURT, BHANDARA**  
**THIRD WORKSHOP**

**SUMMARY OF LEGAL WORKSHOP PAPER ON THE SUBJECT**  
**“ARTICLE 64 AND ARTICLE 65 OF LIMITATION ACT”**

Both articles 64 and 65 are rules of limitation, the only difference being that in the former the onus lies on the plaintiff to prove his dispossession within 12 years while in the latter it is for the defendant to prove when his possession became adverse.

A suit for declaration of title and recovery of possession is governed by Art. 65 of new Act which is different from Art.142 of the old Act inasmuch that under Art.142, the plaintiffs had to prove title and also possession within 12 years from the institution of the suit. Under Art. 65, if the plaintiffs bring a suit for possession over immovable property or any interest therein on the basis of title, the plaintiffs are required to prove only the title and not the subsisting title.

When the character of suit is one of declaration of title and recovery of possession, Art.65 of the Limitation Act is applicable.

In suit for declaration and injunction in respect of claim for immovable property, period of limitation is 12 years and not 3 years.

Where an application by decree-holder for delivery of possession under O.21, R.97 of the Civil Procedure Code is dismissed, against a third party in possession, the decree-holder is entitled to institute a suit for possession against such party under O.21, R.103 of

the Code and the limitation for such suit is one year from the date of the order under Art. 98 of the Limitation Act, 1963. A purchaser, from the decree-holder under a private sale, after the dismissal of the decree-holder's application under O.21, R.97, is however, not bound to sue within one year of the order, and his suit for possession will be governed by Art. 65 of the Act. (*AIR 1971 Bom. 16*)

Where the plaintiff has neither title nor possession within 12 years of the suit, his suit for possession is barred by limitation. (*AIR 1973 SC 2341*).

The combined effect of S.6 of the Specific Relief Act and Arts.64 and 65 of the Limitation Act of 1963 may be summed up as follows :

(1) An owner of property is ousted from possession by force by a trespasser. The owner can sue the trespasser for possession solely on the ground of such dispossession without proving his title. The limitation for such a suit will be 6 months from the date of such dispossession under S.6(2)(a) of the Specific Relief Act.

(2) Even where the owner does not bring such a suit within the period of 6 months, he can sue for possession on the basis of his proprietary title. The right to bring such a suit is saved by S.6(4) of the Specific Relief Act. The period of limitation for such a suit will be 12 years under Art.65 of the Limitation Act, 1963.

(3) A is the owner of property. B is in lawful possession of it. A dispossesses B otherwise than in due course of law. B can recover back the property from A under S.6 of the Specific Relief Act solely on the ground of his dispossession otherwise than in due course of law, although he has no manner of title to the property as against A and

although A is the owner of the property. It must be remembered in this connection that B's possessory title though good against all

persons other than the true owner, is of no avail against the owner namely, in this case, A. In spite of this fact, he can recover the property even from A, solely on the ground of his dispossession otherwise than in due course of law. But this he can do only under S.6 of the Specific Relief Act. If he fails to sue within the period of 6 months prescribed by that section, he cannot subsequently sue A for the recovery of the property. The reason is that as against A, the true owner, he has no manner of title and it is only a suit based on title that is saved by S.6(4) of the Specific Relief Act.

(4) A is the owner of property. B is in unlawful possession of it. C who has also no title to the property dispossesses B by force and without recourse to law. In this case also, B can recover back possession from C solely on the ground of his dispossession otherwise than in due course of law and without proving any title to the property. Such a suit will be one under S.6 of the Specific Relief Act and will be governed by the six months period of limitation under that section.

But even if B fails to bring such a suit within the period of 6 months under S.6 he can still sue C on the basis of his possessory title by reason of his previous possession. Such a suit will also be one based on title within the meaning of S.6(4) of the Specific Relief Act and will be saved by that provision. The limitation for such a suit will be 12 years under Art.64 of the Limitation Act, 1963. In this connection, it must be noted that such a suit is only one based on previous possession and dispossession and not on "title" within the

meaning of Art.64 although it is a suit based on title within the meaning of S.6(4) of the Specific Relief Act. As already explained above, the context in which the word “title” is used in Arts.64 and 65

shows that it is used in those articles in a limited sense as including only proprietary title as distinguished from possessory title, although ordinarily the word title is wide enough to include both proprietary and possessory titles.

Further, apart from the express provision in S.6(4) which saves the right to bring a separate suit on the basis of title, proprietary or possessive, the suit contemplated by S.6 of the Specific Relief Act (to which suit alone the limitation of 6 month's period under the section is applicable) is one which is based solely and purely on the dispossession of the plaintiff otherwise than in due course of law and not on any manner of title- including even the title created by plaintiff's previous possession. In fact, the question of title in any form whatsoever whether it is proprietary or possessory, is irrelevant in such a suit. Hence, a suit based on the title created by the plaintiffs' previous possession is not contemplated by S.6 at all and hence is not a suit to which the six months period of limitation under the section applies at all. Considered from this point of view, S.6(4) really serves only as an Explanation to S.6 rather than as a substantive part of the section. Thus, we are left with the position that a suit based on possessory title i.e., a title created by the fact of plaintiff's previous possession, is governed by the 12 years' rule under Art.64 of the limitation Act of 1963 and not by S.6 of the Specific Relief Act, 1963 even if it may be a case in which the plaintiff has been dispossessed otherwise than in due course of law.

(5) In all the cases considered above, the suit that is brought after the expiry of the 6 months period under S.6 of the Specific Relief Act is by the dispossessed person who fails to avail himself of the summary remedy provided under that section. It has been seen that such a suit is maintainable by the true owner against a trespasser or by a previous trespasser against a subsequent trespasser who ousts him but is not maintainable by a trespasser against the true owner.

The position may now be considered from the point of view of the dispossessing person i.e., the person who dispossesses another and against whom a decree is passed under S.6 of the Specific Relief Act. Such a person may also bring a suit notwithstanding such decree, to vindicate his title to the property. Thus, where a trespasser who is forcibly ejected by the true owner of the property sues and obtains a decree against the true owner in a suit under S.6 of the Specific Relief Act, the true owner can afterwards sue on the basis of his title and recover possession from the trespasser who has been successful in the suit under S.6 of the Specific Relief Act. The true owner's suit will be governed by Art.65 of the Limitation Act, 1963.

But suppose a true owner is ejected by force by a trespasser. In a suit under S.6 of the Specific Relief Act a decree is passed in favour of the true owner. He obtains possession in execution of such decree. In such a case, the trespasser cannot afterwards sue the true owner for possession. The reason is that as against the true owner, the trespasser has no title.

Similarly, suppose a property belonging to A is in the unlawful possession of B; C ousts B from such possession forcibly; B then

obtains a decree against C in a suit under S.6 of the Specific Relief Act, C cannot afterwards sue B for possession on title. The reason is that as between B and C, B has the better title as he was in possession previously to C and such possession gave B a title against all persons except the true owner, A.

The possession must be open and without any attempt at concealment. It is not necessary that the possession must be so effective so as to bring it to the specific knowledge of the owner. (*AIR 1981 SC 707*)

Mere possession of the property is not sufficient to establish adverse possession. The person who sets up title by adverse possession must aver as to when possession commenced. Mere possession over a long time without a claim of right does not create a proprietary right. Possession should as well be peaceful and continuous. Mere possession however long does not necessarily mean that it is adverse to the true owner.

The expression “adverse possession” means a hostile possession, that is, a possession which is expressly or impliedly in denial of the title of the true owner.

Where possession of a land was given by the owner to a person who has lent him money for the purpose of the latter taking the receipt from the land in lieu of interest on the loan, the latter's possession under the arrangement is not hostile to the owner and will not enable him to acquire title by adverse possession against the owner. (*AIR 1951 SC 247*)

Normally a person cannot prescribe with regard to his own property. But, under certain circumstances, the possession of a

person may be adverse to himself. Thus, where A is in possession of his own land, but under a lease from B is under the wrong impression that it belongs to B who asserts a title thereto, A's possession would be B's possession and consequently adverse to A.

Where a Muhammadan executed a gift deed of his property in favour of his minor grand daughter and delivered possession to the minor represented by himself as her guardian, it was held that his possession would be that of the donee and adverse to himself. **(AIR 1971 Mad 184.)**

It is necessary in order to acquire a title by adverse possession that the possession of the wrongdoer must be continuous for the prescribed period of limitation. It follows that where there is a break in the adverse possession of the wrongdoer, limitation ceases to run against the lawful owner of the property. **(AIR 1971 SC 2556)**

The delivery of symbolical possession in execution of a decree to the decree-holder or to the auction-purchaser is, as against the defendant in the suit, equivalent to the delivery of actual possession. It will follow from this that the delivery of such possession to the decree-holder or auction-purchaser will operate as dispossession of the defendant and will put an end to the adverse possession of the defendant. **(AIR 1966 SC 470).**

An attachment of immovable property under the Civil Procedure Code does not affect the possession of the property. Hence, such attachment does not interrupt the adverse possession of the property. **(AIR 1939 Mad 456).**

Adverse possession is possession which is in contravention of the right of another to such possession. Hence, possession cannot be adverse against a person who is not entitled to possession.

Possession of co-owner cannot be adverse. Possession of a property belonging to several co-sharer by one co-sharer shall be deemed that he possess the property on behalf of the other co-sharers unless there has been a clear ouster by denying the title of other co-sharers and mutation in the revenue record in the name of one co-sharer would not amount to ouster unless there is a clear declaration that title of other co-sharers was denied. (***Darshan Singh vs Gujjar Singh, 2002(1) Bom.C.J.588 S.C.***)

Plea of adverse possession against minor. Not available against minor whose property has been purchased without permission of Court under section 8 of Hindu Minority and Guardianship Act, 1956. Any secret animus to hold property adversely would not be relevant to conclude adverse possession in absence of specific evidence to that effect. (***Subash Appa s/o Pundlik Appa Meti..vs.. Maruti Laxmanrao Sawarkar 2006(1) Bom.C.J.603.***)

The Supreme Court has also clarified in case of ***Des Raj ..vs.. Bhagat Ram (AIR 2007 SC (Supp) 512*** as under :

*“In case of this nature, where long and continuous possession of the plaintiff-respondent stands admitted, the only question which arose for consideration by the Courts below was as to whether the plaintiff had been in possession of the property in hostile declaration of his title vis-a-vis his co-owners and they were in know thereof.*

*Mere assertion of title by itself may not be sufficient unless the plaintiff roves animus possidendi. But the intention on the part of the plaintiff to possess the properties in suit exclusively part of the plaintiff to possess the properties in suit exclusively and not for and on behalf of other co-owners also is evident from the fact that the defendants appellants themselves had earlier filed two suits. Such suits were filed for*

*partition. In those suits the defendants appellants claimed themselves to be co-owners of the properties. A bare perusal of the judgments of the Courts below clearly demonstrate that the plaintiff had even thereon asserted hostile title claiming ownership in himself. The claim of hostile title by the plaintiff over the suit land, therefore, was, thus, known to the appellants. They allowed the first suit to be dismissed in the year 1977. Another suit was filed in the year 1978 which again was dismissed in the year 1984. It may be true, as has been contended on behalf of the appellants before the Courts below, that a co-owner can bring about successive suits for partition as the cause of the action therefore would be continuous one. But it is equally well settled that pendency of a suit does not stop running of 'limitation'. The very fact that the defendants despite the purported entry made in the revenue settlement record of rights in the year 1953 allowed the plaintiff to possess the same exclusively and had not succeeded in their attempt to possess the properties in village Samleu and/or otherwise enjoy the usufruct thereof, clearly go to show that even prior to institution of the said suit the plaintiff-respondent had been in hostile possession thereof.”*

Where the question was one of adverse possession against the Government, Arts.142 and 144 of the Act of 1908 were to be read with Art.149 of that Act (corresponding to present Art.112. And so reading them, it was clear that no adverse possession could be effectively pleaded against the Government for a period of less than sixty years. (**AIR 1951 SC 469**). Under the present Art.112 the period of sixty years is now reduced to thirty years.

The Hon'ble Supreme Court of India, in two recent decisions, namely, **Hemaji Waghaji vs. Bhikhabhai Khengarbhai**,

*AIR 2009 SC 103*, and *State of Haryana vs. Mukesh Kumar, 2011(10) SCC 404*, has pointed out the need to have a fresh look at the law of adverse possession. In those cases the Hon'ble Supreme Court described the law of adverse possession as irrational, illogical and wholly disproportionate and extremely harsh for the true owner “and a windfall for dishonest person who had illegally taken possession of the property”. The Hon'ble Supreme Court further observed that “The law ought not to benefit a person who in 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 wrongly taken possession of the property of the true owner. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to lose its possession only because of his inaction in taking back the possession within limitation.”

In the latest case of *State of Haryana vs. Mukesh Kumar (2011) 10 SCC 404*, the Hon'ble Supreme Court highly criticised the doctrine of adverse possession. In this case the State of Haryana (Police Department) set up the plea of adverse possession which was not accepted by the trial Court and appellate Court. The Hon'ble Supreme Court described the law of adverse possession as archaic and “needs a serious relook” in the larger interest of the people. It was observed, “ Adverse possession allows a trespasser, a person guilty of a tort, or even a crime, in the eye of law to gain a legal title to land which he has illegally possessed for 12 years. How 12 years of illegality can suddenly be converted to legal title is, logically and morally speaking, baffling. This outmoded law

essentially asks the judiciary to place its stamp of approval upon conduct that the ordinary Indian citizen would find reprehensible. The doctrine of adverse possession has troubled a great many legal minds. We are clearly of the opinion that time has come for change.”

In the above said ruling the observations made by the Hon'ble Apex Court at paragraph 39 are also relevant. The Hon'ble Apex Court observed “the Government instrumentalities including Police, in the instant case have attempted to possess land adversely. This, in our opinion, is a testament to the absurdity of the law and a black mark upon the justice system's legitimacy”. Then, it was said “if this law is to be retained according to the wisdom of Parliament, then at least the law must require those who adversely possess land to compensate the title owners according to the prevalent market rate of the land or property.” Then at paragraph 40, it was observed that Parliament must seriously consider at least to abolish “bad faith” adverse possession i.e., adverse possession achieved through intentional trespassing. At paragraph 41, it was also observed that if the Parliament decides to retain the law of adverse possession, the duration of possession ( i.e., limitation period) under the law of Limitation should be extended to 30 to 50 years, “rather than a mere 12”. It was pointed out that “a longer statutory period would decrease the frequency of adverse possession suits and ensure that only those claimants most intimately connected with the land acquire it, while only the most passive and unprotective owners lose title.”

Sd/-

( S.R.Sharma )

District Judge-1 & Adl.Sessions Judge,  
Bhandara.