

**THE NATURE OF TITLE OF ADVERSE  
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**Abstract**

The concept of adverse possession is one of the most intriguing aspects in the field of property law and the law of limitation. This concept may seem to accord rights to those who act in violation of the laws in force. But it is not the case since it is the way by which a squatter obtains a proprietary right over a piece of land due to the inaction of the actual owner during the statutory period prescribed. Even though this concept has been clarified in numerous case laws by the Indian judiciary, there is still some confusion due to cases which only discuss about the extinguishment of the proprietary rights of the actual owner, but not about what happens to those rights after they are extinguished. Whether they are transferred to the squatter or whether an entirely new title is created in favour of the squatter.

Apart from the aforementioned issue, there arises another issue as to whether the heading of the section and the chapter heading in which the section falls are contradictory. Section 27 of the Limitation Act, 1963, the relevant provision relating to adverse possession falls under Chapter IV of the Limitation Act, 1963 which states “Acquisition of ownership by possession.” Thus it is to be seen whether Section 27 is correctly placed under Chapter IV of the Limitation Act, 1963.

Thus, in this paper, the authors will discuss the correct concept of adverse possession with the relevant statutory provisions along with the case laws, discuss whether the existing proprietary interests pass on to the squatter and also point out the contradictions, if any, between the section heading and the chapter heading.

**The Concept of Adverse Possession**

Adverse possession is a principle of law by which someone who possesses the property of another person for an extended period of time may be able to claim legal title to that land, provided he fulfills certain other criteria. It is a mechanism which has the effect of allowing a trespasser to acquire title to land and to displace the rights of the ‘paper-owner’. It is based on the principle of limitation of actions whereby an action in the courts becomes ‘statute-barred’ after a certain period of time.<sup>1</sup> The period of limitation for possession of immovable property or any interest based on title is twelve years. 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. The time period starts to operate from the moment the trespasser takes adverse possession of the true owner’s property.

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<sup>1</sup> Paul Chynoweth, *Study Paper: The Law of Adverse Possession*, 2  
<[http://www.lawlectures.co.uk/law3/Documents-Law3/Adverse-Possession\(SP\).pdf](http://www.lawlectures.co.uk/law3/Documents-Law3/Adverse-Possession(SP).pdf)> (Last accessed Mar. 21, 2015).

Transfer of property generally means an act of a living person, or an act ordained by law, or an act dependent upon the death of a living person, by which the ownership status of a person is changed. The transfer by operation of law takes place without an act of parties by directly effecting transfer. It is the legal consequence of a particular event and is governed by the relevant laws. One of the legally recognized modes of acquisition of ownership is uninterrupted and uncontested possession for a specified period of time, hostile to the rights and interests of the true owner i.e. adverse possession.

There is no statutory definition of adverse possession. Adverse possession refers to the actual and exclusive possession of a piece of property coupled with an intention to hold as the owner.<sup>2</sup> It is the possession by a man holding the land on his own behalf or on behalf of some person other than the true owner having the right to immediate possession.<sup>3</sup> Adverse possession is a doctrine under which a person in possession of land owned by someone else may acquire a valid title to it, by virtue of him being in possession for a sufficient period of time, as given in the Limitation Act, 1963, and as long as certain other legal requirements are met.

This would mean that the person who holds the proprietary right to possession cannot recover the property from the person in adverse possession since he has allowed his right to be extinguished by his inaction, and the law comes into play as a necessary consequence thereto. Adverse possession means hostile possession, that is possession which is expressly in denial of the title of the true owner.

Therefore, the person in adverse possession is enabled to hold on to his possession as against the owner not in possession. Therefore the title passes from the owner to the adverse possessor by operation of law as the possession is not handed over by the owner but is acquired by the adverse possessor by the owner's inaction. It is neither a conveyance nor a transfer by will, but is a transfer by operation of law.

The person who settles on a piece of property without title or with a view to acquiring title is called a squatter. A squatter who does not set up a claim of right cannot plead adverse possession. A mere squatter or intruder who does not deny the title of the true owner or set up any right in himself cannot claim to be in adverse possession.<sup>4</sup>

The principle of adverse possession does not operate as simply as it sounds. In fact, there are many requirements to be fulfilled by the squatter in order to establish his title to the property.

A person claiming title to land by adverse possession must prove four basic elements. The claimant must show that she or he used property belonging to another in a way that was<sup>5</sup>

- (1) Open and notorious,
- (2) Actual and uninterrupted,
- (3) Exclusive, and

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<sup>2</sup> T.R. DESAI, COMMENTARY ON THE LIMITATION ACT 915 (10<sup>th</sup> Ed., Universal Law Publishing Co., Delhi) (2011).

<sup>3</sup> Bejochunder v. Kaliparsuno, 4 Cal. 327.

<sup>4</sup> Premendu Bhusan Mandal v. Sripati Ranjan Chakravarty, A.I.R. 1976 Cal. 55.

<sup>5</sup> Chaplin v. Sanders, 100 Wn.2d 853.

(4) Hostile.

The following are the paramount elements which are to be proved by the party claiming adverse possession-<sup>6</sup>

- 1) That he has been in possession of the property in dispute for a period exceeding twelve years.
- 2) That his possession was to the exclusion of all other persons.
- 3) That his possession was open and hostile to the true owner.
- 4) That the adverse possession must be nec vi, nec clam, nec precario i.e., for the perfection of title the possession required must be adequate in continuity, in publicity and extent.<sup>7</sup>

### **The Statutory Provisions Related to Adverse Possession**

Section 27 of the Limitation Act, 1963 is as follows-<sup>8</sup>

*“Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.”*

This section talks about extinguishment of right to property. It says that if the person having the right to possession allows his right to be barred by the limitation of law, his title itself is extinguished in favour of the party who is in possession.<sup>9</sup> Thus, it is expressly provided in this section that when there exists a cause of action in favour of a person to file a suit for possession and if suit is not filed within the period of limitation, then his proprietary right shall stand extinguished. This means that the property will be acquired by the party in possession by operation of law. This section conveys that limitation not only bars the remedy, but also extinguishes the title. But for this section to apply, the true owner should not be in possession of the property. This section presupposes that a person who is not in possession of his property has lost his title to the property to someone who is in possession. The period by which a person in possession of a property, adversely as against the true owner, can perfect his title to such property is twelve years. If within the twelve years from the commencement of such possession, the true owner does not take any legal action against the possessor, the title of the real owner would extinguish and the party in possession would acquire the title. This is the manner in which the law of adverse possession operates.

The provision under Section 27 of the Act is an exception to the rule that a limitation statute is a statute of repose and ordinarily bars a remedy but does not extinguish a right. An extinction of the remedy as contemplated by the provisions of the Limitation Act, 1963 would be prima facie attracted on all types of suits.<sup>10</sup>

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<sup>6</sup>Natesan v. Chinnachi Kandar, A.I.R. 1996 Mad. 468.

<sup>7</sup>Rama Kant Jain v. M.S. Jain, A.I.R. 1999 Del. 281.

<sup>8</sup>The Limitation Act, 1963 § 27.

<sup>9</sup>Gunga Govind Mandal v. The Collector of Twenty Four Pergunhas, 11 Moo IA 345 (P.C.).

<sup>10</sup>Prem Singh v. Birbal, (2006) 5 S.C.C. 353.

This provision, read along with Articles 64 and 65 of the Schedule to the Limitation Act, 1963, establishes the law of adverse possession as it stands in India today. Article 64 deals with cases where the dispute is over possession not necessarily based title, and in such cases the period of limitation runs from the time when the plaintiff was dispossessed of the property.

Article 65 of the Limitation Act, 1963, provides that the period of limitation in case of a suit for possession of immovable property or any interest based on title. Such statutory period is twelve years. This Article is applicable to suits for possession on the basis of title. For this Article to apply, the person in possession of the property must assert an interest in the property and must deny the title of the true owner. Section 3 of the Limitation Act, 1963 is about bar of limitation. It says that every suit instituted, appeal preferred and application made after the prescription period shall be dismissed. It limits the time after which a suit or other proceeding would be barred. And the court can dismiss a suit on the ground of limitation even if that defence has not been raised in that plea. The term "prescribed period" is defined in Section 2(f) of the Limitation Act, 1963, as the period of limitation computed in accordance with the provisions of the Act. This section limits the time after which the suit or other proceeding would be barred. And the prescribed period for claiming adverse possession is twelve years, as given under Article 65 of the Act.

Thus, the two provisions, Section 27 and Article 65 of the Limitation Act, 1963, read together, clearly indicate that on the expiry of twelve years, the title of the true owner to his property extinguishes and the squatter acquires the title to the property.

### **The Nature of the Title**

To understand the nature of the title acquired by the squatter by operation of the law related to adverse possession, there are three theories which could be possible-

*(On expiry of the twelve year period):*

- a) Extinguishment of the title of the immediate owner who has the proprietary entitlement to possess (known as the immediate PEP owner) and the squatter getting no title at all.
- b) The immediate PEP owner's title getting extinguished, and the squatter getting a different title.
- c) The immediate PEP owner's title getting extinguished and the same title being passed to the squatter.

The first theory talks about extinguishment of the title of the immediate PEP owner and the squatter getting no title at all. It is very clear that under the doctrine of adverse possession a person in possession of land owned by someone else acquires a valid title to it, so long as certain requirements are met, and the adverse possessor is in possession for a period of twelve years, as given in the Limitation Act, 1963.

By virtue of Section 27 of the Limitation Act, 1963, the right of the immediate PEP owner is extinguished once statutory period ends. And, Under Article 65 of the Limitation Act, 1963, a

suit for possession of immovable property or any interest therein based on title can be instituted within a period of twelve years calculated from the date when the possession of the defendant becomes adverse to the plaintiff. Both these sections explain that the squatter is not left without a title. His entire claim of possession of property is based on his title, which he has perfected by adverse possession. If the rightful owner does not bother to assert his title within the period prescribed by the provisions of the statute of Limitation applicable to the case, his right is forever extinguished and the immediate PEP owner acquires an absolute title. Therefore, the first theory stands disproved since only the first part of this theory, i.e. extinguishment of the title of the immediate PEP owner, is correct and the second part is absolutely incorrect.

Having proved that the squatter acquires a valid title, the next question that arises is whether this title acquired by the squatter is an altogether different title or is it just the title of the immediate PEP owner which is transferred to the squatter.

The second theory states that the PEP owner's title is extinguished and the squatter gets a different title. The adverse possession principle operates to make the squatter the legal owner of the property which belongs to someone else. And the squatter can become the legal owner of that property only when he acquires the same title as the immediate PEP owner had, when he was the owner. The squatter can never get a different title as he simply displaces the immediate PEP owner and takes his place, meaning thereby, he acquires the PEP owner's title only, which now makes him the legal owner of the property.

The third theory states that the PEP owner's title is transferred to the squatter. Adverse possession not only extinguishes the title of the immediate holder of the PEP but also transfers the same title to the squatter. Once the twelve year period has elapsed, the title of the immediate holder of PEP is extinguished. And from that time period, the squatter acquires that title from the immediate PEP holder. It is only because of inaction on the part of the immediate PEP owner that his title is extinguished and is subsequently transferred to the squatter. In a consultation paper by the law commission of India,<sup>11</sup> it is mentioned that-

*“When the title to property of the previous owner is extinguished, it passes on to the possessor and the possessory right gets transformed into ownership. It means that since the person who had a right to possession has allowed his right to be extinguished by his inaction, he cannot recover the property from the person in adverse possession and as a necessary corollary thereto, the person in adverse possession is enabled to hold on to his possession as against the owner not in possession.”*

Ideally, the squatter acquires the 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 twelve years resulting into extinguishing of the latter's title. It is that extinguished title of the real owner which comes to vest in the wrongdoer.<sup>12</sup>

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<sup>11</sup> Law Commission of India, *Consultation Paper-cum-Questionnaire on Adverse Possession of Land/Immovable property*, para no. 2.2 <lawcommissionofindia.nic.in/reports/Adverse%20Possession.pdf>

<sup>12</sup> *Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors*, A.I.R. 2004 S.C. 3782.

Further, in the case of *P.T. Munichikkanna Reddy & Ors v. Revamma And Ors*,<sup>13</sup> it was held that-

*“Specific Positive intention to dispossess on the part of the adverse possessor effectively shifts the title already distanced from the paper owner, to the adverse possessor.”*

It was also held in the case of *Amrendra Pratap Singh v. Tej Bahadur Prajapati & Ors*,<sup>14</sup> that-

*“Such inaction or default in taking care of one's own rights over property is also capable of being called a manner of 'dealing' with one's property which results in extinguishing one's title in property and vesting the same in the wrong doer in possession of property and thus amounts to 'transfer of immovable property' in the wider sense”.*

Thus, the essential concept of adverse possession is that it consists of repudiation of the title of the real title holder and assumption of that very title by a person in actual possession,<sup>15</sup> i.e. the squatter.

The concept that the title of the immediate owner of the property is extinguished is well established. When a person is obliged to institute a suit for possession of any property, then by operation of section 27 of the Limitation Act at the determination of the period thereby limited his right to such property shall be extinguished.<sup>16</sup>

The Hon'ble Supreme Court of India held in the case of *T. Anjanappa And Ors v. Somalingappa And Anr*,<sup>17</sup> that-

*“Adverse possession is that form of possession or occupancy of land which is inconsistent with the title of any person to whom the land rightfully belongs and tends to extinguish that person's title. The operation of the statute is merely negative, it extinguished the right and title of the dispossessed owner and leaves the occupant with a title gained by the fact of possession and resting on the infirmity of the right of the others to eject him.”*

Even though it is merely stated that the title of the immediate owner of the PEP is extinguished without any talk about the transfer of his title, it does not mean that the title of the immediate PEP owner remains untransferred. Rather, it means that the same title of the immediate PEP owner extinguishes and subsequently passes on to the squatter. These cases only talk about the extinguishment of the title of the immediate PEP owner. Thus, if we take all the aforementioned cited cases into consideration, it can be concluded that it is the same title held by the immediate PEP owner, which passes on to the squatter, The squatter does not acquire a new title. Therefore, the second theory stands proved.

### **Contradiction between the Heading of Section 27 and the Heading of Chapter Iv Of The Limitation Act, 1963**

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<sup>13</sup>(2007) 6 S.C.C. 59.

<sup>14</sup>A.I.R. 2004 S.C. 3782.

<sup>15</sup>Narayan v. Trimbakrao Gopalrao Bagde and Ors, A.I.R. 1988 Bom. 94.

<sup>16</sup>Patel Naranbhai Marghabhai And Ors. v. Deceased Dhulabhai Galbabbhai And Ors, A.I.R. 1992 S.C. 2009.

<sup>17</sup>(2006) 7 S.C.C. 570.

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Section 27 is a part of Chapter IV of the Limitation Act, 1963. The chapter heading is “Acquisition of ownership by possession” and the section heading is “Extinguishment of the right to property”. These two headings are in total contrast to each other.

The chapter heading indicates about the ways in which ownership over a piece of property may be acquired. Taking any case of adverse possession, the chapter heading gives an impression that adverse possession is about ways in which a squatter would actively acquire ownership over the property. The chapter heading is, therefore, basically from the view point of the squatter and not from the view point of the actual owner of the property.

On the other hand, the heading of the section relating to adverse possession, i.e., Section 27, talks about the extinguishment of the right to property, which is from the point of view of the immediate PEP owner. It tells us how the right of the immediate PEP owner is extinguished. And, doesn't talk about acquisition of ownership by possession by the squatter. It only puts the onus on the owner of the property to save his property from trespassers and squatters.

This is how the chapter heading and the section heading are in contrast to each other.

In our view, the section heading is correct, as it correctly shows the concept of adverse possession. Adverse possession operates as a result of inaction on the part of the immediate PEP owner. In the leading case of *Amrendra Pratap Singh v Tej Bahadur Prajapati*,<sup>18</sup> decided by the Hon'ble Supreme Court of India, it was held that-

*The law does not intend to confer any premium on the wrong doing of a person in wrongful possession; it pronounces the penalty of extinction of title on the person who though entitled to assert his right and remove the wrong doer and re-enter into possession, has defaulted and remained inactive for a period of 12 years, which the law considers reasonable for attracting the said penalty. Inaction for a period of 12 years is treated by the Doctrine of Adverse Possession.”*

Thus, adverse possession is primarily about the penalty of extinction of title imposed on the immediate PEP owner. How the squatter acquires ownership, is secondary. Hence, as far as adverse possession is concerned, the section heading is correct, and not the chapter heading as it correctly indicates the doctrine of adverse possession.

## CONCLUSION

To conclude, it may be stated that the core and essence of the law of adverse possession is the prescription of a period of limitation for recovering possession or for the negation of the rights and interests of true owner. The doctrine of adverse possession, thus, operates to confer the title to a property on the adverse possessor. The conditions necessary to prove a claim of adverse possession are not given in any statutory provision, but have been laid down extensively through case laws. The title to the property in dispute is transferred as a result of a failure and inaction on the part of the true owner to enforce his rights within the prescribed time. It is a penalty on the true owner of the property in the form of extinguishment of his title to that property. Therefore, it is true that adverse possession commences against the wrong and is maintained against the right.

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<sup>18</sup>A.I.R. 2004 S.C. 3782.

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The same title, which the true owner possessed, is now passed on to the squatter by operation of the law of limitation. The squatter does not obtain any new title. The title acquired by him is the title which the true owner previously had, before the same got extinguished by operation of the law. The adverse possessor takes the place of the true owner, and becomes the owner of the property, acquiring the title to the property in his name. This is the nature of the title of the adverse possessor.

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