

## Claiming Of Title Over Adverse Possession

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### Adverse Possession Law: Claiming of Title of Immovable Property

Adverse possession is acquiring the title of immovable property by a person who is already in possession of the property despite not being the owner. If a person resides and possesses the property for a minimum of twelve years without any interruption from the owner, then the title inevitably passes to the possessor.

Any land that is in use has more value than the one kept idle. A possessor could claim for the title through Adverse Possession Law if the possessor at the time of the occupancy maintains the property and improvises the property and make the most use of the property at the time of possession.

The Limitation Act, 1963<sup>[1]</sup> gives a period of 12 years to the owner of a property for initiating a suit against the possessor who has adversely claimed the possession.

In the case of *Perry vs. Clissold*<sup>[2]</sup>, the Privy Council held that in case, a person who has an interest in the property but does not claim the rightful possession from the possessor, the ownership stands with the possessor.

Difference Between Possession And Adverse Possession (Adverse Possession Law)

Possession is when a rightful owner possesses a particular property and enjoys it whereas Adverse Possession is when a person possesses a particular property but he/she is not the owner of the property. A person cannot claim adverse possession only based on the possession of the property. The possessor must show that he/she has possessed the property in a rightful way and the owner of the property has not interrupted the possessor for occupying the property and the owner of the property had not shown any interest in the possessed property.

The burden of proof lies on the person who has possession of the property. The possessor should prove that he/she has adversely taken possession. The possessor should prove the various elements of the adverse possession before the court of law.

#### Elements Of Adverse Possession Law

Claiming for adverse possession requires that the possession must be continuous and uninterrupted. There are various elements to claim adverse possession. The elements below must be fulfilled in order to prove the adverse possession.

**Actual:** The possessor must be in possession completely in the limitation period. Actions such as repairing or reconstruction of the building or using it for agricultural purposes include actual possession.

**Hostile:** Mens rea of the possessor must be to acquire the property through adverse possession. It should be implied that the owner does not have any interest over the property.

**Public Knowledge:** The public must have knowledge that the possessor is using and enjoying the property. This element could be favorable to the owner of the property if any public informs about the adverse possession so that the owner could act upon it.

**Exclusivity:** The sole possession must be with the possessor.

**Continuity:** The possession should not be disturbed, there must be a flow in the possession.

In the case of *Mallikarjunaiah vs. Nanjaiah*,<sup>[3]</sup> it was observed that mere possession does not satisfy for claiming adverse possession but the elements of adverse possession must be proved.

#### When An Adverse Possession Cannot Be Claimed?

In *State of Haryana vs. Mukesh Kumar*,<sup>[4]</sup> the court held in the favor of the actual owner of the property. It was held that the concept of adverse possession must be looked into since a trespasser is gaining the title over a property.

In the following situations, the adverse possession cannot be claimed

- A person who holds the possession on behalf of another person is permissive possession. This type of possession cannot be converted into adverse possession.
- When the property is given to a person as a part performance by the owner of the property.
- A co-owner cannot claim adverse possession towards a property.

#### Babri Masjid Case

In the famous Babri Masjid Case,<sup>[5]</sup> the question of adverse possession was raised. One of the main arguments kept by the Muslim community was that the land was claimed through adverse possession. Adverse possession could be claimed only when there is continuous occupancy in the disputed place. They argued that the Babri Masjid is prevailing since the 16th century. Even

though the temple was demolished and they had occupied the place, the property is claimed through adverse possession.

However, the Supreme Court had rejected the claim of adverse possession of the Muslim people. The SC held that it was an empty land and anybody could build anything on the empty land.

The main reason behind the rejection of the claim for adverse possession was that there was no proof of a Hindu temple structure before the mosque was built.

The person claiming for adverse possession has the burden of providing the proof. The Muslim people were not able to prove the claim for adverse possession.

The case was dismissed and the land was awarded to the Hindus.

#### Adverse Possession And Lease

A lease is referred to the transferring rights of immovable property by the owner of the property to another person and getting paid back by the person in possession of the immovable property. An agreement can be drafted between the lessee and the lessor. Once the lease period expires or at the time of termination of the lease agreement, the lessor could serve notice to the lessee.

Here, a question arises that whether the lessee could claim adverse possession in the absence of the lease agreement? In the absence of the lease agreement, the tenure of the lease could be determined for a year. Without any lease agreement, the lease is automatically renewed every year but the owner of the property must be paid for the rights the lessee is enjoying over the property.

#### Adverse Possession And License

The concept of license is permissive and cannot be adverse. A licensee can use the licensed premises. The owner's title does not get affected in the case of a license. Once the license expires, the licensee cannot enjoy the rights over the licensed premises. But if the possessor proved the title of adverse possession for the period of twelve years, the owner cannot claim his rights.

#### Conclusion - Adverse Possession Law

Law of Limitation does not define the concept of adverse possession. Adverse possession only stops the owner from claiming his/her rights over the property after the limitation period exceeds. It is presumed that if the owner does not show his interest in his property then the adverse possession could take place. The concept of adverse possession basically gives the property for free to the possessors and removes the right of the owner of the property. However, the owners of the property must be aware of the adverse possessors.

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- [1] <https://indiankanoon.org/doc/1317393/>
  - [2] <https://rajnisiinhablog.files.wordpress.com/2017/12/perry-v-clissold.pdf>
  - [3] <https://indiankanoon.org/doc/197459594/#:~:text=The%20Trial%20Court%2C%20while%20partly,Gunta%20of%20land%20in%20Sy.>
  - [4] <https://indiankanoon.org/doc/290532/>
  - [5] [https://www.sci.gov.in/pdf/JUD\\_2.pdf](https://www.sci.gov.in/pdf/JUD_2.pdf)

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