

ADVERSE POSSESSION-LEGALLY AUTHORISED THEFT OF PROPERTY

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ABSTRACT

Sir John Salmond's defined Law as 'Law is the body of principles recognised and applied by the State in the administration of justice'. It is the general belief that laws are for administering justice. However there is one lesser known aspect of real estate laws which helps the thieves against the real owner. The adverse possession of any immovable property is an example of injustice meted to real owner as against the illegal person claiming the property as his own, after a particular prescribed time and further he can oust the real owner and become the owner with help of courts. If the object of the laws is to give justice, how can such laws be continued to be used, knowing very well it will benefit the unauthorised occupiers and prevent the title of the authorised person for his own property. The Relevance of this provision of law in the present context is being discussed in this paper. Is it just enough to say that all the laws should be made to administer justice equally to one and all or is it also necessary to implement it.

KEYWORDS: Adverse Possession, Right to Property in India, Property Rights, Negligence of Property Owner, Encroachment of Property, Theft of Landed Property

INTRODUCTION

Real estate is an attractive investment, compared to other options of investment available in market, investment in property is most lucrative and preferred option. When one purchases movable property like diamonds, gold, silver etc there are chances of losing the property through theft land can never be stolen. Since olden times people have continued to purchase landed property as they were and still are certain that the prices of the real estate will appreciate in due course of time and they will certainly earn profits on their investments. Further land being tangible and immovable the investors feel this is safe investment. Right to own property is a legal right guaranteed under Indian Constitution.

Meaning of adverse possession : The common man who owns landed property is many a times unaware of possibility of losing his immovable property to any stranger or trespasser or encroacher, who will be protected by the legal system if, he can prove that his title to property is by adverse possession. Law itself will protect the thief against the claims of the real owner under the concept of adverse possession. And the thief of the stolen property will become the rightful owner. This fact is hard to digest to a genuine owner, but the harsh truth remains whether he like it or not. Owner's fault was that he did not take to protect his property from encroacher, and the owner is punished by law by gifting away his property to the trespasser if fulfilled the provisions of article 65 of Indian limitation act.

The concept of adverse possession in different countries is nearly same, only the period prescribed under the limitation act is different. The basic elements of adverse possession under the common law are that the present occupier / trespasser should have possession which should be actual, continuous and uninterrupted, hostile, exclusive against the

owner and open and notorious.

OBJECT

The object of the paper is study whether the provision of the adverse possession in law is serving its use in the present context in the Indian Society.

The Indian Laws Applicable to Concept of Adverse Possession

The law which deals with the adverse possession is The Limitation Act,1963.The provision is found in Part V - Suits relating to Immovable Property and in Article 65.

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. 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. For suits by or against government the limitation period is 30year and not 12 years.

The Constitution of India also deals with property rights. The right to Property is no longer a fundamental right, it is a legal right which is provided in Article 300A, which states that no person shall be deprived of his property save in accordance with law. The constitution originally classified the right to property as fundamental right under Article 19 (1)(f) which stated as follows:-

“Every person has a right to acquire any property by lawful means, hold it as his own and disposes of it freely, limited only by reasonable restrictions to serve the exigencies of public welfare any other restrictions that may be imposed by the State to protect interests of Scheduled Tribes”.

However after the 44th amendment the fundamental right to property given under Article 19(1)(f) was deleted. As a result the constitutional remedies to file Writ petition in Supreme Court under Article 32 for infringement of his rights was taken away from the property owner. Being only legal right any person can file a suit against government of file writ under Article 226 in High Court only. This resulted into dilution of a person’s remedies on being deprived on his right to property.

Decisions Give by Different Court

Adverse possession - Enjoyment of property as his own for more than 12 years before the date of suit - If true owner does not take any action within the period of limitation then it can be said that person in possession has perfected his title by adverse possession as the three conditions of 'peaceful', 'open' and 'continuous' possession to constitute adverse possession are satisfied. (Devaki Pillai Vs Gouri Amma) 2003(2) Civil Court Cases 65 (Kerala)

In Atul Chandra Adhikari v. State of Orissa, (AIR 1995 Ori. 233), it was held that the burden of proving that the defendants possession of the suit land was adverse and for statutory period lies on the defendant who claims title by adverse possession and that the selling up title by adverse possession has to affirmatively prove his or her possession over statutory period and presumption and probability cannot be substituted for evidence. When the adverse possession is pleaded, the area of land and the age of possession must be stated specifically.

In a suit falling under Art 65 plaintiffs must establish his title to the property; he need not prove that he was in

possession within 12 years. If he fails to prove his title the suit fails, and the question of adverse possession does not arise in such a case.

In *Annasaheb v. Balwant*, (AIR 1995 SC 895), it was held that under Art. 65, the burden is on the defendants to prove affirmatively that he is in possession in hostile assertion i.e. a possession which is expressly or impliedly in denial of the title of the true owner.

The land owner J.A Pye (Oxford)ltd lost title to 43acres of his property, to an encraocher and he lost his cases in Courts of England, against the enroacher, who was successful to get the title to the land without paying anything.The land owner felt cheated by the laws of his land and therefore had to approach the European Court of Human Rights against his own Country. In the case of J.A Pye (Oxford)ltd v United kingdom, British Institute of International and Comparative Law had been asked by Her Majesty's Court Service to conduct comparative research with respect to statutes of limitation in the following common law and civil law jurisdictions; Hungary, Poland, Germany, Netherlands, Spain,Sweden, France, Australia, New Zealand, United States and Canada.The request is made by the counsel appearing in a human rights case J.A. Pye (Oxford) Ltd v United Kingdom.which was before the European Court of Human Rights(ECHR). The United Kingdom had appealed against the decision dated 15November 2005 given against it by ECHR, that it had failed to provide compensation for loss of title to land acquired on expiry of a statutory period of limitation violates Article 1 of Protocol 1 of the Human Rights Convention (Application 44302/02). The report of the British Institute of International and Comparative Law was produced before the ECHR who gave the decison of the appeal in favour of UK.The study showed that the European countries laws' followed the concept of adverse possession.

On studying the various case laws it is observed that most of European countires, UK and in India concept of Adverse possession is being allowed by law. After the prescribed statutory period during which the owner failed to take objections to the possession of the trsspasser, the trespasser is declared owner by law. This is grave injustice. If we trace the origin it is observed that when in olden times one country conquered another country they would take away the land from the true owners and declare themselves as owners as it suited their pupose of expansion of their power and control and becoming rich and powerful. But since times have changed such conquering of other country's land is not being done, the concept of adverse possession should be removed. The owner should not be displaced of his ownership rights at the hands of any tress passers. Government acquires land only for public purposes paying some amount to the owner as per the provisons of the laws prevalent.

SUGGESTIONS

We give the following suggestions for the protecting the rights of the true owner of any property in India. 1)The concept of adverse possession should be abandoned from Indian laws for ever.

- In the alternative if Governmet intends to continue with the provision then the concept of adverse possession should be changed and new concept of 'perfecting the possession' concept should be followed. If use of land is important then, when any who claims adverse possession the market value of the land should be deposited with a new trust formed by the Govt for administration of lands claimed by new possessor. The trust may then invest the amount in banks and fifty percent interest should be used by the trust for its administrative expenses. The new owner should then start paying the taxes.

- Whenever the real owner or his legal heirs come to claim the property the amount deposited by the person claiming his physical possession, should be paid to the real owners or their legal heirs, along with the fifty percent interest.
- A new act relating to the provisions of the perfecting the possession and formation of the new trust relating to administration of Lands claimed through actual possession should be formed.
- These rules should also be applicable to land taken over by State Government and Central Government.
- If Government takes the land then the Government should also deposit the value of the said land with the new trust formed for the purpose.
- The trust should make efforts to locate the real owner / or his legal heirs and give them their dues.

This procedure will effectively solve the land grabbing by the unscrupulous. Just because the in the world, many people follow, such wrongful acts should not be followed by India.

The legal provision for authorising land grabbing by adverse possessors should be stopped. Let them buy the land instead. It is a win - win situation for all.

CONCLUSIONS

But taking away the land by displacing true owner title by any private person without even paying him the sale price or compensation is simply not acceptable to common man in India. As such Article 65 deserves to be deleted from the Limitation Act. Just because adverse possession concept is practised in other countries is not a reason to continue it in India. We can be leaders of change and some countries may follow. One of the argument in favour of adverse possession is that land should be not kept unused. But that does not mean the property rights and title of legal owner or their legal heirs should be forcefully grabbed by the mighty encroachers. As such Article 65 deserves to be deleted from the Indian Limitation Act. For delivering equity and justice to common man, judicial restructuring and legal reengineering is required and the missile of adverse possession should be reinvented in a better form. Free India should not cling to pre colonial and vintage laws imported from the English Common law. The principles of justice, equity and good conscience that should be applied must be attuned with Indian constitution.

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