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Doctrine of Adverse possession

What is adverse Possession :

We often heard or read in news papers either in village or town that someone has captured the property of another person forcefully and illegally for a longer period of time. It happens when a stranger or trespasser comes to your unused or abandoned land and gain legal ownership illegally. Such ownership in legal term known as "Adverse Possession". Thus when a stranger or trespasser who comes in to possession of any private land for a continuous possession for a period of 12 years without interruption and if land is Government owned for a continuous period of 30 years it is called adverse possession. The reason behind this wrongful possession is careless and ignorant attitude of the rightful owners who often leave their property abandoned for a long period of time specially NRIs who purchase property for investment purpose .

The concept of adverse possession is not a new concept ,it recognizes long back about 200 BC in the code of Hammurabi. In India Article 65 , Schedule-1 of limitation Act 1963 deals with Adverse Possession which prescribes a limitation period of 12 years for a suit of possession of an immovable property. The Act sets the bar within which rightful owner can claim his right over the property .It is provided under Article 65 in Schedule 1 that rightful owner has to take the action for recovery of possession of property within a period of 12 years to prevent himself from extinguishing his right on the land .

The principle of law is that land or any immovable property should not be left in abeyance for a long period of time otherwise person in adverse possession of property becomes the rightful and absolute owner of the immovable property. Thus all intruders or possessor must be evicted within a statutory period of limitation.

Main ingredients to establish adverse possession :

1. Actual possession of the property
2. Possession should be hostile or adverse to the true owner
3. Possession should be continuous without any interruption for a long period of time
4. Possession should be exclusive

A claim can be made only when all the above ingredients satisfied .

When Adverse Possession can not be claimed :

1. When possession is permitted
2. In case of co-ownership
3. When property is claimed as part performance of agreement to sale under TPA act
4. Non interference in the property for a prescribed statutory period of time

In *Ravinder Kaur Grewal Vs Manjit Kaur* ,Court held that, " a person in possession cannot be ousted by another person except by due procedure of Law and after 12 years period of adverse possession is over, even titleholder's right to evict him is lost and possessory owner acquires right, title and interest".

In Amarendra Pratap Singh vs Tej Bahadur Prajapati ,Hon'ble Supreme Court defined the adverse possession as, "A person ,though having no right to enter into possession of property of someone else ,he does so and continues in possession setting up title in himself and adversely to the title of the owner,commences prescribing title into himself and such prescription having continued for a period of 12 years,he acquires title not on his own but on account of the default or inaction on part of the real owner."

In Vidya Devi Vs. State of Himachal Pradesh (2020) ,SC held that," A welfare state cannot be permitted to take the ground of adverse possession,which allow a trespasser i.e. an individual guilty of tort,or even a crime ,to gain lawful title over such property for over 12 years.The state cannot be allowed to gain ownership over the land by invoking the doctrine of adverse possession to grab the property of its citizens".The matter was related to an old widow whose property has been aquired by the Himachal Pradesh government for road construction and failed to pay reimbershment for 52 years.

What action need to be taken to prevent the adverse possession ?

1. Proper documentation of the property in case you are giving permission to use the said property.
2. Keep watching by frequent visit .
3. If the intruder is not evicting the property send notice of eviction before completion of limitation period prescribed under article 65 of limitation Act for documentation and legal recourse in future.
4. Can file a suit for possession within six month from the date the possession was taken from him.
5. Can call police and take their help .



by - Adv. Ritu Dubey