

### **Precedents on Adverse possession**

#### **Possession.-Adverse possession.-Perfecting title to agricultural land.-Suit for declaration of title.-Appellant purchased suit land from its true owner.-**

Suit land under attachment by order of Tehsildar and purchased by respondent in auction sale.-Purchaser filed suit for restoration of possession.-Suit dismissed holding that auction sale was invalid.-Order of Tehsildar putting auction-purchaser into possession neither acted upon nor executed.-Appellant continued to remain in possession which was neither interfered with nor lost.-Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of possession.-Trial Court order that appellant had been in continuous possession and perfected his title by adverse possession upheld. *Balkrishan vs. Satyaprakash*, AIR 2001 SC 700 : 2001(2) SCC 498 : 2001(2) JT 357 : 2001(1) Civ CR 692

#### **Possession.-Claim of adverse possession by co-sharer.-Co-sharer claiming share in property as co-owner.-He cannot be ousted by other co-sharers claiming themselves to be in adverse possession.**

The Defendants 2 to 7 being the co-sharers cannot succeed in claiming absolute title by adverse possession unless it is established by convincing evidence that there has been ouster of the Respondent No. 1, an admitted co-sharer, from the disputed property. In the case of a co-sharer, mere exercise of possession as of right, cannot make out a case of ouster of co-sharer and consequential exercise of adverse possession by the other co-sharer so that ultimately the title of the ousted co-sharer is extinguished on account of adverse possession for the prescribed period. *M. Arthur Paul Rama Raju vs. Gudese Garaline Augusta Bhushanabai and another*, AIR 1999 SC 2633 : 1999(3) Land LR 63 : 1998(7) SCC 103 : 1999(2) Rec Civ R 577 : 1999(121) Pun LR 470 : 1999(1) Civ LJ 337

#### **Possession.-Distinction between de facto and de jure possession.-Lawful and unlawful possession are concept of varying legal shades.**

2293 Litigious and lawful possession are concepts of varying legal shades deriving their colour from the setting in which they emerge. Epithet used itself indicates the field in which they operate. The one pertains to dispute in which possession may be conterminous with physical or de facto control, only, whereas the domain of other is control with some legal basis. The former may be uncertain in character and may even be without any basis or interest but the latter is founded on some rule, sanction or excuse. Dictionarily 'litigious' means 'disputed' or 'disputable' or 'marked by intention to quarrel', inviting

controversy', 'relating to or marked by litigation', 'that which is the subject of law suit'. Lawful on the other hand is defined as 'legal, warranted or authorised by the law'. Jurisprudentially a person in physical control or de facto possession may have an interest but no right to continue whereas a person in possession, de jure, actually or constructively has the right to use, enjoy, destroy or alienate property. 'Rights are interest protected or recognised by law. But every interest may not be so. Its violation may not be wrong. Many interests exist de facto and not de jure, they receive no recognition or protection from any rule or right'.

**Krishna Kishore Firm v. The Govt. of A.P. and others, AIR 1990 SC 2292: 1991(1) SCC 184: 1990 Supp (2) SCR 8: 1990(2) Scale 709: 1990(4) JT 24**

**Article 64.-Adverse possession.-Starting point of limitation.-Eviction petition.-Tenant proved to be licensee and given three months' notice to vacate premises.-Claim for adverse possession starts after expiry of three months' notice period on 19-12-1958.-However no steps taken by landlord to execute eviction order.-Suit for possession filed by tenant on 5-8-1970 within limitation of 12 years.**

Throughout the proceedings, the relationship as tenant continues till the eviction order; is passed by the appellate or statutory revisional authority. The relationship does not go on oscillating during the pendency of the proceedings depending upon whether eviction is granted or not in between. In that view of the matter, the contention for the tenant that the relationship of landlord and tenant came to an end on 30-9-1957 when the landlord's appeal was allowed by the appellate authority and that there was no such relationship during the pendency of the tenant's statutory revision till 19-9-1958, must stand rejected. *Ajit Chopra vs. Sadhu Ram and others*, AIR 2000 SC 212 : 2000(1) Land LR 281 : 1999(4) Cur CC 341 : 1999(9) ADSC 393 : 2000(1) SCC 114 : 2000(1) Raj LW 53 : 2000(124) Pun LR 19

**Article 64.-Adverse possession.-Suit for possession on basis of title.-Defendant remained in possession as owner of property for more than 30 years prior to filing of suit.-Sale certificate does not connect plaintiff's title.-Concurrent finding of fact that defendant was not a tenant.-He remained in possession as owner of property for more than 30 years prior to filing of suit.-statement in municipal records that defendant made an endorsement that he was tenant not proved.-Defendant perfected his title by staying for more than 30 years in the premises.**

So far as the plea of adverse possession of the defendants is concerned, it has been found by the Trial Court as well as the first Appellate Court that Suryabhan

was not a tenant of the suit house and as he was in continuous possession of the suit premises for a period of 30 years and more prior to the date of the suit. He had occupied the same in his own right and consequently, he had become the owner of this property by adverse possession against the plaintiffs, especially, Narayan. Efforts made by learned counsel for the appellant-plaintiffs to show that Suryabhan had admitted that Narayan was the landlord both in 1942 when Narayan sought to insert his name in the municipal records as owner and also in 1958 when Suryabhan is alleged to have made an endorsement on the application of Narayan to the municipality that he was a tenant of the suit property since 20 years cannot be of any assistance to the appellants for the simple reason that none of these documents stand proved on the record of the present case as Suryabhan since deceased who is said to have given such a statement on endorsement before municipal authorities was not available for being confronted with the same for proving it and that statement was even otherwise not tried to be proved by the plaintiffs under Section 32 of the Indian Evidence Act. The so called statement was not legally proved in the present case. The Courts below were, therefore, justified in taking the view that the plaintiffs cannot base their case on the so called statement of Suryabhan. Consequently, it has to be held that Suryabhan had perfected his title to the suit rooms by staying for more than 30 years prior to the suit as owner thereof and being in adverse possession against Narayan. This finding reached by the Courts below and as confirmed by the High Court also remains well sustained on the record of this case. *Chandrabhagabai and others vs. Ramkrishna and others*, AIR 1998 SC 2549 : 1998(3) Rec Civ R 391 : 1998 SCC 207 : 1998(2) Rec CR 133 : 1998(3) Cur CC 66

**Article 64.-Adverse possession.-Suit property purchased by plaintiff subject to result of eviction proceedings between vendor and tenant.-Tenant continued to be in possession till revision against order of eviction was dismissed.-Tenant cannot claim adverse possession against plaintiff/purchaser.**

The plaintiff right to possession of the property purchased, was by agreement with the vendor, dependant upon the result of the pending proceedings and the plaintiff had no immediate right to possession. The defendant continued to be in the position of a tenant vis-a-vis the vendor and vis-a-vis the premises even after the plaintiff's purchase. If the respondent was a tenant of the premises till the revision was disposed of, he could not claim that he was in adverse possession against Mr. Bhatia or against Mr. Bhatia's vendee when the latter had no right to immediate physical possession. Therefore, this contention of the respondent, cannot be accepted. Thus even if the respondents adverse possession started on 19-12-1958, when the three months' time granted by the High Court expired, or

even if it be that the adverse possession started on 19-9-58 when the revision was rejected, the suit for possession filed on 5-8-70 was well within 12 years. The adverse possession did not start earlier. *Ajit Chopra vs. Sadhu Ram and others*, AIR 2000 SC 212 : 2000(1) Land LR 281 : 1999(4) Cur CC 341 : 1999(9) ADSC 393 : 2000(1) SCC 114 : 2000(1) Raj LW 53 : 2000(124) Pun LR 19

**Article 65.-Adverse possession.-Co- owner.-Possession of one co-owner cannot confer any right by continuity of possession unless it is adverse to other co-owners.**

*Udaychand Mahatab Chand v. Subodh Gopal Bose and others*, AIR 1971 SC 376: 1970(3) SCC 681

**Article 65.-Application of.-Suit for title challenging the order under Special Act passed without jurisdiction.-The order being nullity, the suit shall be governed by the provision.**

*Ajudh Raj and others v. Moti, S/o Mussadi*, AIR 1991 SC 1600: 1991(3) SCC 136: 1991(2) SCR 690: 1991(1) Scale 896: 1991(2) JT 591

**Article 65.-Adverse possession.-Plaintiff's title to suit property established on basis of relevant documents and other evidence.-Plaintiff cannot be non-suited unless defendant proves adverse possession for prescriptive period.**

When the suit is based on title for possession, once the title is established on the basis of relevant documents and other evidence unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited. Unfortunately, this aspect of the matter was missed by the learned Judge and, therefore, the entire reasoning for disposing of the second appeal has got vitiated. *Indira vs. Arumugam and another*, AIR 1999 SC 1549 : 1998(2) Mad LJ 49 : 1994(2) Land LR 51 : 1998(3) Raj LW 405 : 1998(1) SCC 614 : 1998(2) Civ LJ 603 : (34) All LR 161

**Article 65.-Adverse possession.-Co-sharer claiming share in property as co-owner.-He cannot be ousted by other co-sharers claiming themselves to be in adverse possession.**

The Defendants 2 to 7 being the co-sharers cannot succeed in claiming absolute title by adverse possession unless it is established by convincing evidence that there has been ouster of the Respondent No. 1, an admitted co-sharer, from the disputed property. In the case of a co-sharer, mere exercise of possession as of right, cannot make out a case of ouster of co-sharer and consequential exercise of adverse possession by the other co-sharer so that ultimately the title of the ousted co-sharer is extinguished on account of adverse possession for the prescribed period. *M. Arthur Paul Rama Raju vs.*

*Gudese Garaline Augusta Bhushanabai and another*, AIR 1999 SC 2633 : 1999(3) Land LR 63 : 1998(7) SCC 103 : 1999(2) Rec Civ R 577 : 1999(121) Pun LR 470 : 1999(1) Civ LJ 337

**Article 65.-Adverse possession.-Perfecting title to agricultural land.-Suit for declaration of title.-Appellant purchased suit land from its true owner.-Suit land under attachment by order of Tehsildar and purchased by respondent in auction sale.-Purchaser filed suit for restoration of possession.-**Suit dismissed holding that auction sale was invalid.-Order of Tehsildar putting auction-purchaser into possession neither acted upon nor executed.-Appellant continued to remain in possession which was neither interfered with nor lost.-Mere passing of an order of ejectment against a person claiming to be in adverse possession neither causes his dispossession nor discontinuation of possession.-Trial Court order that appellant had been in continuous possession and perfected his title by adverse possession upheld. *Balkrishan vs. Satyaprakash*, AIR 2001 SC 700 : 2001(2) SCC 498 : 2001(2) JT 357 : 2001(1) Civ CR 692