

Precedents on rights and liabilities of co-owner

Co-owner.-Liability to pay for occupation.-Damages for use of property.-Claim against co-owner.-Permissibility. It is no doubt true that under the law every co-owner of undivided property is entitled to enjoy the whole of the property and is not liable to pay compensation to the other co-owners who have not chosen to enjoy the property. It is also true that liability to pay compensation arises against a co-owner from the enjoyment of the property. It does not, however, follow that the liability to pay compensation arises only in such a case and no other. Co-owners are legally competent to come to any kind of arrangement for the enjoyment of their undivided property and are free to lay down any terms concerning the enjoyment of the property. There is no principle of law which would exclude them from providing in the agreement that those of them as are in actual occupation and enjoyment of the property shall pay to the other co-owners compensation. *Jahuri Sah and others v. Dwarika Prasad Jhunjhunwala and others*, AIR 1967 SC 109: 1966 BLJR 781

Co-owner.-Plea of adverse possession.-Assertion of hostile title.-Non-participation in rent and profit does not amount to ouster. Mere non-participation in the rent and profits of the land of a co-sharer does not amount to an ouster so as to give title by adverse possession to the other co-sharer in possession. Indeed even if this fact be admitted, then the legal position would be that Mohd. Bashir and Mohd. Rashid, being co-sharers of the plaintiff, would become constructive trustees on behalf of the plaintiff and the right of the plaintiff would be deemed to be protected by the trustees. The learned counsel appearing for the respondent was unable to contest this position of law. In the present case, it is therefore manifest that the possession of the defendants, apart from being in the nature of constructive trustees, would be in law the possession of the plaintiff. *Karbalai Begum v. Mohd. Sayeed and another*, AIR 1981 SC 77: 1980(4) SCC 396: 1981(1) SCR 863: 1980 Rev. Dec.. 300

Co-owner.-Plea of adverse possession.-Co-sharer in possession.-On co-sharer cannot claim adverse possession against other without ascertaining hostile title at the earlier opportunity. Adverse possession has to have the characteristics of adequacy, continuity and exclusiveness. The onus to establish these characteristics is on the adverse possessor. Accordingly, if a holder of title proved that he too had been exercising during the currency of his title various acts of possession, then, the quality of those acts, even though they might not be sufficient to constitute adverse possession as against another, may be adequacy and interrupt that exclusiveness and continuity which is demanded from a person challenging by possession the title which he holds. As between co-sharers, the possession of one co-sharer is in law the possession of all co-sharers. Therefore, to constitute adverse possession, ouster of the non-possessing co-sharer has to be made out. As between them, therefore, there must be evidence of open assertion of a hostile title coupled with exclusive possession and enjoyment by one of them to the knowledge of the other. But, once the possession of a co-sharer has become adverse as a result of ouster, a mere assertion of a joint title by the dispossessed co-sharer would not interrupt the running of adverse possession. He must actually and effectively break up the exclusive possession of his co-sharer by re-entry upon the property or by resuming possession in such a manner as it was possible to do. The mere fact that a dispossessed co-sharer comes and stays for a few days as a guest is not sufficient to interrupt the exclusiveness or the continuity of adverse possession so as not to extinguish the rights of the dispossessed co-sharer. *Shambhu Prasad Singh v. Most. Phool Kumari and others*, AIR 1971 SC 1337: 971 (2) SCC 28: 1971 Supp SCR 181

Co-owner.-Plea of adverse possession.-Permissibility.-Bona fide of plea.-Plea of by co-bhumidar to oust the jurisdiction of Revenue Court.-No limitation provided in the local land reforms law.-The jurisdiction of Revenue Court is not barred from entertaining the suit for partition. *Vidya Devi alias Vidya (Dead by LRs.) v. Prem Prakash and others*, AIR 1995 SC 1789: 1995(4) SCC

496: 1995(3) Scale 580: 1995(4) JT 607

Co-owner.-Plea of adverse possession.-Permissibility.-Sole possession by one co-owner is not sufficient.-There must be open assertion of hostile title against the other. The ordinary classical requirement of adverse possession is that it should be *nec vi nec clam nec precario*. In order to establish adverse possession of one co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be on the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir not in possession merely by any secret hostile animus on his own part in derogation of the other co-heir's title. As between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to the knowledge of the other so as to constitute ouster. *P. Lakshmi Reddy v. L. Lakshmi Reddy*, AIR 1957 SC 314: 1957 SCJ 248: 1957(1) Mad LJ (SC) 46: 1957 SCR 195

Co-owner.-Plea of adverse possession.-Permissibility.-The adverse possession pleaded by one co-owner by another.-The possession became adverse by exclusive possession and lease executed in favour of one of the co-owner to the exclusion of the other with full knowledge and consent of the other co-owner.-Subsequently the consenting co-owner cannot turn around and claim the property to the joint property contrary to running of adverse possession. During the whole period of the lease and up to the present day the minor is admittedly in possession of the property and no act or conduct on his part has been proved either within the period of limitation or even after that which might be regarded as an acknowledgment of the title of his father as co-owner. In our opinion the fact that the father who had allowed himself to be dispossessed by his son exhibited later on his animus to treat the property as the joint property of himself and his son cannot arrest the running of adverse possession in favour of the son. A mere mental act on the part of the person dispossessed unaccompanied by any change of possession cannot affect the continuity of adverse possession of the dispossessor. *Wuntakal Yalpi Chenabasavana Gowd v. Rao Bahadur Y. Mahabaleshwarappa and another*, AIR 1954 SC 337: 20 Cut LT 92: 1955(1) SCR 131

Co-owner.-Plea of adverse possession.-Possession held by one co-owner under an arrangement between the co-sharers.-No question of adverse possession by one co-owner against the other arises. *Chhote Khan and others v. Mal Khan and others*, AIR 1954 SC 575: 1954 SCJ 577: 1955(1) SCR 60

Co-owner.-Plea of adverse possession.-Possession of co-owner is possession by all.-In the absence of proof of hostility by exclusion of others, plea of adverse possession is not maintainable. *Syed Shah Gulam Ghouse Mohiuddin and others v. Syed Shah Ahmad Mohiuddin Kamisul Qadri*, AIR 1971 SC 2184: 1971(1) SCC 597: 1971(3) SCR 734

Co-owner.-Possession of co-owner is possession by all.-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

Co-owner.-Plea of adverse possession.-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

Co-owner.-Right of successor's-in-interest.-Suit for permanent injunction.-Partition of property between two brothers.-Right to use gallery by one of co-owners.-Condition in partition deed.-Binds co-owners and their successor's-in-interest.-Permanent Injunction restraining successor-in-interest of other co-owner from interfering with right to use gallery can be issued.

The partition deed contained a condition to the effect that Durga Prasad would have a right to use the gallery for the purpose of ingress and egress. It was because of this that the door existed. This condition of the partition deed would bind not only the two brothers but also their successors-in-interest. The use of the door was not a right in easement, it was a right which came into existence as a result of the partition deed itself.

The Court auction cannot be of an interest which was more than what the previous owner had in the said property. If attached to the property was a right which was given to Durga Prasad and his successors to use the said door and there was a prohibition on Prag Dass and his successors from interfering with this right, then it is with this restriction that the right of Prag Dass which could be sold. As a result of the purchase into the shoes of the erstwhile owner and such a sale could not bring to an end a right in the property of use of the said door which existed in favour of the defendants. *Kanhaiya Lal vs. Babu Ram (dead) by LRs and another*, AIR 2000 SC 3507(2) : 2000(2) Civ LJ 708 : 2000(1) Orissa LR 188 : 2000(1) ICC 743 : 1999(8) SCC 529 : 2000(38) All LR 456

Co-owner.-Sale of undivided share.-Suit for declaration of title.-Parties co-owners in joint possession of land.-Sale of undivided share of land by one co-owner.-Suit for declaration of title filed by other co-owner decreed by trial Court.-High Court held that plaintiff was owner-in-possession of land and defendants took no plea with regard to adverse possession.-Neither any plea nor any finding of partition effected title of decree holder accrued from date of payment under pre-emption decree.

The title of the decree-holder accrues from the date of payment required to be made under a pre-emption decree. In view of the deposit by the original plaintiff of the pre-emption amount in terms of the pre-emption decree, the dismissal of the execution petition was in joint possession of the land, which was part of joint khata. The land sold by Bassia, which was subject-matter of the pre-emption suit, was not any particular part of the land of joint khata but was his undivided share therein. The share of Bassia had never been separated by way of partition before sale by him. The plaintiff was already in possession of the land along with other co-sharers. There is neither any plea nor any finding of partition having been effected by Bassia. On the facts and circumstances of the case, no actual possession was required to be obtained or delivered. When there was threat to the title of the plaintiff, the suit was filed by him. We find no infirmity in the decision of the High Court. *Reshmu and others vs. Rajinder Singh and another*, AIR 2000 SC 1064 : 2000(3) Mad LJ 20 : 2000(2) Land LR 28 : 2000(1) Cur CC 259 : 2000(2) Raj LW 202 : 2000(3) SCC 47 : 2000(2) Andh LD 51 : 2000(3) Civ LJ 266 : 2000(38) All LR 756

Co-owner.-Plea of adverse possession.-The occupant of property claiming to be in occupation after making construction, for a long time.-The construction found to be 28 years old.-Suit for possession against the occupant is not maintainable. *Hari Chand v. Daulat Ram*, AIR 1987 SC 94: 1986(4) SCC 524: 1986(3) SCR 1029: 1986(2) Scale 599: 1986 J.T. 659: 1986 Har. Rent. R. 681
