

Case Law PDF free download on

Adverse Possession.

1. Agreement of Sale: When the plaintiff continued his possession after the expiry period of **agreement of sale** with hostile the title of the rightful owner till the Statutory period of limitation, such possession **becomes adverse**, then the plaintiff must be claimed the plea of adverse possession in the plaint along with prayer. | *1 XP(AD) 89*
2. Invalid Transfer: When there is an **invalid transfer** in favor of a person and he holds possession of the property transferred as transferee, his possession is in his own right and adverse to the transferor. | *16 DLR(SC) 287*
3. Agreement of Sale: As to second and the most vital aspect of the case, namely, title by adverse possession, a few facts may not be lost sight of. Adverse possession implies that it had commenced in wrong and is maintained against right. The Plaintiff has claimed to have his entry into the disputed land under agreement of purchase with defendant No:1 who had no title thereto as found by the trial court and which finding was not reversed by the appellate court. In such a case when the plaintiff after getting into possessing retains the same with clean animus that he has become the absolute owner of the property in complete negotiation of any right or title of the true owner thereof ie. defendant No:2, his enjoyment would be solely in assertion of hostile title. | *49 DLR(AD) 61*
4. The term adverse possession implied that the person against whom adverse possession is exercised is a person who is entitled to demand possession at the moment adverse possession begins. | *36 DLR(AD) 261*
5. A person who bases his title on adverse possession, must show by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed. | *36 DLR(AD) 261*
6. Court will always assume possession as being under a lawful title. | *36 DLR(AD) 261*
7. Mortgage Property: It becomes adverse to the mortgagee when he is entitled to possession after purchasing the property in execution of the mortgage decree and suit having been brought within 12 years, therefrom. | *36 DLR(AD) 261*
8. Possession under mistaken or invalid title is as effective as that a trespasser, and, if sufficient in length of time and continuity gives the holder a title. | *36 DLR(AD) 261*
9. The principle of adverse possession was laid when "a person, who bases his title on adverse possession by clear and unequivocal evidence that his possession was hostile to the real owner and amounted to a denial of his title to the property claimed." | *AIR 1935 PC 53*
10. The correct test to be applied in a case of this nature is, whether the claimant exercised such domain over the property as to justify the interferences that he was in the possession of the whole. It is not necessary for him to prove that **he was in physical possession of every square inch**. | *52 CWN 382*
11. Rent Receipt: Since **the receipt** is not a deed of title of could not confer title to the plaintiff under the provision of section 54 of the Transfer of property Act but his uninterrupted adverse and hostile possession over a **period of 12 years** prior to alleged declaration of property as enemy property, the plaintiff has acquired title by the adverse possession. | *54 DLR(AD) 173, 12 BLT(AD) 27*
12. Essentials of Adverse Possession:
 1. To claim adverse possession it must be specifically pleaded in the plaint.
 2. Hostile title must be asserted
 3. Adverse possession must be adequate in continuity.
 4. Evidence must be addressed to show when possession became adverse so that the starting point of limitation against the party affected can be found. | *11 BLT(AD) 87, 7 MLR(AD) 231, 23 BLD(AD) 160, 42 DLR(AD) 154*
13. Acquisition of Title by Adverse Possession: Though the transfer by invalid document does not confer title, the transferee when continuous in possession of the immovable property for more than statutory period of **12**

- years uninterrupted on the basis thereof be acquires title to the said property by adverse possession notwithstanding the defect in the Document. | **1 MLR(AD) 72, 7 MLR(AD) 249**
14. It is sufficient that the possession should be **over and without any attempt at concealment**, so that the person against whom time is running out, if he exercise due vigilance, to be aware of what is happening. | **39 DLR(AD) 22, 49 DLR(AD) 61, 51 DLR(AD) 257, 42 DLR(AD) 154, 44 DLR(AD) 147, 44 DLR(AD) 100, 54 DLR 523, 7 BLD(AD) 63**
 15. A co-sharer in sale possession transfer land in his possession to a stranger and the later possession the land in exclusion of other co-sharerin denial of their title for more than 12 years -- by such ouster of the co-sharers the stranger purchaser acquires title by adverse poaaession. | **39 DLR(AD) 22, 27 DLR(AD) 143, 45 DLR 541**
 16. Some possession is not exclusive or adverse possession-- onus to prove adverse possession on the defendant showing open and hostile possession. | **39 DLR(AD) 22**
 17. Joint Family: Some co-personers of joint family property sell some distinct portion of the property to a stranger who began the possession claiming adverse possession-- Court upheld his possession. _ **39 DLR(AD) 22_**
 18. Adverse possession is not adverse where original occupant is referable to lawful title. | **1983 BLD(AD) 32, 10 DLR(SC) 174, 35 DLR 295**
 19. Limitation: Adverse possession must be proved to have been computed **for 12 years** before filing the suit. | **6 BLT(HCD) 31**
 20. Limitation: Plaintiffs being in possession of the suit land for **over 12 years** have acquired title to the suit property and Art. 144 of the Limitation Act is no bar to plaintiff suit on the basis of adverse possession. | **1985 BCR(AD) 343**
 21. Limitation: The continuous peaceful possession adversely to the interest of the rightful owner extinguishes the title of the owner of immovable property. In a suit for recovery of possession the fact of dispossession must be stated in the plaint and the suit for recovery of possession must be instituted within **12 years** of the dispossession. | **2 MLR(AD) 239**
 22. Limitation: On consideration of the oral evidence on record found that the defendants were in possession of the suit land to the exclusion of the plaintiffs and their vendors and the suit was barred by the limitation as because the plaintiff did not file the suit within **12 years**. | **4 BLT(AD) 146**
 23. A receipt witness a transfer of an immovable property is not a deed of title and as such it cannot confer title to the transferee. But nevertheless the transferee can acquire title in the land by uninterrupted adverse and hostile possession for over 12 years. | **24 BLD(AD) 43**
 24. The plaintiffs case is that the defendant was found to be possession as tenant who subsequently asserted hostile title and claimed adverse possession. Accordingly to the plaint, it was a case precisely under Article 144 not 142. | **28 DLR(AD) 85**
 25. Since the defendants have been concurrently found to be in possession of the suit property for over 40 years to the exclusion of the plaintiffs and their predecessors it is **Article 144 of the first schedule to the Limitation Act** and not 136 which governs this case and that the concurrent view of the courts below that the suit is barred by limitation stands goods. | **2 BLC(AD) 151**
 26. Tenant: There is no adverse possession where the relationship is that of land lord and tenant -- when the tenant continues to stay on the land after the termination of that but does so on the terns of the lease and on payment of rent his possession cannot be adverse possession to the land lord. | **6 BLD(AD) 297, 4 BLD(AD) 15**
 27. Possession is not Adverse to the Rightful Owner: **Isolated fact of user cannot constitute adverse possession** -- Mere non payment of rent though for many years is not sufficient to show the relationship of landlord and tenant has ceased. **4 BLD(AD) 15**
 28. Tenant: Possession will always refer to a lawful title. Once a tenancy comes to an existence, the tenant cannot convert his tenancy into permanent one by doing any act adverse to the land lord. | **28 DLR(AD) 85, 38 DLR(AD) 22**
 29. Judicial Possession: When the custodian, enemy property, release the property on the ground that the same is not enemy property he could not direct her to release the property to a particular individual, whose title is denied by the owner. As against such person who claims to the part owner of the property. Plaintiff's claim of adverse possession is valid in law. | **4 BLD(AD) 273, 1984 BCR(AD) 264**
 30. There is no averment in the plaint of plaintiff's dispossession from the suit land within 12 years of bringing the suit which is of recovery of khash possession... .. | **2 BLC(AD) 134**

31. Co-owner's Possession: Adverse title interest ouster or exclusion to the knowledge of the person affected co-owners out of possession each deemed to be in constructive possession knowledge of adverse possession is essential. | **27 DLR(AD) 143, 27 DLR 451**
32. Possession of one co-sharer is possession of all co-sharers. | **27 DLR(AD) 451**
33. A person claiming possessory right, a bargader, even a trespasser to maintain his possession as against anybody else except true owner. | **27 DLR 385**
34. Against Real Owner: The plaintiff's claim against the real owner on the basis of a Bainapatra and they were in possession of the land for more than statutory period adversely against him and have perfected their title by such possession has titled in their favor against the true owner. | **1 MLR(AD) 72, 3 BLD(AD) 315**
35. Plaintiff claiming title on adverse possession must prove **that he has been in possession of the land in assertion of his ownership openly, peaceably, continuously and adversely to all for than the statutory period of 12 years.** He cannot tack the possession of the government. | **1 MLR(AD) 426**
36. Ouster of the non possession co-heir by 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 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 coheirs, not in possession, merely by any secret hostile animus on his own part in derogation of the other co-heirs title | **1 MLR(HCD) 40**
37. Section-110 of the Evidence Act.: A presumption of ownership arises from possession, as Men generally own the property they possess. | **41 DLR 123**
38. A title to immovable property can be acquired by adverse possession against the Government in the same way as against a private person. | **_ PLD 1978(Lah.) 1228_**
39. Section-110 of the Evidence Act.: Long possession of land by a person would U/S-110 of the Evidence Act. constitute prima facie proof of title and the burden would shift on the other side of displace that presumption. This presumption avails even against the government. | **AIR 1951 Moddha Prodash 114**
40. Against Real Owner: The plaintiff entered into land by an agreement: In such a case when the plaintiff after getting into possession retains the same with clean animus that he has become absolute owner of the property in complete negation of right of title of the true owner. | **54 DLR(AD) 173**
41. Title on the Basis of Will: Extinsion of title by adverse possession: The uncle of the plaintiff and their transferees have been in possession of the suit land contrary to the provisions of the will for more than 12 years and both the executor and the plaintiff himself stood by until the suit for partition was filed in 1968. Thus it cannot be said that the finding as to adverse possession was wrongly made. | **44 DLR(AD) 147**
42. They have to do more that their possession was so open and hostile to the knowledge of all that the plaintiff must have known the notorious fact that the plea of adverse possession is being raised up. -- Mere non payment of rent and even non sharing of profit would not justify a case of adverse possession. | **6 BLD(AD) 38, 6 BLD(HCD) 63**
43. Mutawali: Article 134B of the Limitation Act applies to all cases where it is shown that the immovable property of **religious endowment was transfer by previous Mutawali** and as such adverse possession can be claimed by transferee from the date of death, resignation or removal of the previous Mutawli and not from the date of transfer. | **6 BLD(HCD) 193**
44. Mutawali: Article 134B of the Limitation Act not applicable in case of transfer of property by the Mutawali treating the same as personal property and as transfer is void and possession of the transferee from the date of proper is adverse against the Waqf Estate and the previous suit having been withdrawn the present suit has been filed beyond the period of limitation and as such defendant has acquired title by adverse possession. | **6 BLD(HCD) 193**
45. There cannot be adverse possession by one co-owner against another co-owner unless there is ouster or exclusive assertion of hostile title of one co-sharer against the other and to the knowledge of the other. | **37 DLR 87**
46. To constitute adverse possession there should be cannoning evidence of prove acquisition of hostile title openly, continuously, and within the knowledge of the real owner-- Mere harboring an intention secretly does not constitute ouster. | **37 DLR 87**
47. When there is an invalid transfer in favor of a person and he holds possession of the property transferred as transferee his possession is in his own right and adverse to the transferee. | **16 DLR(SC) 287**
48. doctrine of Part Performance: One who places reliance on the doctrine of part performance succeeds only where one has been able to prove a contract-- whether plaintiff in defending his possession can invoke

provisions of Section- 53A of the T.P. Act. In view of finding that the agreement for sale was not referable to it. The plaintiff is not entitled to the benefit of the section-53A of the T.P. Act. | **5 BLD(AD) 33**

49. Stranger Purchaser from a Co-Sharer: Adverse Possession by such purchaser as against other co-sharer when can be successfully asserted. | **21 DLR(SC){New Print} 444**
50. Permissive Possession: Permissive possession however long does not create title-- unless there was only assertion of hostile title to the knowledge of the true owner for over 12 years, permissive possession does not become adverse however long such possession may be. Permissive possession never creates title in favor of the possession of a licensee. | **5 MLR(AD) 73, 7 BLT(AD) 328**
51. When the plaintiff are in possession claiming raiyati settlement cannot set up adverse possession either. They are not entitled to a declaration of title... .. | **51 DLR(AD) 257**
52. Article-149 of the Limitation Act: Adverse Possession against Government is sixty years. | **AIR 1924(PC) 150, 20 CWN 311**