

The Execution of Right to Adverse Possession of Property in India

Tarun.G, S.Malaimagal

Tarun.G., III BBA LLB (Hon's), 131702060, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences (SIMATS), Saveetha University, Chennai, Tamilnadu India. (Email: tarung30699@gmail.com)
S.Malaimagal, Saveetha School of Law, Saveetha Institute of Medical and Technical Sciences (SIMATS), Saveetha University, Chennai, Tamilnadu India.(E-mail Id: malaimagals.ssl@saveetha.com)

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Abstract:

The principle of adverse possession is seen in every nation's law governing the acquisition and possession of land. The existence of such a principle goes to show how evolved jurisprudence is about the rights of those who possess a property and those who are the actual owners of the said piece of land. Adverse Possession is the principle in law of property where the continuous possession of a land owned by another person, not the person who is currently owning the possessed land for a long period of time or sometimes, a particular period of time without the opposition of the actual owner, the possession of the land gets the ownership title of the land from the original owner in certainly all cases of property. Such a principle lays down the foundation for the principle of continuous possession of a piece of land by an individual is always rewarded with the title deed of the property. On the other hand, this principle enables the original owner of any property to give their due diligence and sufficient care to ensure the property stays with them till the sands of time. In the end, it's more of a favourable situation for both parties as the principle enables both the original owner and the new inhabitant to claim their supposed right over a property. However, courts in India have interpreted the law of the rule governing such act, making the transfer of property from the original owner to the newer to undergo a series of filing process and authentication to ensure that the people aren't arbitrarily deprived of their property.

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I. INTRODUCTION

The principle of adverse possession is considered a legal principle where a person claims the property's ownership rights to a particular property due to the continuous possession and occupation of

the property in question. The key characteristics of such a principle is that the person acquires the ownership rights to the property without the actual permission from its owner recognized used by law. For the owner of such property to prevent the

execution of such right, one has to resort to legal practice to remove the illegal inhabitants through ejection. In the event of the owner not exercising their right to their property when there has been an illegal occupation by another for a specific period of time, the original owner loses their right and the property's ownership changes through adverse possession. Such a change in ownership rights is governed and protected by legislations around the world. Several nations have different prescribed years of possession required for the execution of adverse possession. Some states of the United States Of America have mandated 5 years of continuous possession and some have stated a period of 40 years of continuous possession.

The principle of adverse possession evolved from the Roman law concept, Usucapio. It's the law which dealt with the property acquisition of a person through continuous possession. It laid down five essential requirements for a land to be possessed through the execution of the principle, possession, good faith, the land in question shouldn't be prohibited by the operation of law of the land, shouldn't be stolen land and not taken by force of action. The possession land creates two separate and unique ownership rights, the bonitary ownership and the good faith ownership. Thus the principle of adverse possession began with the Roman civilization and found its way to the modern day civilization. In India this principle was in force ever since time began. It's more of in use in rural areas where people aren't well aware of their rights and where people go and settle down in a place where one thinks is uninhabited and unowned by another person. Thus it makes it even harder to view it in operation as it is only seen in places where generational ancestral property have either be lost in the transition or have been left unclaimed by the newer and legal heirs to it. Hence, such properties are formed in the first place and left to people around it to either inhabit it or maintain it out of mere goodwill.

The principle of adverse possession is governed under Article 65 and Schedule 1 of the Limitation

Act, 1963 and it states 12 years of mandatory and continuous possession of a private land by an individual and 20 years of government owner property. However to execute the principle of adverse possession is much different in India. The illegal habitant must prove that was an uninterrupted possession, the owner hasn't leased it to another person and the owner ought to let the original owner know their intention to possess and inhabitant their property. Such an intention is seen and recognized starting from the work of construction. However the key difference in execution of such ownership rights from other nations is that the illegal inhabitant must file a suit in the appropriate court, accepting that original owner is the actual owner recognized by law and make it known to them. Through the process of court proceedings is that the encroacher gains the property rights from the original property's owner. Thus this principle in India is carved out in a manner that holds equal footing for both of the parties in the question of ownership's right in India.

The Supreme Court of India has not been kind with its view and interpretation on the laws of adverse possession and its operation. Government owned property, which ought to be possessed continuously for a period of 20 years by an individual is seen in lesser frequency when compared to that of those privately owned properties in and around India. It is the common perception that the government owned property is not obtained ownership by prescription as it is the right of the government to own and possess such land over an unforeseen period of time. The aim of the present paper is to understand the concept of adverse possession, to critically analyse the nature of such property adversely possessed and to examine the procedure of obtaining the property through the operation of adverse possession. On the other end of the spectrum, suits question dispute of the legitimacy of the newer inhabitants and the authenticity of the original owner's claim over the land isn't always raised and entertained in an appropriate court in India on a regular basis.

II. OBJECTIVES OF THE STUDY

The objective of the present paper is

1. To understand the concept of adverse possession,
2. To critically analyse the nature of such property possessed and
3. To examine the procedure of obtaining the property through the principle of adverse possession.

III. REVIEW OF LITERATURE

Adverse Possession is backed the rationale taken the societies all around as the ownership title of any property shouldn't forever be in doubt ("Adverse Possession. Subject Matter and Extent of Adverse Possession. Minerals: Severance from Surface by Deed: Grantee of Adverse Possessor Holding Possession for His Grantor" 1913). The society as a whole ought to benefit from a person's lack of care on an owner property. When a property is idle and isn't being utilized by another person, the society has the obligation to utilise the property, given that how less of suitable land is available for humans to cohabitate with (Bevan 2018). An individual who has neglected the property through the passage of time loses their right to reentry and reposses. However has seen in several judicial interpretations, there need not be an actual act of informing the original owner of their intent to possess (Swope 1938). Thus the act of possessing property through adverse possession isn't a hostile possession as the mere possession of a piece of land of property for a period of 100 years cannot be adversely possessed (Sayles 2018). This principle has a legal sounding to it which causes it to be widely accepted as it is in the present day society and several jurisdictions all around the world (Depoorter, n.d.).

Adverse possession is principle seen in operation in India. However, one doesn't know that acquisition of property though prescription is the actual operation of the doctrine of adverse possession (Wonnacott, n.d.). The modern day practice it very much in line with legislation. Several suits go to the civil courts around the world,

attempting to recover back the lost property or sometimes, stolen property right under their eyes (Thompson and George 2017). Owners of property do not automatically lose their title of for the non-use of property, however the alteration of ownership starts another individual takes up ownership due to the original owner's neglect and care of the property in question (MacKenzie 2016). Article 65 of the Limitation Act, 1963 states the 12 years of continuous possession of the property, the time in this instance, is counted from the time the ownership of the property is adverse to the original owner (George and Layard 2019). While Article 65 deals the statutory period of continuous possession of the property required for a property to be adversely possessed, Article 64 states the maintainability of suits of question of possession based on one's possessory rights over the property (Street 1940).

In Indian Jurisprudence of land acquisition, the essential elements required for a lawfully valid adverse possession are, there must either movable or immovable property, there must be an actual possession of the property by another person, not being the original owner (Woods 2019). There must be publicized, hostile possession and continuous possession, such possession should be with the intention to out the original owner (Miller 1952). With time immemorial, there must be the true lack of possession of the property in the hands of the true owner. However possession obtained by permission from the owner and the mere non usage of the property by the original property is not considered as acts amounting to valid and lawful adverse possession (Clarke and Greer 2018). There has been a few standing taken up by several judicial systems around the world on how the elimination of reclaimment of the lost property is irrational, illogical and inappropriate for an individual who is indeed an actual owner (Krishnaswami and Kulshreshtha 2002). The law in such judiciary systems, question the authenticity of the law giving the legal seal of approval to the illegal act by the inhabitant, which would be otherwise be punished by law (Jourdan and Radley-Gardner 2017).

The legal standing of the doctrine of adverse possession and its operation in India is of no further doubt (McCullough 2015). However, one may at any given point of time question the law placing a protection for those who dishonestly possess and own a property over those who lawfully abided for the purchase and possession (Marty 2016). It is of no doubt that this law compels the individual to lose their possession on the mere cause of not taking well within the time validated under the Limitation Act, 1963 (Bennett 2015). The law is recognised and accepted as a valid law due the reason of it a customary practice and the importance given to piece of land available for possession and inhabitation (Tasmania. Office of Law Reform Commissioner 1995). The original owner has the onus of proof and the burden of proof to try and prove that the property actually belongs to the individual. This results in the procedure for proving the authenticity of the property a whole lot difficult to the actual purchase, possession and taking sufficient care to prevent such loss of property in the first place (Ramamurti and Rekhi 2012) .

IV. MATERIALS AND METHODS& RESULTS

The present study is based on primary data collected by the researcher and the secondary data collected from books, journals and online sources. The present study used simple random sampling method for selection of samples because the population is too high. A total number of 1327 sample respondents in the age group of 18-60 years were selected randomly from Chennai, one of the four metropolitan cities in India. The study used percentage, Pearson Chi-Square test and frequency for meaningful analysis of the results of the study.

V. DISCUSSION & RESULTS

Table 1

Null Hypothesis H0: People in the 20-30 years age group do not agree that possessing a property continuously for 12 years would result in acquiring the ownership rights of the property.

Alternate Hypothesis H1: People in the 20-30 years age group do agree that possessing a property continuously for 12 years would result in acquiring the ownership rights of the property.

**Crosstab
Count**

		An individual continuously holding a property for 12 years gets the title of the property.		Total
		yes	no	
AGE	15 to 20	149	212	361
	20 to 30	378	377	755
	above 30	100	111	211
Total		627	700	1327

In the cross tab between age of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the title of the property among the 15-20 years age group, 149 of them said yes and

212 of them said no. Among 20-30 years, 378 of them said yes and 377 of them said no. Among 30 years and above age group, 100 of them said yes and 111 of them said no.

Table 2
Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	7.576 ^a	2	.023
Likelihood Ratio	7.608	2	.022
Linear-by-Linear Association	3.456	1	.063
N of Valid Cases	1327		

In the cross tab between age of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the title of the property, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

Null Hypothesis H0: People in the 20-30 years age group do not agree that the principle of adverse possession enables a loophole in property law.

Alternate Hypothesis H1: People in the 20-30 years age group do agree that the principle of adverse possession enables a loophole in property law.

Table 3
Crosstab
Count

		Adverse Possession enables loophole in Property Law					Total
		strongly agree	agree	neutral	disagree	strongly disagree	
AGE	15 to 20	52	97	52	111	49	361
	20 to 30	81	202	307	117	48	755
	above 30	30	61	43	71	6	211
Total		163	360	402	299	103	1327

In the cross tab between age of the respondent and the question of whether the principle of adverse possession enables loophole in property law among the 15-20 years age group, 52 of them strongly agreed, 97 of them agreed, 52 of them were neutral about it, 111 of them disagreed and 49 of them strongly disagreed. Among 20-30 years age group,

81 of them strongly agreed, 202 of them agreed, 307 of them were neutral about it, 117 of them disagreed and 48 of them strongly disagreed and 30 years and above age group, 30 of them strongly agreed, 61 of them agreed, 43 of them were neutral about it, 71 of them disagreed and 06 of them strongly disagreed.

Table 4
Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	130.647 ^a	8	.000
Likelihood Ratio	134.971	8	.000
Linear-by-Linear Association	6.213	1	.013
N of Valid Cases	1327		

In the cross tab between age of the respondent and the question of whether the principle of adverse possession enables loophole in property law, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

Table 5

Crosstab

Count

		An individual continuously holding a property for 12 years gets the title of the property.		Total
		true	false	
Gender	female	148	275	423
	male	283	454	737
	prefer not to say	65	102	167
Total		496	831	1327

In the cross tab between gender of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the title of the property among females, 148 of them said yes and 275 of

them said no. Among males, 283 of them said yes and 454 of them said no and among those who prefer not to say, 65 of them said yes and 102 of them said no and among those who preferred not to say, 65 of them said yes and 102 of them said no.

Table 6

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	1.530 ^a	2	.465
Likelihood Ratio	1.538	2	.464
Linear-by-Linear Association	1.271	1	.260
N of Valid Cases	1327		

In the cross tab between gender of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the title of the property, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

Table 7

Null Hypothesis H0: Males do not agree that the principle of adverse possession enables a loophole in property law.

Alternate Hypothesis H1: Males do not agree that the principle of adverse possession enables a loophole in property law.

Crosstab

Count

		Adverse Possession enables loophole in Property Law					Total
		strongly agree	agree	neutral	disagree	strongly disagree	
Gender	female	129	67	106	78	43	423
	male	109	291	207	69	61	737
	prefer not to say	32	31	5	58	41	167
	Total	270	389	318	205	145	1327

In the cross tab between gender of the respondent and the question of whether the principle of adverse possession enables loophole in property law among females, 129 of them strongly agreed, 67 of them agreed, 106 of them were neutral about it, 78 of them disagreed and 43 of them strongly disagreed. Among males, 109 of them strongly agreed, 291 of

them agreed, 207 of them were neutral about it, 69 of them disagreed and 61 of them strongly disagreed and among those who prefer not to say, 32 of them strongly agreed, 31 of them agreed, 5 of them were neutral about it, 58 of them disagreed and 41 of them strongly disagree

Table 8

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	221.235 ^a	8	.000
Likelihood Ratio	226.708	8	.000
Linear-by-Linear Association	17.363	1	.000
N of Valid Cases	1327		

In the cross tab between gender of the respondent and the question of whether the principle of adverse possession enables loophole in property law, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

Table 9

Null Hypothesis H0: Undergraduates do not agree that possessing a property continuously for 12 years would result in acquiring the ownership rights of the property.

Alternate Hypothesis H1: Undergraduates do agree that possessing a property continuously for 12 years would result in acquiring the ownership rights of the property.

Crosstab

Count

		An individual continuously holding a property for 12 years gets the title of the property.		Total
		yes	no	
EDUCATIONAL QUALIFICATION	UG	288	256	544
	PG	127	378	505
	others	166	112	278
Total		581	746	1327

In the cross tab between educational qualification of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the title of the property among Undergraduates, 288 of

them said yes and 256 of them said no. Among Postgraduates, 127 of them said yes and 378 of them said no and among others, 166 of them said yes and 112 of them said no.

Table 10

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	118.441 ^a	2	.000
Likelihood Ratio	122.348	2	.000
Linear-by-Linear Association	.162	1	.687
N of Valid Cases	1327		

In the cross tab between educational qualification of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the title of the property, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

Table 11

Null Hypothesis H0: Undergraduates do agree that the principle of adverse possession enables a loophole in property law.

Alternate Hypothesis H1: Undergraduates do not agree that the principle of adverse possession enables a loophole in property law.

Crosstab

		Adverse Possession enables loophole in Property Law					Total
		strongly agree	agree	neutral	disagree	strongly disagree	
EDUCATIONAL QUALIFICATION	UG	124	97	134	165	24	544
	PG	76	87	166	113	63	505
	others	24	94	76	44	40	278
Total		224	278	376	322	127	1327

In the cross tab between educational qualification of the respondent and the question of whether the principle of adverse possession enables loophole in property law among Undergraduates, 124 of them strongly agreed, 97 of them agreed, 134 of them were neutral about it, 165 of them disagreed and 24 of them strongly disagreed. Among Postgraduates,

76 of them strongly agreed, 87 of them agreed, 166 of them were neutral about it, 113 of them disagreed and 63 of them strongly disagreed and among others, 24 of them strongly agreed, 94 of them agreed, 76 of them were neutral about it, 44 of them disagreed and 40 of them strongly disagree.

Table 12

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	101.165 ^a	8	.000
Likelihood Ratio	102.450	8	.000
Linear-by-Linear Association	6.116	1	.013
N of Valid Cases	1327		

In the cross tab between educational qualification of the respondent and the question of whether the principle of adverse possession enables loophole in property law, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

Table 13

Null Hypothesis H0: People employed in the public sector do not agree that possessing a property continuously for 12 years would result in acquiring the ownership rights of the property.

Alternate Hypothesis H1: People employed in the public sector do agree that possessing a property continuously for 12 years would result in acquiring the ownership rights of the property.

Crosstab
Count

		An individual continuously holding a property for 12 years gets the title of the property		Total
		true	false	
OCCUPATION	public sector	216	80	296
	private sector	273	424	697
	others	141	193	334
Total		630	697	1327

In the cross tab between occupation of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the title of the property among those who are employed in the public sector, 216 of them said yes and 80 of

them said no. Among those who are employed in the private sector, 273 of them said yes and 424 of them said no and among who are employed in other sectors, 141 of them said yes and 193 of them said no.

Table 14

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	100.168 ^a	2	.000
Likelihood Ratio	102.613	2	.000
Linear-by-Linear Association	55.157	1	.000
N of Valid Cases	1327		

In the cross tab between occupation of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the title of the property, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

Null Hypothesis H0: People employed in the private sector do not agree that the principle of adverse possession enables a loophole in property law.

Alternate Hypothesis H1: People employed in the private sector do agree that the principle of adverse possession enables a loophole in property law.

Table 15

Crosstab

Count

		Adverse Possession enables loophole in Property Law					Total
		strongly agree	agree	neutral	disagree	strongly disagree	
OCCUPATION	public sector	66	90	58	46	36	296
	private sector	95	188	142	178	94	697
	others	48	54	101	45	86	334
Total		209	332	301	269	216	1327

In the cross tab between occupation of the respondent and the question of whether the principle of adverse possession enables loophole in property law among those are employed in the public sector, 66 of them strongly agreed, 90 of them agreed, 58 of them were neutral about it, 46 of them disagreed and 36 of them strongly disagreed. Among those who are employed in the private sector, 95 of them

strongly agreed, 188 of them agreed, 142 of them were neutral about it, 178 of them disagreed and 94 of them strongly disagreed and among those who are employed in other sectors, 48 of them strongly agreed, 54 of them agreed, 101 of them were neutral about it, 45 of them disagreed and 86 of them strongly disagree.

Table 16
Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	81.938 ^a	8	.000
Likelihood Ratio	79.995	8	.000
Linear-by-Linear Association	27.256	1	.000
N of Valid Cases	1327		

In the cross tab between occupation of the respondent and the question of whether the principle of adverse possession enables loophole in property law, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

Table 17

Crosstab
Count

		An individual continuously holding a property for 12 years gets the title of the property.		Total
		yes	no	
MARITAL STATUS	married	203	240	443
	unmarried	437	447	884
Total		640	687	1327

In the cross tab between marital status of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the

Null Hypothesis H0: People who are married do agree that possessing a property continuously for 12 years would result in acquiring the ownership rights of the property.

Alternate Hypothesis H1: People who are married do not agree that possessing a property continuously for 12 years would result in acquiring the ownership rights of the property.

title of the property among married, 203 of them said yes and 240 of them said no and among unmarried, 437 of them said yes and 447 of them said no.

Table 18
Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	1.541 ^a	1	.215		
Continuity Correction	1.399	1	.237		
Likelihood Ratio	1.542	1	.214		
Fisher's Exact Test				.222	.118
Linear-by-Linear Association	1.540	1	.215		
N of Valid Cases	1327				

In the cross tab between marital status of the respondent and the question of whether an individual who is in the possession of a property continuously for a period of 12 years would get the title of the property, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

Table 19

Null Hypothesis H0: People who are married do not agree that the principle of adverse possession enables a loophole in property law.

Alternate Hypothesis H1: People who are married do agree that the principle of adverse possession enables a loophole in property law.

Crosstab

Count

		Adverse Possession enables loophole in Property Law					Total
		strongly agree	agree	neutral	disagree	strongly disagree	
MARITAL STATUS	married	74	121	105	111	32	443
	unmarried	72	277	293	172	70	884
Total		146	398	398	283	102	1327

In the cross tab between marital status of the respondent and the question of whether the principle of adverse possession enables loophole in property law among married, 74 of them strongly agreed, 121 of them agreed, 105 of them were neutral about it,

111 of them disagreed and 32 of them strongly disagreed and among unmarried, 72 of them strongly agreed, 277 of them agreed, 293 of them were neutral about it, 172 of them disagreed and 70 of them strongly disagreed.

Table 20

Chi-Square Tests

	Value	df	Asymp. Sig. (2-sided)
Pearson Chi-Square	34.540 ^a	4	.000
Likelihood Ratio	33.661	4	.000
Linear-by-Linear Association	1.883	1	.170
N of Valid Cases	1327		

In the cross tab between marital status of the respondent and the question of whether the principle of adverse possession enables loophole in property law, the Pearson Chi-Square value is 0.000, $P < 0.05$. Thus the null hypothesis is rejected and alternate hypothesis is accepted.

VI. CONCLUSION

The principle of adverse possession certainly played its role in the modern day jurisprudence. It has enabled numerous people to obtain their property rights' from another person. In India, the

Limitation Act, 1963 has minimized 12 years as mandatory years for which the land has to be in the possession required for a land to be adversely possessed from the original owner. More than the continuous possession, the original owner should have turned a blind eye to the continuous and illegal occupation by the other and the illegal occupant must have made their intention to stay in another's property clear to the original owner, for they who do not do so, lose their right to possess and obtain the ownership rights through the operation of adverse possession. It has resulted in increased lawful protection to the original owners who happen to be naive and uninformed about the modern day development in law. Thus the Indian judiciary has taken them into consideration when they have interpreted the law on adverse possession

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