



Rightful owners can lose Illegally occupied property

Owners can lose their title if they fail to file a lawsuit against someone illegally occupying their property for 12 years at a stretch

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Often people invest in several properties at various places and sometimes it becomes difficult to manage all of them. Some properties lie vacant leading to a situation where any person/trespasser can occupy such property and deny the title to its lawful owner. In such a scenario it is imperative for the lawful owner to take action against such illegal occupant/trespasser within a period of 12 years. Failure to take action within the aforesaid time period may result in a situation where the unlawful occupant acquires a better title than the lawful owner due to adverse possession. This situation, when a person is in exclusive, hostile possession of a property owned by another party, without hav-

ing any right or title over such property, is called adverse possession. Hostile possession means a possession of the land/property by the unlawful occupant of the title of the land/property owner. However, though the concept of adverse possession seems unfair for the real owner of the property, it is recognised by law.

The question that arises for consideration then is that what are the circumstances/grounds for claiming title over a property by adverse possession? One of them is that the person who is the actual owner of the property must be aware of such hostile possession of the other person/trespasser. Despite having knowledge of such adverse possession if the owner fails to file a suit and/or to take any action to recover possession within 12 years from the date of hostile possession, then the remedy of taking back possession of his property will no longer be available to him.

The next question for consideration is: at what point of time does the period of 12 years for

claiming adverse possession commence? The 12-year period commences as soon as the possession by the unlawful occupant becomes hostile towards the actual land owners' title.

Also, the occupant/trespasser must be in possession of the property/land for a continuous period of at least 12 years. Such possession must be uninterrupted and continuous for the entire period of 12 years. It is important to note that such possession must not be permissive as the doctrine of adverse possession will not apply in such a case. For instance, it could mean a land owner giving his land/property on lease to a tenant. The tenant then cannot claim adverse possession of the land of the landlord as such possession has been permitted by the landlord. Another example of possession that cannot be claimed as adverse possession is possession by a servant, caretaker or the watchman. Such persons are only allowed to take care of the property and obliged to return possession when demanded by the lawful owner.

It should also be noted that

no declaration of title can be sought by the person/unlawful occupant claiming title on the basis of adverse possession. When the property owner institutes a suit to claim recovery of his land/property and declaration of his title, the unlawful occupant can raise a plea of adverse possession in order to perfect his title. However, once the suit is admitted, the true owner must establish his title over the land/property. Once the title of the true owner is perfected, the defendant (the person adversely possessing property of other) shall have to prove that he has acquired better title than the owner by means of adverse possession. Therefore, the onus to prove the title by adverse possession lies with the unlawful occupant.

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