

Dispute Resolution Hotline

September 25, 2008

NO ENTRY FOR SQUATTERS...OWNER'S TITLE MATTERS! - SAYS SUPREME COURT

The Hon'ble Supreme Court of India ("Court") has in its judgment dated September 23, 2008, passed in the matter of *Hemaji Waghaji Jat ("Hemaji") Versus Bhikhabhai Khengarbhai Harijan & Ors ("Bhikhabhai")*¹, recommended that the Union of India consider and make suitable changes in the law pertaining to adverse possession. In doing so, the Court has, whilst testing the patience of its relationship with the Union of India, clearly attempted to infuse a whiff of fresh air into the archaic laws dealing with immovable property in India.

FACTS & BACKGROUND:

Hemaji had filed a suit for declaration and permanent injunction before the trial court asking to be declared as the lawful owner and occupier in respect of the suit land and an additional prayer that *Bhikhabhai* be restrained from causing hindrance in the possession and occupation of the suit lands. In its judgment dated April 05, 1986, the trial court *inter alia* held that *Hemaji* had, in 1960, taken forcible possession of the suit lands and was in continuous possession of the same till 1986, which was proved from the register of right of cultivation and therefore, became owner of the suit property by way of adverse possession.

Significantly, *Hemaji* had never pleaded adverse possession in his suit and nor was an issue framed by the trial court with regard to the ownership by way of adverse possession. In the appeal against the said order, the appellate court held that *Hemaji* had failed to prove that the suit land was purchased by him and in the absence of crucial pleadings and evidence pertaining to adverse possession, *Hemaji* could not claim to have perfected his title by adverse possession.

Hemaji thereafter unsuccessfully approached the High Court and finally approached the Court by way of a special leave petition.

WHAT IS 'ADVERSE POSSESSION'?

The Court in *Vidya Devi v. Prem Prakash*² held that "Adverse Possession" means hostile possession, that is, a possession which is expressly in denial of the title of the true owner. Possession "to be adverse must be possession by a person who does not acknowledge the other's rights but denies them".

Thus, adverse possession is the possession (of immovable property) by a person (other than the owner of such property) hostile to the right, title and interest of the true owner and which possession must be open and hostile enough to be capable enough to be known by the parties interested in the said property.

JUDGMENT:

The Court noted that the Appellate Court and the High court had held that *Hemaji* had failed to establish his title over the suit land and additionally, had also failed to establish that he had perfected his title by way of adverse possession.

Interestingly, the Court thereafter proceeded to deal with some important cases regarding the principle of adverse possession including *P.T. Munichikkanna Reddy & Ors v. Revamma & Ors.* ("Revamma")³ wherein, the Court had examined the legal position in various other countries particularly in the English and American system. In *Revamma*, the Court had held that human rights, which included the right to property, were now gaining a multifaceted dimension and therefore, the right to property, including claims of adverse possession, would need to be read in that context.

In paragraph 27 of its order, the Court, whilst reviewing the order in *JA Pye (Oxford) Ltd. v. United Kingdom*⁴ states as under:

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"27.....The Court held in favour of the Grahams but went on to observe the irony in law of adverse possession. The Court observed that the law which provides to oust an owner on the basis of inaction of 12 years in "illogical and disproportionate".

The effect of such law would "seem draconian to the owner" and "a windfall for the squatter".

The Court proceeded to note the expanding jurisprudence of the European Court of Human Rights which had taken an unkind view to the concept of adverse possession and that courts around the world are taking an unkind view towards statutes of limitation overriding property rights.

The Court, whilst upholding the findings of the Appellate Court and High Court, noted that admittedly, *Hemajihad* at no stage set up the case of adverse possession, nor were there pleadings to that effect and no issues thereon were framed by the trial court. Consequently, the Court dismissed the appeal with costs.

Further thereto, the Court, in paragraphs 34 and 35 of its judgment, stated as under:

"34. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner."

"35. We fail to understand why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to loose its possession only because of his inaction in taking back the possession within limitation."

The Court thereafter recommended that the Union of India seriously consider and make suitable changes in the law of adverse passion.

ANALYSIS:

- In a *not-so-subtle* message to the Union of India, the Court has observed that the law dealing with adverse possession needs to be seriously reconsidered and amended, presumably to bring it in line with the current multifaceted dimension being accorded to the right to property and other human rights, and also the current view of courts all around the world.
- This judgment comes in line with several pro-owner judgments in tenancy matters and marks a clear and distinct shift in the outlook of the Court.

Source: Supreme Court Judgment dated September 23, 2008 in Civil Appeal No. 1196 of 2007

- Sahil Kanuga & Vyapak Desai

1. Civil Appeal No. 1196 of 2007
2. (1995) 4 SCC 496
3. (2007) 6 SCC 59
4. 2000 Ch. 676 : (2000) 3 WLR 242

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