



Accounting | Finance | Commercial | Anti-trust | Employment | Wealth Mgt | Environment | Consumer | Insurance | IP | Government | International |

[Home](#) > [India](#) > [Litigation, Mediation & Arbitration](#)



## India: Plea Of Adverse Possession – A Shield As Well As A Sword, Clarifies Supreme Court

Last Updated: 11 September 2019

Article by [Kingshuk Banerjee](#) and [Radhika Gupta](#)

Khaitan & Co



Your [LinkedIn](#)  
[Connections at Firm](#)



Most Read Contributor in India, August 2019



### Introduction

The Supreme Court, in its recent decision in *Ravinder Kaur Grewal & Ors. v. Manjit Kaur & Ors*[1], has clarified that a person claiming title by virtue of adverse possession can maintain a suit for declaration of title. The question for consideration before the Court was 'whether Article 65 of the Limitation Act, 1963 ('the Act') only enables a person to set up a plea of adverse possession as a shield and such a plea cannot be used as a sword by a plaintiff to protect the possession of the immovable property or recover it in case of dispossession?'

### Previous decisions: only a shield

The above question was brought before the three judge bench for determination in the backdrop of the two-judge bench's previous decision in *Gurudwara Sahib v. Gram Panchayat Village Sirthala*[2] (*Gurudwara Sahib*), which observed that a party could use the plea of adverse possession only as a defence/ shield, when arrayed as a defendant in proceedings initiated against it.

In *Gurudwara Sahib*, the plaintiff, *inter alia*, sought a declaration that he had acquired title of the suit property by way of adverse possession. The plaintiff also sought injunctive reliefs against the defendant from being dispossessed from the property. Whilst, on appreciation of evidence, the trial court found that the plaintiff was in adverse possession of the suit property and proceeded to grant injunctive relief from being dispossessed by the defendant, the court held that the plaintiff could not seek any declaration as to ownership on the basis of adverse possession since the plea can 'only be used as a shield and not as a sword'. This view was confirmed by the High Court.

On appeal, the Supreme Court upheld the above finding and observed that 'even if the plaintiff is found to be in adverse possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership'. In doing so, the Court confirmed the reliance placed by the trial court and High Court on Punjab & Haryana High Court's decision in *Gurudwara Sahib Sannauli v. State of Punjab*[3]. Interestingly, Punjab & Haryana High Court's observations in *Gurudwara Sahib Sannauli v. State of Punjab* were solely based on the view adopted in two of its earlier judgements in *Bhim Singh and Ors. v. Zile Singh and Ors.*[4] ('*Bhim Singh*') and *State of Haryana v. Mukesh Kumar and Ors.*[5].

In its subsequent decisions in *State of Uttarakhand v. Mandir Shri Laxman Sidh Maharaj*[6] and *Dharampal (Dead) through LRs v. Punjab Wakf Board*[7], Supreme Court reiterated the view expressed in *Gurudwara Sahib*. Thus, pursuant to *Gurudwara Sahib* the settled position was understood to be that a party cannot seek any declaration as to ownership on the strength of adverse possession and can only use the plea of adverse possession as a defence in proceedings initiated against it.

### Position clarified

Tracing the history of the doctrine of adverse possession, the court observed that the concept of adverse possession has roots in a principle that awards ownership of land to a person who makes the best or highest use of land. Simply put, the possessor who maintains and improves the land has a superior claim to the land than the owner who neither visits or cares for the land.

While examining the correctness of the law laid down in Gurudwara Sahib, the Supreme Court took into consideration several of its previous decisions as well as judgements of the Privy Council and English Courts in which suits for declaration of title, protection or restoration of possession founded on the basis of adverse possession were held to be maintainable. The court noted that, in Gurudwara Sahib, decisions of larger and coordinate benches expressing contrary views were not placed before the court for its consideration.

With reference to Punjab & Haryana High Court's decision in Bhim Singh referred to in Gurudwara Sahib, the court noted that the High Court's conclusion, that the plea of adverse possession was available only to a defendant, was solely based on an inferential interpretation of the language used in the third column of Article 65 which provides that time period for a suit covered under the Article begins to run '*when the possession of the defendant becomes adverse to the plaintiff.*' The Supreme Court held that the language did not in any manner suggest that a suit cannot be filed by the plaintiff based on the title acquired by adverse possession and observed that the inferential process of interpretation employed by the High court was not permissible.

The court further noted that the observations made in Gurudwara Sahib were without assigning any reasons; and the proposition of law was not disputed by the parties. Thus, regarding the judgement in Gurudwara Sahib as a '*decision based upon concession*', the court held that same cannot be treated as a precedent. The court, thus, overruled the decision in Gurudwara Sahib as well as the subsequent judgements of the Supreme Court which relied on it.

Whilst recognising that the operation of statute of limitation in conferring a title was merely negative, the court observed that the right conferred by virtue of adverse possession '*may be a negative right but (is) an absolute one*'. The court held that the party in possession acquires title by a negative conferral of right on extinguishment of the owner's right. The court further held that a suit 'for possession of immovable property or any interest therein based on title' provided for in Article 65 of the Act would also include title acquired by plaintiff by way of adverse possession, thus, entitling a plaintiff to maintain a suit on the basis of adverse possession.

Noting that on perfection of title on extinguishment of owner's title a person cannot be left remediless, the court held that any person who has perfected title by way of adverse possession can file a suit for restoration of possession in case of dispossession. The court, thus, concluded that a plea of adverse possession can be used, not just as a shield (by a defendant), but also as a sword (by a plaintiff).

The court also clarified that adverse possession is heritable and the right acquired is a transmissible one, thus, there could be tacking of adverse possession by two or more persons, such as a purchaser, legatee or assignee claiming through the person first in possession.

Pertinently, whilst conclusively establishing a squatter's right, the court recognised issues of encroachment on properties reserved for public utilities and observed that it was advisable that in respect of properties dedicated to public cause, an exception must be carved out in the statute in respect of such properties.

## Comments

The concept of adverse possession has always been frowned upon to the extent it benefits a rank trespasser who wrongfully acquires possession of the property belonging to another. It had, attached to it, a negative connotation. The movement against the doctrine gained more momentum in the last decade when the Supreme Court deprecated the law in its decisions in *Hemaji Waghaji v. Bhikhabhai Khengarbhai Harijan & Ors.*<sup>[8]</sup> and *State of Haryana v. Mukesh Kumar*<sup>[9]</sup> and observed that legislature may consider changing the law. Globally too, this was a moot point in view of the observations made by European Court of Human Rights (ECHR) in *J.A. Pye (Oxford) Ltd. v. United Kingdom*<sup>[10]</sup> that the law was 'illogical', 'disproportionate' and a 'windfall for a squatter'. The observations, however, were eventually disapproved by the Grand Chamber of ECHR. Whilst in 2012, the Law Commission of India issued a public questionnaire inviting responses, *inter alia*, on the question as to whether the law pertaining to adverse possession should be repealed, no recommendations have been made by the Law Commission till date.

Perhaps, the present decision of the Supreme Court will persuade our law makers to take some concrete steps, especially in light of the Supreme Court's recommendations with respect to public spaces.

One also wonders whether the law declared in this judgment will be given retroactive effect, as is ordinarily the norm with judicial decisions. What then would be the fate of pending suits and appeals commenced by unauthorised occupants, some of which may have been on the verge of dismissal, or so the defendants (in those cases) would have been advised.

The other potential concern is the possibility of a fresh flood of litigation by parties, who until now, just had in their arsenal the shield of adverse possession and, as a result, could never strike first. This judgment of the Supreme Court has presented such parties with "swords" – an invaluable gift and one that would, seemingly, encourage them to go to battle with increased vigour.

---

[1] Civil Appeal No. 7764 of 2014, decided on 7 August 2019

[2] (2014) 1 SCC 669

[3] (2009) 154 PLR 756

[4] AIR 2006 P&H 195

[5] (2009) 154 P.L.R. 753

[6] (2017) 9 SCC 579

[7] (2018) 11 SCC 449

[8] (2009) 16 SCC 517

[9] (2011) 10 SCC 404

[10] (2005) 49 ERG 90

The content of this document do not necessarily reflect the views/position of Khaitan & Co but remain solely those of the author(s). For any further queries or follow up please contact Khaitan & Co at legalalerts@khaitanco.com

Do you have a Question or Comment?  
Click here to email the Author

Interested in the next Webinar on this Topic?  
Click here to register your Interest

**Contributor**  
**Kingshuk Banerjee**

Email Firm



More from this Firm



**Khaitan & Co**

View Website



More from this Author



News About this Firm



**Authors**

**Kingshuk Banerjee**

**Radhika Gupta**



Khaitan & Co: 601 employees in your network

Following



**Nandini K.** (2nd)  
Partner at Khaitan & Co.



**Shourya Sengupta** (2nd)  
Senior Associate at Khaitan & Co



**Aditya George Cheriyan** (2nd)  
Partner, Capital Markets at Khaitan & Co



**Adheesh Nargolkar** (2nd)  
Partner at Khaitan & Co.

In Your Network

powered by

Contact Us | Your Privacy | Feedback

