

# ANALYSIS OF THE CONCEPT OF ADVERSE POSSESSION

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## ABSTRACT

The research proposal focuses on the concept of Adverse Possession and how its misuse by any government can lead to serious environmental and economical problems for the society as a whole, for which various examples and models are provided throughout the proposal for the reader to understand. And the impact of these different models on the owner of property and the claimant of the property. Then it sheds some light on how as the use of property over a period of land for activities such as grazing, agriculture, timber cutting, using it for firewood, exploiting it further and further for all the different kind of economic benefits can lead to the environmental degradation of the place, and the places surrounding it as the adverse possession rules in some part of the globe, more for instance in the western society, favor the right of the claimant towards the property, so the economic exploitation of property is directly linked to the higher chances of adverse possession being undertaken. Then at the conclusion the paper focuses on several instances and methods which are necessary to be carried out by the government and the people in general so as to prevent the exploitation of land in the name of adverse possession to take place, various examples being restricting the transfer of title of property from own claimant to its successor, laying out strict guidelines for the uses of wildlife areas and its private possession by different organization's for their own use, only if the unfiltered use of the private properties can be prevented by the government and various measures need to be put in check so as to ensure so as to ensure there is no environmental exploitation at all.

## Introduction

Adverse possession was made so as to generally lay situations or instances wherein the claimant may claim the property from the true owner of the property, but lately it has become a tool in disguise for the government so as to acquire property usually wastelands which the owner usually care take care of the same, and thus banking on the same fact, the laws are made as such so as to favor the claimant of the property as much as possible so that it acquires the wildlands from the true owner of the property and sells it too the person who exploits the property for the ole purpose of economic expansion. The traditional approach or the limitation model of the adverse possession is one such example where a few minor instances of negligence by the true owner of the property and the property transfers to the claimant. According it there should be two principles to be kept in mind where any claim of adverse possession, first being where the true owner of property has every knowledge that the claimant for the past many years has been carrying out all the necessary activities, such as grazing, clearing areas for cultivation, cutting of trees for firewood and the true owner without giving any direction or indication to the claimant lets him to do all his exploitive stuff. Second being the fact that the true owner of the property must pay visit to the property from regular intervals, otherwise the owner might seem to be not interested in the property and the ownership will directly in that particular instance would transfer to the claimant. Now this particular limitation model has its reservations when it comes to the case of wastelands, or for instance the true owner of the property lives in the remotely far from the property. So for instance A being the owner of property lives far away from the property that is supposedly a wasteland, not much productive use of it can be made by a person of it, B on the other hand being the claimant of the property in question can claim its right if the owner A does not visit the property from regular intervals, and in case of a wasteland the visit made by the owner of the property should be of some productive use, not mere inspection, so this brings the owner of the property to a disadvantage situation as first of all he lives not at all near the property, second none would be interested in visiting a wasteland as it does not have any kind of economic use of it, so the claimant on the other hand who is carrying only the usual or normal activities of grassing, cutting or clearing fields for the purpose of agriculture and these are not the alarming kind of activities which put the owner of the property in imminent threat of possession but still the mere absence of the owner of the property and the possession would pass to the claimant. Now we look at the development

model of the adverse possession according to which if there is no productive use of the land by the owner than the transfer of the title passes to the claimant of the property , just because the owner was not able to make productive use of the land. This 20<sup>th</sup> century model is still being followed despite the fact that it highly favors the exploitation of land by the owner or the claimant, this model of development is strictly against the preservationist mindset that the owner if not using the land may prefer to keep it as a reserve instead of exploiting it and using it for economic purposes, this mindset leads to environmental exploitation of the property in both the ways, whether it is in hands of owner or the claimant . Some activities by which the owner can prevent the transfer of its property is by carrying out all the environmental friendly activities such as grassing, sprinkling , timber cutting , grazing herds as them being the only way to stop the transfer of property from the owner to more exploitative claimant. For instance A being the owner of property does not carry out any kind of economic activities on its land , while B being the claimant exploits the land for harvesting , cutting the timber this particular would transfer the property from a preservationist A to exploitative B . Now we look at how through a three step process, the developmental model largely leads to environmental degradation. The idea of conservation of environment was not given much importance in the historical time period for instance the 19th century , but gradually with rising environmental concerns this has become a global concern all around the globe. Many organizations, trusts, special environmental conservation groups have surfaced through past years , in spirit of conservation of wild lands or specially the lands that remain exploited. Many attempts have ben made towards the private conservation of wildlands so that they can be prevented from the exploitation of the adverse possessor, as there the government lands cannot be easily claimed by private organizations , so they remain safe and sound as compared to the private lands. So the adverse possession of the wild lands can directly be linked to the ideology or methodology of exploitation according to which the more the exploitation of the land , the more higher chances of wild land being adversely possessed by the claimant, this also proves as a major threat to the private preservation of lands by the owner as many wild lands are now gradually being occupied or taken by the wild lands conservationist, organizations, so there is little to no amount of land as a resource left for the private owners who do not want to put their land to economic use and merely preserve it. So the first measure through an adverse possessor may claim the title to the land is through carrying out of the economic activities through which there is productive use of the land , even if it is at the cost of environmental degradation , it doesn't matter. So for instance A claimant

regularly carries out the activities of grassing, grazing, clearing fields for the purpose of agriculture over the interval of regularly 15-20 days of time, then he would easily claim the title over the land as against the case of O the real owner of property, so this clearly is reflective of how the doctrine of exploitation is being promoted here. Second one being the transfer of title of property from the owner to the claimant of the property, this particular case is really threatening as far as the environmental concern of the place has to be kept in mind as the title gets transferred from a preservationist owner to the exploitative claimant because of the fact that there is a paradox created by the developmental model as once the title of a wildland transfers from the true owner of the property citing reasons the owner was not up-to anything productive, the exploitation of the land goes on continuing as the claimant now after he dies and passes his property to the successor who will be more destructive in nature when it comes to harboring out resources from the wild lands, whether it be timber, clearing of wide areas for agriculture, these activities cause a major threat too for the environment on a large scale as the area left barren or unused can now not be put into any kind of productive use. Third precautionary measure for the owner of the property being that he or she can carry out regular inspection of the property by employing four to five people so as to take care of the land and prevent it from being transferred to the claimant, this process involves carrying out activities, regular patrolling, clearing areas for agriculture, cutting through grass fields, many owners also prefer to use animals such as dogs to take care of their lands as well and all of this leads to a more higher chance of land degradation leaving the owner into two different minds as to whether allow the claimant to possess the land or whether to carry on with the inspections and the degradation of property, most of them prefer the second option as letting go of their property is not something which comes by as a easy task. So what measures can now the government take so as to prevent the extinction of wildlands and similarly the environmental degradation it causes too. The first step being making wild lands as a exclusive piece of lands which can be preserved by the owner of the property simply by carrying out the recreational activities such as making it a bird sanctuary, breeding ground, hunting as a resort to maintain exclusivity and prevent from the adverse possessor too, as these activities prevent the degradation of land too and helps in conservation of all the lands in the hand of rightful owner of the property which being the preservationist owner and not the exploitative claimant. Only if the governments around the world pass a legislation or judicial review for that matter declaring mere preservation of the land by the owner as a act of not abandoning the property and taking care of it, without

making any kind of economic use of it , so there is no urge for the owner to take exploitative measures. Second being the moral duty of every citizen as a part of this human community to show some kind of humanity and have a moral obligation towards oneself when it comes to the preservation of wild lands, because sooner we realize the fact that all these natural resources, such as these wild lands , which are home to many wildlife reserves, fish reserves , and many different habitats as their only remaining natural habitat , so if the humans go on consuming these wildlands for their own use it would lead to the ultimate extinction of these resources and the future generation would never be able to witness all the wildlife creatures, trees , flowers that used to inhabit this beautiful green planet . One of the ways through which it can be prevented if the personal benefit or the gains that the owner of the property derives from preserving it , from the economic activities and taking care of all the wild life habitats is greater from the benefit it receives from the financial gains it receives from the exploitation of the wild lands, only it would promote the conservationist mentality and remove unnecessary need to exploit the land for financial benefits. The last resort would be making the owner sole proprietor of the property without giving any chance for adverse possession to take place, this easily lead to cut down on all the unnecessary inspections from regular intervals on the property and which would ultimately lead to less amount of exploitation of the land, mere conservation on the part of owner may also lead to an act of paying attention to the land, the owner when he has all the freedom to do as he pleases with the property it would lead to him being more preserving in nature rather than exploitative as it is his decision to decide as to what to do ultimately with the property any reasonable person who does not have to constantly display the act of authority would resort to less exploitive measures only rather than pursuing economic activities for financial gain , this would ensure the co-existence of peace and harmony among the wild land owner and the nature and this is the only best way forward for the mankind to carry out its economic pursuits with the right balance of taking care of all the natural resources that surround it , because economic development at the cost of environment degradation would only lead to man made disasters such as forest fires, global warming etc.

#### References:

- 1). John G. Sprankling, *Environmental Critique of Adverse Possession* , 79 CORNELL L. REV. 816 (1994)

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