

J A PYE (OXFORD) LTD AND OTHERS v. GRAHAM AND ANOTHER [2002]**UKHL 30****Aadithri Shetty***

This House of Lords case is often used as a landmark judgement in any common law discussion of the “Doctrine of Adverse Possession.” Furthermore, it provides a lot of useful insight and detailed discourse on the fundamentals of property law and the history of certain commonly used principles.

FACTS

J.A. Pye was the owner of the Henwick Manor and a lot of the surrounding land until 1977 when he sold a part of it, Manor Farm. Here he continued to own the land that was later disputed in this case (hereafter referred to as “disputed land”). The disputed land was clearly defined and distinguishable from the rest of Pye’s property, as well as from Manor Farm. It was cut off from the nearby land by a hedge which had four gates.

The Grahams bought Manor Farm in 1982. They were informally allowed to utilise the disputed land for grazing from September 1982 till February 1983. Of the four gates to the disputed land, John’s wife had the key to the padlock on one of the gates. Pye had less physical access to the land than the Grahams did. On 1st February 1983, John Graham and Pye entered into an agreement to allow Graham to use the land for grazing and agriculture until 31st December 1983, in exchange for 2000 pounds. The agreement also determined certain duties of upkeep of the land to be fulfilled by Graham during this period. The agreement also stated that Graham was not to allow trespass on the land or transfer possession of the land during this period. Pye held the right to terminate the agreement before the stipulated time with 6 months’ notice. The agreement also explicitly stated that any further such grazing after the expiry of the agreement would have to be done after the formation of a separate new agreement.

In December 1983, a surveyor acting on Pye’s behalf sent Graham a letter reminding him that the agreement was about to expire and that the Grahams should vacate the disputed land. In January 1984, Pye refused to enter into another agreement for 1984 because he was told to

*BA LLB, THIRD YEAR, OP JINDAL GLOBAL UNIVERSITY, SONEPAT.

keep the land in his possession while the application was being made for the development of the land. Pye also believed that grazing would deteriorate the land and reduce the prospects of getting permission for the development.

Despite this, Graham remained in possession of the land and continued utilizing it as he had done under the agreement, even though he knew that another agreement might not be entered into and that this was his liability. In June 1984, Pye agreed to sell Graham the crop from the disputed land for 1100 pounds. This was the last agreement entered into by the two parties. This amount was paid by Graham in November 1984. In December 1984, Graham sent Pye a letter requesting another grazing agreement in 1985, or permission to take a cut of hay. Pye did not respond to this letter or to the other letters that the Grahams sent in May 1985. The Grahams continued to utilize and maintain the land without Pye's authorization from September 1984 to 1999. Graham claimed that if Pye had asked for remuneration for his utilization of the land, he would have paid. Pye did not establish his interest or possession of the land in any manner throughout this time, except for carrying out certain paper transactions that could not qualify as "having possession."

In 1997 John's son Michael Graham filed cautions to contest Pye's ownership of the land based on a squatter's title he obtained through the Doctrine of Adverse Possession. In February 1998, Michael released the cautions for land required for a relief road. Michael was killed on 19th February 1998 in a shooting accident.

Pye issued a summons seeking that the caution be cancelled on 30th April 1998. Michael's widow, Caroline, registered further cautions a week after this. In September 1998, Letters of Administration were given to Caroline and her father.

Pye issued further proceedings seeking possession of the land on 20th January 1999.

ISSUES

Which date the Period of Limitations should begin to be counted from?

As long as the Grahams were in possession of the land with Pye's consent, no proper Right of action (As discussed in Section 15 and Schedule I paragraph 8 of the Limitations Act 1980)¹ can be said to have been accrued to Pye. So, a right of action only accrued after the end of the

¹The Limitations Act, 1980

last agreement around 31st August 1984. To claim ownership of the land the Grahams needed to prove possession of the land without Pye's consent from before 30th April 1986. This possession did exist from 31st August 1984, so the 12-year requirement was fulfilled.

Were the Grahams in adverse possession of the disputed land?

Browne-Wilkinson J agreed with the observations made by Slade J regarding the possession and adverse possession in the Powell case.² The intention of the owner does not affect the intention of the squatter where adverse possession is concerned. Schedule I Paragraph 8(1) of the Limitations Act 1980 defines adverse possession as the situation in which the land is in the possession of the party in whose favour time "can run".³ The judge believed that adverse possession as a concept should not be used and that the question was merely whether the Grahams dispossessed Pye by taking possession of the disputed land for the requisite time period without his consent.

Lord Hope of Craighead disagreed. He believed that adverse possession was just a label used to recognise when the squatter's possession is adverse to the owner's interests.

Did Pye discontinue possession of was he "dispossessed" of the land? If yes, then at what point could he have been said to be dispossessed?

Pye did not discontinue possession according to the definition provided in Schedule I paragraph 1.⁴

Dispossession need not be a confrontational removal of the owner from the land by the squatter, but could also mean possession of the land by the squatter without the owner's consent. Since in most cases possession is single and exclusive, a land possessed by the squatter cannot also be said to be in possession of the owner. The judge established that there are two elements of possession, factual physical possession of the land, and an intent to possess the land. It was not the mere act of physical possession, but also the intention with which the squatter was currently possessing the land. The Grahams were clearly in sole factual and physical possession of the land since they continued farming on it without Pye's consent, combined with the fact that Pye was excluded from the land by the hedges and the lack of a key to the gate to the land.

² *Powell v McFarlane* (1977) 38 P & CR 452

³ *Ibid.*

⁴ *Ibid.*

Did the Grahams have Animus possidendi (intent to possess)?

Browne Wilkinson J, in congruence with Slade J, stated that the intention to exclude the world and the real owner of the land as far as was reasonably practical and would be allowed by the processes of the law would suffice as an intention to possess.⁵

The Grahams need not have been inconsistent with the intentions of Pye, because that notion followed similar principles to the doctrine of adverse possession. Pye's intention was irrelevant to the matter at hand. Furthermore, Browne Wilkinson J agreed with the principles applied by Lord Diplock in the Pinder case,⁶ that the Grahams' willingness to pay was not seen as conflicting with the idea of their intent to possess the land, it did not indicate an absence of intent to possess the disputed land.

DECISION

Considering all the same factors that were later discussed by Browne-Wilkinson J as mentioned above, Neuberger J in a lower court, had already held that the Grahams had intent to possess and accordingly, now held the title to the disputed land.

The Court of Appeal, however, disagreed with this decision. It believed that the agreement between Pye and Graham was not an agreement to consent to possession, but merely a licence to graze the land. Since the Grahams continued to use the disputed land for the same purpose even after the expiration of the agreement(s) they could not be said to have an intention to possess the land but merely to continue using it for the same causes they had been licensed to use it for previously. There was no direct evidence that the Grahams had changed their intent in the time that they had grazed the land without Pye's consent. Pye had retained possession of the land throughout the agreement period since he still held the right to prevent future use of the land, planning of the development of the land etc.

Browne-Wilkinson J of the House of Lords found that the Court of Appeal's reasoning that the agreement did not intend for the Grahams to have possession but was merely a license was somewhat misplaced since clause 5 of the 1983 agreement stated that the Grahams were not to part with the possession of the land and clause 10 of the agreement discussed how Pye could only regain possession of the disputed land during the agreement period if he gave 6

⁵ Ibid.

⁶ *Ocean Estates Ltd v Pinder* [1969] 2 AC 19, 24

months' notice. This pointed to the fact that the Grahams did have possession of the land, even if the Court of Appeal held that this possession was not exclusive. The House of Lords also found the reasoning that they continued utilizing the land in the same manner as they had during the agreement to be weak since they blatantly went against the terms of the contract by not vacating it when the year 1983 was over. They were also not just acting without Pye's permission, the Grahams were expressly informed by Pye in 1984 that they needed to vacate the land so it could be used for developmental purposes, so to the Grahams' knowledge, they were acting in a manner that was directly contradictory to Pye's wishes. The House of Lords believed that the Grahams had been in possession since before 30th April 1986. For all these reasons, Browne-Wilkinson restored Neuberger J's decision.

Lord Hope of Craighead added that from his interpretation of Adverse possession and his reference to other precedents in Scottish Law, he concluded that if the squatter treated and utilized the land as one would expect him to if the land was owned by him, that was enough to establish possession. Since this possession had been maintained for over 12 years, Section 15 of the Limitation Act 1980⁷ applied and Pye had lost the right to recover the land. The principles of natural justice and equity that have been breached due to such a statute are being combated by Schedule 6 of the Land Registration Act 2002.⁸ While this act does not apply to the present case, it provides safeguards to the original owner's rights to his title to the property.

Lord Hutton agreed with all of Lord Browne-Wilkinson's arguments and further reinstated that the Grahams had intent to possess. **Thus, the House of Lords (The Highest Court) held that Pye had lost ownership and the Grahams now had ownership of the land under Section 15 of the Limitations Act 1980.**

LEGAL PRINCIPLES AND STATUTES DISCUSSED IN THIS CASE

This case provides a useful multidimensional perspective of many commonly used concepts and principles in property law.

The doctrine of Adverse Possession - This doctrine, while seemingly outdated, is still referred to in current disputes, as recently even in India as of March 2023.⁹In the Ravinder

⁷ Ibid.

⁸ The Land Registration Act, 2002

⁹ Babu Khan v. Rajendra Prasad, 2023 SCC Online All 78

Kaur Grewal case, the Supreme Court of India discussed in depth the Doctrine of Adverse Possession and held that this doctrine can be used as both a sword as well as a shield, i.e. to defend a suit on the basis that he occupied it, as well as to file a suit against the original owner as plaintiff.¹⁰ It is therefore still a prevalent principle in Indian law. Even in the case being discussed, this doctrine had an important role to play since, if we are to follow Lord Hope's definition, which seems to be the prevalent one in other cases, then the Grahams were in adverse possession of the disputed land, and this is what further proved the lack of Pye's involvement in his property.

Limitation Act 1980 - Section 15 of this act discusses the time period for which adverse possession is required for the possessor to claim the title of the property from the original owner. This time frame is twelve years.¹¹ This section corresponds to Section 27 of the Indian Limitations Act 1963, which, in combination with Article 65 of the Indian Limitations Act, also states that the original owner does not have a claim to the property if it has been in adverse possession for twelve years.¹² Paragraph 8(1) of the First Schedule of the UK Act defines adverse possession. Article 65 of the Indian Act defines the same. These provisions are relevant to the case because they legally backed Graham's claim to the disputed land.

Land Registration Act of 2002 - Section 97 and Schedule 6 of this Act provide certain safeguards to the registration of the title of an adverse possessor.¹³ Had these provisions been active before this case, they might have weakened Graham's claim to the disputed land.

Possession as being exclusive - This is an important concept because, in common law, possession is thought of as the origin of property.¹⁴ In this case, it was discussed that "Exclusivity is the essence of possession" according to Roman law and hence English law as well. This concept was what defined that the Grahams and Pye could not possess the land at the same time and hence the Court of Appeal was overruled.

This case mainly relates to the doctrine of adverse possession. While this doctrine can be seen as archaic, and interfering with the Constitutional right to property, it has its origins in the idea of awarding the land to that individual that makes the best and most beneficial use of the land. The possessor has more claim than the owner who does not visit the land or make good

¹⁰ Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729, 778

¹¹ Ibid.

¹² The Indian Limitations Act, 1963

¹³ Ibid.

¹⁴ Carol M Rose, 'Possession as the Origin of Property' (1985) 52 The University of Chicago Law Review 73

use of it.¹⁵ Furthermore, the owner of the land must occasionally assert his title to the property, so that the general public has surety of who has an interest in the property and who has the legal power to take decisions regarding the property.¹⁶ When someone fails to assert this interest for a period as long as twelve years, it is understandable that the law awards the property to someone that seems to better utilize and establish right over the property. In this light, adverse possession seems equitable. On the flip side, adverse possession can also be extremely detrimental, in that a person suffering from poverty might not be able to initiate proceedings against someone illegally occupying his land, and as a result, might lose even that piece of land.¹⁷ The Doctrine of Adverse Possession, as seen in this case, also requires an intent to possess, which seems to reward intentional wrongdoers over innocent occupants.¹⁸

This concept relates to the concept of acquiescence, where the original owner is deemed to have accepted something merely because of his lack of objection. Similarly, in this case, a lack of action on the owner's part results in him submitting the property to a trespasser. While this doctrine might have originally been instilled to forward a certain cause, there is a lot of scope for its misuse. The judiciary must ensure that all decisions they take regarding this doctrine are taken after assessing the entire case and ensuring that the natural principles of justice, equity and good conscience are maintained.

¹⁵ Ravinder Kaur Grewal v. Manjit Kaur, (2019) 8 SCC 729, 778

¹⁶ Ibid.

¹⁷ Sridevi Shanker, 'PAPER PRESENTATION on the TOPIC of ADVERSE POSSESSION versus RIGHT to PROPERTY'

¹⁸ Lisa Austin, 'Property and the Rule of Law' (2014) 20 Cambridge University Press