



## ADVERSE POSSESSION IN JAMAICA

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For most Jamaicans, the ownership of land is the defining feature of a successful life. The attainment of this objective has not always been easy because of the finite nature of land which also forms part of its allure. An examination of the period immediately following the abolition of slavery provides a vivid illustration of many of the early difficulties associated with land ownership. Lands were concentrated in the hands of a few wealthy land owners. The strategy at that time was to restrict ownership because land ownership meant

independence. If the former slaves had no land of their own then they would be tied to the plantation. Many owners refused to sell lands and the result was that the only option available was squatting.

Registered land in Jamaica is governed by the Registration of Titles Act 1889. In large part, the Act is substantially the same as at its inception, with a few amendments. One such amendment in 1968 arguably has had the most significant impact on the scope of land ownership in Jamaica. Sections 85-87 of the Act were amended to allow persons to acquire a good title as against the registered proprietor by possession. For the first time a squatter was able to obtain a title. A person in possession of privately owned land for a continuous period of 12 years was able to apply for a registered title in his name. The application needed to be supported by 2 statutory declarations from persons who had known the property in question for more than 12 years and were unconnected with the application. The applicant was obliged to submit an up to date certificate of payment of taxes, though it should be noted that mere payment of taxes did not entitle one to claim title by adverse possession. The property was to be clearly identified by means of either a survey diagram or by adequate description.

Before applying for title by way of adverse possession, an applicant should ask himself the following questions:

1. How long have I been living on the property? The application can only be made after 12 years has elapsed as it relates to privately owned lands and 60 years for government lands. It therefore very important to know against whom you are claiming as this determines the relevant time period. To illustrate this importance consider the following example, if one is claiming against a man who has died leaving no heirs, the property reverts to the crown bona vacanti and as a result the requisite time period is 60 years. It is somewhat of a relief that one owner's years can be tacked to another owner's years to attain the requisite time period, which in practical terms means that you can combine your time of possession with that of your father to attain the requisite time of possession. Once the period is interrupted by notice from the owner then the period begins anew.
2. Has my possession been open and notorious and have I acted in a manner as if I were the owner? This is actually a two tier test, the first of which is measured by an engagement in acts of possession consistent with the property in issue in a manner which was capable of being seen. This may include running a fence or putting up a wall. In a recently decided Privy Council case, it was recognized that engaging in mere typical acts of maintenance, such as bushing the property, could amount to sufficient acts of possession. The second tier of the test is that the acts engaged in must be capable of being attributable to the owner and not as a mere tenant. Therefore, someone who entered the property to gather fruits or to collect firewood over a twelve year period would not satisfy this requirement as the mere gathering of the fruit or the collection of the wood would not amount to sufficient acts of possession.
3. Is my possession adverse to the interest of the owner? The possession of the applicant must be to the detriment of the possession of the rightful owner. It must be pointed out that in law there is a clear distinction between possession and occupation. Possession is what is used to determine the issue at hand. Occupation has to do with being on the land physically. To understand the concept fully take the following example: a landlord, who is the owner of the premises rents it to a tenant. The tenant is in occupation of the premises but the owner

is in possession. Similarly, a person who enters property with the permission of the owner cannot claim by way of adverse possession. The possession by the person making the application must be adverse to that of the registered owner. Therefore, if you are allowed to enter premises for the purpose of farming, you cannot then claim adverse possession. You must be a trespasser to claim by way of adverse possession.

Though the amendment has useful applications, it has often been criticized for enabling rightful owners of a registered title to be deprived of their property. The converse is also stated that because of the finite nature of land, it should be put to use and not remain idle. I am of the view that the spirit of the amendment, illustrated by the prevailing social and cultural conditions of the period, was to enable ordinary folks to attain a good title by proving the requisite period of possession. The law on the requisite period is clear but the practical application of the concept has led to absolute frustration for many applicants, to the extent that many have given up totally on getting a registered title. The major considerations for the Referee of Titles in approving a title are whether he is satisfied that the applicant is the person entitled to apply, whether he is the person in possession and would he be entitled to maintain and defend such possession against other persons.

Section 3 of the Limitation of Actions Act states clearly that an action for recovery of land cannot be brought after the expiration of 12 years. This is the basis for adverse possession. However, in practice that period is not finite. In fact, many applicants have been asked to prove possession far in excess of this 12 year period. The justification in many instances has been Section 19 of the Limitation of Actions Act which extends the period to thirty years. In essence the section applies to persons under a disability but is capable of application to most adverse possession applications because many of the applicants do not know who the rightful owner of the property is or if that person has any heirs who may not have attained the age of majority who may want to bring a claim.

It is submitted that this could not have been the intention of Parliament when making these amendments. The intent was to make the process easier and more accommodating. If a person knows the owner of the property, satisfies all the requirements mentioned above and makes the application before the person dies then it appears that the relevant consideration would be the 12 year period. However, if the applicant does not know the owner or the owner dies before the expiration of the 12 year period of possession, or before the application is made then Section 19 becomes applicable and the period is automatically extended to 30 years. Hence, what was supposed to be a simple amendment has turned out to be a complicated headache for many applicants.

What is most apparent is a need for some clarification of the legislation to enable applications to be made with more confidence.

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