



The Insight

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INSIGHT HIGHLIGHTS

SC Clarifies the principles of Adverse Possession

*A person pleading
adverse possession has
no equities, as it seeks
to defeat the true
owner's rights.*

Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 Notified:

The rules outline the
definition of terms
such as 'majority
stake,' 'significant
beneficial owner,'
'reporting limited
liability partnership',
etc. with respect to
LLPs



Foreword

Dear Readers,

Greetings from RGC Lawyers,

As we embark on this new edition of our newsletter, we're reminded of the ever-evolving landscape of real estate, corporate and commercial law. These sectors are not merely industries; they are the lifeblood of economic progress, driving innovation, and shaping our communities.

In these pages, we endeavor to unravel the intricacies, offering you a window into the latest trends, critical legal updates, and strategic insights. Whether you're a seasoned professional navigating complex transactions or an entrepreneur charting new territory, we believe the knowledge shared here will be your guiding light.

Our team at RGC Lawyers has poured their expertise and dedication into curating content that's not only informative but also practical in its application. We hope this newsletter serves as a valuable companion in your professional journey.

Thank you for entrusting us with your legal pursuits. Here's to staying ahead, together.

Warm Regards,

Rajesh Goel
Managing Partner

SUPREME COURT RULINGS



1. SUPREME COURT CLARIFIES THE PRINCIPLES OF ADVERSE POSSESSION

The Hon'ble Supreme Court of India in the case of **Vasantha (Dead) Thr. Lr. vs. Rajalakshmi @ Rajam (Dead) Thr. Lr.** (Civil Appeal No. 3854 Of 2014) reiterated key factors related to adverse possession. To claim adverse possession, one must demonstrate: (a) the date of possession, (b) the nature of possession, (c) whether the other party was aware of the possession, (d) the duration of possession, and (e) open and undisturbed possession. The court emphasized that a person pleading adverse possession has no equities, as it seeks to defeat the true owner's rights.

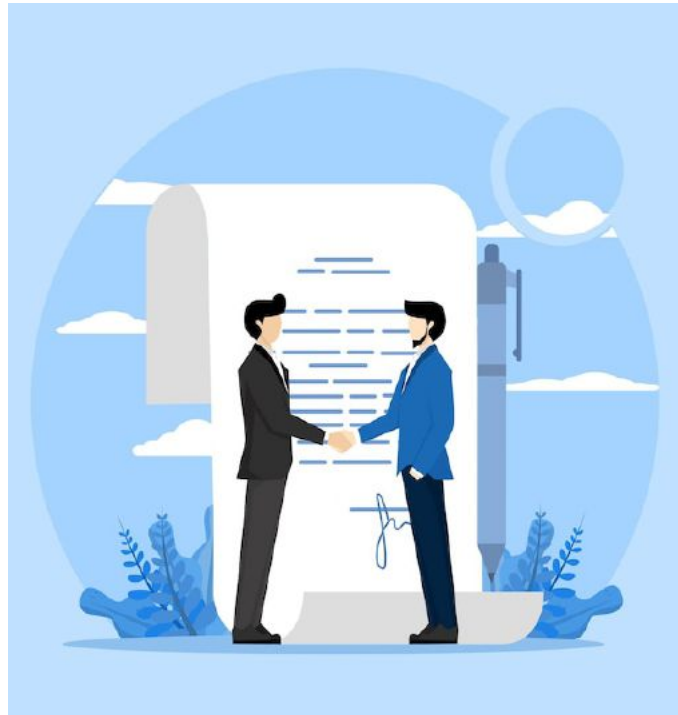
Referring to **Saroop Singh v. Banto** and Article 65 of the Limitation Act, the court clarified that the limitation period begins when the defendant's possession becomes adverse. Exclusive possession and *animus possidendi* (intention to possess) are crucial factors in adverse possession cases. However, the court highlighted the dependence of this principle on limitation, emphasizing the importance of the limitation period when bringing an action to recover property.

The court also relied on **Bharat Barrel and Drum Mfg. Co. Ltd. v. ESI Corpn.** (1971) 2 SCC 860, discussing the object of the Limitation Act. The necessity for limitation periods is to ensure timely commencement of actions, allowing the availability of evidence and discouraging dormant claims.

2. AGREEMENT TO SELL DOES NOT TRANSFER OWNERSHIP OR CONFER TITLE.

In the case of **Munishamappa v. M. Rama Reddy and Ors,** the Supreme Court reiterated that an "Agreement to Sell" does not transfer ownership or confer title to a property. The case involved an appellant who filed a suit for specific performance based on a 1990 agreement.

In summary, the agreement outlined the sale of the property for Rs. 23,000, with the entire amount paid upfront. Possession was given, but due to legal restrictions, the sale deed couldn't be executed initially. The Fragmentation Act, causing this restriction, was repealed on February 5, 1991.



Despite payment and possession, the respondents delayed executing the sale deed. The Trial Court in 2004 dismissed the suit, raising doubts about the agreement's execution and citing concerns about the limitation period.

The First Appellate Court allowed the appeal, confirming the suit was within the limitation period and the execution of the agreement. The High Court, on November 10, 2010, allowed the appeal, deeming the agreement void under the repealed Fragmentation Act.

Justice Vikram Nath and Justice Rajesh Bindal observed no framed issue regarding the Fragmentation Act violation, and it wasn't pleaded by the respondents. The absence of this issue and the respondent's admission during cross-examination led the bench to conclude that the High Court erred.

The bench clarified an Agreement to Sell doesn't convey ownership; the Fragmentation Act barred lease, sale, conveyance, or transfer of rights, not the agreement. Consequently, the Supreme Court allowed the appeal, setting aside the High Court's order, and restoring the First Appellate Court's judgment in favor of the appellant.

3. SETTLEMENT DEED WITHOUT WRITTEN CONSENT OF ALL THE PARTIES IS UNLAWFUL:

The Supreme Court, in the case of **Prasanta Kumar Sahoo & Ors. Vs. Charulata Sahu & Ors.**, addressed a dispute involving siblings and the validity of a Settlement Deed. Following the demise of Mr. Kumar Sahoo in 1969, his three children, Ms. Charulata, Ms. Santilata, and Mr. Prafulla, were involved in a partition suit. The Trial Court determined their shares in ancestral and self-acquired properties.

During the appeal, Ms. Santilata and Mr. Prafulla entered a Settlement Deed in 1991, relinquishing Santilata's share to Prafulla for INR 50,000. Notably, Ms. Charulata did not sign the settlement. The Single Judge of the Orissa High Court modified the trial court's order based on the settlement. However, a subsequent appeal challenged the settlement's validity.

The Supreme Court observed that the settlement, involving only Mr. Prafulla and Ms. Santilata, lacked Ms. Charulata's written consent, making it unlawful. Dismissing the appeal, the court modified the decree, confirming the daughters' 1/3rd share in all properties and holding that the appellants were not entitled to the share of Ms. Santilata due to the invalid settlement.



CORPORATE NEWS

LIMITED LIABILITY PARTNERSHIP (SIGNIFICANT BENEFICIAL OWNERS) RULES, 2023 NOTIFIED:

The Ministry of Corporate Affairs has issued a notification on November 9, 2023, introducing the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023. Aligned with Section 90 of the Companies Act, 2013, these rules apply to Limited Liability Partnerships (LLPs) under the LLP Act, 2008. The rules outline the definition of terms such as 'majority stake,' 'significant beneficial owner,' 'reporting limited liability partnership', etc.



Key Compliance Measures in Detail:

1. Identification of Significant Beneficial Owners (SBOs): Reporting LLPs are mandated to identify individuals considered significant beneficial owners. Declarations from identified SBOs must be obtained using Form No. LLP BEN-1.
2. Timeline for Compliance: The identification process and submission of declarations must be completed within 90 days of the commencement of the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023.
3. Filing Return with Registrar: Upon obtaining declarations in Form No. LLP BEN-1, reporting LLPs are required to file a return with the Registrar using Form No. LLP BEN-2.
4. Maintenance of SBO Register: Reporting LLPs must maintain a register of Significant Beneficial Owners (Form No. LLP BEN-3).
5. Issuance of Notices: Notices in Form No. LLP BEN-4 are to be issued by reporting LLPs to identify SBOs further. These notices align with the provisions of Section 90(5) of the Companies Act, 2013.
6. Exemptions under Rule 10: Exemptions include contributions held by the Central Govt., State Govt., local authorities, and entities controlled by them. Additionally, regulated entities such as SEBI-registered investment vehicles, AIFs, REITs, InvITs, and those regulated by RBI, IRDAI, or PFRDA are exempted.

RERA NEWS



THE ORISSA HIGH COURT ADVOCATES STRICT COMPLIANCE WITH RERA:

The Orissa High Court, in the case of **Bimalendu Pradhan v. State of Odisha & Ors.** (W.P.(C) No. 18799 of 2021) has issued a directive to the Inspector General of Registration (IGR) to ensure strict adherence to the Real Estate Regulatory Authority Act (RERA) and its associated rules. The court highlighted a crucial issue where sale deeds containing clauses contrary to RERA, specifically related to the transfer of common areas, are not to be registered by the IGR. After taking note of certain sample sale deeds, the Court observed, *"While the said sale deeds acknowledge that there is a statutory need for an Association of Apartment Owners to be formed, they proceed to convey the common areas to the individual apartment owners and not to an Association of Apartment Owners, for the obvious reason that such Associations are yet to be formed. It is a matter of concern that such type of sale deeds are getting registered on a daily basis with clauses contrary the RERA Act and the Rules made thereunder*

UP-RERA – OPENING THREE BANK ACCOUNTS MANDATORY

The Uttar Pradesh Real Estate Regulatory Authority (UP-RERA) has mandated the maintenance of three designated bank accounts for real estate projects. This directive aims to bolster transparency, safeguard consumer interests, and ensure adherence to the RERA Act. Key provisions include specific fund allocations and stringent regulations on interest payments to protect consumers and promote accountability within the real estate sector.

Violations of these rules will incur severe penalties, underscoring UP-RERA's commitment to ensuring timely project completion and financial transparency. These proactive measures serve to instill confidence among homebuyers and set a precedent for regulatory bodies in the real estate industry, emphasizing the importance of accountability and consumer protection in project financing and management.

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