

An elderly woman had two children, a son and daughter. In the months before the woman's death, the son had lived in the woman's home and cared for her. Although the daughter had provided no assistance to the woman, both children inherited the woman's home upon her death and became tenants in common.

The son continued to live in the woman's home and paid all taxes, insurance, and other carrying charges on the property. The daughter never visited the property and did not seek rent or other compensation from the son until they got into a heated dispute 15 years later.

The son has filed an action to quiet title and claims that he owns the property in fee simple. The period of time to acquire title by adverse possession in the jurisdiction is 10 years.

Who is likely to prevail?

- A. The daughter, because one co-tenant cannot acquire title by adverse possession against another.
- B. The daughter, because there is no evidence that the son has ousted the daughter.
- C. The son, because he has acquired title in fee simple by adverse possession.
- D. The son, because the parties' acts indicate the daughter's intention to renounce her inheritance.

Explanation:

Adverse possession allows a person to acquire title to another's property when his/her possession of the land is:

Open and notorious – apparent or visible to a reasonable owner

Continuous – uninterrupted for the statutory period

Exclusive – not shared with the owner

Actual – physical presence on the land

Nonpermissive – hostile and adverse to the owner

But for a **co-tenant** to acquire sole ownership of co-owned property through adverse possession, he/she must also **oust** the other co-tenants. This is done by **preventing** them from **using or accessing the property** (eg, changing the locks, constructing a fence, physical removal) **(Choice A)**.

Here, the son (co-tenant) lived alone on the property and paid all taxes, insurance, and other carrying charges for more than the 10-year statutory period. But since he took no action to prevent the daughter (other co-tenant) from using the property, he did not oust her. Therefore, he never acquired sole ownership by adverse possession, and the daughter will likely prevail **(Choice C)**.

(Choice D) An inheritance can only be renounced if the recipient *unequivocally* rejects the inheritance within a reasonable time after learning of it. Actions that merely indicate an intent to renounce are not sufficient. Therefore, the parties' actions—absent an explicit rejection—did not eliminate the daughter's right to the inherited property.

Educational objective:

A co-tenant can acquire sole ownership of co-owned property through adverse possession if he/she ousts the other co-tenants by preventing them from using or accessing the property (and meets all other requirements for adverse possession).

Ways of ousting a co-tenant



Changing locks



Constructing fence



Physical removal