

Seventeen years ago, a property owner granted a sewer-line easement to a private sewer company. The easement allowed the company to build, maintain, and use an underground sewer line in a designated sector of the owner's three-acre tract. The easement was properly recorded with the local registrar of deeds.

Fifteen years ago, a man having no title or other interest in the owner's three-acre tract wrongfully entered the tract, built a cabin, and planted a vegetable garden. The garden was directly over the sewer line constructed pursuant to the easement the owner had granted to the sewer company. The cabin and garden occupied half an acre of the three-acre tract. The man moved into the cabin immediately after its completion and remained in continuous and exclusive possession of the cabin and garden until his death. However, he did not use the remaining two and one-half acres of the three-acre tract in any way.

Eight years ago, the man died. Under the man's duly probated will, he bequeathed to his sister "all real property in which I have or may have an interest at the time of my death." The man's sister took possession of the cabin and garden immediately after the man's death and remained in exclusive and continuous possession of them for one year, but she, too, did not use the remaining two and one-half acres of the tract.

Seven years ago, the man's sister executed and delivered to a buyer a general warranty deed stating that it conveyed the entire three-acre tract to the buyer. The deed contained all six title covenants. Since this transaction, the buyer has continuously occupied the cabin and garden but has not used the remaining two and one-half acres.

A state statute provides that "any action to recover the possession of real property must be brought within 10 years after the cause of action accrues."

Last month, the property owner sued the buyer to recover possession of the three-acre tract.

1. Did the buyer acquire title to the three-acre tract or any portion of it? Explain.
2. Assuming that the buyer did not acquire title to the entire three-acre tract, can the buyer recover damages from the sister who sold him the three-acre tract? Explain.
3. Assuming that the buyer acquired title to the entire three-acre tract or the portion above the sewer-line easement, can the buyer compel the sewer company to remove the sewer line under the garden? Explain.

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Seventeen years ago an owner granted a recorded sewer-line easement across part of a three-acre tract. Fifteen years ago a man with no title entered, built a cabin and a garden over the sewer line, occupying half an acre continuously and exclusively but never using the other 2.5 acres. Eight years ago he died, leaving by will “all real property in which I have or may have an interest” to his sister, who possessed the half acre for one year. Seven years ago the sister conveyed the entire three-acre tract to a buyer by a general warranty deed with all six covenants; the buyer has occupied the half acre ever since. A statute sets a 10-year limit for recovering possession. The owner now sues the buyer.

- ← *Adverse possession: actual, open, exclusive, hostile, and continuous for the statutory period; title only to the land actually used.*
- ← *Tacking: successive possessors in privity (a will, a deed) combine their time.*
- ← *A grantor who does not own cannot pass title; the warranty deed breaches seisin and right to convey.*
- ← *Adverse possession takes title as the owner held it, subject to the recorded easement.*

Section 1: Adverse Possession and Tacking

Issue. Whether the buyer acquired title to the tract or any portion of it by adverse possession.

Rule. G/R: adverse possession requires possession that is actual, open and notorious, exclusive, hostile (under a claim of right, without permission), and continuous for the statutory period; the possessor gains title only to the land actually possessed or used. Successive possessors may tack their periods when they are in privity of estate, that is, a voluntary transfer of possession such as a will or a deed.

Analysis. Here, building and living in a cabin and tending a garden on the half acre was actual, open, exclusive, and hostile use; the man’s 7 years, the sister’s 1 year, and the buyer’s 7 years tack together through the will and the deed, far exceeding the 10-year period, but only the half acre was ever used.

Conclusion. Therefore, Section 1: the buyer acquired title by adverse possession to the half acre only, not the full three-acre tract.

The core question.

Five elements + tacking through privity.

7 + 1 + 7 = 15 years, half acre only.

Title limited to the used portion.

Section 2: The Warranty Deed

Issue. Whether the buyer can recover damages from the sister for the part of the tract she did not own.

Covenant claim on the 2.5 acres.

Rule. G/R: a general warranty deed includes the present covenants of seisin (the grantor owns the estate) and right to convey; a grantor who does not own the land breaches both when the deed purports to convey it.

Seisin + right to convey.

Analysis. Here, the sister owned only the half acre she had adversely possessed yet deeded the entire three acres, so as to the 2.5 acres she had neither seisin nor a right to convey and breached those covenants when she delivered the deed.

Deeded land she did not own.

Conclusion. Therefore, Section 2: the buyer may recover damages from the sister for the portion she did not own.

Present covenants breached.

Section 3: The Sewer-Line Easement

Issue. Whether the buyer can compel the sewer company to remove the sewer line.

Does the easement survive?

Rule. G/R: an adverse possessor takes title no greater than the former owner held and takes subject to existing easements, unless the possessor also adversely possessed the easement by actually interfering with its use.

Title no greater than the owner's.

Analysis. Here, the sewer-line easement was recorded and in place before entry, and the garden over the line did not interfere with the underground sewer use, so the buyer took subject to the easement.

Garden did not interfere with the line.

Conclusion. Therefore, Section 3: the buyer cannot compel removal of the sewer line.

Easement survives.

Step-by-Step: Adverse Possession, Tacking, and Title Taken

Prove the elements, tack through privity, then measure the title actually acquired.

1. Elements: actual, open and notorious, exclusive, hostile, continuous for the statutory period.

→ **Cabin + garden on the half acre**



2. Enough time? Tack successive possessors who are in privity (will, deed).

→ **7 + 1 + 7 = 15 yrs > 10-yr statute**



3. How much land? Title only to the portion actually used.

→ **Half acre only, not the 3 acres**



4. Deed to the rest: no seisin and no right to convey → damages from the sister.

→ **Recover for the 2.5 acres**



5. Existing easement: take subject to it absent interference.

→ **Cannot remove the sewer line**