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tion of the time that passed before the suit was filed would not follow that analogy. Mere ignorance of the law cannot be recognized as a sufficient reason for delay under section 5 of the Act, for that would be a premium on ignorance.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Birdwood.

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MULJI BHULA'BHA'I AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* MANOHAR GANESH (ORIGINAL PLAINTIFF), RESPONDENT.*

Possession—Adverse possession—Manager of a Hindu temple—Shevaks or servants of an idol—Rights of manager and servants inter se.

The plaintiff was the hereditary manager of the temple of Shri Ranchord Ráiji at Dákor. The defendants were the *shevaks* or ministers of the deity. The plaintiff sued to oust the defendants from a certain piece of land attached to the temple, alleging that the defendants had erected shops on the land, and appropriated the rents to their own use, although it had been already decided in a suit between the parties that the land was always to be kept open and unoccupied for the use of the temple. The *shevaks* contended that they had been in exclusive and uninterrupted possession of the land in dispute for more than twelve years, and that by reason of such user they had acquired a *quasi* proprietary title at least as against the manager of the temple. They therefore pleaded that the suit was barred by limitation.

Held, that the defendants had not by occupation and user acquired any title as against the plaintiff who was the manager of the temple estate. They had come into occupation originally as servants and representatives of the deity, and during their occupation they could not by a wish change the nature of their possession. Both they and the plaintiff held the land for the same deity and their rights could not be adverse to each other so as to give rise to a title by prescription. The only question then was as to which of them was the proper representative of the deity for the particular purpose of this suit, and that question had already been decided in a former suit(1) in favour of the plaintiff.

CROSS second appeal from the decision of S. H. Phillpotts, District Judge of Ahmedabad, amending the decree of Ráv Sáheb Harderám, Second Class Subordinate Judge of Umreth.

The plaintiff sued as the hereditary manager of the temple of Shri Ranchord Ráiji at Dákor to eject the defendants, who were *shevaks* or priests of the idol, from a certain piece of land which was attached to the temple. The plaintiff alleged that

* Cross Second Appeals No. 452 and 514 of 1883.

(1) See note *infra*, p. 325.

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the defendants had illegally erected shops on the land in dispute and appropriated the rents thereof to their own use, although it had been decided in a former litigation between the parties that the land in question was part of the court-yard of the temple and should always remain open [1] and unoccupied by any shops, booths, or other similar erections. The plaintiff therefore prayed for an order directing that the land should remain open as it was originally, and for a permanent injunction restraining the defendants from using the land or realizing any profits by erecting shops or booths thereon. The plaintiff also sought to recover Rs. 160, being the amount of rent received by the defendants during six years from 1874 down to the institution of the suit in 1880.

The defendants answered that the land in dispute was in their possession and management as land appurtenant to the *gaushálá* (cow-shed) of Shri Ranchord Ráiji, that it was used for the benefit of the *gaushálá*, and the profits and rent arising therefrom were received by them on behalf of the *gaushálá*; that they were owners of the idol and the *gaushálá*; that as owners they had been in possession of the land for more than twelve years before the suit; and that the plaintiff's claim was barred by limitation.

The Court of First Instance ordered the defendants to give up possession of the land and enjoined them to leave the same permanently open and unencumbered. The rest of the plaintiff's [1] claim was rejected.

On appeal, the District Judge amended the decree by inserting words ordering the defendants to remove the obstruction already erected.

Against this decision the defendant appealed to the High Court on the ground that the plaintiff had lost his right to the land in suit by reason of their adverse possession for more than twelve years.

The plaintiff filed a cross appeal on the ground that the lower Court ought to have directed the defendants to render an account of the rents and profits of the land in dispute, which they had realized from 1874 to 1880.

(1) See note *infra*, p. 325.

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Gokuldás Kahándás Párekh for appellants:—The *shevaks* have had possession of the land in suit for more than twelve years. They have held it adversely to the plaintiff for so long a period as to acquire a *quasi*-proprietary title to the land at least as against the plaintiff. The plaintiff cannot therefore disturb their possession.

Shántárám Nárayan for respondent:—The plaintiff is the hereditary manager of the temple. The *shevaks* are merely votaries or worshippers of the deity. They have no proprietary title to the temple or to any part of the temple property. It has been already decided by this Court that the land in dispute is to be kept open.—*Ganpatráo Manohar* v. *Anoprám Bechar*.[1] The *shevaks* had therefore no right to erect shops on the ground in question. They must account to the manager for the rents and profits they have realized during the period they have set up the shops.

WEST, J.:—The contention that the *shevaks*, the defendants in this case, though they acquired possession or detention of the land in dispute as servants and representatives of the deity Ranchhod Ráiji, have yet by long occupation and user acquired a *quasi*-proprietary title as against the manager of the temple estate, the plaintiff Manohar, is not one that can be admitted. It is opposed to the principle *Nemo potest possessionis suae naturam mutare*. Having come in as servants or representatives of the deity, they could not by a wish or a volition change the nature of their possession, if possession it was to be called. They held for the deity, however; Manohar held for the same deity. In that ideal personage the two rights concurred, and one could not therefore really be adverse to the other, so as to give rise to a title by prescription. The only question is as to the proper representative of the deity for this particular interest; and on the former decisions no doubt can be entertained that the plaintiff holds that position. He could not have used the ground in dispute so as to realize any profit from it. The defendants who have made a small profit by their unauthorized use of it as representatives of the deity will have to account for the sums they have received in the suit for an account in which we recent-

(1) See note *infra*, p. 325.

ly gave judgment. We therefore confirm the decree of the District Judge with costs in the case of each of the appeals before us.

Decree confirmed.

Note.—The following is the judgment of the High Court in the former suit (*Ganpatrâo Manohar* v. *Anopram Bechar*) between the parties relating to the land in dispute:—(Printed Judgments for 1879, p. 361.)

WESTROPP, C.J.—There cannot be any doubt that the decree of this Court of the 8th April, 1872, made in Special Appeal 448 of 1870, recognises that the temple at Dâkor and its appendant villages of Dâkor and Kanjeri are vested in the defendant Tambekar, as manager on behalf of and trustee for Shri Ranchordraiji, the idol of that temple, and that the defendants, the *shevaks*, have not any share whatever in that management and cannot be considered as having any legal ownership, even as trustees, in the temple or its villages, but as votaries of the idol they (like any other worshippers at the temple) may complain and bring to the notice of the proper Civil Court any misappropriation of the funds or misuse of the temple or its villages. They have at times, but without success, asserted the right to manage and exercise a species of proprietorship, but the decree of the 8th April, 1872, has finally disposed of any such claim in the negative. If the question as to the erection by the defendant Tambekar, as trustee and manager of the temple, of a tent or tents, or, more properly speaking, of a booth or booths on the portion of the court-yard of the temple, mentioned in the plaint, were now raised for the first time, we might probably have remanded this case to the lower Court to enquire whether, without inconvenience to the public frequenting the temple, or to its residents, a booth or booths might, advantageously to the funds of the temple, be erected on the occasion of the principal festivals observed in the temple, and let out to petty dealers; but we find that the use of this portion of the court-yard has been the subject of previous litigation in 1862, and that the Munsiff held that the *shevaks* had no right to erect shops there, and compelled them to remove such shops, and ruled that the ground should remain in the possession of the idol, *i. e.* substantially in the possession of the trustee for the idol; and we also gather from that decree, as did the Acting Joint Judge (Mr. Izon), in the present case, that the Munsiff was of opinion that the portion of the court-yard in question should remain open and unincumbered by any shops, booths, or other similar erections, and the decree of the Munsiff was affirmed on appeal and again on special appeal (see Exhibits Nos. 18, 4, and 5). Under these last-mentioned circumstances, we do not think it would be proper or desirable to remand the case, even at the request of the trustee, Tambekar, for the purpose of making such an inquiry as above indicated. Upon these grounds, we affirm the decree of the Acting Joint Judge (Mr. Izon), but direct that the parties respectively shall bear their own costs of this appeal.