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contents were, and of course the date. The Sessions Judge should take the evidence of the jailor, and any other person present, and the prisoner should be allowed to question the witnesses, and to call any witness whose evidence can be procured without unreasonable delay or expense, and who can testify as to what occurred at the time. The evidence should be certified to this Court as soon as possible, and within three weeks.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ra'nade.

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GANGA'RA'M CHIMNA PA'TEL (ORIGINAL PLAINTIFF), APPELLANT, *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.*

Possession—Declaration of title—Suit by person in possession for declaration of title—Burden of proof—Evidence—Failure of plaintiff to prove title—No evidence of defendant's title—Effect of plaintiff's possession—Plaint—Prayer for general relief—Practice—Specific Relief Act (I of 1877), Sec. 42.

The plaintiff who was in possession of certain land sued for a declaration that the defendant had no title to it and that it belonged to him. The plaint also contained a prayer for general relief. At the trial both plaintiff and defendant failed to prove any title to the land, but the plaintiff proved that he had been for ten years in possession and had built a shed on it.

Held, that no declaration of this plaintiff's title could be made; but

Held, on the authority of *Ismáil Ariff* v. *Mahomed Ghouse*(1), that the plaintiff was lawfully entitled to the land and to the shed thereon.

APPEAL from the decision of A. Steward, District Judge of Khándesh, in Suit No. 1 of 1893.

Suit for declaration of title. The plaintiff sued the Secretary of State for India in Council for a declaration of his title to a piece of ground with a cattle-shed on it situate in the village of Juwardi, táluka Páchora, in the Khándesh District, which plaintiff alleged to be his ancestral property and also to have been given to him by his uncle Fulji. The plaint stated that the pátel and the kulkarni of the village had submitted a report to Government stating that the said piece of ground be-

* Appeal, No. 139 of 1894.

(1) L. R. 20 Ind. Ap., 99.

longed to Government; that the plaintiff thereupon received a notice from the Assistant Collector calling on him to vacate the ground, and that he had appealed to the Collector and then to the Revenue Commissioner, but obtained no redress. The plaint concluded with the following prayers:—

"(*a*) That the said piece of ground be declared to belong to the plaintiff.

"(*b*) That he be awarded any other relief to which he might be entitled."

The defendant replied that the ground was not plaintiff's property but belonged to Government, and that assuming that plaintiff had possession of it for some time, such possession could confer no ownership on him.

The District Judge found that plaintiff had built a cattle-shed on the plot of ground at least ten years before suit, but that it was not proved that the site ever belonged to plaintiff's uncle Fulji, or that he had any power to dispose of it in gift as alleged by the plaintiff. He then proceeded to say:—

"It is now to be seen what use was made of the site prior to the plaintiff erecting a cattle-shed ten or fifteen years ago. There were apparently old walls on the site in dispute, and plaintiff asserts that before he built the cattle-shed, he erected sheds on the site each year and that he kept his fodder, grain and earth on the site. He had no hedge, but he put up thorns in places where the wall had fallen down. He might have tied up his cattle there occasionally, but it is not probable that he would have kept his fodder and grain in a place which was practically open and which he could not see from the house in which he lived with his family. I do not believe the statement about the sheds being built on the site each year, and mere tying up of cattle does not constitute ownership.

* * * * *

"Holding, then, that the alleged gift is not proved, and that it is not proved that the site in dispute is the ancestral property of Fulji or of * * or plaintiff Gangárám, and that the documentary evidence is altogether unreliable, the conclusion is inevitable that Gangárám valad Chimna seized this land about 1883 and built a cattle-shed on it, making use, in doing so, of the old broken down walls which he found there. He has proved no ownership in the site; it was a mere unlawful usurpation of it, which Ganpat Pátel reported to the proper authorities in 1886."

On these grounds the District Judge dismissed the plaintiff's suit and ordered him to remove the materials of the shed built on the site within three months of the date of the decree.

Against this decision plaintiff appealed to the High Court.

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Ganesh Krishna Deshmukh for the appellant:—Plaintiff has been in possession for more than twelve years. Defendant requires him to vacate land. The *onus* is obviously on the defendant to prove his title. This he has not done. Plaintiff is, therefore, entitled to be retained in possession. Possession gives him a title against all except the rightful owner—*In re Antáji Keshav Támbe*(1); *Ismáil Ariff* v. *Mahomed Ghouse*(2).

Ráo Sáheb *Vasudev J. Kirtikar*, Government Pleader, for the respondent:—Plaintiff sues for a declaratory decree. He comes into Court to establish his title. He is, therefore, bound to prove it. In such cases the *onus* is always on plaintiff—*Luis Manoel Pedro Antonio* v. *Jálbhái Ardesir Shett*(3); *Kisandás* v. *Káshirám*(4); *Krishna Churn* v. *Protab Chunder Surma*(5); Field on Evidence, sec. 102; section 202 of the Land Revenue Code (Bom. Act V of 1879); *Swarnamayi Raur* v. *Srinibash Koyal*(6); *Báboo Purseedh Narain* v. *Bissessur Dyal Singh*(7); *Royes* v. *Mudhoo Soodun*(8); *Muddun Mohun* v. *Bharut Chunder Roy*(9); *Ponduranga* v. *Nagappa*(10); *Rajah Lelanund Singh* v. *Mahárajah Moheshur*(11).

JARDINE, J.:—The plaint prayed that the Court would declare that the defendant had no title, and that the plaintiff had title to the property in dispute. The learned Judge found, on the evidence, that the plaintiff had not proved his title; and this finding has not been contested here. We are of opinion that the Judge was right in refusing the declaration of title—*Royes* v. *Mudhoo*(8); *Rassonada* v. *Sitharama*(12); *Sheik Torab Ally* v. *Sheik Mahomed Tukkee*(13); *Ismáil Ariff* v. *Mahomed Ghouse*(2).

The plaint, however, contained a prayer that the plaintiff might be awarded any other relief to which he might be entitled. If he had made reference to section 42, Illustration (*g*), of the Specific Relief Act, or if the Court had noticed that illustration which refers to suits brought for confirmation of possession, it

(1) I. L. R., 18 Bom., 670 at p. 674.
(2) L. R., 20 Ind. Ap., 99.
(3) P. J., 1890, p. 215.
(4) P. J., 1892, p. 411.
(5) I. L. R., 7 Cal., 560.
(6) 6 B. L. R., 144.
(7) 7 Cal. W. R., 148.
(8) 9 Cal. W. R., 154.
(9) 11 Cal. W. R., 249.
(10) I. L. R., 12 Mad., 366.
(11) 10 M. I. A., 81.
(12) 2 Mad. H. C. Rep., 171.
(13) 19 Cal. W. R., 1.

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is probable that an issue would have been raised as to whether the plaintiff was entitled as against the defendant to be retained in possession. There is no evidence, on the record, of the defendant's title; and it is found by the Judge that the plaintiff has held possession for at least ten years and has built a shed on the land. These facts appear to us to bring the case within the ruling of their Lordships of the Privy Council in *Ismáil Ariff* v. *Mahomed Ghouse*(1).

We, therefore, modify the decree of the District Judge and further declare that the plaintiff is lawfully entitled to possession of the land in suit and the shed thereon; the defendant to bear the costs in both Courts.

Decree amended.

(1) L. R., 20 Ind. Ap., 99.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

1895.

September 9.

TA'I AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* LA'DU AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Reversioner—Widow—Suit by reversioner for possession—Death of the widow—Accrual of right to sue—Unsuccessful application in execution proceedings against widow—Limitation Act (XV of 1877), Sch. II, Art. 141—Civil Procedure Code (Act XIV of 1882), Sec. 283.

Under article 141, Schedule II, of the Limitation Act (XV of 1877) a reversioner's right to sue accrues on the death of the widow. The fact that the reversioner has made an unsuccessful application for possession in execution proceedings against the widow, and has not sued under section 283 of the Civil Procedure Code (Act XIV of 1882), does not debar him from filing a regular suit.

SECOND appeal from the decision of Arthur H. Unwin, District Judge of Násik, confirming the decree of Ráo Sáheb L. K. Nulkar, Subordinate Judge of Sinnar.

The plaintiffs, as the daughters and sole heirs of one Málji valad Anáji, sued in the year 1891 to recover possession of certain lands and mesne profits. They alleged that their father died about thirteen years before the institution of the suit; that

*Second Appeal, No. 326 of 1894.