APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

1911.
August 25.

PANDURANG BALAJI KHANDKE AND OTHERS (ORIGINAL DEFENDANTS 1, 2 AND 3), APPELLANTS, *v.* DNYANU BIN BALAJI *alias* SHIVAJI GURAV (ORIGINAL PLAINTIFF), RESPONDENT.*

Property dedicated to an idol—Decree against manager—Execution sale—Purchase by defendant—Suit by succeeding manager to recover possession—Defendant's possession adverse to the idol.

The plaintiff, a manager of a temple, brought a suit in the year 1908 to recover possession of certain endowed property in the possession of the defendant. The defence was that the property was purchased at a Court sale in 1870 in execution of a decree against the then manager and that the defendant's possession was adverse to the idol.

Held, dismissing the suit, that the defendant's possession was adverse to the idol.

Dattajiri v. *Dattatraya*(1), referred to.

SECOND appeal against the decision of V. M. Ferrers, Assistant Judge of Satara with appellate powers, confirming the decree of G. R. Datar, Subordinate Judge of Patan.

The plaintiff sued in the year 1908 to recover possession of the property in suit alleging that it was the endowment property of the idol Shri Ninai Devi, that the plaintiff was entitled to enjoy the same as manager, that his father died on the 5th January 1902 and he then told the defendants to give up possession of the property and that the defendants refused to do so setting up purchase in an execution sale.

Defendants answered that the property belonged to one Balaji Laxman Gurav, whose interest was purchased by Murari Damaji Mule in an auction sale on the 25th March 1870 and the same was subsequently purchased from him by the defendants and that the claim was time-barred.

The Subordinate Judge found that the plaintiff was entitled to recover possession of the property in suit after the death of his father, that the property was subject to the charges for the

* Second Appeal No. 215 of 1910.

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maintenance of the deity and that the suit was not time-barred. He, therefore, decreed the claim.

On appeal by the defendants, the Assistant Judge confirmed the decree. His reasons were as follows:

It is only on the fifth ground (limitation) that battle is seriously engaged. Defendants have admittedly been in possession more than 12 years. They now quote *Dattajiri* v. *Dattatraya* (I. L. R. XXVII Bom. 363) in support of their contention that their title has now hardened into infragibility by lapse of time.

There is I believe a clear distinction between that case and this. The land now in question is declared by the Sanad to be the endowment property of Shri Ninai. The lands in the case quoted were recognized as the private property of the persons who from time to time shall be its lawful holders. It was found as a fact that when alienated, that property was held by the alienor as his private alienable property. These circumstances suffice to differentiate that case from the case under consideration. The land in suit was endowment property, and endowment property in the absence of special circumstances is inalienable. In the absence of such circumstances (which are not alleged to have existed) the most that a manager could do would be to authorise his grantee to hold the land during the life-time of his grantor.

Now in this case the grantor died in 1902; until that event therefore the grant held good, but after it, time began to run against the successor in the management.

The suit is therefore in time.

Defendants preferred a second appeal.

G. S. Rao for the appellants (defendants).

N. A. Shiveshvarkar for the respondent (plaintiff).

BEAMAN, J.:—This was a suit to recover possession of property dedicated to an idol. The defendant relied upon adverse possession but the finding of the lower appellate Court was against him. His contention here is that the plaint property was sold so far back as the year 1870 in execution of a decree obtained against the then manager of the endowed property. Since then the defendant contends that the possession of the purchaser at the Court sale has been adverse to the idol. The plaintiff, on the other hand, presses the view that each successive manager, except where the office is hereditary, takes in virtue of his appointment, and that, therefore, no limitation begins to run against him, in respect of the alienations of the endowed property, made by his predecessor in the office. We think, however, that the defend-

ant's contention both in principle and upon authority is good. We have considered the terms of the sale-certificate and we find that it was there stated, in the preamble so to speak, that the property belonged to the judgment-debtor. Then it goes on to say that his right, title and interest in that property was put to sale. No express qualification is to be found giving the purchaser notice that that right, title and interest was limited to a life-interest as from a manager. In considering, therefore, the defendant's plea of limitation we have to look to the quality of the possession, upon which he relies, originating in what upon the face of it he might well have believed to be an out-and-out sale of the property he bought. There can, we think, be no doubt that from his point of view he intended to hold adversely against all the world. We think that the plaintiff is not much helped by the language of section 8, clause (3) of Bombay Act II of 1863. Cases decided both in the Privy Council and in this Court have now too clearly settled the rule that title in such lands may be lost by adverse possession; and all that we have to consider in this case is whether the possession was adverse. We feel unable to accede to the argument of the plaintiff that no possession derived from a manager of endowed property can ever be adverse against the idol, as represented by the next succeeding manager. This principle appears to have been clearly and emphatically recognised in the case of *Dattagiri* v. *Dattatraya*[1]. No doubt, that case was decided under Article 134, while this case must admittedly be dealt with under Article 144; but that, in our opinion, makes no difference so far as the principle, we have just mentioned, goes. We are, therefore, clearly of opinion that the defendant's possession since 1870 has been adverse to the idol and, therefore, of course to the plaintiff, who now seeks to recover the plaint land as manager of the idol's property. We must, therefore, reverse the decree of the Court below and dismiss this suit with all costs.

Decree reversed and suit dismissed.

G. B. R.

(1) (1902) 27 Bom. 363.