On the other point I agree with the learned Chief Justice that the fact that the acknowledgments were not addressed to the mortgagor or his heirs is clearly immaterial under Explanation 1 of section 19 of the Indian Limitation Act. The point is fully discussed in Starling's Indian Limitation Act, 6th Ed., pp. 103 and 104, where it is shown that the weight of authority is clearly against the decision in *Imam Ali* v. *Baij Nath Ram Sahu*[1]. Against that decision there is the authority of the Privy Council not only in *Hiralal Ichhalal* v. *Narsilal Chaturbhujdas*[2]. but also in *Maniram Seth* v. *Seth Rupchand*[3], and this Court in *Shriniwas* v. *Narhar*[4] has also rejected such a contention. I agree, therefore, with the proposed order.

Decree reversed : case remanded.

R. R.

(1) (1906) 33 Cal. 613.
(2) (1913) 37 Bom. 326.
(3) (1906) 33 Cal. 1047.
(4) (1908) 32 Bom. 296 at p. 299.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

RAKHMABAI, WIDOW OF ATMARAM NARAYAN ASHTEKAR (ORIGINAL PLAINTIFF No. 1), APPELLANT *v.* RAMCHANDRA VASUDEV RUTITHOR AND OTHERS (ORIGINAL DEFENDANTS NOS. 1 TO 3 AND PLAINTIFF No. 2), RESPONDENTS*.

1920. *September 23.*

Adverse possession—Decree for partition—Property remaining in possession of judgment-debtor—Decree-holder obtaining possession—Execution of decree barred by limitation—Suit by judgment-debtor to recover back possession of the property.

The defendant obtained in 1896 a decree against the plaintiff to recover his share in lands by partition. He applied in 1899 and 1902 to execute the decree; but the land remained in possession of the plaintiff. In 1911, the

* Second Appeal No. 211 of 1919.

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defendant managed to get possession of his share in the lands. The plaintiff sued in 1915 to recover possession of the land from the defendant :—

Held, dismissing the suit, that though the defendant went into possession without intervention of the Court his possession would be ascribed to the decree ; and the plaintiff could turn him out only if she could show that she had acquired a good title against the world before he got into possession.

SECOND appeal from the decision of F. X. DeSouza, District Judge of Satara, reversing the decree passed by P. C. Divanji, Subordinate Judge at Tasgaon.

Suit to recover possession of property.

The plaintiff's husband Atmaram was in possession of land bearing Survey No. 311 in Turchi. On his death, his nephew sued (Suit No. 217 of 1894) to recover one-third share in the land. The suit ended in a compromise decree on the 29th May 1896, whereby Atmaram's nephew was held entitled to one-third share in the land.

The decree-holder Yeshwant applied in 1899 and 1902 to execute the decree ; but both darkhasts failed for want of prosecution. In 1911, he obtained possession of his share without intervention of the Court.

In 1915 the plaintiff sued to recover possession of the land.

The trial Court decreed the claim.

On appeal, the District Judge held following 33 Bom. 317 that the plaintiff's suit was not maintainable.

The plaintiff appealed to the High Court.

P. B. Shingne, for the appellant :—It was an error to hold that the possession of the appellant, which he held at the date of the decision and for more than twelve years since then did not give him title to the property in suit under section 28 of the Indian Limitation Act. The case applied against the appellant by

the lower Court should be distinguished from this case, because of the intervention of section 48 of the Civil Procedure Code.

V. D. Limaye, for the respondent, was not called upon.

MACLEOD, C. J. :—We think the decree of the lower appellate Court was correct. With regard to the suit property a decree was passed on the 29th of May 1896 which directed that Yeshwant a nephew of Atmaram the husband of plaintiff No. 1 should take one-third portion by partition. Execution proceedings were taken, but for some reason or other were not prosecuted, with the result that the whole of the Survey Number remained in the possession of Atmaram's widow till October 1911, when the defendants who were the heirs of Yeshwant got into possession. Now it may be that at that time execution of the decree was barred. But if without execution the successors of Yeshwant got into possession, then their possession would be ascribed to the decree, and the present plaintiff could only turn them out if she could show that she had acquired a good title against the world before they got into possession. She might show that she had acquired a title by adverse possession. But she could only do so by asserting that time began to run against Yeshwant the moment the decree was passed. Such a contention shows a confusion in the mind of the appellant between time running against the execution of decree, and time running in favour of a person in possession of property. When a decree has been passed against a person in possession directing him to give up possession to the successful party, and the former remains in possession waiting for execution, then it cannot be said that that party is holding adversely to the world, although all the time the period of limitation was running out against the successful decree-holder. As we

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stated in a recent decision we must assume that the person against whom the decree for possession has been passed recognises the decree, and is not prepared to take up the position that the decree is not binding against him. It can safely be presumed that if such a person remains in possession until execution proceedings are taken, he does not thereby assert that he has a title against the decree. Therefore, as in this case the heirs of Yeshwant got into possession, they were entitled to remain there, as the plaintiff cannot show that she has been in possession adversely against the world for twelve years. The appeal, therefore, must be dismissed with costs.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920.

September 27.

RAMNATH MULCHAND AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS *v.* GAJANAN PANDURANG LIMAYE (ORIGINAL DEFENDANT), RESPONDENT*.

Civil Procedure Code (Act V of 1908), section 115—Inherent powers—Executing Court—Decree under execution cannot be questioned.

It is not competent to an executing Court to go behind a decree and question its propriety.

Ramchandra Govind v. *Jayanta*[1], followed.

SECOND appeal from the decision of J. D. Dikshit, District Judge of Sholapur, reversing the decree passed by S. N. Sathaye, First Class Subordinate Judge at Sholapur.

Execution proceedings.

* Second Appeal No. 945 of 1917.

[1] (1920) 45 Bom. 503.