

APPELLATE CIVIL.

1920.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.*August 5.

RAMCHANDRA BALWANT APHALE (ORIGINAL DEFENDANT No. 1),
APPELLANT *v.* BALAJI GANESH KULKARNI (ORIGINAL PLAINTIFF),
RESPONDENT*.

Indian Limitation Act (IX of 1908), Articles 142 and 144—Suit to recover possession—Adverse possession of trespasser—One trespasser cannot tack his own wrongful possession to the wrongful possession of another trespasser.

The property in dispute, which belonged to V, was wrongfully sold in execution of a decree and purchased by C. C was put in possession of the property in 1893. V applied to recover possession of the property by setting aside the sale. On V's death, the name of his sister B was placed on the record as his heir. The proceedings terminated in B's favour and she recovered possession of the property on the 14th October 1903. The plaintiff who was the nearer heir to V than B, filed the present suit on the 11th October 1915 to recover possession of the property from the alienee of B:—

Held, that the suit was within time as it was governed by Article 144 and not by Article 142 of the Indian Limitation Act, 1908; and that B, the latter of the two trespassers, could not be allowed to add to the period of her hostile possession the period of possession of a former trespasser C from whom she did not derive title in any way.

SECOND appeal from the decision of N. S. Lokur, Assistant Judge, A. P., at Satara, varying the decree passed by D. R. Pathak, Joint Subordinate Judge at Satara.

Suit to recover possession of lands.

Laxman and Vishnu were *mirasdars* of the lands in dispute.

In 1893, one Chinto obtained a decree against a third party in execution of which he wrongly attached the lands in question. The lands were sold at a Court-sale and purchased by Chinto himself. Chinto went into possession of the lands on the 22nd April 1893.

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Laxman having died, his brother applied to the Court to set aside the sale and to reinstate him in possession of the property. Pending the proceedings Vithal died and his sister Bhagirathi was brought on the record as his heir. The proceedings terminated in Bhagirathi's favour; and she was put in possession of the property on the 14th October 1903.

Bhagirathi died. Her heirs sold the property to defendant No. 1 in 1915.

The plaintiff, who was Vithal's brother's son filed the present suit on the 11th October 1915, as Vithal's nearest heir, to recover possession of the property which belonged to Vithal.

The trial Court dismissed the suit on the ground that it was time-barred under Article 142 of the Indian Limitation Act, 1908.

On appeal, the Assistant Judge was of opinion that the plaintiff's claim was governed by Article 144 and not by Article 142 of the Indian Limitation Act, 1908; and that the suit was within time. The learned Assistant Judge allowed plaintiff's claim to property in dispute.

Defendant No. 1 appealed to the High Court.

H. G. Kulkarni, for the appellant.

J. R. Gharpure, for the respondent.

MACLEOD, C. J. :—The plaintiff sued to recover possession of certain land. His suit was rejected in the trial Court, but the learned appellate Judge gave him a decree for possession of the lands comprised in group No. 1 including the strips enclosed in a red line, Exhibit 77, consisting of the Survey Numbers set out at page 2 of the print. This land originally belonged to Laxman and Vithal. Laxman died in 1895 and Vithal in 1903. But before Vithal died one Chinto got

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possession in execution by mistake of the plaint lands as far back as 1893. After Vithal's death Bhagirthibai, his sister, was put on the record to continue the proceedings and eventually an order was passed that she should be put in possession of the plaint property, and on the 14th of October 1903 she actually got possession. This suit was filed on the 11th of October 1915 and as it is admitted that the plaintiff was the nearer heir to Vithal than Bhagirthibai, from whom the defendant claims, there can be no doubt that he proved his title to the plaint property, and with regard to the properties in Group No. 1, which got into Bhagirthibai's possession on the 14th of October 1903, defendants have not been able to prove adverse possession for twelve years, nor can they tack on the possession of Chinto as they did not claim through him. I think the learned Judge is correct when he says that Bhagirthibai, the latter of two trespassers, cannot be allowed to add to the period of her hostile possession the period of possession of a former trespasser Chinto from whom she did not derive title in any way. It might have been different if the plaintiff himself had been dispossessed and was suing for possession under Article 142. He might then have to prove that he had been in possession within twelve years before suit. This suit comes under Article 144. Time begins to run when the possession of the defendant or anybody through whom he claims becomes adverse to the plaintiff.

The decision of the learned Judge in the Court below is right and the appeal will be dismissed with costs.

The cross-objections are also dismissed with costs.

Appeal dismissed.

R. R.