

(1930) 02 BOM CK 0009
In the Bombay High Court
Case No : Second Appeal No. 892 of 1927

Mulchand Chouthmal Marwadi

APPELLANT

Vs

Hirabai Fakirchand

RESPONDENT

Date of Decision : 21-02-1930

Acts Referred:

Citation : AIR 1930 Bom 400 : (1930) 32 BOMLR 695

Hon'ble Judges : Madgavhar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Madgavkar, J.—The question in this appeal is, whether, as both the lower Courts have held, the plaintiff's suit is barred by limitation. The land in suit originally belonged to Chouthmal who had two sons Mulchand the plaintiff, and Fakirchand the deceased husband of defendant-respondent No. 1 Hirabai. Chouthmal purchased the land in 1891, and on July 16, 1899, leased it for eleven months to Ragho the deceased father of the defendant respondent No. 2 Ganpat and the uncle of defendant-respondent No. 3 Bhila. In 1905, there was a partition between Mulchand and Fakirchand. Both were ignorant of their claim to their property in suit. It was, however, agreed between the two that any property not included in that partition should, if subsequently discovered, be divided equally between them. In 1912, Fakirchand became aware of his interest in this property. On July 8, 1912, Fakirchand filed a suit on his own behalf for possession and rent against Ragho and obtained a decree which was confirmed in appeal on March 31, 1915. That decree was never executed. Subsequently in a partition between defendants Nos. 2 and 3 the land in suit fell to the share of defendant No. 3 and on September 12, 1925, the plaintiff instituted the present suit for partition against defendant No. 1 and to recover possession of his half share from defendants Nos. 2 and 3. The lower Courts awarded a decree for partition against defendant No. 1: but in regard to possession against defendants Nos. 2 and 3, it dismissed the claim on the ground that it was barred by

limitation. The plaintiff appeals.

2. That the possession of the original lessee Ragho became adverse to the lessor from 1900 is indisputable. It is argued for the appellant that the adverse possession was interrupted by the decree which Fakirchand obtained in 1912, and that as he himself was not a party to the suit, his right remains. That possession was adverse from 1900 at least till 1912, and there is nothing to show that there has been any break in the possession from 1900 to 1925. Nor is there any evidence to show that its adverse character was altered by the decree of 1912. There may perhaps be an exceptional case such as *Mir Akbarali v. Abdul Ajij* ILR (1920) 44 Bom. 934, 22 Bom. L.R. 916, where a decree might be sufficient to cause a change in the adverse character of the possession in the case of a co-manager. This is not, however, the case here, and with the greatest respect, it cannot be held as a proposition of law that a decree of itself necessarily interrupts possession or alters its character. It is difficult to see how the plaintiff who has taken no stops till 1925, can be in a better position than Fakirchand who sued and obtained a decree in 1912 even though he failed to execute it. It is hardly open to the plaintiff to allege that his right remains because he was not a party to the suit of Fakirchand, and yet to rely upon Fakirchand's decree as interrupting the adverse possession. " The lower Courts were, in my opinion, right in holding that respondents Nos. 2 and 3 and their predecessor-in-title Ragho had been in adverse possession from 1900 to 1925. The claim as against defendants Nos. 2 and 3 is barred by limitation.

3. The appeal is dismissed with costs in favour of respondent No. 3 who alone appears.