

(1920) 09 BOM CK 0014
In the Bombay High Court
Case No : Second Appeal No. 211 of 1919

Rakhmabai

APPELLANT

Vs

Ramchandra Vasudev Rotithor

RESPONDENT

Date of Decision : 23-09-1920

Acts Referred:

Citation : AIR 1921 Bom 470 : (1921) 23 BOMLR 301 : 61 Ind. Cas. 114

Hon'ble Judges : Norman Macleod, J;Fawcett, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Norman Macleod, Kt., 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 a 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 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 such a person remains in possession until execution proceedings are taken, but 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 had been in possession adversely against the world for twelve years. The appeal, therefore, must be dismissed with costs.