

**(1920) 08 BOM CK 0028**

**In the Bombay High Court**

**Case No : Second Appeal No. 897 of 1919**

Ramchandra Balwant Athale

APPELLANT

Vs

Balaji Ganesh Kulkarni

RESPONDENT

---

**Date of Decision :** 05-08-1920

**Acts Referred:**

**Citation :** AIR 1921 Bom 48 : (1920) 22 BOMLR 1452

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

**Bench :** Division Bench

**Final Decision :** Allowed

---

## **Judgement**

Norman Macleod, Kt., 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 S6t 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 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 continues 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.

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

3. The cross-objections are also dismissed with costs.