

1863.  
Oct. 1.

*Special Appeal No. 296 of 1863.*

RA'MCHANDRA bin MA'DHAVRA'V & another. *Appellants.*  
ABA'JI valad YES and others ..... *Respondents.*

*Limitation—Intervention of Owner after Title lost by operation of Law of Limitation—Reg. V. of 1827, Sec. 1.*

If a proprietor of land loses all title to it through the operation of the Law of Limitation, but subsequently intervenes and holds it for a year or two, twenty-eight years before action brought (while Reg. V. of 1827 was in force), he cannot rely on this possession to defeat the law of limitation, but must show affirmatively that his intervention was rightful and in virtue of proprietorship, and such as to supersede the previous prescriptive right acquired against him.

**A**BA'JI and others, plaintiffs below, sued in the Court of the Munsif of Násik, in the Ahmednagar District, to prevent defendants Rámchandra and others from a plot of land standing in the Government books in the name of one Bájí Labade, setting forth that the land in question belonged by proprietary right to this Bájí; that he was deceased, and plaintiffs were his heirs; that defendants had been in possession for twenty-five years, and were not proprietors of, and had no title to, the land.

The defendants below, present appellants, Rámchandra and others, contended that plaintiffs were not the heirs of Bájí Labade; that they (defendants) had acquired a title to the land in question by prescription, having held the same as proprietors from eighty to eighty-five years.

The Munsif of Násik, A'zam Sadáshiv Balál, before whom the case came, considered that plaintiffs had failed to prove themselves the heirs of Bájí Labade, through whom they claimed the land sued for; that defendants had proved possession as proprietors for more than sixty years, which gave them a sufficient right of property in the land; whereas plaintiffs had not shown that either they or their father had ever been in possession, and he accordingly rejected the claim with costs.

Against this decision plaintiffs Abáji and others appealed, and the Judge of Ahmednagar, S. A. Harrison, considered that plaintiffs had proved their title by descent from Bájí Labade, the original proprietor of the land sued for, and that they had had possession within thirty years: he, therefore, reversed the Munsif's decision, and awarded as claimed, with costs.

From this decision defendants Bamchandra and others preferred a Special Appeal to the High Court, on the ground, among others, that they (defendants) having had possession for more than thirty years as proprietors, the appellate court decided contrary to Reg. V. of 1827, Sec. i. (a), in awarding the claim.

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RAMCHAN-  
DRA  
MA'DHAVRA V  
et al.  
v.  
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The appeal was argued before FORBES and ERSKINE, JJ.

*Mādhavrāv* and *Pāndurang* for the appellants.

*Dhīrajāl Mathurādās* and *Shāntārām Nārāyan* for the respondent.

FORBES, J., delivered the following judgment:—

The Munsif found that defendant had been sixty years in possession. The Judge, without deciding that point, found that plaintiffs had subsequently intervened for a year or two some twenty-eight years ago.

If it should be held that at the time of this intervention defendant had acquired by prescription a title which superseded the prior title through which plaintiffs claim, and if plaintiffs wish to oust defendant from the possession which they have regained, and enjoyed for many years, plaintiffs must prove plainly, irrespective of their ancestors' superseded title, that their short intervention was rightful, and in virtue of proprietorship; and such as again to supersede defendant's previous prescription.

If the plaintiffs cannot prove this, the presumption that their intervention was unauthorised will, looking at the defendant's previously acquired prescriptive right and subsequent long adverse possession, which still continues, be apparently irresistible.

The Court, therefore, reverses the decree of the District Judge, and remands the case that a new decision may be passed after due consideration of the above points. Costs to follow the final decision.

*Decree reversed.*

(a) I. "First—Whenever lands, houses, hereditary offices, or other immoveable property have been held without interruption for a longer period than thirty years, whether by any person as proprietor, or by him and his heirs or others deriving right from him, such possession shall be received as proof of a sufficient right of property in the same."