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they follow in a very near relation to the decrees and awards there mentioned.

We are of opinion, therefore, that the certificate of sale relied on by the appellant, is not a document of such a character as to be entitled by law to any priority, by virtue of its being registered, over the unregistered lease set up by the respondent, and held established by the court below.

The decree must, therefore, be affirmed with costs.

*Decree affirmed.*

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*Special Appeal No. 57 of 1866.*

B. G. GURA'VI ..... *Appellant.*

V. L. GURA'VI and others ..... *Respondent.*

*Possession of land for thirty years—Reg. V. of 1827, Sec. 1.—Joint family—Separation—Fabrication of document.*

In a suit brought to recover a share in land alleged to be joint family property, where the defendants pleaded possession as proprietors for more than thirty years :—

*Held* that it was not necessary that actual separation should be proved ; but that it was enough to show that the defendants had been in uninterrupted possession for more than thirty years.

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**T**HIS was a special appeal from the decision of W. H. Newnham, Acting Senior Assistant Judge of the Konkan at Ratnágirí, in Appeal Suit No. 498 of 1864, reversing the decree of the Munsif of Málvan, in Original Suit No. 2554 of 1861.

Bháná Govind Gurávi brought the suit against Vithoji Ládoji Gurávi and four others, to recover possession of a fourth-share of a holding in Pendor village, which he alleged to be joint family property.

The defendants answered that the plaintiff had no share in the land ; and that he had not, for a longer period than thirty years, held any portion of it as proprietor, although he had been in occupation as tenant within that period.

The Munsif found it proved that the plaintiff was a member of the family, and that as such he had been in possession within thirty years ; and passed a decree in his favour.

On appeal, the Senior Assistant Judge laid down the issues to be :—(1) Is plaintiff entitled to a share in the land ; (2) If so, is his claim barred by limitation. His decision was as follows :—

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“(1) The evidence on this head is, of course, directly conflicting. The Munsif has held the plaintiff's to be the true story ; and on reading the evidence I am disposed to agree with him. I think it is shown that the plaintiff originally had a fourth-share in the family property.

“(2) But I cannot concur in the view that the claim is within the period of limitation. The defendants have been in possession for more than thirty years ; but the Munsif has found occupation and recognition of the plaintiff's right proved within that time, by exhibits 39, 40, and 18 respectively. Now Nos. 39 and 40 show him certainly to have held certain of the fields ; but apparently, as defendants say, merely on the footing of a tenant, as the same papers show several other men to have been holding : all are entered as tenants only ; and this is not enough to keep his right alive.

“No. 18, again, is an agreement said to have been passed in 1832, by Ládoji, father of one defendant, and uncle or brother of others, recognising the plaintiff's right, and stipulating that certain land should be held by Ládoji for twenty-two years in default of redemption by the plaintiff. This document bears the signature of Ládoji, which I find undoubtedly genuine, by comparison with other documents in the case. But the defendants point out that this signature and that of the witnesses are over the leaf at the top, and that the writing on the other (first) side is irregular ; the latter lines being much wider apart than the first, so as to conclude the deed on the first page, and just fill it up. They suggest that the lower half of a paper with these signatures was cut away, just above the signatures ; and then the deed written, so as to fill up the other side of the paper. After carefully examining the document, I have scarcely a doubt that this was the case. The trick is well known to every Mofussil court, and usually be-

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trays itself, owing to the great difficulty of getting all the writing in exactly and naturally on the other side of the paper. The defendants show, by a copy of another paper, that the two attesting witnesses to the document used about that time to attest kabuláyats for Ládoji, and thus an old paper might have been procured for the purpose. It is true that a witness eighty years old deposes that such a paper was executed by Ládoji, and that he attested it; and in 1855 the present plaintiff petitioned the Mámlatdár about the land, the twenty-two years having then expired, and then produced this document; but this only shows that, if forged, it was forged as long as ten years ago. Looking at the document, I cannot admit it as genuine; and after carefully examining the case, I cannot but come to the conclusion that the plaintiff, whose claim really was barred by limitation, has fabricated this deed No. 18, to take it out of the statute.

“The Munsif’s decree is reversed, and the claim dismissed.”

The case was heard before COUCH, C.J., and NEWTON, J.

*Vishnu Moreshwar and Nánábhái Haridás* for the appellant:—The claim was not barred. The documents Nos. 39 and 40 have been misconstrued. The appellant claims a division of the joint property, several portions of which were managed by the different members without any specific division. The family not having been found to have been divided, it must be presumed to have remained in coparcenary; and the possession of the defendants was not adverse. The defendants held the land as trustees of the family.

*Shántarám Náráyan*, for the respondents, cited S. A. No. 4268 (a); followed in S. A. No. 1028 of 1864 (b).

COUCH, C.J.;—In this case the Senior Assistant Judge held that the suit was barred by Reg. V. of 1827, Sec. 1. He has found that the defendants have been in possession for more than thirty years. The Munsif had found that the plaintiff had been in occupation within thirty years; and that he was, therefore, entitled to a share of the property.

(a) 7 Bom. S. D. A. Dec. 371.

(b) Next case.

The Judge does not concur with him, and proceeds to examine the documentary evidence. He comes to the conclusion that exhibits Nos. 39 and 40 do not show the plaintiff's possession, and that exhibit No. 18 is a fabricated document.

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The plaintiff did not put forward in the lower court the case now made for him, that the defendants were trustees for the family. The Judge found that the defendants had been in possession for thirty years; and, although he does not say so, he must have meant possession as proprietors. That being so, the claim is barred. The case cited by the respondent's vakil is not so accurately expressed as we could have wished. The defendant was not bound to prove the negative that the plaintiff was not in possession; nor was it necessary that actual separation should be found. It was enough to show that the defendants had been in possession as proprietors for more than thirty years.

NEWTON, J., concurred.

*Decree affirmed.*

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*Special Appeal No. 1028 of 1864.*

C. D. RA'NE and others.....*Appellants.*

G. R. RA'NE.....*Respondent.*

*Hereditary allowance—Joint family—Reg. V. of 1827, Sec. 1.*

In a suit brought for a share in a hereditary family allowance, where the defendants pleaded possession for more than thirty years :—

*Held* that the lower appellate court was in error in holding that, " if a claimant is proved to be one of the *bháband* of the defendants, no lapse of time, since the active enjoyment of the privileges, would bar his claim to such a share as he would be entitled to."

S. A. No. 4268, 7 Bom. S. D. A. Dec. 372, followed.

**T**HIS was a special appeal from the decision of A. T. Crawford, Senior Assistant Judge of the Konkan, at Ratnágiri.

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of 1864.

Govind bin Rághoji Ráv Ráne brought the suit, to establish his right, as a member of the Ráne family, to share in an hereditary allowance, called *pátílki miráski*, in the village of Naringrái.