

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.

1866.
June 28.
S. A. No. 57
of 1866.

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.

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

1865.
February 20.
S. A. No. 1028
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.

1865.
February 20.
S. A. No. 1023
of 1864.

The defendants denied the plaintiff's relationship; and pleaded that they, and those from whom they derived their right, had been in possession as proprietors for more than one hundred years.

The Munsif held the claim proved. But the Senior Assistant, on appeal, was of opinion that he was bound by a decision of the Bombay Şadr Adálat of the 15th of January 1853, in S. A. No. 2871, to hold that, "if a claimant is proved to be one of the *bhábund* 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." And, finding the plaintiff to be a member of the family, he, accordingly, held that the claim was not barred.

Shántárám Náráyán, for the appellant, relied upon S. A. No. 4268, decided on the 21st of December 1860.

PER CURIAM (COUCH, NEWTON, and WARDEN, JJ.) :—The Senior Assistant Judge was in error in holding that the case referred to by him was binding upon him as a precedent; the contrary to that decision having been held by the late Şadr Court, in the much more recent case cited by the appellant's vakíl.

Following the decision in S. A. No. 4268 (*a*), the Court reverses the decree of the Senior Assistant Judge; and remands the case, in order that he may determine, whether or not the defendants have acquired a title, in the hereditary allowance claimed by the plaintiff, by possession without interruption as proprietors for a longer period than thirty years, under Reg. V. of 1827, Sec. 1.

Case remanded.

(*a*) "The Court consider that, in a suit for a division of family property, if the party in possession can show thirty years of such possession uninterrupted and as proprietor, and further that, during this time, the party claiming has never derived any profit from, or recovered any part of the proceeds of, the property in dispute, then such possession is good proof of a separation of interests, and will bar the action."—*Per Keays, Hart, and Hebbert, Puisne Judges.* 7 Bom. S. D. A. Dec. 372.—Ed.