

[APPELLATE CIVIL JURISDICTION.]

*Special Appeal No. 403 of 1872.*1873.
July 21.SA'VALGIA'PA' VIRBASA'PA' *et al.*.....Appellants.

BASVANA'PA' BASA'PA'Respondent.

Possession—Prescription—Right of Way—User.

A, being out of possession and excluded from the use of a piece of ground for a longer period than six months, sues *B*, who is in possession, to establish a right of way:—

Held that *A* must prove either thirty years' user, or a grant by the owner of the ground, for the possession itself constitutes a title against any person failing to prove a better.

THIS was a special appeal from the decision of A. L. Spens, Judge of the District of North Kanara, reversing the decree of the Subordinate Judge of Sirci.

The plaintiff sued the defendants for a right of way, complaining that the latter prevented him from carrying grass by a lane by which he had been in the habit of carrying it for eighteen or twenty years. The Court of first instance decreed against the claim, holding that the plaintiff had not acquired a prescriptive title. This decree was reversed in appeal on the ground that "the defendants have not proved that the ground * * * belongs to them. There is no evidence to this effect. There is evidence to the contrary, viz., the defendants' own title deeds, which to my mind clearly show that this lane forms no portion of their purchase, and does not belong to them * * *. On the other hand, the plaintiff has clearly shown, and the fact is not disputed, that the plaintiff has made use of this lane for the last eighteen or twenty years. It seems to me, therefore, under the circumstances, extraordinary that the plaintiff should be prevented from using the road by a man who has no authority to prevent him, simply because the plaintiff has not lived long enough to make use of the road for thirty years."

The special appeal was heard by MELVILL and WEST, JJ.

v.
BASVANA'PA
BASA'PA'.

Chunilál Mániklál for the appellants.

Shámráv Vithal for the respondent.

PER CURIAM:—The defendants having been in possession and the plaintiff having been out of possession, for a longer period than six months, the plaintiff must prove his title. In order to establish his right of way, he must prove either thirty years' user, or a grant by the Government, whom he declares to be the owners of the ground. It has been found, by the Courts below, that he has not established the first; and his pleader has failed to point out to us any evidence which could possibly be held to establish the second. The District Judge has found that the defendants have failed to prove their title to the ground; but their possession is in itself sufficient to constitute a title against any person failing to prove a better title.

District Judge's decree reversed and Subordinate Judge's decree restored with costs throughout.

[APPELLATE CIVIL JURISDICTION.]

Miscellaneous Special Appeal No. 26 of 1872.

July 2.

GANPATLA'L ANUPRA'M *et al.*... *Plaintiffs and Appellants.*

SAMPATRA'M GHELA'BHA'I... *Defendant and Respondent.*

Hereditary Officer—Act XI. of 1843, Sec.13—Official emolument of a Watandár—Its liability to Civil Process.

The official remuneration of the officiating hereditary officer is not liable to civil process so long as it is in the hands of the Collector or other disbursing officer; but as soon as it is in the hands of the hereditary officer himself, it is deprived of any special protection.

THIS was a miscellaneous special appeal from an order of F. D. Melvill, Judge of the District of Ahmedabad, amending an order of the Subordinate Judge of Neriad.

The facts of the case are briefly these:—