

We feel, therefore, that we must reverse the decrees of the Courts below and remand the case for a proper trial upon the merits. Costs will abide the final result.

HEATON, J. :—I concur.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Heaton.

BAPUJI NARAYAN CHITNIS AND OTHERS (ORIGINAL PLAINTIFFS), APPELLANTS *v.* BHAGWANT BALWANT CHITNIS AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS^o.

Ejectment suit—Onus of proof—Proof of title.

Where in a suit in ejectment, the plaintiff fails to prove title, but succeeds in proving that he was in possession of the lands in dispute for a brief period within twelve years of suit, the onus of proving title is not thereby shifted to the defendant.

SECOND appeal from the decision of G. K. Kale, Assistant Judge, A. P., at Satara, confirming the decree passed by H. N. Mehta, Joint Subordinate Judge atampur.

Ejectment suit.

The plaintiffs sued to recover possession of certain lands from the defendants. From 1881 down to 1898, the defendants had been in possession of the lands; but the plaintiffs went into possession in 1898 and retained it till 1907, when they were ousted by the defendants. The present suit was instituted in 1911.

In the suit, the plaintiffs failed to establish their title to the lands; but they maintained that as they had been in possession of the lands within 12 years of suit, the burden of proving title to the lands was thereby thrown on the defendants.

^oSecond Appeal No. 1068 of 1916.

1918.

LAKHICHAND
CHATRABHUJ
v.
LALCHAND
GANPAT.

1918.

January 21.

1918.

BAPUJI
NARAYAN

v.

BHAGWANT
BALWANT.

The lower Courts disallowed the plea and dismissed the suit.

The plaintiffs appealed to the High Court.

N. M. Samarth, for the appellant:—There is a long course of decisions of this Court which says that a plaintiff relying on his possession can sue to eject a trespasser: see *Fatan v. Emad*⁽¹⁾. Here the plaintiff before he was dispossessed by the defendant was nine years in possession.

M. V. Bhat, for the respondent, was not called upon.

BEAMAN, J.:—The point taken before us is that although the plaintiffs have been held by both the Courts not to have proved any title, still the fact that they were once in possession within twelve years of suit throws the onus of proving good title on the defendants. Doubtless there is some case-law authority which might be construed into supporting such a proposition. We, however, prefer to follow the simple law established ever since the English Courts settled any principles of law at all that in a suit in ejectment the plaintiff must prove good title and that there is no onus on the defendant to prove title relatively good or bad at all. Here the plaintiffs have attempted to prove title and have proved some years' possession. But it needs twelve full years to make title. Both the Courts have found that the plaintiffs have no title. It is not disputed that that finding of fact is binding upon us, and we are unable to see how in the face of it any relief can be decreed to the plaintiffs in this form of action.

We must, therefore, dismiss the appeal with all costs.

Appeal dismissed.

R. R.

⁽¹⁾ (1901) 3 Bom. L. R. 246