

(1920) 01 BOM CK 0028

Bombay High Court

Case No: None

Mir Akbarali walad Mir Inayatalli
and Others

APPELLANT

Vs

Abdul Ajj walad Mirasaheb
Jahagir Dak and Another

RESPONDENT

Date of Decision: Jan. 5, 1920

Citation: (1920) ILR (Bom) 934

Hon'ble Judges: Norman Macleod, C.J; Heaton, J

Bench: Division Bench

Judgement

Norman Macleod, C.J.

The plaintiffs brought this suit to establish their sole right to manage the Devasthan of Usthal, alleging hereditary right and ancient and immemorial custom, against defendants Nos. 1 and 4 as representing a board of management elected by various co-sharers under the Collectors order of 23rd March 1908. This question appears to have been decided against the plaintiffs by a decree of the High Court in Suit No. 96 of 1893 which was passed on the 7th July 1896. Apparently after the decree was passed the plaintiffs remained in possession, and nothing was actually done by the other side to get into possession, until the Collector's order of the 1st August 1908.

2. It is suggested in the first place that the plaintiff can tack on the period of adverse possession before, the decree in, Suit No. 96 of 1893 to the period after the decree, so that they acquired an absolute title after-twelve years from the date of the original possession. That is an argument which we cannot accede to. The period of adverse possession is calculated for the benefit of the party setting up adverse possession, and if he loses, then there is an end of that period, and he must, if he wishes to acquire a good title by adverse possession, start afresh after the decree. But we cannot presume since the decree was passed by the High Court on the 7th July 1896 that the plaintiffs in this suit determined at once to hold adversely to the successful party, and in effect in contempt of the decree of the High Court. It is quite

possible after the decree had been passed, and after the successful party was so remiss in seeking to execute it, the plaintiffs might have gathered fresh courage, and might have after a certain period had elapsed from the date of the decree determined to set up again a title in themselves against the successful party in that suit. But we have no evidence of that, and certainly there is no evidence that they took that attitude before the 1st August 1908. But we think that it would require very strong; evidence indeed on the part of a losing party to acquire a fresh title by adverse possession against the decree of the High Court or of any Court, and he would certainly have to act in such a way that the parties interested could have no doubt whatever with regard to his motives in order that they might be enabled to take proper steps to stop time from running. But in this case although the execution of the decree in Suit No. 96 of 1893 was barred by time, yet as laid down by the late Chief Justice in *Bala v. Abai* (1909) 11 Bom. L.R. 1093 although the remedy may be barred the right remains. We therefore think that the decision of the learned District Judge was correct. The appeal fails and must be dismissed with costs.