

**Ramchandra Vs. Laxman**

**Ramchandra Vs. Laxman**

**SooperKanoon Citation :** [sooperkanoon.com/328824](http://sooperkanoon.com/328824)

**Court :** Mumbai

**Decided On :** Apr-14-1958

**Reported in :** AIR1959Bom49; (1958)60BOMLR1164; ILR1959Bom134

**Judge :** K.G. Datar and ;G.B. Badkas, JJ.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Sections 47 - Order 33, Rules 10 and 13

**Appeal No. :** Letters Patent Appeal No. 61 of 1953

**Appellant :** Ramchandra

**Respondent :** Laxman

**Advocate for Def. :** R.K. Thakur, Adv.

**Advocate for Pet/Ap. :** G.R. Mudholkar, Adv.

**Judgement :**

**K.G. Datar, J.**

1. This is an appeal by the plaintiff under the Letters Patent from the judgment of Mr. Justice Bhutt delivered in School Appeal No. 91 of 1948. A few facts may be stated before we consider the points that have been raised by Mr. Mudholkar on behalf of the appellant in this appeal.

2. Survey No. 21 of mouza Anjangaon Bari, tahsil and district Amravati, originally belonged to one Kisan. He sold the land to the plaintiff who is the present appellant, on 5-6-1926. Kisan's son Shrawan aggrieved by the transfer effected by his father filed civil suit No. 73 of 1928 in forma pauperis for avoiding the transfer and for possession of the land Shrawan obtained a decree in the suit on 30-11-1929. It appears that there was an appeal preferred by the present plaintiff against the decree in favour of Shrawan. That appeal came to be dismissed on 9-4-1931. It may be noted that the trial Court, when it passed a decree for possession in favour of Sharwan, also passed the necessary order for payment of Court-fees under Order 33, Rule 10 of the Code of Civil Procedure. The learned trial Judge ordered Shrawan to pay the amount of Court-fees which would have been paid by him if he had not been permitted to sue as a pauper. This amount of Court-fees was under the said provisions declared to be the first charge on the subject-matter of the suit. In execution of this order for payment of Court-fees, the Collector on behalf of the State Government attached survey No. 21 which was the subject-matter of the suit and brought it to auction sale. It appears that this attachment was effected sometime in the year 1935. Thereafter there were two attempts made for bringing the property was brought to sale for the first time. For some reason or other which it is not now necessary to investigate into, that sale was not completed. Then again, in January 1939 there was a second attempt to hold a sale. That attempt also proved abortive. Then finally on 25-8-1945 the auction sale was held and in the said auction sale the present defendant purchased the property. The auction sale was confirmed on 7-5-1946 and the defendant was put in possession of the property sometime in July 1946.

3. It may be noted that although Shrawan had got a decree for possession of the property survey No. 21, no attempt was made on his behalf when he was a minor to execute that decree or by himself within three years after he attained majority. It is stated before us that Shrawan was born on 1-11-1928 and it is not now therefore disputed before us that the last date on which he could have himself executed the decree for possession was on 1-11-1944. Thereafter, the period for applying to execute the decree expired and the present plaintiff, in spite of the decree against him, continued in uninterrupted possession till he was dispossessed in July 1946 by the defendant in whose favour the auction sale had

been held and confirmed. The present suit has been instituted by the plaintiff for possession of survey No. 21 against the defendant on the ground that at the date of the auction sale he had become the owner of the property by right of adverse possession for over 12 years and therefore, there was no right, title or interest subsisting in Shrawan which could be or which was put up for sale and auctioned in favour of the present defendant. The defendant contended that there was no adverse possession completed by the plaintiff and that the plaintiff had not become the owner by right of adverse possession. The defendant further contended that the State Government had a statutory and first charge over the property survey No. 21 and in enforcement of that charge the property had been brought to sale and had been purchased by the defendant and, therefore, no question of the plaintiff's title, even assuming that there was such title acquired by him by adverse possession, arose as against the defendant who had purchased the property in execution of an order which had created a statutory charge in favour of the State Government. The trial Court held that the plaintiff had acquired a title by adverse possession before the property was brought to sale in 1945 and, therefore, there was no right, title or interest of Shrawan subsisting which could be put up in auction and sold to the defendant. Accordingly, it made a decree in favour of the plaintiff. There was an appeal preferred to the District Court by the defendant. The learned Additional District Judge, however, held that the property having been sold in enforcement of the statutory charge created in favour of the State Government, no question of adverse possession arose and accordingly he dismissed the suit and allowed the appeal. The same view was taken by Mr. Justice Bhutt in second appeal.

4. Now, the only question that arises in the present appeal under the Letters Patent is whether the plaintiff can contend that he has become owner by right of adverse possession against the defendant who has purchased the property in execution of the order in favour of the Government, which order created a statutory charge in their favour over the suit property. Mr. Mudholkar attempted to raise some points which have not been raised so far either in the trial Court or in the District Court or even in the High Court in second appeal, and those points were, firstly that the present plaintiff could not be regarded as a party for purposes of Section 47 of the Code of Civil Procedure under the provisions of Order 33,

Rule 13. His contention was that when the trial Court purported to pass an order for payment of Court-fees, the trial Court passed the order directing Shrawan to pay the Court-fees and declared the charge upon the property of Shrawan. Therefore, says Mr. Mudholkar, it could not be said that the plaintiff would be a party under Order 33, Rule 13, as no order was passed against him or against his property under Order 33, Rule 10. The second point raised by Mr. Mudholkar was that the execution proceedings which were taken out for enforcing the order as to the payment of Court-fees and the order which created a charge in favour of the Government were not shown to have been filed within time. In other words the suggestion that was made by Mr. Mudholkar was that the sale having taking place in 1945, it was not clear upon the record that this sale was held in execution proceedings started within 12 years from the date of the order which was passed in favour of the Government. Then the third point that was taken by Mr. Mudholkar was that when his client, namely, the present plaintiff, was not a party to the proceedings which ended in the auction sale having been held in favour of the present defendant, those proceedings would be void as against him as at the time when the auction sale was held, the property, by reason of adverse possession for the statutory period, belonged to the plaintiff and he not having been made a party to those proceedings, those proceedings could not be regarded in any way binding upon the present plaintiff. We must at once say that these questions which have been raised by Mr. Mudholkar necessarily involve investigation into further facts and therefore even if these questions had been attempted to be raised in second appeal, and it is well settled that points which were not taken in second appeal cannot be allowed to be taken up for the first time in the Letters Patent Appeal. We, therefore, have not allowed him to take up and develop the points which are noted above.

5. Then the point that survives for consideration in this appeal would be: what is the effect of a charge having been created in favour of Government under Order 33, Rule 10 of the Code of Civil Procedure? In our view, this would be a statutory charge in favour of the Government and this charge will attach to the property over which it has been created and if after this charge was declared, as it was declared at the time when the trial Judge passed his decree, the property has been transferred or, as in this case, has been taken forcible possession of by a

purchaser in the position of the present plaintiff, we do not see why the Government cannot enforce this charge against a trespasser who has come into possession of this property sometime after the charge has been created in favour of the Government. When we say this, we are assuming that the proceedings in execution that were prosecuted by the Government were valid and lawful proceedings against the necessary parties, and in this case, if the proceedings were started and if the property over which the charge was created had been brought before the Court for being put up for auction, then it would not be an effective answer for the trespasser in the position of the present plaintiff to say that his property cannot be put up for sale. Now, consider this position from another point of view. It is the contention of the plaintiff that he has become the owner by right of adverse possession. But assuming that he has become such an owner by adverse possession for the statutory period, what is it that he gets after all from such adverse possession? The title which he gets no doubt will be a new title. Surely it will not be an assignment from the person against whom he was holding the property by adverse possession. But when the title that he gets is a new title by adverse possession, that title must necessarily correspond in quality and quantity to the title held by the real owner and when we come to examine the title which was held by the real owner at the time when the charge was made, we see that his title was not an absolute title. It had already been made subject to the charge that had been created by the Court under Order 33, Rule 10. If, therefore, after the creation of such charge the property has come to be held adversely by the plaintiff as is now contended by Mr. Mudholkar on behalf of the plaintiff, then he must also hold the property subject to the charge. In other words, the charge-holder can proceed against the property wherever it lies and as it happens to be in possession of the plaintiff, the charge-holder namely, the State Government, can proceed against the property and bring that property to sale, since there does not appear to be any valid answer to the claim made by the Government. We accordingly confirm the decree of this Court in second appeal and dismiss the appeal with costs.

6. Appeal dismissed.