1884

C. R. DESOUZA v. PESTANJI DHANJIBHAI.

the lessee. A custom so unreasonable, even if proved, cannot be regarded as having the force of law; and we do not think that the rights of the lessee under his lease in this case could be in the least affected by such a custom, or by the subsequent transaction between the lessor and the plaintiff. We must, accordingly, confirm the decree of the Court below.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Nánábhái Haridás and Mr. Justice Birdwood.

April 29.

DURGA'RA'M MA'NIRA'M (ORIGINAL PLAINTIFF), APPELLANT, *v.* SHRIPATI AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Dekkhan Agriculturists' Relief Act XVII of 1879, *Secs.* 3, 39, 46, 47 *and* 48—*Conciliator's certificate when necessary—Limitation—Act XV of* 1877, *Sch. II, Art.* 11—*Time intervening between application to conciliator and grant of certificate.*

The necessity to procure the conciliator's certificate before the entertainment of a suit to which an agriculturist residing within any local area for which a conciliator has been appointed is a party, is not limited to suits specified in section 3 of the Dekkhan Agriculturists' Relief Act, 1879, but extends to all matters within the cognizance of a Civil Court.

Held that such certificate was necessary before bringing a suit against an agriculturist to obtain a declaration that certain property was liable to be sold in execution.

In computing the period of limitation for such a suit the time intervening between the application to the conciliator and the grant of a certificate by him must be excluded.

THIS was a second appeal from the decision of R. F. Mactier, Judge of Sátára, confirming the decree of the Subordinate Judge of Sátára rejecting the claim.

Hon. *K. T. Telang* (with *Ganesh Rámchandra Kirloskar*) for the appellant.

Branson (with *Ghanashám Nilkant Nádkarni*) for the respondents.

The facts appear from the judgment delivered by

NA'NA'BHA'I HARIDA'S, J.—In this suit the plaintiff seeks to obtain a declaration that certain lands mentioned in his plaint

*Second Appeal, No. 5 of 1883.

1884

DURGÁRÁM MÁNIRÁM v. SHRIPATI.

are the property of his judgment-debtor Badrudin, and, as such, liable to be sold in execution of his decree against such debtor. He has brought the suit, because his attachment was ordered to be raised, under section 280, Civil Procedure Code (X of 1877), on the 7th October, 1879, at the instance of the defendants, who claimed the land to be theirs.

The plaint was filed on the 14th December, 1880, or more than a year after the date of the order to raise the attachment. This fact appearing on the face of the lower Court's judgment, and not being disputed before us, it seemed to us desirable, before going into the merits of the case, to call upon the learned counsel for the appellant to satisfy us that the suit was not barred by the Limitation Act XV of 1877, Sch. II., art. 11, though that question was neither raised nor considered in the Courts below.

It is contended for the appellant that the respondents being agriculturists residing within a local area "for which a conciliator has been appointed," he (the appellant) had to make an application to such conciliator under the Dekkhan Agriculturists' Relief Act (XVII of 1879), sec. 39, and that, therefore, under section 48 of that Act, in computing the period of limitation in this case the time intervening between such application and the grant of the certificate by such conciliator under section 46 should be excluded. On the other hand, it is contended for the respondents that the present suit not being one of those contemplated in section 3 of the Dekkhan Agriculturists' Relief Act, it was not necessary for the appellant to have gone to the conciliator at all, and that, therefore, he was not entitled to have such time excluded. We are of opinion that the contention for the appellant is sound. Section 39 provides:—"When any dispute arises as to, or there is a prospect of litigation regarding, any matter within the cognizance of a Civil Court between two or more parties, one of whom is an agriculturist residing within any local area for which a conciliator has been appointed, or when application for execution of any decree in any suit to which any such agriculturist is a party, and which was passed before the date on which this Act comes into force, is contemplated, any of the parties may apply to such conciliator to effect an amicable settlement between them."

1884

DURGÁRA'M MÁNIRÁM v. SHRIPATI.

The Legislature evidently intended by this enactment to secure, if possible, "an amicable settlement" between the parties, and that not only in suits specified in section 3, but in all matters "within the cognizance of a civil Court." This is rendered still more clear by section 47, which provides:—"No suit,.....to which any agriculturist.....is a party, shall be entertained by any Civil Court, unless the plaintiff produces" a certificate under section 46 that the endeavour to effect an amicable settlement has failed. Such being the clear language of these sections, we must hold that they do apply to such a suit as the present, and that the appellant, therefore, is entitled to have the intervening time excluded; such time—19th September to 30th November, 1880—being thus excluded, the appellant's suit is in time. [His Lordship then proceeded to discuss the evidence, and remanded the case for the determination of certain issues of fact.]

Issues sent down accordingly.

APPELLATE CIVIL.

Before Sir Charles Sargent, Knight, Chief Justice, and Mr. Justice Nánábhái Haridás.

PARṢHRA'M VA'MA'N, PLAINTIFF, *v.* HIRA'MAN FATU AND OTHERS, DEFENDANTS.* *May* 1.

Vakil and client—Inám patras—Agreements for rewards—Act I of 1846, *Sec.* 7.

Inám patras, or agreements, oral or written, made contemporaneously with the *vakalatnámás* by clients with their pleaders for the payment of rewards in addition to the regulation fees, provided their cases are decided in their favour, are not *nudum pactum*, and, having regard to section 7 of Act I of 1846, cannot be considered as illegal.

THIS was a reference, under section 617 of the Code of Civil Procedure (XIV of 1882) by Ráv Sáheb Krishnáji Náráyan Pátankar, Subordinate Judge of Bhusával, who stated the case thus :—

"Suits Nos. 128 and 131 of 1884 are brought on oral agreements made by clients with their pleaders to pay certain rewards in addition to the usual fees, provided the cases are decided in favour of the parties. Suit No. 141 of 1884 is brought on a simi-

*Civil Reference, No. 18 of 1884.