

JUDGMENT.

1891
SEP. 30.
APPEL-
LATE
CIVIL.
17 B. 227.

SARGENT, C. J.—Having regard to the general scope and object of Reg. XXIX of 1827, we think that the expression "Ordinary Rules" as used in s. 4 of that enactment means the rules for the time being in force determining the jurisdictions of the Judges referred to in that section (1). We cannot hold that the Agent for Sirdars was intended to exercise jurisdiction only in such cases of a civil nature as the Civil Courts were empowered by Reg. II of 1827 to take cognizance of. The object of the Regulation was clearly to invest the Agent with such jurisdiction as would for the time being, but for the enactment of the Regulation, be vested in the Civil Courts. If, after the passing of the Act, the jurisdiction of the Civil Courts were to become in any way modified, the jurisdiction of the Agent would be similarly modified. Section 4 of Act XXIII of 1871, being now a part of the "Ordinary Rules" determining the jurisdiction of the Civil Courts, is applicable therefore to the Agent's Court, though that Court is not a Civil Court in the ordinary acceptation of the term. As the plaintiff had obtained no certificate from the Collector as regards so much of the claim as is affected by the Act of 1871, the Agent has rightly held that in respect of such claim the suit is barred.

The Agent should, however, have dealt with that part of the claim which is not affected by the Act, and he was wrong, we [227] think, in dismissing the whole of the plaintiffs' claim. We must, therefore, reverse his decree and remand the case for a re-hearing. Costs to abide the result.

At the hearing of the appeal it was objected for the respondent that the defendant being now dead, and the suit being one for damages, does not survive against the son. This is a question that must be dealt with by the Court below when the appeal is reheard.

Decree reversed and case remanded.

17 B. 227.

APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and
Mr. Justice Birdwood.*

KADAPPA (*Plaintiff*) v. MARTANDA (*Defendant*).*
[11th February, 1892.]

Stoppel—Suit on a document executed by defendant in which he was described as a trader—Plea in suit that he was an agriculturist—Dekkhan Agriculturists' Relief Act (XVII of 1879).

The mere fact that the defendant described himself in the instrument, on which the suit was brought, as a trader, would not of itself estop him from pleading at the trial that he was an agriculturist, and entitled to the protection of the Dekkhan Agriculturists' Relief Act (XVII of 1879). There must be evidence to show that by describing himself as a "trader" he represented himself as a trader, and intended that that representation should be acted on by the plaintiff.

* Civil Reference No. 23 of 1891.

(1) Section 4 of Reg. XXIX of 1827 is as follows:—

An agent of Government shall be specially appointed for the purpose of receiving, and trying, and deciding all complaints of a civil nature which would under the ordinary rules be cognizable by either of the Judges of Poona and Ahmednagar against any of the persons contemplated in the preceding section.

THIS was a reference made by Rao Sahab R. D. Nagarkar, Subordinate Judge of Islampur in the Satara District, under s. 617 of the Civil Procedure Code (Act XIV of 1882).

The circumstances under which the reference was made were as follows :—

The plaintiff, Kadappa, sued to recover possession of a shop and arrears of rent on a rent-note, dated 23rd July, 1889, in which the defendant's occupation was mentioned as "trade." In the plaint, also, his occupation was given as "trade." The defendant, Martand, pleaded that he was an agriculturist, and that, therefore, the suit was not maintainable without the Conciliator's certificate under s. 47 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). He further stated that he was an agriculturist at the time of the execution of the rent-note sued upon, [228] and had been so ever since, and he claimed the protection of the Act.

The Subordinate Judge, having regarded to the description of the defendant in the rent-note and his contention with respect to his status, referred the following questions to the High Court :—

"(I) Whether the admission of a non-agriculturist status in the rent-note in question would prevent the defendant from proving the existence of a contrary status on the day of its execution by operating as an estoppel?

"(II) Whether, in the absence of an allegation of a change of status, he would be at liberty to prove the existence of the status of an agriculturist after the date of its execution?"

The opinion of the Subordinate Judge on both the points was against the defendant,—that is, on the first in the affirmative, and on the second in the negative.

There was no appearance for the parties.

JUDGMENT.

SARGENT, C.J.—The mere fact that the defendant described himself in the instrument on which the suit was brought as a trader would not of itself estop him from pleading at the trial that he was an agriculturist and entitled to the protection of Act XVII of 1879. There must be evidence to show that by describing himself as a "trader" he represented himself as a trader, and intended that that representation should be acted on by the plaintiff.

Order accordingly.

1892
FEB. 11.

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