

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

1894.

February 8.

NA'RA'YANDA'S SAKHA'RA'M, PLAINTIFF, *v.* KONDI, DEFENDANT.*

Dekkhan Agriculturists' Relief Act (Bombay Act XVII of 1879), Secs. 49 (a) and 74†—Conciliation agreement—Conciliation agreement forwarded to be filed in Court—Death of plaintiff—Substitution by the conciliator of the name of the deceased's heir on the return of the agreement by the Subordinate Judge—Practice.

A plaintiff applied to a conciliator appointed under the Dekkhan Agriculturists' Relief Act (Bombay Act XVII of 1879) for an amicable settlement of a dispute between himself and the defendant, and came to an agreement disposing of the matter which was duly forwarded to the Subordinate Judge to be filed in Court. On receipt of the agreement, the Subordinate Judge issued notices to the parties to show cause why the agreement should not be filed, and was, on the day of hearing, informed that the agreement could not be filed owing to plaintiff's death. The agreement was then returned to the conciliator, who entered therein the name of the deceased plaintiff's heir and forwarded it to the Subordinate Judge. A question having thereupon arisen as to whether the conciliator could enter on the record the name of the heir of the deceased plaintiff,

Held, that although there is no provision in the Dekkhan Agriculturists' Relief Act (Bombay Act XVII of 1879) empowering a conciliator to enter the name of the heir of a party, and Government have not apparently under section 49 (a) of the Act made any rules regulating the procedure before conciliators in this respect, yet when a Subordinate Judge is seized of a conciliation agreement, there is a "proceeding" before him under the Act. He should, therefore, under section 74 of the Act follow the provisions of the Civil Procedure Code (Act XIV of 1882) in regard to placing on the record the heirs of the deceased parties.

REFERENCE from Ráo Sáheb K. S. Riswadkar, Subordinate Judge of Shrigonda in the Ahmednagar District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

Under section 39 of the Dekkhan Agriculturists' Relief Act, Náráyan Sakháram applied to Káji Mir Buchásáheb, conciliator of Shrigonda, praying for an amicable settlement of a dispute

* Civil Reference, No. 3 of 1894.

† Sections 49 (a) and 74 of the Dekkhan Agriculturists' Relief Act (XVII of 1879):—

49. The Local Government may from time to time make rules—

(a) regulating the procedure before conciliators in matters not provided for by this Act,

(b) * * * *

(c) * * * *

74. Except in so far as it is inconsistent with this Act, the Code of Civil Procedure shall apply in all suits and proceedings before Subordinate Judges under this Act.

between himself and the defendant, and came to an agreement finally disposing of the matter in dispute as contemplated by section 43 of the Act. The agreement being reduced to writing, and signed by the conciliator and the parties, was forwarded to the Court of the Subordinate Judge of Shrigonda Court under section 44 of the Act for being filed.

The Subordinate Judge returned it to the conciliator for correction, but before it could be corrected the conciliator died, and under orders from the Special Subordinate Judge the agreement was transferred to another conciliator for correction, was duly corrected, and returned to the Court of the Subordinate Judge. Notices were thereupon issued by him to the parties to show cause within one month from the date of service why the agreement should not be filed; but on the day of hearing he was informed that the agreement had not been filed owing to the plaintiff's death. The agreement was then returned to the conciliator with a request that he might take such steps with respect to it as he might deem proper. The conciliator then entered the name of Bakhatram in the agreement in place of his brother the plaintiff, deceased, and returned it to the Court.

The Subordinate Judge being of opinion that the provisions of the Civil Procedure Code do not apply to any proceeding before the conciliator, and that the Dekkhan Agriculturists' Relief Act does not make any provision in respect of entering on the record the name of plaintiff's heir in any application pending or agreement made before him in the event of the plaintiff's death, considered that the conciliator's action was *ultra vires*, and that it would not be legal to file the agreement in question, which should be cancelled. He accordingly referred the following questions:—

(1) Whether in an agreement made before a conciliator under section 43 of the Dekkhan Agriculturists' Relief Act the conciliator can enter on the record the names of the heirs of the plaintiff in his place in the event of his death before the agreement is duly filed in the proper Court?

(2) Whether on the receipt of such an agreement for being filed in the Court of the Subordinate Judge, the Subordinate Judge can, relying on section 74 of the Dekkhan Agriculturists' Relief

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Act, permit the heirs of the plaintiff to come on the record before the agreement is duly filed should the plaintiff die in the meantime ?

(3) Whether the agreement, which is the subject of the reference, can be filed under the circumstances already mentioned, or whether it must be cancelled ?

The opinion of the Subordinate Judge on each of the above questions was in the negative.

There was no appearance for the parties.

SARGENT, C. J.:—We agree with the Subordinate Judge in his view with regard to the first and second questions referred by him. There is no provision in the Dekkhan Agriculturists' Relief Act empowering a conciliator to enter the name of the heir of a party, and Government have not apparently under section 49 (a) of the Act made any rules regulating the procedure before conciliators in this respect.

When, however, the Subordinate Judge was seized of the agreement there was a proceeding before him under the Act. He, therefore, under section 74 of the Act should have followed the provisions of the Civil Procedure Code in regard to placing on the record heirs of deceased parties, and there was no reason for him to return the agreement to the conciliator, assuming that he had the power to do so. It remains for him to take the legal steps to bring the heirs of the deceased plaintiff on the record; and it is thus unnecessary to answer the third question, which does not arise.

Order accordingly.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

BA'LRISHNA PANDHÁRINATH (ORIGINAL PLAINTIFF), APPELLANT, v.
BA'PU YESA'JI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

*Civil Procedure Code (Act XIV of 1882), Sec. 258—Amending Act (VII of 1888),
Sec. 27—Changes of law relating to procedure—Retrospective effect—Practice.*

The change effected in the language of section 258 of the Civil Procedure Code (Act XIV of 1882) by section 27 of the Amending Act (VII of 1888), by which

* Second Appeal, No. 529 of 1892.

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