

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

DEVIDAS VALAD DHANJI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS,
v. VITHALDAS KASHIDAS (ORIGINAL PLAINTIFF), RESPONDENT.*

1911.

September 5.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 39, 48†—Conciliation—
Time taken up in conciliation proceedings—Exclusion of time—Limitation.*

The plaintiff sued on a promissory note dated the 12th of June 1905. He first applied on the 23rd May 1908 for a conciliator's certificate under section 39 of the Dekkhan Agriculturists' Relief Act, 1879; and obtained it on the 31st August 1908. Then on the 10th September 1908, both he and the defendant made a joint application for conciliation. The conciliator held that the first certificate that he had granted had become useless; and gave a fresh certificate on the 3rd December 1908. The suit was brought on the 11th December 1908. It was contended that the suit was barred by limitation.

Held, that the suit was within time, inasmuch as the whole proceeding from the 23rd of May 1908 to the 3rd of December 1908, was one and continuous, and that period should be excluded under section 48 of the Act.

SECOND appeal from the decision of J. Scotson, Assistant Judge of Khándesh, reversing the decree passed by S. R. Koppikar, Subordinate Judge, at Nandurbár.

* Second Appeal No. 748 of 1910.

† Sections 39 and 48 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) run as follows:—

39. 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 brought before Conciliator. 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.

48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded.

1911.

DEVIDAS

v.

VITHALDAS.

This was a suit to recover a sum of money due on a promissory note dated the 12th June 1905. The plaintiff first applied on the 23rd May 1908 to obtain a conciliator's certificate under section 39 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) and obtained it on the 31st August 1908. Then on the 10th September 1908, both he and the defendant made a joint application for conciliation. The conciliator rescinded the first certificate; and granted a fresh certificate on the 3rd December 1908. The suit was filed on the 11th December 1908.

The defendant contended (*inter alia*) that the suit was barred by limitation.

The Subordinate Judge dismissed the suit on the ground that it was barred by limitation. On appeal, however, the Assistant Judge held the claim to be within time and decreed it.

The defendant appealed to the High Court.

R. R. Desai, for the appellants.

N. V. Gokhale, for the respondent.

CHANDAVARKAR, J.—The facts are these. The suit was brought on a promissory note dated the 12th of June, 1905, and it was presented to the Court on the 11th of December, 1908. On the face of it, therefore, the suit was barred; but the plaintiff seeks to bring it within the period of limitation on the ground that on the 23rd of May he had applied for a conciliator's certificate under section 39 of the Dekkhan Agriculturists' Relief Act. That certificate was granted to him on the 31st of August 1908. But it appears that on the 10th of September, 1908, both he and the defendant made a joint application on the strength of a *ka bulayat* executed by the defendant to the conciliator. The conciliator on receipt of that application held that the certificate, which had been granted on the 31st of August, had become useless. Accordingly, he gave a fresh certificate on the 3rd of December in compliance with the prayer in the joint application of the 10th of September. It is contended for the appellants (defendants) that the suit brought on the 11th of December, 1908, is barred, because the plaintiff is not entitled to a deduction of the period from the 23rd of May to

the 10th of September, 1908. We think that that period ought to be deducted, because the whole proceeding from the 23rd of May to the 3rd of December, when the certificate was given, was substantially one continuous proceeding. It is true that the conciliator held on the 20th of September, 1908, that the certificate granted by him on the 31st of August, 1908, had become useless; but when we look at the facts, it appears to us that the old certificate merged in the new. It is urged, however, by Mr. R. R. Desai that this is a new case altogether which was not presented to either of the Courts below, and that it raised new facts which ought not to be allowed in second appeal; but assuming that it is a question of fact, we have jurisdiction under the new Civil Procedure Code to record our finding upon it, as the question was not determined by the Courts below and arises on facts which are admitted.

Therefore, looking to the whole proceeding from the 23rd of May 1908 to the 3rd of December 1908 as one and continuous, it must be held that the plaintiff's suit is within time.

For these reasons, the decree must be confirmed with costs.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Russell and Mr. Justice Chandavarkar.

HILLAYA SUBBAYA HEGDE (ORIGINAL DEFENDANT No. 3), APPELLANT, v. NARAYANAPPA TIMMAYA AND ANOTHER (ORIGINAL PLAINTIFF AND DEFENDANT No. 2), RESPONDENTS.*

1911.

September 12.

Fraud—Fraudulent transfer of possession—Reversioner getting into possession from an alienee of the widow—Mortgage by alienee—Suit for foreclosure—Reversioner setting up the plea that widow's alienation beyond her life-time was void—Estoppel between mortgagor and mortgages—Estoppel binds reversioner—Practice.

In 1878, G's widow sold certain property, belonging to G, to G A, who mortgaged it to D in 1892. The widow died in 1897. After G A's death in 1901, H (defendant No. 3), who was a reversioner of G, slipped into possession of the property by

* Second Appeal No. 19 of 1910.