

## APPELLATE CIVIL.

*Before Mr. Justice Batchelor and Mr. Justice Hayward.*

PIRAPPA BIN MALKAPPA AND ANOTHER (ORIGINAL DEFENDANTS),  
APPELLANTS v. ANNAJI APPAJI MOHOLKAR (ORIGINAL PLAINTIFF),  
RESPONDENT.\*

1915.

September 1.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 72†—Agriculturist—Status at the time when the cause of action arises—Sons of original debtor, not in existence at the date of the cause of action, are yet within the statute—"Person," meaning of.*

The defendants' father passed a registered bond to the plaintiff in 1900, the cause of action under which accrued in 1901. In 1912, the plaintiff filed a suit to recover moneys due under the bond, and tried to bring his claim in time by reference to the provisions of section 72 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The defendants contended that the section did not apply, for at the time the cause of action arose in 1901, they were not only not agriculturists but were not in existence at all. The lower Court negatived the contention and decreed the suit. The defendants having appealed—

\* Second appeal No. 232 of 1914.

The section runs as follows:—

† In any suit [of the description mentioned in sec. 3, cl. (v)] for the recovery of money from a person<sup>\*\*\*</sup> who at the time when the cause of action arose was an agriculturist [in any of the districts of Poona, Satara, Sholapur and Ahmednagar], the following periods of limitation shall be deemed to be substituted for those prescribed in the second column of the second schedule annexed to the Indian Limitation Act, 1877 (that is to say):—

(a) When such suit is founded on a written instrument registered under this Act on any law in force at the date of the execution of such instrument—twelve years ;

(b) in any other case,—six years ;

1. Provided that nothing in this section shall—

(i) apply to a suit for the recovery of money from a person who is a surety merely of the principal debtor if the principal debtor was not at the time when the cause of action arose, an agriculturist [in any of the districts aforesaid], or

(ii) revive the right to bring any suit which would have been barred by limitation if it had been instituted immediately before this Act comes into force.

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*Held*, that the suit fell within the scope of section 72 of the Dekkhan Agriculturists' Relief Act, and that the plaintiff was entitled to the extended limitation.

The word "person" in section 72 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is equivalent to the word "defendant" which occurs in section 3, cl. (w) of the Act.

SECOND appeal from the decision of G. K. Kanekar, First Class Subordinate Judge with Appellate Powers, reversing the decree passed by G. L. Dhekne, Joint Subordinate Judge at Sholapur.

Suit on a bond.

On the 19th June 1900 the defendants' father passed to the plaintiff a registered bond for Rs. 600. The moneys became due in 1901.

The plaintiff filed the present suit on the 6th June 1912 to recover moneys due under the bond. The claim was sought to be brought in time by reference to the provisions of section 72 of the Dekkhan Agriculturists' Relief Act, 1879.

The defendants contended *inter alia* that the claim was barred by limitation, for they were not only not agriculturists in 1901 when the cause of action accrued, but they were not even born at that date.

The Subordinate Judge dismissed the suit as barred by limitation.

On appeal, this decree was reversed by the lower appellate Court, where it was held that the claim was not barred by limitation for reasons which were expressed as follows:—

The object of section 72 aforesaid when it was first introduced in Act XVII of 1879 was to obviate the difficulties of the rayat which were aggravated by the Indian Limitation Act of 1877. The money lender was compelled under the Limitation Act of 1877 to sue the rayat at short intervals or to take a fresh bond from him. In section 72 aforesaid when it was first introduced the words were as follows:—"In any suit against an agriculturist

for the recovery of money." That section was amended by Act XXIII of 1881 to prevent anomalous results arising from the wording of section 72 above quoted. That wording showed that defendant who had become an agriculturist shortly before the institution of the suit is contemplated by that section. To prevent such anomalous results, the wording above quoted was deleted and that section was amended so that it will apply only when the defendant was an agriculturist at the time the cause of action arose. The expression 'suits under this Act' at the beginning of section 72 was deemed to be objectionable. The words "suits of the description mentioned in section 3, cl. (w)" were substituted by Act No. XXIII of 1886. The history of section 72 aforesaid as stated above would show that appellant's ground No. 8 in his memorandum of appeal and the argument of his pleader based on section 3, cl. (w), of the Dekkhan Agriculturists' Relief Act of 1879 and on the reference of that section in section 72 aforesaid and on the word "defendant" as defined in section 2 of the Indian Limitation Act of 1908, are weighty and convincing. It must be noted that section 72 does not state that the suit of the description mentioned in section 3, cl. (w), must be against the person who at the time when the cause of action arose was an agriculturist. That section provides for the recovery of money from such person. That section requires that the person who is liable to be sued must be an agriculturist when the cause of action arose. It does not contemplate that the suit must be instituted against the person who was an agriculturist when the cause of action arose. Section 3, cl. (w), aforesaid militates against such view. A statute ought to be construed so that, if it can be prevented, no clause, section or word shall be superfluous, void or insignificant. Generally, an Act must be so construed as to advance the objects as contemplated by the Legislature. The interpretation of section 72 as made by the lower Court is not consistent with the history of section 72 aforesaid from its introduction at the outset down to the present amendment of that section. The word "defendant" in section 3, cl. (w), and the word "person" in section 72 aforesaid appear to be convertible. The Legislature appear to have used those words having regard to the definition of "defendant" in section 3 of the Indian Limitation Act of 1877 or section 2 of the Indian Limitation Act of 1908.

The lower Court observes in its reasoning for its finding on the issue of limitation at the end as follows :—" But the Legislature has probably used the word 'person' advisedly so as to exclude the benefit of section 3 in certain suits such as the one before me." I am unable to find any justification for the observation above quoted. The object of section 72 aforesaid when it was first introduced and its subsequent amendments do not, in the least, lend countenance to the above quoted observation. On the whole, I hold that section 72 of the Dekkhan Agriculturists' Relief Act of 1879 applies to the present case and that the lower Court has erred in interpreting that section. Exhibit 15 is

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defendant's pleading which shows that the debtor Malkappa died in the year 1909. Exhibit 18 is plaintiff's deposition. He admits that he had last received payment from the said Malkappa one year before his death. That payment appears to be of the amount of interest due to plaintiff. Defendant's pleading, Exhibit 15, and application, Exhibit 19, support plaintiff's evidence in the matter. The effect of that payment is also to save the bar of limitation, if any, under section 20 of the Limitation Act of 1908.

The defendants appealed to the High Court.

*D. A. Tulzapurkar*, for the appellants.

*P. D. Bhide*, for the respondent.

BATCHELOR, J.:—The question raised in this appeal is one of some nicety upon the construction of section 72 of the Dekkhan Agriculturists' Relief Act, a section which, as it seems to us, is somewhat unfortunately worded.

The bond in suit is registered, and was executed on the 19th June 1900. Ordinarily the period of limitation would have expired in 1907, that is, six years from the accrual of the cause of action in 1901. The suit was not filed till 1912, but it is sought to save it by virtue of section 72 of the Dekkhan Agriculturists' Relief Act, which, if it can properly be applied, extends the period to twelve years. The lower appellate Court has upheld the plaintiff's contention on this point.

It is now contended by Mr. Tulzapurkar for the appellants that section 72 cannot be invoked in the plaintiff's favour, because the suit is brought not against the person who originally executed the bond in 1900, but against his sons. It is, therefore, urged, following the strict words of the section, that this suit cannot be said to be brought against a person who, at the time when the cause of action arose, was an agriculturist in the named districts. For, the argument runs, the cause of action arose in 1901, and at that time the persons against whom the suit is brought were not only not agriculturists

within the named districts, but were not in existence at all. That no doubt is a construction to which a rigorous adherence to the mere words of section 72 does lend some countenance, but it is not, we think, a construction which the Court ought to favour, if only out of respect for the Legislature. For, if we followed that construction, the result would be that a suit brought against an agriculturist father would receive the concession afforded by the section, but the concession would be refused if the suit were brought against the agriculturist sons upon the death of the father; and a result so repugnant ought not lightly to be attributed to the Legislature. Rather, we think, it must be taken that the word 'person' in section 72 is equivalent to the word 'defendant' which occurs in section 3, cl. (w), that clause being referred to in the section.

It may also be contended with less violence than Mr. Tulzapurkar's argument would involve that the words 'cause of action' must be read in their proper sense as referring to the whole bundle of material facts which it is incumbent upon the plaintiff to prove in order to establish his case. In such an instance as this, therefore, the cause of action as against the present defendants would be compounded partly of the fact of the execution of the bond and partly of the fact that the present defendants succeeded to the liabilities of their father on his death in 1909. In that view also the suit would fall within the scope of section 72, and plaintiff would be entitled to the extended limitation.

On these grounds we think the lower appellate Court was right, and the appeal is dismissed with costs.

*Appeal dismissed.*

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