

APPELLATE CIVIL.

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

1895.

January 22.

RAJMAL MOTIRAM MA'RVADI (ORIGINAL PLAINTIFF), APPLICANT, v.
KRISHNA VALAD MAHIPATI HAGADEKAR (ORIGINAL DEFENDANT),
OPPONENT.*

*Dekkhan Agriculturists' Relief Act (Bom. Act XVII of 1879), Sec. 44, para. 2—
Expression "show cause," meaning of—Section 525 of the Civil Procedure Code
(Act XIV of 1882).*

The expression "show cause" in para. 2, section 44 of the Dekkhan Agriculturists' Relief Act (Bom. Act XVII of 1879) means to allege and prove sufficient cause and not simply to object.

This was an application under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the order passed by C. H. Jopp, Special Judge under the Dekkhan Agriculturists' Relief Act (Bom. Act XVII of 1879).

The plaintiff, who was a creditor of the defendant, applied under the provisions of the Dekkhan Agriculturists' Relief Act to the conciliator of Tembhurdi to effect an amicable settlement between them. The conciliator did so, and after reducing the settlement to writing in the form of an agreement forwarded it to the Subordinate Judge of Karmala to be filed in Court according to section 44 of the Act. Before the Subordinate Judge the defendant

* Application under the extraordinary jurisdiction, No. 89 of 1894.

† Section 44 of the Dekkhan Agriculturists' Relief Act (Bom. Act XVII of 1879):

44. When the agreement is one finally disposing of the matter, the conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides;

and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

The Court which receives the agreement shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

The Court may in any case, for reasons to be recorded by it in writing, from time to time extend the period of one month allowed for showing cause under this section.

impeached the agreement as fraudulent, imputing fraud both to the conciliator and to the plaintiff, but he adduced no evidence in support of his allegations. The Subordinate Judge in the absence of the plaintiff passed an *ex-parte* order refusing to file the agreement on the ground that the defendant did not admit it.

The plaintiff applied for revision to the Special Judge, who issued notice to the defendant to appear and answer the application. On the appointed day neither the plaintiff nor the defendant appeared before the Judge. He, therefore, rejected the application, holding that the agreement was not an "amicable" one as contemplated by section 41 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The plaintiff then applied to the High Court under its extraordinary jurisdiction contending (*inter alia*) that the Subordinate Judge had no jurisdiction to dispose of the matter *ex parte* in the absence of the plaintiff, and that he had no jurisdiction to refuse to file the agreement unless cause was "shown" in the sense of "proved." A rule *nisi* was issued calling upon the defendant to show cause why the order of the Special Judge should not be set aside.

Ganesh K. Deshamukh appeared for the applicant (plaintiff) in support of the rule:—The Subordinate Judge had no jurisdiction to dispose of the matter, especially when notice of the defendant's objections had not been duly served on us. Service of notice is a condition precedent to the Court having jurisdiction—*Murári v. Hari*⁽¹⁾. Both the Courts appear to have thought that cause is sufficiently shown when it is only alleged. But the expression "to show cause" has been judicially interpreted in reference to section 525 of the Civil Procedure Code by the different High Courts to mean not only to allege, but to allege and prove cause. We submit that the same interpretation should be put on the expression in the Dekkhan Agriculturists' Relief Act—*Dándeekar v. Dándeekars*⁽²⁾; *Surjan Raot v. Bhikári Raot*⁽³⁾.

The defendant alleged fraud only in vague and general terms. The particulars of the fraud were not given. As there was no

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(1) P. J., 1887, p. 39.

(2) I. L. R., 6 Bom., 663.

(3) I. L. R., 21 Cal., 213.

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sufficient averment of fraud such as the Court should take notice of, the Judge should not have entertained the plea of fraud at all—*Krishnaji v. Wamnaji*⁽¹⁾.

There was no appearance for the opponent (defendant).

SARGENT, C. J.:—The Special Judge and the Subordinate Judge have both construed the expression "show cause" in the second paragraph of section 44 of the Dekkhan Agriculturists' Relief Act as meaning "allege cause." without proving it, or, in other words, as simply "to object." But we think that the expression, as was held by this Court in construing section 525 of the Civil Procedure Code in *Dandekars v. Dandekars*⁽²⁾, is a well-known one denoting both to allege and prove sufficient cause. If that be the correct meaning of it, the Subordinate Court could not act upon the defendant's mere statement of objection, but should have decided as to its sufficiency after giving notice to the other side. This was not done by the Subordinate Judge. However, the applicant had an opportunity of supporting the argument before the Special Judge, and if he did not intend to do so on the day fixed for the hearing, he cannot now complain if the Special Judge confirmed the decision of the Subordinate Judge, and ask for the exercise of this Court's extraordinary jurisdiction. We must, therefore, discharge the rule.

Rule discharged.

(1) I. L. R., 18 Bom., 144.

(2) I. L. R., 6 Bom., 663.

APPELLATE CIVIL.

FULL BENCH.

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

REFERENCE BY THE COLLECTOR AND SUPERINTENDENT
OF STAMPS, BOMBAY.*

*Stamp Act (I of 1879)—Instrument—Trust-deed—Settlement—Testamentary
document—Stamp.*

An instrument called a trust-deed by the party executing it was intended to have immediate operation. It vested the property in the trustees at once, and the provi-

* Civil Reference, No. 17 of 1894.

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