

1892.

KADAPPÄ
v.
MÄRTANDA.

and had been so ever since, and he claimed the protection of the Act.

The Subordinate Judge, having regard to the description of the defendant in the rent-note and his contention with respect to his status, referred the following question 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.

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.

APPELLATE CIVIL.

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

KA'SHINA'TH TRIMBAK JOSHI, APPLICANT, v. DUMING ZURAN,
OPONENT.*

- 1892.

February 11.

Limitation.—Civil Procedure Code (Act XIV of 1882), Sec. 318—Purchaser at Court sale—Certificate of confirmation of sale—Application for possession of purchased property—Date of accrual of right to apply for possession.

The right of a purchaser to apply for possession under section 318 of the Civil Procedure Code (Act XIV of 1882) accrues to him when the certificate “has been

* Civil Reference, No. 22 of 1891.

granted,"—that is to say, when it has been issued to him, and the period of limitation for such an application is to be computed from that day.

THIS was a reference made by Ráo Sáheb Rámchandra V. Patki, Second Class Subordinate Judge of Bassein in the Thána District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

1892.
 KÁSHINÁTH
 TRIMBAK
 JOSHI
 *
 DURING
 ZURAN. *

The applicant, Káshináth Trimbak Joshi, purchased certain immoveable property at a Court sale on the 13th February, 1888, and the sale to him was confirmed on the 18th April, 1888. On the 7th October, 1890, he applied for a certificate under section 316 of the Civil Procedure Code (Act XIV of 1882), which was granted to him on the 13th February, 1891, and was issued to him on the same day. He subsequently presented an application to obtain possession of the property under section 318 of the Civil Procedure Code. The Subordinate Judge referred the following question for decision :—

“Should the period of limitation for the application to recover possession be counted from the day on which the certificate was actually issued to the applicant, or should it be counted from the date on which the sale was confirmed ?”

The opinion of the Subordinate Judge was that the period of limitation should be counted from the date of the confirmation of the sale.

There was no appearance for the parties.

SARGENT, C. J. :—The right of a purchaser to apply for possession under section 318 of the Civil Procedure Code accrues to him when the certificate “has been granted,”—that is to say, when it has been issued to him. See *Motichand Tárúchand v. Náikji bin Gopálji*⁽¹⁾.

Order accordingly.

(1) P. J., 1886, p. 46.