

think, in dismissing the whole of the plaintiffs' claim. We must, therefore, reverse his decree and remand the case for a re-hearing. Costs to abide the result.

At the hearing of the appeal it was objected for the respondent that the defendant being now dead, and the suit being one for damages, does not survive against the son. This is a question that must be dealt with by the Court below when the appeal is reheard.

Decree reversed and case remanded.

APPELLATE CIVIL.

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

KADA'PPA', PLAINTIFF, v. MA'RTANDA, DEFENDANT.*

1892.

Estoppel—Suit on a document executed by defendant in which he was described as a trader—Plea in suit that he was an agriculturist—Dekkhān Agriculturists' Relief Act (XVII of 1879).

February 11.

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 the Dekkhan Agriculturists' Relief 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.

THIS was a reference made by Ráo Sáheb R. D. Nagarkar, Subordinate Judge of Islámpur in the Sátára District, under section 617 of the Civil Procedure Code (Act XIV of 1882).

The circumstances under which the reference was made were as follows :—

The plaintiff, Kadáppa, sued to recover possession of a shop and arrears of rent on a rent-note, dated 23rd July, 1889, in which the defendant's occupation was mentioned as "trade." In the plaint, also, his occupation was given as "trade." The defendant, Mártand, pleaded that he was an agriculturist, and that, therefore, the suit was not maintainable without the Conciliator's certificate under section 47 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). He further stated that he was an agriculturist at the time of the execution of the rent-note sued upon,

* Civil Reference, No. 23 of 1891.

1891.

DÁJI
NILKANTH
NAGARKAR
v.
GANPATRÁO
NILKANTH
NAGARKAR.

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.