

## APPELLATE CIVIL.

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

1891.  
September 30.

DA'JI NILKANTH NAGARKAR AND OTHERS, (ORIGINAL PLAINTIFFS), APPELLANTS, v. GANPATRA'O NILKANTH NAGARKAR, (ORIGINAL DEFENDANT), RESPONDENT.\*

*Jurisdiction*—Court of Agent for Sirdárs in the Deccan—Suit in that Court—Pensions Act (XXIII of 1871), Sec. 4, applies to such suit—Collector's certificate—Regulation XXXIX of 1827, Secs. 4 and 6—Ordinary Rules—Regulation II of 1827.

A suit brought against a *sirdár* in the Court of the Agent for Sirdárs in the Deccan, of the class specified in section 4 of the Pensions Act (XXIII of 1871), requires a Collector's certificate, as provided by section 6 of that Act.

THIS was an appeal from the decision of G. C. Whitworth, Agent for Sirdárs in the Deccan at Poona.

Suit for an account and recovery of income.

The plaintiffs alleged that they and the defendant Ganpatráo Nilkanth Nagarkar (deceased pending appeal to the High Court), who was a third class *sirdár*, were co-sharers in certain *jághir*, *ináms*, *saranjám* and other properties situate in the Ahmednagar District; that partition had taken place between the co-sharers, and that they had been separately receiving the income of their respective shares; that for the sake of convenience the lands had not been actually partitioned, and that the income thereof had been collected with the assistance of a clerk named Gangádhár Bákrishna Godbole, who was appointed by all the co-sharers; that, latterly, this clerk in collusion with the defendant, who was the senior representative of the family, and under whom the clerk acted, declined to render accounts, &c. The plaintiffs, therefore, brought this suit for an account, &c. They further stated that the defendant being a third class *sirdár* was amenable to the jurisdiction of the Agent for Sirdárs in the Deccan, and that they had, therefore, filed the suit against him in the Agent's Court and a separate suit against the clerk, Gangádhár Bákrishna, in the Subordinate Judge's Court.

The defendant, Ganpatráo Nilkanth Nagarkar, contended (*inter alia*) that as some of the property in dispute was service *vatan*,

\* Appeal No. 123 of 1889.

the suit must fail for want of the Collector's sanction under the Pensions Act (XXIII of 1871).

The Agent for Sirdárs held that the suit was barred owing to the plaintiffs' failure to produce the Collector's certificate under section 4 of the Pensions Act (XXIII of 1871). On the authority of the case of *Bábáji Hari v. Rájárám Ballál*<sup>(1)</sup> he dismissed the claim.

The plaintiffs appealed to the High Court.

*Ganesh Rámchandra Kirloskar* (with *Purushottam Parashuram Khare*) for the appellants:—The Collector's certificate is not required for a suit in the Agent's Court. It is necessary for a suit filed in an ordinary civil Court, but the Court of the Agent for Sirdárs is not such a Court. The appointment of the Agent is made under section 3 of Regulation XXIX of 1827, and sections 4 and 6 lay down what suits shall be tried by the Agent and not by civil Courts. Under section 4 of the Pensions Act a civil Court cannot maintain a suit without the Collector's certificate, but the Agent's Court not being a Court contemplated by the Act, a suit filed in his Court cannot fail for want of the certificate, the Agent being invested with a special jurisdiction. The Pensions Act cannot take away a jurisdiction which is specially created under a prior enactment (Regulation XXIX of 1827) for particular purposes. *Khusáldás v. Sakhárám Rámchandra*<sup>(2)</sup> shows that the Court of the Agent was not considered to be a civil Court under section 284 of the Civil Procedure Code (Act VIII of 1859).

In any case, we contend that the Agent was wrong in dismissing our suit wholly, as our claim includes certain other property to which the Pensions Act is not applicable, and the Agent ought at least to have proceeded to determine the suit with respect to that property.

*Mahádeo Chinnáji Apte* for the respondent:—The Pensions Act lays down that no civil Court shall entertain a suit without the Collector's certificate. There is no distinction drawn between the Court of a Subordinate Judge and that of the Agent for

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(1) I. L. R., 1 Bom., 75.

(2) 12 Bom. H. C. Rep., 212.

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Sirdárs. The provisions of the Pensions Act apply to all Courts of civil jurisdiction, and what is to be determined is whether a particular Court is a civil Court under Regulation II of 1827; and if so, section 21 of the Regulation and section 4 of the Pensions Act apply to suits brought in such a Court.

The plaintiffs brought the present suit to recover damages. The defendant has died, and the cause of action does not survive against his sons; moreover, owing to the defendant's death, the jurisdiction of the Agent ceases, because, though the defendant was a *sirdár*, his sons are not.

SARGENT, C. J.:—Having regard to the general scope and object of Regulation XXIX of 1827, we think that the expression "Ordinary Rules," as used in section 4 of that enactment means the rules for the time being in force determining the jurisdictions of the Judges referred to in that section<sup>(1)</sup>. We cannot hold that the Agent for Sirdárs was intended to exercise jurisdiction only in such cases of a civil nature as the civil Courts were empowered by Regulation II of 1827 to take cognizance of. The object of the Regulation was clearly to invest the Agent with such jurisdiction as would for the time being, but for the enactment of the Regulation, be vested in the civil Courts. If, after the passing of the Act, the jurisdiction of the civil Courts were to become in any way modified, the jurisdiction of the Agent would be similarly modified. Section 4 of Act XXIII of 1871, being now a part of the "Ordinary Rules" determining the jurisdiction of the civil Courts, is applicable, therefore, to the Agent's Court, though that Court is not a civil Court in the ordinary acceptance of the term. As the plaintiff had obtained no certificate from the Collector as regards so much of the claim as is affected by the Act of 1871, the Agent has rightly held that, in respect of such claim, the suit is barred.

The Agent should, however, have dealt with that part of the claim which is not affected by the Act, and he was wrong, we

(1) Section 4 of Regulation XXIX of 1827 is as follows :—

An agent of Government shall be specially appointed for the purpose of receiving, and trying, and deciding all complaints of a civil nature which would under the ordinary rules be cognizable by either of the Judges of Poona and Ahmednagar, against any of the persons contemplated in the preceding section.

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).*

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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.

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