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. (*m*)] for the recovery of money from a person****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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APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Hayward.

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MAHADEO RANGNATH GODBOLE (ORIGINAL PLAINTIFF), APPELLANT *v.* RAMA TUKARAM DEVKATE AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 22†—House of agriculturist—Exemption from sale—Exemption not confined to cases of contractual debts but extends to restitution proceedings—Civil Procedure Code (Act V of 1908), section 144.

The defendants paid into a Court sum which they had to pay under a decree, and at the same time preferred an appeal against the decree. The sum paid into Court was taken away by the plaintiff. The appeal filed by the defendants was successful: the decree was reversed and the suit ordered to be retried. The defendants thereupon applied under the provisions of section 144 of the Civil Procedure Code, for restitution of money paid by them; and prayed for an order to sell the plaintiff's house in case he failed to make the restitution. The plaintiff contended that he being an agriculturist his house could not be sold, by virtue of the provisions of section 22 of the

* Second Appeal No. 50 of 1915.

†The section runs as follows:—

22. [Immoveable property belonging to an agriculturist* * * *shall not be attached or sold] in execution of any decree or order [passed whether before or after this Act comes into force,] unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists. [For the purposes of any such attachment or sale as aforesaid standing crops shall be deemed to be moveable property.]

But the Court, [on application or of its own motion,] may, when passing a decree against an agriculturist or [in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force,] direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section 29.

The provisions of section 31 shall, *mutatis mutandis*, apply to any property so dealt with.

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Dekkhan Agriculturists' Relief Act, 1879. The lower Courts negatived the contention on the ground that the provisions of section 22 applied only in cases of contractual debts and not to restitution proceedings. The plaintiff having appealed :—

Held, that if the plaintiff was an agriculturist, his house was immune from sale under section 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The true construction of section 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is, first, a general provision that immoveable property belonging to an agriculturist shall always be immune from sale, and, secondly, a proviso directing that this immunity is subject to exception where the two following conditions are both satisfied, that is to say, (*a*) where the decree or order in question relates to the repayment of a debt, and (*b*) where the agriculturist's property has been specifically mortgaged for the payment of that debt. The limiting words referring to a debt occur only in the proviso and cannot be imported into the main rule so as to restrict its express generality.

SECOND appeal from the decision of F. X. DeSouza, District Judge of Sholapur, confirming the order passed by R. D. Nagarkar, First Class Subordinate Judge at Sholapur.

Execution proceedings.

The decree under execution was a redemption decree. It directed the defendants to pay Rs. 550 on the 25th March 1909; and to pay the balance of Rs. 410 in annual instalments of Rs. 100 each.

The defendants accordingly paid into Court Rs. 660, which the plaintiff withdrew.

Meanwhile, the defendants appealed against the decree, with the result that the decree was reversed and the suit remanded for retrial on merits.

The defendants thereupon applied to the Court under section 144 of the Civil Procedure Code for restitution of the sum of Rs. 660; and prayed that on failure of the plaintiff to make the payment, the sum should be realised by sale of the plaintiff's house.

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The plaintiff contended that he being an agriculturist his house was exempt from sale by virtue of the provisions of section 22 of the Dekkhan Agriculturists' Relief Act, 1879.

The Subordinate Judge did not accept the contention on the following grounds:—

They seek the relief now sought not in execution of a decree or order but in pursuance of statutory provision contained in section 144 of the Civil Procedure Code. To such a case section 22 of the Dekkhan Agriculturists' Relief Act which is confined to the execution of a decree or order of a *Court* has no application. Even assuming therefore that the plaintiff is now an agriculturist his immoveable property is not exempt from attachment for the purposes of section 144 of the Civil Procedure Code the relief wherein is not covered by section 22 of the Dekkhan Agriculturists' Relief Act.

The Subordinate Judge therefore declined to go into the question whether the plaintiff was an agriculturist.

On appeal, the District Judge confirmed the decree on the following grounds :—

The more serious objection that was pressed was based on the provisions of section 22 of the Dekkhan Agriculturists' Relief Act, XVII of 1879. It was contended that the order directing the recovery of the amount by sale of the immoveable property of the plaintiff was illegal as the plaintiff was in a position to prove that he was an agriculturist and under section 22 of the Dekkhan Agriculturists' Relief Act immoveable property belonging to an agriculturist shall not be attached or sold in execution of any decree or order. It was vigorously urged that the Court was in error in excluding evidence adduced to prove the plaintiff's status as an agriculturist.

It seems to me that this argument rests on a misconception of the scope of section 22 of the Dekkhan Agriculturists' Relief Act. The decree or order to which that section relates presupposes the existence of a "debt" and a debt *ex vi termini* connotes a contractual obligation created by voluntary agreement between the parties and not a statutory obligation such as is created by section 144 of the Civil Procedure Code. Neither from the scope of the Act taken as a whole nor from the wording of section 22 does it seem to me to have been the intention of the Legislature to exempt the immoveable property of agriculturists from attachment and sale for the purpose of enforcing obligations of the latter character.

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The plaintiff appealed to the High Court.

P. V. Kane, for the appellant.—Section 22 of the Dekkhan Agriculturists' Relief Act lays down a wide rule subject only to one exception, viz., that the immoveable property belonging to an agriculturist-debtor can be sold in execution of a decree, if the property is specifically mortgaged to secure the decretal debt. There is no mortgage in the present case but the property is attempted to be sold under proceedings initiated under section 144 of the Civil Procedure Code. The plaintiff must therefore be allowed an opportunity to show that he was an agriculturist.

P. D. Bhide, for the respondent.—Section 144 of the Civil Procedure Code creates a statutory obligation; and section 22 of the Dekkhan Agriculturists' Relief Act must be so construed as to advance the remedy given by statute. Section 22 must be construed in the light of the provisions of sections 3 and 12 of the Act, which refer to debts arising out of contractual obligation. The decree or order contemplated by section 22 must, therefore, be one based on a contract or debt.

BATCHELOR, J.:—The appellant before us was the original plaintiff who in 1908 brought a suit in ejectment against the defendants. It was found, however, that the plaintiff was a purchaser from a mere mortgagee, and the Court consequently gave the defendants a decree for redemption. The sum to be repaid was Rs. 960, of which Rs. 550 were to be paid on 25th March 1909. The balance was payable by yearly instalments of Rs. 100. The defendants paid in all a sum of Rs. 660. In the meanwhile, however, they had lodged an appeal, and the lower appellate Court reversed and remanded the original Court's decree. Therefore on the 3rd August 1912 the defendants applied

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under section 144 of the Civil Procedure Code asking for restitution in respect of the payments which they had made, and for interest at twelve per cent. There was an added prayer that in the event of the plaintiff failing to pay, his house should be attached and sold.

The lower Courts have ordered the sale of the plaintiff's house.

The plaintiff complains that since he is an agriculturist, his house is immune from sale under section 22 of the Dekkhan Agriculturists' Relief Act. If that contention is justified, then it would follow that the plaintiff must have an opportunity of proving that he is an agriculturist, such opportunity not yet having been afforded to him.

The question, therefore, is whether assuming that the plaintiff is an agriculturist, his house is not liable to sale under section 22 of the Dekkhan Agriculturists' Relief Act. That section, in so far as it is now material, runs as follows :—"Immoveable property belonging to an agriculturist shall not be attached or sold in execution of any decree or order...unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates." The learned District Judge reads this section as presupposing the existence of a contractual debt in all cases, and he, therefore, decides that, since no such debt was in existence here, the section is inapplicable. The phraseology of the section does perhaps lend some colour to the District Judge's view, but it appears to us that the true reading of the section is that for which the plaintiff contends. The learned Judge's construction is only to be arrived at if we read into the main general clause the restrictive words implying the existence of a debt, and those restrictive words do not occur in the main general clause, but occur only in the limiting proviso. We

cannot, therefore, but think that the true construction of the section is, first, a general provision that immoveable property belonging to an agriculturist shall always be immune from sale, and, secondly, a proviso directing that this immunity is subject to exception where the two following conditions are both satisfied, that is to say, (*a*) where the decree or order in question relates to the repayment of a debt, and (*b*) where the agriculturist's property has been specifically mortgaged for the repayment of that debt. The provision would have been clearer if it had been expressed at greater length, but it seems that the draftsman preferred terseness and concision. Nevertheless the limiting words referring to a debt occur only in the proviso and cannot, I think, be imported into the main rule so as to restrict its express generality. This view seems to derive support both from the general character of the Dekkhan Agriculturists' Relief Act itself and from the wideness of the preceding sections 20 and 21.

We, therefore, think that the lower Court's decree must be reversed and the case must be remanded in order that the plaintiff may have an opportunity of proving that he is an agriculturist within the statute.

Costs to be costs in the Darkhast.

Decree reversed.

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