section 488 of the Criminal Procedure Code do not contemplate a mere casual residence in a place for a temporary purpose.

It is true that, according to the petitioner's statement, the residence of her husband at Bombay was merely a temporary one. The meaning of the words "last resided" in section 488 have apparently not been construed by this Court and I would prefer to follow the ruling in *Mrs. E. H. Jolly* v. *St. John William Jolly*,[1] where it was held that temporary residence was sufficient to give the Court jurisdiction under sub-section (8) of section 488. It is difficult enough for a wife to recover maintenance from her husband who refuses to maintain her and to give a strict interpretation to the words "last resided" in section 488 would render the difficulty even greater. Moreover, in this case it would appear that the respondent has no settled place of residence and that this is not a case like that of *Ramdei* v. *Jhunni Lal*[2] where the parties had a fixed place of residence. I would, therefore, set aside the order of the learned Presidency Magistrate dismissing the application and would direct him to proceed with it according to law.

Rule made absolute.

J. G. R.

[1] (1917) 21 Cal. W. N. 872.

[2] (1926) 3 O. W. N. 231; 27 Cri. L. J. 820.

ORIGINAL CIVIL.

Before Mr. Justice Fawcett.

DHARAMSEY KHETSEY *v.* BALKRISHNA PANDURANG SAMANT.*

1928 *August* 22.

Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 2 and 11—Agriculturist—Civil Procedure Code (Act V of 1908), Order XXX, rule 1—Suit against a firm—Partners in the firm "agriculturists"—Whether firm "agriculturist".

The definition of "agriculturist" in section 2 of the Dekkhan Agriculturists' Relief Act, 1879, can only apply to a firm sued under the provisions of Order XXX, rule 1 of the Civil Procedure Code, 1908, if that firm by itself or

*O. C. J. Suit No. 2376 of 1927.

by its servants or by its tenants earns its livelihood wholly or principally by agriculture carried on within the limits of a district to which the Act extends.

The fact of an individual partner of a firm, or even all the partners of the firm, earning their livelihood principally from agricultural income, does not affect the right of the plaintiff to sue the firm at the place where it actually carries on business or where the cause of action has arisen.

The word " person " in the definition of " agriculturist " cannot by reason of the context be taken to cover a " body of individuals " under the definition of that word in clause (39) of section 3 of the General Clauses Act, 1897.

SUIT to recover a sum of money.

The plaintiffs filed a suit to recover a sum of Rs. 5,226-2-0 from Tukaram and Kashinath on an adjusted account. The defendants by their written statement objected to the jurisdiction of the Court on the ground that they were "agriculturists" within the meaning of that term in the Dekkhan Agriculturists' Relief Act. On this, the plaintiffs obtained leave to amend the plaint by bringing the firm of Balkrishna Pandurang Samant, wherein Tukaram and Kashinath were partners, on the record as defendants. The defendants again contended that the firm was an "agriculturist" and that the Court had no jurisdiction to try the suit.

A preliminary issue was raised as to the jurisdiction of the Court.

Munshi, for the plaintiff.

Lalji, for the defendants.

FAWCETT, J. :—The question that has been argued before me is whether the defendant firm can set up the contention that all or any of its partners are agriculturists, as defined in the Dekkhan Agriculturists' Relief Act, and that therefore the suit cannot be tried by this Court but must be brought in a Court having jurisdiction at the place where the partners reside, in accordance with the provisions of section 11 of the Dekkhan Agriculturists' Relief Act.

Mr. Lalji's contention is that a firm is only a compendious mode of expressing the partners of which that firm is composed, and that a partner can therefore avail himself of the provisions of this Act relating to agriculturists. It is an important question because if it is held that such a contention may be set up, there will often be considerable difficulties in the way of suing parties who carry on business in Bombay. I quite agree that ordinarily a firm does, in law, only mean the partners of which it is composed, but I do not think that it necessarily follows that a definition like that of "agriculturist" in the Dekkhan Agriculturists' Relief Act is, on that account, applicable to any partner in that firm. It is recognized law that any partner can put in a pleading on behalf of the firm, but that pleading has to be confined to pleas that can be raised on behalf of the firm and he cannot put in a purely personal defence. That has, for instance, been laid down in *Ellis* v. *Wadeson*[1]; and the main effect of the firm being sued is that, if a decree is obtained against it, the partnership assets become liable to satisfy that decree, as has, for instance, been laid down in *Adiveppa* v. *Pragji*.[2] There are special provisions in Order XXI, rules 49 and 50, as to the separate liability of any particular partner, so that there are distinctions made by the law between personal pleadings that can be set up by a partner in his purely individual capacity and the pleadings that can be set up by the firm, and also between the liability of a firm in regard to the partnership assets and the liability of each particular partner as to his separate property. Then also there is the further consideration that it has been held by this Court that the definition of "agriculturist" under the Dekkhan Agriculturists' Relief Act and the other provisions in favour of the agriculturists in that Act are purely personal privileges.

(1) [1899] 1 Q. B. 714. (2) (1924) 26 Bom. L. R. 388.

1928

DHARAMSEY
v.
BALKRISHNA
PANDURANG

Fawcett J.

It has, for instance, been laid down in *Martand Trimbak* v. *Amritrao Raghojirao*[1] that such privileges cannot be transferred by assignment or devolution. Again, it has been held in *Dagdu* v. *Mirasaheb*[2] that a minor cannot ordinarily be an agriculturist as defined in the Act, because he does not earn his livelihood by agriculture within the meaning of the definition, but is dependent on others, and though the latter may earn their livelihood by agriculture, that in itself does not make him an agriculturist. A third consideration is that under Order XXX, rule 1, the main essential in the right to sue, or the liability to be sued, in the name of a firm is the fact of " two or more persons claiming or being liable as partners and carrying on business in British India." I stress the words " carrying on business ". That is what the Legislature puts in the forefront instead of the actual residence of the partners, and the personal residence of a partner is ordinarily of no importance in determining the jurisdiction of a Court over a firm. Thus, in *Angullia & Co.* v. *Sassoon & Co.*[3] it will be seen from page 571 of the report that it was pleaded in defence that inasmuch as the proprietor of the defendant firm was residing outside British India, Order XXX of the Civil Procedure Code did not apply; but Harington J., who tried the suit, held that the Court had jurisdiction to entertain it, and it will be seen from page 577 that the objection as to jurisdiction was abandoned in the appellate Court.

Bearing in mind these considerations, it seems to me clear that the definition of " agriculturist " in section 2 of the Act must be read as only applying to a firm at the utmost, if that firm by itself or by its servants or by its tenants earns its livelihood wholly or principally by agriculture carried on within the limits of a district to

[1] (1925) 49 Bom. 562. [2] (1912) 36 Bom. 496.
[3] (1912) 39 Cal. 563.

which the Act extends. There can, I think, in that view, be an agriculturist firm and it might be held that the firm could only be sued at the place where it resided in the sense of carrying on its business, irrespective of the place where the cause of action may have arisen. Apart from that, I think the fact of an individual partner of a firm, or even all the partners of the firm, earning their livelihood principally from agricultural income, cannot affect the right of a plaintiff to sue the firm at the place where it actually carries on business or where the cause of action has arisen.

This result is consistent also with another view that it is possible to take. It has been urged by Mr. Munshi that the word "person" in the definition of "agriculturist" cannot by reason of the context be taken to cover a body of individuals, such as it would otherwise include under the definition of the word in clause (39) of section 3 of the General Clauses Act, 1897. That definition is subject to the opening proviso "unless there is anything repugnant in the subject or context," and there are, in my opinion, good grounds for saying that the definition ordinarily contemplates the case of an individual, who actually earns his livelihood by agriculture or ordinarily engages personally in agricultural labour so that there is something in the context repugnant to its application to a body of individuals, unless it is limited in the particular way that I have mentioned about an agriculturist firm. Therefore, in my opinion, it is not open to the defendant firm to set up this contention in this suit.

Mr. Lalji admitted that he could find no authority in support of his contention, and I imagine that is because it is so obviously absurd that it has not been raised before. The preliminary issue is, therefore, answered by my finding that this Court has jurisdiction to try the suit, and the case is adjourned to next week for evidence

1928

DHARAMSEY v. BALKRISHNA PANDURANG

Fawcett J.

on the further points. Costs of this hearing to be borne by the defendants, in any case.

Attorneys for plaintiff: Messrs. *Dabholkar & Co.*

Attorneys for defendants: Messrs. *Sabnis, Goreguonkar & Senjit.*

Answer accordingly.

B. K. D.

APPELLATE CIVIL.

Before Sir Amberson Marten, Kt., Chief Justice, and Mr. Justice Murphy.

1928 *September* 26.

THE GUJERAT GINNING AND MANUFACTURING COMPANY, LIMITED (ORIGINAL DEFENDANT), APPELLANT *v.* THE MOTILAL HIRABHAI SPINNING AND WEAVING AND MANUFACTURING COMPANY, LIMITED (ORIGINAL PLAINTIFF), RESPONDENT.*

Indian Easements Act (V of 1882), sections 52, 54 and 60 (b)—Irrevocable license—Joint Stock Companies—Common Agents—Land belonging to one Company—Another Company with premises adjoining using the land—Buildings of permanent character erected on a portion of the land—Acquiescence—Implied license—Adverse possession—Company—Memorandum of Association—Construction.

The parties to the suit were two joint stock companies owning adjoining properties and having the same agents from 1896 to 1914. In 1893 the plaintiff company obtained under a permanent lease a piece of land measuring 8,361 square yards. The defendant company, whose premises adjoined this land from 1897, began by the common agents using a portion of this open land for storing their articles and they occupied about 1,590 square yards for constructing a large tank and a godown at considerable expense. In 1917 the plaintiff company demanded rent from the defendant company for the land covered by the godown and tank but the defendant company refused to pay it. In 1922, disputes having arisen between the agents of the companies, the plaintiff company claimed possession of the land with the tank and buildings on it and also asked for injunction to restrain the defendant company from obstructing them in the use of the remainder of the land. The defendant company pleaded that they held the land under a permanent lease under an oral agreement, or that their possession had become adverse or in the alternative that they were licensees of the plaintiff company, under a license which was irrevocable, so far as regards the land covering the tank and the building were concerned, under the Indian Easements Act, 1882.

Held, (1) that the occupation of the lands by the defendant company being permissive, *viz.*, by the common agents, adverse possession was not proved;

(2) that so far as regards 1,590 square yards, the erection of the buildings being a part of the arrangement arrived at by the then common agents

*First Appeal No. 237 of 1925 (with Cross First Appeals Nos. 32 and 49 of 1928).