

ACT No. VI OF 1895.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 15th February, 1895.)

An Act to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1886.

WHEREAS it is expedient to amend in manner hereinafter appearing the Dekkhan Agriculturists' Relief Acts, 1879 to 1886; It is hereby enacted as follows:—

1. (1) This Act may be called the Dekkhan Agriculturists' Relief Act, 1895; and it and the Dekkhan Agriculturists' Relief Acts, 1879 to 1886, may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1895. Title and commencement.

* (2) This Act shall come into force on the first day of May, 1895.

2. In this Act, unless there is something repugnant in the subject or context,— Definitions.

“section” means a section, and “Chapter” a Chapter, of the Dekkhan Agriculturists' Relief Act, 1879.

3. Sections 8, 9, 14, 15, 19 and 73 are hereby repealed. Repeal.

4. To section 1 the following shall be added after the words “Presidency of Bombay,” namely:— Addition to section 1.

“or to any part or parts of any other such district or districts.”

5. For section 2 the following section shall be substituted, namely:— Substitution of new section for section 2.

“2. In construing this Act, unless there is something Construction.

thing repugnant in the subject or context, the following rules shall be observed, namely:—

“*1st.*—‘Agriculturist’ shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.

“*Explanations.*—(a) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by agriculture or to engage personally in agricultural labour as aforesaid, or who is prevented from so earning his livelihood or engaging in agriculture by age or bodily infirmity or by necessary absence in the military service of Her Majesty, does not thereby cease to be an agriculturist within this definition.

“(b) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

“*2nd.*—In Chapters II, III, IV and VI, and in section 69, the term ‘agriculturist,’ when used with reference to any suit or proceeding, shall include a person who, when any part of the liability which forms the subject of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law.

“*3rd.*—An agriculturist shall be deemed to reside where he earns his livelihood by agriculture or personally engages in agricultural labour as aforesaid.

“*4th.*—‘Money’ shall be deemed to include agricultural produce, implements and stock.

“*5th.*—‘Lease’ shall be deemed to include a counterpart, kabuliyat, an undertaking to cultivate or occupy and an agreement to lease.

“*6th.*—‘Standing crops’ shall include crops of all sorts attached to the soil, and leaves, flowers and fruits upon and juice in trees and shrubs.”

6. In section 7, before the word "unnecessary" the word "clearly" shall be added; and at the end of the same section the following shall be inserted, namely:—

Amendment of section 7.

"*Explanation.*—The compulsory examination of the defendant shall not be dispensed with merely by reason of the fact that the defendant has filed a written statement."

7. After section 13 the following section shall be added, namely:—

Addition of new section after section 13.

"13A. Where the mortgaged property is in the possession of the mortgagee or his tenants other than the mortgagor, and the Court is unable to determine what profits have been actually received, it may fix a fair rent for such property and charge to the mortgagee such rent as profits for the purpose of section 13:

In certain cases rent may be charged in lieu of profits.

Provided that, if it be proved that in any year there was an entire or serious failure of the crops, an abatement of the whole or part of such rent may be allowed for the year."

8. After section 15A the following section shall be added, namely:—

Addition of section after section 15A.

"15AA. So far as it may be consistent with the provisions of this Act, every decree for redemption or foreclosure of any mortgage, and every decree or order for the sale of any mortgaged property made at the instance of a mortgagee thereof, shall name such future day, not being less than six months after the date of such decree, as the Court may think reasonable for the payment by the mortgagor of the money payable under the decree, and no such foreclosure shall be made absolute nor shall any such sale take place before the day so named."

Power of Court to name some future date for payment by the mortgagor.

9. To section 15B the following shall be added, namely:—

Addition to section 15B.

"(3) In passing a decree for redemption or foreclosure

Power to continue the

mortgagee in possession.

closure in any such suit as aforesaid, the Court may direct that the amount payable by the mortgagor shall be discharged by continuing the mortgagee in possession for such further period as will enable him to recover his principal with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.

“(4) When the amount payable to a mortgagee in possession has been determined in any such suit as aforesaid, the Court may in its discretion, instead of making an order for payment thereof, direct that the mortgagee be continued in possession for such period (to be specified by the Court) as will in the opinion of the Court be sufficient to enable him to recover from the profits the amount payable by the mortgagor together with reasonable interest, and that on the expiry of such period the property mortgaged shall be restored to the mortgagor.”

Amendment of section 22.

10. In section 22 the words “other than his standing crops” shall be omitted, and in the same section after the word “subsists” the following words shall be inserted, namely :—

“For the purposes of any such attachment or sale as aforesaid standing crops shall be deemed to be moveable property.”

Amendment of section 36.

11. In section 36, after the words “or misconduct of the Village-munsif” and before the words “and pass,” the following words shall be added, namely :—

“or on the ground that the Village-munsif has exercised a jurisdiction not vested in him by law.”

Substitution of new section for section 44.

12. For section 44 the following section shall be substituted, namely :—

Procedure when agreement finally disposes of case and in other circumstances.

“44. (1) When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides, and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such deli-

very,

very, why such agreement ought not to be filed in such Court.

“(2) The Court which receives the agreement shall in all cases scrutinize the same, and if it thinks that the agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

“(3) If the said Court thinks that the agreement is not a legal or equitable one or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall of its own motion issue process for the attendance of the parties, and if after such inquiry as may be deemed necessary the Court finds that such agreement is a legal and equitable one finally disposing of the matter, and that it has not been made in fraud of the stamp or registration laws, it shall order such agreement to be filed; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed, and from which no appeal lies.

“(4) If, on the other hand, the said Court finds that the agreement does not constitute a legal or equitable agreement, or that it does not finally dispose of the matter, or that it has been made in fraud of the stamp or registration laws, it shall return the said agreement to the Conciliator, and such Conciliator shall thereupon be bound to furnish on demand to the parties or any one of them a certificate under section 46.

“(5) The Court may in any case, for reasons to be recorded by it in writing, from time to time extend the period of one month allowed for showing cause under this section.”

Amendment
of section 51.

13. In section 51, clause (b), before the word "transfer" the following words shall be added, namely:—

"transfer from the Court of one Subordinate Judge to another any suit or any agreement pending before a Subordinate Judge under section 44 of this Act; or"

Substitution
of new section
for section 52.
Appointment
of Assistant
or Subordinate
Judges
to aid Dis-
trict Judge.

14. For section 52 the following section shall be substituted, namely:—

"52. (1) The Local Government may appoint an Assistant or Subordinate Judge to inspect and supervise, subject to the control of the District Judge, the proceedings of all Subordinate Judges under Chapter II, Chapter IV and Chapter VI of this Act, and of all Village-munsifs and Conciliators in any district or part of a district to which this Act applies:

"Provided that, if the Local Government thinks fit, the same Assistant or Subordinate Judge may be so appointed for two or more such districts or parts of districts or districts and parts of districts.

"(2) The District Judge may, by order, confer upon any Assistant or Subordinate Judge appointed under this section, as regards any district or part of a district for which he is so appointed, all or any of the powers specified in the order which vest in the District Judge under section 51."

Substitution
of new sec-
tion for sec-
tion 61.
Superinten-
dence of
Village-
registrars
and custody
and destruc-
tion of their
records.

15. For section 61 the following section shall be substituted, namely:—

"61. (1) The Local Government may appoint one or more officers to exercise by themselves or their subordinates a general superintendence over all Village-registrars, and may either make rules, or empower such officer or officers to make rules, from time to time consistent with this Act for regulating the proceedings of the Village-registrars and for providing for the custody of their records.

"(2) The Local Government may, by order to be published in the Government Gazette, declare that any documents other than wills remaining unclaimed

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in any registration office in any district or part of a district to which this Act applies, for a period exceeding two years, may be destroyed."

16. In Chapter XI the following section shall be inserted, namely :—

Insertion of section 71 in the Act. Bar of application of section 258, Act XIV, 1882.

XIV of 1882.

"71. The last clause of section 258 of the Code of Civil Procedure shall not apply to payments out of Court made in any proceeding under this Act, in any case where an acknowledgment by the judgment-creditor for the same is produced, or when the payment is either admitted by him or proved."

17. After section 71 the following section shall be inserted, namely :—

Insertion of section 71A. in the Act.

"71A. In taking an account under section 13 or in any suit under this Act where interest is chargeable such interest shall be awarded at the following rates :—

Rate of interest allowable on taking an account.

(a) the rate, if any, agreed upon between the parties or the persons (if any) through whom they claim, unless such rate is deemed by the Court to be unreasonable ; or

(b) if such rate is deemed by the Court unreasonable, or if no rate was agreed upon, or, when any agreement between the parties or the persons (if any) through whom they claim, to set off profits against interest and assessment and similar charges without an account has been set aside by the Court, such rate as the Court may deem reasonable."

18. In section 72, after the word "agriculturist", where that word first occurs, the words "in any of the districts of Puna, Satara, Sholapur and Ahmadnagar,"

Amendment of section 72.

and in the same section, after the same word where that word afterwards occurs, the words "in any of the districts aforesaid,"

shall be added.