Ramlal Hariram Vs. Ratanlal Balchand

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Court : Mumbai

Decided On : Jul-10-1931

Reported in : AIR1932Bom99; (1931)33BOMLR1466; 136Ind.Cas.504

Judge : Baker and ;Nanavati, JJ.

Appeal No. : First Appeal No. 64 of 1930

Appellant : Ramlal Hariram

Respondent : Ratanlal Balchand

Disposition : Appeal dismissed

Judgement :

Baker, J.

1. The point arising in this appeal is one which, so far as I know, has not come before the Courts before. The facts are that the plaintiffs obtained a decree on a mortgage against the defendants in the Court of the District Judge at Akola in Berars, The defendants pleaded that they were agriculturists, and prayed for instalments, but the Court held that the Dekkhan Agriculturists' Relief Act not having been made applicable to Berars, the defendants could not avail themselves of its provisions, and they could not claim accounts or instalments. The bulk of the mortgaged property is situated in the Khandesh District. The decree was transferred for execution to the First Class Subordinate Judge of Jalgaon. The defendants asked for instalments, but the Judge held that instalments could not now be allowed as they were claimed in the suit and were refused, and, therefore, it was not necessary to go into evidence about their status as agriculturists. The defendants make this appeal, and the point is, whether, when a decree has been passed by a Court where the Dekkhan Agriculturists' Relief Act does not apply, it is open to the executing Court where the Dekkhan Agriculturists' Relief Act does apply to grant instalments to the defendants assuming of course that they are agriculturists. The learned counsel for the appellant has contended that the Judge is wrong in holding that instalments were refused, the ground on which the Akola Court proceeded being that the Dekkhan Agriculturists' Relief Act was not applicable and so the question of instalments could not be considered. The defendants claim instalments under Section 15B of the Dekkhan Agriculturists' Relief Act, which says:--

The Court may in the discretion, in passing a decree for redemption, foreclosure or sale in any suit of the descriptions mentioned in Section 3, Clause (y) or Clause (z), or in the course of any proceedings under a decree for redemption, foreclosure or sale passed in any such suit, whether before or after this Act comes into force, direct that

any amount payable by the mortgagor under that decree shall be payable in such instalments, etc. etc.

2. Now in order that Section 16 B may apply, the suit in which the decree is passed or the execution proceedings are taken must be a suit of the description mentioned in Clause (y) or Clause (z). The present suit was of the same nature as suits falling under Clause (y), but it was not a suit under Section 3 of the Dekkhan Agriculturists' Relief Act. Chapter II of the Dekkhan Agriculturists' Relief Act applies to suits hereinafter described when they are heard by Subordinate Judges of the First or Second Class, and do not exceed a certain value. That is Section 3, Clause (6). The present suit is not a suit of that description It was not heard by a Subordinate Judge under the Dekkhan Agriculturists' Relief Act, and it was held in Devu v. Revappa : (1922)24BOMLR370 that, considering the nature of the Act, the description of 'suit' in Section 3 is not confined to the relief claimed in the suit, but also includes the status of the parties, and hence it was held that the Court cannot, under the provisions of Section 15B of the Dekkhan Agriculturists' Relief Act, 1879, grant instalments under a decree to a person who at the time the decree was passed was not, but has since become, an agriculturist. There can be no doubt that at the time the suit was determined the defendant was not an agriculturist; within the meaning of the Dekkhan Agriculturists' Relief Act, which does not apply in Berara. There is another case in the same volume, which is apposite to the present case, i.e., Manlji v. Goverdkandas : AIR1923Bom36 , in which a decree was passed on the Original Side of the High Court against defendant. In execution proceedings the defendant made an application under Section 20 of the Dekkhan Agriculturists' Relief Act for instalments contending that he was an agriculturist. It was held (1) that the point whether the defendant was or was not an agriculturist was involved in the suit as in virtue of Section 11 and Section 3, Clause (w), of the Dekkhan Agriculturists' Relief Act the High Court would not have jurisdiction to entertain the suit if the defendant was an agriculturist, and it must, therefore, be taken to have been decided that the defendant was not an agriculturist at the date of the decree, and (2) that as the defendant was not an agriculturist at the date of the decree he could not in execution proceedings raise the question that he was an agriculturist at the date of the decree. Applying this principle, it is clear that as defendants were not agriculturists within the meaning of the Act at the date of the passing of the decree, they cannot now in execution proceedings raise this question. The learned counsel for the appellants has relied on three cases, Maneklal v. Mahipatram : AIR1927Bom492 Rudrappa v. Chanbasappa (1923) 26 Bom. L.R. 153 and Manoherji v. Thakordas I.L.R. (1906) Bom. 120 8 Bom. L.R. 963 In Manehlal v. Mahipatram, which is a full bench case, it was held that under Section 21 of the Dekkhan Agriculturists' Relief Act, 1879, the material date for the determination of the status of an alleged agriculturist is the date of the attempted arrest. But by reason of the definition of the term ' agriculturist' in Section 2(2) of the Act, that determination may also import the determination of his status at the date when the liability arose. A person, who is sued as a non-agriculturist and who fails to appear and urge his status at the hearing of the suit and suffers a money-decree to be passed against him ex parte, is not precluded from urging in execution proceedings that he is an agriculturist at the date of the arrest or imprisonment; and for the purposes of that plea, he is not debarred from urging, if necessary, that he was an agriculturist at the data of the decree. That case was a case under Section 21. This case does not overrule Devu v Revappa, as is shown by the remarks of Patkar J. at p. 1120. The next case relied on, Budrappa v. Chanbasappa, holds that where a decree is passed ex parte the defendant can in execution proceedings show that he was to Agriculturist at the date of the decree and claim

instalments under Section 15B. The material date of the determination of the status of the alleged agriculturist under Section 15B is the date of the decree, and that principle has been extended in the Case of Narayan v. Dhondo (1925) 28 Bom. L.R. 305 where it was held that the defendant can in execution proceedings show that he was an agriculturist at the dale of the decree in spite of the fact that he had not claimed the privilege in previous execution proceedings arising out of the Same decree. The material date for the determination of the status of the alleged agriculturist in all these three cases, which were decided under Section 15B was, therefore, held to be the date of the decree. This view proceeded upon the particular words of Section 15B Which involved the result that the alleged agriculturist had to prove that he was an agriculturist at the date of the decree. But it has already been pointed out that at the date of the decree of the Akola Court the defendant was not an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act, It follows, therefore, on the decided cases that he cannot raise that question now. The learned counsel for the appellant has relied on the case in Mancherji v. Thakordas. In that case, in execution of a decree for sale of mortgaged property, a portion of the property was sold, and the rest was ordered to be sold by the Collector to whom the decree was transferred for execution. In the meanwhile the Dekkhan Agriculturists' Relief Act having been made applicable to the District, the mortgagor applied to the Court for payment by instalments under Section 15B. The application was refused by the Court on the ground that the decree having been transferred to the Collector, it had no power to grant instalments. It was held oh appeal by the mortgagor, reversing the order of the lower Court, that payment by instalments could be decreed. The application for payment by instalments having been made within one month from the time the Dekkhan Agriculturists' Relief Act was made applicable, no question of limitation arose. Now it is true that in that case at the time the decree was passed the Dekkhan Agriculturists' Relief Act was not applicable to the Surat District, and, therefore, it might be contended that the defendant was not an agriculturist within the meaning of the Act. But nowhere in the judgment do I find any reference to this point, the case having been decided on other considerations, and hence although a very similar point to the present arose in that case, it does not seem to have received the attention of the learned Judges deciding that case, and in these circumstances I think I am bound by the view expressed in the cases already quoted, Devu v. Revappa, etc. I am of opinion that the suit in which the decree was passed was not a suit under the Dekkhan Agriculturists' Relief Act, nor was the defendant an agriculturist as defined in that Act, and therefore Section 1513 will have no application. I may further refer to Sawantrava v. Giriappa : AIR1914Bom273 , as supporting my view.

3. I am, therefore, of opinion that the view of the lower Court is correct, and the appeal should be dismissed with costs including costs in the lower Court. In Civil Application No. 418 of 1930, the rule is discharged with costs.

Nanavati, J.

4. The decree-holder in this case had obtained a mortgage-decree against the mortgagors in the Court of the District Judge of Akola on September 30, 1926, and it was sought to execute the decree in the Jalgaon Court by sale of the joint share of the debtors in the mortgaged property the bulk of which is situated in Khandesh. The judgment-debtors, among other things, claimed to be treated as agriculturists and asked for instalments. The learned Subordinate Judge held that instalments could not be allowed as they were claimed in the suit and were refused. It is from this decision that the present appeal is brought.

5. Now it is true that an issue was raised in the trial Court on the point in question. It runs as follows:--

16 Whether the Dekkhan Agriculturists' Relief Act can apply to the defendants Whether they can avail themselves of its provisions and whether they can claim accounts of the past dealings Whether they can claim a decree for instalments?

6. On this issue the decision of the Akola Court was to the effect that as the Dekkhan Agriculturists' Relief Act had not been made applicable to the Berars the defendants could not avail themselves of its provisions. He, therefore, held that the Court could not grant any relief to the defendants under the Act. It has been contended, and I think rightly, that this decision is not a decision on the merits of the claim. The Court did not consider the question whether the defendants came within the description of an agriculturist in the Dekkhan Agriculturists' Relief Act; nor did it consider the question whether the grant of instalments would be a proper exercise of discretion in the circumstances of this case or not. It could not consider these questions as the Act was not in force in its territory. The cases, therefore, in which it has been held that where the status of an agriculturist might have been pleaded at the trial of a suit but was either not so pleaded, or if pleaded, was decided adversely to the defendant, the same plea could not be raised again in execution proceedings, do not apply to the present case. For example, in Mulji v. Goverdhandas : AIR1923Bom36 , the suit was one that could net have been tried by the High Court on the. Original Side unless the defendant had been a non-agriculturist; and so it was held that the fact that it was tried by that Court necessarily implied a decision against the status sought to be pleaded in subsequent execution proceedings. But in the present case the fact that the Akola Court was not able to consider the question of the defendant's status in any way, did not necessarily imply that he was not a person entitled to that status in the Jalgaon Court.

7. The question, however, remains whether Section 15B of the Dekkhan Agriculturists' Relief Act can in its terms apply to the appellants. That section applies to proceedings under a decree in a suit of the description mentioned in Section 3, Clause (y), which refers to suits 'for sale of mortgaged property when the defendant or any one of the defendants is an agriculturist.' Now, 'an agriculturist' is defined in Section 2, and since the Act did not apply to the Akola Court, the question is whether the suit could at all be described as a suit against an agriculturist as defined in the Act.

8. A case somewhat analogous in its circumstances to the present case is to be found in Mancherji v. Thakordas I.L.R. (1906) Bom. 120 8 Bom. L.R. 963 There the position was that at the date of the decree the Dekkhan Agriculturists' Relief Act was not applicable to the District in question, but it became applicable subsequently, and during the execution proceedings the judgment debtor applied for instalments. The application was refused by the lower Court on the ground that the decree having been transferred to the Collector, it had no power to grant instalments. It was held on appeal that payment by instalments could be decreed. But the point that at the time when the decree was passed the defendant could not have been an agriculturist as defined in the Act by reason of the Act not being applicable to the District, does not appear to have been argued or noticed in the case.

9. It may, however, be urged that a person may be an agriculturist, that is to say, one who earns his livelihood by agriculture as defined in the Act, though he may not be

one for the purposes of a suit in the Akola Court. When a class is defined in an Act, it does not mean that persons included in that class can have no existence where the Act does not apply. In other words, an agriculturist is an agriculturist whether the Dekkhan Agriculturists' Relief Act applies or does not apply to the Court in which a suit against him is brought. The only result of the non-applicability of the Act to the area is that the Court cannot give him the protection of the Act. It may further be urged that in interpreting an Act intended for the benefit of a special class it would be too narrow a construction to hold that a person who satisfies the conditions laid down in the definition cannot get the benefit of that Act even where that particular legislation applies, merely because another Court could not apply the Act.

10. The question, however, is ,one of considerable difficulty. In Sawantrawa v. Giriappa : AIR1914Bom273 , which was a case under Section 10A, it was held that ' agriculturist' was not to be read in the general and popular sense as a person earning his living by agriculture but that he must belong to that class as defined by statute at the date of the transaction. It was there held that the mortgagor could not have been an agriculturist at the date of the transaction because at that date the Act had not been extended to the District in question. This case, however, is distinguishable, because in the present case the mortgagors who had lands in Khandesh at the date of the transaction were (if they fulfilled the other conditions of the definition) agriculturists as defined in the Act in Khandesh.

11. In Devu v. Revappa : (1922)24BOMLR370 it was no doubt held that Section 3 includes the question as to the status of the parties and that therefore at the date of the suit the defendant must be an agriculturist. This is not, however, the point in dispute. This case does not lay down that he must be an agriculturist in the District in which he is sued.

12. In Ganpat v. Tulsi (1923) 26 Bom. L.R. 118 the question was again under Section 10A of the Act and it was agreed that a person to be an agriculturist within the definition in Section 2 should earn his livelihood by agriculture within a district where the Act for the time being extends. The main question in that case was different, viz., what was to be understood by the phrase 'the District to which the Act may extend,' and whether the extension of certain sections of the Act to a district was sufficient extension of the Act or not.

13. These cases, therefore, lay down that an 'agriculturist' means an agriculturist as defined in the Act, and it might appear at first sight that these cases lay down that there can be no suit against an ' agriculturist ' as defined by the Act in a Court to which the Act does not extend. It is, however, possible to distinguish the present case for the following reasons. In the cases above referred to, the lands of the defendant from which his status as an agriculturist arose were situated in the District in which the suit against him was brought. If the Act had not been extended to that District he could not have been an agriculturist as defined for the reason that the definition requires that the agriculturist should earn his livelihood from agriculture carried on in a District to which the Act applies. But in the present case the suit was brought in a Court in a different district under the provisions of Section 17 of the Civil Procedure Code, part of the mortgaged lands being in the jurisdiction of that Court. Hence, in the present case the possibility of the defendant satisfying the conditions laid down in the definition in Section 2 is not excluded. He may well have been a person earning his livelihood at the date of the suit by agriculture carried on within the limits of Khandesh District where his lands are situated and to which the Act applies. The only

difficulty in his way is the fact that the Akola Court could take no cognisance of the fact because the Act does not apply to that District.

14. The question is, therefore, an extremely difficult one and there is much that can be urged for conflicting opinions. I have had the advantage of reading the judgment of my brother Baker. It seems to me, with great respect, that the fact that the case was not tried by a Subordinate Judge under the Dekkhan Agriculturists' Relief Act is immaterial for the present purpose. That fact is only material as regards the question of the application of the special procedure laid down in Chapter II, while Section 15B is in Chapter III of the Act, I am inclined to think that it is possible for a person to be an agriculturist as defined in the Act though sued in a Court where the Act does not apply. The cases which appear to lay down that he cannot, all deal with the case of a person whose 'agricultural work' was carried on within a district where the Act had no application, the Court in which he was sued also being situated in the same district. In the present case the appellants' ' agricultural work' (assuming that they so earn their livelihood) is carried on in a district where the Act does apply (Khandesh), and the only point against them is that they were sued in a Court where it does not. As against this is the fact that the execution proceedings are in a Court where the Act does apply. If in these circumstances it were to be held that they cannot possibly be 'agriculturists' as defined in the Act merely because the trial Court could not apply the definition, it means not only that an agriculturist can have no existence in a Court not under the Act but also that his existence cannot be recognised at any subsequent stage even by a Court governed by the Dekkhan Agriculturists' Relief Act. It would follow that when a decree of a Native State is transferred for execution to a British Indian Court under Section 44, Civil Procedure Code, the latter Court would be bound to execute the decree even by arrest of the judgment-debtor in spite of his being in a position to prove that at all material dates he was an agriculturist as defined by the Act in British India, Such a result would be at least very anomalous. Moreover, the Dekkhan Agriculturists' Relief Act is a special legislation designed for the protection of a particular class and it should, as far as possible, receive an interpretation calculated to carry out that object.

15. It appears to me unnecessary, however, in the present case to decide this point finally one way or the other since it is clear that the relief sought by the appellants is a purely discretionary one which the Court might or might not grant according to the circumstances of each case. The circumstances of the present darkhast are such as to make it extremely unlikely that any Court would exercise that discretion in favour of the appellants. The judgment (Exhibit 25) shows that the debt on which the suit is based, in its origin was a trade debt incurred in or about 1916. There were various proceedings in connection with the debt and finally the suit from which the present proceedings arose was brought in the year 1922. A decree was obtained in the year 1926 and the decree was transferred to the Court at Jalgaon in 1928. No portion of the decretal amount appears to have been realised so far. Taking these circumstances into account (as was done in Balkrishna v. Sarupchand (1926) 38 Bom. L.R. 656 the present case does not appear to be a case in which the discretion of granting instalments should in any case be exercised.

16. I would, therefore, maintain the order of the learned First Class Subordinate Judge refusing to grant instalments and dismiss the appeal with costs.