

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

RADHAKISAN HAKUMJI, PLAINTIFF, v. BALVANT RAMJI,
DEFENDANT.*

1883
September 6.

The Code of Civil Procedure, sec. 266, cl. (c)—Houses and buildings occupied by agriculturists—Representative of an agriculturist—Exemption from attachment and sale.

The expression "materials of houses and other buildings belonging to, and occupied by, agriculturists" used in sec. 266, cl. (c) of the Code of Civil Procedure is intended to exempt from attachment and sale the house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling.

The exemption does not extend to other houses not in the physical occupation of an agriculturist owner as a dwelling appropriate or convenient for his calling. The exemption extends, after the death of an agriculturist debtor, to his representative who occupies the house in good faith as an agriculturist, who does not take it up merely with the view of defrauding his creditor.

THIS was a reference, under section 617 of the Code of Civil Procedure, by Rav Saheb Dwarkanath Randive, Subordinate Judge of Pimpalgaon, for the orders of the High Court.

The plaintiff obtained a decree in 1882 against one Nana Ramji, an agriculturist, who died after the date of the decree. The plaintiff then applied to enforce his decree by attachment and sale of a house which had belonged to Nana Ramji, and was then in the occupation of his brother, the defendant Balvant, who succeeded to his property. Balvant was himself an agriculturist.

The Subordinate Judge on the above facts asked two questions :—

First.—Whether the exemption contained in section 266, cl. (c) of the Code of Civil Procedure does or does not extend to all the houses of agriculturist judgment-debtors, and, if not to all, then to the dwelling-houses of such agriculturists? and

Second—Does the exemption, if it exists, cease to operate after the death of the agriculturist owner?

* Civil Reference, No. 33 of 1883.

As regards the first point, the Subordinate Judge was of opinion that the use of the words "materials" did not limit the exemption so as to exclude the house itself in which an agriculturist lived, and the buildings which he used in the exercise of his calling. As regards the second question, he was of opinion that the exemption did not cease to operate on the property of the agriculturist after his death, provided the property came into the hands of his heir, also an agriculturist.

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No party appeared in the High Court.

The decision of the Court was given by

WEST, J.—We are of opinion that the proviso in clause (c) of section 266 of the Code of Civil Procedure is to be construed by the terms of the positive enactment to which it is annexed. An exception is meaningless unless it is an exception of something otherwise included in the rule. The rule makes houses and buildings subject to attachment in execution: the exception excludes "the materials of houses and other buildings belonging to, and occupied by, agriculturists." The expression made use of in the latter clause is plainly meant to exempt a particular class of houses and buildings from attachment,—not merely loose materials of buildings, and those only. In some instances the sites of houses may be held on sufferance, or there may be other means of forcing a tenant to remove or pull down his hut: the clause saves a decree-holder from the temptation he might be under of putting undue pressure, or getting it put, on the tenant thus situated. If he cannot attach even the materials, he has no interest in reducing a house to ruin. While it stands he cannot attach it as a house without attaching the materials of which it is composed.

The exemption is of a house or building occupied by an agriculturist, and this, we think, means a house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling. It does not include other houses, which in one sense may be occupied; what is meant is a physical occupation, by an owner, of his house as a dwelling appropriate or convenient for his calling.

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As regards the second question, the exemption of a dwelling from attachment depends on its answering the description already given at the time when the decree-holder seeks to attach it. If his original judgment-debtor is dead, he proceeds against his representative as liable under the decree, and the representative taking the place of the deceased as to liability under section 266, takes his place also as to the protection afforded by clause (c) of the section. If, having become owner, he is in good faith occupying the house sought to be attached as an agriculturist, it is exempt from attachment. He is not by this freed from responsibility in other ways; and he will not be allowed, by the artifice of removing from his former dwelling to one that has devolved on him from a deceased judgment-debtor, to defraud a decree-holder of his just claims, and thus unrighteously enrich himself by taking an estate without its burdens.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

LADU CHIMAJI (ORIGINAL PLAINTIFF), APPLICANT, v. BABAJI

KHANDUJI (ORIGINAL DEFENDANT), OPPONENT.*

Dekkhan Agriculturists' Relief Act XVII of 1879 as amended by Act XXII of 1882, Sec. 15 (B)—Mortgage—Foreclosure—Instalments.

The applicant, an agriculturist mortgagor, sued the defendant, the mortgagee, for redemption on the terms provided by the Dekkhan Agriculturists' Relief Act, 1879. The account was made up, and the mortgagor was directed to pay the sum found to be due within six months, or to be for ever foreclosed. He failed to pay within the time fixed; and afterwards applied, under section 15 (B) of the Act as amended by Act XXII of 1882, to be allowed to pay the amount of the decree by instalments.

Held that the order asked for could not be made. An order for foreclosure when the time appointed by the order has expired, itself operates to transfer the ownership; and the ownership having once passed to the mortgagee cannot be taken away from him by a subsequent order not founded on any new transaction of the parties, except on some special ground, such as fraud or inevitable accident.

THIS was a reference by Rao Saheb Balaji, Mahadev, Subordinate Judge of Khed, under section 617 of the Code of Civil Procedure, for the orders of the High Court.