

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

DWA'RKOJIRA'V BA'BURA'V AND ANOTHER (ORIGINAL PLAINTIFFS),
 APPLICANTS, v. BA'LKRISHNA BHA'LCHANDRA AND OTHERS (ORIGINAL
 DEFENDANTS), OPPONENTS.*

1894.
 March 6.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), Sec. 2†—Suit by agriculturist—
 Agriculturist also owner of the inām villages and a pensioner—Income from
 villages owing to mortgage together with pension less than income from other
 sources—Definition of agriculturist—Agriculturist.*

Where an owner of inām villages, the revenue from which, together with his income from other sources not agricultural, was greatly in excess of the income he derived from agriculture, mortgaged the inām villages, and thereby reduced the income actually received by him from non-agricultural sources to less than the income he derived from agriculture,

Held, that although his income from the inām villages and from other sources not agricultural might together be sufficient for his maintenance, nevertheless the construction of the definition of agriculturist given in the Act which is quite independent of any such question, could not be affected thereby, and that he must be deemed to "earn the means of livelihood" principally from agriculture, and to be an agriculturist within the meaning of Act XVII of 1879.

* Application No. 162 of 1893 under the extraordinary jurisdiction.

†Section 2 of the Dekkhan Agriculturists' Relief Act (Act XVII of 1879) :—

2. In construing this Act, unless there is something 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, his servants or tenants earns his livelihood wholly or principally by agriculture carried on within the limits of the said districts "(namely Poona, Sātara, Sholapur and Ahmadnagar)," 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 or to engage personally in agricultural labour as aforesaid does not thereby cease to be an agriculturist within this definition.

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

2nd.—In Chapters II, III, IV and VI and in section sixty-nine the term "agriculturist" when used with reference to any suit or proceeding shall be deemed to include a person who, when any liability incurred by him and forming the subject or part of the subject of that suit or proceeding was so incurred, was an agriculturist as defined in the first rule.

1894.

DWÁRKOJI-
RÁV
BÁBURÁV
v.
BÁLKRIŚHNA
BHĀ'ĪCHĀN-
DRĀ.

APPLICATION under the extraordinary jurisdiction of the High Court (section 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Ráo Bahadur R. D. Páranjpe, First Class Subordinate Judge of Sátará.

Plaintiffs Dwárkojiráv and Rámráv Báburáv Pátankar instituted the present suit to redeem certain lands. They alleged that they were agriculturists within the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879), and they, therefore, in pursuance of the Government of India's Notification No. 3502, dated the 14th October, 1885,* affixed to the plaint the Court-fees stamp which was equal in value to one-half of that which would have been ordinarily payable under the provisions of the Court Fees Act (VII of 1870).

The defendants contended that the plaintiffs were not agriculturists as defined in Act XVII of 1879.

The first plaintiff received from the Kolhápúr State a monthly pension of Rs. 33 and his mother Rs. 19, the yearly income from that source being Rs. 624. The plaintiff's mother also received from another source a sum of Rs. 6 per mensem, being a yearly income of Rs. 72. The plaintiffs were also owners of certain villages the revenue of which was considerable, but owing to mortgages on them they only yielded to the plaintiffs a sum of Rs. 333 per annum.

The Subordinate Judge, who was of opinion that what goes to a man's creditors for the satisfaction of his debts is as much his income as that which is actually received by him, found that the plaintiffs were not agriculturists as defined in the Dekkhan Agriculturists' Relief Act, and that they did not earn their livelihood principally from agriculture, their income from sources

* The following is the material portion of the Government of India's Notification No. 3502, dated the 14th October, 1885 :—

“ * * From 1st December, 1885, in the District of Sátára the fees shall be reduced to one-half in the case of documents specified in the first and second schedules to the said Court Fees Act annexed in the case of suits for the redemption of mortgaged property when the plaintiff, or, when there are several plaintiffs, any one of the plaintiffs, is an agriculturist.”

other than agriculture, being in excess of the income derived from that source. He, therefore, directed the plaintiffs to make up the deficiency in the Court-fees stamp on the plaint, and adjourned the hearing to enable them to pay in the requisite stamp.

The plaintiffs applied to the High Court under its extraordinary jurisdiction and obtained a rule *nisi* calling on the defendants to show cause why the order should not be set aside.

Anderson (with *D. A. Khare*) for the applicants (original plaintiffs) in support of the rule.

Lang (Advocate General, with *M. C. Apté*) for the opponents (original defendants) appeared to show cause.

SARGENT, C. J.:—The expression “earns his livelihood” can only mean “obtains the means of maintaining himself.” At the present moment the inám villages, owing to the mortgage on them, only contribute Rs. 333 per annum towards the plaintiffs’ maintenance, that being the only sum which comes into their hands from that source. Therefore, even if the whole of the pension from the Kolhápúr State were added to it, still the means of providing for the plaintiffs’ livelihood would be less than that derived from agriculture; and, therefore, under those circumstances we think they must be deemed at the time of bringing the suit to obtain or, in other words, “earn the means of livelihood” principally from agriculture. The fact that the 333, 624 and 72 Rs. might together be sufficient for the plaintiffs’ maintenance, cannot, in our opinion, affect the construction of the definition of “agriculturist,” which is quite independent of any such question.

We must, therefore, in the exercise of our extraordinary jurisdiction, make the rule absolute and direct that the suit be tried under the Dekkhan Agriculturists’ Relief Act. The plaintiffs to have their costs of this application.

Rule made absolute.

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