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the respondent's claim has been contested by the appellant, and, though the suit is for a money claim, it is in reality a claim to immoveable property situate outside British territory.

Our Courts, no doubt, have jurisdiction to try actions relating to such property where the persons against whom relief is sought are living within the jurisdiction but that is "upon the ground of a contract or some equity subsisting between the parties respecting immoveables situated out of the jurisdiction." See the notes to *Penn v. Lord Baltimore*⁽¹⁾. There is no contract or equity here. On the other hand, what the respondent claims and what is found on the evidence is that the ruling power of a foreign State has assigned to the respondent the right of that power to levy toll on certain articles in that territory. "The action is in the nature of an action for a penalty or to recover a tax; it is analogous to an action brought in one country to enforce the revenue laws of another. In such cases it has always been held that an action will not lie outside the confines of the last-mentioned State." *Sydney Municipal Council v. Bull*⁽²⁾.

For these reasons the decree of the Court below must be reversed and the claim rejected with costs throughout on the respondent.

Decree reversed.

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(1) 1 Wh. & Tu. L. Cas. p. 768 (7th edn.).

(2) [1909] 1 K. B. 7 at p. 12.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

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March 15.

CHUNILAL HARICHAND GUJAR (ORIGINAL PLAINTIFF), APPELLANT,
v. VINAYAK ANANDRAO (ORIGINAL DEFENDANT), RESPONDENT.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), sec. 2—"Agriculturist"
—*Interpretation*—"Earns his livelihood"—*Sources of income.*

In ascertaining whether a man who has two or more sources of income of which the income from agriculture is one, occupies the status of agriculturist as defined in the Dekkhan Agriculturists' Relief Act (XVII of 1879), the Court

* Appeal No. 44 of 1908, from order.

must take into account all these sources and ascertain whether the income derived from agriculture is larger or smaller than the rest. All the sources must be taken to be the means of his livelihood and if the income from agriculture exceed the other incomes he must be deemed to be earning his livelihood principally by agriculture.

Dwarkanjirav Baburav v. Balkrishna Bhalchandra⁽¹⁾ explained.

APPEAL from order passed by S. S. Wagle, First Class Subordinate Judge, A. P., at Thána, reversing the decree passed by B. D. Subnis, Subordinate Judge at Kalyán.

Proceedings in execution.

The plaintiff held a decree against the defendant. He applied to execute the decree: and in the proceedings that followed the defendant pleaded that he was an agriculturist.

The Subordinate Judge took evidence upon the point and came to the conclusion that the defendant was not an agriculturist, on the following grounds:—

It is unquestionable that defendant derives his income from agricultural sources. He was examined by the Court—and also as a witness on his own side. (Exhibits 21 to 25). He has put in assessment receipts (Exhibits 27 to 36), and examined witnesses exhibits 38 to 40. He has also put in some leases but they were not proved. The whole of the evidence on record shows that the defendant's income from agriculture amounts to Rs. 300 at the most after paying Government assessment and the expenses of cultivation; defendant himself in his deposition (Exhibit 21) not only practically admits this but that deposition further shows that his income from this source is even less. He on the other hand states that he has a ten annas share in the revenues of the Inám village of Atgaon. He has also purchased a one-anna share from another Inámdár of the same village. The revenues of the village amount to about Rs. 1,000 (Exhibits 21, 25 and 38) and the defendant admits that his income from this source amounts to Rs. 300 a year (Exhibit 21) and that he got Rs. 700 last year on account of ground-rent. His deposition (Exhibit 25) makes it clear that he derives a part of his annual income from the village ground-rent and though the amount of it is not certain yet calculating on the basis of the rent received last year, *viz.*, Rs. 700 it may safely be presumed that it amounts to at least half the amount annually on an average. Then again defendant is forced to admit that he has got tenants at Sháhápúr—paying about Rs. 80 annually as rent. He no doubt says that he does not recover more than Rs. 25 or 30 out of it but this statement is not borne out by any reliable evidence on the record. Even assuming that what the applicant states in his two depositions can by itself be taken as giving a correct idea as to his income from different sources, I find nothing in them to support the applicant's contention that his income

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from agriculture exceeds that from other sources. I therefore hold that he is not an agriculturist within the meaning of section 2 of the Dekkhan Agriculturists' Relief Act. I therefore find the first issue in the negative. The more delicate question as to whether any relief can be granted to the applicant when the execution proceedings are once at an end does not consequently arise; I therefore pass the following order inasmuch as defendant applicant being held not to be an agriculturist is not entitled to reliefs prayed for.

This decree was on appeal reversed by the lower appellate Court, on the following grounds:—

It appears to me that the learned Subordinate Judge has approached the consideration of this case from an erroneous point of view. He says "Even assuming that what applicant states in his two depositions can by itself be taken as giving a correct idea as to his income from different sources I find nothing in them to support the applicant's contention that his income from agriculture exceeds that from other sources. I therefore hold that he is not an agriculturist." This view cannot be supported. It is not necessary for a man claiming the status of an agriculturist under the definition in the Agriculturists' Relief Act to show that his income from agriculture exceeds his income from other sources. All that is necessary is to show that his income from agriculture is sufficient to enable him to earn his livelihood wholly or principally. He may have other sources of income and that income may be sufficient for his maintenance. But that fact will not affect the construction of the definition: *Dwarkanjirav v. Balkrishna*⁽¹⁾. What we have to see is therefore not whether the judgment-debtor's income from agriculture exceeds his income from other sources, but whether the income from agriculture is sufficient for his maintenance. It is not disputed that the judgment-debtor owns lands about 40 or 45 acres situated at Adgaum, Sháhápur and Nandgaum which are all adjoining villages. He cultivates some land (about 20 bighas) privately and has let the rest to tenants. He says that his income from these lands is about Rs. 500 to Rs. 600. He has called witnesses Nos. 38, 39 and 40. From their evidence I hold that the income from lands is about Rs. 350 to Rs. 400 a year clear of Government assessment and costs of cultivation. To this is to be added the income from grass Rs. 40 or Rs. 50. For grass may very well be classed as agricultural produce. The judgment-debtor stated that this income was sufficient for his maintenance. The decree-holder has not produced any evidence nor shown by the cross-examination of the judgment-debtor that the agricultural income is not sufficient for the maintenance of the judgment-debtor. Ordinarily this income would be sufficient to maintain a man and there is nothing to show that the judgment-debtor's style of living is other than ordinary. No doubt in the lower Court no inquiry was directed as to the amount required for the judgment-debtor's maintenance. But when the judgment-debtor stated his agricultural income and alleged in his application that he maintained himself principally by

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agriculture it was for the decree-holder to show that agricultural income is not sufficient to maintain the judgment-debtor. The decree-holder however called no evidence. I, therefore, hold that the agricultural income is sufficient to maintain the judgment-debtor and that he is an agriculturist.

The plaintiff appealed to the High Court.

M. B. Chaudal, (Government Pleader), for the appellant.

B. V. Vidwans, for the respondent.

CHANDAVARKAR, J.—The learned Judge in the appeal Court below has misunderstood the judgment of this Court in *Dwarkojirav Baburav v. Balkrishna Bhalchandra*⁽¹⁾ in construing the word "agriculturist" as defined in the Dekkhan Agriculturists' Relief Act. He says that "it is not necessary for a man claiming the status of an agriculturist under the definition in the Agriculturists' Relief Act to show that his income from agriculture exceeds his income from other sources." That is not what was held in *Dwarkojirav Baburav v. Balkrishna Bhalchandra*⁽¹⁾. In that case, as the facts show, when the suit was instituted the income from non-agricultural sources had become less than that from agriculture; and the Court held that that circumstance brought the plaintiff within the definition. The judgment begins by pointing out that the expression "earns his livelihood" can only mean obtains the means of maintaining himself. In ascertaining whether a man who has two or more sources of income, of which the income from agriculture is one, occupies the status of agriculturist as defined in the Act, the Court must take into account all those sources and ascertain whether the income from agriculture is larger or smaller than the rest. All the sources must be taken to be means of his livelihood, and, if the income from agriculture exceed the other incomes, he must be held to be earning his livelihood principally by agriculture. That is the interpretation which has been hitherto placed by this Court in all the cases in which this point has arisen, following *Dwarkojirav Baburav v. Balkrishna Bhalchandra*⁽¹⁾. We reverse the decree and remand the appeal for rehearing on the merits. Costs to abide the result.

Decree reversed.

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