

1909.

JIVANJI
JAMSHEDJI
v.
BARJORJI
NASSEBVANJI.

years, I think, more than 30 years, with the tacit acquiescence of the true owners. If that is not a sufficient title on which to sue a trespasser for possession; it is very difficult to say what is; at least in the case of any claim to possession by any person not an absolute owner.

Decree confirmed.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Heaton.

1909.

June 21.

MAHADEV NARAYAN LOKHANDE (ORIGINAL PLAINTIFF), APPELLANT,
v. VINAYAK GANGADHAR PURANDHARE AND OTHERS (ORIGINAL
DEFENDANTS), RESPONDENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2—Agriculturist—A person who is an agriculturist in 1871 but is not one when the suit is brought in 1905 cannot claim the benefit of the Act.

In 1871, the defendant executed a mortgage in plaintiff's favour. It was provided that the mortgage was not to be redeemed before 1886. The defendant was an agriculturist at the date of the mortgage: but he was not one when the suit was brought. In 1879, the term 'agriculturist' first received a legal definition in the Dekkhan Agriculturists' Relief Act. In the suit by the plaintiff upon the mortgage the defendant claimed the benefits of the Act, on the ground that his liability under the mortgage was not incurred till 1886: it was admitted that the defendant was not an agriculturist at the date of the suit:—

Held, that the liability incurred by the defendant was to pay back the money borrowed by him; and that liability was incurred when the money was borrowed in 1871.

Held, further, that in 1871, the defendant, whatever may have been his occupation in fact, could not have been an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act, which was enacted in 1879.

Held, also, that the defendant was not entitled to the benefit of the Act.

SECOND appeal from the decision of Ruttonji Muncherji, First Class Subordinate Judge, A. P., at Poona, confirming the decree passed by T. N. Sanjana, Subordinate Judge of Haveli.

* Second Appeal No. 891 of 1907.

On the 6th December 1871 the defendant No. 1 executed a mortgage-deed in favour of plaintiff. The mortgage was not to be redeemed before 1886.

In 1905, the plaintiff brought this suit to foreclose the mortgage.

The defendant No. 1 was an agriculturist in 1871 and 1886, but he was not one in 1905.

The Dekkhan Agriculturists' Relief Act, which contained the definition of 'Agriculturist' was first enacted in 1879.

The defendant No. 1 contending that he was an agriculturist at the date of the bond sued upon and at the date when he incurred liability under it in 1886, claimed the benefit of the Dekkhan Agriculturists' Relief Act, 1879.

The Subordinate Judge who tried the case held that the defendant was an agriculturist: and in decreeing the plaintiff's claim against him, made the decretal amount payable in instalments under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The Subordinate Judge remarked as follows:—

The chief contention in this case is as regards the status of the defendants Nos. 1, 3, 4 and 5. Admittedly they were not agriculturists on the date of the suit. It is contended that the defendant No. 1 was an agriculturist on the date of the bond sued upon.

There is no other evidence adduced to prove this excepting the statement of defendant No. 1. But I see no reason to doubt his statement. He states that at the time he maintained himself out of the agricultural income of his lands and followed no other occupation. The plaintiff does not seem to deny this. But the learned pleader for the plaintiff contends that the words "an agriculturist within the meaning of that word as then defined by law" in rule 2nd of section 2 of the Dekkhan Agriculturists' Relief Act show that the persons claiming the status of an agriculturist after the passing of the original Act are only included in the term and not those claiming that status before the Act was passed.

The definition of the term is inclusive and not exclusive. The words "shall include a person in the 2nd rule" show that the intention was to apply the Act as well to persons who were agriculturists when the liability in the suit was incurred as to those who are so when the suit is instituted, *Banu v. Krishnambat, P. J.*, 1886, page 159. The above rule 2 lays down that in the former case, *i. e.*, in the case of a person who claims to be an agriculturist when the liability was incurred his status should be determined in case the liability

1909.

MAHADEV
NARAYAN
v.
VINAYAK
GANGADHAR.

1909.

MAHADEV
NARAYAN
v.
VINAYAK
GANGADHAR.

was incurred after the passing of the original Act according to the definition of the term at the particular time. But it does not exclude the case of a person who claims to be an agriculturist before the original Act was passed when the liability as in this case was incurred before 1879. The defendant No. 1 was an agriculturist when the liability was incurred as he earned his livelihood at the time wholly by agriculture and I find that he is entitled to the benefit of the provisions of the Dekkhan Agriculturists' Relief Act.

On appeal, this decree was confirmed by the First Class Subordinate Judge with appellate powers on the following grounds :—

No exception is taken to the correctness of the decree passed by the Court below provided defendant No. 1 (respondent) be found an agriculturist on the date the mortgage-bond was executed or on the date the liability was incurred. Mr. Lokhande for the appellant founds his argument upon explanation (2) section 2 of the Dekkhan Agriculturists' Relief Act of 1879. It says that "the term agriculturist.....should include a person; who when..... the liability was incurred was an agriculturist within the meaning of that word as then defined by law." Now what do the words "when the liability was incurred" mean, and much depends upon the way in which they are construed. The words are no doubt not happily chosen. At first sight they may mean that the liability was incurred on the day the mortgage-bond was executed. If so, there was then no enactment in force of the nature of the Dekkhan Agriculturists' Relief Act, and there was no law, in which the word "agriculturist" was defined. If this construction be placed on the said words a *bond fide* agriculturist would be debarred from the benefit of the Dekkhan Agriculturists' Relief Act in respect of any bond or mortgage or any other writing executed prior to 1879 when the Dekkhan Agriculturists' Relief Act came into force. To construe these words we must look to the object, and scope of the enactment. The very title by which it is distinguished shows that the Act was passed to relieve the indebtedness existing among the agricultural population prior to 1879. The said words should therefore mean when the liability becomes due, or in other words when the right to sue occurs. This happened in 1886. The definition of the word "agriculturist" has undergone several amendments since the passing of the Act in 1879. Even according to the old definition defendant No. 1 was an agriculturist both when the bond was passed and the liability was incurred, for it is not disputed that he was then earning his livelihood wholly and principally by agriculture.

The plaintiff appealed to the High Court.

V. G. Ajinkya for the appellant :—Admittedly the defendant No. 1 was not an agriculturist in 1905 when this suit was brought. The question then is was he an agriculturist within the meaning

of the Dekkhan Agriculturists' Relief Act, 1879, when the liability was incurred? Here the liability was incurred in 1871, when the mortgage-deed was executed, but when there was not enactment defining the term "agriculturist."

The lower Courts have erred in holding that the liability was incurred in 1886, at that date the debt became payable; the liability was incurred in 1871.

P. P. Khare for respondent No. 1 (defendant No. 1):—The Dekkhan Agriculturists' Relief Act, 1879, was introduced for the first time in 1879 with a view to relieve the then indebtedness as well as the future indebtedness of agriculturists. As the debt in the present case was contracted in 1871 and remained unpaid until after the passing of the Dekkhan Agriculturists' Relief Act, the case of defendant No. 1 is one of indebtedness contemplated to be relieved against by the introduction of the Act in 1879.

As to the debt in question here, the liability to pay was incurred in 1886, when it became payable or due till that date the mortgagor did not become liable to pay the debt though the deed sued upon was passed in 1871.

P. D. Bhide for respondent No. 2.

BATCHELOR, J.—This appeal arises out of a suit filed by the mortgagee to recover the mortgage-debt with costs and further interest by sale of the mortgaged property. The first defendant replied that he was an agriculturist and claimed the benefits of the Dekkhan Agriculturists' Relief Act. The lower Courts have allowed the first defendant the benefits of the Act, and the question involved in this appeal is whether he is entitled to them in this case. The particular shape which they have assumed is the form of instalments which have been granted at the rate of Rs. 150 a year. Whether the first defendant is an agriculturist or not turns upon the construction of sub-section (2) of clause (b) of section 2 of the Dekkhan Agriculturists' Relief Act. It is there provided that 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

1909.

MAHADEV
NARAYAN
v.
VINAYAK
GANGADHAR.

1909.

MAHADEV
NARAYAN
v.
VINAYAK
GANGADHAR.

meaning of that word as then defined by law. The mortgage-bond in suit here was executed in 1871, and under the mortgage it was provided that the mortgagor should not redeem before 1886. It is contended before us that the first defendant's liability was not incurred till 1886, inasmuch as it was not till then that repayment of the debt became obligatory, and that we understand is the view adopted by the learned Judge below. But it does not appear to be possible to put that construction fairly upon the words of the section. What was the liability incurred here? The liability incurred was to pay back the money borrowed by the mortgagor, and it is clear that that liability was incurred when the money was borrowed in 1871. That is not the less so by reason of the stipulation that the payment was not due till 1886. The liability to repay in 1886 was incurred in 1871.

As to the other argument which was addressed to us, it is enough to say that since this liability was incurred in 1871, and since the Act of 1879 contained the first legal definition of the word "agriculturist" it follows that, when he made this mortgage, the first defendant, whatever may have been his occupation in fact, could not have been "an agriculturist within the meaning of that word as then defined by law", for there was then no such legal definition existing.

The result is that the first defendant is not entitled to the benefit of the Dekkhan Agriculturists' Relief Act. This appeal must be allowed and there must be the ordinary decree for sale under section 88 of the Transfer of Property Act in the form prescribed by the Civil Procedure Code.

The mortgagee will be entitled to add the costs of this appeal to his mortgage-debt.

Decree reversed.

R. R.
