

that by an oral agreement a subsequent reconveyance was provided for. The District Judge proceeded quite correctly in his order framing issues for trial, and had in mind what it is essential to remember in cases of this kind, *viz.*, that a sale-deed cannot be construed as or converted into a mortgage-deed (that is where section 10A of the Dekkhan Agriculturists' Relief Act does not apply) but that the person who executed the sale-deed may show, if he can, that the sale-deed did not represent the real agreement between the parties; or for some other reason is of no effect. This the plaintiff was allowed an opportunity of doing, but as indicated above it has not been found that he succeeded in doing it. Therefore, I agree that the decree of the first Court must be restored.

Decree reversed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

DAMODAR NANDRAM AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, *v.* MANUBAI, HUSBAND GOVINDRAO PATIL (ORIGINAL PLAINTIFF), RESPONDENT.*

1909.

August 24.

Dekkhan Agriculturists' Relief Act (XVII of 1879), sec. 2†
—*Agriculturist—Definition—Interpretation.*

Section 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) gives two definitions of the term "agriculturist", one in clause 1 and the other in clause 2.

* Second Appeal No. 692 of 1907.

† The Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2—

1st.—"Agriculturist" shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood, wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend or who ordinarily engages personally in agricultural labour within those limits.

2nd.—In Chapters II, III, IV and VI, and in section 69, the term "agriculturist" where 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 meaning of that word as then defined by law.

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The former applies where a party to a suit is an agriculturist at the time the suit is filed by or against him.

The second clause, which gives a special definition of the term "agriculturist" for the purposes of Chapters II, III, IV and VI and section 69 of the Act, is not exhaustive but is merely inclusive and is intended for a special purpose.

The decision in *Mahadev Narayan Lokhande v. Vinayak Gangadhar Purandhare*(1) does not lay down the proposition of law that a party to a suit is not entitled to the privileges of an agriculturist under the Dekkhan Agriculturists' Relief Act, 1879, if he was not an agriculturist at the time the liability in question was incurred, even though it may be that he was an agriculturist within the meaning of the first clause of section 2 at the time of the suit.

SECOND appeal from the decision of W. Baker, District Judge of Ahmednagar, confirming the decree passed by G. B. Laghate, Subordinate Judge of Shevgaon.

Suit to redeem a mortgage.

The mortgage was executed by Anandibai (mother-in-law of plaintiff) to one Kesuram (father of defendants) on the 26th March 1874.

The plaintiff alleging that the mortgagees went into possession of the property in 1875 and that the mortgage-debt was satisfied out of the profits they received, instituted this suit in 1904.

The plaintiff was an agriculturist.

The Court of first instance took an account of the dealings between the parties as provided for by the Dekkhan Agriculturists' Relief Act, 1879, and found that nothing remained due under the mortgage. The plaintiff's claim was therefore decreed.

The lower appellate Court confirmed this decree on appeal.

The defendants appealed to the High Court.

D. R. Patvardhan, for the appellants.

K. H. Kelkar, for the respondents.

CHANDAVARKAR, J.:—The lower appellate Court has found that the respondent is an agriculturist and on that footing has taken the accounts of the mortgage transactions concerned in this case. But it is contended that the finding as to the status of the respondent is erroneous in law, because the Act applies

(1) (1909) 33 Bom 504; 11 Bom. L. R. 721.

only to a person who was an agriculturist when the liability in dispute was incurred. Reliance is placed in support of that contention upon the judgment of this Court in the case of *Mahadev Narayan v. Vinayak Gangadhar*⁽¹⁾. That decision applies to a state of facts different from the present and lays down no such proposition as is contended for. Section 2 of the Dekkhan Agriculturists' Relief Act gives two definitions of the term "agriculturist"—one in clause 1 and the other in clause 2. Where a party to a suit is an agriculturist at the time the suit is filed by or against him, the former clause applies. That is the case of the respondent before us. In the decision above cited the facts show that there it was admitted that some of the defendants were not agriculturists at the time of the suit, so that their case did not fall within the purview of the provisions of the first clause of section 2 of the Dekkhan Agriculturists' Relief Act. But they sought to bring their case within the second clause, which gives a special definition of the term agriculturist for the purposes of Chapters II, III, IV and VI and section 69 of the Act. The definition given in the second clause is not exhaustive, but is merely inclusive and is intended for a special purpose. The defendants in that case wanted to have the benefit of that special definition. It is with reference to that contention that the learned Judges who were parties to that decision held that the case of those defendants did not fall within the second clause. They never intended to lay down the proposition of law which is now contended for by the learned pleader for the appellant before us that a party to a suit is not entitled to the privileges of an agriculturist under the Act if he was not an agriculturist at the time the liability in question was incurred, even though it may be that he is an agriculturist within the meaning of the first clause of section 2 at the time of the suit.

We confirm the decree with costs.

Decree confirmed.

R. R.

(1) (1909) 33 Bom. 504; 11 B. m. L. R. 721.

1909.

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