## APPELLATE CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.*

1911. *February* 17.

KASHINATH RAMCHANDRA POTNIS (ORIGINAL DEFENDANT-APPLICANT), APPELLANT, *v.* VINAYAK GANGADHAR BHAT AND OTHERS (ORIGINAL PLAINTIFFS-OPPONENTS), RESPONDENTS.*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2, explanation (b)*(1)*—Agriculturist, definition—Assignee of Government revenue, not an agriculturist.*

The income derived from tenants by an Inamdar which is to a certain extent attributable to the fact that he is the assignee of Government revenue and, therefore, does not have to pay over a portion of that income to Government but may keep it for himself, cannot be taken into consideration in estimating whether or not he earns his livelihood wholly or principally by agriculture, and therefore is not an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

FIRST appeal against an order passed by Ruttanji Mancherji, First Class Subordinate Judge of Poona, in the matter of an application for a declaration of status as an agriculturist.

One Gangadhar Keshav Bhat, the predecessor in interest of the present plaintiffs, obtained a decree, No. 69 of 1893, against the defendant in the Court of the First Class Subordinate Judge of Poona. The decree was passed in the terms of an award and was dated the 18th February 1893. It directed that the defendant should pay to the plaintiff Rs. 9,125 within five years and on his default the plaintiff should recover the amount by the sale

* First Appeal No. 70 of 1910.

(1) Dekkhan Agriculturists' Relief Act, section 2, explanation (*b*) :—

2. In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed, namely :—

"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.

Explanation (*a*) :— * * * * * *

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

of the mortgaged properties. An order for sale absolute of the mortgaged properties was passed on the 25th March 1907. Subsequently the plaintiffs having applied for the execution of the decree by Darkhast, No. 441 of 1909, the defendant presented an application, dated the 4th January 1910, stating that he was an agriculturist and as such was entitled to the benefit of the Dekkhan Agriculturists' Relief Act. The Subordinate Judge found on the evidence that the defendant was not an agriculturist as defined by the Dekkhan Agriculturists' Relief Act and rejected the application. His reasons were as follows:—

To sum up, his agricultural income is Rs. 254-8-0 in the Colaba District, plus Rs. 443 in the Satara District, plus Rs. 19 ryotwari lands in the Satara District total Rs. 716.

While his non-agricultural income is Rs. 394-15-4 Saranjam allowance, plus Rs. 428-7-0 Satara Inam, plus Rs. 280 . . Colaba Inam, plus Rs. 11 Deshpande allowance—total Rs. 1,114-6-4, which greatly preponderates over his agricultural income.

Defendant appealed.

*K. N. Koyaji* for the appellant (defendant):—The defendant being Inamdar of both the revenue and soil, the revenue that he appropriates to himself without giving it over to Government is as much part of his agricultural earning as the rest of the produce of the soil. In the case of an Inamdar of revenue only, he gets a share of the produce of the land cultivated by some one else. He is, therefore, not an agriculturist within the meaning of section 2 of the Dekkhan Agriculturists' Relief Act. But the income which a cultivator himself retains is his earning derived by agriculture.

*P. P. Khare* for respondents 1, 8 and 9 (plaintiffs 1, 8 and 9):—The share of the produce paid as revenue and retained as Inam is not agricultural income. It is an assignment of revenue only. The ruling in *Purshotam* v. *Sitaram*[1] shows that the Inam of revenue is distinct from Inam of soil. Explanation (*b*) to section 2 of the Dekkhan Agriculturists' Relief Act lays down that an assignee of Government revenue is not an agriculturist.

*P. D. Bhide* for respondents 1—6 and 9 (plaintiffs 1—6 and 9).

(1) (1906) 8 Bom. L. R. 606.

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*Koyaji* in reply:—The ruling in *Purshotam* v. *Sitaram*[1] does not touch the present point. Explanation (*b*) to section 2 of the Dekkhan Agriculturists' Relief Act is not an exception to the definition but only an explanation.

SCOTT, C. J.:—The question that we have to decide in this case is whether the income derived from tenants by an Inamdar which is to a certain extent attributable to the fact that he is the assignee of Government revenue and therefore does not have to pay over a portion of that income to Government but may keep it for himself, can be taken into consideration in estimating whether or not he earns his livelihood wholly or principally by agriculture and therefore is an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act.

The answer to the question depends upon what force is to be attributed to explanation (*b*) of the definition in section 2. That explanation says "An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition."

Now, we think, it is clear that if the object of that explanation was to exclude the consideration of the income of a mortgagee as such, it must also have been the intention to exclude the consideration of the income of an assignee of Government as such. We have no difficulty in arriving at the conclusion that the object of the legislature was to exclude mortgagees, to the extent to which their income is derived from their rights as mortgagees, from claiming the special benefit of the Act, and, therefore, we are forced to the conclusion that the legislature also intended to exclude assignees of Government assessment in that capacity from claiming the benefit of the Act.

In the case before us, therefore, the receipts of agricultural income attributable to the position of the applicant as Inamdar must be excluded from consideration; and in this view the conclusion arrived at by the Subordinate Judge that the applicant is not an agriculturist is correct.

We dismiss the appeal with costs.

*Appeal dismissed.*

G. B. R.

(1) (1906) 8 Bom. L. R. 606.