

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Batchelor.

1912.

February 26.

SAVALPURI GURU BALPURI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS,
v. BALA VALAD YADAOSHET SONAR AND ANOTHER (ORIGINAL DEFENDANTS),
RESPONDENTS.*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2†—Agriculturist—
Definition—Gosavis—Earning livelihood by mendicancy and also from agriculture.*

The plaintiffs who were Gosavis had no lands of their own at the date of the suit, but purchased some thereafter. They were following two occupations, one that of Gosavis, and the other that of agriculture. On a claim made by them to be agriculturists within the meaning of the term as defined in the Dekkhan Agriculturists' Relief Act, 1879,

Held, that the plaintiffs were not agriculturists, for they adduced no proof to bring themselves under the first part of the definition, and they could not take advantage of the second branch inasmuch as they being Gosavis, the presumption would be that their ordinary occupation was that of mendicancy.

SECOND appeal from the decision of B. C. Kennedy, District Judge of Nasik, modifying the decree passed by B. B. Kunte, Joint Subordinate Judge at Pimpalgaon.

Suit to redeem a mortgage.

In 1872, an ancestor of the plaintiffs, who were Gosavis, (*i.e.*, religious mendicants) mortgaged to the defendants half of a Survey No. (135). They sued to redeem the mortgage in 1908. As regards the other half of the survey number the plaintiffs contended on the one hand that it was later on given by them to defendants as additional security; the defendants on the other hand denying the fact. They further contended that they had purchased the whole number at a Court-sale in 1876: and that the plaintiffs were not agriculturists.

* Second Appeal No. 181 of 1911.

† The term "agriculture" is thus defined:—

"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.

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The plaintiffs had no lands of their own at the date of the suit ; but they purchased thereafter some lands. They, therefore, claimed to be agriculturists within the meaning of the Dekkhan Agriculturists' Relief Act, 1879.

The Subordinate Judge held that the plaintiffs were agriculturists, for though they owned no lands at the date of the suit they must be presumed to be cultivating the lands of others as they and their fathers were professional agriculturists. He further held that the sale relied upon by the defendants was not proved ; that the plaintiffs were entitled to redeem half of the survey number and as the mortgage-debt was satisfied out of the profits, the plaintiffs were entitled to be placed in possession of the property : and that the defendants were entitled to retain the other half which was not mortgaged to them by the plaintiffs.

On appeal, the District Judge held that the plaintiffs were not agriculturists ; that they were entitled to redeem the mortgage ; and that they were liable to pay the mortgage-debt of Rs. 100.

The plaintiffs appealed to the High Court.

A. G. Desai, for the appellants.—The definition of the term " agriculturist " in section 2 of the Dekkhan Agriculturists' Relief Act, 1879, is very general. A person may acquire or lose the status of agriculturist at any time before the date of the decree. See *Padgaya Somshetti v. Baji Babaji*⁽¹⁾ ; and *Shamlal v. Hirachand*⁽²⁾.

V. G. Ajinkya, for the respondents.—The change of status during the course of the suit does not avail the plaintiffs. The plaintiffs are religious mendicants : they have never cultivated the lands of others or worked as labourers at any time ; nor have they maintained themselves wholly or principally on agriculture.

CHANDAVARKAR, J. :—The Subordinate Judge found that although the appellants had ceased to be agriculturists at the date of the suit, yet they had purchased certain lands after that date, so that at the trial they were agriculturists in accordance

(1) (1887) 11 Bom. 469,

(2) (1885) 10 Bom. 367,

with the principle laid down by this Court in the three cases which he has cited, *viz.*, *Kondi v. Gunda*⁽¹⁾, *Padgaya Somshetti v. Baji Babaji*⁽²⁾, and *Shamlal v. Hirachand*⁽³⁾. But although that fact was in favour of the appellants, still it was not decisive of the case, because the appellants ought to have proved one of two things in order to entitle them to the benefit of the provisions of the Dekkhan Agriculturists' Relief Act. They were bound to prove either that they were earning their livelihood wholly or principally by agriculture carried on within the limits of the district; or that they ordinarily engaged personally in agricultural labour within those limits. The first part of this definition the appellants did not attempt to prove. It is found as a fact by the learned District Judge that these appellants are not agriculturists. They are Gosavis—religious beggars. They were following two occupations, one that of Gosavis or religious beggars, and the other that of agriculture, and therefore, the material question was whether they earned their livelihood wholly or principally by means of agriculture. On that point no proof was adduced. And it was not suggested that their case fell within the first branch of the definition of "agriculturist" in the Act. Nor can they take advantage of the second branch of the definition, there being two occupations followed by them. The question was, which was the occupation which they ordinarily followed. They are Gosavis and the presumption in such a case would be that their ordinary occupation was that of mendicancy. On that ground the decree must be confirmed with costs.

Decree confirmed.

R. R.

(1) (1882) P. J. 156.

(2) (1887) 11 Bom. 469

(3) (1885) 10 Bom. 367.