

1913.

DAKORE  
TOWN-  
MUNICI-  
PALITY  
v.  
TRAVEDI  
ANUPRAM.

after the place has become a Municipal district. It matters not in either case whether the encroachment has been in existence for twelve years or more, but the statutory conditions regulating the exercise of the power must be shown to exist. The Municipality in the present case have not shown either that the stone which they have removed was an obstruction to the safe and convenient passage along the street or that the stone was set up by the plaintiff after the place became a Municipal district. They have, therefore, not justified their action by reference to their statutory powers. On that ground we affirm the decree of the lower appellate Court and dismiss the appeal with costs.

*Decree affirmed.*

G. B. R.

## APPELLATE CIVIL.

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

1913.  
July 16.

SAWANTRAVA KOM FAKIRAPPA (ORIGINAL PLAINTIFF), APPELLANT, v.  
GIRIAPPA FAKIRAPPA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 2 (2), 10A† —  
Evidence Act (I of 1872), section 92—Agriculturist—Mortgage in form of  
sale—Redemption suit—Intention of the parties at the time of the transaction.*

\* First Appeal No. 272 of 1912.

† Sections 2 (2), 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) are as follows:—

2. (2nd.) In Chapters II, III, IV and VI and in section 69, 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 meaning of that word as then defined by law.

The object of section 10A of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is to enable a party to the suit to prove, notwithstanding the words of the document, what the real intention was at the time when the document was executed. Regard must be paid to the date of the transaction and an agriculturist can only be allowed, according to the provisions of section 10A, to enjoy the special benefit of the favoured class in disregarding the provisions of section 92 of the Evidence Act (I of 1872), if he belonged to the favoured class as defined by the statute at the date of the transaction.

1913.

SAWANTRAVA  
v.  
GIRIAPPA  
FAKIRAPPA.

FIRST appeal against decision of G. V. Patvardhan, First Class Subordinate Judge at Dharwar, in Suit No. 116 of 1912.

This action was instituted by the plaintiff to redeem the lands in suit on the allegation that the document sued on, though in the form of a sale, was really a mortgage, and he prayed that accounts be taken under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The defendants contended that the transaction in suit was a sale out-and-out and that the plaintiff was not

10A. Whenever it is alleged at any stage of any suit or proceeding to which an agriculturist is a party that any transaction in issue entered into by such agriculturist or the person, if any, through whom he claims was a transaction of such a nature that the rights and liabilities of the parties thereunder are triable wholly or in part under this Chapter, the Court shall, notwithstanding anything contained in section 92 of the Indian Evidence Act, 1872, or in any other law for the time being in force, have power to inquire into and determine the real nature of such transaction and decide such suit or proceeding in accordance with such determination and shall be at liberty, notwithstanding anything contained in any law as aforesaid, to admit evidence of any oral agreement or statement with a view to such determination and decision :

Provided that such agriculturist or the person, if any, through whom he claims was an agriculturist at the time of such transaction :

Provided further that nothing in this section shall be deemed to apply to any suit to which a *bona fide* transferee for value without notice of the real nature of such transaction or his representative is a party where such transferee or representative holds under a registered deed executed more than twelve years before the institution of such suit.

1913.

SAWANTRAVA

v.  
GIRIAPPA  
FAKIRAPPA.

entitled to the benefit of the Dekkhan Agriculturists' Relief Act.

The transaction in suit was entered by the plaintiff's deceased husband on the 27th November 1899, and the provisions of the Dekkhan Agriculturists' Relief Act were extended to the Dharwar District in 1905.

The Subordinate Judge framed a preliminary issue and found that the suit was not maintainable under section 10A of the Dekkhan Agriculturists' Relief Act. He, therefore, dismissed the suit, observing :—

Plaintiff claims through her husband, the original mortgagor, who cannot be said to have been an agriculturist at the time of the transaction, *viz.* in 1899, when the Dekkhan Agriculturists' Relief Act had not been extended to this District (*vide* section 2 of the Dekkhan Agriculturists' Relief Act and 11 Bom. L. R., pages 1288 and 721): Section 10A provides that the plaintiff or the person through whom he claims must be an agriculturist at the date of the transaction.

The plaintiff appealed.

*Jayakar*, with *G. S. Mulgaonkar*, for the appellant (plaintiff) :—There is a difference in the wording of the proviso to section 10A of the Dekkhan Agriculturists' Relief Act when compared with section 2 (2). The words “then defined by law” occurring in the latter are not to be found in the former. Prior to the enactment of section 10A it was enough to show that the person was an agriculturist at the date of the suit.

The ruling in *Balleishen Das v. Legge*<sup>(1)</sup> demonstrated that some remedial measure was necessary to relieve the strictness of the rule followed in the case. Section 10A is of a remedial character for those who would take the benefit of the Act. The word “agriculturist” means a person who is an agriculturist at the date of the suit: *Gopal Ghela v. Rajaram Amtha*<sup>(2)</sup>. In this case section

(1) (1899) 22 All. 149.

(2) (1911) 36 Bom. 305.

10A was applied to a transaction dated 1879; see also *Shankar Ramkrishna v. Krishnaji Ganesh*<sup>(1)</sup> and *Mahadev v. Vinayak*<sup>(2)</sup>.

Further, section 10A being a remedial measure should be liberally construed, whereas section 2 (2) being a protective measure should receive a strict construction: Maxwell on Statutes, pp. 124, 367.

To say that unless a person is an agriculturist at the date of the transaction he will not receive the benefit of section 10A is entirely inconsistent with the remedial nature of the section.

The following cases were referred to:—

*Javanmal Jitmal v. Muktabai*<sup>(3)</sup>; *Shivram Udaram v. Kondiba Muktabai*<sup>(4)</sup>; *Pannalal v. Kalu*<sup>(5)</sup> and *Fatmabibi v. Ganesh*<sup>(6)</sup>.

*K. H. Kelkar* for respondent 1 (defendant 1) not called upon.

*Campbell*, with *A. G. Desai*, for respondents 2 and 3 (defendants 2 and 3) not called upon.

*S. V. Palekar* for respondent 4 (defendant 4) not called upon.

SCOTT, C. J. :—This suit was instituted by the plaintiff for redemption of certain property, which, she alleged, had been mortgaged by her husband to the defendants by a document, which, though in form a sale, was in reality a mortgage. In order to prove that she was a mortgagor it would be necessary for her to give evidence of the intention of the parties at the time of the transaction, namely, in the year 1899, and to show that that intention was not expressed in the deed. This

(1) (1909) 34 Bom. 161.

(2) (1909) 33 Bom. 504.

(3) (1890) 14 Bom. 516.

(4) (1884) 8 Bom. 340 at p. 345.

(5) (1906) 8 Bom. L. R. 798.

(6) (1907) 31 Bom. 630.

1913.  
SAWANTRAVA  
v.  
GIRIAPPA  
FAKIRAPPA.

she could not do under the provisions of section 92 of the Indian Evidence Act. But if she was enabled to avail herself of the provisions of section 10A of the Dekkhan Agriculturists' Relief Act she could give the proof that she desired.

The suit was brought in the Dharwar District to which the provisions of the Dekkhan Agriculturists' Relief Act were extended in the year 1905. Section 10A enables the Court to inquire into the real nature of the transaction in issue, provided that the agriculturist, who was a party to the suit claiming the benefit of the Act, was an agriculturist at the time of the transaction (in this case in the year 1899). It is argued that "agriculturist" in the proviso to section 10A must not be read by the light of the statutory definition, but must be interpreted in the general and popular sense, and that in that sense the mortgagor was earning a living by agriculture, and therefore falls within the proviso.

The difficulty is that section 2 is peremptory. It provides that in construing this Act, unless there is something repugnant in the subject or context, the following rule should 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.

It has been argued that if the statutory definition is applied to the proviso to section 10A we shall have a result repugnant to the object of the section. That does not appear to us to be the case. The object of the section is to enable a party to the suit to prove, notwithstanding the words of the document, what the real intention was at the time when the document was

executed. Therefore, one must have regard to the date of the transaction, and he can only be allowed according to the provisions of section 10A to enjoy the special benefit of the favoured class in disregarding the provisions of section 92 of the Indian Evidence Act, if he belonged to the favoured class as defined by the Statute at the date of transaction. Therefore, in my opinion, the decision of the Subordinate Judge was correct and this appeal should be dismissed with costs. The case of *Gopal Ghela v. Rajaram Amtha*<sup>(1)</sup> is cited as showing that this Court has applied the provisions of section 10A to a transaction dated the 15th of June 1869 in the Broach District, to which the provisions of section 10A were only extended in January 1911, and to which the provisions of the Dekkhan Agriculturists' Relief Act were only extended long subsequent to 1869. We have good reason to believe that this proviso to section 10A was not brought to the notice of the Court at the time of the hearing of that case, and the judgment itself indicates that no point was based upon the proviso, for there is no reference to it throughout the judgment.

HEATON, J. :—I concur.

MACLEOD, J. :—I concur.

*Appeal dismissed.*

G. B. R.

(1) (1911) 36 Bom. 305.