

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Hayward.

1915.

September 1.

MAHADEO RANGNATH GODBOLE (ORIGINAL PLAINTIFF), APPELLANT
v. RAMA TUKARAM DEVKATE AND ANOTHER (ORIGINAL DEFENDANTS),
RESPONDENTS.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 22†—House of agriculturist—Exemption from sale—Exemption not confined to cases of contractual debts but extends to restitution proceedings—Civil Procedure Code (Act V of 1908), section 144.

The defendants paid into a Court sum which they had to pay under a decree, and at the same time preferred an appeal against the decree. The sum paid into Court was taken away by the plaintiff. The appeal filed by the defendants was successful : the decree was reversed and the suit ordered to be retried. The defendants thereupon applied under the provisions of section 144 of the Civil Procedure Code, for restitution of money paid by them ; and prayed for an order to sell the plaintiff's house in case he failed to make the restitution. The plaintiff contended that he being an agriculturist his house could not be sold, by virtue of the provisions of section 22 of the

* Second Appeal No. 50 of 1915.

†The section runs as follows :—

22. [Immoveable property belonging to an agriculturist* * * shall not be attached or sold] in execution of any decree or order [passed whether before or after this Act comes into force,] unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists. [For the purposes of any such attachment or sale as aforesaid standing crops shall be deemed to be moveable property.]

But the Court, [on application or of its own motion,] may, when passing a decree against an agriculturist or [in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force,] direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the opinion of the Collector, is not required for his support and the support of the members of his family dependent on him, and the Collector shall thereupon take possession of such property and deal with the same for the benefit of the decree-holder in manner provided by section 29.

The provisions of section 31 shall, *mutatis mutandis*, apply to any property so dealt with.

Dekkhan Agriculturists' Relief Act, 1879. The lower Courts negatived the contention on the ground that the provisions of section 22 applied only in cases of contractual debts and not to restitution proceedings. The plaintiff having appealed :—

Held, that if the plaintiff was an agriculturist, his house was immune from sale under section 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The true construction of section 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) is, first, a general provision that immoveable property belonging to an agriculturist shall always be immune from sale, and, secondly, a proviso directing that this immunity is subject to exception where the two following conditions are both satisfied, that is to say, (a) where the decree or order in question relates to the repayment of a debt, and (b) where the agriculturist's property has been specifically mortgaged for the payment of that debt. The limiting words referring to a debt occur only in the proviso and cannot be imported into the main rule so as to restrict its express generality.

SECOND appeal from the decision of F. X. DeSouza, District Judge of Sholapur, confirming the order passed by R. D. Nagarkar, First Class Subordinate Judge at Sholapur.

Execution proceedings.

The decree under execution was a redemption decree. It directed the defendants to pay Rs. 550 on the 25th March 1909; and to pay the balance of Rs. 410 in annual instalments of Rs. 100 each.

The defendants accordingly paid into Court Rs. 660, which the plaintiff withdrew.

Meanwhile, the defendants appealed against the decree, with the result that the decree was reversed and the suit remanded for retrial on merits.

The defendants thereupon applied to the Court under section 144 of the Civil Procedure Code for restitution of the sum of Rs. 660; and prayed that on failure of the plaintiff to make the payment, the sum should be realised by sale of the plaintiff's house.

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The plaintiff contended that he being an agriculturist his house was exempt from sale by virtue of the provisions of section 22 of the Dekkhan Agriculturists' Relief Act, 1879.

The Subordinate Judge did not accept the contention on the following grounds:—

They seek the relief now sought not in execution of a decree or order but in pursuance of statutory provision contained in section 144 of the Civil Procedure Code. To such a case section 22 of the Dekkhan Agriculturists' Relief Act which is confined to the execution of a decree or order of a *Court* has no application. Even assuming therefore that the plaintiff is now an agriculturist his immoveable property is not exempt from attachment for the purposes of section 144 of the Civil Procedure Code the relief wherein is not covered by section 22 of the Dekkhan Agriculturists' Relief Act.

The Subordinate Judge therefore declined to go into the question whether the plaintiff was an agriculturist.

On appeal, the District Judge confirmed the decree on the following grounds:—

The more serious objection that was pressed was based on the provisions of section 22 of the Dekkhan Agriculturists' Relief Act, XVII of 1879. It was contended that the order directing the recovery of the amount by sale of the immoveable property of the plaintiff was illegal as the plaintiff was in a position to prove that he was an agriculturist and under section 22 of the Dekkhan Agriculturists' Relief Act immoveable property belonging to an agriculturist shall not be attached or sold in execution of any decree or order. It was vigorously urged that the Court was in error in excluding evidence adduced to prove the plaintiff's status as an agriculturist.

It seems to me that this argument rests on a misconception of the scope of section 22 of the Dekkhan Agriculturists' Relief Act. The decree or order to which that section relates presupposes the existence of a "debt" and a debt *ex vi termini* connotes a contractual obligation created by voluntary agreement between the parties and not a statutory obligation such as is created by section 144 of the Civil Procedure Code. Neither from the scope of the Act taken as a whole nor from the wording of section 22 does it seem to me to have been the intention of the Legislature to exempt the immoveable property of agriculturists from attachment and sale for the purpose of enforcing obligations of the latter character.

The plaintiff appealed to the High Court.

P. V. Kane, for the appellant.—Section 22 of the Dekkhan Agriculturists' Relief Act lays down a wide rule subject only to one exception, viz., that the immoveable property belonging to an agriculturist-debtor can be sold in execution of a decree, if the property is specifically mortgaged to secure the decretal debt. There is no mortgage in the present case but the property is attempted to be sold under proceedings initiated under section 144 of the Civil Procedure Code. The plaintiff must therefore be allowed an opportunity to show that he was an agriculturist.

P. D. Bhide, for the respondent.—Section 144 of the Civil Procedure Code creates a statutory obligation; and section 22 of the Dekkhan Agriculturists' Relief Act must be so construed as to advance the remedy given by statute. Section 22 must be construed in the light of the provisions of sections 3 and 12 of the Act, which refer to debts arising out of contractual obligation. The decree or order contemplated by section 22 must, therefore, be one based on a contract or debt.

BATCHELOR, J.:—The appellant before us was the original plaintiff who in 1908 brought a suit in ejectment against the defendants. It was found, however, that the plaintiff was a purchaser from a mere mortgagee, and the Court consequently gave the defendants a decree for redemption. The sum to be repaid was Rs. 960, of which Rs. 550 were to be paid on 25th March 1909. The balance was payable by yearly instalments of Rs. 100. The defendants paid in all a sum of Rs. 660. In the meanwhile, however, they had lodged an appeal, and the lower appellate Court reversed and remanded the original Court's decree. Therefore on the 3rd August 1912 the defendants applied

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under section 144 of the Civil Procedure Code asking for restitution in respect of the payments which they had made, and for interest at twelve per cent. There was an added prayer that in the event of the plaintiff failing to pay, his house should be attached and sold.

The lower Courts have ordered the sale of the plaintiff's house.

The plaintiff complains that since he is an agriculturist, his house is immune from sale under section 22 of the Dekkhan Agriculturists' Relief Act. If that contention is justified, then it would follow that the plaintiff must have an opportunity of proving that he is an agriculturist, such opportunity not yet having been afforded to him.

The question, therefore, is whether assuming that the plaintiff is an agriculturist, his house is not liable to sale under section 22 of the Dekkhan Agriculturists' Relief Act. That section, in so far as it is now material, runs as follows:—"Immoveable property belonging to an agriculturist shall not be attached or sold in execution of any decree or order...unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates." The learned District Judge reads this section as presupposing the existence of a contractual debt in all cases, and he, therefore, decides that, since no such debt was in existence here, the section is inapplicable. The phraseology of the section does perhaps lend some colour to the District Judge's view, but it appears to us that the true reading of the section is that for which the plaintiff contends. The learned Judge's construction is only to be arrived at if we read into the main general clause the restrictive words implying the existence of a debt, and those restrictive words do not occur in the main general clause, but occur only in the limiting proviso. We

cannot, therefore, but think that the true construction of the section is, first, a general provision that immovable property belonging to an agriculturist shall always be immune from sale, and, secondly, a proviso directing that this immunity is subject to exception where the two following conditions are both satisfied, that is to say, (a) where the decree or order in question relates to the repayment of a debt, and (b) where the agriculturist's property has been specifically mortgaged for the repayment of that debt. The provision would have been clearer if it had been expressed at greater length, but it seems that the draftsman preferred terseness and concision. Nevertheless the limiting words referring to a debt occur only in the proviso and cannot, I think, be imported into the main rule so as to restrict its express generality. This view seems to derive support both from the general character of the Dekkhan Agriculturists' Relief Act itself and from the wideness of the preceding sections 20 and 21.

We, therefore, think that the lower Court's decree must be reversed and the case must be remanded in order that the plaintiff may have an opportunity of proving that he is an agriculturist within the statute.

Costs to be costs in the Darkhast.

Decree reversed.

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