APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Beaman.

DEVARE HEGDE BIN PARAMAYA HEGDE AND ANOTHER, HEIRS OF THE DECEASED SUBAYA DEVAPPA HEGDE (HEIRS OF THE ORIGINAL DEFENDANT No. 1), APPELLANT *v.* VAIKUNT SUBAYA SONDE AND OTHERS (HEIRS OF THE ORIGINAL PLAINTIFF SHRINIVAS SUBAYA, DECEASED), RESPONDENTS.*

1917. January 19.

Civil Procedure Code (Act V of 1908), section 60 (c)—Decree—Execution—Attachment—'Agriculturist', meaning of.

A judgment-debtor put in an application before a Subordinate Judge claiming that his house attached in execution should not be sold by reason of the provisions of section 60 (*c*) of the Civil Procedure Code, 1908, as he was an agriculturist. The lower Courts dismissed the application on the ground that the judgment-debtor had ceased to be an agriculturist in the ordinary sense of the term and had become a mere agricultural labourer. On appeal to the High Court,

Held, that the judgment-debtor should be protected from the attachment of the house as the term 'agriculturist' as used in section 60 of the Civil Procedure Code should be held to include persons engaged in cultivating the soil for remuneration although they may have no proprietory interest in the soil.

SECOND appeal against the decision of C. V. Vernon, District Judge of Kanara, confirming the decree passed by B. G. Kadkol, Subordinate Judge of Sirsi.

Application in execution proceedings.

One Shrinivas Subaya Sonde ancestor of the present respondents obtained a money decree against one Subaya Devappa Hegde (original defendant No. 1) and his undivided brothers for Rs. 2,762 on the 23rd July 1907.

An application for execution of the decree was made on the 21st August 1907 when Rs. 946 only were recovered.

Subsequently in the year 1912 the present Darkhast was filed to recover the balance by attachment and sale of the ancestral house of the judgment-debtors. In the

* Second Appeal No. 115 of 1916.

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course of the Darkhast proceedings an application was made by Subaya one of the judgment-debtors for removing the attachment under section 60 (*c*) of the Code of Civil Procedure, 1908, on the ground that he was an agriculturist and the house in question could not be sold in execution inasmuch as it was used for agricultural purposes.

The Subordinate Judge dismissed the application holding that the judgment-debtor Subaya was not an agriculturist within the strict meaning of the term and therefore not entitled to claim exemption under section 60 (*c*) of the Civil Procedure Code, 1908.

The District Judge, on appeal, confirmed the order.

The judgment-debtors, heirs of Subaya, appealed to the High Court.

S. N. Karnad, for the appellants:—We claim protection under section 60 (*c*) of the Civil Procedure Code, 1908. The word "agriculturist" is not defined in that Act and should therefore be construed to mean a cultivator of the soil in the ordinary sense of the term: see Maxwell on Interpretation of Statutes, pages 5, 526. The intention of the Legislature is to protect *bona fide* cultivators from attachment and sale of their houses in execution proceedings. There is no distinction in the eye of the law, between an "agriculturist" and an "agricultural labourer." The word means "a farmer:" *vide* Murray's Dictionary. The finding of the lower Court is that we are in physical occupation of our ancestral house. That being so, we submit that the case of *Radhakisan Hakumji* v. *Balvant Ramji*[1] is not against our contention.

G. P. Murdeshwar, for the respondents:—I submit first that the appellant cannot raise the question now. It is *res judicata*. When the case was

[1] (1883) 7 Bom. 530.

fixed for hearing, the defendant No. 1 (appellant), who was also guardian of defendant No. 4 did not appear. Defendant No. 2 alone appeared and issues were raised. On the day of trial, no defendant appeared and the Court ordered that the plaintiff's application be allowed and the defendant's house be attached and sold. Subsequently defendant No. 1 put in an application that the Court should not have ordered the sale of his house, he being described as an agriculturist in the decree itself. The order of the Court amounted to a decree (see section 2 of the Civil Procedure Code, 1908) and unless it was set aside under Order IX, Rule 13, the present application was not sustainable.

Secondly, I submit that the view of the lower Court is right, otherwise, every judgment-debtor would set up the plea that he is an agriculturist doing agricultural labour and thus defeat the decree-holder. The definition given in the dictionaries does not support the appellants' contention.

SCOTT, C. J.:—Subaya Devappa Hegde who was the senior member of a family of judgment-debtors put in an application before the Subordinate Judge claiming that a house attached in execution should not be sold by reason of the provisions of section 60 (*c*) of the Civil Procedure Code as he was an agriculturist. The first Court decided against the judgment-debtor. An appeal was preferred by him to the District Judge who (referring to all the judgment-debtors including the appellant) says "the defendants now live solely by agricultural labour. They have no lands either as owners or tenants. They work for others. They continue to live in the house, which is their ancestral house, from the time when they held lands of their own. They have ceased to be agriculturists (farmers of land) in the ordinary sense of the term, and have become mere

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agricultural labourers." The term "agriculturist," as used in section 60 of the Civil Procedure Code, is not defined in that Act, and the question is whether it should be confined to persons who cultivate land in which they have an interest either as proprietor or tenant, or whether it can be extended to all persons engaged in the cultivation of land. If the policy of the Legislature is to provide for the efficient cultivation of the soil of the country, there seems no reason why the word "agriculturist," if it is capable of that meaning, should not include persons engaged in cultivating the soil for remuneration, although they may have no proprietory interest in such soil. The Dekkhan Agriculturists' Relief Act, 1879, which has a number of provisions in *pari materia* with the provisions of clauses (*b*) and (*c*) of section 60 of the Civil Procedure Code, and the corresponding provisions of the Codes of 1877 and 1882, is by its definition clearly intended to apply both to persons who cultivate land as farmers, to use the expression of the District Judge, and to persons personally engaged in agricultural labour. Turning to the Dictionary meaning of the word "agriculturist" as showing what is the ordinary sense of that word we find in Murray's Dictionary "agriculturist" is a professed cultivator of the land, a farmer (for which agriculturalist is also used).

A person who earns his livelihood by tilling the soil can hardly be said not to be a professed cultivator of the land. I do not think that in ordinary parlance there is any difference in meaning between "an agricultural population" and "a population of agriculturists." If therefore a professed cultivator of the land earning his remuneration from another employer owns a house in which he lives he should be protected from the attachment of that house by reason of the provisions of section 60 (*c*). We do not find that the leading Bombay

case on the subject, *Radhakisan Hakumji* v. *Balvant Ramji*[1], is inconsistent with this conclusion. The learned Judges say: "The exemption is of a house or building occupied by an agriculturist, and this, we think, means a house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling. It does not include other houses, which in one sense may be occupied; what is meant is a physical occupation, by an owner, of his house as a dwelling appropriate or convenient for his calling." It seems to us that those words may be used to support the position of the defendants in the present case. The other cases to which reference has been made, *Jivan Bhagà* v. *Hira Bhaiji*[2]; *Pandurang Balaji* v. *Krishnaji Govind*[3]; and *Jamna Prasad Raut* v. *Raghunath Prasad*[4] do not conflict with this decision. It is said that the defendant No. 1 who was the appellant before the District Judge is now dead; but that is no reason why in appeal we should not hold that the attachment which was under consideration before the District Judge was improperly levied on his house.

It has been said, however, that the defendant No. 2 at all events is concluded by an order made in execution proceedings by the Subordinate Judge. But defendant No. 2 is interested with defendant No. 4, who has now come of age, in the same house, and both he and defendant No. 4 live in the house as a dwelling from which they can carry on their calling. That house as a result of this judgment will be protected from attachment, and therefore, defendant No. 2 will get the benefit of the order. We reverse the decree of the lower appellate Court and dismiss the Darkhast with costs throughout.

Decree reversed.

J. G. R.

(1) (1883) 7 Bom. 530.
(2) (1887) 12 Bom. 363.
(3) (1903) 28 Bom. 125.
(4) (1913) 35 All. 307.