

already recorded, and such further evidence as may be given, in the light of the remarks in this judgment. We set aside the decree and remand the case for disposal to the lower Court. Costs costs in the cause.

*Decree set aside.*

R. R.

HATHISIN  
JEEBHAI  
v.  
KUBER  
JETHA.

## APPELLATE CIVIL.

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

CHANBASAYYA BIN PADADAYA AND OTHERS (ORIGINAL DEFENDANTS),  
APPELLANTS v. CHENNAPGAVDA RAMCHANDRAGAVDA (ORIGINAL  
PLAINTIFF), RESPONDENT.\*

1919.

*August*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), sections 2, 10A—  
Agriculturist at the time of the transaction—Sale or mortgage—Oral evidence  
to prove that the transaction was a mortgage.*

The defendant conveyed his land to the plaintiff under a document which was in the form of a sale deed. Sometime before the execution of the deed, sections 2 and 20 of the Dekkhan Agriculturists' Relief Act, 1879, were extended to the District in which the defendant lived. The plaintiff having sued to recover possession of the land, the defendant sought to prove by oral evidence that the transaction was a mortgage under section 10A of the Act:—

*Held*, that the defendant could not take the advantage of section 10A of the Dekkhan Agriculturists' Relief Act, 1879, since he could not prove that he was an agriculturist at the date of the transaction, as at that time it could not be said that the Act was extended to the District merely because sections 2 and 20 had been extended.

APPEAL from the decision of V. M. Ferrers, Assistant Judge at Dharwar.

Suit to recover possession of land.

The land in dispute was sold by the defendant to the plaintiff in 1903. Sometime before the date of the transaction, sections 2 and 20 of the Dekkhan

\* First Appeal No. 254 of 1917.

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Agriculturists' Relief Act, 1879, had been extended to the District of Dharwar. On the 15th August 1905, a major portion of the Act was extended. Section 10A of the Dekkhan Agriculturists' Relief Act was enacted on the 27th August 1907.

In 1914, the plaintiff sued to recover possession of the land sold to him. The defendant contended that the transaction was in reality a mortgage and sought to prove the contention by oral evidence under section 10A of the Dekkhan Agriculturists' Relief Act.

The trial Judge was of opinion that the mere extension of sections 2 and 20, did not enable the defendant to prove that he was an agriculturist at the date of the transaction which was 1903; and that he could not, therefore, take advantage of the provisions of section 10A of the Act. The suit was accordingly decreed.

The defendant appealed to the High Court.

*D. A. Tuljapurkar*, for the appellants.

*R. A. Jahagirdar*, for the respondent.

MACLEOD, C. J.:—The plaintiff sued to recover possession of the plaint land and Rs. 900 as mesne-profits for three years before suit from the defendants. The suit was filed in the Court of the Assistant Judge of Dharwar. The defendant sought to prove by parole-evidence that the sale-deed which he had admitted having executed should be construed as a mortgage. This was a defence which he could set up if he was an agriculturist at the time of the transaction which was in 1903.

It is argued that the defendant could prove he was an agriculturist within the meaning of section 2 of the Dekkhan Agriculturists' Relief Act.

because the Act had been extended to the district of Dharwar before the execution of the sale-deed. When the Act was passed sections 1, 11, 56, 60 and 62 only were extended to the whole of British India. The rest of the Act extended only to the Districts of Poona, Satara, Sholapur, and Ahmednagar, but might, from time to time, be extended wholly or in part by the Local Government to other districts. In 1903, sections 2 and 20 of the Act were extended to Dharwar. Clearly the object of that extension was to enable agriculturists to obtain the benefit of section 20 which enacts that the Court may at any time direct that the amount of any decree passed, whether before or after the Act comes into force, against an agriculturist, or the portion of the same which it directs under section 19 to be paid, shall be paid by instalments with or without interest. Section 19 had been repealed, and section 20 ought to have been amended accordingly.

It has been argued then that the defendant can prove that he was an agriculturist at the date of the execution of the sale-deed, and that argument depends upon the definition of "agriculturist," which under section 2 must 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 the Act had been extended by the Notification of 1903 to the Dharwar district, and that, therefore, the defendant could now prove that he was an agriculturist at the date of the transaction, so that he can be allowed to prove by parole evidence under section 10A that the sale-deed should be construed as a mortgage. It may have been the intention

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of the Local Government to enable a person resident in Dharwar to prove that he was an agriculturist in order to take advantage of section 20. Clearly such a person could only prove that he was an agriculturist if he was earning his livelihood wholly or principally by agriculture carried on, if he was a resident of Dharwar, in the Dharwar district, provided the Act had been extended to that district, and therefore it may be said that the Local Government considered that the Act had been extended to Dharwar. But we have to consider what is the plain meaning of section 2. In my opinion it cannot be said that in 1903 the Act was extended to Dharwar merely because sections 2 and 20 were extended. What is meant by the extension of an Act to a district is the extension of the substantial portion of the Act and not merely the extension of a particular section or one or more sections. Otherwise the Act would extend to the whole of British India because sections 1, 11, 56, 60 and 62 extend thereto. The plaintiff could only succeed if section 2 had contained the words "district to which this Act may for the time being either wholly or in part extend." In my opinion, therefore, the decision of the learned Assistant Judge was correct and the appeal must be dismissed with costs.

HEATON, J. :—We have in this case, as has happened so often before, to consider the meaning of the word "agriculturist." Broadly speaking, at any rate for the purposes of this Court, there are two ways of ascertaining the meaning of that word: one way is to turn to the Dictionary, the other way is to turn to the Dekkhan Agriculturists' Relief Act. But the Dekkhan Agriculturist's Relief Act only provides you with an "agriculturist" if that person (broadly speaking) is residing within the limits to which the Act has been extended. The word as used in the

Act has no application whatever to cultivators and others who live outside those limits. In this particular case the person claiming to be an agriculturist lived and carried on his work in the Dharwar district, and the transaction we are concerned with was of the year 1903. So we have to consider whether the Act extended to the Dharwar district in 1903. There can be no doubt that the Act cannot extend to a district because a few sections only extend. I think the Act itself provides us with good reason for saying this, because it provides that sections 1 and 4 and other sections extend to the whole of British India, and that the rest of the Act extends only to the four named districts. I do not think that would have occurred in the Act itself if the Legislature had intended that the extension of these few sections would have to be regarded as an extension of the Act. I think the very contrary appears.

Then it may be said that the Act cannot extend to a district unless every single word of it extends. I do not think that applies either. I think what is meant is that there must be an extension of the Act sufficient to provide that its main purpose applies to the district, or a really substantial part of the main purpose. That happened in the Dharwar district in 1905, not in the year 1903. We have the effect of section 10A dealt with in the Full Bench case of *Sawantrava v. Giripappa Fakirappa*<sup>(1)</sup>. The result is rather curious because section 10A is held to apply to transactions which were entered into after the Act is extended in a particular region, and not to apply to transactions before that time, and this has been described as very arbitrary. But for all that, there is a very good reason for it, and the reason is this. Section 10A was enacted to meet an evil which had arisen by reason of the operation of the Dekkan Agriculturists' Relief Act in the four

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<sup>(1)</sup> (1913) 38 Bom. 18.

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districts to which for many years it had been applied, and it was feared that when the Act came to be applied to other districts the same evil might arise there also. But it did not appear that the evil which was prevalent in the four districts had at that time become at all common elsewhere. That I believe to be a correct statement of facts so far as they were then known, and I believe so far as they are now known, and therefore, it would be natural and it would exactly fulfil the intention of those who suggested section 10A that it should result precisely as laid down in the Full Bench decision in *Sawantrava v. Giriappa Fakirappa*<sup>(1)</sup>. The remedy for the evil is only to be applied after the evil comes into existence, and the evil is not likely to come into existence until the Act is extended. The result that we have arrived at in this case is absolutely in accordance with what I believe to be the intention of section 10A. We find that it does not apply to the transaction in this case because that transaction happened at a period before there was any reason to suppose that the evil which section 10A was intended to thwart had arisen in the Dhavur district. I agree, therefore, that the appeal should be dismissed with costs.

*Appeal dismissed.*

R. R.

<sup>(1)</sup> (1913) 38 Bom. 18