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The record was "By consent decree for plaintiff for Rs. 19 and costs." The record ought really to have been "By consent the decision in the other suit is to be taken as governing the decision in this suit." But as the record stood it seemed as if the defendant had consented to the decree being passed against him. The Full Court, presumably for the same reasons as in the other case, reversed the decision of the trial Court. For the reasons which I have already given in Civil Extraordinary Application No. 333 of 1920, we restore the order of the trial Court. Rule will be made absolute in both cases with costs throughout.

SHAH, J.:—I agree.

*Rule made absolute.*

J. G. R.

## APPELLATE CIVIL.

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

1921.
*April 8.*

HIRALAL RAVCHAND SHAH (ORIGINAL PLAINTIFF), APPELLANT *v.* PARBHULAL SAKHIDAS SHAH AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS*.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2†—Agriculturist—Definition—Income derived from fruits of mango trees—Agricultural income.*

The term "Agriculturist," as defined in section 2 of the Dekkhan Agriculturists' Relief Act, 1879, includes a person who derives the greater part of his income from the fruits of mango trees, even though he bestows no care or labour on them.

* Second Appeal No. 358 of 1919.

† The material portion of the section runs thus :—

"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.

*Per* MACLEOD, C. J.:—"The test seems to be whether the income is derived from the produce of the land and not what is the actual quantum of labour which has to be bestowed in getting in the crop."

SECOND Appeal from the decision of B. C. Kennedy, District Judge of Ahmedabad, confirming the decree passed by J. N. Bhatt, Subordinate Judge at Umreth.

Suit for declaration.

The plaintiff, who was a Bania by caste, executed four deeds of mortgage in favour of defendant No. 1. He sued for a declaration that the deeds were hollow; but in case they were found to be genuine, he prayed for accounts under the provisions of the Dekkhan Agriculturists' Relief Act, 1879.

It was alleged by the plaintiff that he was an agriculturist. He was by profession a petition writer and made an income of Rs. 5 for month. He also owned full-grown mango-trees, the fruits of which yielded a yearly income of Rs. 75 on an average.

The trial Court held that the plaintiff was not an agriculturist, on the following grounds:—

"The lands on the borders of which these trees stand are mortgaged with possession to defendant No. 1, and the plaintiff has to do no labour either by himself or through others to make the trees yield fruits and income. If the plaintiff had to water the trees or do any other manual work, perhaps there would have been some ground to hold him an agriculturist for that reason. Here, however, the trees have sufficiently grown and require no nurture. They spontaneously without any care or attention devoted to them yield the fruits. In the case of such trees, the person enjoying the fruits or their income cannot, in my opinion, be called an agriculturist."

This finding was, on appeal, upheld by the District Judge, for the following reasons:—

"I do not think this income from trees is agricultural income. The trees grow on the lands of others and he has merely a right to the produce. According to the custom in this country the trees being full grown receive no attention whatever from the plaintiff, he does not water or manure or lop or

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otherwise deal with them. He merely takes the fruit when ripe. This I think cannot be called agriculture which connotes a certain amount of cultivation. Plaintiff does not seem to me any more of an agriculturist than he would be if he held debentures in a fruit growing company."

The trial Court dismissed the suit on merits. But on appeal, the plaintiff was given the usual redemption decree.

The plaintiff appealed to the High Court.

*K. N. Koyajee*, for the appellant.

*H. V. Divatia*, for respondent No. 1.

MACLEOD, C. J.:—The plaintiff sued for possession of a certain mortgaged property, and for a declaration that the mortgages were nominal and passed without consideration; if they were passed for consideration, then for an account of what might be found due to the first defendant. The first issue was whether the plaintiff was an agriculturist. Undoubtedly the major part of his income was derived from the produce of mango trees. But it has been held in both Courts that he is not an agriculturist within the meaning of that word in the Dekkhan Agriculturists' Relief Act because the trees were full-grown and received no attention from the plaintiff. He merely took the fruit when it was ripe. Undoubtedly, if a person derives the greater portion of his income from land by sale of the crops of any sort, and standing crops include fruit, he must be considered an agriculturist. If he owns certain fruit trees and lets out the right to take the fruits to tenants, he would be an agriculturist if the greater part of his income consisted of the rents so received, and the Court would not have to inquire how much labour or care was bestowed on the cultivation of the trees. If he does not let out the right to take the fruit to tenants, but picks the fruit himself, it is difficult to see

how he can in any sense be less of an agriculturist than if he let out the right. The test seems to be whether the income is derived from the produce of the land, and not what is the actual quantum of labour which has to be bestowed in getting in the crop. If that were not so, it would be extremely difficult to know where to draw the line. For instance, if a man planted mango trees they would require a considerable amount of care, attention and labour until they arrived at a certain stage of growth, and the owner, as long as he was bestowing care, attention and labour on them, would be an agriculturist. But according to the defendant's argument when the trees became fruit-bearing and no longer required care and attention but only the labour of picking the fruit the owner, though deriving his income from the fruit, would no longer be an agriculturist. That seems to be the view of the Judge when he says: "According to the custom in this country the trees being full grown receive no attention whatsoever from the plaintiff. He does not water or manure or lop or otherwise deal with them." I cannot agree with that view. Once it is proved that the plaintiff derives the greater part of his income from these mango trees, he must be considered an agriculturist, and will be entitled to the benefit of the Act. The appeal must, therefore, be allowed and the case sent back to the trial Court to take an account of what is due under the suit mortgages under the Dekkhan Agriculturists' Relief Act. Costs will be costs in the suit.

SHAH, J.:—I agree.

*Appeal allowed.*

R. R.