

APPELLATE CIVIL

FULL BENCH

Before the Hon'ble Mr. M. C. Chagla, Chief Justice, Mr. Justice
Gajendragadkar and Mr. Justice Dixit.

1951
Feb. 8

SHIDVIRAPPA GURUSSATAPPA CHINVAR AND ANOTHER (ORIGINAL
DEFENDANTS), APPELLANTS *v.* SHIVALINGAPPA BASALINGAPPA CHI-
NWAR (ORIGINAL PLAINTIFF) RESPONDENT.*

*Mudhol State Agriculturists' Relief Act (I of 1940-41), ss. 6, 14—Dek-
khan Agriculturists' Relief Act (XVII of 1879), s. 10A—Retrospective
effect—Question of sale or mortgage—Transaction effected before
passing of Act—Whether Act applies to such transaction—Construc-
tion of statutes.*

The Mudhol State Agriculturists' Relief Act came into force in 1940. In 1943 the plaintiff, an agriculturist, sued for accounts of a transaction dated 1937 alleging it to be a mortgage though ostensibly it was a sale. In order to prove by oral evidence the real nature of the transaction the plaintiff relied upon s. 6 of the Act (corresponding to s. 10A of the Dekkhan Agriculturists' Relief Act, 1879) which required him to be an agriculturist not only at the date of the suit but also at the time of the transaction. The defendants contended that it was not open to the plaintiff to avail himself of the benefit of the section as it applied only to transactions entered into after the Act came into force and secondly because he could not be an "agriculturist" at the date of the transaction as the Act had not then come into force:

Held, (1) that s. 6 was purely procedural and retrospective in effect and, therefore, applied even to transactions entered into before the Act came into force;

(2) that it was open to the Legislature to say that if a particular person answered the qualifications laid down in the Act which it had passed at the time when he entered into the transaction, then he would get the benefit provided in s. 6;

(3) that, therefore, the plaintiff could show that he was an agriculturist at the date of the transaction.

Sawantrawa v. Giriappa,⁽¹⁾ overruled.

Dayabhai Jivabhai v. Shana Bana,⁽²⁾ approved.

Mahadev v. Vinayak,⁽³⁾ and *Damodar v. Manubhai*,⁽⁴⁾ distinguished.

Ganpat v. Tulsi,⁽⁵⁾ *Tulsiram v. Shankar*,⁽⁶⁾ and *Gopal Rajaram*,⁽⁷⁾ referred to.

* Appeal No. 8 of 1949 from Order.

⁽¹⁾ (1912) 15 Bom. L. R. 778, F. B. ⁽²⁾ (1946) 48 Bom. L. R. 627.

⁽³⁾ (1909) 11 Bom. L. R. 721. ⁽⁴⁾ (1909) 11 Bom. L. R. 1143.

⁽⁵⁾ (1923) 26 Bom. L. R. 118, F. B. ⁽⁶⁾ (1943) 46 Bom. L. R. 621.

⁽⁷⁾ (1911) 14 Bom. L. R. 14.

When the language of a section is clear, it is not for the Court to consider what the object or the intention of the Legislature might have been. But when there is any doubt or ambiguity, it is perfectly competent to the Court to look at the preamble of the statute and to determine what was the object that the Legislature had in mind when putting the particular legislation on the statute book.

APPEAL FROM ORDER passed by V. C. Garawad, Esquire, District Judge, Mudhol State, reversing the decree passed by K. S. Patil, Esquire, Subordinate Judge at Mudhol.

Suit for accounts.

The suit land belonged to one Shivalingapp (plaintiff), a resident of Mudhol State. On August 12, 1937, he sold it to one Shidvirappa (defendant No. 1) for Rs. 2,750 and gave its possession to him.

On November 1, 1940, the Mudhol State Agriculturists' Relief Act came into force. S. 6 of the Act entitled an agriculturist party to a suit to prove the real nature of any transaction in issue by leading oral evidence notwithstanding the provisions of the Evidence Act.

On September 20, 1943, the plaintiff filed the present suit alleging that he was an agriculturist within the meaning of the Act and contending that the transaction dated 1937, although ostensibly a sale, was in reality a mortgage and asking for accounts of the mortgage.

The trial Court dismissed the suit finding that the plaintiff had failed to prove that he was an agriculturist according to the Act.

On appeal, the District Judge reached an opposite conclusion and found that the plaintiff was an agriculturist. He, therefore, remanded the case to the lower Court for disposal according to law.

The defendants appealed to the High Court from the order of remand. In appeal they contended for the first time that s. 6 of the Mudhol State Agriculturists' Relief Act did not apply to transactions which were effected before the Act came into force and that the plaintiff could not be an "agriculturist" within the meaning of the Act as the same had not been enacted at the date of the transaction.

The appeal first came up for hearing before Gajendragadkar J. who referred it to a division bench on November 29, 1950.

1951

SHIDVIR-
APPA
GURUSSAT-
APPA
v.
SHIVALING-
APPA
BASALING-
APPA

1951

SHIVVIR-
APPA
GURUSSAT-
APPA

v.

SHIVALING-
APPA
BASALING-
APPAChagla
C. J.

The division bench consisting of Chagla C. J. and Gajendra-gadkar J. referred it to a full bench on January 16, 1951.

The appeal was heard.

G. R. Madbhavi, for the appellants.

N. S. Annikhindi, for *K. G. Datar*, for the respondent.

CHAGLA C. J. The plaintiff filed a suit in the Court of the Second Class Subordinate Judge, Mudhol State, alleging that he was an agriculturist within the meaning of the Mudhol State Agriculturists' Relief Act and contending that a certain transaction he had entered into with the defendants on August 12, 1937, although ostensibly a sale, was in reality a mortgage and asking for accounts of this mortgage transaction. The trial Court held that the plaintiff was not an agriculturist and dismissed his suit. In appeal the learned District Judge of Mudhol took a contrary view and held that the plaintiff was an agriculturist and remanded the suit to the trial Court for disposal. It is from this decision that this appeal is preferred, and as the matter involved consideration of a rather important question of law, the matter has been referred to this full bench.

The Mudhol State Agriculturists' Relief Act came into force on November 1, 1940, and the suit was filed on September 20, 1943. The suit is under s. 14 of that Act which enables an agriculturist whose property is mortgaged to sue for an account of the amount of principal and interest remaining unpaid on the mortgage and for a decree declaring that amount. "Agriculturist" is defined in s. 2. The definition lays down that he must possess land used for agricultural purposes within the limits of the Mudhol State and cultivate such land personally or he ordinarily engages personally in agricultural labour, and his income from sources other than agriculture and manual labour should not ordinarily exceed 33 per cent. of his total income. Having filed the suit under s. 14, the plaintiff wanted the benefit of s. 6 of that Act, and that section provides:

"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 sections 91 and 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."

Therefore, the plaintiff's contention was that the transaction of August 12, 1937, was in reality a mortgage and he wanted liberty to prove the real nature of the transaction notwithstanding the bar contained in the Indian Evidence Act and other provisions of the law. There is a proviso to this section and the proviso is in these terms:

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

The main section itself is complied with in the case of the plaintiff, because he was admittedly an agriculturist at the date of the filing of the suit. The difficulty arises with regard to the application of the proviso, and what we have to determine is whether he was an agriculturist at the time of the transaction which he has challenged, because s. 6 requires two conditions: Not only that the party challenging the transaction and requiring the Court to permit oral evidence should be an agriculturist himself at the date of the suit, but he must also be an agriculturist at the date when the transaction was entered into which he is challenging.

Now, the contention of Mr. Madbhavi is that the proviso refers to transactions entered into after the Act came into force. Mr. Madbhavi says that as in this case the transaction was of 1937 before the Act came into force, it is immaterial and irrelevant whether the plaintiff was an agriculturist at that date or not. It is only if the transaction was entered into after November 1, 1940, that the proviso would apply and the Court would have to investigate whether the party challenging the transaction was an agriculturist at the date of the transaction. Now, looking to the plain language used by the Legislature, no limitation or qualification is placed upon the expression "at the time of such transaction". Obviously, if we were to give this expression its natural meaning, it would mean "at the time of such transaction whenever that transaction was entered into." But Mr. Madbhavi suggests that we must qualify this expression because according to him the canons of construction require that we must not give a retrospective effect to a piece of legislation which affects or interferes with vested rights. Mr. Madbhavi is quite right, and if this particular piece of legislation we are dealing with did affect vested rights, then

1951

SHIVVIR-
APPA
GURUSSAT-
APPA

v.

SHIVALING-
APPA
BASALING-
APPAChagla
C. J.

1951

SHIDVIR-
APPA
GURUSSAT-
APPA

v.

SHIVALING-
APPA
BASALING-
APPA*Chagla*
C. J.

we must not give retrospective effect to such a piece of legislation unless the Legislature in clear and explicit terms did intend to affect vested rights. Now, what is the right that is being affected by s. 6. All that s. 6 does is to abrogate, as it were, certain provisions of the Indian Evidence Act with regard to the production of evidence. The Indian Evidence Act precludes the leading of oral evidence to contradict the terms of a written document and the more so when that document has taken the solemn form of a registered document. Section 6 permits a particular class of persons defined in the Act to override those provisions of the Indian Evidence Act and lead oral evidence in order to satisfy the Court what the real nature of the transaction was, notwithstanding what form it took in the written document. It should be noted that the transaction itself is not being affected. The rights of the parties under the real transaction are in no way being interfered with. Only permission is being given to the agriculturist to satisfy the Court as to what the real transaction was. We could have understood if s. 6 in any way limited or qualified the rights of the mortgagee or vendee which had accrued to him under the transaction. But that is not the purpose of s. 6. Section 6, in our opinion, is purely procedural and it deals with rules of evidence. Can it then be said that in construing the proviso we must look upon it as affecting substantive rights and therefore refuse to put upon it a construction which may give it a retrospective effect? It cannot be said—and Mr. Madbhavi has not urged it—that his client has any vested right in procedure. He has no vested right in certain rules of evidence being observed by a Court of law and, to repeat again, all that s. 6 does is to ask the Court to observe certain rules of evidence contrary to the Indian Evidence Act where certain parties are before the Court.

It is then argued that if the definition of "agriculturist" was not in force at the date of the transaction, it is difficult to understand how a party could be an agriculturist at the date of the transaction. It is pointed out that the definition only came into force when the Act came into force, viz. on November 1, 1940. How then, it is asked, could the plaintiff be an agriculturist on August 12, 1937, when he entered into the transaction in suit? That argument, in our opinion, does not present any difficulty because it is open to the Legislature to lay down a certain definition and to state that parties answering that definition at a particular time will be entitled to certain benefits. What the Legislature in the proviso does is to state that if a

particular person answers the qualifications laid down in the Act which it has passed at the time when he entered into the transaction, then he would get the benefit provided in s. 6. There is one other aspect of the matter which also requires consideration. If Mr. Madbhavi was right in his contention, the result would be that all transactions prior to November 1, 1940, would not come within the purview of the Act to the extent that s. 6 may apply to them; in other words, the result would be that an agriculturist would not be able to challenge any transaction and get relief in respect of that transaction prior to November 1, 1940. It is perfectly true that when the language of a section is clear, it is not for the Court to consider what the object or the intention of the Legislature might have been. But when there is any doubt or ambiguity, it is perfectly competent to the Court to look at the preamble of the statute and to determine what was the object that the Legislature had in mind when putting the particular legislation on the statute book. Turning to the preamble of this Act, it states that it is expedient to relieve the agricultural classes in the Mudhol State from indebtedness. Therefore it was to indebted agriculturists that relief was sought to be brought by this Act. The object was not to relieve agriculturists who may have become indebted after the Act came into force; the object was to give relief to those who were already indebted; and certainly if an agriculturist was indebted by reason of a transaction which in reality was a mortgage and not a sale and his property had been taken away by the alleged vendee, then it is clear that the object of the Mudhol State Act was to give relief to such an agriculturist. From this point of view also we feel that a restricted meaning should not be given to the expression "at the time of such transaction" used in the proviso and that the expression used in it means "at the time of the transaction whenever that transaction might have been entered into."

There is a large volume of case law on this subject, because to a large extent the Mudhol State Agriculturists' Relief Act has followed our own Dekkhan Agriculturists' Relief Act, and Mr. Madbhavi strongly relies upon the decisions of two full benches of our Court. As far as our Act is concerned, the definition is to be found in s. 2 which substantially corresponds to the definition contained in s. 2 of the Mudhol State Act. But there is a second definition in our Act which does not find a place in the Mudhol State Act. That is not an exhaustive but an inclusive definition and that definition is that the term "agriculturist", when used with reference to any suit or proceeding,

1951

SHIDVIR-
APPA
GURUSSAT-
APPA
v.
SHIVALING-
APPA
BASALING-
APPA

Chagla
C. J.

1951

SHIDVIR-
APPA
GURUSSAT-
APPA

v.

SHIVALING-
APPA
BASALING-
APPAChagla
C. J.

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 reason for including this definition is obvious. If we turn to Chap. III in which s. 10A appears, which corresponds to s. 6 of the Mudhol State Act, it is necessary that the person who wishes to take advantage of that section must be an agriculturist at the date of the suit. This inclusive definition seems to contemplate those cases where a person who was an agriculturist at the date of the transaction has ceased to be an agriculturist at the date of the suit, and the advantages of s. 10A are to be given not to all agriculturists who cease to be agriculturists at the date of the filing of the suit but only to a limited class who satisfy the definition of "agriculturist" as then defined by law, i. e. defined by law at the date of the transaction. But with regard to the first definition it is clear that it would apply to those cases where a person was an agriculturist at the date of the filing of the suit. No difficulty would arise in that case and it would not be necessary for him to fall back upon the inclusive definition contained in s. 2 (2). As we shall presently point out, the decisions of this Court have taken the same view with regard to these two definitions contained in s. 2. With regard to the other sections, s. 15D corresponds to s. 14, and, as I said, s. 10A corresponds to s. 6.

Turning to the full bench decisions to which we have referred, the first is *Sawantrawa v. Giriappa*.⁽¹⁾ In that case the transaction was of the date 1899. It is necessary to consider the history of the application of our Act, Dekkhan Agriculturists' Relief Act. The Act was passed in 1879. Sections 1 and 11 came into force immediately. Sections 2 and 20 were applied first to Khandesh and then to other districts in between 1902 and 1905. And s. 10A was enacted in 1907 and applied in 1911. As we said before, the transaction in question before the full bench was in 1899 and the suit was filed on March 16, 1912, and the question was whether the agriculturist was entitled to avail herself of the provisions of s. 10A of the Dekkhan Agriculturists' relief Act, and the learned Chief Justice delivering the judgment of the full bench held that she was not entitled, and the view he took was that one must have regard to the date of the transaction and a person could only be allowed, according to the provisions of s. 10A, to enjoy the special benefit of the favoured class in disregarding the provisions of s. 92 of the Indian

⁽¹⁾ (1913) 15 Bom. L. R. 778, F. B.

Evidence Act, if he belonged to the favoured class as defined by the statute at the date of the transaction. Therefore, according to the full bench, it was only when the transaction was entered into after the statute was enacted that the party could avail himself of the benefits of s. 10-A. With very great respect to the decision of the full bench, the only argument which seems to have been seriously considered in the judgment was that the person who claimed to be an agriculturist prior to the coming into force of the Act should be so determined in the usual and popular sense and not in the light of the definition given by the statute. That argument, with respect, was rightly rejected. If a party wishes to benefit himself by the provisions of s. 10A he has to establish his status as an agriculturist not in any other sense except the sense laid down in the Act. But then when the question came to be considered as to the date of the transaction, again with respect to the full bench, there does not seem to be any attempt at construing the language of the proviso. The real question which we thought it necessary to consider in this judgment was not even looked at, viz. whether the proviso to s. 10A itself was purely procedural or it affected substantive rights, and the full bench seemed also to have assumed, with respect, erroneously that the proviso qualified the expression "at the time of such transaction" by the words "as defined by law." With respect, there does not seem to be any warrant for reading into the plain language of the proviso a limitation or a qualification which the Legislature did not intend.

Coming to the later decision of the full bench in *Ganpat v. Tulsi*,⁽¹⁾ that was a case from Khandesh, the transaction was of the date 1905, and ss. 2 and 20 had been made applicable in 1902 and s. 10A in 1911, and the suit was filed in 1919, the suit being a suit for redemption under s. 15D, and the same question arose as to whether the plaintiff was entitled to the benefit of s. 10A. The only question that the full bench considered was whether the extension of ss. 2 and 20 of the Dekkhan Agriculturists' Relief Act to the District of Khandesh was sufficient to make a person an agriculturist within the meaning of s. 2, and that question the full bench answered in the affirmative. It was attempted to be argued that the plaintiff was not entitled to the benefit of s. 10A because at the date of the transaction that section was not in force, and this argument was advanced on the strength of the decision in the earlier full bench in

1951

SHIVDIR-
APPA
GURUSSAT-
APPA

v.

SHIVALING-
APPA
BASALING-
APPAChagla
C. J.

⁽¹⁾ (1923) 26 Bom. L. R. 118, F. B.

1951
 SHIDVIR-
 APPA
 GURUSSAT-
 APPA
 v.
 SHIVALING-
 APPA
 BASALING-
 APPA
 Chagla
 C. J.

Sawantrawa v. Giriappa.⁽¹⁾ Mr. Justice Marten, as he then was, refused to consider this question and left it to the divisional bench, which had referred this matter to the full bench, to decide this point. When the matter went back to Mr. Justice Shah and Mr. Justice Crump, Mr. Justice Shah took the view that notwithstanding the fact that s. 10A was not applicable at the date when the transaction was entered into, the agriculturist was entitled to take the benefit of s. 10A, and Mr. Justice Shah relied apparently on the principle of *stare decisis* because he says that (p. 137):—

“It is a matter of common knowledge that during all these years after s. 10A was enacted and extended to the whole presidency, it has been applied to all transactions, whether entered into after that date or before that date, provided the party to the transaction was an agriculturist as defined by the Act, subject of course to the other provisions of the section, without any objection having been raised.”

And the learned Judge goes on to say that he has no hesitation in rejecting the argument which has been urged on behalf of the appellants in support of the view that s. 10A must be applied only to transactions which are entered into after the date on which that section was enacted or extended to this particular district. Read in this bald form this opinion seems to suggest that the decision in *Sawantrawa v. Giriappa*⁽¹⁾ was impaired if not completely overruled. But it must be conceded in fairness to Mr. Madbhavi who has pointed this out to us that in this particular case, although s. 10A was not applicable when the transaction was entered into, s. 2 had been made applicable, and, therefore, Mr. Madbhavi says that when you have a case where the definition section has come into force, then it may be urged with some force that a transaction entered into after s. 2 has come into force, although before s. 10A itself has come into force, may fall within the purview of s. 10A. And Mr. Justice Crump in his concurring judgment makes it clear that he agrees with Mr. Justice Shah because in this particular case s. 2 had been made applicable before the transaction was entered into. But with very great respect, it is difficult to understand on principle why a distinction should be made between cases in which transactions have been entered into before s. 10A was put in force but subsequent to s. 2 being made applicable, and cases in which transactions were entered into before s. 2 was brought into force. It is difficult to understand why the mere fact that a defining section has come into force

⁽¹⁾ (1913) 15 Bom. L. R. 778, F. B.

can possibly affect the position under s. 10A when that section itself was not in force. Either s. 10A is procedural, in which case it has a retrospective effect, or it affects substantive rights in which case it should not be given a retrospective effect. But the mere coming into force of a section which defines an agriculturist cannot make the transaction which is being challenged affect vested rights less than it would have done if the definition section had not come into force. Logically, *Sawantrawa v. Giriappa*⁽¹⁾ in the extreme view that it took may be supported. On the other hand, the other logical view, the one which we are proposing to take, is possible. But, with respect, the view taken in *Ganpat v. Tulsi*⁽²⁾ by Mr. Justice Shah and Mr. Justice Crump is not supportable on principle or authority, though in fairness to Mr. Justice Shah at least it must be said that he was not called upon to consider the larger question which we are dealing with in this reference. It may be that Mr. Justice Shah might have taken the same view and we are inclined to that opinion looking to the language in which his judgment is couched.

There are judgments by two single Judges which have considered this question. One is the judgment of Mr. Justice Lokur in *Tulsiram Motiram v. Shankar*.⁽³⁾ In that case Mr. Justice Lokur was dealing with a case in which the transaction was entered into in 1902 in the District of Kolaba and he held that as no section of the Act was extended in 1902 to that district, the predecessors-in-title of the defendant could not have been agriculturists in 1902 and therefore the defendant was not entitled to the benefit of s. 10A. In coming to this conclusion Mr. Justice Lokur really followed *Ganpat v. Tulsi*.⁽²⁾ Then there is a judgment of Mr. Justice Kania, as he then was, in *Dayabhai Jivabhai v. Shana Bana*,⁽⁴⁾ and that learned Judge seems to have been inclined to take the same view as we are taking of s. 10A, because the learned Judge observes at p. 629 that:—

“Section 10A is a rule of evidence which allows an agriculturist-defendant to prove (by evidence what otherwise will not be admissible) the real nature of the transaction. If it is treated as a rule of evidence, the Court is bound to allow the party to lead evidence when the inquiry is held before it and when s. 10A is operative.”

But it must be pointed out that in this case also which was from Nadiad the date of the transaction was 1906, and although s. 10A was applied in 1911, s. 2 was already in force,

⁽¹⁾ (1913) 15 Bom. L. R. 778 F. B.

⁽²⁾ (1923) 26 Bom. L. R. 118, F. B.

⁽³⁾ (1943) 46 Bom. L. R. 621.

⁽⁴⁾ (1946) 48 Bom. L. R. 627.

1951
 SHIDVIR-
 APPA
 GURUSSAT-
 APPA
 v.
 SHIVALING-
 APPA
 BASALING-
 APPA
 Chagla
 C. J.

1951

SHIDVIR-
APPA
GURUSSAT-
APPA

v.

SHIVALING-
APPA
BASALING-
APPAChagla
C. J.

though with respect the learned Judge has erroneously assumed that even s. 2 was not applicable to Nadiad at the date of the transaction. Even on that assumption the learned Judge came to the conclusion that s. 10A was applicable to the transaction. Therefore it is clear that Mr. Justice Kania was of the same view which we are taking in this case.

Perhaps we might refer to *Gopal v. Rajaram*,⁽¹⁾ which was overruled by *Sawantrawa v. Griappa*⁽²⁾. There the transaction was of 1869 and Mr. Justice Russel and Mr. Justice Chandavarkar held that the provisions of s. 10A being procedural were retrospective and applied to pending proceedings. This decision was overruled because, with respect, the learned Judges were more concerned to consider whether an appeal was an extension of a suit or not because the divisional bench was asked in appeal to apply s. 10A and they were more concerned with the jurisdiction to do so rather than in construing s. 10A itself and deciding whether s. 10A applied or not. The other case referred to at the bar was *Mahadev v. Ninayak*.⁽³⁾ In that case the transaction was of the date 1871 and the party challenging the transaction was not an agriculturist when the suit was brought. He attempted to prove that he was an agriculturist at the date of the transaction and Mr. Justice Batchelor, with respect, rightly pointed out that if he wanted to do so he had to satisfy the inclusive definition contained in s. 2 (2) and as he could not establish that he was an agriculturist as then defined by law, he was not entitled to the benefit of s. 10A. The same view of the inclusive definition in s. 2 (2) was taken in a later case reported in *Damodar v. Manubhai*⁽⁴⁾ by Mr. Justice Chandavarkar and Mr. Justice Heaton. They were not considering s. 10A but they were considering the definition in s. 2 (2) and Mr. Justice Chandavarkar took the same view that the definition in s. 2 (2) only came into play if a party to the proceedings was not an agriculturist.

In coming to the conclusion that we do we are conscious that we are overruling *Sawantrawa v. Griappa*⁽²⁾ because the point that we have now decided was never fully considered in that case. The point that arose for our determination was whether, when a transaction is entered into before any part of the Act came into force and if a party to that transaction was an agriculturist as defined by the Act, it would be open to him to

⁽¹⁾ (1911) 14 Bom. L. R. 14.

⁽²⁾ (1913) 15 Bom. L. R. 778, F.B.

⁽³⁾ (1909) 11 Bom. L. R. 721.

⁽⁴⁾ (1909) 11 Bom. L. R. 1143.

avail himself of the benefit of s. 10A. In coming to the conclusion that we have, we do feel that we have helped the Legislature to carry out its object in putting this remedial measure on the statute book. The benefit to the agriculturist would have been largely illusory if he could not have challenged transactions antecedent to the passing of this remedial measure.

We, therefore, hold that the learned District Judge was right in holding that the plaintiff was an agriculturist. The appeal is, therefore, dismissed with costs.

Appeal dismissed.

M. W. P.

APPELLATE CIVIL

FULL BENCH

Before the Hon'ble Mr. M. C. Chagla, Chief Justice, Mr. Justice Gajendragadkar and Mr. Justice Dixit.

BHAGWAN SHANKAR SURDI (ORIGINAL DECREE-HOLDER), APPELLANT
v. RAJARAM BAPU VITHAL NANAJKAR (ORIGINAL JUDGMENT-DEBTOR), RESPONDENT.*

Civil Procedure Code (Act V of 1908), ss. 20, 13—Decree passed by foreign Court in absentem—Unforceability of decree—Subsequent events—Foreign Court ceasing to be foreign—Whether decree becomes enforceable.

A decree passed by a foreign Court against a person who has not submitted to its jurisdiction can become enforceable by reason of a subsequent event (e. g. the foreign Court ceasing to be foreign), and *Chunilal Kasturchand v. Dundappa Damappa*,⁽¹⁾ to the extent that it decides this point, was rightly decided.

Gurdyal Singh v. Raja of Faridkot,⁽²⁾ explained.

A decree passed by the Sholapur Court against a resident of Akalkot State was sought to be executed in the Akalkot Court. *Qua* the Akalkot Court the judgment of the Sholapur Court was a foreign judgment passed by a Court not of competent jurisdiction as the judgment-debtor had not submitted to its jurisdiction. The Akalkot Court, therefore, refused to execute the decree. The decree-holder appealed and whilst the appeal was pending the Sholapur Court ceased to be a foreign Court *qua* the Akalkot Court by reason of the merger of the Akalkot State with the Province of Bombay. In appeal:

* Second Appeal No. 271 of 1949.

⁽¹⁾ (1950) 52 Bom. L. R. 660.

⁽²⁾ (1894) 22 Cal. 222, P. C.

1951

SHIVVIR-
APPA
GURUSSAT-
APPA

v.

SHIVALING-
APPA

BASALING-
APPA

Chagla
C. J.

1951

Feb. 8