

## APPELLATE CIVIL

Before Mr. Justice Gajendragadkar.

1955  
Dec. 14

SAKHUBAI KHANDOBA KACHARE AND OTHERS (ORIGINAL DEBTORS),  
PETITIONERS *v.* LAXMIBAI PATILBOA MATHEPHOD AND ANOTHER  
(ORIGINAL CREDITORS), OPPONENTS.\*

*Bombay Agricultural Debtors' Relief Act (Bom. XXVIII of 1947), ss. 24 (2), 4, 2 (5)—Transaction between agricultural labourer and creditor admitted and in form a mortgage—Whether agricultural labourer can invoke provisions of s. 24 (2)—Construction.*

The provisions of s. 24 (2) of the Bombay Agricultural Debtors' Relief Act, 1947, can be invoked by an agricultural labourer even where the transaction between him and his creditor is admittedly, (and in form) one of mortgage.

*Pratapsing Ramsang v. Jibhai Himat*<sup>(1)</sup> and *Tukaram Bhau Sathe v. Narsu Mahadu Nanavare*,<sup>(2)</sup> referred to.

Civil Revision application against the decision of D. G. Gatne, Esquire, Senior Extra Assistant Judge, Poona, reversing the decision of J. Gupte, Esquire, Joint Civil Judge, Junior Division, Poona.

The facts are sufficiently set out in the judgment.

Y. V. Chandrachud, for the Petitioners.

K. J. Abhyankar, for Opponent No. 1.

*Gajendragadkar J.*—This revisional application raises a short question under s. 24 sub-s. (2) of the Bombay Agricultural Debtors' Relief Act. The petitioners applied for adjustment of their debts under s. 4 of the Act. Their case was that they had executed two mortgages in favour of the opponents on February 7, 1935 and June 7, 1937, for Rs. 200 and Rs. 125 respectively. A repayment of Rs. 165-7-0 had been alleged in the petition and the adjustment of debts was claimed on that footing. Pending this application, the petitioner sought for leave to convert their petition into one under s. 24 sub-s. (2) of the Bombay Agricultural Debtors' Relief Act. It is clear that they were unable to establish their status as debtors within the meaning of s. 2 sub-s. (5) of the Act and they sought to rely upon their status as agricultural labourers. The learned trial Judge allowed the original application to be converted into one under s. 24 sub-s. (2) and held that the petitioners as agricultural labourers were entitled to the adjustment of their debts under the provisions of the said section. On taking accounts as required by the Act, the learned trial Judge came to the conclusion that Rs. 206-8-0 were due from the debtors to the creditors and so an award was passed to that extent. The creditors preferred an appeal and it was urged on their behalf that, since the transactions in question were admittedly mortgages, the petitioners, who claimed to be agricultural labourers,

\*Civil Revision Application No. 1344 of 1954.

1. (1951) Civil Revision Application No. 335 of 1951, decided by Chagla C. J., on June 22, 1951 (unrep.).

2. (1953) Civil Revision Application No. 1663 of 1952, decided by Chagla C. J., on July 10, 1953 (unrep.).

were not entitled to invoke the provisions of s. 24 sub-s. (2) of the Act. The lower appellate Court has upheld this plea and in the result the application for adjustment of debts made by the petitioners has been dismissed. It may be added that the lower appellate Court has also considered the merits of the award and has come to the conclusion that, if the petitioners were entitled to claim adjustment, the amount due from them would be Rs. 192 and not Rs. 206-8-0 as found by the learned trial Judge. It is the dismissal of their application by the lower appellate Court that has given rise to the present revisional application and so the only point which arises for decision is whether the provisions of s. 24 sub-s. (2) can be invoked by an agricultural labourer for the adjustment of his debt when the transaction between him and his creditor is admittedly, and even in form, one of mortgage.

Section 24 sub-s. (2) affords a special facility to agricultural labourers to claim adjustment of their debts and in giving the benefit of this sub-section Legislature has deliberately exempted agricultural labourers from proving their status as debtors within the meaning of s. 2 sub-s. (5). Section 2 sub-s. (5) requires that, before an applicant can be held to be a debtor, he must not only be indebted, but must hold land used for agricultural purposes as required by sub-cl. (ii) of s. 2 (5) (a) and must have cultivated an agricultural land as required by sub-cl. (iii) of s. 2 (5) (a) of the Act. He has also to prove that his annual income from sources other than agricultural and manual labour does not exceed 33 per cent of his total annual income or does not exceed Rs. 500, whichever is greater. Now, it is clear that, if a person who was an agriculturist and who owned lands has been reduced to the position of a landless labourer because he has either transferred his lands by ostensible sale-deeds or has conveyed them by way of security for the debts borrowed by him, it would be impossible for him to satisfy the tests laid down by s. 2 sub-s. (5) of the Act. It is also equally clear that, if any class of agricultural debtors is entitled to the protection of the Act, it is these debtors who have become landless labourers as a result of their indebtedness. That is why s. 24 sub-s. (2) provides that the debt due from an agricultural labourer who owns no land should be adjusted even though he may not be able to prove his status as a debtor as defined by s. 2 sub-s. (5). The last part of sub-s. (5) of s. 2 lays down that, when a declaration has been made in favour of an agricultural labourer as contemplated by the earlier part of the sub-section, the applicant shall, notwithstanding anything contained in the definition of "debtor" in sub-s. (5) of s. 2, be deemed to be a debtor for the purposes of the Act and the Court shall proceed to deal with his application as if it was an application made under s. 4. In other words, once the agricultural labourer obtains a declaration from the Court as mentioned by s. 24 sub-s. (2), he would be

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regarded as a debtor even though he may not satisfy the tests laid down by s. 2 sub-s. (5) and the application made by him under s. 24 sub-s. (2) would be dealt with as if it was an application made by a debtor under s. 4 of the Act. This position is quite clear. The difficulty, however, arises when one considers the first part of s. 24 sub-s. (2). The first part of that sub-section provides that any agricultural labourer may make an application before August 1, 1947, claiming that any transfer of land by him or any other person through whom he inherited it was a transfer in the nature of a mortgage. Then the sub-section adds that, on hearing the application, the Court shall, notwithstanding anything to the contrary contained in any law, custom, or contract, declare the transfer to be a mortgage, if it is satisfied that the circumstances connected with the transfer showed it to be in the nature of a mortgage. It would thus be seen that, if this part of the sub-section is literally construed, it can only apply to applications made by agricultural labourers where they have transferred their property by conveyances in the form of ostensible sale-deed though in substance and in truth the transactions evidenced by the said conveyances are in the nature of mortgages. In such a case, the usual tests recognised by judicial decisions are applied, material circumstances attending the execution of the transaction are taken into account, and a declaration is granted in a proper case to the agricultural labourer that the transaction in question, though ostensibly a sale-deed, is in reality a mortgage. The last part of this sub-section then provides that, once a declaration about the real nature of a transaction is thus made in favour of an agricultural labourer, he would be regarded as a debtor and his application would be dealt with under the provisions of the Act.

It has been held by the lower appellate Court that the provisions of s. 24 sub-s. (2) can be invoked by an agricultural labourer only where the transaction impugned is in form an ostensible sale-deed. The argument is that, unless the transaction impugned has taken the form of an ostensible sale-deed, the Court is not required to adjudicate upon the real nature of the transaction and without such an adjudication there would be no occasion or justification for making a declaration in favour of the agricultural labourer that the transaction is in reality a mortgage, and that it is only where such a declaration is made that the agricultural labourer can be regarded as a debtor under the last part of s. 24 sub-s. (2). This view postulates that the condition precedent for treating applications made under s. 24 sub-s. (2) as made under s. 4 and for conferring the status of a debtor on an agricultural labourer is that a declaration should have been made in favour of the said labourer by a Court of competent jurisdiction that the impugned transaction is a mortgage and not a sale. It may be conceded that, on a literal construction of s. 24 sub-s. (2), this inference

may be regarded as possible. But, on the other hand, this inference is so wholly and patently inconsistent with the object of s. 24 sub-s. (2) that it would be unreasonable to adopt such a mechanical and literal construction of this sub-section. The Bombay Agricultural Debtors' Relief Act was passed because Legislature thought it to be expedient to consolidate and amend the law for the relief of agricultural debtors in the province of Bombay, and, as I have already mentioned, in granting relief to agricultural debtors highest priority was intended to be given to such debtors who had become landless labourers by reason of their indebtedness. If the view taken by the lower appellate Court was accepted, it would lead to this most anomalous result that, whereas an agricultural labourer can claim adjustment of his debts notwithstanding the fact that the transaction impugned is an ostensible sale, he would not be entitled to the same benefit where the transaction is admittedly and in form a mortgage. If the policy of the Act was to provide the benefit of adjustment for debts due from agricultural labourers, it would be obvious that claim for adjustment of a debt made by an agricultural labourer, where the transaction is admittedly in the nature of a mortgage and where no adjudication in regard to the nature of the transaction is required, should be recognised without any difficulty. That is why I am disposed to think that s. 24 sub-s. (2) must be liberally construed and the higher right given to the agricultural labourer to establish the real nature of the transaction between him and his creditor should be deemed to include the lesser and the lower right of claiming the adjustment of his debts when the transaction between him and his creditor has not even taken the form of an ostensible sale-deed, but is in form and in substance a mortgage-deed. An agricultural labourer, in such a case, should be regarded to be a debtor as soon as it is shown to the satisfaction of the Court that the debt whose adjustment he seeks to obtain is even in form a debt and needs no adjudication in Court. The right claimed by an agricultural labourer in such a case is obviously of the same kind as the right conferred upon an agricultural labourer in respect of ostensible sale-deeds and compared to the latter right it is a lesser and a smaller right and must be deemed to be included within the meaning of s. 24 sub-s. (2). I must, therefore, hold that the view taken by the lower appellate Court, against the petitioners is not well-founded.

My attention has been invited to two judgments delivered by the learned Chief Justice bearing on this point. In *Pratap-sang Ramsang v. Jibhai Himat*,<sup>(3)</sup> the learned Chief Justice rejected the argument urged before him by the petitioner that, where the transaction is admitted to be a mortgage, s. 24 sub-s. (2) cannot be invoked by an agricultural labourer. In this

3. (1951) Civil Revision Application No. 335 of 1951, decided by Chagla C. J., on June 22, 1951 (unrep.).

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particular case, the nature of the impugned transaction had been declared by a previous decision between the parties pronounced by a Court of competent jurisdiction, and the learned Chief Justice held that the provisions of s. 25 sub-s. (i) would be applicable to the proceedings before him and that made the argument urged by the petitioner untenable. The view taken by the learned Chief Justice in this revisional application appears to me to be consistent with the construction which I am disposed to put on s. 24 sub-s. (2). This judgment has been relied upon by Mr. Chandrachud on behalf of the petitioners. On the other hand, Mr. Abhyankar has relied upon another judgment of the learned Chief Justice in *Tukaram Bhau Sathe v. Narsu Mahadu Nanaware*.<sup>(4)</sup> In this case, the learned Chief Justice was considering another aspect of the argument urged before him under s. 24 sub-s. (2). He was emphasizing the fact that, after a declaration is made in favour of an agricultural labourer as provided for by the first part of s. 24 sub-s. (2), the agricultural labourer would automatically be treated as a debtor even though he may not satisfy the tests of the definition of a debtor under s. 2 sub-s. (5). In the case before the learned Chief Justice, no declaration had yet been made in favour of the agricultural labourer. "If no declaration is made", observed the learned Chief Justice, "then the debtor can only avail himself of the provisions of the Act provided he proves his status as a debtor. But if a declaration is made that the transaction challenged is a mortgage, then the applicant becomes a debtor for the purposes of the Act" and it would be unnecessary for him to prove his status and so it would not be necessary to try the preliminary issues about the said status. Mr. Abhyankar contends that the observation of the learned Chief Justice that, if no declaration is made, then the debtor can only avail himself of the provisions of the Act provided he proves his status indicates that the learned Chief Justice was disposed to construe the section literally. I do not think that this would be a fair way of reading this judgment. Reading the judgment as a whole, I am not satisfied that the learned Chief Justice really intended to lay down that, if an agricultural labourer came to the Court for adjustment of a debt evidenced by a mortgage deed, his claim would be rejected on the ground that there was no occasion to adjudicate upon the nature of the debt and so s. 24 sub-s. (2) would not apply. The observation on which Mr. Abhyankar relies must be confined to the facts with which the learned Chief Justice was dealing and it need not be read as a general observation approving of the literal and mechanical construction of s. 24. Besides, as I have just mentioned, the learned Chief Justice himself has adopted a liberal con-

4. (1953) Civil Revision Application  
 No. 1663 of 1952, decided by  
 Chagla C. J., on July 10, 1953  
 (unrep.).

struction of s. 24 sub-s. (2) in the other judgment to which I have just referred.

In the result, the revisional application must be allowed, the order passed by the lower appellate Court must be set aside and an award directed to be drawn between the parties holding that the petitioners would be liable to pay Rs. 192 to the opponents. Rule absolute. The petitioners would be entitled to their costs throughout.

Application allowed.

K. B. S.

## APPELLATE CIVIL

Before Mr. Justice Shah.

THE INCOME TAX OFFICER, WARD C, SANGLI & ANOTHER PETITIONER, (ORIGINAL APPLICANTS) v. CHANDANBAI BALARAM DOSHI AND ANOTHER OPPONENTS (ORIGINAL DECREE-HOLDER AND JUDGMENT-DEBTOR).\*

1956  
Jan. 16

*Practice and Procedure—Execution of Decrees—Proceeds of Auction sale of Judgment-debtors' property—Whether held by Court in trust for the decree holders—Whether the proceeds remain as of the Judgment-debtor—Whether Sales-Tax Officer entitled to recover Sales Tax dues from the proceeds—Bombay Sales Tax Act (Bom. III of 1953) ss. 3, 44, 17—Whether Sales Tax Officer competent to apply under s. 17.*

The proceeds at a Court-sale of unencumbered property of the judgment-debtor are not held by Court for and on behalf of or as a trustee; they continue to belong to the judgment-debtor, subject to the restrictions imposed by the order of attachment, until appropriated by an order of the Court to the claim of the creditor or creditors.

*Oudh Commercial Bank Ltd. v. Secretary of State*,<sup>(1)</sup> disagreed with.

*The Deputy Commissioner of Police Madras v. Vedantam*,<sup>(2)</sup> *Manikham Chettiar v. Income-tax Officer Madura South*,<sup>(3)</sup> *Governor General in Council v. Chhotalal Shivdas and another*,<sup>(4)</sup> followed.

In view of the Notification issued by the Collector of Sales Tax, Bombay under s. 44 of the Act a Sales Tax Officer has the power to apply under s. 17 (1) of the Bombay Sales Tax Act.

CIVIL Revision Applications against the orders passed by M. N. Nargundkar, Esquire, Second Joint Civil Judge, Junior Division, at Sangli.

Darkhast proceedings.

The facts material to this report are set forth in the Judgment.

V. S. Desai, Additional Assistant Government Pleader for the Petitioners in both Civil Revision Applications.

P. T. Patil, Advocate for Opponent No. 1 in C. R. A. 364 of 1955.

\*Civil Revision Application No. 364 of 1955 with Civil Revision Application No. 366 of 1956.

1. [1935] A. I. R. Lah. 319.  
3. [1938] Mad. 744. F. B.

2. [1936] Mad. 428.  
4. (1939) 7 I. T. R. 411.