

(1925) 10 BOM CK 0028
In the Bombay High Court

Ambanna Dharappa Akkavagol

APPELLANT

Vs

Kallappa Shivlingappa Alligi

RESPONDENT

Date of Decision : 08-10-1925

Acts Referred:

Dekkhan Agriculturists Relief Act, 1879 — Section 15B, 20

Citation : AIR 1926 Bom 327

Hon'ble Judges : Macleod, C.J.;Coyajee, J

Bench : Full Bench

Judgement

Macleod, C.J.—The plaintiffs arrested the defendant in execution of the decree in Suit No. 382 of 1921 passed by the First Class Subordinate Judge of Bijapur. The defendant was described in the decree as a "trader"; and the defendant who consented to a decree being passed against him in terms of the compromise is now claiming the trial of an issue whether or not he is an agriculturist. When he was arrested in execution of the decree, he claimed protection u/s 21 of the Dekkhan Agriculturists' Relief Act, which provides that no agriculturist shall be arrested or imprisoned in execution of a decree for money passed whether before or after this Act comes into force.

2. The Judge thought it was decided in Mulji v. Goverdhandas AIR 1923 Bom. 36 that the defendant cannot raise a contention that he is in agriculturist in execution, if he has not done so at the hearing. Accordingly, he directed that notice under Order 21 Rule 37, should issue. Now in that case an ex-parte decree was passed in favour of the plaintiff on the original side of the High Court. The defendant was described in the plaint as a "merchant." In execution proceedings the defendant made an application, u/s 20 of the Dekkhan Agriculturists' Relief Act, for instalments, contending that he was an agriculturist. If he had been an agriculturist, the High Court would not have had jurisdiction, and the Court held that it must be taken that it had been decided in the suit in favour of the plaintiff that the defendant was not an agriculturist, so that it was res judicata in execution proceedings.

3. Section 20 of the Dekkhan Agriculturists' Relief Act, however, is certainly different from Section 21, and even on the question of res judicata it was held by this Court, in Rudrappa v. Chanbasappa AIR 1924 Bom. 305 that:

Where a decree is passed ex parte, the defendant can, in execution proceedings, show that he was an agriculturist at the date of the decree and claim instalments u/s 15B of the Dekkhan Agriculturists' Relief Act.

4. The circumstances in the case in Mulji v. Goverdhandas were peculiar, and we do not think that in the ordinary case of a decree passed ex parte, in a Subordinate Judge's Court, the question whether the defendant was or was not an agriculturist, in the absence of his being described as an agriculturist in the plaint, can be considered as res judicata for the purpose of execution proceedings.

5. But it is argued in this case that because the defendant did not plead that he was an agriculturist, when he had a chance at the hearing of the suit, he must be precluded for all times from taking the advantage under the Dekkhan Agriculturists' Relief Act. I doubt very much whether the principle of res judicata can be applied to Section 21. It is positive in its terms. It directs that no agriculturist shall be arrested or imprisoned in execution of a decree for money and the words

Passed whether before or after the Act comes into force.

which were added by Act XXII of 1882, Section 8, show that it is not necessary that the defendant should be an agriculturist at the date of the decree in order that he may take advantage of the section.

6. In any event in this case we think that, no question of res judicata arises, and that the defendant, on being arrested, was entitled to plead that he was an agriculturist. Therefore, we allow the appeal and direct the Judge to decide that question.

7. Costs of the appeal will be decided by the Judge who decides the issue whether or not the defendant is an agriculturist. If the defendant proves that he is an agriculturist, he will have costs of the appeal. If the defendant fails to prove that, he will have to pay the costs of the other side.

Coyajee, J.

8. I agree.