

(1959) 07 KL CK 0037
In the High Court Of Kerala
Case No : A.S. No. 75 of 1959

Dr. Morris

APPELLANT

Vs

Mrs. Veera D''cruz

RESPONDENT

Date of Decision : 09-07-1959

Acts Referred:

Kerala Agriculturists Debt Relief Act, 1958 — Section 2(a)

Citation : (1959) KLJ 794

Hon'ble Judges : S. Velu Pillai, J;M.S. Menon, J

Bench : Division Bench

Advocate : V. Rama Shenoi and R. Raya Shenoi, for the Appellant; T.S. Venkiteswara Iyer and T.V. Ramakrishna Iyer, for the Respondent

Final Decision : Dismissed

Judgement

Velu Pillai, J.—In this appeal, which is directed against an order passed by the Subordinate Judge, Cochin, denying relief to the appellant--the judgment-debtor--under the Kerala Agriculturist Debt Relief Act 1958, or shortly the Act, the two questions which arise are, whether the appellant is an agriculturist, and whether the Judgment-debt is a debt, within the meaning of the Act. We are of the opinion, that this appeal must fail on the decision of the first question. On the arguments addressed to us, the first question must depend on, whether a plot of land, 16 cents in extent, on which seven cocoanut trees and one bread-fruit tree are standing, and in which a residential building occupied by the appellant, is situated, is "agricultural land" within the meaning of Section 2(a) of the Act. The Subordinate Judge has found, that the land is in an important residential locality in Fort Cochin, capable of fetching a monthly rent of Rs. 125/-, while the yield from the trees, would not be more than 8 1/3 rupees per mensem; this finding was not disputed. It cannot therefore be doubted that the land has a residential value more than anything else, and is used accordingly.

2. The definition in Section 2 (a) of the Act is related to "agricultural land", as distinguished from non-agricultural land. The term "agricultural land" denotes, as

we understand it, land devoted to agricultural purposes. The purpose to which the land is put, must therefore decide the issue; if so we have no doubt, that the land in question is used as the residential seat of the appellant. Counsel for the appellant contended that the existence of the trees on the property without more, must be deemed to be sufficient to establish its character as agricultural land; pushed to the logical limit, if, for example, there is only one tree on the property, counsel found it difficult to sustain the argument. He then submitted, that if the area of the above plot of land on which the trees stand, is carved from the rest of the area on which the building is situated, the area so carved, may be deemed to be agricultural land. This is to ignore, what perhaps is the underlying fact in the case, that the whole plot of 16 cents constitutes, and is used as one unit; it seems to us, the character of the land has to be determined, by the use to which it is put and not by the accident that a few trees are standing on it, though in a given case, such number may have some relevance in ascertaining the nature of the use of the land. In the present case, we come to the conclusion, that the plot of land in question, was not devoted to agricultural purposes and is therefore not "agricultural land". Another plot of land, 4 cents in extent also owned by the appellant, is the seat of his dispensary, and was not contended before us, to be agricultural land. A similar view was taken in *Abdul Kareem v Ismail Sheriff Sahib*, 1958 K.L.J. 786, and *Abdul Kadar v Indo-Mercantile Bank Ltd.*, 1959 K.L.J. 340, by two Division Benches of this Court. In the former, it was observed "that the mere fact, that the property brought to sale, a purayidom of 35 cents in extent, and mainly covered by a cinema shed and other buildings, has three cocoanut trees and two mango saplings standing on it, does not make it agricultural or horticultural land so as to make the third defendant, who is described as the owner thereof, an agriculturist within the meaning in Section 2 (a) of the Act". The Act referred to, was the Indebted Agriculturists Relief Act III of 1956, but there is no distinction between the two Acts in the context of the term "agricultural land". The latter case related to a plot of land, 8 cents in extent, used for trade in timber, on which there were a cocoanut tree an Aini tree, and some plants and plantains; this was held to be a non-agricultural land. These two cases support the conclusion that we have reached. The Subordinate Judge was therefore right in holding that the appellant is not an agriculturist.

In this view, the second question need not be determined, and we leave it open. This appeal is dismissed with costs.