
(1940) 11 BOM CK 0009
In the Bombay High Court
Case No : Second Appeal No. 647 of 1937

Gangadhar Kashinath Sakhare

APPELLANT

Vs

Dattatraya Vishvanath Sulakhe

RESPONDENT

Date of Decision : 15-11-1940

Acts Referred:

Dekkhan Agriculturists Relief Act, 1879 — Section 10A, 2

Citation : AIR 1941 Bom 209 : (1941) 43 BOMLR 341

Hon'ble Judges : Wassoodew, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Wassoodew, J.—This is a second appeal from a decision of the Assistant Judge of Sholapur. The only question that arises upon this appeal is whether a plaintiff, who is held not to be an agriculturist at the date of the suit purporting to be one for redemption under the Dekkhan Agriculturists' Relief Act, can invoke the provisions of Section 10A of that Act to show that the original transaction to which his predecessor an agriculturist was a party was in reality intended, contrary to the terms of the document, to be treated as a mortgage.

2. The suit was instituted in August, 1930, by the plaintiff as the adopted son of one Kashinath, the adoption having been made by Kashinath's widow in 1924. The plaintiff maintained that his father Kashinath, who died in 1909, had executed a formal conveyance of the property in dispute on February 11, 1899, in favour of the defendants, and that, although it was an out and out sale of the entire interest of the transferor, by a contemporaneous agreement it was intended to be treated as a mortgage. As regards the plaintiff's status it was described in the plaint to be that of an agriculturist. It was also stated that Kashinath was an agriculturist in 1899. The alleged nature of the transaction, the status of the plaintiff and that of his adoptive father were denied by the defendants, and that denial was upheld by the trial Court. In appeal the learned Assistant Judge took the view that Kashinath was an agriculturist in 1899, that

the alleged contemporaneous agreement could be inferred from circumstances, but that as the plaintiff was not an agriculturist at the date of the suit, the suit was incompetent. He, however, remarked in paragraph 7 of his judgment that "it appears that, pending the suit, the plaintiff has started working personally in the fields and has taken lands of others on leases;" but in his opinion that circumstance did not enable the plaintiff to claim the benefit of Section 10A of the Dekkhan Agriculturists' Relief Act. Accordingly the trial Court's decree was confirmed; but the defendants, except the Municipality, who had acquired a portion of the land, were deprived of their costs. Against that decree the plaintiff has filed this second appeal and the defendants, the transferees under the deed of 1899, have filed cross-objections for costs.

3. Two contentions have been formulated in support of the appeal by Mr. Desai. He argues, first, that it is not necessary, when palling in aid the provisions of Sectopm 10A of the Dekkhan Agriculturists' Relief Act, for the plaintiff to show in a suit for redemption that he is an agriculturist; for it is sufficient that a person through whom the plaintiff claims was an agriculturist at the date of the transaction, and, secondly, that even if the plaintiff is not an agriculturist at the date of the suit, and if pending the suit and in the course of the hearing the plaintiff acquires the status of an agriculturist by working personally in the fields, he could be deemed to be a party agriculturist to the suit for the purpose of Section 10A, for, according to Mr. Desai, that section does not in terms require that the suit must be instituted by an agriculturist.

4. In my opinion the first contention is without any substance. Section 10A provides as follows:-

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 section 92 of the Indian Evidence Act, 1872, (or in section 49 of the Indian Registration Act, 1908) or in any other law for the time being in force, have power to inquire into and determine the real nature of such transaction....

Apart from authority, the plain provisions of that section indicate that, unless an agriculturist is a party to the suit, the Court has no jurisdiction to disregard the provisions of Section 92 of the Indian Evidence Act. The basis of the plaintiff's claim to disregard the provisions of Section 92 of the Indian Evidence Act in order to grant him relief was that as an agriculturist party to the suit, he was entitled to rely on Section 10A of the Dekkhan Agriculturists' Relief Act. That claim could only be sustained if he proved that he was an agriculturist at the date of the suit and not merely that his predecessor was an agriculturist at the date of the transaction. The finding of fact is that the plaintiff was not an agriculturist and there was no other agriculturist party to the suit Prima facie therefore the Court has no jurisdiction to apply Section 10A of the Dekkhan

Agriculturists" Relief Act.

5. In the consideration of Mr. Desai's alternative argument it will be interesting to note how the legislature has expressed itself in the different parts of the Dekkhan Agriculturists' Relief Act as to when the privilege can be asserted or established for the purpose of the several reliefs referred to. The language of Section 10A of the Dekkhan Agriculturists' Relief Act does not follow the language used in Section 3 or Section 15B or Section 20 of that Act. In Section 3(a) the legislature has stated that the provisions of Chapter II shall apply to suits for an account "instituted by an agriculturist." The legislature there expressly lays down that the plaintiff must be an agriculturist at the date of the suit. Section 20 says that "the Court may at any time direct that the amount of any decree, whether before or after this Act comes into force against an agriculturist . . . shall be paid by instalments with or without interest." Here it is obviously intended that the status must be that of an agriculturist at any time when the question of instalments arises. The provisions of Section 15B leave it to implication as to when the status has to be established. Although that section does not indicate clearly, as Section 20 does, the time when the claimant to the privilege should be an agriculturist, it has been construed as implying the time when the accounts are claimed, that is at the time of passing the decree (see *Devu Jetiram v. Revappa Satappa* (1921) ILR 46 Bom. 964 and *Bal v. Maneklal* (1931) 34 Bom. L.R. 55. The language used by the legislature is not uniform in these two sections, and the proper time for claiming the privilege has to be fixed by reference to the language used and the provisions as to relief. In my opinion, the proper time when the jurisdiction to inquire into the real nature of the transaction could be assumed by the Court for the purpose of Section 10A is when the Court is requested to exercise that jurisdiction. That request is contained in the plaint when disclosing the essential cause of action, upon the averment that the plaintiff is an agriculturist and a party to the suit. Therefore if the plaintiff invokes the Court's jurisdiction u/s 10A, he must be an agriculturist within the meaning of Section 2 of the Dekkhan Agriculturists' Relief Act at the date when it is instituted. The question is really not of first impression and is covered by the authority of this Court (see *Gadadhar Ka.Kaji Gore Vs. Gangaram Tatya Mhaske*, , and *Sultan Rahim v. Ranchhadji* (1926) 29 Bom. L.R. 249). Although the question in the form in which it is presented was not raised in those cases, this Court has held that the provisions of Section 10A require that there should be an agriculturist plaintiff to a suit for redemption at the time of its institution.

6. But even upon the assumption of the correctness of the construction suggested by Mr. Desai that the plaintiff's status has to be considered only at the stage of hearing, for it is then that the question of abrogating the general rule of evidence arises, the plaintiff in this case cannot succeed. There is no warrant for the view that even at that stage the plaintiff was an agriculturist. In fact no such plea was raised in the plaint. All that the plaint stated was that the plaintiff was an agriculturist when the suit was instituted. It was not said that he had changed

his original status at any time and acquired a new one. The suit was filed in August, 1930, and the plaintiff was not examined till October, 1934. At that time in one statement in his deposition it was elicited that in that year he had taken kabulayats and had started working personally in the fields. Assuming that he had done so, that was insufficient to clothe him with the privileged status. The privilege of an agriculturist is not hereditary but personal (see *Martand v. Amritrao* (1924) 27 Bom. L.R. 951 and *Dharamsey v. Balkrishna* (1928) 31 Bom. L.R. 984. Nor can that privilege be acquired by birth (see *Gadadhar v. Gangaram*). If so, it must be assumed that merely upon adoption the plaintiff could not acquire the status which his adoptive father possessed in 1899. He had other landed estate whose income fell in the category of non-agricultural income. If suddenly three years after the suit he began to hold a plough, he could not come within the definition of the first paragraph of Section 2 of the Dekkhan Agriculturists' Relief Act, for he must in order to claim that status prove that he ordinarily engaged personally in agricultural labour, that is, he was regularly and habitually cultivating his fields. Mere initiation into the ways of husbandry is not enough. Consequently it cannot be said that even pending the suit the plaintiff had acquired the status of an agriculturist. Therefore the plaintiff's appeal must be dismissed with costs (two sets-one set to defendant No. 4).

7. As regards the cross-objections it seems to me having regard to the view upon the evidence of the lower appellate Court the discretion as to costs was properly exercised. The cross-objections are therefore disallowed with costs.