

(1921) 04 BOM CK 0002
In the Bombay High Court
Case No : Second Appeal No. 358 of 1919

Hiralal Ravchand Shah

APPELLANT

Vs

Parbhulal Sakhidas Shah

RESPONDENT

Date of Decision : 08-04-1921

Acts Referred:

Citation : (1921) 23 BOMLR 796

Hon'ble Judges : Shah, J; Norman Macleod, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Norman Macleod, Kt., C.J.—The plaintiff sued for possession of a certain mortgaged property, and for a declaration that the mortgages were nominal and passed without consideration; if they were passed for consideration, then for an account of what might be found due to the first defendant. The first issue was whether the plaintiff was an agriculturist. Undoubtedly the major part of his income was derived from the produce of mango trees. But it has been held in both Courts that he is not an agriculturist within the meaning of that word in the Dekkhan Agriculturists' Belief Act because the trees were full-grown and received no attention from the plaintiff. He merely took the fruit when it, was ripe. Undoubtedly, if a person derives the greater portion of his income from land by sale of the crops of any sort, and standing crops include fruit, he must be considered an agriculturist. If he owns certain fruit trees and lets out the right to take the fruits to tenants, he would be an agriculturist if the greater part of his income consisted of the rents so received, and the Court would not have to inquire how much labour or care was bestowed on the cultivation of the trees. If he does not let out the right to take the fruit to tenants, but picks the fruit himself, it is difficult to see how he can in any sense be less of an agriculturist than if he let out the right. The test seems to be whether the income is derived from the produce of the land, and not upon the actual quantum of labour which has to be bestowed in getting in the crop. If that were not so, it would be

extremely difficult to know where to draw the line, For instance, if a man planted mango trees they would require a considerable amount of care, attention and labour until they arrived at a certain stage of growth, and the owner, as long as he was bestowing care, attention and labour on them, would be an agriculturist. But according to the defendant's argument when the trees became fruit-bearing and no longer required care and attention but only the labour of picking the fruit the owner, though deriving his income from the fruit, would no longer be an agriculturist. That seems to be the view of the Judge when he Says: "According to the custom in this country the trees being fall-grown receive no attention whatsoever from the plaintiff. He does not water or manure or lop or otherwise deal with them." I cannot agree with that view. Once it is proved that the plaintiff derives the greater part of his income from these mango trees, he must be considered an agriculturist, and will be entitled to the benefit of the Act. The appeal must, therefore, be allowed and the case sent back to the trial Court to take an account of what is due under the suit mortgages under the Dekkhan Agriculturists' Relief Act. Costs will be costs in the suit.

Shah, J.

2. I agree.