

(1959) 04 MP CK 0017
In the Madhya Pradesh High Court
Case No : First Appeal No. 48 of 1955

Mathrabai Bhat and Another

APPELLANT

Vs

Kanhaiyalal Baluram Agrawal

RESPONDENT

Date of Decision : 16-04-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 60(1)

Citation : AIR 1959 MP 375 : (1959) 4 MPLJ 872

Hon'ble Judges : V.R. Newaskar, J; P.V. Dixit, J

Bench : Division Bench

Advocate : T.L. Namjoshi, for the Appellant; S.D. Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

Dixit, J.

This appeal arises out of execution proceedings of a money-decree held by Kanhaiyalal against the appellants Mathrabai and Ganeshram. In execution proceedings of the decree, one engine, its accessories, a water pump and a rubber hose-pipe belonging to the judgment-debtors were attached. The judgment-debtors raised the objection that they were agriculturists and as the articles attached were implements of husbandry they were exempt from attachment under the proviso (b) to Section 60(1) C. P. C. The learned Civil Judge, First Class, Indore, overruled this objection holding that the engine was being used for running a flour-mill; that the water-pump with lying idle for over eighteen months as the well where it was fitted had dried up permanently and that, therefore, the engine, the water-pump and its other fittings could not be regarded as implements of husbandry. Hence this appeal by the judgment-debtors.

At the conclusion of the hearing of this appeal on 31-3-1959, we passed an order dismissing the appeal and saying that we would state our reasons later on. Accordingly we now proceed to do so.

The only question that arises for determination in this appeal is whether the engine, the water-pump and its accessories are implements of husbandry exempted from attachment under proviso (b) to Section 60(1) C. P. C. The executing Court has found, and on the evidence on record also it is plain, that at the time of the attachment the engine was being used for driving a flour-mill and the water-pump was lying idle as the well where it was fitted had dried up permanently.

As these articles were not being used for agriculture, they are clearly not exemptible as implements of husbandry u/s 60 C. P. C. Even if the judgment-debtors' statement that the engine was first being used by them for running a flour-mill as well as for working the water-pump is accepted, they cannot, in our opinion, be regarded as "implement's of husbandry" spoken of in proviso (b) to Section 60(1) C. P. C. The exemption granted by the proviso is intended for the benefit of indigent artisans and agriculturists. The principle underlying the exemption is that such needy persons should not be deprived of the tools and instruments which are if dispensable for their craft and agriculture.

The meaning of "implement as given in shorter Oxford English Dictionary is: "things that serve as equipment or outfit; the apparatus, instruments etc. employed in any trade or in executing any piece of work". The implements of husbandry, which are exempt from attachment, u/s 60 C. P. C., must be such as are in the opinion of the Court necessary to enable the agriculturist to earn his livelihood as such. Now "livelihood" connotes the idea of means of living or sustenance.

The implements of husbandry which can be exempted must, therefore, be such which are indispensable to an agriculturist and with which he can earn a living to support his life. An internal combustion engine used for working a water-pump is clearly not indispensable for agriculture. Water can be drawn from the well for irrigating the fields by other means also. Such mechanical appliances may enable an agriculturist to irrigate his fields conveniently and quickly. But they are not indispensable.

It must be remembered that the CPC was enacted in 1908 when mechanised farming was unknown in India. Even today the majority of the agriculturists use the same implements for ploughing and irrigating their fields which were in vogue in 1908. As was pointed out by Niyogi J. in *Shaligram v. Sheopratap* AIR 1939 Nag 3 : ILR (1939) Nag 355, the expression "implements of husbandry" is preceded by "tools of artisans" and followed by "cattle".

That indicates a class of husbandmen who are of the same status as artisans and who perform their agricultural operations with the help of animate beings and not inanimate machinery. The "implements" of the husbandman correspond to the "tools" of artisans. In that case the question arose whether a motor-tractor, which was not being used for agriculture but for driving a flour-mill, was an implement of husbandry within the meaning of Section 60 C. P. C.

It was held that a motor-tractor, which is an internal combustion machine, which performs the work of bullocks and is used for power, is not indispensable for agriculture and, therefore, cannot be regarded as being essential to it and consequently it is not an implement of husbandry. It is easy to see that if the expression "implements of husbandry" is construed widely beyond what it was taken to signify in 1908 so as to include modern machinery used in mechanised fanning, there would be nothing to prevent a rich person with substantial means doing mechanised farming on a very extensive scale and who is in a position to replace easily any machinery, from claiming exemption under proviso (b) to Section 60(1) C. P. C. Surely, the proviso is not intended for the benefit of such rich modern agriculturists. We are clear in our mind that the engine, the water-pump and its accessories, which were attached in this case, are not implements of husbandry within the meaning of Section 60 C. P. C.

Learned counsel for the appellants referred us to *Udharam v. Rozi Shambe* AIR 1939 Sind 96 where it has been held that an engine or a water-pump is necessary for the agriculturist to irrigate and cultivate his fields and earn his livelihood as an agriculturist and, therefore, it comes within the term "implements of husbandry". The learned Judges in the Sind case took the view that the term "implements of husbandry" in Clause (b) of the proviso to Section 60(1) C. P. C. should be interpreted in a generous spirit and not in a narrow manner; that the clause was not intended to force agriculturists back to primitive ways but to protect them in their livelihood as agriculturists by preventing the attachment even of those mechanical means whereby they plough and irrigate and cultivate and soil and obtain their livelihood as agriculturists.

In our judgment, the language of Clause (b) of the proviso does not warrant the construction put in the Sind case. In support of their view that the term "implements of husbandry" should be interpreted in a generous spirit, the learned Judges of the Sind Judicial Commissioner's Court relied on *Lakshman Mhasu Bhagat Vs. Narhari Dadasa Gujar*, But the Bombay decision does not lend any support to the view taken in Sind case. In *Lakshman Mhasu Bhagat Vs. Narhari Dadasa Gujar*, Charaks, Khadhais and planks of timber used by an agriculturist for crushing sugar-cane grown on his field for making jaggery were held to be implements of husbandry.

Clearly, there can be no analogy between a Charak or a Kadhi or a plank of timber and an internal combustion engine or a motor-tractor. The learned Judges of the Bombay High Court expressly stated that it was not necessary for them to define the exact scope of the expression "implements of husbandry", and proceeded to observe:

"But having regard to the nature of the articles in this case and the use made thereof on the field by the agriculturist, we think thatthey are implements of husbandry within the meaning of Section 60, Clause (b) of the C. P. C."

We do not find ourselves in agreement with the view taken in the Sind case.

There is also a decision of the Allahabad High Court in Dwarka Prasad Vs. Municipal Board, Meerut, where a motor-tractor was held to be an implement of husbandry. That was a case where a judgment-debtor carrying on mechanised farming in a farm of roughly 1200 Bighas claimed that a tractor which was being used on the farm was exempt from attachment.

The learned Judges of the Allahabad High Court held that there was nothing in Clause (b) of the proviso to indicate that it was limited to small fanners and that, on the other hand, what the clause aimed at was to protect the implements of every farmer so as to enable him to continue earning his livelihood in the same way as he had been earning previously. The learned Judges stated this view after referring to the dictionary meaning of the words "artisans", "agriculturists", "implement", "husbandry" and "livelihood" but without indicating as to how the view taken by them followed from the dictionary meaning of those terms.

A reference was made by them to ATE 1939 Nag 3. But in regard to that case, all that was said in the Allahabad case was that the view taken in the Nagpur case that the motor-tractor could not be an implement of husbandry was mere obiter. The learned Judges of the Allahabad High Court did not think it necessary to examine the reasoning of Niyogi J. in AIR 1939 Nag 3. The reasoning adopted by Niyogi, if we may say so with respect, is unassailable.

It was wrong to say that the opinion of Niyogi J., in that case that a motor-tractor was not an implement of husbandry was merely obiter. The motor-tractor was first being used for agriculture and later on it was used for driving a flour-mill. It, therefore, became necessary for him to say whether a motor-tractor even if it was used for agriculture could at all be regarded as an implement of husbandry.

For these reasons, we are of the opinion that the decision of the lower court that the engine, the water-pump and its accessories are not exempt from attachment, which is in consonance with the decision in AIR 1939 Nag 3, is right. This appeal is, therefore, dismissed with costs.

Newaskar, J.

I agree.