

(1971) 10 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : Civil Revision No. 21 of 1971

Mst. Mehtabi Begum

APPELLANT

Vs

Haji Habib Dar and others

RESPONDENT

Date of Decision : 11-10-1971

Acts Referred:

Agriculturists Relief Act, 1983 — Section 2(1)

Citation : AIR 1972 J&K 103

Hon'ble Judges : Mufti Baha-ud-Din, J

Bench : Single Bench

Advocate : M.L. Qureshi, for the Appellant; J.L. Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Mufti Baha-Ud-Din Farooqi, J.—This is a civil revision. It is directed against an order passed by the learned Sub Judge, Baramulla, on a

preliminary issue whether defendants Nos. 1 to 8 are agriculturists. The learned Sub Judge has decided the issue against the defendants on the

finding, as he puts it, ""that the defendants are not agriculturists but doing other substantial business by way of owning a truck and other contract

business having been found in possession of a small piece of land not more than 7 kanals jointly owned with another co-sharer"".

2. Section 2 (1) of the Agriculturists' Relief Act, 1983, so far as it is relevant, reads:-

'Agriculturist'" means a person who, by himself, or by his servants, or by his tenants, earns his livelihood wholly or principally by agriculture, or by

horticultural or pastoral pursuits or who ordinarily engages personally in agricultural labour or such pursuits.

3. In that Legislature providing that a person shall be an agriculturist if he earns

his livelihood principally by agriculture or agricultural pursuits it

envisaged cases in which a person may depend for his earnings not only on agriculture or agricultural pursuits but also on other 'occupation' or

'pursuit'. In such a case it intended that the earnings from the two occupations or pursuits should be compared in order to determine if a person is

an agriculturist. 'Occupation' or 'pursuit', however, implies habitual and not a casual engagement in any trade, business, craft or employment.

Accordingly the mere fact that a person is casually engaged in any trade, business or employment would not justify his earnings from such casual

engagement being taken into consideration in the matter. This becomes all the more clear from the explanation to Section 2 (1) when it inter alia

says that an agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood by such labour or

pursuits does not thereby cease to be an agriculturist within the definition.

4. In the instant case the learned Sub Judge has based his decision first on the fact that the defendants own a truck. Now owning a truck or for that

matter any property, say, a house, would not disentitle a person from being an agriculturist unless it is shown that such truck or house gives him an

income regularly which is much more than that derived by him from agriculture or agricultural pursuits. The learned Sub Judge has omitted to

consider this aspect and thereby landed himself into an error.

5. The learned Sub Judge has stated next that the defendants are contractors. His statement is based on the testimony of Ghulam Mohd, D. W.,

who says that a lease sanctioned in favour of the father of the defendants was, upon his death, taken over by the defendants. In the view that I have

taken about Section 2 (1) this approach was not correct as long as the learned Sub Judge did not come to the conclusion that the defendants were

habitual contractors.

6. Finally, what has appealed to the learned Sub Judge most is that the defendants own lands which are very small. That is not enough. The crux of

the problem lay in his comparing the earnings of the defendants from land with those from their other business, if any, and then coming to a

conclusion whether it was the one or the other which was the principal source of their livelihood. This is also what he has not done. He has not

even cared to discuss all the evidence produced by the defendants. Surprisingly

enough, he has omitted to consider the statements of the defendant and his witness, Jaba Khan, although their evidence had a great bearing on the question before him. In fact his treatment of the question is. I should say. most perfunctory.

7. In the learned Sub Judge omitting to consider the entire evidence bearing on the matter before him, and in his approaching the matter from an angle not envisaged by law, he has acted with material irregularity such as would justify interference by this Court in exercise of its revisional power. In my opinion, however, the interference should be limited to setting aside the order and leaving it open to the learned Sub Judge to consider the matter in all its details and then giving a proper decision. While doing so, he may also rehear the arguments of the learned counsel for the parties. In the course of such arguments, it shall be open to the learned counsel for the plaintiff to argue that the defendants cannot take up the plea of being agriculturists, as was done before me, on the ground that the decree, if any, shall eventually be passed against the assets of the deceased father of the defendants and not against them personally.

8. In the result I accept this revision petition; set aside the order under revision and, hereby send back the case to the trial Court for fresh disposal after keeping in view the observations made above.

Revision allowed.