

(1925) 09 MAD CK 0023
In the Madras High Court

Muthuvenkatarama Reddiar and Others	APPELLANT
Vs	
The Official Receiver, South Arcot and Others	RESPONDENT

Date of Decision : 24-09-1925

Acts Referred:

Provincial Insolvency Act, 1920 — Section 28(5)

Citation : 92 Ind. Cas. 398

Hon'ble Judges : Waller, J;Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—The appellants wore adjudicated insolvents on their own petition in 1922. They applied to the District Court on 24th July

1924 for a declaration that the two items of property, a terraced house and a cattle-shed, did not vest in the Official Receiver. The District Judge

dismissed their petition, and they have preferred this appeal.

2. The contention of the appellants is that they are agriculturists and the two items which are buildings which they occupied are exempt from the

operation of the Insolvency Law by reason of Section 28, Clause 5 of the Provincial Insolvency Act. The appellants are large landed proprietors

owning about 300 acres of land worth nearly a lakh and their debts amounted to Rs.. 1,35,000 and odd. The two items are valued" by the

appellants themselves at Rs. 6,000 and Rs. 1,000 respectively. u/s 28, Clause 5 all properties which are exempt by reason of Section 60 of the

C.P.C. or by any other law from liability to attachment and sale in execution of a decree do not vest in the Official Receiver and are, therefore, not

liable to be sold to satisfy the claims of the creditors. The question for determination is whether the two buildings come within Section 60, Clause

(c) of the C.P.C. Clause (c) is in these items:

Houses and other buildings with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment

belonging to an agriculturist and occupied by him.

3. In order to claim exemption u/s 60, Clause (c) two points should be found in favour of the appellants, (1) the appellants are agriculturists within

the meaning of Clause (c) and (2) the house and cattle-shed are such as are mentioned in Clause (c).

4. The term, "agriculturist", means etymologically one versed in agriculture and is not used in Clause (c) in its etymological sense, but it is used to

denote a person making his living by tilling the soil, in other words one whose sole means of livelihood is gained by cultivating land and does not

necessarily mean only a person who works with his hands. But it means and includes a small holder of land who tills the soil and cultivates it.

Clause (c) has to be read in the light of Clause (1) and (2). What is exempt from attachment is what is absolutely necessary to enable a person to

live such as wearing apparel, cooking vessels, bedding, etc., tools of artisans, implements of husbandry, etc. A large landed proprietor, even

though his sole income is from land, is not an agriculturist within the meaning of Clause (c). Mr. Srinivasagopalachariar's contention is that a man

whose sole income is from land, whatever its extent may be, whether he cultivates the land himself or leases it, is an agriculturist. If this is the

correct meaning of the word "agriculturist" a man owning say, 1,000 acres of wet land is an agriculturist provided he has no other source of

income. It could not have been the intention of the Legislature to give protection to such people. The protection is given to small owners of land as

well as actual tillers of the soil. The word "agriculturist" must be interpreted in a strict sense. In *Jivan Bhaga v. Hira Bai* 6 Ind. Dec. 726 West, J.,

observes

5. "It was for agriculturist in the strictest sense and for an agriculturist in that sole character that the protection of Section 266, Clause (c) of the

C.P.C., was intended." We hold that the appellants are not agriculturists within the meaning of Clause (c) of Section 60.

6. Even if the contention of the appellants that they are agriculturists is upheld, they would not succeed in the appeal unless they make out that the

house and cattle-shed are houses and buildings within the meaning of Clause (c). In order to make out that the house and cattle-shed come within the meaning of Clause (c), they must be shown to have been occupied for purposes of agriculture, that is, in order to enable the owner or occupier to cultivate land. The expression ""and occupied by him"" gives the clue to the meaning of Clause (c), i.e., that they are occupied by the agriculturists as such, as houses or buildings as are necessary for pursuing the occupation of the agriculturists--a shed in a field or a house in the midst of fields which is occupied, so that the agricultural occupation may be carried on effectively and without loss of time, or in other words without such buildings and houses the agricultural operations would suffer. A mansion in a large village in which the owner lives, even though he has no other source of income except that from land, is not such a house as is contemplated by Clause (c) nor is the house of an ordinary agriculturist situated at a considerable distance from the land which he cultivates and which is not necessary for effective or convenient cultivation of the land. A man may have a house in a town and a small holding at a considerable distance from the income of which he maintains himself. As the house in the town is not occupied by him for purposes of agriculture, it is not exempt from attachment and sale under Clause (c).

7. We are glad to find that the view that we hold is in accordance with the view expressed by West and Nanabhai Haridas, JJ., in *Radhakisan*

Hakumji v. Balvant Ramji 8 Ind. Jur. 146 : 4 Ind. Dec. 357. The learned Judges observe at page 531 Page of 7 B.--[Ed.]:

The exemption is of a house or building occupied by an agriculturist, and this, we think, means a house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling. It does not include other houses, which in one sense may be occupied; what is meant is a physical occupation, by an owner, of his house as a dwelling appropriate or convenient for his calling.

8. The house and cattle-shed are in the midst of a village containing, it is said, about 300 houses and cannot be said that they were occupied by the appellants for purposes of agriculture and they do not come within the meaning of ""houses and other buildings belonging to an agriculturist and occupied by him"" within the meaning of Section 60, Clause (c) of the C.P.C.

9. The decision in *Devara Hegde v. Vaikunt Subaya Sonde* 19 Bom. L.R. 281 does not help the appellants. The learned Judges cite with approval

the passage in *Radhakisan Hakumji v. Balvant Ramji* 8 Ind. Jur. 146 : 4 Ind. Dec. 357 extracted above and hold that if the building came within

the exemption given by Section 60, Clause (c) at the time of the attachment, the benefit thereof, would not be lost by the death of the judgment-

debtor.

10. That the present contention is an afterthought is clear from the fact that the appellants mention the two items in their schedule as assets available

for distribution among the creditors and delivered possession thereof to the Official Receiver two years before they made the application to the

lower Court.

11. In the result the appeal fails and is dismissed with costs.

Waller, J.

12. I do not consider that appellants can any longer be described as agriculturists. Their land has vested in the Official Receiver and there is nothing

to show that they cultivate any other land as labourers or tenants. A house to be exempt from attachment u/s 60 of the C.P.C., must belong to or

be occupied by an agriculturist as such, i.e., for the purpose of agriculture. Apart from that, appellants placed the Official Receiver in possession of

goods before the adjudication and I do not think that they should now be allowed to plead exemption. I agree that the appeal should be dismissed

with costs.