

(1979) 07 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous (Second) Appeal No. 27 of 1975

Nar Singh

APPELLANT

Vs

Kamandas and Another

RESPONDENT

Date of Decision : 20-07-1979

Acts Referred:

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

Citation : AIR 1980 MP 37 : (1981) ILR (MP) 534 : (1980) JLJ 27

Hon'ble Judges : G.P. Singh, C.J;U.N. Bhachawat, J;C.P. Sen, J

Bench : Full Bench

Advocate : S.C. Jain, for the Appellant; P.V. Pandit, for the Respondent

Final Decision : Partly Allowed

Judgement

U.N. Bhachawat, J.—The reference to this Bench arises out of the execution proceedings pending in the Court of the III Civil Judge, Class II, Chhindwara, in Execution Case No. 165-A of 1969, which was initiated on the application of the decree-holder-respondents for the execution of their money decree against the judgment-debtor-appellant. The reference has arisen in the following manner.

2. An electric motor pump belonging to the judgment-debtor, which has been fitted in his well, situated in agricultural field for irrigating the field, and his cart have been attached on the application of the decree-holders-respondents by the said Executing Court. The judgment-debtor filed an objection to this attachment submitting that he was an agriculturist and the attached articles are the implements of husbandry which are necessary to enable him to carry on his agricultural operation and earn livelihood and as such the articles were exempted from attachment under proviso (b) to Sub-section (1) of Section 60 of the CPC (hereinafter referred as "the Code"). The Executing Court vide its order dated 20th July, 1974, holding that the attached articles cannot be said to be necessary to enable the judgment-debtor to earn his livelihood as an agriculturist rejected the objection relying on the decision of the Supreme Court in Shrimant Appasaheb Tuljaram Desai and Others Vs. Bhalchandra Vithalrao Thube, and a

decision of this Court in Mathrabai Bhat and Another Vs. Kanhaiyalal Baluram Agrawal, .

3. On an appeal against this order by the judgment-debtor in the Court of the Additional District Judge, Chhindwara, being Misc. Civil Appeal No. 20 of 1974, the order of the Executing Court has been upheld by the Additional District Judge vide his order dated 18-11-1974, and the appeal has been dismissed.

4. Thereafter, the judgment-debtor preferred a second appeal in this Court being Misc. (Second) Appeal No. 27 of 1975, which came up for hearing before a single Judge, Mr. Justice Raina (as he then was). The learned single Judge was of the opinion that in Section 60(1)(b) of the Code the expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood" was relatable only to the expression "such cattle and seed grain" and not to the words "his implements of husbandry" : but, as in the Division Bench decision of this Court in Mathurabai v. Kanhaiyalal (supra), the view was taken that the expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood" qualify the words "his implements of husbandry" also, he directed the case to be laid before the Chief Justice, with a recommendation that the matter be placed before a Bench of two or more Judges, vide order dated 21-7-1975. The matter was then referred to a Division Bench. The Division Bench vide order dated 24-11-1977, ordered that as the question referred to, involved reconsideration of a Division Bench decision of this Court in Mathurabai v. Kanhaiyalal (supra), the question should be considered by a larger Bench. Thus, the matter has been placed before this Bench.

5. At the outset it may be mentioned that there is a concurrent finding and also not disputed before us that the judgment-debtor is an agriculturist. It is also conceded by the learned counsel for the judgment-debtor that there is no evidence in the instant case that the attached cart is being used for agricultural operations by the judgment-debtor. It is in this backdrop that we shall proceed to answer the reference.

6. As would appear from the order of the learned single Judge, the whole case has been referred, to quote:

"I, therefore, refer this case to the Hon^{ble} the Chief Justice with a recommendation that it may be placed before a Bench of two or more Judges since it involves a question of law of importance and requires reconsideration of the decision of this Court in Mathurabai v. Kanhaiyalal."

No particular questions have been framed for being answered. In the light of the controversy, that is involved in the case, the following questions arise.

(i) Whether in Section 60(1)(b) of the Code the qualifying expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood" qualifies the expression "his implements of husbandry" also?

(ii) Whether the electric motor pump belonging to the judgment-debtor who is

admittedly an agriculturist, and fitted in his well, situated in his agricultural field, is an implement of husbandry exempted from attachment u/s 60(1)(b) of the Code.

(iii) Whether the attached cart of the judgment-debtor is an implement of husbandry and as such exempted from attachment u/s 60(1)(b) of the Code.

7. Section 60(1)(b) of the Code reads as under;

"60. Property liable to attachment and sale in execution of decree --

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, moveable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by any other person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:--

(a)

(b) tools of artisans, and where the Judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following sections:--

X X X X X

8. It is settled canon of construction that to arrive at the true meaning of any particular phrase in a statute, it has not to be read detached from the context. Words and phrases occurring in a statute are not to be taken in an isolated or a detached manner dissociated from the context.

9. Section 60(1) of the Code to borrow the expression from the decision of their Lordships of the Supreme Court in Appasaheb v. Bhalchandra (supra) makes all saleable property, moveable and immovable, belonging to the judgment-debtor and over which he has a disposing power liable to attachment and sale in execution of a decree against him unless the proviso comes to the rescue.

10. Now on analysing the proviso (b) reproduced hereinabove in paragraph 7 of this opinion, what is obtainable is that the following belongings of a judgment-debtor who is an agriculturist -- agriculturist for the purposes of this proviso as defined in Explanation V. -- are exempted from attachment and sale.

(a) Implements of husbandry.

(b) Such cattle and seed grain as may in the opinion of the Court, be necessary to enable him to earn his livelihood as agriculturist.

(c) Such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section, that is Section 61.

11. Each part, describing the belongings of an agriculturist-judgment-debtor which are exempted from attachment and sale, enumerated by us, is distinct and independent of the other; each can be read independently, making provisions for exemption of distinct articles. The word "and" used in between each of these parts is used in a disjunctive sense. The word "and" has been used to indicate each distinct article of the agriculturist exempted from attachment and sale. In this view of the matter, the expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood" qualifies "cattle and seed grain"; which falls in the second part as indicated hereinabove. This conclusion is buttressed from the prefixing of "cattle and seed grain" by the word "such". The purpose of prefixion is to identify or give a particular meaning to the expression following the prefix. The word "such" is used to particularise "the cattle and seed grain" of the agriculturist judgment-debtor who/which answer the description of the qualifying expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood". Had it been the intention of the Legislature to apply the qualifying clause for implements of husbandry also, the Legislature would have put it "his such implements of husbandry and cattle and seed grain as may, in the opinion of the Court be necessary to enable him to earn his livelihood."

12. In the light of the foregoing discussion we are of the firm opinion that the qualifying expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood" does not relate to or qualify the words "implements of husbandry". This is the view taken by their Lordships of the Supreme Court also while interpreting Section 60(1) of the Code as would be evident from the following excerpt of the judgment of the Supreme Court in Appasaheb v. Bhalchandra (*supra*).

"In the case of an agriculturist his implements of husbandry must therefore mean implements with which he tills the soil. These are saved from attachment. So far as his cattle and seed grain are concerned, only that much is exempted which, in the opinion of the Court, would be necessary to enable him to earn his livelihood and by which he could earn his maintenance. It is to be noticed that under Clause (b) the land which an agriculturist, "tills is not exempted from attachment. The agricultural produce of the land is exempted to the extent as notified in the Official Gazette issued u/s 61 of the Code. On a fair reading of the provisions of Clause (b), that which is saved to an agriculturist are his implements with which he tills the soil and such cattle and seed grain which in

the opinion of the Court, are necessary for him to use in order to enable him to maintain himself. The provisions of Clause (b) in the case of an agriculturist, therefore, suggest a person who tills the soil in order to maintain himself."

In a Division Bench decision of this Court in *Matharabai v. Kanhaiyalal* (supra), the view taken that the forereferred qualifying clause qualifies or is relatable to the words "implements of husbandry" is not correct. That view of the Division Bench cannot be sustained in the light of the foregoing discussion. It runs counter to the view of the Supreme Court in *Appasaheb's* case (supra).

13. It was contended by the learned counsel for the decree-holders respondent, relying on the observations of the Supreme Court, in *Appasaheb v. Bhalchandra* (supra) -- "in the case of an agriculturist his implements of husbandry must, therefore, mean implements with which he tills the soil" on a fair reading of the provisions of Clause (b) that which is saved to an agriculturist are his implements with which he tills the soil "that the electric motor pump is not an implement of husbandry. His argument was that tilling the soil means ploughing the land and as electric motor pump is not used for the purposes of ploughing the land, it does not fall within the ken of the observations of their Lordships of the Supreme Court in *Appasaheb v. Bhalchandra* (supra) -- implements with which he tills the soil."

14. It is undisputed that the attached electric motor pump is fitted in the well which is situated in the field of the judgment-debtor. It is an implement for drawing water to irrigate the field of the judgment-debtor. The dictionary meaning of the word "till" given in Webster's New World Dictionary Second College Edition at page 1488, is -- to strive for, work for, akin to, to aim, strive, point aimed at, base, to order, establish, to work (land) in raising crops, as by plowing, fertilizing etc; cultivate. It cannot be gainsaid that irrigation is a process essential for better cultivation. The water pump is used for drawing water from the well for irrigating the crop. The meaning of the word "husbandry" vide Black's Law Dictionary Fourth Edition at page 876, is -- agriculture, cultivation of the soil for food; farming, in the sense of operating land to raise provisions. The Supreme Court has also adopted in *Appasaheb's* case (supra) one of the dictionary meaning of the word "husbandry" : To quote -- According to Shorter Oxford Dictionary, one of the meanings of the word "husbandry" is the business of husbandry, that is to say, a person who tills and cultivate the soil or a farmer. The meaning of the word "implement" even in the Black's Law Dictionary Fourth Edition, page 888, is -- such things as are used or employed for a trade, or furniture of a house. Thus taking the cumulative meaning of these words "implements of husbandry" they mean apparatus, instruments and other implements used for the purposes of farming or cultivation or for agricultural operation.

15. As already observed hereinabove by us, irrigation of fields is absolutely essential for better cultivation and, therefore, it can well be said that the electric motor pump which is an instrument or an apparatus for pumping out the water

for irrigating the field is an implement of husbandry. It would not be out of place to mention here that it is a matter of common knowledge that modern trend is on mechanized farming and great encouragement to cultivators is being given by the Government by advancing loans in the form of taccavi etc. for the purchase of electric motor pumps and utilising them for irrigation purposes and as such even a small farmer, these days, possesses electric motor pump for irrigating his field. The purpose in stating all this is to indicate that electric motor pump has come to be recognised as a common implement of husbandry for an agriculturist. In this view of the matter, it is difficult to accept the argument of the learned counsel for the respondent that the electric motor pump is not an implement used for tilling and is, therefore, not an implement of husbandry.

16. Now adverting to the question whether the attached cart is an implement of husbandry. We would like to say that in the instant case, as frankly admitted by the learned counsel for the judgment-debtor, there is no evidence that the cart is being used by the judgment-debtor in connection with his agricultural operation. Had there been evidence to the effect that the cart is being used by him for bringing manure or seeds or for transporting the crop from the field to thrashing floor or for such other purposes, it could have certainly been held to be an agricultural implement. In view of the fact that there is no such evidence, the cart in the instant case cannot be held to be an implement of husbandry of the judgment-debtor.

17. We shall also like to mention that before amendment, in the CPC (Amendment) Act, 1976 (hereinafter referred to as "the Amendment Act") by which Section 60 and other provisions of the Code of Civil Procedure, 1908 were amended, the word "agriculturist" for the purposes of proviso (b) to Section 60(1) of the Code, was not defined. The Supreme Court had, therefore, in Appasaheb's case (supra), on taking the conspectus of the various decisions and terminology employed in Clauses (b) and (c) of proviso to Section 60(1) of the Code, held that "agriculturist" for the purposes of provisions of Clauses (b) and (c) meant a person who tills the soil in order to maintain himself and the implement of husbandry meant the implements with which he tilled the soil.

18. Now, after the aforesaid decision of the Supreme Court, in Appasaheb's case (supra), by the Amendment Act, vide Explanations V and VI, for the purposes of proviso to Sub-section (1) of Section 60 of the Code, the expression "agriculturist" has been defined. The Explanations V and VI added to the proviso to Sub-section (1) of Section 60, read as under:

"Explanation V -- For the purposes of this proviso, the expression "agriculturist" means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer --

Explanation VI -- For the purposes of Explanation V, an agriculturist shall be deemed to cultivate land personally, if he cultivates land

- (a) by his own labour, or
- (b) by the labour of any member of his family, or
- (c) by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both."

On a bare reading of the aforesaid Explanations, it can well be said that the definition of "agriculturist" has been widened and a person who neither cultivates himself nor supervises the cultivation carried on by his servants or the labourers, or the members of his family is also an agriculturist provided he depends for his livelihood mainly on the income from agricultural land. The observations of the Supreme Court in Appasaheb's case (supra) "implements of husbandry meant the implements with which he tilled the soil" was in the context of the finding that agriculturist means who tills the land. In view of the extended definition of "agriculturist" after the decision of the Supreme Court in Appasaheb's case (supra), the argument of the learned counsel that only those implements which are used by agriculturist in ploughing the land would only be the implements of husbandry for attracting the exemption provided in Clause (b) of proviso to Sub-section (1) of Section 60 of the Code does not hold good.

19. In the light of the foregoing discussion our answer to the questions framed are as under:

Question :

Answer :

(i) Whether in Section 60(1)(b) of the Code the qualifying expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood" qualifies the expression "his implements of husbandry"?

That the qualifying expression "as may, in the opinion of the Court, be necessary to enable him to earn his livelihood" does not qualify the word "implements of husbandry".

(ii) Whether the electric motor pump belonging to the judgment-debtor who is admittedly an agriculturist, and fitted in his well, situated in his agricultural field, is an implement of husbandry exempted from attachment u/s 60(1)(b) of the Code?

(ii) The attached electric motor pump is an implement of husbandry of the judgment-debtor and is liable Co be released from the attachment.

(iii) Whether the attached cart of the judgment-debtor is an implement of husbandry and as such exempted from attachment u/s 60(1)(b) of the Code?

(iii) The attached cart is not an implement of husbandry of the judgment-debtor and as such not liable to be released from the attachment.

20. In the result, we partially allow the appeal, allow the objection of the

judgment-debtor to the extent it relates to the electric motor pump and direct the release of electric motor pump from attainment.

We make no order as to costs