

(1910) 11 BOM CK 0008
In the Bombay High Court

Narsangji Meramansangji Thakor

APPELLANT

Vs

Ranchhodbhai Lalbhai

RESPONDENT

Date of Decision : 01-11-1910

Acts Referred:

Dekkhan Agriculturists Relief Act, 1879 — Section 16, 2

Citation : 9 Ind. Cas. 929

Hon'ble Judges : Rao, J;Batchelor, J

Bench : Division Bench

Judgement

1. The appellant here is the Thakor of Dehwan and there are three suits involved in the appeal.
2. In 1890 the appellant's father Meramansangji passed two money bonds each for Rs. 16,892, to Sursangji Kubersangji and Lalbhai Kabhai respectively.
3. On Lalbhai's bond Suit No. 19 of 1905 was brought by the creditor. On Sursangji's bond Suit No. 20 of 1905 was brought also by the creditor, Suits Nos. 19 and 20 both being instituted on the 9th January 1905.
4. In those suits one of the defences raised by the Thakor was that he was an agriculturist and as such entitled to the benefits of the Dekkhan Agriculturists' Relief Act.
5. Upon that point a preliminary issue was framed in Suits Nos. 19 and 20 which were heard together find that issue was decided against the Thakor on the 8th of December 1905.
6. Prior to that, in August 1905, the Dekkhan Agriculturists' Relief Act had been introduced in the Ahmedabad District, and on the 24th October 1905 the third of these present suits was filed, that is, Suit No. 564; it was filed by the Thakor to obtain the relief allowed by Section 16 of the Dekkhan Agriculturists' Relief Act; that is to say, to obtain the taking of accounts in the special manner laid down by that statute.

7. In the lower Court the learned Subordinate Judge held in suits Nos. 19 and 20 that the Thakor was not an agriculturist, and consequently was not entitled to have accounts taken in "the particular manner prescribed in the Dakkhan Agriculturists" Relief Act. That same finding he used as sufficient answer to the Thakor's suit No. 564, being of opinion that his decision in the creditors' suits operated as *res judicata* in the Thakor's suit also. As a result he has made a decree directing that the plaintiffs do recover Rs. 16,070 and costs from the estate of the deceased Thakor Meheramansangji.

8. From that decree the present appeal is brought, and the first question which we have to decide is whether the Thakor was and is an agriculturist within the meaning of the Act. We cannot doubt that this question should be answered in the affirmative. The Thakor's son Exhibit 50 deposes that all his income is derived from agricultural lands and to that statement no cross-examination was directed. The statement is supported by the son of the Thakor's Karbhari, witness Balchand, Exhibit 51, who says that the income of the defendant is between Rs. 15,000 and Rs. 16,000; per year, and (as the, vernacular reads) all this income is derived from the lands. Again there was no cross-examination to this assertion, nor was any attempt made to break it down by other evidence.

9. Turning now to Section 2 of the Dekkhan Agriculturists' Relief Act we find that an "agriculturist" include a person who by his servants or tenants earns his livelihood wholly or principally by agriculture.

10. On the evidence here there is no doubt that the Thakor falls within that definition. And the only reason why the learned Subordinate Judge excluded him was, as we read the judgment, that the Thakor was by wealth and social position too, exalted a person to be considered an agriculturist. It seems to us, however, that the definition in the Act has nothing to do with a man's wealth or social position. All that is required is that his livelihood should be earned wholly or principally in a certain way, and we, think that this requirement is satisfied here by the Thakor.

11. If then the Thakor is and was an agriculturist, the next question which arises is whether he is entitled in this litigation to have accounts taken in the manner provided by Section 12 of the Dekkhan Act. From the dates which we have already set out it will be gathered that the point is one of some nicety. When the creditors' suits were filed the Dekkhan Act was not in force. But it came into force long before those suits were decided, and indeed long before there was a decision on the preliminary issue as to the Thakor's status. After the Act had come, into operation, and while yet the creditors suits were still undecided, the Thakor files his suit claiming the benefit of Section 16 of the Dakkhan Agriculturists' Relief Act.

12. In these circumstances it seems to us, having regard to the special character of the Dekkhan Agriculturists' Relief Act, that we ought to hold that the Thakor was entitled to have accounts taken u/s 12.

13. For the respondents, Mr. Jivanlal has relied upon the Full Bench decision in *Fatamabibi v. Ganesh* 9 Bom. L.R. 917 : 31 B. 630, where it was laid down that in Section 12 of the Dekkhan Act the words concluding the second paragraph, namely, the words "and, secondly, with a view to taking an account between such parties in manner hereinafter provided" have no retrospective effect, that is, that the provision contained in those words must be denied to suits instituted before the coming into force of the Dekkhan Act. That decision is binding upon us, but we think that here we have a circumstance which was absent from *Fatmabibi's* case 9 Bom. L.R. 917 ; 31 B. 630 and which distinguishes that case from the facts before us. That circumstance is that the debtor, the Thakor, had already filed his suit u/s 16 of the Dekkhan Act, while this litigation was still unfinished.

14. It seems to us that the ruling in *Fatamabibi v. Ganesh* 9 Bom. L.R. 917 : 31 B. 630 ought not to be so extended as to produce in this case this result that the Thakor's suit under Section 16 should be defeated merely because the creditors had previously instituted against him other suits which were still pending before the Court.

15. It was urged that u/s 10 of the CPC the Court would not be at liberty to proceed with the Thakor's suit. But it appears to us that Section 10 has no application inasmuch as the matter in issue in the creditor's suit was not the matter in issue in the Thakor's suit, and the legal position of the parties had been altered in the meanwhile by the introduction of the Dekkhan Act.

16. For these reasons we are of opinion that the Court below should have held that the Thakor was an agriculturist and was entitled to account u/s 12.

17. With regard to the one other point which has been raised in this appeal we agree with the learned Subordinate Judge that there is no evidence on which it could be held that the lands referred to in Exhibits 49 and 96 in the *Kathol Wanta* were ever made over by the debtor into the creditor's possession.

18. The result, therefore, is that we must reverse the decrees under appeal and remand the cases in order that the Subordinate Judge may take accounts between the parties in the manner provided by Sections 12 and 13 of the Dekkhan Agriculturists' Relief Act.

19. Costs in the cause, to be dealt with by the learned Subordinate Judge.