

(1943) 08 BOM CK 0004
In the Bombay High Court
Case No : Second Appeal No. 157 of 1942

Pandurang Vithoba Patil

APPELLANT

Vs

Shamrao Bhau Patil

RESPONDENT

Date of Decision : 04-08-1943

Acts Referred:

Dekkhan Agriculturists Relief Act, 1879 — Section 22

Citation : AIR 1944 Bom 272 : (1944) 46 BOMLR 618

Hon'ble Judges : Lokur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Lokur, J.—This appeal raises an important question regarding the interpretation of the second paragraph of Section 22 of the Dekkhan Agriculturists' Relief Act, 1879.

2. The respondent obtained a money decree for Rs. 274 and odd against the appellant who was then not an agriculturist. The respondent then filed a darkhast to recover the decretal amount, and as by that time the appellant had acquired the status of an agriculturist, the respondent requested the Court to direct the Collector to take possession of his land under the second para of Section 22 of the Dekkhan Agriculturists' Relief Act for the satisfaction of the decree out of its income. The appellant contended that as he was not an agriculturist at the date of the decree, the Collector could not be asked to take possession of his land under that section. Both the Courts below held that para. 2 of Section 22 was applicable and ordered the darkhast to proceed.

3. The first paragraph of Section 22 provides that Immovable property belonging to an agriculturist shall not be attached or sold in execution of any decree or order passed whether before or after this Act comes into force, unless it has been specifically mortgaged. Hence, whether the judgment-debtor was an agriculturist at the date of the decree or whether he acquired that status after

the decree but before the execution, his land cannot be attached and sold in execution of a money decree. The second paragraph provides as follows :-

The Court, on application or of its own motion, may, when passing a decree against an agriculturist or in the course of any proceedings under a decree against an agriculturist passed whether before or after this Act comes into force, direct the Collector to take possession, for any period not exceeding seven years, of any such property of the judgment-debtor to the possession of which he is entitled, and which, in the Opinion of the Collector, is not required for his support and the support of the members of his family dependent on him.

4. If the decree sought to be executed is passed against an agriculturist, that is to say if the judgment-debtor was an agriculturist at the date of the decree, then there is no difficulty. But if he was not an agriculturist at the date of the decree, but has acquired that status at the time of the execution proceedings, the question is whether the Collector can be asked to take possession of his lands in execution of that decree against him. The expression "in the course of any proceeding under a decree against an agriculturist" is interpreted by both the Courts below as meaning "any proceeding taken against an agriculturist under a decree", and they have held that whether the decree itself is passed against an agriculturist or not, the application of para. 2 is attracted when the proceeding under that decree is taken against an agriculturist. In other words, the status of the judgment-debtor at the date of the proceeding can be taken into consideration in determining whether para. 2 of Section 22 is applicable or not. Such an interpretation would obviously be straining the language of the section. Before the section was amended by Act XXII of 1882 the second paragraph ran as follows :-

The Court may, when passing a decree against an agriculturist, or at any subsequent time, direct the Collector to take possession etc.

5. It is obvious that under that section the Collector could take possession only when the decree was passed against an agriculturist and the expression "at any subsequent time" obviously referred only to such a decree, so that if the judgment-debtor was not an agriculturist at the date of the decree, the second paragraph had no application even though he might have acquired that status at the time of its execution. Before the passing of the amending Act of 1882 it was held by this Court in *Dipchand v. Gokaldas* ILR (1880) 4 Bom. 363 that the section was not intended by the Legislature to apply to decrees made prior to the coming into force of the Act. Hence the expression "at any subsequent time," was substituted by the words "in the course of any proceeding; under a decree against an agriculturist passed whether before or after this Act comes into force." This change was intended to make it clear that the section was to have a retrospective effect and to be applicable even if the decree against the agriculturist was passed before the coming into force of the Act. The expression "against an agriculturist" cannot be taken together with "any proceeding," since that expression is followed by the words "passed whether before or after this Act

comes into-force," which are clearly applicable to the word "decree". The expression "against an agriculturist" comes between the word " decree " and the words " passed whether before or after this Act comes into force." Thus the clause read as a whole evidently means that the proceeding must be under a decree which is against an agriculturist and which is passed either before or after the Act comes into force.

6. Such an interpretation is likely to lead to an anomaly. When a judgment-debtor who was not an agriculturist at the date of the decree has acquired the status of an agriculturist at the time of its execution, his Immovable property cannot be attached or sold in execution of the decree, and as he was not an agriculturist at the date of the decree, his land cannot be ordered to be taken possession of by the Collector under the second paragraph of Section 22. Thus a judgment-debtor who was not an agriculturist at the date of the decree but has become one subsequently will be in a better position than a judgment-debtor who was an agriculturist both at the time of the decree and subsequently. This is only one of the many anomalies which are to be found in the Act. But the provision of a statute must be construed according to its plain meaning, neither adding to it nor subtracting from it, and when the terms are clear and plain, it is the duty of the Court to give affect to it as it stands. As observed in *Palmer v. Thatcher* (1878) 3 Q.B.D. 346 the question for interpretation is not what the Legislature meant, but what the language means, and there is no doubt that the expression "against an agriculturist" in the second paragraph of Section 22 must be taken as going with the preceding word " decree" and not with the word " proceedings". If this interpretation leads to a result which was not contemplated by the Legislature, then the remedy will be to amend the section suitably. But the language being plain, it must be held that the second paragraph does not apply when the decree was passed against one who was not an agriculturist although he may have acquired" that status at the time of the execution proceedings.

7. The appeal is, therefore, allowed and the darkhast dismissed. In view of the ambiguity of the language of the section I make no order regarding the costs throughout.