
(1937) 03 MAD CK 0046
In the Madras High Court

Parvataneni Lakshmayya

APPELLANT

Vs

The Official Receiver of Krishna

RESPONDENT

Date of Decision : 16-03-1937

Acts Referred:

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

Citation : (1937) ILR (Mad) 777 : (1937) 45 LW 704 : (1937) 2 MLJ 11

Hon'ble Judges : Horace Owen Compton Beasley, C.J

Bench : Division Bench

Judgement

Horace Owen Compton Beasley, C.J.—The only question raised in this Civil Revision Petition is whether the insolvent is an "agriculturist" within the meaning of Section 60(1) (c) of the CPC and this petition has been posted before a Bench of three Judges because in Muthuvenkatarama Reddi v. Official Receiver, South Arcot (1925) 50 M.L.J. 90 : ILR 49 Mad. 227 Devadoss and Waller, JJ., took the view that in order to constitute an agriculturist within the meaning of that section agriculture must be the sole source of living whereas in (Peyyett) Gopalram Garu Vs. Adusumilly Gopalakrishnayya Garu, Devadoss and Wallace, JJ., held that in order to constitute an agriculturist it is enough if his chief source of income is agriculture. These decisions are obviously in conflict.

2. In the present case, the facts are that the petitioner's income was derived from agriculture, as a mahazadar enjoying kists paid by his ryots, from a motor business and a tobacco trade. He became insolvent and. it was claimed that his house was not liable to sale because of Section 60(1) (c) of the Code of Civil Procedure. The Subordinate Judge held that the petitioner was not an agriculturist within the meaning of that section and the District Judge affirmed that decision on appeal.

3. By reason of Section 60(1) (c) of the CPC "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" shall not be liable to attachment or sale; and by reason of Section 28(5) of

the Provincial Insolvency Act the property of the insolvent which vests in the Official Assignee is not to include property which is exempted by the CPC from liability to attachment and sale in execution of a decree.

4. We will, first of all, take the cases cited which support the view that in order to constitute an "agriculturist" within the meaning of Section 60(1) (c), Civil Procedure Code, it is enough if his chief source of income is agriculture. *Ma E Se v. Ma Bok Son*" ILR (1929) Rang. 766 was the first case cited on the petitioner's behalf; but it does not really assist his argument because there both a house in a village and also a hut in a field belonging to an agriculturist and occupied by him were held to be exempt from attachment. It was assumed that the occupier was an agriculturist and it was held that the house although situated in a village and not in the field was with the hut equally exempt from attachment under the provisions of Section 60(1) (c). That case therefore does not decide the point here. *The Bank of Chettmad v. Ko San Ok* ILR (1933) Rang. 372 next cited was upon the point of whether houses belonging to and occupied by an agriculturist otherwise than in connection with his calling are exempt from attachment under that section and does not decide the point before us. In that case *Muthuvenkatarama Reddi v. Official Receiver, South Arcot* (1925) 50 M.L.J. 90: ILR 49 Mad. 227 was cited but only upon the point under discussion by the Full Bench and not on the present one. Next, reference was made to some decisions of Allahabad High Court and all of them are upon this point. In *Jamna Prasad Raut v. Raghunath Prasad* ILR (1913) All. 307 the appellant was both a zamindar and a cultivator of land and the question was whether he was an agriculturist and on p. 308 the test applied was "what is his main source of income and whether or not he -is an agriculturist within the strict sense of the term and occupies the house as such" and it was stated that he had to show that his main source of income was cultivation and not zamindari and that he was in the strict sense of the term an agriculturist. This it was held that he had failed to do. In *Shafian v. Hamid-ul-lah Khan* (1916) 33 I.C. 727 : 14 A.L.J. 240 the test applied was whether his chief occupation and chief means of livelihood were agriculture. It appears that the judgment-debtor there, was both an agriculturist and a zamindar, his zamindari being infinitesimal in amount and he was held to be an agriculturist. In *Sabha Ram v. Kishan Singh* ILR (1930) All. 1027 a Division Bench applied the test of whether the main source of income was agriculture. The same test was employed in *Bachan Singh Vs. Bhika Singh* i.e., main source of income. As in the other Allahabad cases the party alleging himself to be an agriculturist was also a zamindar and a proposition of law was propounded by the lower appellate Court that a pure and simple zamindar is to be taken as an agriculturist in the absence of any legal definition to the contrary. On second appeal *Iqbal Ahmad, J.*, however, expressed the opinion that the presumption is the other way F.B. and a zamindar must be taken to be a zamindar unless his main source of income is proved to be from cultivation. In *Dharam Singh and Another Vs. Shah Mal Singh and Another*, also a case of a zamindar obtaining his livelihood from cultivation as well as from the zamindari the main source of

income test appears to have been accepted by Niamatullah, J., though he says the fact that he cultivates his Beasley C.J. own land and thereby maintains himself and his family will not necessarily make him any the less an agriculturist and that on the other hand, if land which he cultivates and has let to tenants is considered to be sufficient for his maintenance, he will not be considered to be an agriculturist only because he cultivates the whole of what he owns. He then discusses the facts of the case and states that "the fact that the appellants own 27 pakka big has of land is in my opinion an indication of the extent to which they are maintained by sources other than agriculture pure and simple. This amount of land if let to tenants will fetch sufficient though somewhat reduced income for the maintenance of the appellants. On the whole I think that they cannot be considered to be agriculturists within the meaning of Section 60(1) (c). Next, two decisions of the Lahore High Court were cited, namely, Abdullah v. Anjuman Dehi AIR 1928 Lah. 132 and Gurbakhsh Singh v. Lal Chand-Dharsan Lal AIR 1936 Lah. 737. In the former case, it was held by "agriculturist" is meant one who earns his livelihood wholly or principally by agriculture or ordinarily engages personally in agricultural labour. In that latter case it was held that an agriculturist means a professed cultivator and a farmer or husbandman. In that case the judgment-debtor did not himself till the land and earn his living thereby wholly or partly and he was held not to be an agriculturist. But on page 739 Coldstream, J., makes some observations which, with respect, we cannot agree with. He there expresses the opinion that there is no justification in the wording of the section for holding that for the purpose of that section the term excludes a large landowner or a person who does not depend solely or mainly on cultivation for his livelihood. In our opinion such a person would not be an agriculturist in the strictest sense in which the section should be applied. We are supported in this view by Jivan Bhaga v. Hira Bhaiji ILR (8871) Bom. 363 There West, J., says that "it was for agriculturists in the strictest sense and for an agriculturist in that sole character that the protection of Section 266(c) of the CPC the equivalent of the present Section 60(1) (c) was intended.

5. On the other side, there is the decision of the Calcutta High Court in Surangini Deby v. Kedarnath Chandra (1921) 63 I.C. 681 where the same view as that taken in Muthuvenkatarama Reddi v. Official Receiver, South Arcot (1925) 50 M.L.T. 90 : ILR 49 Mad. 227 was expressed. There it was held that where a judgment-debtor's only source of living is not by cultivation of land he is not an agriculturist within the meaning of Section 60(1) (c).

6. After a consideration of the authorities referred to, we have come to the conclusion that the test is not "main source of income" neither is it "sole source of income." We think that having regard to the scheme of the section exempting from attachment as it does 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, and his houses and other buildings occupied by him, protection is intended to be given to those who are real tillers of the land and that an agriculturist in the

section is a person who is really dependent for his living on tilling the soil and unable to maintain himself otherwise. Main, chief, or principal sources of income are not, in our view, the proper tests. A man's main source of income may be from tilling the soil but his other source or sources of income may be more than sufficient to maintain him. The fact that a man's income from tilling the soil may be larger than his income from his ownership of land or other sources does not seem to us to make him an agriculturist within the meaning of the section. At the same time we see no reason for depriving an agriculturist of the exemption under the section because he may have invested money in a business or businesses as alleged in the present case and may derive some income there from or do coolie work and add to his earnings in bad times. The test of sole source of income if applied would deprive him of the benefit of the section and we prefer the test Advice we have already laid down, viz., that he must be a tiller of the soil really dependent for his living on tilling the soil and unable to maintain himself otherwise.

7. The case is accordingly sent back to the lower Court for disposal in the light of our observations: the costs of this petitioner will abide the result there.