APPELLATE CIVIL—FULL BENCH.

Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice Venkataramana Rao and Mr. Justice Lakshmana Rao.

PARVATANENI LAKSHMAYYA (PETITIONER), PETITIONER, 1937, March 16.

v.

THE OFFICIAL RECEIVER OF KISTNA AT MASULIPATAM (RESPONDENT), RESPONDENT.*

Code of Civil Procedure (Act V of 1908), sec. 60 (1) (c)—"Agriculturist"—Test to be applied to find out who is.

An "agriculturist" within the meaning of section 60 (1) (c) of the Code of Civil Procedure must be a tiller of the soil really dependent for his living on tilling the soil and unable to maintain himself otherwise.

Case-law discussed.

PETITION under section 75 of the Provincial Insolvency Act, praying the High Court to revise the order of the District Court of Kistna at Masulipatam in Civil Miscellaneous Appeal No. 41 of 1933 preferred against the order of the Court of the Subordinate Judge of Bezwada (Additional) in Interlocutory Application No. 1263 of 1931 in Insolvency Petition No. 23 of 1929.

This petition originally came on for hearing before VENKATARAMANA RAO J. who made the following

ORDER OF REFERENCE TO A BENCH :—

The only question in this case is whether the insolvent is an "agriculturist" within the meaning of section 60 (1) (c) of the Code of Civil Procedure. In *Muthuvenkatarama Reddiar* v. *Official Receiver, South Arcot*(1) a Bench took the view that in order to constitute a person an "agriculturist" within the meaning of that section agriculture must be the sole source of living. In *Gopalam Garu* v. *Gopalakrishnayya Garu*(2) another Bench,

*Civil Revision Petition No. 1121 of 1934.

(1) (1925) I.L.R. 49 Mad. 227. (2) A.I.R. 1927 Mad. 342.

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a member of which was also a party to the other decision, took the view that in order to constitute a person an "agriculturist" it was enough if his chief source of income was agriculture. In view of this difference of opinion I think it desirable to have this matter decided by a Bench and I accordingly refer it to a Bench.

On the reference the case was posted before the Full Bench constituted as above.

P. Satyanarayana for petitioner.

V. Govindarajachari for respondent.

The JUDGMENT of the Court was delivered by

BEASLEY C.J.

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 Code of Civil Procedure; and this petition has been posted before a Bench of three Judges because in *Muthuvenkatarama Reddiar* v. *Official Receiver, South Arcot*(1) DEVADOSS and WALLER JJ. took the view that in order to constitute a person an "agriculturist" within the meaning of that section agriculture must be the sole source of living, whereas, in *Gopalam Garu* v. *Gopalakrishnayya Garu*(2), DEVADOSS and WALLACE JJ. held that in order to constitute a person an "agriculturist" it is enough if his chief source of income is agriculture. These decisions are obviously in conflict.

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

(1) (1925) I.L.R. 49 Mad. 227. (2) A.I.R. 1927 Mad. 342.

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.

By reason of section 60 (1) (*c*) of the Code of Civil Procedure

> "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 Receiver is not to include property which is exempted by the Code of Civil Procedure from liability to attachment and sale in execution of a decree.

We will, first of all, take the cases cited which support the view that in order to constitute a person an "agriculturist" within the meaning of section 60 (1) (*c*) of the Code of Civil Procedure it is enough if his chief source of income is agriculture. *Ma E Se* v. *Ma Bok Son*(1) was the first case cited on the petitioner's behalf; but it does not really assist his argument because, there, both a house in the 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*

(1) (1929) I.L.R. 7 Ran. 766.

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Chettinad v. *Ko San Ok*(1), 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 Reddiar* v. *Official Receiver, South Arcot*(2) 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 the Allahabad High Court and all of them are upon this point. In *Jamna Prasad Raut* v. *Raghunath Prasad*(3) the appellant was both a zamindar and a cultivator of land and the question was whether he was an "agriculturist" and on page 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*(4) the test applied was whether the person's 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*(5) a Division Bench applied the test of whether the main source of income was agriculture. The same test

(1) (1933) I.L.R. 11 Ran. 372 (F.B.). (2) (1925) I.L.R. 49 Mad. 227.
(3) (1913) I.L.R. 35 All. 307. (4) (1916) 33 I.C. 727.
(5) (1930) I.L.R. 52 All. 1027.

was employed in *Bachan Singh* v. *Bhika Singh*(1), 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 and that a zamindar must be taken to be a zamindar unless his main source of income is proved to be from cultivation. In *Dharam Singh* v. *Shah Mal Singh*(2), 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 NIAMAT-ULLAH J., though he says that the fact that he cultivates his 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 :

"The fact, that the appellants own 27 pakka bighas 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*)."

(1) A.I.R. 1927 All. 601. (2) A.I.R. 1931 All. 20.

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Next, two decisions of the Lahore High Court were cited, namely, *Abdullah* v. *Anjuman Dehi*(1) and *Gurbakhsh* v. *Lal Chand-Darshan Lal*(2). In the former case, it was held that by "agriculturist" is meant one who earns his livelihood wholly or principally by agriculture or ordinarily engages personally in agricultural labour. In the 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*(3). There, WEST J. says:

> "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 Civil Procedure Code [the equivalent of the present section 60 (1) (*c*)] was intended."

On the other side, there is the decision of the Calcutta High Court in *Surangini Deby* v. *Kedarnath Chandra*(4) where the same view as that taken in *Muthuvenkatarama Reddiar* v.

(1) A.I.R. 1928 Lah. 132.
(2) A.I.R. 1936 Lah. 737.
(3) (1887) I.L.R. 12 Bom. 363.
(4) (1921) 63 I.C. 681.

Official Receiver, South Arcot(1) 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*).

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

(1) (1925) I.L.R. 49 Mad. 227.

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business or businesses as alleged in the present case and may derive some income therefrom 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 tests which 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.

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

G.R.

APPELLATE CIVIL—FULL BENCH.

Before Sir Owen Beasley, Kt., Chief Justice, Mr. Justice Venkataramana Rao and Mr. Justice Lakshmana Rao.

1937, March. 15.

SWAMINATHAN alias MUTHUVELU UDAYAR (SECOND RESPONDENT), PETITIONER,

v.

THE OFFICIAL RECEIVER OF RAMNAD AT MADURA AND TWENTY-THREE OTHERS (PETITIONER AND RESPONDENTS 1 AND 4 TO 25), RESPONDENTS.*

Code of Civil Procedure (Act V of 1908), O. XXXIII, r. 1, Explanation—Whether Official Receiver can institute a suit in forma pauperis *to recover the estate of an insolvent vested in him under sec. 28, cl. (2), Provincial Insolvency Act (V of 1920).*

An Official Receiver, in whom the estate of an insolvent is vested under section 28, clause (2), of the Provincial Insolvency Act (V of 1920) by virtue of an order of adjudication made by

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* Civil Revision Petition No. 113 of 1935.