

in force, every suit for recovering an unsecured loan in which the defendant . . . is an agriculturist shall be *instituted and tried* in a court within the local limits of whose jurisdiction etc. It seems to us that the intention of the legislature is that no court should have jurisdiction to entertain a suit when it is filed or to try it unless the conditions mentioned in that section are fulfilled. The Act is professedly for the relief of agriculturists. The object of the section apparently is that an agriculturist defendant should not be dragged to a distant place for the purpose of defending a claim brought against him and that such suit should be tried and decided by a court within whose jurisdiction he either resides or within whose jurisdiction his property is situated, if he resides outside the province. We think that the view taken by the court below is correct.

The revision is dismissed with costs. The court below will return the plaint to the plaintiff for presentation to the proper court.

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 JAMUNA
PRASAD
v.
BHAWANT
DANAI

 APPELLATE CIVIL

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Bennet*

SHEO SHANKAR DAS AND ANOTHER (DEFENDANTS) v.
MUHAMMAD HASAN (PLAINTIFF)*

 1937
April, 6

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 2(2), first proviso and explanation VII—"Agriculturist" for the purpose of chapter V—Limits of amounts of local rate or land revenue paid, whether applicable.

The definition of an "agriculturist" for the purpose of proceedings under chapters IV and V of the U. P. Agriculturists' Relief Act is completely governed by the first proviso to section 2(2) of the Act and is not affected by the explanations appended to the section. There is nothing in explanation VII to suggest that it was intended to apply to matters falling under

*First Appeal No. 6 of 1937, from a decree of Kali Das Banerji, Civil Judge of Jaunpur, dated the 14th of July, 1936.

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chapters IV and V and other sections mentioned in the first proviso to section 2(2); the explanation is subject to the proviso, so far as matters specially exempted under it are concerned.

Dr. K. N. Katju and Mr. Lakshmi Saran, for the appellants.

This appeal was heard *ex parte*.

SULAIMAN, C.J. and BENNET, J.:—This is an appeal from an order passed by the Civil Judge of Jaunpur in a suit under section 33 of the U. P. Agriculturists' Relief Act. The question was whether the applicant was an agriculturist within the meaning of the Act. The court below has found that the applicant pays a local rate under the District Boards Act and also pays Government revenue, but has ignored the limits of these rates and revenues on the ground that the suit is under chapter V of the Act and the limits have to be omitted under the first proviso to section 2(2). It is contended in appeal that the explanation VII added to the section lays down that a person in districts subject to the Benares Permanent Settlement Regulation, 1795, shall not be deemed to be an agriculturist if the total of the rent and local rate annually payable by him exceeds Rs.500, and it is urged that this explanation must override the proviso. We are of opinion that this explanation has been added in order to explain the provisions of the main section, particularly (b), whereas the proviso is intended to exempt from the operation of the limits imposed certain sections and two specific chapters. There is nothing in explanation VII to suggest that it was intended to apply to applications governed by chapters IV and V and other sections mentioned in the proviso. In our opinion, the explanation is subject to the proviso so far as applications specially exempted under it are concerned. Furthermore, admittedly the applicant does not pay any rent and therefore explanation VII cannot apply, because it applies to a person who pays both rent and local rate and not to a person who is not a tenant at all. It is noteworthy that in none of the explanations I to VI

there is any reference to chapters IV and V, whereas in explanations II and VI there are references to chapters II, III and VI. It follows that applications which are governed by chapters IV and V are completely covered by the proviso and not affected by the explanations. We accordingly dismiss the appeal under order XXI. rule 11 of the Code of Civil Procedure.

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SHEO
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REVISIONAL CIVIL

Before Mr. Justice Niamat-ullah

BRIJ MOHAN DAS (DECREE-HOLDER) *v.* PIARI
(JUDGMENT-DEBTOR)*

1937
April, 6

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 7—Jurisdiction—Forum—Decree passed ex parte—No plea under section 7 raised—Decree transferred for execution—Execution court questioning jurisdiction of court which passed the decree—Civil Procedure Code, section 21.

A money decree was passed *ex parte* by a court in Benares district. The defendant, who was a resident of Jaunpur district, did not appear and raise the plea that he was an agriculturist and therefore under section 7 of the U. P. Agriculturists' Relief Act the suit could be instituted only in the Jaunpur district. The decree was transferred for execution to a court in Jaunpur district and the judgment-debtor there raised the plea that the decree was passed by a court which had no jurisdiction to pass it:

Held that the court executing the decree was not competent to embark on an inquiry into facts which, if established, would tend to show that the court passing it had no jurisdiction to do so. In the present case the court executing the decree took evidence to decide whether the judgment-debtor was an "agriculturist"—a fact which did not appear on the face of the record—and secondly it had to decide whether the suit was for recovery of an unsecured loan as defined in the U. P. Agriculturists' Relief Act; and it was beyond its competence to allow such questions to be raised in the execution