REVISIONAL CIVIL

Before Mr. Justice Niamat-ullah

1937
March, 3

PHULMATI DEVI (DECREE-HOLDER) *v.* LILADHAR AND OTHERS (JUDGMENT-DEBTORS)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), sections 2(2), 30—Agriculturist—"Holding" land—Fresh promissory note in lieu of former one—Whether a "loan" within the meaning of the Act.

A person falling within the categories (*a*), (*d*), (*f*) and (*g*) of the definition of an agriculturist in section 2(2) of the U. P. Agriculturists' Relief Act should be considered to be "holding" the land, though the same may be in the actual occupation of a thekadar or a tenant, who should also be considered to be "holding" such land. Each holds it in a different tenure; the proprietor holds it in his capacity as proprietor, while the thekadar or tenant holds it as such; and if other conditions are fulfilled, each of them should be considered to be an "agriculturist".

Quaere, whether the mere renewal of an earlier promissory note, without any fresh advance, comes within the category of a "loan" for the purpose of section 30 of the U. P. Agriculturists' Relief Act.

Mr. *G. S. Pathak,* for the applicant.

Mr. *B. Malik,* for the opposite parties.

NIAMAT-ULLAH, J.:—This is an application for revision under section 115 of the Civil Procedure Code, against an order passed by the Munsif of Pilibhit in a case under the Agriculturists' Relief Act. The applicant in this Court obtained a decree against the opposite party on foot of a promissory note before the passing of the Agriculturists' Relief Act of 1934. The judgment-debtors made an application under sections 4, 5 and 30 of that Act for the reduction of interest and for the decree being converted into one allowing payment by instalments. The decree-holder objected on various grounds, one of which was that the judgment-debtors were not agriculturists and therefore not entitled to the benefit of the Act. The lower court

*Civil Revision No. 423 of 1936.

held that they were agriculturists, and proceeded to consider the question whether interest should be reduced and how far the decree should be allowed to be satisfied by instalments.

It is common ground between the parties that the judgment-debtors borrowed Rs.1,000 in cash on the 2nd of July, 1928, under a promissory note, agreeing to pay interest at the rate of 1-8-0 per cent. per mensem. No payment was made, and on the 22nd of June, 1931, they executed a fresh document, the nature of which is in controversy between the parties. It is in the form of a letter addressed to the creditor, in which it is declared that a sum of Rs.1,500 was due on foot of the promissory note of the 2nd of July, 1928. The executants thereof promised to pay the sum with interest at the rate of 1-8-0 per cent. per mensem. A decree was obtained by the applicant in a suit in which the entire history of the transactions between the parties was disclosed The decree was for the entire sum due, which included Rs.1,500 and interest at the rate of 1-8-0 per cent. per mensem calculated on that amount from the 22nd of June, 1931.

The judgment-debtors claimed that interest be reduced, under section 30 of the Agriculturists' Relief Act, from 1st January, 1931, that future interest be reduced under section 4 and that the entire decretal amount be made payable by instalments. The lower court allowed interest at the contractual rate on Rs.1,000 from the 2nd of July, 1928, to the 31st of December, 1929, and interest at 12 per cent. per annum on the total amount due on the last mentioned date up to the date of institution of the suit, and thereafter at 6 per cent. per annum up to the 8th of May, 1935, after which interest was to run at $3\frac{1}{2}$ per cent. per annum till the 15th of January, 1936, after which at $3\frac{1}{4}$ per cent. per annum.

One of the questions argued in revision is that the judgment-debtors were not agriculturists at the relevant

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time, because they paid income-tax. The lower court has taken notice of the fact that the judgment-debtors paid income-tax, but has held them to be agriculturists, because the income-tax paid by them did not exceed the amount of local rate payable on the land which they held. The definition of an agriculturist, as given in section 2(2), fully applies to the judgment-debtors on the facts assumed by the lower court. If the income-tax paid by them did not exceed the local rate payable on the land which they held, they were not excluded from the category of agriculturists, which they otherwise admittedly were. It is, however, contended that the local rates, which the lower court has assumed to be payable on certain lands, are not payable on the lands actually held by the judgment-debtors. It is pointed out that the amount of local rate, which the lower court has taken into consideration, is in respect of land of which the judgment-debtors are proprietors and also of the land of which they are only thekadars. The contention is that the land of which the judgment-debtors are proprietors cannot be considered to be land "held" by them, such land being held as thekadar or tenant by persons other than the proprietors. It is argued that only one person can hold the same land. I am unable to accept this contention. A reference to the definition of "agriculturist" will show that it includes all those who (*a*) pay land revenue not exceeding Rs.1,000 in districts not subject to the Benares Permanent Settlement Regulation, 1795, or (*b*) pay a local rate under section 109 of the District Boards Act, 1922, not exceeding Rs.120 per annum, or (*c*) hold land free of revenue, paying a local rate under section 109 of the District Boards Act not exceeding Rs.120, or is (*d*) an under-proprietor in Oudh holding a sub-settlement of land the revenue of which does not exceed Rs.1,000, or (*e*) a thekadar who holds a theka of land the revenue of which does not exceed Rs.1,000, or (*f*) a person, other than a thekadar or an under-proprietor

in Oudh holding a sub-settlement, and paying rent for agricultural land not exceeding Rs.500, or (*g*) a person holding land free of rent the area of which does not exceed 80 acres, or (*h*) a person ordinarily living outside the limits of any municipality who belongs to any of the classes mentioned in schedule I. The second proviso to the definition is that "No person shall be deemed to be an agriculturist if he is assessed to income-tax, which, if he belongs to any of the classes (*a*) to (*e*) above, exceeds the local rate payable on the land which he holds, or, if he belongs to class (*f*) above, exceeds 5 per cent. of his rent, or, if he belongs to class (*g*) above, exceeds Rs.25." In my opinion, a person falling within the categories (*a*), (*d*), (*f*) and (*g*) should be considered to be holding the land, though the same is in the actual occupation of the thekadar or a tenant, who should also be considered to be holding such land. Each holds it in a different tenure. The proprietor holds it in his capacity as proprietor, while the thekadar holds it as such. If other conditions are fulfilled, both of them should be considered to be "agriculturists," if they do not pay income-tax exceeding the amount of the local rate payable in respect of the same land. The contention of the learned counsel for the applicant assumes that land can be held by only one person at a time. As already stated, this assumption is not correct and a land can be held by holders of different grades at one and the same time. In this view, the judgment-debtors were rightly held by the lower court to be agriculturists.

Another question that has been argued in this Court is that in reducing interest under section 30 the lower court should not have ignored the transaction of the 22nd of June, 1931, though it was a mere renewal of the earlier transaction of the 2nd of July, 1928, in respect of the principal and interest due on the date of the second transaction. It is urged that the debtor should be deemed to have actually paid to the creditor all that was due on that day, and the creditor should be deemed

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to have re-advanced the same amount to the debtor, who executed a fresh promissory note. It is a moot question as to whether a notional payment of this kind can be considered to be a "loan" within the meaning of section 30 of the Agriculturists' Relief Act. Having regard, however, to the circumstances of the present case, it is not necessary to decide it. The transaction of the 22nd of June, 1931, is embodied in a letter addressed by the debtors to the creditor, in which it is clearly stated that the sum of Rs.1,500, due under the promissory note of the 2nd of July, 1928, is outstanding and that the sum would be paid at the same rate of interest, viz., 1-8-0 per cent. per mensem, on demand. There was not even a notional payment by one to the other. If it had been a case of a promissory note, purporting to have been executed on the 22nd of June, 1931, for a cash advance, though in fact it was only principal and interest due under the earlier bond, the theory of notional payment might have been considered. As already stated, the letter leaves no doubt that the liability acknowledged in it on the 22nd of June, 1931, was that under the earlier promissory note, which was not treated as satisfied and liability thereunder extinguished. Accordingly I hold that the lower court was right in calculating interest at the contractual rate on Rs.1,000 up to the 31st of December, 1929, and thereafter at 12 per cent. per annum on the total amount due on that date. As regards other rates of interest, to which reference has already been made, no exception is taken.

In the result, I hold that the order of the lower court is not vitiated by any error which may be considered to amount to an illegal or irregular exercise of jurisdiction. The application for revision is accordingly dismissed with costs.