

creditors will be stayed and will remain pending during the disposal of the case in the court of the Special Judge and of the Collector under the Encumbered Estates Act. Accordingly we dismiss this application in revision with costs.

1936

BEIJ  
KISHORE  
v.  
PARSHOTAM  
DAS

## APPELLATE CIVIL

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

MUHAMMAD MUSA KHAN (JUDGMENT-DEBTOR) v. SRI  
THAKUR GOPALJI (DECREE-HOLDER)\*

1936  
December, 23

*U. P. Agriculturists' Relief Act (Local Act XXVII of 1934),  
section 2(2)(a)—Agriculturist—Mutwalli of wakf property  
paying land revenue—Whether an "agriculturist".*

Where a mutwalli of wakf property has a beneficial interest under the wakf, then his payment of land revenue for the property brings him under the definition of an "agriculturist" in section 2(2)(a) of the U. P. Agriculturists' Relief Act. If he takes no beneficial interest whatever under the wakf, then he is merely in the position of a trustee for other persons.

*Dr. M. Nasim and Begam M. A. Faruqi, for the appellant.*

*Mr. Panna Lal, for the respondent.*

SULAIMAN, C.J., and BENNET, J.:—This is a first appeal by a judgment-debtor under the following circumstances. The judgment-debtor applied under the U. P. Agriculturists' Relief Act for fixation of instalments and reduction of interest under sections 4 and 30 of the Act. Section 30 is in chapter IV. Accordingly, therefore, the first proviso in section 2(2) applies, and the limit of land revenue does not apply in sub-section (1). The appellant claims that he is a person paying land revenue in a district not permanently settled. The court below has held that he does pay land revenue to the extent of Rs.9,000 but that it is not for himself and that he is not the owner of the

\*First Appeal No. 226 of 1935, from an order of Akib Nomani, Subordinate Judge of Aligarh, dated the 17th of August, 1935.

1933  
MUHAMMAD  
MUSA  
KHAN  
v.  
SRI  
THAKUR  
GOPALJI

property. The circumstances are that there was a mortgage executed on the 9th of September, 1920, by the judgment-debtor and a decree was obtained by the opposite party on the 22nd of September, 1933, to the extent of over a lakh on that hypothecation bond. After the mortgage of 1920 the judgment-debtor executed a *wakf-alul-aulad* of his property and in his capacity of mutwalli he made the payment of the revenue in question. The court below considers that the fact that he is a mutwalli renders him not an agriculturist. The words used in section 2(2)(a) are "a person who pays land revenue". The words are not "the owner of zamindari property who pays land revenue". Although the judgment-debtor may not be an owner we are of opinion that he may or may not come under the definition of "agriculturist" by this payment of land revenue. The court below should examine the wakf and determine whether under that wakf the judgment-debtor takes a beneficial interest or not. If he takes no beneficial interest whatever under the wakf then he is merely in the position of a trustee for other persons. On the other hand if he has a beneficial interest under the wakf then his payment of land revenue in our opinion brings him under the definition of "agriculturist". Accordingly we set aside the order of the lower court and we remand this case to that court for disposal according to law according to the directions given above. Costs hitherto incurred will abide the result.