

MISCELLANEOUS CIVIL

1937
November, 19

Before Mr. Justice Collister and Mr. Justice Bajpai
BISHESHAR (DECREE-HOLDER) v. GAYA BUX SINGH
AND OTHERS (JUDGMENT-DEBTORS)*

U. P. Temporary Regulation of Execution Act (Local Act XXIV of 1934), sections 4(i) and 6—Decree against several judgment-debtors some of whom are "cultivators"—Applicability of Act—Interpretation of statutes—Lacuna—Spirit and intention of Act.

In the case of a decree against several judgment-debtors, some of whom are "cultivators" within the meaning of the U. P. Temporary Regulation of Execution Act, and others not, if it is possible to separate the liability of the "cultivator" judgment-debtors the benefit of the Act should apply to them alone and should be granted only so far as their share of the liability is concerned; but if it is not feasible so to separate their liability, then all the judgment-debtors will be entitled to the benefit of the Act.

Reading sections 4(i) and 6 of the Act, it appears that the Act omitted to provide for a case in which only some of the judgment-debtors are "cultivators"; but it being clear that the intention of the Act was primarily to give relief to cultivators, the Act should be interpreted according to its spirit and intention, so as not to deprive "cultivators" of its benefit in such a case, even though non-cultivators would simultaneously be getting such benefit.

Mr. Rama Shankar Prasad, for the applicant.

Mr. H. P. Sen, for the opposite parties.

COLLISTER and BAJPAI, JJ.:—This is a reference under section 113 of the Civil Procedure Code by a Munsif of Allahabad.

A mortgage decree was passed against nine persons. The judgment-debtors subsequently applied under section 6 of the U. P. Temporary Regulation of Execution Act (Local Act No. XXIV of 1934) for relief under section 8 of the Act. According to the learned Munsif's statement of the case only two of the nine judgment-debtors are cultivators within the meaning of the Act. The Munsif has referred the following

*Miscellaneous Case No. 355 of 1937.

question to this Court: "Where some, but not all, the judgment-debtors are cultivators within the meaning of the Act, can those judgment-debtors alone who are cultivators reap the benefit or all of them, and in the former case whether the benefit will be granted so far as their share of liability alone is concerned?" The Munsif's own opinion is in the affirmative.

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Section 6 of Act XXIV of 1934 reads as follows: "Any person against whom a decree to which this Act applies has been passed or his successor or representative may, within a period of one year following the commencement of this Act, apply to the court passing such decree, or if the decree is being executed, the court in which execution proceedings are pending, to give him the benefit of the provisions of this Act: Provided that no person shall make such application unless he is a cultivator on the day on which this Act comes into force and is a cultivator on the date of the application."

The Act is silent on the point which has been referred to us, but learned counsel for the decree-holder pleads that in such a case none of the judgment-debtors is entitled to the benefit of the Act. He points out that in the U. P. Agriculturists' Relief Act (Local Act No. XXVII of 1934) there is a proviso to section 2(2) to the effect that "if a non-agriculturist joins with an agriculturist in any transaction of loan, save for the purpose of adding his name as security, the agriculturist shall not be considered as such for the purpose of that transaction"; and he argues that by analogy the same principle should be applied in cases arising out of Act No. XXIV of 1934. From the grammatical construction of the above mentioned proviso it might well be argued that it is doubtful whether it was intended to apply to loans taken after the passing of that Act;

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and in any case we think it would be unsafe to apply the analogy.

There is, however, one difficulty which we have noticed. Section 6 of Act No. XXIV of 1934 provides that any person against whom a decree to which this Act applies has been passed is competent to apply for relief; but section 4(i) lays down that the Act shall not apply to any decree passed against any person other than a cultivator. From this it may be argued—and it was so argued after we had pointed this out to learned counsel for the decree-holder—that since it is clear that the decree in the present case was, *quoad* seven of the judgment-debtors, a decree against persons other than cultivators, it must be held that the Act is totally inapplicable to this transaction. The contention is not without some force; but it is equally clear that *quoad* two of the judgment-debtors the decree in question was also a decree against persons who are cultivators. If the legislature had intended that when some of the judgment-debtors in a proceeding under Act No. XXIV of 1934 are cultivators within the meaning of the Act (and others are not) the benefit of the Act should be denied to all, it may be presumed, having regard to the scheme and purpose of the Act, that a provision to the above effect would have been incorporated therein.

The conclusion at which we have arrived is that if it is possible to separate the liability of the cultivator judgment-debtors, the Act should apply to them alone and the benefit should be given so far only as their share of liability is concerned. But if this is impracticable, we must consider what the position will be. It is remarkable that the framers of the Act did not envisage the possibility of a decree being passed against several persons, some of whom are cultivators and others not, and that it did not provide for such a likely contingency; but it is clear that the intention of the legislature was primarily to give relief to cultivators and we must

endeavour to interpret the Act according to its spirit. If the courts have to decide whether cultivator judgment-debtors should lose the benefit of the Act by reason of their association with non-cultivators or whether the non-cultivator judgment-debtors should enjoy the benefit of the Act by reason of their association with cultivators, we are of opinion that in the absence of an express provision to the contrary the Act should be construed so as not to deny to the cultivator judgment-debtors their rights under the Act. In other words, all the judgment-debtors will in such a case be entitled to benefit under the Act. This ruling may appear to operate somewhat harshly on the decree-holder in the present case, having regard to the fact that no less than seven of the nine judgment-debtors are non-cultivators; but a case might well arise in which out of a large number of judgment-debtors only one is a non-cultivator and it would be unfortunate if the cultivators should lose their right to benefit from the Act by reason of the fact that a non-cultivator was associated with them from a time when this legislation was not yet in contemplation. It may be mentioned that Act No. XXIV of 1934 applies only to decrees which were passed before this Act came into force.

Our answer to the reference is that the benefit of the Act shall, if possible, be granted only to such of the judgment-debtors as are cultivators within the meaning of the Act and shall be granted only so far as their share of liability is concerned; but if it is not feasible so to separate their liability, then all the judgment-debtors will be entitled to the benefit of the Act.

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