

preceded the sale became null and void. It is not necessary, for the purposes of this appeal, to decide this point, which may never arise between the parties.

We dismiss the appeal, subject to the order that proceedings in the lower court should be considered as stayed and not quashed. The appellant shall pay the costs of this appeal.

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BENARES  
BANK, LTD.  
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KISHORE

### REVISIONAL CIVIL

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

ALLAHABAD BANK (DECREE-HOLDER) v. PRAKASH NATH  
(JUDGMENT-DEBTOR)<sup>33</sup>

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*U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), sections 2(2) explanation II, 5, 30—"Agriculturist"—Joint Hindu family—Decree against joint Hindu family—Whether every member individually can apply for instalment decree and reduction of interest.*

According to explanation II to section 2(2) of the U. P. Agriculturists' Relief Act each member of a joint Hindu family can be regarded as an agriculturist only for certain specified purposes; and for purposes other than those expressly covered by this explanation the karta or person actually recorded as holding the property, or paying land revenue or local rate, etc., can alone be treated as the agriculturist and the other members of the joint family can not claim the same benefits and privileges. As section 5, and section 30 (which is in chapter IV), of the Act are expressly excluded from the operation of explanation II to section 2(2), it follows that for the purposes of applications under section 5 or under section 30 the person recorded as holding the property, or the person paying land revenue or local rate, etc., is the only person who, as an agriculturist, can so apply. Normally such a person in a joint Hindu family would be the karta, and the other members of the family could not be regarded as "agriculturists" entitled to make such applications.

Mr. *Brij Lal Gupta*, for the applicant.

The opposite party was not represented.

SULAIMAN, C.J., and HARRIES, J.:—This is a decree-holder's application for revision of an order passed by

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the learned Civil Judge of Meerut allowing a judgment debtor's application under sections 5 and 30 of the U. P. Agriculturists' Relief Act, 1934. The applicants, the Allahabad Bank, Ltd., obtained a decree against members of a joint Hindu family, namely Babu Lal and his three sons, one of whom is the present opposite party Prakash Nath. Later, Babu Lal the karta applied under sections 5 and 30 of the Agriculturists' Relief Act for the payment of the decree by instalments and for the reduction of interest payable on the loan. This application was dismissed upon the ground that Babu Lal was not an agriculturist, and later he applied for a review of that order. His application to review the order was eventually dismissed and he then appealed to the District Judge, and when the present application of Prakash Nath was before the lower court Babu Lal's appeal was still pending before the District Judge. We are now informed by counsel for the applicant bank that Babu Lal's appeal has been dismissed by the District Judge.

Prakash Nath claimed also to be an agriculturist, and the learned Civil Judge has held that he was an agriculturist and therefore entitled to the benefits of sections 5 and 30 of the Act. Counsel for the applicant now contends that the lower court could not possibly find that Prakash Nath, the son, was an agriculturist when the courts had previously found that Babu Lal, the father and admitted karta of the family, was not an agriculturist.

The term "agriculturist" is defined by section 2(2) of the Agriculturists' Relief Act, and it is clear from sub-paragraphs (a) to (h) of sub-section (2) that it is the person who is holding land or who is paying land revenue etc. who is to be regarded as an agriculturist. For example, if a person is recorded as holding certain property or if the revenue papers show that a certain person actually pays land revenue, etc., then he is the person

who is *prima facie* an agriculturist within the meaning of sub-section (2) of section 2 of the Act. Where property is owned by a joint family, difficulties might have arisen and consequently the position is dealt with in explanation II to section 2(2) of the Agriculturists' Relief Act. This explanation reads as follows: "In the case of members of a joint Hindu family or joint owners or joint tenants, each member or owner or tenant shall be considered to be an agriculturist for the purposes of chapters II (except sections 3, 4, 5 and 8), III and VI, whose share or interest in revenue, local rate or rent or the rent-free land, as the case may be, does not respectively exceed the aforesaid limits." This explanation makes it clear that for certain purposes each member of a joint Hindu family or each joint owner or joint tenant may apply for certain benefits conferred by the Act. But on the other hand, this explanation makes it equally clear that each member of a joint family or joint owner or joint tenant cannot claim the benefits conferred by section 5 of the Act or by section 30, which is one of the sections in chapter IV, because section 5 and chapter IV are expressly excluded in this explanation. According to this explanation each member of a joint Hindu family can be regarded as an agriculturist only in certain specified cases, e.g., proceedings relating to redemption of mortgages under chapter III, proceedings under sections 37 and 38 etc. In cases other than those expressly covered by this explanation the karta or person actually recorded as holding the property or paying land revenue etc. can only be treated as the agriculturist and the other members of the joint family cannot claim the same benefits and privileges.

It follows, therefore, that for the purposes of applications under section 5 or applications under chapter IV the person recorded as owner or the person paying

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revenue etc. is the only person who can apply. Normally such a person in a joint Hindu family would be the karta. In the present case it is found that Babu Lal was the karta of the family, and the property held by the family was recorded in his name. Therefore he was the only person who could for the purposes of section 5 or any of the sections of chapter IV be regarded as an agriculturist. The court has held that Babu Lal is not an agriculturist, and in our view that concludes the matter. The other members of the family could not by reason of explanation II, section 2(2), be regarded as agriculturists for the purposes of this application before us, and consequently the application of Prakash Nath should have been dismissed by the learned Civil Judge.

For the reasons given above we allow this application, set aside the order of the learned Civil Judge and dismiss the judgment-debtor's application. The applicants will have the costs of this application in this Court and in the court below.

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

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 August, 24

BABU RAM AND OTHERS (JUDGMENT-DEBTORS) v.  
 MANOHAR LAL (DECREE-HOLDER)\*

*U. P. Encumbered Estates Act (Local Act XXV of 1934), sections 7(1)(a) and 9(5)—Stay of execution proceedings—Court to which application for stay is to be made—Stay as against all judgment-debtors although only some have applied under the Act—Civil Procedure Code, section 115—Revision of decision of first court, though confirmed by decision of appellate court from which no revision lies—Civil Procedure Code, section 115—"Case decided"—Order refusing to stay proceedings in accordance with the U. P. Encumbered Estates Act, section 7(1).*

Where there is a decree for money passed jointly against several judgment-debtors, and even one of them applies under