

reversed the decree of the trial court which was in favour of the plaintiff has been held by us to be incorrect. We therefore allow this second appeal and we restore the decree of the trial court with costs throughout in favour of the plaintiff.

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DHARAM

NATH

v

MUHAMMAD
UMAR KHAN

Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai

BANGALI MAL (PLAINTIFF) v. BANSIDHAR AND ANOTHER
(DEFENDANTS)*

1939

January, 4

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), section 2(2), proviso third, explanation II; sections 3 and 30—“Agriculturist”—Joint Hindu family—Decree against joint Hindu family—Karta, being recorded owner, can apply for benefit of sections 3 and 30—Such benefit can extend to all members of the family—Members whose names are not recorded in the revenue papers are not “non-agriculturists” for purposes of the proviso.

A mortgage of zamindari property was executed by a father and his son, who were members of a joint Hindu family. The name of the father alone was recorded in the revenue papers as owner. As the revenue did not exceed Rs.1,000, the father came within the definition of “agriculturist” in section 2(2) of the U. P. Agriculturists' Relief Act. In a suit upon the mortgage both the defendants prayed for relief under sections 3 and 30 of the Act, for fixing of instalments and reduction of interest:

Held, that in view of explanation II to section 2(2) of the Act the father alone, being the person recorded as owner paying revenue, but not the son, was the person who could apply under section 3 or section 30. But that did not mean that a decree for the whole amount and without any instalments must be passed against the son. On the application being made by the father the court was competent to extend the benefits of sections 3 and 30 to both the defendants who were members of a joint Hindu family.

Held, also, that the third proviso to section 2(2) of the Act applies only to those cases where an agriculturist joins a non-agriculturist in any transaction of loan; and although in view of explanation II to section 2(2) the son might be regarded as a

*Second Appeal No. 752 of 1936, from a decree of Z. Islam Khan, Additional Civil Judge of Agra, dated the 14th of January, 1936, confirming a decree of R. K. Choudhari, Munsif of Agra, dated the 17th of October, 1935.

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non-agriculturist for purposes of applying under sections 3 and 30, he could not be regarded as a non-agriculturist for all purposes. He could not, therefore, be held to be a non-agriculturist so as to invite the application of the proviso, and that being so, the father by joining the son with him in the execution of the mortgage did not forfeit the right to the reliefs to which he was entitled by the provisions of the Act.

Messrs. *Baleshwari Prasad* and *Gopal Behari*, for the appellant.

Mr. *S. Munir Ahmad*, for the respondents.

IQBAL AHMAD and BAJPA), JJ.:—This is a plaintiff's appeal and arises out of a suit for sale on a mortgage dated the 23rd of August, 1929. The mortgage was executed by Bansidhar and his son Chhedi Lal who are members of a joint Hindu family. Bansidhar and Chhedi Lal contested the suit *inter alia* on the allegation that both of them were agriculturists and were entitled to the benefit of the provisions of sections 3 and 30 of the U. P. Agriculturists' Relief Act (Act XXVII of 1934). They prayed that the rate of interest be reduced and the decretal amount be made payable by instalments. This prayer of the defendants was accepted by the trial court and that court reduced the interest and also granted certain instalments. On appeal by the plaintiff the lower appellate court affirmed the decision of the trial court.

The plaintiff has come up in appeal to this court and it is argued on his behalf that in view of the provisions of explanation II to section 2(2) of the Act the courts below were wrong in granting instalments and in reducing the rate of interest. In support of this contention reliance is further placed on one of the provisos to section 2 which runs as follows: "Provided further 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."

Explanation II provides that "In the case of members of a joint Hindu family. . . each member . . .

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. . . . as the case may be, does not respectively exceed the aforesaid limits" In the present case it has been found by both the courts below that the joint family of the defendants is possessed of ancestral zamindari property, the revenue of which does not exceed Rs.1,000. But the name of Bansidhar alone, who is the karta of the family, is recorded in the revenue papers and Chhedi Lal's name is not recorded as a proprietor in those papers. In view of the provisions of explanation II it is contended that Chhedi Lal could not be considered to be an agriculturist for the purposes of sections 3 and 30 of the Act, and it is, therefore, urged that he must be deemed to be a non-agriculturist and as Bansidhar joined with Chhedi Lal in the execution of the mortgage the proviso quoted above applied to this case.

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In our judgment, there is no force in this contention. The proviso applies only to those cases where an agriculturist joins a non-agriculturist in any transaction of loan. Chhedi Lal could not, in view of explanation II, be regarded as a non-agriculturist for all purposes. He could not, therefore, be held to be a non-agriculturist so as to invite the application of the proviso referred to above. That being so, Bansidhar by joining Chhedi Lal in the execution of the mortgage did not forfeit the right to the relief to which he was entitled by the provisions of the Act.

The learned counsel for the appellant relied on the decision in *Allahabad Bank v. Prakash Nath* (1), in support of the contention referred to above. In that case it was held that 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

(1) I.L.R. [1938] All. 19.

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is the person who is *prima facie* an "agriculturist" within the meaning of sub-section (2) of section 2 of the Act. It was further held in that case that explanation II of sub-section (2) of section 2 of the Act makes it clear that each member of a joint Hindu family 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. The learned Judges after making these observations laid down: "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 revenue etc. is the only person who can apply. Normally such a person in a joint Hindu family would be the karta." It is clear from the observations just quoted that a karta of a joint Hindu family is entitled to apply for the benefit conferred by section 3 and section 30 of the Act. In the case before us Bansidhar had applied for relief under those sections in his written statement. The courts below were therefore right in granting instalments and in reducing the rate of interest.

It was argued that as Chhedi Lal could not be deemed to be an agriculturist for the purposes of section 3 and section 30 the decree for the full amount claimed should have been passed against him. We are unable to agree with this contention. On an application being made by Bansidhar the court was competent to extend the benefit of sections 3 and 30 to both the defendants who are members of a joint Hindu family.

In our judgment, there is no force in this appeal. It is accordingly dismissed with costs.