1933

May 16.

FULL BENCH.

Before Sir Arthur Page, Kt., Chief Justice, Mr. Justice Das and Mr. Justice Dunkley.

THE BANK OF CHETTINAD

v.

KO SAN OK AND ANOTHER.*

Agriculturist's house—Exemption from attachment—Occupation by agriculturist as such essential—Civil Procedure Code (Act V of 1908), s. 60 (1), proviso (c).

The exemption from attachment under proviso (c) to s. 60 (1) of the Civil Procedure Code is of a house occupied by an agriculturist, and this means a house dwelt in or occupied by an agriculturist as such and in good faith for the purpose of agriculture. It does not include other houses belonging to and occupied by an agriculturist otherwise than in connection with his calling.

Radhakisan Hakumji v. *Balwant Ramji*, I.L.R. 7 Bom. 530—*followed.*

Jamna Prasad v. *Raghunath*, I.L.R. 35 All 307; *Jivan Bhaga* v. *Hira Bhaiji*, I.L.R. 12 Bom. 363; *Mirza* v. *Jhanda Ram*, I.L.R. 12 Lah. 367; *Muthuvenkata* v. *Official Receiver*, I.L.R. 49 Mad. 227—*referred to.*

Ma E Se v. *Ma Bok Son*, I.L.R. 7 Ran. 766—*overruled.*

The plaintiffs attached two houses owned and occupied by the defendants in Minzan village in execution of a money decree against them. The defendants who are husband and wife were agriculturists owning about 30 acres of paddy land which they cultivated. One of the houses was under construction at the time of attachment, the defendants formerly occupying only the other house which they used also as a cattle shed and a granary. They had entered into occupation of the partly constructed house only about the time of the attachment to save it from being attached. The defendants purported to sell both the houses to near relatives who applied for the removal of attachment, but subsequently withdrew their application. The defendants now raised the plea that the properties were not attachable under proviso (c) to s. 60 (1) of the Civil Procedure Code.

* Civil Reference No. 4 of 1933 arising out of Special Civil Second Appeal No. 188 of 1932 of this Court.

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The Township Court ordered the attachment of the partly constructed house to remain, but that of the other house to be removed. The plaintiffs did not appeal, but the debtors appealed against the first part of the order. The lower appellate Court allowed the appeal. The plaintiffs now appealed to the High Court, and Mya Bu J. who heard the appeal came to the conclusion that the respondents were agriculturists, and that the attached house was in the occupation of the respondents, but that the occupation was not for the purposes of agriculture. The learned Judge referred the case for the decision of a Bench, and after setting out the above facts in the order of reference proceeded as follows :

" If it were necessary for the purpose of the exemption under proviso (*c*) to s. 60 (*1*) that the house must be occupied by the agriculturist owner in good faith or for purposes of agriculture, I will have no hesitation in holding that the respondents are absolutely out of Court. According to the proviso ' houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him ' are exempt from attachment and sale. In a single Judge case of *Ma E Se* v. *Ma Bok Son* (1) my learned brother Baguley J. stated ' In the present case, the property attached is a house which belongs to an agriculturist and is occupied by him ; and giving their plain meaning to the words of the section, I entirely fail to see how it can be said that the house is liable to attachment. The trial Judge says that if this meaning is given to the section, most of the houses in Burma cannot be attached, which would be very absurd. This may be the case, but it is not for him to say whether the law is absurd or not, it is his duty to enforce the law as it is.' Only one authoritative decision upon the question appears to have been laid before his Lordship with reference to which he stated ' The trial Judge quoted the case of *Jivan Bhaga* v. *Hira Bhaiji* (12 Bombay 363) and stated that it was

(1) (1929) I.L.R. 7 Ran. 766.

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held therein that only the house occupied by an agriculturist *bonâ fide* for the purpose of cultivation is exempted. The first comment I make on this ruling is that it was not under the existing Code of Civil Procedure and s. 60 (*c*) of the present Code differs in its wording from the old s. 266.' The effect of this ruling, to my mind, is that the question whether the occupation by an agriculturist of a house belonging to him is or is not in good faith or for the purpose of agriculture does not arise in a proceeding such as this. Therefore if this ruling is correct, this appeal must fail.

There have been a few reported cases of some of the Indian High Courts upon the interpretation of the provisions under consideration both before and after the introduction of the Civil Procedure Code, 1908. In the Code of 1882 the corresponding proviso runs thus '(*c*) The materials of houses and other buildings belonging to and occupied by agriculturists.' And there have been judicial interpretations to the effect that under this clause fall houses belonging to and dwelt in by agriculturists. In the case of *Radhakisan Hakumji* v. *Balvant Ramji* (1) it was observed that 'the exemption is of a house or building occupied by an agriculturist, and this, we think, means a house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling.' In *Jivan Bhaga* v. *Hira Bhaiji* (2), the case noticed in *Ma E Se* v. *Ma Bok Son* (3), it is ruled that 'there must be an occupation in good faith for the purposes of agriculture, in order to get the benefit of the exemption.' Both these cases were decided before the Code of 1908. Among the decisions made after the Code of 1908, there are three which bear upon the point. The earliest of them is the case of *Jamna Prasad Raut* v. *Raghunath Prasad and others* (4) in which the occupation of the house by an agriculturist as such is spoken of. The next is the case of *Muthuvenkatarama Reddiar and others* v. *The Official Receiver of South Arcot and others* (5) in which it was held that 'the property of an agriculturist, to be exempt under clause (*c*) of s. 60 of the Code, must be shown to have been occupied by him as such for purposes of agriculture, that is, in order to enable the owner or occupier to cultivate the land.' In *Mirza and another* v. *Jhanda Ram and others* (6) it was pointed out that 'in order to claim

(1) (1883) I.L.R. 7 Bom. 530.
(2) (1887) I.L.R. 12 Bom. 363
(3) (1929) I.L.R. 7 Ran. 766.
(4) (1913) I.L.R. 35 All. 307.
(5) (1925) I.L.R. 49 Mad. 227.
(6) (1930) I.L.R. 12 Lah. 367.

exemption from attachment or sale, under s. 60 (*1*)(*c*) of the Code of Civil Procedure, it is not sufficient merely to show that the house or the site in question belonged to an agriculturist, but it must be established further that it was being used or occupied (*bonâ fide* for purposes of agriculture).' If the decisions of the Indian High Courts quoted above lay down the correct interpretation of proviso (*c*) to s. 60 (*1*), then it is open to the Court, in determining whether a house belonging to an agriculturist is exempt from attachment, to consider whether or not the occupation by the agriculturist of the house is *bonâ fide* for purposes of agriculture.

There has, therefore, been a conflict of opinion between that expressed in these decisions and that expressed in *Ma E Se* v. *Ma Bok Son* (1). In view of this conflict and of the frequency with which the Courts in this agricultural country are confronted with this question I am of the opinion that it is highly desirable to have a decision more authoritative than that of a single Judge laid down by this Court. I accordingly refer the following question for the decision of a Bench, full or otherwise as the learned Chief Justice may determine, namely 'Whether for the purpose of exemption from attachment under proviso (*c*) to s. 60 (*1*) of the Civil Procedure Code, 1908, the occupation by an agriculturist of a house belonging to him must be in good faith for the purpose of agriculture.' "

Aiyangar for the appellants. S. 60 (*c*) of the Code of Civil Procedure exempts from attachment houses and buildings belonging to an agriculturist and occupied by him only where they are occupied for the purpose of carrying on his avocation. The Code does not extend the exemption to all houses that an agriculturist may own whether they are required for the purposes of agriculture or not. The decision in *Ma E Se* v. *Ma Bok Son* (1) carried the exemption too far. If that decision were to stand once a house is proved to belong to an agriculturist, however palatial and however unnecessary it may be for the purpose of carrying on his avocation, it would be exempt from attachment.

(1) I.L.R. 7 Ran 766.

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Except the decision in *Ma Bok Son's* case the decisions of the Indian High Courts are uniform; and they have held, both under the old Code and the present Code of 1908, that the exemption applies in respect of an agriculturist's property only when it is occupied by him *bona fide* for the purposes of agriculture. To make the matter clear the earlier decisions went to the extent of adding the words "as such" after the word "agriculturist".

See *Radhakisan Hakumji* v. *Balvant Ramji* (1); *Jivan Bhaga* v. *Hira Bhaiji* (2); *Jamna Prasad* v. *Raghunath Prasad* (3); *Muthuvenkatarama Reddiar* v. *The Official Receiver of South Arcot* (4); *Mirza* v. *Jhanda Ram* (5).

No appearance for the respondents.

PAGE, C.J.—In this case the question propounded is:

> "Whether for the purpose of exemption from attachment under proviso (*c*) to s. 60 (*1*) of the Civil Procedure Code, 1908, the occupation by an agriculturist of a house belonging to him must be in good faith for the purpose of agriculture."

S. 60 (*1*) (*c*) exempts from attachment "houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him." Whether any particular house or building is brought within the ambit of s. 60, sub-section (*1*) (*c*), is a question of fact which must be determined upon the evidence adduced in the case. The material facts are set out in the order of reference and need not be repeated. The learned

(1) I.L.R. 7 Bom. 530.
(2) I.L.R. 12 Bom. 363.
(3) I.L.R. 35 All. 307.
(4) I.L.R. 49 Mad. 227.
(5) I.L.R. 12 Lah. 367.

Judge who heard the appeal found (1) that the judgment-debtors to whom the house belonged were agriculturists; (2) that they were in occupation of the house which has been attached; (3) that their occupation of the house was not for the purpose of earning their livelihood by agriculture. It appears that the house with which we are concerned in this case was in course of construction, and was situate in the same compound as another house which had been occupied by the judgment-debtors for the purpose of carrying on agricultural operations, and in which also cattle were housed and paddy was stored. The learned Judge expressed the opinion that it was not necessary, in order that the judgment-debtors should carry on their occupation as agriculturists, that they should live in the house under construction, and in these circumstances he has referred the question propounded to a Full Bench for decision. I am of opinion that the answer to the question is free from difficulty, and that the true construction to be put upon s. 60 (*1*) (*c*) was settled as long ago as 1883 by the decision of the Bombay High Court in *Radhakisan Hakumji* v. *Balvant Ramji* (1). That case was decided upon s. 266 (*c*) of the Code of 1882, which exempted from attachment "materials of houses and other buildings belonging to, and occupied by, agriculturists". In delivering the judgment of the Court West J. observed:

"The exemption is of a house or building occupied by an agriculturist, and this, we think, means a house dwelt in by an agriculturist as such, and the farm buildings appended to such dwelling. It does not include other houses, which in one sense may be occupied; what is meant is a physical occupation, by an owner, of his house as a dwelling appropriate or convenient for his calling."

(1) (1883) I.L.R. 7 Bom. 530.

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In other words West J. pointed out that a house is exempt from attachment if the owner "is in good faith occupying the house sought to be attached as an agriculturist". The correctness of the construction that was placed upon s. 60 (*1*) (*c*) by the Bombay High Court in *Radhakisan Hakumji's* case (1) has never been doubted, except by my learned brother Baguley J. in *Ma E Se* v. *Ma Bok Son* (*2*), and I am of opinion that the construction put upon s. 60 (*1*) (*c*) by the Bombay High Court in *Radhakisan Hakumji's* case (1) is correct. [*Jivan Bhaga* v. *Hira Bhaiji* (3); *Jamna Prasad Raut* v. *Raghunath Prasad* (4); *Muthuvenkatarama Reddiar and others* v. *The Official Receiver of South Arcot* (5) and *Mirza and another* v. *Jhanda Ram and others* (6).] In *Ma E Se* v. *Ma Bok Son* (*2*) the only case to which Baguley J. referred was *Jivan Bhaga* v. *Hira Bhaiji* (3), and his Lordship was of opinion that that case was not *ad rem* upon the ground that he apprehended that in that case the judgment-debtor "was not merely an agriculturist; he had some other form of occupation". It is unnecessary to discuss the facts of that case except to observe that a *bhagdar*, who is a person who cultivates the land giving a share of the crops raised thereon to the owner of the land and keeping the remainder as his remuneration, clearly earns his living as an agriculturist. What Baguley J., with all respect, appears to me to have overlooked was that in *Jivan Bhaga's* case West J. delivering the judgment of the Court expressed his adherence to the *ratio decidendi* of *Radhakisan Hakumji* v. *Balvant Ramji* (1), and his Lordship pointed out that:

(1) (1883) I.L.R. 7 Bom. 530.
(2) (1929) I.L.R. 7 Ran. 766.
(3) (1887) I.L.R. 12 Bom. 363.
(4) (1913) I.L.R. 35 All. 307.
(5) (1925) I.L.R. 49 Mad. 227.
(6) (1930) I.L.R. 12 Lah. 367.

"In the case of *Radhakisan Hakumji* v. *Balvant Ramji* it is said that the building contemplated is one dwelt in by an agriculturist as such. There must be an occupation in good faith for the purposes of agriculture, in order to get the benefit of the exemption."

Jivan Bhaga's case (1), therefore, is in consonance with the chain of authorities by which it is well—and in my opinion correctly—settled that s. 60 (*1*) (*c*) must receive the construction that was placed upon it by the Bombay High Court in *Radhakisan Hakumji's* case. Baguley J., whose attention does not seem to have been called to the other authorities upon this subject, held that :

"An agriculturist's house, occupied by him, is exempt from attachment : and this would apply both to his house in the village and also to his hut in the field if he has one."

If Baguley J. in that case intended to construe s. 60 (*1*) (*c*) in any way other than that in which it has consistently been interpreted by the decisions to which I have referred, in my opinion, with all due respect, Baguley J. did not correctly lay down the law. For these reasons, in my opinion, the answer to the question which has been referred is in the affirmative.

DAS, J.—I agree.

DUNKLEY, J.—I am of the same opinion. The main ground on which the learned Judge in *Ma E Se* v. *Ma Bok Son* (2) distinguished the case of *Jivan Bhaga* v. *Hira Bhaiji* (1) was that the latter was decided under the Civil Procedure Code of 1882, but the terms of s. 266 of the Code of 1882 were, so far as this point is concerned, exactly similar to those of clause (*c*) of the proviso to s. 60 (*1*) of the present Code. Clause (*c*) of the proviso to s. 60 (*1*) cannot be construed as if it stood alone. It must

(1) (1887) I.L.R. 12 Bom. 363. (2) (1929) I.L.R. 7 Ran. 766.

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be construed with reference to clauses (*a*) and (*b*), and when these three clauses are read together it is plain that the intention of the Legislature was by these clauses to exempt from attachment such properties, and only such properties, as are necessary to enable judgment-debtors to live and carry on their ordinary trade or occupation. As pointed out in *Muthuvenkatarama Reddiar* v. *Official Receiver of South Arcot* (1), it would be manifestly absurd that, if for his own personal convenience an agriculturist lives in a mansion in a town, that mansion should be exempt from attachment.

APPELLATE CIVIL.

Before Sir Arthur Page, Kt., Chief Justice, and Mr. Justice Das.

1933

May 4.

C.T.A.C.T. NACHIAPPA CHETTYAR

v.

THE SECRETARY OF STATE FOR INDIA AND ANOTHER.*

Registration of a firm by Income-tax Officer—Income-tax Act (XI of 1922), ss. 2 (14), 55—S. 59 and rules 2, 3 and 6—Application for registration—Signature by agent—Registration contrary to statutory rules—Concurrent remedies—Application by a partner under s. 33 for cancellation of registration—Refusal of remedy by Income-tax authority—Declaratory suit—Income-tax Act, s. 67—Proceedings of Income-tax authority void—Jurisdiction.

The registration of a firm under s. 2 (*14*) of the Income-tax Act in the manner prescribed under the Act is a condition precedent to the right of the Income-tax Officer to refrain from levying super-tax upon the firm under s. 55. Under rules 2, 3 and 6, made pursuant to s. 59 of the Act, an application for registration must be signed by at least one of the partners of the firm. An application signed by an agent of the partners does not comply with the statutory rules, and the registration of the firm by the Income-tax Officer on such an application would be *ultra vires* and void.

M. A. Kureshi v. *Argus Footwear, Limited*, I.L.R. 9 Ran. 323—*followed.*

(1) (1925) I.L.R. 49 Mad. 227.

* Civil Second Appeal No. 120 of 1932 from the judgment of the District Court of Tharrawaddy in Civil Appeal No. 16 of 1932.