

We express no opinion on any other issues except those that we have dealt with in our judgment.

Costs of this appeal must be dealt with by the trying Judge on remand.

*Issues sent down.*

G. B. R.

## APPELLATE CIVIL.

*Before Mr. Justice Russell and Mr. Justice Chandavarkar.*

PARVATIBAI, WIDOW OF TRIMBAK GANESH AGASHI (ORIGINAL PLAINTIFF),  
APPELLANT, v. YESHWANT KRISHNA SHETE AND OTHERS (ORIGINAL  
DEPENDANTS), RESPONDENTS\*.

1911,  
September 29.

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2—Agriculturist—  
Definition †—Sources of income—Agriculture—Scholarship or stipend received by  
a student is not income from non-agricultural sources.*

The income from agricultural sources of two brothers was Rs. 250 a year. They had two houses which yielded as rent Rs. 30 a year. One of the brothers held a scholarship of Rs. 15 a month; and the other received a stipend of Rs. 7 a month at a training college. The money they thus received from non-agricultural sources amounted to Rs. 294. A question having arisen whether they were agriculturists within the meaning of section 2 of the Dekkhan Agriculturists' Relief Act (XVII of 1879):—

*Held*, that the brothers were agriculturists, for the money they received either as scholarship or stipend were mere bounties.

SECOND appeal from the decision of P. E. Percival, District Judge of Satara, reversing the decree passed by J. H. Betigiri, Subordinate Judge of Rahimatpur.

Execution proceedings.

The decree under execution was obtained by Trimbak (the husband of Parvatibai) against the father of the defendants. Parvatibai applied to execute the decree by attachment and sale of the defendant's house. The defendants objected to the

\* Second Appeal No. 130 of 1911.

† The definition runs as follows:—

“Agriculturist” shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.

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attachment and sale, on the ground that they were agriculturists. The income of the defendants from agriculture was Rs. 250 a year. They had two houses which fetched Rs. 30 a year. One of the defendants was a student in the Bombay Veterinary College and held a scholarship of Rs. 15 a month. The other defendant was a student in the Training College at Poona and received a stipend of Rs. 7 a month.

The Subordinate Judge found that the income of the defendants from agriculture was Rs. 250 a year; and their income from non-agricultural sources was Rs. 294 a year (that is Rs. 30 from house-rent and Rs. 264 from scholarship and stipend). He held that the defendants were, therefore, not agriculturists. The execution was ordered to be proceeded with.

On appeal the District Judge was of opinion that the money which the defendants received either as scholarship or stipend could not be regarded as settled income; and held that the defendants were agriculturists.

The decree-holder appealed to the High Court.

*K. H. Kelkar*, for the appellant.—The money earned by scholarship is income of the family and ought to be taken into account. The burden of proving the status of an agriculturist lies on him who set it up. It is for him to prove that his income from agricultural sources predominates over others.

*S. R. Bakhale*, for the respondent.—The definition speaks of earning livelihood. The word "earn" according to Webster means to acquire by labour, service or "performance." It involves the idea of working for gain; and to determine whether a person is agriculturist or not, one should take into account the income that he gets as an earning. A scholarship or a stipend cannot be taken as earning.

RUSSELL, J.:—As the lower appellate Court has said that this is a novel point upon which there is no authority I propose shortly to state the facts of this case, which are admitted on both sides.

The two defendants are brothers, one a major and the other a minor. They earn at most Rs. 250 from agriculture and only Rs. 30 from the rent of two houses. One of them holds a

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scholarship of Rs. 15 a month in the Veterinary College, Bombay, the other is a student in the Training College, Poona, and gets a stipend of Rs. 7 a month. Last year he was a school-master for about ten months and earned Rs. 9 a month. If the scholarship and stipend are added to Rs. 30 the total is Rs. 29½, so that in that case the total income is not principally from agriculture. The question is, can these two brothers be deemed to be agriculturists within the meaning of the Dekkhan Agriculturists' Relief Act in respect of the Rs. 15 a month and Rs. 7 a month abovementioned respectively? Clause (1) to section 2 of the Act says: " 'Agriculturist' shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits."

In the present case it is unnecessary to consider the last clause of section 2. The question, therefore, that arises is: do these two young men earn their livelihood from agriculture or in consequence of these stipends are they anything less than agriculturists? The Legislature in the Act have declined to give an accurate definition of what an "agriculturist" is. Far be it from me to attempt to give it any definition so as to embrace the meaning of this word under all circumstances, and I merely deliver this judgment upon the facts as now before us.

It appears to me that it would be impossible to say that these stipends which these young men receive could be said to be earnings for their livelihood. In my view they are in the nature of bounties which may cease at any time. We have not been told how long either the scholarship or the stipend are to continue. They are what might be called windfalls by which these young men are assisted to eke out their livelihood which is derived to my mind entirely from agriculture.

In my opinion, therefore, the decree must be confirmed and the appeal dismissed with costs.

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CHANDAVARKAR, J.—The question is, whether a person who gets a scholarship can be said to be a person who derives his income from that scholarship and earns his livelihood from it, within the meaning of the definition of “agriculturist” in the Dekkhan Agriculturists’ Relief Act. The words of the definition are:—“‘Agriculturist’ shall be taken to mean a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture carried on within the limits of a district or part of a district to which this Act may for the time being extend, or who ordinarily engages personally in agricultural labour within those limits.” A person, to fall within the definition, must be one who works for gain as an agriculturist and whose income is derived from agricultural labour. The underlying idea of the definition is that agricultural labour must be contrasted with labour of other kinds and the income derived by a man must be income derived from some occupation, agricultural or other, pursued for livelihood. Now in the case of a student who holds a scholarship and derives income from it, it cannot be said that he is following any occupation or is engaged in any labour for the purpose of his livelihood. He cannot be described as a labourer or as a person who is earning his income by work for his livelihood. The scholarship is a mere matter of bounty and a student is one who is qualifying himself for an occupation or some labour which would enable him to earn his livelihood. If we bear in mind, therefore, the dominant idea of the definition, and the eleemosynary and precarious character of a scholarship as contrasted with the essential characteristics of labour for livelihood, it is reasonable to conclude that a scholarship held by a student was intended by the Legislature to be excluded from the kinds of income contemplated by that definition.

On these grounds, I think that the District Judge was right in the view which he took and the decree must be confirmed with costs.

*Decree confirmed.*