

APPELLATE CIVIL.

Before Mr. Justice Heaton and Mr. Justice Rao.

1913.
February 19.

BALCHAND CHATURCHAND AND ANOTHER (ORIGINAL PLAINTIFFS),
APPELLANTS, v. CHUNILAL JAGJIVANDAS (ORIGINAL DEFENDANT),
RESPONDENT.*

*Dekkhan Agriculturists' Relief Act (XVII of 1879), section 20†—Court—
Instalments, power to grant—Status of agriculturist not at the date of decree,
but in execution proceedings.*

The Court has no power to grant instalments, under section 20 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), in the case of a judgment-debtor who was not an agriculturist when the decree was obtained, but who becomes one at the time of the execution by limiting himself exclusively to profits in land.

FIRST appeal from the decision of G. B. Laghate, First Class Subordinate Judge at Nasik.

Proceedings in execution.

The decree under execution was obtained by the plaintiffs against the defendant and was for Rs. 19,093. The defendant was not an agriculturist at the date of the decree. During the course of the execution proceedings he limited his income to agricultural sources: and applied to the Court to treat him as an agriculturist and to make the decretal amount payable in annual instalments of Rs. 200 each.

The Subordinate Judge found that the defendant was an agriculturist then; and fixed instalments at Rs. 2,000 a year.

The plaintiff appealed to the High Court.

* First Appeal No. 227 of 1912.

† The section runs as follows:—

20. The Court may at any time direct that the amount of any decree passed, whether before or after this Act comes into force, against an agriculturist, or the portion of the same which it directs under section 19 to be paid, shall be paid by instalments with or without interest.

R. R. Desai, for the appellant:—The respondent was not an agriculturist at the time the decree was passed. The change in his status subsequent to that date will not entitle him to the benefit of section 20 of the Dekkhan Agriculturists' Relief Act.

P. B. Shingne, for the respondent:—Though the respondent was not an agriculturist at the date of the decree he became one when he required the benefit of section 20 of the Dekkhan Agriculturists' Relief Act. At that date he unquestionably was an agriculturist as defined in section 2; and was entitled to appeal to the privilege accorded by section 20.

HEATON, J.:—In this case the First Class Subordinate Judge of Nasik has applied section 20 of the Dekkhan Agriculturists' Relief Act to the case of a judgment-debtor who was not an agriculturist when the decree was obtained, but who by discarding trade and limiting himself more exclusively to profits in land had become an agriculturist at the time of the execution. We do not think that he was empowered to do this. There has been a great deal of argument as to the meaning of section 20, in the light of the definition of the word 'agriculturist' in the Act, but it seems to us to be quite clear that section 20 cannot apply to the case of a person who was not an agriculturist when the decree was obtained, whatever his status may be thereafter when execution comes to be taken out against him. And therefore as the Subordinate Judge had no power to make the order which he did, granting instalments, we must set that order aside and direct that the execution proceedings should go on according to law.

The appellants must have their costs here and in the Court below.

Decree reversed.

R. R.

1913.

BALCHAND
CHATUR-
CHAND

v.
CHUNILAL
JAGJIVANDAS.