

We must, therefore, allow this appeal, reverse the decree of the lower appellate Court and remand the suit for trial on its merits.

The appellants must have their costs in this Court and in the lower appellate Court from the respondents. Costs in the first Court will abide the result.

Decree reversed.

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1912.

MALHAR
BHAGVANT

v.
NARASINHA
KRISHNA.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

MANOHAR RAMCHANDRA HINGE AND OTHERS (ORIGINAL DEFENDANTS),
APPELLANTS, v. THE COLLECTOR OF NASIK (ORIGINAL PLAINTIFF),
RESPONDENT.*

1912.

August 16.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 2—Agriculturist—Definition†—Estate of agriculturist in charge of Court of Wards—The Court of Wards is an agriculturist—Court of Wards Act (Bombay Act I of 1905).

A Court of Wards constituted under the Court of Wards Act (Bombay Act I of 1905) and representing the estate of a minor agriculturist is entitled to bring a suit under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879).

The Dekkhan Agriculturists' Relief Act countenances no distinction based upon the comparative riches or poverty of the person whose status is being investigated.

FIRST appeal from the decision of Gulabdas Laldas, First Class Subordinate Judge at Nasik.

Suit for redemption.

The Collector of Nasik as representing the Court of Wards was in charge of the estate of one Gopalrao, a minor agriculturist. A portion of the estate was mortgaged. The Collector brought a suit, under the provisions of the Dekkhan Agriculturists' Relief Act, to redeem the mortgage.

* First Appeal No. 154 of 1911.

† The term "agriculturist" is thus defined in section 2:—

"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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The defendant contended that neither Gopalrao nor the Court of Wards was an agriculturist; and that in any event the Court of Wards could not claim to be an agriculturist under the Act.

The Subordinate Judge held that Gopalrao was an agriculturist. He further held that the Court of Wards as representing his estate was also an agriculturist, on the following grounds:—

There appears to me to be no force in the contention inasmuch as I understand the provisions of the Court of Wards Act I of 1905 Bombay, the ward does not cease to be the owner of the estate taken over by the Court in its management. He is to all intents and purposes the beneficiary or *cestui que* trust and the Court of Wards is for the time being his trustee. The estate is no doubt managed and represented by the Court but it is not the status of the Court that is to be looked to in determining the question relating to it. A next friend who is a non-agriculturist or an agriculturist minor or lunatic is as far as I am able to see competent to sue as an agriculturist under the Dekkhan Agriculturists' Relief Act on behalf of the minor and is entitled to claim and is ordinarily allowed all the benefits of the special provisions of the Act. In like manner a guardian certified or appointed *ad litem* for a minor defendant even though he may not be an agriculturist claims and is allowed all the privileges attached to the status under the Act, if the minor represented by him is found possessing the status.

It is the indebtedness of a ward that entitles him to claim the protection of the Court of Wards Act I of 1905 Bombay, and the reason why Government as *parens patrie* step in and assume the management is that the indebted land-holder is found incapable of carrying on management of his estate. The management is assumed as a temporary measure and in view of the analogy of the cases relating to minor plaintiff and defendant I am of opinion that it is the status of Sardar Gopalrao that must be looked to and not that of the Court of Wards for the purposes of redemption suits under the Dekkhan Agriculturists' Relief Act.

The defendant appealed to the High Court.

K. H. Kelkar, for the appellant.

L. A. Shah, acting Government Pleader, for the respondent.

BACHELOR, J.:—The only question involved in this appeal is whether the Court below was right in its view that the suit was governed by the Dekkhan Agriculturists' Relief Act on the footing that the plaintiff is an agriculturist. Upon the title of the suit itself it is brought by "The Collector of Nasik District representing the Court of Wards for the estate of Gopalrao Shivdevrao Rajebahadur."

Mr. Kelkar's first argument is that the real plaintiff is the Court of Wards, and it is that Court's status which should be regarded, and not the status of Gopalrao Shivdevrao. It is, says the learned pleader, the same case as if a person being himself an agriculturist assigned his property to a non-agriculturist stranger. The assignee could not claim the benefit of the special Act. It appears to us, however, that the Court of Wards bears no resemblance to the assignee in the case put. As appears quite clear from the Court of Wards Act (Bombay Act I of 1905) *passim*, and especially from sections 2, 4 and 32 thereof, the property remains the property of the ward, and the only manner in which the Court of Wards intervenes is to assume the superintendence of it.

The reason why this suit is brought in the name of the Court of Wards is explained by section 32 of the Act which lays down that in such a case as this "the Court of Wards having the superintendence of the Government ward's property, shall be named as the next friend or guardian for the suit." In other words the ward being temporarily disabled from suing on his own behalf sues through the Court of Wards. But the plaintiff is none the less the ward Gopalrao Shivdevrao, and it is his status, therefore, which alone has to be considered.

A further argument upon this point was endeavoured to be extracted from section 25 of the Act. Mr. Kelkar relying on that section has contended that even assuming that the real plaintiff is the ward Gopalrao, he cannot be considered an agriculturist for the purpose of the Dekkhan Agriculturists' Relief Act, because his only means of livelihood is the allowance made to him by the Court of Wards under section 25. We think, however, that this temporary allowance made for the purposes of maintenance is not conclusive of the ward's status, but that to ascertain what that status is regard must be had to the character of the ward's property from which this allowance is derived.

The question, therefore, still remains whether Gopalrao, the plaintiff, is an agriculturist within the meaning of the Dekkhan Agriculturists' Relief Act. In that Act the term

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'agriculturist' is defined as "a person who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture." It will be seen that the Act countenances no distinction based upon the comparative riches or poverty of the person whose status is being investigated. In other words the rich agriculturist is just as much an agriculturist under this Act as the petty agriculturist. If that is so, it would certainly be a surprising result if we were to find that the plaintiff in this case who is a land-holder, and nothing else, should not be regarded as an agriculturist, within the definition of the Act. We think, however, that the learned Judge below was right in his view that the plaintiff fell within the definition.

It may be, as Mr. Kelkar has argued, that the Judge was wrong in allowing the Rs. 1,100, received by the ward's mortgagees, and not by the ward himself, to be counted as if that sum formed part of the ward's agricultural income. We say that it may be so, without deciding definitely, because in the view we take of this case it is not necessary for us to pronounce a decision.

Assuming that Mr. Kelkar's argument on this point is correct, it is, however, none the less established in our view that the plaintiff is an agriculturist. On the admitted figures the yearly income accruing to the plaintiff from the lands paid by his occupancy tenants is Rs. 3,793. The total assessment on all the lands involved comes to Rs. 2,382. From this sum of Rs. 2,382 a certain deduction must be made. What that deduction should be was a point of some argument. We agree with Mr. Shah's contention that the deduction should be the total assessment on all the mortgaged property, that is the sum of Rs. 885, and we cannot accept the counter contention that the deduction should be limited only to that part of the assessment which is leviable on the lands exempted. If, therefore, we make this deduction of Rs. 885 from the total assessment of Rs. 2,382 we get as the result Rs. 1,497, which figure will represent the assessment on the non-mortgaged property. This sum of Rs. 1,497 must now be deducted from

the sum of Rs. 3,793 to which we have already referred. That leaves us with Rs. 2,296 as the income derivable from the agricultural sources. As against that, the most that we can set on the other side of the account would be a sum of Rs. 1,255, plus something under Rs. 400 as a cash allowance. These two sums would yield only Rs. 1,655 as against Rs. 2,296 derived from agricultural sources. This is the reckoning which, in our opinion, is most favourable to the case for the defendant. And even on this reckoning it is plain that the plaintiff is entitled to be regarded as an agriculturist under the Dekkhan Agriculturists' Relief Act.

We are of opinion, therefore, that the learned Judge below was right and we must dismiss this appeal with costs.

As to the scale on which the costs should be allowed the parties should go first to the Taxing Officer.

Appeal dismissed.

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MANOHAR
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v.
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APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

DHONDU DAGDU PATIL (ORIGINAL PLAINTIFF), APPELLANT, v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT), RESPONDENT.*

1912.

August 19.

Abkari Act (Bombay Act V of 1878), sections 32, 67†—License to sell country liquor—Collector suspending and cancelling the license—Suit against Government by licensee for damages—Filing of the suit after the allowed period—Collector's action done bona fide—Liability to be sued—Acts done in performance of statutory duties.

* First Appeal No. 7 of 1912.

† The Bombay Abkari Act (Bombay Act V of 1878), sections 32 and 67 run as follows :—

32. The Collector may summarily recall or cancel any license, permit or pass granted under this Act :—

(a) if any fee or duty payable by the holder thereof be not duly paid, or