defendant No. 1 or the other defendants, if and when he or they erect a temple of Balia Kaka in this village either in the land purchased by defendant No. 1 or anywhere else, should take the necessary precaution of preventing deception to the intending pilgrims by putting in a conspicuous place outside the wall of the new building a stone slab showing the year in which it is built and that it is a "new temple of Balia Kaka". There shall be no order as to costs in this appeal. Defendants Nos. 1 to 3 shall pay half the costs of the plaintiffs in the trial Court. Defendants Nos. 4 and 5 shall bear their own costs.

Decree modified.

J. G. R.

APPELLATE CIVIL.

Before Mr. Justice Wassoodew and Mr. Justice Indarnarayen.

APPA SAKHARAM MADKAR (ORIGINAL DECREE-HOLDER), APPLICANT v. JAGANNATH SAMBHUAPPA GHODKE (ORIGINAL JUDGMENT-DEBTOR), OPPONENT.*

1939 October 10

Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 22 and s. 2 (2)—Decree—Execution—Attachment of property—Status at the date of the attempted attachment or the date of the decree can be proved.

Under s. 22 of the Dekkhan Agriculturists' Relief Act, 1879, the material date for the determination of the status of the alleged agriculturist is the date of the attempted attachment. But by reason of the definition of the term 'agriculturist' in s. 2 (2) of the Act, the judgment-debtor can show that he was within the general definition at the date when the liability was incurred, namely, at the time of the decree and thereby claim that his property is exempt from attachment.

Maneklal v. *Mahipatram,*[1] relied on.

Maruti v. *Martand,*[2] *Balkrishna* v. *Sarupchand,*[3] and *Shamrao* v. *Malkarjun,*[4] referred to.

*Civil Revision Application No. 494 of 1939. (S. A. 83 of 1939 converted.)

[1] (1927) 51 Bom. 455 (F. B.)
[2] (1922) 24 Bom. L. R. 749.
[3] (1926) 28 Bom. L. R. 656.
[4] (1931) 33 Bom. L. R. 797.

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APPLICATION praying for setting aside the order passed by B. K. Dalvi, District Judge of Sholapur, reversing the order made by T. B. Shanbhag, Subordinate Judge at Barsi.

Proceedings in execution.

On October 14, 1933, Appa Sakharam obtained a decree for Rs. 498 against Jagannath Sambhuappa who was described as an agriculturist in the decree.

In June 1937, Appa (decree-holder) sought execution of his decree and claimed attachment of the property of the judgment-debtor on the ground that he had ceased to be an agriculturist at that date.

The Judge of the executing Court after hearing the evidence held that the judgment-debtor was not an agriculturist at the date of the attempted attachment and accordingly ordered a warrant to issue for attachment of property of the judgment-debtor under O. XXXI, r. 54 of the Civil Procedure Code, 1908.

The judgment-debtor appealed to the District Court. The District Judge held that the definition of an agriculturist in cl. (*2*) of s. 2 of the Dekkhan Agriculturists' Relief Act, 1879, covered the case and according to the Full Bench ruling of *Maneklal* v. *Mahipatram*,[1] the property would be exempt from attachment and sale under s. 22 if the judgment-debtor was an agriculturist at the date of the decree. The appeal was allowed, and the order of the trial Court was set aside and execution proceedings were sent back to the lower Court for disposal according to law.

The judgment-creditor preferred a second appeal to the High Court which was held to be incompetent, but the appeal was allowed to be converted into a Civil Revision Application and thereafter the rule was discharged.

P. B. Gajendragadkar, for the applicant.

S. G. Patwardhan, for the opponent.

[1] (1927) 51 Bom. 455 (F. B.)

WASSOODEW J. This is a second appeal from a decision of the District Judge of Sholapur. The only question raised for consideration is whether under s. 22 of the Dekkhan Agriculturists' Relief Act (Bom. Act XVII of 1879) the material date for the determination of the status of the alleged agriculturist is the date of the attempted attachment or the date of the decree. It is common ground that the decree which was a money decree for Rs. 498 was passed against the respondent on October 14, 1933, as an agriculturist. His privileged status was admitted by the creditor-appellant. In June, 1937, when the decree-holder sought execution of his decree, he claimed attachment of the property of the judgment-debtor on the ground that he had ceased to be an agriculturist at that date, the underlying suggestion being that there was a change in his status since the decree. The learned Judge of the executing Court thought that it was open to the creditor to challenge the status even though conceded at the time of the decree, and accordingly after hearing the evidence he found against the judgment-debtor's plea to the contrary and issued a warrant of attachment. In appeal a contrary view prevailed. The learned District Judge, relying upon the Full Bench case of *Maneklal* v. *Mahipatram*,[1] held that the judgment-debtor, who sought the protection of s. 22 of the Dekkhan Agriculturists Relief Act, should show either that he was then within the general definition contained in s. 2 of the Act or that he was within that definition at the date when the liability was incurred, namely, at the time of the decree. Accordingly he allowed the appeal, and set aside the order of attachment of the property of the judgment-debtor. Against that order the decree-holder has filed this appeal.

A preliminary objection has been raised by the respondent that inasmuch as the decretal debt is less than Rs. 500 no

(1) (1927) 51 Bom. 455 (F. B.)

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second appeal lies under s. 102 of the Civil Procedure Code. That argument is well founded, and the objection has to be allowed. But we are asked, and we accede to the request of the learned advocate for the appellant, to convert this appeal into a civil revisional application as a substantial question of law is involved affecting the jurisdiction of the executing Court to enquire into the status of the judgment-debtor. We have accordingly heard the advocates treating this as a civil revisional application.

Section 22 of the Dekkhan Agriculturists' Relief Act enacted in Chapter III thereof provides as follows:—

"Immoveable property belonging to an agriculturist shall not be attached or sold in execution of any decree or order passed whether before or after this Act comes into force, unless it has been specifically mortgaged for the repayment of the debt to which such decree or order relates, and the security still subsists".

The important expression which requires attention in that section is "immoveable property belonging to an agriculturist". On first impression it appears that to claim exemption from attachment it must be shown that the property belongs to an agriculturist when it is sought to be attached. The material date for that purpose would obviously be the date of the attempted attachment—[see *Maruti* v. *Martand*,[1] *Balkrishna* v. *Sarupchand*[2]; and *Shamrao* v. *Malkarjun*.[3]] Our Courts have therefore allowed the status to be proved even in execution where that status has either not been proved at the time of the decree or not been relied upon then. In *Maruti* v. *Martand*[1] the judgment-debtor was an agriculturist and as long as he lived the decree-holder was unable to go against his immoveable property by reason of the provisions of s. 22. On the death of the judgment-debtor the property passed into the hands of his heirs, his sons, who were not agriculturists, and when the decree-holder applied for execution, it was held that the immunity ceased as soon as the property passed on the death of the judgment-debtor

(1) (1922) 24 Bom. L. R. 749.
(2) (1926) 28 Bom. L. R. 656.
(3) (1931) 33 Bom. L. R. 797.

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into the hands of non-agriculturists, although they were his legal representatives. *Shamrao* v. *Malkarjun*(1) was a converse case. The judgment-debtor in that case was a non-agriculturist, and the property upon his death passed into the hands of his heir who was an agriculturist, and it was held that he was entitled to the benefit of the provisions of s. 22 of the Dekkhan Agriculturists Relief Act upon the authority of *Maruti* v. *Martand*.(2) That view was followed in *Balkrishna* v. *Sarupchand*.(3) Upon those authorities, therefore, the material date for consideration for the application of s. 22 would be the date of the attachment. That is, as I have said, the obvious construction of the expression "immoveable property belonging to an agriculturist" in s. 22.

Now, a person might be an agriculturist at the date of the attachment either actually or fictionally. By 'actually' I mean an agriculturist as defined in s. 2, cl. (*1*), of the Dekkhan Agriculturists Relief Act, that is, who by himself or by his servants or by his tenants earns his livelihood wholly or principally by agriculture, or who ordinarily engages personally in agricultural labour within the limits of a district or part of a district to which this Act extends. He may also be agriculturist according to the fiction introduced in cl. (*2*) of s. 2. It says—

"In Chapters II, III, IV and VI, and in s. 69, the term 'agriculturist', when used with reference to any suit or proceeding, shall include a person who, when any part of the liability which forms the subject of that suit or proceeding was incurred, was an agriculturist within the meaning of that word as then defined by law."

Therefore although the question of the status arises upon the application for attachment, that status might be established by recourse to the first or the second clause of s. 2 of the Act, as the case may be. Here the judgment-debtor was *ex concessu* an agriculturist at the date of the decree when the liability arose, and he therefore, assuming that there was a change of status,

(1) (1931) 33 Bom. L. R. 797. (2) (1922) 24 Bom. L. R. 749.
(3) (1926) 28 Bom. L. R. 656.

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was an agriculturist at the date of the attachment. Consequently upon the above provisions of the Act, as they stand, the protection could be extended to the respondent notwithstanding the change of status since the decree.

The Full Bench in *Maneklal* v. *Mahipatram*(1) were dealing with the question as to whether protection could be afforded to the judgment-debtor under s. 21 from arrest if he could show either that he was at the date of the arrest within the general definition or that he was within that definition at the date when the liability was incurred, and the Court came to the conclusion that the material date for the determination of the status was the date of the attempted arrest; but by reason of the definition of the term agriculturist in cl. (*2*) of s. 2, that determination might also import the determination of his status at the date when the liability arose. The cogency of that reasoning, if I may say so with respect, could not be questioned in the consideration of the application of the provisions of s. 2, cl. (*2*), for the interpretation of s. 22. But it has been argued that the construction may in certain cases lead to illogical results, and upon a close examination of the various sections of the Act, it was pointed out that there was a defect in drafting which might create mischief and, instead of subserving the object of the enactment, defeat it. We were also referred to the rule of construction contained in s. 2 which says that "in construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed." With regard to the illogical consequences of strictly following the Act, there can be no two opinions, and it has more than once been pointed out that the Act, as it stands, is extremely defective and productive of hardship. But I fail to see how upon the application of the definition in s. 2, cl. (*2*), to s. 22, there can be repugnancy. All that can be said is that upon the construction adopted in the lower Court the immunity

(1) (1927) 29 Bom. L. R. 1109.

would attach to the judgment-debtor during his lifetime. But that is no repugnancy. That might be unreasonable in the result. But that is no ground for departing from the plain meaning of the words used in the Statute. "From the words of the law there should not be any departure" is a healthy rule of construction so far as the Acts of the Legislature are concerned, and it would be a dangerous experiment to adopt any interpretation contrary to the express letter of the Statute. Personally speaking, a disturbance of that language, such as is pressed upon us in argument, would cause greater harm to the agriculturist. After establishing the status, the creditor would be prone, if permitted, to subject the agriculturist to continuous harassment in the process of execution, by alleging that the status which had been established in the suit had been changed. That would be more unfortunate in its consequences than the hardship to the creditor. There is neither any ambiguity in the provisions nor any obscurity of the intention of the Legislature, and apart from the suggestion of unreasonableness there is no ground for holding that the intention as expressed would be defeated. It is true that ss. 20 to 22 are different in their wording, and perhaps it might be proper to argue that the Full Bench case of *Maneklal* v. *Mahipatram*[1] could not be regarded as an authority for the construction of s. 22. But even if it were not an authority, and the remarks of the learned Chief Justice are susceptible of the view that the decision was intended to be confined to the provisions of s. 21, I see the greatest difficulty in not giving effect to the definition of agriculturist contained in s. 2, cl. (*2*). As I have already stated, if that definition were designed by the Legislature to protect the interests of the agriculturists, when once the status were established at the hearing, for the purpose of the proceedings following upon a decree obtained thereunder, I think the respondent is entitled to rely upon that proof of

[1] (1927) 5 Bom. 454, F. B.

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status for the purpose of claiming exemption from attachment of his property. I would therefore confirm the decree of the lower appellate Court. Accordingly the rule will be discharged with costs.

INDARNARAYEN J. I agree. I would only add a remark with respect to the argument advanced by Mr. Gajendragadkar for the applicant that the object of s. 22 of the Dekkhan Agriculturists' Relief Act was to shield the property from attachment if and when at the date of the attachment the defendant was an agriculturist. The reply to this argument appears to be contained in s. 2, r. (*2*), which is a rule of interpretation laid down for the purpose of the Act. The object of the rule contained in s. 2, cl. (*2*), could be none other, in my opinion, than to lay down that once the status of an agriculturist was judicially upheld and found to exist at any time in a suit or proceeding, at no future date or stage in the same suit or proceeding could the change of status to that of a non-agriculturist be pleaded or contended for, even if there was in fact a change. It is difficult to conceive of the Legislature not having had this object in mind. The anxiety of the Legislature to protect an agriculturist from harassment by multiplicity of legal proceedings is obviously the reason for this enactment. Hence I do not see any repugnancy between s. 22 and rule No. (*2*) mentioned in s. 2 of the Dekkhan Agriculturists' Relief Act. The authorities have already been fully discussed by my learned brother. I think the remarks of Sir Norman Macleod, C. J., in *Maruti* v. *Martand*,[1] viz "Narayan Ballal was described as an agriculturist, and consequently as long as he was alive his immoveable property could not be attached or sold in execution of that decree" are very apposite. I therefore agree with the order proposed by my learned brother.

Rule discharged.

J. G. R.

[1] (1922) 24 Bom. L. R. 749, at p. 750.