

(1936) 12 AHC CK 0012

Allahabad High Court

Case No: None

Haji Mohammad Mosa Khan

APPELLANT

Vs

Sri Thakur Gopiji Mahraj

RESPONDENT

Date of Decision: Dec. 23, 1936**Citation:** AIR 1937 All 344**Final Decision:** Dismissed

Judgement

1. This is a first appeal by a judgment-debtor under the following circumstances : The judgment-debtor applied under the U.P. Agriculturists' Belief Act for fixation of instalments and reduction of interest under Sections 4 and 30 of the Act. Section 30 is in Ch. 4. Accordingly therefore the first proviso in Section 2(2) applies and the limit of land revenue does not apply in Sub-section (1). The appellant claims that he is a person paying land revenue in a district not permanently settled. The Court below has held that he does pay land revenue to the extent of Rs. 9,000 but that it is not for himself and that he is not the owner of the property. The circumstances are that there was a mortgage executed on 9th September 1920 by the judgment-debtor and decree was obtained by the opposite party on 22nd September 1933 to the extent of over a lakh on that hypothecation bond.

2. After the mortgage of 1920 the judgment-debtor executed a wakf alal aulad of his property and in his capacity of mutawalli he made the payment of the revenue in question. The Court below considers that the fact that he is a mutwalli renders him not an agriculturist. The words used in Section 2(2)(a) are "a person who pays land revenue". The words are not "the owner of zamindari "property who pays land revenue". Although the judgment-debtor may not be an owner we are of opinion that he may or may not come under the definition of "agriculturist" by this payment of land-revenue. The Court below should examine the wakf and determine whether under that wakf the judgment-debtor takes a beneficial interest or not. If he takes no beneficial interest whatever under the wakf then he is merely in the position of a trustee for other persons. On the other hand, if he has a beneficial interest under

the wakf, then his payment of land revenue in our opinion brings him under the definition of "agriculturist". Accordingly we set aside the order of the lower Court and we remand this case to that Court for disposal according to law according to the directions given above. Costs hitherto incurred will abide the result. One further point was raised by learned Counsel for the respondent, that some undertaking had been given to the Court below by the judgment-debtor that he would apply to this Court for this appeal to be dismissed, and on the strength of that undertaking the Court below admitted a subsequent application to the same effect. This matter has not been shown by affidavit and we consider that it is a matter which may be brought to the notice of the Court below.