

(1965) 06 KL CK 0030**High Court Of Kerala****Case No:** S.A. 678 of 1961

Thomas

APPELLANT

Vs

Joseph

RESPONDENT

Date of Decision: June 11, 1965**Acts Referred:**

- Kerala Agriculturists Debt Relief Act, 1958 - Section 2(c), 4

Citation: (1965) KLJ 734**Hon'ble Judges:** T.C. Raghavan, J**Bench:** Single Bench**Advocate:** M. Krishnan Nair, for the Appellant; George Vadakkel and Varghese Kallith, for the Respondent**Final Decision:** Allowed

Judgement

T.C. Raghavan, J.

This second appeal arises in execution; and a short question under Kerala Act XXXI of 1958 arises for consideration. On the date of commencement of the Act the appellant did not have the mortgaged properties with him, he having already conveyed them to a third party. Subsequently, he got them reconvened in his name in 1960; and the question for consideration is whether he is entitled to the benefit of instalment payments u/s 4 of the Act. The lower courts have held that since he was not an agriculturist-debtor on the date of commencement of the Act, he was not entitled to relief.

2. The above view of the lower courts is directly in conflict with the decision of this Court in Bernad Augustine v Krishnan Kunju (1961 K. L. T. 165), wherein Madhavan Nair J. has held that the definition of "debt" in section 2(c) as inclusive of a liability "incurred by" but not "due from" an agriculturist at the material date and the significant omission of any reference to agriculturist in section 4 make it clear that any debt within the definition of the Act is amenable to be discharged u/s 4 of the

Act. The contention, the learned Judge proceeds, that the Legislature contemplated only agriculturist-debtors to be the exclusive beneficiaries u/s 4 cannot be accepted. To the same affect is an observation of mine in *Antony Premiose v T. Idiculla Panicker* (I. L. R. 1962-11 Kerala 644), wherein I have said that the definition of "agriculturist" does not warrant the construction that the agriculturist nature should be in existence at the commencement of the Act. In view of these decisions, the decision of the lower courts has to be reversed. The second appeal is consequently allowed, the decision of the lower courts is set aside and the matter is remitted to the primary court to be disposed of u/s 4 of the Act. The parties will bear their respective costs throughout.