

(1923) 03 BOM CK 0038

Bombay High Court

Case No: None

Narayan Bapulal and Others

APPELLANT

Vs

Sonusingh Ghanashamsingh

RESPONDENT

Date of Decision: March 8, 1923

Citation: AIR 1923 Bom 383 : 76 Ind. Cas. 659

Hon'ble Judges: Norman Macleod, C.J; Crump, J

Bench: Division Bench

Judgement

1. The only question in appeal is whether the defendants have satisfied the Court that they were agriculturists. The onus lay upon them to prove that particular status, but on the evidence the learned Judge in the Court below applied, in our opinion, the right test and came to the conclusion that the defendants were not agriculturists. If the family is joint then the only way to ascertain, whether the members of the joint family are agriculturists or not, is to ascertain what is the joint income of the family provided they are living together. It cannot be suggested now on the evidence that any of the members themselves engaged in agricultural labour and they can only derive their agricultural status by earning their livelihood from it. The second and the third defendants appear to have been in service, and the joint income from the earnings of the father and his sons was derived from their father's pension, a certain amount of rent from the theatre which had not been very successful and the annual income derived from 14 acres of land assessed at Rs. 29-8-0. The defendants endeavoured to prove that the income from this land was anything between Rs. 500 and Rs. 1,000 but only succeeded in satisfying the Judge that the income on the evidence could not be more than Rs. 200. But as a matter of fact if it was more than that it was for the defendants to prove that. On reading the evidence, although vague allegations were made with regard to the produce of the lands, there is nothing definite from which it can be concluded that, the learned Judge's finding was wrong. Therefore, the plaintiff was entitled to succeed against the defendants as non-agriculturists and the decree of the lower Court was right. The appeal, therefore, must be dismissed with costs.

2. The defendants should redeem within six months from the date of this decree.
3. Cross-objections are dismissed. It appears they were not necessary and were filed under misapprehension, as the Pleader admits.