Appa Sakharam Medkar Vs Jagannath Sambhuappa Ghodke

Court: Bombay High Court

Date of Decision: Oct. 10, 1939

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 102
Dekkhan Agriculturists Relief Act, 1879 â€" Section 22

Citation: AIR 1940 Bom 239 : (1940) 42 BOMLR 457

Hon'ble Judges: Wassoodew, J; Indarnarayen, J

Bench: Division Bench

Judgement

Wassoodew, J.
This is a second appeal from a decision of the District Judge of Sholapur. The only question raised for consideration is

whether u/s 22 of the Dekkhan Agriculturists" Relief Act (Bom. Act XVII of 1879) the material date for the determination of the status of the

allleged 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 (1927)

29 BOm. LR. 1109held that the judgment-debtor, who sought the protection of Section 22 of the Dekkhan Agriculturists" Relief Act, should show

either that he was then within the general definition contained in Section 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.

2. A preliminary objection has been raised by the respondent that inasmuch as the decretal debt is less than Rs. 500 no second appeal lies u/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.

3. Section 22 of the Dekkhan Agriculturists" Relief Act enacted in Chapter III thereof provides as follows :-

Immovable 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 "" Immovable 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 Babaji Totre Vs. Martand Narayan

Kulkarni, ; Balkrishna Tulsidas Vs. Sarupchand Purshottamdas, and Shamrao Ramohandra Jadhav Vs. Malkarjun Apparao Manthalkar, . 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 the judgment-debtor was an agriculturist and as long as he lived the decree-holder was unable to

go against his Immovable property by reason of the provisions of Section 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 into the hands of non-agriculturists, although they were his legal representatives.

Shamrao v. Malkarjun 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 Section 22 of the Dekkhan

Agriculturists" Relief Act upon the authority of Maruti v. Martand. That view was followed in Balkrishna v. Sarupchand. Upon those authorities,

therefore, the material date for consideration for the application of Section 22 would be the date of the attachment. That is, as I have said, the

obvious construction of the expression "" Immovable property belong ing to an agriculturist"" in Section 22.

4. 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 Section 2, Clause (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 an agriculturist according to the fiction introduced in Clause (2) of Section 2. It says-

In Chapters II, III, IV and VI, and in Section 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 denned 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 Section 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, 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.

5. The full bench in Maneklal Girdharlal Soni Vs. Mahipatram Mansukhram Patel, were dealing with the question as to whether protection could

be afforded to the judgment-debtor u/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 Clause (2) of Section 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 Section 2, Clause (2), for the interpretation of

Section 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

Section 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 Section 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 prcductive

of hardship. But I fail to see how upon the application of the definition in Section 2, Clause (2), to Section 22, there can be repugnancy. All that

can be said is that upon the construction adopted in the lower Court the immunity 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 J. 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 not ground for holding that the intention as expressed would be defeated. It is true that Section 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 could not be regarded as an authority

for the construction of Section 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 Section 21, I see the greatest difficulty in not giving effect to the definition of

agriculturist contained in Section 2, Clause (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 was 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 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.

6. I agree. I would only add a remark with respect to the argument advanced by Mr. Gajendragadkar for the applicant that the object of Section

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 Section 2, Clause (2), which is a rule of interpretation laid down for the

purpose of the Act. The object of the rule contained in Section 2, Clause (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 Section 22 and rule No. 2

mentioned in Section 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 Babaji Totre Vs. Martand Narayan Kulkarni, viz. "" Narayan Ballal was described as an

agriculturist, and consequently as long as he was alive his Immovable 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.