Shrimant Appasaheb Tuljaram Desai and Others

Vs

Bhalchandra Vithalrao Thube

Civil Appeal No. 716 of 1957

(Syed Jafer Imam, A. K. Sarkar, Raghubar Dayal JJ)

28.10.1960

JUDGMENT

IMAM J. -

This is an appeal against the judgment of a Division Bench of the Bombay High Court in Letters Patent Appeal No. 50 of 1953, reversing the decision of Shah, J. and restoring the order passed by the executing court which had been set aside by him.

Two questions arise for decision in this appeal (1) whether the Wada (house) ordered to be attached by the executing court is Watan property, and if so, can it be attached in execution of a decree ? (2) If the Wada is not Watan property, is it exempted from attachment by virtue of the provisions of section 60 of the Code of Civil Procedure ?

It is necessary now to state a few facts. One Rao B. Vithalrao Laxmanrao Thube, hereinafter referred to as Laxmanrao, brought Civil Suit No. 313 of 1943 against Tuljaramarao Narainrao Desai, hereinafter referred to as Tuljaramarao, to recover Rs. 80,000 which had been borrowed by him from the plaintiff. Laxmanrao's suit was decreed on December 20, 1943. Tuljaramarao having died his legal representatives, the present appellants, were brought on the record on September 21, 1944. In April, 1949, Laxmanrao filed an application for the execution of the decree. He sought the attachment, with a view to their subsequent sale, of certain properties including the Wada which is the subject-matter of this appeal. The appellants objected to the proposed attachment on various grounds. The executing court on December 17, 1951, issued a warrant of attachment only against the Wada in question. The appellants appealed to the Bombay High Court. Their appeal was heard by Shah, J., who by his order dated September 23, 1953, set aside the order of attachment relying on the decision of Chagla, J., in second Appeal No. 760 of 1942. He, however, gave no decision on the question whether section 60 of the Code of Civil Procedure gave protection to the Wada from attachment. Against the decision of Shah, J., there was an appeal under the Letters Patent of the High Court which was heard by a Division Bench. The Division Bench, as already stated, reversed the decision of Shah, J. restored the order made by the executing court. Subsequently, the High Court gave a certificate that the case was a fit one for appeal to this Court.

It is undisputed that the whole of village Nandi had been granted as inam to the ancestor of Tuljaramarao and his descendants as per Sanad, Ext. 54, and the Inam Patrak, Ext. 57. In that Sanad there is no mention of any Wada existing on the Inam land. According to the executing court the Wada appears to have been built after the grant. It appears that the opinion of the Division Bench of the High Court was also to the same effect. There is no finding of Shah, J., to the contrary. We must, therefore, proceed on the basis that the Wada in question was not the subject of the original grant.

This Wada came to be constructed on the land in the inam village of Nandi sometime subsequent to the grant.

What has to be decided is, do the attributes of "Watan Property" accrue to the Wada which was constructed after the grant on land which was admittedly "Watan Property" as defined by the Bombay Hereditary Offices Act, 1874 (Bombay Act No. III of 1874), hereinafter referred to as the Act. In appeal No. 760 of 1942, Chagla, J., took the view that the house in that case was an accession to the site on which it stood. Accordingly, it must partake of the character of the land on which it stood. The learned Judge stated that the question which he had to determine was whether the house was immovable property held for the performance of the duty appertaining to an hereditary office within the meaning of section 4 of the Act. Having regard to the definition of "immoveable property" in the Bombay General Clauses Act he was of the opinion that the house certainly formed part of the immoveable property which was held for the performance of the duty appertaining to the hereditary office of the Watan and that the only answer to the question "what is the immoveable property which is held for the performance of the duty under section 4 ?" can be both the land and the house. If the house forms part of the immoveable property it is not possible to sever the two and to say that it is only the land which Watan property and not the house which is permanently fastened to it. Shah, J., relied upon the decision of Chagla, J., and held that the land on which the Wada in the present case stood, being Watan Property, the Wada must also be deemed to have acquired that character. The Division Bench which heard the appeal against the decision of Shah, J., was of the opinion that although a house built on land must be regarded as immoveable property it did not follow that like the land on which it was built the house became Watan property. The fact that a house subsequently built became immoveable property would have no material bearing on the question whether it was Watan property or not. In order that the house may be regarded Watan property it must satisfy the test laid down by the definition of the word "Watan Property" in section 4 of the Act and that if the word "held" was construed in the way in which the learned Judges of the Division Bench thought it should be, it would be difficult to accept the view that a house subsequently built by a watandar on a part of a Watan land could be said to be held by him for the performance of his duties of a hereditary office. The learned Judges of the Division Bench accordingly were of the opinion that Shah, J., erred in so holding.

> "Watan property" has been defined in the Act to mean :
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> "The moveable or immoveable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office. It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise.
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> It includes cash payments in addition to the original watan property made voluntarily by the State Government and subject periodically to modification or withdrawal."

The inam lands of Nandi were undoubtedly held as remuneration for the performance of the duty appertaining to an hereditary office and therefore were Watan properties. On the findings of the courts below the Wada in question was not the subject of the grant. In our opinion, therefore, at no time was it held for providing remuneration for the performance of the duty appertaining to a hereditary office. Nor could it be said to have been acquired for performance of any such duty. It had been constructed some time subsequent to the grant either by the grantee or his descendants and there is no indication on the record that it was constructed for the purpose of providing remuneration for the performance of the duty appertaining to a hereditary office. To that extent at

least it appears to be clear that the Wada in question does not come within the definition of Watan property as defined in the Act. The only question is whether having been constructed on land which is Watan property and being immovable property within the meaning of the Bombay General Clauses Act, does it partake of the character of the land on which it stood ? On behalf of the appellants it was argued that the Wada is an accession to the Watan property, namely, the land of village Nandi. It seems to us, however, that construction of a Wada on land which is Watan property is not an accession to it, as accession to the land would suggest that over a course of years imperceptible accretion to the land has taken place and it was impossible to distinguish the original land from the accreted land. In such a case the accreted land may possibly partake of the character of the original land. Adjacent lands to the original land which have been acquired and can be distinguished cannot partake of the character of the original land.

On behalf of the appellants it was argued that the right, title and interest of the grantor had to be looked at first in construing a grant and if it appeared from the terms thereof that it did not contain any reservation or exception then all the rights, title, and interest of the grantor which he was capable of granting would pass to the grantee. The grantor in this case was the Government which could have built a construction on the land granted or dug tube wells on it. The grantee, therefore, could also build a house or any other structure on the land. On the other hand, it was contended on behalf of the respondent that the position of a watandar was not that of an absolute owner of the land. He held the land on certain conditions. The land was liable to forfeiture if he was guilty of certain acts mentioned in section 60 and Schedule II of the Act. We will assume, there being nothing to the contrary in the Sanad, that the grantee was not restricted from constructing a building on the land. From that, however, it does not necessarily follow that the building so constructed became Watan property within the meaning of the Act. If the Government could have built a construction on the land it could also have dismantled it and removed the material with which it was made. Similarly, the grantee could do so, there being no restriction in that regard in the terms of the Sanad. It seems to us that on a proper construction of the Sanad there was no impediment on the way of the grantee from dismantling the house which he had built and removing the materials with which it had been constructed and selling the same. Indeed, unless it is held that a house constructed on the land partakes of the character of the land, it is difficult to see how the grantee is prevented from selling or mortgaging it but not the land on which it stood. It seems, therefore, that the Wada in the present case although immovable property did not partake of the character of the land on which it was constructed because it was severable from the land and was capable of being dismantled and the materials of which could be removed and sold without violating any of the provisions of the Act. In our opinion, the decision of the Division Bench of the High Court that the Wada not Watan property appears to be correct.

The next question for consideration is whether the Wada is one belonging to an agriculturist and occupied by him within the meaning of cl. (c) of the proviso to section 60(1) of the Code of Civil Procedure. If it is, then it is exempted from attachment by the provisions of the proviso. It was urged that as the word "agriculturist" has not been defined in the Code, the word must be construed according to its ordinary meaning. According to Shorter Oxford English Dictionary this word can also mean a farmer. Neither the extent of the land farmed by him nor the amount of income derived by him from cultivating the land was a relevant consideration in construing the word "agriculturist". Not would it be right to restrict the meaning of the word "agriculturist" to mean that an agriculturist must be a person who himself or by the aid of the members of his family tills the land and not with the aid of employed labour. On behalf of the respondent, however, it was contended that the word "agriculturist" in cl. (c) of the proviso must bear the same meaning as the word "agriculturist" in cl. (b) of the proviso. It was necessary, therefore, to construe the provisions of cl. (b) as well in order to

understand what the Code intended the word "agriculturist" to mean in cl. (c). On a proper construction of cl. (b) not only an agriculturist must be the tiller of the land but he must also be a small agriculturist. Clause (b) was not intended to refer to a person who cultivated a large area of land and derived from it a large income. It was pointed out that in the present case the appellant Appasaheb was cultivating a very large area of land with the aid of employed labour and derived an income somewhere between Rs. 30,000 to 35,000 a year. Section 60(1) of the Code states in detail what property of a judgment debtor is liable to attachment and sale in the execution of a decree. It was urged that but for the proviso all the properties of Tuljaramarao other than Watan property were liable to attachment and sale in execution of Laxmanrao's decree. The proviso no doubt exempted from attachment and sale certain properties mentioned therein but cl. (b) of the proviso clearly indicated that the object of the Code was to save in the case of a judgment debtor his tools as an artisan and, where he was an agriculturist, his implements of husbandry and such cattle and seed-grains as may, in the opinion of the court, be necessary to earn his livelihood. It did not even exempt his agricultural produce unless there was a notification under section 61 of the Code specifying by a general or special order how much of the agricultural produce was, in the opinion of the State Government, necessary for the purpose of providing, until the next harvest, for due cultivation and the support of the judgment debtor and his family. It was suggested, therefore, that the Code intended to exempt from attachment and sale, in the case of an agriculturist, only that much which was necessary to enable him to earn his livelihood as such.

The meaning of the word "agriculturist" has been interpreted by various High Courts in India. Reference to only some of these cases need be made. In the case of Hanmantrao Annarao v. Dhruvaraj Pandurangrao ((1946) 49 B.L.R. 867.) it was held by the Bombay High Court that the word "agriculturist" in cls. (b) and (c) of the proviso to section 60(1) of the Code of Civil Procedure denotes persons who are personally engaged in tilling and cultivating the land and whose livelihood depends upon the proceeds of such tillage and cultivation of the soil. It does not include large landed proprietors even though they may be tilling the land and cultivating it through their servants. In the case of Parvataneni Lakshmayya v. The Official Receiver of Kistna (I.L.R. [1937] Mad. 777.) a Full Bench of the Madras High Court arrived at the following conclusion after considering various decisions of some of the High Courts in India :-

> "We think that, having regard to the scheme of the section exempting from attachment, as it does, tools of artisans, and, where the judgment debtor is an "agriculturist" his implements of husbandry and such cattle and seed-grain as may in the opinion of the Court be necessary to enable him to earn his livelihood, and his houses and other buildings occupied by him, protection is intended to be given to those who are real tillers of the land, and that an "agriculturist" in the section is a person who is really dependent for his living on tilling the soil and unable to maintain himself otherwise. Main, chief, or principal sources of income are not, in our view, the proper tests. A man's main source of income may be from tilling the soil but his other source or sources of income may be more than sufficient to maintain him. The fact that a man's income from tilling the soil may be larger than his income from his ownership of land or other sources does not seem to us to make him an "agriculturist" within the meaning of the section. At the same time we see no reason for depriving an "agriculturist" of the exemption under the section because he may have invested money in a business or business as alleged in the present case and may derive some income therefrom or do coolie work and add to his earnings in bad times. The test of sole source of income of applied would deprive him of the benefit of the section and we prefer the tests which we have already laid down, viz., that he

> must be a tiller of the soil really dependent for his living on tilling the soil and unable to maintain himself otherwise."

In the case of Tirloki Prasad v. Kunj Behari Lal (A.I.R. 1935 All. 448.) the Allahabad High Court held that the test to be applied in deciding whether a person is an agriculturist is whether his main source of income is derived from cultivation or not. In the case of Dwarka Prasad v. Municipal Board, Meerut (A.I.R. 1935 All. 448.) the same High Court held that there was no reason for holding that cl. (b) of the proviso to section 60(1) applied only to the case of very small farmers and not to the case of large farmers. Clause (b) aimed at protecting the implements of every farmer so as to enable him to continue to earn his livelihood in the same way as he had been doing previously. There was nothing to indicate that the clause was limited to small farmers. In the case a Gowardhandas v. Mohanlal (I.L.R. [1938] Nag. 461.) the conclusions of the Nagpur High Court were :

> "(i) Whether a person is an agriculturist or not is not a question turning on source of income but on nature of occupation.
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> (ii) A person may have many occupations. If one of them is agriculture and for that purpose a house or building is occupied, protection can be claimed.
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> (iii) A person who owns land and lets it reserving either money or produce is not an agriculturist but a landlord.
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> (iv) A person who cultivates the land as a labourer, though neither landowner nor a tenant, is an agriculturist.
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> (v) If a man cultivates the land with his own hands or by means of labourers whose activities he directs he is an agriculturist whether he operates on a large or a small scale. If he has no connection with the land except that he owns it and people work for him, he may or may not be an agriculturist according to circumstances."

In the case of Nihal Singh v. Siri Ram ((1939) I.L.R. 21 Lah. 23.) the Lahore High Court held that the word "agriculturist" means a person who personally engages in the occupation of tilling the soil and derives his livelihood from that occupation and cannot (or does not) maintain himself from other sources. On the facts of the case that Court held that a man who merely received rent from tenants or the income of the reduce derived by the employment of servants or partners could not be said go depend for his livelihood upon the proceeds derived from so engaging himself in the tillage of the soil. In the case of Anantalal v. Bibhuti ((1944) I.L.R. 23 Pat. 348.) the Patna High Court held that an agriculturist was one who tilled the soil and thereby earned his livelihood and was expected to have implements of husbandry, cattle and seed-grain. This, however, did not mean that he must till the land with his own hands or that he must necessarily have his own implements of husbandry. In any event, cultivation must be his main source of income though this would not be that sole test. The question whether a person was an agriculturist or not would have to be decided with reference to the facts of each particular case.

In the present case the evidence of the appellant's own witness, Balaji, shows that Tuljaramarao had reserved some lands for a home farm about 8 years before his death. The area reserved was about 35 acres and that he maintained about 12 bullocks and 8 servants. He was getting an income of Rs. 20,000 to Rs. 25,000 a year from these lands. He used to keep his cattle in the Wada where his

servants also stayed and his agricultural implements were kept. The produce of the lands was also stored in the Wada. Tuljaramarao used to supervise the agricultural operations and his servants. After his death his on appellant Appasaheb became the owner. Appasaheb increased the acreage of the cultivation of the home farm to about 60 acres. He has 14 bullocks and 10 or 12 servants and the income is Rs. 30,000 to Rs. 35,000 a year. The cattle and the produce are kept in he Wada where he also resides. This witness also stated that the appellant Appasaheb had inams in 4 villages. Furthermore, in 10 or 12 villages he owns lands an he gets about Rs. 35,000 to Rs. 40,000 from his lands. The said Appasaheb and his brother sometimes worked personally in the fields. It is a clear, from this evidence, that Appasaheb is by no means entirely dependent for his livelihood upon the income from the home farm. Apart from the income of the home farm he has a substantial income from the lands and there is nothing to show that this income derived from his other lands is the result of cultivation by him.

It was contended on behalf of the appellants that the Bombay High Court had taken an extreme view in the case of Hanmantrao Annarao v. Dhruvaraj Pandurangrao ((1946) 49 B.L.R. 867.). Reliance was placed on the decision of the Allahabad High Court in Dwarka Prasad v. Meerut Municipality (A.I.R. 1958 All. 561.) where it was held that a tractor was an implement of husbandry and it was not subject to attachment although it was used for cultivating an area of about 1,200 bighas of a farm. The decisions of the Madras High Court in the case of Parvataneni Lakshmayya v. The Official Receiver of Kistna (I.L.R. [1937] Nag. 461.), of the Lahore High Court in the case of Nihal Singh v. Sri Ram and Others ((1939) I.L.R. 21 Lah. 23.) and of the Nagpur High Court in the case of Gowardhandas v. Mohanlal (I.L.R. [1938] Nag. 461.) were also relied upon on behalf of the appellants in order to show that to be an agriculturist a person did not have to personally cultivate the land and that it was immaterial whether the area cultivated or the income derived therefrom was large or small. The real test was, was the cultivation his main source of livelihood ? It was submitted, on the facts of the present case, that the appellant Appasaheb depended for his livelihood on the income derived from the land cultivated by him and that the Wada on the land was occupied by him as an agriculturist for the purpose of his cultivation. Such being the position the Wada was occupied by him as an agriculturist and was therefore exempted from attachment under cl. (c) of the proviso to section 60(1) of the Code of Civil Procedure.

Sub-section (1) of section 60 of the Code of Civil Procedure makes all saleable property, moveable and immovable, belonging to the judgment debtor and over which he has a disposing power liable to attachment and a sale in execution of a decree against him. In this sub-section unless the terms of the proviso came to the rescue of the judgment debtor, all lands and houses or other buildings, goods and money, amongst other things, belonging to him would be liable to be attached. The Legislature, however, recognized that it would not be expedient to leave the matter at that. Hence the proviso. The relevant clauses in order to determine what the word "agriculturist" means are clauses (b) and (c) of the proviso. Under cl. (b) the tools of an artisan are exempted from attachment. According to the Shorter Oxford English Dictionary the word "artisan" means a mechanic, handicraftsman or an artificer. The object of the Legislature in exempting from attachment tools of an artisan was obviously to leave him his tools in order to enable him to make a living. Without his tools the artisan would be destitute, a situation which the Legislature intended to avoid. In the case of judgment debtor who was an agriculturist, the Legislature intended that his implements of husbandry and such cattle and see-grain as, in the opinion of the court, were necessary to enable him to earn his livelihood as an agriculturist should be exempted from attachment. Here again, the intention of the Legislature was to leave in the hands of an agriculturist sufficient means whereby he could earn his livelihood as an agriculturist. According to Shorter Oxford Dictionary one of the meanings of the word "husbandry" is the business of husbandry, that is

to say, a person who tills and cultivates the soil or a farmer. The same dictionary states that one of the meanings of the word "livelihood" is means of living maintenance. It can also mean income, revenue, stipend. In the case of an agriculturist his implements of husbandry must therefore mean implements with which he tills the soil, These are saved from attachment. So far as his cattle and seed-grain are concerned, only that much is exempted which, in the opinion of the court, would be necessary to enable him to earn his livelihood and by which he could earn his maintenance. It is to be noticed that under cl. (b) the land which an agriculturist tills is not exempted from attachment. The agricultural produce of the land is exempted to the extent as notified in the Official Gazette issued under section 61 of the Code. On a fair reading of the provisions of the Code. On a fair reading of the provisions of cl. (b), that which is saved to an agriculturist are his implements with which he tills the soil and such cattle and seed-grain which, in the opinion of the court, are necessary for him to use in order to enable him to maintain himself. The provisions of cl. (b) in the case of an agriculturist, therefore, suggest a person who tills the soil in order to maintain himself.

Under cl. (c) houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him are exempted from attachment. The word "agriculturist" in this clause must carry the same meaning as the word "agriculturist" in cl. (b) and the house must be occupied by him as such. The object of the exemption in cl. (c) apparently is that an agriculturist should not be left without a roof over his head. Another words, the Legislature intended by cls. (b) and (c) to prevent an agriculturist becoming destitute and homeless. It was, however, argued on behalf of the appellants that there are no restrictive words in cl. (c). So long as it was a house belonging to an agriculturist and occupied by him, it was exempted from attachment no matter what other income than agriculture was earned by him. The Wada in question was clearly occupied by the appellants for the purpose of tilling the land of the home farm and for storing the produce thereof, the implements of husbandry and tethering of cattle employed in cultivating the land. It seems to us, on the evidence of the appellants' own witness, that they do not themselves till the land of the home farm which is done by a large number of labourers employed by them. Tuljaramarao did not himself cultivate the land. He merely supervised the work of cultivation by the labourers. The witness, however, did state that sometimes Appasaheb and his brother worked personally in the fields. This is a vague statement which does not necessarily mean that they did any act of cultivation themselves. The Wada in question is a big structure where the appellants reside but if they are not agriculturists within the meaning of tea word in section 60, the Wada cannot be exempted from attachment. It seems to us that even if it is not necessary that a person must till the land with his own hands to come within the meaning of the word "agriculturist" he must at least show that he was really dependent for his living on tilling the soil and was unable to maintain himself otherwise. In the present case it is quite obvious that even if the appellants can be described as agriculturists in the widest sense of that term, they are not agriculturists who are really dependent for their maintenance on tilling the soil and that they are unable to maintain themselves otherwise. The evidence shows that Tuljaramarao was getting an income of nearly 20,000 to 25,000 rupees from lands cultivated in the home farm and that the appellant Appasaheb by extending the acreage of that farm was receiving an income of Rs. 30,000 to Rs. 35,000. In addition he had lands in 10 or 12 other villages and his income from the lands was Rs. 35,000 to Rs. 40,000. Assuming that these figures include the income from the lands of the home farm, they would show that in addition to that income he had an additional income of at least Rs. 5,000 from lands in villages other than Nandi. Furthermore, the appellant Appasaheb is receiving a cash allowance of Rs. 700 to Rs. 800 per annum and Rs. 4,000 to Rs. 5,000 from the village officers of the four inam village. In these circumstances, it can hardly be said that the appellant Appasaheb is really dependent for his maintenance by tilling the soil and

unable to maintain himself otherwise. From this point of view it seems to us that he cannot be regarded as an agriculturist within the meaning of that word in section 60 of the Code.

In our opinion, the decision of the High Court that the Wada in question was not Watan property and that it was not exempted from attachment by virtue of the provisions of section 60(1) of the Code is correct. The appeal is accordingly dismissed with costs.

SARKAR J. -

The appellants are the legal representatives of one Tuljaram Desai. Tuljaram was the owner of certain watan properties. On his death, his son the appellant Appasaheb became entitled to them. The other appellants are the widow and younger son of Tuljaram.

Sometime in 1943 one Vithalrao Thube obtained a decree for Rs. 80,000 against Tuljaram. By 1949 both Tuljaram and Vithalrao had died. The respondent is the successor in interest of Vithalrao.

The present appeal arises out of the proceedings for the execution of the decree started by the respondent against the appellants. In this appeal we are concerned only with a wada (building) belonging to the appellant Appasaheb, standing on watan land which the respondent seeks to have attached and sold in execution. It is not now in dispute that watan properties are not saleable properties and cannot therefore be attached and sold in execution. The wada stands on watan land which the respondent seeks to proceed against the structure apart from the land.

The appellant Appasaheb contends that he is an agriculturist and that wada belonging to and occupied by him is protected from attachment and sale by cl. (c) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure. He also contends that the wada itself is watan property and is not in view of sub-section (1) of section 60 liable to attachment and sale as it is not a saleable property.

Now sub-section (1) of section 60 makes all saleable property liable to attachment and sale in execution. The proviso to it so far as material runs thus :

> "Provided the following particulars shall not be liable to such attachment or sale, namely :-
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> #..... .....##
>
> (b) tools of artisans and where the judgment debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the court be necessary to enable him to earn his livelihood as such....
>
> (c) houses and other buildings (with materials and the sites thereof and land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him."

I purpose now to consider the question whether the wada is saved from execution under cl. (c) of the proviso to sub-section (1) of section 60. In order that the clause may apply two conditions have to be fulfilled. First, the person claiming benefit under it must be an agriculturist and secondly the wada must belong to and be occupied by him.

First, then, was the appellant Appasaheb an agriculturist within the meaning of the clauses ? Now the plain meaning of the word "agriculturist" in the present context, is a person who occupies himself with agriculture, that is, cultivation of land for raising crops. Anybody who is engaged in cultivating land for raising crops would be an agriculturist. So far there is no difficulty. It appears however from the reported decisions that the High Courts have expressed sharply divergent opinions on the question as to who an agriculturist within the meaning of the clause. The difference however is not on the point that an agriculturist must be one who cultivates but as to whether the agriculturist contemplated in cls. (b) and (c) is one who cultivates with his own hands and whether al persons who carry on agricultural operation are agriculturists within the clauses. These differences have arisen not because any difficulty was felt as to the meaning of the word "agriculturist", but from the intention of the legislature to be gathered from the other words used in the clauses. In this appeal these authorities have been relied on by the parties at it suited the contention of each. It is necessary therefore to consider the views expressed in these case and decide whether the word "agriculturist" is to be given its plain meaning or has to be qualified in some way. It is of some significance to state that by and large, the view of one High Court has been discarded by another.

One view is that an agriculturist is a person whose main source of livelihood is agriculture : see Tirloki Prasad v. Kunj Behari Lal (A.I.R. 1935 All. 448.) It is said that this is right view for an agriculturist must be one who is so by profession. Now the main source of livelihood of a person may vary from time to time : therefore at one period of time a person might be an agriculturist but not at another. It is not reasonable to hold that such a result was intended. Again it would often be difficult to decide which is the main source of livelihood of a person. Indeed it is not quite clear as to what is meant by main source of livelihood unless it means the livelihood producing the largest income. I find nothing in the clauses to warrant this view : they do not say anything about agriculture being a person's main source of livelihood in any sense of the word "main". Furthermore if this view is accepted, a rich farmer who has income from other sources, which income is smaller than his income from agriculture, would be protected by these clauses while a poor peasant who makes a slightly bigger income, say as a day labourer, than he does from agriculture, would be deprived of the protection. I am unable to accept a view which produces such a result. I find no reason why a person who has a profession besides agriculture, should be protected if agriculture is his main profession and not otherwise, particularly when what is protected is agricultural implements, cattle, seed-grain and house used for agricultural purposes.

Another view taken is that the agriculturist must be one whose sole means of livelihood is cultivation of land but excluding persons carrying on farming in a large way : Muthuvenkatarama Reddiar v. The Official Receiver of South Arcot ((1925) I.L.R. 49 Mad. 227.). This view has been discarded in a later full bench decision of the same High Court in Parvataneni Lakshmayya v. The Official Receiver of Kistna (I.L.R. 21 Lah. 23.) to which reference will be made later. For myself, I find nothing in the clauses to justify this view. Take the case of a small cultivator who, in order to maintain himself, takes up the other work and so supplements his income. There is nothing in the clauses to indicate that such a cultivator should be deprived of the protection. It is well known that agricultural operations do not occupy a person for the whole year and as the income from agriculture is for quite a large number not enough to meet their needs, many small cultivators have to supplement their income by other work when they are not engaged in the fields. There is nothing in the clauses to lead to the view that these persons were not intended to get the protection. It seems to me manifest that there is no reason to deprive these persons of the benefit of the protection. Neither do I find any words in the clauses to support the view that big farmers are not intended to get the protection. This aspect of the matter will be discussed further later. The view taken in Muthuvenkatarama Reddiar's case ((1925) I.L.R. 49 Mad. 227.) does not therefore appear to me to

be well founded.

In Nihal Singh v. Siri Ram ((1939) I.L.R. 21 Lah. 23.) a full bench of the Lahore High Court held that an agriculturist must be one who personally tills and not through servants and does not maintain himself from other sources of income. The reason given to support this view appears to be as follows : The word agriculturist must mean the same thing in cls. (b) and (c). In cl. (b) it is in juxtaposition with the words artisan. An artisan is one who himself practices a handicraft and furthermore he must practice the handicraft not as a hobby but as a living. So in cl. (b) an agriculturist must be one who personally tills and not through servants and maintains himself by agriculture alone.

I am not convinced by this reasoning. If the word agriculturist means one who must till with his own hands, then it is wholly unnecessary to rely on the juxtaposition of the words artisan and agriculturist in cl. (b) for reaching the conclusion that the Lahore High Court did. It is only if the word "agriculturist" as ordinarily understood includes one who carries on agricultural operations through persons employed by him that it becomes necessary to rely on the reasoning based on the juxtaposition of the two words in the clause. But I am wholly unable to appreciate the logic of this reasoning. Assume that an artisan must be one who works with his own hands. It does not follow that an agriculturist if it does not mean exclusively one who tills with his own hands, must be one who tills only with his own hands when that word is used in juxtaposition with the word artisan. Such juxtaposition would afford no reason for departing from the normal meaning of the word agriculturist.

In Hanmantrao v. Dhruvraj (I.L.R. [1947] Bom. 687.) also it was said that an agriculturist within the meaning of the clauses is one who tills with his own hands. The reason there put is that since in cl. (b) reference is made to implements of husbandry, cattle and seed-grain necessary for earning a livelihood as a cultivator, therefore prima facie, only an agriculturist who cultivates with his own hands is meant. Again I am unable to follow the reasoning for a person who lives on cultivation carried on by hired labour would also require implements of husbandry, cattle and seed-grain.

An agriculturist, as I have said, is one who carries on cultivation. Now one may carry on cultivation himself or through hired labour. In the latter case also he would be an agriculturist within the plain meaning of that word. Then it seems to me that if we exclude from the clause an agriculturist who does not till with his own hands, a mist unreasonable situation would ensure. Old and incapacitated small farmers and most women would have to be denied the protection of the clauses. Again, it may so happen that a person carrying on agricultural operations himself becomes unable to do so through ill health for two or three years when he gets the cultivation done by employing labour and resumes cultivation when he regains his health. If the view now under discussion is correct, then such a person would cease to be an agriculturist during the period of ill health though before and after that period he would be an agriculturist. It does not seem to me that such results could have been intended.

I come now to the view taken in Parvataneni Lakshmayya v. The Official Receiver of Kistna (I.L.R. [1937] Mad. 777.) earlier referred to. It was there said, "We think that, having regard to the scheme of the section exempting from attachment, as it does, tools of artisans, and, where the judgment-debtor is an "agriculturist", his implements of husbandry and such cattle and seed-grain as may in the opinion of the court be necessary to enable him to earn his livelihood and his houses and other buildings occupied by him, protection is intended to be given to those who are real tillers of the land, and that an "agriculturist" in the section is a person who is really dependent for his living on

tilling the soil and unable to maintain him otherwise."

I am unable to agree with this view. It leads to obvious anomalies. Take the case of a person whose sole means of living is agriculture. Suppose he carries on agriculture on a large scale and makes a big income out of it. He would still be dependent on agriculture for his living and unable to maintain himself otherwise. He would be an agriculturist for the purpose of the clauses within the meaning of Parvataneni's case (I.L.R. [1937] Mad. 777.), for that case does not say that a large scale farmer is not an agriculturist. Such a person would be entitled to protection under the Clauses even though his income from agriculture is, say Rs. 25,000 a year. Now take the case of a small farmer whose income from agriculture is Rs. 1,000 a year but who also makes Rs. 1,500 from other sources and is able to maintain himself from the latter income. According to Parvataneni's case (I.L.R. [1937] Mad. 777.) such a person would not be an agriculturist for the purpose of the clauses and would not be entitled to any protection under them. I find it impossible that the legislature could have intended such a result.

Then again I find nothing in the language of the clauses clearly leading to the view accepted in Parvataneni's case (I.L.R. [1937] Mad. 777.) however. The only reference to a living is in cl. (b) and it is to be found in the words. "such cattle and seed-grain as may..... be necessary to enable him to earn his living as such", that is, as an agriculturist. I do not think that these words lead to the conclusion that the agriculturist contemplated must depend for his living on agriculture. They are intended to define the limit of the protection which an agriculturist is entitled to for his cattle and seed-grain. These words must therefore mean such cattle and seed-grain as are necessary for the agriculturist to earn his livelihood from agriculture if that was his sole means of livelihood. If that were not so we would have to hold that this part of the clause contemplated an agriculturist whose livelihood depended on agriculture alone and who had no other source of income. Obviously where a person earned his livelihood from agriculture and another source, it could not be decided what cattle and seed-grain he would require to earn his living as an agriculturist for the simple reason that he did not earn his living as an agriculturist only. Parvataneni's case (I.L.R. [1937] Mad. 777.) however accepts the view that a person may be an agriculturist within the meaning of the clauses though he may have besides agriculture another source of income. And with that view, for the reasons earlier stated, I entirely agree.

There seems to me to be other reasons also why the view taken in Parvataneni's case (I.L.R. [1937] Mad. 777.) is not the correct one. So far as the tools of an artisan are concerned, cl. (b) does not limit the protection to such of them as are necessary to enable him to earn his living as an artisan. Therefore, there is no reason to think that an artisan is one who must be dependent for his living one the handicraft practised by him. Likewise all implements of husbandry of an agriculturist are exempt from attachment and sale. The word "such" occurring before the words 'cattle and seed-grain' in cl. (b) shows that these are protected only to the extent indicated and that there is no limit to the protection afforded to the implements of husbandry of an agriculturist. If this is the correct reading of the clause, as I think it is, then it seems to me impossible to say that an agriculturist whose implements of husbandry are intended to be protected must be one who could not maintain himself apart from agriculture. Likewise, there is nothing in cl. (c) to indicate that the agriculturist there mentioned must be one who depends for his living on agriculture.

There remains one other view to consider. It has been said that the agriculturist must be a very small farmer; Muthuvenkatarama Reddiar v. The Official Receiver of South Arcot ((1925) I.L.R. 49 Mad. 227.). For this qualification for an agriculturist again, I find no warrant in the clauses or indeed anywhere else in section 60. The various clauses in the proviso to section 60, sub-section (1)

exempting diverse things from attachment and sale are no doubt based on public policy, but the consideration of public policy in each case appears to me to be different. I find it impossible to say that the central idea was to protect the poor or to prevent a person being left destitute. Thus cl. (a) protects the necessary wearing apparel, cooking vessels beds and bedding of the judgment-debtor. Even a very rich judgment debtor is entitled to protection under this clause. Clause (d) protects books of account. Here again it is not a poor man alone that is contemplated nor would deprivation of books of account leave one destitute in all cases. Clause (g) protects political pensions which may be and often are of substantial amounts. Clause (h) protects wages of labourers and domestic servants. This clause of course deals with a poor man and is intended to relieve against poverty. Since however, there is no one specific central idea running through all the clauses, each clause has to be construed by itself. Coming then to cls. (b) and (c), I find no justification for the view that they deal only with poor people or are intended to protect against destitution. Thus there is nothing in cl. (b) to indicate that the tools of only poor artisans are to be protected. The same thing can be said of an agriculturist. The fact that his cattle and seed-grain are protected to the extent necessary to enable him to earn his livelihood does not lead to the view that he must be a poor agriculturist. On the contrary, the clause contemplates an agriculturist who has more cattle and seed-grain than he needs for his livelihood. It clearly contemplates a rich and large scale agriculturist.

Therefore it seems to me that there is no warrant for imposing any qualification on the plain meaning of the word 'agriculturist' in cls. (b) and (c). In my view, an agriculturist contemplated by the clauses is any person who occupies himself with agriculture. This is the view taken in Gowardhandas v. Mohan Lal (I.L.R. [1938] Nag. 461.) and with it I agree. A person occupying himself with agriculture would be an agriculturist though he does not cultivate with his own hands and carries on agriculture in a very large scale. He would still be an agriculturist though he has other means of livelihood besides agriculture.

I come now to the facts of this case. The question is, is Appasaheb such an agriculturist as I have indicated ? The evidence clearly shows that he is. It can be said to have been established beyond doubt and not questioned in the Courts below, that Appasaheb was carrying on agricultural operations under his supervision through labour employed by him and with his own cattle and agricultural implements on fifty to sixty acres of land. The evidence also establishes that Appasaheb's income from agriculture came to Rs. 30,000 to Rs. 35,000 per year. It appears that he was in receipt of cash allowances of Rs. 700 to Rs. 800 per year in respect of the watan and Rs. 4,000 to Rs. 5,000 per year from village officers of the watan villages, neither of which was income from agriculture. These facts in my view make Appasaheb an agriculturist for the purpose of cls. (b) and (c) though it may be that he was not dependent for his living upon agriculture and was a large scale farmer who did not till with his own hands. I wish however to state that there is uncontradicted testimony that Appasaheb personally took part in the agricultural operations.

Now cl. (c) protects from attachment and sale houses and other buildings with the sites thereof and land immediately appurtenant thereto and necessary for their enjoyment, belonging to an agriculturist and occupied by him. I think it is a fair reading of this clause to sat that the houses, buildings and lands must be occupied by the agriculturist for the purpose of agriculture for the object of these clauses is to protect an agriculturist only so far as is necessary for his agricultural operations. If an agriculturist occupied a house, say as a holiday resort, there would be no reason to protect that house from attachment and sale.

The question then arises whether Appasaheb occupied the wada for the purposes of his agricultural operations. I think the evidence makes it perfectly clear that he did so. It shows that the larger part

of the wada was used for storing crops, keeping agricultural implements, residence of the farm servants and tethering cattle used for agriculture. Appasaheb and his family lived in a part of the wada but that also was clearly occupation for purposes of agriculture, for it is from there that he supervised the agricultural operations.

I have therefore come to the conclusion that the wada is saved from attachment and sale in execution by cl. (c) of the proviso to sub-section (1) of section 60 of the Code of Civil Procedure.

The other contention of the appellants does not seem to me to be sustainable. It is said that the maxim accessio credit principali applies and the wada standing on watan land has acquired the character of watan as an accession to it. It is not in dispute now that the wada was not in existence when the watan was first created but had been built subsequently by one of the watandars. It is also said that the grant of the watan carried full right of ownership in the subject of the grant; that the grantee had the right to make such use of the land granted as any owner of it could have done. So it was said that the wada had been put up rightfully by the watandar and became part of the watan as an accession to it.

There is no doubt that the wada was rightfully constructed. It may be that it became on such construction a part of the land on which it stands and assumed the character of immovable property. But I am unable to agree that it thereupon assumed the inalienable character of watan property and was therefore not liable to attachment and sale in execution. I do not think that the maxim accessio cedit principali applies in giving the wada put up on watan the character of a watan. Watan is a creation by government grant. It is inalienable under a special Act. The inalienable character attaches under the Act only to the property granted by the government. This peculiar character cannot be extended to other property by the application of the maxim. Therefore it seems to me that the wada is not inalienable though it stands on land which is inalienable as a government grant under a special Act. I would for this reason reject this contention of the appellant.

As however in my view, the wada is protected from attachment and sale in execution under cl. (c) to the proviso to sub-section (1) of section 60 of the Code of Civil Procedure, I would allow the appeal.

BY COURT :

In view of the majority Judgment, the appeal is dismissed with costs.

Appeal dismissed.

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