

BOMBAY HIGH COURT

Basavanappa Shivappa

Vs.

Neelappa Adivappa

Civil Revn. Appln No. 1349 of 1953

(Gajendragadkar, J.)

12.09.1955

ORDER

Gajendragadkar, J.

1. In proceedings taken under Section 4, Bombay Agricultural Debtors Act, two persons who were shown in column 7 as co-sharers with the original petitioner have been ordered to be transposed as petitioners. It is this order for transportation that is challenged by Mr. Desai on behalf of the creditor.

2. The transaction in question took place on the 5-6-1931. It was an ostensible sale effected by Neelappa, Basappa and Kalappa. Neelappa applied in 1949 for adjustment of the debt evidenced by this transaction. The trial Court held, that the transaction was a sale. In appeal, it has been held to be a mortgage and the proceedings have been sent back for taking accounts. A revisional application preferred against this order was summarily dismissed by this Court on 21-7-1952. At this stage, Basappa and Adivappa, son of Kalappa, applied to be transposed as petitioners in these proceedings. They alleged that they were co-sharers in respect of the property, subject-matter of the original transaction, and that they were interested in prosecuting the proceedings in their own right. This application has been allowed.

3. Mr. Desai for the petitioner contends that the learned Judge was in error in allowing the application for transposition at this late stage. He argues that the preliminary issues have already been found, the matter has been agitated in three courts and it is at a very late stage that the two cosharers chose to apply for transposition. In my opinion this argument cannot succeed. Section 46, Bombay Agricultural Debtors Relief Act makes the provisions of the Code of Civil Procedure applicable to proceedings under the Act, and the proviso to Section 46 enables the Court to exercise its powers to add or strike out parties under Rule 10 of O. 1 of the Code in a proper case and on such terms as may appear to the Court to be just. This proviso makes it clear

that the addition of the parties or striking them out would not necessarily be governed by considerations of delay. In the present case, the two parties that have been transposed as petitioners were shown as coshares in column 7, and it was really the duty of the Court under Section 14 of the Act to issue notice to these co-sharers. In my opinion, it would be unfair to penalise the parties for the omission of the Court to issue notice to them. The creditor as much as the petitioner and the two co-sharers were interested in the property, the transaction In respect of which was being adjudicated upon. Therefore, I am unable to accept the argument that the order passed by the learned Judge transposing the two co-sharers to the side of the petitioners suffers from any infirmity for which interference of this Court under Section 115 would be justified.

4. Mr. Desai then argued that the order transposing these parties to the side of petitioners need not and cannot mean that the petitioners would automatically be entitled to an order for the adjustment of debts. What points can hereafter be raised between the added petitioners and the creditors and what issues would have to be tried and decided between them has been elaborately discussed by the learned Judge below. I do not think it is necessary for me to cover that ground in the present revisional application. Mr. Desai has invited my attention to the fact that having regard to the definition of the word "debtor", contained in Section 2, Sub-Section (5) of the Act and having regard to the provisions of Section 6, different considerations may arise and different issues may fall to be considered between the added parties and the creditor, according as the added parties and the original debtor were members of an undivided family or were separate. These point were raised before the learned Judge and he has observed that the transposition of the present additional parties would not necessarily mean that nothing more remains to be decided between them and the creditor. Therefore, in my opinion, it is unnecessary to deal with Mr. Desai's argument that he should be entitled to raise points of defense against the parties who have been added by the order under revision.

5. The revision application therefore fails and the rule is discharged with costs.
Rule discharged.