

## Bansi Dhar vs Rameshwar And Ors. on 13 March, 1950

### Equivalent citations: AIR1952ALL562

#### JUDGMENT

Kidwai, J.

1. On 19-2-1930, a decree was passed in favour of the resps, 1 & 2 for a sum of Rs. 494/ 14/6 plus costs & interest against the applt. & resp. 3. Various applns. for execution were made, the last one being on 19-2-1944. When this appln. was made the J. D. objected that the appln. was made beyond time having been filed more than 12 years after the decree. Upon this an issue was framed by the Court executing the decree which was as follows "Are the objectors agriculturists under Act X [10] of 1937?" After this issue had been framed, the pleader for the objectors stated as follows "The objectors are copper-smiths by profession. They have no other occupation in life." Bansidhar appellant made a statement on oath as P.W. 1. He stated 'I am a copper-smith & deal in copper & brass wares.' At a latter portion of his statement he stated: 'In 1941 I applied for amendment. I classed myself as an agriculturist because I was a copper-smith.'

2. The judgment of the trial Court indicates, that the only point argued before that Court was that a copper-smith was not a servant of the village community within the meaning of Sch. 3 attached to the Temporary Postponement of Execution of Decrees Act X [10] of 1937. The Ct. held that he was a servant of the village community because mention is made in the first schedule attached to the U.P. Debt Redemption Act of copper-smiths as servants of the village community. The trial Ct. therefore, held that Act X [10] of 1937 applied to the present case & adding the period allowed by Section 5 of that Act, it held that the appln. for execution was within time.

3. In appeal it is contended, firstly, that a copper-smith is not a servant of the village community & secondly, that it is not shown that the applt. was actually doing the work of a coppersmith, although he is one by caste & has a shop for selling copper & brass-wares.

4. In respect of the first point the reasoning of the trial Court is correct. Schedule 2 to Act X [10] of 1937 does not enumerate all the servants of the village community but adds a sentence which indicates that there are other classes of persons who may be servants of the village community. Further the passage relating to a notification being issued in the gazette does not govern the words "or other servants of the village community" but it governs the words "or any similar class of persons," This is clear from the fact that power is given to the Local Govt. to include other classes within the schedule. Other servants of the village community were already included & therefore, there is no question of including them in the schedule by any notification in the gazette.

5. In the first schedule attached to the U. P. Debt Redemption Act, another list of servants of the village community is given. This is the same as that given in the Schedule 2 to Act x [10] of 1937 but

adds several other classes of persons e.g., bangle makers, masons, tailors & stone cutters. Copper, smiths are also entered in this schedule as servants of the village community. This is a clear indication of the fact that such copper-smiths were deemed by the legislature to be servants of the village community &, in fact, they performed functions similar to those of black-smiths, basket makers, leather workers, masons etc. They served the village community just as much as any of the other classes mentioned. In these circumstances there is no reason not to treat them as servants of the village community.

6. The next objection that the present applt. is not shown to be actually doing the work of a copper-smith but that he keeps a shop at which he sells copper utensils which he purchases from others. The quotations that I have given above indicate that this was not the case in the trial Court & the absence of the mention of any such contention in the judgment of the trial Court strengthens this conclusion. In the trial Ct. it was admitted that the objectors are copper-smiths not only by caste but by profession. The fact that they purchase copper utensils from others & sell them in the village does not negative the fact that they carry on the profession of village copper-smiths. This admission by the pleader for the applt. in the trial Ct. after the issue had been framed & after he knew what the point for decision was must be given its full weight. It must, therefore, be held that the applt. is a copper smith by profession & there is no reason to presume that he does not do the work of a copper-smith for the village community. In these circumstances there is no force in the objection & it was rightly dismissed by the lower Ct. This appeal, therefore, fails & is dismissed with costs. The stay order dated 24-4-1946, is hereby vacated.