

Pearey Lal vs Bhamandal Das on 10 January, 1950

Equivalent citations: AIR1950ALL433, AIR 1950 ALLAHABAD 433

JUDGMENT

Bind Basni Prasad, J.

1. This is a defendant's appeal arising out of a suit on the foot of three hypothecation bonds for the recovery of Rs. 7,911-14-0. The first bond was executed on 14th September 1931 for a sum of Rs. 700/-. The second is dated 22nd December 1932 for Rs. 2,250/-. The third is dated 13th April 1939 for Rs. 800/-. The same property is hypothecated in all the three mortgages. Pearey Lal and Mt. Bhawani alias Mt. Gobindi are the common mortgagors of these three transactions and Lala Bhamandal Das was the common mortgagee.

2. The suit was resisted on a number of grounds and no less than eight issues were framed by the learned Civil Judge. In the present appeal, however, we are concerned with only one issue, namely, whether the defendant is an agriculturist within the meaning of the term as defined in the U. P. Agriculturists' Relief Act. The learned Civil Judge has held that the defendant-appellant is not an agriculturist and so he is not entitled to the benefits of the Act.

3. It appears that one Tika Ram was the original owner of the two mortgaged houses and a proprietary grove. This grove is assessed to a land revenue of Rs. 2-3-0 only. On 11th February 1915 Tika Ram made a will of his properties. He had no male or female issue. Mt. Bhawani was his permanent mistress and Pearey Lal defendant is his nephew. By the will he made the following provision in respect of his properties:

"After my death Mt. Bhawani, my kept wife, and after her death, Pearey Lal, my nephew, will be the owner in possession of all the property mentioned in this document. Mt. Bhawani shall have no power to make any kind of transfer or to sell or gift or endow it. So long as she is alive, she will enjoy the income of the property such as rent etc. After the death of Mt. Bhawani, Pearey Lal, aforesaid, shall have all kinds of power to transfer the property in respect of which this will has been made."

4. It is evident from the above that by the will Mt. Bhawani was given a life-estate in the property without any right of transfer, and Pearey Lal had the vested remainder. In the life-time of Mt. Bhawani, the rights of Pearey Lal in the grove were not contingent but were vested. The question then arises whether Pearey Lal defendant comes within the definition of the terms "agriculturist" as contained in Sub-Section (2) of Section 2, U. P. Agriculturists' Relief Act, 1934. Mt. Bhawani died before the present suit was brought. Clause (a) of Sub-section (2) of Section 2 provides:

" 'Agriculturist' means, in all sections of the Act where the term is used, a person who, in districts not subject to the Banaras Permanent Settlement Regulation, I [1] of 1795, pays land revenue not exceeding Rs. 1,000/- per annum."

The third proviso to this sub-section runs as follows :

"Provided further that if a non-agriculturist joins with an agriculturist in any transaction of loan, save for the purpose of adding his name as security, the agriculturist shall not be considered as such for the purpose of that transaction."

5. An essential condition for a person to be an agriculturist Under Section 2 (2) (a) is that he "pays" land revenue. As in the life-time of < Mt. Bhawani, Pearey Lal was neither paying any land revenue nor was he liable for it, so on the dates of these three mortgages Pearey Lal was not an agriculturist. As Mt. Bhawani joined a non-agriculturist, in these transactions, so by virtue of proviso 3 to Sub-section (2) of Section 2 of the Act she too cannot be considered as an agriculturist for the purposes of those transactions.

6. Learned counsel for the appellant has also contended that the defendant conies within Clause (g) of Sub-section (2) of Section 2 of the Act. This clause provides that a person holding land free of rent, the area of which does not exceed 80 acres, would be an agriculturist. The clause is referable only to rent-free grants and not to holders of proprietary groves.

7. There is then the proviso to Sub-section (1) of Section 8, the effect of which is to be considered on the status of the defendant-appellant. The section provides as follows :

"No person shall be deemed to be an agriculturist for the purposes of this chapter unless he was an agriculturist both at the time of the advance of the loan as well as at the date of the suit :

Provided that, if a person has a subsisting interest in land, but, by reason of a temporary transfer or for any other similar reason, does not for the time being pay any rent or revenue in respect thereof he will not merely by reason of such non-payment cease to be an agriculturist."

The substantive part of Section 8 contemplates two termini of time--(1) date of loan and (2) date of suit. For the purposes of Chap. II of the Act a person has to be an agriculturist on both of these dates, that is to say, if a person claims to be an agriculturist by reason of his paying rent or revenue, he must have been paying it on both these dates. The proviso makes an exception to this general rule by laying down that if at any of these termini, a person possessing subsisting right in land is not actually paying rent or revenue on account of any temporary transfer or similar reason he will continue to be an agriculturist and will not be deprived of the benefits of Chap. II. The word "cease" in the proviso connotes the idea that prior to the point of time when he is not paying the rent or revenue, he must have enjoyed the status of an agriculturist by paying the rent or revenue and the continuity of the status of an agriculturist was broken "by reason of a temporary transfer or for any

another similar reason."

8. The appellant contends that on the dates of these loans, he had a subsisting interest in the grove and was not paying its revenue because under the will Mt. Bhawani had a life interest in it at that time. On the date of the suit, however, he was an agriculturist, as Mt. Bhawani was then dead and he was then paying the land revenue for the grove. He treats the will as a permanent transfer to him with a temporary transfer to Mt. Bhawani. For these reasons he claims that he held the status of an agriculturist at both the points of time. It is true that he had a subsisting title in the grove on the dates of the three loans. But he had not the status of an agriculturist at any time before those loans, because he had not paid any land revenue of the grant at any time prior to the loans. It was on the death of Tika Ram after 11th February 1915 that for the first time he came to have an interest in land. The actual possession of the grove was, however, postponed during the lifetime of Mt. Bhawani and so he was not paying revenue during her life. This is, therefore, not a case in which a person held the status of an agriculturist by paying rent or revenue and at the first of the two aforesaid points of time he was not paying it on account of a temporary transfer. In the present case, Pearey Lal came to have the status of an agriculturist for the first time on the death of Mt. Bhawani when he began to pay the revenue for the grove. On the dates of the loans, there was no cessation of the appellant's status of an agriculturist. He had never before held that status. The proviso is, therefore, not applicable to him. Had he paid rent or revenue before the loans, and on the dates of the loans he had ceased to pay it owing to any temporary transfer or any other similar reason, the proviso would have applied to him. The position here is that he became an agriculturist in the sense of the definition of the terms after these three mortgages. As the marginal heading of Section 8 will show, it provides for change in the status of an agriculturist. The true position is that if a person has not been an agriculturist before the date of incurring a loan, but is an agriculturist on the date of the suit, then the proviso to Section 8 is not applicable.

9. It may be noted that even if the provisions of Section 8 were attracted in the present case the appellant would be entitled only to the benefits of Sections 3 and 4 of the Act which occur in the same Chapter in which Section 8 occurs and not to the provisions of Sections 30, 32 and 34 which occur in different Chapters. But as I have already held above that Section 8 does not apply to the present case, the benefits of Sections 3 and 4 also are not available to the appellant.

10. It may also be noted that the appellant's pleader admitted in the trial Court that he had no right in the grove in Mt. Bhawani's lifetime. We have ignored this, as it was an admission of law and is not binding upon him.

11. It was also argued that the appellant was entitled to the reduction of interest according to the provisions of the Usurious Loans Act. The rate of interest in one of the mortgage deeds is 9 per cent. per annum and in the other two 7 1/2 per cent. per annum with six monthly rests. Having regard to the proviso in Section 3, Usurious Loans Act, I agree with the learned Civil Judge that the interest should not be reduced.

12. I would dismiss the appeal with costs.

13. Kidwai J. -- For the reasons given above I agree with my learned brother, Bind Basni Prasad J.

By the Court. -- The appeal is dismissed with costs.