Madras High Court
V.R. Margachari And Anr. vs M.R. Krishnaswami Mudaliar And ... on 28 April, 1983
Equivalent citations: (1984) 2 MLJ 285
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JUDGMENT S. Padmanabhan, J.

1. This Letters Patent Appeal has been filed by the judgment-debtors against the order of the learned Single Judge of this Court, dismissing A.A.O. No. 183 of 1976. A.A.O. No. 183 of 1976 had been filed by the appellants against the dismissal of an application filed by the appellants before the executing Court for a declaration that the Court sale held on 7-7-1975, in execution of the decree in O.S. No. 295 of 1972, on the file of the Subordinate Court, Vellore was void and inoperative.

2. The facts necessary for the disposal of the appeal may be set out as follows:

3. The appellants had executed three mortgages in favour of the respondents on three different dates for a total sum of. Rs. 12,300/-. The respondents filed O.S. No. 295 of 1972 on the file of the Sub-Court, Vellore on the foot of the mortgages on 16-12-1972. The appellants filed a written statement claiming benefits under the Tamil Nadu Debt Relief Act 38 of 1972. A preliminary decree was passed on 20-10-1973. Thereafter, the respondents filed an application for the passing of a final decree and on 31-10-1974 a final decree was passed on the basis of an endorsement made by the defendants counsel. Thereafter, the respondents filed E.P. No. 17 of 1975 to execute the decree. In the meanwhile, Tamil Nadu Ordinance 1 of 1975 was passed on 16-1-75. On 26-2-1975 the appellants entered appearance before the executing Court and took time for filing their objections to the execution application till 5-3-1975. On 5-3-1975, the appellants made an endorsement that there was no objection to the execution petition. Thereupon, the respondents brought the property to sale and the sale was held on 7-7-1975 and the same was purchased by the second respondent for a sum of Rs. 31,000/-, which was confirmed on 28-2-1976. Before the date of sale, the appellants filed E.A. No. 255 of 1975 for stay of the execution proceedings under the Tamil Nadu Ordinance 1 of 1975. It may be mentioned here that the Ordinance 1 of 1975 had been superseded and replaced by the Tamil Nadu Indebted Agriculturists (Temporary Relief) Act, 1975 on 3-4-1975. Thereafter, the appellants filed another application in E.A .No 323 of 1975 for stay of the execution proceedings.

4. On 7-7-1975, the appellants filed another application to postpone the sale. That application was dismissed and the sale was held. Thereafter, on 5-8-1975, the appellants filed E.A. No. 450 of 1975 for a declaration that the sale was void and inoperative. They also filed E.A. No. 628 of 1975, claiming benefits under Section 23 of the Act 4 of 1938. On 28-2-1976, the said applications were dismissed and the sale was confirmed. Against the order dated 28-2-1976, the petitioners/appellants filed A.A.O. No. 183 of 1976, wherein this Court remanded the matter and called for a finding from the trial Court, on the question, whether the first appellant was an agriculturist or not. The trial Court rendered a finding that the first appellant was an agriculturist on 7-7-1975, on which date, the sale took place. The learned single Judge accepted the finding of the executing Court that the petitioner was an agriculturist on 7-7-1975, the date of sale. But the learned single Judge found that, during the stage of trial, the first appellant took a stand that he was not an agriculturist and obtained relief on that basis for scaling down the debt under Section 6 of the Tamil Nadu Debt Relief

Act 38 of 1972. In this view, the learned single Judge found that the first appellant was debarred from claiming the benefits under the Tamil Nadu Act 10 of 1975 on the ground that he was an agriculturist. Accordingly, the learned single Judge dismissed the appeal.

5. Mr. M.N. Padmanabhan, learned Counsel for the appellants raised the following contentions.

6. In view of the fact that both the executing Court as well as the learned single Judge found that the first appellant was an agriculturist on 7-7-1975, on which date the sale took place, the first appellant ought to have been given the benefits of the Act 10 of 1975. Section 3 of the said Act provided that-

No suit for the recovery of a debt shall be instituted, no application for the execution of a decree for payment of money passed in a suit for the recovery of a debt shall be made, and no suit or application for the eviction of a tenant on the ground of non-payment of a debt shall be instituted or made, against any agriculturist in any Civil or Revenue Court before the expiry of a year from the date of the commencement of this Act.

7. In view of this, there was a statutory bar on the part of the Courts from entertaining any suit or execution application for the recovery of a debt for a period of one year. In other words, the said Act gave a stay for a period of one year to all agriculturists. The learned Counsel for the appellant further argued that even as early as on 8-4-1975, the first appellant had filed E.A. No. 255 of 1975 for stay of the execution proceedings, under Ordinance 1 of 1975. He also filed E.A. No. 323 of 1975 for stay of further proceedings till the disposal of E.A. No. 255 of 1975. However, the executing Court did not pass any order on these applications but held the sale on 7-7-1975. Consequently the sale was void and in-operative.

8. Mr. M. Srinivasan, on the other hand contended on behalf of the respondents/decree-holders and the auction- purchaser that the appellants were barred by principles of constructive res judicata from raising any objection to the execution of the decree by virtue of the order passed on 10-3-1975 on the basis of the endorsement made by the appellants, that there was no objection to the execution of the decree. (2) Having obtained a benefit under the Tamil Nadu Debt Relief Act 38 of 1972 on the ground that the first appellant was a non-agriculturist debtor, he could not now plead that he was an agriculturist within the meaning of the Tamil Nadu Debt Relief Act 10 of 1975.

9. Mr. Srinivasan, further argued that at the time the first appellant claimed the benefit of the Tamil Nadu Debt Relief Act 38 of 1972, he had the remedy of claiming the benefit under the Tamil Nadu Act 34 of 1983 on the ground that he was an agriculturist. However, the first appellant elected to claim the benefit under the Tamil Nadu Debt Relief Act 38 of 1972. Consequently he cannot now claim to be an agriculturist.

10. It was not disputed by Mr. M.N. Padmanabhan, that on 26-2-1975, the appellants entered appearance before the executing Court and took time for filing a counter affidavit. On 5-3-1975, the appellants did not file any counter affidavit. On the other hand they made an endorsement that there was no objection to the execution of the decree and consequently on 10-3-1975 the execution court ordered settlement of proclamation of sale. The fact that the appellants did not raise any

objection to the execution of the decree and the execution court ordered that the execution proceedings could be proceeded with, show that the execution court impliedly came to the conclusion that it had jurisdiction to execute the decree and that there was no valid objection to the executability of the decree. The appellants were served with a notice under Order 21, Rule 22 of the Civil Procedure Code and therefore it was incumbent upon them to have raised before the executing court the objection that it had no jurisdiction to execute the decree. In this case, not only the appellants did not raise any such objection but on the contrary they made an endorsement that there was no objection to the executability of the decree. The conduct on the part of the appellants before the executing Court on 5-5-1975 went to the root of the matter and would preclude them from raising the plea of jurisdiction on the principle of constructive res judicata, after the property had been sold in execution of the decree. It is now settled by judicial precedents of the various High Courts, the Privy Council and the Supreme Court that the principle of constructive res judicata is applicable to execution proceedings. It is unnecessary to refer to the earlier decisions on the applicability of the doctrine of constructive res judicata to execution proceedings. Suffice it to refer to the decision of the Supreme Court in Mohan Lal Goenka v. Benoy Krishna Mukherjee , In that case, a decree passed by the Calcutta High Court on its Original Side in 1923, was transferred by that Court for execution to the Court of the Subordinate Judge of Asansol in 1931. The decree-holder applied for execution to the Asansol Court but the application was dismissed for default in February, 1932 and the Asansol Court sent to the Calcutta High Court what purported to be a certificate under Section 41 of the Civil Procedure Code, stating that the execution case was dismissed for default, but neither the copy of the decree nor a covering letter was sent to the High Court. The decree-holder again applied for execution in November, 1932 and a certain colliery was proclaimed for sale on 3-4-1933. On 27-3-1933 the Calcutta High Court passed an order granting liberty to the Court of Asansol to sell the colliery in execution by public auction. Thereafter, the colliery was sold. The sale was set aside and the colliery was resold. When the property was sold for the third time, the judgment-debtor filed an application under Section 47 and Order 21, Rule 90 of the Civil Procedure Code for setting aside the sale on the ground that after the dismissal of the execution case in February, 1932 and the transmission of a certificate under Section 41 to the High Court, the Asansol Court had no jurisdiction to execute the decree. Though the application to set aside the sale was dismissed by the Asansol Court, the High Court set aside the sale. It is under these circumstances, the matter went before the Supreme Court.

11. Das, J., took the view that the order dated 27-3-1983 had the effect of conferring jurisdiction on Asansol Court to execute the decree. In that view, the learned Judge allowed the appeal.

12. Ghulam Hasan, J., took the view that, as the judgment-debtor did not raise the present objection either when the decree-holder made second application for execution to the Asansol Court in November, 1932, or when the decree-holder applied to the High Court in March, 1933 for giving liberty to the Asansol Court to proceed with execution by sale of the colliery, or in the proceedings for setting aside the sale of the colliery held in 1936 or in the appeals therefrom, though several other objections were raised, and on one or two occasions when he did raise it, he never pressed the objection, he was precluded from raising the plea at a latter stage on the principle of constructive res judicata. The learned Judge has observed as follows:

that the principle of constructive res judicata is applicable to execution proceedings is no longer open to doubt. See Ananda Kumar Roy v. Sheik Madan (1933)38 C.W. N. 141, and Mahadeo Prasad Bhagat v. Bhagwat Narain Singh A.I.R. 1938 Pat. 427, and Ram Kirpal Shukul v. Mussamat Rup Kuari (1883) L.R. 11 I.A. 37 : I.L.R. 6 All 269 (P.C.) An argument was advanced before the Supreme Court that, when the Asansol Court had no jurisdiction to entertain the execution application, the doctrine of constructive res judicata could not be attracted. This was rejected by Ghulam Hasan, J. The learned Judge observed that...

The question which arises in the present case is not whether the execution Court at Asansol had or had not jurisdiction to entertain the execution application after it had sent the certificate under Section 41 but whether the judgment-debtor is precluded by the principle of constructive res judicata from raising the question of jurisdiction. We accordingly hold that the view taken by the High Court on the question of res judicata is not correct.

13. With regard to the facts of the case, the learned Judge observed as follows:

The foregoing narrative of the various stages through which the execution proceedings passed from time to time will show that neither at the time when the execution application was made and a notice served upon the judgment-debtor, nor in the applications for setting aside the two sales made by him did the judgment-debtor raise any objection to execution being proceeded with on the ground that the execution court had no jurisdiction to execute the decree. The failure to raise such an objection which went to the root of the matter precludes him from raising the plea of jurisdiction on the principles of constructive res judicata after the property has been sold to the auction purchaser who has entered into possession. There are two occasions on which the judgment debtor raised the question of jurisdiction for the first time. He did not, however Press it with the result that the objection must be taken to have been impliedly overruled.

14. A similar question arose for consideration before a Bench of this Court in C. Abdul Aseez Sahib v. Official Receiver, North Arcot, . An application to execute a mortgage decree was made more than three years after the date of the final order on a prior execution application. The judgment-debtor to whom notice was ordered failed to contest the application. Consequently, the execution court passed an ex parte order for sale. Though the properties were brought for sale on 15-3-1948, the sale did not take place and the execution petition was dismissed. Thereafter, the decree was assigned to a third party who filed another execution petition for executing the decree in 1952. The Official Receiver, who entered appearance contended that the right to execute the decree was barred as the execution petition had been filed more than three years after the final order. This Court, speaking through Rajagopalan, J., rejected the plea of the Official Receiver, and held that the principles of res judicata applied to the facts of the case. The learned Judge observed as follows:

The plea of limitation would have been well-founded had it been put forward as a defence in the proceedings in E.P. No. 225 of 1947, before the Court ordered execution of the decree. No such defence was taken and the order of the Court itself ex parte the judgment-debtors. The question is, does not the decision in E.P. No. 225 of l947 bar an investigation of the plea of limitation, at this stage in the proceedings in the subsequent application to execute the decree, E.P. No. 205 of 1952?

Then after referring to the decision in Venkata Ranga Reddi v. Chinna Sithamma (1941)1 M.L.J. 270 : 53 L.W. 181 : A.I.R. 1941 Mad. 440, Appayya v. Venkataratnam , and Shanmugavelu v. Karuppannaswami , the learned Judge held that the plea of res judicata would have to be upheld. The learned Judge has further observed as follows:

As pointed out in Shanmugavelu v. Karuppannaswami , it is now well established that if an order to execute is passed in an execution petition the Court is deemed to have decided that the petitioner has a right to execute, (2) that the judgment-debtor is liable to satisfy the decree, (3) that the decree is executable, and (4) that it is not barred by limitation.

The principle of constructive res judicata has been again discussed by the Supreme Court in Prem Lata Agarwal v. Lakshman Prasad Gupta .

15. In the present case, before us, on 5-3-1975, the appellants made an endorsement that they had no objection to the decree being executed. On the basis of that endorsement the execution court ordered settlement of proclamation of sale on 10-3-1975. This would mean that the execution Court held that it had jurisdiction to execute the decree and that sale could be ordered persuant to the execution petition.

16. Mr. M.N. Padmanabhan, contended that Section 3 of the Act 10 of 1975 passed a moratorium on the power of the Court to execute a decree and consequently, whether the judgment-debtor raised any objection or not, no court was competent either to entertain a suit or an execution petition for the recovery of a debt. We are unable to appreciate the contention urged by the learned Counsel. The Tamil Nadu indebted Agriculturists (Temporary Relief) Act, 1975 was enacted to provide temporary relief to indebted agriculturists to get freedom for a time from the pressure of creditors and to enable them to rehabilitate themselves. "Agriculturist" means:

a person who owns an interest in agricultural land, and who, by reason of such interest, is in possession of such land or is in receipt of the rents or profits thereof and shall include a lessee.

However, the Act excluded certain persons.

17. According to this Act, 'debt' is defined as follows:

Debt" means any sum of money which a person is liable to pay under a contract (express or implied) for consideration received and includes rent in cash or kind which a person is liable to pay or deliver in respect of the lawful use and occupation of agricultural land.

However, certain debts are excluded from the purview of this definition. Section 3 of the Act relates as follows:

No suit for the recovery of a debt shall be instituted, no application for the execution of a decree for payment of money passed in a suit for the recovery of a debt shall be made, and no suit or application for the eviction of a tenant on the ground of non-payment of a debt shall be instituted or

made, against any agriculturist in any Civil or Revenue Court before the expiry of a year from the date of the commencement of this Act.

In order to attract the bar of suits and execution applications, under Section 3 of the Act, the Court will have to satisfy itself that the suit is for the recovery of a debt against an "agriculturist" as defined under the Act. There is no general bar op the part of the court from entertaining any suit for the recovery of a debt from any person or from entertaining any execution application for the execution of a decree for the payment of money asked for in a suit against against any person. Consequently when a suit is filed by the plaintiff against the defendant for the recovery of money or an application is filed by the decree holder against the judgment-debtor for the execution of a money decree, it is for the defendant or the judgment debtor to appear before the Court and plead that the suit or the execution petition is for the recovery of a debt as defined under the Act, that he is an agriculturist as defined in the Act, and that consequently, no suit or application for execution of the decree can be filed before the expiry of the year from the date of commencement of the Act. Unless the person sued or the person against whom execution petition is filed proves to the satisfaction of the Court that the suit or the execution petition falls within the meaning of Section 3 of the Act, the court would not be obliged to stay the suit or the execution proceeding. Consequently, whether the stay under Section 3 of the Act should be granted or not would depend on the nature of the debt and the character of the person against whom the debt is sought to be recovered. Under these circumstances, the appellants ought to have raised objections when notice was served on them in E.P. No. 17 of 1975 that the first appellant was an agriculturist within the meaning of the Act 10 of 1975; that the debt sought to, be recovered from him was a debt within the meaning of the said Act and consequently, no application for execution of the decree shall be made before expiry of a year from the date of commencement of the Act. If the appellants had successfully raised the plea before the execution court then the execution court could have decided that it had no jurisdiction to entertain the execution petition under Section 3 of the Act. Not having raised such an objection, the appellants are precluded from raising the objection at the subsequent stage of execution proceeding. There is no substance in the contention of Mr. M.N. Padmanabhan. Under these circumstances, we have no hesitation to hold that the appellants are precluded from now raising the objection that the execution court had no jurisdiction to entertain the execution petition by reason of Section 3 of the Act 10 of 1975 on the principles of constructive res judicata. Of course, we are not sure whether the plea based upon constructive res judicata was raised before the learned Judge, by the learned Counsel for the respondents. That does not in any way prevent us from deciding the question, as the point raised is purely one of law based on admitted facts.

18. We are equally in full agreement with the finding of the learned single Judge that the first appellant is not entitled to relief, since he did not claim during the trial, that he was an agriculturist. It is admitted that in the suit the appellants claimed benefits under the Act 38 of 1972. That Act was passed to provide relief to certain indebted persons in the State of Tamil Nadu. A 'debtor' is defined as any person from whom any debt is due. The first proviso excludes a person from falling within the category of a debtor under certain circumstances, provided, that a person shall not be deemed to be a debtor, if he is an agriculturist as defined under the Tamil Nadu Agriculturists Relief Act 4 of 1938 and entitled to the benefits of the Act. Under Act 4 of 1938 an 'agriculturist' is defined as a person who-

(a) has a saleable interest in any agricultural or horticultural land in the State of Tamil Nadu, which is assessed by the State Government to land revenue which shall be deemed to include peshkash and quit-rent, or which is held free of tax under a grant made, confirmed or recognised by Government; or(b) holds an interest in such land under a landholder under the Tamil Nadu Estates Land Act, 1908(Tamil Nadu Act I of 1908) as tenant, ryot or under-tenure-holder; or (c) holds an interest in such land, recognised in the Malabar Tenancy Act, 1929(Tamil Nadu Act XIV of 1930); or (d) holds a lease of such land from any person specified in Sub-clause (a), (b) or (c) or is a sub-lessee of such land.

19. The proviso says that certain persons shall not be deemed to be agriculturists under certain circumstances. Therefore, when the first appellant claims benefit under the Tamil Nadu Debt Relief Act 38 of 1972, he knew that in order to claim such benefits he should not be an agriculturist as defined under Act 4 of 1938. In other words, he had an option either to consider himself, under the Tamil Nadu Debt Relief Act 38 of 1972, a non-agriculturist debtor and claim benefits conferred on a debtor under the said Act or treat himself as an agriculturist within the meaning of the Tamil Nadu Agriculturists Relief Act 4 of 1938 and claim benefits on that basis. The Appellants however chose to claim the benefit under the Tamil Nadu Debt Relief Act 38 of 1972 claiming that they are non-agriculturists debtors. Having taken that stand and availed the benefit on that basis, it will not be open to them now to change the position and say that the first appellant was an agriculturist entitled to the benefits of stay under Section 3 of the Tamil Nadu Agriculturists Relief Act. This principle is based on the doctrine of election which states that when a person has an opportunity to choose one or other of the two inconsistent things, when once he has made his election it cannot be retracted, it is final and cannot be altered. Quoting a passage from Coke on Littleton, Lord Blackburn said in Benjamin Scarf v. Alfred George Jardine,(1882) L.R. 7 A.C. 345 @ 360.

Where a man has an option to choose one or other of two inconsistent things, when once he has made his election it cannot be retracted, it is final and cannot be altered.

20. Lord Atkin speaking for the House in United Australia Ltd. v. Barelays Bank Ltd., L.R.(1941) A.C. 1 @ 30 : (1940)4 All E.R. 20, observed:

On the other hand, if a man is entitled to one of two inconsistent rights it is fitting that when with full knowledge he has done an unequivocal act showing that he has chosen the one he cannot afterwards pursue the other, which after the first choice is by reason of the inconsistency no longer his to choose. Instances are the right of principal dealing with an agent for an undisclosed principal to choose the liability of the agent or the principal; the right of a landlord where forfeiture of a lease has been committed to exact the forfeiture or to treat the former tenant as still tenant and the like. To those cases the statement of Lord Blakcburn in Benjamin Scarf v. Alfred George Jardine,(1882) L.R. 7 A.C. 345 @ 360, 'where a man has an option to chose one or other of two inconsistent things when once he has made his election it cannot be retracted applies.

This principle has been followed by Rajagopala Ayyangar, J., in R . Sumudra Vijayan Chettiar v. Srinivasa Alwar and Ors. (1956)1 M.L.J. 276 : 69 L.W. 62 : A.I.R. 1956 Mad. 301. The same principle has been accepted by a Bench of this Court in K. Shanmugham Pillai and Ors. v. S. Shanmugham

Pillai and Ors. . Natesan, J., speaking for the Bench, spoke thus:

The doctrine of election is the principle that the exercise of choice by the person left to himself of his own free will to do one thing or another binds him to the choice which he has voluntarily made and is founded on the equitable doctrine that he who accepts benefit under an instrument or transaction of his choice must adopt the whole of it and renounce everything inconsistent with it. The Court exercising jurisdiction in equity will bind him to his election and preclude him from going behind the same.

The learned Judge further observed as follows:

The fact that the alienation as such is void is no bar to the applicability of the doctrine which is rested on equitable principle.

In Spencer Bower "Estoppel by Representation" 2nd Edition by Turner at page 296, referring to the doctrine of election as applied to instruments, it is stated:

It may happen that one of two parties to an instrument, in the course of his dealings with the other in pursuance of, or in relation to, that instrument finds, or thinks he has found, that it is voidable at his option as against such other party. Thereupon, it is open to him to take up one of two inconsistent attitudes; he may either treat the instrument as void and not binding on him, or he may think it to his advantage, instead of exercising his right in this respect, to treat it as valid and subsisting; but if, by words or (as is usually the case) by conduct, he leads the other party to believe that he is definitely choosing the one course in preference to the other, and, in the belief, to alter his position for the worse, he is estopped, as against the other party, from afterwards approbating what he has thus reprobated, and reprobating what he has thus approbated.

A creditor who has elected to deal with a deed of composition or arrangement as valid, instead of exercising his right to treat it as an act of bankruptcy or as void for non-compliance with the bankruptcy law, is precluded from afterwards supporting a bankruptcy petition against the debtor by setting up that the execution of the deed constituted an act of bankruptcy, or from claiming, as against the debtor, that such deed is void.

21. The objection of the appellants can also be overruled on the principle that it is not open to a party to both approbate and reprobate. In Aiyathurai Pillai v. Gnanaprakasa Odayar A.I.R. 1919 Mad. 1172 this principle was applied by a Bench of this Court. There, the plaintiff instituted a suit on the Small Cause Side of the Munsif's Court. The defendant pleaded want of jurisdiction by the Small Cause Court and on his objection, the court returned the plaint for presentation on the ordinary side. Against the decree of the District Munsif, there was an appeal to the Subordinate Judge and against the appellate decree of the latter a revision petition was filed in the High Court. The defendant raised the objection in the High Court that the suit was of a small cause nature and that no appeal lay to the Subordinate Judge. The learned Judges observed that-"the defendant was estopped from raising the objection".

22. Again in Sri Perla Annapurnammagaru v. Rajah of Vizianagaram (1935)68 M.L.J. 441 : 41 L.W. 589 : A.I.R. 1935 Mad. 367 at page 368,Venkatasubba Rao, J., observed as follows:

I am quite clear that apart from any question of res judicata, the plaintiff cannot now turn round and say that the land is an estate and on the strength of that assertion invoke the special jurisdiction of the Revenue Courts. To use the words in Smith v. Baker, 8 C.P. 350, quoted by the Judicial Committee in Anbu v. Velu (1933)60 I.A. 266 : I.L.R. 56 Mad. 737 : A.I.R. 1933 P.C. 167, he cannot at the same time blow hot and cold; see also Ram Khelawan Singh v. Maharaja of Benaras A.I.R. 1930 All. 15.

23. Further, the answer to the contention of Mr. M.N. Padmanabhan, can be stated from the ruling reported in S. Nand Singh v. Rahmat Din A.I.R. 1946 Lah. 73, wherein it is observed as follows:

It is quite true that there can be no estoppel against a statute but this rule does not imply that there can be no estoppel even against a plea of a fact which has to be established before the application of the statute can be invoked. A man may not estop himself by any conduct of his from pleading that an alienation made by him is in contravention of a provision of the Punjab Alienation of Land Act. He may, however estop himself by such conduct from pleading that he is a member of a tribe to which protection is afforded by the Act.

In this case, the first appellant, as already pointed out, is precluded from agitating the facts which would entitle him to claim the benefit of stay under Section 3 of the Act 10 of 1975.

24. The learned Counsel for the appellants cited a decision reported in Velayya Reddiar v. Errachi Reddiar, (F.B.). But we are unable to see how that judgment in any manner helps the appellants.

25. An attempt was made by the learned Counsel for the appellants to argue that both the execution court as well as the Single Judge found that the first appellant has been an agriculturist as on the date of sale and as a matter of fact the first appellant became an agriculturist only after the suit was filed. There is absolutely nothing on record to show that the appellant became an agriculturist as alleged by him only in 1973. There was no dispute that the first appellant claimed title to the property under Exhibit A. 1 settlement deed. Under the settlement deed, possession was given to the appellant immediately on the date of document. An attempt was made to show that the respondents had admitted that the first appellant became an agriculturist only subsequently. But the learned Counsel for the appellants was not able to point out that there was any such admission. We, therefore, reject the contention of the learned Counsel for the appellants that the plea that the first appellant was an agriculturist was not available to him during the trial of the suit. In any view of the matter, it is not denied that at the time when the first appellant was served with notice Order 21, Rule 22 of the Civil Procedure Code in E.A. No. 255 of 1975, the first appellant had become an agriculturist and therefore was entitled to put forth his claim under Act 10 of 1975, which he did not. Under these circumstances, we hold that the appellants are not entitled to the declaration prayed for:

26. Yet another contention was raised by the learned Counsel for the appellants that when the appellants had filed an application for stay of the execution proceedings under Act 10 of 1975, the execution Court acted illegally in holding the sale before passing an order on the application for stay. We are not concerned in this case, whether the execution Court acted properly or not in not passing an order on the application filed by the appellants for stay of the execution proceedings under Act 10 of 1975. We are concerned only with the validity of the sale. Therefore, we reject this contention also. We, therefore, confirm the judgment of the learned single Judge and dismiss the appeal. No costs.