

**Raj Narain and anr. Vs. B. Bindaban**

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**SooperKanoon Citation :** [sooperkanoon.com/463398](http://sooperkanoon.com/463398)

**Court :** Allahabad

**Decided On :** Feb-19-1936

**Reported in :** AIR1936All449; 163Ind.Cas.828

**Judge :** Sulaiman, C.J. and; Bennet, J.

**Appellant :** Raj Narain and anr.

**Respondent :** B. Bindaban

**Judgement :**

Sulaiman, C.J.

1. This is an application in revision from an order of the Munsif of Farrukhabad amending a mortgage decree under Section 30, U.P. Agriculturists' Relief Act. The learned advocate for the decree-holders contends before us that the Court below has seized jurisdiction by misinterpreting the definition of 'agriculturist' within the meaning of Section 2. No doubt the learned Munsif has thought that inasmuch as the debtor's income during the current year, namely April 1935 to March 1936, was about Rs. 500 and odd he was not assessable to income-tax, and that the words 'is assessed' in the proviso to Section 2 means 'at the present time,' that is to say at the time when the Court is to pass its order. On the date when the learned Munsif disposed of the case the rules framed by the Local Government had not been published and that is why the position was not so clear to him. His interpretation of the section does appear to be wrong as it is difficult to hold that

the debtor cannot be an agriculturist unless on the date when the order is to be passed he is not assessable to income tax. Income-tax is of course assessed for a whole year and on the basis of the income during the last financial year. The words 'is assessed' obviously mean 'was assessed at the last occasion,' that is to say was assessed during the last financial year. That this is the correct criterion is also apparent from Rule 1, published on 10th August 1935, which is to the effect that the Court had to find out whether the debtor admits or does not admit that he was assessed to income-tax for the last financial year for which assessments have been made by the Income-tax Department.' This would be a convenient test in order to determine whether he is or is not assessed to income-tax. The mere fact that during the current year his return is still under examination and the income-tax officer has not yet decided whether he should or should not be assessed to income-tax should not make any difference.

2. But we think that the error was merely one of law and due to the fact that the rules had not been published by the time the order came to be made. We cannot say that the learned Judge has acted with any material irregularity or has exercised a jurisdiction not vested in him when he committed an error of law in interpreting a section of the Act. We do not think that we should exercise our discretion in this case and interfere. The application is dismissed but without costs.