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Court : Rajasthan

Decided On : Jul-24-1978

Reported in : 1978WLN(UC)242

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Revision Petition No. 176 of 1977

Appellant : Khamma Devi

Respondent : Doli Devi

Disposition : Petition dismissed

Judgement :

S.K. Mal Lodha, J.

1. This revision application has been filed by Smt. Khamma Dew, widow of Lalchand in her own capacity as well as in the capacity as a natural guardian of defendants Nos. 3 to 7 against the order of the Munsif, Balotra, dated March 2, 1977 passed in Civil Original Suit No. 35 of 1975.

2. A few facts deserve to be recalled lied here. Smt. Doli Devi widow of Hiralal (plaintiff-non petitioner No. 1 instituted a suit for recovery of Rs. 4,000/- against Maghraj son of Jethmal (defendant No 1. non-petitioner No. 2) and the petitioners in the court of Munsif, Balotra on May 20, 1975. It was alleged that the plaintiff, at

the request of Lalchand (husband of petitioner No. 1 defendant No. 2) and father of defendants Nos. 3 to 7 (petitioners No. 2 to 6) deposited a sum of Rs. 100/- on January 24, 1973 and Rs. 2000/- on January 25, 1973. To these two sums, an amount of Rs. 1000/- was added as interest and the present suit was instituted as aforesaid. The defendants Nos. 2 to 7 were sued as legal representatives of deceased Lalchand. The defendants denied the plaint averments by filing written-statements i.e., one by defendant No. 2, the other by guardian ad item of defendants Nos. 3 to 7 and the third by defendant No 1. It may be stated that the natural guardian of defendant No. 3 to 7 fails to appear to defend the suit on their behalf and She Hastimal Advocate of Balotra was appointed as their guardian, ad litem. The plaintiff submitted a rejoinder to the written statement submitted on behalf defendants Nos. 2 to 7. The trial court framed issues on July 6, 1976. During the trial on September 14, 1976, a joint application was moved on behalf of defendant No. 2 and defendants Nos. 3 to 7 under Section 4(c) of the Rajasthan Scheduled Debtors (Liquidation of Indebtedness) Act (No. XXIII of 1976) which will hereinafter be referred to as 'the Act'. It was stated in the application that defendants Nos. 2 to 7 are scheduled debtors under the provisions of the Act and they are marginal farmers, that the amount for which the suit has been instituted is not a 'debt' within the meaning of Section 2(c) of the Act & that as they are marginal farmers, suit against them cannot proceed and the debt stands discharged. It was pared that the; may be discharged from the debt and proceedings against them should be dropped. The plaintiff non petitioner No. 1 contested this application on various grounds. It was alleged by her that the defendants are not agriculturists, that the amount advanced was by way of deposit and not a loan, that the amount was outstanding against defendant No. 1 and the deceased Lal Chand and defendant Nos. 2 to 7 have been sued as legal representatives of deceased Lalchand and therefore they do not fall under the category if debtors in 1 heir individual capacity. In para 4 of the reply it was stated that Lalchand in his statement recorded in execution case No. 382 of 1976 Dhingarmal v. Achaldas stated before the civil Judge that he was principally doing leaden' and that in the sale deed, dated June 5, 1974, a recital was made that the house is being sold for maintaining themselves as they (defendants Nos. 2 to 7) have no other source of livelihood. After the filing of the reply, the Munsif

adjourned the case for the disposal of this application to November 4, 1976 On November 4, 976, the case was again adjourned for the disposal of the application Time was sought for arguments be the learned Counsel for the plaintiff on November 18, 1976 and therefore, it was adjourned to November 25, 1976 for the disposal of the application Learned Counsel for the parties took time for arguing the application on November 25, 1976 and December 17, 1976. The arguments could not be heard on January 20, 1977 and February 14, 1977 It appears from the order sheet dated February 24, 1977 that the arguments were heard on this application and then the case was fixed for others on March 2, 1977, the application of the defendant under Section 4(c) of the Act was dismissed with costs amounting to Rs. 30/-.

3. Being dissatisfied with the order rejecting the application under Section 4(c) of the Act, the petitioners have come up in revision in this court. A preliminary objection was raised by M.L. Rajerdra Mehta, learned Counsel for the plaintiff non petitioner No. 1 to the effect that this revision is not maintainable as on behalf of the manor defendants Nos. 3 to 6, this has been presented by the natural guardian (their mother) Smt. Khamma Devi while a court guardian was appointed by a trial court. After the appointment of the court guardian, he conducted the proceedings on their behalf & he has neither been removed nor has he retired until the presentation of the revision In these circumstances, it was contended that Smt. Khamma Devi natural guardian could not prefer the revision application in their behalf. He cited Mishrilal in v. Pukhaj and Ors. , Smt. Khamma Devi also one of the petit toners in this case against whom the order undo revision was passed by the learned Munsif After arguing this preliminary point for sometime he informed me that he dot s rot want to press this preliminary object on in view of this, it is not necessary for me to give any finding on this preliminary objection.

4 Mr. Chopra contended (i) that the trial court has misdirected itself in holding that the petitioners are not agriculturists within the meaning of sec 2(b) of the Act and (ii) that the trial court has erroneously found that the salt is not for the recovery of debt as defined in Section 2,(e) of the Act.

5. After going through the application, dated September 14, 1976 submitted on behalf of defendants Nos. 2 to 7, Mr. Chopra learned Counsel for the petitioners argued that the petitioners are marginal farmers and therefore, the finding arrived at by the trial court in this regard is not sustainable in law He also argued that it was incumbent on the trial court to hold an inquiry in view of the averments made in the application of the petitioners and the reply thereto given by the non-petitioner.

6. After hearing the learned Counsel for the parties, I am satisfied that no valid exception can be taken to the order in revision and the application of the petitioners has been rightly rejected by the learned Munsif Along with the application under Section 4(c) of the Act, a certified copy of the application submitted to the Tehsildar, Siwana on September 13, 1976 containing the certificate of the Tehsildar dated September 22. 1976 to the effect that the petitioners are khatedar agriculturists was produced In that application, it was prayed that a certificate may be issued to them that they are agriculturists after taking the report from the concerned Pewter. The Tehsildar has certified that the petitioners are agriculturists On behalf of the plaintiff, certified copies of the statement of deceased Lalchand dated March 18, 1961 and the sale-deed dated June 5, 1974 were submitted. It needs to be mentioned that though after filing the reply to the application under Section 4(c) there were several hearings in the suit but none of the parties asked for any enquiry into the matter. No request was made to the trial c6urt on behalf of any of the parties that they wait to substantiate their respective averments by producing oral evidence. As the proceedings which have been averted above would show, the parties wanted to make their submissions orally by way of arguments on this application under Section 4(c) of the Act submitted by the petitioner on September 14, 1976 Section 2(b) of the Act defines agriculturist meaning a person who earns his livelihood wholly or mainly from agriculture or from rent from agricultural land in case he belongs-to any of the categories of persons mentioned in Clause (a) to (h) of Sub-section (1) of Section 46 of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955). Sub-section (1) of Section 2 of the Act defines 'marginal farmer' as follows,

(f) 'Marginal farmer' means an agriculturist who holds land as a Khatedar or Ghair Khatedar tenant and cultivates it personally and also a person who cultivates land as a sub-tenant or share cropper and which in area, does not exceed the limits specified below:

(i) 0.33 hectare land under assured irrigation capable of growing at least two crops in a year;

(ii) I hectare barani land in fertile zone, semi fertile zone or hilly zone;

(iii) 2 67 hectares land in seme-desert zone; and

(iv) 3.67 hectares land in desert zone;

Rest of Sub-section (f) of Section 2 is not material for the purpose in hand. Section 5 of the Act inter alia lays down that the Tehsildar within the local limit; of whose jurisdiction a debtor act rally and voluntarily resides, or carries his business or personally works for gain shall be competent to issue a certificate in the prescribed form and manner certifying that the debtor is ad agricultural 'labourer a marginal farmer or a rural artisan. Form (2) appended to the rules made under the Act deals witch the firm of the certificate which is to be issued by the Tehsildar. Form (1) is the prescribed form for application fir obtaining certificate of being an agricultural laborer a marginal farmer rural artisan. It is not in dispute that the application in accordance with the prescribed form for obtaining the certificate was not submitted. A perusal of the certificate given on the application clearly shows that it is rot in accordance with Form (2). Be that as it may, one of the essential conditions necessary fir being categorized as a marginal farmer within the meaning of Clause (f) of the Act is that he or she must be an agriculturist who holds land as a khatedar or Ghair Khatedar tenant and cultivates it personally and also the person who cultivates land as a sub-tenant or share camper which, in area, dots not exceed the limits specified in the sub-section. The definition agriculturist is given in Section 2(b) clearly shows that he is a person who earns his livelihood who by or mainly from agriculture No material has been placed by the petitioners on record for coming to the conclusion that they are marginal farmers. There is nothing to show that they earn their, lively hood wholly or mainly

from agriculture. There is nothing to indicate on record that they cultivate the land personally. The petitioners moved the application under Section 4(c) of the Article. The averments made in that application were denied by the plaintiff. The burden was on the petitioners to prove that they are marginal farmers which they failed to discharge. They dad not invite the count to enquire into the carmines made by them though they had ample opportunity in this regard. I would like to add that the petitioners cannot take advantage of Section 6 of the Act which runs as under:

6 Presumption and burden of proof - Where in any proceeding for the recovery of debt in a civil court, the debtor producer a certificate issued in his favour under Section 5, the civil court shall presume that the debtor is a scheduled debtor and the burden of proving to she contrary, shall lie on the creditor.

It is only on a certificate having been issued by the Tehsildar to the effect that they are marginal farmers in the prescribed form and manner as laid down in the Act that a presumption could have been raised as contemplated by Section 6 of the Act that they are scheduled debtors and in that case, the burden of proving to the contrary would have been on the plaintiff. In the absence of a certificate in the prescribed form & manner, certifying that they are marginal farmers, the petitioners cannot call in aid the provisions of Section 6 of the Act.

7. As stated by me above, it was for the petitioners in these circumstances to establish that they are marginal farmers which they have failed to do. The learned Munsif took note of the certificate given by the Tehsildar on the application dated September 14, 1976 & observed that from this certificate, the only inference that can be drawn is that the petitioners are khatedar agriculturists but on that basis, it cannot be said that their only and main source of livelihood is agriculture. If that is so, then in view of the definition of the marginal farmer given in Sub-section (f) of Section 2 these petitioners are not marginal farmers. The learned Munsif was therefore tight in holding that the petitioners are not agriculturists within the meaning of Section 2(b) of the Act I would like to make it clear that this conclusion of the Munsif is upheld by me only on the basis of the reasons that have been mentioned above by me He has given some other reasons which require close scrutiny but it is not necessary to do so in view of the conclusion arrived at by me.

Learned Counsel are in agreement that once it is held that the petitioner, are not scheduled debtors, for, the are not marginal farmers then no finding is necessary whether the amount for which the suit has been brought is a 'debt' within the meaning of Section 2(e) of the Article, as it may prejudice the case of either of the parties. In view of this, I refrain from doing so.

8. The result if that this revision is devoid offices and is accordingly dismissed. In the circumstances of the case, there will be no order as to costs.

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