CIVIL WRIT

Before Harbans Singh, J.

BIMAL KUMAR AND ANOTHER,—*Petitioners.*

versus

SHRI RAM LAL AGGARWAL, P.C.S., APPELLATE OFFICER, NEW DELHI AND OTHSRE,—*Respondents.*

Civil Writ No. 190 of 1958.

1958

Dec., 24th

Evacuee Interest (Separation) Act (LXIV of 1951)—Section 9(2)—"Agricultural land"—Whether includes a garden.

Held, that the garden falls within the meaning of "agricultural land" in sub-section (2) of Section 9 of the Evacuee Interest (Separation) Act, 1951 and the Competent Officer and the Appellate Authority under the Act are within their jurisdiction in taking action under sub-section (2) of Section 9 of the said Act with regard to a garden.

Income-tax Commissioner v. *Benoy Kumar* (1), relied on.

Petition under Article 226 and 227 of the Constitution of India praying that an appropriate writ of Certiorari; order or direction be issued quashing the orders of respondents Nos. 1 and 2, dated 31th July, 1957, 31st March, 1954, respectively.

F. C. MITTAL, for Petitioners.

ROOP CHAND, for Respondents.

ORDER

HARBANS SINGH, J.—This rule was issued in the following circumstances. One-third share of a garden comprised in *khasra* Nos. 5831, 5846 and 5853, situated in Mauza Gohana, District Rohtak, Harbans Singh, J.

(1) A.I.R. 1957 S:C, 768

Bimal Kumar and another
v.
Shri Ram Lal Aggarwal, P.C.S., Appellate Officer, New Delhi and others

Harbans Singh, J.

was mortgaged with possession by its original owner Atma Ram in favour of Ch. Benarsi Dass and Ch. Lajpat Rai on 12th of July, 1922, for a sum of Rs. 325. Later, in 1924 Atma Ram sold his equity of redemption in the aforesaid share in the garden to one Mahamud-ul-Hasan, who migrated as a result of the partition of the country in 1947 and is now represented by the Custodian Evacuee Property. Proceedings were taken under the Evacuee Interest (Separation) Act of 1951 and the competent officer appointed under the Act took action under sub-section (2) of section 9 of the aforesaid Act which is to the following effect:—

> "Where a mortgagee has taken possession on any terms whatsoever of any agricultural land and is entitled to receive profits accruing from the land and to appropriate the same, every such mortgage shall be deemed to have taken effect as a complete usufructuary mortgage and shall be deemed to have been extinguished on the expiry of the period mentioned in the mortgage deed or twenty years, whichever is less, from the date of the execution of the mortgage deed; * * *."

Bimal Kumar and Ravi Kumar petitioners appeared before the competent officer as the sons of the original mortgagees who were dead and contended that the garden did not fall within the meaning of 'agricultural land' as given in the section aforesaid. The competent officer, however, did not agree with this contention and treated the garden as 'agricultural land' and declared the mortgage extinguished because, admittedly more than twenty years had expired since the possession of the garden was given to

Bimal Kumar and another v. Shri Ram Lal Aggarwal, P.C.S., Appellate Officer, New Delhi and others

Harbans Singh, J.

the mortgagees. The appeal filed on behalf of the petitioners before the appellate officer under the aforesaid Act was also dismissed. The present petition was filed alleging that the competent officer or the appellate officer had no jurisdiction whatever to extinguish the mortgage because the garden was not agricultural land.

The interpretation of the words 'agricultural', 'agricultural purpose' and 'agricultural income' came to be considered by the Supreme Court in *I. T. Commr.* v. *Benoy Kumar* (1). The question that arose for decision was whether income derived from a forest which was originally of spontaneous growth but a portion of which was replanted would fall within the purview of 'agricultural income'. In a detailed judgment Bhagwati J., thoroughly discussed the meaning of word ' agriculture' in its root sense as well as in its extended meaning. The relevant portion of the head-note (d) is as follows:—

"The primary sense in which the term agriculture is understood is ager—field and cultura—cultivation, i.e., the cultivation of the field and if the term understood only in that sense, agriculture would be restricted only to cultivation of the land in the strict sense of the term meaning thereby, tilling of the land, sowing of the seeds, planting and similar operations on the land. They would be the basic operations and would require the expenditure of human skill and labour upon the land itself. There are, however, other operations which have got to be resorted to * * * * for the purpose of effectively raising the produce from the land. They are operations to be performed after the produce sprouts from the land, e.g., weeding, digging the soil around the growth,

(1) A.I.R. 1957 S.C. 768

Bimal Kumar and another
v.
Shri Ram Lal Aggarwal, P.C.S., Appellate Officer, New Delhi and others

Harbans Singh, J.

removal of undesirable undergrowths and all operations which foster the growth and preserve the same from * * * * cutting, harvesting and rendering the produce fit for the market. The latter would all be agricultural operations * * * *. In order to invest them with the character of agricultural operations, these subsequent operations, must necessarily be in conjunction with and continuation of the basic operations which are the effective cause of products being raised from the land. It is only if the products are raised from the land by the performance of these basic operations that the subsequent operations attach themselves to the products of the land and acquire the characteristic of agricultural operations * * * *

> The terms 'agriculture' cannot be confined merely to the production of grain and food products for human beings * * * * but would also include forest products such as timber * * * * horranuts, ets."

Applying the above principles to the facts of the case before the Supreme Court it was observed at page 790 of the report as follows:—

> "We no doubt start with the findings that the forest in question was of spontaneous growth. If there were no other facts found, that would entail the conclusion that the income is not agricultural income. But, then, it has also been found by the Tribunal that the forest is more than 150 years old, though portions of the forest have from time to time been denuded, that its to say, trees have completely fallen and the proprietors have planted fresh trees in those areas and

they have performed operations for the purpose of nursing the trees planted by them.

It cannot be denied that so far as those trees are concerned, the income derived therefrom would be agricultural income. In view of the fact that the forest is more than 150 years old, the areas which had thus become denuded and replanted cannot be considered to be negligible. The position, therefore, is that the whole of the income derived from the forest cannot be treated as non-agricultural income.

If the enquiry had been directed on proper lines, it would have been possible for the income-tax authorities to ascertain how much of the income is attributable to forest of spontaneous growth and how much to trees planted by the proprietors."

If we apply the analogy of the Supreme Court case to the case in hand, we find that there is nothing to indicate that the garden in question was of spontaneous growth or that the mortgagor did not plant the entire or a portion of the garden himself. Furthermore, it cannot be denied that in order to get full benefit out of the garden, the operations like weeding, tilling of the land, manuring, etc., have all to be done, and consequently, it cannot be said without any further evidence on the record that this garden could not fall within the purview of agricultural land as used in sub-section (2) of section 9. In Webster's Dictionary 'agriculture' is defined *inter alia* as follows:—

Bimal Kumar and another
v.
Shri Ram Lal Aggarwal, P.C.S., Appellate Officer, New Delhi and others

Harbans Singh, J.

> "The cultivation of the ground, for the purpose of producing vegetables and fruits; * * * * *. In a broad sense, the word includes gardening, or horticulture, and also the raising of livestock."

It cannot be said, therefore, that the garden cannot fall within the meaning of 'agricultural land' and consequently the competent officer and the appellate were well within their jurisdiction in taking action under sub-section (2) of section 9 of the Evacuee Interest (Seperation) Act, 1951. I therefore, direct the discharge of the rule issued. The respondents will have costs from the petitioners Counsel's fee Rs. 75.

B.R. T.

APPELLATE CIVIL

Before K. L. Gosain and A. N. Grover, JJ.

MST. BAKHTAWARI,—*Appellant.*

versus

SADHU SINGH AND OTHERS,—*Respondents.*

Regular Second Appeal No. 606 of 1951 with Cross-objections.

1958

Dec., 26th

Code of Civil Procedure (V of 1908)—Order 22 Rules 3 and 11—Appeal and cross-objections pending—Appellant dying—Legal representatives taking no steps to bring themselves on the record in appeal—Respondent making an application to bring them on record—Appeal—Whether abated—Corss-objections—Whether can be heard when the appeal has abated—Hindu Succession Act (XXX of 1956)—Section 14—"Any property possessed by a female Hindu"—Meaning of—Person dying before the coming into force of the Hindu Succession Act—Collaterals becoming owners of ancestral property left by him—Whether can be divested of that property after the coming into force of the Act.

Held, that the legal representatives of the appellant were impleaded by the respondents in this case only for