

NAHAN HALIL HOUSSEIN,

Appellant (Plaintiff),

v.

EMINE ALI,

Respondent (Defendant).

NAHAN HALIL
HOUSSEIN
v.
EMINE ALI

(Civil Appeal No. 4302).

Debtors—Judgment Debtors—Execution—Sale of Immovables—The Civil Procedure Law, Cap. 7—“Farmer”—Meaning—Exemptions from sale—Second proviso to section 22—Occupation not for profit—Domestic work—Immaterial in deciding whether the debtor's farming occupation is his sole or main occupation.

Section 22 of the Civil Procedure Law, Cap. 7, deals with the execution by sale of immovable. The second proviso thereto reads as follows: “provided also that when the debtor is a farmer there shall be exempted from the sale so much land as shall in the opinion of the Court be absolutely necessary for the support of himself and his family”. The main question in issue in this appeal is whether a married woman—the respondent—, whose only occupation for profit is farming, cannot be held to be a “farmer” within the meaning of the second proviso (*supra*), because her chief occupation is to look after her home and to help her husband in his work as shepherd.

Held, affirming the order appealed from—

(1) A “farmer” within the meaning of the second proviso to section 22 of the Civil Procedure Law, Cap. 7, is a person whose sole or main occupation for profit is farming.

Ahmet Shoukri v. Lema Niazi, Civil Appeal No. 4153 dated the 19th December 1955, (unreported) followed.

(2) A husband or wife, no doubt, has to do a lot of home and domestic work, but this is not the kind of occupation which might be considered along with his or her other occupation for the purposes of the law in question.

(3) On the evidence, the respondent had only one occupation for profit *i.e.* cultivating her lands. Consequently, she is a “farmer” entitled to the exemptions provided by the second proviso (*supra*), and the fact that her main occupation is to look after her home and help her husband in his profession, is immaterial.

Appeal dismissed.

Cases referred to:

Ahmet Shoukri v. Lema Niazi, Civil Appeal No. 4153 dated December, 19, 1955 (unreported).

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Appeal.

Appeal by the appellant-plaintiff against the Order of the District Court of Famagusta (Ekrem, D.J.) dated the 25th November, 1959, (Action No. 1630/55) whereby it was held that the defendant-respondent was a farmer under the second proviso to section 22 of the Civil Procedure Law, Cap. 7, and that her immovable properties should be exempted from execution by sale under that section.

Orhan Zihni for the appellant.

A. M. Chiftchioglou for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court, which was read by:

ZEKIA, J. : The respondent in this case is a married woman who has been adjudged to pay to the appellant, the judgment creditor, the sum of £85 and costs. She paid against her judgment debt £75 but there was left a balance of £50 and odd, for the satisfaction of which the judgment creditor applied under Part V of the Civil Procedure Law, Cap. 7, for the issue of a writ for the sale of the immovable property of the respondent. The immovable property consisted of two olive trees and two pieces of land, two donums and two evleks and 3 donums and 3 evleks in extent, respectively.

In the hearing of the application for the issue of a writ directing the sale of the said lands in satisfaction of the judgment debt, the respondent alleged that she was a farmer within the meaning of the second proviso to section 22 of the Civil Procedure Law and therefore the lands and trees, the subject matter of the application, ought to be exempted from the sale as being absolutely necessary for the support of herself and her family.

Evidence was adduced and the Judge found that the respondent is a farmer within the meaning of the relevant section of the Law.

From the evidence it appears that the lands in question have been for a number of years directly or indirectly cultivated by the respondent. When she was young she tilled the lands and later her daughters did the job and she also worked in the field clearing it from bushes, stones, etc. She also hired others to plough the land on her behalf.

It appears that the cultivation of the land and the trees in question hardly occupied her for a month in a year. But being a married woman no doubt her chief occupation was to look after her house and help her husband who is a shepherd and owner of a flock worth about £1,000.

On these facts the trial Court found that the respondent was a farmer and entitled to exemption from sale of the lands in question. The second proviso to section 22 reads:—

“Provided also that when the debtor is a farmer there shall be exempted from the sale so much land as shall in the opinion of the Court be absolutely necessary for the support of himself and his family. This last proviso shall not be applicable in respect of debts incurred before the 2nd of May, 1919, or in respect of debts to any Co-operative Credit Society, duly registered as such under the provisions of the Co-operative Credit Societies Law, 1914, or any amendment thereof, by any member or past member thereof”.

The point to be decided was one, namely, whether the judgment debtor is a farmer within the relevant proviso. There is no definition of the word “farmer” and it behoves the Court to place a construction on the said proviso which is consonant with the letter and object of the relevant section of the said Law. In a previous case (Civil Appeal No. 4153 —*unreported*) this Court had the occasion to deal with this proviso. In that case the Court was composed by Sir Eric Hallinan, C.J., and Zekia, J. The Chief Justice dealing with the word “farmer” stated the following:

“In my view it is not necessary in the interpretation of the second proviso to section 22 of the Civil Procedure Law to give the word ‘farmer’ a meaning other than its ordinary meaning. I take it that its ordinary meaning is, a person who cultivates land”.

In another passage the learned Chief Justice stated:

“It is sufficient when interpreting this proviso to consider first whether a man is cultivating land, and secondly whether he would be allowed exemption from execution against some of his land because it is absolutely necessary for the maintenance or support of himself and his family”.

Zekia, J. in that case said :

“In my view, in ascertaining whether a judgment debtor is a farmer or not, the Court should examine whether the particular debtor’s main occupation is farming and that for his living he chiefly depends on farming. Once the Court is satisfied that the particular debtor’s main occupation is farming and also that for the maintenance of himself and his family he is dependent on farming, then he is entitled to exemption from sale of a certain amount of land which is absolutely necessary for the maintenance of himself and his family”.

It is of course pertinent, when a judgment debtor is engaged in farming as well as other business, to find out which is his principal or dominant occupation ; but when he or

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she has only one kind of occupation, of course no question arises as to ascertaining the principal occupation of the debtor. A married woman no doubt occupies herself a lot in the house but this is not an occupation for profit: what is to be considered for the purpose of the proviso in question is an occupation by which a person earns his or her livelihood and therefore it must necessarily be an occupation for profit.

A husband or a wife having the status of a married man or married woman, no doubt has to do a lot of home and domestic work owing to such status, but this is not the kind of occupation which might be considered along with other occupations for the purpose of the law in question.

It is a pity that there is no definition of "farmer" under the Civil Procedure Law, as in some protective legislation concerning the farmers here as well as in U.K. and Canada where a definition of the word "farmer" is given. In Agricultural Debtors Relief Law the definition of the words "agricultural debtor" is given as follows: "Agricultural debtor means a debtor whose primary means of livelihood is agriculture". In the Agricultural Credits Act, 1928, section 5 (7) the definition of farmer is given as being any person who as a tenant or owner of an agricultural holding cultivates the holding for profit. In section 2 (1) of the Farmers Credits Arrangement Act, 1934, of Canada, the word "farmer" is defined as a person whose principal occupation consists in farming or the tillage of the soil. In some Canadian cases quoted in the Words and Phrases, Vol. 2, p. 285, after citing the definition of farmer it is stated: "It is not necessary for a woman to do any manual labour such as driving a tractor or binder to be a farmer. In fact it is not the custom generally in Canadian women to do heavy manual labour in the fields. She may hire it or she may get help from her husband or children or neighbours. A co-operation may be a farmer within the above sub-section".

No doubt a definition given in a particular law is to be limited to the purpose of that law but where similarity in the objects of laws exists such definitions might be of some help for a Court, where the text allows, in construing a particular section of such law which contains no such definition.

We are of the opinion, therefore, that in considering whether a person is a farmer the only occupation to be considered is the one which is held for profit. If he or she has more than one occupation then if his or her principal occupation is land farming he or she is again entitled to the benefit of the proviso. In the present case the respondent has only one occupation for profit, namely, that of a farmer; we think, therefore, that the Judge correctly found the respondent to be a farmer and entitled to the exemption from sale of her land and trees obviously being of small extent and barely sufficient to support her.

Appeal dismissed with costs.