
(1924) 04 BOM CK 0001
In the Bombay High Court
Case No : Second Appeal No. 216 of 1922

Achalsingh Kesrisingh

APPELLANT

Vs

Dolatsingh Surajmalji

RESPONDENT

Date of Decision : 07-04-1924

Acts Referred:

Bombay Village Police Act, 1867 — Section 3
Contract Act, 1872 — Section 69
Specific Relief Act, 1877 — Section 42

Citation : AIR 1924 Bom 470 : (1924) 26 BOMLR 678 : 83 Ind. Cas. 30

Hon'ble Judges : Pratt, J;Fawcett, J

Bench : Division Bench

Judgement

Pratt, J.—This case has been the subject of a protracted litigation but the essential facts are few. In the year 1905 the District Magistrate being of opinion that the employment of two extra pagis in the village of Kamijla was necessary, required the Avalkarkun of Viramgam to take statements of the bhayats on the point. The Avalkarkun took down the statements of the bhayats (Exhibits 33 and 34), and they were not willing to employ two pagia. Thereafter the District Magistrate directed the plaintiff, who is the Chief of Patdi, to employ two pagis. This appears from the District Magistrate's order dated November 27, 1906, Exhibit 361 and the extract from the Barnishi of the Patdi Durbar which contains a summary of the correspondence on the subject between the Mamlatdar and the Durbar. The two pagis who were the nominees of the Patdi Durbar were appointed by the Collector. The plaintiff has been paying their wages, and seeks to recover a half share of the wages that he had paid for the defendant who is a jiwaidar entitled to a half share of the revenue of the village. He seeks not only to recover the amount that he has already paid, but also prays for a declaration of his right to reimburse himself from the defend-ant in respect of the future payments.

2. The first point made by Mr. Thakor is that the District Magistrate had no jurisdiction to appoint the village pagis. This matter was concluded by the

interlocutory judgment of this Court given on October 9, 1919. Mr. Thakor contends that that judgment has been misunderstood, and that all that the judgment decided was that the right of the District Magistrate to make the appointment of the village pagis was a question of evidence dependent upon whether the organization of the village did or did not include the appointment of the stipendiary village servants. He suggests that the re-trial should have included further evidence as to whether organization of the village was such as to make it competent to the District Magistrate to make such appointments. But if that had been the effect of that judgment, the High Court would surely have proceeded under Order XLI, Rule 25, and have either called for further evidence on the preliminary issue or framed an issue as to whether the organization of the village was such as to justify the appointments. As a matter of fact the High Court proceeded under Order XLI, Rule 23, reversed the decree of the lower Court and remanded the case for re-trial of the rest of the issues. No doubt there are observations in the judgment which lend colour to Mr. Thakor's construction of it inasmuch as the only evidence pointed to in the judgment in support of the conclusion that the organization of the village contemplated the appointment of the stipendiary village servants, was a Government Resolution of the year 1895. But we are not here to sit in review of that judgment and there is no doubt that the effect of the judgment was to hold that the District Magistrate had power u/s 3 of Bombay Act VIII of 1867 to make the appointments and that the judgment was so construed by the appellants' own pleader in the District Court. We must, therefore, hold that Mr. Thakor's first point is concluded by the judgment of this Court dated October 9, 1919.

3. Mr. Thakor then contends that even if the District Magistrate had power u/s 3 of Bombay Act VIII of 1867 to make the appointments he had no power to delegate making of those appointments to the Chief of Patdi or to any other authority. This is a question of fact and is concluded by the judgment of the District Judge for he says: "There is no question of delegation at all. What plaintiff was called upon to do was to nominate two men for appointment as pagis." What happened was that the District Magistrate through his local officials asked the Patdi Durbar to name two individuals, and that he then sub-sequently appointed the two individuals whom the Patdi Durbar had nominated. This it was competent for the Magistrate to do.

4. I do not understand the defendant's contention that the Durbar had no right to make the nomination. As a matter of fact they were first asked to nominate two men for the appointment and it was owing to their failure to nominate that the District Magistrate appointed the nominees of the Patdi Durbar. There is no suggestion that the District Magistrate's power to appoint u/s 3 of Village Police Act was conditional on his appointing nominees either of the Durbar or of the bhayats. The two pagis, therefore, were validly appointed.

5. The plaintiff's claim for indemnity against the defendant in respect of payments which he had been ordered to make by the District Magistrate are

grounded both in the plaint and in the judgment of the lower Courts on Sub-section 69 and 70 of the Indian Contract Act. The pay of the pagis is admittedly a charge on the revenues and plaintiff has a right of reimbursement u/s 69 for he has been obliged by the District Magistrate to make a payment for which the defendant is primarily liable.

5. But there can be no cause of action for a declaration in respect of future right of indemnity, for Section 42 of the Specific Relief Act is limited, as pointed out by Sir Lawrence Jenkins in his judgment in *Deokali Koer v. Kedar Nath* ILR (1912) Cal. 704, to status and rights in property.

6. I would, therefore, vary the decree of the lower appellate Court by giving the plaintiff a decree to recover Rs. 315-7-9 with interest at six per cent. Per annum till realization and cost of the suit in the two lower Courts from the defendants. Plaintiff's suit for declaration is dismissed. Each party to bear his own costs in the appeal in this Court.

Fawcett, J.

7. I agree generally with the judgment just delivered by my learned brother. On the main points at issue, I think the judgment of the lower Court in paragraphs 3 to 7 very ably discusses the questions of the right of interference of Government and the respective rights of the plaintiff and the defendant. With regard to the appointment of these two pagis, I agree with the remarks of the learned District Judge on the particular points arising thereunder.

8. As regards the applicability of Sub-section 69 and 70 of the Indian Contract Act, I do not think that Section 70 applies, as the payment in question was not one intended for the benefit of the defendant, and cannot be said to be one which benefits him otherwise than as an ordinary resident in the village interested in its general peace and security. In my opinion, however, the provisions of Section 69 are wide enough to cover the present case. The plaintiff was a person who was interested in the payment of this money, inasmuch as it was made bona fide for the protection of his own interests. There had actually been a threat, as evidenced by the Mamlatdar's memo of February 20, 1907, Exhibit 243, that, if the plaintiff failed to act upon the District Magistrate's orders within a certain time, steps would be taken to appoint two pagis and to recover their pay from the plaintiff, and that would necessarily put him in a derogatory position which he would be anxious to avoid. It seems to me, therefore, that the plaintiff was actuated in making this payment by a desire to protect his own interests, and it was not a case of mere officious interference. I agree with the commentary in *Pollock and Mulla's Indian Contract Act*, 4th Edition, p. 381, where it is said:-

The view taken in the most recent cases is that this section applies to suits for contribution where both the plaintiff and the defendant were liable for the money paid by the plaintiff. This view, it is submitted, is sound. The section is general in its terms, and there is no reason why attempts should be made to restrict its

operation.

9. As regards the declaration that has been granted, I do not think the plaintiff is entitled to anything beyond the decision that he can recover the amount claimed in this suit. The decision will operate as *res judicata* with regard to any future litigation arising under similar circumstances. But the circumstances are of an exceptional nature, and it is undesirable to stereotype them. They may be altered by the authorities or by consent, and it is I think wrong to make any declaration that would in any way interfere with this being done.