
(1914) 11 BOM CK 0004
In the Bombay High Court

Dattajirao alias Tatyasaheb Bin Shidhojirao alias Abasaheb
Ghorpade

APPELLANT

Vs

Nilkantrao Bin Santojirao alias Bapusaheb Ghorpade

RESPONDENT

Date of Decision : 26-11-1914

Acts Referred:

Pensions Act, 1871 — Section 4, 6

Citation : (1915) ILR (Bom) 352

Hon'ble Judges : Batchelor, J; Basil Scott, J

Bench : Division Bench

Judgement

Basil Scott, Kt., C.J.—The plaintiff alleged Unit one Shidhojirao was the full owner of all the lands in two villages, namely, Jigeri and Irapur of Hon Taluka, and one house at (lajondragad, that the two villages were Saranjam Inams, that the plaintiff's father died in 1899, that I he plaintiff and Ids father were joint and the properties above-mentioned were managed and. enjoyed jointly by them up to the death of the plaintiff's father, that afterwards up to about Tune 1900, the plaintiff alone managed and enjoyed the property, and about the month of June 1900, the father of the defendant, without having any rigid thereto, illegally took possession of all the land and was in enjoyment of it until five years ago when he died, and since then the defendant had been enjoying the property. The plaintiff further alleged that his lather bequeathed the property in suit to him by will in the year 1890, but the plaintiff brought the suit not merely relying upon, the right which accrued to him under the will but upon his right by his survivorship and as the son of Shedhojirao, and he prayed that the Saranjam lands in the two villages of Irapur and Jigeri should, be given over by the defendant; that mesne profits should "be awarded, and further profits from the date of suit until possession at the rate of Rs. 1,000 a year. The defendant by the sixth paragraph of his written statement pleaded that the suit was not maintainable without a certificate of the Collector u/s 6 of the Pensions Act XXIII of 1871.

2. On the 13th September 1912, a preliminary issue was raised in the trial Court

as follows: "Whether the suit can lie without a certificate under the Pensions Act?" On the 22nd of October 1912, the Court passed its decision upon that issue, giving as its reason that "Mr. Kambli for the plaintiff agrees that a certificate is necessary and wants time to produce it." Time, accordingly, in accordance with the practice of Civil Courts in this Presidency was given to the plaintiff's pleader. On the 1st April 1913 the learned Judge disposed of the suit upon, the preliminary issue, "saying "after repeated adjournments for the production of the certificate, the plaintiff's pleader now informs the Court that the Collector has refused to grant the certificate. He appears clearly to have refused the certificate on the strength of Government Notification No. 1455, dated the 10th February 1912, published in the Bombay Government Gazette, Part I, page 192. The plaintiff's pleader wants time to appeal to the Commissioner, but no such remedy is given to him by law. The suit is, therefore, dismissed with, costs."

3. Now the plea raised by the sixth paragraph of the written statement was based upon the provision of the Pensions Act, Section 4, that "no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the British or any former Government;" and the subsequent provision is that to which I have already alluded, contained in Section 6, that a certificate by the Collector authorising to file the case must be produced. It is quite clear from the plaint that the plaintiff came to trial on the footing of the property which he seeks to recover being Saranjam, and it is equally, clear that the plea contained in paragraph 6 of the written statement is based upon the established rule that, in the absence of evidence to the contrary, the grant of a Saranjam must be presumed to be a grant of land-revenue and not of the soil. That is laid down in *Ramchandra v. Venkatrao* (1882) 6 Bom. 598, and reference is made in the judgment in that case to the definition by Professor Wilson in his Glossary of the term "Saranjam." He defines Saranjam as "temporary assignments of revenue from villages or lands for the support of troops, or for personal service, usually for the life of the grantee; also grants made to persons appointed to civil offices of the State to enable them to maintain their dignity. They were neither transferable, nor hereditary, and were held at the pleasure of the Sovereign." The judgment also quotes the statement of Mr. Steele in his "Hindu Castes" at page 207 that: "Grants by the Native Government in jaghir were either Fouj Saranjam, subject to the performance of military service, or Jat Saranjam, personal jaghir. The subject of those grants were the whole or particular portions of the revenues of villages belonging to the Sarkar.... Usually the grants depended on the pleasure of the Sovereign, and the fidelity of the grantee. They were not, in general, hereditary."

4. There is, therefore, a strong presumption that the pleader for the plaintiff in agreeing that a certificate was necessary under the Pensions Act was taking a correct view of the position. But if that was not correct, it could only be shown to be incorrect by the production of evidence which would establish that the grant was not the usual grant of revenue but a grant of the soil. However, time was

given for the production, of the certificate, and the reason, for the refusal of the certificate appears to have been the rule laid down in the Government Notification cited by the Subordinate Judge that certificates shall, not be given in the case of Saraujams, probably because Saranjams are not ordinarily hereditary in the usual, sense of the word, that is to say, they do not pass except with the consent of the Killing Power to the heir of the holder.

5. The plaintiff, however, has appealed from the decision, and his pleader, as far as we can ascertain, without any materials whatever before him, has positively asserted that he could prove by evidence, if Ins were given the opportunity, that the grant in this case is a grant of the soil and. not of the revenue. He says that, for the purpose of arguing the appeal, he cannot be concluded by the admission of the plaintiff's pleader in the lower Court, because, an admission of a pleader on a point of law is not binding upon the client in appeal. Whether that is a correct statement in its unqualified form, where the admission is the direct cause of the dismissal of the suit, it is not necessary now to consider; for, upon the statement of the appellant's pleader and upon the authorities to which I have just referred, it is clear that the plaintiff could only succeed in showing that the suit could be maintained without a certificate, if he called evidence to displace the ordinary presumption regarding the nature of Saranjam grants; and where a pleader-in the lower Court makes an admission upon an issue regarding which evidence might be but is not given, we have the authority of the Privy Council for holding that the client will be bound : see 6 CWN 641 (Privy Council) . Let us, however, assume that the appellant is not bound by the admission of the pleader In the lower Court, then we have before us an appeal where the lower Court has disposed of the suit upon a preliminary point. We cannot then remand the case under Order XLI, Rule 23, unless we reverse the decree in this appeal. But what materials have we to justify us in reversing the decree? The presumption based upon high authority is that the decree was perfectly right, but the appellant has come to this Court to have the decree set aside and the case, remanded without a particle of documentary evidence, without any statement, based upon affidavit, to induce us to hold that evidence is forthcoming which ought to have been produced in the lower Court in. the interest of the plaintiff, and which would have been produced but for some grave error on the part of his pleader. We cannot presume that this is the case. We, therefore, hold that the decision of the lower Court was right. We dismiss the appeal with costs.