

(1944) 07 BOM CK 0014

In the Bombay High Court

Case No : Civil Revision Application No. 540 of 1943

Harshadlal Ambalal Desai

APPELLANT

Vs

Bai Ichha

RESPONDENT

Date of Decision : 07-07-1944

Acts Referred:

Pensions Act, 1871 — Section 4, 5, 6
Provincial Small Cause Courts Act, 1887 — Article 13

Citation : AIR 1945 Bom 496 : (1945) 47 BOMLR 360

Hon'ble Judges : Chagla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chagla, J.—This is a revisional application u/s 25 of the Provincial Small Cause Courts Act, 1887. the plaintiff sued to: recover her share of the desaigiri money received by the defendant for the years 1938-39, 1939-40, 1940-41 and 1941-42, The learned Judge passed a decree in favour of the plaintiff for Rs. 40, costs of the suit and interest.

2. Two points have been raised on this application. Both go to the question of the maintainability of the suit. The first point is that the suit is not maintainable under Sections 4, 5 and 6 of the Pensions Act, 1871. It is contended that the jurisdiction of the civil Court is barred in all suits relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, and a civil Court can only entertain a suit of this nature provided a certificate is obtained from the Collector u/s 6. Now it has got to be remembered that in this case there is no dispute as to the right of the plaintiff to receive her share in the pension nor is it suggested that the defendant wrongfully received the pension from Government. The plaintiff's case is that the defendant having rightfully received the pension wrongfully retained her share of the pension. Therefore to my mind the nature of the suit is suit for moneys had and received and not in respect of any pension payable by Government.

3. Mr. N. C. Shah has drawn my attention to two decisions of our Court, first Babaji Hari v. Rajaram Ballal ILR (1875) 1 Bom. 75, and the other Bhikaji Hari v. Radhabai ILR (1913) 37 Bom. 700 : 15 Bom. L.R. 803. Now in both these cases the right to receive the pension was in dispute. It is true that in Babaji Hari v. Rajaram Ballal Mr. Justice West says (p. 79):

As it stands, the section extends to all suits relating to any grant of money made by Government ; and the plaintiff, who seeks a share in such a grant from his alleged co-sharers must, we think, be said to bring a suit relating to the grant.

But at p. 81 the learned Judge makes it clear that the suit by one sharer against a co-sharer must be to establish his right to an aliquot portion of any allowance paid by Government. As in my opinion no question arose in this suit as to the right of the plaintiff to her aliquot share, it was not a suit relating to a pension and did not fall under any of the Sections 4, 5 and 6 of the Pensions Act.

5. The other contention of the petitioner is that the Small Cause Court has no jurisdiction to try the suit because it falls under Article (13) of sch. II of the Provincial Small Cause Courts Act. Article 13 says?

A suit to enforce payment of the allowance or fees respectively called malikana and hakk, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property or in an hereditary office or in a shrine or other religious institution.

Now this clearly is not a suit to enforce payment of any malikana, hakk or cess. This is a simple suit by the plaintiff to recover from the defendant moneys had and received. In a suit to enforce payment of a hakk the question would arise as to the right of the plaintiff to receive that hakk. As I have already stated, as no such question arises in this suit, the suit in my opinion does not fall under Article 13 of sch. II of the Provincial Small Cause Courts Act.

6. The application must, therefore, fail and must be dismissed with costs.