
(1923) 08 BOM CK 0005
In the Bombay High Court
Case No : First Appeal No. 254 of 1921

Patdaya Muppaya Hiremath	Vs	APPELLANT
The Secretary of State for India		RESPONDENT

Date of Decision : 02-08-1923

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876 — Section 4(a), 5

Citation : AIR 1924 Bom 273 : (1923) 25 BOMLR 1160

Hon'ble Judges : Lallubhai Shah, J; Kemp, J

Bench : Division Bench

Judgement

Lallubhai Shah, Kt., Acting C.J.

1. The facts which have given rise to this appeal are briefly these. The plaintiff is the Swami of the Hiremath at Haveri. He filed this suit on February 25, 1918, against the Secretary of State for India and two other defendants. These two defendants represent the line of one Chanviraya, who was the father of Baslingaya shown in the genealogy in paragraph 3 of the plaint. The plaintiff's predecessor in-title as the Swami of the Math was one Tirmalswami. This Tirmalswami, before he became the Swami of the Math, in his family was the natural brother of the said Chanviraya. The suit relates to three Survey Numbers 35, 136 and 137 which, roughly speaking, represent two out of the four lands which were originally assigned under the Sanad of 1868 to Chanviraya for the purpose of remunerating him in connection with the performance of his duties as a Jangam. The plaintiff's case is that really he and his predecessors, the Swamis of the Math, have been the Jangams and the lands were really assigned to them. It appears, however, from the statement of the case that two lands are admittedly in the possession of defendants Nos. 2 and 3. These are Survey Numbers 7 and 310 which apparently correspond to the old Nos. 5 and 224. The plaintiff's case is that he is the rightful owner of the those lands mentioned in the suit, and that the defendants have no right whatever to those lands beyond recovering the amount payable to the Government as Judi. On the application of

defendants Nos. 2 and 3 the Collector made an order that "full rent as per Form E was to be recovered for all the three Nos. and paid to applicants" on April 24, 1915. There was an appeal from this to the Commissioner who upheld the orders September 16, 1915. There was a memorial to the Government ; but the Government declined to interfere on September 29, 1916. As a result of this order, the full economic rent in respect of these two lands was levied for three years as stated in paragraph 9 of the plaint amounting in all to Rs. 481-5-6. The present suit is filed by the plaintiff on the footing of the cause of action having arisen in virtue of the interference by the Revenue Authorities with his rights by charging economic rent, and he has claimed the following reliefs :

(a) that the plaintiff should be declared as the Jangam of the Hiremath of Haveri and not the defendants Nos. 2 and 3;

(b) that a permanent injunction be issued restraining defendant No. 1 from recovering the full rent of the lands mentioned in para 1, and from paying the same to defendants Nos. 2 and 3, and again restraining defendants Nos. 2 and 3 from receiving the same;

(c) that the sum of Rs. 481-5-6 mentioned in para 9 of his plaint should be ordered to be repaid to the plaintiff;

(d) in case the Court holds that defendants Nos. 2 and 3 are Jangams of the said Hiremath and they are entitled to recover the Jangam grant from plaintiff, that it should be declared that they are entitled to recover the royal share of the revenue only of the lands mentioned in para 1, i.e., the assessment levied on them and not the full rent of the same.

2. Defendant No. 1 denied the claim of the plaintiff both as the Jangam and as the owner of these lands. He also denied that the plaintiff or his predecessors had been in possession for a long time past as alleged by the plaintiff. His case was that these lands were assigned for the Jangam service useful to the community at Haveri, and that defendants Nos. 2 and 3 were the Jangams and were entitled to the lands. It was also denied that the service was remunerated merely by the royal share of the revenue of the lands. By a supplemental statement the objections were raised that the claim was barred u/s 4(a) of the Bombay Revenue Jurisdiction Act X of 1876, and that it was barred by Article 14 of the Indian Limitation Act. Defendants Nos. 2 and 3 asserted their own right both to two-faceted as Jangam and to the lands in question, and in other respects they raised the same objections which defendant No. 1 had raised to the suit.

3. On this several issues were raised. It is not necessary to refer to those issues and to the findings in detail here but in the result the plaintiff's suit was dismissed.

4. The plaintiff has appealed from this decree, and in support of the appeal several questions have been argued. It will be convenient to take the points with reference to the prayers in the plaint, and to deal with them as they have been

raised in the appeal. The first prayer relates to the declaration that the plaintiff is the Jangam and not defendants Nos. 2 and 3. This office is useful to the village community, and the lands assigned to the office holder are assigned in respect of the services which he has to render. In the present case the Government continued the lands for the office of the Jangam under the Sanad of 1868, which was issued to Chanviraya, who would represent Baslingaya's branch as shown in the plaint.

5. As regards the first prayer it is clear that the claim is barred u/s 4(a), 2nd para, of Act X of 1876. It provides that "subject to the exceptions hereinafter appearing, no civil Court shall exercise jurisdiction as to any of the following matters: ?claims to perform the duties of any such officer or servant", such officer or servant having been specified in the first paragraph which would include any other village officer or servant, It was rightly conceded in the course of the argument by Mr. Nilkanth, that the jurisdiction of the Courts as to the first prayer would be barred under this clause, and it is not necessary to labour this point.

6. But it, has been argued in this appeal that though the question as to who is the Jangam is excluded from the jurisdiction of the civil Courts the Courts could determine the question whether the lands were assigned to the defendants Nos. 2 and 3 ancestors or the plaintiff's ancestors. The evidence bearing on the question as to whether the grant was originally to the Swami of the Hiremath at Haveri or to Chanviraya, the original ancestor of the present defendants Nos. 2 and 3, has been discussed at some length. It is common ground, however, between the parties, or at any rate the contrary has not been suggested on behalf of the appellant, that the lands are given as remuneration for the services to be rendered as Jangam ; and if the Court cannot determine whether the plaintiff is the Jangam ; and if it must accept the fact that defendants Nos. 2 and 3 are the Jangams as the representatives of the Jangam whom the Government accepted as the office-holder, it must also be accepted that the lands were assigned to them as remuneration for the services to be performed by them as Jangams. In this view of the matter, it is needless to discuss the evidence as to the grant. But we may mention briefly that even if it was open to us to consider the evidence bearing on the question whether the grant was originally to the Swami of the Math or to Chanviraya, the evidence points to the conclusion that the lands were given originally by the former Government to Chanviraya. Exhibits 240, 242 and 244 show that so far back as 1820 the lands stood in the name of Chanviraya, and it is conceded that the lands have all along stood in the name of Chanviraya. When an inquiry was made before that Inam Commission, it appears that Baslingaya, the son of Chanviraya, made a statement in 1845, Exhibit 210, which is relied upon by the appellant as proving his case. As against this, however, we have the fact that in 1854 in Suit No. 201 between the predecessors-in-title of the plaintiff and defendants Nos. 2 and 3 there was a compromise decree, which is Exhibit 218, and according to that the lands continued to be in the name of the defendants' ancestors; and above all we have

the fact that in 1868 Government granted the Sanad to Chanviraya, The decision of the Inam Commission, if there was any, has not been put in. Under these circumstances in spite of the statement of Baslingaya, which is not altogether unequivocal, but which we are willing to take for the purpose of the present argument as telling in favour of the plaintiff's case, the conclusion must be accepted that the lands were appurtenant to the office and were assigned to the ancestors of the present defendants Nos. 2 and 3.

7. As regards the second prayer which relates to the injunction against defendant No. 1 restraining him from recovering the full rent of the lands, and from paying the same to defendants Nos. 2 and 3, and against defendants Nos. 2 and 3 restraining them from receiving the same, the question stands on a different footing. It is urged on behalf of defendant No. 1 that the suit is barred u/s 4(a), paras 1 and 4, of the Bombay Revenue Jurisdiction Act. It is important to remember that the Collector has apparently acted under the rules framed by the Government in 1908 for the resumption of lands. These rules purport to have been framed under the powers conferred by Act XI of 1852, Schedule B, Sections 8 and 10, and by Bombay Act VII of 1863, Section 2, Clause 3, and all other powers in this behalf. Under Rule 4, the Collector has the power in respect of lands which do not fall under Rules 2 and 3 at his discretion to resume these lands if he finds that the hinds are in possession of third parties; and under Rule 6 he can summarily evict any person wrongfully in possession of the land, or levy any rent due by any person in the manner that may be prescribed for the time being in force for the levy of a revenue demand. In the present case the Collector ordered the economic rent to be levied; and the only possible basis for this order is afforded by these rules. No other statutory power is referred to as justifying the order. The plaintiff's case is that these rules are ultra vires of the Government so far as the territories to which Act XI of 1852 applies are concerned, as regards those lands which are held by servants of the class mentioned in paragraph 1 of Section 8 of Schedule B of Act XI of 1852. The Government has power to regulate by rules the question of emoluments relating to service performed to the State under the fifth provision of Section 8 But the Government has no power under that Act to frame any rules with reference to the resumption of lands given as emoluments of any hereditary office, such as Kazis, village Joshis etc. It is common ground that the office of a Jangam comes under the first paragraph of Section 8. Therefore by the very preamble of these rules it is clear that they could not have been intended to apply to lands held by such village servants in the territories to which Act XI of 1852 applies. It may be mentioned that there is no provision in Bombay Act II of 1863, like the provision in Section 2, Clause (3), Sub-clause (3), in Bombay Act VII of 1863. The case for the plaintiff is that the order of the Collector is ultra vires so far as it purports to levy rent in excess of the full assessment authorised by Government. The claim, so far as it relates to this excess amount over the assessment authorised by law, would be saved u/s 5(a) of the Bombay Revenue Jurisdiction Act. Under that section it is open to the plaintiff to file a suit against Government contesting the

amount claimed, or paid under protest, on the ground that such amount is in excess of the amount authorised in that behalf by Government. Assuming, therefore, that the claim as to this rent would fall under Clause (a) of Section 4, paragraphs 1 and 4, it is saved from the bar of the Revenue Jurisdiction Act to the extent which I have stated.

8. It has been urged on behalf of the appellant that the suit would be saved also under Clauses (t) and (k) of Section 4 of the Bombay Revenue Jurisdiction Act. It is clear that no decision under Act XI of 1852 has been put in, and no exemption is claimed on the basis of such a decision. Therefore Clause (k) would not apply. The Sanad in question does not purport to have been issued under Bombay Act II of 1863, and it seems to us that it could not have been issued under that Act as it does not apply to lands held for service¹ as provided in Section 1, Clause (2), Sub-clause (3). We are unable to accept Mr. Nilkanth's argument that "service" there means service to the State and not service to the village community. It would not be possible to accept this contention without reading words in the clause which are not there : and the construction would be opposed to the observations in *Jamal Saheb v. Murgaya Swami* ILR (1885) 10 Bom. 34. Therefore Clause (i) also would not apply. But we think that the suit is saved u/s 5 of the Bombay Revenue Jurisdiction Act. This point was not decided in the two decisions which have been referred to in the course of the argument, viz., *Mahamadsaheb v. The Secretary of State for India* ILR (1919) 44 Bom. 120 : 21 Bom. L.R. 1159 and *Fakarudinsab v. The Secretary of State for India* ILR (1919) 44 Bom. 130 : 21 Bom. L.R. 1166.

9. The lower Court has taken the view that even though the order may not be justified under any statutory provision, it must be deemed to be valid on the ground that the Government have the inherent power of authorising the Collector to resume the lands summarily where they appertain to the office of a village servant of the description mentioned in Act XI of 1852 Schedule B, Rule 8, para 1, and where the office is found to be dissociated from the lands which would be contrary to the purpose of the grant of the lands as remuneration for services to be rendered to the village community. We are, however, unable to accept this view. We do not think that unless the powers could be referred to any statutory provision, or any rule which has the force of law, it could be assumed that the Collector would have the power of disturbing the possession of any third parties who may have acquired rights in respect of such lands under the operation of law, as, for example, by adverse possession. Where a third party is found in possession of such lands, either the party interested must sue him for possession ; or if the Government feel interested in the restoration of the lands, they may be able to sue the third party for such restoration. We do not express any opinion on this last point. But we think that if these rules are not intra vires of the Government as regards such lands as we are concerned with in this case, and if the Collector has no power to disturb the possession of a third party by summarily evicting him or by levying economic rent, the plaintiff is entitled to maintain a suit for the purpose of restraining the Collector from enforcing the

order in question.

10. This of course does not affect the question as to who has the title to these lands, nor does it affect the question whether the Collector or the Government has the right to sue the plaintiff for the purpose of restoring the lands to the office-holder. But if the order made by the Collector and upheld by the Commissioner is ultra vires, the plaintiff is entitled to prevent the Revenue Authorities from recovering the full rent. It appears in this case that in 1868 when a Sanad was granted, the full assessment in respect of all the lands was Rs. 90, and that was the amount which was to be paid to the Government under the Sanad. Therefore at that time the lands were continued on payment of Judi, amounting to full assessment. It appears, however, that at the next Revision Survey in 1876-77 the assessments were raised in respect of these lands and the total assessment under that Revision Survey was Rs. 129 in respect of all the five lands. The Government was entitled to Rs. 90 under the Sanad, and the difference between the two items represented the benefit to the Sanad-holder. It further appears that in 1909-10 this amount of assessment was further enhanced to Rs. 145-8-0, and according to that the Sanad-holder would be entitled to the difference between Rs. 145-8-0 and Rs. 90. The plaintiff's present claim must be confined to the excess over the full assessment in respect of the three lands in suit which is recovered by the Collector under the order in question, and to that extent, as we have said, the suit is maintainable. On the merits, in spite of the argument of the learned Government Pleader to the contrary, we are unable to hold that the order of the Collector levying economic rent can be justified. As regards the lands held by village servants useful to the village community under Act XI of 1852, Schedule B, Section 8, paragraph (1), the Government have accepted the view that these rules have no validity. Our conclusion, however, is based upon the view that we take of the powers of Government to frame such rules quite independently of that Resolution. In our opinion, the plaintiff is entitled to an injunction restraining defendant No. 1 from levying the economic rent under the order made by the Collector in April 1915 so far as it is in excess of the full assessment leviable in respect of these three lands.

11. It is conceded, and it is indisputable, that the Collector is entitled to levy the full assessment from the plaintiff in respect of these lands, and to pay to defendants Nos. 2 and 3 the difference between the full assessment and the Judi payable to the Government under the Sanad. The relief by way of injunction is confined only to the excess over that full assessment.

12. It will be convenient to deal here with the further question which has been raised on behalf of defendant No. 1 that the suit is time-barred, because the suit to set aside such orders must be brought under Article 14 of the Indian Limitation Act within a year from the date of the order. It is needless, however, to refer to the many decisions bearing on this point. It is clear that if the order is ultra vires, it need not be set aside, and this is not a suit to set aside the order. It

is a suit to seek relief on the footing that the order is ultra vires. That is a recognised distinction so far as the application of Article 14 is concerned, and we do not think that Article 14 can apply to the claim for injunction.

13. After dealing with points not material to this report the judgment concluded : In the result, the plaintiff's claim must be disallowed, except with reference to the injunction. We would, therefore, allow the appeal to that extent and vary the decree of the lower Court by granting an injunction against defendant No. 1 restraining him from recovering any rent in excess of the full assessment in respect of the lands in suit under the order of the Collector dated April 24, 1915. ...As regards costs, we think that under the circumstances each party should bear his own costs throughout.