

(1919) 08 BOM CK 0002
In the Bombay High Court
Case No : First Appeal No. 299 of 1916

Rachangauda Irangauda Patil

APPELLANT

Vs

The Secretary of State for India

RESPONDENT

Date of Decision : 04-08-1919

Acts Referred:

Bombay Revenue Jurisdiction Act, 1876 — Section 4(a)(1)
Government of India Act, 1915 — Section 65

Citation : (1919) 21 BOMLR 1155

Hon'ble Judges : Norman Macleod, J;Heaton, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Macleod, C.J.—The plaintiff in this suit was a sixteen anna Vatander Patil owning 23 Vatan lands in the village of Talikot in the District of Bijapur. By Government Resolution No. 7950 of 26th August 1914 it was resolved that Government concurred in the opinion expressed by the Commissioner in paragraph 3 of the Memorandum. Sanction was accorded to the dismissal of Rachangauda Irangauda from the post of Revenue and Police Patil of the village of Talikot and to the forfeiture of his life-interest in the Patilki Vatan of the village. He then brought this suit against the Secretary of State for India in which the following relief was claimed(a) a declaration that the order of Government is illegal and does not legally effect forfeiture within the meaning of Section 61 of the Watan Act; (b) consequently the plaintiff is entitled to possession of the Vatan lauds with mesne profits from date of suit.

2. The District Judge dismissed the suit on the ground that it was barred by Section 4(a) para 1 of the Bombay Revenue Jurisdiction Act, and that as he had no doubt in the matter he was precluded from referring the matter to the High Court u/s 13 of the Act. That section provides that subject to the exceptions thereafter appearing, no civil Court shall exercise jurisdiction with respect to any of the following matters (a) claims against Government relating to any

property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874 or any other law for the time being in force, or of any other village officer or servant, or claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service.

3. There can be no doubt that the plaintiff's suit comes within the purview of those words, but it has been argued that that Act is ultra vires of Government in its powers of legislation on the authority of *Secretary of State for India v. Moment* (1912) 15 Bom. L.R. 27. It was laid down in that case that the effect of Section 60 of the Government of India Act, 1858, was to debar the Government of India from passing any Act which can prevent a subject from suing the Secretary of State for India in Council in a Civil Court in any case in which he could have similarly sued the old East India Company. The appellant therefore, has to satisfy us that he could have sued the old East India Company claiming the relief which he asked for in the present suit. Counsel for the appellant was not able to refer us to any authority which could convince us that such a suit as the present one could have lain against the old East India Company. We were referred to Regulations XVI and XVII of 1827. But there is nothing in those Regulations which provide that a claim to Inam lands was cognizable by the Courts of the East India Company. That is made clear by the preamble to Act XI of 1852 which states "Whereas in the Territories of the Deccan, Kandeish, and Southern Mahratta Country, and in other Districts more recently annexed to the Bombay Presidency, claims against Government on account of Inams and other Estates wholly or partially exempt from payment of Land Revenue are excepted from the cognizance of the ordinary Civil Courts,...and whereas it is desirable that the said claims should be tried and determined without further delay", the enactment was passed. Then u/s 2 the Governor of Bombay in Council was empowered to appoint an Inam Commissioner with so many Assistants, and such subordinate establishment as might be necessary for the purposes thereafter mentioned. By Section 7 no decision or order of the Inam Commissioner, or of any of his Assistants, or of the Governor-in Council under the provisions of this enactment, so long as the same shall be in force under such provisions, shall be questioned or avoided in any Court of law.

4. It is thus perfectly clear that before 1858 such a claim as the plaintiff's in the present suit was not cognizable by the ordinary civil Courts. Therefore Section 4(a)(1) of Act X of 1876 was not ultra vires. Therefore, in my opinion, the decision of the learned District Judge was correct and the appeal must be dismissed with costs.

Heaton, J.

5. I agree. There is no doubt whatever, it is not pretended that there is any doubt on this point, that the present suit is barred by Section 4 of the Bombay Revenue Jurisdiction Act if that section enunciates the law. But it is said that the section, at any rate in so far as it bars a suit of this kind, is ultra vires. It is for

the appellant to show that this is so. He relies on the case of Secretary of State for India v. Moment (1912) 15 Bom. L.R. 27. That throws us back on to Section 65 of the Statute 21 & 22 Vic. Clause 106. That section and the case referred to open up a large variety of possible points, but so far as we have been able to inquire into the law as it existed when that Statute was enacted, i.e., in the year 1858, it is not shown that a suit would have lain against the East India Company for an act of this kind. In other words, it is not shown that the provisions of the Bombay Revenue Jurisdiction Act are ultra vires in so far as they affect this suit. Therefore, I think the appeal must be dismissed with costs.