
(1926) 07 BOM CK 0044
In the Bombay High Court

Sadashiv Atmaram Inamdar

APPELLANT

Vs

Annabhat Venkanbhat Kavathekar and Others

RESPONDENT

Date of Decision : 16-07-1926

Acts Referred:

Pensions Act, 1871 — Section 4

Citation : AIR 1927 Bom 81

Hon'ble Judges : Marten, C.J.; Patkar, J

Bench : Full Bench

Judgement

Patkar, J.—In this case the plaintiff sued to recover Rs. 189-8-0 at the rate of Rs. 46-8-0 per year out of the revenue of the inam village of Kallol. The plaintiff in the plaint stated that he was in possession of all the lands belonging to Defendant No. 3, his adoptive father, except the revenue of the village of Kallol, which was payable to Defendant No. 3. The suit, as framed by him, clearly relates to a grant of land revenue. The defence was, that a certificate from the Collector under the Pensions Act was necessary as the suit amount included Mamul Judi and the amount collected from Kadim Inamdar.

2. The question, therefore, in this case is, whether a certificate is necessary u/s 4 of Act 23 of 1871. Both the Courts have decided against the plaintiff and have held that a certificate under the Pensions Act is necessary. From the pleadings it clearly appears to be a suit relating to a grant of land-revenue. The learned pleader for the appellant con-tends that he ought to be given an opportunity of proving that the grant related to the soil and was not merely a grant of land revenue. The Subordinate Judge says in his judgment:

Plaintiff was given full opportunity to produce the Sanad which is the only guide to ascertain the nature of the grant and whether the certificate is necessary. Defendant contends that a portion of the grant at least consists of sums recovered from Kadim Inamdars. Plaintiff has not denied or challenged, that statement.

3. Ample opportunity was given to the plaintiff to prove that the grant was of the soil and was not a grant of land-revenue. It is clear that the suit relates to a grant of land-revenue, and the suit must fail because the plaintiff has not produced a certificate from the Collector. The plaintiff was given an opportunity to produce the certificate; the Subordinate Judge kept the case pending till the end of the month to enable the plaintiff to produce the necessary certificate and on failure to produce the certificate the suit was dismissed. He has not yet produced the certificate from the Collector. We, therefore, think that the suit must fail for want of a certificate u/s 4 of the Pensions Act.

4. It is contended on behalf of the appellant that this suit is not a suit against Government but is a suit between private parties, and, therefore, Section 4 of the Pensions Act does not apply, and reliance is placed on the case of *Govind Sitaram v. Bapuji Mahadeo* [1893] 18 Bom. 516. That was a case in which the plaintiffs brought a suit for a declaration that they were entitled to officiate as Kulkarnis and for a third share in the moiety of the Vatan belonging to the parties. In the course of the judgment, the learned Chief Justice says (p. 519):

As the Vatan Act itself precludes the suit being entertained except for the purpose of declaring the plaintiffs' status as vatandars, it cannot, we think, in its restricted form be regarded as a suit relating to a grant of money within the meaning of the above section.

5. The Court regarded the suit as being substantially a mere suit for a declaration of the plaintiffs' status as Vatandars and it was held that, as the suit was of a, restricted nature, it was not a suit, which related to a grant of money or land-revenue. As against this contention of the appellant there are several decisions of this Court. In *Damodar v. Satyabhama Bai* [1907] 31 Bom. 512, the plaintiff sued to recover a sum of money as the amount of her maintenance. She claimed "under an agreement whereby the defendants agreed to pay her Rs. 52 every year for her maintenance out of a cash allowance, which was received by the latter from Government. It was held that the suit could not be taken cognizance of without a certificate u/s 4 of the Pensions Act. That was a suit between private parties and was not a suit against Government. It was held "that the words "relating to" were wide enough to include any suit to enforce such a claim provided it related to a pension or grant of money or of land-revenue; it was immaterial whether the claim was based on an agreement between the parties or arose out of any other legal right or liability and whether it was a claim for a share by way of partition or maintenance or otherwise." That case was followed in several cases, and I may refer to the cases of *Dwarkanath v. Mahadev* [1912] 37 Bom. 91; *Balkrishna v. Dattatraya* [1918] 42 Bom. 257; and *Girjabai v. Narayanrao* AIR 1925 Bom. 148, where Sir Lallubhai Shah and Fawcett, JJ., have followed the case in *Damodar v. Satyabhama Bai* [1893] 18 Bom. 516. That was also a case between private parties and it was held that Section 4 of the Pensions Act applied.

6. It was next contended that the suit is saved by Section 9 of the Pensions Act,

but Section 9 of the Pensions Act applies where the claim of the plaintiff is admitted by Government. Here, in this case, the claim of the present plaintiff was never admitted by Government, and therefore, Section 9 would not apply.

7. An attempt was made by Mr. Desai the learned pleader for the appellant, to argue that the Pensions Act was ultra vires. But that point was not taken in any of the lower Courts and was not taken in the memo of appeal, and that contention was not upheld in the case of *Madhavrao v. Secretary of State* [1920] 22 Bom. L.R. 1170. It was there held that "a suit against the Secretary of State for India in Council to recover a share in the Sardeshmukhi Haq could not lie in the absence of a certificate u/s 4 of the Pensions Act of 1871", and that "S. 4 of the Pensions Act 1871, so far as it dealt with pensions and grants of land-revenue, was not ultra vires, since an action would not lie against the East India Company on a grant of land-revenue as the grant was in the exercise of their sovereign rights." No doubt that was a case against the Secretary of State and was not a suit between private parties.

8. The result, therefore, is that the suit must fail as the plaintiff has not produced the necessary certificate under the Pensions Act. The plaintiff's remedy, if any, is to go to the Collector and apply that his name should be entered in the place of his deceased adoptive father, Defendant No. 3, and that he has failed to do. We think, on the whole, that the view taken by both the Courts is correct and that this appeal must be dismissed with costs.

Marten, C.J.

9. I concur. I regard this suit on the facts-or rather on the pleadings of the plaintiff-as one in effect to establish the plaintiff's right to share this land-revenue jointly with his father. Consequently, as his father died pending the suit, his present claim is substantially one to establish his right to the whole amount of the land-revenue. But, that, I take it, is a matter which prima facie is one for the Collector under the Land Revenue Code to decide, as it directly affects the persons by and to whom the land-revenue has to be paid. On that footing I do not think that Mr. Desai can maintain the suit without a certificate from the Collector. I say nothing as to what might be the case in a totally different class of suit, e. g., a suit for the administration of the estate of a deceased man, in which some question relating to land-revenue might arise in working out the ordinary accounts and enquiries. But that is not the class of case we have to deal with. I can quite see that, if this case was decided in favour of the plaintiff, it might very largely prejudice the Collector in deciding what is prima facie his duty to determine, viz., to whom the land revenue should be paid by Government.