

(1915) 03 AHC CK 0040
In the Allahabad High Court

The Secretary of State for India

APPELLANT

Vs

Jwahir Lal

RESPONDENT

Date of Decision : 16-03-1915

Acts Referred:

Pensions Act, 1871 — Section 4, 6
Pensions Act, 1871 — Section 4, 6
Pensions Act, 1871 — Section 4, 6

Citation : AIR 1915 All 290 : 29 Ind. Cas. 146

Hon'ble Judges : Henry Richards, C.J;Piggott, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal arises out of a suit in which the plaintiff claimed a declaration that he has "proprietary rights in ten biswas of revenue-free grant in each of the three mahals Nur Muhammad, Farhat Fatima and Intizamuddin in Mouza Lakhimpur," and that the name of the Government may be expunged. The claim does not appear to be accurately expressed. What the plaintiff really claims is that in the events which have happened, he is now entitled to be considered as the assignee of the Government revenue payable in respect of the 10 biswas. His real claim is that the last assignee of this Government revenue was one Dalpat Rai, who died leaving a daughter Musammam Ram Piare. He claims that now he is entitled, as the heir of Dalpat Rai under Hindu Law, to have the same rights as Dalpat Rai enjoyed.

2. The Court below granted the plaintiff a decree declaring that he is entitled, by right of succession to Dalpat Rai as the muafidar or assignee of the Government revenue, to the revenue of the 10 biswas share in mahals.

3. The Secretary of State has appealed, and it is contended, first, that the Court below ought not to have entertained the suit because the plaintiff had not obtained the certificate referred to in Sections 5 and 6 of Act XXIII of 1871; secondly, that the decree of the Court below is in contravention of the provisions

of Section 6 of the same Act; and thirdly, that the title which Dalpat Rai had, to be deemed the assignee of the Government revenue, came to an end with his lineal descendants.

4. The plaintiff submits that the provisions of Sections 5 and 6 do not apply; secondly, that if it was necessary to obtain a certificate, he did in fact obtain one; and thirdly, that the decree of the Court below does not in any way contravene the provisions of Section 6.

5. It appears that sometime after the year 1902 the plaintiff brought a suit in respect of a certain zemindari which belonged to Dalpat Rai. He succeeded then in establishing his title to the property he sued for. He did not in that suit include the Government revenue which he now claims. As a matter of fact he had already assigned it to third parties. A vendee from the plaintiffs also brought a suit in respect of some other zemindari which had at one time belonged to Dalpat Rai. In that case the Court dismissed the suit, on the ground that the then plaintiff had failed to prove that the present plaintiff was the reversioner to Dalpat Rai.

6. Section 4 of Act XXIII of 1871 is as follows: "Except as hereinafter provided, 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, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim, or right for which such pension or grant may have been substituted." Section 5, Any person having a claim relating to any such pension or grant may prefer such claim... to the Collector of the District, or Deputy Commissioner, or other officer shall dispose of such claim in accordance with such rules as the Chief Revenue Authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf." Section 6, "A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner, or other officer authorised in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly."

7. The plaintiff seems to have procured a certificate, dated the 10th of November 1902, probably in connection with the previous suit to which we have already referred. This certificate will be found at page 7 of the respondent's book. The plaintiff contends that if the provisions of Act XXIII of 1871 applied to the present case, then the production of that certificate is a sufficient compliance with the provisions of Section 6. The argument of the plaintiff that the provisions of Section 6 of Act XXIII of 1871 do not apply to his case, is based on the decision of their Lordships of the Privy Council in the case of *Secretary of State for India v. J. M. M. 18 Ind. Cas. 22 : 40 C. 391 : 13 M.L.T. 53 : 170. W.K. 169 : (1913) M.W.N. 45 : 15 Bom. L.B. 27 : 11 A.L.J. 49 : 17 C.L.J. 194 : 6 Bur. L.T. 1 : 24 M.L.J. 459 : 7 L.B.R. 10 : 40 I.A. 48*. In that case it was held that

certain provisions in the Burma Act (IV of 1898) were ultra vires in so far as it enacted that no Civil Court should have jurisdiction to determine any claim to any right over land as against the Government. Their Lordships referred to the Act of 1958 and to the Indian Councils Act of 1861. By Section 65 of the Act of 1858 it was provided that, "The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the Secretary of State in Council for India as they could have done against the said Company." Their Lordships proceed as follows: "Their Lordships are of opinion that the effect of Section 65 of the Act of 1858 was to debar the Government of India from passing any Act which could prevent a subject from suing the Secretary of State in Council in a Civil Court in any case in which he could have similarly sued the East India Company." On referring to Act XXIII of 1871 it will be found that until the passing of that Act there had been a Regulation in force, namely, XXIV of 1793, Section 17 of which barred the jurisdiction of Civil Courts in a suit like the present. This section was repealed by Act XXIII of 1871. It would, therefore, seem that the East India Company could not have been sued at the time of the transfer of its powers and liabilities to the Crown. The case cited therefore, does not apply to the present case. If the provisions of Section 6 do apply, it was necessary that the plaintiff should produce the certificate specified in this section. It seems to us that the certificate which in fact was produced is not a compliance with the section. In the first place it is dated 1902, long before the present claim was contemplated. It was a certificate that the claim of Jwahir for resumption of amitafi grant might be tried by a Civil Court. At that time, there were rival claimants to the property of Dalpat Rai. The present suit is not a suit to establish the right of one of two rival claimants but is a suit against the Secretary of State in Council. Furthermore, it seems to us that we could not possibly make a decree declaring that the plaintiff was the assignee of the Government revenue without making an order or a decree which would directly or indirectly affect the liability of Government to pay a grant of the Government revenue." The original sanad is not on the record. Such evidence as there is shows that it was a "grant naslan bad naslan" that is to say, from generation to generation." It is not usual to make a grant of Government revenue by way of absolute grant, and if the grant was only made to the original grantee and his lineal descendants then the plaintiff has no claim. Admittedly he is in fact a lineal descendant. If on the other hand, it was a grant of the absolute interest, then the owner for the time being could do what he liked with the subject-matter of the grant. If the grant was of this nature, then the plaintiff by his own admission has alienated the revenue to third parties in which case he has no title. The plaintiff asks that in any event we should give him a declaration that he is the nearest reversioner to Dalpat Rai. The Court below has found that he is the nearest reversioner. As already pointed out, in one previous suit he satisfied the Court that he was the nearest reversioner. On the other hand, a vendee from him failed to prove in another Court that the plaintiff was

the nearest reversioner of Dalpat Rai. The plaintiff says that a declaration of this kind may help him to come to a settlement with the Government. We do not feel called upon to decide the question, but at the same time we do not express any disagreement with the finding of the Court below. In our opinion we are precluded from making any declaration that would in any way directly or indirectly affect the liability of Government to pay this revenue to the plaintiff. We, therefore, think upon all these grounds that the plaintiff's suit was misconceived and ought to have been dismissed.

8. We accordingly allow the appeal, set aside the decree of the Court below and dismiss the plaintiff's claim, with costs in all Courts. Costs in this Court will include fees on the higher scale.