

The Court (TURNER, C.J., and MUTTUSAMI AYYAR, J.) delivered the following

[341] Judgment:—The value of the subject-matter in suits such as that before us must depend on two considerations—the amount of the charge, and the value of the property it is sought to make available for the satisfaction of the charge. If the value of the property is in excess of the charge, the value is the amount of the charge, for the subject of the suit is the right to make the property available for the satisfaction of the whole charge; but where the value of the property is less than the amount of the charge, the subject-matter is the right to make the property available for the satisfaction of the charge so far as the property will suffice, and it cannot suffice to satisfy more than a sum proportionate to its value, and consequently in such cases the value of the subject-matter is the value of the property.

We remit an issue to the Lower Appellate Court to determine what is the value of the land.

The Subordinate Judge is directed to try the foregoing issue upon the evidence already recorded and upon such further evidence as the parties may adduce, and to return his finding, together with the evidence, to this Court, within three weeks from the date of receiving this order, when twelve days will be allowed for filing objections.

[4 Mad. 341]

ORIGINAL CIVIL.

The 26th January, 1882.

PRESENT :

MR. JUSTICE KERNAN.

Syed Mahommed Isaack Mushyack.....Plaintiff

and

A zeezoon Nissa Begam.....Defendant.*

The Pensions Act, 1871, Sections 34, 56.

A jaghire having been granted by the Nawab of the Carnatic for the support of the grantee and his relatives, was resumed by Government, and a money payment, equivalent to the rent, substituted :

Held that a suit by a relative of the original grantee to recover, as arrears of his share, money received by the representative of the grantee was barred by Section 4 of the Pensions Act, 1871.

THE jaghire of Shankarapuram, it was alleged by the plaintiff in this case, was bestowed by Nawab Wallajah on his Dewan, [342] Syed Ausim Khan, for the support of the relatives of the latter and their descendants in perpetuity. The grantee died in 1799, having distributed the

* Civil Suit No. 256 of 1881 on the Original Side of the High Court.

income among his relatives, one of whom was Khaja Yakub Khan, the ancestor of the plaintiff who received Rs. 60 a month. This allowance was paid to his son Khaja Gulam, on the death of Yakub. On the death of Syed Ausim Khan disputes arose between his sons, upon which the British Government intervened, resumed the jaghire about 1830, and in lieu thereof granted an allowance equal to the income of the jaghire which was paid to the seven children of Syed Ausim Khan, on condition that they should divide the same among themselves and the relatives and descendants of Syed Ausim Khan. In 1832 a list was prepared by Syed Ali Sahib, the third son of Syed Ausim Khan, showing the names of the relatives entitled (in which list the names of the plaintiff and his mother were entered), and submitted to Government for the proper distribution of the share of income to each member. From 1832 to 1837 the plaintiff and his mother were paid their shares by Ali Sahib and his representatives. Since 1837 the defendant was the representative of Syed Ali Sahib, and as such has received the allowance from the Government of Madras. From 1837—1867 the defendant paid the plaintiff on account of his share of the said allowance Rs. 9-5-4 a month, promising to pay the difference as soon as she was extricated from her pecuniary difficulties.

Various other payments were alleged until 1872.

This suit was brought to recover from the defendant Rs. 5,160-11-3 arrears, as money had and received to plaintiff's use, and to compel the defendant to pay the plaintiff in future Rs. 14 a month from 1st April 1880.

The defendant, *inter alia*, pleaded that the Court had, under Sections 4 and 5 of Act XXIII of 1871, no jurisdiction to entertain the suit.

Mr. Spring Branson for Plaintiff.

Mr. Grant for Defendant.

Mr. Spring Branson :—The suit is not for a pension within the meaning of *The Pensions Act*. The defendant received this money from Government as our agent, in trust for us.

(KERNAN, J.—Does not the Act refer to cases in which relief is sought against Government?)

[343] It has been decided that the Act applies whether Government is a party or not—*Babaji Hari v. Rajaram Ballal* (I. L. R., 1 Bom. 75). Section 3 of the Act must be construed strictly as being contrary to common right—*Gurushidgavadabin Rudragavada v. Rudragavadati Kom Dnyamangavada* (I. L. R. 1 Bom., 531). The word 'right' in Section 3 does not include the plaintiff's right. The grant was an absolute grant by the Nawab for no political purpose. The Government merely substituted a money payment in exchange for the jaghire. This act could not alter the character of the grant. If the word 'right' in Section 3 is not restricted, the right of a person who, under contract with Government, is entitled to payment of money for goods supplied would be affected by the Act—*Bavji Narayan Mandlik v. Dadaji Bapuji Desai* (I. L. R. 1 Bom., 529).

This case is distinguishable from *Babaji Hari v. Rajaram Ballal* (I. L. R. 1 Bom., 75); *Parbhudasrayaji v. Motiram Kalyandas* (I. L. R. 1 Bom., 203); *Maharawal Mohansingji Jeysingji v. The Government of Bombay* (I. L. R. 5 Bom, 408; s.c. L. R., 8 I. A., 77.)

The Court (KERNAN, J.) without calling upon Counsel for the defendant delivered the following,

Judgment :—The case last cited, the case of Toda Giras Haks, is a strong case against the plaintiff's claim. The rights of the Girasias was treated as

property, although originally a sort of blackmail levied on the village communities, and Government arranged to pay, in lieu of it, certain allowances to the male issue of the Girasias.

The Judgment deals with every view of the case.

(a) It treats the collection as recognized property.

(b) It treats it not as property, but as a precarious payment.

Referring to the Burdwan case (23 Suth. W. R., 378) their Lordships distinguished it on the ground that the decision rests on an obligation to pay rent for certain *Mouzahs*. Here, even if the jaghire is absolute property, the grant of money is throughout an allowance. The Government found a list of persons who were to receive payments. Their right was admitted by Government. The Act provides that any one claiming such payments must take a certain course of procedure in the form prescribed by the [344] Act and none other. Here there is no certificate under the Act. The plaintiff should have got a certificate from the proper officer.

As to the argument that this is a suit for money had and received, I cannot declare that unless I have power to declare and determine plaintiff's right to the money received.

I have no jurisdiction.

I must dismiss the suit with costs. If I have power to do so, I will reserve to the plaintiff the right to bring another suit for the same matter if and after he shall obtain a certificate under the Act.

Solicitors for the Plaintiff: *Branson and Branson*.

Solicitor for the Defendant: *Carr*.

NOTES.

[This case was followed in (1894) 18 Mad., 187, where it was held unnecessary that Government should be a party, for the bar to operate.

See also 18 Mad., 75; (1906) 29 Bom., 480=7 Bom. L. R., 497.

This case does not apply where the person entitled to a portion relinquished it in lieu of a maintenance not made payable out of the pension, and the suit was brought to recover such maintenance:—(1882) 4 Mad., 341.]

[4 Mad. 344.]

ORIGINAL CIVIL.

The 9th December, 1879.

PRESENT :

MR. JUSTICE INNES.

Hari Bhanji and another.....Plaintiffs

and

The Secretary of State for India in Council.....Defendant.*

Jurisdiction of Courts to entertain suit against the Secretary of State for India for alleged illegal levy of import duties by a Collector—Salt Act of 1877—Import duty increased—Salt in transit, effect of notification under Tariff Act, 1875, exempting salt from paying more than the difference between excise and import duty leviable.

In 1877 H shipped salt from Bombay to Malabar ports having conformed to the provisions of the Bombay Salt Act, 1873, and paid Rs. 1-13-0 per maund, the full duty then leviable

* Civil Suit No. 482 of 1879 on the Original Side of the High Court.