

will be the order of the majority of the Judges who took part in this appeal.

[In compliance with the above order the District Judge returned a finding which was accepted by the High Court, and the decree appealed against was accordingly modified by awarding to the plaintiff  $\frac{9}{11}$  of items Nos. 2—5 described in exhibit I.]

PATHUKUTTI  
v.  
AVATHALA-  
KUTTI.

---

## APPELLATE CIVIL.

Before *Mr. Justice Muttusami Ayyar and*  
*Mr. Justice Wilkinson.*

KOMBI (PLAINTIFF), APPELLANT,

v.

AUNDI AND OTHERS (DEFENDANTS), RESPONDENTS.\*

1889.  
July 8, 30.

*Specific Relief Act—Act I of 1877, s. 42—Suit for declaration of title as holder of a stanom to which a malikana allowance is attached—Pensions Act—Act XXIII of 1871, s. 6.*

Suit to declare plaintiff's title to the stanom of fifth Raja of Palghat; the first Raja (defendant No. 1) received a malikana allowance from Government payable to the various stanomdars, but had refused to pay to plaintiff the fifth Raja's share:

*Held*, the plaintiff being entitled to sue for further relief than the declaration of his title and having omitted to do so, the suit must be dismissed under Specific Relief Act, s. 42.

*Per cur*: Pensions Act, s. 6, was not applicable to this case.

SECOND APPEAL against the decree of L. Moore, Acting District Judge of South Malabar, in appeal suit No. 25 of 1888, reversing the decree of S. Subbramanya Ayyar, District Munsif of Temelprom, in original suit No. 8 of 1887.

Suit for a declaration that the plaintiff was entitled to the stanom of the fifth Raja of Palghat. Defendant No. 1 was the first Raja, and as such he received from Government a *malikana* to distribute among the other Rajas, being the stanomdars of the kovilagam. The plaint stated that defendant No. 1 refused to pay the fifth Raja's share to the plaintiff, who accordingly brought this suit to establish his title.

KOMBI  
v.  
AUNDI.

The District Munsif passed a decree for the plaintiff, but it was reversed on appeal by the District Judge, who held that the suit was not cognizable by the District Munsif.

The plaintiff preferred this second appeal against the decree of the District Judge.

*Sankaran Nayar* for appellant.

*Rama Rau* and *Ramachandra Ayyar* for respondents.

The further facts of this case and the arguments adduced on second appeal appear sufficiently for the purpose of this report from the following judgments:—

WILKINSON, J.—The plaintiff, one Kombi Achan, instituted this suit to obtain a declaration that he was the fifth Raja of Palghat. The Munsif decreed for the plaintiff; but on appeal the District Judge dismissed the suit on the grounds—(1) that the suit was not cognizable by the Munsif, the certificate required by section 6, Act XXIII of 1871 not having been obtained, and (2) that the plaintiff was entitled to further relief and could not therefore maintain a suit under section 42 of the Specific Relief Act. I am of opinion that the Judge was in error on the former point. The suit was not a suit relating to any pension or grant of money or land-revenue conferred by the British or any former Government, but merely a suit for a declaration as to the plaintiff's status. No doubt malikana is paid by Government on behalf of the stanom of the fifth Raja, but this suit did not seek a declaration that the plaintiff is entitled to anything so payable. Act XXIII of 1871, being in derogation of the rights of the subject to resort to the ordinary Civil Courts, must be construed strictly. But the suit is barred by the provisions of section 42, Specific Relief Act. The malikana payable to the fifth Raja is in the hands of the first Raja. There being a dispute between the male members of the family as to who is, in virtue of seniority, entitled to succeed to the vacant post, the first Raja refused to pay any malikana until the claimants have made good their title. The plaintiff was entitled to seek further relief than a mere declaration of his status. Being entitled to an executory decree he cannot seek a mere declaratory decree. The decree of the Lower Appellate Court must therefore be affirmed and the appeal dismissed with costs.

MUTTUSAMI AYYAR, J.—This was a suit to have it declared that the appellant (plaintiff) was entitled to the stanom of the

fifth Raja of Palghat. The plaint stated that his status as such was denied by the defendant No. 4 and that defendant No. 1, who drew from the Government the malikana allowance payable to the several stanoms and edoms in the kovilagam, refused to pay the appellant the share due to the fifth Raja. The District Judge considered that the suit was not cognizable by the District Munsif under the provisions of section 4 of Act XXIII of 1871 and of section 42 of Act I of 1877. Hence this second appeal.

I am also of opinion that the Pensions Act has no application in this case. The suit was not brought against the Government, nor was any relief claimed within the scope of the Act. As soon as the pension was paid by the Government to the first defendant, it ceased to be a pension payable by the former and became money had and received by the latter for the use of persons entitled to the several stanoms and edoms for whose benefit the payment was made. The decision in *Babaji Hari v. Rajavam Ballal*(1) is not in point. It proceeded on the ground that Act XXIII of 1871 was intended not only to guard the executive Government against responsibility to the Civil Courts in respect of pensions, but also to keep the distribution of what is regarded as a bounty of Government in the hands of its executive officers. This view is consistent with the decision of this Court in regard to suits for partition of inams mentioned in Regulation IV of 1831 (Madras) and may be accepted as sound.

But this was not a suit brought to obtain a declaration that the fifth Raja was entitled to a share of the malikana which the Government paid the first defendant professedly on his own account. On the other hand it was admitted that the malikana was paid by the Government to the first defendant to be distributed among the fifth Raja and others, the only matter in controversy being whether the appellant was the fifth Raja. This differs therefore from the Bombay case in that the money received by the first defendant was paid by the Government and received by him avowedly for distribution among the fifth Raja and others of his family, and it is not necessary to determine for the purposes of this suit that the fifth Raja is entitled to a share in the malikana.

Though the Pensions Act does not bar this suit, yet the

---

(1) I.L.R., 1 Bom., 75.

KOMBI  
v.  
AVNDI.

decision appealed against must be supported under section 42 of the Specific Relief Act. It provides that no declaration shall be made when the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. The arrears of malikana payable to the fifth Raja and already paid to the first defendant, being monies had and received by the one for the use of the others, their recovery was the further relief which the appellant was at liberty to claim and which he omitted to claim or abandon. The object of the proviso to section 42 is to avoid multiplicity of suits and to prevent a person getting a declaration of right in one suit and immediately after, the remedy already available in another. On this ground the appeal must fail and be dismissed with costs.

---

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar.*

1889.  
August 7.  
Sept. 3.

MUNICIPAL COUNCIL OF TUTICORIN (DEFENDANTS),  
PETITIONERS,

v.

SOUTH INDIAN RAILWAY COMPANY (PLAINTIFFS),  
RESPONDENTS.\*

*Municipal tax—District Municipalities Act—Act IV of 1884 (Madras), ss. 49, 50, 53, 101—Wrongful assessment of profession tax—Jurisdiction of Small Cause Court—Provincial Small Cause Courts Act—Act IX of 1887, sch. II, paragraph 1—Order of a Local Government.*

The Municipality at Tuticorin demanded Rs. 50 as profession tax from the South Indian Railway Company which had already paid profession tax to the Municipality at Negapatam. The Company complied with the demand under protest and sued the Municipality for a refund of the amount paid on the Small Cause Side of the District Munsif's Court :

*Held*, (1) the Court had jurisdiction to hear and determine the suit;

(2) the Municipality at Tuticorin had no right to levy the tax on the Railway Company and the decree directing the amount levied to be refunded was correct.

---

\* Civil Revision Petition No. 173 of 1888.