APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Muttusami Ayyar.

1888. September 26. November 1.

RAMA (PLAINTIFF), APPELLANT,

and

SUBBA AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Pensions Act 1871, *s.* 4—*Grant of villages enabling grantee to receive the land revenue.*

Suit to recover a moiety of two villages granted as a jaghir:

Held, that as the original grant was not of the freehold or full ownership in the soil, the suit was barred by s. 4 of the Pensions Act, 1871.

APPEAL from the decree of J. D. Goldingham, District Judge of Bellary, in Suit No. 2 of 1887.

The facts and arguments sufficiently appear from the judgment of the Court (Collins, C.J., and Muttusami Ayyar, J.).

Mr. *Subramanyam* and *Ramachandra Rau Saheb* for appellant.

Bhashyam Ayyangar and *Sundara Rau* for respondents.

JUDGMENT.—The appellant brought this suit to recover from respondents a moiety of two villages together with mesne profits from 1882. Those villages were granted in 1809 as a jaghir by the late East India Company to one Ramachandra Rao in consideration of good service rendered by him to the Government.

Until 1884 there was no apparent disagreement among the members of the grantee's family. In August 1885 respondents asserted a claim to the sole and exclusive enjoyment of the jaghir. Thereupon the appellant presented a petition to the Collector, under s. 5 of the Pensions Act, complaining that the first respondent was collecting the entire revenue of the jaghir and appropriating it in contravention of a family custom by which the appellant was entitled to an equal share. He asserted further that as the grandson of the grantee and as nearer to him in degree than respondents, he was entitled to be recognized as the sole jaghirdar. The first respondent contended that the custom intro-

* Appeal No. 173 of 1887.

duced into the family by the grantee was one of primogeniture, and that as the senior representative of the senior branch, he was the head of the family and the sole jaghirdar. The case was referred for investigation to the Head Assistant Collector who considered that the evidence before him was altogether in favor of the first respondent and recommended his recognition under the standing order of the Board of Revenue, No. 138, as the managing member of the family. The Collector also suggested that the first respondent, Subba Rao, should be recognized as representative of the jaghir and as the managing member of the family; adding, however, that the division of the collections was a separate question, and that the managing member would be liable, if he failed, to provide proper maintenance for the appellant. The Board of Revenue agreed with the Collector, and on the 28th November 1886 the Government approved of the Board's recommendation (Exhibit VI). On 21st January 1887 the appellant applied to the Collector for a certificate under s. 6 of Act XXIII of 1871, declaring his claim to be cognisable by a Civil Court and urged that it was not governed by the Pensions Act. The Collector observed that the jaghir was an unenfranchised inam, and as such came under the Pensions Act, and that the Inam Register stated that as the grant was not enfranchised, parties could only sue with the permission of the Government. He further remarked that he would be prepared to recommend the issue of a certificate to enable the appellant to file a suit with respect to his allegation that the collections were not fairly divided, on receiving *primâ facie* proof that he had sustained any such injustice or even that there was a *bonâ fide* dispute as to the share or amount to which he was entitled. The Collector passed his order on the 3rd February 1887 (Exhibit V), and on the 21st idem the present suit was brought. The preliminary objection was taken for the respondents that the grant being one of land revenue, the suit was not cognizable without a certificate from the Collector under ss. 4 and 6 of Act XXIII of 1871. Thereupon two issues were recorded for decision; viz.: (1) whether the grant was an absolute grant of the two villages mentioned therein or whether it was a mere assignment of the Government revenue on account of services rendered; (2) whether the suit falls within Act XXIII of 1871, and whether a certificate, under s. 6 of that Act, is necessary before plaintiff can proceed with the suit. The

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judge was of opinion on the first issue that the grant (Exhibit I) was a grant of land revenue coupled with the power of collecting it, and that it did not convey to the grantee any right in the soil; and on the second issue that the suit was governed by ss. 4 and 6 of the Pensions Act of 1871. Accordingly he dismissed the suit with costs, and the contension in appeal is that both issues ought to have been decided in appellant's favor.

We are of opinion that the District Judge is right in considering the claim to be barred by the Pensions Act, s. 4. That section enacts that 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; s. 7 exempts from its operation any inam of the class referred to in the first section of Madras Act IV of 1862. The expressions 'inam,' and 'grant of revenue' are obviously used in the same sense, and the natural inference is that s. 4 is applicable, whether the inam tenure exists in conjunction with or apart from the kudivaram right. This was the view taken by this Court in *Peria Kovil Kalavi Appan* v. *A. Pulliah Chetty*(1), and the Court observed in that case that the release of a burden altogether or the lightening of a burden which the land would otherwise bear in the shape of assessment is a gift or grant of revenue to the extent of the relief and therefore that a suit for such land is prevented by s. 4 of the Pensions Act. Again the expression "hereditary or personal grant of land revenue" was also used in Regulation IV of 1831 which was the first Regulation in this Presidency that barred the jurisdiction of Civil Courts to entertain suits regarding inams, except with the previous permission of Government, and Madras Act IV of 1862 which divides such grants of land revenue into enfranchised and unenfranchised inams refers to them as "inam lands." This again suggests the inference that though the suit may be for a piece of land, in respect of which the grant of revenue was originally made, yet it is a suit relating to such grant. This view receives further corroboration when we consider the course of previous legislation on the subject, the nature of Act XXIII of 1871 and the probable intention of the Legislature. As observed already, the first Regulation in this Presidency which barred the jurisdiction of Civil Courts regarding hereditary or personal grant

(1) 1 Ind. Jur., 164.

of land revenue made by the authority of the Governor in Council was Regulation IV of 1831. It was provided by s. 2 of that enactment that no Civil Court should take cognizance of "any claim to such grants, however denominated, unless the complainant was referred to it by an order signed by the Chief or other Secretary to the Government, to seek redress from the established Courts of Adalat." The intention was to give the Government an opportunity to protect the reversionary interest of the Crown. The next step taken to carry out that intention was the framing of rules by Government, under which the title to the inam was scrutinized on the occasion of the inamdar's death and orders were passed as to whether it lapsed to the Crown or whether it was to be continued to his successor, and if so, whether subject to any and what terms. The next change was the removal of the uncertainty in which the recurring scrutiny under the lapse rules involved the title to the inam, and in 1859 rules were framed for enfranchising the inam grants by surrendering the reversionary interests of the Crown for an equivalent quit-rent and placing enfranchised inams on the footing of private property. The outcome of the inam Settlement under those rules was Madras Act IV of 1862. The preamble gives the prior history of the inam tenure and says "whereas by Regulation IV of 1831 of the Madras Code, and Acts XXXI of 1836 and XXIII of 1838, all hereditary and personal grants of land revenue in this Presidency are removed from the cognizance and process of the Courts of Civil Jurisdiction, and the power of deciding on claims to these tenures is reserved to the Government; and whereas, under the inam rules sanctioned by Government under date, the 9th August 1859, the reversionary rights of Government are surrendered to the inamdars, in consideration of an equivalent annual quit-rent, and the inam lands are thus enfranchised and placed in the same position as other descriptions of landed property in regard to their future succession and transmission, it is hereby enacted as follows."

Then s. 1 says "All inams of the classes described in cl. 1, s. 2, Regulation IV of 1831 which have been or shall be enfranchised by the Inam Commissioner and converted into freeholds in perpetuity or into absolute freeholds in perpetuity, shall be exempted from the operation of Regulation IV of 1831, and of Acts XXXI of 1836 and XXIII of 1838 of the Madras Code." This enactment shows, first, that though the inam tenure consisted

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in a grant of land revenue, it might exist in conjunction with the kudivaram right to the land and referred to it as the inam land; 2ndly that the effect of enfranchisement was its exemption from the operation of Regulation IV of 1831, and its conversion into a freehold in perpetuity; 3rdly that the term freehold was used in the sense of full ownership unrestricted as to future succession and transmission, or of a release of the reversionary right of the Crown under the terms of the grant; 4thly that unenfranchised inams continued as before subject to Regulation IV of 1831; and 5thly that the land to which the grant of revenue related was contemplated by the Legislature as either enfranchised or not enfranchised. When the Act of 1871 was passed, there were, therefore, two classes of inam tenures in the case of hereditary grants of land revenue, viz., enfranchised inams and unenfranchised inams, whether those tenures were held in conjunction with or apart from the kudivaram right to the land. Act XXIII of 1871 was intended to consolidate the law on the subject of pensions and grants of land revenue and it repealed Regulation IV of 1831 in respect of enfranchised inams and kept alive Madras Act IV of 1862 in respect of unenfranchised inams. There is no indication of an intention to surrender the reversionary rights of the Crown in the first-mentioned class of inams except for an equivalent annual quit-rent fixed under the inam rules of 1859, as stated in Madras Act IV of 1862. The evident intention was to re-enact Regulation IV of 1831 which it repealed for purposes of consolidation by ss. 4 to 6 with reference to unenfranchised inams. It is therefore immaterial that the inam tenure and the kudivaram right vest in one and the same person, provided that the estate which he has is not a freehold nor private property in the sense in which the expression is used in Madras Act IV of 1862 and does not negative any reversionary interest in Government. The construction suggested for the appellant, viz., that Act XXIII of 1871 does not apply when the exemption from the burden of paying assessment in whole or part co-exists with some interest in land which is not a freehold, involves the anomaly of an involuntary surrender of the reversionary rights of the Government in unenfranchised inams and the inconsistency of placing inamdars who did not choose to enfranchise their holdings on the same footing with those who enfranchised the inam lands and converted their qualified estate into full ownership or freehold in the sense of their release from the reversionary interests of the

Crown. The course of decisions in Bombay which is referred to by the Judge lends support to this construction. The question considered in them was one of construction of the original grant, and the test adopted in each case was whether the terms in which the grant was made disclosed an intention to grant the freehold of the land or a qualified ownership in unoccupied land in the villages granted in view to the beneficial enjoyment of the land revenue payable to Government from villages forming the subject of the grant. *Ravji Narayan Mandlik* v. *Dadaji Bapuji Desai*(1) an instance in which full ownership or freehold in the soil was granted. The cases of *Vaman Janardan Joshi* v. *The Collector of Thana*(2) and of *Ramchandra* v. *Venkatrao*(3) are instances of a grant of land revenue and of qualified ownership in unoccupied land. The distinction made is sound in principle. When the land revenue is the real subject of the grant and entire villages are granted in order that the grantee may receive the land revenue due thereon to Government and appropriate it to his own use, subject to the terms of the grant, it is clear that no proprietary interest can pass in lands already occupied and in which the kudivaram right is vested in others, for the Government is not competent to grant what does not belong to it and the terms of the grant must be construed with reference to what was intended to be granted. Such being the case, the interest that passes in waste land or land relinquished by the occupant for the time being is such as would enable the grantee to realize the revenue due to Government which was the subject of the grant, unless the terms of the grant show that a larger interest therein was vested in Government and that that interest was intended to be passed. These decisions show that in order that a grant of villages may not fall under the Pensions Act, it must be a grant of the freehold therein or full ownership in the soil, qualified in no way by any reversion suggested by the terms of the grant, in regard to future succession or transmission.

In the case before us the grant is clearly not a grant of the freehold in the soil in the sense already indicated. Exhibit J, which is the grant, mentions in express terms the contingencies in which the villages should revert to Government. Document J, after reciting the grant of the two villages, states: "which said

(1) I.L.R., 1 Bom., 523. (2) 6 B.H.C.R., 191. (3) I.L.R., 6 Bom., 598.

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villages, the said Ramachendra Rao and his heirs shall continue to hold, receive and enjoy all the Circar revenues derivable from the lands belonging to the said two villages so long as the said Ramachendra Rao and his heirs shall continue faithful to his and their allegiance to the British Government and obedient to the Regulations which have been or may be established by its authority for the internal government of the country, for the administration of justice, and for preserving to its subjects the enjoyment of their just rights and privileges." The purpose for which the villages were granted was "subject to the performance of the above duties," that of enabling the grantee to "hold, receive and enjoy all the Circar revenues derivable therefrom." Again the document reserves to other inamdars in possession of land allotted to them in the said villages "in inam tenure" their rights in full. This does not signify that occupancy rights vested in others holding assessed lands were intended to be taken away, nor does it mean that the freehold in any part of the villages was intended to be conferred, for a reversionary right is reserved to Government in certain contingencies. It is not necessary to decide, for the purpose of this appeal, whether until the reversionary right reserved to Government accrues, the grantee has a larger interest in waste land which lay waste at the date of the grant or was since relinquished, than that of cultivating it, such as that of cutting timber, &c.; but it is sufficient to say that so long as the reversionary right exists, the grantee and his heirs do not hold the villages as freeholds or in full ownership as they hold other private property. It is not shown that the villages were exempted from the rules framed under Regulation IV of 1831. On the other hand it appears that the villages were the subject of the enquiry held by the Inam Commissioner and they were not enfranchised. Documents A to F do not carry the case further or show that a freehold was granted.

Reliance was placed by the appellant on the decision of this Court in *Panchanadayyan* v. *Nilakandayyan*(1). The decision in that case proceeded on the ground that the property in the soil was the subject of the grant. The history of inam tenures in this Presidency was not then considered, and the Privy Council case on which that decision rested did not decide that land allotted

(1) I.L.R., 7 Mad., 191.

in inam tenure, which was not enfranchised, was not within the scope of the Pensions Act, as the question did not arise for decision in that case.

We consider that the appeal cannot be supported and dismiss it with cost.

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Before Mr. Justice Kernan and Mr. Justice Muttusami Ayyar.

RAMACHANDRA (PLAINTIFF), APPELLANT,

and

THE SECRETARY OF STATE FOR INDIA IN COUNCIL.*

1888. August 30. December 6.

Madras Forest Act, 1882, s. 10—Procedure—Remedy by ordinary suit barred.

Where by an act of legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the ordinary jurisdiction of civil courts is ousted and in the case of injury the party cannot proceed by action.

Plaintiff sued in a Munsif's Court to cancel the decision of a Forest officer confirmed by a District Judge under s. 10 of the Madras Forest Act, 1882, and to recover certain land, a claim to which had been rejected under the said section:

Held that the Munsif had no jurisdiction to entertain the suit.

APPEAL from the decree of H. J. Stokes, District Judge of Coimbatore, reversing the decree of P. Narayanasami Ayyar, District Munsif of Coimbatore, in suit No. 387 of 1885.

The facts necessary for the purpose of this report are set out in the judgment of the Court (Kernan and Muttusami Ayyar, JJ.).

Bhashyam Ayyangar for appellant.

The Government Pleader (Mr. *Powell*) for respondent.

JUDGMENT.—The appellant is the plaintiff in suit No. 387 of 1885 in the Court of the District Munsif of Coimbatore.

The facts are that plaintiff alleges that he is the owner of lands having an area of 822 acres in the village of Vellimalaipattanam. The Forest Range Officer of Coimbatore, acting under the Forest Act V of 1882, notified in the gazette the intention of Government to constitute the said lands forest reserve. The plaintiff under s. 10 of that Act filed a claim to the lands, No. 53 of 1883. On the 18th December 1883 the Forest officer allowed

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* Second Appeal No. 54 of 1888.