APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

ANDI ACHEN (DEFENDANT No. 2), APPELLANT,

v.

KOMBI ACHEN (PLAINTIFF), RESPONDENT.*

1894. February 20, November 14.

Pensions Act—Act XXIII of 1871, ss. 4, 6—Suit for malikana without certificate of Collector.

In a suit against the Rajah of Palghat and other members of his family for a declaration of the plaintiff's status as the third Rajah, and to recover a sum of money payable to him as such on account of his share of malikana, it appeared that the plaintiff had obtained no certificate under Pensions Act, 1871, section 6:

Held, that the suit was not maintainable.

APPEAL against the order of E. K. Krishnan, Subordinate Judge of South Malabar at Calicut, in appeal suit No. 901 of 1891, reversing the decree of V. Rama Sastri, District Munsif of Palghat, in original suit No. 298 of 1891.

The plaintiff sued the Rajah of Palghat and three other members of the family for a declaration of his status as third Rajah of Palghat and to recover Rs. 769 being the malikana due and payable to him as such. The plaintiff had brought a previous suit (see *Kombi* v. *Aundi*(1) asking for declaration of his status only. The present suit was dismissed by the District Munsif on the ground that the malikana being a pension the suit was not maintainable without a certificate under Act XXIII of 1871, section 6. This decree was reversed on appeal by the Subordinate Judge on the ground that the ruling of the District Munsif was contrary to the judgment of the High Court in the case above referred to, and he accordingly remanded the suit to be disposed of on the merits.

Defendant No. 2 preferred this second appeal.

Bhashyam Ayyangar and *Desikachariar* for appellant.

Sankara Menon for respondent.

BEST, J.—As observed by the Subordinate Judge the difference between the present suit and the former one is that in his former suit

* Appeal against Order No. 124 of 1892.

(1) I.L.R., 13 Mad., 75.

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plaintiff asked only for a declaration of his status without seeking further relief in the shape of payment to him of his share of the malikana, whereas he now seeks both for the declaration and the further relief.

The former suit was expressly held to be not barred by the Pensions Act XXIII of 1871 on the ground that it was merely for a declaration as to the plaintiff's status and that though "no doubt "malikana is paid by Government on behalf of the stanom of "the fifth Rajah" the suit "did not seek a declaration that the "plaintiff is entitled to anything so payable."

As the malikana, in question, is clearly money paid by Government within the meaning of section 4 of the Pensions Act (*cf.* the recent decision of the Privy Council in *Deo Kuar* v. *Man Kuar*(1)) the present suit is, in my opinion, not maintainable in the absence of a certificate under section 6 of that Act.

I would, therefore, allow this appeal and, setting aside the order of the Subordinate Judge, restore the decree of the District Munsif and direct the respondent (plaintiff) to pay the appellant's (second defendant's) costs in this Court and also in the lower Appellate Court.

MUTTUSAMI AYYAR, J.—In this case judgment was reserved on account of an opinion expressed by me in my judgment in *Kombi* v. *Aundi*(2), to the effect that unless the suit is brought against the Government, no certificate is perhaps necessary under section 6 of Act XXIII of 1871. It was not necessary to determine the question for the purpose of the previous suit which could not be maintained under section 42 of the Specific Relief Act.

On re-considering the question which arises for adjudication in this suit and taking time to consider it, I see reason to alter my opinion. I think that upon the proper construction of section 4 of the Pensions Act, it is enough that the suit relates to a "malikana" and it is not necessary that it should be instituted against the Government or its officers. I was influenced by the notion that the Legislature did not probably intend to shut out the co-sharers from the ordinary Courts, even in regard to the determination of their relations *inter se* which must prevail in regard to other property. But having regard to the language of section 4 and the scheme of the Act suggested by sections 5 and 6, the

(1) L.R., 21, I.A., 148. (2) I.L.R., 13 Mad., 75.

narrower construction, viz., that it is enough that the suit relates to malikana, appears to be the true construction. Possibly, the intention was that the distribution of what is regarded as the bounty of Government among the co-sharers should remain under its control or that of its executive officers. This view is the result of the grammatical interpretation of section 4 confirmed by the scheme of the Act embodied in sections 5 and 6. It is also the view taken in *Babaji Hari* v. *Rajaram Ballal*(1) and *Syed Mahommed Isaack Mushyack* v. *Azeezoon Nissa Begam*(2) and recently in *Deo Kuar* v. *Man Kuar*(3) by the Privy Council. On the ground that a certificate from the Collector is necessary to give jurisdiction to the Civil Courts to entertain the suit relating to the malikana in dispute, I concur in the judgment proposed by my learned colleague.

APPELLATE CIVIL.

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

SRIRANGACHARIAR AND OTHERS (DEFENDANTS NOS. 1, 3, 4 AND 6), APPELLANTS,

1894. Feb. 19, 20. March 6.

v.

RAMASAMI AYYANGAR AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Contract Act—Act IX of 1872, *s.* 23—*Consideration in part illegal—Stifling a prosecution—Limitation Act—Act XV of* 1877, *s.* 22, *sched. II, arts.* 91, 120—*Civil Procedure Code—Act XIV of* 1882, *s.* 13—Res judicata—*Decree in suit of small cause nature—Subsequent suit for declaration.*

The plaintiff, claiming to be entitled together with two of the defendants to the office of archaka of a temple, sued in 1889 for a declaration of his title, and for a declaration that an agreement entered into by them in 1886 with the other defendants was void as having been executed under coercion, and because part of the consideration was the withdrawal of a pending criminal charge of trespass and theft against them. These averments were proved. The first-named defendants were made plaintiffs in the suit more than three years after the execution of the agreement. The remaining defendants pleaded that the validity of the agreement was *res judicata* for the reason that they had brought a previous action upon it against the plaintiffs and had obtained a decree for Rs. 75:

(1) I.L.R., 1 Bom., 75.
(2) I.L.R., 4. Mad, 341.
(3) L.R., 21 I.A., 148.
* Appeal No. 55 of 1893.