

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkitt.

IHTISHAM ALI (PLAINTIFF) v. SHAM SUNDAR AND OTHERS

(DEFENDANTS).*

1902
April 2
and
August 4.

Act No. XXIII of 1871 (*Pensions Act*), sections 4 and 6—*Pension Right to receive land revenue granted by Government as a reward—Mortgage of right—Suit for foreclosure—Certificate of Collector not forthcoming—Procedure.*

Section 4 of the Pensions Act, 1871, applies to a heritable right to receive land revenue granted by Government as a reward for services rendered.

Where therefore such a right to receive land revenue was included along with other property in a mortgage, upon which a suit for foreclosure was brought, it was held that as regards the right to receive land revenue the suit would not lie in the absence of the certificate required by section 6 of the Pensions Act, and, time having been granted for the production of the necessary certificate, which was not produced, the dismissal of the suit *quoad hoc* was sustained. *Tijaji Pratabji Raje v. Balkrishna Mahadeo* (1) followed.

THIS was a suit for foreclosure of a mortgage executed by the two principal defendants on the 20th of June, 1893. The mortgage included, amongst other items, (3) a 5 anna 4 pie zamindari and muafi share in mauza Terhi, and (4) a 5 anna 4 pie zamindari and muafi share in mauza Kansebhari. The "muafi" in these two villages consisted of a perpetual right to receive a certain share in the revenue derivable therefrom, which had been granted by one of the Moghal emperors to an ancestor of the defendants in recognition of services rendered by him. In his plaint the plaintiff stated that in respect of this property the plaintiff had applied to the Collector for a certificate, in view of the provisions of Act No. XXIII of 1871, but that the Board of Revenue had expressed its opinion that no such certificate was necessary. As regards this property the principal defence raised was that no certificate such as is required by section 6 of the Pensions Act, 1871, was forthcoming, and that the suit could not proceed without it. The Court of first instance (Subordinate Judge of Banda) gave the plaintiff a decree for foreclosure of the mortgaged property exclusive of the muafi rights in Terhi and Kansebhari. From this decree the plaintiff appealed to the High Court, urging that the opinion of the Board of Revenue as to the necessity of a certificate was conclusive, and if not, that, for various reasons no certificate was necessary.

* First Appeal No. 156 of 1899, from a decree of Rai Anant Ram, Subordinate Judge of Banda, dated the 19th of June 1899.

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Manlyi Ghulam Mujtaba, for the appellant.

The respondents were not represented.

STANLEY, C. J., and BURKITT, J.—In this suit the plaintiff claimed foreclosure of certain properties which had been mortgaged to him under two deeds of mortgage, dated respectively the 20th of June, 1893, and the 28th of September, 1893. The claim in respect of all the properties other than two shares in two mauzas, to which we shall presently refer, was decreed. In regard to the shares in mauza Kansebhari and mauza Terhi, the lower Court found that the subject-matter of the mortgage was land revenue granted by Government as a reward for services to the defendant's ancestor, and that consequently, before any civil suit could be entertained, it was necessary for the plaintiff, under the provisions of the Pensions Act (Act No. XXIII of 1871), to produce a certificate from the Collector, the Deputy Commissioner, or other officer authorized to give a certificate, that the case might be tried. It appears that an application was made by the plaintiff through the Collector to the Board of Revenue for a certificate, and that a reply was received from the Board of Revenue to the effect that no certificate was requisite. It appears upon the evidence that the respondent's interest in the two mauzas in question was merely the right to realize the Government revenue; and this being so, in our opinion, under the provisions of section 4 of the Pensions Act, the matter in dispute being a grant of land revenue made by the Government or the ruling authority, no Civil Court can entertain a suit relating to it without the production of the certificate referred to in section 6. We fail to understand the meaning of the opinion of the Board of Revenue that a certificate was not necessary in this case. It is not a certificate of the Board of Revenue which is requisite, but the certificate of the Collector or other officer mentioned in the section. We are not aware of, and we have not been referred to, any subsequent legislation under which the Board of Revenue has been substituted for the Collector in regard to this matter. We have been asked by the learned pleader for the appellant to allow him time to procure the certificate, if he be able to do so, and we do not think that this application is unreasonable, having regard to the fact that he did

apply to the Collector for a certificate, and was informed that no such certificate was necessary. We desire to state that, in our opinion, the certificate was, in the circumstances of this case, absolutely essential. We shall therefore allow the appellant three months from this date to take such steps as he may be advised for the purpose of obtaining a certificate under section 6 of the Pensions Act. We adjourn the hearing of the case for that period. If no certificate is forthcoming within the three months, the appeal will stand dismissed. In granting time for obtaining the certificate, we are following the precedent furnished by the Bombay High Court in the case of *Jijaji Pratabji Raje v. Balkrishna Mahadeo* (1).

[The time granted having expired, the appeal was, on the 4th of August, 1902, disposed of by the following order.]

STANLEY, C. J., and BURKITT, J. — Having regard to the fact that the Collector has refused to give the certificate required by section 6 of the Pensions Act this appeal cannot be maintained. It is therefore dismissed. As there is no one appearing for the respondents we say nothing as to costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Banerji.

EMPEROR v. DURGACHARAN GIR.*

Act No. XLV of 1860 (Indian Penal Code), sections 193, 511—Fabricating false evidence—Attempt to commit forgery.

One Durga Charan Gir had an ejection case against Ram Ghulam, which was decided against him. After this, on the 23rd of November, 1901, Durga Charan took his servant Daulat to the town of Padrauna, and there purchased an 8 anna stamp paper in the name of Ram Ghulam. Daulat personated Ram Ghulam, and told the stamp vendor that he was Ram Ghulam, so that the stamp vendor put down the name of Ram Ghulam on the stamp paper as the purchaser of it. The stamp paper was subsequently found in the possession of Durga Charan, who had locked it up in a chest in his house. Held upon the above facts that Durga Charan was properly convicted of the offence of abetting the fabrication of false evidence, though his acts did not amount to an attempt to commit forgery. *Queen-Empress v. Mula* (2), followed.

* Criminal Revision No. 433 of 1902.

(1)) 7, L. R., 17 Bom., 169. (2) (1879) L. L. R., 2 All., 105.

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