

property under section 88 of the Transfer of Property Act; and as regards the property held in mortgage by the defendants, or any of them, to direct that if necessary their interest as mortgagges in that property be likewise sold and the proceeds applied to discharge the debt. The defendants must pay the costs of this appeal.

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*Appeal decreed and cause remanded.*

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

LACHMI NARAIN AND OTHERS (DEFENDANTS) v. MAKUND SINGH (PLAINTIFF) AND DURGA KUNWAR AND OTHERS (DEFENDANTS).\*

*Act No. XXIII of 1871 (Pensions Act), sections 3 and 11—Civil Procedure Code, section 266—Pension—Zamindari granted as a reward for services rendered to Government.*

*Held that zamindari granted—not revenue free—by Government as a reward for services rendered is not a pension, and its alienation by the grantee is not prohibited either by Act No. XXIII of 1871 or by section 266 of the Code of Civil Procedure. The Secretary of State for India in Council v. Khemchand Jeychand (1), Bal Krishna Bhao v. Govind Rao (2) and Bishambhar Nath v. Nawab Indad Ali Khan (3) referred to.*

THE facts of this case are as follows :—

In 1868 the Government granted certain zamindari villages, subject to the payment of land revenue, to one Ganga Bakhsh, as a reward for services rendered by Ganga Bakhsh to the Government. In 1870 Ganga Bakhsh and his uncles mortgaged this, along with other property, to secure previous debts and a further advance of money. A decree for sale was obtained on that mortgage, and some of the property was sold. Upon a further portion of the mortgaged property being proclaimed for sale on the 25th of October 1901, a suit was instituted by the minor son of Ganga Bakhsh through his next friend for the purpose of obtaining a declaration that “the property sought to be sold is the land granted as a pension for good services, and that, according to military law and the conditions of the grant, as well as according to the Hindu law, it is not saleable as against the plaintiff in execution of the decree held by defendants

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\* First Appeal No. 169 of 1902 from a decree of Maulvi Maula Bakhsh, Additional Subordinate Judge of Aligarh, dated the 2nd of May 1902.

(1) (1880) I. L. R., 4 Bom., 432. (2) Weekly Notes, 1902, p. 161.

(3) (1890) L. R., 17 I. A., 181.

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first party." The Court of first instance (Subordinate Judge of Aligarh) gave the plaintiff a decree in the terms of his plaint, declaring that the property in suit was not liable to sale in execution of the decree held by the defendants first party. Against this decree the defendants-mortgagees appealed to the High Court.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Sital Prasad Ghosh*), for the appellants.

The respondents were not represented.

STANLEY, C.J., and BURKITT, J.—A question of a somewhat unusual nature arises in this case. The facts which give rise to it are as follows:—In the year 1868 the Government of the North-Western Provinces had on its hands certain zamindari property—possibly property confiscated during the Mutiny—in the Aligarh district as yet undisposed of. By a *sanad*, bearing date June 30th, 1868, the Government conferred on one Ganga Bakhsh proprietary rights in certain villages, including that in dispute in the present suit, subject to the payment of land revenue.

Ganga Bakhsh is father of the plaintiff-respondent here. The grant is expressed to have been made in consideration of good service rendered to Government by Ganga Bakhsh. On the 29th of December 1870 Ganga Bakhsh conjointly with his uncle executed to the appellant a mortgage of that with other property to secure previous debts and a further advance of money. A decree for sale was obtained on that mortgage, and it would appear that some of the property comprised in the grant had already been sold. That portion of it which forms the subject of this suit was advertised for sale on October 25th, 1901. Thereupon the present suit was instituted by the minor son of Ganga Bakhsh through his next friend. The object of the suit is to obtain a declaration that "the property sought to be sold is the land granted as pension for good services, and that according to the military law and the conditions of the grant, as well as according to the Hindu law, it is not saleable as against the plaintiff in execution of the decree held by defendants first party." In an earlier part of the plaint it is alleged that Ganga Bakhsh was the adopted son of Moti Singh,

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and that "in lieu of the good services, military and civil, rendered by Moti Singh, the British Government granted to Ganga Bakhsh, heir of Moti Singh, some villages as grant land by way of pension for good services." The property in suit here is part of the land granted to Ganga Bakhsh. Now as to this extract from paragraph 3 of the plaint, we think the Subordinate Judge was right. There is no reference anywhere in the *sanad* to any services rendered by Moti Singh. Next, in paragraph 5 of the plaint, it is averred that "the object of the grant was that the granted property should always remain in the family of Moti Singh, generation after generation, and his heirs should remain in possession thereof and continue to enjoy the profits thereof as political pension," and further that none of Moti Singh's heirs had any power to incumber or sell it, "nor is any creditor of any heir of Moti Singh authorized to render such a grant liable for any demand or to get it sold." In paragraph 10 it is averred that "such a land granted as pension can never in any way be sold in execution of a decree for satisfaction of any demand." Finally in paragraph 12 it is alleged by the plaintiff that to pass such a decree as that impugned in this case "is beyond the jurisdiction of the Court; is irregular and null and void, and it is contrary to the provisions of the Letters Patent."

For the defence it was contended that the property in suit could be taken in execution of the hypothecation decree for sale, and that the plaintiff had not been born at the date of the mortgage and of the decree.

The Subordinate Judge who heard the suit accepted the plaintiff's contention and gave a decree for the relief prayed for. His words are:—"The plaintiff's foremost contention is that the grant was one to which Act XXIII of 1871 applied. I think it is so. The revenue was not of course granted, but the proprietary interest that was granted was owned before the grant by the Government, and this was bestowed on Ganga Bakhsh for services rendered to the country, and therefore for political reasons. It is, it seems to me, a political pension, which under section 266, Code of Civil Procedure, is exempted from attachment and sale. The word 'anything' in section 3 of the Act is significant.

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Had it been meant to confine the operation of the Act to the grant of 'land revenue, or grant of money,' a different and more explicit expression would have been used." By his decree the learned Subordinate Judge declares that "the property sought to be sold is the land granted as pension for good services, and that according to the military laws and conditions of the grant, as well as according to the Hindu law, it is not saleable as against the plaintiff in execution of the decree held by the defendants first party." What the learned Subordinate Judge means by the phrases 'military laws,' 'conditions of the grant' and 'according to Hindu law' we are at a loss to understand. He seems to have copied them slavishly from the plaint without attempting to apply the facts of the case to them.

For the appellants, the mortgagees decree-holders, it is contended that the grant under the *sanad* of 1868 of proprietary rights, subject to the payment of revenue, to Ganga Bakhsh, cannot be considered to be a "political pension" within the meaning of section 266, clause (g) of the Code of Civil Procedure, nor a pension within the meaning of section 11 of the Pensions Act, No. XXIII of 1871. The former enactment provides that "political pensions" shall not be liable to attachment and sale in execution of a decree, while the latter is as follows:—"No pension granted or continued by Government on political considerations, or on account of past services or present infirmities, or as a compassionate allowance, and no money due, or to become due, on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any Court in British India at the instance of a creditor for any demand against the pensioner, or in satisfaction of a decree or order of any such Court."

The question then for decision is, does either of these two provisions *debar a creditor from seizing in execution of his decree and from selling the property the subject of this suit?* or in other words can the grant made under the *sanad* of June 30th, 1868, be considered to be either a "pension" under section 11 of the Pensions Act, or a "political pension" under section 266 of the Code of Civil Procedure? It is to our minds extremely difficult to understand by what process of

reasoning this grant of land, subject to payment of revenue, can be held to be a "pension" in any sense of that word. That which was granted by Government in June 1868 was a gift of certain villages in proprietary possession to Ganga Bakhsh, just as Government, had it so pleased, might have made to him a gift of a valuable *khillat* or of jewellery. We presume that such articles, even though granted for good services rendered by the grantee, could not be considered to be a pension which the Civil Courts would compel a vendee to restore if sold to him by the grantee, or would direct to be released if attached in execution of a decree against him. It is difficult to see what difference there can be between the case of such a gift and a gift of land. It is most noticeable also that in this case there was no grant to Ganga Bakhsh of any land revenue. The *sanad* expressly provided that he was to pay the land revenue assessed on the villages. The argument for the defendant-respondent is that the receipt year by year by the grantee of the rents of the land granted to him by Government amounts to a pension. We cannot assent to such a proposition. Such a receipt of rents from tenants is not a pension, nor would the rents be payable by Government. The object of the grant of June 1868 was no doubt once for all to give Ganga Bakhsh a suitable reward for his good services, and not to confer on him an inalienable pension. Had the grant been one of "land revenue" possibly other considerations might arise, but that is a matter which we need not discuss. We have no doubt that the word "pension" in section 11 of the Pensions Act, and in section 266 of the Civil Procedure Code, implies periodical payments of money by Government to the pensioner in the manner prescribed by section 8 of the Act. We are strengthened in that opinion by the provisions of section 12 of the Act, which when declaring null and void any incumbrances created by a pensioner describes pensioners as persons "entitled to any pension, pay or allowance mentioned in section 11" of the Act. Evidently 'pension,' 'pay' or 'allowance' are treated as being all of them *ejusdem generis*, importing persons entitled to periodical money payments, as appears from the words "in respect of any money" which follow the words cited above. In the

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case of the *Secretary of State for India in Council v. Khemchand Jeychand* (1) the question was whether a "tora garas" allowance was exempted from attachment under section 11 of the Pensions Act. From the observations of the learned Judge who delivered the judgment of the Court, we gather that an allowance of that nature was in the nature of a grant made to families of freebooters as compensation for the loss of their blackmail. In that case a Full Bench of the Court after pointing out the distinction made in the Pensions Act between pensions and all other grants, proceeds as follows, at page 436: "It follows that in our opinion the word 'pension' in section 11 is used in its ordinary and well-known sense, namely, that of a periodical allowance or stipend granted not in respect of a right, privilege, perquisite, or office, but on account of past services or particular merits, or as compensation to dethroned princes, their families and dependents." In this definition we fully concur, and it was cited with approval by this Court in the case of *Bal Krishna Bhao v. Gobind Rao* (2). A very good illustration of what is a "political pension" will be found in the case of *Bishambhar Nath v. Nawab Imdad Ali Khan* (3). For the above reasons we have no hesitation in coming to the conclusion that the Subordinate Judge was wrong in holding that the property in suit was protected from attachment and sale either under section 266, cl. (9), of the Civil Procedure Code or under section 11 of the Pensions Act. We therefore allow this appeal: we set aside the decree of the lower Court, and we direct that the plaintiff's-respondent's suit do stand dismissed with costs in all Courts.

*Appeal decreed.*

(1) (1880) I. L. R., 4 Bom., 432. (2) Weekly Notes, 1902, p. 161.  
(3) (1890) L. R., 17 I. A., 181.