

## APPELLATE CIVIL.

1905  
July 10.

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

GANPAT RAO (DEFENDANT) v. ANAND RAO (PLAINTIFF).\*

*Act No. XXI of 1871 (Pensions Act), section 6—Pension—Definition—Grant of village upon payment of a quit rent—Construction of document.*

The common ancestor of the parties to a suit for partition of immovable property had obtained one of the villages which were the subject of the suit by grant from the Maharaja Scindhia in 1861. In 1866 this grant had been confirmed by the British Government by means of a sanad which contained the following material provisions. There was a declaration that the village in question shall be continued by the British Government to the grantee and his heirs inclusive of all lands, allowances and rights belonging to others, so long as he and his heirs shall continue loyal to the British Government and shall pay Rs. 800 to Government as quit rent. The sanad further contained a guarantee against any further payment by the holder on account of Imperial Land Revenue beyond the amount specified, and a declaration that the village and its holder shall be liable for any local taxation which may be imposed in the district generally. *Held* that these provisions did not amount to a grant of land revenue, and the grant did not therefore fall within the purview of the Pensions Act, 1871. *Raoji Narayan Mandlik v. Dadaji Bapuji Desai* (1) referred to.

THIS was suit for partition of immovable property—lands and houses—brought by one Anand Rao, the son of Jagdeo Rao, against Ganpat Rao, the grandson of Jagdeo Rao, son of Sultanji Rao, deceased. The property which formed the subject-matter of the suit consisted of three villages in the Jhansi district, one in the Ahmadnagar district in the Bombay Presidency, another village in the Poona district, 15 bighas 11 ganthas Patelji land and 440 acres of land in the Poona district, and certain houses in the three districts mentioned above. So far as the purposes of this present report are concerned the claim relating to the village Warur Buzurg alone is material. As to that village, the Court of first instance (Subordinate Judge of Jhansi) dismissed the plaintiff's suit on the finding that the sanad by which this village was granted to Jagdeo by the British Government, in confirmation of a previous grant by the Maharaja Scindhia, involved a grant of land revenue and was, therefore, a grant of a pension within the definition contained in the

\* First Appeal No. 263 of 1902, from a decree of Mir Jafar Husain, Subordinate Judge of Jhansi, dated the 30th day of June, 1902.

pensions Act, 1871, and no certificate, as required by the Act, had been obtained by the plaintiff in respect of this village. The defendant appealed against the decree of the Subordinate Judge to the High Court. The plaintiff filed objections under section 561 of the Code of Civil Procedure, and, *inter alia*, objected to the dismissal of his suit in respect of Warur Buzurg upon the ground that no certificate was required by law having regard to the terms of the sanads under which the village was granted to Jagdeo Rao. The terms of these sanad are set forth and commented upon in the judgment of the Court.

Mr. *G. W. Dillon*, for the appellant.

The Hon'ble Pandit *Madan Mohan Malaviya*, for the respondent.

STANLEY, C. J., and BANERJI, J.—This is an appeal from the decree of the learned Subordinate Judge of Jhansi in a suit instituted by the plaintiff for partition of certain properties. We have also before us objections filed by the respondent under the provisions of section 561 of the Code of Civil Procedure. The property which is the subject-matter of the suit consists of three villages in the Jhansi district, one in the Ahmadnagar district in the Bombay Presidency, and another village in the Poona district, also 15 bighas 11 ganthas Patelji land and 440 acres of land in the Poona district. There is also a claim in respect of certain houses in the three districts mentioned above.

The plaintiff, Anand Rao, is the son of Jagdeo Rao, and the defendant, Ganpat Rao, is the grandson of Jagdeo Rao, being the son of Sultanji Rao, deceased, brother of Anand Rao.

Only two matters have been pressed before us in appeal by the learned counsel for the appellant. They are in respect of the three villages in the Jhansi district and a portion of the 440 acres of land in the Poona district in respect of which the claim for partition was allowed. As regards the three villages in the Jhansi district, the objection which was raised in the ground of appeal is that the property was subject to the provisions of the Pensions Act, No. XXIII of 1871, and that no certificate was obtained under section 6 of that Act

1905

---

GANPAT RAO  
v  
ANAND RAO.

1905

GANPAT RAO  
v.  
ANAND RAO.

before the institution of the suit, and so the Court had no jurisdiction to try the case. That defect, if any, has been cured. This Court allowed the hearing of the appeal to be adjourned in order to enable the respondent to procure a certificate and to avoid the necessity of disposing of the technical question raised in regard to it. The result is that the appeal in respect of the three Jhansi villages fails.

As regards the portion of the 440 acres in respect of which the claim for partition has been decreed, it appears from the judgment that satisfactory proof was given that the portion of this property in respect of which the claim was dismissed was purchased by Sultanji Rao, father of the defendant, after he had become separate from his brother, Anand Rao, and that consequently the plaintiff was not entitled to claim partition of it, but as to the residue no such proof was given. In proof of his defence the defendant produced five sale-deeds relating to the portion of the property in respect of which the suit was dismissed. They are exhibits M, N, O, P and K. He did not produce any of the title deeds of the remainder of the 440 acres, and the Court below held, and we think rightly held, that inasmuch as the defendant and his father were the managers of the property and had under their control all the deeds of title in connection with it, and inasmuch as the defendant produced the title deeds of the portions of the 440 acres which were not included in the decree for partition in proof of his case that they had been purchased after the separation of Sultanji Rao and Anand Rao, but did not produce any other title deeds, the reasonable inference was that the other documents of title to the residue of the 440 acres were not favourable to the defendant's case, otherwise they would have been produced. We think the learned Subordinate Judge was justified in arriving at this conclusion and in including in the partition the portions of the 440 acres which were not comprised in the five deeds of sale to which we have referred. These are the only two questions that have been raised before us on behalf of the appellant, and in regard to them the appeal wholly fails, and therefore is dismissed with costs.

We now come to the objections which have been filed on behalf of the respondent. As regards the village Mahur, it is evident from a perusal of the sanads which were granted to Jagdeo Rao that the subject of the grant was Government revenue, and therefore this portion of the property was subject to the provisions of the Pensions Act. As no certificates as required by section 6 of that Act has been obtained, the suit in regard to this portion of the property must fail. We find that every effort was made by the plaintiff to obtain a certificate in regard to it, but difficulties and obstacles were thrown by the defendant in the way of his obtaining a certificate, the result of which is that no certificate is forthcoming. Under these circumstances the learned vakil for the respondents asks the Court to allow the plaintiff to abandon his suit in regard to this portion of the property with liberty to bring a fresh suit if so advised. We think under the circumstances that permission should be so granted and we accordingly allow the plaintiff to abandon his suit as regards the village of Mahur, with liberty, if so advised, to institute a fresh suit in regard to it. As regards this portion of the case, we think that each party should abide his own costs having regard to the matters we have referred to above.

The next objection is with regard to the village of Warur Buzurg. The learned Subordinate Judge found that, inasmuch as no certificate in regard to it was obtained under the provisions of the Pensions Act, the plaintiff's suit failed in regard to it. Now we have read the sanad under which this village was granted to Jagdeo Rao by the British Government in confirmation of an earlier sanad by the Maharaja Scindhia. The earlier sanad is dated the 28th of July 1861, and in confirmation of that the sanad dated the 1st of December 1866, was granted by the British Government to Jagdeo Rao. In that sanad we find a declaration that the village in question shall be continued by the British Government to Jagdeo Rao and his heirs, inclusive of all lands, allowances and rights belonging to others so long as he and his heirs shall continue loyal to the British Government, and shall pay Rs. 800 to Government as quit rent. In a later portion of the sanad there

1905

---

GANPAT RAO  
v.  
ANAND RAO.

1905

GANPAT RAO  
v.  
ANAND RAO.

is a guarantee against any further payment by the holder on account of Imperial Land Revenue beyond the amount specified and a declaration that the village and its holder shall be liable for any local taxation which may be imposed in the district generally. It was strenuously contended on behalf of the appellant that this amounts to a grant of land revenue and consequently comes within the purview of the provisions of the Pensions Act. We are clearly of opinion that the sanad is not a grant of revenue, but it is a grant of the soil of the village to the grantee for all time, subject only to the right of escheat to the crown in the event of disloyalty on the part of the grantee or in the event of non-payment of the quit rent reserved by the sanad. We are unable to see how in any point of view this document can be regarded as a grant of land revenue. We must construe it according to the plain language used in it, and, as it appears to us, so construing it, it amounts to a grant of the village and the soil of the village, and therefore is in no sense a grant of land revenue. We are fortified in our view of the true construction of this document by a passage in the judgment of Westropp, C. J., in the case of *Ravji Narayan Mandlik v. Dadaji Bapuji Desai* (1). In the course of his judgment he observes:—"If words are employed in the grant, which expressly or by necessary implication indicate that Government intends that so far as it may have any ownership in the soil that ownership shall pass to the grantee, neither Government nor any person subsequently to the date of the grant deriving (title) under Government can be permitted to say that the ownership did not so pass." Here it appears to us plain that the Government intended that the ownership of the soil in the village should pass to the grantee, the only reservation being that in the event of disloyalty or non-payment of the quit rent reserved by the sanad Government shall be in a position to resume the ownership. We, therefore, are of opinion that the view taken by the learned Subordinate Judge in regard to this village is erroneous, and that the decree must be modified by including in its operation this village. For the same reason it is obvious that the houses in this village

(1) (1875) I. L. R., 1 Bom., 523.

also passed to the grantee under the sanad, and that those houses should also be included in the decree for partition.

In regard to the portion of the objection which deals with the 440 acres, the learned vakil for the respondent does not press his objection, so that the decree in so far as it excludes the land included in the five deeds of sale to which we have referred, being exhibits M, N, O, P and K, will remain excluded from the order of partition.

As regards the houses in Mahur, in the Poona district, for the reasons already given in regard to the remainder of the 440 acres which is to be included in the decree and partitioned, those houses should also be included in the order of partition and the decree modified accordingly.

The result then will be that we modify the decree of the Court below in the manner indicated above. As regards the costs of the objections, the parties will abide the costs here and hitherto in proportion to their failure and success.

*Decree modified.*

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

PARSOTAM RAO AND OTHERS (DEFENDANTS) v. JANKI BAI  
AND ANOTHER.\*

*Civil Procedure Code, section 387—Dispute as to who is the legal representative of a deceased plaintiff—Order admitting a person to be legal representative for the purpose of prosecuting the suit—Effect of such order.*

Section 387 of the Code of Civil Procedure empowers the Court in a case where a dispute arises as to who is the legal representative of a deceased plaintiff, to appoint a legal representative for the purpose of prosecuting the suit, but the appointment of such legal representative is not a determination of any issue which is properly raised in the suit, and particularly (as, for example, in a suit for partition of family property) such a vital issue as whether the deceased plaintiff was joint with or separate from the rest of his family.

In this case one Chandar Rao sued his brother Parsotam Rao, his nephew Madho Rao, son of a deceased brother Vasudeo Rao, and Waman Rao, son of Parsotam Rao, for partition of

1905

GANPAT RAO  
v.  
ANAND RAO.

1905  
July 10.

\*First Appeal No. 82 of 1903 from a decree of Babu Bipin Bihari Mukerji, Subordinate Judge of Cawnpore, dated the 9th of March 1903.