

1909

May 8.

*Before Mr. Justice Banerji and Mr. Justice Tudball,*  
**AMNA BIBI AND OTHERS (JUDGMENT-DEBTORS) NAJMUN-NISSA**  
**(DECREE-HOLDER).\***

*Act No. XXIII of 1871 (Pensions Act) section 11—Immovable property granted in lieu of pension—Not a pension—Liable to attachment—Code of Civil Procedure (Act No. XIV of 1882), section 266 (g).*

Where certain immovable property was granted in lieu of a pension and the sanad provided that upon the death of the original grantee the estate would be continued in perpetuity in the manner of an hereditary holding (*zamindari mauroosi*) and at the desire of the grantee revenue was assessed and the members of the family had treated it as ordinary zamindari property, subject simply to the payment of Government revenue, held that the zamindari so granted was not a pension within the meaning of section 11 of the Pensions Act, and was liable to attachment and sale in execution. *Lachmi Narain v. Makand Singh* (1) and *Secretary of State for India v. Khemchand Jaychand* (2) followed.

THE facts of this case are as follows:—

One Kadir Bakhsh, a Pindari Chief, from whom appellants are descended, was granted by the Government a political pension of Rs. 4,000 a year. The Government by a *sanad* dated the 14th of January 1819, bestowed on Kadir Bakhsh, in lieu of this pension, a revenue free *jagir* consisting of 27 villages in one *Taluqa* in Gorakhpur. The *sanad* lays down the following provisions:—“ . . . On the decease of Kadir Bakhsh, the estate will be continued in perpetuity in the manner of an hereditary holding, *zamindari mauroosi*, in possession of heirs and successors, provided that an adequate payment of revenue be made to Government.” In the year 1822, the revenue was assessed on the estate at the request of Kadir Bakhsh. Since then the property had all along been treated by the members of Kadir Bakhsh’s family as an ordinary zamindari holding. The respondent decree-holder attached the property in execution of her decree against the appellants, who contended that the property being in the nature of a political pension could not be attached in execution of the decree. The Additional Subordinate Judge disallowed the judgment-debtors’ objection. The judgment-debtors appealed to the High Court.

Mr. *Abdul Raoof*, for the appellants. The property really belongs to the Government and the appellants have only a right to recover from it the pension granted by Government originally

---

\* First Appeal No. 228 of 1908, from a decree of Gur Prasad Dube, Additional Subordinate Judge of Gorakhpur, dated the 28th of July 1908.

(1) (1904) I. L. R., 26 All, 617. (2) (1880) I. L. R., 4 Bom., 432.

1909

AMNA BIBI

v.  
NAJIM-UN-  
NISSA.

to their ancestor Kadir Baksh, and therefore it must be treated as a political pension. It is not liable to attachment in execution of the decree. *Civil Procedure Code, 1882, section 266 (g). Pensions Act, XXIII of 1871, section 1. F. A. 32 of 1878, decided on November 27, 1878, (unreported).*

Maulvi Muhammad Ishaq, for the respondent, relied on *Lachmi Narain v. Makund Singh* (1). *The Secretary of State for India in Council v. Khemchand Jaychand* (2).

BANERJI and TUDBALL, JJ.—This appeal arises out of an application for execution of a decree by the respondent Musamat Najm-un-nissa Bibi, who has obtained a decree for dower against the other heirs of her deceased husband. The decree is dated 16th August 1904. In execution of that decree she has attached some 21 villages in the hands of the judgment-debtors appertaining to *taluqa* Ganeshpur. The judgment-debtors have objected to this attachment on the ground that the property constitutes a political pension within the meaning of section 266 (g) of the Code of Civil Procedure of 1882. The lower court has held against them and they have come on appeal to this court.

The sole question for decision is whether the property attached can be considered to be a political pension within the meaning of section 266 (g) of the Code.

The parties are the descendants of one Kadir Baksh, a Pindari Chief, who in the earlier part of the nineteenth century was granted by the Government of India a pension of Rs. 4,000 per annum. In the year 1819, by a *sanad* dated the 14th of January of that year the Government of India bestowed on Kadir Baksh, *in lieu of his so-called pension*, a revenue free *jagir* consisting of 27 villages. The *sanad* runs as follows (after relating the facts of the grant to Kadir Baksh), "on the decease of Kadir Baksh the estate will be continued in perpetuity in the manner of an hereditary holding, *samindari mauroosi*, in possession of his heirs and successors, provided that an adequate payment of revenue be made to Government." Subsequently in the year 1822, at the request of Kadir Baksh himself, revenue amounting to Rs. 1,877-8-0 was assessed on this estate, to come into force on the decease of Kadir Baksh. From that time the heirs of Kadir

(1) (1904) I. L. R., 26 All., 617. (2) (1880) I. L. R., 4 Bom., 482.

1909

AMNA BIBI

v.

NAJIM-UN-  
NISSA.

Baksh, have held this estate on the payment of this permanent revenue to Government. Subsequently in the year 1862, the predecessors in title of the present parties brought a suit against the Government claiming the full proprietary right as zamindars over an area of 8,000 odd bighas (part of the estate granted by the *sanad*). That case proceeded on the assumption that Kadir Baksh was the full owner of 3,933 bighas, the balance of the property. The question of the full ownership of this portion of the estate was not in dispute. The plaintiffs in that case obtained from their Lordships of the Privy Council on the 22nd of February 1870, a decree for possession as full proprietors and zamindars of the entire area of 8,000 odd bighas. It also appears that subsequently to this various portions of this estate have been sold by public auction and have also been transferred by co-sharers therein. So that it is clear that the property has all along been treated by the members of this family as an ordinary zamindari holding, subject simply to the payment of Government revenue.

The contention for the appellants is that the property really belongs to the Government and the appellants have only a right to recover from it their pension granted by Government originally to Kadir Baksh, and that therefore the property must be treated as a political pension and not liable to attachment in execution of the decree. A similar question arose in the case of *Lachmi Narain v. Makund Singh* (1). It was therein held that the zamindari granted by Government as a reward for services rendered is not a pension and its alienation by the grantee is not prohibited either by Act XXIII of 1871 or by section 266 of the Code of Civil Procedure. At page 621 of the Report the learned Judges held as follows:—"We have no doubt that the word "pension" in section 11 of the Pensions Act and in section 266 of the Code of Civil Procedure implies periodical payments of money by Government to the pensioner in the manner prescribed by section 8 of the Act." The learned Judges also quoted the case of the *Secretary of State for India in Council v. Khemchand Jaychand* (2), where the same questions also arose and was decided and in which it was held as follows:—"It follows that in our opinion the word "pension" in section 11 is used in

(1) (1904) I. L. R., 26 All., 617. (2) (1880) I. L. R., 4 Bom. 432.

its ordinary and well-known sense, namely that of a periodical allowance or stipend granted, not in respect of any right, privilege, perquisite or office, but on account of past services, or particular merits, or as compensation to dethroned princes, their families and dependents." With this definition we fully concur and it is very difficult to see how the zamindari which was granted under the *sanad* of the 14th of January 1819, can now be deemed a political pension.

Our attention has been called to the decision of a Bench of this court in an unreported case, case no. 32 of 1878, dated the 27th of November 1878. It appears that at the time when this grant was made to Kadir Baksh a similar grant was made to another Pindari chief named Karim Baksh under another *sanad*, practically worded the same as the one in this case. It was held by the learned Judges who decided that case that the property was not liable to attachment. The judgment runs as follows: "It appears that a necessary allowance in the nature of a political pension was originally granted to the ancestor of the judgment-debtor, a Pindari chief Karim Khan. For their necessary allowance a grant of the *taluka* at a given rent was substituted. The Government has from 1846 up to the present time asserted that the grant was a *jagir* escheating to the Government on failure of the *jagirdar's* heirs and which the *jagirdars* for the time being are incompetent to alienate. We may refer to the letter No. 2367 of 1846 from the Secretary to Government to the Secretary, Sudder Board of Revenue, the letter of the Commissioner of the Southern Division to the Sudder Board, dated 6th June 1853, and No. 205 and to the letter No. 224 from Secretary to Sudder Board to the Commissioner of the Benares Division, 17th June, 1853." It does not appear from this judgment that the terms of the *sanad* were at all considered. It is based on certain correspondence which was before the learned judges but which is not before us and which moreover does not relate to the present estate. The circumstances of that case appear to have been somewhat different to those of the case before us. In view of the recent ruling of this Court mentioned above and of the circumstances of this case set forth, we find it impossible to hold that the attached property can in any way be considered a political pension and

1900

AMNA BIBI

NAJIB-UN-  
NISSA

1909

AMINA BIBI

\*  
NAJM-UN-  
NISSA.

P.C.

1909

March 19

May 11.

therefore not liable to attachment and sale. The appeal therefore fails and is dismissed with costs.

*Appeal dismissed.*

## PRIVY COUNCIL.

MANESHAR BAKHSH SINGH (DEFENDANT) v. SHADI LAI AND  
OTHERS (PLAINTIFFS.)

[On Appeal from the Court of the Judicial Commissioners of Oudh  
Lucknow.]

*Contract Act (IX of 1872), section 16 as amended by Act VIII of 1899—  
Suit on Bond—Debtor and creditor—Disqualified proprietor whose estate  
was under control of Court of Wards—Exercise by creditor of Undue In-  
fluence—Unconscionable Transaction—Compound interest—Onus of proof  
of Undue Influence.*

This was an appeal by the defendant, a “disqualified proprietor” under the provisions of the Oudh Land Revenue Act (XVII of 1876) whose property, on the ground of his indebtedness and consequent inability to manage it, had been placed in charge of the Court of Wards. Whilst it was under their control and without their sanction he executed on 27th January 1896, in favour of the plaintiff, a bond by which he contracted to pay in two years with interest and compound interest with yearly rests, the sum of Rs. 9,950 which was due on a former bond dated 14th September 1889 executed by him for a loan of Rs. 4,000 in favour of the same creditor. No actual money consideration therefore passed at the execution of the bond in suit. The defendant’s estates were restored to him in July 1898, and on 25th January 1904 the plaintiff brought a suit for Rs. 32,877 principal and interest due on the bond. The defence was that the bond was obtained by “undue influence”, and that it was an unconscionable transaction. Both the courts below placed the onus on the defendant to prove undue influence, and found that he had failed to do so and that the transaction was not unconscionable.

*Held* by the Judicial Committee (reversing the decisions of the Courts in India) following the case of *Dhanipal Das v. Maneshar Bakhs Singh* (1), in which the same defendant as in the present case was the borrower that he was (as in that case) placed in such a condition of helplessness that the plaintiff was in a position “to dominate his will” within the meaning of section 16 of the Contract Act (IX of 1872) as amended by Act VIII of 1899, and that he used that position to obtain an unfair advantage over the defendant.

Under the circumstances the bond was set aside, and a decree passed for the original sum of Rs. 4,000 with simple interest at 18 per cent. per annum from 14th September 1889 to the date of payment.

---

*Present* :—Lord ATKINSON, Lord COLLINS, Lord SHAW, and Sir ARTHUR WILSON.