PRIVY COUNCIL.

P. C.
1909
November 17,
December 16.

GANPAT RAO (DEFENDANT) *v.* ANANT RAO (PLAINTIFF).

[On appeal from the High Court at Allahabad.]

Act No. XXIII of 1871 *(Pensions Act), section* 6—*Certificate giving court jurisdiction to try suit—Sanad, construction of—Grant of soil of village not a grant of Land Revenue—Non-production of certificate at time of institution of suit—Grant on payment of quit rent.*

A village, portion of the subject of a suit for partition, was granted to the ancestor of the parties by Maharaja Scindia of Gwalior in 1861, and the grant was confirmed in 1866 by the British Government in a sanad which declared that the village in question "shall be continued 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 a quit rent." In a later portion of the sanad there was 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 on the district generally."

Held (affirming the decision of the High Court) that the sanad was not a grant of Land Revenue, but of the soil of the village itself, and therefore the Pensions Act (XXIII of 1871) did not apply: but, even if it did, the Subordinate Judge had rightly held that an order made by the Revenue Court referring the plaintiff (respondent) to a suit in the Civil Court was equivalent to a certificate under section 6.

Semble.—The non-production of a certificate under section 6 of the Pensions Act at the time of the institution of a suit for which such a certificate is necessary, is not a bar to the maintenance of the suit, but is a defect which may be cured by obtaining the certificate at a later stage of the proceedings.

APPEAL from a judgment and decree (10th July 1905) of the High Court at Allahabad, which varied a decree (30th June 1902) of the Subordinate Judge of Jhansi.

The suit out of which this appeal arose was brought by the present respondent against his nephew, the present appellant, for partition of certain villages, houses and lands.

The facts of the case are sufficiently stated in the report of it before the High Court (SIR JOHN STANLEY, C. J., and BANERJI, J.) which will be found in I. L. R., 28 All., 104.

On this appeal.

DeGruyther, K. C., and *Peary Chand Dutt* for the appellant contended that the Court had no jurisdiction to try the suit because no certificate under the Pensions Act (XXIII of 1871) was

Present:—Lord MACNAGHTEN, Lord COLLINS and Sir ARTHUR WILSON.

produced at the time of its institution; that the defect was not one which could be cured by obtaining such a certificate at a later stage of the proceedings; that the High Court should not have allowed the respondent to withdraw the suit with regard to the village of Mahur, as to which he had been unable to obtain a certificate, with leave to bring a fresh suit, but should have dismissed the suit with respect to that portion of the property; and that in regard to the village of Warur Buzurg the High Court was in error in deciding that on the construction of the sanad under which that village was held it was not a grant of land revenue, but a grant of the right to the soil to the grantee subject to certain conditions, and that the Pensions Act did not apply to it. Reference was made to the Pensions Act, section 3, as to the interpretation of the words "grant of revenue or money," and section 6, Bombay Regulation XXIX of 1827; "Report of the Inam Commission," Bombay 1871, by Col. A. T. Etheredge, C.S.I., page 4, paragraphs 10 and 11; "Hand-book for Revenue officers in the Presidency of Bombay" by A. K. Nairne, B.C.S., 1872, Chapter XXIII, pages 341, 343 and 345; *Ram Chandra Mantri* v. *Venkatrao* (1); *Muhammad Azmat Ali Khan* v. *Lalli Begum* (2); *Adrishappa* v. *Gurushidappa* (3); *Sultan Sani* v. *Ajmodin* (4) and "The land System of British India" by Baden-Powell, Vol. III, "Inam Tenures," page 140.

Ross for the respondent contended, mainly for the reasons there given, that the judgment of the High Court was correct.

DeGruyther, *K. C.*, replied.

16*th December* 1909.—The judgment of their Lordships was delivered by LORD COLLINS:—

The question in this case is as to the respective rights of certain members of the family of one Jagdeo Rao, who was Commander-in-Chief of the Maharaja Scindia, of Gwalior, at the time of the Indian Mutiny, in respect of certain villages and lands, situate part in Bombay and part in the N.-W. Provinces, an interest in which was conferred upon him by the British Government in perpetuity as a reward for his services subject

(1) (1882) I. L. R., 6 Bom., 598 (602, 603, 606).
(2) (1881) I. L. R., 3 Calc., 422 (434); L. R., 9 I. A., 8 (20).
(3) (1880) I. L. R., 4 Bom., 494: L. R., 7 I. A., 162.
(4) (1892) I. L. R., 17 Bom., 431: L. R., 20 I. A., 50.

1909

GANPAT RAO v. ANANT RAO.

to the conditions of loyalty and the payment of an annual sum. The appellant, Sardar Ganpat Rao, is the eldest son of Sultanji Rao, deceased, who was the eldest son of Jagdeo Rao. The respondent, Anand Rao, is the third surviving son of Jagdeo Rao. His second son, Tantya, was adopted into another family before the death of Jagdeo Rao. This litigation began through a claim put forward by Anand Rao for a partition of all the family property. Ultimately, the present suit, which was brought by Anand Rao, as plaintiff, against his nephew, Sardar Ganpat Rao, for partition, came before the Subordinate Judge of Jhansi. Numerous issues were stated and disposed of by the learned Judge, but that which was most discussed in respect of each portion of property embraced in the claim was that which raised the question whether the want of a certificate under section 6 of the Pensions Act XXIII of 1871 was a bar to the action in respect of each of the portions of land in which rights were claimed. The learned Judge made a list of each of the parcels and dealt with them separately. He held that the want of the certificate was a bar as to all but a few of the parcels, viz., (*a*) three Jhansi villages, as to which he held that a certain order made by the Collector of Jhansi of 26th October, 1899, was equivalent to a certificate under section 6, and (*b*) certain portions of land in the village of Mahur, as to which he held that the property in the soil itself, not the mere right to a revenue therefrom, was the subject-matter of the claim, and therefore did not fall within section 6 of the Act; but as to all the rest of the parcels, including the village of Warur Buzurg and the lands therein, he held that section 6 applied and dismissed the claim.

The defendant thereupon appealed to the High Court and the plaintiff filed an objection under section 561 of the Code of Civil Procedure, claiming in effect that he was entitled to have his whole claim decreed. But by the time the appeal came to be heard the field of controversy was considerably narrowed. The Court at the outset of their judgment say :— "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." They then go on:— "As regards the three villages in the Jhansi District, the objection which was raised in the grounds 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 before the institution of this 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 so 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."

They then deal with that part of the 440 acres in respect of which partition was allowed, and agree with the Subordinate Judge's decision, which is one of fact, thereon. Therefore, on this point also, the appeal failed.

They then deal with the respondent's objections. First, that the village of Mahur should not have been excluded from the decree in favour of the plaintiff, as it was not covered by section 6 of the Pensions Act. On this point they allow the plaintiff to abandon his suit as regards that village, with liberty, if so advised, to institute a fresh suit in regard to it. The only exception as to this was that the terms as to costs were too easy upon the plaintiff. But the matter was clearly in the discretion of the Court in view of the circumstances to which they refer.

The next relates to the village of Warur Buzurg, as to which the learned Subordinate Judge had held that though it came within the section 6 of the Pensions Act the want of a certificate was sufficiently met by the order above referred to. The High Court, without expressing any opinion on that point, held that the sanad by which the British Government, on 1st December, 1866, confirmed the land to Jagdeo Rao was not a grant of land revenue but of the soil of the village itself, and consequently that the Pensions Act did not apply.

Their Lordships are not disposed to differ from the two Judges of the High Court on a question of construction, particularly as it seems to them that the learned Subordinate Judge, for the reasons he gave, was fully justified in treating the order as

1909

GANPAT RAO v. ANANT RAO.

dispensing with the certificate. The learned Judges go on to point out that counsel for the respondent had abandoned his point as to the property in Mahur contained in the five deeds of sale. They also treated the houses in Mahur and the Poona District as covered by the reasons given in regard to the remainder of the 440 acres included in the decree and partitioned.

Their Lordships see no reason to differ from these conclusions. The result is that in Their Lordships' opinion the appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

Appeal dismissed.

Solicitors for the appellant:—*T. L. Wilson & Co.*

Solicitors for the respondent:—*Pyke Parrott & Co.*

J. V. W.

REVISIONAL CRIMINAL.

1909
December 3.

Before Mr. Justice Tudball.

EMPEROR v. BALDEO SINGH.*

Act No. XI of 1878 (*Indian Arms Act*), *section* 4—*Definition*—*Ammunition*—*Empty cartridge cases*

Held that Indian empty cartridge cases are ammunition within the meaning of section 4 of the Indian Arms Act, 1878. *King-Emperor* v. *Ibrahim* (1) followed.

IN this case one Baldeo Singh was convicted by a Magistrate and fined Rs. 5, under section 19 (*f*) of the Arms Act, 1878, for being in possession of certain empty cartridge cases which had already been used for firing. Against his conviction and sentence Baldeo Singh applied in revision to the Sessions Judge, who referred the case to the High Court under section 438 of the Code of Criminal Procedure, being of opinion that the empty cartridge cases were not ammunition within the meaning of the Acts.

Mr. *A. E. Ryves* (Government Advocate), for the Crown.

The applicant was not represented.

TUDBALL, J.—One Baldeo Singh has been convicted under section 19 (*f*) of the Arms Act and sentenced to pay a fine of

* Criminal Reference No. 664 of 1909.

(1) (1905) 7 Bom., L. R., 474.