

## APPELLATE CIVIL.

1915  
March, 16.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Piggott*

THE SECRETARY OF STATE FOR INDIA IN COUNCIL

(DEFENDANT) *v.* JAWAHIR LAL (PLAINTIFF)\*.

*Act No. XXIII of 1871 (Pensions Act), section 4, 5, 6—Suit for a declaration affecting the liability of Government—Jurisdiction of Civil Court.*

The plaintiff came into Court claiming in effect a declaration that he was entitled to be considered as the assignee of the government revenue payable in respect of certain property as being the reversioner to one Dalpat Rai who was the last assignee. He produced a certificate purporting to be a certificate under section 6 of the Pensions Act, 1871, but it was a certificate granted in respect of some former litigation between the plaintiff and a rival claimant to the property.

*Held* that the suit as framed could not be entertained without the production of a certificate in conformity with section 6 of Act No. XXIII of 1871; that the certificate produced was not in conformity with section 6 of the said Act, and that in any case it would be impossible to pass a decree in favour of the plaintiff without affecting the liability of Government to pay such grant within the meaning of the section. *The Secretary of State for India v. Moment* (1) distinguished.

THE facts of this case were as follows:—

The plaintiff came to court alleging that one Dalpat Rai was a grantee of the Government revenue of the villages Mohammadpur Bayar and Lakhanpur from Muhammadan Emperors, and that the British Government had continued that grant. On the death of Dalpat Rai his daughter inherited the right to get the Government revenue and on her death her husband Durga Prasad had his name recorded as a grantee of Government revenue. The plaintiff sold a portion of the property to a certain person and sued Durga Prasad to recover the remainder and obtained a decree. His vendee also brought a suit against the daughter of Durga Prasad, but his suit was dismissed on the ground that Jawahir Lal was not a reversioner of Dalpat Rai. Durga Prasad died and the Revenue Court recorded the name of the Government in place of Durga Prasad. The plaintiff therefore brought this suit for declaration that he is entitled to recover the Government revenue. The defence pleaded among others was that the suit was governed by the provisions of sections 4 and 6 of the Pensions

\* First Appeal No. 225 of 1912, from a decree of Gokul Prasad, Subordinate Judge of Shahjahanpur, dated the 4th of April, 1912.

(1) (1912) I. L. R., 40 Calc., 391.

Act and the suit could not be maintained without a certificate from the Collector, and that the Civil Court had no power to make any order affecting the right of the Government. The defence also denied the plaintiff's right to the grant as he was not in the direct line of the grantee. The court below decreed the suit. It held that the suit was governed by the Pensions Act but that the plaintiff had produced a certificate dated the 5th of November, 1902, empowering "a Civil Court to try the plaintiff's claim for resumption of *muafi* grant in M. Lakhanpur." That certificate, although granted prior to the recording of the name of the Government, was held to give the plaintiff a right to sue. The defendant appealed to the High Court.

Mr. A. E. Ryves, for the Secretary of State in Council :—

The present suit could not be maintained in the absence of a certificate as required by section 6, read with section 4 of the Pensions Act. The certificate granted to the plaintiff in 1902 was inapplicable to this suit. That certificate was given to plaintiff to ascertain which one of two rival claimants should get the revenue. Subsequently Government's name was recorded as entitled to the revenue, and the old certificate was insufficient. Secondly, the concluding part of section 6 barred the suit, as the decree must at least indirectly affect the liability of Government which claimed the revenue itself.—Thirdly the grant was to the grantee and his descendants "generation after generation" (*naslan bad naslan*). This was a restricted grant to the lineal descendants of the grantee, and even if the plaintiff proved that he was, according to Hindu Law, the next reversioner, he would not be entitled to succeed as he was admittedly a collateral and not a lineal descendant.

The Hon'ble Dr. Tej Bahadur Sapru (for Mr. B. E. O'Connor, with him Pandit Shyam Krishna Dar), for the respondents :—

The provisions of the Pensions Act restricting the right of the plaintiff to institute the present suit were *ultra vires*. In a recent case *Secretary of State v. Moment*, (1) the Privy Council had held that the Indian Legislature was a subordinate legislature, and could not pass any laws which were opposed to any statute of the British Parliament. He referred to Acts of Parliament dealing with India, (Acts of 1858, and 1861). It was laid down there

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that if a suit could be instituted in respect of a matter against the East India Company before the Government of India was transferred to the Crown, a suit could be instituted in respect of that matter against the Crown through the Secretary of State for India, in spite of any law to the contrary enacted by the Indian Legislature. Before 1871 a suit in respect of this matter could be brought against the East India Company and the provisions of sections 5 and 6 of the Pensions Act were not good law. The Pensions Act did not lay down any particular form for the certificate. Under section 5 a claim had to be preferred to a Collector who could grant a certificate and the Civil Court could thereupon entertain a suit (section 6). A certificate was granted to Jawahir Lal in this case. That enabled him to get a declaration of right. The present suit was brought for that purpose. There is no limit of time during which the certificate could be produced before a court. The law did not require that the certificate should be obtained against the defendant. He further contended that if the certificate produced was not good, the plaintiff should be allowed time to obtain and produce a fresh certificate.

The declaration of the plaintiff's right in this case would not bind the Government to pay Government revenue to the plaintiff. It would only enable him to approach the Government and lay his claim before them. The second paragraph of section 6 did not, therefore, bar the suit. The grant of revenue to a person generation after generation conferred an absolute right upon him.

*Mr. A. E. Ryves* was heard in reply.

RICHARDS, C. J., and PIGGOTT, J.—This appeal arises out of a suit in which the plaintiff claimed a declaration that he has “proprietary right in ten biswas of revenue-free grant in each of the three mahals, Nur Muhammad, Farhat Fatima and Intizamuddin, in Mauza Lakhanpur,” and that the name of the Government may be expunged. The claim does not appear to be accurately expressed. What the plaintiff really claims is that in the events which have happened, he is now entitled to be considered as the assignee of the Government revenue payable in respect of the 10 biswas. His real claim is that the last assignee

of this Government revenue was one Dalpat Rai, who died leaving a daughter Musammat Ram Piari. He claims that now he is entitled, as the heir of Dalpat Rai, under Hindu Law, to have the same rights as Dalpat Rai enjoyed.

The court below granted the plaintiff a decree declaring that he is entitled by right of succession to Dalpat Rai, as the *muafidar* assignee of the Government revenue of the 10 biswas share in the three mahals.

The Secretary of State has appealed, and it is contended first that the court below ought not to have entertained the suit because the plaintiff had not obtained the certificate referred to in sections 5 and 6 of Act XXIII of 1871; secondly, that the decree of the court below is in contravention of the provisions of section 6 of the same Act; and thirdly that the title which Dalpat Rai had to be deemed the assignee of the Government revenue came to an end with his lineal descendants.

The plaintiff submits that the provisions of sections 5 and 6 do not apply; secondly, that if it was necessary to obtain a certificate he did in fact obtain one; thirdly, that the decree of the court below does not in any way contravene the provisions of section 6.

It appears that some time after the year 1902, the plaintiff brought a suit in respect of certain zamindari which belonged to Dalpat Rai. He succeeded then, in establishing his title to the property he sued for. He did not, in that suit, include the Government revenue which he now claims. As a matter of fact he had already assigned it to third parties. A vendee from the plaintiffs also brought a suit in respect of some other zamindari which had at one time belonged to Dalpat Rai.

In that case the court dismissed the suit on the ground that the then plaintiff had failed to prove that the present plaintiff was the reversioner to Dalpat Rai.

Section 4 of Act XXIII of 1871 is as follows:—

“Except as hereinafter provided no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.

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"SECTION 5. Any person having a claim relating to such pension or grant may prefer such claim to the Collector of the district or Deputy Commissioner or other officer, who shall dispose of such claim in accordance with such rules as the Chief Revenue authority may, subject to the general control of the Local Government, from time to time, prescribe in this behalf.

"SECTION 6. A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy Commissioner or other officer authorized in that behalf that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly."

The plaintiff seems to have procured a certificate, dated the 5th of November, 1902, probably in connection with the previous suit to which we have already referred. This certificate will be found at page 7 of the respondent's book. The plaintiff contends that if the provisions of Act XXIII of 1871 applied to the present case, then the production of that certificate is a sufficient compliance with the provisions of section 6. The argument of the plaintiff that the provisions of Act XXIII of 1871 do not apply to his case is based on the decision of their Lordships of the Privy Council in the case of *The Secretary of State for India v. Moment* (1). In that case it was held that certain provisions in the Burma Act, Act IV of 1898, were *ultra vires* in so far as it enacted that no Civil Court should have jurisdiction to determine any claim to any right over land as against the Government. Their Lordships referred to the Act of 1858, and to the Indian Councils Act of 1861. By section 65 of the Act of 1858 it was provided that—

"The Secretary of State in Council shall and may sue and be sued as well in India as in England by the name of the Secretary of State in Council as a body corporate; and all persons and bodies politic shall and may have and take the same suits, remedies and proceedings, legal and equitable, against the Secretary of State in Council of India as they could have done against the said Company."

Their Lordships proceed as follows :—

"Their Lordships are of opinion that the effect of section 65 of the Act of 1858, was to debar the Government of India from passing any Act which could prevent a subject from suing the Secretary of State in Council in a Civil Court in any case in which he could have similarly sued the East India Company."

On referring to Act XXIII of 1871 it will be found that until the passing of that Act there had been a regulation in force, namely, XXIV of 1793, section 17 of which barred the jurisdiction

of Civil Courts in a suit like the present. This section was repealed by Act XXIII of 1871. It would, therefore, seem that the East India Company could not have been sued at the time of the transfer of its powers and liabilities to the Crown. The case cited, therefore, does not apply to the present case. If the provisions of section 6 do apply it was necessary that the plaintiff should produce the certificate specified in this section. It seems to us that the certificate which, in fact was produced, is not a compliance with the section. In the first place it is dated 1902, long before the present claim was contemplated. It was a certificate that the claim of Jawahir for *resumption of a muafi grant* might be tried by a Civil Court. At that time there were rival claimants to the property of Dalpat Rai. The present suit is not a suit to establish the right of one of two rival claimants, but is a suit against the Secretary of State in Council. Furthermore it seems to us that we could not possibly make a decree declaring that the plaintiff was the assignee of the Government revenue without "making an order or a decree which would directly or indirectly affect the liability of Government to pay a grant of Government revenue." The original *Sanad* is not on the record; such evidence as there is shows that it was a grant "naslan bad naslan," that is to say, from "generation to generation." It is not usual to make a grant of Government revenue by way of absolute grant and if the grant was only made to the original grantee and his lineal descendants, then the plaintiff has no claim. Admittedly he is not a lineal descendant. If, on the other hand, it was a grant of the absolute interest, then the owner for the time being could do what he liked with the subject matter of the grant. If the grant was of this nature, then the plaintiff by his own admission has alienated the revenue to third parties, in which case he has no title. The plaintiff asks that in any event we should give him a declaration that he is the nearest reversioner to Dalpat Rai. The court below has found that he is the nearest reversioner. As already pointed out, in one previous suit he satisfied the court that he was the nearest reversioner. On the other hand, a vendee from him failed to prove in another court that the plaintiff was the nearest reversioner of Dalpat Rai. The plaintiff says that a declaration of this kind may help him to

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come to a settlement with the Government. We do not feel called upon to decide the question, but at the same time we do not express any disagreement with the finding of the court below. In our opinion we are precluded from making any declaration that would in any way directly or indirectly affect the liability of Government to pay this revenue to the plaintiff. We, therefore, think upon all these grounds that the plaintiff's suit was misconceived and ought to have been dismissed.

We accordingly allow the appeal, set aside the decree of the court below and dismiss the plaintiff's claim with costs in all courts.

*Appeal allowed.*

## REVISIONAL CIVIL.

1915  
March, 22.

*Before Mr. Justice Channier and Mr. Justice Piggott.*

EMPEROR v. TILAK PANDEY AND OTHERS.\*

*Criminal Procedure Code, section 476—Jurisdiction—Limitation.*

There is nothing in section 476 of the Code of Criminal Procedure which requires a court to take action, if at all, immediately after the conclusion of the case in which the offences are said to have been committed or within any fixed time thereafter. *In the matter of the petition of Nawal Singh* (1) *Girwar Prasad v. King-Emperor* (2) followed; *Aiya Kannu v. Emperor* (3) *Rahimadulla v. Emperor* (4) not followed. *In re Lakshmi Das* (5) *Emperor v. Rustomji Harmusji Tarwalla* (6), referred to.

THE facts of this case were as follows :—

One Musammat Mohra brought a suit to establish her right to certain property as the daughter of Sheo Narain. The applicants and others brought another suit against Musammat Mohra for possession of property on the ground that she was not the daughter of Sheo Narain. The two cases were tried together, and the Subordinate Judge found that Musammat Mohra was the daughter of Sheo Narain. He waited for a month probably to see whether appeals would be filed against his decision, and as soon as the month had expired he took proceedings against the applicants under section 476 of the Code of Criminal Procedure.

The applicants thereupon applied in revision to the High Court to have the Subordinate Judge's order set aside upon

\* Civil Revision No. 175 of 1914.

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| (1) (1912) I. L. R., 34 All., 393. | (4) (1907) I. L. R., 31 Mad., 140. |
| (2) (1906) 6 A. L. J., 392.        | (5) (1907) I. L. R., 32 Bom., 184. |
| (3) (1908) I. L. R., 32 Mad., 49.  | (6) (1902) 4 Bom., L. R., 778.     |