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IN THE
MATTER OF
TASADDUQ
AHMAD
KHAN
SHERWANI.

not being a member of the profession. We feel that we ought to be cautious not to pass such an order as would for all time deprive Mr. Sherwani of his right to practise as an Advocate. But that is a very different thing from saying that he ought at this moment to remain an Advocate of the Court. In our view he ought not to be allowed to continue on the rolls. In view of the conviction which has been passed against him we order that the name of Tasadduq Ahmad Khan Sherwani be struck off the rolls of this Court. If, however, it should happen that hereafter Mr. Sherwani should desire to rejoin the profession and should make an application to the Court, we hope the Bench, who will have to decide that matter, will give it favourable consideration if they are of opinion that the circumstances then put forward by Mr. Sherwani and his demeanour and attitude in the matter make it just and reasonable for them to do so.

APPELLATE CIVIL.

Before Mr. Justice Lindsay and Mr. Justice Gokul Prasad.
HARNAM DAS (PLAINTIFF) v. FAIYAZI BEGAM AND ANOTHER
(DEFENDANTS)*.

Act No. XXIII of 1871 (Pensions Act), sections 11 and 12—"Pension"—
Endowment founded by the Emperor Akbar, *inter alia*, for the maintenance
of the descendants of Shaikh Salim Chishti.

Held that an allowance payable to one of the descendants of Shaikh Salim Chishti out of the income of an endowment founded by the Emperor Akbar and continued by the British Government was a "pension" within the meaning of section 11 of the Pensions Act, 1871, and therefore not assignable. *Secretary of State for India in Council v. Khemchand Jeychand* (1) followed.

THE facts of this case were briefly these :—

Some villages were assigned by the Emperor Akbar for the purposes of (a) the maintenance of the tomb of Salim Chishti, the saint of Fatehpur Sikri, (b) the maintenance of his descendants and (c) the performance of some religious ceremonies in his memory. In 1846 the British Government took these villages

*Second Appeal No. 276 of 1920, from a decree of T. K. Johnston, District Judge of Agra, dated the 25th of February, 1920, reversing a decree of Kauleshar Nath Rai, Subordinate Judge of Agra, dated the 2nd of August, 1918.

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and in lieu thereof undertook the preservation of the building, the payment of an annual sum for the performance of the ceremonies and the payment of pensions to the descendants.

It appears that the respondents mortgaged their share of the pension by means of two hypothecation bonds, on foot of which the appellant brought this suit for the recovery of his money by sale of the property mortgaged.

In their written statement the defendants pleaded, *inter alia*, that the hypothecation in respect of the amount of pension was illegal and contrary to law.

The court of first instance decreed the suit, holding that the property mortgaged was not such a pension as was contemplated by section 11 of the Pensions Act (Act XXIII of 1871) which exempted it from attachment and sale.

In appeal the District Judge reversed this decree and held that the pension was a 'political pension' and as such could not be sold or attached under section 11 of Act XXIII of 1871.

From this decree the plaintiff proffered this second appeal.

Dr. *Surendra Nath Sen* (with him *Munshi Narain Prasad Asthana*), for the appellant :—

The term 'pension' is defined in section 3 of the Pensions Act. Section 11 of the Act gives the class of pensions exempted from seizure, attachment or sequestration. *The Secretary of State for India in Council v. Khemchand Jeychand* (1) is the leading case in which the rules for determining the connotation and denotation of the word 'pension' have been laid down. The pension in suit was given in order to support the descendants of the saint. It was not in consideration of any past service, for Sheikh Salim Chishti did no service to Akbar, he only prayed to God. In *Balkrishna Bhanu v. Govind Rao* (2), the Bombay case has been followed in drawing a distinction between pensions contemplated under section 11 and those granted in respect of any right, privilege, perquisite or office. In the present case the pension is in respect of a privilege. It is the respondents' privilege to be the descendants of the saint. Whatever might have been the consideration for continuing this pension by the British Government, it was certainly not political. It may be that the Government continued

(1) (1880) L. L. R., 4 Bom., 482. (2) Weekly Notes, 1902, p. 161.

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it out of reverence for an old institution or out of a sense of justice towards a right so long enjoyed by the descendants of the saint. The Government altered only the mode of payment and not the nature of the grant. The definition laid down in the Bombay case has also been adopted in *Amna Bibi v. Najm-un-nissa* (1), and *Jiban Krishna Ghosh v. Sripatti Charan Dey* (2). None of the cases define the term 'political consideration'.

The Hon'ble *Syed Raza Ali*, for the respondents :—

The language of the Government letter, dated the 14th of August, 1846, indicates clearly that these pensions were continued for 'political consideration.' The tomb of the saint is described in the document as a 'national architectural monument' which it was the duty of the Government to keep in repair. The document also declared the descendants of the saint as pensioners of the Government entitled to draw their pension from the treasury. In 1846, the British Government was not completely settled and very likely the pensions were continued in order to show religious toleration. This was certainly a political consideration. Section 11 of the Act contemplates four considerations. The 'grant' in suit was allowed for more than one of them. A very limited meaning has been given to the term 'political consideration' by the opposite party. The circumstances of the fifteenth century should not be judged by the standard of the modern times. In the days of Emperor Akbar the saint was regarded to have rendered service to the state. Almost all the Allahabad cases go to determine whether land revenue assigned is a Government pension. But an attempt has been made to lay down the general principle in *Lachmi Narain v. Makund Singh* (3).

LINDSAY and GOKUL PRASAD, JJ. :—The question we have to decide in this second appeal is whether an allowance of Rs. 60 payable every six months to the first defendant respondent, Musammat Fayyazi Begam, is capable of assignment. The allowance has been hypothecated twice to the plaintiff appellant, Harnam Das, under two deeds of the 18th of June, 1906, and the 23rd of April, 1907, respectively. The first of these deeds was

(1) (1909) I. L. R., 81 All., 382. (2) (1904) B. C. W. N., 665.

(3) (1904) I. L. R., 26 All., 617.

executed by the lady alone ; the second by herself, her husband and her son.

The claim was for Rs. 1 418-5-0 and the plaintiff mortgagee asked for a decree enabling him to recover the debt by sale of the hypothecated property. Admittedly the question before us has to be decided with reference to the language of sections 11 and 12 of the Pensions Act (Act XXIII of 1871).

Section 11 lays down that no pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance is 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. And section 12 enacts that assignments of pensions mentioned in section 11 are null and void.

The allowance in dispute is obviously a "pension" in the sense that it represents money payable periodically otherwise than in respect of a right, privilege, perquisite or office. The history of the fund out of which this allowance is paid and to which we shall presently refer makes this quite clear.

But the question remains whether it is a pension of any of the kinds mentioned in section 11 of the Act.

The courts below have differed on this point, the first court holding that the allowance did not fall within the scope of section 11, the lower appellate court being of opinion that it did. In the well-known case of *Secretary of State for India in Council v. Khamchand Jeychand* (1), the Bombay High Court gave a definition of the pensions described in section 11 which has been accepted by other High Courts, including our own. The case is reported in I.L.R., 4 Bom., 432, and at page 436 the learned Judge says as follows :— "In our opinion, the word "pension" in section 11 is used in its ordinary and well-known sense, *viz.*, 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."

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The history of the grant in this case is that it was made by the Emperor Akbar for the support of the descendants of Sheikh (or Shah) Salim Chishti, the famous saint whose mausoleum at Fatehpur-Sikri is one of the most renowned buildings in northern India.

It appears that in the year 1569 Akbar visited the saint who was then living at the place called Sikri. It is said that Akbar, who was childless at the time, besought the prayers of the saint and, in consequence of a suggestion made by the latter, sent his wife to reside at Sikri, where in the following year she gave birth to a son Salim, who was afterwards known as the Emperor Jahangir.

This event led Akbar to found a new city on the spot, Fatehpur-Sikri, where he resided for a considerable period. It was here that Akbar, after the death of Salim Chishti, caused the famous cenotaph to be erected, and in order to provide for its maintenance he made an endowment consisting of the revenue of a number of villages. This fund was to be devoted not only to the preservation of the tomb but also to the maintenance of certain religious services and the provision of an allowance for the saint's descendants, of whom the defendant Faiyazi Begam is admittedly one.

In the year 1846 the British Government of the day passed certain orders regarding the manner in which the endowment fund should be administered; these are contained in a letter from the Secretary to Government, N.-W. P., to the Officiating Secretary to the Sadar Board of Revenue, No. 3346 of 1846, dated the 14th of August, 1846, a copy of which is on the record. From this it would appear that prior to that date the persons charged with the administration of the fund had been exercising a right of management over the villages the revenue of which had been assigned for the endowment.

It was decided that this arrangement should not continue, as settlement had been made by the Government with the proprietors, and it was directed that in future the revenue should be paid into the Government treasury and the fund applied under the supervision of the Collector in accordance with the instructions contained in the letter. In this letter it was declared that

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the tomb of the saint was a national architectural monument which it was the duty of the Government to keep in repair and a portion of the fund was definitely allotted for that purpose.

Instructions were next given for the disbursement of a definite portion of the fund to meet the cost of the religious ceremonies for which the Emperor had provided.

And, lastly, a specified amount was set aside to be applied in the maintenance of the saint's descendants, regarding whom it was declared that they were pensioners of the Government entitled to draw their pensions in perpetuity from the treasury. It was laid down that they were to be registered and treated as such, and we understand that this arrangement continues to the present day and that the pension to which Faiyazi Begam is entitled as one of Salim Chishti's descendants is paid out as directed in the letter to which we have just referred.

On this statement of the facts, it is not to be doubted that the Government in 1846 came to the decision that it was just and politic to continue the grant of the land revenue which Akbar had assigned for the purposes indicated above, and we agree with the learned District Judge that the continuance of the pensions to the descendants of the saint was based upon what may fairly be called political considerations.

This being so, the pension now in dispute is one of those mentioned in section 11, and is clearly within the definition laid down by the Bombay High Court, for the grant was, without doubt, originally made either in recognition of the past services of Sheikh Salim Chishti or in acknowledgment of his particular merits.

It follows, therefore, that the assignments of the pension to the plaintiff appellant upon which he founds his claim in the present suit are null and void as provided by section 12 of the Act. The only other plea taken in the memorandum of appeal viz., that in any case the plaintiff should have been given a simple money decree, is unsustainable. Such a claim is barred by limitation.

We dismiss the appeal with costs to the respondent.

Appeal dismissed.