

**REVISIONAL CIVIL.**

*Before Jai Lal J.*

DURGA DAS *alias* DURGA SAHAI (PLAINTIFF)

Petitioner

*versus*

GURDAS AND OTHERS (DEFENDANTS) Respondents.

**Civil Revision No. 71 of 1932.**

*Indian Pensions Act, XXIII of 1871, section 6: Certificate by Collector—Suit for share in Muafi—whether fresh certificate necessary for subsequent suit—after a previous suit by plaintiff's predecessors-in-title.*

*Held*, that for every suit governed by section 6 of the Pensions Act a fresh certificate from the Collector must be obtained. A certificate granted for the purposes of a previous suit to plaintiff's predecessors-in-title ceased to have any force after the decision of that suit and could not form the basis of a subsequent suit.

*Krishnaji Sukharam v. Anant (1)*, distinguished.

*Petition for revision of the decree of Sheikh Ata Ilahi, Senior Subordinate Judge, Shahpur at Saragodha, dated the 29th October, 1931, affirming that of Chaudhri Bashir Ahmad, Subordinate Judge, 4th Class, Bhera, District Shahpur, dated the 5th June, 1931, dismissing the plaintiff's suit.*

NANAK CHAND and AMAR NATH CHONA, for Petitioner.

VISHNU DUTT, for Respondents.

JAI LAL J.

JAI LAL J.—The suit is for the recovery of the plaintiff's share in a *muafi* granted by the Government to the defendant Gurdas who is, according to the plaintiff, the nominal holder of the *muafi*, the plaintiff being entitled to get a share out of it. It has been dismissed by the Courts below on the ground that it is

incompetent in the absence of a certificate by the Collector under section 6 of the Pensions Act, XXIII of 1871, and the plaintiff has presented this petition for revision.

\* \* \* \* \*

1932  
 DURGA DAS  
 v.  
 GURDAS.  
 JAI LAL J.

The case has been argued on the assumption that the suit is covered by the provisions of the Pensions Act, 1871. It is contended that no certificate is necessary because in the year 1883 the plaintiff or his predecessors-in-interest obtained a certificate from the Collector and instituted a suit against the predecessors-in-interest of the defendants, which was decreed. It is, therefore, urged that that certificate is sufficient to enable the plaintiffs to maintain the present suit. The suit was instituted in 1931. Reliance in support of this contention is placed on *Krishnaji Sakharam v. Anant* (1). That case, however, is clearly distinguishable from the facts of this case. In that case a certificate was granted by the Collector to the plaintiff to institute a suit for the amount due to him in respect of a certain number of years, and it appears that at the time of the institution of the suit there was due to the plaintiff some amount for one subsequent year also and the plaintiff included the claim in respect of that year also in the same suit in which he claimed the amount in respect of the years which had been specifically mentioned in the certificate granted by the Collector. The learned Judges held that whereas the right of the plaintiff to institute a suit had been recognised, he could include the claim in respect of the year not mentioned in the certificate in the suit instituted on the authority of that certificate. In the present case the plaintiff had

(1) (1904) I. L. R. 28 Bom. 241.

1932

DURGA DAS

v.

GURDAS.

JAI LAL J.

instituted a suit on the basis of the certificate granted to him; the certificate therefore ceased to have any force after the decision of the suit. Moreover, as I have already stated, Gurdas the defendant in the present case is not the same person against whom the previous permission was granted though he is the son of that person. There has been a novation of a grant in his favour and different consideration may weigh with the Collector in granting or refusing permission to institute a suit against him. The phraseology of section 6 of the Pensions Act makes it clear that for every case to be tried by the Civil Court a certificate from the Collector must be obtained.

The view of the Courts below, therefore, is correct on the merits and I dismiss this petition with costs.

N. F. E.

*Revision dismissed.*

---