

APPELLATE CIVIL.

Before Sir L. H. Jenkins, K.C.I.E., Chief Justice, and Mr. Justice Batty.

APPAJI BIN RATNAPPA SHENDYA (ORIGINAL PLAINTIFF), APPELLANT,
v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND ANOTHER
(ORIGINAL DEFENDANTS), RESPONDENTS.*

1904.
March 15.

Bombay Revenue Jurisdiction Act (X of 1876), section 4 (a) †—Service land—Sanad grant—Suit for the recovery of possession—Secretary of State for India in Council, defendant—Jurisdiction.

The plaintiff, a vendee of certain lands assigned as remuneration for village service, having brought a suit for the recovery of the lands against the Secretary of State for India in Council and another defendant who was put in possession of the lands by Government officers,

Held, that under section 4 (a) of the Bombay Revenue Jurisdiction Act (X of 1876), a Civil Court had no jurisdiction to entertain the suit against the Secretary of State for India in Council (the grant being of land and not of revenue).

The plaintiff having contended that his claim was for the possession of lands and not for the revenue arising therefrom which alone was granted,

Held, that the plaintiff's vendor was put into the occupation of the land free from assessment as the reward of his service and that his remuneration did not and could not consist in an exemption from assessment in respect of the lands without reference to his occupation.

APPEAL against the decision of J. C. Gloster, District Judge of Belgaum, in Original Suit No. 117 of 1903.

* Appeal No. 117 of 1903.

† Section 4 (a) of the Bombay Revenue Jurisdiction Act (X of 1876).

4. Subject to the exceptions hereinafter appearing, no Civil Court shall exercise jurisdiction as to any of the following matters :—

(a) Claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act No. III of 1874, or any other law for the time being in force, or of any other village-officer or servant, or

claims to perform the duties of any such officer or servant, or in respect of any injury caused by exclusion from such office or service, or

suits to set aside or avoid any order under the same Act or any other law relating to the same subject for the time being in force passed by Government or any officer duly authorized in that behalf, or

claims against Government relating to lands held under treaty, or to lands granted or held as saranjám, or on other political tenure, or to lands declared by Government or any officer duly authorized in that behalf to be held for service,

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The plaintiff sued the Secretary of State for India in Council as defendant 1 and another person named Chandkhan va'ad Dada Sanadi as defendant 2, to recover possession of Survey Nos. 43 and 47 in the village of Karajgi in the Chikodi Taluka of the Belgaum District, alleging that he was the vendee of one Shivapa Joti to whom the lands belonged; that he was dispossessed by the Collector of Belgaum in August, 1901, and that the lands were given in the possession of defendant 2 from whom the Sanadi service formerly rendered by the plaintiff was thenceforth accepted by Government.

Defendant 1 pleaded, *inter alia*, that the Court had no jurisdiction to entertain the suit and that Shivapa had no right to transfer the lands inasmuch as they were service lands assigned for the remuneration of the Police Sanadi and therefore inalienable without the sanction of Government.

Defendant 2 relied on his title as derived from Government.

Shivapa's title to the lands was an extract (Exhibit 23) relating to the Inám Register which contained twenty-two columns. The entry in the 2nd column, which gave the class and the period for which the inám was to continue, was as follows.—

Police Non-vatandár. As long as the service is required by Government.

In the 4th column the name of the owner was given, namely, Sadu bin Balappa Raghoji. The 20th column showed that the assessment on the lands was twenty-one rupees and the last column, that is, the column of remarks about the transfer or exchange contained the following:—

An enquiry was made about the said person having become old and unfit to render service and a report, No. 50, dated 18th May, 1898, was made to Dakha H. zur (Collector); below that the District Magistrate of Belgaum passed an order, No. 169, dated 6th June, 1898, which having been received and also an order of the Janabandi (Revenue) Register, No. 151, having been received to enter the name of Shivapa bin Josi, the name of Shivapa Joti is entered. Fasli year 1308 (1898-9.).

The Judge dismissed the suit for want of jurisdiction to entertain it under section 4 (c) of the Bombay Revenue Jurisdiction Act (X of 1877) inasmuch as the lands in suit appertained to the office of Police Sanadi.

The plaintiff having appealed, *

S. R. Bahule appeared for the appellant (plaintiff):—The Judge was wrong in holding that Civil Court had no jurisdiction to entertain a suit like the present under section 4 of the Bombay Revenue Jurisdiction Act. It was for the defendant to show that the claim fell under that section. The Secretary of State ought to have shown that the claim related to property appertaining to the office of a village servant. It was therefore necessary to find what was the nature of the property that was assigned for remuneration. Government must show that it was the land that was so assigned and not merely the revenue or the assessment thereon. Ordinarily when there is a grant by Government, it is the grant of the royal share and not of the land. What we claim in this suit is the lands and not exemption from the payment of assessment. We contend that what was assigned by Government as remuneration for service was the assessment on the lands and not the lands. We admit that a suit for the recovery of assessment assigned for service cannot lie. But a suit for the possession of lands stands on a different footing. This distinction, it seems, was not present to the mind of the Judge.

Further, the order dismissing the suit was clearly wrong. If our suit could not lie against the Secretary of State, the Judge should have returned the plaint for presentation to the proper Court to proceed against defendant 2.

Rao Bahádur V. J. Kirtkar (Government Pleader) appeared for respondent 1 (defendant 1):—We contend that all the *shet sanali* lands are grants of lands and not merely of revenue thereon. But whatever may be the general nature of such grants, the grant in suit is a grant of land, see Exhibit 29. The column of remarks in that Exhibit shows that the plaintiff's predecessor-in-title was put in possession of land after the removal of the previous grantee on account of his old age. The grant was, therefore, clearly a grant of land.

K. H. Kelkar appeared for respondent 2 (defendant 2):—It was not necessary for the Judge to return the plaint for presentation to proper Court. If Government is competent to take the land from one servant and give it to another, no suit can lie against us.

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Bakhle, in reply :—Exhibit 29, no doubt, shows that the land was granted to the plaintiff's predecessor during the life-time of the previous servant, but that previous servant was the grandfather of the new nominee. The Government, therefore, did not remove one servant and give the land to a stranger. It was given to the person next entitled to the property as heir.

With respect to the contention of defendant 2 we submit that we are entitled to proceed with our claim against him. It would be too early at this stage to say what would be the result of the suit against him.

JENKINS, C. J. :—The plaintiff sues to recover possession of Survey Nos. 43 and 77 in the village of Karajgi in the Chikodi Taluka of the Belgaum District, and has made as defendants to his suit the Secretary of State for India in Council and one Chandkhan who has been put into possession by the Government officers.

The Secretary of State for India has taken the objection that the suit will not lie against him, because of section 4 (a) of the Bombay Revenue Jurisdiction Act, X of 1876, which provides that subject to exceptions with which we are not now concerned "no Civil Court shall exercise jurisdiction as to claims against Government relating to any property appertaining to the office of any hereditary officer appointed or recognized under Bombay Act III of 1874 or any other law for the time being in force, or of any other village officer or servant....."

It is conceded by the plaintiff that he comes within the description of village officer or servant, but he maintains that the claim against Government in this suit does not relate to property appertaining to his office, and he seeks to make this out by arguing that his claim is for the possession of land, while the property that appertains to his office is not the land but the revenue arising from the land.

The District Judge has not discussed the case in view of this distinction, and it is probable that this is due to the fact that the point was not made before him as it has been before us by Mr. Bakhle, who has argued the case with great care and ability. At one time we were much disposed to accept the view put forward by Mr. Bakhle recognizing that these sanad-grants are

for the most part grants of the royal share of revenue and not of the land.

But the matter has been placed before us very clearly by the Government Pleader with the result that we think the just inference to be drawn from Exhibit 29, which was properly admitted as evidence in this case, is that Shivappa from whom the present plaintiff claims as vendee was put into the occupation of the land free from assessment as the reward for his service, and that his remuneration did not and could not consist in an exemption from assessment in respect of the land without reference to his occupation. Therefore we think that so far as the Government is concerned the suit cannot be entertained by reason of the provision in section 4 (a) of the Bombay Revenue Jurisdiction Act, 1876.

This brings us to the second objection urged by Mr. Bakhle that in case we arrive at this conclusion the District Judge was in error in dismissing the suit.

We think that this objection is well founded, and that whatever may be the fate of the suit when it comes before the proper Court on proper materials, it is the plaintiff's right now that the suit is dismissed as against the Government, to have the plaint returned to him for presentation in the proper Court, and the decree of the District Judge must be varied in that respect.

The Secretary of State for India in Council will be entitled to his costs here and in the Court below, but the costs of the second defendant here and in the Court below must abide the result of the suit.

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