

Lower Court and remand the case to be dealt with by the Lower Appellate Court with reference to the remarks above. Costs to abide the result.

*Order reversed. Case remanded.*

1903.

PURU-  
SHOTTAM  
BHASKAR  
v.  
BALAKISHNA  
PANDURANG.

## APPELLATE CIVIL.

*Before Mr. Justice Chandavarkar and Mr. Justice Jacob.*

KRISHNAJI SAKHARAM PINGLE (ORIGINAL DEFENDANT No. 1),  
APPELLANT, v. ANANT AND KESHAVRAO AND OTHERS (ORIGINAL  
PLAINTIFFS AND DEFENDANT No. 2), RESPONDENTS.\*

1903.

September 30.

*Pensions Act (XXIII of 1871), section 6—Collector—Certificate—Civil  
Court—Suit to recover share of allowance for particular years—Certificate  
referring only to some years.*

A certificate granted by the Collector under the Pensions Act (XXIII of 1871) authorized the plaintiff to recover his share in the allowance for the years 1889-90 to 1896-97. On the strength of this certificate, the plaintiff brought a suit to recover his share of the allowance for the years covered by the certificate and also for the year 1897-98. The Lower Appellate Court disallowed plaintiff's claim so far as it related to the year 1897-98, on the ground that that year was not included in the certificate:—

*Held*, that the certificate given by the Collector might refer only to the plaintiff's share in the allowance for particular years, but if the Collector permitted the plaintiff to establish his right to a share in a Civil Court, the plaintiff was not bound under the Pensions Act to get a certificate for each year's allowance before suing for it. The general right being allowed and established, the right to each year's share follows as consequent upon it.

SECOND appeal from the decision of Gangadhur V. Limaye, First Class Subordinate Judge, A. P., at Poona, varying the decree passed by R. G. Bakhle, Subordinate Judge of Haveli.

The plaintiffs brought this suit to recover by partition the separate possession of certain property, and to recover their share in the allowance (Deshpande Hak) for the years 1889-90 to 1897-98.

\* Second Appeal No. 53 of 1903.

1903.

KRISHNAJI  
SAKHARAM  
v.  
ANANT.

Previously to the bringing of this suit, the plaintiffs obtained from the Collector a certificate under the Pensions Act (XXIII of 1871). The certificate ran as under :—

Whereas Waman Gopal, Anant Gopal, and Keshva Gopal Pingle Deshpande, all of Donge, Táluka Haveli, Poona District, are desirous of preferring a claim against Krishnaji Sakharam Pingle, residing at Vinchur, Táluka Niphád, Násik District, to recover their share of half of the amount of Rs. 18 annually paid from the Haveli Sub-Treasury in the Poona District to Krishnaji Sakharam for Deshpánde huk in the village of Kondhre Dhavdi, Táluka Haveli, for the years 1889-90 to 1896-97 :

This is to certify that I, Arthur Rivers Bonus, Collector of Poona, do hereby allow, under section 6 of the Pensions Act, 1871, that the said claim may be tried by any Civil Court otherwise competent to try the same.

The Subordinate Judge awarded the plaintiff's claim.

On appeal the First Class Subordinate Judge modified this decree by disallowing the plaintiff's claim to a share in the allowance for the year 1897-98, on the ground that it was not covered by the certificate granted by the Collector under the provisions of section 6 of the Pensions Act (XXIII of 1871).

Defendant 1 appealed to the High Court; and the plaintiff filed a cross-objection that (1) the Lower Appellate Court erred in law in reducing the amount for 1897-98 in appeal.

*N. M. Samarth*, for the appellant.

*S. R. Bakhle*, for the respondents.

CHANDAVARKAR, J. :—We think that, as far as the appeal is concerned, the decree of the Lower Court must be confirmed. Two points were raised by Mr. Samarth, pleader for the appellant; one of them was that we should not accept as conclusive the finding of the Lower Appellate Court on issues Nos. 3 and 4. The Subordinate Judge, with Appellate Powers, has examined the evidence on which it was quite competent for him to give to the plaintiff the relief he sought. He has accepted the plaintiff's version and held that the property was reserved as joint at the previous partition.

The second point raised by Mr. Samarth relates to issue No. 3. It appears that defendant No. 2 in his deposition has stated that there is certain property in the possession of the plaintiff which is still joint. As to this it is to be remarked that the Subordinate

Judge held that the property need not be brought into hotchpot and that the suit could proceed. The Subordinate Judge, with Appellate Powers, says:—"The appellant has not adduced any evidence to show that the respondents are in possession of any property which is still the joint property of the parties." It is true that there was defendant No. 2's evidence, but the Subordinate Judge, A. P., must be taken to have meant that there was no evidence beyond the interested statement of defendant No. 2. We cannot, therefore, interfere with the finding of the Subordinate Judge, A. P., on issue No. 3.

Then there are the cross-objections filed by the respondents. These cross-objections deal with the finding of the Lower Appellate Court on issue No. 6. That Court has declined to give to the plaintiff a share in the allowance for the year 1897-98 because the Collector's certificate under the Pensions Act refers only to the years 1889-90 to 1896-97. But, in our opinion, if the Collector once gives a certificate which entitles a party to claim a certain right in a Civil Court, then the effect of that certificate is to give to the party the right to claim in a Civil Court whatever he is entitled to in virtue of that right. The certificate given by the Collector may refer only to the plaintiff's share in the allowance for particular years, but if the Collector permitted the plaintiff to establish his right to a share in a Civil Court, the plaintiff was not bound under the Pensions Act to get a certificate for each year's allowance before suing for it. The general right being allowed and established, the right to each year's share follows as consequent upon it.

We think, therefore, we must modify the decree of the Lower Appellate Court by awarding to the respondents Rs. 98-11-6 and costs in proportion throughout. The appellant must pay to the respondents the costs of this appeal as well as of the cross-objections.

*Decree varied.*

1903.

KRISHNAJI  
SAKHARAM  
v.  
ANANT.