

In this case, apart from the general considerations to which we have alluded, there is particular evidence strongly in favour of the respondent. The oral evidence, which comes largely from parties interested on the other side, favours the defendant's case rather than the plaintiff's. And the record contains two distinct admissions, and one implied admission, made by the present plaintiff and wholly irreconcilable with the case which he now puts forward in this suit.

Upon the whole, therefore, we agree with the learned District Judge in thinking that the plaintiff has failed to make out the case for which he was contending and that this appeal should be dismissed with costs.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

DWARKANATH AMRIT DESHPANDE AND OTHERS (ORIGINAL DEFENDANTS), APPELLANTS, v. MAHADEO BALKRISHNA DESHPANDE AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1912.
August 12.

Pensions Act (XXIII of 1871), section 4—Collector—Certificate of Collector—Civil Court—Jurisdiction—Suit for declaration for share in cash allowance—Deshpande Kulkarni Vatan.

The plaintiffs sued for a declaration that they were owners of a share in the Deshpande Kulkarni Vatan which consisted of a cash allowance paid annually from the Government Treasury. They did not produce a certificate from the Collector as required by section 4 of the Pensions Act (XXIII of 1871).

Held, that the suit in the absence of a certificate from the Collector could not be entertained in a Civil Court owing to the provisions of section 4 of the Pensions Act, 1871, inasmuch as the suit was clearly one relating to a pension or grant of money conferred by the British Government.

Babaji Hari v. Rajaram Ballal(1), followed.

Govind Sitaram v. Bapuji Mahadeo(2), distinguished.

*Second Appeal No. 714 of 1911.

(1) (1875) 1 Bom. 75.

(2) (1893) 18 Bom. 516.

1912.

DWARKANATH
AMRIT
v.
MAHADEO
BALKRISHNA.

SECOND appeal from the decision of S. S. Wagle, First Class Subordinate Judge with appellate powers at Thana, varying the decree passed by S. G. Kharkar, Subordinate Judge at Pen.

Suit for declaration.

The plaintiffs sued to obtain a declaration that they were owners of an eight annas share in the Deshpande Kulkarni Vatan relating to 10 villages in Nagothna Petha which consisted of a cash allowance of Rs. 122 paid annually from the Government Treasury at Pen. They further sued for a declaration of their right to receive the amount of their share from defendant No. 1, the registered Vatan-holder, until the plaintiffs' names were separately registered. The plaintiffs alleged in their plaint they applied to the Collector for a certificate under section 4 of the Pensions Act (XXIII of 1871) ; but that officer refused to grant it ; and his order was confirmed on appeal by the Commissioner and by the Government. The plaint went on to say : "In the absence of the certificate, plaintiffs recognize that they cannot sue for the recovery of the money and therefore seek only a declaration of their right to the Vatan."

The Subordinate Judge found that the plaintiffs had one-sixth share in the Vatan in question and granted a declaration accordingly. On appeal, however, this decree was varied by the First Class Subordinate Judge with appellate powers, who held that their share in the Vatan was one-third.

The defendants appealed to the High Court contending *inter alia* that the Civil Court had no jurisdiction to entertain the suit in absence of a certificate from the Collector under section 4 of the Pensions Act (XXIII of 1871).

D. A. Khare, for the appellants.

N. M. Samarth, for the respondents.

BACHELOR, J. :—The point raised for the appellants-defendants in this appeal is that under sections 4 and 6 of the Pensions Act XXIII of 1871 this suit does not lie without a certificate from the Collector. Admittedly such a certificate was refused on the plaintiffs' application. The only question, therefore, now before us is whether section 4 of the Pensions

Act debars the Civil Court from entertaining the suit without such a certificate. It appears to us that if regard is had to nothing but the words of section 4 of the Statute and to the pleadings and the nature of this suit, there can be no reasonable doubt but that Civil Court is ousted of its jurisdiction. Section 4 lays down that "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." And the present suit is explicitly and in terms a suit to obtain a declaration that the plaintiffs are the owners of an eight annas share in the Deshpande Kulkarni Vatan which now consists of a cash allowance of Rs. 122 paid annually from the treasury at Pen. The plaintiffs seek also for a declaration of their right to receive the amount of their share from the first defendant, the registered Vatanholder. On its face, therefore, the suit is clearly a suit relating to a pension or grant of money conferred by the British Government. It is pointed out by Mr. Samarth, for the respondents-plaintiffs, that they withdrew their prayer to recover the actual cash received, and restricted their suit to a claim for a declaration that they were entitled to an eight annas share in this cash allowance in respect of the Deshpande Kulkarni Vatan. Even upon this footing, however, it seems to us that the suit is none the less barred, for it seems to us not possible reasonably to maintain that the suit falls outside the class of suits defined by section 4 of the Pensions Act.

Reliance was placed for the respondents on this Court's decision in *Govind Sitaram v. Bapuji Mahadeo*⁽¹⁾, a decision which does, no doubt, at first sight afford some countenance to the respondents' case. But upon the best consideration which we can give to Sargent C. J.'s judgment in that case, we must read it as based upon the view that the suit then under notice was capable of being regarded, and was by the Court regarded,

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as being substantially a mere suit for a declaration of the then plaintiffs' status as Vatandars. No such view can be taken of the present plaint with its specific claim for a share in the cash allowances of the Vatan, and it follows that there is nothing in *Sitaram's case* which is inconsistent with the application of section 4 of the Pensions Act to the present suit.

There is, however, a decision of this Court which is a direct authority on the facts now before us and which supports the opinion we have formed: we refer to *Babaji Hari v. Rajaram Ballal*⁽¹⁾, where Mr. Justice West after allowing all possible weight to what he describes as the anterior improbability of the Legislature's having intended to shut out such suits from the jurisdiction of the Courts, comes to the conclusion that the plain grammatical meaning of section 4 must prevail, and that such a suit as this must be ousted. In that case the plaintiff had sued to have his right declared to a ninth share in certain Vatan of some villages in Satara, and Mr. Justice West, for the reasons which are set out in the judgment, held that section 4 imposed a complete bar to the Court's jurisdiction in so far as the suit had reference to the cash allowance payable by the Government. The learned Judge said: "As it stands, the section extends to all suits relating to any grant of money made by Government; and the plaintiff, who seeks a share in such a grant from his alleged co-sharers, must, we think, be said to bring a suit relating to the Grant." It is, in our opinion, impossible to draw any distinction of substance between the plaint which was then under consideration and that which is before us now.

We are of opinion, on these grounds, that the suit falls within the bar of section 4 of the Pensions Act, and must be dismissed with costs. We, therefore, allow this appeal, reverse the decree and dismiss the suit with costs throughout.

Decree reversed.

R. R.

(1) (1875) 1 Bom. 75.