Appellate Jurisdiction (a)

Regular Appeal No. 6 *of* 1868.

W. B. BASAPPA.....*Appellant.*

Y. YENKATAPPA.....*Respondent.*

Regulation VI of 1831 prohibits the Civil Courts from taking cognisance of a suit brought to recover the value of three years' produce of certain land (held by the plaintiff on Service Inam tenure), on the ground that the defendant, who held a lease from the plaintiff, wrongfully refused to give up possession on the expiration of his lease and continued to hold the land and to deprive the plaintiff of the possession and enjoyment thereof.

Bassapah v. *Kooroovatappa* Mad. Sadr Dec. 1858, p. 268, distinguished.

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THIS was a Regular Appeal from the decree of H. E. Sullivan, the Acting Civil Judge of Bellary, in Original Suit No. 15 of 1867.

Parthasaradhy Aiyangar, for the appellant, the plaintiff.

The facts sufficiently appear in the following

JUDGMENT :—This is a suit to recover the value of three years' produce of certain land held by the plaintiff on Service Inam tenure, and the ground of the suit is that the defendant, who held a lease from the plaintiff, wrongfully refused to give up possession on the expiration of his lease in 1864 ; and that he continues to hold the land and to deprive the plaintiff of the possession and enjoyment thereof.

The defendant did not put in any written statement, but filed the document under which he claimed, and which purported to be a lease from the plaintiff to him for 8 years from 1863.

The Civil Judge held that, by Regulation VI of 1831, he was prohibited from taking cognisance of the suit, and we think that he was right in so holding.

The 3rd Section of that Regulation enacts that claims to the possession of or succession to hereditary village or other offices in the Revenue and Police Departments or to

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the enjoyment of any of the emoluments annexed thereto shall not be cognisable by the ordinary Courts of Judicature, and Section 4 provides that all such claims are to be brought before the Collector for adjudication, an appeal being given from his decision to the Board of Revenue, and the order of the Board being subject to revision by the Governor in Council. It was argued before us that these provisions are not applicable to the present case, because the plaintiff's title as Inamdar is not disputed, and some decisions of the late Sadr Court were cited. The case principally relied upon was *Bassapah* v. *Kooroovatappa* at p. 268 of the decisions of 1858; in which the plaintiff complained that the 1st, 2nd and 3rd defendants in collusion with the 4th had carried off the produce of certain Inam land which he held under mortgage from the 4th defendant. The defence was that the said crop had been raised by 4th defendant and sold by him to the other defendants, and the Court of Sadr Adalat were of opinion that, taking the plaintiff's representations to be true, Regulation VI of 1831 presented no bar to the adjudication of his claim, and they said in their judgment "the question in issue is not the title to the Inam, but to certain produce raised by permission of the Inamdar, the point to be decided is, whether the plaintiff raised the said produce or not," and the case was remanded to the District Munsif that he might decide that matter.

But that is certainly a very different case from the present. There the Inamdar was claiming nothing and complaining of nothing. The dispute was entirely between third parties both of whom were claiming under the Inamdar; and the question was whether the defendants 1 to 3 had carried off a crop raised by the plaintiff. Even the title of the plaintiff as mortgagee was not impeached in that suit though the Regulation 6 of 1831 clearly renders null and void any mortgage of Service Inams. In the present case, the Inamdar is suing for 3 years' produce of the Inam land, which the defendant is withholding from him, and though the defendant does not deny that the plaintiff is the Inamdar, he does deny the plaintiff's present right to hold and enjoy the lands. We do not see how it can be

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said that this suit is not a claim to the enjoyment of the emoluments annexed to the plaintiff's office. The main object of the Regulation 6 of 1831 appears to have been to prevent the appropriation of the emoluments derived from lands and other sources and annexed to various hereditary village and other offices in the Revenue and Police Departments, to purposes other than those for which they were originally designed ; and, in order to secure the due performance of the services, to prevent any separation of the emoluments from the offices. With a view to accomplish that object the adjudication of all claims to such emoluments is confined to the Revenue Authorities subject to the ultimate control of the Government, and if it should be held that that provision applies only to cases where the title of the person claiming as Inamdar is disputed it appears to us that the main purpose of the enactment would in very many cases be defeated.

Nor could it, we think, have been the intention of the late Sadr Court to lay down any such general proposition, for under the somewhat similar enactment contained in Regulation IV of 1831 with respect to a different class of Inams, it was laid down as a Rule of Practice that in the case of plaints relating to Inams or grants by the ruling power, the Judge is to ascertain by reference to the enactments of the Legislature and the Rulings of the Sadr Court, whether the plaint is admissible or not before he brings it on his register of suits (R. of Pr. 18 Nov. 1861, p. 27), and therefore in most cases before he can tell whether the title of the person claiming as Inamdar will be disputed.

It is not inconsistent with this to hold as the late Sadr Court appears to have done under Reg. IV of 1831 that suits for rent due on Inam land where the right to Inam is not in dispute are admissible by the Courts without the previous permission of Govt. (Sadr Pro. 26th June 1856), for in such cases the suit is brought upon a contract of tenancy ; but in the case cited before us from the Sadr Court Decisions of 1856, p. 128, the Sadr Court took a distinction between the rent of Inam land and an allowance payable from the collection of the Inam village. They

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observed that it could not be determined from the record whether the annual sum claimed by the plaintiff was the rent of the Inam land or an allowance payable from the collection of the Inam village; "if the former (they said) the suit is not opposed to the provisions of Reg. 4 of 1831 and Act 31 of 1836 as it becomes one for debt, not for proprietary right; but if the latter, the enactments quoted would be a bar to its institution." If this distinction be sound, it would seem to exclude the present case from the cognisance of the Courts, but the distinction seems to be between a mere money rent and an allowance out of the village collections, and such an allowance might be as truly a rent as the other; and out of the failure to pay a debt might arise in the one case as well as in the other. The ground on which the decisions as to suits for rent may be more satisfactorily put appears to us to be that already mentioned, viz., that the suit is brought simply for a breach of contract by the defendant; and the same ground will apply to the cases in which it has been held that an Inamdar, whose Inam is of a kind which may lawfully be mortgaged, may maintain a suit to redeem his Inam land from mortgage (Sadr Pro. 22nd October 1859). Further, the case referred to by the Civil Judge (Sadr Pro. 20th October 1858) affords additional reason to believe that the late Sadr Court had not adopted any such general proposition as that contended for in this case, viz., that the prohibition against suing in the ordinary Courts was confined to cases in which the title of the claimant as Inamdar was in dispute, for in those proceedings the Court say "that the prohibition to the Courts to interfere with claims to Inams, imposed by Reg. 4 of 1831, extends to the produce of the Inams, it being obvious that the value and uses of an Inam are bound up altogether in its produce, and that to leave the holder the bare title and take away from him the profits accruing therefrom would be to nullify the provisions of the Regulation and to deprive the Inamdar of the protection and privileges designed thereby to be secured to him. There may, however," the Court observe, "be such a divestment by the Inamdar himself of his right over the produce of his Inam as

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to place it within the range of ordinary personal effects and therefore within the power of the Courts to deal with; for example, should he voluntarily tender produce in discharge of a decree, or should he have sold or pledged it; but such divestment must be special and of actual standing crops or reaped produce and cannot embrace prospective or untangible produce." Now if these observations are correct with respect to the class of Inams included in Regulation 4, which does not prohibit alienations by the Inamdar, they are, a *fortiori* applicable to the class of Inams which fall under Regulation 6 1831, and in the present case, as the Civil Judge has observed, the plaint negatives any such divestment of the produce as is above referred to. In that case the Sadr Court held that the Civil Courts had no authority to direct the appropriation of the produce of the Inam lands towards the satisfaction of a decree against the Inamdar, and in the present case, we hold on the same principle that the Civil Courts have no authority to enforce the claim of the Inamdar to receive from the defendant 3 years' produce of the Inam land, the same being part of the emoluments annexed to an office, all claims to the enjoyment of which are declared to be adjudicable by the Collector of the District. We therefore confirm the decree of the Civil Judge, but, as the respondent did not appear, there will be no costs.

Appeal dismissed.