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Before Sir Michael Roberts Westropp, Kt., Chief Justice, and Mr. Justice Melvill.

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MANSANG MADHAVSANGJI *v.* THE GOVERNMENT OF BOMBAY.*

[10th October, 1877.]

Act XXIII of 1871, s. 4, prohibits the Civil Courts from entertaining a suit against Government upon an alleged agreement by it to pay moneys from its treasury in lieu of *tora garas haks*.

[F., 4 B. 432 (436).]

JUDGMENT.

10th October 1877. WESTROPP, C.J.— The District Judge of Surat having held that this suit in respect of *tora-garas*, is excluded from his jurisdiction by the Indian Pensions Act (XXIII of 1871), the plaintiffs have appealed to this Court.

They are the sons of the second defendant, a garasia, who supports their claim.

The plaintiffs, describing themselves as garasias, say in their plaint that "from the time of the late Government, the *hak* (right) of receiving *garas* from the pargana of Chikhli, in the Surat District, has continued in our (their) family hereditarily." They then set forth a pedigree of their family, beginning with Harisangji, who left a son Ramsangji who had five sons, of whom the eldest was Ratansangji, who again left three sons, *viz.*, Kesrisangji, Anupsangji (father of the second defendant Madhavsangji, and grandfather of the plaintiffs), and Ramsangji. The plaint then proceeded thus: "It was in the time of my ancestor, Ramsangji Harisangji, that the English Government began to collect the *garas* from the raiyats and to pay it over to (him as) the garasia. Since then there used to be received (by my said ancestor) Rs. 2,803-1-1 in respect of *garas* from the *thana* of the Chikhli Pergana. Accordingly, he received (the same) until his death. And (but) before that (he) used to collect (levy) that *hak* from the villages (themselves). When the aforesaid Ramsangji died, three of his sons mentioned in the genealogy, namely, Ratansangji, Dhirsangji and Niyarsangji, were alive. They received the said *garas hak* as (their) inheritance up to their deaths: (that is to say) for some time jointly, and, after their separation, (each of them) took his respective share separately. After that, the three sons of Ratansangji Ramsangi, namely Kesrisangji, Anupsangji and Ramsangji, mentioned in the genealogy (above), took by right of inheritance the aforesaid *garas hak* of their father's share jointly as well as separately, (each) his own respective share up to their deaths. And the above-mentioned Dhirsangji having died sonless after separation, the aforesaid *garas hak* of his share was taken by his widow Jasuba, mentioned in the genealogy (above); and the above-mentioned Niyarsangji [444] also having died sonless after separation, the *hak* of his share was taken by his widow Bai Hiraji, mentioned in the genealogy above-mentioned, by right of inheritance so long as they were alive. Likewise, the above-mentioned Kesrisangji and Ramsangji having died sonless after separation, the *garas* (*haks*) of their (respective) shares were taken by

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their (respective) widows Bai Shamaji and Devba by right of inheritance so long as they were alive. Of the above-mentioned four widows, Shamaji died in the Samvat year 1884 (A.D. 1827-28), Hiraji in the Samvat year 1900 (A.D. 1843-44), Jasuba in the Samvat year 1906 (A.D. 1849-50), and Devba in the Samvat year 1910 (A.D. 1853-54). When the aforementioned Shamaji died, our grandfather Anupsangji became her heir; and when our said grandfather and the remaining three widows died, the whole of the *garas hak* of Rs. 2,803-1-1 came to our father, Madhavsangji (defendant No. 2), by right of inheritance. Thus the above-mentioned *garas hak* coming down from generation to generation according to the Hindu law and the custom of the country and of our caste, came to our father by inheritance, and, therefore, his name was entered in the Government records."

The plaintiffs then (no doubt with reference to the Mitakshara and Mayukha doctrine) averred in their plaint that, inasmuch as at their respective births they became co-proprietors with their father in the *hak*, they could not be prejudiced by his acts or omissions with regard to it.

The plaint then proceeded thus: "As shown above, the members of our family have continued to receive the above-mentioned *garas hak* from the times of the former Governments (and) for hundreds of years. And, at first, the said *garas* (*hak*) used to be collected (levied) from the villages. (But) about the Samvat year 1878 (A.D. 1821-22) this Honourable Government stopped this (mode of collection), and, in lieu of the same, made an arrangement (*bandobast*) with the garasias, and agreed to pay (then the same) from (its) treasury. And since then the said *hak* has been received from this Honourable Government's treasury at the Chikhli thana. "This allegation as to the nature of the *hak*, as it is now claimed, is almost *verbatim* and is substantially the same as the description of the *hak* in Maharaval Mohansangji's suit against Government (*supra*, 4 B. 437), which was heard by us immediately before the present appeal was heard.

The plaint next stated that the adult plaintiff Mansang, on attaining his majority, "came to know" that Government had passed a resolution (of which the date is not stated) "prejudicial" to the rights of the plaintiffs, to the effect that Rs. 534-10-2 of the *hak* should be "entered in the name of their father Madhavsangji as "continuable hereditarily in the male line;" that Rs. 534-13-11, which Kesrisangji (their great-uncle) used to receive; Rs. 294-8-6, which Jasuba (widow of their great-great-uncle Dhirsangji) used to receive; and Rs. 883-9-6, which Hiraji (widow of their great-great uncle Niyarsangji) used to receive—" in all, Rs. 1,712-15-11—shall be received by our father during his lifetime, that Rs. 154-0-10 were made *khalsa* (*i.e.* resumed by Government) as the same used to be received in excess; and that Rs. 401-6-2 which Devba, the widow of Ramsangji" (great-uncle of the plaintiffs), "used to receive, were also make *khalsa*."

"Thus by the resolution of the Government of Bombay we shall suffer a loss of Rs. 2,268-6-11 after the lifetime of our father; and at present we have suffered a loss of Rs. 555-7-0. The order causing the above-mentioned losses have been made from time to time by the Honourable the Government [445] of Bombay and by the officers of the Revenue, Alienation and Settlement Departments subordinate to it." The plaintiffs then stated that, as "soon as they came to know this," they had petitioned Government, on the 31st October 1875, for relief against those orders which they asserted to be illegal, but had not received any reply. They then stated that they made their father a co-defendant with Government in the suit, and they prayed that they and their heirs and representatives

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might be declared entitled to take hereditarily from the Government of Bombay from the treasury of the Chikhli *thana* Rs. 2,268-6-11, the balance deft after deducting Rs. 534-10-2 (the amount sanctioned as continuable hereditarily to the heirs male of their father, the second defendant) from Rs. 2,803-1-1, the amount of the full *hak*, or for such other relief as the Court might deem them entitled to. They averred that their cause of action accrued when the adult plaintiff Mansang came of age, and from the 25th May 1875, subsequently to which date they "came to know of this matter."

The Government of Bombay, in its written statement, in defence, put in on its behalf by the Collector on the 8th February 1877, has pleaded that the District Court has by Act XXIII of 1871 (The Indian Pensions Act) been deprived of jurisdiction to entertain this suit.

The second defendant, Madhavsangji, in his written statement, filed nearly a year before that of the Collector, played, as might be expected, completely into the hands of the plaintiffs. He admits that the statements in the plaint are true, and says that, by numerous applications to Government, he sought for, but obtained no redress from Government, and he forestalls the Collector's defence by saying that, "at the time of the passing of the different resolutions passed by the Government, neither the Pensions Act nor any other (such) Act was in force. And as the cause of action accrued to the plaintiffs during their minority, and as their claims were not then barred by any Act, the plaintiffs' suit is not barred now by the Pensions Act."

The extracts (paragraphs 7 to 19 inclusive) from the Government Resolution No. 4309, dated 27th November 1862, mentioned in our judgment in *Maharaval* v. *The Government of Bombay* (*supra*, 4 B. 437), as put in by consent in that appeal, have also by consent been put in evidence in this appeal.

It will be observed that the plaint in this case, like that in *Maharaval* v. *The Government of Bombay*, contains no allegation that Government occupies with respect to the *hak*, the subject of suit, the position of agent for the plaintiffs or their ancestors. There is not any averment of a promise of the Government to collect *tora-garas* either for a limited time or in perpetuity from the villages on behalf of the plaintiffs and their ancestors, or at all. In the plaints in both cases, the description of the claim is substantially the same, and in the present case the plaintiffs expressly pray for a declaration, not that Government should collect and pay over the *garas* to them, but that the plaintiffs are entitled to take it hereditarily "from the Government of Bombay from the treasury of the Chikhli *thana*, and, in fact, treat themselves as entitled to a grant of money out of the treasury in lieu of the levy which their ancestors formerly made from the villages. This claim, for the same reasons which we have given in our judgment in *Maharaval* v. *The Government of Bombay*, and which it is unnecessary to repeat, appears to us to come within the scope of the prohibition, in the Indian Pensions Act, to Civil Courts to entertain any suit relating to a grant of money made by the British Government, whatever may have been the [446] consideration for such a grant, and whatever may have been the nature of the payment, claim, or right for which such grant may have been substituted, interpreted as the term "grant of money," is by the third section of the Act. The learned counsel, who argued *Maharaval* v. *The Government of Bombay* (*supra*, 4 B. 437) for the plaintiffs there, also immediately afterwards argued the present appeal for the plaintiffs here, and relied upon the same arguments in both cases. The provision in the first section of

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the Act—that it shall come into force on the date of its passing, "but not so as to affect any suit in respect of a pension or grant of money or land revenue which may have been instituted before such date"—shows that the point made for the plaintiffs by their father in his written statement, *viz.*, that the causes of action had accrued before the Indian Pensions Act was passed, and, therefore that it is inapplicable to this suit, is unsound. Suits instituted before the Act was passed, only are saved from its operation. A subsequent suit, constituted as this is, we must hold to be rendered unsustainable in a Civil Court by that Act.

On the argument of the appeal, counsel for the plaintiffs suggested in this case, as well as in *Maharaval* v. *The Government of Bombay*, that the plaintiffs might be permitted to amend their plaint by treating Government as their agent to collect and pay over to them the *tora-garas*. But here too, the plaintiffs' advisers must have been fully aware, from the Collector's written statement, that the Pensions Act would be relied upon, and it is not asserted that any application was made, either before or after the District Judge gave his judgment, to him for leave to amend. Under such circumstances we do not see our way to compliance with the suggestion that leave to amend should be given by this Court.

Here, too, (laying aside, however, what we have said as to limitation in our judgment in *Maharaval* v. *The Government of Bombay*, inasmuch as, of the present plaintiffs, one is alleged to have been until lately and the other is said to be still a minor), we, for the reasons given in *Maharaval* v. *The Government of Bombay* (*supra*, 4 B. 437) doubt that permission to amend, would much aid the plaintiffs. And as to the alleged vesting of the plaintiffs' interest at birth, we note how carefully they have abstained from giving the dates of any of the Government resolutions which they mention in their plaint,—dates which, doubtless, they might, without difficulty, have obtained from their sympathizing parent, the second defendant. Their plaint was filed on the 19th June 1876, and in the title of it the elder plaintiff describes himself as being then nineteen years of age. If that be true, he could not have been born before 1857. But Devba, the last survivor of the three widows, is in the plaint stated to have died in Samvat 1910 (A.D. 1853-54), and Anupsangji, the plaintiffs' grandfather, had died previously, so that the plaintiffs' father's rights of action, whatever they may have been, had accrued to him, and for aught that appears to the contrary in the plaint, may have been finally compromised by him with Government before either of the plaintiffs came into *esse*. However, we do not in anywise rest our decision on that possibility. We think that the District Court had not jurisdiction to entertain the suit as framed, and that no reason has been shown why the plaintiffs should be permitted to recast their suit at its present stage.

We affirm the decree of the District Judge. The parties must, respectively, bear their own costs of this appeal.