

## APPELLATE CIVIL.

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Pinhey.

NA'RO DA'MODAR GHUGRI (ORIGINAL PLAINTIFFS), APPELLANT, v. THE COLLECTOR OF POONA AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS,\*

1877  
July 9.

*Pensions Act XXIII of 1871, Secs. 3 and 4—Jurisdiction of Civil Court—Deshmukh.*

A suit in a Civil Court by a hereditary *deshmukh* relating to a grant of land revenue is prohibited by the Pensions Act XXIII of 1871.

THE plaintiff Naro sued for Rs. 78-9-0 on account of certain *sirpatilki haks* for two years, 1869 and 1870. He alleged that the said *haks* had belonged to one Madhavray Kunjir; that he (plaintiff) had purchased them at a Court sale in September, 1868, in execution of a decree against the said Madhavray; that Madhavray died on the 22nd October, 1872; and that the Collector of Poona (defendant No. 1) paid the amount of the *haks* to his son Ravji. The suit was instituted in 1874.

The Collector (defendant No. 1) answered (*inter alia*) that the suit was barred under Act XXIII of 1871; that the plaintiff only purchased the life-interest of Madhavray in the *vatan*; and that the property was inalienable under Regulation XVI of 1827, sec. 20. The answer of Ravji (defendant No. 2) was similar.

The Assistant Judge of Poona (Mr. W. H. Crowe), who tried the suit, held that the suit was not barred under the Pensions' Act XXIII of 1871, and that Madhavray's interest in the property continued beyond his lifetime. He allowed the plaintiff's claim to the amount of Rs. 50, and held the rest of it barred by limitation. In appeal, the District Judge (Baron Larpent) reversed that decree, on the ground that Madhavray had only a life-interest in the *vatan*.

The plaintiff, therefore, specially appealed to the High Court.

The principal question argued in special appeal was whether or not the suit was barred under Act XXIII of 1871.

The Hon. V. N. Mandlik appeared for the appellant.

Shamray Vithal appeared for the Collector (defendant No. 1).

Shantaram Narayan appeared for Ravji (defendant No. 2).

\* Special Appeal, No. 184 of 1876.

1877

NARO  
DAMODAR  
GHUGRI  
v.  
THE COLLECTOR  
OF  
POONA.

The following is the judgment of the Court delivered by

WESTROPP, C. J.—On reading the grant, A. D. 1699, of the *haks* (of which those in dispute in this suit form a part) together with 1,355 villages by Rajaram, son of the celebrated Sivaji, to Khundoji Yesaji Dabhare as the *Sirpatilki vatan* of Junar, which document was not before Baron Larpent, the District Judge, but has, by consent of the parties, in order to avoid a remand, been produced for our inspection by the Collector, we at once perceive that this suit relates to a grant of land revenue conferred by the Maratha Government of that day, and, therefore, falls within sections 3 and 4 of Act XXIII of 1871. Yeshvantrav Dabhare a descendant of the donee of 1699, by a sub-grant of the 8th November 1798 (Shak 1720 1 Kartik Sud), alienated a portion of the *haks* above mentioned to Baloji bin Subanji Kunjir, an ancestor of Madhavrav Kunjir, under whom the plaintiff claims. Those *haks*, in whosever's hands they may be, still retain their original character (whether or not the service to be rendered for them as *sirpatil* has been dispensed with) sufficiently to bring them within the sections of the enactment already referred to. The circumstance that they were levied in the form of grain directly from the villagers, does not efface the fact that they originated in a grant from the Maratha Government, and are still payable in virtue of that creation. We think, therefore, that this case comes within the authority of *Vasudev Sadashiv Modak v. The Collector of Ratnagiri* (1), in which Her Majesty's Privy Council affirmed, on the 2nd March, 1877, the decree of this Court, which held that a suit in a Civil Court, by a hereditary *deshmukh*, for a percentage on the cash revenue and a percentage on the grain revenue, was prohibited by the Pensions Act of 1871. On these grounds we affirm the decree of the District Judge with costs.

*Decree affirmed.*

(1) 1.L.R. 2 Bom., 99.