

## APPELLATE CIVIL.

*Before Mr. Justice Melvill and Mr. Justice Pinhey.*

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, BY THE COLLECTOR OF KHEDA (ORIGINAL DEFENDANT No. 1), APPELLANT, v. JAMNADAS AND OTHERS (ORIGINAL PLAINTIFFS), RESPONDENTS.\*

1882  
September 18.

*Pensions Act XXIII of 1871, Sections 1 and 4—Grant of land revenue—Former suit for money.*

The plaintiffs formerly sued for a sum of money, and obtaining a decree attached, in 1861, two villages, the land revenue of which had been granted in *inam*. The attachment continued down to 1875, when the last holder of the villages died, and, the Government having resumed the villages, the attachment was raised. The plaintiffs now sued to have their right declared to satisfy their decree from the revenues of the villages.

*Held* that the former suit was not a suit in respect of a pension or grant of money or land revenue, and that an attachment placed in pursuance of an ordinary money decree before the date of the Pensions Act (XXIII of 1871) could not be treated as a suit in respect of a pension, grant of money, or land revenue instituted before such date, so as to exclude the operation of the Act under section 1.

This was an appeal from the decision of S. II. Phillpotts, Judge of Ahmedabad.

The facts of the case, in so far as they are material, are as follows :—

The plaintiffs sued the Secretary of State for India in Council represented by the Collector of Kheda and one Karunashankar to establish their right to have the proceeds of two villages Kansari and Jesarva attached in execution of a decree obtained by their ancestor Dayaram in 1856 in the Court of the Principal Sadar Amin of Surat against Karunashankar's adoptive father Pranshankar. That decree had been transferred for execution to the Subordinate Judge of Borsad, who by an order dated 13th February, 1861, attached the villages and continued to execute the decree till 31st of July, 1875, through the Collector of Kheda.

The village of Kansari was granted by the Peishwa in 1803 and the village of Jesarva by the British Government in 1820 to a Brahman of the name of Hareshvar, who died on the 4th of October, 1821. On the death of the grantee his son Umyashankar succeeded, and he was succeeded by his son Pranshankar, the judg-

\* Regular Appeal, No. 37 of 1881.

1882

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, BY THE COLLECTOR OF KHEDA,  
v.

JAMNADAS AND OTHERS.

ment-debtor of the plaintiffs. Pranshankar died on the 18th of November, 1852. Hareshvar's lineal descendants accordingly enjoyed the villages as owners for a period of more than thirty years, and as such had, at the date of Pranshankar's death, acquired a prescriptive title under Regulation V of 1827, independently of the *sanads*. The grant by the Peishwa was to Hareshvar, his sons, grandsons, &c., but the grant by the British Government was to Hareshvar alone. Hareshvar petitioned the Government to remedy this defect; and a resolution was passed by Government ordering the issue of a *sanad* accordingly. It did not appear whether an amended *sanad* was in fact issued; but Pranshankar, the great-grandson of the original grantee, continued to enjoy both villages up to his death in 1852.

Pranshankar died childless, and was succeeded by his widow, on whose petition the Government passed a resolution declaring that she should enjoy the villages during her lifetime, but at her death they should lapse to Government. The widow Suraj declined to accede to this order or to accept the terms of the summary settlement. About the year 1874 she adopted the second defendant Karunashankar as the son of her deceased husband, and she died in June, 1875, when the villages were declared by the Collector of Kheda as *khalsa* and not liable to further execution of the plaintiffs' decree. The Subordinate Judge of Borsad accordingly on the 3rd of December, 1878, referred the plaintiffs to a regular suit, and raised the attachment. The present suit was accordingly brought in 1880.

Both the defendants urged a number of objections, but it is not material to take any notice of them: Their main contention was that the cognizance of the suit was barred by the Pensions Act XXIII of 1871.

Upon a construction of the *sanads* the District Judge arrived at the conclusion that the grant as regards both the villages was one of revenue only, and that this suit was prohibited by section 3 of the Pensions Act. But he thought the prohibition was removed by section 1, the attachment on the villages having been placed prior to the Act. He said: "The Act was not intended to be retrospective, and section 1 provides that it shall not affect

any suit in respect of a pension or grant of money or land revenue which may have been instituted before the date on which it came into force. Now the plaintiffs' decree did not bind the *inam* or in any way encumber it; but on the 13th of February, 1861, or a few days afterwards, at any rate years before the Pension Act came into force, an order was passed declaring this *inam* liable for the plaintiffs' decree, and any subsequent legislation cannot deprive the plaintiffs of this right. This attachment was raised on application by the defendant No. 1 or rather on the Collector of Khêda using the power he had as manager to obstruct the decree. The plaintiffs have now sued under section 283 of Act X of 1877. This was the only means open to them of giving effect to the decree. To say that they should not bring this suit without the consent of the Revenue Authorities would deprive them of the benefit of the former suit, and put an insuperable objection in the way of their obtaining the benefit thereof. Had the Collector been, as he ought to have been, referred to a regular suit, he must undoubtedly have lost it on the merits, and it would be unfair to give him the advantage he might have gained by his decidedly irregular procedure." The District Judge, therefore, awarded the plaintiffs' claim. The Secretary of State for India in Council appealed to the High Court.

*Nanabhai Haridas*, Government Pleader, for the appellant.—The suit is barred by section I of the Pensions Act. The plaintiffs' decree, under which the attachment was placed on the villages, was not in respect of a pension or grant of money or land revenue. It was a simple money decree in execution of which the attachment was placed. On failure of heirs the Government was at liberty to resume the villages, the land revenue only of which and not the soil was alienated. In the case of *Parbhudas v. Motiram* (1) the mortgagee of the *toda gras haks* had, before the date on which the Pension Act came into operation, obtained a decree for the recovery of the mortgage *haks*.

*Shantaram Narayan* for the respondent.—The decree obtained by the plaintiffs followed by the attachment on the villages

1882

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, BY THE COLLECTOR OF KHEDA,

v.  
JAMNADAM AND OTHERS.

1882

THE SECRETARY OF STATE FOR INDIA IN COUNCIL, BY THE COLLECTOR OF KHERDA  
v.  
JAMNADAS AND OTHERS.

vested in the plaintiffs the right to recover the proceeds of the villages until full satisfaction of their decree. The right thus vested before the Pension Act could not be taken away from the plaintiffs by that Act, which has been held not to have retrospective effect : *Jamnadas v. Lalitaram*(1). The villages have been undoubtedly enjoyed by the grantee and his descendants for more than thirty years, and they have acquired the prescription of them by Regulation V of 1827. The Government, therefore, had no right to resume them. Had the Collector been referred to a suit by the executing Court, he would, as remarked by the District Judge, have lost on the merits. It would, therefore, be inequitable to construe the Pension Act as urged by the appellant. But the Pension Act does not apply, as the grant of the village of Kansari especially was a grant of the soil and not merely of the land revenue. The terms of the *sanad* in respect of the Kansari village are as follows :—

“You hold the village of Kansari in the pargana Petlad as a *jat tainat* (personal holding). As you serve the Government faithfully, so from the year Shak 1726 this village with the exception of the rights of the *hakdars* and *inamdars* has been given you as a newly-created *inam* for the maintenance of yourself and your family by the Government : so do you and your sons, grandsons, &c., hereditarily enjoy the *inam* and be prosperous.”

MELVILL, J.—We think that the District Judge was right in holding that the property which the plaintiffs wish to attach is in the nature of a grant of land revenue, and the present suit is, consequently, barred by section 4 of the Pensions Act, No. XXIII of 1871 unless they can have the benefit of the reservation contained in section 1 of the Act. The District Judge, evidently relying on the decision in *Parbhudas v. Motiram* (2), has given them the benefit of this reservation ; but we do not think that either that case or *Jamnadas v. Lalitaram* (3) can help the plaintiffs. In both those cases there had been a previous suit by a mortgagee to enforce his claim against the pension or grant of land revenue, and a decree had been obtained directing payment out of such pension or grant. A refusal to execute such decree

(1) I. L. R. 2 Bcm., 294.

(2) I. L. R. 1 Bom., 203.

(3) I. L. R. 2 Bom., 294.

would directly have affected "a suit in respect of a pension or grant of land revenue" within the meaning of section 1 of the Act. But in the present case the plaintiffs never brought any suit in respect of any such grant. They are simply the holders of a money decree, and the mere attachment of property under that decree before the date of the Pensions Act cannot be treated as a suit in respect of such property instituted before such date.

The decree of the District Court is reversed, and the claim rejected with costs on the plaintiffs throughout.

*Decree reversed.*

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### APPELLATE CIVIL.

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*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Kemball.*

HARI (ORIGINAL PLAINTIFF) *v.* MARUTI (ORIGINAL DEFENDANT),  
RESPONDENT.\*

*August 29.*

*Limitation Act XV of 1877, Article 127—Partition—Exclusion from share.*

Where in a suit for partition a District Judge held the plaintiff's claim barred, on the ground that the defendant had been in possession of the property in dispute for more than fifteen years without any claim having been made by the plaintiff,

*Held* that under the Limitation Act XV of 1877, article 127, time would not run against the plaintiff until his exclusion (if he was excluded) from the property had become known to him.

This was a second appeal from the decision of R. F. Mactier, Judge of the District Court of Satara, affirming the decree of the First Class Subordinate Judge at the same place.

The plaintiff Joti and his brother brought this suit to recover possession of certain immoveable property, alleging that their father and the defendant's father were brothers; that the property in dispute was their joint ancestral property; and that, therefore, they (plaintiffs) were entitled to a half share in it. The plaint was filed on the 23rd November, 1880.

The Subordinate Judge dismissed the suit, holding that it was barred.

In appeal, the District Judge raised the issue whether the property in dispute was in possession of any person from whom

\* Second Appeal, No. 143 of 1882.