1892 FEB. 10.

APPELLATE CIVIL.

17 B. 164.

could not succeed, as he would, as such, be primarily the heir of her husband and not of her son.

The subject of the adoption by a mother higher in the line than the son is discussed in West and Buhler, (3rd Ed. p. 984), from the ceremonial point of view, and such adoption is held invalid on the ground that the son would be placed in a worse position as regards the due performance of his *sraddhas* than if there had been no adoption—and they conclude by laying down, as a consequence of that view, that" a mother succeeding to her son after the son's investiture is not the more capable of adopting a son to him, because she divests no estate but her own." In this Presidency, doubtless, the permission of *sapindas* is not required, but that circumstance cannot affect the application of the above rule, as explained and applied in *Thayammal* v. *Venkatarama* (1).

We have been referred to a decision of the Calcutta High Court—*Manik Chand Golecha* v. *Jagat Settani*(2)—where the [169] circumstances of the case were the same as here. Mitter and Beverley, JJ., there say: "It is true that in their later judgment the Privy Council decided that upon the vesting of the estate in the widow of Bhowani the power of adoption was " at an end " and incapable of execution, but the power in that case was a power given by the husband, and the decision referred to lays down the limit of the time within which such a power should be exercised." It is plain from this that the attention of the Court had not been directed to the decision in *Thayammal* v. *Venkatarama* (1), that the ruling in *Bhoobun Moyee Debia* v. *Ram Kishore* was equally applicable where the adoption was made with consent of *sapindas*.

From the above Privy Council decisions, taken together, we think that the question under consideration is concluded by authority, and that the adoption by Gangabai after Anpurnabai's death was invalid; and that the decree must, therefore, be confirmed with costs.

Decree confirmed.

---

17 B. 169.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

JIJAJI PRATAPJI RAJE AND OTHERS (*Original Plaintiffs*), *Appellants* v. BALKRISHNA MAHADEO AND OTHERS (*Original Defendants*), *Respondents*.* [18th February, 1892.]

Pensions Act (XXIII of 1871), *ss.* 4 *and* 6—*Collector's certificate—Certificate not obtained when suit filed—Certificate not produced at hearing—Adjournment asked for and refused—Certificate accepted in appeal and placed on record—Procedure—Practice.*

A suit under the Pensions Act XXIII of 1871 is not bad *ab initio* by reason of its being filed without a Collector's certificate.

Where at the hearing of such a suit the necessary certificate was not produced. *Held*, that the Judge ought to have granted the plaintiffs' application for an adjournment, in order that the certificate might be obtained and produced.

[F., 25 A. 73 (75); 12 Bom.L.R. 801=7 Ind. Cas. 986 (989); 12 Bom.L.R. 803 (809); R., 17 C.L.J. 239=17 C.W.N. 408=17 Ind. Cas. 490.]

THIS was a second appeal from the decision of H. J. Parsons, District Judge of Thana.

---

* Second Appeal, No. 673 of 1885.

(1) 14 I.A. 67. (2) 17 C. 518, (537).

[170] Suit to recover revenues of a village granted in *inam* to the plaintiffs by the defendants, who were the *khots* of the village.

This action was originally instituted by plaintiffs Nos. 1 and 2 (Jijaji Pratapji Raje and Narayan Manaji Raje) in their own names. Plaintiffs Nos. 3 and 4 were subsequently joined on their own application.

The plaintiffs sought to recover one-half of the revenues of the village of Kandali, granted to them *inam*, from the *khots* of the village, defendants Nos. 1 and 2.

Defendant No. 3 was joined afterwards, as claiming the right to the revenues himself as *inamdar*.

Defendants Nos. 1 and 2 disputed (*inter alia*) the right of the plaintiffs as *inamdars*, and set up the plea of limitation.

Defendant No. 3, Kanoji Ramaji Raji, pleaded that the suit was barred by the Statute of Limitation, and also by the Pensions Act (XXIII of 1871).

The Subordinate Judge (Rao Saheb Sakharam M. Chitale) held that the claim would lie, although the plaintiffs had not obtained a certificate under the Pensions Act (XXIII of 1871), s. 6, but rejected it on the ground that it was barred by limitation.

The plaintiffs appealed to the District Court on the point of limitation, and defendant No. 3 on the point relating to the certificate under the Pensions Act.

In appeal, the only issue raised was "will this suit lie without a certificate from the Collector, having regard to the provisions of the Pensions Act of 1871," and the finding thereon was in the negative.

The District Judge in his judgment remarked :—

"I am asked to adjourn the case to allow of the plaintiffs procuring a certificate, and a case in the Printed Judgments, 1888, p. 52, is cited. There I notice that there was a certificate though not a very clearly worded one. Printed Judgments, 1877, pp. 228, 314 and Printed Judgments 1880, p. 56, cited on the other side. I think that the suit being filed, without a certificate, is bad *ab initio*, and must be dismissed. Were I disposed to grant time, it would be uselesss, because as the suit could only be said to have been properly brought at the time when [171] the certificate is produced, the claim would now be time-barred. The plaintiffs' remedy, however, was not by a suit at all, but by application to the revenue authorities. The decree of the Court dismissing the suit is, therefore, confirmed on the finding of the only point that I have raised."

The plaintiffs appealed to the High Court.

Mahadeo Chimnaji Apte, for the appellants (plaintiffs) :—Our suit was dismissed by the lower Court, because the Collector's certificate under the Pensions Act was not produced, the property in dispute being *saranjam*. The Court gave no opportunity to produce the certificate, being of opinion that the suit must be held to be brought on the day the certificate is produced, and that it would then be time-barred. The lower Court is wrong, and it ought to have given us an opportunity to produce the certificate. The suit is not instituted on the day the certificate is brought—*Nawab Mahammad Azmat Ali Khan* v. *Mussumat Lalli Begum* (1). We have got the necessary certificate, and we tender it.

Branson (with *Mahadeo Bhaskar Chavbal*), for respondents Nos. 2 and 3, and *Daji Abaji Khare*, for respondent No. 1.—Under the provisions of the Pensions Act, the Court can only take cognizance of a suit when

(1) 9 I.A. 8.

1892 FEB. 18. — APPELLATE CIVIL. — 17 B. 169.

the certificate is produced, and not before. A suit launched without a Collector's certificate cannot be recognized as a suit. The suit when it was brought was not properly constituted—*Kalidas Kevaldas* v. *Nathu Bhagvan* (1).

Mahadeo Chimnaji Apte, in reply.—The suit was instituted when it was originally filed, and it is not barred. A suit cannot be barred except under the provisions of the Limitation Act (XV of 1877), s. 4. But the explanation of that section says that a suit is instituted when the plaint is presented to a proper officer. The point is, therefore, whether the plaint was presented to a proper officer, and not whether it was accompanied by a certificate. There are special provisions in the Limitation Act under which suits are barred, &c.. But there is no section with respect to the provisions of the Pensions [172] Act, nor is it laid down that a plaint must comply with the provisions of a particular enactment. In order to satisfy the requirements of the Limitation Act, a plaint is to be presented to a proper officer within a prescribed period, and nothing more. An analogous case is where a minor brings a suit, and a guardian *ad litem* is appointed afterwards. In that case the suit is held to be instituted on the day the plaint was presented, and not when the guardian *ad litem* was appointed. Similarly, when a suit is filed on an insufficient Court fee, it is held to be filed on the day the plaint was presented, and not on the day on which the deficiency in the Court fee is made up. We now produce the Collector's certificate, and ask to have it put on in the record.

The certificate was put on the record.

JUDGMENT.

SARGENT, C. J.—We agree with the District Judge that the suit is one which falls within the Pensions Act as relating to a grant of land-revenue, and that, too, although the Government is not a party to the suit—*Balaji* v. *Rajaram* (2). But the District Judge is wrong in treating the suit as bad *ab initio* by reason of its having been filed without a certificate. The remarks of the Privy Council in *Nawab Mahammad Azmat Ali Khan* v. *Mussumat Lalli Begum* (3) show that this is not so, and that the Court is only precluded from taking cognizance of it until the certificate is produced. The District Judge should, therefore, on being asked to do so, have adjourned the case for the production of a certificate.

The certificate is now produced; and we must, therefore, reverse both the decrees of the Courts below and remand the case for a fresh trial, as all that has hitherto been done by the Subordinate Judge, without the certificate, was done without jurisdiction.

As regards the question of the Statute of Limitations, we are of opinion that the suit must be treated as having been instituted by plaintiff No. 1. Costs to follow the result.

Decree reversed and case remanded.

(1) 7 B. 217. (2) 1 B. 75 (79). (3) 9 I. A. 20.