APPELLATE CIVIL.

Before Mr. Justice Russell and Mr. Justice Batty.

1905.
July 25.

TRIMBAKRAO ANANDRAO MANTRI (ORIGINAL OPPONENT), APPELLANT, *v.* BALVANTRAO NARAYANRAO MANTRI (ORIGINAL APPLICANT), RESPONDENT.*

Pensions' Act (XXIII of 1871), section 4†*—"Suit"—Execution proceedings—Payment of annuity charged on Saranjám lands—Liability of the son of the grantor to make the payment—Partition of family property—Income of a Saranjám village—Conciliation agreement—Dekkhan Agriculturists' Relief Act (XVII of 1879), section 44*‡*—Decree.*

A conciliation agreement was filed in Court on the 16th June 1882 under section 44 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). It effected partition of family property between two brothers, A and N. Under the agreement A undertook to pay to N Rs. 456-0-6 every year, and for the convenience of the parties this was to come out of the Saranjám lands which had

* Appeal No. 73 of 1904.

† Section 4 of the Pensions' Act runs as follows :—

"Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British or any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted."

‡ Dekkhan Agriculturists' Relief Act (XVII of 1879) sections 43 and 44 run as follows :—

43. If on the day on which the case is first heard by the Conciliator, or on any subsequent day to which he may adjourn the hearing, the parties come to any agreement, either finally disposing of the matter or for referring it to arbitration, such agreement shall be forthwith reduced to writing, and shall be read and explained to the parties, and shall be signed or otherwise authenticated by the Conciliator and the parties respectively.

44. When the agreement is one finally disposing of the matter, the Conciliator shall forward the same in original to the Court of the Subordinate Judge of lowest grade having jurisdiction in the place where the agriculturist who is a party thereto resides ;

and shall at the same time deliver to each of the parties a written notice to show cause before such Judge, within one month from the date of such delivery, why such agreement ought not to be filed in such Court.

The Court which receives the agreement shall, after the expiry of the said period of one month, unless cause has been shown as aforesaid, order such agreement to be filed ; and it shall then take effect as if it were a decree of the said Court passed on the day on which it is ordered to be filed and from which no appeal lies.

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fallen to the share of A. The payment was regularly made during the life-time of A, and after his death, T, the son of A, continued to make the payment till 1899, when he stopped making any more payment. B, the son of N who had died, then filed a *darkhast* to enforce the payment of 1899-1900. T objected to this *darkhast* on two grounds: (1) that a certificate under the Pensions' Act (XXIII of 1871) was necessary; and (2) that A's interest having terminated with his death, the Saranjám must be considered as a fresh grant to the son who was not liable to continue the payment.

Held, (1) that a certificate under the Pensions' Act (XXIII of 1871) was not necessary, for the word "suit" in section 4 of the Act does not include execution proceedings.

Vajiram v. *Ranchordji*[1] followed.

Held, (2) that A was a trustee in respect of the Rs. 456-0-6 for Narayan, the obligation to pay which would attach to the succeeding holders of the Saranjám and it followed that N and his descendants would have the right to call upon A and his descendants to account for their management of the Saranjám and pay to them Rs. 456-0-6 per annum.

A consent decree can only be set aside upon the same grounds as an agreement can be set aside, *e.g.*, fraud or mistake or misrepresentation.

Per *BATTY, J.*—"A Court executing a decree cannot question the jurisdiction of the Court which passed it."

"The present application in no way affects property falling within the purview of the Pensions' Act, but seeks enforcement against the general assets of the judgment-debtor whose liability under the decree is not made a charge on the Saranjám or cash allowance at all. That liability appears to have been imposed and accepted not as effecting any partition of the Saranjám property, but for the purpose of effecting equality in the partition of non-Saranjám property, the Saranjám property being merely indicated as a fund available to the defendant for the purpose of discharging that liability."

APPEAL from an order passed by Vaman M. Bodas, First Class Subordinate Judge at Sátára.

One Raghunathrao died in 1873, leaving behind him two sons Anandrao and Narayanrao. The family estate consisted of the Saranjám village of Islámpur and other property. The two brothers were living jointly. Soon after, quarrels sprang up between Anandrao and Narayanrao, which led up to the conciliation agreement between them, which was filed in Court on the 16th June 1882, under section 44 of the Dekkhan Agriculturists' Relief Act (XVII of 1879). The agreement effected partition of the family property. One of the items to be partitioned was the

(1) (1892) 16 Bom. 731.

income of the Saranjám village of Islámpur. The arrangement as to it was that Anandrao was to pay Rs. 456-0-6 every year to Narayanrao, and this sum was mentioned to come "out of the cash collections, at the village of Islámpur."

Anandrao used to make the agreed payment to Narayanrao till his (Anandrao's) death in 1886, after that, his son, Trimbakrao continued to make the payment till 1899; after 1899, however, Trimbakrao refused to make any payment.

Narayanrao having died, his son Balvantrao filed a *darkhast* (No. 509 of 1901) to execute the conciliation agreement, which, under section 44 of the Dekkhan Agriculturists' Relief Act, 1879, had the force of a Civil Court's decree, and to recover Rs. 456-0-6 for 1899-1900.

Trimbakrao then applied to the Collector to recommend Government to resume and re-grant the Saranjám to him. This the Collector declined to do, and passed the following order :—

"On inquiry I find that on the death of Anandrao the name of his son was entered in the Government records in 1886 as Saranjámdar by the Mámlatdár as a matter of form, but no orders of Government were taken and the Saranjám was not formally resumed and re-granted free of incumbrances.

"It would apparently be possible for Government to now resume it and re-grant it free of incumbrances, but I am not inclined to recommend them to do so for the purpose of assisting Trimbakrao to evade the payment of an allowance which he continued to pay without objection for 14 years, *i.e.*, after his succession."

The Subordinate Judge in whose Court the application for execution was filed, directed the execution to "proceed for the recovery of the sum claimed."

Trimbakrao appealed to the High Court.

Vasudeo J. Kirtikar (with *Chitnis and Motilal* and *Nilkantha Atmaram*), for the appellant :—

The decree was passed between the appellant's father Anandrao and the respondent's father Narayanrao. The appellant was not a party to it. Therefore, the provision in the decree about the payment of Rs. 456-0-6 out of the cash revenue from Islámpur, which is Saranjám, is not binding upon the appellant. It was binding only during Anandrao's life-time, as he had only a life interest in the Saranjám.

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By the payment of Rs. 456-0-6 till 1899 the defendant is not estopped from contending that the provision in the decree cannot be executed against him. He is entitled to hold the Saranjám free from any incumbrance created by his father. The Judge has misunderstood the scope and object of the Collector's order (Exhibit 19). It cannot be said that Government declined to permit the appellant to enjoy the Saranjám as on a fresh grant, free from encumbrances. The order was not passed by Government. The tenure of the property was not altered thereby.

As the present application is in respect of Saranjám property, a certificate under the Pensions' Act is necessary.

Branson (with him *M. B. Chaubal* and *C. A. Rele*), for the respondent:—

The appellant paid the amount to the respondent's father and after his death to the respondent, from 1885 till 1899. He did not take any steps to have the provision in the decree set aside or modified. Validity of a decree of which execution is sought cannot be disputed in execution proceedings. See *Chintaman* v. *Chintaman*.[1]

Since the passing of the Collector's order (Exhibit 19), no application was made by the appellant to alter the status. If the order was wrong, he ought to have applied to Government. There was no resumption and fresh grant free from incumbrances to the appellant. The Collector declined to permit him to enjoy the Saranjám as on a fresh grant, and he is to enjoy it by right of succession in the same way as other property of Anandrao's.

Under the decree Narayanrao got less than Trimbakrao got out of non-Saranjám income. So Rs. 456-0-6 were agreed to be paid to Narayanrao out of the cash revenue of Islámpur, as the appellant has taken the benefit of the partition decree, he must take the burden also.

The sum is not made a charge on the Saranjám. The provision in the decree merely indicates the source from which the sum is to be paid. The respondent does not seek to recover the amount from the income of Saranjám, but by attachment and sale of appellant's moveable property. Hence, a certificate under the

(1) (1896) 22 Bom. 475.

Pensions' Act is not necessary. Besides, a certificate is necessary only when a claim is to be established by a suit. See sections 4 and 6 of the Pensions' Act, 1871.

Vasudeo J. Kirtikar, in reply :—The Court executing a decree can go into the question whether the Court has jurisdiction to pass it. See *Bhagwantappa v. Vishwanath*.[1]

RUSSELL, J.—The decree sought to be executed herein is a conciliation agreement filed in Court on 16th June 1882 under section 44 of the Dekkhan Agriculturists' Relief Act, 1879. It effected partition of family property between two brothers, Narayan and Anandrao Mantri of Islámpur, who were joint. The present appellant is Trimbak, son of Anandrao, and the respondent is Balwant, son of Narayan. [His Lordship read the material parts of the agreement.] One of the items to be partitioned was the income of the Saranjam village of Islámpur. Out of that Anandrao was to pay every year Rs. 456-0-6 to Narayan. They are both dead. It is admitted that till 1899 the payment was duly made during their lives and even afterwards by Trimbak to Narayan. The present Darkhast is by Balwant to enforce payment for 1899-1900.

The first objection is that a certificate under the Pensions' Act is necessary.

As to this we are of opinion that the Pensions Act XXIII of 1871 does not apply; for the word "suit" in section 4 does not include execution proceedings, see *Vajiram* v. *Ranchordji*[2] where Jardine, J., says (page 735): "We are of opinion that, if the Legislature had intended this consequence, it would have amplified the words of section 11 so as to include such property mentioned in section 4 as is not specified in section 11. The Act is to be construed strictly—*Ravji* v. *Dadaji*[3]—and its operation is not to be extended further than the language requires."

The next objection is that Anandrao's interest having terminated with his death, the Saranjam must be considered as a fresh grant to his son, and that the latter is not bound by the decree and liable to continue the yearly payment.

(1) (1904) 28 Bom. 378 : 6 Bom. L. R. 342.
(2) (1892) 16 Bom. 731, p. 735. (3) (1875) 1 Bom. 523.

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It appears from the above agreement that the income from Saranjam lands came to about Rs. 9,367 and from non-Saranjam sources to about Rs. 7,590. Narayan was to get Rs. 3,029 out of the latter. It was purely for the convenience of the brothers that Rs. 456-0-6 were to come out of the Saranjam lands of Islámpur. Narayan, in his application for execution, asks that if the defendant does not pay Rs. 456-0-6, &c., the same may be realized by attachment and sale of the defendant's moveable property at Islámpur and paid to him.

By Exhibit 19, the order of the Collector of Sátára, dated 3rd October 1903 (which his Lordship read), the Collector declined to recommend Government to resume and re-grant their Saranjam for the purpose of assisting Trimbakrao to evade the payment of an allowance which he continued to pay without objection for 14 years, *i. e.*, after his succession. We refer to this because—as appears below—the Civil Courts, in dealing with Saranjams, must have regard to the rules laid down by Government.

It is necessary to consider the position of Anandrao, defendant's father, towards his brother Narayan.

In *Ramchandra* v. *Venkatrao*[1], it is laid down "that it is for the Government to determine how *Saranjams* are to be held and inherited, and that, if the Civil Courts had jurisdiction over claims relating to *Saranjams*, they would be bound to determine such claims according to the rules laid down by the Government." Now the orders of Government are that the Saranjam shall not be sub-divided, but that the obligation of the holder to maintain the younger members of his family shall be strictly enforced, Nairne's Revenue Hand-book (Edn. of 1872), page 346, paragraphs 13, 14. See *Moreshwar* v. *Kushaba*[2]. In *Narayan* v. *Vasudeo*[3] it was held that the defendant's possession, being admittedly one for management subject to the rights of the shares to receive their respective shares in the profits of the village, was the possession of a trustee of such profits. The plaintiff was, therefore, entitled to have an account taken of the management of the village by the defendant, and there was no limit to the period over which

(1) (1882) 6 Bom. 598 at p. 610. (2) (1877) 2 Bom. 248 at p. 251.
(3) (1890) 15 Bom. 248.

the accounts should extend other than the limits stated in the plaint.

Again Saranjams are only *primâ facie* impartible, the holders being required to make a suitable provision for their younger brothers, *Madhavrav* v. *Atmaram*[1]. In the present case Anandrao was a trustee in respect of the Rs. 456-0-6 for Narayan, the obligation to pay which would attach to the succeeding holders of the Saranjam and it follows that Narayan and his descendants would have the right to call upon Anandrao and his descendants to account for their management of the Saranjam and pay to them the Rs. 456-0-6 per annum. The case, it seems, is analogous to *Pirthi Pal* v. *Thakur Jewahir*[2], where it was held that where a judgment of the Judicial Committee in 1879 declared that the defendant to a suit brought in 1865 held the villages in suit in trust for the joint family to which he belonged, and as a joint family governed by the Mitakshara, and decreed that the defendant do cause the said villages and the proceeds thereof to be managed, dealt with and applied accordingly: the Courts below were precluded from holding in subsequent suits that such defendant held the said villages as an integral impartible estate according to the rule of primogeniture without the said trust, or from declaring that the plaintiff was entitled to have his share allotted on partition, to be held by him as sub-proprietor to the defendant.

In the present case the Rs. 456-0-6 per annum was not allotted to Narayan on the partition, but Anandrao simply (for valuable consideration) declares himself and his successor after him a trustee of that sum for Narayan and his successors. Instead of paying Narayan a sum down, Anandrao agrees to pay him so much a year out of the income of the Saranjam. There seems to be no reason why this Court should not give effect to such an arrangement, and we cannot find anything in the nature of Saranjams to prevent it.

Another ground upon which the plaintiff is entitled to succeed is that the decree which is referred to was one *by consent*. So long as that decree stands, it is incumbent upon the Court to execute it. It constituted an agreement between Anandrao and

(1) (1890) 15 Bom. 519. (2) (1886) 14 I. A. 37.

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his brother Narayan and can only be set aside upon the same grounds as an agreement can be set aside, *e. g.*, fraud or mistake or misrepresentation. See per Lord Esher, M. R., in *The Bell-cairn*[1] and *In re South American and Mexican Company*[2].

For the above reasons we confirm the decretal order of the lower Court with costs.

BATTY, J.:—I would add that under the rulings in *Chogalal* v. *Trueman*[3], *Kasturshet* v. *Rama*[4], *Chintaman* v. *Chintaman*[5], and cases there cited, a Court executing a decree cannot question the jurisdiction of the Court which passed it. The case of *Bhagwantappa* v. *Vishwanath*[6], cited by the appellant's pleader, follows that of *Chogalal* v. *Trueman*[3], and only shows that a Court to which a decree is sent, can, before it becomes the Court executing the decree, consider the jurisdiction of the Court which passed it, so that, if not satisfied on the point, it may decline to become the Court executing the decree, in which case the parties must go back to the Court which passed the decree. That case has no application here. Moreover, the present application in no way affects property falling within the purview of the Pensions' Act, but seeks enforcement against the general assets of the judgment-debtor whose liability under the decree is not made a charge on the Saranjam or cash allowance at all. That liability appears to have been imposed and accepted not as effecting any partition of the Saranjam property, but for the purpose of effecting equality in the partition of non-Saranjam property, the Saranjam property being merely indicated as a fund available to the defendant for the purpose of discharging that liability. The appellant has failed to show that the execution sought can be resisted on the grounds above considered or on any other ground. I concur in dismissing the appeal with costs.

R. R. *Appeal dismissed.*

(1) (1885) 10 P. D. 161 at p. 165.
(2) [1895] 1 Ch. 37.
(3) (1883) 7 Bom. 481.
(4) (1885) 10 Bom. 65.
(5) (1896) 22 Bom. 475.
(6) (1904) 28 Bom. 378; 6 Bom. L. R. 342.