

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

BALKRISHNA SAMBHAJI GHATE (ORIGINAL PLAINTIFF),—APPELLANT *v.*
DATTATRAYA MAHADEV GHATE (ORIGINAL DEFENDANT), RES-
PONDENT.*

1917.

December 17.

Pensions Act (XXIII of 1871), section 4—Kulkarni Vatan—Land revenue assigned for the office of Kulkarni—Suit for a share in the revenue—Civil Court—Jurisdiction.

A suit by a member of a Vatan family for a declaration of his right as owner of a certain share in the land revenue assigned for the purpose of supporting the office of Kulkarni, is a suit falling within the purview of section 4 of the Pensions Act, 1871, and is not maintainable without a certificate from the Collector.

SECOND appeal against the decision of M. B. Tyabji, District Judge of Ratnagiri, reversing the decree passed by N. K. Mastakar, Subordinate Judge at Devgad.

Suit for declaration.

The plaintiff sued to have it declared that he was the owner of a ten pies share in the Kulkarni Vatan of the village of Mutat. He alleged that one Laxman Vasudev had one anna eight pies share and the defendant one anna eight pies share in the plaint Vatan; the shares of both were entered in the name of the defendant; that Laxman Vasudev being dead his share went to his nearer relations the defendant and his brother Vishwanath Vasudev; that from Vishwanath the plaintiff got his share under a sale deed dated the 20th February 1914. The defendant refused to allow the plaintiff to get his share entered in his name and hence the suit.

The defendant contended *inter alia* that Laxman Vasudev had no share in the Vatan and that the suit

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did not lie in the absence of the Collector's certificate under section 4 of the Pensions Act, 1871.

The Subordinate Judge held that the suit was maintainable without a certificate under the Pensions Act, 1871, and allowed the plaintiff's claim.

On appeal the District Judge was of opinion that the suit was not maintainable without the production of the certificate of the Collector. The plaintiff having failed to produce the certificate the suit was dismissed.

The plaintiff appealed to the High Court.

P. B. Shingne, for the appellant:—The suit is thrown out for want of a certificate. It is a suit for a declaration that plaintiff is the owner of a share in a Vatan; so it is not a suit relating to a "grant of money;" vide *Govind Sitaram v. Bapuji Mahadeo*⁽¹⁾; *Ramchandra Dabholkar v. Anant Sat Shenvi*⁽²⁾.

S. G. Abhyankar, for the respondent not called upon.

SCOTT, C. J.:—The plaintiff sued to have it declared that he was the owner of a ten pies share out of a one anna eight pies share, and a still larger share standing in the name of the defendant in the Kulkarni Vatan of the village of Mutat. The share was in land revenue assigned for the purpose of supporting the office of Kulkarni. Section 4 of the Pensions Act provides that no Civil Court shall entertain any suit relating to any grant of 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.

The applicability of this section to cases of the description which we now have before us has been

(1) (1893) 18 Bom. 516.

(2) (1883) 8 Bom. 25.

considered in various reported judgments of this Court, notably in *Babaji Hari v. Rajaram Ballal*⁽¹⁾, and *Dwarkanath v. Mahadeo*⁽²⁾. Both judgments emphatically assert the necessity of applying the section without modification to all suits of this nature. In *Balvant Ramchandra v. Secretary of State*⁽³⁾, the section was very exhaustively discussed, together with the authorities which have accumulated upon it, in the judgment of Mr. Justice Batty, and in that judgment it will be found an express acceptance of the conclusions arrived at by the Court in *Babaji Hari v. Rajaram Ballal*⁽¹⁾. It is, however, said that those conclusions are inconsistent with the judgment of Sir Charles Sargent in *Govind Sitaram v. Bapuji Mahadeo*⁽⁴⁾. That judgment, as shown in *Dwarkanath v. Mahadeo*⁽²⁾, related to a case expressly provided for by the Vatan Act in which the Legislature contemplated that a decree of a Court should be obtainable, for it was a case in which the plaintiff's status as Vatanadar was challenged, and the Court held that that being so, his right of access to the Civil Court was not to be ousted merely because the greater part of the remuneration for the Vatan service consisted of a money grant from Government. Here we are not concerned with any question of disputed status. The plaintiff is a member of a Vatan family who by reason of his membership has been able to acquire by purchase a certain share in the Vatan property, and his suit now relates to the share of revenue assigned for the Vatan, a suit relating to which falls within the purview of section 4 of the Pensions Act. We, therefore, affirm the decree of the lower appellate Court and dismiss the appeal with costs.

Decree confirmed.

J. G. R.

(1) (1875) 1 Bom. 75.

(2) (1912) 37 Bom. 91.

(3) (1905) 29 Bom. 480.

(4) (1893) 18 Bom. 516.

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