APPELLATE CIVIL.

Before Mr. Justice Shah and Mr. Justice Hayward.

1919. *August* 1.

MAHAMADSAHEB VALAD APPALAL KAZI (ORIGINAL DEFENDANT No. 3), APPELLANT *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS (ORIGINAL PLAINTIFF AND DEFENDANTS NOS. 1 AND 2), RESPONDENTS.*

Revenue Jurisdiction Act (Bom. Act X of 1876), section 4 (a), proviso (k)—Kazi Inam lands—Alienation of lands by Inamdar—Adjudication passed by Inam Commissioner declaring the land to be held wholly free of assessment—Order passed by the Collector directing alienee to pay rent to Kazi or else directing resumption—Suit by alienee to set aside the order—Civil Court—Jurisdiction.

The lands in suit were granted in Inam for Kazi services. In 1852 by the decision of the Inam Commissioner it was declared that the lands will be continued to be held wholly free of assessment. In 1914 the Collector passed an order directing that the plaintiff who was an alienee from the Inamdar should pay a certain rent on the lands in suit for Kazi services or else the lands would be resumed from his possession. The plaintiff sued for a declaration that the order of the Collector was illegal and *ultra vires*. The defendant Kazi contended that the plaintiff's claim being against Government relating to the property appertaining to his office as village officer, the jurisdiction of the Civil Court was ousted under section 4 (*a*), paragraph 1 of the Bombay Revenue Jurisdiction Act, 1876.

Held, that the plaintiff's claim being a claim to hold land wholly exempt from assessment under the decision of the Inam Commissioner was clearly within the scope of proviso (*k*) of section 4 of the Bombay Revenue Jurisdiction Act, 1876, and therefore cognisable by Civil Court.

Held, also, that the proviso to section 4 of the Bombay Revenue Jurisdiction Act, 1876, in terms applied to any person claiming exemption from Land Revenue under an adjudication duly passed by a competent officer under Bombay Act XI of 1852 and an alienee from the Inamdar could not be treated as being outside the scope of the proviso.

SECOND Appeal against the decision of L. C. Crump, District Judge of Belgaum, confirming the decree passed by A. Montgomerie, Assistant Judge of Belgaum.

* Second Appeal No. 922 of 1917.

Suit for a declaration.

The lands in suit situated at Madwal, a village in Gokak Taluka, were originally granted in Inam for Kazi services to the ancestor of defendants Nos. 2 and 3 by the Peshwa Government.

In 1824, the lands were alienated by the then Kazi in favour of one Annajipant Deshpande.

In 1852, the Assistant Inam Commissioner held an enquiry regarding this Inam and by his decision, dated the 31st December 1852, ordered as follows:—

The said land at Madwal, Mahal Ankālgi, in the Pachapur Taluka of the Belgaum District which is continued as whole Inam in the name of the Musalman Kazi Babasaheb walad Isabsaheb of Pachapur has been so continued... from the beginning as an Inam in respect of "Mulla". It is, therefore, thought proper and is hereby ordered that the said land...should be perpetually continued as whole Inam, along with the vatan of the Mulla....This decision should only be taken to mean how long the land is to be continued free (without assessment).

In 1900 the heirs of Annajipant Deshpande who had remained in possession of the lands since 1824 sold the same to the plaintiff.

In 1914, the defendants Nos. 2 and 3, Kazis of Madwal, moved the Collector of Belgaum to have the land restored to them and the Collector by his order, dated the 2nd June 1914, required as follows:—

"In these cases as the stipulated service continues to be performed and is required by the village community but the service Inam lands have been wholly or partially alienated, no steps need be taken to resume such lands from the persons in possession of them so long as they agree to pay the rents demanded from them and so long as any member of the family of the grantees is willing to perform the requisite services and to pay the judi fixed on the Inam lands; but it should be intimated to the alienees that the lands will be resumed from their possession whenever the requisite services cease to be performed, or when the alienees refuse to pay the rents demanded from them".

The rent demanded was Rs. 68.

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Against the Collector's order, the plaintiff preferred appeals to the Commissioner and the Governor-in-Council. The said appeals being dismissed the plaintiff filed the present suit for a declaration that the order passed by the Collector was illegal and *ultra vires*.

Defendant No. 1, the Secretary of State for India in Council, contended that the lands were service Inam; that the order of the Collector was justified by the rules framed under Bombay Act XI of 1852 and published in Government Notification in Revenue Department No. 10336, dated the 12th October 1908; and that the jurisdiction of the Civil Court was ousted by section 4 (*a*) of the Bombay Revenue Jurisdiction Act, 1876.

Defendants Nos. 2 and 3 raised contentions similar to that of defendant No. 1.

The Assistant Judge decreed the suit in favour of the plaintiff by declaring that the Collector was not entitled to recover any sum exceeding the full assessment of the land in suit. He held that the Collector's order was not justified by the rules framed under Bombay Act XI of 1852 and that the suit was not barred under section 4 (*a*) of the Bombay Revenue Jurisdiction Act, 1876. His reasons were as follows:—

"Plaintiff claims that the suit comes within exception (*k*) of the same section and also of sub-section A of section 5. ... I am of opinion that the present suit is covered by both exceptions relied on by plaintiff. Land Revenue is defined in the Act as 'all sums in payment in money or in kind received or claimable by or on behalf of Government from any person on account of any land held by or vested in him or any cess or rate authorised by Government under the provisions of any law for the time being in force'. The definition obviously covers much more than the ordinary land revenue assessed in accordance with the Land Revenue Code. It is not confined to what is usually termed a land revenue assessment. The sum imposed by the Collector's order appears to be a sum claimed by Government in respect of land held by plaintiff. It is true that it is described as rent nominally paid to the Kazis. But it is in reality a sum enacted by Government from the land from remunerating a servant of the village community. It does not make

any difference whether Government orders the plaintiff to pay the sum directly to the Kazi or itself collects it and hands it over to the officiator for the time being. It may be that the remuneration is not paid to the Kazi as a servant of the State; but the original grant by the Peshwa and the continuation of the grant by the British Government indicates that the State has assumed the burden of remunerating the services rendered to a part of the community. Rent claimed from plaintiff is claimed by Government in order to assist it in paying for these services and so falls within the definition of 'Land Revenue'. I am not sure that it would not also fall within the term 'cess authorised by Government': Plaintiff's claim then is a claim to hold his land either wholly or partially exempt from payment of the demand for land revenue now made upon him. And his claim is based on an adjudication duly passed by a competent officer under Act XI of 1852 declaring the particular property in dispute to be exempt. The decision in *Janardhan Rao* v. *The Secretary of State for India*, 13 Bom. 445 is based on the ground that where there has been such an adjudication, Act X of 1876 leaves the interpretation of that adjudication within the jurisdiction of the Civil Courts. From another point of view this is a suit against Government to contest the amount claimed as land revenue on the ground that such amount is in excess of the amount authorised in that behalf by Government (section 5A), land revenue being taken in the sense above indicated. I therefore find that this suit can be tried by this Court".

Against the decision of the Assistant Judge, defendant No. 1 and defendant No. 3 preferred separate appeals to the District Court. Appeal No. 263 of 1916 preferred by defendant No. 1 was, however, withdrawn and it was dismissed. In defendant No. 3's Appeal No. 264 of 1916, it was contended that the suit was barred by section 4 (*a*), paragraph (3) of the Bombay Revenue Jurisdiction Act, 1876. The District Judge disallowed the contention and dismissed the appeal.

Defendant No. 3 preferred an appeal to the High Court.

A. G. Desai, for the appellant:—Apart from the question whether the order of the Collector is right or wrong, I submit that so long as that order exists a suit to set aside or avoid that order is not cognisable by the Civil Court. The jurisdiction of the Civil Court is

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ousted under section 4 (*a*) of the Revenue Jurisdiction Act.

I rely principally on section 4 (*a*), paragraph 1, which prohibits "Claims against Government relating to any property appertaining to the office ..... of any other village officer or servant". The words "village officer" are general and they would include a Kazi whose services are useful to the community. The Government has to pay remuneration to a Kazi for his services and sometimes, as in this case instead of an allowance in cash, land is allowed to the Kazi as remuneration for his services. These lands having gone into the possession of strangers, the Government will have a right to resume them and restore them to the Kazi. Instead of resuming possession, the Collector directed that my client who is performing the services of a Kazi should get the economic rent from the alienee.

I further submit that the suit is not saved by proviso (*k*) to section 4, for two reasons, first, the proviso in terms would not apply to subsequent alienees from the Inamdar. The words "any person" in the proviso would mean only the person in whose favour the grant is made and not any alienee from him.

Secondly, the plaintiff's claim is not to hold land wholly or partially exempt from payment of land-revenue. "Land Revenue" is defined in the Act as "all sums and payments, in money or in kind, received or claimable by or on behalf of Government from any person ....." see section 3. The word "received" means "recovered and retained", but such is not the case here. The Government does not "retain" for itself anything; nor is the sum "claimable *by* or *on behalf* of Government." The rent is claimed by the Kazi and it is

demanded by the Collector for his sake. The Collector, even if he be considered to be Government within the meaning of section 3 of the Act only directs the alienee to pay it to the Kazi. The suit is also not saved by section 5 (*a*). It is not a suit to contest the amount claimed or paid under protest as "land revenue" on the ground that such amount is in excess of the amount authorised in that behalf by Government. The plaintiff does not allege that any particular sum is authorised by Government or that the sum claimed is in excess of any such authorised sum.

Government Pleader, for respondent No. 1 did not contest the appeal.

G. S. Rao and *J. G. Rele*, for respondent No. 2:— We submit that the suit is not barred under section 4 (*a*) paragraph (1). The words "village officer or servant" in that paragraph would include only such officers or servants as are useful to the State and community. Kazi's services are not useful to the State and therefore he cannot be called a village officer within the meaning of the above paragraph.

Secondly, the claim falls under proviso (*k*) of section 4 and is therefore cognisable by the Civil Court. The words "any person" in the proviso would include an alienee from an Inamdar. Our claim is to hold the land either wholly or partially free of land revenue and the claim is based under an adjudication passed by the Inam Commissioner in 1852. Land revenue as defined in the Act would also include rent claimed by the Collector. It is a sum exacted by Government from the land for remunerating the Kazi and is claimable *by* or *on behalf* of Government from the plaintiff: see section 3. In levying the rent the Collector has, therefore, gone beyond the terms of the adjudication order made by the Inam Commissioner; at the most by resumption

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the Government could only recover full assessment on the land; see *Ganpatrav Trimbak Patwardhan* v. *Ganesh Baji Bhat*[1]; *Hari Sadashiv* v. *Shaik Ajmudin*[2]; *Gururao Shrinivas* v. *Secretary of State for India*[3].

The assessment on the land in suit is only Rs. 12½ while the rent demanded is Rs. 68. The Collector's order was, therefore, unauthorised and the suit to set it aside is maintainable in Civil Court.

Thirdly, the suit is also saved by section 5 (*a*) of the Bombay Revenue Jurisdiction Act. In form it is a suit against Government to contest the amount claimed as land revenue on the ground that such amount is in excess of the amount authorised in that behalf by Government.

Desai, in reply.

C. A. V.

SHAH, J.:—The plaintiff in this case sues for a declaration that the order of the Collector, dated 2nd June 1914, directing that he should pay certain rent on the lands in question or that the lands should be forfeited is illegal and *ultra vires*.

The defendant No. 1 (the Secretary of State for India in Council) and defendants No. 2 and 3 in whose favour the said order was made contended in the trial Court that the jurisdiction of the Civil Courts was ousted by section 4 (*a*) of the Bombay Revenue Jurisdiction Act (X of 1876) and that the order was justified by the Rules framed by the Government in 1908 in exercise of the powers conferred by sections 8 and 10, Bombay Act XI of 1852, and Act VII of 1863, section 2, clause (3), regarding the resumption and continuance of service lands.

(1) (1885) 10 Bom. 112 at p. 116. (2) (1886) 11 Bom. 235 at p. 239.
(3) (1916) 41 Bom. 408 at p. 422.

The trial-Court held that the jurisdiction of the Civil Courts was not ousted, that the rules did not justify the order of the Collector, and that he was entitled only to levy the full assessment. It accordingly declared that the Collector was not entitled to recover from the plaintiff any sum exceeding the full assessment of the lands in suit and ordered a refund of the sum recovered in excess of the full assessment in pursuance of the Collector's order.

The defendant No. 1 acquiesced in this view before the lower appellate Court; and the contentions raised by defendant No. 3 as to the validity of the rules in relation to the service lands in question and as to jurisdiction under section 4 (*a*), paragraph 3 were disallowed by the lower appellate Court. In the result the decree of the trial Court was confirmed.

In the appeal before us defendant No. 1 has not raised any objection to the decree appealed from. On behalf of defendant No. 3, who is the appellant here, it is urged that the jurisdiction of the Civil Courts is ousted under section 4 (*a*), paragraph 1. The points raised in the lower appellate Court have not been urged before us on his behalf; and it is not suggested now that the Collector's order is justified beyond the extent recognised by the lower Courts or that the jurisdiction of the Civil Courts is ousted under section 4 (*a*), paragraph 3. On behalf of the plaintiff, no objection is taken to the decree so far as it allows the levy of full assessment against him. Thus in this appeal we are not concerned with the merits of the decree passed by the lower Courts, but only with the question of jurisdiction raised by defendant No. 3.

It is urged that the claim relates to propery appertaining to the hereditary office of a Kazi, which is one of the offices expressly recognised under Act XI of 1852,

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schedule B, rule 8, paragraph 1, or which is the office of a village officer within the meaning of section 4 (*a*), paragraph 1, and that no Civil Court can exercise jurisdiction in relation thereto. But the provision relied upon is subject to the exceptions appearing in the same section. As indicated by the proviso clause (*k*), if any person claim to hold wholly or partially exempt from payment of land revenue under an adjudication duly passed by a competent officer under Act XI of 1852 which declares the particular property in dispute to be exempt, such claim shall be cognisable by Civil Courts. In the present case plaintiff relies upon a decision of the Assistant Inam Commissioner, dated 31st December 1852, and claims in effect that the land in question is wholly exempt from assessment. The Sanad subsequently granted in 1867 is only a formal expression of that decision. Thus the plaintiff's claim is clearly within the scope of the proviso and cognisable by Civil Courts.

It may be that on the merits he may not be able to substantiate his claim fully or at all: but that does not affect the jurisdiction to consider his claim to hold the land wholly free under the decision of the Inam Commissioner.

It is contended, however, that the plaintiff claims as an alienee and not under the person upon whom the Inam was conferred under the decision of the Inam Commission and that the exception cannot apply to him. The proviso in terms applies to any person claiming exemption from land revenue under an adjudication duly passed by a competent officer under Act XI of 1852. I do not see how an alienee can be treated as being outside the scope of the provision. Further the decision of the Inam Commissioner expressly saves the rights of other persons, whose names may not appear in the decision, and it is made

clear that the decision should be taken to mean how long the land is to be continued free from assessment.

In this view of the matter it is not necessary to consider the effect of section 5 (*a*) which has been relied upon by the plaintiff as saving the jurisdiction of the Civil Courts in a suit like the present. The plaintiff's contention is that his suit is against Government to contest the amount claimed and recovered as land revenue on the ground that such amount is in excess of the amount authorized in that behalf by Government. He further contends that the amount claimed and recovered under the Collector's order is land revenue within the meaning of the Revenue Jurisdiction Act and that it is in excess of the amount authorised by Government under Act XI of 1852 or under the Sanad. On the other side it is contended that the amount must be deemed to have been authorised under the rules framed by the Government in 1908 and that section 5 (*a*) cannot save the jurisdiction of the Civil Courts. The plaintiff's contention is not without force. But as I have said, it is not necessary to decide this question. The only point raised on behalf of the appellant as to the jurisdiction of the Court, therefore, fails.

The question relating to the meanning of "resumption" of an Inam under Act XI of 1852 in respect of service lands pertaining to any hereditary office useful to the village community as distinguished from the State, has been incidentally argued. But it does not affect the point of jurisdiction in any way. It is really a point touching the merits of the Collector's order; and neither party has objected to the decree under appeal on merits. It is not, therefore, necessary to express any opinion about it.

The result is that this appeal is dismissed and the decree of the lower appellate Court confirmed.

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The appellant to pay the costs of respondent No. 2. Respondent No. 1 to bear his own costs.

HAYWARD, J.:—I agree.

Decree confirmed.

J. G. R.

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Before Mr. Justice Shah and Mr. Justice Hayward.

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FAKARUDINSAB AND TWO OTHERS, SONS AND HEIRS OF THE DECEASED MAHOMED ARIFSAHEB WALAD PIRASAHEB, KHATIB AND MULLA (ORIGINAL PLAINTIFF), APPELLANTS *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Revenue Jurisdiction Act (Bom. Act X of 1876), section 4 (a), proviso (k) and section 5 (a) and (b)—Khatib Inam land—Alienation of land by Inamdar's widow—Adjudication passed by Inam Commissioner exempting the land from payment of assessment—Collector's order directing alienee to pay economic rent to the officiator appointed—Suit by alienee to set aside the order—Jurisdiction—Civil Court.

The lands in suit were originally granted in Inam to one Fakarudin for Khatibgiri services. In 1856 by an adjudication passed by the Inam Commissioner under Bombay Act XI of 1852, it was declared that the lands were to be held by the Inamdar free from payment of land-revenue. In 1864 Fakarudin's widow Pachhabi alienated the lands and transferred the Khatibgiri right to plaintiff's father. Thereafter the plaintiff enjoyed the lands free from assessment and performed the services as Khatib until 1911 when an order was passed by the Commissioner directing that the full economic rent be recovered from the plaintiff and be paid to defendant No. 3 as long as he officiated as Khatib on behalf of the Inamdar. The plaintiff sued for a declaration that the Commissioner's order was invalid and not binding upon him and also claimed the right to officiate as a Khatib. The defendants contended that the jurisdiction of the Civil Court was ousted under section 4(a) of the Bombay Revenue Jurisdiction Act, 1876; and the suit was not saved

*First Appeal No. 13 of 1916.