

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Sardar Ganpat Rao, Moharkar v. Sardar
Anand Rao, Baji Sahib, Moharkar, from
the High Court of Judicature for the North-
Western Provinces, Allahabad ; delivered
the 16th December, 1909.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Lord Collins.*]

The question in this case is as to the respective rights of certain members of the family of one Jagdeo Rao, who was Commander-in-Chief of the Maharaja Scindia, of Gwalior, at the time of the Indian Mutiny, in respect of certain villages and lands, situate part in Bombay and part in the N.W. Provinces, an interest in which was conferred upon him by the British Government in perpetuity as a reward for his services subject to the conditions of loyalty and the payment of an annual sum. The Appellant, Sardar Ganpat Rao, is the eldest son of Sultanji Rao, deceased, who was the eldest son of Jagdeo Rao. The Respondent, Anand Rao, is the third surviving son of Jagdeo Rao. His second son, Tantya, was adopted into another family before the death of Jagdeo Rao. This litigation began through a claim put forward by Anand Rao for a partition of all the family property. Ultimately,

[62] P.C.J. 176.—L. & M.—125—30/11/09. Wt. 98.

the present suit, which was brought by Anand Rao, as Plaintiff, against his nephew, Sardar Ganpat Rao, for partition, came before the Subordinate Judge of Jhansi. Numerous issues were stated and disposed of by the learned Judge, but that which was most discussed in respect of each portion of property embraced in the claim was that which raised the question whether the want of a certificate under Section 6 of the Pensions Act, XXIII. of 1871, was a bar to the action in respect of each of the portions of land in which rights were claimed. The learned Judge made a list of each of the parcels and dealt with them separately. He held that the want of the certificate was a bar as to all but a few of the parcels, viz., (a) three Jhansi villages, as to which he held that a certain order made by the Collector of Jhansi of 26th October, 1899, was equivalent to a certificate under Section 6, and (b) certain portions of land in the village of Mahoor, as to which he held that the property in the soil itself, not the mere right to a revenue therefrom, was the subject-matter of the claim, and therefore did not fall within Section 6 of the Act; but as to all the rest of the parcels, including the village of Warur Buzurg and the lands therein, he held that Section 6 applied and dismissed the claim.

The Defendant thereupon appealed to the High Court and the Plaintiff filed an objection under Section 561 of the Code of Civil Procedure, claiming in effect that he was entitled to have his whole claim decreed. But by the time the Appeal came to be heard the field of controversy was considerably narrowed. The Court at the outset of their Judgment say: "Only two matters have been pressed before us in Appeal by the learned Counsel for the Appellant. They are in respect of the three villages in the Jhansi District, and a portion of the 440 acres of land in the Poona District, in

respect of which the claim for partition was allowed." They then go on: "As regards the three villages in the Jhansi District, the objection which was raised in the grounds of Appeal is that the property was subject to the provisions of the Pensions Act, No. XXIII. of 1871, and that no certificate was obtained under Section 6 of that Act before the institution of this suit, and so the Court had no jurisdiction to try the case. That defect, if any, has been cured. This Court allowed the hearing of the Appeal to be adjourned in order to enable the Respondent to procure a certificate and so avoid the necessity of disposing of the technical question raised in regard to it. The result is that the Appeal in respect of the three Jhansi villages fails."

They then deal with that part of the 440 acres in respect of which partition was allowed, and agree with the Subordinate Judge's decision, which is one of fact, thereon. Therefore, on this point also, the Appeal failed.

They then deal with the Respondent's objections. First, that the village of Mahcor should not have been excluded from the Decree in favour of the Plaintiff, as it was not covered by Section 6 of the Pensions Act. On this point they allow the Plaintiff to abandon his suit as regards that village, with liberty, if so advised, to institute a fresh suit in regard to it. The only exception as to this was that the terms as to costs were too easy upon the Plaintiff. But the matter was clearly in the discretion of the Court in view of the circumstances to which they refer.

The next relates to the village of Warur Buzurg as to which the learned Subordinate Judge had held that though it came within Section 6 of the Pensions Act the want of a certificate was sufficiently met by the order above referred to. The High Court, without expressing

any opinion on that point, held that the Sanad by which the British Government, on 1st December, 1866, confirmed the land to Jagdeo Rao was not a grant of land Revenue but of the soil of the village itself, and consequently that the Pensions Act did not apply.

Their Lordships are not disposed to differ from the two Judges of the High Court on a question of construction, particularly as it seems to them that the learned Subordinate Judge, for the reasons he gave, was fully justified in treating the order as dispensing with the certificate. The learned Judges go on to point out that Counsel for the Respondent had abandoned his point as to the property in Mahoor contained in the five deeds of sale. They also treated the houses in Mahoor and the Poona District as covered by the reasons given in regard to the remainder of the 440 acres included in the Decree and partitioned.

Their Lordships see no reason to differ from these conclusions. The result is that in their Lordships' opinion the Appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.