

Andi Achen Vs. Kombi Achen

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Court : Chennai

Decided On : Sep-14-1894

Reported in : (1895)ILR18Mad187

Judge : Muttusami Ayyar and ;Best, JJ.

Appellant : Andi Achen

Respondent : Kombi Achen

Judgement :

Best, J.

1. As observed by the Subordinate Judge, the difference between the present suit and the former one is that in big former suit plaintiff asked only for a declaration of his status without seeking further Relief in the shape of payment to him of his share of the malikana, whereas he now seeks both for the declaration and the further Relief.

2. The former suit was expressly held to be not barred by the Pensions Act XXIII of 1871 on the ground that it was merely for a declaration as to the plaintiff's status and that though 'no doubt malikana is paid by Government on behalf of the stanom of the fifth Raja,' the suit 'did not seek a declaration that the plaintiff is entitled to anything so payable.'

3. As the malikana in question is clearly money paid by Government within the meaning of Section 4 of the Pensions Act cf. the recent decision of the Privy Council in *Deo Kuar v. Man Kuar* L.R. 21 IndAp 148 the present suit is, in my opinion, not maintainable in the absence of a certificate under Section 6 of that Act.

4. I would therefore allow this appeal and, setting aside the order of the Subordinate Judge, restore the decree of the District Munsif and direct the respondent (plaintiff) to pay the appellant's (second defendant's) costs in this Court and also in the Lower Appellate Court.

Muttusami Ayyar, J.

5. In this case judgment was reserved on account of an opinion expressed by *roe in ray* judgment in *Kombi v. Aundi* I.L.R. 13 Mad. 75 to the effect that unless the suit is brought against the Government, no certificate is perhaps necessary under Section 6 of Act XXIII of 1871. It was not necessary to determine the question for the purpose of the previous suit which could not be maintained under Section 42 of the Specific Relief Act.

6. On reconsidering the question which arises for adjudication in this suit and taking time be consider it, I see reason to alter my opinion. I think that upon the proper construction of Section 4 of the Pensions Act, it is enough that the suit relates to a malikana and it is not necessary that it should be instituted against the Government or its officers. I was influenced by the notion that the Legislature did not probably intend to shut out the co-sharers from the ordinary Courts, even in regard to the determination of their relations inter se which must prevail in regard to other property. But having regard to the language of Section 4 and the scheme of the Act suggested by Sections 5 and 6, the narrower construction, viz., that it is enough that the suit relates to malikana, appears to be the true construction. Possibly, the intention was that the distribution of what is regarded as the bounty of Government among the co-sharers should remain under its control or that of its executive officers. This view is the result of the grammatical interpretation of Section 4 confirmed by the scheme of the Act embodied in Sections 5 and 6. It is

also the view taken in Babaji Hari v. Rajaram Ballal I.L.R. 1 Bom. 75 and Syed Mahommed Isaack Mushyack v. Azeezoon Nissa Begam I.L.R. 4 Mad. 341 and recently in Deo Kkuar v. Man Kuar L.R. 21 IndAp 148 by the Privy Council. On the ground that a certificate from the Collector is necessary to give jurisdiction to the Civil Courts to entertain the suit relating to the malikana in dispute, I concur in the judgment proposed by my learned colleague.

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