

Vinayak Ganesh Hasabnis Vs Narayan Shankar Hasabnis

Court: Bombay High Court

Date of Decision: Dec. 7, 1934

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 41 Rule 27
Pensions Act, 1871 â€” Section 4

Citation: AIR 1935 Bom 227 : (1935) 37 BOMLR 343

Hon'ble Judges: Murphy, J; Barlee, J

Bench: Division Bench

Judgement

Murphy, J.

The decree appealed against awards plaintiffs Nos. 1 to 4 possession of a half share of certain property by a partition to be

carried out by metes and bounds and future mesne profits from date of suit to date of possession being obtained of all the property awarded

except the Poona house and site for that property from defendants Nos. 5, 6 and 8. A similar share in certain cash allowances sued for was

refused to plaintiffs on the ground that they had not obtained the Collector's permission to sue, a prerequisite of the Court's jurisdiction under the

Pensions Act.

2. Plaintiffs appeal against that portion of the decree refusing them a share in the cash allowances for lack of the necessary certificate and also

against the Court's refusal to give them a decree for past mesne profits.

3. The cash allowances are payable to the Hasabnis family by the Collector of Salt Revenue and the Collectors of Thana and Ratnagiri. The claim

of a share in the one payable in Ratnagiri has been given up. It is also conceded at the hearing in spite of contentions to the contrary in the memo,

of appeal that a certificate under the Pensions Act is necessary before the Court can deal with any dispute concerning the cash allowances : and the

point in appeal is whether the necessary certificates having been obtained and tendered in an accompanying civil application they should now be

admitted and cognizance of this claim so far refused should now be taken.

4. There are also cross-objections, their burden being that relief in respect of the cash allowances having been refused, it was wrong to grant

plaintiffs half the costs of the whole suit.

5. The family tree so far as is necessary is given at the head of the reasons in the original Court's judgment. The plaintiffs' claim was as

reversioners of Gangabai, widow of Trimbak Hasabnis who died in 1918. In 1891 Gangabai had sued Shankar of the other branch of the family

for a share in the cash allowances, and it appears that on applying to Government for a certificate she was told one was not necessary. This

episode is alleged to have led to its non-production in this case. In fact in that suit it was held that the Government's reply quoted above amounted

to the grant of a certificate and the claim was decreed.

6. The provisions of the Pensions Act, Section 4, are that proceedings in a claim such as this are forbidden and the bar is removed in the form of

the Court being allowed to take cognizance on the production of the certificate. In the present case the difficulty is and the objection taken was that

since the written statement raised the contention that a certificate was necessary and the plaintiffs persisted in the suit without one they cannot now

be heard to say that they have obtained one. The only means, it is said, of now producing it is under Order XLI, Rule 27, Civil Procedure Code,

which cannot apply, for its admission was not refused by the Court below and it is not the Court that requires it, (1931) L.R. 58 I.A. 254 (Privy

Council) an additional evidence case-was relied on, and also that of Motiram Kaliandas v. Pratabba Wasadya Hamirsingji Mohansingji (1877)

P.J. 314, in which was held that the appellate Court had no jurisdiction to reverse a decree, on the ground that the certificate which was lacking in

the original Court and so caused the failure of the suit had been produced in appeal. But this view does not seem to have been persisted in in later

cases. The leading case is (1881) L.R. 9 I.A. 8 (Privy Council), in which the decision is, that once the certificate is produced, the Court can take

cognizance, and Mr. Coyajee's argument is that since an appeal is a continuation of the original proceedings, he can put in the certificates at this

stage. Sardar Ganpat Rao Moharkar Vs. Sardar Anand Rao, Baji Sahib, decides that where the High Court allowed the plaintiff to produce and

file a certificate under the Pensions Act, there was no reason for their Lordships of the Privy Council to interfere. In Antaji v. Vinayak (1914) 17

Bom. L.R. 153 the hearing of the appeal was adjourned to enable the plaintiff to obtain the necessary certificate from the Collector-though the

Court had come to a decision on the merits which it was apparently prepared to express as soon as it was received.

7. In Jijaji Pratapji Raje v. Balkrishna Mahadeo I.L.R (1892). 17 Bom. 169 it was held that what the original Court should have done was to

adjourn the suit so that a certificate might be produced and both the decrees of the Courts below were reversed on its production in the High

Court, and the suit was remanded for a fresh trial as it was there held that what had been so far done was without jurisdiction. We think that these

authorities conclude the matter. Two certificates have now been produced. We must, therefore, reverse that part of the learned Subordinate

Judge's order which dismisses the claim to a share in the cash allowances, and remand the suit to him for a decision on this point on the merits.

8. The appellants must pay all the costs of this appeal-their own and the respondents". With regard to the cross-objections it seems to us that two

pleaders' fees were correctly awarded but the whole of the costs should not have been, since a substantial part of the claim failed. The cash

allowances' value is Rs. 7,249-11-0. Costs on this amount are disallowed to the plaintiff in the Court below. Respondent to get his costs of the

cross-objections which have succeeded. Each party to get his own costs in the lower Court to the extent of his success. The civil application is

allowed. Certificates may be put in. All costs on the applicant.

9. The prayer for past mesne profits is allowed-they should be ascertained in, execution.