

*Privy Council Appeal No. 124 of 1917.*  
*Allahabad Appeal No. 14 of 1915.*

Hakim Shiam Sundar Lal and others - - - - *Appellants*

v.

The Secretary of State for India in Council - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN  
PROVINCES, ALLAHABAD.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 21ST OCTOBER, 1919.

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*Present at the Hearing :*

LORD ATKINSON.  
LORD PHILLIMORE.  
SIR JOHN EDGE.  
MR. AMEER ALI.

[*Delivered by* MR. AMEER ALI.]

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This is an appeal from a judgment and decree of the High Court of Allahabad dated the 16th March, 1915, which, reversing the order of the Subordinate Judge, dismissed the plaintiffs' suit.

For the purposes of this judgment the facts which gave rise to the action may be stated very shortly.

An ancestor of the plaintiff, a hakim by profession, who appears to have been attached to the Court of the Emperor Babar, the founder of the Mogul dynasty, received from that sovereign in reward of his services the permanent grant descendible to his heirs of the revenues payable to the State by the actual possessors of the soil in respect of a mouzah called Muhammadpur Byar, and of a half or 10 biswas share of Mouzah Lakhanpur in the District of Badaun. Such grants are still called by their

original name of *muafi*, and the particular grant to the plaintiffs' ancestor was recognised by the British Government. The last undisputed holder of the *muafi* in this case was Hakim Dalpat Rai. On his death without leaving male issue it descended under the Hindu (Mitakhshara) law to his daughter Ram Piari. She died in 1901, leaving a daughter Buneshri and the daughter's husband Durga Pershad. These two claimed to be entitled to the *muafi* on the decease of Ram Piari, and succeeded in getting their names entered as *muafidars* in the Revenue Registers. The plaintiff Jawahir Lall had opposed their claim, but the Revenue authorities overruled his objection and referred him to the Civil Court to establish his title.

It is not disputed that the subject matter of the claim falls within, and is subject to the provisions of, Act XXIII of 1871. That Act relates to pensions and grants by Government of money or land-revenue, and provides by section 4 as follows:—

“Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or 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.”

Section 5 declares that:—

“Any person having a claim relating to any such pension or grant may prefer such claim to the Collector of the District or Deputy-Commissioner or other officer authorised in this behalf by the Local Government, and such Collector, Deputy-Commissioner or other official shall dispose of such claim in accordance with such rules as the Chief Revenue Authority may, subject to the general control of the Local Government, from time to time prescribe in this behalf.”

Section 6 then declares the conditions under which only a Civil Court may entertain any such claim. It provides as follows:—

“A Civil Court, otherwise competent to try the same, shall take cognizance of any such claim upon receiving a certificate from such Collector, Deputy-Commissioner or other officer authorised in that behalf, that the case may be so tried, but shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.”

In view of the provisions of section 6 the plaintiff obtained the necessary certificate from the Collector for the institution of the suit he had to bring to establish his title as reversionary heir to Dalpat Rai's estate. In the meantime, and in order to provide himself with funds, he sold to certain moneylenders a 7-biswas share of his right in Muhammadpur Byar and the 10 biswas share of Lakhanpur. He then brought his suit for the affirmance of his title as the heir of Dalpat Rai to the 13 biswas of Muhammadpur Byar which he still retained, and obtained a decree in respect thereof. This decree was finally affirmed by the High Court in June, 1907.

In September, 1906, the plaintiff's name was entered in the Revenue Register as the *muafidar* of 13 biswas of Muhammadpur Byar; but the application of his vendees for the entry of their names in respect of the shares they had purchased was refused on the ground that the assignments made to them were unauthorised and invalid under section 12 of the Act. As the plaintiff had parted with his rights in the 7 biswas of Muhammadpur Byar and in the 10 biswas of Lakhanpur, the name of Government was recorded in place of the last *muafidar*.

Jawahir thereupon, on the 20th May, 1911, brought the present suit in the Court of the Subordinate Judge of Shahjahanpur against the Secretary of State for India in Council, for the following declaration and relief:—

“(1) It may be established and declared that the plaintiff has proprietary rights in 10 biswas of revenue-free grant in each of the three mahals—Nur Muhammad Farhat Fatima and Intizam-ud-din—situate in mauza Lakhanpur pargana and district Budaun, each of the three mahals having recently been formed into a 20 biswa mahal, and that the plaintiff owns 10 biswas in each of them and the name of the Government may be expunged.”

He was at once met with the objection that having regard to the provisions of sections 5 and 6 of Act XXIII of 1871 such a suit was not maintainable. The Subordinate Judge overruled the objection, and made a decree, as already stated, in favour of the plaintiff. The High Court, on the appeal of the defendant, reversed his order and dismissed the suit, holding that the Civil Court was incompetent to make a declaration directly or indirectly affecting the liability of the Government “to pay the revenue to the plaintiff.”

It appears that after the appeal had been filed in the High Court on behalf of Government, Jawahir Lall died. Under the provisions of the Indian statutes a suit or an appeal “abates” on the death of a defendant or respondent unless the plaintiff or appellant—as the case may be—takes steps within six months to revive the suit or appeal against the representatives of the deceased defendant or respondent. But the Act gives to the Court the power of extending the time on sufficient cause. In this case the application for revivor was not made until after the expiry of six months, and it was accordingly rejected by the High Court on the ground that it had been made out of time. On an application, however, of the Collector, supported by an affidavit explaining the delay, the learned Judges of the High Court recalled their order of abatement, re-admitted the appeal, and after a full hearing made the order which forms the subject of the appeal before their Lordships. It is argued on behalf of the appellants, the representatives of Jawahir Lall, that the High Court proceeded on insufficient grounds in allowing the appeal to be revived after it had abated. In their Lordships' opinion the matter was within the discretion of the learned Judges, and they do not see that the discretion has been wrongly exercised.

As regards the suit itself it appears to be clearly misconceived. A competent Civil Court is authorised under section 6 to take cognisance of a claim in respect of "pensions and grants by Government of money or land-revenue" only on receiving a certificate from the authority mentioned in the section "that the case may be so tried." The object of this provision evidently is that in cases of conflicting titles the Revenue authorities should grant to the unsuccessful applicant an opportunity for adjudication of his right by the regular Courts of Justice. But it expressly declares that "the Civil Court shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly."

The High Court have not interfered with the finding of the Subordinate Judge that the plaintiff was the nearest male reversioner to Dalpat Rai, but they were clearly right in setting aside the decree in so far as it affected the liability of Government in respect of the revenue of the *muafi* grant.

Their Lordships are of opinion that this appeal should be dismissed with costs. And they will humbly recommend His Majesty accordingly.

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In the Privy Council.

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HAKIM SHIAM SUNDAR LAL AND OTHERS

v.

THE SECRETARY OF STATE FOR INDIA IN  
COUNCIL.

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DELIVERED BY MR. AMEER ALI.

Printed by Harrison & Sons, St. Martin's Lane, W.C.  
1919.