

Educational (1902) Department.

ORDINARY MS.

G.O., No. 82.

DATED 14. 2. 02

INDEXED.



(8)

[Despatch Abstract.]

Sanes the defence of a suit filed against
Govt in the St. James's Court, Calicut by
Mr. J. Mathew. for the recovery of the rent
of a school building.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

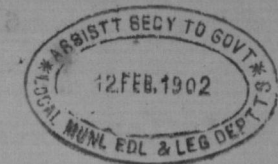
Revenue (190 ²) Department.

CURRENT No. 259

From

The Board of Revenue,

Land Revenue.



o. 531 Routine.

dated 11th February 1902. 190 .

osures

Received 190 .

Registered 12-2-1904

SUBJECT

Submitting for the orders of Govt. letter from the Collec-
 labar requesting sanction for defending the suit filed against
 Govt. in the District Munsif's Court, Calicut by Mr. J. Mathews for the
 recovery of the rent of a school building

BACK PAPERS.

FURTHER PAPERS.



Proceedings of the Board of Revenue
(Land Revenue).

No. 531 Routine, dated 11th February 1902.

Read letter from ~~the~~ A.F. Pinhey Esquire, I.C.S. Collector
of Malabar, dated 6th February 1902, Ref: on C. No. 2150.

-----:0:-----

Resolution.

Submitted for the orders of Government, as the -
subject matter of the suit does not fall within the province
of the Board of Revenue.

(True Extract.)

Loell Doreton
Secretary.

To the Secretary to Government, Local and Municipal, Educational,
and Legislation Departments, with the collector's
letter and its enclosures

" collector of Malabar.

C.B.M.
11/2.

CV
11/2/02

Statement in Form A. printed in B. P. 234 d/26-6-1896.

(Small Cause Suit 520 of '01, P.R. St. Juff's Court, Calicut)

Date of service of the summons	Date of Collector's letter	Date of hearing.	Explanation for delay where a clear fortnight is not allowed to the Board for the consideration of the case.
2	3	4	5
7-10-'01	6-2-'02	24-2-'02	The draft written statement received from the local Government Pleader on 14-1-'02 was forwarded for remarks to the Head Mistress, Govt. Mayan Training School, from whom it was received back on the 3 rd Instant.

Malabar Collector's office
Calicut. 7th February 02. *Sub. 7.2.02*

V. Prayunghal
for Collector.

In the Court of the Principal District Munsiff of Calicut.

S. C. No. 520 of 1901.

Written statement of Defendant under Section 110 of the Code of Civil Procedure.

1. The Defendant denies that the plaint paramba is held on kanom by the Plaintiff and that the tiled house on it belongs to Plaintiff absolutely.

2. The Defendant denies that the kanom deed was taken benami for the Plaintiff in the name of ~~the~~ his late wife Mrs. Liza Mathews.

3. The Defendant admits the lease and the rent fixed in it but denies that it was executed on 1st April 1894 and that the Plaintiff took it in the name of his wife.

4. The Defendant asserts that the lease is dated 1st August 1894 and was entered into between the Defendant and the Plaintiff's wife, the owner of the property.

5. The rent was raised from Rs. 20 to Rs. 25 per mensem from April 1896 and not from 1897 as is vaguely stated in the plaint.

6. The Defendant denies having paid any rent on the sole receipt of the Plaintiff ~~through~~ ^{Defendant} through agent Miss. A. Harris of the Govt. Moyan Training school.

7. The Defendant asserts that he raised objections to pay rent to Plaintiff on his sole receipt on the very first occasion when such a receipt was attempted to be passed and that after the death of Mrs. Liza Mathews on 17th June 1901.

8. The Defendant refused to pay the rent due from June 1901 because the Plaintiff refused to satisfy the Defendant that he (Plaintiff) had authority to collect the rent.

9. The Defendant denies having any knowledge that the property really belongs to Plaintiff. On the other hand Defendant asserts that the property belongs to the estate of the late lessor Mrs. Mathews.

10. The Defendant is not estopped as it is stated in para 9 of the plaint and his plea is not at all inconsistent with the past conduct of the parties.

11. The Plaintiff is estopped by his past conduct from setting up his own exclusive right to the property and claiming bent from Defendant otherwise than as representative of his late wife.

12. The present suit is not maintainable as the Plaintiff has not produced his authority to administer the Estate of his late wife. The deceased has also left a daughter who is also -- entitled to the property.

13. This suit is not maintainable also for the reason that no notice under section 424 C.P.C. has been given to the Defendant.

14. The Plaintiff is not entitled to any relief in this suit and the Defendant is not liable for any costs of the Plaintiff.

15. Prays therefore that this suit may be dismissed and Defendant's costs awarded.

=

V. P. Mathew

In Collection.
7. 2. '02

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4. 2. '02

Recd 2/10/02

In the Court of the Principal District Munsiff of Calicut.

S. C. No. 520 of 1901.

J. H. Mathews residing at Kasba amsam, Calicut.

Plaintiff.

The Right Hon'ble the Secretary of State for India
in Council.

Defendant

Suit under Section 50 of the C.P.C.

The Plaintiff abovementioned states as follows:-

1. Of the properties shown in the annexed schedule Marakkatan Mukkuparamba is held by Plaintiff on a kanom right and the tiled house thereon belongs to him absolutely having been constructed at his expense.

2. Though the kanom deed of the Plaintiff is taken in the name of ^{his} the late wife Mrs. ^L~~Liza~~ Mathews the property really belongs to the Plaintiff.

3. The said properties were leased to the Defendant on 1st April 1894 for a yearly rent of Rs. 240 to be paid by equal monthly instalments. The Plaintiff took the lease in the name of ^{his} late wife Mrs. Liza Mathews.

4. Certain additions were made to the ^ubuilding in the year 1897 on account of which the Defendant agreed to pay an enhanced rent of Rs. 300 per annum.

5. Since then the rent has been regularly paid by the Defendant through his agent Miss A. Harris, the Head Mistress of the Moyan Government Training school for Mistresses, Calicut, on Plaintiff's sole receipt executed in her favour a form of which is herewith ~~execut~~ appended without any objection having been made as to ^{his} ~~the~~ title to receive the same.

6. The late Mrs. Liza Mathews died on 17th June 1901.

7. Though demand has been made as usual of the said Miss A. Harris as agent of Defendant she has refused to pay the rent due from June 1901. This action of hers has been ratified by her Principal, the Director of Public Instruction, Madras, who as agent of the Defendant has executed the said lease.

8. The said Miss. Harris as agent ^{and} of the Defendant ^{his} on his

behalf, contends that the property belongs to the estate of the late Mrs. Mathews while they do not so belong and are known by her to be the property of the Plaintiff.

9. The Defendant having paid the rent as shown in para 4 cannot ~~be~~ now contend that the Plaintiff is not entitled to receive the rent now due in his sole right and for his sole benefit. The Defendant is estopped from denying Plaintiff's right to receive the rent by his past conduct.

10. The Plaintiff is entitled to a decree for Rs.100 being rent due on the said lease and for use and occupation of the said properties.

11. The cause of action arose on 1st July 1901 within the jurisdiction of this court.

Plaintiff therefore prays that a decree may be passed for payment of the sum shown below and costs of the suit with future interest thereon.

Valuation.

The amount of rent due from June to September 1901.

both months inclusive.....Rs100

Schedule.

x x x x x x x x x

Sd. J. H. Mathews.

Plaintiff.

True Copy.

[Handwritten signature]

For Collector.

7. 2. '02

[Handwritten signature]
259

[Handwritten signature]
7.2.02

Calicut, 6th February 1902.

From

A. F. Pinhey, Esq., I.C.S.,

Collector of Malabar,

CALICUT.

To

The Secretary to the Commissioners
of Land Revenue,
MADRAS.

Sir,

I have the honour to submit for the orders of the Board a copy of the plaint in S.C.S. No.520 of 1901 on the file of the Principal District Munsiff, Calicut, together with a draft of the written statement proposed to be filed on behalf of Government the Defendant.

2. The plaint land with the building thereon belonged to the late Mrs. Liza Mathews who was for some time an assistant mistress of the Government Moyan Training School for Mistresses. On the transfer of the school from Tellicherry to Calicut in 1893 she offered the plaint building for the use of the school which was accepted and a lease dated 1st August 1894 was executed in her name by the Defendant agreeing to pay a monthly rent of Rs.20. The rent was raised to Rs.25 per mensem from April 1896 which was sanctioned in G.O. No.537 (Educational) dated 7th September 1896. For about seven years from the date of occupation of the building its rent was paid to Mrs. Liza Mathews on her acknowledging its receipt in the acquittance roll. In March 1900 she was transferred to the Government Girls' School at Cannanore and from that date till June 1900 she submitted separate acknowledgments for the rent which were affixed to the acquittance roll.

At the request of the Head Mistress to make suitable arrangements to receive the house rent Mrs. Liza Mathews informed her that during her absence from the station it might be paid to J. H. Mathews (her husband) on his furnishing a bill duly receipted and signed for her. The rent was accordingly paid to J.H. Mathews,

plaintiff for 11 months up to May 1901 as the representative of Mrs. Mathews and not as the owner of the building as is evident from the bills.

3. Mrs. Mathews died on the 17th June 1901 and the Plaintiff as owner of the building claimed the rent for June 1901. As Mrs. Mathews had left a daughter who might claim the rent the Plaintiff was asked to produce the authority under which he claimed it. He having failed to do so, the Head Mistress under the orders of the Director of the Public Instruction, informed him that the rent would be paid to him on production of a succession certificate or a certificate of administration of the estate of the deceased and that otherwise it would be drawn and deposited in Court. -- Instead of producing the certificate he has filed the present -- suit for arrears of rent claiming the property as absolutely his own.

4. The local Government Pleader who drafted the written -- statement states that there is a fair chance of our succeeding in the defence. The following is an extract from his letter:-

"The Plaintiff sues in his own right and not as representative of his late wife. We are not prepared to admit the Plaintiff's exclusive right to the property. From the facts stated in letter No. 12 of the Head Mistress of the Government Moyan Taining school and from the enclosures to that letter, it seems to me that there is a very fair chance of our succeeding in the defence, that the Plaintiff cannot sue for rent without his -- taking letters of administration to the estate of the deceased lessor, his wife (section 190 of the Indian Succession Act 10 of 1865)."

"The Plaintiff does not allege that he is suing as representative of his wife and that as such he has taken Letters of -- Administration to her Estate. The Plaintiff bases his claim on the single fact that the property really belongs to him and that his wife was only a name lender. If the Plaintiff is not able to establish this fact in Court, his suit must be dismissed."

-2-

"Deposit of rent in Court is only necessary when right to recover the same is admitted and the Defendant is non-liability for costs. From the nature of the case I am of opinion that the rent need not be deposited. I raise I am of opinion that the rent need not be deposited. 5. I request ~~the~~ the sanction of the Board for of the suit. It stands posted for hearing on the 24

I have the honour to

Sir,

Your most obedient servant

V. R. Ramesh

For Collector.

Copy with a copy of the written statement forwarded to the Director of Public Instruction Madras.

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to the Commissioners
of Land Revenue,
MADRAS.



ched. 7-2-'02

ved.

Doc 9 Enc 3
Hearing
24.2.02

requesting sanction for defending the
filed against the Govt. in the
's Court, Calicut by

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READ ALSO:—

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The Defense of the Soil ^{is} sanctioned. & the draft
written State made for approved

856
14. 2. 02

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~~The Board of Rec. L.R.~~

" Coll. of Malabar — (by telegraph)

17/2

14/2

When given for copying _____
 When copied _____
 When examined _____
 When signed _____

190

READ AGAIN G.O., No. _____, DATED _____
 190 .

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING WANT FOR DESPATCH
 IN ORIGINAL.

N.B.:-

- A = Copy in full.
- B = Not to be copied.
- P = Copy abstract only.
- Q = Copy heading only.