

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1083	Press ~~Mis.~~
47-48	
Dated 9-8-1958	

Not to be folded or roughly handled

File

Fort St. George, Judicial Consultation, 10th August 1858.

No. 47. Read the following letter from Lieut. Colonel W. G. WOODS, Adjutant General of the Army; to the Secretary to Government, Military Department, dated Ootacamund, 6th July 1858, No. 1263.

SIR,

I have the honor by order of the Commander-in-Chief, to forward for submission to the Right Honorable the Governor in Council, the accompanying letter from M. Veerathoo Pillay, Deputy Post Master, Sadras, dated 6th October last, relative to a House purchased by him at Saint Thomas' Mount, and to the proceedings instituted against him on an alleged complaint that the house in question was mortgaged to one Canaca Amall and soliciting the Commander-in-Chief's intervention with a view to the restoration of the purchase money and Court costs, amounting in all to Rupees 420-2-2.

1 Letter from the Officer Commanding Mount, dated 17th Oct 1857, No. 103.
2 do. do. do. 19th Jan. 1858, No. 10, with 1 enclosure.
3 do. Officer Commanding Centre Division, dated 7th Apl. 1858, No. 121, with 1 do.
4 do. do. Mount, do 7th May do. No. 58, with 1 do.
5 do. do. Mount, do. 10th June do. No. 72, with 2 do.

The correspondence which has taken place as per margin, is forwarded for the information of Government.

The Commander-in-Chief considers the case of the petitioner a hard one. He purchased a house at Saint Thomas' Mount at an Auction ordered by the Officer Commanding, in accordance with the Decree of a Native Court of Requests, which directed the sale of the house to pay off a mortgage, but before the sale took place one Kanagamah claimed to have a 2nd mortgage upon the house. The case was enquired into and Brigadier Conran writes 1st March 1854, "She, the 2nd mortgagee was convicted for fraudulent transactions and the sentence passed and confirmed under Regulation VII of 1832. A claim for 110 Rupees against the house-owner has been awarded by a Court of Requests under Act XI of 1841, and the property sequestered by a Warrant issued for execution."

The house was sold to and paid for by the present petitioner and he has been subjected to great inconvenience, loss and hazard of his property by the proceedings in the Talook Moonsiff's Court of Poonamallee. Upon this the Sudr Judges observe, "that it was an error on the part of the District Moonsiff dealing with the legality of a Decree passed by a Court with which he stood wholly unconnected. The only remedy against an improper decision by a Military Court of Requests is that provided by Section XI of the Act before quoted."

The Commander-in-Chief is not aware that there is any way of reimbursing the petitioner for the expense to which he has been unnecessarily put, unless the expenses incurred before the Talook Moonsiff's Court, are ordered by Government to be defrayed by the Moonsiff, or the person who irregularly instituted the suit in the Moonsiff's Court, or are paid by the Government itself.

From M. VARATHOO PILLAY, Deputy Post Master, Sadras; to His Excellency the Right Honorable the Commander-in-Chief, Fort Saint George, &c., &c., &c., dated 6th October 1857.

HONORABLE SIR,

With due submission and respect I humbly and submissively beg leave to state for the information of your Excellency, that I have purchased a house in the Public Auction of Saint Thomas' Mount, by Lieutenant C. Smith, then Superintendent of Police, for Rupees 261 in March

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1854, the premises and the Bill of Sale were delivered to me by the said Lieutenant Smith which is in my possession; some time after I have received a summon from the Mooftee Sudr Ameen's Court of Chingleput regarding the house, to appear and answer a complaint preferred by one Canaca Amall touching the purchase made by me, and alleging that the house in question was mortgaged with her, and the Court decreed in her favor, which your Excellency will perceive by the enclosed copies of the documents and endorsements of my petitions which I herewith forward for your Excellency's perusal, and humbly solicit and implore on your Excellency's kind and benevolent consideration on this subject, and cause an order be given to Colonel Shirreff at least for the restoration of my money of the purchase together with the Court cost which amounts in all to Rupees 420-2-2, for which favor I will ever acknowledge with very great gratitude.

From Brigadier A. SHIRREFF, Commanding the Mount; to the Adjutant General of the Army, Fort Saint George, dated 17th October 1857, No. 103.

SIR,

With reference to your letter, No. 5384, under date the 12th Instant, forwarding a petition* from Vurda Pillay, Deputy Post Master, for report, I have the honor to forward copies of letters I had addressed to the Civil Judge of Chingleput on the subject of this petitioner's claim, and I shall forward to you his reply when received, for the information of His Excellency the Commander-in-Chief.

From Brigadier A. SHIRREFF, Commanding the Mount; to W. DOWDESWELL, Esq., Civil Judge of Chingleput, dated 2nd April 1857, No. 48.

SIR,

I have the honor to request you will do me the favor to inform me whether the lower Civil Court at Poonamallee can set aside the decree of a Military Court of Requests held under Act XI of 1841 and duly confirmed by the Officer Commanding the Station. The Talook Moonsiff at Poonamallee has recently given judgment in a case that was already disposed of by a Military Court of Requests in 1854, the case stands thus:

* Vide copy marked No. 1. C. Ramakistna Modelyar presented a petition* to the Station Staff Officer here in January 1854, putting forth a claim for Rupees 110, stated to be due by Sundarummah, which was registered and submitted before a Military Court of Requests for adjudication. On the 6th of the following month the Court awarded† in favor of plaintiff who applied for and obtained a Warrant of Dstraint, having given the usual Indemnity Bond. The Warrant‡ was then executed, the plaintiff pointed out a house which he said was the property of the defendant. It was accordingly sold by public auction to satisfy the award of the Court, an appeal was afterwards made by one Kanagammah who sued the plaintiff and defendant together with the purchaser of the house before the Civil Court at Poonamallee for its value, on the plea, that it was mortgaged to her by one Comarasawmy Modely, brother of the defendant's husband and judgment was given in her favor, thereby upsetting the Decree of the Court of Requests held in 1854.

It seems to me extraordinary that any liability should be attached to the person who bought the house or the party who sold it under competent authority, the sale being conducted

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in the usual manner. If the Decrees of Military Court of Requests are interfered with and upset in this way, the Cantonment authorities have no security for the part they have to take to carry out to the fullest extent the awards of these Courts, nor is there any security to the residents of the Station for property they may purchase at public sales of this kind, and people look on them with suspicion and fear to purchase, to the great deterioration of private property.

The enclosed petition, &c. are herewith forwarded for reference, to be returned when done.

From Brigadier A. SHIRREFF, Commanding the Mount; to the Civil Judge of Chingleput, dated 22nd September 1857, No. 92.

SIR,

I have the honor to request you will be good enough to favor me with a reply to my letter No. 48, under date the 2nd April 1857.

From W. DOWDESWELL, Esq., Civil Judge of Chingleput; to the Officer Commanding the Mount, dated 23rd September 1857, No. 291.

SIR,

In reply to yours of the 22nd Instant No. 92, I have the honor to inform you that the letter alluded to therein, does not appear to have been ever received in this office. I therefore beg you will be so good as to send me a copy thereof for the purpose of enabling me to answer it.

From Brigadier A. SHIRREFF, Commanding the Mount; to the Civil Judge of Chingleput dated 3rd October 1857, No. 95.

SIR,

I have the honor to forward copy of my letter No. 48 under date the 2nd April last, together with enclosures which were sent to you by post on that date as requested in your letter of the 23rd Ultimo.

From M. VARATHOO, Deputy Post Master, Sadras; to Colonel A. SHIRREFF, Brigadier, Commanding Artillery, Saint Thomas' Mount, dated 26th July 1856.

HONORED SIR,

I, the Deputy Post Master at Sadras, most respectfully beg to bring to your kind notice the following circumstance in the hope that your honor will comply with the request herein made.

That pursuant to the notification made by the Acting Brigadier, Lieutenant Colonel P. J. Begbie, and with reference to the decision passed by the Military Court of Request, a house belonging to one Soondara Ummal was put in Public Auction by Lieutenant C. Smith, then Superintendent of Police and purchased by me (the highest bidder) for Rupees 261. On the payment of this money into the Police Treasury, the house was put into my possession, and has since been in my enjoyment.

But on the 16th March 1854, I received a Summon from the Moofy Sudr Ameen at Chingleput to appear and answer for the suit preferred by one Canaca Ummal of Saint Thomas' Mount, who alleged that the house I purchased in auction was mortgaged to her and when

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this case was transferred to the Talook Moonsiff at Tripasore, I was obliged to produce all my documents connected with Officer, and depositions were taken from me, but all these having proved ineffectual, it was decreed by the Moonsiff on the 30th June 1856 in favor of the plaintiff Canaca Ummal against me, requiring to make an Appeal regarding the house in question within the 10th Proximo.

I therefore in forwarding to your honor the document connected with the sale of the house in auction and the proceedings of the Moonsiff's Court at Tripasore, humbly request that you will be kind enough to give due consideration to the subject and be pleased to issue orders to the payment of the money made by me for the house into the Police Treasury with the cost I now sustained, Rupees 41-11-7 in the Talook Moonsiff's Court of Tripasore, amounting in all Rupees 302-11-7, as I am not able to proceed further in the matter by any way of appeal. In conclusion, I humbly beg to be favored with a reply at your early convenience.

Endorsement No. 25.

The petitioner is informed that he should appeal his case to higher Court for redress.

The Mount, }
29th July 1856. }

(Signed) A. SHIRREFF, Brigadier,
Commanding the Mount.

From M. VARATHOO, Deputy Post Master, Sadras ; to Colonel A. SHIRREFF, Brigadier,
Commanding Artillery, Saint Thomas' Mount, dated 31st July 1856.

HONORED SIR,

With reference to your resolution on my petition, dated 26th July 1856, directing me to appeal my case for redress, I have the honor to state that I am not at all in any way able enough to proceed any further in the matter by way of appeal.

I have already suffered the cost of nearly Rupees 41-11-7 for which I am now entitled and I do not see the necessity of undergoing any further cost in carrying on the suit by appeal as long as the house in question was purchased by me in the public auction put by the late Superintendent of Police, Lieutenant C. Smith.

In case I prosecute the case, I humbly beg your honor will be kind enough to furnish me with the document existing at the Police, stating that Coomarasawmy Moodelly when sued in the Court for debt has no right at all for the house. He afterwards seemed to have mortgaged the house to Canaca Ummal on whose favor the case was now decided at Moonsiff's Court.

In conclusion, I request that provided I am authorized by your honor to draw all the cost I may incur when the case sometimes proves against me, I will then try to proceed in the matter. And unless I receive such authority from your honor, I will not take on my head this affair undertaking to suffer unnecessary cost, the Police authority to whom I paid the price of the house. To this effect I humbly beg to receive an answer at your earliest convenience.

Endorsement No. 32.

The petitioner is informed that nothing can be done in his case until he has obtained the final decision of higher Court in appeal.

Mount, }
31st September 1856. }

(Signed) A. SHIRREFF,
Brigadier Commanding the Mount.

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From M. VARATHOO, Deputy Post Master, Sadras ; to Colonel A. SHIRREFF, Brigadier
Commanding Saint Thomas' Mount, dated 21st January 1857.

HONORED SIR,

In reference to my petition dated 31st July 1856, your honor endorsed in No. 32, dated 8th September 1856 stating the petitioner is informed that nothing can be done in his case until "he has obtained the final decision of higher Courts in appeal."

According to your Endorsement, I applied in the higher Court, the decision was in favor of the defendant, therefore I request your honor to order the present Superintendent of Police to restore the sum 261 Rupees with the cost of the Court about Rupees 150. To this effect I humbly beg to receive an answer at your earliest convenience.

From M. VARATHOO, Deputy Post Master, Sadras ; to Colonel A. SHIRREFF, Commandant
of Artillery, Mount, dated 19th March 1857.

SIR,

In reference to my petition dated 21st January 1857, I have the honor to state that I herewith despatch the final decision of the higher Court, and I beg to order to give off the sum shewn below without further delay, namely:—

	Rs.	A.	P.
Principal...	261	0	0
The expenditure of the lower Court...	41	11	7
Stamp Paper for the higher Court...	33	0	0
Lawyer's Fees for do.	34	13	7
Batta for Notice.	0	15	0
5 Sheets of Stamp Paper to wrote final decision...	5	0	0
Fees for writing... ..	1	10	0
Postage, &c.,... ..	2	0	0
Security deposited in the Court... ..	40	0	0
Total Rupees.....	420	2	2

I beg your kind permission to send herewith receipt received from the Civil Judge, W. Dowdeswell, for the deposited money, Rupees 40. I beg to assert that if there would be more any further unnecessary expense, I am not to be answerable.

From M. VARATHOO, Deputy Post Master, Sadras ; to Colonel A. SHIRREFF, Brigadier
Commanding Artillery, Saint Thomas' Mount, dated 21st September 1857.

HONORED SIR,

With reference to my petition of the 19th March 1857, I have the honor to state that I have not received any answer up to this date, I therefore humbly beg your honor will be kindly pleased to cause an order to the present Superintendent of Police to pay into the hands of Govindoo Rayaloo Moodeliar, writer in the Artillery Canteen, to whom I have authorized to receive the sum of Rupees 420-2-2, being the amount due to me on account of the purchase of the house in question and also beg to acquaint you that I have already written to the Superintendent of Police on the 24th March 1857, to deliver the same to the said Govindoo Moodelly who will

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grant him a receipt for the same, the delay of the non-delivery of my money for this long time I become the loser of the interest and thereby suffered a great loss, I therefore beg your honor will be pleased to grant my request without putting me to any further loss, for which favor I will ever acknowledge with great gratitude:

(True Copies.)

(Signed) M. VARATHOO PILLAY,
Deputy Post Master.

From Brigadier A. SHIRREFF, Commanding the Mount; to the Adjutant General of the Army, Fort Saint George, dated 19th January 1858, No. 10.

SIR,

With reference to your letter No. 169 of the 9th Instant, I have the honor to forward a copy of a letter received from the Civil Judge of Chingleput and when I receive his final reply, I shall transmit it to you for submission to His Excellency the Commander-in-Chief on the subject of the Petition of Vurdapillay, Deputy Post Master.

From W. DOWDESWELL, Esq., Civil Judge of Chingleput; to Brigadier A. SHIRREFF, Commanding Saint Thomas' Mount, dated 12th December 1857, No. 379.

SIR,

With reference to your letters Nos. 48, 95 and 113 respecting the claim of Varathoo Pillay to a house bought by him at a public auction and sold by the Military authorities in execution of an award passed by a Military Court of Requests, I have the honor to inform you that I have recorded my opinion on the case after a deliberate consideration of the whole proceedings connected therewith and the law relating to the Military Court of Requests, but as no instance of the kind appears to have ever before occurred, I have considered it necessary to submit your reference and my opinion thereto, for the consideration and opinion of the Sudr Udalut before replying your letters on the subject and will send you my final reply as soon as I receive an answer from the Sudr Udalut.

From Major General P. E. CRAIGIE, Commanding Centre Division; to the Adjutant General of the Army, dated 7th April 1858, No. 121.

SIR,

No. 1251.
Requesting to know if the final reply from Civil Judge Chingleput (on the subject of Petition of Vurda Pillay, Deputy Post Master,) has been received, if not, to address that functionary on the subject.

With reference to your letter of the 19th Ultimo, No. and subject as per margin, I have the honor to enclose for the information of His Excellency the Commander-in-Chief a copy of a letter from the Civil Judge of Chingleput.

From W. DOWDESWELL, Esq., Civil Judge of Chingleput; to the Officer Commanding St. Thomas' Mount, dated 31st March 1858.

SIR,

In reply to your letter of the 25th Instant, I have the honor to inform you that the question agitated by you was not referred to the Court of Sudr Udalut until lately, in consequence of the delay in obtaining certain information from the records of this office, as well as

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from the records of the District Moonsiff's Court at Poonamallee and as soon as their reply is received, the same will be duly communicated to you for the information of the Adjutant General of the Army.

From Brigadier P. HAMOND, Commanding the Mount; to the Adjutant General of the Army, Fort Saint George, dated 7th May 1858, No. 58.

SIR,

I. As promised in my letter, No. and date as per margin,* I have the honor to forward, for the information of His Excellency the Commander-in-Chief, the accompanying copy of Extract from the Proceedings of Sudr Udalut in reply to a reference made to them by this

department through the Civil Court of Chingleput, with such observations as the nature of the subject may seem to call for.

II. The main features of the correspondence may be succinctly stated thus: petitioner Vurdapillay, Deputy Post Master, who is a resident of the Military Cantonment under my command, purchased a house sold at a Public Auction in execution of a Decree of the Military Court of Requests. The amount of the Decree was duly paid to the plaintiff, the first mortgagee, Ramakistna Moodelly, Head Writer, from the sale proceeds, and the surplus was made over to the defendant, Soondaramah, the owner of the house. Thus the matter was disposed of so far back as 1854.

III. One Kanakamah who represented herself as the second mortgagee of the property, made a protest against the sale of the house, and instituted legal proceedings in the District Moonsiff's Court of Tripasore against the petitioner, &c., for the cancelling thereof. This was accordingly done by the above officer, and consequently an appeal was preferred by the petitioner Vurdapillay, under instructions from my predecessor, Brigadier Shirreff, to the Civil Judge on the subject, which terminated in the confirmation of lower Court's Decree.

IV. Dissatisfied with this judgment in appeal, the petitioner has appealed to His Excellency the Commander-in-Chief, setting forth the above facts of the case, and requesting that, agreeably with the provisions contained in Section XI, Act No. XI of 1841, the Proceedings of the Civil Courts questioning the legality of the Decree passed by the Military Court of Requests, may be set aside, and the original award of Court of Requests ordered to be carried into effect and law cost sustained by him to be made good.

V. The petitioner's requests seems but reasonable, and worthy of the favorable consideration of His Excellency; for he was placed in possession of the house by the Military Court of Requests, and if the 2nd Mortgagee has any claim on it, the proper course for her to have adopted was to have appealed to His Excellency, and not to the Judicial authorities, who have no control of any kind over the Military Court of Requests as declared in para. 9 of the Sudr Udalut's Proceedings herewith transmitted.

VI. The petitioner is therefore entitled to the full possession of the property, and also to the refund of all charges incurred by him in defending the suit in the District Moonsiff's Court, and prosecuting his appeal in the Civil Court at Chingleput.

VII. That he is entitled to the refund of the costs will be self-evident when it is remembered that if the Action had been brought against the Court of Requests itself, it would doubtless have been ordered to be defended at the public cost, as the petitioner Vurdapillay is a real sufferer from the proceedings of the Judicial authorities, he seems to be entitled to every considera-

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tion at the hands of Government, and I accordingly beg to recommend that the costs incurred by him be ordered to be reimbursed to him from the public treasury.

From W. DOWDESWELL, Esq., Civil Judge of Chingleput; to the Officer Commanding Saint Thomas' Mount, dated 20th April 1858, No. 133.

SIR,

With reference to my letter of the 31st Ultimo intimating having submitted the question mooted by you for the opinion of the Judges of the Sudr Udalut, I have the honor to forward Therewith for your information copy of their decision thereon.

Extract from the Proceedings of the Sudr Udalut, under date the 16th April 1858.
Read letter dated the 30th March 1858, from the Civil Judge of Chingleput.

6. They (the Judges) do not consider that the circumstances of a Bond pointing as security to a house within a Military Cantonment, would of itself take claims arising on such Bond out of the jurisdiction of a Military Court of Requests, constituted under Act XI of 1841, such a suit does not involve "any right to real property" in the sense in which they understand that expression in Section II of that Act.

7. That the Court of Requests did not consider that they were dealing with any such right, and never intended to do so, is evident, for although the plaintiff does mention that his Bond points to special security, the Court makes its Decree, exactly as it would have done had no such provision existed, by ordering the "execution to be general" under Sections XIV and XV of that Act. Had the house, therefore, not been mentioned in the Bond, it would nevertheless have certainly and very properly been sold under the Decree.

8. Putting therefore the question of the Court's jurisdiction aside as not affecting and not affected by the case, the facts remain, that, under a Decree given in 1854, a certain house was in that year sold in execution, which house was mortgaged to another party by a Deed executed in October 1850. The purchaser of 1854 is exactly in the same position as he would be, had he purchased at a sale ordered by the Civil Court in execution of one of its own Decrees. His title in such case would be subject to such claims as might without his knowledge or that of the selling authority, have existed upon the property, and upon this principle the claims of the Decree holder in the suit brought by Kanakummual ought to be adjudged.

9. The Judges observe that it was an error on the part of the District Moonsiff dealing with the legality of a Decree passed by a Court with which he stood wholly unconnected. The only remedy against an improper decision by a Military Court of Requests is that provided by Section XI of the Act before quoted.

(True Extract.)

(Signed) C. F. CHAMIER,

Acting Register.

(True Copy.)

(Signed) W. DOWDESWELL,

Civil Judge.

From Brigadier P. HAMOND, Commanding the Mount; to the Adjutant General of the Army,
Fort Saint George, dated 10th June 1858, No. 72.

SIR,

(A.)
No. 923, dated 26th May 1858.
Requests to state, the date the second mortgagee Kanagamah objected to the sale of the house.

(B.)
Vide Extract from the list of petitions (herein enclosed,) marked A.

1. In reply to your letter number and subject as per margin, I have the honor to state for the information of His Excellency the Commander-in-Chief, that the protest of Kanagamah against the sale of the property to which she pretended to have a claim, was made on the 2nd March 1854, prior to the date of sale which took place in the same month; this claim was duly enquired into and disposed of by Brigadier Conran. The following narrative will explain the entire proceedings connected with his case.

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2. Soobroya Moodely, proprietor of the house in question, mortgaged it to Colunda Moodely, the father of Ramakistna Moodely, the plaintiff. On the death of Soobroya Moodely, his property devolved on his widow Soondaramah, there being no male issue. Ramakistna Moodely sued the widow Soondaramah to recover a debt of Rupees 110 which she admitted to be due, about the same time Comarasawmy Moodely (brother of the deceased Soobroya Moodely) who had no legal claim to the property with a view of defrauding his sister-in-law and the mortgagee Ramakistna Moodely, and of obtaining possession of the property for himself, drew up a Bond purporting that the house in question had been mortgaged by him to his concubine Kanagamah and instigated her to assert her right to it under the title of this Bond. These circumstances were elicited, during the enquiry conducted under Brigadier Conran's orders, who considered that the protest made by Kanagamah was made under fraudulent pretences and both she and Comarasawmy Moodely were punished by his orders for the deception.

3. A copy of Brigadier Conran's letter to the address of the Deputy Assistant Adjutant General, number and subject as per margin, reporting on the petition of Kanagamah on the same subject is herein enclosed and from the explanation therein given, His Excellency will perceive that though the protest was made prior to the date of sale, it received immediate consideration, but did not lead Brigadier Conran to make any alteration in the instruction he had previously given.

4. Kanagamah under the instigation of Comarasawmy Moodely, having gained a temporary successful opposition to the Brigadier's orders by an appeal to the talook Moonsiff's Court at Poonamalee, whose decision has been pronounced by the Judges of the Sudr Udalut, to be one he had no authority to give, has apparently become impressed with the idea that by continual applications and misrepresentations she may eventually come into possession of the property to which she never has had any just claim.

Extract from the List of Petitions received and disposed of.

No.	From whom.	To whom.	Substance of Petition.	Endorsement.	How disposed of.
5	Comarasawmy Moodely.	The Actg. Brigadier Commanding St. Thos. Mount.	Appeals against the award of a Military Court of Requests, and objecting the sale of a house.	It appears from the proceedings held before the Supt. of Police in case No. 192 of 1854, that the house alluded to, in this petition, to be the property of Soondaramah, against whom a claim for Rupees 110 preferred by Ramakistna Moodely, which has been awarded by a Court of Requests, in his favor, and the house has been sequestered by a Warrant issued for the execution of the Decree of the said Court, and the house will be sold by public auction on the 7th Instant, and the petitioner has been convicted of fraudulent transactions, and the sentences passed against him, and confirmed under Regulation VII of 1832, and Act No. II of 1839.	Returned to the petitioner.

The Mount,
2nd March 1858.

(Signed) G. CONRAN, Brigadier,
Commanding the Mount.

From Brigadier G. CONRAN, Commanding the Mount; to the Deputy Assistant Adjutant General, Centre Division, dated 1st March 1854, No. 27.

SIR,

With reference to the Endorsement made on the petition (a) of Kanagamah, registered trader at this station, forwarded to me for report, I have the honor to state that she was convicted for fraudulent transactions and the sentences passed and

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confirmed under Regulation VII of 1832, a claim for Rupees 110 against the house-owner, has been awarded by a Court of Requests, under Act XI of 1841 and the property sequestered by a Warrant issued for execution.

The petitioner made a similar complaint to the Magistrate of the district, who received the same reply on his application for the proceedings.

Referred to the Judicial Department.

Fort St. George, }
15th July 1858. }

(Signed) W. H. WAPSHARE, Major,
Acting Deputy Secy. to Govt.

No. 48. ORDER THEREON, No. 1083; dated 9th August 1858.

It appears here that the Deputy Post Master of *Sadras*, whose petition to His Excellency the Commander-in-Chief is forwarded with the foregoing letter, became in the year 1854 the purchaser of a certain house situated within the cantonment at *St. Thomas Mount*, and which was put up to sale by the Brigadier Commanding in satisfaction of a decree passed by a Military Court of Requests. At the time of the sale, one *Kanakammah* put forward a claim to the property, alleging that she had a mortgage on it. The claim however on being enquired into was rejected, and the house put up to sale and sold.

2. Thus defeated, the claimant *Kanakammah* instituted a regular suit against the purchaser and others in the Court of the District Moonsiff of *Poonamallee*, for the recovery of the amount due on her alleged Bond. The Moonsiff held the Bond good. There was no appeal on the part of the defendants, but the case was referred by the Brigadier at the Mount first to the Civil Judge of *Chingleput* and subsequently to the *Sudder Udalt*, on the ground that the plaintiff's suit was irregularly instituted and ought to have been summarily rejected by the Moonsiff. The higher Courts however did not admit the validity of these objections.

3. The Commander-in-Chief thinks the petitioner's case is a hard one, and suggests that that individual should be reimbursed by the Government, unless the Government shall see fit to order that the expenses be defrayed by the plaintiff in the Moonsiff's Court, or by the Moonsiff himself; the latter proposal being connected with a remark in the proceedings of the *Sudder Udalt* that "it was an error on the part of the Moonsiff dealing with the legality of a Decree passed by a Court with which he stood wholly unconnected."

4. With regard to this last point, the Government observe that the *Sudder Udalt* are only rebuking the Moonsiff for going out of his way to discuss the merits of the Decree of the Court of Requests, and not for any irregularity in placing on his file and disposing of in the usual course the suit of the plaintiff. There was no irregularity whatever in the conduct of the suit before the District Moonsiff. On this subject a radical misapprehension runs through the whole of the correspondence of Brigadier *Shirreff* and the other Military authorities, viz. the assumption that the suit brought in the Moonsiff's Court was in effect an appeal from the decree of the Court of Requests. This is altogether erroneous. Had the sale of the house in 1854 been postponed until the expiration of a period allowed to the holder of the alleged mortgage Bond to appeal to the *Sudder Udalt*, her claim might have been settled without delay. But the house once sold, her only remedy was the one she resorted to, viz., the institution of a regular suit. In this suit her Bond was established, but this does not interfere with the decree of the Court of Requests. That remains still to be executed and can be so by process issued against any property of the defendant's that may be forthcoming.

5. As to the purchaser of the house, he has his action for the recovery of his money and damages against such parties as he may be advised to sue for the same. He bought the house, it is observed, with his eyes open to the existence of *Kanakammah's* claim. He bought the house, appear that the Decree-holder executed an Indemnity Bond before the Decree was enforced by the sale of the premises pointed out by him as defendant's property. If this was so, it may afford the petitioner the means of recovering his purchase money and he should be advised accordingly.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

N^o 48

To

W. D. Doudeswell Esq.
Civil Judge of
Chingleput

Sir

I have the honor to request you will do me the favor to inform me whether the lower Civil Court at *Poonamallee* can set aside the decree of a Military Court of Requests held under Act XI of 1841 and duly confirmed by the Officer Commanding the Station the *Salook Moonsiff* at *Poonamallee* has recently given judgment in a case that was already disposed of by a Military Court of Requests in 1854 the case stands thus.

C. Ramakrishna Modelyar presented a Petition to the Station Staff Officer here in January 1854 putting forth a claim for Rupees 110. Stated to be due by *Sundarammah* which was Registered and submitted before a Military Court of Requests for adjudication. On the 6th of the following month the Court awarded in favor of Plaintiff who applied for and obtained a Warrant of distraint, having given the usual indemnity Bond the Warrant then executed. The Plaintiff pointed out a house which he said was the property of the Defendant it was accordingly sold by public auction to satisfy the award of the Court, an appeal was afterwards made by one *Kanakammah* who sued the Plaintiff and Defendant together with the purchaser of the house before

vide Copy of Contract from Proceedings marked in file

vide Copy marked in file

no appeal - it was a fresh suit which she was entitled to file will

To
The Adjutant General
of the Army
Fort St. George

Sir

I As promised in my letter
N^o and date as per margin, I have the
honor to forward, for the information of
His Excellency the Commander-in-Chief, the
accompanying Copy of Extract from the
Proceedings of Sudr Udalut in reply to a
reference made to them by this Department
through the Civil Court of Chingleput with
such observations as the nature of the subject
may seem to call for.

The main features of the correspondence may be succinctly stated thus:
Petitioner, Vudapillay, Deputy Post Master,
who is a resident of the Military Canton-
ment under my command purchased a
house sold at a public auction in Execution
of a decree of the Military Court of
Requests. The amount of the decree was duly
paid to the Plaintiff, the first Mortgagee,
Ramatkistna Mooddy, Head Water, from
the sale proceeds, and the surplus was
made over to the Defendant, Soundaramah
the

104
Bearing N^o 10 of the
19th January 1858

Forwards Copy of a letter
received from the Civil
Judge of Chingleput, and
states that, his final reply
will be transmitted when
received regarding the
Petition of Vudapillay
by Post Master

before the Civil Court at Poonamallee for its value
on the plea, that it was mortgaged to her by one Komara-
Sawmy Mooddy brother of the Defendant's husband and
judgment was given in her favor thereby upsetting the
decree of the Court of Requests held in 1854.

It seems to me extraordinary that any liability
should be attached to the person who bought the house, or the
party who sold it under competent authority, the sale being
conducted in the usual manner, if the decrees of Military
Court of Requests are interfered with and upset in this way
the Cantonment authorities have no security for the part
they have to take to carry out to the fullest extent the
awards of these Courts nor is there any security to the
residents of the Station for property they may purchase at
public sales of this kind and people look on them with
suspicion and fear to purchase to the great deterioration
of private property.

The enclosed Petition &c are herewith
forwarded for reference, to be returned when done.

The Mount
2nd April 1857
Sd/-
N^o 92
I
The Civil Judge
of Chingleput

Sir
I have the honor to request you will
be good enough to favor me with a reply to my letter
N^o 48 under date the 2nd April 1857.

The Mount
22nd September 1857
Sd/-
N^o 92
I
The Civil Judge
of Chingleput

it did not upset
it - the decree is
the good for
execution -

2 Petitions from
Vudapillay marked
N^o 45.
1 Copy of decree of
Poonamallee dated
1856.
1 Copy of appeal decree
of Chingleput dated
1857.

the owner of the house - Thus the matter was disposed of so far back as 1854.

III One Hanakamah, who represented herself as the second mortgagee of the property, made a protest against the sale of the house, and instituted legal proceedings in the District Moonsiff's Court of Tripasore against the Petitioner & for the cancelling thereof. This was accordingly done by the above Officer, and consequently an appeal was preferred by the Petitioner Vardapillay, under instructions from my predecessor, Brigadier Shireff, to the Civil Judge on the subject which terminated in the confirmation of lower Court's Decree.

IV Dissatisfied with this judgement in appeal, the Petitioner has appealed to His Excellency the Commander-in-Chief setting forth the above facts of the case, and requesting that, agreeably with the provisions contained in Section XI Act No. XI of 1841, the Proceedings of the Civil Courts questioning the legality of the Decree passed by the Military Court of Requests, may be set aside and the original award of Court of Requests ordered to be carried into effect and the law cost sustained by him to be made good.

The

V The Petitioner's requests seems but reasonable, and worthy of the favorable consideration of His Excellency; for, he was placed in possession of the house by the Military Court of Requests, and if the 2^d Mortgagee has any claim on it, the proper course for her to have adopted was to have appealed to His Excellency, and not to the judicial authorities, who have no control of any kind over the Military Court of Requests as declared in para 9 of the *Chidre Udaluts Pro.* proceedings herewith transmitted.

VI The Petitioner is therefore entitled to the full possession of the property, and also to the refund of all charges incurred by him in defending the suit in the District Moonsiff's Court, and Prosecuting his appeal in the Civil Court at Chundepur.

VII That he is entitled to the refund of the costs will be self-evident when it is remembered that if the action had been brought against the Court of Requests itself, it would doubtless have been ordered to be defended at the public cost. As Petitioner Vardapillay is a real sufferer from the Proceedings of the judicial authorities, he seems to be entitled to every consideration at the hands of Government, and accordingly, her

beg to recommend that the costs incurred
by him be ordered to be reimbursed to
him from the public treasury.

I have the honor to be
Sir,

Your Most Obedt Servant
J. H. M. V. Brigadier
Commanding the Mount

The Mount
7th May 1858

No 216

Read Quarter Centre Dec

March 13th May 1858

P. Braigie Major General
Commy Centre Dec

No 216
The Adjutant General
of the Army
Fort St. George

Sir

1. In reply to your letter Number end
subject as per margin I have the honor to state
for the information of His Excellency the Commander
in Chief that the protest of Kanagamah against
the sale of the property to which she pretended to
have a claim made on the 2d March 1854 prior
to the date of sale which took place in the same
month; This claim was duly enquired into and
disposed of by Brigadier Conran. The following
narrative will explain the entire proceeding
connected with this case.

18923 dated
26th May 1858

Requests to state the
date the second most
of Kanagamah
objected to the
sale of the house

161
Vide Extract from
the list of petitions
(herewith enclosed)

2. Sobroya Moodely Proprietor of
the house in question mortgaged to Colunda
Moodely the father of Ramakistna Moodely the Plaintiff.
On the death of Sobroya Moodely his property
devolved on his widow Soondaramah, there
being no male issue. Ramakistna Moodely sued
the widow Soondaramah to recover a debt
of Rupees 110 - - - which she admitted to be
due. About the same time Comarasawmy Moodely
(brother of the deceased Sobroya Moodely) who
had no legal claim to the property with a
view of defrauding his sister-in-law and the mortgagee

Ramakistna Moodely

Kamakhista Moodely, and of obtaining possession of the property for himself, drew up a bond purporting that the House in question had been mortgaged by him to his concubine Hanagamah and instigated her to assert her right to it under the title of this Bond - These circumstances were elicited during the enquiry conducted under Brigadier Conran's orders, who considered that the protest made by Hanagamah was made under fraudulent pretences and both she and Comarsawmy Moodely were punished by his orders for the deception.

3. A Copy of Brigadier Conran's letter to the address of the Dy. Asst. Adj. General, number and subject as per Margia reporting on the petition of Hanagamah on the same subject is herein enclosed and from the explanation therein given His Excellency will perceive that though the Protest was made prior to the date of sale, it received immediate consideration but did not lead Brigadier Conran to make any alteration in the instruction he had previously given.

4. Hanagamah under the instigation of Comarsawmy Moodely having gained a temporary successful opposition to the Brigadier's orders by an appeal to the Talook Moonsiff's Court at Boonamalee whose decision has been pronounced by the Judges of the Suor Udalut to be one + no this is a

101
N. 27 dated 1st March 1858
Reports on the Petition of Hanagamah
marked B.

10
He had no authority to give, has apparently become impressed with the idea that by continual applications and misrepresentations she may eventually come into possession of the property to which she never has had any just claim.

I have the honor to be
Sir
Your Most Obedt. Servant
J. H. Munnell, Brigadier
Commanding the Mount

The Mount
10th June 1858

N. 207
Head Quarters Centre Division
Madras 11th June 1858

J. E. Brairio Major General
Commanding Centre Division

+7 forwarding it illegal - his
error in his report - he
sent of 1/4, wanted
but he had not, needed is
good - well

He mistake the D.L. as the merits of the Bond tied on the fact
been ~~unduly~~ disturbed - in his decree the D.L. was mentioned on the decision of
the C.P.H.

A true copy of the original
sent to Col. [illegible] by [illegible] 11th June 1858
It has been sent to the [illegible] of the [illegible]

Abraham Lincoln

Concord Mass

March 11th and 1884 - to
the 24th a boat 2000 lbs
weighing on the bottom
of Newburg and -

[illegible]

Wood
Dr. 80 12/4

Account of the
of the

Extract from the List of Petitions received and disposed of

Atty Genl
Cetrach
24th May Lieut Colonel
Superintendent of Police

A letter from the Virginia
Farm and the other most
dated 1st June 1838
A 492

The Commander in Chief considers the case of the Petitioner a hard one. He purchased a house at Saint Thomas's Mount at an Auction ordered by the Officer Commanding in accordance with the Decree of a Native Court of Requests, which directed the sale of the house to pay off a Mortgage but before the sale took place one Kanazamah claimed to have a 2^d Mortgage upon the house. The case was inquired into and

Bugadner

Case is a hard one, & suggests ^{the} ~~the~~ Rat

Sir,

Sir,
 I have the honor by order of the
 Commander in Chief to forward for submission to the
 Right Honorable the Governor in Council the
 accompanying Letter from Mr. Veerathoo Pillay
 Deputy Post Master Sadras dated 6th October last
 relative to a House purchased by him at Saint
 Thomas's Mount and to the proceedings instituted
 against him on an alleged complaint that the House
 in question was mortgaged to one Canaca Amall and
 soliciting the Commander in Chief's intervention with
 a view to the restoration of the purchase money and
 Court costs amounting in all to Rupees 4, 20 - 2. 2.

The correspondence which has taken place as per margin is forwarded for the information of Government.

1	Letter from the Officer Commanding Inland dated 17 th October 1857 No 10 ^B	to	19 January 1858 No 10 with 1 enclosure
2	do do	do	No 10
3	do do	Officer Commanding Central Division dated 7 th April 1858 No 121 with 1 do	do
4	do do	do do	No 58 with 1 do
5	do do	do do	No 72 with 2 do

Brigadier Conran writes 1st March 1854. "The
"the 2^d Mortgage was convicted for fraudulent
"transactions and the sentence passed and confirmed
"under Regulation VII of 1832. A Claim for 110
"Rupees against the House owner has been awarded
"by a Court of Requests under act XI of 1841, and the
"property sequestered by a Warrant issued for
"execution."

The House was sold to and paid
for by the present Petitioner and he has been
subjected to great inconvenience, loss and hazard of
his property by the Proceedings in the Talook
Munsiff's Court of Poulamallee. Upon this the
Sudr Judges observe, "that it was an error on the
"part of the District Munsiff dealing with the
"legality of a decree passed by a Court with which
"he stood wholly unconnected. The only remedy
"against an improper decision by a Military Court
"of Requests is that provided by Section XI of the
"Act before quoted."

The Commander in Chief is
not aware that there is any way of reimbursing the
Petitioner for the expense to which he has been
unnecessarily put unless the expenses incurred before
the Talook Munsiff's Court, are ordered by
Government to be defrayed by the Munsiff, or
the person who irregularly instituted the suit in
the Munsiff's Court, or are paid by the Government
itself.

Adj. Genl's Office
Recd. 2nd
Col. Macdonald
6th July 1858

I have the honor to be
Sir,
Your Obedient Servant
J. H. M. L. Coll
Adjutant General
of the Army

Gen. L. H.

There was no irregularity in the
suit before the D. M.
The suit before him was filed to re-
store the amount due on a
Mortgage Bond ^{de mort} dated 1850
This Bond was declared good.

The decision of the Court of Requests
was passed on a mortgage of
the same house as above re-
ferred to - the date of the Bond
being in issue before the Court.
was subsequently to that of the
Bond filed in the D. M. Court
consequently the house could not
be sold as it has been by order of
the Court of Requests, as the decree
passed before the D. M. had a
prior claim on the said house.
The decree passed by the Court
of Requests - whereas the latter
executed & order to 4 or
2 cutters issued against
any property of the Def. that may be

case is a hard one, & suggests that the

No. 1083

here enters No 1263

8/0th July/58.

here enters No 1263

2. Thus defeated, the claimant Kanakam -
-mak instituted a regular suit against
the purchasers & others in the Court of the
D. M. of Poonamallee, for the recovery
of the amount due on her alleged Bond.
The Munsiff held the Bond good. There
was no appeal on the part of the Defen-
-dants, but the case was referred by the
D. M. at the Mount first to the Civil
Judge of Chingapur & subsequently to
the Sudder Udalt, on the ground that
the Plaintiff's suit was irregularly insti-
-tuted & ought to have summarily re-
-fected by the Munsiff. The higher Courts
however did not admit the validity of
these objections.

3. The Commr in Chief thinks the Petitioner's case is a hard one, & suggests he-ke-

The purchase of the house at the sale
 ordered by the Court of Regent^l must have
 his money respected to him - when he made
 the purchase - the claim alleged by the Phelps
 the D. de - Ct was known to him - he there-
 fore purchased, aware of the risk he
 ran - viz that a prior mortgage existed -
 The W. de

individual should be reimbursed by the
Court, unless the Court shall see fit to order
that he as heures be defrayed by the
Deft in the Momiff's Co, or by the
Momiff himself; he has been proposed
being connected with a remark in the
Proceedings of the Sudder Adalat that "it
"was an error on the part of the Momiff
"dealing with the legality of a decree passed
"by a Co with whom he stood wholly unconnected
-fed."

With regard to his last point, the Court
observes that the Sudder Adalat are only
rebutting the Momiff for going out of his
way to discuss the merits of the decree of the
Court of Requests, & not for any irregularity
in placing on his file & disposing of in the
usual course the suit of the Plaintiff -
There was no irregularity whatever in the
conduct of the suit before the Dist. Juff -
On his subject a radical misapprehension
runs through the whole of the correspondence
of Brig. Sheriff & the other Mil authorities;
viz: the assumption that the suit brought
in the Miff's Court was in effect an appeal
from the decree of the Court of Requests.

^{It is altogether}
~~It is altogether~~ erroneous. Had the
sale of the house in 1852 been postponed
until the expiration of a period allowed
to the holder of the alleged Mortgage Bond
to appeal to the Sudder Adalat, her claim might
have been settled without delay. But the
house once sold, her only remedy was the one
she resorted to, viz: the institution of a reple-
died, but this does not interfere with the decree
of the Co of Requests. That remains still to be exe-
cuted & can be so by process issued against any pro-
perty of the Defts that may be forthcoming -
As to the purchaser of the house, he has his action
for the recovery of his money & damages against such parties
as he may be advised to sue for the same. He bought the house,
it is shewn, with his eyes open to the existence of Kanakamunah's claim.

It was so it may
afford the Dist. Court
the means of recovering
the purchase money & the
advice according to
the Court's judgment
of the 13th

It would however
be better that the Decreeholder-
should have executed an Indemnity
Bond before the Decree
was enforced by the sale of
the premises provided out of
him as Deft's property. ^{But this may be}
~~But this may be~~ as to the purchaser of the house, he has his action
for the recovery of his money & damages against such parties
as he may be advised to sue for the same. He bought the house,
it is shewn, with his eyes open to the existence of Kanakamunah's claim.

Receivd to Court: 10 August
Judicial - 1850. & others

At 1853.

Edward. Morris: of Court

2/9: August 1858.

2/12/1858.



4/9/58.