

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 233	<u>Press</u> <u>Mis.</u>
36-37	
Dated 14 — 3 — 1918	

Not to be folded or roughly handled

Judicial/859 Depart
From Govt. Pleader Sud Walcutt
To Chief Secretary to Govt.
Dated 4th March /59
By the Court: 15 March

No. 360. No. 29
(Enclosure none)
With reference to Extrait
M/19th October 1858 No. 1477
and 30th October 1858 No. 1529
Reporting that Govt. P. Yesterday
filed in the Sud Walcutt 2 Petitions
on behalf of Woodroffe
3. On filing those Petitions
he moved the Court to issue
the Precept and the Court made
an Order agreeably with his
request.

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Cy. Mant
R12

No. 334
To be recorded. JP
14/3/59.

No. 36. Read the following letter from W. KNOX, Esq., Magistrate of Masulipatam; to the Secretary to Government, Fort Saint George, dated Aukeed, 25th February 1859, No. 55.

SIR,

Para. 1. I have the honor to lay before the Government for their orders, the accompanying translation of a Plaint filed in the Civil Court against me on the 18th October 1858, O. S. No. 73. The object of the Plaintiffs is to recover a piece of ground, which their father was prevented from enclosing, and building on, in the first instance by the Head of Police in 1855, and subsequently by order of the then Assistant Magistrate in 1856. The circumstances as stated in the Plaint, are in the main correct, and for fuller information I would refer the Government to the accompanying Precis drawn up from the papers connected with the case. The Plaintiffs produced no reliable title deeds to the ground, and have failed for upwards of 3 years to appeal to the established tribunals from the orders of the Assistant Magistrate.

2. I have looked into the matter, and examined the Register of grants in the office. There are grants given in 1826 and 1825, for A and B, and in 1826 for E, but none for C, the land in dispute; or D, an unoccupied site, said to be the property of Streepaty Pracasarow, said to be original owner of C: but if Plaintiffs' title was good, they would, doubtless, have taken a grant for the land in dispute, when grants were obtained for that on either side of it, the sale of this land being in 1827, or only a year after the grants for the rest were taken out. Several witnesses were examined lately by the Head of Police; but they do not, in my opinion, establish the Plaintiffs' right. One of the 5 says, that the produce of the trees on the land belonged to two other parties. The Plaintiffs did not show me their title deeds, as they said they were filed in Court.

3. On the whole, looking at the want of title, the paucity of evidence, and the time the Plaintiffs have taken to bring the Suit, 3 years from the date of the order; I think it one, that should be defended, and I beg to submit a draft of the answer, I propose putting in, if Government take this view of the case. Considering the insignificance of the case, I was anxious to have settled this without troubling Government with a reference, and should have done so had I believed the claim was just, and it is owing to the time lost in making inquiries into its truth, that so much delay has taken place in making this reference, but the result of the inquiries is, that the claim is in my opinion untenable, and I think the Suit should be defended on principle; for it seems to have been brought, because the party hoped to force a compliance, or compromise, by putting the authorities into Court. As the time for appeal expires on 5th March, I beg to be favored with early instructions as to the wishes of Government in this matter.

4. I would particularly draw the attention of Government to this case instituted after 3 years, for the act of a Subordinate Officer, though there was his immediate superior the Magistrate at the Station, and, besides him, the Sessions Judge. The object can be but to put Government to the expense of a Suit, and I would suggest that some rule should be laid down to prevent litigation, which might have been wholly unnecessary, had the regular course of business been pursued.

To the Civil Court of Masulipatam.

Answer presented by WILLIAM KNOX,
Esq., Magistrate of Masulipatam and Defendant
in O. S. No. 73 of 1858, Civil Court's file.

1. The Plaintiff neglected at the time to pursue his rights in the proper course, by appeal to the Magistrate or Judge, and consequently his suit should be dismissed with costs, and himself fined.

2. The Plaintiff has no right to the land; he holds no Government grant nor has he been in possession.

3. The present Magistrate cannot be called on to be answerable for the acts of an Assistant, when neither his immediate superior at the station, nor the then Zillah Judge, were appealed to nor can a Magistrate be answerable for his Assistant's acts, if those acts are not brought to his notice at the time, and confirmed by him.

Masulipatam, Magistrate's Office at Aukeed, 25th February 1859.

Magistrate of Masulipatam
Chief Justice Civil Auditor } *Supd. 16*

Fort St. George, Judicial Consultation, 15th March 1859.

Translation of the Plaint—Original Suit No. 73 of 1858.

To the Civil Court of Masulipatam.

Plaintiff.

Defendant.

1. Sreepaty Soorish alias Peda Bungariah.

1. The Assistant Collector and Magistrate of Masulipatam on behalf of Government.

2. Dr. Sreeramulu alias Chena Bungariah, sons of the late Sreepaty Badriah.

1. In the ground belonging to Sreepaty Pracasaraydoo, situated in Rajoopett, and marked with black lines in the plan herewith filed, portion A is occupied by his second son Gopalram, who has built his house on it.

2. His eldest son Pracasaraydoo, sold portion B to Coormudally Kistiah, who has built a house and lives there.

3. Portion C bounded on the east by the highway, on the south by the said Pracasaraydoo's grounds, on the west by the highway, and on the north by the wall of the said Kistiah's grounds; and measuring east to west 30 yards, north to south 15 yards, or 340 square yards, of space, was made over by deed to one Potarauze Soondur Ramiah, son of Pracasaraydoo on Sunday the 10th Soodum Asweja year Survajit. The said Potarauze Soondur Ramiah having transferred by a deed of sale, this piece of ground to our father for Rupees 10 on Tuesday the 13th Balaola Chytram Virodharoot 29th April 1851, the same has continued in our enjoyment since.

4. There remained to Pracasaraydoo portion D. In this with his permission our father built a charity well and trough for watering cattle.

5. Ground E was latterly transferred to Pracasaraydoo.

6. Probably in January 1856, or it may be before or after that, our father attempted to raise a wall on ground C, when for some reason, our enemy the late and of police, Chulupally Ramaswamy prevented it, and by misrepresenting the matter to the Assistant Magistrate, caused prevention by that Officer also. This complaint is therefore brought against the defendant. We pray therefore that our witnesses and evidence may be examined, and a decree passed in our favor with costs for the said ground valued at Rupees 10.

4th October 1858.

Two original documents are herewith filed.

(Signed) Plaintiff SREEPATY VEYYANAH, DEECHATOOLOO.

We shall carry on this suit against the present Collector and Magistrate Mr. William Knox.

13th October 1858.

(Signed) Plaintiff SREEPATY VEYYANAH, DEECHATOOLOO.

Filed 18th October 1858.

(Signed) J. J. COTTON,
Civil Judge.

(True translation)

(Signed) W. KNOX,
Magistrate.

Memorandum regarding the suit, No. 73 of 1858, (4th October 1858,) by Sreepaty Soorish alias Peda Bungariah and Sreeramulu alias Chena Bungariah, sons of the late Sreepaty Badrachelliah of Rajoopett, in Masulipatam.

Against the present Collector of Masulipatam, in the matter of a piece of ground which Plaintiff's father was prevented from enclosing in 1856.

1. While Sreepaty Badriah was digging foundations for building a house on the unoccupied ground, south Coormudally Kistiah's House. Some residents of the Pettah appeared before the Head of Police, and made a declaration in April 1855, that the ground in question was, from a long time, unoccupied, and that Badriah was now enclosing it. The Head of Police prevented its enclosure, pending production of the title deed by Badriah, who accordingly drew up a plan of the vacant ground, and submitted it with two documents, relating to ground marked C, claimed by him. He forwarded the papers connected with the subject, and requested the orders of the then Assistant Magistrate.

Hookoom by the Assistant Magistrate, 16th May 1856, No. 59.

2. The Assistant Magistrate inspected the documents, and the ground in question, personally. The documents show that the ground in question, was given by Sreepaty Pracasaraydoo in 1827 to Potarauze Soonderramiah, and by the latter sold to Badriah. But it does not appear how Pracasaraydoo came by the ground, Badriah did not produce any grants or other documents given by the authorities. Besides this the ground in question appears to have been waste or unoccupied for a long time and not in the enjoyment of Badriah. For these reasons, it was ordered, that the ground be left unoccupied as it has been hitherto. The two documents filed by Badriah, were returned.

3. The declaration given by the people of Rajoopett, before the Head of Police, is signed or attested by 9 persons, Coorma Weyoor, Galeel Saib, Coorma Ummiah, Dade Saib, Coorma Veeraswamy, Shaik Hoossain, Nundegam Baupaniyah, Mungala Survadoo, Coorma Nagarah. It is to the following effect, we know the ground in question since we came to years of discretion. It is Gyradah or unoccupied ground, our elders used to say the same. Nobody acquired it. There are no title-deeds of any description regarding it. In summer, all the neighbours used to dig pits therein for charity and use the water in this, and other pettahs. Formerly, that is 20 or 25 years ago, one Chelkani Janiah built a well (with pottery rings.) It is now filled up. If excavated, it can be seen now: Sreepaty Badriah also built a charity trough and well for watering cows, &c. This year also four days ago, some of us Shaik Hoossain, Coorma Veeraswamy &c., dug a pond for charity. To-day and in future also we intend digging charity ponds. There is no owner to this ground, Sreepaty Badriah and others now claim it as theirs and with a view of building thereon have cut down the Tamarinds, Oormedi, Kanvogas, &c., growing spontaneously thereon and have dug the foundations. Badriah &c., are influential men. We fear them and are therefore silent, we have thus stated the true state of the case.

4. In the petition addressed to the Head of Police by Badriah, 8th May 1856, the circumstances stated, are the same as those recited in the present plaint.

The grant for A. is dated January 31st 1826.

" B. " April 19th 1825.

" E. " September 12th 1826.

1st Witness deposes.—C. D. was formerly Streputty Pracasaraydoo's who gave C. to Potarauze Soondur Ramiah, for building a house, (no date mentioned.) He sold it to S. Budriah.

2nd Witness.—Do. do.

3rd Witness.—That C. was enjoyed by S. Budriah and he heard, that Streputty Pracasaraydoo gave it to Potarauze Soondur Ramiah, who sold it to Budriah.

7th Witness.—That the land was under the enjoyment of Potarauze Soondur Ramiah, who sold it to Streputty Budriah, and that it was ever since enjoyed by Budriah.

9th Witness.—That he knows nothing of the ground in question, but that for 50 years since that is to say from the time he came to years of discretion, Streputty Veyemah, and Bungariah caused him to cut the leaves of the palmira trees, situated in the said land.

Masulipatam, Magistrate's Office }
at Aukeed, 25th February 1859. }

(Signed) W. KNOX,
Magistrate.

No. 37.

ORDER THEREON, No. 333; dated 11th March 1859.

The Right Honorable the Governor in Council grants authority for the defence in the first instance at the public expence of O. S. No. 73 of 1858, instituted in the Civil Court at Masulipatam against the Magistrate of the District, but will determine when a copy of the Decree is furnished, whether the costs, if any be adjudged against the Magistrate, shall be borne by that Officer, or by the Government.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

The Magistrate of Masulipatam.

Judicial Department.

N^o. 333

Extract from the Minutes of Consultation.

Dated 11th March 1857.

Read letter from the
Magistrate of Masulipatam with Inclosures - Enter N^o. 55 of 25th Ult.

H.
G.

W.

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J.P.

The Magistrate of Masulipatam }
Sd/- Secy Civil Auditor } 25th 1857

My dear Sir,

Andréa (1839) September

1853.

Richard Henry Stoddard

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27th