M.R.O. 1—33,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 768 Press ~~Mis~~

143-144

Dated 20.5.1863 ~~H.~~ .

16/19

Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 20th May 1863.

No. 143. Read the following letter from the Honorable D. ARBUTHNOTT, Magistrate of Salem; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Salem, 2nd April 1863, No. 42.

I have the honor to forward herewith a translation of the plaint in Original Suit No. 1 of 1863, on the file of the Civil Court at Salem with draft of an answer which I propose to file in the suit in question and to request the sanction of Government to my defending the suit at the public cost.

2. This suit has been instituted by Sambalinga Moorty the Gooroo or Priest of the Davanga caste of weavers at Shevapett against myself, Teroopala Chetty and 25 others belonging to Salier class of weavers, for the recovery of Rupees 12,000 on account of alleged damages and costs incurred by the Plaintiff by being prohibited from proceeding with his caste insignia through the disputed street of Shevapett in the Salem town.

The facts of the case are as follows :—

3. The Plaintiff presented a petition in the month of October 1861 to Mr. Brett the then Magistrate, requesting permission to go through a disputed street in Shevapett. The heads of Saliers or weaver caste (the Defendants) also appeared before Mr. Brett and expressed that they would rather risk their lives than to allow the Gooroo to pass through their houses. Mr. Brett apprehending a breach of the Peace if he were to allow the Gooroo to pass through the disputed street in procession, proceeded personally to Shevapett and after inspecting the locality pointed out to the Gooroo the way through which he could pass omitting that portion of the street which was in dispute to go to his disciples' houses to receive his perquisites. Mr. Brett passed an endorsement* to this effect on the Gooroo's petition on the 31st October 1861. Mr. Brett also sent a copy of the endorsement to the head-quarter Inspector, and directed him personally to stop the procession if the Gooroo attempted to pass through the objected portion of the street. The Gooroo did not however agree to the arrangement made by Mr. Brett, but made no attempt to move in procession.

* Copy enclosed.

4. A few months after the Gooroo moved the Moofty Sudder Ameen's Court for execution of their decree in Original Suit No. 387, 1857† recognizing his right to pass through the disputed main street in procession. The Court issued an order to the Nazir directing him to enforce the decree. The Moofty Sudder Ameen gave me no intimation of the order he had passed to execute the decree. I was only made aware of the fact by the head-quarter Inspector of Police on the evening of the day previous to the one on which it was intended to carry on the procession. The head-quarter Inspector also informed me that disturbance would ensue if the Gooroo were allowed to pass through the disputed street in procession, and that the Gooroo's attempt on a former occasion was stopped by Mr. Brett as he anticipated disturbance. The Superintendent of Police being absent from the station at the time and as there was besides no time at all to admit of due precautions being taken to prevent any breach of the Peace, I issued a warrant to the head-quarter Inspector to stop the procession if attempted.

† Confirmed by the Sudder Adalut in Special Appeal Suit No. 141 of 1857.

5. The Moofty Sudder Ameen reported my interference with the Gooroo's procession to the Civil Judge, who called upon me for an explanation of my interference in an Extract from the Proceedings of the Court, dated the 26th April 1862. In reply I addressed him a letter, dated the 14th May 1862, No. 119, a copy of which is enclosed for the information of Government. A copy of the further correspondence which passed between the Civil Judge and myself is also enclosed for information.

6. As the Superintendent of Police returned, in the meantime I made arrangements with him to allow the Gooroo to pass through the disputed street with due precautions for preventing a breach of the Peace. The Gooroo passed through the disputed portion of the Shevapett main street in procession with his caste insignia on the 1st August 1862, accompanied by a body of

Proceedings of the Madras Government, Judicial Department,
20th May 1863.

Police, at the head of which were myself, the Superintendent of Police, and the Assistant Superintendent of Police.

7. The subject of my interference with the Gooroo's procession has already been brought to the notice of Government by the Civil Judge, vide Mr. Cherry's letter to Government, dated the 30th July 1862, No. 8, and Government Proceedings, dated the 13th August 1862, No. 1,300.

8. Time for filing the answer will expire on the 3rd May 1863.

9. I may state for the information of Government that the Gooroo did not include me as one of the defendants in the suit in the first instance. It appears the Judge returned the plaint for amendment with a Diary order, a copy of which is enclosed, when the Plaintiff added me to the list of the Defendants.

No. 141. ORDER THEREON, 20th May 1863, No. 768.

The Magistrate should defend the suit referred to in the foregoing letter. When a decree is passed the Governor in Council will determine whether or not the costs, if any, should be borne by Government.

(Signed) A. J. ARBUTHNOT,
Chief Secretary.

Exd. T. McMootry.

Order passed by the Magistrate of Salem on the petition presented by Sambalinga Mudy Gooroo of the Dauangum caste.

The Magistrate is of opinion that the peace of the town would be disturbed if the petitioner were allowed to go in procession with caste insignia through the whole main street of Shevapett. The Magte also finds that the Petitioner from having shifted his residence to a place called Soga South of Shevapett has not the same occasion as formerly to pass through that portion of the main street in which the Salers reside in order to reach the places occupied by Dauangums or that class of weavers who belong to his caste. If he wishes to visit in procession his followers on the North side of Shevapett he may do so by proceeding through the Cumera Street into the Dauangums street,

and

and do back to Coga. If he wishes to go in procession thro the streets occupied by Davangans who reside on the west side of Shevapett he may do so by passing thro the Yeltikoo: Cavai's Street into Appasaumy Pillay's Street and thence into the main street of Shevapett as far as the Bazar Street by which he may again enter Yelathoocava Street and so return to his own house.

The Police will therefore be instructed to permit the Petitioners procession to take the above route.

The Petitioner is hereby prohibited from passing in procession either Parian chetty street or thro thro thereby that part of the main Street in Shevapett in which the Indians reside.

The Petitioner will understand that this order refers only to his passing through the streets in procession. The Petitioner is at liberty to pass any of the public streets

streets in the same manner as other people, and no one will prevent him so doing.

31st October 1863.

(Signed) H. Bird
Magistrate

True copy

H. Bird
Magistrate

Extract from the Proceedings of the Civil Court of Salem under date the 26th April 1862.

Read Urzee from Sudr Ameen bringing to the notice of this Court that at the instance of the Plaintiff, a Goowo or Priest of Dananga Caste he was required to execute the decree passed in Original Suit N. 387/1857 on the file of his Court which has been finally confirmed by the Sudr Adalut in Special Appeal N. 141/1857

2 His decree recognized the said Plaintiffs right to pass through the main street in procession. He (the Sudr Ameen) issued a Precept for the enforcement of the decree, but the Nazir has reported that the decree cannot be carried out, owing to the interference of the Police Officers on the ground that the execution thereof is likely to cause a disturbance and owing also to an order of the Magistrate having been published on the spot against the Goowo going in procession.

3 Ordered that a translation of the foregoing Urzee be sent to the Magistrate of Salem who will be pleased to explain under what circumstances the execution of the decree referred to has been already interfered with and why the decree should not be at once enforced

4 The Magistrate is bound to carry out the Law and should not allow the same to be set at defiance.

No. 3
Sir a letter from the Magistrate of Salem dated 2d April 1862 No 42

Rec. 20th May 1862 No. 968

Order passed by the Magistrate of Salem in the petition presented by Kandadeiga Goowo Pattu Dasaragu Caste.

Read Rec. 20th May 1862

Letter from the Magistrate of Salem dated 2d April 1862 No. 42

Forwarding petition of Kandadeiga Goowo Pattu Dasaragu Caste.

Read Rec. 20th May 1862

5

A copy of the Judgment of the Higher Court is sent for the Magistrate's information and guidance.

(True Extract)

(Signed) J. W. Cherry
Civil Judge.

(True Copy)

D K Buthnott
Magte

Extract from the Proceedings of the Civil Court of Salem dated the 2d April 1862.

Read Petition of Nagoor Pitchay Servai praying that the Decree passed in Original Suit No 387 of 1857 may be executed.

Ordered that the Petitioner be informed that the Decree will be executed on the 14th instant.

True Extract

(Signed) J. W. Cherry
Civil Judge.

True Copy

D K Buthnott
Magte

Forwarded with a letter from the Magistrate of Salem dated 2d April 1862.

R.A.2.

Salem Magistrate's Office 54

No. 119 — 14th May 1862.

From

The Honorable D. Arbuthnott
Magistrate of Salem

To

J. W. Cherry Esquire
Civil Judge of Salem

Sir

With reference to an extract from the Proceedings of the Civil Court of Salem dated the 26th Ultimo requesting me to explain under what circumstances the execution of the decree passed by the Mufti Sudder Ameen in Original Suit 387/1857 has already been interfered with, and why the decree should not at once be enforced, I have the honor to inform you that my predecessor was of opinion that if the Gooroo were allowed to pass in procession thro' the disputed Street a serious disturbance would undoubtedly take place. I was not made aware only accidentally of the Mufti Sudder Ameen's intention to execute the decree till the evening of the day previous to the one on which it was intended to be executed. And as the Superintendent of Police was absent from the Station at the time, I issued a warrant to the Head Quarter Inspector to stay the Procession. I annex copy of an endorsement passed by Mr. Brett on the petition presented

presented to him by Sambalinga Murty Gooroo of the Davangunn Caste explaining why he declines to grant the Goorroo permission to pass in procession with Caste insignia thro' the whole main Street of Sevapett and permitting the Goorroo to pass thro' certain Streets named therein

2. In following out the views of my predecessor I acted in accordance with the instructions contained in para 5 of Extract Minutes of Consultation dated 26th March 1859 and in keeping with the ruling of the Foujdare Udalut dated 6th July 1854.

3. With reference to para 4 of your Extract I beg further to observe that the Musti Sudder Ameen gave me no timely notice of his intention to execute the decree so that I could neither preconcert arrangements with the Superintendent of Police for the preservation of the peace, nor could I say the objections Mr. Brett had to the Goorroo passing in procession thro' the disputed Street, before the Court for their consideration Under these circumstances I had no alternative left at the last moment but to pursue the course I did.

I have the honor to be
Sir
Your most obedient Servant
(Signed) D. Arbuthnott
Magistrate

True Copy

D Arbuthnott
Maj[illegible]

Extract from the Proceedings of the Civil Court of
Salem under date the 14th July 1862.

Read again Argue from the
Court also Letter together with
Court also Letter from the Magistrate
in accompaniments, dated 14th May 1862 in
of Salem under date 14th May 1862 in
answer to their Court's extract of the
Proceedings explanation
to the Appeal, registering Proceedings in
of the Magistrate, Proceedings of
under date the Execution of
undersigning Decree.
the abovementioned Decree will be proved
by Witnesses
as to shade distinctly whether in his
opinion the examination
of the Decree in question will be
penalty attended with a Breach of
the Public Peace and likely to cause
a disturbance and whether in
Think Security be is unable with the
Appearance of the Police, to prevent
Answer.

In a letter from the
Magistrate of Salem
dated 2d April 1
Ans. 42

Proc. 20 May 1863 No.

Copy of letter from
the Magistrate of
Salem, to the Civil
Judge of Salem
dated 14th May 1862
Sud. Jo. 103 Dt. No. 752

2 The Civil Judge deems the Foujdari Adalut's ruling quoted by the Magistrate in his letter inapplicable to the present instance, inasmuch as that refers to the interference of the Sepoy Judge, whereas here it is the Civil Judge who is appealed to, by one who holds a decree to be put in possession of his Civil rights.

3 As regards the Extract of Minutes of Consultation, the Court begs to refer him to Para 7, in which it is clearly stated. "Further "although the principle that every man "has a full right to the free use of the "highway and to deal with his property "as he pleases so that he does not "give any real cause of annoyance "to others, or generally speaking to do "any acts not repugnant to decency "and morality, nor prohibited by "Law, is a sound principle, and "such as the officers of Government "should never fail to assert whenever "they may be appealed to on a proper "occasion may arise yet it is not "desirable that they should go out of the "way to enforce the application of the "principle. It will suffice that it be "temperately but resolutely upheld, when "ever opportunities for asserting it "may present themselves fairly and "in due course."

4 In the present case the Gooroo's right to traverse the disputed street with the caste Insignia and his followers, has been "fairly and in due course" expressly recognised by the decree of a Court of Law, and that decree has been confirmed by the highest Judicial Tribunal the Sudder Adalut.

5 It would be a great injustice to the Gooroo if after all the expenses and annoyance to which he has been subjected for a series of years, in establishing his right to the previlege in question, he should now be interdicted in the exercise of that previlege inconsequence of an apprehension by the Magistrate that the execution of

of the judgment in his favor might create a disturbance.

6. The Court considers that the law of this case having been formally declared, it is the duty of the Magistrate to use his best endeavours to see the same enforced, and not to throw obstacles in the way of its being carried out, merely from fear of an imaginary disturbance.

7. Before therefore taking further steps in this matter, the Court wishes clearly to learn from the Magistrate, as to whether he is or is not able to put in force the law, as declared in this particular case.

Ordered that extract from these proceedings be sent to the Magistrate of Salem for his information and guidance.

/ True extract /
/ signed / J. W. Cherry
Civil Judge.

/ True Copy /

D. K. Bullmoth
Magistrate.

of the Magistrate to stop the exercise of such right if he has reason to apprehend a breach of the peace.

3. The Civil Courts should bear in mind that if any disturbance were to occur a Civil Court decree would form no excuse for a Magistrate who allowed the Procession to take place, and as the Civil Court is in no way responsible for the peace of the District the expressions made use of by the Civil Court in paras 5 and 6 regarding the fears of the Magistrate of an imaginary disturbance are uncalled for.

I have the honor to be
Sir
Your most obedient Servant
(Signed) D. Arbuthnott
Magistrate

True Copy

D Arbuthnott
Magistrate

Orginal Suit No

Plaintiff

Jambalingamoorthy
a Priest of Davanga
Community
Vakeel Appasawmy Pillay

Defendants.

1. Theroopallee chetty
2. Cavatty chetty
3. Nallavadan alias Custhoori chetty
4. Alagheri chetty
5. Cooppiah chetty
6. Chendroya chetty
7. Kistna chetty
8. Ramasawmy chetty
9. Vencatrama chetty
10. Chennakrietna chetty
11. Vencatrama chetty a convict in the Jail
12 Ramasawmy chetty a convict in the Jail
13. Poothoor Govinda chetty
14. Cacoola Chelvoiya chetty
15. Poonalvo Govinda chetty
16 Poda Sashiya chetty
17. Semboorungiah chetty
18. Pola Bawlee chetty
19. Pundura Vencatakistna chetty
20. Poda Ramasawmy chetty
21. Podu Poovvoshthavi chetty
22. Vembara Pethy chetty
23. Poonalvoo Kistna chetty
24. Poovvolvo Veeraragana chetty
25. Veeraiualla Bodichetty
26. Cacvolvo Cunniya chetty

This is an action instituted by the Plain:

Vide
Letter from
the Magistrate No
Taleun dated 2d
April 1863 No 44

Received May 8th 1863

Copy of letter from
the Magistrate to the
the Civil Judge of
Taleun dated 16th
April 1863
No 252

tiff against the Defendants to recover from the latter Rupees 15000 being the amount of damages and expenses incurred by the Plaintiff.

The Plaintiff states that he is the priest of Davanga or Sader Community and the 2, 7 and 8 Defendants and the fathers of the 1st 3d 4th 5th and 6th Defendants and also the other Defendants obstructed in 1852 Plaintiff's proceeding in a Palenquen in procession with his caste ensigns and Musics. That Plaintiff consequently filed a suit and in the pleadings filed in the abovementioned suit the Defendants have cast unfounded reflection against Plaintiff by altogether denying his position as a Gooroo to the great prejudice of the Plaintiff's reputation and also admitted having obstructed Plaintiff going in procession. That the Sudr Court to whom a special appeal (in N°141 1854) was made duly weighing the above mentioned circumstances recognized Plaintiffs right to proceed in procession and observing that the Defendants have altogether failed to prove that their obstructing the Plaintiffs passage was founded upon usage have pronounced on their liability to any damages that Plaintiff would sustain in consequence of their obstruction. That this Decree of the Sudr Court have been confirmed on the review which was solicited by the Defendants. That notwithstanding this Decree the Defendants and their sectuaries have again maliciously presented motions remonstrating against the execution of the said Decree that when orders were passed by the lower and appellate Courts for the execution of the abovementioned Decree Securities have been taken from the 2d, 4th 6th 7th 9th and 10th Defendants to prevent their acting in breach of public peace. That as the Plaintiff was proceeding in procession along the public streets in Shivapett the 11th and 12th Defendants being instigated by the other Defendants threw slippers against Plaintiff.

Under these circumstances the Plaintiff seeks to recover from the Defendants Rupees 10,000 as a compensation for the injury sustained by him in person and Rupees 5000 being the amount of debt incurred by Plaintiff for his maintenance during a period of 10 years from 1852 to 1861 at the rate of 500 Rupees a year the Plaintiff having all along thus twice been compelled to confine himself to a particular place Shivapett or Madras without being able to collect his perquisites from his disciples at different countries.

The Court consider there is no ground for action for a legitimate denial of a right such as was set up in this suit and that consequently no damage can be sought for now at the hands of those who merely disputed that right the damages might have been sued for in the Original Suit. On the other hand if after the Plaintiff had been declared entitled to that right any one threw difficulties in the execution of the Decree in his favor or again acted in controvention of his right after his having been put in possession of it such a one is liable for an action

for damage— this plaint is therefore returned for the requisite amendment

6th December 1862 (Signed) J. W. Chevy
Civil Judge
(True Copy)

D K Cuthbert
Judge

Translation of a plaint filed by Samba Linga Moorthy Priest of Davangum caste people resident of Shevapett attached to Salem cutcherry

1. Madana Tripalla Chetty, nephew of Pembarai Govinda Chetty resident of Shevapett.
2. Kavati Chetty.
3. Nallavadum alias Kustiri Chetty son of Coopiah Chetty
4. Alagiri Chetti nephew of Coopiah Chetti
5. Koopiah Chetti son of Govt. Tongadi Chetty
6. Chennaroya Chetti son of Chennakrishna Chetti
7. Krishna Chetti
8. Ramasawmy Chetty
9. Venkat Rama Chetti
10. Chennakrishna Chetti
11. Venkat Rama Chetti now in the Criminal Jail at Salem
12. Ramasamy Chetti in the above Jail
13. Govinda Chetti of Pottoor now at Shevapett
14. Gajoor Chalovadi Chetti
15 Poovaloo Govinda Chetti
16. Poda Thathappah Chetti
17. Chamba Ringiah Chetti
18. Poda Bala Chetti
19. Pandara Pugata Krishna Chetty
20 Poda Ranga Swamy Chetti
21. Poda Poovaloo Chetti
22 Venkata Reddi Chetti
23. Poovalue Krishna Chetti
24 Poovaloo Vera Raghava Chetty
25 Veeramulla Podi Chetti
26. Gajoolu Ramaya Chetti
27. The Honorable David Arbuthnott Collector of Salem

Appasawmy Pillai Vakeel on behalf of the Plaintiff requests that the Defendants may be made to pay Rupees 12000 for the damages

No 2

In a letter from the Magistrate of Salem dated 2d April 63

Rec'd 4th April 63
P.P. 42.

Opposite Plaintiff's Name.
Returned by the Civil Judge for Amendment of Plaint
a Stamp Paper for Amendment of Plaint

damages and loss sustained by the Plaintiff

1. The Judicial Court passed a decree on the 6th March 1858 in Special Appeal No 141 of 1857 to the effect that the Plaintiff may pass in Palankeen in procession through the Public Street with music and banners and on the 7th March 1859 this decree was confirmed on a review of a Petition.

2. Mr. H. A. Brett predecessor of the 27th defendant prevented the Plaintiff in the Month of October 1861 by a written order from proceeding in procession through the disputed public street according to the decree. This prevention was repeated in the month of April 1862 by a written order by the 27th defendant.

3. The other defendants prevented the Plaintiff in the same way in the month of February 1862 and subsequently through public writting and through verbally.

4. The Plaintiff went through the disputed public street in procession on the 14th August 1862 in virtue of the right conferred upon him, when the 11th & 12th defendants, either through the instigation or Co-operation of all the other defendants except the 27th

defendant flung slippers in front of or near the procession passing.

5 As the defendants have thus seriously degraded the honor of the Plaintiff, the Plaintiff requests that the Court may be pleased to award 10,000 Rs for damages & 2000 Rs for loss sustained by the Plaintiff in consequence of his having defrayed the costs of his establishment by contracting loans owing to his having been prevented by the Defendants from the date of the decree till August 1862 from passing through the disputed public street to go to the houses of his deciples to earn his perquisites from his deciples.

/Sigd/ Appasawmy Pillai

Vakeel for the Plaintiff

I, the Plaintiff, in the above plaint do declare that what is stated therein is true to the best of my information & belief.

/Sigd/ Samba Linga Moorty

Govrs of the Davangere caste people

Filed on the 3 January 1863

(True Translation)

A Robertson

Magistrate.

Draft of an answer proposed to be filed in Original Suit No 3 of 1863 on the file of the Civil Court at Salem-

1 That the 27th Defendant maintains that his predecessor Mr Brett, Magistrate of the District and as such entrusted with the preservation of public order and peace, apprehending danger to such order and peace was justified in acting as he did and that he having acted judicially and in good faith is not liable to be sued in any Civil Court under Act XVIII of 1850.

2. That the 27th Defendant further states that his predecessor Mr Brett after a personal inspection of the locality pointed out to the Plaintiff a way to go to the houses of the Goroos disciples omitting only a portion of the Street the Plaintiff's passing through which he apprehended danger and that there was nothing to prevent the Plaintiff from following this course and thus obtaining from his disciples his perquisites.

3 That the 27th Defendant urges on behalf of himself that as no notice was given to him of the Plaintiff's intention

No 1

In the Letters from the Principal Sudder Ameen Salem
Received 2nd April 1863
No 42

Rec'd in Mayr's Office 3rd April 1863

Pauchatcha Pillay
Plaintiff filed by Vanda-
Rayar Esquire Commissioner
for the Investigation Cause

Mayr's Office
Aug 1752

intention to proceed in procession through the disputed street, that as the fact of the intended procession was brought to his notice by the Police only the evening preceding the morning on which the Plaintiff proposed to go in procession, that as there was no time to make arrangements to prevent danger to public order and peace, and that as such danger was apprehended he issued an order prohibiting the Plaintiff from going in procession in opposition to the order issued by his predecessor Mr. Brett, and that he having also acted judicially and in good faith, is protected by Act XVIII of 1850 from being liable to a civil action.

4. That the 27th Defendant therefore prays that he may be removed from the list of Defendants to this suit, and that the costs incurred by him may be ordered to be paid to him.

R. K. Caldwell

Magistrate

Jud C Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the Magistrate of Salem

/ Rev Letter 2d April 1863 No 42 /

Order thereon 20th May 1863 No 768

The Magistrate should defend the suit referred to in the foregoing letter. When a decree is passed the Governor in Council will determine whether or not the costs, if any, should be borne by Government.

to Salem - dispd 20

Rec: 20th May 1863 Order 768

Rough Draft an answer to the Letter from the Collector of Salem dated 2nd April 1862 No 42.

Letter to Salem dispd 20th May 1863

Pro. Diary

Judl 186 3. Department.

No. 768.

PROCEEDINGS OF GOVERNMENT.

Dated 20 May 63

Directing the Magistrate of Salem to defend the suit brought against him and others by a Goorroo & observing that when a decree is passed it will be determined whether or not the costs, if any, should be borne by Government.

10,083