M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No.	1466	Press Mis.
52-53		
Dated	5-10-19 1864	

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department, 8th October 1864.

No. 52. Read the following letter from H. G. SMITH, Esq., Acting Magistrate of Cuddapah; to J. D. SIM, Esq., Secretary to Government, in the Judicial Department, Fort Saint George, dated Cuddapah, 28th September 1864, No. 30.

With reference to the Orders of Government, dated 18th November 1863, No. 1784, I have the honor to submit translations of judgment and decree passed by the District Moonsiff of Cuddapah in Original Suit No. 716 of 1863, together with a draft of appeal petition, which I propose to file in the Civil Court against that decision, for the approval of the Government, and request that the sanction of Government may be obtained to proceed with the appeal at the public expense.

2. Four months' time has been allowed to file the appeal petition, which will expire by the 4th November 1864.

TRANSLATION of the Judgment passed by the District Moonsiff's Court of Cuddapah town.

Present—Moulavi Syed Abdool Aziz Hussain Saib, District Moonsiff.

No. 716 of 1863.

Plaintiff.	*Defendant.*
A. Subramhaniyam, by Vakeel Guravaraz.	H. G. Smith, Esq., by Vakeel A. Ramiah.

Read the whole record relating to this suit. The plaintiff brought this suit against the defendant, stating that the pials under dispute form no obstruction to the public; that the defendant is about to remove the same; and that he (plaintiff) would sustain a loss of 64 Rupees in the event of its being done so, and solicits a decision for their non-removal.

2. The following points were given to the plaintiff to produce evidence in support thereof, viz., (1) Whether the place on which the pials existed is of his own? (2) Are they of long standing? (3) Do they cause any injury to the comfort of the people? (4) Whether the wall of the house would be affected by the removal of those pials? (5) Whether any loss would result on their removal; if so, what would be the amount thereof? (6) Lastly, has he applied to the defendant for the appointment of a jury?

The 1st and 2nd points were proved by his 2nd, 3rd, 4th, and 7th witnesses; the 3rd point by the 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th witnesses; and the 4th and 5th points by the 2nd, 3rd, and 7th witnesses.

The 6th point was admitted by the defendant. The evidence of the 1st witness is of no use to his complaint.

3. The defendant in his reply states that the pials in question would probably have been an obstruction, causing inconvenience to the public; and that they were ordered to be removed in order to secure the comfort of the community.

4. The following points were given to the defendant for proof, viz., (1) Did the pials occupy the road-way? (2) Did they stand as a nuisance to the public? (3) Was any notice given to the plaintiff to remove the pials; if not, why was it not done? (4) Did the plaintiff apply for a punchayet; if so, what was the objection to comply with his request? (5) When were the pials removed, whether after or previous to the service of summons on the defendant? (6) Would he (plaintiff) not sustain any loss by the removal of those pials? The defendant reported by a yadast that the 1st, 2nd, and 6th points would be considered to have been proved on personal inspection of the place by the Court; that no notice was given to the plaintiff as stated in 3rd point; that no jury was appointed, as referred to in the 4th point; and that the pials, in question were removed after the receipt of the summons alluded to in the 5th point.

5. The Court repaired to the spot and made a careful inspection of the place as requested by both parties. The pials in question were found to have been removed. It appears, from several marks left in the wall, that the length of the one, which had existed on the south of the outer door of the plaintiff's house, is 8½ yards, and of the other on the north 2 yards. On measuring the large slabs of stones of those pials, the exterior part thereof was found to be ¾ths

of a yard in width, leaving out the portion taken up in the walls. At present a side channel has been excavated for the drainage of rain water at the very place on which the pials had existed. The walls seem to have received no damage as yet by the removal of those pials. A Mazar was given, before the Court, by the people who live in the neighbourhood, to the effect that the pials in question caused no inconvenience to the people, or to the bandies.

6. Had a previous notice been given to the plaintiff, and had the pials in question been removed after the constitution of a jury applied for by the plaintiff, there would have been no necessity for the institution of this suit. The plaintiff sustained no loss up to this time, but the mere laborers' hire required for the construction of the said pials. Consequently the plaintiff is not entitled to receive the amount sued for. But it has been proved both by the evidence of witnesses and Mahazarnamah that the pials in question would form no obstruction.

7. Under these circumstances, it is resolved and decreed that the plaintiff should be allowed to construct, at his own cost, a sluice for drainage of rain water at the very place occupied by the pials, and to build thereon pials with large slabs of stones to the same extent as before, and that both parties should bear their own costs.

27th April 1864.

The date on which application was made by A. Ramiah, Government Pleader, on behalf of the defendant; for a copy of this judgment is 27th April 1864. | Copy prepared, 28th April 1864. | Copy granted on the 18th June 1864, on payment of the fee, Annas 2, and Pice 6.

(True Translation.)

(Signed) H G. SMITH,
Acting Magistrate.

TRANSLATION of a Decision passed by the District Moonsiff's Court of Cuddapah town.

Present—Moulavi Syed Abdool Aziz Hussain Saib, District Moonsiff.

Plaintiff.	*Defendant.*
A. Subramhaniyam, by Vakeel Guravaraz.	H. G. Smith, Esq., by Vakeel A. Ramiah.

1*st*.—The plaintiff filed this suit against the defendant, on the ground that the latter is about to order the removal of the pials situated in front of his house at Mochimmyapett, in the town of Cuddapah; that they form no obstacle to the public; and that he would sustain a loss of 64 Rupees in case of their removal, and request that a decision may be passed not to raze the pials in question.

7*th*.—Under the circumstances stated in the judgment, it is resolved and decreed that no loss should be re-imbursed to the plaintiff by the defendant; that the plaintiff should be permitted to construct, at his own cost, a side drain in front of his house, for the passage of rain water, and to form thereon two pials with large slabs of stones, one of 8½ yards long on the south side of his gate, and the other of 2 yards long on the north, with ¾ths of a yard width; and that the both parties should bear themselves their costs.

Plaint filed on the 6th October 1863.
Pleadings were over on the 22nd December 1863.
Examination of the witnesses 2nd and 19th February 1864.
Last hearing, 27th April 1864.
Decreed, 27th do.
Judgment fair-copied on the 27th April 1864.
Time for appeal will be over by the 27th May 1864.

(Signed) MOULAVI SYED ABDOOL AZIZ HUSSAIN,
District Moonsiff.

(True Translation.)

(Signed) H. G. SMITH,
Acting Magistrate.

DRAFT of an Appeal Petition proposed to be filed in the Civil Court of Cuddapah District, against the Decree passed by the District Moonsiff at Cuddapah in Original Suit No. 716 of 1863, brought against the appellant for the recovery of Rupees 64, being the amount of loss alleged to have been sustained by the respondent (original plaintiff.)

In Original Suit.

Plaintiff.	*Defendant.*
A. Subramhaniyam.	H. G. Smith, Esq., Actg. Magistrate.

In Appeal.

H. G. Smith, Esq., Acting Magistrate.

Appellant prefers this appeal against the decree passed by the Moonsiff in the above suit, being dissatisfied with his decision in having permitted the respondent to restore the pials.

1. The appellant in his official capacity as a Magistrate issued and put it into execution an order to remove the pials which had existed in front of the respondent's house, with a view to facilitate the free passage of bandies, &c., through the public road. It is quite apparent that the Civil action brought in such a case is not to be entertained* by the Judical officers, and that the evidence produced by the respondent and the Mahazarnamah taken in support thereof are of no avail.

* Vide provisions of Act XVIII of 1850.

2. In regard to the three principal points given to the appellant, (viz., 1st. Whether the pials in question are situated in the road-way? 2nd. Do they cause any injuiry to the public? 6th. Whether their removal is a loss to the respondent?), he informed the Court that no other evidence would be required, if the place in question be inspected personally. In the Decree he District Moonsiff) merely mentions his having done so, but gave no opinion of his own in regard to the situation of those pials in the said place.

3. In paragraph 6 the Moonsiff clearly states that there would have been no cause for the institution of this suit had they (pials) been *removed after the constitution of the Jury*; and, moreover, he acknowledges himself that no loss has yet been sustained, though six months have elapsed since the removal of those pials. After all he erroneously decides in favor of the respondent.

4. The two points referred to in the preceding two paragraphs plainly show the legality of the order issued by the appellant for the removal of those pials.

5. In the plan produced by the appellant, the width of the whole street at different places were fully noted therein, from which it was clear that the road-way, at the very place where the disputed pials had existed, was only the most narrow part owing to their being there, and that it was a nuisance to the people. Further, the respondents' witnesses depose to the recent construction of the pials, *i. e.*, five or six years ago. This is a contradiction of what the respondent himself stated in his plaint.

6. It may also be seen from the above plan that, with the exception of this part, there is ample room throughout the street for the free passage of two carts when they meet each other.

7. With a view to secure the comfort of the public, the late Magistrates occasionally, on their personal inspection, caused the removal of pials, verandahs, walls, &c., which were then considered to be an obstruction to the people, &c., passing through such narrow streets, it being incumbent on them to do so. The appellant also likewise issued the order alluded to in 1st paragraph, finding the street (where the pials were constructed) to be very narrow when compared with the other parts of those near. These particulars escaped the Moonsiff's notice when passing judgment.

8. The appellant therefore requests the Court to take the above circumstances into consideration when perusing the original proceedings of this suit, and after a personal inspection of the said place to cancel the decree passed by the Moonsiff, directing the respondent, at the same time, to remove the pials lately restored as per original decree, and to pay the whole costs.

(Signed) H. G. SMITH,
Acting Magistrate.

Proceedings of the Madras Government, Judicial Department,
8th October 1864.

No. 53. ORDER THEREON, 8th October 1864, No. 1466.

Subject to the same condition under which the cost of defending the suit was advanced, authority is granted for prosecuting the appeal against the decision of the District Moonsiff also at the public expense.

(True Extract.)

Chief Secretary.

To the Magistrate of Cuddapah.

Exd. J. Tulloch.

8 (3)

№ 1466 dy 8th Oct/64

Subject to the same condition under which the cost of defending the suit was advanced, authority is granted for prosecuting the appeal against the decision of the District Moonsiff also at the public expence.

J. D.

To the Magte of Cuddapah dispd 14/9

As there is a Counter al. lowed, a reference to the Dole Court should take place

Pass'd 122. 123 18-11-1863