M.R. O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1722 Press ~~Mis.~~

11-12 Dated 2-12-~~19~~1864

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Not to be folded or roughly handled

No. 11. Read the following letter from W. M. CADELL, Esq., Collector of Tanjore; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Judicial Department, Fort Saint George, dated Tanjore, 11th November 1864, No. 1156.

I have the honor to report, for the information and orders of Government, that a suit has been filed in the District Moonsiff's Court at Tranquebar by one Verriyaudu Naik against Chokalinga Pillay, Taluq Sub-Magistrate of Nannilam, and certain other parties, for the recovery of certain land alleged to belong to him (the plaintiff) by right of purchase, but which he was restrained by an order of the Sub-Magistrate from entering upon.

2. The facts of the case out of which this suit has arisen, are simply these—One Somu Moodelliar, a Mirasidar of the village* noted in the margin, brought a complaint before the Sub-Magistrate above named, stating that this plaintiff and another party† forcibly entered upon a piece of ground which formed the site and appurtenance of a ruined choultry, the common property of all the Mirasidars of the village, including the complainant, and also one of the defendants other than the plaintiff (plaintiff not being a Mirasidar), and further cut down the branches of a tree on an adjoining ground which belonged to the complainant individually. The plaintiff, on the other hand, contended that the premises referred to were the individual property of one Chinnappa Chetty, whose ancestors had originally erected the choultry which stood thereon, and from whom he (plaintiff) purchased them about a month previous, together with some other land belonging to that party.

* Kondhugrí Kovilpat Nannilam Taluq.

† Kolanda Ramasami Naik, son of Musili Naik.

3. The Sub-Magistrate, however, considered the alleged sale invalid and inadmissible, and as neither the plaintiff nor the individual, who was the other defendant in that case, were, according to that officer's finding, able to prove any exclusive previous possession of the premises in question, he was of opinion that the entry of these parties thereon amounted to criminal trespass, and accordingly fined them in the sums of Rupees 20 and 15 respectively.

4. It is for the recovery of the premises of which according to his allegation he was thus deprived by the decision of the Sub-Magistrate, as also for the remission of the fine inflicted upon him, that the plaintiff has brought this suit. He claims also damages to the extent of Rupees 220, on account of loss alleged to have been sustained by him in having been prevented from proceeding with the re-erection of the choultry for which he had collected materials and laid foundations.

5. It must here be observed that an appeal having been preferred by the other defendant‡ against the above-mentioned decision of the Sub-Magistrate, the same has been reversed by the Acting Joint Magistrate, Mr. Plumer. This plaintiff, however, having preferred no appeal it is of course impossible to say what the decision of the Appellate Court, so far as he is concerned, would have been.

‡ Kolanda Ramasami Naik.

6. Whether right or wrong, there appears to me no reason to think that the decision of the Sub-Magistrate was passed otherwise than in good faith, and in the discharge of his public duties, and consequently that officer is, in my opinion, clearly protected by Act XVIII of 1850. I beg, therefore, to recommend that he be authorized to defend himself at the expense of Government.

7. A translation of the plaint as filed by the plaintiff, as also of the Sub-Magistrate's decision, which forms the cause of this suit, is herewith enclosed for the information of Government, together also with a copy of Mr. Plumer's decision on appeal above referred to. The hearing of the suit has been reported by the Joint Magistrate to have been fixed on the 28th instant, and though I have requested that officer to take measures for an extension of time for 15 days from that date being obtained, I would beg to request that I may be favored with orders as early as possible.

To the Judge of the Court of Small Causes, with powers of Principal Sudder Ameen, Negapatam.

Plaintiff.

Verrivaudu Naik, Mirasidar, son of Raganatha Naik, residing in Alangudicheri in Thirumaragal Mahanam of Nannilam Taluq.

Defendants.

1. Chinnappa Chetty *alias* Subramania Chetty, son of Shanmuga Chetty, residing in Agarakondagai in the above Mahanam.
2. Kothandarama Sami Naik, son of Musili Naik, residing in Alangudicheri.
3. Somu Muthaliar, residing in Sannamangalam in the above Mahanam.
4. Manikkapattia, residing in Konthagai Kovilpat in the above Mahanam.
5. Mahomed Kasim Ravuthan, son of Kathuvava Ravuthan, residing in Thittaicheri in above Mahanam.
6. Pichammal, wife of Mahomed Thambi Nagutha (in insanity), residing in Oil Monger's street in Nagore, in Negapatam Taluq.
7. Arunachalapathan, son of Sabapathepatan, residing in Kammala street in Tirumalarajanpatnam, in the French territories.
8. Kanagasabai Muthalikanam of Thittaicheri Vattam, residing in Pandaravadai Konthagai in above Mahanam.
9. Chokkalingapillai, Taluq Sub-Magistrate, residing in Nannilam.

Valuation of suit Rupees 1543, for the recovery of certain Malguzary (or rent paying) lands.

1. For the purpose of a Maha Mandugappady or festival of Sree Savariraja Perumal of Thirukannapuram, one Tiruvasal (or choultry) and certain lands of Nanjai Punjai, &c. were endowed by the ancestors of the 1st defendant in the village of Konthagai Kovilpat. The property was duly entered in the Paimash accounts and other documents, and was in the enjoyment of the original family, who were duly attending to the charity.

2. On the 3rd of Panguni of the year Parthiva, or the 14th of March 1826, the Tiruvasal and the lands were mortgaged to the father of the 2nd defendant by Thandavaroya Chetty *alias* Appavu Chetty, paternal uncle of the 1st defendant; from that time the property was in the enjoyment of the mortgagee.

3. On the 2nd May 1861, the 1st defendant recovered the property from the 2nd defendant. The 1st defendant has since sold me, for a sum of Rupees 700, the Tiruvasal, the lands appertaining thereto, together with his proprietary right of enjoyment of the property, and of attending to the charity, duly specifying the situation, with the boundaries of the land, &c. Of the waste land attached to the property as hereunder specified, with the exception of that for the use of the Tiruvasal, which is numbered 62 and 64 in the Paimash accounts, and which is in the possession of the 2nd and 3rd defendants, I am enjoying the rest.

4. The Tiruvasal has a thatched roof. In order to turn it into a masonry Mandapam or building I have prepared a lac of bricks, chunam, &c., and commenced work three months ago. The expense incurred hitherto is Rupees 500. The required materials to complete the work, such as mortar, &c., are also prepared and ready at the spot.

5. The 3rd defendant deputed an Agent for the purpose, and filed a complaint against me in the Taluq Sub-Magistrate's Court, to the effect that the Tiruvasal and the lands attached therewith, as particularized below, are the *common* property of the village, and that, by attempting to raise a building, I have misappropriated the property. The Sub-Magistrate, 9th defendant,

who tried the case, instead of confining his proceedings as far as it was necessary to elicit the charge brought against me, has proceeded to establish a document executed without the knowledge of the original proprietor during the time the property was under mortgage, and referring to the revenue of the land. He also condemns my documents. The Sub-Magistrate has attempted to establish the right to the property, which by law can only be done by a Civil Court of competent authority; in so doing, he has acted beyond his authority. He has thus abused the authority vested in him. He has not only instituted unnecessary inquiries, but also failed to inquire into the documents and other evidence in my behalf. The Sub-Magistrate fined me in a sum of 20 Rupees.

6. I request the Court, therefore, to cancel the decision passed by the Sub-Magistrate; to establish the deed of sale valuing 700 Rupees, which was abused by the Sub-Magistrate; to make over to my charge for the use of the charity, from the 2nd and 3rd defendants, 91¾ gulis of land; to cause the defendants from 2nd to 7th not to interfere with my enjoying the land, viz., maus 6 and gulis 4, and with my constructing the building I have commenced; to have refunded to me the amount of fine, Rupees 20, and the value of chunam and other materials destroyed and damaged, amounting to Rupees 220, by the 9th and 3rd defendants respectively.

7. The village Karnam is made the 8th defendant, as he admitted and stated the right of the 1st defendant to the property in question in the statement and Register rendered to the Inam Commissioner in 1863, and as he gave evidence to the contrary in the proceedings of the Sub-Magistrate, in order to agree with the notions of the 3rd and 9th defendants. Particulars of amount to be recovered from the 3rd and 9th defendants.

	RS.	A.	P.
Cost of 200 cullums of chunam destroyed, and the carriage for sand and cooly wages in beating it, and other materials damaged.....	120	0	0
Amount advanced to bricklayers, coolies, &c., which could not be recovered from them, the work having been stopped by the Sub-Magistrate's decision.....	100	0	0
Amount of fine unjustly imposed.....	20	0	0
Total...	240	0	0

(Signed) VERRIVAUDU NAIDU,
„ RAMASAMI AIYAR, *Vakeel.*

Filed 26th August 1864.

(Signed) M. CROSS,
Judge.

(True Translation.)

(Signed) C. G. PLUMER,
Acting Sub-Collector.

Decision in Calendar case No. 204 of 1864, on the file of the 2nd Class Subordinate Magistrate Nannilam Taluq.

Somu Mudali, Mirasidar of Kondagai-kovilpattu by Agent Vaitinathaiyan. *versus*

1. Kodandaramasami Naiker, by Vakil Kistna Aiyangar.
2. Mundukuna *alias* Verrivaudu Naiker, Vakeel Ramaiyan.

Witnesses.

1. Sokalinga Mudali.
2. Ramasami Naiken.
3. Vaidelinga Kavindan.
4. Virabhadra Pillai.

Witnesses.

1. Sauriperumlaiyangar.
2. Sauriaiyangar.
3. Sinna Annavaiyan.
4. Appasami Aiyan.
5. Ganapadi Subbaiyan.
6. Chandrasekharanainan.
7. Kurnum Nilakandaiyan.
8. Sinnappa Setti *alias* Subbramania Setti.

Cirkar witnesses.

1. Mahomed Kasim Ranutten Pattamaniagar.
2. Kanakasabhai Mudali, Kurnum.
3. Rangaiyangar, Revenue Inspector.

The Charge.

1*stly*.—That the prisoners did, at 8 o'clock on the morning of the 3rd June 1864, at Kondagaikovilpattu, unlawfully enter upon and remove bricks from the foundation of an old choultry, which existed on Gramasamudayan Alayada Purampok land on the north side of the road; did encroach upon Gramasamudayam Punsei land to the extent of ¾ kol, excavate foundation and raise walls; and did lop off and carry away branches of a Puvarasam tree which stood on the prosecutor's land, thereby committed the offence of criminal trespass punishable under Section 447 of the Indian Penal Code.

2*ndly*.—That the 2nd prisoner did further, at same time and place, use criminal force to the prosecutor by pushing and attempting to beat him, thereby committed an offence punishable under Section 352 of the Indian Penal Code.

From the records of this case it is observed, that the evidence of the 2nd, 3rd, and 4th witnesses for the prosecution proves that the 1st and 2nd prisoners did come to the site of the choultry in dispute and had the bricks from the foundation removed, and the Puvarasam clippings carried away by their men.

The Vakeels of the 1st and 2nd prisoners admit that the bricks were removed as alleged, and that a new building was under construction; and the 1st prisoner's Vakeel further states that by order of 2nd prisoner his men lopped off branches of the Puvarasam tree.

It only remains necessary to determine whether the entry of the prisoners was lawful or unlawful.

The 1st prisoner's Vakeel states, that the site of the choultry in dispute, and 15 mas of Punsei land to the south of it belonged to Tandavaraya Chetty of Agorakondagai; that they were mortgaged to Musali Naiker, his client's father; that the choultry existed until 25 years ago, and wherein Musali Naiker kept a water-shed and celebrated a festival in favor of an idol; that after its dilapidation he annually used to put a pandal with bamboos and cocoanut leaves, and celebrated the said festival of Magham in the month of Masi; that Sinnappa Setti, a descendant of the said Tandavaraya Setti, used to be present on the occasion that the festival was observed in the last Masi, and that the said Sinnappa Setti redeemed the mortgage in the last Chittrai, and made over the lands to the 2nd prisoner under a Bill of sale.

The 2nd prisoner's Vakeel in corroborating the above statement adds, that the lands, &c., were bought for Rupees 700.

The 1st, 4th, 5th, 6th, and 7th witnesses for the defence state, that Subramania Setti put a pandal at the place in dispute in favor and celebrated the festival of Sri Samiragaperumal of Terukannapuram in the festival of Masi Magham. The 2nd and 3rd witnesses ignore by whom the pandal is put, and 8th witness states that he, with the assistance of the 1st prisoner's father, puts the pandal and celebrates the festival, but none of them state that Musali Naik, 1st prisoner's father, used to put the pandal at the place in dispute.

The witnesses for the prosecution, and the 1st and 2nd Cirkar witnesses affirm that the prosecutor's client and other Mirasidars of the village put the pandal at the place in dispute.

8th witness admits the execution of the deed to the 2nd prisoner, and which deed his Vakeel produced and filed a copy thereof, in which it is seen that the boundaries of the said choultry with its endowments are described.

The Karnam and the Revenue Inspector were ordered to inspect, with the aid of the Paimash account, the site of the building, and to report on its present condition. They state that they accordingly inspected the spot; that in the Paimash account of Fasli 1238, the choultry is entered in No. 290 as Alayadapurampok, tiled roof choultry, and as measuring 2⅞, guntahs in extent; that it is at this site that the prisoners are at present constructing the new building; that the ground to the north of it is entered in No. 297 as Punsei and garden lands in the enjoyment of the choultry, and which is included in the Pattahs of the prosecutor, prisoners, and others according to their shares, and for which they pay tax; that in this land prisoners have taken up to the extent of 3 kols by half, excavated the foundation, and were erecting the building; that

the Puvarasam tree, the branches of which the prisoners have lopped off, stands on the north side of the prosecutor's Punsei land, which is entered in No. 293, and which is included in his Puttah. The 1st witness, who is a Miras Puttamaniagar, corroborates their statements.

The Kurnam further states that, when in July 1863, accounts of Inams were rendered to the Deputy Collector, Inam Commission, the land included in Nos. 54, 55, 60, 61, 70, 67, 73, 63, and which, according to Harris' survey, amounted to 4 maus 72 gulis of land, but which, according to the Paimash of Fasli 1238, and Kolapiramanam of 1862, amounts to 8 maus 81 1/16 gulis, was entered in the statement in the name of the said Subramania Chetty; that no Nansei land is included therein; that according to the said Subrumania Chetty's statement it is also stated therein that a pandal is put in No. 63, and a festival celebrated, but that no mention is made of the choultry in No. 290.

The above said maus 8 and odd lands is an Inam as mentioned in the statement. The allegation that 15 and odd maus of land was obtained under the deed made by the prisoners in explanation of what is stated in the deed as Nansei Pansei, &c., within the limits specified is just the contrary. In the description of its boundaries, it is stated to the west of Maniatotti; but on the west of it is found No. 63 embankment, and on the west of this is No. 62, Alayadapurampok Odai, measuring 72 gulis, of which Musali Naik in Fasli 1272 bought 55 gulis of land under cultivation and Tirwah was charged thereon. In Fasli 1273, prosecutor's client brought under cultivation 17½ gulis of land of No. 62, and 19 gulis in the Odai, but this was objected to by Musali Naik, who claimed it as Inam land. The matter, it appears, was inquired into and reported to the Head Assistant Collector on the Revenue side, and an order No. 189, dated 8th April 1864, received directing that the said 36½ gulis should continue in the enjoyment of prosecutor's client.

If it be true that Musali Naik was in long enjoyment, as alleged by prisoners of the said Inam lands under mortgage, there was no reason for Musali Naik easily to admit the inclusion in extra cultivation accounts part of the land under No. 62, within the specified boundaries, and which he reclaimed to receive a Puttah for the same and to pay Tirwah thereon. Prisoners are aware that the land to the north of it, which was the subject of a dispute was, under the Huzur orders, confirmed in the possession of prosecutor's client; that a Puttah was given him for the same, and that he pays the Tirwah thereon; and yet the prisoners allege that this land is included within the boundaries specified in the deed. In corroborating the above statement, Subramania Chetty, 8th witness adds, that he has heard that the choultry with its lands was mortgaged 30 years ago by his uncle to Musali Naik, and that he had himself enjoyed the lands 30 years ago. His statement, therefore, that the lands were in his enjoyment at a time when he heard that they had been mortgaged is a direct contradiction, and his testimony is unworthy of belief.

The said Subramania Chetty himself admits that the Inam, &c., lands are not in his possession; that he holds neither Puttah for the same nor pays Tirwah thereon, ignores as to how his ancestors acquired the choultry and the Inam, &c. lands, and denies that he has any documents in his possession in respect thereof. It is also elicited by the evidence of 1st and 2nd Circar witnesses, that the choultry is entered in the Paimash, not in the name of any one but as Alayadaporampok; that the said Subramania Chetty possessed no lands within the limits specified in the deed of sale, nor anywhere else in the village, and that he holds no Mirasi Puttah and pays no Tirwah.

It is thus seen that the said Subramania Chetty's title to the land is supported neither by documentary nor actual possession, and his sale thereof merely on the ground that it is entered in his name in the statement given to the Deputy Collector is therefore improper, and he is by no means qualified to sell property which is not in his enjoyment, or to which he is not otherwise entitled. It also appears that the 1st prisoner knowing that the property is in dispute has instead of purchasing it himself, indirectly had it conveyed to the 2nd prisoner who lives with him, and who is no Mirasidar.

Prisoners entering, therefore, on the Alayadapurampok Gramasamudayum or village common (No. 290) in dispute on the pretended authority of the Bill of sale and without the consent of the prosecutor and other Mirasidars, their removing the bricks from the old foundation, their taking up to the extent of ¾ a kol and erecting walls on Punsei lands entered in the Puttahs as belonging to prosecutor and prisoner, and all other Mirasidars, and for which they pay revenue, and their lopping off branches of a Puvarasam tree, which stands on the land entered in the prosecutor's Puttah, all establish that the prisoners are guilty of the offence of criminal trespass.

The 2nd Count of the charge, viz., that the prisoner did use criminal force to the prosecutor is not substantiated by the evidence of witnesses, nor is it admitted by the prisoner.

Finding and Sentence.

The Court finds that the 1st and 2nd prisoners have committed criminal trespass, and have thereby each committed an offence punishable under Section 447 of the Indian Penal Code; and directs that the 1st prisoner do pay a fine of Rupees 15, and the 2nd a fine of Rupees 20, in default that they be imprisoned for seven days each.

The Court finds that the complaint of using criminal force is not proved, acquits 2nd prisoner, and directs that he be discharged under Section 270 of the Code of Criminal Procedure.

(Signed) SOKKALINGAPILLAI,
2nd Class Sub-Magistrate.

1st August 1864.

(True Translation.)

(Signed) W. M. CADELL,
Collector.

Read appeal presented by RENGASAMY AIYEN, Vakeel of Codanda Ramasami Naik, against a decision passed by the Sub-Magistrate of Nannilam, fining him Rupees 15 for criminal trespass.

Read also the decision appealed against, together with the record of the case.

Decision.

The Sub-Magistrate has not, in the opinion of the Court, sufficiently considered the nature of the charge upon which the appellant has been convicted. The offence of criminal trespass is defined in the Penal Code as being "the entering into or upon property in the possession of another with intent to commit an offence, &c." Now, in this case, have the two material points necessary to ensure a conviction been clearly, and, without doubt, proved against the appellant? The Court thinks they have not. The very fact of the large number of documents examined by the Sub-Magistrate would appear to show that the question which he was considering, was the right to the possession of disputed land, rather than a criminal charge of trespass. The evidence, as regards possession, is extremely conflicting, so much so that the Court is of opinion that the appellant, in entering upon the land, did so under the idea that he had the right to enter upon it, and not with any criminal intention so as to render himself liable to a criminal charge. The question was in fact a question of right, *i. e.*, a question determinable by a Civil but not by a Criminal Court. On these grounds, then, the Court resolves to reverse the sentence appealed against, and the Court reverses it accordingly, and directs that the fine levied from the appellant be returned to him.

KOLMANGUDY,
14th September 1864.

(Signed) C. G. PLUMER,
Acting Joint Magistrate.

(True Copy.)

(Signed) C. G. PLUMER,
Acting Joint Magistrate.

No. 12. ORDER THEREON, 2nd December 1864, No. 1722.

The defence of the suit referred to in the foregoing letter may be carried on at the public expense in the first instance. When a copy of the decree is furnished, it will be determined whether the costs, if any, should be borne by the Government or not.

(True Extract.)

A. J. ARBUTHNOT,
Chief Secretary.

To the Collector of Tanjore,

Exd. J. Tulloch,

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No. 1722 – 2d December 1864.

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The Collector of Tanjore. } Copy forwarded.

The Charge.

1*stly*.—That the prisoners did, at 8 o'clock on the morning of the 3rd June 1864, at Kondagaikovilpattu, unlawfully enter upon and remove bricks from the foundation of an old choultry, which existed on Gramasamudayan Alayada Purampok land on the north side of the road; did encroach upon Gramasamudayam Punsei land to the extent of ¾ kol, excavate foundation and raise walls; and did lop off and carry away branches of a Puvarasam tree which stood on the prosecutor's land, thereby committed the offence of criminal trespass punishable under Section 447 of the Indian Penal Code.

2*ndly*.—That the 2nd prisoner did further, at same time and place, use criminal force to the prosecutor by pushing and attempting to beat him, thereby committed an offence punishable under Section 352 of the Indian Penal Code.

From the records of this case it is observed, that the evidence of the 2nd, 3rd, and 4th witnesses for the prosecution proves that the 1st and 2nd prisoners did come to the site of the choultry in dispute and had the bricks from the foundation removed, and the Puvarasam clippings carried away by their men.

The Vakeels of the 1st and 2nd prisoners admit that the bricks were removed as alleged, and that a new building was under construction; and the 1st prisoner's Vakeel further states that by order of 2nd prisoner his men lopped off branches of the Puvarasam tree.

It only remains necessary to determine whether the entry of the prisoners was lawful or unlawful.

The 1st prisoner's Vakeel states, that the site of the choultry in dispute, and 15 mas of Punsei land to the south of it belonged to Tandavaraya Chetty of Agorakondagai; that they were mortgaged to Musali Naiker, his client's father; that the choultry existed until 25 years ago, and wherein Musali Naiker kept a water-shed and celebrated a festival in favor of an idol; that after its dilapidation he annually used to put a pandal with bamboos and cocoanut leaves, and celebrated the said festival of Magham in the month of Masi; that Sinnappa Setti, a descendant of the said Tandavaraya Setti, used to be present on the occasion that the festival was observed in the last Masi, and that the said Sinnappa Setti redeemed the mortgage in the last Chittrai, and made over the lands to the 2nd prisoner under a Bill of sale.

The 2nd prisoner's Vakeel in corroborating the above statement adds, that the lands, &c., were bought for Rupees 700.

The 1st, 4th, 5th, 6th, and 7th witnesses for the defence state, that Subramania Setti put a pandal at the place in dispute in favor and celebrated the festival of Sri Santiragaperumal of Terukannapuram in the festival of Masi Magham. The 2nd and 3rd witnesses ignore by whom the pandal is put, and 8th witness states that he, with the assistance of the 1st prisoner's father, puts the pandal and celebrates the festival, but none of them state that Musali Naik, 1st prisoner's father, used to put the pandal at the place in dispute.

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8th witness admits the execution of the deed to the 2nd prisoner, and which deed his Vakeel produced and filed a copy there of, in which it is seen that the boundaries of the said choultry with its endowments are described.

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the Puvarasam tree, the branches of which the prisoners have lopped off, stands on the north side of the prosecutor's Punsei land, which is entered in No. 293, and which is included in his Puttah. The 1st witness, who is a Miras Puttamaniagar, corroborates their statements.

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If it be true that Musali Naik was in long enjoyment, as alleged by prisoners of the said Inam lands under a mortgage, there was no reason for Musali Naik easily to admit the inclusion in extra cultivation accounts part of the land under No. 62, within the specified boundaries, and which he reclaimed to receive a Puttah for the same and to pay Tirwah thereon. Prisoners are aware that the land to the north of it, which was the subject of a dispute was, under the Huzur orders, confirmed in the possession of prosecutor's client; that a Puttah was given him for the same, and that he pays the Tirwah thereon; and yet the prisoners allege that this land is included within the boundaries specified in the deed. In corroborating the above statement, Subramania Chetty, 8th witness adds, that he has heard that the choultry with its lands was mortgaged 30 years ago by his uncle to Musali Naik, and that he had himself enjoyed the lands 30 years ago. His statement, therefore, that the lands were in his enjoyment at a time when he heard that they had been mortgaged is a direct contradiction, and his testimony is unworthy of belief.

The said Subramania Chetty himself admits that the Inam, &c., lands are not in his possession; that he holds neither Puttah for the same nor pays Tirwah thereon, ignores as to how his ancestors acquired the choultry and the Inam, &c. lands, and denies that he has any documents in his possession in respect thereof. It is also elicited by the evidence of 1st and 2nd Circar witnesses, that the choultry is entered in the Paimash, not in the name of any one but as Alayadaporampok; that the said Subramania Chetty possessed no lands within the limits specified in the deed of sale, nor anywhere else in the village, and that he holds no Mirasi Puttah and pays no Tirwah.

It is thus seen that the said Subramania Chetty's title to the land is supported neither by documentary nor actual possession, and his sale thereof merely on the ground that it is entered in his name in the statement given to the Deputy Collector is therefore improper, and he is by no means qualified to sell property which is not in his enjoyment, or to which he is not otherwise entitled. It also appears that the 1st prisoner knowing that the property is in dispute has instead of purchasing it himself, indirectly had it conveyed to the 2nd prisoner who lives with him, and who is no Mirasidar.

Prisoners entering, therefore, on the Alayadapurampok Gramasamudayum or village common (No. 290) in dispute on the pretended authority of the Bill of sale and without the consent of the prosecutor and other Mirasidars, their removing the bricks from the old foundation, their taking up to the extent of ¾ a kol and erecting walls on Punsei lands entered in the Puttahs as belonging to prosecutor and prisoner, and all other Mirasidars, and for which they pay revenue, and their lopping off branches of a Puvarasam tree, which stands on the land entered in the prosecutor's Puttah, all establish that the prisoners are guilty of the offence of criminal trespass.