M.R. O. 1—82,000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 1794 Press Mis.

145-146 Dated 13-12- 19 1864

8/9

Not to be folded or roughly handled

No. 145. Read the following letter from G. A. BALLARD, Esq., Magistrate of Malabar, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George; dated Calicut, 29th November 1864, No. 155.

I have the honor to submit translate of a plaint* filed against me and the late Sub-Magistrate of Ernad by the Nelambur Tirupad, claiming as his property 18 logs of timber discovered in three Criminal cases in 1861.

* In original suit, No. 4 of 1862, on the file of the Civil Court of Calicut.

2. The first of these cases was a complaint of theft of 50 logs of timber, preferred by the Tirupad before the Sub-Magistrate (then designated Head of Police) against three Moplahs of Ernad.

1. Kanhirale Atan.
2. Kanantodil Mamod Kutti.
3. Alapelli Kutti Atan.

3. The preliminary inquiry into the complaint was held by a Sub-Officer of Police. He discovered, during the inquiry, 5 logs of timber in a channel. The Tirupad asserted these to form part of the logs stolen, but failed to prove his assertion.

His witnesses stated the logs to have been felled about 8 months previous, while the appearance of the logs showed this to be utterly improbable.

The logs were obviously much older than they were represented to be. In fact one of them had commenced to rot and crumble from age.

Moreover the marks, which the Tirupad stated were proofs of his title, appeared to have been recently, and, in all probability, surreptitiously carved on the logs; while there were other marks on them, evidently much older, which the Tirupad did not and could not allege to be his.

In short there was not a scintilla of reliable evidence in support of the Tirupad's claim to these 5 logs.

4. The charge of theft brought by the Tirupad against the Moplahs was also not proved.

The Sub-Magistrate, therefore, dismissed the charge, and submitted the whole proceedings with his decision to the then Magistrate of the District, Mr. Grant, for his information, leaving the logs, discovered in the case, for disposal according to the orders he might receive from Mr. Grant, as no *real* owner had appeared.

The Moplah defendants confessed the logs were *not* theirs. Two of them asserted that the logs belonged to two† other Moplahs whom they named; but these men did not come forward and claim the logs at that time.‡

† 1. Malikel Musa Koya Aji.
2. Kanhirale Uni Kadr.

‡ Note.—They claimed the logs about 3 months afterwards, but did not establish their claims.

5. Previous to the dismissal of the charge by the Sub-Magistrate, as above said, two complaints were laid before him against the Tirupad and his people, by the individuals noted, one of whom (Kanhirale Atan) was, it will be observed, a defendant in the case of theft brought by the Tirupad as aforestated.

1
1. Kanhirale Atan.
2. Cherupallikel Unni Moyen.
versus,
Tacharakovil Tirupad, and 16 others.

2
Kolotuntoli Kouhi Rayan.
versus.
Tacharakovil Tirupad, and 7 others.

Moreover

These two complaints are the other Criminal cases referred to in paragraph 1.

* In one case 98 logs, in the other 130.

The charges in both were of forcible removal of timber* belonging to the complainants.

6. The Sub-Magistrate inquired into the charges, and arrived at the conclusion that the forcible removal of timber, complained of in both cases, did actually take place.

He referred the cases to Mr. Grant for disposal.

7. Before this reference, the Tirupad had appealed to Mr. Grant against the Sub-Magistrate's decision dismissing his complaint.

8. Mr. Grant held a personal local inquiry into all three cases.

He inspected the 5 logs of timber discovered in the case of theft brought by the Tirupad against the Moplahs, and, after a searching inquiry into the matter, was perfectly satisfied that the logs were *not* the Tirupad's.

9. While Mr. Grant was still on the spot, the Tirupad's opponents, who had brought the two complaints mentioned in paragraph 5, against him, represented that some of the logs of timber referred to in their complaints, which had been forcibly carried away by the Tirupad's people, had been concealed in a river and were lying there.

Upon this, a search was made, and 13 logs were discovered.

No claim to these logs, on the part of the Tirupad, was put forward at the time.

His Agent, who was present on the spot, took no action to show that the logs were his. On the contrary, the proceeding of the Agent on the occasion implied that the logs were *not* the Tirupad's. He said that they must have been placed in the river by the Moplah complainants themselves, with the object of injuring his principal.

10. The Moplah complainants, however, did not then *prove* any of the logs to be theirs.

11. Mr. Grant, after his return to Calicut, decided all the three cases. He dismissed the appeal preferred by the Tirupad against the Sub-Magistrate's decision, declaring the Tirupad's claim to the timber unfounded, and he also dismissed the two cases brought by the Moplahs against the Tirupad.

12. A few months subsequently to the disposal of the three cases as above stated, and after I had taken charge of the District, the Sub-Magistrate reported to me that the 18 logs of timber discovered in the three cases were lying in localities in which they stood the chance of being lost, and suggested their sale on account of Government.

I then sent out a notice inviting owners to appear and prove their title to the logs within one month, in failure of which they were to be sold on account of the State.

13. After this notice the Tirupad wrote to me demanding not only the 5 logs found in his case against the Moplahs, which he had previously claimed, but also the 13 logs discovered in the two cases brought by the Moplahs against him, which he had not previously claimed. He stated that he was about suing for the logs in a Court of law, and requested that, pending the issue of the suit, the logs might not be sold.

14. I observed, in reply, that the 5 logs, first adverted to, had been already decided by the late Magistrate not to be the Tirupad's property, and, if he had really any claim to the other 13 logs, he should establish it before the Sub-Magistrate of Ernad within 15 days.

The Tirupad failed to establish his claim as suggested, and, after instituting the present suit, applied to me for a months' time, to enable him to produce the Court's Diary in proof of the suit having been filed, apparently with a view to stay the disposal of the logs.

15. A few days after, two* of the Moplah complainants, and another† individual unconnected with any of the complaints, presented petitions claiming 12 out of the 13 logs mentioned in the preceding paragraph.

* Kolotuntodi Kunhi Rayan and Kanhirale Atan.
† Mutedata Pokar, (Moplah.)

The Sub-Magistrate inquired into these claims, and the claimants proved their title to 8 of the logs.

On receiving the Sub-Magistrate's report to this effect, I directed him to fix a period for the Tirupad to produce the Court's injunction preventing the disposal of the logs, and, if no injunction was produced within the period appointed, to make over, on good and sufficient security‡, to the Moplah claimants, such of the logs as they had proved to be their property.

‡ I thought security necessary for the restoration of the logs if adjudged to the Tirupad by the Court.

16. The Tirupad was advised of this by the Sub-Magistrate, and allowed 30 days to produce the injunction.

He then wrote to me objecting to the delivery of the logs to the Moplah claimants, as he had moved the Court for an injunction, and a notice on the subject would reach me from the Court.

In fact, I received a notice about the same time, requiring me to urge any objections I had to the retention, under the Government charge, of the 13 logs out of those sued for, pending the disposal of the suit.

Of course, I had no objection to urge, and, for the better security of all the logs discovered, I had the 13 logs just adverted to, as well as the other 5 not distinctly mentioned in the Court's notice, but equally disputed and involved in the suit, made over to the custody of a third party, in whose charge they now are.

17. Thus the suit and the Court's notice, above referred to, have prevented the delivery to the Moplah claimants of the logs to which they have established their title, as well as the sale on account of Government of the remaining logs.

18. The suit is indeed vexatious. The Tirupad had ample opportunity to establish his claim; but he failed, obviously, because he was unable to do so.

19. I submit for the approval of Government the draft of a statement I propose to file in the suit.

Moreover

20. The 2nd defendant, the late Sub-Magistrate of Ernad, has retired on pension. He is not, moreover, in any way responsible in the case. He acted under the orders of his superior, the Magistrate of the District.

I have, therefore, inserted this plea at the close of the statement, as enjoined in the Boards' Circular Order, dated 24th June 1839, in order that he may be excluded from the suit.

Board's Circular Order Book, 1st Volume, page 264.

21. I request that sanction may be accorded for the defence of the suit at the public expense.

22. The Statement must be presented to the Court on the 23rd proximo.

No. 146. ORDER THEREON, 13th December 1864, No. 1794.

The Governor in Council sanctions the defence of the suit referred to in the foregoing letter, in the first instance, at the public expense. It will be determined, hereafter, on a copy of the judgment being furnished, whether the costs, if any, shall be borne by the Government or not.

2. His Excellency in Council directs that a copy of Mr. Ballard's letter and its enclosures, in original, be sent to the Government Pleader, and that Mr. Dale be requested to transmit the proposed answer to the plaint to the Magistrate, with such suggestions as he may deem proper to make.

(True Extract).

Chief Secretary.

To the Magistrate of Malabar.
" Government Pleader, (with Plaint and answer).

Exd. J. H. Burns.

3

In the Civil Court of Calicut

In Original Suit No 4 of 1862 wherein

Nelambur Tachara Kavil Nana Vikraven Tirumelpad of Nelambur Amshom Ernad Taluk — *is Plaintiff*

and

1. Magistrate of Malabar
2. Nambanur Komen Nair, Ernad Taluk Magistrate, residing in Manjeri Amshom Ernad Taluk — *are Defendants.*

Written Statement of Government Vakil Ambu Pothwal on behalf of 1st Defendant, Magistrate of Malabar.

1. This suit is barred by Act 18 of 1859 the Decision and the Notice which Plaintiff seeks to have cancelled having been passed and issued by the late Magistrate of the District and his successor 1st Defendant respectively in their Judicial capacity.

2. 1st Defendant is not therefore liable to be sued for his acts or for those of his predecessor in the matter under the Act quoted.

Moreover

3. Moreover the timber claimed by Plaintiff does not belong to him. Of the 18 logs sued for, 5 were found in an enquiry held by the Police on a complaint of theft of Timber brought by Plaintiff against certain Moplas - and the remaining 13 logs were discovered in another enquiry instituted by the Sub Magistrate himself on complaints of forcible removal of timber preferred against Plaintiff by one of the Defendants named in his complaint of theft, and two other Moplas of Eruad in 1861.

4. Plaintiff was allowed ample opportunity to prove his title to the timber discovered in both these inquiries, but he failed to do so.

5. He utterly failed to adduce any credible evidence in support of his pretension to 5 of the logs -

6. As to the remaining 13 logs he produced no evidence to establish his claim; while three other claimants to two of whom were parties concerned in the complaints above referred to, came forward and proved their title to 5 of these 13 logs before the Eruad Sub Magistrate.

7. The 8 logs last mentioned were therefore about to be delivered over to such claimants, and the other 10 logs were about to be sold on account of Government as no one had established any right thereto, but Plaintiff's objection and his institution of the present suit have prevented the

the delivery of the 8 logs aforementioned to the parties entitled thereto, and the sale of the remaining 10 logs on account of the State, as contemplated -

7. The inclusion of the 2d Defendant in the suit is uncalled for -

He acted throughout under the orders of his superior the Magistrate of the District, and is not therefore responsible in the matter -

No separate Statement of the case is for this reason presented on behalf of 2d Defendant -

8. Under all the foregoing circumstances 1st Defendant prays that the suit may be dismissed with costs -

Sd/ [illegible]
Magistrate -

5.

To

The Civil Court
Calicut Zilla.

Nelambur Tacharakaral Mana Vikraven Terimelpad, of Nelambur Amshom, in Ernad Taluk. } Plaintiff.

- Versus -

1. The Magistrate of Malabar
2 Nambanur Konnen Nair. Ernad Taluk Magistrate, residing in Mangeri Amshom, Ernad Taluk. } Defendants.

This Suit is instituted under Section 21 of Act 8 of 1859, and in accordance with the spirit of Section 33 of Act 7 of 1853; to cancel the decision of the 2d Defendant setting aside the claim preferred by me to the timber belonging to me, specified in List (A); and also the decision dated 9th January 1862 passed by the 1st Defendant confirming the 2d Defts decision and for the recovery from the Defendants of the said timber, or its value Rupees 444-1-1, together with Rupees 132-5-1 on account of damages.

In the 1st Paper of this Plaint the lines from the 7th to the 19th have been wholly scored out. A Stamp Paper of the value of Rupees 32 has been attached hereto according to rule.

The two decisions above alluded to are herewith submitted.

Dated 30th Kar Kadagom 1037
15 August 1862.

Signature of Vakil
Kannan Menon.

In

Plaint filed 25th Sept.
Exhibit (A) to Plaint in Suit No. 15 of 1862 alluded to in the above Plaint.

Exhibit (B) to Plaint in Suit No. 15 of 1862 alluded to in the above Plaint.

Copy of Letter from the Deputy Collector dated 29th November 1861 to the Magistrate of Malabar.

Exhibit (C) to Plaint in Suit No. 15 of 1862 alluded to in the above Plaint.

Copy of Letter from the Deputy Collector dated 29th November 1861 to the Magistrate of Malabar.

In the abovementioned decision mention is made of only 5 logs of timber - but as by the Notice dated 20th June 1862, the sale of 18 pieces of timber is ordered, the Plaintiff prays that that Notice may also be made null & void. It is this circumstance which has led to the suit being brought for 18 logs of timber -

Date as above.

In the 13th line of the 2d paper under the list 15 letters have been scored out and 14 letters interlined -

Date as above.

Signature of Vakil
Kannan Menon -

Received corrected - 13 August 1862. -

Place where the timber lies. Vakil.	Ambalam.	Vellam.	Number.	Particulars.	Length in Feet.	Girth in Inches.	Cubic Feet.	Feet.	Cubic Ft.	16ths.	Number.	Particulars.	Length in Feet.	Girth in Inches.	Cubic Feet.	Feet.	Cubic Ft.	16ths.
Ernad	Vellambur		1		12½	10½	2	9	10	2	11		5½	16	2	10	16	"
do	do		2		15¼	9	2	3	11	4	12		7	12	1	18	"	"
do	do		3		17½	9	2	11	1	8	13		11	11¾	2	15	6	11
do	do		4		14	8½	1	18	3	8	14		6	10	1	1	"	"
do	do		5		14	8¼	1	15	16	14	15		10	9	1	9	18	"
do	do		6		12¾	8	1	15	8	"	16		6¾	8	"	18	"	"
do	do		7		17¼	7½	1	13	8	11¼	17		9½	7¾	"	23	18	9½
do	do		8		11¾	7¼	1	1	17	9¾	18		6½	6¾	"	12	8	2½
do	do		9		15½	6¾	1	4	22	13¼								
do	do		10		15.	6½	1	2		9	12.							

Teak. Blackwood.

Of the above, 6 logs of Teak above 8 Borrels in thickness, measuring 12 Candies, 1 Tole, 3 Borrels & 4 Sixteenths, are valued, @ 24 Rupees per Candy, at Rupees 289-2-2. (as P.)

4 Logs of Teak below 8 Borrels in thickness, measuring 4 Candies, 22 Viss, 20 Borrels & 12½ Sixteenths, are valued, @ 11 Rupees per Candy, at Rupees — 54-7-8.

Carried over Rs - 343.9.10

6

Brought over Rupees - 343 - 9 - 10 (as P.)

6 Logs of Blackwood above 8 Borrels in thickness measuring 10 Candies, 16 Borrels, 11 Sixteenths, are valued, @ 16 Rupees per Candy, at Rupees ——— 160 - 7 - 5.

2 Logs of Blackwood below 8 borrels in thickness, measuring 1 Candy, 12 Viss, 2 borrels, 12 Sixteenths, are valued, @ 10 Rupees per Candy, at Rupees ——— 15 - " - 8

Total of 4 items 519 - 1. 11.

Deduct

Discount of 1½ Rupee & 2 Rupees for every 10 Rupees of the value of Teak & Blackwood respectively ——— 78 - " - 10

Balance Rs 441 - 1 - 1.

Vakalat - As the above timber could not be sold in consequence of the decision aforementioned, the Tirumelpad, Plff, was unable to sell it and realize its price as above quoted - the amount of damages which should therefore be paid to him at Rupees 3 for every 10 Rupees of the value of Timber, is Rupees - 132 - 5 - 1.

Signature of Manavikrama Tirumelpad -
Do of Kannan Menon
(True translation)

Sd Cavendish
Magistrate -

Contd p 5

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the Magistrate of Malabar — Dated 29th Nov. 64 No. 155.

Order — 13th December 1864 No. 1794.

The Governor in Council sanctions the defence of the suit referred to in the foregoing letter in the first instance at the public expense. It will be determined hereafter on a copy of the judgment being furnished, whether the costs, if any, shall be levied by the Govt. or not.

2. H.E. in Council directs that a copy of Mr. Ballard's letter & its enclosures in original be sent to the Govt. Pleader, & that Mr. Dale be requested to transmit the proposed answer to the plaint to the Magistrate with such suggestions as he may deem proper to make.

The Magistrate of Malabar.
Govt. Pleader — With Plaint & Answer.

dispatched 13/12

1864 Sept.
Enc: 2.
Re a letter from the Magistrate of Malabar dated 29th November 1864 No. 155.

Forward to Chamier Esqr. Legal Secretary Govt. Fort St. George for information & with reference to his letter dated 4th Sept. 1862 alluded to in the within letter.

Sept. 16th
Rec. 20
13/2

1864. *Department.*

No. 1774.

PROCEEDINGS *of* GOVERNMENT.

Dated 13 *August* 1864.

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