

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	752	Press
	211-212	Mis.
Dated	26-5-1913	

12/13

Not to be folded or roughly handled

No. 211. Read the following letter from W. M. CADELL, Esq., Magistrate of Tanjore ;
to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Judicial Department, Fort Saint George, dated Mutupettah, 12th May 1864, No. 99.

I have the honor to submit, for the information of Government, translation of a Plaint which
has been filed* in the Principal Sudder Ameen's

* In No. 105 of 1862.

Court at Tranquebar by certain parties, Meras-
eiders of the village of Pillur in the Mayaveram Taluq, against certain other parties including
among them Mr. Morris, the late Sub-Collector and Vasudeva Row, Tahsildar of Mayaveram. On
Mr. Morris' departure, his name has been struck out from the Plaint and that of Mr. Plumer sub-
stituted as his successor in the office of Sub-Collector.

2. This suit has arisen out of an order passed by Mr. Morris as Joint Magistrate, directing
that 6 velies of land, known as "Pillur Ukkadai," in the village of Yelumagalur and belonging
to one Ramachendra Row (1st defendant), be irrigated from the channel known as Pillur chan-
nel. The 2nd defendant is by far the largest landholder in the village of Pillur above-mentioned,
and as such therefore most likely to be affected by the order of the Joint Magistrate. He is
de facto the plaintiff and instigator of the suit. Why he has made himself a defendant putting
forward others as plaintiffs is, however, not clear.

3. The facts of the case are fully set forth in Mr. Morris' English order which forms the sub-
ject of the suit, as also in the Memorandum drawn up by that gentleman as his proposed answer
to the Plaint, copies of both of which are here-
with enclosed, together with the rough sketch†
of the localities concerned, and to which refer-
ence is made in the former.

† Will be sent under separate cover.

4. In passing the order which has been made the subject of this suit, the Joint Magistrate
is clearly protected by Act XVIII of 1850. Further, it appears to me that the suit as it has
been brought is on its face irregular and that it ought not to have been entertained. It has not
been brought as a personal action for the recovery of damages, but merely to have the Magistrate's
order cancelled. An order passed by a Magistrate can be quashed only by the constituted Court
of Appellate Criminal Jurisdiction and is certainly not reversible by means of Civil action.

5. Mr. Morris before he left the District accordingly sent an order to the Government
Vakeel, instructing him to point out to the Court that his inclusion in the suit as a defendant was
unnecessary and opposed to the Act above quoted, and that he should therefore be excluded
from it, so that the necessity for any defence being entered upon might be avoided; but the
Court have directed that this plea should be urged at the hearing, and have declined to pass any
order before the merits are gone into.

6. I beg therefore to submit, for the approval of Government, a draft of the answer which
I propose should be filed in the names of Mr. Plumer, the present Acting Sub-Collector, and
the Tahsildar of Mayaveram, who has also been included in the suit as a defendant, and
to request the sanction of Government for conducting the defence at the expense of Govern-
ment. Strictly speaking, Mr. Plumer cannot be deemed the successor of the late Sub-Collector,
and as such made defendant in place of Mr. Morris. In the late re-arrangement of charges the
Taluq, in which the locality forming the subject of this is situated, has come under the charge of
the Head Assistant Collector, who should therefore be deemed the official successor and repre-
sentative of the officer who was a defendant in the suit as it was originally brought. This,
however, is immaterial and the defence, if sanctioned, may be conducted either in the name of the
Acting Sub-Collector or in that of the Head Assistant Collector.

7. The date as lastly fixed for the hearing of the suit is the 24th instant, but as I find from
a notice which has appeared in the last issue of the District Gazette that the Courts of the Zillah
of Tranquebar are to be adjourned for two months from the 16th instant, the suit will not be
called on for hearing before the 16th July next.

8. I regret the delay which has taken place in the submission of this report. Though the
notice of the suit reached the late Acting Collector in February 1863, the uncertainty which

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existed as to whether the suit should be defended or not at all and the lengthened correspondence, as also the repeated reference to the Court which ensued in consequence, took much time and thus prevented this report being submitted earlier.

MEMORANDUM.

The order passed by me on the 2nd April 1862 when I was Sub-Collector, is not a final order establishing any claim on the part of the 1st defendant, or denying any right which the complainant may possess. I have entered in the order "Pillur Ukkadai" as the name of the village, because the parties and the Karnam have been calling it by that name. It is not therefore a name given to the village by me. I have no objection to the Court cancelling the order. The above order was issued by me as Magistrate under Section 62 of the Criminal Procedure Code, to prevent injury to those engaged in cultivating the lands of the village, till such time as a competent Court might decide the question of right which was in dispute.

2. The agent of the 1st defendant complained to me in October 1861 that the agents of the 2nd defendant had, in company with a mob of people, prevented him from taking water as usual from a channel for the irrigation of his six velies in the villages of Yelumagalur and all the land in Vyiniyanur. Upon the receipt of this complaint on the 10th defendant the Tahsildar of Mayaveram on my orders repaired to the spot and, after inquiring into the matter, made a report to me. I myself then also went to the spot and having inspected the channel in dispute and conversing with the contending parties, came to the conclusion that the dispute existing between them was one which could best be settled by the assistance of a Panchayet, and with this view I passed the order of the 20th December 1861 to the effect that, until a Panchayet was convened, and the dispute was settled by them, no one should erect any dam across the channel.

3. For some time after this, although I spoke more than once to both parties, I could get neither of them to agree to abide by the decision of a Panchayet, and as the cultivation season of Fasli 1272 was drawing near, I perceived that if my provisional order about no dam being erected was not modified, much land in the village would not be cultivated, and hence the reason for my using Section 62 of the Criminal Procedure Code.

4. It is stated in the plaint that the above orders are contrary to one passed by the late Collector, dated 13th October 1853. No order has been passed by the late Collector on the above date regarding the villages mentioned in my order.

5. As my order of the 2nd April 1862 was passed by me in my capacity of a Magistrate with full powers in the discharge of my judicial duty, and I then, in good faith, believed that I had jurisdiction under Section 63 of the Criminal Procedure Code to pass that order, and I still believe so, I am protected by Act XVIII of 1850, from being sued in any Civil Court for passing that order.

(Signed) G. L. MORRIS,
Acting Collector.

(True Copy.)

(Signed) W. M. CADELL,
Collector.

I went and saw this place some two or three months ago, and after doing so, passed an order that I would not then settle what shares of the irrigating stream each of the two parties should enjoy. I did this as I was anxious that they should settle it amongst themselves, and moreover because I was convinced that they could do so very fairly, if they were in any way inclined. Since then, however, no amicable arrangement has been come to between them, and as it appears that injury will occur, and that the land will not be properly cultivated in the ensuing season if this question of irrigation be not settled, I now proceed to pass an order on the subject.

2. Within the limits of Pillur and to the east of the channel in dispute are situated six velies of land called Pillur Ukkadai, and belonging to Ramachendra Row. This land Ramachen-

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Row says has always been irrigated by the Pillur channel, whilst on the other hand Narrainasami Aiyen declares that it has been irrigated by a wooden bridge thrown across the channel, water being supplied thereto from the Yelumagalur lands. I agree with Ramachendra Row, and have no doubt whatsoever that this land has been irrigated in the same way as the rest of the Pillur village lands. This land bears a proportion of 1 to 5 when compared with the remainder of the Pillur lands, and I therefore direct that Ramachendra Row be allowed to make use of the Pillur channel water for irrigating this land during the last 12 hours of every three days: he making use hereof by erecting temporary dams in such places as may be requisite, and the Pillur villagers joining the same for the remaining 60 hours.

3. With regard to Narrainasami Aiyen placing dams across the mouths of the channels marked A and B, I totally prohibit his doing so at any time, for these channels are clearly irrigation channels belonging to the village of Yekijiyamur, and Narrainasami Aiyen has not a shadow of right to in any way interfere with them. As respects the channel marked C, however, Narrainasami Aiyen is allowed to place a dam across its mouth during the time (that is, the 60 hours) that he may be irrigating the Pillur lands. This dam is, however, to be removed at the end of that time. I concede this, as I am of opinion that the Pillur lands will not be properly irrigated if no dam of any kind be allowed to be placed across the mouth of the channel marked C. Any disobedience of this order will render the recusant party liable to punishment under the Penal Code.

(Signed) G. L. MORRIS,
Joint Magistrate.

MAYAVARAM, 1st April 1862.

(True Copy.)

(Signed) W. M. CADELL,
Magistrate.

No. 212.

ORDER THEREON, 26th May 1864, No. 752.

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

(True Extract.)

Chief Secretary.

To the Magistrate of Tanjore.

Ed. J. Talloch.

Proposed Answer

The order which has been made the subject of this suit, was passed by the late Mr. Colletts in his judicial capacity as Justice of the Peace under Section 62 of the Code of Criminal Procedure, and which was held by the Court Magistrate in good faith believed himself to have jurisdiction to pass. He is therefore protected by Act XVIII of 1850. Sec. 1.

2. Further, the suit as brought by the Plaintiffs, on its face irregular in that they ask for the cancellation of an order passed by a Magistrate and which, if illegal, can be quashed only by the constituted Criminal Court of appellate jurisdiction. No suit can ever lie against an order of a Magistrate, except by way of a personal action for damages.

3. We therefore pray that our names may be struck out of the Plaint, and that the Plaintiffs may be adjudged

to pay the costs incurred by us on
account of this suit.

Wm. Fisher

Attorney

To The Principal Sudder Amirs Court of
Negapatam

1 Subbaramayya son of Agaramanjan
residing in the village of Pillur in
Kannilam Taluk

3 *Claytonia virginica*

4 *Emu Subbacamonigau*

5. Kaccayana Cuyam son of Dharmasubhaya

6 *Vaidilingayan*

6. Vaiddilungayam
7. Venkatanamanjan son of Venkateswara
manjan

8. *Sivaramaiah*

9. *Signaturen*

10 Venkataramanayana son of Appatharayan

11 Juni Patten

12 Valu ammal mother and guardian of
Apparu grand son of Panchamadaiyan

13. Sumanachala Pillai

14 Kollandaramanyan son of Annawanyan

15 Dharmarajan son of Dharma Subbanjan

16 Venkataramayan son of. Suria Ayya
uayam

17. Ramenyaire

Richard Anderson

2nd Dec 1854
 3rd Dec 1854

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Ch. de la Chapelle

De la - 2010

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February

de l'Université

Wm. H. K. K.

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And yet to be

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18. Sanni Arayan son of Sannatharayan
19. Subbar Pillai
20. Vengapalan Pillai
21. Kailash Pillai
22. Padayappa Pillai
23. Appakrishnan
24. Sumanam Krishnan
25. Sanki Ammal wife of Sumanam
26. Anna Satti
27. Saku Satti

Defendants

1. Ramachandrarayan Ammal of the village in the Changanur Taluk residing in Panchayath Holisthan Karai Street at Kaska Changanur Taluk District.
2. Narayanaswamiyan residing in the village in Namaluru Taluk
3. Subbaramayan son of Sannatharayan
4. Kandaswami Shetti
5. Raghunathan residing in Thelivanur Changanur Taluk.
6. Sita Ammal daughter-in-law of Sannatharayan
7. Sanni Arayan son of Rajakutti Seshab Pillai living in Pillai Changanur Taluk
8. Venkappan of Kandaswamiyan father and guardian of Sannatharayan aged 10 years and daughter-in-law of Sannatharayan

9. G. L. Morris Esq. late Sub Collector & now Asst Collector of Tanjore

10. Vasudena Rao Sahibdar of Changanur Taluk.

Plaint for cancelling an order passed in opposition to the Plaintiffs right value of land Rs. 9282-6-9.

The village of Pillai attached to Namaluru Taluk consists of 16849-89/64 of land including Nanni Panni and one (the Plaintiffs) as also the Defendants from 2 to 8 are its rightful possessors.

The land in question was, since the formation of the village and till before a period of about 15 years, irrigated by 2 channels. One which branches out from Kandaswami river and the other, a Sankirankal or main channel in one of the channels branching out from Kandaswami River, but a bridge having been subsequently constructed across the Sankirankal river by which the said Kandaswami river is supplied & a dam erected with earth across the stream thereof for the purpose of carrying water

water to the French Territories at Namkal, the Channel is now but poorly supplied and the village in question is up to date irrigated by a reduced supply of water, therefore as well as by the said Samibai: Kal now under dispute.

3 Some of us (Plaintiffs) addressed a Petition (Registered) by post to the 9th Defendant on the 5th December 1861 informing him of the circumstances stated in the above 2 papers but no notice was taken of it by him. On the 2nd April 1862 the 9th Defendant passed an order agreeably to the urge submitted to him by the 10th Defendant who is a relation of the 1st Defendant promising that the 2nd Defendant was the only murderer of the said Pillur village and stating that 1st Defendant or murderer of Elumagalur and who has no connection whatever with Pillur might carry water from the said Samibai: Kal by putting a dam across it, and thereby irrigate for 12 houses of every

7 every three days a portion of 64 acres of land situated in Elumagalur village and to which the designation Pillur (Khalai) was newly given and that the 3 surplus channels of Pillur village which discharged themselves in the said Samibai: Kal were the irrigating channels of the said village. It was also stated in the above order that the parties acting against it will be punished according to Law.

4 The said order is contrary not only to our long established right and usage but also to the order passed by a former collector on the 13th October 1853 and to that of the 9th Defendant dated the 20th December 1861 and we who pay a Kist to Government amounting to Rupees 5818-4-0 per annum are thereby subjected to much loss.

5 We have thereby brought this suit against the 1st 9th and 10th Defendants and also against the Defendants from 2 to 8 for establishing our right and

and cancelling the order alluded to in para

3. And this suit is instituted on the valuation of the whole extent of land in the village amounting to Rs 9282-6-9 as shown below:-

Whole Extent of Panyia land in Pillur village -	154 - 15 - 28
Grass produce according to Jamabandi -	24373 - 7 1/2
Decret Hindivaram or Cultivator's share 4% at 1/2 per cent on the grass produce according to the usage of the village -	6093 - 7/8
Remainder -	18280 - 65/8
Value at 8 annas per Kalam -	9140 - 1 - 9
Pattakhat on Panyia lands consisting of 14 - 4 - 61 33/64 -	142 - 5 - "
Total -	9282 - 6 - 9

11 October 1862

The usual declaration has been made by the Plaintiffs with their signatures below.

Signed / F. Subramaniam
T. K. K.

O.S. No 105 of 1862 Filed on Court this 6 Dec 1862
Signed / V. Sundara Naidu
P. S. S. R. Amin.

True copy


Magistrate

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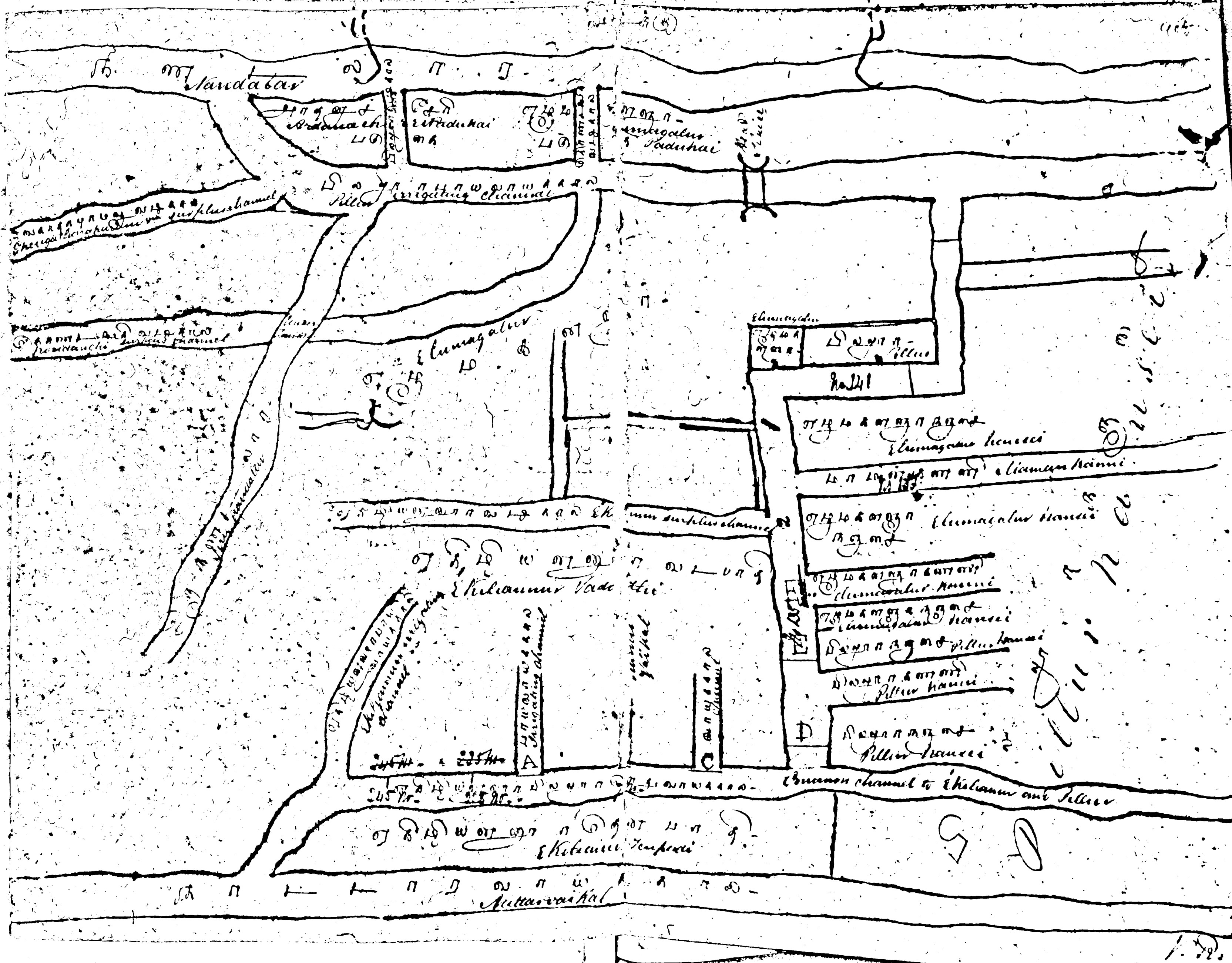
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Judicial.

Proceedings of the Madras Govt.

Read letter from the
Magistrate of Tanjore - Inter 12th May '64 N^o 99.

Order - 26th May 1864 N^o 752 -

See

The Governor in Council
grants authority for the
defence, at the public
expense in the first in-
stance, of the suit re-
ferred to in the foregoing
letter, but will determine
on a copy of the decree
being furnished, whether
the costs, if any, are to
be borne by the Govt. or
not.

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The Magistrate of Tanjore. 3/5

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