

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

108-109	G.O. No.	2021	Press
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	Dated	9-12-1918	1867

415

Not to be folded or roughly handled

3-11-3

*Proceedings of the Madras Government, Judicial Department,
9th December 1867.*

No. 103. Read the following letter from the Acting Magistrate of the Kistna District, to the Chief Secretary to Government, Fort Saint George; dated Masulipatam, 22nd November 1867, No. 341.

I have the honor to forward copy of the plaint in Original Suit No. 311 of 1866 on the file of the District Moonsiff of Bandur, brought by Kanaparti Atchemma, against the Taluk Sub-Magistrate of Bandur, as 1st defendant, and another.

2. The prayer of the plaint is in effect that a decree may be passed reversing an order made under Section 62, Code of Criminal Procedure, by the 1st defendant, after inquiry held into certain allegations, made by the 2nd, of encroachment made by the two sons of plaintiff on a public thoroughfare in Bandur town, to the obstruction of traffic and inconvenience of passengers. The order, dated 28th September 1866, was issued under instructions from the District Magistrate, dated 22nd idem.

3. The complainant, on the 28th September 1866, filed this suit, which has not been hitherto reported, from a promise made by the Sub-Magistrate (now under suspension) of obtaining certain information from 2nd defendant never having been fulfilled. The first I knew of it was from an Urzee, No. 41, dated 3rd October last, from the Government Vakeel of the Court, requesting instructions. On being furnished with a copy of the plaint, I, on the 16th current, directed the Vakeel to move the Court to strike it off the file, as the order had been made in good faith, and the 1st defendant was protected by the provisions of Act XVIII of 1850. The Court, in answer, said that it would consider these matters at the hearing; I have therefore to propose the following

Answer.

That the order of 1st defendant having been made in good faith, under instructions from the District Magistrate, 1st defendant is, under Act XVIII of 1850, not liable to answer for the same in a civil action.

Prays, therefore, that the suit against first defendant be dismissed with costs.

PLAINT No. 311 of 1866.

To the Moonsiff's Court at Masulipatam.

Complaint preferred by plaintiff K. Atchemma, mother of Kanaparti Brammanacharu and Do. Bhramaracharu, living by the help of their disciples, and an inhabitant of Khojelli Petta, against the defendants

1. Mr. P. Tims, Second Class Sub-Magistrate, residing at Elapelli in Aukulamannadu Pergunnah.

2. Pasumoni Lakshmipati Sastulla, Inamdar, and an inhabitant of Khojelli Petta.

My sons having applied to issue a warrant in execution of the Decree No. 259, your Court's file, the Court issued a warrant, directing that 2½ feet of the site of the foundation of the wall, the subject of the said suit, should be left to the adjoining street, and that we should erect the wall on our ground. The 2nd defendant, dissatisfied with the aforesaid order, represented to the 1st defendant certain false circumstances, to the effect that the ground in question is vacant, that the walls, about two yards in length, which we erected on the north and south side of the aforesaid ground, be ordered to be removed. The 1st defendant, therefore, issued an order on 20th instant to my sons, directing them to remove the said walls. He is making arrangements to-day to pull them down. The site on which the walls stood is not waste. It is not the property of Government. It is our right, as will be apparent from the Kabala, &c., documents granted by Government. The ground in question was sold to us by the 2nd defendant, which fact will be proved by

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the record No. 259, and other records. While the case is thus standing, the 1st defendant acted in this manner so that our right is affected. My sons are absent at other countries. I, therefore, prefer this suit in my name.

	Rs.
Value of two yards of ground belonging to my sons....	20
Value of the walls stood on that ground....	10
	30

I pray the Court will pass a decree directing the 1st and 2nd defendants not to hinder my sons in their occupying the ground in dispute, and not to pull down the walls and thereon, reimbursing me the costs incurred by me. I beg to file the order above referred to.

The documents are with my sons; the plan is not, therefore, filed at present, there being no time to prepare it. Section 26 of the Civil Procedure Code and Clause 11, Section 1, Act XIV.

(Signed) KONDAPALLI SOMALENGAM.
Mark of K. ATCHEMMA.

I, K. Atchemma, Plaintiff named in the above suit, do declare that what is stated therein is true to the best of my information and belief.

Mark of K. ATCHEMMA.

(True translation).

(Signed) W. WILSON,
Acting Magistrate.

No. 109. ORDER THEREON, 9th December 1867, No. 2621.
The draft answer embodied in the foregoing letter is approved.
(True Extract).

Chief Secretary.

To the Magistrate of the Kistna District.

Exd. J. H. Burns.

3/11
Kistna District
Magistrate's Court
Mandlapatam 22nd November 1867
From,
William Wilson Esquire,
Acting Magistrate of Kistna District
Honorable R. S. Ellis, C. B.
Chief Secretary to Government
Fort Saint George

I have the honor to forward copy of the plaint in original suit No. 311 of 1866 on the file of the District Magistrate of Bander brought by Kanapatti Atchemma against the Taluk Sub Magistrate of Bander as 1st Defendant and another.

The prayer of the plaint is in effect that a decree may be passed reversing an order made under section 62 C. C. P. by the 1st Defendant after enquiry held into certain allegations made by 2^d of encroachment made by the two sons of Plaintiff on a public thoroughfare in Bander town to the destruction of traffic and inconvenience of passengers. The order dated 28th September 1866 was issued under instructions from the District Magistrate dated 27th Idem.

The Complainant on the 28th September 1866 filed this suit, which has not been hitherto reported from a promise made by the Sub Magistrate (now under suspension) of obtaining certain information from 2^d Defendant never having been fulfilled. The first renewal of it was from an aig. No. 411 dated 3^d October last from the Government Valak of the Court, requesting instructions. On being furnished with a copy of the plaint on the 16th current, directed the Valakel to move the Court to strike it off the file as the order had been made in good faith by the 1st Defendant was protected by the provisions of Act 18 of 1850.

The Court in answer said that it would consider these matters at the hearing. I have therefore to propose the

the following?

Answer.

That the order of 1st Defendant having been made in good faith under instructions from the District Magistrate, 1st Defendant is under Act 18 of 1850, not liable to answer for the same in a civil action.

Prays therefore that the suit against first Defendant be dismissed with costs.

I have the honor to be,
Sir,

Your most Obedient Servant
W. J. M.

Sitting Magistrate.

The Sub. Mag. might have pleaded Sec. 62. if (and I think) if he had acted on his own authority but it is clear that he received an order from the Dist. Mag.

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I doubt the validity of any plea resting on Section 62. See the first seven lines at the top of page 27 of the 1st of the C. Crim. Proc. as there is no appeal to the Supreme Court and under Section 62 a man must have some medium for securing redress & that medium is the civil court.
W. J. M.

1867

Judicial Department.

From

The Acting Magistrate

of the District

of the Chief Secretary

to Government

Stark County

Dated 22d November

1867

No 311.

Enclosed 1

No 2658

Forwarding Copy of a plaint
in original and No 311 of 1866 on the
file of the District in which of
Bancroft brought against the
Telling and Magistrate of Bancroft
together with a draft of answer.

Not an order

9 Dec 1867 No 2021.

The draft answer submitted
in the foregoing letter is
approved.

W. R.

By the Magistrate of the District
of Stark County

22 Nov
1867
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