

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

194-195	G.O. No.	281	Press
			~~Mis.~~
	Dated	22.2.1867	

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,

22nd February 1867.

No. 194. Read the following letter from the Magistrate of Tanjore, to the Chief Secretary to Government, Fort Saint George; dated Vallam, 10th January 1867, No. 7.

I have the honor to report, for the information of Government, that certain Mirassidars of the village of Chittakadu, in the Mayaveram Taluq, have instituted a

O. S. No. 285 of 1866.

suit* in the District Moonsiff's Court at Mayaveram against some other Mirassidars of the same and of a neighbouring

village, named Pattamangalam Agraharam, including the Acting Head Assistant Magistrate, the 2nd Class Taluq Sub-Magistrate of Mayaveram, and a Revenue Inspector also amongst the defendants.

2. The object of the suit is to cause an order issued by the Head Assistant Magistrate, under Section 62 of the Code of Criminal Procedure, directing the removal of an aqueduct raised by the plaintiffs to be cancelled.

3. When the plaintiffs were building the aqueduct in question, the villagers of Pattamangalam Agraharam complained to the Taluq authorities, that it was altogether a new work, and that it was calculated to prevent a free passage of water to their village, as well as to flood another channel which irrigates a part of the village of Chittakadu.

4. The villagers of Chittakadu on the other hand declared that it was not a new work, but a mere renewal of an old one which had stood there from time immemorial, and had been constructed and repaired by them in Kudimaramut.

5. The Taluq Sub-Magistrate thereupon inspected the spot, and having made inquiries found that the work was really new, and that nothing similar had existed previously on the same spot for upwards of 40 years. It appeared, moreover, that the plaintiffs had intimated their intention of building the aqueduct in question to the Range Officer, but had carried out the work without waiting for either that Officer's order or that of any other Government official.

6. It should be added that traces of an old work were found a few yards from the aqueduct, and that the plaintiffs had stated in certain petitions presented by them to the District Magistrate, Head Assistant Magistrate, and Sub-Magistrate, that these traces were the remains of the old aqueduct, and that they had constructed the new aqueduct a few yards away from the old one, owing to the course of the channel itself having latterly been slightly diverted by natural causes. In the plaint, however, an English translation of which is herein enclosed, no mention is made of this circumstance, but from the traces above-mentioned, as well as the petitions formerly presented by plaintiffs, it was clearly established that, even if any old aqueduct had existed, it must have been in a different locality from that in which the present one stands, and that the latter was, at all events, a new structure and ought not to have been raised without the sanction of the proper authorities having been previously obtained, especially when it was likely to be prejudicial to the interests of a neighbouring village.

7. The matter was further referred to the Officers of the Department Public Works for their opinion, as to whether the aqueduct was in any way detrimental to the irrigation of Pattamangalam Agraharam or not, and Captain Hasted has reported (an opinion confirmed by Captain Oakes) that "the work was likely to cause obstruction to the free passage of the water down the Pullam channel, and should therefore be removed."

Magistrate of Tanjore

*Proceedings of the Madras Government, Judicial Department,
22nd February 1867.*

8. It was under these circumstances that the Head Assistant Magistrate issued the order which it is the object of the present suit to get cancelled.

9. I have stated the facts of this case in detail, in order that the Government may be aware of what has taken place, but I do not intend to plead them before the Court, but merely to demur to its jurisdiction, since the order was passed by the Head Assistant Magistrate in the discharge of his judicial duty as Magistrate, he, believing in good faith that he had jurisdiction, under Section 63 of the Code of Criminal Procedure, to pass such an order, and therefore being clearly protected by Act XVIII of 1850 from being sued in any Civil Court for doing so.

10. I beg to submit, for the approval of Government, a draft answer, which I propose should be filed in the names of the Head Assistant Magistrate, Sub-Magistrate, and the Revenue Inspector, all of whom have been included as defendants, and to request the sanction of Government for conducting the defence of this suit at the public cost.

11. The hearing of the case has been adjourned till the 31st of January 1867, before which date I request that I may be favored with the instructions of Government.

Proposed Answer.

The order which has been made the subject of this suit* was passed by the Head Assistant Magistrate in his judicial capacity under Section 62 of the Code of Criminal Procedure, and is an order which that Officer in good faith believed himself to have jurisdiction to pass. He is, therefore, protected by Act XVIII of 1850 from any Civil action.

2. Further, the suit as brought by the plaintiffs is irregular, in that they ask for the cancellation of an order passed by a Magistrate, which, if illegal, can be quashed only by the constituted Criminal Court of Appellate Jurisdiction. No suit can lie against an order passed by 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 the suit.

(Signed) G. L. MORRIS,

Magistrate.

To the Court of the District Moonsiff of Mayaveram.

PLAINTIFFS.

versus

DEFENDANTS.

1. Alagapillai of Chittakadu, Mayaveram Taluq.
2. Nadaraja Nainan.
3. Saminada Pillai.
4. Sapapathi Pillai.
5. Arumugatta Pillai.

Do. do. do.

1. Sannyan, son of Aiyarayan, residing in Patramangalam Agraharam in the said Taluq.
2. Ramasami Aiyar, son of Toppaiyan of Mattur.
3. Venkatanaranappiyan, son of Duraisami Aiyar.
4. Vasuayan.
5. Subbaiyan.
6. Ramasami Aiyar.
7. Ramasami Aiyar, Pattanamaniyam of Akkalur, residing in the above-said village.
8. Sappa Pillai of the said Chittakadu.
9. Ranganatha Pillai.
10. Muttukumara Pillai.
11. The Head Assistant Magistrate of Tanjore at Mayaveram.
12. The 2nd Class Sub-Magistrate of Mayaveram Taluq.
13. Duraisami Aiyar, Revenue Inspector of the said Taluq.

Mirassidars.

Employment.

*Proceedings of the Madras Government, Judicial Department,
22nd February 1867.*

PLAINT.

The extent of 65 Velies of Nanjai land we possess in the said village of Chittakadu is irrigated from a long time by three small channels or kannis branching from the Pallavan channel, and by three similar kannis branching from Kar Vaikal channel of Chittakadu, crossing the said Pallavan channel through aqueducts constructed and repaired in Kudimaramat by our ancestors, &c., with the consent of the Circar, and which aqueducts are, moreover, being used for irrigating our lands on a high level from time immemorial and without any objections being raised thereto ever since.

2. As of the three aqueducts, that of the Pullaiyar Kanni, within the limits below mentioned, had fallen down during the last year, we have as usual restored the same in Kudimaramat at a cost of about Rupees 150, after informing the Circar of the same in April of the current year.

3. With a view to injure us by depriving us of the long established enjoyment of the said irrigation, defendants 1 to 7 at the instigation of our enemies, defendants 8, 9, and 10, gave false information to the 12th and 13th defendants, being Circar authorities, to the effect that the aqueduct in dispute, which was restored in lieu of the old one, was to their prejudice. Upon this, and on an erroneous report made by the 12th and 13th defendants, the 11th defendant has, on the 14th August, issued unjustly and without consideration an order for the removal of the said aqueduct enjoyed by us from a long time. This order the 12th defendant has begun to carry out.

4. We have brought this suit against the first 7 defendants, as they are directly connected with the case, against 8th, 9th, and 10th defendants on account of their trying to create disturbance, though quite unconnected with the matter, and against the 11th, 12th, and 13th defendants in their capacities of Government Officers, on account of the first one having issued an illegal order which the 2nd is about to enforce on a false report made by the third. We, therefore, request that the said order issued to cause us loss may be cancelled and the aqueduct in question be left undisturbed.

Particulars of the work under reference.

The Pullaiyar Vaikal aqueduct, a building of brick and stone, valued at Rupees 150, constructed by us in our land and within the following limits, that is to say, bounded on the north by Subramaniya Chetty's field in the said Chittakadu village of Mayaveram Taluq, on the south by Aiyasami Naick's field, on the west and east by the Pallavan Vaikal Channel.

We, therefore, pray that the Court will be pleased to decree that the above said structure, valued at Rupees 150, may not be removed, and that the cost of the suit be awarded to us.

The names of defendants 11 and 12 have not been given here agreeably to Clause 6, Section 25, Act VIII of 1859.

We, plaintiffs Alagapillai, &c., hereby firmly declare that all that has been said in the above plaint are true.

(Signed) SAMINADA PILLAI,

(„) SABAPATHI PILLAI, son of
Kolanda Velayda Pillai.

(„) ALAGA PILLAI,

(„) ARUMUGATTA PILLAI,

(„) NADARAJA NAINAN.

(Signed) VEDANYAGAM PILLAI,

District Moonsiff.

28th August 1866.

(True Copy).

(Signed) C. S. CROLE,

Ag. Head Asst. Magistrate.

(True Translation).

(Signed) E. L. MORRIS,

District Magistrate.

Magistrate of Tanjore

*Proceedings of the Madras Government, Judicial Department,
22nd February 1867.*

No. 195. ORDER THEREON, 22nd February 1867, No. 281.

Before passing orders on the foregoing letter, the Governor in Council resolves to refer the papers to the Government Pleader for his opinion as to the sufficiency of the proposed answer. Mr. Dale's attention is specially called to the 2nd paragraph of the proposed answer.

(True Extract).

Chief Secretary.

To the Government Pleader.
" Magistrate of Tanjore.

Exd. J. Tulloch.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

*Read letter from the
Magistrate of Tanjore*

(Dated Tanjore 6th Feb 67)

Order.

*I feel doubtful about
para 2 of the proposed answer,
as against order passed by
the Magistrate under Section
52 & 53 C. Crim. Proc: no appeal
lies to the Superior Court - post.*

The defence of the
suit in question is au-
thorised to be carried on
at the public expense
in the first instance;
but it will be determined
hereafter, when a copy
of the decree is furnish-
ed, whether the costs,
if any, are to be borne
by the Govt: or not.

2 The draft answer sub-
mitted with the foregoing
letter is approved

To Magistrate of Tanjore

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1. *Conspicua* — *Conspicua* — *Conspicua*
 2. *Conspicua* — *Conspicua* — *Conspicua*

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Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read letter from the Magistrate
of Tanjore.

(dated 10th Aug 1867 No. 7)

Order thereon 22nd February 1867 No. 281.

Before passing orders
on the foregoing letter, the
Governor in Council re-
solves to refer the papers
to the Government Pleader
for his opinion as to the
sufficiency of the proposed
answer. Mr. Dale's atten-
tion is specially called
to the 2nd para of the
proposed answer.

To the Govt Pleader
" Magistrate of Tanjore

hit of March

Judicial 1867. Department.

No. 281

PROCEEDINGS OF GOVERNMENT.

Dated. 22nd February 1867.

Subscribed

No. 3-4

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