

MADRAS RECORD OFFICE.

Government of Madras.

Journal DEPARTMENT.

G.O. No.	376	<u>Press</u> <u>Mis.</u>
Dated	7 - 3 - 1916.	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
7th March 1867.*

No. 88. Read the following letter from the Magistrate of Cuddapah, to the Chief Secretary to Government, Fort Saint George; dated Cuddapah, 1st March 1867, No. 7.

With reference to the Government Order, dated 8th October 1864, No. 1466, I have the honor to enclose copies of Decree and Judgment of the Acting Civil Judge of Cuddapah in Appeal Suit No. 133 of 1864, which I have received only yesterday from the Government Vakeel here.

2. The respondent, A. Soobramaniam, having prepared a Special Appeal to the High Court of Judicature at Madras from the above Decree, I was served with a notice from that Court on the 25th February 1867, intimating that the appeal will be heard on, or as soon as possible after the 23rd March next.

3. I request, therefore, that the Government will be pleased to authorize their Pleader at Madras to conduct pleadings in the appeal at the High Court.

4. I have this day forwarded to the Government Pleader at Madras copies of Government Orders, dated 18th November 1863, No. 1784, and 8th October 1864, No. 1466, and of Decree and Judgment of the Acting Civil Judge of Cuddapah, to enable him to conduct pleadings in the appeal at the High Court, and I shall be ready to supply him with any further information which may be required by him.

Original Suit No. 716 of 1863, on the file of the Cuddapah Moonsiff's Court.
Plaintiff. versus Defendant.
A. Soobramaniam. Mr. H. G. Smith.

Appeal Suit No. 133 of 1864.

Present—W. D. Horsley, Esq., Acting Civil Judge of Cuddapah.

<i>Appellant (Defendant.)</i>	<i>versus</i>	<i>Respondent (Plaintiff.)</i>
Mr. H. G. Smith.		A. Soobramaniam.
Vakeel A. Ramiah.		Vakeel Narasaramiah.

L. S.

The plaintiff in this suit states, that he erected two pyals in front of his house, which exist from a long time, and the defendant ordered their removal, on the grounds that they were dangerous, and caused inconvenience to the public; and that their removal has not only caused the house unsightly, but the walls are apt to be undermined by the rain-water. Hence this suit.

2. The defendant in answer states, that by the removal of the pyals mentioned in the plaint, the plaintiff sustains no loss. The plan of the pyals is filed. The plaintiff recently purchased the ground on which his house stands. The space on which his pyals stand is not included in the sale. The document of sale of the land to plaintiff must be perused. The road should permit of two bandies meeting and passing each other. The plaintiff was warned to remove them, but refused to do so. Plaintiff's suit is in opposition to Section 314 of the Criminal Procedure Code, and prays that plaintiff's suit be rejected.

3. The Moonsiff in his judgment resolves, that plaintiff may erect pyals at his own cost, of the same size as before, providing a way under them for the drainage of rain-water, and directs that the costs of each party be borne by themselves.

The defendant appeals on the following grounds:—

1. Defendant, in his capacity of Magistrate, ordered the removal of the pyals, to prevent inconvenience to passing conveyances, and under Act XVIII of 1850 the suit against defendant is inadmissible; therefore plaintiff's evidence, &c., is of no use.

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2. That the pyals are on the road; that they are of danger to the public; and that their removal will cause no loss to plaintiff, the Court will perceive on visiting the spot, and further evidence will be unnecessary.

Although the Moonsiff inspected the place, he does not give his opinion on the above three points in his judgment.

3. The Moonsiff visited the place six months after the pyals were removed, and after remarking in his judgment, that it was no loss to plaintiff, decrees in plaintiff's favor; this is wrong.

4. The plan filed by defendant will show that the pyals have been erected in the narrowest part of the lane, and are a cause of trouble to people. Plaintiff's witnesses mention, that the pyals had been erected five or six years back; this is in opposition to plaintiff's statement.

5. The plan will show that, with the exception of that part of the lane where the pyals are built, conveyances can in the other portions meet and pass each other.

6. The Court should consider that it is defendant's duty to inspect all by-lanes, and cause pyals, &c., in narrow streets to be removed; the Moonsiff did not consider this.

7. Defendant prays, that the original record be perused, the place inspected, the Moonsiff's decree reversed, the plaintiff ordered to remove the pyals newly constructed, and made to pay all costs.

The Acting Civil Judge resolves to annul the decree of the District Moonsiff, and directs that plaintiff do bear the costs both in the Original and Appeal Suits.

	RS.	A.	P.	RS.	A.	P.
Stamp duty on Institution under Act X of 1862...	...	4	0	0		
Fees to Appellant's Vakeel...	...	3	3	0		
Value of Stamp paper filed by Appellant...	...	1	0	0		
Fees to Respondent's Vakeel...	...	3	3	0		
Value of Stamp paper filed by Respondent...	...	0	8	0		
<i>Costs incurred in the Original Suit.</i>				11	14	0
By the Plaintiff...	...	12	13	0		
By the Defendant...	...	4	3	0		
Total...	...	28	14	0		
Rupees twenty-eight and Annas fourteen only.						
Amount to be paid by the Respondent (Plaintiff) to Appellant (Defendant)...	...	12	6	0		
Amount to be borne by the (Plaintiff) Respondent...	...	16	8	0		
	...	28	14	0		

* Of which, viz:—

Amount to be paid by the Respondent (Plaintiff) to Appellant (Defendant)...

Amount to be borne by the (Plaintiff) Respondent...

Pronounced in Court this 19th January 1867.
Given under my hand and the seal of the Civil Court of Cuddapah this 19th January 1867.
(Signed) W. D. HORSLEY,
Acting Civil Judge.

Original Suit No. 716 of 1863, on the file of the Cuddapah Moonsiff's Court.
Plaintiff. versus Defendant.
A. Soobramaniam. Mr. H. G. Smith.

Appeal Suit No. 133 of 1864.
Present—W. D. Horsley, Esq., Acting Civil Judge of Cuddapah.
Appellant (Defendant.) versus Respondent (Plaintiff.)
Mr. H. G. Smith. A. Soobramaniam.
Vakeel A. Ramiah. Vakeel Narasaramiah.

The plaintiff in this suit states, that he erected two pyals in front of his house, which exist from a long time, and the defendant ordered their removal, on the grounds that they were dangerous, and caused inconvenience to the public; and that their removal has not only caused the house unsightly, but the walls are apt to be undermined by the rain-water. Hence this suit.

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7th March 1867.*

2. The defendant in answer states, that by the removal of the pyals mentioned in the plaint, the plaintiff sustains no loss. The plan of the pyals is filed. The plaintiff recently purchased the ground on which his house stands. The space on which his pyals stand is not included in the sale. The document of sale of the land to plaintiff must be perused. The road should permit of two bandies meeting and passing each other. The plaintiff was warned to remove them, but refused to do so.

Plaintiff's suit is in opposition to Section 314 of Criminal Procedure Code, and prays that plaintiff's suit be rejected.

3. The Moonsiff in his judgment resolves, that plaintiff may erect pyals at his own cost, of the same size as before, providing a way under them for the drainage of rain-water, and directs that the costs of each party be borne by themselves.

The defendant preferred an appeal, urging the grounds specified in the decree.

Judgment.

1. This case came on for hearing in the presence of the Vakeels of the two parties.

2. There is an objection raised by the Government Vakeel for the defence to the entertainment of the suit under Act XVIII of 1850.

3. If this is an objection, it will be unnecessary to enter into the merits of the case.

4. The Court will take time to consider how far this Act applies, and postpones the final hearing of this case till 20th January 1867.

This suit came on for hearing on the 19th January 1867, in the presence of the Vakeels for the respective parties.

This suit is barred by Act XVIII of 1850. It does not matter whether the Magistrate had jurisdiction or not; but in this case the Magistrate had jurisdiction, and he has not been shown to have acted otherwise than in perfect good faith.

The decree of the District Moonsiff is annulled.

The costs in the lower Court to be paid by the plaintiff.

The costs of this appeal to be paid by the plaintiff.

(Signed) W. D. HORSLEY,
Acting Civil Judge.

19th January 1867.

No. 89. ORDER THEREON, 7th March 1867, No. 376.

The Governor in Council requests that the Government Pleader will appear before the High Court in support of the Appeal Decree referred to in the foregoing letter, on the hearing of the application for the admission of a Special Appeal.

(True Extract).

Chief Secretary.

To the Government Pleader.
„ Magistrate of Cuddapah.

Exd. J. Tulloch.

1/10/07

61.

Judicial Department.

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following
letter from the Magistrate of Cuddalore.
No. 1, Cuddalore, 10/7.

Order thereon 7 March 1867 No. 370.

The Governor in
Council request that
the Government Pleader
will appear before the
High Court in support
of the appeal decree
referred to in the foregoing
letter, on the hearing of
the application for the
admission of a special
appeal.

JP
WM

To the Gov. Pleader. }
Magistrate of Cuddalore }
Supplies of the order only to }
for Pleader ————— despatch 13/3.

*Sp. 1867-1868
1867-1868
(1867-1868)*

Sp. 1867-1868-53

27/10/64

12/11/63

12/11/63

00-89

Medical 1867: Department.

No. 376

PROCEEDINGS OF GOVERNMENT.

27/12/14

Dated 7th March 1867

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