

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	532	Press ~~Mis.~~
Dated	5-4-1867	

Not to be folded or roughly handled

File

*Proceedings of the Madras Government, Judicial Department,
5th April 1867.*

No. 45. Read the following letter from the Collector of South Arcot, to the Chief Secretary to Government, Fort Saint George; dated Punrooty, 26th March 1867, No. 12.

I have the honor to request that Government will be pleased to authorize the Government Pleader to appear for me, and, if necessary, to defend in R. A. Suit No. 92 of 1866 now pending before the High Court, and which, it is believed, will come on for hearing in the course of the ensuing month.

2. I beg to inform Government that the suit in question was originally brought before the Civil Court of Cuddalore in Original Suit No. 42 of 1863, against the Collector of the District and others, and that as against the Collector the suit was thrown out by the Court together with costs. An appeal has since been laid before the High Court, and although on legal and other grounds I entertain no doubt of the issue, it appears to me advisable that the Government Pleader should be empowered to defend and watch the case through the Appellate Court, and I therefore seek the issue of the necessary authority at an early date; and I would beg to suggest that a duplicate of the Government Order be forwarded direct to Mr. Dale, who will be duly advised by me on the subject.

3. I beg to enclose a copy of the Civil Court's Decree, recorded in extenso in the Original Suit referred to.

Original Suit No. 42 of 1863 on the file of the Civil Court.

<i>Plaintiff</i>	<i>versus</i>	<i>Defendants.</i>
Madava Naick.		1. Nagammal.
Narasimma Charry, Vakeel,		2. C. W. Reade, Esq., Collector of South Arcot.
		3. George Banbury, Esq.
		C. Sooboo Row, Vakeel.

This was an action of ejectment. The plaintiff declared that the land in litigation, as set forth in the plaint, was his kypud up to Fusly 1255—1845. In Fusly 1264 the 1st defendant's husband having made a durkhast for the same, his application was rejected and the land made over to plaintiff, with reference to the Circular Order of the Collector of the District, dated 22nd September 1854, and puttah was issued in his favor. The 1st defendant, however, managed by fraud to obtain the cancellation of this puttah and got possession of the land with puttah for the same in his own name. Plaintiff having applied, without redress to the Collector, to obtain restoration of his land, has brought this action for its recovery, with puttah right for the same, as also for Rupees 1081-7-5, the value of seven years' produce, exclusive of Teervah and Warram, as also of Rupees 154-7-11, value of produce for the current Fusly, with the further value of the produce up to the date of delivery of land to him.

2. The 1st defendant pleaded that the land was immemorial waste; in Fusly 1255 the plaintiff further made a durkhast for the land and obtained a puttah for it, but did not cultivate. The husband of the 1st defendant then tendered for the land and obtained it and some other waste lands in Fusly 1264; while inquiry was pending into the defendant's (1st) husband's application the plaintiff's father obtained by fraud a puttah, which was subsequently cancelled by order of the Collector; the land having been waste for upwards of five years, the plaintiff had lost his claim to it. The 1st defendant's husband further pleads that the claim made by the 1st defendant in regard to the income is not correct. The 2nd defendant in a detailed statement pleaded that the land was immemorial waste, and that the plaintiff had no right whatever to it; that he obtained a puttah through the connivance of a Curnum, and it was at the next settlement cancelled.

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5th April 1867.

(Here enter list of Documents and Witnesses).

(Here enter also issues as settled by the Court).

Judgment.

It is quite clear that whether the land claimed by plaintiff was immemorial waste or not, it had been waste for many years when the husband of the 1st defendant tendered or made durkhast for it. His 1st witness says, that when such durkhast was made it had been waste for 10 years, and all the witnesses examined on his behalf deposed to the fact of its having been waste from eight to six years. It is evident then that the plaintiff had either by himself or by the acts of his father brought himself under the operation of the Revenue rules prevailing in the District in regard to the occupancy of waste lands, and that he had lost his exclusive right of the land. When I say lost his right to the land, I mean that he did not possess the right to take up the land for cultivation without the permission of the Revenue authorities. He has asserted that what he calls his kypat right to retain possession of the land even though it had remained waste for 10 years is indefensible, and that the Collector or the Revenue authorities could not accept any durkhast from a stranger during this period, but I am unable to gather from the documentary evidence that this right exists. I am of opinion that the plaintiff had no more right to take up this land for cultivation than a stranger, and that his so doing was in contravention of the rules in force at the time; that he obtained a puttah for the land thus improperly resumed by him is admitted, but that gave him no real right of occupancy, and from the fact of its being cancelled shows that the proper forms for obtaining it had not been gone through. It is even very doubtful whether the plaintiff was really entitled at all to the land in virtue of kypat or any other right; for one of his witnesses, a cousin, says that the land or division fell to his share and that it was made over by him to plaintiff by an agreement before the Tahsildar. According to the witness, the terms of the agreement were never carried out, and of the proceedings before the Tahsildar there is no satisfactory evidence on record. Under these circumstances, I find that the plaintiff has no right to the land he claims; that the puttah for it which he obtained was irregularly granted, and that the cancellation thereof, and grant of the land to 1st defendant's husband, was in accordance with the existing Revenue justice. I therefore resolve to dismiss the plaintiff's claim with costs.

CUDDALORE,
12th June 1866.

(Signed) G. H. ELLIS,
Civil Judge.

(True Copy).

(Signed) C. W. READE,
Collector.

No. 46. ORDER THEREON, 5th April 1867, No. 552.

The Governor in Council requests that the Acting Government Pleader will appear before the High Court on behalf of the Collector of South Arcot, at the hearing of the appeal referred to.

(True Extract.)

Chief Secretary.

To the Acting Government Pleader.

Exd. J. Tulloch.

5th April 1867 No. 552.

The Governor in Council requests that the Acting Government Pleader will

N. M. appear before the High Court on behalf of the Collector of South Arcot, at the hearing of the appeal referred to.

To the Acting Government Pleader: }
with 2 copies of the order with per. paid in H.S.