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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

JUDICIAL DEPARTMENT

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Dated	18. 2. 1868.	197.

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RCW

Proceedings of the Madras Government, Judicial Department.
18th February 1868.

No. 218. Read the following letter from the Acting Collector of the Kistna District, to the Chief Secretary to Government, Fort Saint George; dated Gudewada Taluq, 28th January 1868, No. 9.

I have the honor to enclose, for the consideration of Government, copy of a plaint, No. 422 of 1867, filed in the Court of the District Moonsiff of Guntoor by *Gowda Lakshmi Narayana, son of Gowda Lakshmi Narayana, in the Taluq of Guntoor, against* the Joint Magistrate and Sub-Magistrate of Mangalagiri, as 1st and 2nd defendants, and two others. The prayer of the plaint is that his right may be declared to a certain site purchased by him from the 4th defendant on 20th December 1866, and that an order of the 1st defendant, ordering the removal as an encroachment and nuisance of a wall of a house built thereon by the plaintiff, be cancelled.

2. The facts of the case are briefly as follow:—

On the 15th March 1867, a petition was received in the Joint Magistrate's office from the plaintiff, complaining that the 3rd defendant, a copyist in the Sub-Magistrate's office, had interfered to prevent his building a house on a site bought by him from 4th defendant. The petition was, on 22nd March 1867, endorsed over for report by the 1st Class Subordinate Magistrate of Guntoor, who, on 24th April 1867, forwarded the report, No. 15, dated 15th April 1867, of the 2nd Class Subordinate Magistrate of Mangalagiri to whom he has referred it. This was to the effect that an encroachment by the plaintiff on the public thoroughfare had occurred, and that the Subordinate Magistrate had directed plaintiff to remove the encroaching wall, and build it within his proper limits, which were pointed out to him, and that in the event of his failing to do so the village authorities should take steps to see it done. This was approved and recorded. On the 30th April 1867, the plaintiff again addressed the Joint Magistrate, stating that no final order had been issued, and requesting permission to let the buildings remain. The Joint Magistrate, after examination of the record and of the site, came to the conclusion already arrived at by the Subordinate Magistrate, who was, on 22nd August 1867, directed to issue notice to the plaintiff under Section 63, C. C. P. for the removal of the offending wall, disobedience to be followed by action under Section 188, I. P. C.—The plaintiff kept out of the way and the notice has never been served. It is the Departmental order of the 1st defendant to 2nd that the plaintiff prays to be cancelled by the Civil Court. Mr. Hughesdon was of opinion, after personally examining the site, that the encroachment though real was trivial, and proposed to the plaintiff that he should withdraw, paying the costs of Government if permitted to retain possession. The plaintiff promised to do so several times, but has failed to perform his promise; nor do I judge from the Arzee, No. 217, dated 18th December 1867, of the Government Vakcel that there is any prospect of his doing so on the terms offered, as he expressly desires to be relieved of the Government costs.

Order No. 44.

3. Mr. Hughesdon, whose letter, No. 7, dated 11th January 1868, is enclosed, has proposed answers for 1st and 2nd defendants. I do not approve of the form of the former, which sets forth that the Departmental order of 1st might be obeyed or

to the effect that an encroachment by the Plaintiff on the Public thoroughfare

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not by 2nd as he should see fit, on the ground that it was *advice*, which, as a Magistrate, he might think proper to reject, and propose in substitution the following.

ANSWER.

1.—The plaint discloses no cause of action as against either 1st or 2nd defendants: the action of both was in good faith, and being taken in their Magisterial capacity is beyond the jurisdiction of the Civil Courts under the provisions of Act XVIII of 1850.

2.—That the act of the plaintiff was an encroachment on the public thoroughfare made without sanction, and that any order issued by 1st or 2nd defendants to plaintiff for its removal was just, proper, and within jurisdiction.

3.—That as a matter of fact no written order appears to have been served on plaintiff, and in the absence of such no action can lie on the Departmental order of 1st defendant to 2nd.

4.—Prays, therefore, that the suit may be dismissed with costs as against 1st and 2nd defendants.

From the Acting Sub Collector of the Kistna District, to the Acting Collector of Kistna District: dated Guntoor, 11th January 1868, No. 7.

I have the honor to enclose copy of a plaint filed in the Guntoor District Moonsiff's Court against myself, the Sub-Magistrate of Mangalagiri, and two other persons as defendants.

2. I also enclose, as per list in the margin, the reports of my officers connected with the case.

3. From these reports you will learn that the facts are as follow:—

The plaintiff is connected with a petition received by you when Acting Joint Magistrate from the plaintiff in the present suit, Goonadala Chenchu, in which the plaintiff alleged that he had been prevented by one Numboori Mongaladry (who is a volunteer in the Sub-Magistrate's office and 3rd defendant in the present suit), and by another person from building a house and wall on certain land which he (plaintiff) had purchased. The petition was referred by you to the 1st Class Sub-Magistrate of the Guntoor Taluk, who, it appears, sent the matter on for report by the local Sub-Magistrate at Mangalagiri. The Mangalagiri Sub-Magistrate thereupon replies that he has examined the locality in dispute; has found that the Government ground has been encroached on by Goonadala Chenchu; has pointed out to that man his proper limits; has directed him to remove the wall, &c., accordingly; and on his (plaintiff's) failing to do so, has directed the village authorities to take steps to cause the removal. This report was forwarded to you by the 1st Class Sub-Magistrate, and was received on 27th April last. The proceedings thus far appear to have had your approval, for I find that you then merely recorded the papers, and in this state the case was when I assumed charge of the office in July.

4. On 6th August the plaintiff presented a petition to me, stating that he had not received any final orders, and requesting permission to let the buildings remain. I thereupon looked at what had already passed in the matter, and accepting the report of the case as made by the Sub-Magistrate, but conceiving that his order to the village authorities was irregular, pointed out to him that his most proper course was to serve a formal order on the plaintiff personally under Section 63, C. C. P., and I at the same time directed him to report to me the result of that order so that, in the event of plaintiff considering his claim to the land to be so valid as to justify him in disobeying the order under Section 63, I might have an opportunity of dealing with such disobedience under Section 188, I. P. C., and thus of personally investigating the whole affair *de novo*. Plaintiff, however, has anticipated me, and having taken care to absent himself from the village and thus afford no opportunity for the service of the order by the Sub-Magistrate; he has filed a plaint in the Moonsiff's Court. In this state then the case stands at present.

5. Some time ago when at Mangalagiri I took the opportunity of examining the site in dispute, I am of opinion that some trifling encroachment has been made on the public street, and

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having regard to Board's Standing Order, No. 19 (page 9 of the new volume), as well as to the inexpediency, as a matter of principle, of not defending suits in which an equitable reply can be made, I considered that an answer to the plaint should be filed. On the other hand, keeping in view your directions in a very similar case (vide your letter, No. 299, dated 16th October last), as well as the trivial nature of the dispute, I deemed it not improper to suggest to the plaintiff to withdraw his suit, on the understanding that he was to pay defendants' costs, while I undertook to leave his possession undisturbed. He has been to my Catcherry three or four times, expressing his intention of adopting this course, but as I am informed by the Government Vakeel that no steps have yet been taken for the withdrawal of the suit, which is set down for hearing on 18th instant, I must now request that you will be good enough to move the Board to sanction the defence on the usual terms.

6. I have moved the Court to grant an extension of two months for filing the answer to the plaint, at the same time pointing out that this application has been necessitated by plaintiff's own course in representing to me his intention to withdraw.

7. I apprehend there can be no doubt that the suit must be dismissed, as the proceedings throughout have been on the Magisterial side; besides plaintiff prays for the cancelment of an order which, so far as he is concerned, has no existence; for he has never afforded an opportunity for it to be served upon him, and, as a mere Departmental record lying in the Sub-Magistrate's office, it is, in any view of the case, a perfectly innocuous document, and could scarcely, I think, come within the ken of a Civil Court.

8. I have to add that the deed of sale referred to in the plaint has been restored to the plaintiff. I need scarcely say that it discloses no title to the land claimed.

9. I append draft of proposed reply by 1st and 2nd defendants; 3rd defendant having acted without orders in the matter must be left to put in his own defence.

Original Suit No. 422 of 1867 on District Moonsiff's Court File.

To the District Moonsiff's Court, Guntoor.

Plaintiff.

Goonadala Chenchu, a barber by profession, and inhabitant of Pata Mangalagiri.

Defendant.

1. J. C. Hughesdon, Esq., European, and Acting Sub Collector, Kistna District, Guntoor.
2. Patri Vencata Ramanaya Pantulu, Sub-Magistrate of Mangalagiri.
3. Numboori Mongaya, alias Mongaladry, Brahmin, Volunteer.
4. Gali Iyavaroo, weaver, and an inhabitant of Pata Mangalagiri.

Plaint preferred under Section 26 of the Civil Procedure Code by Goparazu Seetapaty, Pleader for plaintiff.

2. The plaintiff purchased a piece of ground, situated at Pata Mangalagiri, on the 7th day of Kartikee Baboolam, year Atchaya, corresponding to 20th November 1866, from the 4th defendant; plaintiff proceeded to enclose the ground, and about three months ago built a house on the western side of the enclosure, and abutting on a lane. This land is now in the occupation of plaintiff.

3. The 3rd defendant having conceived hatred towards the plaintiff preferred a charge to the 1st defendant, which was endorsed to the 2nd defendant. The cause of the 3rd defendant, who is a volunteer in the office of the 2nd defendant, was upheld by 2nd defendant, and the 1st defendant approved of the opinion of the 2nd defendant, which was to the effect that the wall on which the plaintiff's house rested should be pulled down. Thereupon was issued an order to the 2nd defendant, according to which, about ten days ago, 2nd defendant directed that the wall of the enclosure be pulled down. The 1st defendant did not give an authenticated copy of the order, nor has he returned the deed of sale by which the right of the plaintiff to the disputed property can be established, which was filed in the 1st defendant's office on the 30th July.

4. The boundaries are as follow:—On the east the compound wall (15½ yards) of Sungapu Abbaya; on the south the ground (5½ yards) purchased by Sungapu Abbaya, and which belonged to the 4th defendant; on the west is the narrow path (15½ yards) leading to the bazaar; on the north is a narrow pathway (5½ yards).

to the effect that an encroachment by the Plaintiff on the Public Street

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5. This claim is brought to establish the right of the plaintiff to the place, valued at Rupees 4, situated within the above boundaries, and also to the thatched house, valued at Rupees 7, situated on the western boundary wall, which was valued at Rupees 4, and to have the order of the 1st defendant cancelled, which is contrary to the right of the plaintiff.

8th September 1867.

(Signed) G. SEETAPATI.

Plender.

I, Goonadala Chenchu, do declare that the above is true to the best of my knowledge and belief.

(Signed) GOONADALA CHENCHU.

(True Translation).

(Signed) J. C. HUGHESDON,
Actg. Sub-Collector.

No. 219.

ORDER THEREON, 18th February 1868, No. 267.

The Honorable the Governor in Council grants authority for the defence, in the first instance, at the public expense, of O. S. No. 422 of 1867, instituted in the District Moonsiff's Court of Guntur against the Joint Magistrate of the Kistna District and the Sub-Magistrate of Mangalagiri, but will determine, when a copy of the Judgment as well as of the Decree is furnished, whether the costs, if any be adjudged against the Joint Magistrate and Sub-Magistrate, shall be borne by those Officers or by the Government.

(True Extract).

Chief Secretary.

To the Acting Collector of the Kistna District, with enclosures returned.

Exd. J. Tulloch.

Kistna District Collector's
Circuit Kacheri at Guntur
in Guntur District
28th January 1868.

From. W. Wilson Esquire,
Acting Collector of the Kistna District.

To. The Honorable R. S. Ellis Esq.
Chief Secretary to Government
Fort Saint George.

I have the honor to enclose for the consideration of Government copy of a plaint No. 422 of 1867 filed in the Court of the District Moonsiff of Guntur by Goonadala Chenchu a barber of Patala a Mangalagiri in the Taluk of Guntur against the Joint Magistrate, Sub-Magistrate of Mangalagiri as 1st and 2nd Defendants and two others. The prayer of the plaint is that his right may be declared to a certain site purchased by him from the 1st Defendant on 28th December 1866 and that an order of the 1st Defendant ordering the removal as an encroachment and nuisance of a wall of a house built thereon by the Plaintiff be cancelled.

The facts of the case are briefly as follows.

On the 15th March 1867 a petition was received in the Joint Magistrate's office from the Plaintiff complaining that the 2nd Defendant a copyist in the Sub-Magistrate's Office had interfered to prevent him building a house on a site bought by him from the 1st Defendant; the petition was on 22nd March 1867 ordered over for report by the 1st class Subordinate Magistrate of Guntur, who on 28th April 1867 forwarded the report No. 15 dated 15th April 1867 of the 2nd class Subordinate Magistrate of Mangalagiri to whom he has referred it. This was to the effect that an encroachment by the Plaintiff on the Public thoroughfare

had occurred, and that the Subordinate Magistrate had directed Plaintiff to remove the encroaching wall, and limit it within his proper limits which were pointed out to him, and that in the event of his failing to do so the Village authorities should take steps to see it done. This was approved and recorded. On the 30th April 1867 the Plaintiff again addressed the Joint Magistrate stating that no final order had been issued and requesting permission to let the buildings remain: the Joint Magistrate after examination of the record and of the site came to the conclusion already arrived at by the Subordinate Magistrate who was on 22nd August 1867 directed to issue notice to the Plaintiff under a section 65 L.C. 9. for the removal of the offending wall, disobedience to be followed by action under section 188 L.C. 9. The Plaintiff kept out of the way and the notice has never been served: it is the Departmental order of the 1st Defendant to 2nd that the Plaintiff prays to be cancelled by the Civil Court. Mr. Hughson was of opinion after personally examining the site that the encroachment though real was trivial and proposed to the Plaintiff that he should withdraw paying the costs of Government if permitted to retain possession. The Plaintiff promised to do so several times but has failed to perform his promise, nor do I judge from the arguments 21st dated 18th December 1867 of the Government to hold that there is any prospect of his doing so on the terms offered, as he expressly desires to be relieved of the Government costs.

Mr. Hughson whose letter 24th 7 dated 11th January 1868 to be returned is enclosed has proposed answers for 1st and 2nd Defendants. I do not approve of the form of the former, which sets forth that the departmental order of 1st might be obeyed or not by 2nd as he should see fit, on the grounds that it was advisory which as a Magistrate he might think proper to reject, and propose in substitution the following

Answer

- Answer.
- (1). The Plaintiff desires no cause of action as against either 1st or 2nd Defendants: the action of both was in good faith and being taken in this Magisterial capacity is beyond the jurisdiction of the Civil Court under the provisions of s. 41 of 1860.
- (2). That the act of the Plaintiff was an encroachment on the public thoroughfare made without sanction, and that any order issued by 1st or 2nd Defendants to Plaintiff for its removal was just, proper, and within jurisdiction.
- (3). That as a matter of fact no written order appears to have been served on Plaintiff, and in the absence of such no action can lie on the Departmental order of 1st Defendant to 2nd.
- (4). Prays therefore that the suit may be dismissed with costs as against 1st and 2nd Defendants.

I have the honor to be,
Your most obed^t servant,
W. H. H. H.
Selling Collector.

ORDER thereon, 15th February 1868, No. 267.

The Acting Collector
of the Krishna District
with encls. sent Dec 24/2

Paid 28th Jan 79
 Paid 16th Feb 79
 Paid 3rd Feb 79

6.29

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Submitting copy
of a Dated N^o 422 of 1847
filed in the District
at Missouri Court at
Sunderly Concorda
Cherokee a Clerk of
State Mangalago of
Sunderly today against
the said Mangalago offers
as defendant about
certain Rites. and, he
proceeding caution to
defend the said at public
expense.

Judicial 1868 Departt

N^o 264

Proceedings of Court

Dated 18 February 1869

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