

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 2178

Dated 2nd Oct. 1895

INDEXED.

[Despatch Abstract.]

SUIT.

Sanctioning with remarks, the defence of original----No. 344
of 1895, on the file of the District Munsif's Court, Kumbakonam.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	2001		1896	R	827	Ind	11-5-96
	3675		1896	R	1470	"	29-8-96

Written Statement to be filed in C. S. No. 344 of 1895 on the file of the District Munsiff's Court Kumbakonam.

The statements in paras 1 and 2 of the plaint are admitted.

2 The statement in para 3 that plaintiff fully established his claim to the plaint-mentioned property in 1893 is false.

3 Para 4. It is true that a notice was issued to plaintiff to receive certain silver pieces. Owing to a clerical mistake the plaint-mentioned property was included in the notice but it was never intended to be admitted that plaintiff had established his claim to it. The date given is wrong as no proceedings were passed by the magistrate in the case on 25 April 95.

4. Para 5 is false. The Sub Magistrate after examining

examining plaintiff and his agent (his witness)
found that the ownership of the property was not
satisfactorily proved and ordered its sale.

5. Para 6 is admitted.

6. The cause of action arose on 5th May 94 when
the Magistrate passed the proceedings above
referred to and not on 25th April 95 as stated
in the plaint. The suit is barred by limitation
as per Article 14 of the 2nd Schedule of the Indian
Limitation Act, the plaint not having been
filed till 30th August 1895.

7. Defendant puts plaintiff to proof of all
allegations not expressly admitted herein
and prays that the suit may be dismissed
with costs.

For ag. collector

21. 10. 95

Enc. B

In a letter

From

The Collector
of Tanjore

To

The Chief Secretary
to Government
Judicial Department
Madras

Dated 21st October 1895

Ref on car no 2617
V2/11/8

Subject

Draft written answer
to be filed in O.S.

No 344 of 1895 on

the file of the District
Munsiff Court, Kumbakonam.

In the Court of the District Munsiff
at Kumbakonam.

O.S. No: 344 of 1895.

Ponnusamy Chettiar, son of Kosha
Muthan Chokkalinga Chettiar
residing in Nanayakara Street
Kumbakonam Town.

Plaintiff

Secretary of State for India in
Council

Defendant

District Collector of Tanjore - Agent.

The above mentioned plaintiff prays to
put in the following plaint under Section
50. C. C. P.

1). The undermentioned piece of silver with
some others remained as mine own in
my shop at Kumbakonam.

2). These were taken possession of by the
Police officers at Porayar on a search warrant
being made by them as being connected
in a theft case in Calendar case No 268
of 1893 on the file of the 2nd Class Magistrate
of Pranguebar.

3). Then a notice was sent by the said
Magistrate calling upon me to establish
my claim to the said pieces on 27th July 1893

and I then fully established my claim to the same.

4). Then the magistrate issued me another notice calling on me to receive the pieces as the magistrate believed the same to be mine and I then duly presented myself before him when he ordered his clerk to give me the pieces to me on 25th April 1895; but the clerk on some reasons or other not known to me gave me all the pieces but the undermentioned one and promised to give me the same afterwards. and the magistrate on hearing the same from the clerk gave the very same order.

5). The magistrate, who after full enquiry found that the properties were mine, had no right afterwards to refuse to give me the said piece and I am unable to get any further information about the same.

6). The usual notice required by law had been given to defendant through the Sub-Collector of Ranjore and no relief is made as yet.

7) The cause of action arises on 25th April

1895

1895 the date on which the magistrate refused to give me the silver piece. though he found the same to be mine.

Therefore the plaintiff humbly prays this Court to pronounce judgment asking the defendant to deliver the silver piece or its value to me and to grant such other relief as the Court may think fit and also to give me the costs of this suit.

Amount claimed.

Silver piece worth - Rs 39-0-0.

Interest from 25th April 1894. 6-0-0.
45-0-0.

Signed. Ponnusamy chetty.
[True copy].

Shankar
Per Ag Collector.

cl. 120.

Run 2

In a letter

From
The collector
of Tanjore

To
The Chief Secretary to
Government
Judicial Dept.
Madras

Dated 21st October 1895

Ref on cur No $\frac{2617}{\text{Ver}}$ 1895

Subject

Copy of the plaint
in C.S. No 344 of
1895 on the file of
the D. C. Munsif's Court,
Kumbakonam.

1895
Jud. Dept.
Enclor. No.
To 4980
C. No.

Ref on No. $\frac{344}{\text{E.C.R.}}$

Sub-Collector's office
Kumbakonam
1st October 1895.

From

Robert B. Clegg, Esquire,
Ag. Sub-Collector of
Tanjore

To The Collector of Tanjore.

Sir, With reference to your Ref on
Cur. No. $\frac{2607}{\text{Ver}}$ of 1895 dated 9th Instant,

1. Records of C.C. $\frac{268}{1893}$ on the file
of the Tranquebar Sub-Magistrate
as per index — 1
2. This office Disposal file No. $\frac{509(\text{Mag})}{3-12-94}$ — 1
3. Tranquebar Sub-Magistrate's arji
No. 605 dated 19-9-95 — 1
4. Collector's endorsement No. $\frac{2617(\text{Ver})}{9-9-95}$ — 2
- with 1 enclosure — 5

I have
the honor
to forward
herewith
the records
connected
with the
Suit filed
by one
Ponnu-
Sami
Chetti

of Kumbakonam in Original Suit
No. $\frac{344}{1895}$ on the file of the District
Munsif, Kumbakonam, against the
Secretary of state for India.

2. The following are the facts of the Case:

In Connection with a case of house breaking by night and theft under Sections 457 and 380 I.P.C. in Olugamangalam

C.C. No. 268 on the file of the Tranquebar Sub-magistrate.

village, Mayavaram Taluk, in June 1893, the plaintiff's shop in Kumbakonam was searched by the Police on 8th July 1893 and certain silver pieces (Exhibits

X. a lump of silver worth Rs 36-0-0
XI. 5 pieces of silver bars 13-2-0

Nos. X & XI in the case) were seized

and the plaintiff was examined as the 5th prosecution witness in the case.

The case was disposed of on 24th July 1893 and the following order was recorded by the sub-magistrate in his judgment in respect to Exhibits X & XI:-

"No. X will be treated as unclaimed property as it is doubtful whether it forms the silver pieces proved to have been sold by the accused to the 5th witness, as its weight is

very nearly equal to that of the silver pieces sold to the 5th witness and as the 5th witness has given contradictory statements as to how he got it unless the 5th witness establishes his claim therefor within a month.

No. XI will be returned to the 5th witness."

The order with reference to Exhibit X was communicated to the Plaintiff by a notice in which he was directed to produce evidence, if any, to show that it belonged to him. The notice was served on him personally on 3rd August 1893 (Vide Record No. 53 in C.C. No. 268/1893). He appeared before the sub-magistrate on the 22nd August 1893 and put in a petition stating that the property was received by him

in the usual course of business from Palghat and requesting that it should be returned to him. The submagistrate directed him to produce his witness (Vide No. 54). An order was issued to the Police, at the same time, to report whether Exhibit X was required by them for the further investigation ordered by the submagistrate to see whether there was any charge against the receiver (namely the plaintiff) under Section 411 I.P.C.. As nothing was heard from the Police, the sub-magistrate issued another notice to the plaintiff on 18th April 1894 directing him to appear on the 25th Idem and receive the lump of silver and 5 bars as he had laid claim to them (Vide Record No. 63). He appeared on the 25th April 1894 and engaged to produce evidence in support of the claim

claim in respect to Exhibit X; on the 3rd May following (Vide No. 61). He and his agent appeared on the 5th May and they were examined by the submagistrate and the following order was recorded on the same day:-

"Ponnusami Chetti and his witness do not satisfy me that the former is entitled to receive the silver. I therefore direct that the lump of silver No. X will be sold and the sale proceeds credited to Government."

The plaintiff then obtained Exhibit XI alone and gave a receipt therefor (Vide No. 67). Exhibit X was then sold by the submagistrate on 9th October 1894 and the proceeds Rs 33-14-0 remitted to the Treasury. The plaintiff sent an appeal petition by registered post to the Head Assistant Magistrate

on 8th October 1894, which was sent to the Joint Magistrate and received on 26th October. It was rejected on 9th November 1894, as an appeal, as being long out of time. Plaintiff has in this petition added that if the silver should not be returned, it (petition) might be treated as a suit notice under Section 424 C.P.C.

It would thus appear that the statement in para 3 of the plaint, that the petitioner "fully established his claim" to the property, is unfounded.

3. Para 4 of the plaint - It is true that in the notice dated 18th April 1894, the plaintiff was carelessly directed to appear and receive both the Exhibits X and XI instead of being called on to produce evidence in respect to the property No. X.

It is clear, however, from what subsequently transpired on the 25th April when the plaintiff turned up, that the submagistrate never meant to return Exhibit X before the plaintiff established his ownership to it and that the careless wording of the notice was due simply to a clerical mistake.

The sub-magistrate says that the allegations in this para and the previous one are "quite false".

4. Para 7 of the plaint - nothing was done by the sub-magistrate on 25th April 1895 in respect to the property; plaintiff evidently means 25th April 1894.

5. There was no proper notice under Section 424 of the Civil Procedure. Further, the suit is evidently one falling

falling under Art. 14 of the 2nd
Schedule of the Limitation Act and
the same is time-barred.

6. The sub-magistrate's proceedings
have been reviewed in my order dated
13th December 1894.

I have to
2nd October 1895. (Signed) Robt A B. Clegg
Ag. Sub-Collector

(True Copy) CURRENT NO. 4980

Submitted to Government (Judicial
Department) with the request that
sanction for the defence of the suit
may be accorded at an early date.

2. A copy of the plaint and a draft
of the written answer proposed to be
filed are enclosed.

3. The hearing of the suit is posted
to the 30th instant and orders for its
defence are solicited by wire. The
delay

delay has been caused by the matter
having been submitted to the Board
of Revenue for orders, by oversight.

Shri Lal Sahai
For Ag. Collector
22.10.95

Emergency 4980
From Red

The collector of
Tanjore

To

UNDER SECRETARY
23001 95
The Chief Secretary
to Government
Judicial Dept
Madras

Dated 21st October 1895
Recd 23rd Oct

Ref no 2617 of 1895
Ver

Em. 2

Subject

Requesting sanction
for defence of O.S.
no 344 of 1895 on the
file of the District -
Munsif's Court, Kumbha-
Konam.

1618 24.1.95 Mm (Sini Land)

E

[G.]
25.
00-25-11-94.

C. No. 4980

JUST. DEPARTMENT

FOR ORDERS.

The Sub-Magistrate's action appears
to have been justified by sec. 523
of the Cr. P. C. and it is proposed
to pass the following order.

Order. 25 Oct 1895 No 2178

The following telegram
will be despatched to the Collector
of Tanjore. ^(Def)
25/10

No. 662 Your letter 26th dated 21st.
"Defence of suit sanctioned"

2. The draft statement of
defence should however take exception
to the want of ~~proper~~ notice ^{registered}
by sec. 424 of the Cr. P. Code.

25.10.95
25/10/95.

To

The Collector Tanjore of despd 25/10
forwarded 25/10

Sanction for the defence of
a Suit

FOR ORDERS.

VE

Cs.

When given for copying _____
When copied _____ } 189
When examined _____
When signed _____

READ AGAIN G.O. No. _____ DATED
189 ,

CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT A A A A A A A

LETTER OF GOVERNMENT.

STATEMENT WITH DITTO.

PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH
IN ORIGINAL.

N.B.-

A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only.