

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 910

Dated 3rd May 1895

INDEXED.

[Despatch Abstract.]

TANJORE JUDGMENT FORGERY CASE.

Passing orders in regard to the claim of M.R.RY.A.Sankar-
riah to the attached property of M.R.RY. K.Subbarayar suspected of com-
plicity in the---, and in regard to the claims of his two minor sons.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	1235		22/5/94				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	1235		22-5-94				
	2507		95				
G.O.	911		3-5-95				
	2564		95				

[$\frac{G}{n}$]
2,000-33-1-00

DEPARTMENT.

From MMR A. Sankar is h
Retired Deputy District Officer of Cochin.

No.

Dated 23 } Feb 95
Received 25 }
Sd 25 }
Enclosures 2.

SUBJECT.

Forwarding a notice of Suit against
the Secy. of State for India in Council
under Sec 424 of the Civil M.C.

No 479/94 Circular

Current No. 674 of 1895
VER.

Endorsement of 5. 3. 95
No 474

Referred to the
Smt. Sankar for
report. (By order
of the Secy. of State
for India in Council)

Sd
2.5.95

Expedite the report to
Secy. 470885

TO BE RETURNED
WITHIN 10 DAYS

20

The Collector and District Magistrate
Tanjore.

Sir,

I beg to forward herewith copy of a deed of hypothecation executed to me by Kuthur Subbaraya Iyer, mirasadar, Kuthur village, and dated the 6th April 1890 and registered in the office of the Sub-Registrar of Assurances, Tin Khatupallee, as document N^o 555 of 1890 in Book I, Vol 39, pages 10 to 13. It will be observed that the principal is Rs 12000, which is re-payable by 6 instalments of Rs 2000 each, within the 15th day of October 1892, 1894, 1896, 1898, 1900 & 1902 respectively; and that the interest which is 6 p.c per annum is payable before the 5th April of every year.

2. Mr Subbaraya Iyer paid me the interest of Rs 720 in 1891, 1892 & 1893, and the sum of Rs 7500 to be credited to the principal in May 1893 and promised to pay the balance of principal Rs 4500 with the interest payable in April 1894.

3. On his failing to remit to me the amount in April last I made enquiries and learnt that he (Mr Subbaraya Iyer) had left the district

2

The Collector of Tanjore,

Sir, I beg to acknowledge receipt of your Memo, N^o 64, of the 17th instant, and beg you will be pleased to inform me of the arrangement you intend to make on behalf of Government, to pay off the mortgage amount and interest due to me by the registered instrument of 1890, on the property of Kuthir Subbaraya Iyar, which is now placed at the disposal of Government.

I beg to remain &c

[Sd] A. Sankariah

24 January 1895.

N^o 341 of 1895
ver:
Enclosure nil.

Memo.

With reference to his petition dated 24th January 1895, Mr. A. Sankariah, Soargal, N^o 21, Vallatambi Street, Triplicane, is informed that the undersigned cannot interfere in the matter and that he should have recourse to Civil Courts for an adjudication of his claims.

Tanjore District Office,
15th February 1895 }

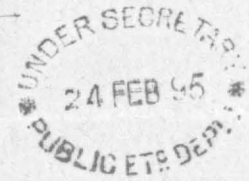
[True copy]

(unintelligible)
For Ag. Collector
19. 2. 95.

A. Sankariah

20th February 1895 }
Madras }

Notice under Section 424 of the Civil Procedure Code
(Act XIV of 1882)



Y.

The Secretary of State for India in Council
thru The Chief Secretary to the Government of Madras.

Under the terms of a hypothecation deed dated
6th April 1890, and registered as N^o 555 of 1890 in Book I,
Vol 39, pages 10 to 13, Kuthir Subbaraya Iyer, Mirasadar,
Kuthir village, hypothecated to me the properties specified
in the Schedule to the instrument aforesaid for a sum of
Rs 12,000, repayable by 6 instalments of Rs 2000 each, within
the 15th day of October 1892, 1894, 1896, 1898, 1900 and 1902
respectively, the interest of 6 p.c being payable before
the 5th April of each year.

2. The said Subbaraya Iyer has paid me
the interest up to the 5th April 1893, inclusive, and the sum
of Rs 7,500 to be credited to the principal in May 1893.

3. The balance of principal amounting
to Rs 4,500 is due to me as also the sum of Rs 270,
being the interest payable to me on the said balance
of principal on the 5th April 1894.

4. The properties specified in the
Schedule



Schedule attached to the document are liable for my claims and as the same are now at the disposal of Government, (Vide Endorsement No $\frac{64}{17-1.95}$ of the Collector of Tanjore), the Government is liable to pay the amount due to me.

5. In reply to my letter dated 24th January 1895, the Collector of Tanjore has in his endorsement No $\frac{341}{Ver.}$ of 1895 said he "Cannot interfere in the matter and that I "should have recourse to Civil Courts for an adjudication of" my "claims".

6. The failure of the said Subbaraya Iyer and of the Secretary of State for India in Council to pay the interest due to me on the 5th April is the cause of action.

7. I hereby give notice that, should the Secretary of State for India in Council fail to pay me Rs 270, the amount of interest already due and payable to me in April last, with compound interest at 6 p.c., and make provision for further payments as per terms of the document, I would be compelled to sue the Secretary of State for India ^{for India} in Council for the recovery of the same.

A. Sankariah

Retired Dewan Peishkar of Cochin,
Residing in 21, Nallatambi Mudali Street,
Triplicane, Madras.

23 February 1895.

Current No. 674 of 1895.
VER.

UNDER SECRETARY
24 FEB 95
PUBLIC WORKS DEPT.

926

The Chief Secretary
to the Government of Madras,
Madras.

Sir,

I beg to submit for the orders of Government copies of my application to the Collector and District Magistrate of Tanjore and of his endorsements regarding the payment of my claims on the property mortgaged to me in 1890 by Subbaraya Iyar of Kuthan village, which with other property belonging to him is now at the disposal of Government.

2. I beg also to submit a notice of the suit against Government as recommended by the Collector of Tanjore and as prescribed by S. 424 Civil Procedure Code.

3. I beg also to add that there is no dispute regarding my claims under the document which is duly registered, and as I have acknowledged payment to me of part of the principal viz Rs 7500 being a larger amount than is provided by the terms of the document as payable in instalments, and as Subbaraya Iyar has already informed the Collector that my claims should be paid, I do not see any object in going to the Civil Courts and increasing the amount recoverable on the property.

Submitted

Ind

926

RECEIVED
24 FEB 95
PUBLIC SECRETARY

CURRENT No. 1786
From

The Collector and D.
Magistrate
Tanjore

To, 347/14.2.94 Sainla

The Chief Secretary
to Government

Judicial Department
Madras

Dated 2nd }
Despatched } April 1895
Received 6
Reqs 9

Reference No. 679
DESPATCHED
7 APR. 95
GOVERNMENT OF MADRAS
Enc. 8

Reporting on the notices of suit given
under section 424 C.C.P. by Shri
A. Sankarai and requesting
orders of Government on the notice
given by the minor sons of
Kuthum Subbarayan

80 1235/94. *ref 42*
454 190 S.C. 494 *ref 42*
347. 14.2.94 Sainla

852. 264 93 S.
Cus. 926 + 1786/95.

For orders

Perhaps a copy of the hypothesis
deed may be obtained & legal advice invited
in the matter? - The Dist. Magistrate should
surely be told to investigate the
genuineness of the petitioner's claim (para
7 of his letter) & if he finds it to be
true to admit it & pay the principal
interest as quickly as possible. The
total claim is Rs 4500 principal & the
arrear interest Rs 270 - 6 April 1894.
Current interest thereafter at 6%.
The property is worth a great deal more
than this (para 4 of letter) - & Govt. may
now sanction the sale of it.

ENCLOSURE No. 5

In a letter

FROM

THE COLLECTOR OF *L. D. Magistrate*

Saigore

TO

THE *Chief Secretary Government*

Judicial Department

Dated

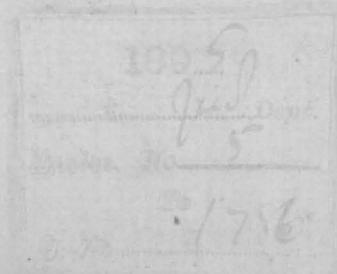
2nd April

1895.

Refer. No. 674 of 95

Subject.

*Returning the Government
endorsement on the notice
of suit, against the Secretary
of State given by Mr. R. K. A.
Sankarish, Dewan Naikhar*



Proceedings of the Court of the Sub Divisional
Magistrate, Kumbakonam

Dated 19th October 1894

Read letter from the Collector of Tanjore
dated 14th July 1894 No. $\frac{2568}{Ver}$ in re the
disposal of the Estate of Kuthir Subbarayan
attached under a warrant issued by
this Court.

Read again this office Proceedings dated
7th August 1894 directing that "the property
under attachment shall be at the
disposal of Government".

Read the records of enquiry
Read also the records of Register Case
No 6 of 1893 on the file of this Court.

Order

On the 14th October 1893, a warrant
was issued by this Court for the
arrest of the accused Kuthir Subbarayan

a mirasidar and Village Magistrate of Kuthur, Tanjore Taluk under sections 466 and 380 I.P.C. in connection with the forgery of a Judgment from the Tanjore District Court records. It being reported that the accused could not be found and having reason to believe that the accused had absconded, a proclamation under section 87 C.P.C. was signed and issued by this Court on the 6th November. The date fixed in the proclamation for the accused's appearance before this Court was — within the 11th December 1893. A copy was duly affixed to the Court house. In the village of Kuthur the proclamation was published on the 15th November 1893 and a copy was affixed

to the house of the accused on that date. The moveable and immoveable estate of the accused was placed under attachment and the attachment still remains in force under section 88 C.P.C. The accused did not appear within the time specified in the — proclamation or subsequently until the 25th June 1894, when he voluntarily — surrendered himself. The property under section 88, has been declared to be at the disposal of Government and the accused is now called on to show cause why his moveable and immoveable property under attachment should be restored under section 89 C.P.C.

2. When the accused appeared on

the 25th June he made a statement to the effect that on the 29th Purattasi (Corresponding to the 13th and 14th October) he went to bathe in Alandakavéri, Trichinopoly District and started for a pilgrimage to Benares on the 18th or 19th Arhasai (Corresponding to 1st or 2nd November). He said that he halted at four or five places on the way, but he could give me no satisfactory account of these halts. After remaining a fortnight in Benares, he visited several places of pilgrimage and then returned to Benares. There about the end of February or beginning of March his elder brother's son came and found him, having been sent to search for him, as warrant of arrest and attachment

warrant

warrant had been issued. He pretended that he did not give them any address at home where he had gone or receive any letters from home. At the beginning of January, he wrote a letter home from Ayodhya to his brother. He alleged he had applied for leave to the Taluk 15 days before starting on his pilgrimage, and went after it was recommended for sanction in the Taluk. He further applied from Pres (Allahabad) for 3 months' leave in extension to the Tahsildar. The delay in returning, he accounts for, on the score of illness.

3. The accused put in a report to the Tirukattupalli Revenue Inspector on the 13th September 1893 applying for leave for 3 months on private affairs (Exhibit a). This was not sanctioned by the

Deputy Collector, Tanjore, until the
to 26th October. Again, the Revenue Inspector
(received a report on the 17th October 1893
(Ex. C)
dated 15th October 1893 in the hand-
writing of the accused and headed
Kuthur, saying that he was going away
in anticipation of sanction. According
to his first witness, Seshappier to whom
he handed over charge, the accused gave
him this report just as he was getting
into his bandy on the journey to bathe
at Abandakaveri. This witness says
it was the 14th October, but I cannot
conceive why the accused should date
the report a day onwards. The accused
himself has fixed the date as the 29th
Purattasi (13th or 14th October) whereas the
witnesses who saw him going say it
was

was a day later viz the last day of
Purattasi. Evidently this agent Seshappier
states that the report dated 15th October
was given him on the 14th October to bring
his evidence in conformity with the
accused's original statement before
me on the 25th June 1894. The Constable
No 1218 Doraisami Pillai who went to
Kuthur to arrest the accused on the
15th October 1893 could not find him. I
think, therefore, it is clear that he left
Kuthur that very morning before the
Constable arrived at his house. The
day before is the 14th October, the warrant
was issued, and one of the co-accused
'Nageswarier', since convicted, had
been arrested on the 14th. The accused
Kuthur Subbarayar was a close

relation of the 3^d prisoner Naganatha
Iyer, since convicted, and it is not
at all unlikely that news of what had
taken place in Kumbakonam on the
14th would have reached Kuthur before
the warrant. If it is not so, his —
departure is a most remarkable —
coincidence. The 2^d witness, Kailasa
Iyer, who is the accused's brother —
pretends he knew nothing about the
warrant and as accused did not
come back home to perform his father's
ceremony at Deepavali festival (7th Novem-
ber) he went to Trichinopoly in search
of him but not finding him, supposed
he had gone to Benares. When the
proclamation was published (15th Novem-
ber) this witness came to hear of the
warrant.

warrant for the first time he says, but
did not know where the accused
was at the time. On the 25th December
and not till then did he send 3^d
witness Subramonia Iyer accused's
nephew to Benares to look for him.

The ^{excuse} ~~excuse~~ for the delay is that
Subramonia Iyer, who was acquainted
with Benares was ill until then.

5. From the above evidence, it is clear
that the departure of the accused was
extremely sudden. He gives his report
Exhibit C into the hands of his substitute
as he is getting into his bandy the very
next day after the warrant is issued
and when he has no time for proper
preparation and intimation to his relations
of his intentions. Nothing is said about

his intention to go on a pilgrimage in
his leave reports, and according to his
own witnesses, he went away when they
expected him home and they did not
know where he had gone to. His first
letter was from Ayodhya dated 2-1-94
and even then, no address is given,
if we are to believe the evidence on
his behalf. Subramonia Iyer finds him
about the end of February or beginning
of March in Benares, and pretends
for fear of making him ill he did not
tell him that he was wanted on a
warrant until they arrived at Nasseik,
a short time before the accused —
surrendered. This is a very unlikely
story and it does not appear that
accused

accused was so extremely ill from his
own actions and Conduct in the
meantime. The object is clearly to show
that accused was not aware of the
warrant until just before he surrendered
to justice.

6. Before the man Subramonia Iyer
was sent the Case had been committed
to the Sessions and before he surrendered
the Case before the Sessions was completed.

7. The pretended ignorance of the accused
relations and his own ignorance of
what affected so. Considerably his own
relative is absurd. The letters which
might go against his plea have been
apparently concealed. Only a few
of the letters have been produced. —

Another very important fact against the

accused's plea is that neither himself nor his relations made any Communication to this Court or the Police in explanation of his absence until he surrendered.

8. Considering the suddenness of his departure the day after the issue of the warrant in anticipation of the sanction of his leave, his mysterious disappearance to Benares without informing (as he wishes me to believe) his relations, the delay in returning to surrender to justice until the whole Case was over, and his not having given any information of his whereabouts and inability to appear until he did surrender lead me to the conclusion beyond all doubt that he absconded to avoid being arrested

on

on pursuance of the warrant, and kept out of the way until the Case was disposed of against the other prisoners.

9. As the accused has not proved to my satisfaction that he did not — abscond for the purpose of avoiding — execution of the warrant, I cannot release the property from attachment.

10. There is an irregularity in the publication of the proclamation in the village. The time specified in the proclamation for the accused's appearance was 11th December, but owing to neglect on the part of the Police, although the proclamation was issued on the 6th November, it was not published until the 15th November in the village, thereby allowing only 26 days for his

appearance instead of 30 days as
required by section 87 C.P.C. The Copy
was under clause C, however, —
affixed to the Court house in time.

11. Under the Circumstances of the
Case this slight irregularity in the
proceedings cannot be considered
in the least degree to have prejudiced
the accused and under section 537
C.P.C I don't think it should be
the means of the accused's escape —
from the penalty.

12. Six months have elapsed
since the attachment. I, therefore,
order under section 88 C.P.C the
moveable and immoveable estate
of the accused under attachment

to be sold and the sale proceeds
credited to Government.

Signed Robert B. Cress
Sub Divisional Magistrate
Humbalakoram
19th October 1894

True Copy

For A.S. District Magistrate
b n f

Enclosure no III

In a letter
To
The Collector
of
Tanjore

To
The Chief Secretary
to Government
Judicial Department
Madras

Dated. 2nd April 1895

Reference no. 674 of 1895

In
Proceedings of the Joint magis-
trate dated 19th October
1894

100-3-8-94.

No. 769

JUDGMENT in Criminal Appeal No. 93 of 1894, on the file of the
SESSIONS COURT AT TANJORE.

The 22nd day of December 1894.

PRESENT:— E. J. Sewell Esq., Sessions Judge.

From what Court the appeal is } Court of the 1st Class Sub-Divisional
preferred. } Magistrate of Kambakonam Division.

No. of the case in that Court.— R.E. C. No. 6 of 1893.

No. of the Appeal.— 93 of 1894.

Name and Description of the Appellant.

Name of Appellant.	Father's name.	Caste or race.	Occupation.	Residence.	Age.
Subbarayer	Subramonia Syer	Brahmin	Miras	Kuthur, Tanjore taluk	37

The Sentence and Law under which it was imposed in the Lower Court—
The moveable and immoveable estate of the appellant under attachment to be sold and sale proceeds credited to Government under section 88 of the Code of Criminal procedure.

Whether confirmed, modified or reversed— Modified

If modified, the modification— The Magistrate's order is altered to one declining to restore the property to the appellant.

on 4th December 1894 and having stood over for consideration till this day
This appeal coming on for hearing, upon perusing the petition of appeal, the Magistrate's Judgment, and the records of the case, and duly considering the same, after hearing the arguments of K. Kallianasundram Syer Vakil for the appellant, and of the Public Prosecutor in support of the conviction, the Court delivered the following Judgment:—

The appellant

a mirassidar and was a village magistrate.
A warrant for his arrest on a Criminal charge
was issued on October 14th by the Joint Magistrate.
The warrant was followed in due course by a
proclamation calling on the appellant to appear
within 30 days of the date fixed. As the appellant
did not so appear, his moveable and immoveable
property which had been attached was declared
at the disposal of Government. The proclamation
was dated November 6th 1893; on June 25th 1894,
the appellant surrendered himself. He then was
heard to show cause under section 89 Criminal
Procedure Code why his property should be restored
to him. The Joint Magistrate passed final orders
directing that the estate of appellant should be
sold and the proceeds credited to Government.
The appellant appeals against this order under

Section

Section 405 Criminal Procedure Code.

2. The first question for decision is whether
the Joint Magistrate was right in finding
that the defendant did abscond to avoid
execution of the warrant. The charge on which
a warrant was issued was not an ordinary
charge; the appellant was charged with
Complicity in what is known as the Tanjore
Judgment Forgery Case. The nature of the
charge is relevant because it was one which
had excited a good deal of attention and
had been for some time under inquiry by
various officers before the warrants were
issued.

3. The warrant was issued on October
11th and on that day one of the accused was
arrested in Kumbakonam. The appellant

is closely related to another of the accused.
The constable who took the warrant to Kuthur
(where accused lives) on the morning of

October 15th Could not find him. The appellant

says he had started on the 29th Purattasi

to bathe at Akandakavêri that on 1st or 2nd

November he started for Benares and

never heard of the warrant or subsequent

Proceedings against him till the end of

February or beginning of March.

4. There is some uncertainty as to

the date intended by the 29th Purattasi.

It appears to be October 14th but some Tamil
Calendars give it (wrongly, it would appear)

is the 13th.

The Joint Magistrate gives what

are good reasons for thinking that

appellant really left on October 15th.

The evidence of appellant's agent Seshappaier is that appellant went away on October

15th, that of two other witnesses is to the effect

that the appellant started for Akandakavêri

on the last day of Purattasi. This is beyond

all doubt one day later than the date given

by appellant (29th Purattasi). Seshappaier

says that the appellant handed him exhibit

C as he was getting into his Cart to start. Now

exhibit C is clearly dated October 15th and

is in appellant's hand writing (see evidence

of Krishnasami Iyer, Revenue Inspector). I

think this leaves no doubt that the real date

on which the appellant left home was the

15th October.

5. It is urged that the appellant

Could not have known of the issue of a warrant on the 14th for his arrest. As the Joint Magistrate remarks, it is quite possible for the news of the issue of the warrants and arrest of one of the defendants at Kumba Koram on the 14th to have reached the appellant before the morning of the 15th.

6. If it had not, the fact that appellant went away that morning is a remarkable coincidence. But the other facts connected with appellant's going away make it impossible to believe that it was a coincidence.

7. According to the evidence of the Police Constable who went with the warrant, it was not ascertained from appellant's family that he was gone to Akaudakavêri. This seems true because it is evident

that no attempt was made to follow appellant to that place. Appellant says he remained there 17 or 18 days. The Police would be very anxious to get Credit by arresting appellant or to avoid blame for letting him get away. I think it clear that they did not know appellant was at Akaudakavêri.

The appellant did not mention in exhibit C where he had gone, although he was going away in anticipation of the final sanction of the leave he had applied for.

8. From Akaudakavêri appellant went to Benares without the knowledge of any of his relatives or of his agent. From the evidence of appellant's brother, Kailasa Iyer, it appears that appellant was due at home and expected there on November 7th for the performance of

his father's Ceremony but that no news of appellants whereabouts reached them.

9. All this is absolutely inconsistent with the belief that appellants absence was an ordinary journey from home.

10. The departure by appellant without waiting to get his leave finally sanctioned, the omission from exhibit C of any report as to where appellant had gone or could be found, his subsequent departure for Benares without informing his relatives, and his leaving them without any information where he was or how he could be reached, leave no doubt, I think, that appellant was concealing himself to avoid execution of the warrant.

11. As to the proclamation, the case is clearer. The evidence of appellants brother

Shows that appellants family thought on November 7th the appellant might have gone to Benares; yet they say that no one was sent to find appellant, and no attempt made to tell him of the warrant until after December 14th. At this time the 30 days within which appellant had to appear had expired. The nephew who went to find appellant says he could not find him till March 11th or 12th and that he never informed appellant of the proclamation. The only reason he gives is that appellant was too ill. He was not too ill to journey to Allahabad and from there to Benares.

12. The illness is said to have been fever which would not be likely to be continuous for weeks together. This witness' explanation

that he did not tell appellant lest he should frighten him to death is highly absurd in such circumstances.

13. I cannot feel the least doubt that all this evidence of appellant's relatives is entirely false, and that appellant, when he went to Benares, left his relatives the means of communicating with him. They do not deny that they were aware that the proclamation was a matter of which appellant ought to be informed, and that they were desirous of informing him of it.

14. Under these circumstances, I cannot doubt that appellant was informed of the proclamation.

15. It is next urged that the proclamation calling on appellant to appear before December 1st not published in the village until November

15th. So that it did not allow 30 days from that day as required by section 87 Criminal

Procedure Code.

16. The section requires publication in three different ways which cannot well be simultaneous. This proclamation was published by being affixed to the Joint Magistrate's Court house (one of the prescribed methods) on November 6th, 35 days before the date fixed for appearing.

17. No doubt, the publication in the village is the most important part of the publication and that most likely to be effective. Inasmuch however, as one of the methods of publication directed was in good time, and as it is certain that no failure of justice has been caused by the publication in the village, 4 days too

Late, I think this latter defect may be regarded as an irregularity coming under the description in section 537 Criminal Procedure Code.

18. The appellant's pleader quotes decisions in the Cognate Case of a sale of property under Sections 274 and 290 of the Civil Procedure Code.

They are not much to the point because Section 290 explicitly fixes the terminus a quo as the date of affixing the notice on the Court house. Even in that Case a sale within 30 days from that date has been held a mere irregularity.

19. The next objection is that as the appellant had surrendered himself, the order declaring his property at the disposal of Government passed after his surrender was without

without authority.

20. There is some authority for this contention. It was not quoted at the hearing and has not been discussed. It is an opinion of Mr Justice Phear reported in 10 Bengal Law Report appendix page 18 (In re Ram Kishore Sein). I cannot think the opinion correct. The section (88) enacts that if the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government. There is no mention of any order being required; the meaning seems to me to be that the property becomes, by operation of law, at the disposal of Government, upon the non-appearance of the proclaimed person within the special time. The order declaring that to be done, which the law has already done is mere surplusage.

21. The order for the sale of the property is

not in accordance with the provisions of the Section.

The property is at the disposal of Government

and should be dealt with in accordance with

any instructions that may be received. The

order of the Joint Magistrate is altered into

one declining to restore the property to the

appellant.

(Signed) E. J. Sewell

Ag Sessions Judge

(True Copy)

Bnu chu Lan

For Ag District Magistrate.

b n. fs

SR.

Re

ENCLOSURE No. 10

In a letter

FROM

THE COLLECTOR OF District Magistrate

Tanjore

TO

THE Chief Secretary to Govern-
ment

Judicial Department

Madras

Dated

2nd April

1895

Reference No. 674 of 1895

Subject.

Copy of judgment in Crimi-

-nal appeal No. 93 of 1894

the file of the Sessions Court

8
canon

CURRENT No. 178

Collector and

Tanjore District Magistrate's

Office, Camp Mannarjudi,
2nd April 1895.

From,

J. Thomson Esq.

Collector and

A. G. District Magistrate,
Tanjore

To,

The Honourable Mr. J. F. Price,
Chief Secretary to Govt.,
Judicial Department,
Madras.

Sir,

Adverting to Government
Endorsement, dated 5th March
1895, No. 474, I have the honour
to state that Mr. R. A.
San Kariah, retired Dewan Peishkar
of Cochin has also given me a
notice intimating his intention
to file a suit against Government.

* enclosed.

if his claims be not satisfied.

In 2. The two minor sons of Subbarayar
Fr have given a similar notice for
the recovery of the whole of their
father's property or at least
their two thirds share of it.

1 3. I solicit orders on the above
two notices.

4. The facts of the case are briefly
these:-

Kuthur Subbarayar, a ryot
and the Village Magistrate
Co of Kuthur, Tanjore Taluk, was
-2 suspected of complicity in the
well known Tanjore Judgment
Forgery case and the Joint
Magistrate, Kumbakonam,
who held the ^{original} preliminary
Enquiry issued a warrant

for his arrest. Accused absconded,
and his property, both moveable
and immovable was attached
under Sec. 88 of the Code of
Criminal Procedure. The
moveable property is worth
about Rs 600 and is now in the
custody of the present Village
Munsif of Kuthur. The immovable
property consists of seven houses
and a vacant house-site worth
in all Rs 4,150, and dry and
wet lands measuring about
Acres 135 assessed at Rs 1240-10-9.
The lands are now under my
management and they have
been leased out for Fasli 1304
at a fixed money rent of
about Rs 5120.

5. In his Proceedings dated the 19th October 1894, the Joint Magistrate directed the moveable and immovable property under attachment to be sold and the sale proceeds to be credited to Government. The accused appealed to the Sessions Judge who modified the Joint Magistrate's order directing the sale of the property into one declining to restore the property to the appellant. Copy of this order is also enclosed. The property is now at the disposal of Government and I solicit instructions for its disposal with reference to P.O. dated 11th March 1890.

(* Copy enclosed)

which by Govt. sanction is necessary for sale of attached property
D. 20/10/94

No 454 Judicial.

6. The notice given me by the two minor sons of the accused is also enclosed and the Government Endorsement is herewith returned.

7. I have not seen Mr Sankarian's hypothecation deed. If it is valid and genuine (I have no reason to suspect otherwise) his claims must, I think, be admitted as the hypothecation had been made more than three years before the property was declared to be at the disposal of Government.

8. Lists of moveable and immovable property are enclosed for reference.

9. I may add that Kuthur Subbaraya surrendered on 25th June last.

and is now under enquiry
before the Joint Magistrate.
From what I have heard of the
progress of this enquiry it
seems doubtful if proof will
be now available to justify
trial. Of his complicity in the
offence no doubt is generally
entertained. The disposal of
his property follows by law on
his absconding, and has been
held correct.

I have the honour to be
Sir
Your most obt. Servant

Chowman
32/5/95
As Collector
& Dist. Magistrate

am
29/5/95

[G.
25.]

860-8-3-95.

DEPARTMENT.

C. No.

FOR ORDERS.

I should say we had better
ask the D.M. whether the man
has so far cleared himself
under S. 89 C.P.C. as to be
entitled to get the property (or
the proceeds thereof) back. He
should also be told to satisfy
himself as to the validity of
Sankaraya's claim. I can
see no reason to doubt it and
Sankaraya will probably admit
it, if asked. In that case, the
D.M. should satisfy Sankaraya
out of the proceeds of the property
in his hands (unless he gives it up
under S. 89). Also the two minor
sons of Sankaraya, I presume
they are entitled to their shares.
Also, the D.M. should deal with them
as with Sankaraya, after satisfying
the latter's claim. Perhaps, ask the
Adv. Genl. -

In the meantime, reply to
Sankaraya that the D.M. has
been told to investigate his
claim & that if all is found
correct to it will be met, if
Govt. does not restore the property
under S. 89 in case he must
look to Sankaraya. BN
29/5/95

Please see paras 4 & 5 of District Magistrate's letter
for account of the way in which the property
comes to be at the disposal of Govt.
The attached property consists of
(i) moveables worth Rs. 600
(ii) 7 houses & 1 house site worth Rs. 4,150
(iii) 135 acres of land resumed
at Rs. 1241 cleared for Rs. 5720 per
anna

The claims against this, in respect of
which suit notices have been received
are

A. By mortgage A Sankarish
Rs. 4500, principal
Rs. 270 interest accrued
and interest at 6% from April 1894

B. By the "next friend" of the defaulter
2 minor sons, who claims the
"whole property" or at least 2/3 of

2. The share of the minor sons is of
course liable to contribute to the
payment of the mortgage debt, their father
being manager of the family. They can
get the whole property as the order of

attachment has been upheld on appeal.

3. The Dist. Magr. has made no enquiry into the genuineness of these two claims. Submitted that he should be told to institute enquiries & report the result with his recommendation (a) as to whether the suits shld. be compromised (- & if so, on what terms) or defended, & (b) as to whether the property shd. be sold - in whole or in part - or retained under Govt. management.

D
24-4-55

The Dist. Magr. states that he never surrendered: he must have done so long before the expiry of the two years after attachment. Being a village magistrate and a Brahmin he has or will undoubtedly try having the Comr. under Section 89 C.C. I. : this may enable the Dist. Magr. to get out of any difficulties that may arise. There is no doubt as to the legality of the attachment if it was made as it should have been of the right title and interest of the absconder only.

May not the Dist. Magr. be asked if anything has been done or is likely to be done to recover the property?

C. J. K.

Defence of a suit

FOR ORDERS.

H. M.

For orders,

[G.
25
600-
X

DEPARTMENT.

C. No.

FOR ORDERS.

With ref. to H. M.'s direction that the Dist. Magr. should be called upon to report "whether the man has so far cleared himself and" & 89 Cr. P.C. is to be entitled to "get the property (or the proceeds thereof) back, attention is invited to Enclosures III & IV of the Dist. Magr.'s letter. Enclosure III is the joint Magr.'s order passed after calling on the accused to "show cause why his moveable" and immovable property under "attachment should be restored" under 89 Cr. P.C., & deciding against him vide paras. 9 & 11 of order. Enclosure IV is the decision of the Sessions Judge upholding the joint Magr.'s order in so far as it declined to restore the property.

to the accused.

2. There is thus no necessity to call for the proposed report. & the following order will perhaps suffice

Order 3 May 1895. No 910.

The Dist. Magistrate should make enquiries in order to satisfy himself as to the validity of MARRA's Santharichi claim, & in the event of its being established, should meet the demand out of the proceeds of the attached property.

2. As regards the claim of the minor sons the Advocate General will be requested to favour Govt with his opinion.

3. MARRA's Santharichi has already been separately informed of the instructions issued to the Dist. Magistrate.

Forwarded to
30/4/95

The Dist. Magistrate's letter (4/4) with notice from Santharichi addressed to himself (retd), the Govt. Solr, with enclosures is original & A of C. 1786.

The defect in this order is that it does not state how the property is to be disposed of; orders on this point can however be deferred till the Advocate General replies.

Letter under C.P.C.

5420

FOR ORDERS.

H.M.C.

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

189

READ AGAIN G.O., No.
189

DATED

CURRENT No.

ORDER TO C. No.

ORDER OF GOVERNMENT

LETTER OF GOVERNMENT

STATEMENT WITH DITTO.

APERS 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.