

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 948

Dated 8th May 1895

INDEXED.

[Despatch Abstract.]

ESTATE OF THE LATE ARUNACHELLA ACHARI.

Communicating to the Collector of Salem and the Inspector General of Prisons Government Solicitor's opinion regarding the rent due by the Jail Department to the defendants in the suit connected with the---.

The record

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	630		26-5-95				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	2601		25				
			14/7/95				
			13-7-95				

[6
9]
5,000-14-75

Current No. 1482.

Just

DEPARTMENT.

From

CS
Enclosure No. 822
13-4-95

Referred to the General Manager
Solicitor for opinion with
advice to paras 2 & 4
of the Supp. Genl's letter.

No.

Dated

Received

Enclosures

SS
11/4/95

(By order)
Colonel Davidson
As Under Secretary

SUBJECT.

To the Genl. Secy, Madras.
With papers in reply
when returned.
At.
5/4/95

TO BE RETURNED
FLY.

The less due

No. 1534

3

Ootacamund.

OFFICE OF THE INSPECTOR-GENERAL OF JAILS

Dated 21 March 1895.

From

A. G. CARDEW, Esq., M.A.,

INSPECTOR-GENERAL OF JAILS, Prisons.

To

THE

CHIEF SECRETARY TO GOVERNMENT,

SIR,

2 Enclosure.

With reference to G.O. 11th August 1894
N. 1931 Judicial, I have the honour to
-close for perusal and favour of return
a "Letter dated 13th March 1895, Ref. on N. 2
B and G, from the Collector of Salem, in
which that officer requests that inform-
-ation may be furnished as to the amount
of rent "due by Government" on this date
to the estate of the late Arunachella Asari

2. The answer to this question appears to
me clearly to be that no rent is due by
Government, so far as the Tail Department
is concerned to the estate in question. The
house which was rented of the late Arun-
-chella Asari was vacated by the Tail Dep-
-ment on the 31st March 1887. Under art.

14
of the Second Schedule to the Limitation Act. *XXIV 157*
7, read with section 4 of the Act, every
it for arrears of rent instituted after the
piry of 3 years from the date on which
arrears of rent became due shall be
dismissed, even "although limitation has
not been set up as a defence". In other
words, no arrears of rent is at all recog-
nizable by law after 3 years, and in the present
case just 7 years have elapsed since the arrear
accrued.

3. The monthly rental of the house in ques-
tion was Rs 30. The house was occupied from
1st May 1885 to the 31st March 1887. The only
payment of rent that can be traced is
sum of Rs 180, and it would thus ap-
pear that rent from 1st November 1885 to 31st
March 1887 or Rs 510 was never paid. On
an average population of 600 prisoners it will
be seen that this sum will amount to a
charge of nearly a rupee a head, and, if paid,
will raise the Contingent charges of the year
1895 by that amount. As the expenditure
rightly relates to 1885-1887, its incidence
on 1895 will be misleading.

4. The Government will observe that, under
section 470 of the Code of Civil Procedure, an
interpleader-suit may only be instituted by

5
by a stake-holder "for the purpose of obtain-
ing a decision as to whom the payment or
should be made or delivered, and of ob-
indemnity for himself." It seems clear from
these words that a person who, by the
of limitation, has already secured comp-
indemnity cannot institute such a suit.
The law would, it may be presumed, not
allow its forms to be made use of in
case in which no real dispute could arise,
for, whether the Government were
pay the arrears of rent to Arunachella's
nephew's wives or to his grandson, it would
merely be a present, or grant enforced
in any Court of law and made purely a
discretion. As, however, there does not seem to
be any reason for making a present of Rs 510
to these people, and as the provisions of Chapter
XXXIII of the Civil Procedure Code do not con-
-plate the insertion of such a matter in an
interpleader suit, I request the sanction of
Government to inform the Collector of Sa-
lem that, so far as the Jail Department is
concerned, nothing is due to any of the
defendants in the suit.

I have the honour to be,
Sir,
Your most obedient servant

A. G. Cardew
Inspector General of Prisons

JUDICIAL.

JAIL (1895) DEPARTMENT.

From

THE INSPECTOR-GENERAL OF PRISONS,

To

THE CHIEF SECRETARY TO GOVERNMENT.

Dated 21

Despatched

Received 24

Aug 25

No. 1534

ENCLOSURES. 2

Subject.

Requesting the sanction of Government to inform the Collector of Salem that, so far as the Jail Department is concerned, nothing in the case of rent is due to the defendants in the suit connected with the estate of the late Arumachella Aari.

In the

Court, Salem

original suit no

The Secretary of State for India }
in Council. } Plaintiff

1. Chinna Agilandammal

2. Chinna Arumammal —
widows of Sriaputhra Aari
residing at Salem

3. Rathnasawmy claiming the
the adopted son of the deceased
Arumachella Aari residing at
Salem.

Interpleader suit under Section 470 C.P.C.

The Secretary of State for India in Council
the above mentioned plaintiff states that

1. In May 1885 the Bangalow in Salem
used as the office of the Superintendent
of Police, Salem was leased to the Plaintiff
by Arumachella Aari of Salem.

a rent of Rs 50/- per mensem.

The lessee

JAIL

rom

TH

Co

The said Anna Chella stary died
or about the month of June 1885
leaving him surviving his nephew
brother's son) Ariaputhera stary the
husband of the 1st and 2nd defendants
there named.

The said Ariaputhera stary died shortly
after the death of the said Arumachella
stary and leaving the 1st and 2nd defen-
dants his widows but no issue him
surviving.

The plaintiff is informed and believes
that the 3rd defendant is the son of a
daughter of the said Arumachella stary
deceased and claims to be his adopted
son alleging that he was adopted in

the year 1886 by Peria Argiladammal
the widow of the said Arumachella stary
is under authority from him

The rent payable by the Plaintiff
which has accrued subsequent
to the

to the death of the said Arumachella
in respect of the said Bangalore has not yet
paid by the plaintiff owing to the uncertainty
as to the person entitled to receive the said

6. The 1st and 2nd defendants claim the
said rent as the widows of the said Aru-
-puthera stary deceased and as such the
representatives of the said Arumachella stary
deceased.

7. The 3rd defendant claims the said rent
as the adopted son and representative of the
said Arumachella stary deceased.

8. The Government of Madras on behalf of the
the plaintiff gave the defendants notice
to produce a decree of a Competent Court
or some other documentary evidence estab-
-lishing the right of the defendants respec-
-tively to receive the said rent but none
of the defendants has as yet done so.

9. The amount of rent now owing

plaintiff in respect of the said Bau-
low after deducting the cost of repairs
etc and the charges for the municipi-
al assessment is Rs —

Another building near the Central Jail
Salem was leased to the plaintiff in the
year 1884 by the said Chinnachella Chary
at a monthly rental of Rs 30 for the occupa-
tion of the Deputy Factor of the said Central
Jail and was given up by plaintiff in
the beginning of the year 1887. The amount
now payable by the plaintiff on account
of this building after deducting the
amount - already paid and the charges
for the municipal assessment is Rs —

The defendants respectively claim
the said sum of Rs — on the same
grounds as those on which they respect-
ively claim payment of the said sum
Rs — being the rent of the said
Bau-law used as the office of the Super-
intendent

Superintendent of Police.

12. The total amount of rent owing by
plaintiff in respect of the said two buil-
dings as heretofore mentioned is Rs
which sum is now paid into Court.

13. On the death of the said Chinnachella
Chary disputes arose as to the Successor
to his estate. His widow Peria Agilam
-dammal since deceased applied by No.
323 of 1885 on the file of the District Court
of Salem for a certificate of heirship to collect
his debts and a similar petition No P No.
325 of 1885 was presented by his nephew the
said Ariaputhra Chary.

14. During the pendency of such petitions
the said Ariaputhra Chary died and was
represented by his widows the 1st and 2nd
defendants in this suit.

15. The District Judge of Salem upon the

The lease due

630-26-3-95

14

800-10-7-94.

15

Salem Collector's Office

28th March 1895

Repon No. 505
From B. G. L.

Despatched on.....

G. STOKES Esq.,

Collr. & Dist. Magte. of Salem

To

The Secretary to Government, of Madras
Judicial Department,
Madras.

SIR,

In continuation of my letter

No. 630
26.3.95

No. 205
B. G. L. dated 13. 3. 95 I have the honor
to enclose herewith a copy of the de-
claration in the interpleader suit
to therein as amended by the Govern-
ment Solicitor, Madras.

* The figures the
referred to in para 2. The information referred to in para
from the Dept of
Prison & Police.
3 of my letter quoted above has now
been received.

As per
order no. 1482
refd to at above.

I have the honor
to be

Sir,

Yours most obedt. Servt.

Copied
31/3/95

X
1.4.

with 1 enclosure a copy of
plaint.

Thurappah
J. G. Collect

1895
Jud. Dept.
Encls. No. 1
1676

Department.

630 26.3.95

From the Collector

and District Magistrate,

Spatched on 1-4-95 Salem.

To

The Secretary to the
Government of
Madras
Judicial Department.

Dated 28th March 1895

Recd 3/4

Ref No. 505
Bt. 4.

Enclosure 1
Subject.

Informing that the Govern-
ment Solicitor has replied
to the reference about the
interpleader rent but not
the Inspector General of
Police and Prisons.

Where is C. 1482
Please. It has been disposed
Is await reply to

Ref. No. 822 Tudd

13-4-95

22-4-95

So. 630: 26 March 95

+ papers

Ct. N^o 1482/95.

Order
R

Recorded with the
remark that the D.M. should
remind the officers Insp. Genl.
of Police + Prisons for the necessary
information.

To D.M. Salem. B. to.

MR
20/4/95

Note.

Please see the linked current for Mr.
Carr's reply.

[G]
9
2,000-23-1-95.

Current No. 2120.

Judicial DEPARTMENT.

From The Govt. Solicitor
Madras.

No. 261

Dated 28th

Received 28th April 1895

Enclosures C. 1482 with enc. ret.

SUBJECT.

Forwarding his opinion regarding
the rent due by the Tail Dept. to the
defendants in the suit connected
with the Estate of the late Annachellu
Asari.

29/4
20/4

Cons

Ref. No. 822/95
+ papers

Ct.

1676
Ct. 1482/2120/95

In order. Order

to be taken by the Govt. solr.
will be com. to the J.S. Prisons +
of Salem with the intimation that in the
reported no rent is due to any of the
so far as the Tail Dept. is concerned
The plaintiff then requires amendment.

Read C. 1482, 1676, 8
Order 8 May 1895, No. 948.

The Govt. Solr's op.
will be communicated
the Collector of Salem
the J.S. of Prisons with
remark that the drafts for
information and guidance

The Govt. Solr. 25-5-95
The J.S. of Prisons (948) - 17 May C. 2120
The Colr. of Salem (948) - M.A. of C. 1482

Madras 26th April 1895-

From

Ernest Barclay
Government Solicitor
Madras

To

The Chief Secretary to Government
Cotacamund

Sir

1. I beg to acknowledge receipt of your endorsement dated 13th instant N^o 822 upon a letter dated 21st ultimo N^o 1534 from the Inspector General of Prisons to your address.

2. In paragraph 2 of his letter the Inspector General says that it appears to him that no rent is due by Government, so far as the Jail Department is concerned, to the estate of the late Arumachella Asari on the grounds that the house which was rented from him was vacated by the Jail Department on 31st March 1887 and that any suit for the recovery of such rent would now be barred under Article 110 of Schedule II of Act 15 of 1877. That such a suit is barred there is no doubt but, because the remedy by which the rent might have been recovered is now taken away by law, I am not prepared to go so far as to say that the rent is the less due.

3. Section 470 of the Code of Civil Procedure provides that, when two or more persons claim, adversely to one another, the same payment or property from another person who is a mere stakeholder and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or the property should be made or delivered and of obtaining an indemnity for himself. If therefore Government is ready to render the rent referred to by the Inspector General to the right owner, it appears to me that it is quite open to Government to file an interpleader suit in respect of that rent, notwithstanding that no suit to recover it from Government could be entertained and notwithstanding that, by reason of the Limitation Act, Government apparently may be in no actual need of indemnity. Unfortunately, I can find no decision in support of the Inspector General's contention nor, on the other hand, can I find any decision against it, nor any decision on the subject of Interpleader with reference to the law of limitation.

4. But, though I am not prepared to agree with the Inspector General as to the reasons for Government not being able to interplead in respect of the rent in question, I am of opinion that —
Government

Government cannot now interplead in respect of that rent, on another ground. Arunachella Asary the owner of the premises died in June 1885 and, on his death, disputes arose as to the succession to his estate. His widow Peria Agilandammal, since deceased, and his nephew, Ariaputhra Asary, respectively applied for certificates of ~~Her~~ship. Pending these proceedings, Ariaputhra Asary died and his widows, Chinnna Agilandammal and Chinnna Angammal, the 1st and 2nd defendants in the proposed interpleader suit represented him. On 10th April 1886 C. Agilandammal and C. Angammal obtained a certificate which however did not include rents accruing due after Arunachella Asary's death. The other claimant to the rent is Ratnamasari, and he claims as the adopted son of Arunachella Asary.

5. From the above facts it is, I think, sufficiently clear that the present claimants have been claiming the rent and adversely to each other for a period in excess of six years. The limitation Act does not expressly provide any period within which an interpleader suit must be brought, so that, such a suit would come under Article 120 of Schedule 2 to the Act, as a suit for which no period of limitation is provided elsewhere in the Schedule and, for such suits, the period allowed

is six years from the time when the right to sue accrues. In this case the right to bring the interpleader in respect of this rent accrued when the parties were litigating prior to the grant of the Certificate on 10th April 1886, or over nine years ago. It seems to me therefore that as regards the rent referred to by the Inspector General, an interpleader suit in respect of same would now be barred

6. I return the papers sent to me &

I have the honor to be
sir
Your obedient servant
Ernest Barker
Government Solicitor

UNDER SECRETARY
28 APR 86
PUBLICITY DEPT

UNDER SECRETARY
28 APR 86

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

189

RECEIVED AGAIN G.O., No.
189

DATED

CURRENT No.

ENCLOSURES TO G. 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.
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