

(1) Number of pages 8

(2) Date of repair 11. 7. 86

(3) Initials of the Referencer lamb

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Local

DEPARTMENT

G.O. No.	380	Press.
B.P. No.		Mis.
Dated	5. 3. 1878	1868
		197-

Not to be folded or roughly handled

No. 62. Read the following letter from the Magistrate of the Madras District, to the Chief Secretary to Government, Fort Saint George; dated Sydapet, 25th February 1868, No. 32.

I have the honor to forward, herewith, copy of plaints in Original Suits, Nos. 29 and 30 of 1866, on the file of the Civil Court of Chingleput, wherein the Court have included the Magistrate as supplemental defendant, and to request you will obtain the sanction of Government to my defending the suits at the public expense.

2. The subject matter of both the suits is one and the same, but preferred only by two different villagers, and the circumstances out of which they have arisen are briefly as follow.

3. In May 1866, a complaint was preferred to the Sub-Magistrate of Ponnary by one Moottoosawmy Moodelly, and certain other ryots of the villages of Medoor and Asanaboodoor, in the Ponnary Taluq, against the Shrotriendar of Veerangivadoo, in the same Taluq, and certain of his servants, to the effect that the latter had unlawfully, and contrary to usage, thrown up an anicut across a madagoo in the limits of Veerangivadoo, and thereby diverted the water from the channel, so as to diminish the supply to the Government villages of Medoor and Asanaboodoor.

4. The Sub-Magistrate took up the case as one of mischief under Section 430 of the Indian Penal Code, but subsequently considering that it was one which required disposal under Chapter XXII of the Criminal Procedure Code, as it was in fact a water dispute, referred the same for the disposal of the then Magistrate, Mr. Cockerell, who tried the case under that Chapter.

5. Mr. Cockerell being in the neighbourhood took an opportunity to inspect the disputed spot, and as from that inspection, and the evidence adduced on both sides, he was led to the opinion that the anicut, the restoration of which is now sought for by the plaintiff, had not existed previously, and that in the pymash account itself there was no mention made whatever of such a work, though the madagoo itself was mentioned. He fined the parties, and ordered the removal of the anicut at once, which was accordingly done by the present plaintiffs themselves.

6. Mr. Cockerell having thus acted in good faith, and in his judicial capacity as the Magistrate of the district, he was clearly not liable to Civil action under Act XVIII of 1850; I have, therefore, put in that plea in the written statements which I propose filing, and beg the Government will permit my doing so. A copy of Mr. Cockerell's decision in the case is herewith forwarded for the perusal of Government.

7. The time for filing the written statements in both suits will expire on the 1st March next.

DRAFT of a written statement proposed to be filed by E. G. R. FANE, Esq., Collector and Magistrate of the Madras District, and the Supplemental Defendant in O. S. No. 29 of 1867, on the file of the Civil Court at Chingleput.

The supplemental defendant begs to submit that the decision which the plaintiffs allege as having entailed serious loss on them was passed by Mr. Cockerell in good faith, and in his judicial capacity as Magistrate of the district, and is therefore not liable to Civil action under Act XVIII of 1850, and therefore prays that the suit, so far as he is concerned, may be dismissed, and the cost recovered for him.

(Signed) E. G. R. FANE,
Magistrate.

Draft of a written statement proposed to be filed by E. G. R. FANE, Esq., Collector and Magistrate of the Madras District, and the Supplemental Defendant in O. S. No. 30 of 1867, on the file of the Civil Court at Chingleput.

The supplemental defendant begs to submit that the decision which the plaintiffs allege as having entailed serious loss on them was passed by Mr. Cockerell in good faith, and in his judicial capacity as Magistrate of the district, and is therefore not liable to Civil action under Act XVIII of 1850, and therefore prays that the suit, so far as he is concerned, may be dismissed, and the cost recovered for him.

(Signed) E. G. R. FANE,
Magistrate.

File No. 96 of 1868.

Finding.

The complaint is set forth in my proceedings, which has called up the parties and caused them to appear before me this day. It is that across a madagoo, which passes through the Shrotriem village of Veerangivadoo, in the Ponnary Taluq, and supplies with water during the rains the tanks in the villages of Asanaputhur, Vangivalam, Tirupalavanam, an anicut has been raised at Veerangivadoo, which prevents water from going down the madagoo to the tanks in the other villages. The anicut, it is said, was raised on the 7th of May by the Shrotriadar of Veerangivadoo, and completed in the day by a party of workmen, 300 in number. The parties interested in the free passage of water in the madagoo would have prevented the construction of the anicut, but the body of men employed on the work was too great for them to resist. They preferred, therefore, to lay their grievances before the authorities. They reported them without a moment's delay to the Tahsildar, that is to say, while the anicut was being built. The Tahsildar made his inquiry. His record, and two Arzies he wrote to this office, show he was very doubtful what to do and wanted the Magistrate to take up the case. The Shrotriadar, it is to be observed, is a rich and very influential person. Some of the parties concerned came to me at Sydapet. As I was about to make a tour in the north of the district, I said I would visit the spot in person and dispose of the case. I did visit it and found reason to suppose that, unless I took up the case and decided it, the indignation of the parties injured would effervesce and a breach of the peace happen. I arrived at this conclusion in consequence of the excitement I witnessed. I have examined the pymash accounts, and I find from them that the madagoo is pymash, and that no anicuts are mentioned as having existed in it. The Shrotriadar's people say the anicut has always been in the madagoo, but they admit they raised it on the 7th of May. When I was on the spot I understood clearly they had so raised it from a height of 1 to 1½ feet at which it stood previously; but now they say that before the additions were made the height was 3, or, as the witness whom they put forward states, 4 or 5 or 7 feet. The dam is now 12 to 14 feet higher, and is very substantial and strong. No water can pass down the madagoo in consequence of it. No floods would remove it apparently. From a personal inspection I can say only it exists, and that the outside is all new. I cannot say whether a small bund is covered by additions. But I imagine no anicut has hitherto been on the spot of any description, simply because a small dam would serve no purpose and could not obstruct water in a manner to make it available for the wet lands above. This is a question of levels and depth, and will be understood by a reference to the sketch in the record drawn by me. It is a question, too, of evidence, and the statement made by the witness for the defence is so loose and unsatisfactory that no weight whatever can be attached to it.

I consider the erection of the anicut a most unjustifiable aggression, and calculated to do great injury to the parties having land below its site.

I direct the defendant to remove it forthwith under Section 32 of the Criminal Procedure Code, within ten days from this date.

5th September 1868.

(Signed) J. R. COCKERELL,
Acting Magistrate.

(True Copy)

(Signed) E. G. R. FANE,
Magistrate.

VALUE OF SUIT, RUPEES 1030.

TO THE ACTING CIVIL JUDGE OF CHINGLEPUT.

Plaintiffs.

1. Sundaramier, son of Prabala Subbaramier, cultivator, residing at Medoor, Ponnary Taluq.
2. Appiah, son of Suriah.
3. Vijayapur Ganesa Row, residing at No. 20, on the west side of Yekambrapuram Agraharam, Peddunaik's Pettah, Black Town, Madras.
4. Strinivassa Pillai, son of Venkatakistina Pillai, residing at the above-mentioned Medoor.
5. Kullappah Mudali, son of Chenchurama Mudali, residing at do.
6. Kommu Mudali, son of Kannapah Mudali, residing at do.
7. Virasawmy, son of Yekambra Mudali, residing at do, represented by Vakeel N. Ramakistner.

Defendants.

1. Muttusawmy Mudali, father's name not known, residing at Asanaboodoor, Ponnary Taluq.
2. Muniappah Mudali, (father's name not known,) residing at do.
3. Mavalanga Mudali, (father's name not known,) residing at do.
4. Subramaniya Mudali, (father's name not known,) residing at do.

This plaint is filed under Section 26 of Act VIII of 1859, and the prayer of the plaintiffs is that a decree may be passed by the Court, permitting the restoration of an anicut, valued at Rupees 30, and which yields an annual income of Rupees 1000, to the said Medoor, the same having been removed in pursuance to the District Magistrate's decision, dated 5th September 1866, and cancelling the said decision of the Magistrate. The total value of the suit is thus Rupees 1030.

Questions.

1. The madagoo (spring channel) rises in the village of Kattavur, and in its course irrigates many other villages besides that of plaintiffs. The water from the madagoo is taken to each village by means of dams thrown across it within the limits of each village; and, moreover, it is usual for the ryots of the said villages to execute any repairs that the dams might require from time to time at their own expense. Thus the right of the plaintiffs to draw water from the madagoo is a long standing one.

2. The anicut which irrigates the Shrotriem village of Veerangivadoo, as well as Medoor, the village of the plaintiffs, having fallen into disrepair, some repairs were executed for it as usual by the Shrotriadar, &c., of Veerangivadoo on the 7th May 1866.

3. The second defendant and the others instigated the first defendant to present an unjust complaint to the 2nd Class Sub-Magistrate of the said Ponnary Taluq, requesting that the above-named anicut should be removed; and the District Magistrate, depending on the report of the Sub-Magistrate, and without insti-

Answers.

1. The supplemental defendant knows nothing of the various anicuts referred to in this paragraph. It is for the plaintiffs to prove the statement therein contained. The late Acting Magistrate, Mr. Cockerell, disposed of the water-dispute between plaintiffs, the Shrotriadar, the villagers of Veerangivadoo, and defendants, the ryots of Medoor and Asanaboodoor, both Government villages, after a personal inspection of the locality. From the evidence adduced on both sides, and from the said inspection, Mr. Cockerell came to the conclusion that no anicut whatever had existed previously, and that the one the plaintiff contended was an old one was no such thing. He, therefore, ordered its immediate removal by the plaintiffs, which the latter accordingly did. The dispute was settled under Chapter XXII of the Criminal Procedure Code.

3. The supplemental defendant is not aware through whose instigation the complaint was made, neither does it signify. He admits that the Sub-Magistrate of Ponnary did refer the case to the then Acting Magistrate, as he thought he was not competent to dispose of it himself.

tuting a proper inquiry into the case, passed a decision on the 5th September 1866, directing the dam to be removed within ten days, as being superfluous. The decision is at direct variance both with law and equity; the villagers of Veerangivadoo accordingly removed the dam without giving any notice to the plaintiffs. This is extreme injustice.

4. This removal of the anicut, in pursuance of the said decision, has diminished the usual supply of water to such a degree as to entail on the plaintiffs a clear loss of 1000 Rupees a year.

5. The plaintiffs, therefore, pray that the Court may pass a decree, permitting the restoration of the said anicut, valued at Rupees 30, and which yields an annual income of 1000 Rupees, to the said Medoor village, and cancelling the District Magistrate's Order, dated 5th September 1866, according to which the dam in question was removed.

The value of the suit is Rupees 1030.

(True Translation).

(Signed) E. G. R. FANE,
Magistrate.

VALUE OF THE SUIT, RUPEES 1035.

TO THE CIVIL COURT, CHINGLEPUT.

Plaintiffs.

1. Gajanana Mudali, adopted son of Teruvengada Mudali, Shrotriendrar of Naga-chery, Ponnary Taluq.
 2. Commoo Mudali, residing at Veerangivadoo, a Shrotriendrar village of the said Taluq, and Mirassidar of the said village.
 3. Muniappa Mudali, residing in the said village.
- Represented by M. Cooposawmy Naick,
Court Vakeel.

Defendants.

1. Muttusawmy Mudali, residing at Asanaboodoor, in Ponnary Taluq, (father's name not known), cultivator by profession.
2. Muniappah Mudali, residing in the said village, (father's name not known).
3. Mavalings Mudali, residing in the said village, (father's name not known).
4. Subramaniya Mudali, residing in the said village, (father's name not known).
5. Soobaroya Mudali.
6. Aroonachala Mudali.

The plaint is filed under Section 26 of Act VIII of 1839, and the prayer of the plaintiffs is that a decree may be passed, permitting the restoration of an anicut, valued at Rupees 30, and which yields an annual income of Rupees 1000 to the said Veerangivadoo, the same having been removed by the Magistrate's Order, dated 5th September 1866, and cancelling the said decision of the Magistrate; and directing the defendants to pay the plaintiffs Rupees 55, 25 being the cost incurred for removing the anicut, and 30 the estimated cost of restoring the same. The total value of the suit is thus Rupees 1035.

Questions.

1. The madagoo (spring channel), shown in the accompanying plan, rises in the village of Kattavur, and in its course irrigates many villages besides that of the plaintiffs. The water from the Madagoo is taken to each village

Answers.

1. The supplemental defendant knows nothing of the various anicuts referred to in this paragraph. It is for the plaintiffs to prove the statement contained. The late Acting Magistrate, Mr. Cockerell, disposed of the water-dis-

by means of dams thrown across it, within the limits of each village; and, moreover, it is usual for the ryots of the said villages to execute any repair that the dams might require from time to time at their own expense. Thus the right of the plaintiffs to draw water from the madagoo is a long standing one.

2. The dam thrown across the madagoo, within the limits of Veerangivadoo, the village of the plaintiffs, having fallen into disrepair, the plaintiffs, according to custom, made some repairs for it on the 7th May 1866.

3. But the second and other defendants instigated the first defendant to prefer a complaint to the 2nd Class Sub-Magistrate of the said Ponnary Taluq, requesting that the dam might be removed; and the District Magistrate depending on the report of the Sub-Magistrate, and without instituting a proper inquiry into the case, passed a decision on the 5th September 1866, directing the dam to be removed within ten days as superfluous. The decision, enclosed herewith, is opposed both to Law and Regulations. In obedience to this decision, however, the dam has been removed by the plaintiffs.

4. This removal of the long standing dam has diminished the supply to the village of the plaintiff to such a degree as to entail on them a clear loss of 1000 Rupees a year.

5. The plaintiffs, therefore, pray that a decree may be passed, permitting the restoration of the bund, valued at Rupees 30, and yielding an annual income of Rupees 1000, to the plaintiffs' village of Veerangivadoo, cancelling the decision of the District Magistrate, dated 5th September 1866, according to which the said anicut has been removed; and directing the defendants to pay the plaintiffs Rupees 50, 30 being the estimated cost of restoring the bund, and 25 the cost incurred for removing it.

(True Translation).

(Signed) E. G. R. FANE,
Magistrate.

No. 63.

ORDER THEREON, 5th March 1868, No. 380.

The Governor in Council sanctions the defence of the two suits in question at the public cost in the first instance. It will be determined, after judgment is given, by whom the costs, if adjudged against Government, are to be borne.

U. S. DEPARTMENT OF JUSTICE

Decided 1862 (24th)

(No. 280.)

Proceedings of the
Federal Government
Decided 5th March 1862.
Of A. 1028/69.