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Judicial Dept

C.O. NO 771

Dt-27-4-1874

A.K

171

*Proceedings of the Madras Government, Judicial Department,
27th April 1874.*

Read the following papers:—

No. 185. Petition from JAYANTI KRISTNAYYA, CHENDRAYYA, and
VENCAYYA, inhabitants of Berhampore.

ABSTRACT.—State that, in satisfaction of the decree amount of Suit No. 389 of 1861, on the file of the District Munsif of Teckalli, against the petitioners, who were the defendants, they paid into the Court Rupees 272-11-0; that the amount has been, however, credited to Government as the plaintiff failed to obtain its payment within two months from the date of the notice published in the District Gazette for the purpose; that the plaintiff filed a fresh suit against the petitioners for the same and on special appeal to the High Court obtained a judgment in his favour (copy of which is herewith submitted); that under it petitioners' land has been made over to the plaintiff as the defendants (the petitioners) were unable to pay the amount again; that thus petitioners have been deprived of their land as well as their money, deposited in the Court for payment to the plaintiff.

Pray, therefore, that a cheque for Rupees 272-11-0, deposited by them and credited to Government, may be favoured them on the Bank at Berhampore.

No. 301.

Referred to the District Judge, Ganjam, for report.

(By order.)

Fort St. George,
23rd February 1874.

(Signed) J. STURROCK,
Acting Under Secy. to Govt.

No. 185-A. From J. G. THOMPSON, Esq., District Judge of Ganjam, to the
Hon. D. F. CARMICHAEL, Acting Chief Secretary to Government, Fort
St. George, dated Ganjam, 4th April 1874, No. 4.

With reference to G. O., dated 23rd February 1874, No. 301, calling for a report in the matter of the petition presented to the Government by Jayanti Kristnayya and two others for refunding to them Rupees 272-11-0, being the amount connected with Suit No. 389 of 1861, on the file of the District Munsif's Court of Teckalli, I have the honour to report that in the said Suit No. 389 of 1861 Pirukhana Siwaravu Pantulu was plaintiff and Jayanti Kristnayya and three others were defendants, of whom the first, third, and fourth defendants are the present petitioners: both parties filed a Razinamah on 6th January 1862.

2. The Razinamah, among other things, states that defendants paid to plaintiff's Pleader Rupees 67-14-8 at the time of executing the Razinamah and promised to pay the balance of Rupees 200 in three instalments with interest at one per cent. per mensem, viz.:—

Rupees	66-10-8	on	31st	January	1862.
"	66-10-8	on	"	"	1863.
"	66-10-8	on	"	"	1864.
Total...	200	0	0		

It provides also that if defendants would fail to pay money as aforesaid the land mortgaged in plaint bond was to become the property of the plaintiff.

*Proceedings of the Madras Government, Judicial Department,
27th April 1874.*

3. No decree was passed according to the Razinamah, but, the defendants having failed to make payments as agreed to in the Razinamah, plaintiff, on his application for execution of the Razinamah, was put in possession of the land by the District Munsif. Against these proceedings the defendants appealed, and the Munsif's order was reversed by the Civil Court on the ground that no decree was in execution and that the terms of the Razinamah, as such, could not be enforced. Against this order of the Civil Court the plaintiff appealed to the High Court, who ordered that plaintiff could bring a fresh suit.

4. In the meantime, i. e., on the 28th October 1865, defendants paid into the Munsif's Court Rupees 272-11-0, being the amount of mortgage-debt with interest due to plaintiff, and obtained a receipt. The amount having remained in deposit for a long time without being received or claimed by the plaintiff the Munsif issued a notice in the District Gazette declaring that unless within two months from 17th February 1866, the date of the notice, the amount aforesaid, among others, be taken by the parties concerned the amount would be carried to the credit of the Government. Still there having been no claimant the Munsif carried the amount to the credit of Government on the 25th April 1866.

5. Subsequently the plaintiff instituted Suit No. 46 of 1867 in the Munsif's Court to recover the land with produce and costs. The Munsif dismissed the suit. The plaintiff having appealed the Civil Judge confirmed the Munsif's decree. Then on appeal the High Court reversed the decrees of the lower Courts and passed a decree on the 17th June 1870 directing that the land be delivered over to plaintiff unless within three months from date of their decree the defendants pay the amount of the mortgage-debt. The defendants failed to pay the debt within the time allowed. Plaintiff applied for execution of the decree: the defendants objected on the ground that they had long ago paid the money into Court, and asked the Munsif to get the money back from Government and give it instead of the land to the plaintiff. The Munsif held that the defendants themselves were to blame in not recovering the money in good time, and he ordered that the land should be delivered to the plaintiff.

In M. P. 708-72 the defendants appealed to this Court, and on 25th January 1873 this Court thus disposed of the petition:—

Digumarti Venkataramayya (defendant's Pleader) argues that the direction of the High Court "is that within three months the defendants should pay to the plaintiff that particular sum which they had deposited, and no other sum!" and he argues that, as that particular sum had already been credited to Government, it was impossible that the defendants could get it, and that consequently the plaintiff must go unpaid! Yet he holds that the object of the High Court was to protect each side from loss!

"He says that when the High Court passed their order plaintiff knew that the money had been credited to Government and that plaintiff was bound then to bring the fact to the notice of the High Court. When asked why it was not equally the duty of the defendants he says that the defendants then did not appear. Possibly that was their own affair.

*Proceedings of the Madras Government, Judicial Department,
27th April 1874.*

"Whatever may be the meaning of the directing part of the order it is certain that in earlier parts of it the High Court declared that the deposit was not to bar the plaintiff's right to foreclosure though it was to bar his right to interest.

"The appeal must be dismissed with costs."

6. In the above petition the defendants did not ask for a refund of the money in question.

7. The Government Order under reply and its enclosures are herewith returned.

No. 186. ORDER THEREON, 27th April 1874, No. 771.

On consideration of the circumstances stated the Governor in Council directs the refund of Rupees (272-11-0) two hundred and seventy-two and Annas eleven to the petitioners.

2. The petitioners will be informed accordingly.

(True Extract.)

Acting Chief Secretary.

To the District Judge of Ganjam.
„ Accountant-General.
Endorsement to the Petitioner.

Exd. A. S. Rodgers.

1.901
26/1/74
4/2

72/3

The Right Honorable
the Governor in Council
Madras.

May it please your Lordship to take the following
Wages, presented by Jayanti Kristnaya, Jayanti-
Chendraya, & Jayanti Venkaya, inhabitants of
Perampur, into your Lordship's benign Considera-
tion.

In suit No 389 of 1861 on the file of the Dis-
trict Court of Secchali, the Plaintiff was Per-
ukhava Sevaram Puculake and we were Defendants.
We, in conformity with the Proceedings of the Dis-
trict Court, dated 17th October 1865, paid to the
said District Court on the 28th October 1865
Rs 272-11-0, being the amount due for & secured
in favor of the Plaintiff and received an acquittance.

It was published in the District Gazette that
the Plaintiff should come and take the aforesaid
sum

RECEIVED
5 374
J.G. 1883

It also that if Defendants would fail to pay money

JUDICIAL
THE DISTRICT JUDGE OF CANJIAN,
Secchali.
C.O. 2744 of 1874, No. 771.
APRIL
1883.

Sum within two months from the 26th February 1866. The Plaintiff not having presented himself before the Court by the prescribed time, the District Munsiff's Court of Secunderabad issued a Proceedings dated 25th April 1866 to the effect that the sum in question should be credited to Government and sent the sum to be dealt with accordingly.

Whereon the Plaintiff brought a new suit against us for the same land and the High Court, on an appeal being made to it, passed a decree on the 17th June 1870 to the effect that the right to the sum credited to Government should belong to us and that we should reclaim and pay the sum to the Plaintiff within 3 months from the date of the decree.

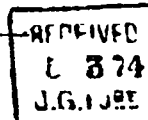
We were unable to pay the sum to the Plaintiff within 3 months, as

99/4
credited to Government and the Court, in consequence, put our land in possession of the Plaintiff. It is not lawful that the sum we paid to the Plaintiff should be credited to Government. As the sum was not paid to the Plaintiff, our land, which is of great value, was made over to him. It is illegal that we should be deprived of both our money and land. As it is lawful for us to reclaim our sum, we beg to be allowed to intimate the same to Government. According to the decision of the High Court, the right to the sum credited to Government belongs to us.

We, therefore, with due deference beseech your lordship to be gracious enough to favor us with a cheque on the Bank of England for the said sum of Rs 272-11-4 & return the enclosures (1) D. Gazette, d/ 21st February, 1865 (2) The original receipt (3) Copy of the Proceedings of the Munsiff's Court, dated 25th April 1866 (4) Copy of the decision of the High Court. 18th January 1874.

Respectfully,
[Signature]

W. V. S. S. S. S.
[Signature]



h2. 4/5

Government of Madras.
Judicial DEPARTMENT.

Petition No. 304 of 1874.

From Jayanti Kintanayya,
Chindrayya Kintanayya, &c. &c.
Occupation. inhabitants of

Village.

①

Talook.

District. Berhampur

Dated

Received 26th Jan'y 1874

Enclosures 4

Abstract.

State that in the
satisfaction of the decree
amount of Rs 389 of 1861 in the
files

is herewith submitted) that
 under its petros' land had
 been made over to the Plain
 tiff, as the Defts (the petros)
 were unable to pay the
 amount again; that
 thus petros have been
 deprived of their land
 as well as their money,
 deposited in the Court
 for payment to the Plain
 tiff.

Pray, therefore, that
 cheque for Rs 272-11 -
 deposited by them & credit
 to Court, may be favour
 them in the Bank at
 Berhampore.

RECEIVED
 5 3 74
 JG 1000
 B. 1. 84/5

For deposit
 232 Subm. 1974
 3374
 By order
 J. M. 11
 J. M. 11
 J. M. 11

7

Deposited to the Court for payment

Rs. 968/4

file of the 8th Division
 diff. of Teekhal, as
 against the petes, whom
 the defendants, they paid
 into the Court Rs 272-11-0,
 that the amount had
 been however credited
 to Court as the Plaintiff
 failed to obtain its
 payment within two
 months from the date
 of the notice, published
 in the 8th Gazette for
 the purpose; that the
 Plaintiff filed a fresh
 suit against the petes
 for the same, and on
 special appeal to the
 High Court, obtained
 a judgment in his
 favour (copy of which
 is

From,

1861

J. B. Thompson Esquire,
 District Judge of

Gangam District Court
 Dated 6 April 1874 N^o 4
 Sent 10th April 1874 Encl. 1

Gangam

Secy. Chief Secretary to Government,
 Judicial Department,

Sir,

Madam.

With reference to Government order dated 23rd February 1874 N^o 301
 calling for a report in the matter of the petition presented to the Government
 by Jayanti Krishnayya and 2 others for refunding to them Rs 272-11-0
 being the amount connected with suit N^o 389 of 1861 on the file of the District
 Munsif Court of Teekhal, I have the honor to report that in the said
 suit N^o 389 of 1861 Binkhana Sivarava Pantulu was Plaintiff
 and Jayanti Krishnayya and three others were Defendants of whom
 the 1st, 3rd and 5th defendants are the (present petitioners). Both parties
 filed a Razinama on 6 January 1862.

2. The Razinama among other things states that Defendants paid to
 Plaintiffs' pleader Rs 67-11-5 at the time of executing the Razinama and
 promised to pay the balance of Rs 400 in three instalments with interest
 at 1 per cent per mensem viz:-

Rupees 66-10-8 — on — 31st January 1862.

Rupees 66-10-8 — on — " — 30 — 1863.

Rupees 66-10-8 — on — " — 30 — 1864.

Total Rupees 200-0-0

It provides also that if Defendants would fail to pay money

as aforesaid, the land mortgaged in Plaintiff bond was to become the property of the Plaintiff.

3. A decree was passed according to the Kaminama, but having failed to make payments as agreed to in the Kaminama, his application for execution of the Kaminama was put in possession.

appealed and the Munsiff's order was reversed by the Civil Court on the ground that no decree was in execution and that the terms of the Plaintiff's appeal could not be enforced. Against this order of the Civil Court, Plaintiff appealed to the High Court who ordered that Plaintiff bring a fresh suit.

11. In the meantime i.e. on 28th October 1865 Defendants had Munsiff's Court Rs 272-11-0 being the amount of mortgage interest due to Plaintiff and obtained a receipt. The amount having been in deposit for a long time without being received or claimed by the Plaintiff, the Munsiff published a notice in the District Gazette declaring that unless within two months from 17th February 1866, the date of the notice, the amount was claimed by the parties concerned, the amount was to be carried to the credit of Government. Still there having been no claim, the Munsiff carried the amount to the credit of Government.

1366. 5. Subsequently the Plaintiff instituted suit No 6 of 1867 in Court to recover the land with interest and costs. The Munsiff decreed in favour of the Plaintiff, but the Civil Judge confirmed the decree. Then on appeal, the High Court reversed the decrees of

Courts and passed a decree on 17th June 1870 directing that the land be delivered over to Plaintiff unless within three months from date of their decree the Defendants pay the amount of the mortgage debt. The Defendants failed to pay the debt within the time allowed. Plaintiff applied for execution of the decree: the Defendants objected, on the ground that they had deposited the money with the Government, and asked the Court to order the land to be delivered to them.

From Government, and give it instead of the land to the Plaintiff. The Court held that the Defendants themselves were to blame in not recovering the money in good time: and he ordered that the land should be delivered to the Plaintiff. In N. No. 708 of 1872 the defendants appealed to this Court: and on 25th January 1873 this Court thus disposed of the petition:-

Dignamarti Venkataramayya [defendants' pleader] argues that the direction of the High Court is that within three months the Defendants should pay to the Plaintiff that particular sum which they had deposited, and not other sums! and he argues that as that particular sum had already been deposited to Government, it was impossible that the Defendants could get it; - and that consequently the Plaintiff must go unpaid! Yet he holds that the object of the High Court was to protect each side from loss!

He says that when the High Court passed their order, Plaintiff knew that the money had been credited to Government, and that Plaintiff was bound then to bring the fact to the notice of the High Court. When asked why it was not equally the duty of the Defendants, he says that the Defendants then did not appear. Possibly, that was their own affair. Whatever may be the meaning of the directing part of the order, it is certain that in earlier parts of it the High Court declared that the

deposit was not to bar the Plaintiff's right to foreclosure, though it was to bar his right to interest.

The appeal must be dismissed, with costs.

6. In the above petition the Defendants did not ask for a refund.

we reply and return.

I have the honor to be
Sir,

Your most Obedient Servant

J. M. Munn
Judge--

P. M. Munn

Govt. District Judge
of Ganjam
Dated 11th April
1874
10th Decr. 6 1874
Reporting on the petition
presented by the
Defendants & 2 others for
refunding Rs 272-11-0
being the amount
conceded with 1/2
of Rs 544 of the
Defendants' fund--

2/5

Judicial Department

PROCEEDINGS of the MADRAS GOVERNMENT.

Read the following letter from the

District Judge of Ganjam,
dated 11th April 1874, No. 186.

186 Order therein, Octacomm, 27th April 1874, No. 186.

In consideration of
the circumstances stated
the Governor is pleased to
order the refund of Rs
272-11-0, two hundred and
seventy rupees and eleven
annas, to the Petitioner.
The Petitioner will
be informed accordingly.

P. M. Munn, District Judge of Ganjam
Dated 11th April 1874
Para 1 to the Petitioner as an Subordinate
in the order of the

Recd: 21/4/74

77/9

1877
Bout. of 1877 & 1878.

Judicial

V

To the Hon. Secy. of the Interior.

Dated 27 May
Recd.

1877, No 77.

Nos. 43-0.

Unit on the bill & the
the same as the bill.

- The report of No 27-119
by the National and
the other, in connection
with the bill, and the