M.R.O. 1—77,000—8-6-37.

(1) Number of pages

(2) Date of repair

(3) Initials of the Referencer

MADRAS RECORD OFFICE.

Government of Madras.

Public Works DEPARTMENT.

G.O. No. 442, Press Mis.
353-254
Dated 15—2—1867.

Not to be folded or roughly handled

(1)

Proceedings of the Madras Government, Public Works Department,
15th February 1867.

No. 253. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Department Public Works, dated Kcelapalur, 30th January 1867, No. 1,286:—

Enclosure 1. As directed in G. O. No. 123, dated 14th instant, I have the honor to forward a copy of the Judgment and of the Decree by the Civil Judge at Trichinopoly on the Original Suit regarding the proprietorship of the Rock Citadel Wall.

—

DECREE.

ORIGINAL SUIT No. 3 of 1865.

In the Civil Court of Trichinopoly.

Present.—Æ. R. McDONELL, Esq., Civil Judge.

(L. S.)

Plaintiff.	*Defendants.*
Manunathumbiran Andna Karter of the Thayamanswamy Temple in the Rock Fort of Trichinopoly.	1. W. C. Palmer, Executive Engineer, Trichinopoly. 2. Maistry Moonisami Naick, Trichinopoly.
Vakeels.	
Veeraragavier and Kristnama Chariyaur.	P. Subbier, Vakeel for 1st Defendant.

1. This suit was instituted to recover, from the defendants, Rupees 999, being the value of certain granite stones which they had illegally removed, these stones being the property of the Pagoda.

2. The Civil Judge dismisses the plaintiff's claim with all costs.

	RS.	A.	P.
To be paid to 1st Defendant by Plaintiff.			
Value of Stamp papers used for statement, &c.	3	8	0
Peon's batta	0	4	0
Vakeel's fee	49	14	9
	53	10	9
To be paid to 2nd Defendant by Plaintiff.			
Peon's batta	0	4	0
To be borne by Plaintiff.			
Value of Stamp papers used for plaint, &c.	53	0	0
Peon's batta	1	0	0
Vakeel's fee	49	14	9
	103	14	9

Given under my hand and the seal of the Civil Court of Trichinopoly this 5th December 1866.

The period for preferring an appeal is ninety days from this date.

(Signed) Æ. R. McDONELL,
Civil Judge.

not the property of the Government —

the

JUDGMENT.

ORIGINAL SUIT No. 3 of 1865.

In the Civil Court of Trichinopoly.

Present.—Æ. R. M.DONELL, Esq., Civil Judge.

1. This suit was instituted to recover from the defendants Rupees 900, being the value of certain granite stones which they had illegally removed, these stones being the property of the Pagoda.

2. In the plaint it is stated that the plaintiff, as the "Anilna Karter" of the Thayumanaswamy Temple in the Rock Fort, sues for the value of these stones, which the defendants removed and carried away from the wall which surrounds the rock, and that he prays for a decree prohibiting the defendants from further interfering with the walls, which he asserts are the property of the pagoda, being from time to time kept in repair from the Pagoda funds, and that this wall is not the property of the Government.

3. The 1st Defendant, Captain Palmer, who was then Executive Engineer in this district, in his written statement denies the plaintiff's title to bring this suit, at the same time maintaining that the wall in dispute does not belong to the Pagoda, but forms a portion of the fortification constructed for the Military defence of Trichinopoly, and as such the property of Government; that this wall was never repaired from Pagoda funds, but when such repairs were needed, they were carried out under estimates prepared by the Department of Public Works, and at the expense of the State; that as this citadel wall was in a dilapidated state, the removal of these stones was ordered to prevent them from falling and causing injury.

4. The 2nd defendant was *ex-parte*. Points were recorded.

5. Plaintiff filed nine documents, from A. to I., and examined six witnesses.

6. First defendant filed twenty-four documents, numbered 1 to 24, and examined three witnesses.

7. This suit was originally filed in the Court of the District Moonsiff of Conad, but under Order No. 501, 25th January 1865, No. 240 of the Proceedings of Government, in the Department of Public Works, the Collector of this district requested it might be called up and placed upon the file of this Court, under the provisions of Clause VI., Act VIII. of 1859, and this Court ordered accordingly.

8. Of the six issues recorded, two are very important, and on them the whole case turns, viz.,

I. Whether the wall in dispute belongs to the Pagoda or to the Government?

II. Whether the plaintiff has any title to bring this suit?

9. By the evidence of plaintiff's witnesses, it is proved that the plaintiff is the principal Stalather of the Pagoda; that he has the management of the Maniem lands attached to the Pagoda; and that from the proceeds thereof, he defrays the expenses of two poojahs a day; the Civil Judge is therefore of opinion that the Thumberan has full authority and title to institute suits for any claims referred on behalf of this institution.

10. With regard to the other point, viz., that the disputed wall is Pagoda property, the Civil Judge observes that the plaintiff has failed most signally to adduce any satisfactory evidence either oral or documentary.

11. The Civil Judge has visited the Pagoda and the disputed locality on several occasions, and a brief description of it here will not be out of place.

12. The Pagoda building in which are the idols, sacred rooms, Muntapums and Stambams, is situated on the apex of the Trichinopoly Rock, some four hundred feet above the level of the surrounding plain; near the base of this rock, and surrounding it are streets and a citadel wall known as the inner fort wall, in contradistinction to the outer fort wall, built near the moat which encircles the fort; plaintiff claims the wall (the inner wall) as Pagoda property, and objects to the stones of this wall having been made use of for Government purposes.

Proceedings of the Madras Government, Public Works Department, 15th February 1867.

13. In support of his plea, the plaintiff filed nine documents, but these are of little use to him. Document A. is a Yadast addressed by the Town Subordinate Magistrate to the Pagoda Trustee, calling upon him to repair a cross stone supporting the roof of the gateway of the stone stair-case leading to the pagoda. Document B. is a copy of a petition, presented so far back as 1814, by the Pagoda "Kothian," or bricklayer, to the then Collector of this district, complaining that certain ryots were withholding certain dues to which he was entitled as holding a "Maniem" to remunerate him for keeping the Temple Pracarums, Muntapams, &c., clear of all brushwood, &c., and requesting that the collections on this account be at once realized. C. purports to be a copy of an order issued to the Deputy Peishcar on the 14th July 1814, directing this officer to recover the said allowances due to the petitioner in B.

14. The plaintiff throughout assumes (but he has entirely failed to prove) that the Temple Pracarum wall, alluded to in the said documents B. and C., is the very wall now in dispute, and from which the defendants removed the stones. The Civil Judge is, however, satisfied that this is not the Covil "Pracaram" or Covil "Mathel," or a wall in any way belonging to the Pagoda. Higher up on the rock, and encircling the Pagoda building, is another wall, the Covil "Pracarum;" to clear this wall, which in some places it is hardly possible for man to climb, there being an abrupt precipice on one side, is a work of great difficulty, and attended with much risk to life and limb, it is quite necessary, too, that the brushwood up here should not be allowed to get too much headway, or there would be danger to the masonry, it is but natural that for services of such a nature where a skilled hand is required, a Maniem and its allowances should be assigned; on the other hand, to clear brushwood from the wall in dispute, ordinary cooly labor would suffice, and there could be no attendant risk in the work to be performed. Document D. purports to be a copy of another Takeed, said to have been issued in 1815, directing the Head Peishcar to have all the walls and streets cleared of the overgrowing brushwood; this document is brought forward evidently because in it, beyond a doubt, the wall in dispute is pointedly referred to. However, the Civil Judge refuses to accord the slightest credit to this document, the original of which this purports to be a copy, is nowhere to be found. Secondly, it is not a copy of the original, but is a copy of a copy said to have been prepared from the original document, and this copy, from which it is said to have been taken, does not bear the Collector's or any officer's signature in attestation of its genuineness. Thirdly, if such a document had been really in existence, the plaintiff or some other of the Pagoda people would most undoubtedly have provided themselves with a copy at the time when the Documents B. and C. were obtained from Mr. Collector Maltby in 1851.

15. Documents E., F., and G. are irrelevant; the first document relates to a piece of ground within the Rock Fort, the other documents refer to a tank and its parapet walls. Document H. needs no consideration; it is a sale certificate granted by Lieutenant Mead of the Royal Engineers, and is filed, because the wall now in dispute is termed in this document as "Mallai Kottai Mathel."

16. With regard to the oral evidence of plaintiff's six witnesses, it is just so much trash, they do not point out any specific marks to show that the disputed wall is Pagoda property; all these witnesses are persons residing in the street within this wall, their sympathies and prejudices (pretty strong too) are all with the Pagoda, their evidence must therefore be cautiously accepted. However, taking it at its full worth, the plaintiff has completely failed to establish that the wall in dispute forms a portion of the Pagoda property.

17. So much for the plaintiff's claim, and although it may be considered unnecessary to make any long notice of the defence urged on behalf of the Government servants, the Civil Judge considers it advisable, with a view to putting a stop to further disputes, to declare that this wall is the property of the State.

18. Twenty-four documents were filed by the 1st defendant; these are principally English correspondence, being letters that have passed between the Government, Collector, Engineer, and Military authorities between the years 1818 and 1846 relating to the Trichinopoly Fort.

19. To the most inexperienced observer, one visit to the Rock Fort would at once satisfy him that this inner or citadel wall is an integral portion of the Military fortifications of Trichinopoly, as

not the property of the Government

shown in Document No. 21, a plan of the Fort, there are bastions and flanking defences to this disputed wall, and just within this wall, in some places abutting on it, are the Government Granaries, Stores, Powder Magazine, and Guard Rooms now in possession of the Government. Had this wall been built as a "Covil Pracarum," there was no necessity for fortifying it.

20. Documents 8 to 13 show that in the year 1845-46 a portion of this wall, in the eastern or Tanjore side, was pulled down under the sanction of Government, and the stones so removed were made use of by the State for public purposes. Documents 14 to 16 show that this wall was repaired from time to time at the expense of the State.

21. Under these circumstances, there is not one shadow of doubt that the wall in dispute (as established by the documentary and oral evidence of the defendants) forms a portion of the fortifications of the Trichinopoly Fort; that as such it is State property, and that Government has never ceased to exercise its authority over it, or allow its interest in it to lapse.

22. For the foregoing reasons, the Civil Judge dismisses the plaintiff's claims with all costs.

TRICHINOPOLY,
5th December 1866.

(Signed) E. R. McDONELL,
Civil Judge.

(True Copy.)

(Signed) R. F. OAKES, Captain, R. E.,
Superintending Engineer.

No. 254.

ORDER THEREON, 15th February 1867, No. 442.

CIVIL WORKS, No. 34.

Ordered to be recorded.

(True Extract.)

(Signed) CHARLES A. ORR, Colonel, R. E.,
Secretary to Government.

To the Superintending Engineer, 6th Division.
" Board of Revenue.
" Revenue Department.
" Collector of Trichinopoly.
" Government Pleader.

Exd. S. T. Augustin.

Judgment -

Original Suit No 3 of 1865 -

In the Civil Court of Trichinopoly -

Present - M. R. McDonell Esquire Civil Judge

1 - This Suit was instituted to recover from the Defendants Rupees 999 - 0 - being the value of certain granite stones which they had illegally removed, these stones being the property of the Pagoda -

2 - In the Plaint it is stated that the Plaintiffs are the "Anderu Karta & the Rayamanadargum Temple in the Rock Fort stones for the value of these stones which the Defendants removed and Carried away from the wall which surrounds the Rock and that he prays for a decree prohibiting the Defendants from further interfering with the Walls which he asserts are the property of the Pagoda, being from time to time kept in repair from the Pagoda funds, and that the walls are not the property of the Government -

The

3 — The 1st Defendant Captain Palmer who was then Executive Engineer in this District, in his written Statement denies the Plaintiffs title to bring this Suit, at the same time maintaining that the wall in dispute does not belong to the Pagoda, but forms a portion of the fortification constructed for the Military defence of Trichinopoly & as such the property of Government that this wall was never Repaired from Pagoda funds, but when such Repairs were needed they were Carried out under Estimates prepared by the Department of Public Works & at the Expense of the State. that as this Citadel Wall was in a dilapidated state the removal of these stones was ordered to prevent them from falling and Causing injury

4 — The 2d Defendant was Exparte

Points were recorded.

5 — Plaintiff filed nine Documents from A to I and Examined six witnesses.

6 — 1st Defendant filed twenty four Documents numbered 1 to 24 and Examined three witnesses — (1)

7 — This Suit was originally filed in the Court of the District Moonsiff of Conad, but under Order No 501, 25th January 1865 No 240 of the Proceedings of Government in the Department of Public Works, the Collector of this District requested it might be called up & placed upon the file of this Court under the Provisions of Clause VI, Act VIII of 1859 & this Court ordered accordingly —

8 — Of the six issues recorded, two are very important & on them the whole Case turns viz:- I whether the wall in dispute belongs to the Pagoda or to the Government?-

II — Whether the Plaintiff have any title to bring this suit —?-

9 — By the Evidence of Plaintiffs witnesses it is proved that the Plaintiff is the principal Stalathar of the Pagoda, that he have the Management of the Manium Lands attached

to

to the Pagoda, & that from the proceeds thereof he defrays the Expences of two Poojahs a day - the Civil Judge is therefore of opinion that the Thundaram has full authority & title to institute suits for any Claims preferred on behalf of this Institution -

10 — With regard to the other point viz: that the disputed wall is Pagoda property - the Civil Judge observes that the Plaintiff has failed most signally to adduce any satisfactory evidence either oral or Documentary -

11 — The Civil Judge has visited the Pagoda & the disputed locality on several occasions & a brief description of it here will not be out of place -

12 — The Pagoda building in which are the Idols, Sacred Rooms, Mantapums and Stambams is situated on the apex of the Trichinopoly Rock, some four hundred feet above the level of the surrounding Plain near the

the base of this Rock and surrounding it are streets and a Citadel wall known as the Outer Fort wall in Contradistinction to the Outer Fort wall built near the moat, which encircles the Fort (Plaintiff claims the wall) the inner wall) as Pagoda property and objects to the stones of this wall having been made use of for Government purposes -

13 — In support of his plea the Plaintiff filed 9 Documents but these are of little use to him - Document A is a Cadjan addressed by the Subordinate Magistrate to the Pagoda Trustee, calling upon him to prepare a Cross stone supporting the Roof & the Gateway of the Stone Staircase leading to the Pagoda - Document B is a copy of a petition presented so far back as 1814 by the Pagoda Kottan or brick layer to the then Collector of this District complaining that Certain Ryots were withholding

Certain

certain dues to which he was entitled as holding a "Inamium" to remunerate him for keeping the Temple Racarium &c clean of all brushwood &c & requesting that the Collections on this account be at once realized. C purports to be a copy of an order issued to the Deputy Peishcar on the 14th July 1814 directing this officer to recover the said allowances due to the Petitioners in B.

14.— The Plaintiff throughout assumes (but he has entirely failed to prove) that the Temple Racarium wall, alluded to in the said documents B and C, is the very wall now in dispute & from which the Defendants removed the stones. the Civil Judge is however satisfied that this is not the Covil "Racaram" or Covil "Muthal" or a wall in any way belonging to the Pagoda. Higher up on the Rock & encircling the Pagoda building is another wall, the Covil Racarum" to clean this wall which in some places it is hardly possible for man to climb, there being an abrupt precipice on one side, is a work of great difficulty & attended with much risk to life and limb - it is quite necessary too that the brushwood up here should not be allowed to get too much headway or there would be danger to the masonry, it is but natural that for services of such a nature where a skilled hand is required, a Inamium & its allowances should be assigned - on the other hand to clear brushwood from the wall in dispute, ordinary coolly labor would suffice, and there could be no attendant risk in the work to be performed. Document D purports to be a Copy of another Cadeed said to have been issued in 1815, directing the Head Paistan to have all the walls & streets cleared of the overgrowing brushwood, this Document is brought forward evidently because in it beyond a doubt (—

the

the wall in dispute is point to & recorded,
however, the Civil Judge refuses to
accord the slightest Credit to their
document the Original & which this
purports to be a Copy, is nowhere to
be found - Second it is not a Copy of
the Original but is a Copy of a Copy said
to have been prepared from the Original
Document & their Copy from which it
is said to have been taken does not
bear the Collectors or any officers
signature in attestation & its genuine-
ness - third, if such a Document
had been really in existence, the
Plaintiff or some other of the Pagoda people
would most undoubted & have pro-
vided themselves with a Copy at the
time when the Documents B and C
were obtained from the Collector
in Mallay in 1851 -

15. — Document E F and G are
irrelevant - the first document re-
lates to a piece of ground within the
Rock Fork, the other documents
refer to a Tank & its parapet walls -
Document H needs no consideration,

it

it is a Sale Certificate granted
Lieutenant Read of the Royal E
-gineers & is filed because the wa
now in dispute is termed in the
Document as Mallai Kottai hat

16 — With regard to the oral evidence
of Plaintiffs six witnesses it is
just so much trash, they do not
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Pagoda property all these witnesses
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within their wall, their sympathies
& prejudices (pretty strong too) are al
with the Pagoda their evidence must
therefore be cautiously accepted - how
even taking it at its full worth the
Plaintiff has completely failed to
Establish that the wall in dispute
forms a portion of the Pagoda property -

17 — So much for the Plaintiffs claim
& although it may be considered unn
necessary to make any long notice of
the defence urged on behalf of the
Government Servants - the Civil Judge

Considers

it advisable with a view to putting a stop to further disputes to declare that this wall is the property of the State.

18 — Twenty four documents were filed by the 1st Defendant three are principally English Correspondence being letters that have passed between the Government, Collector, Engineer, and Military Authorities between the years 1818 & 1846 relating to the Frickinhoff Fort —

19 — To the Mock inexperienced observer on revisit to the Rock Fort would at once satisfy him that this inner or Citadel wall is an integral portion of the Military fortifications of Frickinhoff as shown in Document No 21, a Plan of the Fort, there are bastions & flanking defences to this disputed wall, and just within this wall, in some places abutting on it, are the Government Granaries, Stores, Powder Magazine, & Guard rooms now in possession of the Government, had this wall been built as a "Civil Bracarum" there was no necessity for fortifying it — (8)

20 — Documents 8 to 13 show that in the year 1845-46 a portion of this wall in the Eastern or Sanford side was pulled down under the Sanction & Government of the Stores to remain were made over by the State for Public purposes — Documents 14 to 16 show that this wall was repaired from time to time at the Expense of the State —

21 — Under these Circumstances there is not one shadow of doubt, that the wall in dispute (as Established by the Documentary & oral evidence of the Defendants) forms a portion of the fortifications of the Frickinhoff Fort that as such it is State property and that Government has never ceased to exercise its authority over it or allow its interest in it to lapse —

22 — For the foregoing reasons the Civil Judge dismisses the Plaintiffs Claims

claim with all costs—

Trichinopoly—
Civil Court
5th December/66

(Signed) A.R.McDowell
Civil Judge

(True Copy)

A.F.Bakewell Capt RE
Supt Engineer

Decree—

Original Suit No 3 of 1865—
In the Civil Court of Trichinopoly—
Present—A.R.McDowell Esquire Civil Judge
(L.S.)

Plaintiff—	Defendants—
Maunathumbiran	1— W. C. Palmer
Andina Karter &	Executive Engineer
the Rayamanswamy	Trichinopoly &
Temple in the Rock	2— Ministry of Mo-
Fort of Trichinopoly—	niyam Work
Vakeels	Trichinopoly
Veerangavien, and	P. Subbien Va
Krishnama Chariyar	for 1st Defendant

1— This suit was instituted to recover from the Defendants Co Rupees 999-0-0 being the value of certain granite Stones which they had illegally removed these Stones being the property of the Pagoda—

2— The Civil Judge dismisses the Plaintiffs claim with all costs to be paid to 1st Defendant

by

by Plaintiff -

Value of Stamp Papers used for Statement &c — 3-8-0

Pros Battah — "-4-"

Vakeels fee — 49-14-9

53-10-9

To be paid to 2d Defendant by Plaintiff -

Pros. Battah — "-4-" "-4-"

To be borne by Plaintiff -

Value of Stamp Papers used for Plaint &c — 53-"-"

Pros battah — 1-"-"

Vakeels fee — 49-14-9 103-14-9

Given under my hand and the Seal of the Civil Court of Trichinopoly this 5th December 1866 -

The period for preferring an appeal is 90 days from this date

/Signed/ R. R. McDowell

Civil Judge -

/True Copy/

W. F. Oakes Capt R

Sup's Engineer

Enclosure in
a Letter No 1286
dated 30th January
from the Supt Engr
6th Division
to the Secretary
to Government
D.P.Wr.

Supt Engr's Office 6th Div
Fere Champenoise 30th January 67

No 1286

(1)

From, Captain R.F. Baker RE
Supt Engineer 6th Div

To Colonel C.A. Orr RE
Secretary to Government
D.P.Wr.

Sir,

As directed in G.O. No 125
dated 14th instant I have the
honor to forward a Copy of the
Judgment & Decree by the
Civil Judge at Trichinopoly on
the Original Suit regarding the
proprietorship of the Rock Citad
Wall.—

I have the honor
Sir
Your most Obd Servt
R.F. Baker Captain RE
Supt Engineer 6th Div

Cir

Civil Matters

No 442

Recorded.

Way

N.

Fort St George
15th Febry 1867

No 253—254

C. Gen Staff 1867. Qr. 11th.

No 442

Re. Petition for Pilgs
Encl 391

Re Instn of Pilgs
6th Dec

To The Secretary to
Government
Dis Pilgs

Dated 31st Jany 1867
Recd 4th Febry 1867

Encl
No 442. 15th Febry 1867
Forwarded Copy of the
Judgement of the Court
Given by the Civil Judge
at Trichinopoly on
the Original Petition
Regarding the Proprietor
ship of the Rock Citadel
Fort — With the Case

6 Covenants
8 — Bd of Revs
5 " Revenue Dept
5 " Collr of Trichinopoly
1 " Govt Pleader

Dispatched 19th Febry 1867

35