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MADRAS RECORD OFFICE

~~Government of Madras~~

Public Works DEPARTMENT

G.O. No.	170	Press
B.P. No.		Mis.
336-337		
Dated	26-1-1874	195

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
26th January 1874.*

No. 336. Read the following letter from Major J. N. HUNTER, R.E., District Engineer, Salem, to Colonel G. W. WALKER, R.E., Secretary to Government, Public Works Department, dated Salem, 20th December 1873, No. 123 :—

ADVERTING to G. O., No. 2,396, dated 30th September 1873, I have the honour to report that the suit against Major R. Hunter was heard on the 26th September 1873, and the District Court

- 1 Copy of Judgment.
- 1 Copy of Decree.

delivered a judgment for the plaintiff, the Secretary of State for India in Council, by Colonel Edward Archibald Foord, Superintending Engineer, 5th Division, declaring the right of Government to the portions of the Ahtoor and Nagalore Ghaut Roads, in dispute, passing through Major Hunter's Estates of Pathipady and Karadyur respectively on the Shevaroy Hills, as claimed by him, and restraining the defendant from any interference therewith whatsoever hereafter, and directing him to pay plaintiff the sum of Rupees 2,900 as sued for the amended plaint on account of damages done to those roads, together with all costs.

2. The Collector promises that steps will be taken for the recovery of the damages awarded by the Court as well as the costs incurred by Government in due course.

3. A copy of the Judgment and a copy of the Decree are herewith sent.

No. 337. ORDER THEREON, 26th January 1874, No. 170.

ESTABLISHMENT, No. 21.

ORDERED to be recorded.

2. Report of realization of damages and costs to be made in due course.

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the District Engineer, Salem.

Exd. S. T. Austin.
Spare Copies

N^o 123. District Engineer's Office,
Salem, 20th December 1873.

From
The District Engineer,
Salem.

To
The Secretary to Government
Public Works Department.

Sir,

Enclosure 2.
1 copy of Judge's
-ment
1 copy of decree.
Adverting to G. O. N^o 2396
dated 30th September 1873, I have the
honour to report that the suit against Major
B. Hunter was heard on the 26th Septem-
ber 1873, and the District Court delivered
a judgment for the Plaintiff the
Secretary of State for India in Council
by Colonel Edward Archibald Ford,
Superintending Engineer, 5th Division,
declaring the right of Government to
the portions of the Shoor and Kafalre
ghat roads, in dispute, passing through
Major Hunter's estates of Pathupady
and Karadyar respectively on the
Sheneroy Hills, as claimed by him, and
restraining the defendant from any
interference

2. The collector promises that steps will be taken for the recovery of the damages awarded by the court as well as the costs incurred by Government in due course.

3. A copy of the Judgement and a copy of the decree are herewith sent.

I have the honor to be,

Sup

Your most Obedt Servant.

J. Hutchins Major, R.E.,
District Engineer, Salem.

26th September 1873

Present C. F. Elliott, Jr.

Original sub. No 1 of 1873.

The Secretary of State for India in Council
by Colonel Edward Archibald Foord } Plaintiff

Superintending Engineer's Division

Major R. Hunter ————— Defendant

This Original suit coming on for final hear-
-ing this day, the Court delivered the foregoing
judgment. This is a suit to obtain a

Judgment This is a suit to obtain a declaration of the right of Government and the Public to certain parts of the Shitur and Nagalur Ghat roads on the Shervoy hills, 12 feet wide, which pass through the estates of Pattipadi and Karadigar respectively, belonging to Defendant, the boundaries whereof are here under described, also for an injunction to compel the removal by Defendant of certain

Certain Coffee plants, which he has planted within the limits of the said roads, and to restrain him from interfering with the Officers of the Department of Public Works in keeping the said roads in repair and to recover from him a sum of 900 Rs as damages sustained by Plaintiff in consequence of the injury done by the Defendant to the said roads as herein after more particularly set forth.

The plaint sets forth that the foreman states of Defendant were formerly Government waste lands and purchased by Defendant from Government in February 1864 and that his Deeds of Conveyance thereof dated 12th April 1864 reserved all existing and customary rights of Government and adjoining proprietors to all existing roads and paths. That the aforesaid roads existed at that date and

were

were therefore reserved under the said Conveyance Deeds, and the Defendant has therefore no right whatever to the same or any part thereof and further that the said roads are marked also in the plans attached to the said Conveyance Deeds, which plans have been signed by Defendant as correct. Moreover, it is asserted that, before the date of the Defendant's said purchase, he himself had contracted with the Government to construct the said roads of a width of 12 feet, and had partially completed the same, and had received sums amounting to Rs. 12,550 from Government being the whole amount for which he had so contracted to complete the said roads. That, in or about the month of August 1870, the Defendant began to encroach on the said roads, and has since then destroyed and broken

broken down the said roads, and have planted Coffee within the limits of the same, and denies the right of Government and the public to these roads and threatens to close the same and has on several occasions interfered with and obstructed the officers of the Department of Public Works in repairing the same.

The damages owing to the injury done by Defendant to the roads are estimated hereunder

860	Cubic yards earth at 4 annas	Rs. 215	4
535 1/2	Do — Do Rough stone at 1 Rupee	535	4
397	Do — Do gravelling at 4 annas	99	4
		849	8
	Sundries	50	8
	Total	900	

The boundaries of the Althuryghant are

Village	Distance	Boundaries
Pattipadi	594 yards	Bounded on the north, south and west by Major Hunter's land No. 120 and on the east by the Althuryghant and village Cultivation reserve for Pattipadi

The boundaries of the Nagalurghant are

Village	Distance	Boundaries	Value
Karadiyer	front north and south 1016 yards	East and West by Major Hunter's land No. 161, North and South, Government lands and Karadiyer branch ghant.	Rs. 10910
			Total value 18100

The defendant in his written statement denies that the Government or the Public have a right to the Freehold of these parts of the Althury and Nagalurghant roads in question as alleged, and pleads that he purchased 2 pieces of land through which the said roads run on the 1st February 1864, and the said lands together with the said roads were conveyed to him (Defendant) by the Government of India by 2 Indentures respectively dated 12th April 1864. that at the time of the sale of the said lands it was expressly stated that such lands were sold without any reservation and that by section 2 Act of 1864

of 1863 of the Government of India it is provided that if the land is ordered to be sold subject to any Condition or reservation, such Condition or reservation shall be notified to intending purchasers, but no such notification was made in the sale of the lands in question to Defendants.

That the reservation in the Title deed granted to Defendants by the Government of India of "all existing and customary rights of Government and of proprietors of lands adjoining or lying near to the land and premises thereby conveyed in all existing roads and paths and in streams of water running through or bounding the land and premises thereby conveyed is *ultra vires* and contrary to law and cannot confer or reserve to the Government of India or any other person or persons rights which

which were not expressly reserved at the time of sale according to the provisions of the said Act ~~XXIV~~ of 1863.

That the Ghant road which runs through the piece of land number 161 (Kandigum) was abandoned, and another road constructed by Government in its stead, and the portion of the road in question has ceased to be used as a road private or otherwise for 3 years and upwards, and the plaintiff has therefore lost any rights he may have had in the said road.

That the Ashur Ghant Roads were commenced by the Coffee planters with their own monies, and subsequently the Government gave grants in aid to the said Coffee planters, and with the money so subscribed and obtained, the roads in question were made, and the defendant has since the date of his said purchases

purchaser paid Rs 10 to the Government upon the area of the suit roads.

The defendant denies the right of the Department of Public Works to enter upon the road in question for the purposes of repairing the same as they are his own private property.

He further pleads that the Court has no jurisdiction to try this Case in as much as it is not constituted under the said Act VIII of 1863 and that the Plaintiff's claim is barred by the Limitation Act. II of 1871. He lastly denies that Plaintiff has sustained any damages as alleged in plaint.

The Case coming on for 1st hearing, the following Witnesses and exhibits were filed, on either side:

The following exhibits were filed on behalf of Plaintiff:

A Duplicate of sale deed of a land

in Karadyat dated 12th April 1864 executed to Major R. Hunter by Government.

B. Plan of land referred to in A belonging to Major Hunter as per above sale deed of Government.

C Duplicate of sale deed of a land in the Village of Pattipady dated 12th April 1864 executed to Major R. Hunter by Government.

D. Plan of — Do — Do — Do

E. Letter dated 24th January 1863 from Major Hunter to the Deputy Chief Engineer, Madras, requesting the latter to take charge of the Arthur Ghaut in Company with Mr. Stottow.

F. Letter dated 25th November 1862 from the District Engineer to the Deputy Chief Engineer, requesting to be informed whether he should carry out the order of Government in regard to the improvement of the Arthur road or whether

whether the latter will take up the responsibility in regard to the same by personally taking charge of the work from Major Hunter.

G. Letter dated 13th June 1870 from the Executive Engineer Salem Range to the Superintending Engineer 5th Division requesting him to bring to the notice of Government Major Hunter's interference with the Karadiger and Athas ghats.

H. Letter dated 25th June 1870 from the Executive Engineer Salem Range to the Superintending Engineer 5th Division bringing to notice the interference of Major Hunter with the work carried on the Ghats by driving the Coolies of D. P. W. and requesting permission to prosecute him criminally for obstructing a public servant in the discharge of his duty.

The Defendant filed the following exhibits

I Original deed of conveyance of 142 a. and

59 Decimals of land on the Sherry Hills dated 12th April 1864 granted to Major Hunter by the Secretary of State for India with a plan of the same.

II. De. of 38 Acres and 11 Decimals of land on D. — D. — D.

III. Letter dated 18th May 1866^{from Mr. D. M. Jones} to Major Hunter stating that no reserves had been made for rights of way &c through the land at the time of sale and asking Major Hunter to put up a fence round his land.

IV. Letter dated 23rd October 1868 from Mr. A. G. Pritchard to Major Hunter regarding the water Course.

V. Letter dated 25th October 1871 from Mr. Pincourt to Major Hunter stating that Mr. Jones sold the land without any reserve.

VI. Receipt for Kist and Road Cess paid for

for Gashi 1280 granted to Major Hunter
by the Deputy Jail Dar Mr Datta dated
11th August 1871.

The following preliminary objections
or issues on points of law were heard
and determined.

I Whether this Court has jurisdiction to
entertain this suit, inasmuch as it is not
a Court duly constituted under section 7 of
Act XVIII of 1863.

The Court failed to see how Act XVIII
of 1863 was to be held applicable to this
suit in any way at all. That Act makes
special provision for the speedy adjudication
of claims of waste lands proposed to be
sold or otherwise dealt with on account
of Government. Kind of objections taken
to the sale or other disposition of such
lands. This suit on the other hand

is one of an ordinary description entertainable
by any Civil Court of competent jurisdiction,
such as this Court is being brought to establish
the right of Government and the public
to certain portions of the estate and
Nagah Ghant roads on the Sherrooys
passing through the estates of Major
Hunter and unlawfully usurped by him
in 1870 and to prevent his illegal interference
therewith, as also to recover damages
to the extent of goods alleged to have
been sustained, owing to his wrongful
acts consequent on his illegal usurpation.
Such being the state of the case, the
Court holds that the provisions of Act
XVIII of 1863 do not apply to the suit in
question and in overruling this prelimi-
nary objection in point of law finds
this issue in the affirmative that
this Court has the jurisdiction to try
and

and dispose of this suit in its ordinary
Capacity as the District Court.

Whether, as denied by Plaintiff and
affirmed by Defendant, Plaintiff's claim
is barred under the statute of Limitation
Act IX of 1871.

The Court holds that this suit is
not barred, because (1st) it has been brought
within 6 years, which is the period of
limitation laid down under section 20 of
Schedule attached to Act IX of 1871, for
any suit in name of the Secretary of State
for India in Council such as in the present
instance and because (2nd) under section 116 of
the same schedule of the same Act, the
period of limitation for a suit for a
declaration of rights to an easement, such
as this suit is held by this Court is 12
years and not 6 years.

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The Court, therefore finds in
the negative on this issue, that the suit
is not barred under Limitation Act IX
of 1871.

Whether, as affirmed by Defendant
and denied by Plaintiff, the reservation
in the Title deeds, granted to Defendant
by the Government of India of all
existing and customary rights of Government
in the existing roads and paths &c.
and the reservation of the lands and
premises thereby conveyed is ultra vires and
contrary to law, because they are rights which
were not expressly reserved at the time of
sale to him by Government of the waste
lands which form his estates now,
according to the provisions of Act XXX of 1863.
The Court holds this objection to
be

be frivolous and ~~unintentionally~~ inadmissible, because 1st the Court has already held Act ~~XXXX~~ of 1863 to be not applicable to this suit at all, and because 2^d the Defendant is primarily estopped from such pleading by his own acts of acceptance of the said Title Deeds containing such reservations and lastly because no reasons are recorded for such an assertion, but the Court is merely referred to para 6 of the Defence statement for the same which contains nothing but the allusion to the provisions of Act ~~XXXX~~ of 1863 already held to be inapplicable to this suit.

For these reasons, the Court dismisses this objection and finds in the negative on this issue that the reservations in the Title Deeds of Defendant is not

not "a vice" of contrary to law. I think this is ~~inadequate~~ for Defendant that the roads in dispute do exist, and are the same as those reserved in his title Deeds but it was pleaded that the road through Kavadigar estate had been disused for more than 3 years and therefore the Plaintiff had lost his rights thereto under section 27 Act 9 of 1871.

For the Plaintiff it was argued in reply that the Defendant had never acquired any right to the road even if Plaintiff had lost it, nor can Defendant say who has this right except Plaintiff.

The Court is of opinion that these sections and Act quoted by Defendant's counsel do not apply to this case as this

is not a suit brought for obstructing
a right of way, ~~indeed~~, but for declaration
of a right to an easement, which right
is denied by defendant who sets up a
Contra claim, while there has never been
any legal acquisition of ownership by
possession on his part at all to begin
with, nor has the Defendant even acquired
any such prescriptive right by a 20 years
peaceable enjoyment either as an
easement or as of right without interruption
such as to render such right absolute
and indefeasible and to bring him within
the scope of this Act, nor could such
possibly be so in the circumstances of this
Case. On the contrary, the terms of this
section of this Act if applicable at
all, are more in favor of Plaintiff as the
owner by prescription right absolute and
indefeasible

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indefeasible if such were sought to be
declared which however is not the
relief sought and the Court therefore decide
for plaintiff on this point accordingly.

The only issue of fact recorded
and referred for final hearing was.

Whether Plaintiff had sustained
any ^{and} what damages?

As this could only be determined
upon a personal inspection and estimation
of the damages incurred to the roads
by some professional and skilled person,

The Court resolved to appoint a Commissioner
for that purpose and selected Mr Turner
the Assistant District Engineer and a
Civil

Civil Engineer by profession for this special
work - and adjourned the further hearing
of the Case until the Submission and
receipt of his report.

On the Case coming on again for final
hearing on the 25th August, the attorney
for defendant Mr. Abbs, applied for 2 additional
Issues to be framed in this Case (1st) Who
the Plaintiff in this Case was.

2. From whom the Costs were to be recovered
in the event of a decree being given for
Defendant.

The Court objected and declined to record either
because with regard to the first it could see
no necessity whatever for

the same and with regard to costs, there
would be time enough to consider and
settle the same after Defendant had
gained the suit and at the time of recording
of Decree.

The Commissioner's report not having
been received, the Case was then again
adjourned on account of the same until
15th September and again for the same reason
until 2nd and again until 26th idem so
allow of the Commissioner's attendance to give
evidence.

On the latter date, the Defendant's
attorney Mr. Abbs argued that the
Plaintiff was bound to pay Commissioner's
Fees and not Defendant under section
182 and the Court ruled thereon that the
same would be included in the Costs.

The Commissioner's report having
been

been separately perused by all concerned
was then taken as read.

The Plaintiffs Vakil then again applied
under section 32 of the Civil Procedure Code
to be allowed to amend the value of his
suit upon the Commissioner's Report
from 900 Rs. to 2900 Rs. which was the
amount of damages assessed therein
which the Defendant's Attorney opposed
and applied for an adjournment. Thereafter
the same as being a fresh claim which
he was unprepared to meet.

The Court directed the amendment
of the plaint as to value of suit from
Rs. 900 to Rs. 2900. etc. Pursuant to the
Commissioner was then examined and
affirmed his written report and estimated
the cost of repairing the roads in question
as Rs. 2900 inclusive of a
sum

sum of Rs. 750 the estimated cost of the
upkeep of these roads Rs. 250 Rs. per
annum for 3 years and relating exclusively
to those portions of the roads passing
through Major Hunter's estates. He also
said that in consequence of the destruction
of these roads, Government had been
put to expense of constructing other
roads and internis for carrying on the
traffic, which Government had not been
estimated for by him.

Mr. Abbe for Defendant then stated
that this evidence merely showed that the
roads were out of repair only, and requiring
repair, but that no damages to them
were proved to have been done by Major
Hunter, and therefore Plaintiff was
not entitled to a title. There must
be proof he argued of some damage
done

by defendant of which there was
none whatever - all that is evidenced
being damaged by user or permissive waste
by letting the roads get out of repair
and unless personal damages can be
proved Plaintiff's claim is unsustainable
and should be dismissed.

The Plaintiff's Vakil replied that
the written statement of Defendant itself
relieves Plaintiff entirely from all
necessity for calling evidence as to
damage done by him personally because
he therein set up his own claim to the
roads per contra to that of Government.
thereby admitting his usurpation thereof
and denying the right of Government
thereto by claiming a possession
adverse and exclusive and therefore
to the damage of Government and
no

no better evidence, therefore, could have
been produced than the statement
of a professional man to report on the
roads. He further said that the road
having been found to be in need of repair
before, the Defendant is solely responsible
for the same and that Rs. 750 on account
of the same would have been applied
of these roads cannot be deducted
from the Commissioner's estimate but
is very properly included therein, because
other roads had to be constructed
comparatively in line and kept up - the
cost of which had been estimated
and included in his estimate.

The Court held the estimate
of damages fixed by the Commissioner
in his report to be a fair and just
one and confirmed the same accordingly.

and thereupon gave judgment for the Plaintiff declaring the right of Government to the portions of the Ahtur and Nagalur Ghaut roads in dispute passing through Major Hunter's estates of Pattipady and Karadiyur respectively on the Sherooy Hills as claimed by him, and restraining the Defendants from any interference therewith whatsoever hereafter, and directing him to pay Plaintiff the sum of Rs. 2900 as sued for the awarded plaint on account of damages done to those roads, together with all costs.

(Signed) C. F. Elliott
District Judge

(True Copy)

Signed by Dr. Vanoyagum
Sheristadar

True Copy

Redrick Hill
Collector

9 MB 988/3
40 no. 178-27-174

In the District Court of Salem.

26th September 1873.

Present C. F. Elliott J.

Original Suit No. 1 of 1873.

The Secretary of State for India in Council
by Colonel Edward Archibald Frisvold,
Superintending Engineer 5th Division } Plaintiff

Major R. Hunter } Defendant
Claim. To obtain a declaration

right of Government and the Public to certain parts of Ahtur and Nagalur Ghaut roads 12 feet wide which pass through defendants' estates of Pattipady and Karadiyur on the Sherooy Hills to compel the Defendant to remove certain Coffee plants raised by him within the limits of the said roads and to restrain him from interfering with

with the Officers of the Department
of Public Works in keeping the said roads
in repair and to recover from him a
Sum of 2,900 Rupees as damages sustained
by Plaintiff in consequence of the injury
done by the Defendant to the said roads.

Decree. This original suit coming
on for final hearing this day, before
perusing the plaint, written statement
and the material papers in the suit,
and upon hearing the arguments of
P. Soodramier, Pleader for the
Plaintiff and of Mr. Abbs, Attorney
and Mr. Middleton, Pleader for
the Defendant, this Court doth
order and decree for the Plaintiff
declaring the right of Government
to the portions of Ahtur and Bagalore
ghaut

ghaut reads in dispute passing through
Major Hunter's estates of Pattsodi
and Haradiyur respectively on the
Shenoi Hills as claimed by him and
restraining the Defendant from any
interference therewith whatsoever
hereafter, and this Court doth
adjudge that the Defendant do pay
Plaintiff the Sum of Rupees 2,900 as
sued for in the amended plaint on
account of damages done to those
roads, and this Court doth further
order and decree that the Defendant
do pay the costs of the Plaintiff in
this original suit.

Mandatum of Costs.

Costs incurred by Plaintiff Rs. 100/-
Value of Stamp for Plaint 2/12-8-"
Pleader

Readers fee on to 2900 145

Batta and Postage for
 Serving Sumners — } 2-5-

Due for Commissioner 75—

To be paid to Plaintiff
by the Defendant } 434-13

Signed / J. C. Harrington
District Judge.
for Mr. E. F. Child

✓

/Signed/ K. G. Panayagum
Shoristadan.

(True Copy.)

Indenter

By Collector
for Collector.

Soups: Alewife
etc

Mr. Wm. H. W. at
26th Aug 1794

Q 675872

of the 18th of January

Accepted and dated 27/1/75.

Aditya

Ne 1780
Ordered the records. W/H
Report of investigation of damages
and cost of the made in the same.

Pub. Works 1873/4/5

From No 6958
The District Engineer
Salem.

To
The Secy. to Govt.
D. P. W.

Dated 20th Decr: 1873
Recd: 23rd Decr: 1873
No 123
Encls: 2

Reporting on the
result of the suit
against Major
R. Hunter of the
Shevaroy Hills.

With Order

Op. 6958
Govt. of 1874 Madras
PUBLIC WORKS.

To The District Engineer
Salem.

Dated

Encls.

Encl. 2

G. O. 26th Decr: 1873 N 170

Nos. 3367 337

Suit. Letter from the D.

Engr., Salem, reporting
the result of the suit in-
stituted against Major
Hunter in connection with
the Akkott & Nagalove
Shants on the Shevaroy
Hills and forwarding

Copies of the decree
in judgment of the
Jury of the case, recorded,
Report of realization of
damages made to be
made in due course.