

(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. 3352
B.P. No.

Press
Mis.

Dated 27. 11. 74 1955.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Public Works Department,
27th November 1874.*

No. 488. Read the following letter from Colonel C. V. WILKIESON, R.E.,
Superintending Engineer, Coimbatore, to Colonel G. W. WALKER,
R.E., Secretary to Government, Public Works Department, dated Coim-
batore, 6th November 1874, No. 101 :—

With reference to G. O., No. 914-A., of 4th April 1874, I have the honor to
inform you that the appeal suit filed by Plaintiffs Vyapoory Gowndun and
Nunjappa Gowndun, against the decree of the District Munsiff of Coimbatore, for
the recovery of Rupees 634-2-0, on account of bricks and chunam supplied for
Chinnanowkara bridge, has been dismissed by the District Judge, who affirmed the
decree of the District Munsiff.

2. A copy of the District Court's decree and judgment in the appeal suit
in question is herewith forwarded.

No. 489. ORDER THEREON, 27th November 1874, No. 3,352.

ESTABLISHMENT, No. 26.

RECORDED and communicated to
the Controller of Public Works Ac-
counts.

(True Extract.)

Colonel, R.E.,
Secretary to Government.

To the Superintending Engineer, Coimbatore.
" Controller of Public Works Accounts, with G. O., No. 914-A.

Exd. S. T. Austin.
Spare Copies



In the District Court of Coimbatore
Monday the Twenty first day of September one
thousand eight hundred and seventy four

Present

Francis Martin Winderley Esquire.

Appeal Suit No. 66 of 1872

- | | | |
|---|------------------|---------------------------|
| 1 | Vyaspoorygounden | } Appellants (Plaintiffs) |
| 2 | Kunjaspagounden | |

Royappanatha Swamyar - Madam Plaintiff

- | | | |
|---|-------------------------------|---------------|
| 1 | The Superintending Engineer & | } Respondents |
| 2 | The Range Engineer Coimbatore | |
- (Defendants)

Appeal against the decree of the Dist.
Munsif Court of Coimbatore in Original
Suit No. 229 of 1870

Grounds of Appeal

I The claim has been satisfactorily proved
by Plaintiffs' documents and witnesses and this
evidence is supported by that of the 1st, and
4th witnesses for Defendants ^{and} that of David
the 1st of 3 shut ^{by} ~~and~~ Pillay

Pillay, joint witness.

3

Defence has not in the least been proved

Decree — This appeal, coming on for hearing: Upon perusing the grounds of appeal the Judgment and decree of the Lower Court and the material papers in the suit and upon hearing the arguments of Ramalingier & Hooprosawmy Sastry Vakils for the Appellants and Veerabudrier Vakils for the Respondents.

This Court doth order and decree that the judgment of the lower Court be and the same is hereby affirmed, and this appeal dismissed with costs.

Memorandum of costs.

Respondents' costs in Appeal suit
Value of Stamp paper for Vakalatnamahs "—8—"
Pleaders' fees on the appeal, amount } 31-11-2
viz Rs 634-2-—

Total Rupees 32-3-2.

To be paid to Respondents by made over Appellant.

(Signed) H. M. Henderson
District Judge.

4
/ True Copy /

By order

M. A. S. S. S.

Sheristadar

W. B. S.

Copy applied for 30th October 1874 Head writer
Copy ready for delivery 3rd November 1874
Copy delivered 4th November 1874

Compd.

J. H. Streunapasinger

3rd & last sheet

W. B. S.

COURT FEE
WEIGHT A

In the District Court of Coimbatore
Monday the Twenty first day of September
one thousand eight hundred and seventy four.

Present

Francis Martin Weindersley Esquire

Appeal suit No. 65 of 1872

- | | |
|----------------------|---------------------------|
| 1 Vyapooray gounden, | } Appellants (Plaintiffs) |
| 2 Annasappaygounden | |

Rajappanatha Swamyar. Made over Plaintiff

- | | |
|---------------------------------|---------------|
| 1 The Superintending Engineer & | } Respondents |
| 2 The Range Engineer Coimbatore | |

Appeal against the decree of the District
Munsiff Court of Coimbatore in Original Suit
No. 229 of 1870

This appeal coming on for hearing the
Court delivered the following

Judgment I. The Plaintiffs sued to
recover, Rupees 634-2-0 being the price 78,000
bricks and 1054 Parays of Chunam delivered
by Plaintiffs under a contract entered into
by Sh 1st of 6 sheets per by

In a letter from the
Suby Engineer Coimbatore
to the Secretary to
Government, P. M. O.
Coimbatore, No. 101 dated
6th November 1874.

Dec. 27 27 Nov 74
In No. 101 of 1874
P. M. O. 24/74

Copy of Decree in Appeal
Suit No. 65 of 1872 against
the decree of the District
Munsiff of Coimbatore
decreeing that the
lower Court's judgment
is affirmed

by them with the D. P. W. on 3rd February 1863: the Plaintiffs giving credit for Rupees 100 paid on the 26th March 1863

2 The defence was that 1st Plaintiff, alone had entered into the contract of 3rd February 1863, and that he failed to supply any materials except — 13000 bricks and that deducting Rupees 45-8- the value of these bricks from Rupees 100 advanced to 1st Plaintiff, on 26th March 1863, the 1st Plaintiff owed Rupees 54-8- to the Department.

3 The District Munsiff has dismissed the suit finding that the contract set up by Plaintiffs was not proved and that Plaintiffs had failed to prove delivery of bricks and chumam as stated in the plaint

4 The Plaintiffs assert that the contract was to deliver 150000 bricks at Rupees 3½ per 1000 and 2000 Parays of chumam at 7 annas per paray, that half the materials were to be delivered within 1st March 1863 and the remainder within the 19th Idem; that

the 2nd of 6 sheets the

the Range Officers should inspect and accept the same and pay the value to Plaintiffs.

5 The Defendants cannot state what the exact terms of the contract were, as the contract deed has been lost; but the exact terms are really immaterial in this case.

6 Now the Plaintiffs go on to say that between 25th February 1863 and 10th April 1863 they delivered 78000 bricks and 1054 Parays of Chumam which were inspected & accepted by the Range Officer, who directed the Overseer to grant a receipt for the same, which receipt was accordingly granted on 28th May 1863 - (Exhibit A)

7 Now that the receipt was granted, there is I think no doubt, for ^{and the} it bears signature of one Mac Donough the Overseer, and the signature looks genuine: but it is I think very doubtful whether materials were delivered according to that receipt; whether Mac Donough did not give a false receipt to suit his own purposes. This seems probable from the fact that

Sh

3^d of 6 shut

on

on 29th May 1863 MacDonough wrote for
letter VIII to the Range Officer stating that
only 13,000 bricks had been delivered by 1st
Plaintiff, and also from the fact that the
receipt A acknowledges delivery of 78,000 bricks
& 1054 Parays of Churnam, no credit is given
in it for the Rupees 100 advanced on 26th
March

8 But whether or not the receipt is true,
the Plaintiffs' present claim is barred. It is
admitted that the materials were delivered
by the 10th April 1863, and the Plaintiffs
prove that the materials were accepted by the
Range Officer, at least 10 days before the receipt
A was given, that is on the 16th May 1863 and
Plaintiffs assert that by the contract payment was
to be made as soon as the materials were accepted.
The cause of action therefore arose on 16th May
1863 according to Plaintiffs' own case, and this
suit instituted on 25th May 1863 is therefore
barred.

9 The Plaintiffs' Vakil argues that the
4th of the Act is not a limitation

limitation runs from the date of A. but it is not
so: the money was due and the cause of action arose
directly the materials had been accepted, and A
can be looked on as nothing but an acknow-
-ledgment that the goods had been delivered.
Then the Plaintiffs' Vakil argued that A was
an acknowledgment under section 4, Act XIV of 1859,
but clearly not. In the first place A does not
admit that any money is due; money might
or might not have been paid for the goods
delivered. On Plaintiffs' own showing money for
the 78000 bricks and 1054 Parags of chunam
mentioned in A was not ^{is} all due for Plai-
-tiffs admit Rupees 100 had been paid to
them; when then it is found that the re-
-ceipt merely mentions delivery of a certain
quantity of goods and when it is admitted
that a portion of those goods had been
paid for prior to the granting of the
receipt, it is evident that as far as the receipt
goes the whole of the goods might have
been paid for and that at all events the
5th of 6 shulz used receipt

receipt cannot be looked on as an acknowledgment of money due for all or any of the goods mentioned in it.

10 But even if the receipt were an acknowledgment of the debt it would not help Plaintiffs; for under section 4 of the limitation Act of 1859 the acknowledgment must be in writing signed by the debtor himself and in this case the contracting party and the party to whom Plaintiffs looked for their money was not the Overseer, ~~Wm. D. Donough~~ but the Range Officer.

11 For these reasons I affirm the judgment of the Court below and dismiss this appeal with costs.

(Signed) H. M. Knidersley
(True copy) As District Judge.

copy applied for 30 October 1874 By order
copy ready for delivery 31 October 1874
copy delivered 4 November 1874

Compared

H. Streeter & Co.

Theristador

Wm. D. Donough Head Writer

In a letter from the
Superintending Engineer
re: Combustion to the

Secretary to Government
J. M. De la Madras
No. 101 dated 6 Nov 1874

Ms. 272200/74
In MS. N. 1488.

J. M. 2024/74

Copy of judgment
in appeal sent to 1874

of 1872 against the
Decree of the District
Court of Coimbatore.

done affirming the
lower Court's finding.

must and should
be sent to the suit with

MS. N. 1488-27-1874

1874 Depart.
 The Supg Engineer
 Bangalore

To
The Secretary to Govt
D. W. Dept.

Dated 6th
Recd 9th } November
1874
No 101

Enclosures 2.

Informs that the appeal
 suit preferred against
 the decree of the District
 Munsiff by Vyapoomy
 Goundon and Kanyap-
 pa Goundon has been
 dismissed by the
 District Judge.

With an Order

8802
Recorded and communication to the Conference

3352[®]

of the Deeds.

Wm. J. Fox

20

Amp. T. undulose ✓
S.E. C. diploles mlt. 80-910 ✓

Delivered to Hall 30/11/74.

488-489

Rec'd to Connor 9/20/74

7024
Govt. of M.S. Madras.
PUBLIC WORKS.

The Supr. Engr.
Cumbalur

Encl. 2
D. 2000 1874 No. 3352
Nos. 400-409

Controller of P.W.
Accts. —

Suit — Cumbalur S. —

Letter from the Supt.
intimating that he ap-
peal suit preferred against
the decree of the S. Moonsiff
by certain Contractors for the
recovery of money due for
supply of bricks & Chumam
for the Chin Chinnanankar
rahi Bridge in 1863 has been
dismissed by the District Judge
Recorded & Comd to the Engr.