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MADRAS RECORD OFFICE

Government of Madras

Public Works DEPARTMENT

G.O. No. 3503

B.P. No.

Press

Mis.

Original

Dated

11-12

1875

195

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No. 182. Read the following letter from Colonel F. J. MOBERLY, R.E., Superintending Engineer, Chingleput, to Major-General G. W. WALKER, R.E., Secretary to Government, Public Works Department, dated Guindy, 25th November 1875, No. 3,618:—

WITH reference to G.O., No. 1,066-F, dated 24th April 1874, I have the honor to forward the judgment of the Additional District Munsif of Chingleput in the suit of the Manapakum villagers.

1 Judgment.
1 Extract of the Court's Decree.

2. Mr. Lowry has been exempted from payment of Court costs as will be seen from an extract of the Court's decree herewith enclosed, but he is desired to refill the channel to its former width.

IN THE ADDITIONAL DISTRICT MUNSIF'S COURT OF CHINGLEPUT.

Original Suit No. 256 of 1874.

JUDGMENT.

THIS is a suit for establishing plaintiffs' right to enjoy kany 0-2-0 of nunjah land at Manapakum, assessed at Rupees 0-5-1, for obtaining a decree to fill a channel which 1st, 2nd, 3rd, 4th, and 5th defendants dug by order of the 6th and 7th defendants in the said land; for recovering from the defendants Rupees 40, of which Rupees 20 are compensation for loss of produce in 1873, and Rupees 20 are the charges to be incurred in filling the said channel.

The plaintiffs assert that nunjah lands Nos. 773, 774, 777 and 789 form part of the plaintiffs' share in Manapakum; that plaintiffs enjoyed the said lands for fifteen years up to February 1873 with entry of puttah in their names; that in February 1873 defendants from 1st to 5th, with the permission of the 6th and 7th defendants, dug a new channel in the said lands to the extent of 96 yards in length, 4 yards in breadth, and 1 yard in depth, and threw mud all along the said channel to the extent of 2 yards on each side; that there never existed a channel through the said lands to the village of Odayambakum; and that the said channel was dug notwithstanding the objections raised by plaintiffs.

The plaintiffs' Vakil excludes the 7th defendant from the suit.

The 1st, 2nd, 3rd, and 5th defendants state that land No. 773 is waste; that land No. 774 is poramboke; that they do not form part of the plaintiffs' village share; that they were not enjoyed by plaintiffs, nor are they entered in their puttah; that the channel in question is not in lands Nos. 777 and 789, which are entered in plaintiffs' puttah; that the channel in dispute is the old channel supplying torrent water to the Odayambakum tank; that the Sirkar repaired it; and that there is no other torrent supply channel to the said tank.

The representative of the 4th defendant let the suit go *ex parte*.

The 6th defendant, Executive Engineer, No. 3 Range, states that the channel in question is a catch-drain intended to intercept the water flowing from north to south and convey it into the Odayambakum tank; that this channel has been many years in existence and it in no way affects the interest of the plaintiffs; that when improvements were made to the channel in 1872 and 1873 by slightly widening and deepening it, the necessary excavation was not made on the plaintiffs' land, but on waste land belonging to Government; that his predecessor, Mr. Ottmann, who made the said improvements had a right to do what he did under the decision of the High Court in Regular Appeal No. 26 of 1871, as the water is thereby declared to be the property of Government; and that he has only done his duty in making use of what would otherwise flow to waste.

The following issues were framed:—

- (1.) Whether the site of the channel in question belongs to the plaintiffs.
- (2.) Whether the said channel is an old existing one.
- (3.) What will be the amount of costs in filling up the said channel.

*Proceedings of the Madras Government, Public Works Department,
11th December 1875.*

(4.) Whether defendants from 1 to 6 are liable to pay to plaintiffs any sum as compensation for the loss of produce claimed, and what that amount is. Plaintiffs produced the following documents:—

- A.—Pymash Account for 1821.
- B.—Puttahs for fashis 1273, 1276 and for 1863.
- C.—Complaint in Original Suit No. 72 of 1863, on the file of the Caranguli District Munsif.
- D.—Defendants' written statement in do. do.
- E.—Judgment in Appeal Suit No. 135 of 1872, on the file of the District Court of Chingleput.
- F.—Plan.

G.—Map of Madrantikam Taluq.

Sixth defendant produced the following documents:—

- I.—Letter written by the Sub-Engineer, No. 3 Range, to the Sub-Collector of the Chingleput District, on 13th March 1872.
- II.—Urzi written by the Tahsildar of Chingleput Taluq, to the Sub-Collector of the Chingleput District, on 30th September 1872.
- III.—Plan.

In this suit six witnesses have been examined for plaintiffs, two for the 6th defendant and four witnesses for 1st, 2nd, 3rd, and 5th defendants.

The plaintiffs' witnesses, except the 5th, state that the channel in dispute was dug about two years ago; and that there was no channel existing previously on its site.

The plaintiffs' 4th witness adds that torrent rain water used to pass through the site of the disputed channel, when it was waste, into the tank of Odayambakam, on the northern bund of which there was a little opening to receive it.

The witnesses for the 1st, 2nd, 3rd, and 5th defendants and the 5th witness for the plaintiffs state that there was an old channel on the site of the disputed one, conveying water to the said tank.

Mr. Ottmann (1st witness for 6th defendant, who appears to have inspected the spot in question) states that there was a channel above the disputed part and also below it; that the natural gravity of drainage was to the Odayambakam tank; that there was a natural channel all along above the disputed part; and that therefore he asserts that the channel must have been continuous.

The 6th defendant's 2nd witness, the Tahsildar of Ponneri, who appears to have inspected the spot in question before the digging of the new channel, states that he found a small channel adjoining the said tank bund to the extent of 2 yards on the north of the said bund, 1½ feet broad and 1½ feet deep; that there were some nunjah fields north of the said channel; that on the north-west of the said fields there appeared to be marks of an old channel which was in ruin; that he recollects that it was 2 feet broad in some places, 1 or 1½ feet broad at other places; and that it appeared to him that there was an old channel passing to the said tank which was intercepted by the fields newly formed by Manapakam people.

The Pymash account A of Manapakam, dated 1821, does not show that there existed any channel about the site of the channel in dispute.

I do not think that there was a regular supply channel to the tank of Odayambakam on the site of the disputed one. I am nevertheless of opinion that the torrent water from a distance made its way to the said tank and formed a natural channel, varying in breadth at different places, and this was after the preparation of the Pymash account A, long before the plaintiffs cultivated pieces of lands at the said spot.

The plaintiffs had no right to interfere with the said natural channel.

The plaintiffs state that the channel now in dispute was dug four yards broad.

The 1st, 2nd, 3rd, and 5th defendants' witnesses say that it is 2 yards broad.

It has been shown in evidence that the breadth of the old channel at its largest opening was only 4 feet.

*Proceedings of the Madras Government, Public Works Department,
11th December 1875.*

It has been also shown in evidence that water stands in the plaintiffs' fields, west of the channel in dispute, for four or five days when the river channel inundates in winter, the western bund ½ yard higher than the level of the ground stopping its passage towards the east.

I do not think that the Engineers had a right to enlarge the old channel and raise its bund to the detriment of the plaintiffs' interest.

Hence I think that the said channel could not be made broader than 4 feet and its bund higher than 1 foot from the level of the ground. The plaintiffs have not proved the actual damage by any satisfactory evidence.

I think that defendants 1, 2, 3, and 5 are rather to blame in having got the channel enlarged.

The plaintiffs are equally to blame in having denied the existence of the old channel.

It is therefore decreed that the 6th defendant do cause the channel in dispute to be filled in such a way as to make it 4 feet broad, and cause its bunds to be 1 foot only higher than the level of the adjoining grounds; that the rest of the claim be dismissed; that plaintiffs and 1st, 2nd, 3rd, and 5th defendants do bear their own costs; and that half of the costs of the 6th defendant be paid by the plaintiffs, the other half being paid by the 1st, 2nd, 3rd, and 5th defendants.

Pronounced this 7th August 1875.

(Signed) P. A. DEVARAMBAN,
Additional District Munsif.

Extract from the Decree of the Additional District Munsif of Chingleput, Original No. 363 of 1873, refer No. 256 of 1874. Court costs incurred by the 6th Defendant Mr. (Lowry).

	RS.	A.	P.
Value of Stamps	...	...	...
Cost of summoning witnesses	...	...	...
Batta paid to witnesses	...	...	...
Vakeel's fees	...	...	...

71 11 9

Of this amount half should be paid by the plaintiffs to the 6th defendant and the other half by the 1st, 2nd, 3rd, and 5th defendants.

7th August 1875.

(Signed) P. A. DEVARAMBAN.

(True Extract.)

(Signed) F. J. MOBERLY, Colonel, R.E.,
Superintending Engineer, Chingleput.

No. 183. ORDER THEREON, 11th December 1875, No. 3,503.

ESTABLISHMENT, No. 14.

RECORDED. The alteration of the channel in accordance with the decree should be carried out at once.

(True Extract.)

Major-General, R.E.,
Secretary to Government.

To the Superintending Engineer, Chingleput.
" Controller of Public Works Accounts.
" Chief Engineer for Irrigation.

Exd. S. T. Austin.

Spare Copies

36
Extract from the decree of the
Additional District Moonsiff of Chingleput
Original No. 363 of 1873 Refer No. 256 of 1874
Court Costs incurred by the 6th Defendant
/Mr. Lowry/

Value of Stamps	—	Ruppes	—	3	—
Cost of summoning Witnesses	—	—	—	8	—
Batta paid to witnesses	—	—	—	69	—
Vakeels' fees	—	—	—	2	—
				—	9
				71	—
				11	—
				9	

Of this amount half should be paid
by the Plaintiffs to the 6th Defendant
and the other half by the 1st 2^d 3^d
and 5th Defendants.

7th August 1875.

/Signed/ P. A. Devarambani

/True Extract/

J. H. S. by Colonel R. B.
Superintending Engineer
Chingleput

NO. 3618

Chingleput Superintending Engineer's Office,
Coimbatore, 25 November 1875.

From

THE SUPG. ENGINEER

Chingleput.

To

The Secretary to Government
Department Public Works.

Sir,

Enc: 2
Judgment
Extract of the
Court's decree
With reference to G. O. No. N
dated 24th April 1874, I have the honor
to forward the judgment of the Addition-
al District Moonsiff of Chingleput in
the suit of the Manapakam Villagers.

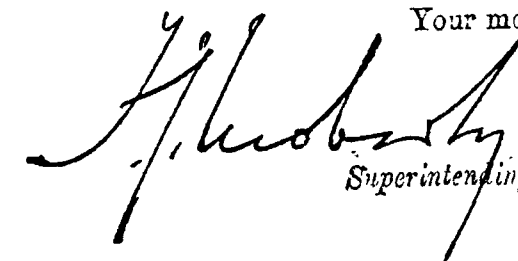
Defendant.

Mr. Lowry has been exempted
from payment of Court costs as will
be seen from an Extract of the Court's
decree herewith enclosed, but he is
desired to refill the channel to its
former width.

I have the honor to be,

Sir,

Your most obedient Servant.



Colonel, R. E.

Superintending Engineer Chingleput.

No 3503

Public Works Dept

Proceedings of the Madras Government
under date the 11 May 75
Read the following:-

From

The Superintending
Engineer
Chingleput

(P.O. No 2618 dt 25 Nov 1975)
Chingleput

Recorded. The altera-
-tion of the channel in
accordance with the decree
should be carried out at once

Wm. 7/12
[Signature]

To S. Eng. Chingleput ✓
Controller of P.W.D. ✓
Chief Eng. for S.W. ✓
desd 21-12-75
Office 17

P.O. No 3503

P. M. 1875, 28th

From
THE SUPR. ENGINEER
Chingleput

To

THE
Secretary to Govt.
P. M. 1875

Dated 25th
Received 28th
June 1875

No. 3618
ENCLOSURE 2

Towards the
Judgment of the ad-
-ditional District Mag-
-istrate of Chingleput
and extract of the
Court's decree in the
suit of the Municipality
vs. the P.W.D.
Will be sent -

707/6

Govt. of 1875 Madras.

PUBLIC WORKS.

Supp. Reg.
Chingleput

12/11

Dated

Issued

Recd.

Encl.

G. O. 17/11/12 1875. No. 3503

No. 152 1/2

Trick brought by certain Villagers
of Mandapam, Chingleput Dist. - judgement of
the additional British Magistrate
in the ———— against the
Lorry recorded with 2
Marks.