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MADRAS RECORD OFFICE

Government of Madras

Public Works

DEPARTMENT

G.O. No.	374	Press	<i>Original</i>
~~B.P.~~ No.		Mis	
Dated	11 . 2 .	195	1875

Not to be folded or roughly handled

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

No. 238 Read the following letter from Colonel F. J. MOBERLY, R.E.,
Superintending Engineer, Chingleput, to Colonel G. W. WALKER,
R.E., Secretary to Government, Public Works Department, dated Camp
at Red Hills, 10th January 1875, No 3,463.—

WITH reference to paragraph 2 of G. O., No 1,870-B, dated 11th July 1874,
I have the honor to forward an authen-
Enclosure one containing 12 Sheets. ticated copy of Trivellore District
Munsif's Court's Judgment in favor of
Chellampattady villagers.

No. 239 ORDER THEREON, 11th February 1875, No. 374.

IRRIGATION, No 11.

Establishment.

His Excellency the Governor in Coun-
cil is of opinion that the decree in this
suit shows that Mr Ottmann, when Range
Officer, acted improperly in persistently
carrying out the raising of a bund in face

of the protest made by the plaintiffs. He was aware that the demarcation made
by the Revenue Survey Department supported the plaintiffs' representations, and
it appears that he stopped the work in or about April 1872 and then resumed and
completed it in September 1872, without, as far as can be learnt from the decree,
having obtained any authority to do so from the Revenue Officers, or from the
then Superintending Engineer, to whom the matter should have been referred for
orders.

2 As Mr. Ottmann took upon himself to decide a question manifestly not
within his competence to determine, he will be called upon to bear the share of
the expense of defending the suit decreed against the present Range Officer.
The Superintending Engineer, Chingleput, will arrange for the amount being
disbursed, and will inform the District Engineer, Nellore, of the sum to be
recovered from Mr. Ottmann. The lowering of the bund in accordance with the
decree, which will be returned to the District Engineer, should also at once be
carried out.

(True Extract.)

Colonel, R.E.,

Secretary to Government.

To the Superintending Engineer, Chingleput.

„ District Engineer, Nellore,

with G Os, Nos 1,576-A, 13th June, and 1,870-B, 11th July 1874

„ Chief Engineer for Irrigation

„ Revenue Department,

with G Os, No 1,576-A, 13th June, and 1,870-B, 11th July 1874

„ Controller of Public Works Accounts.

Esd S T Austin.

Spare Copies

*Officers attached a half of the pond to the pangs
1st 2nd 3rd 4th 5th 6th 7th 8th 9th 10th 11th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21st 22nd 23rd 24th 25th 26th 27th 28th 29th 30th 31st 32nd 33rd 34th 35th 36th 37th 38th 39th 40th 41st 42nd 43rd 44th 45th 46th 47th 48th 49th 50th 51st 52nd 53rd 54th 55th 56th 57th 58th 59th 60th 61st 62nd 63rd 64th 65th 66th 67th 68th 69th 70th 71st 72nd 73rd 74th 75th 76th 77th 78th 79th 80th 81st 82nd 83rd 84th 85th 86th 87th 88th 89th 90th 91st 92nd 93rd 94th 95th 96th 97th 98th 99th 100th*

In the District Munsiff's Court at Trivellore.

Tuesday the 29th day of September 1874 3-

Present-

M. Krishna Rao District Munsiff

Original Suit No. 641 of 1873.

This suit coming on for hearing the court delivered the following judgment.

1. The Plaintiffs the mirasidars of Chelambutt, a suburb of Kottor, a zamindari village sue to compel the Defendants to remove the eastern bund of a pond called Niliam kutam 70 feet long, 12 feet wide and 4 feet high, to establish their right to irrigate their lands by the said pond and to recover Rs. 20 for the cost of removing the bund if the Defendants fail to do so, and also Rs. 31 for the loss of produce they sustained in consequence of the erection of the bund. Their material averments are as follow. The Defendants 1 to 13 are mirasidars of Thupanguttam, a government village. The 14th Defendant is the present Range officer of the Department of Public works. The 15th Defendant is the overseer, a subordinate of the 14th Defendant. The pond in question originally belonged to Chelambutt but by a demarcation in 1870 the settlement officers attached a half of the pond to Thupanguttam.

1st inst.

and the other half to Chelumbut. The Plaintiffs have, from time immemorial, been irrigating their lands situated on the east of the pond, from the water of the pond. In March 1872, the Department of public works began the repairs of the tank of Kopenzulla, called "Matthangal", and then tried to extend the bund of Matthangal over the eastern bank of the pond. The Plaintiffs petitioned to Mr. Altman the predecessor of the 14th Defendant, remonstrating against the extension. He sent a reply intimating that he has ordered the work to be stopped until further orders, and promised to settle the matter after inspection. He gave no orders on the point. In September 1872, he again commenced the work and finished it. The result was that the eastern bank of the pond was raised to 4 feet high over the old level. This has interfered with the Plaintiffs' right of irrigating their lands on the east of the pond and has caused the lands on the west to be submerged. The Plaintiffs sustained a loss of Rs. 31,000 by their being prevented by the Defendants from irrigating their lands as usual.

2. The 1st, 2^d, 3^d, 5th, 6th, 7th, 8th, 9th, 10th, 11th,
 & 14th Defendants plead that the pond in question
 belongs to Papanquilton, that the Demarcation-
 Apartment wrongly attached a half of it to the
 Saint-Joseph-village, that the land of the Stangal
 is not of

[illegible]

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always extended over the eastern bank of the pond,
that the recent repairs did not heighten the bank
but only kept to the former level, that the Plaintiffs
had never enjoyed the right of irrigating their
lands by the water of the pond, and that the claim
is barred by lapse of time as this suit was filed
more than a year after the commencement and
closing of the work. They also dispute the measure
of damages claimed.

3. The 12th & 13th Defendants admit the
Plaintiffs' case.

4. The 15th Defendant pleads not liable
and was exonerated at the first hearing with the
consent of the Plaintiffs.

5. The 14th Defendant is ex parte.

6. The following issues were settled.

1st Whether the pond belongs to the pango toor
or whether it belongs in equal moieties to
happangulloor, & Chelambutt.

2 Whether the bank of the tank of
happangulloor extended over the line marked A
& B in the plans furnished by both parties, &
if so whether the recent repairs have raised
its height and to what extent.

3. Whether the officers of the Department of
public works are justified in maintaining the
bank at its present height.

3rd sheet of

14th

What will be the cost of removing the bound.

3rd

Whether the Defendants are bound by the Rasinamah filed by the mirasidars of hopangthor + chelumbatt before the Demarcation Department.

6th

Whether the letter produced by the Plaintiffs purporting to have been addressed to them by Mr. Ottman is genuine & whether any final orders were passed and communicated to Plaintiffs after the date of the said letter & if so when.

7th

Whether this suit is barred by article 16 of the 2nd Schedule attached to the Limitation Act.

8th

Whether the Plaintiffs have the right to irrigate their lands by the water of the pond, & 9th whether the Plaintiffs sustained any loss by the acts of the Defendants & if so what is the extent thereof.

7.

The Plaintiffs filed the following exhibits.

A.

the Rasinamah referred to in the 5th issue.

B.

Mr. Ottman's letter referred to in the 6th issue.

C.

the plan of the ground in dispute.

D.

Mr. Ottman's letter dated 20th July 1872 to the Sub Collector stating that the Demarcation Department seems to have wrongly included a bit of the Government land to chelampatt;

E.

Letter of Deputy Superintendent of Revenue Survey dated 25th October 1872 stating that Mr. Ottman is wrong in his assertions made in (C).

F.

the letter of the Superintendent of Revenue Survey dated 6th November 1872, enclosing the

- 114
- Opinion of his deputy contained in Ex. 57,
- II, the Nymayashie account of Chelumbutt.
- I, Nymayashie account of Kipangutloor.
8. The Defendants filed Exhibit I the ground plans, II a Ma ha purnama signed by the 1st Plaintiff relating to the cultivation of some land, III estimate of work furnished by the Department of public works to its contractor & IV, Mr. Ottman's explanation dated 28th November 1872, in vindication of the assertions he made in Exhibit C.
9. The Plaintiffs examined 5 Defendants & 7 witnesses.
10. From the Nymashie accounts of Chelumbutt (Exhibit II) it is clear that the Mirasidars of Kipangutloor always disputed the claim of the Plaintiffs to the pond, but the latter admitted the claim of the former to a moiety of the pond. The Demarcation department after inspection of the Nymayashie accounts of both villages & necessary investigation came to the conclusion that the pond belongs in equal moieties to Chelumbutt & Kipangutloor, and accordingly demarcated it. The mirasidars of both villages put in a Rajinama (Exhibit A) accepting the correctness of the conclusion arrived at by the Demarcation Department. This is signed by Abbi Suidor (the late father of the 1st & 2^d Defendants and uncle of the 3^d Defendant, Village Munsiff and. Mari

13
of Kuppangottur) the 4th Defendant (another Marim
of the same village), and Kanakapillay (Plaintiff
4th witness) & 2 other mirasidars of Kuppangottur.
The contending Defendants assert that they are not
bound by Exhibit A, It is a well established
principal of law that in disputes regarding the
boundaries between two villages, a few of the
inhabitants of each village may represent the
whole community, and the decisions arrived at,
unless impeached for fraud & collusion binds all
(See Mr. H's Reports Vol III Page 226). In the present
case, the head men and the mirasidars of the
Defendants' village signed the Razinama, and
one of them is the present head man of the village
2^d, and 3^d Defendants. If the Defendants
thought that the Demarcation was wrong, they
ought to have appealed against it within the
time allowed by Section 25 of Act XXVIII of 1860.
This they did not. Mr. Osman's suspicion of the
correctness of the decision of the Demarcation
department could not affect the validity of the
demarcation which was carried out under the
express sanction of a legislative enactment.
Moreover his objections were overruled by competent
authority, the Directors of the Revenue Settlement
(Exhibits H and I). Upon these facts it is clear
that the Plaintiffs have a right to a moiety of
the pond, and they can properly question the
6th sheet of

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extension of the bund of the Thangal over the eastern
bund of the pond. I have now to consider whether
the bund was extended and heightened. From the
oral evidence on both sides it is quite clear that
the bund was heightened. Exhibit III gives no
idea of the former height, as it is simply a
specification of the work to be executed. The
Department of public works could have conclusively
shown from their own correspondence that the
height remains the same as before. (Read the
evidence of the Defendants' 5, 6, & 7 witnesses).
But they do not attempt to do this. In some of the
omissions I have to draw the inference that
their production would be unfavorable to the
Defendants' case. Moreover it is admitted that
the northern bund of the pond still exists
in its former condition. It is further allowed
that in the present condition of the Thangal, if
it receives sub supply, the northern bund of the
pond will be submerged. On the northern bund
of the pond there are trees. According to the
ordinary laws of nature no tree could grow in the
water. The inevitable conclusion from this is that
if the northern bund of the pond was submerged
by the water of the Thangal, at the time when
the trees were mere plants they would not have
grown to the height they now hold, and that
the Thangal water did not at all events.

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Subm. 30. The trees were banded when those trees
were in their infancy. The trees are not more
than 10 or 12 years old. It is further admitted
that 11 Sept 11. Shangul, there is a cart track,
and it was used from time immemorial. The
Superintendent's witness says that in the Shangul is
just this band must be abandoned for at least
20 days, and that in the height of the eastern
bank of the pond be reduced to the top most level
of the northern bank, the capacity of the Shangul
would be reduced by 20 days supply. From these
circumstances, it appears to me, that the band
of the Shangul was so heightened as to hold
water for 20 days supply in excess of the former
capacity of the tank. I must also here observe
that the Indians admit that there was band
on the eastern side of the pond, but they contend
that it was high lined. It is also part of their
case that the northern limit of the eastern bank
of the pond was quite close to the southern limit
of the eastern bank of the Shangul. Upon the
premises I find that in the course of repairs
the eastern bank was heightened, and that the
extent of the increased height is probably
what is above the top most level of the northern
bank of the pond. In the course of public works
has no right to maintain the bank at its present
height especially as it interferes with the rights
of the inhabitants of a primary village.

19✓
(All the reports vol V page 6 to 8 & 122 of 1868,
and also United States Revenue Register VI page 157
to 21 of 1871)

11. The Defendants Tuck argues that
whatever may be the merits of the Plaintiffs
claim, their right to ask for the reduction
of the height of the dam is correct. It is not
disputed that the repairs were commenced in
March & closed in September 1872, that the
Plaintiffs demand was made in April 1872 against
the erection of the dam on the east of the pond,
and that the defendant who was in charge
of the work Mr. Ottman intimated to the
Plaintiffs in writing (Exhibit B) in April 1872
that he would not let the work be stopped until
he instructed and decided the matter. Exhibit B
is admitted by the Defendants to be genuine.
The Defendants do not show that Mr. Ottman
passed any final orders or communicated
them to the Plaintiffs prior to the recommen-
cement of the work in September 1872. The
Exhibits C, D, E and F show that at all events
until September 1872 Mr. Ottman was not
sure what he was to pay on the Plaintiffs
petition. . . and therefore bound to compute
time from September 1872 when the work
was finished and this suit was laid in
September following. Moreover, the learned
counsel for the Plaintiffs contended, and
I think rightly, that his clients seek for the

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... and nuisance, & that as long as the
nuisance remains, they have a right to sue
for the removal thereof, and quoted sec 24 of
the Indian Limitation Act 18 of 1871. Article
11 of the E. & the rule must of course be read in
connection with the section quoted by the learned
counsel. ... therefore over rule the plea based on
the limitation.

12. I have still to decide whether the
plaintiffs have the right to irrigate these
lands by the waters of the pond. The lands on
the east of the pond are entered as wet lands
in the ry magyasha account (Exhibit II)
the plaintiffs' witnesses one of whom is the
headman of the defendant's village, prove
that the plaintiffs irrigated the lands on the
east from the pond for more than 20 years.
The evidence of the defendant's witnesses
entirely fails to prove that the defendant
received the water of the pond to their fields.
So too witnesses of theirs gave the same account
of their use. The story told by the 2^d Defendant
is that the water of the pond is first taken
to the Phangui and thence to their fields. It is
admitted that the bed of the Phangui is above
the level of the pond, and the waters of Phangui
flow into the pond, then the reverse. In the
ry magysha accounts of the defendant's village,
there is no allusion to the defendant's having
10th sheet

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enjoyed the pond & water for irrigational purposes.
A cursory perusal of the depositions of the Defendants' witnesses will show how utterly worthless their evidence is. I find that the Plaintiffs have the right of irrigating their lands on the east of the pond, by the water of the said pond.

13. The 2^d Defendant admits that he prevented Plaintiffs from taking water to their fields. I assess the Plaintiffs' loss at Rs 15 which the 2^d Defendant must pay to the Plaintiffs.

14. My conclusions are that the portion of the pond on the south of the demarcation line belongs to the Plaintiffs' village, that the eastern end of the pond has been heightened, that the increased height is to be found in that portion of the bund which is above the topmost level of the northern bunch of the pond, that the Plaintiffs' claim in this suit is not barred, that the Plaintiffs have the right of irrigating their lands lying on the east of the pond by the water of the pond, that the 2^d Defendant is liable to pay to Plaintiffs the loss they sustained, and that the amount of such loss is Rs 15.

15. I accordingly decree that the height of the bund on the east of the pond be reduced within 6 months to the level of the topmost point of the northern bund, that in default, the Plaintiffs shall be

1/12/75

1/12/75

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Sup
CHINGLEPUT DISTRICT ENGINEER'S OFFICE,
Chingleput.
11 January 1875.

From
THE DISTRICT ENGINEER,
Chingleput.

To
The Secretary & Government
Department Public Works

Sir, With reference to para 2
of P.O. 1870 dated 11th July 1874
I have the honor to forward
an authenticated copy of
Enclosure District Munsiffi
Court's Decree in favor of
Chellampattay village.

I have the honor to be,

Sir,

Your most obedient Servant,

[Signature]
Colonel, R. E.,
District Engineer Chingleput.

1/12/75
2-1-3

P. H. Rept
 Proceedings of the Madras Government
 Read the following:-
 From the Superintending Engineer
 Chingleput } (M. No. 3466 d/10 Jan'y 175)

374

His Excellency the Governor
 and in Council is of opinion
 that the decree in this suit
 shows that Mr. Ottmann,
 when Range Officer, acted
 improperly in persistently
 carrying out the raising
 of a bund in face of the
 protest made by the
 Plaintiffs. He was aware
 that the demarcation
 made by the Revenue
 Survey Department sup-
 ported the Plaintiffs
 representations, and it
 appears that he stopped the

M. 23/1

P. W. 1875 Sept
 From THE DISTRICT ENGINEER
 CHINGLEPUT.
 To THE Secretary to
 Government
 Camp, Bellary
 Dated 10th Jan'y 1875
 Received 12th Jan'y 1875
 No. 3466
 ENCLOSURE
 Forward an authen-
 ticated copy of decree
 of the Settlement Dist.
 Officer in favor
 of Gollampentla
 Pillagers in the
 Camp, Bellary
 Ch 238
 1022-1-75 or 11-1-75
 1022-1-75 or 11-1-75

the work in or about April 1872, and then resumed and completed it in September 1872 without, as far as can be learnt from the decree, having obtained any authority to do so from the Revenue Officers or from the then Superintending Engineer, to whom the matter should have been referred for orders.

2 As Mr. Ottman took upon himself to decide a question manifestly not within his competence to determine, he will be called upon to bear the share of the expense of defending the suit decreed against the present Range Officer. The Superintending Engineer, Chingleput, will arrange for the amount being distributed.

and will inform the District Engineer, Bellare, of the sum to be recovered from Mr. Ottman. The lowering of the bund in accordance with the decree, which will be returned to the District Engineer, should also at once be carried out.

Wm. 19/1/75
J.W.

561

- 6 To the Supl. Engr. Chingleput. ✓
- 6 " Dist. Engr. Bellare - (send copies also of 1576 A. & 1870 B) ✓
- 5 " Chief Engr. for Irrigation ✓
- 15 " Revenue Dept. - with G.O. No 1576 A - 13 June, & 1870 B 11 July 1874 ✓
- 5 " Controller of P.W. Accounts ✓

Staff - 12-2-75-

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Govt. of (1875) Madras
PUBLIC WORKS.

20

The Engineer.
Chingleput

Dated

Recd

1875

11 Feb. 1875, No. 374

No. 238239.

File Mr. Ottman called
upon to bear the share of
the expense of defending the
suit decreed against Mr.
Ottman in the suit instituted
by Mr. Chellampattad
Dyots, the owners of the
bund, ~~of the~~ in the Chellam
hally tank to be carried
out in accordance with
the decree.