

MADRAS RECORD OFFICE.

Government of Madras.

Pension

DEPARTMENT.

G.O. No. 1235

Press
Mis.

Dated 15 12 1882

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

PENSION DEPARTMENT.

READ—again the following G.O., dated 7th May 1879, No. 211, Pension:—

ABSTRACT.—Deciding that the superannuation pension of Rs. 5 admissible to K. Kelu Menon, late Gumastah, Walawanád Taluk, Malabar District, be withheld under Section 93 of the Civil Pension Code, pending further orders.

READ—also the following paper:—

From L. R. BURROWS, Esq., Acting Collector of Malabar, to the Chief Secretary to Government, dated Calicut, 25th November 1882, No. 3648.

Referring to G.O., Pension Department, dated the 7th May 1879, No. 211, I have the honor to enclose copies of judgments in the civil suits in which K. Kelu Menon was found to have knowingly used a forged document and of the decision of the Sessions Judge acquitting Kelu Menon.

2. The Acting Special Assistant Collector reports as follows:—

“With reference to your endorsement, dated the 10th instant, on Petition No. 3821 of 1882 presented by one K. Kelu Menon, I have the honor to state that the following is a summary of the circumstances under which petitioner was committed to the Court of Sessions.

“2. Petitioner was charged with the offences of forgery and using as genuine two forged documents which he knew to be forged (Sections 465 and 471, Indian Penal Code).

“3. These documents were produced by petitioner in evidence in Civil Suit No. 151 of 1878 on the file of the District Munsif of Ernád, in which he was a party. The Munsif found them to be forgeries, and in Appeal No. 565 of 1878 against that decision the District Court also held the same opinion.

“4. The District Munsif accordingly sanctioned the prosecution of petitioner for the said offences, and the Tahsildar Second-class Magistrate of Ernád, on a reference by that officer under date the 6th November 1878, entertained the present case against petitioner.

“5. When a warrant for the arrest of petitioner was issued immediately afterwards, he evaded it and was not found for about three-and-a-half years. Lately he surrendered himself to the Police, notwithstanding a warrant for the attachment of his property was, after the usual proclamation for his appearance, issued in the meanwhile.

“6. Petitioner, of course, pleaded not guilty to the charge brought against him, maintaining that the deeds were genuine. The evidence for the prosecution was of two persons, who stated that the deeds in question were filed by petitioner in the civil suit alluded to, that they were forgeries, and that the signatures which they contained, purporting to be those of the executant, differed strikingly from those in certain other genuine documents (also recorded) executed and registered by him.

“7. The alleged executant of the deeds having died some time prior to the institution of the civil suit and the guardian of his son (still a minor) having also died some time subsequent to that event, their evidence was not obtainable.”

3. It is clear that Kelu Menon absconded for the space of three-and-a-half years to evade execution of a Magistrate's warrant for his arrest, and that he only surrendered himself after the death of the two persons whose evidence would have been

material against him. Although the charge could not be proved in the Sessions Court, I am of opinion that the petitioner deserves no indulgence at the hands of Government, and I recommend that his permanent pay order may be finally cancelled.

ORDER—dated 15th December 1882, No. 1235, Pension.

In the circumstances reported the Government decline to grant the superannuation pension for which the applicant, K. Kelu Menon, has qualified.

(True Extract.)

J. D. REES,
Acting Under Secy. to Govt.

To the Collector of Malabar.
„ Accountant-General.

Gobt. of (1882) Madras.
PENSION.

Issued

Recd.

Encl.

G.O., 15th December 1882, No. 1235.

DECEMBER.

Pension.

Declining to grant the superannuation — for which K. Kelu Menon, late Gumastah, Walawanád Taluk, Malabar District, has qualified.

Enclosure 1 to letter N^o. 3648 dated 25th Nov 1882.

Suit N^o. 151 of 1878.

In the Court of the District Munsiff of Ernad.

Present. S. Subramana Iyer, Munsiff.

Dated 19th July 1878.

Suit to recover a land demised on Kanam by the Plaintiff's uncle (father's elder brother) to the 1st Defendant's father.

The plaintiff set forth that the demise was in 1009 for 101 ₹ , but that in suit N^o. 990 of 1864, brought for the recovery of the land, the 2nd Defendant, assignee of the Kanam, pleaded a further advance bringing the Kanam to ₹ 1400 and an agreement allowing him to hold the land for another 12 years from 1039, both of which pleas were upheld by the Court and that that period has now elapsed.

The plaintiff also claims arrears of rent from 1040, and ₹ . 200 by way of damages for injury done to the land and the bund of a canal.

2. 2nd Defendant pleaded assignment of his right to the 3rd Defendant who admits the assignment, but contends that he advanced to the Plaintiff's father ₹ . 95 in 1042, to be added to the Kanam on its renewal in 1051, and ₹ . 80 for fa, and could not now be expected, that he paid rent up to 1044 inclusive and that he has done no

injury to the land, but has, on the contrary, improved it at a large outlay. He further contended that the plaintiff has a cousin having a better right to sue.

3. 1st Defendant did not appear and the 4th Defendant did not put in his answer.

4. The following issues were framed in this case.

(1) Whether the plaintiff's father borrowed Rs. 95 of the 3rd Defendant and agreed to renew the demise of the land sued for to that Defendant.

(2) Whether any injury was done to the bund of the Canal and whether it was caused by the fault of commission or omission of any of the Defendants who injured it.

(3) What would it cost to repair it.

5. Plaintiff filed the following documents.

A. A Kanam deed on stamped paper executed by Plaintiff's father to Pathrot Padinharakkalathil Shanunni Nayar in Kanmi 1037.

B. - - - D^o - - - D^o by D^o to collatit Pathumak, dated 17th Medam 1043.

C. - - - D^o - - - D^o by D^o to collatit Ali dated 27th Medam 1043.

D. Kanam deed on stamped paper executed by Plaintiff's father to collatit Pathumak residing at Palliyal Thodika dated 28th Medam 1043.

E. Authenticated copy of the written statement

presented by the 2nd Defendant in Suit No. 490 of 1864 on the file of this court, dated 12th January 1866.

6. 3rd Defendant filed the following documents.

I Agreement on stamped paper granted by Plaintiff's father to 3rd Defendant dated 28th Karkitakam 1042.

II Receipt on cadjan granted by D^o to D^o dated 11th Kumbham 1044.

III Agreement on stamped paper granted by D^o to 2nd Defendant, dated 12th Makaram 1039.

IV Teer deed on stamped paper executed by 2nd Defendant to 3rd Defendant, dated 5th Karkitakam 1042.

V Mortgage deed on stamped paper executed by 3rd Defendant to Mookadakkat Vatakattil Kellummi Nayar, dated 23rd Kanmi 1052.

7. Plaintiff examined the following witnesses.

(1) Kurupath Keli Menon (3rd Defendant)

(2) Velayakkath Krishnan Nayar

(3) Muthal Kunhi Krishnan Nambiyar

(4) Theijyil Koya.

8. 3rd Defendant examined the following witnesses.

(1) Pazayoor Kachayil Vikrisia Eradi

(2) Kellat Achuthan Nayar

(3) Kairkulangaray Karimpanakel Kalil Nambiyar

(4) Tharamil Chembiniyil Keli Nambiyar

(5) Moonakel Don Avera

6. Mummajil Padinherapat Ramunni
Paniker.

Judgment.

9. If it were possible to apply the whipping Act in the case of persons making deliberately false contentions and producing glaringly forged documents to support such contentions, the 3rd Defendant to the present suit would be a proper subject for its application. The language may be strong, but nothing less would be adequate to condemn that Defendant's case. He was, no doubt, encouraged to make the contentions by the success he met with, of course indirectly, in the litigation of 1864 which enabled him to keep off the Janmi from his land for long number of years in addition to encumbering it with, comparatively, a large Kanam.

10. Plaintiff's father's elder brother demised, at what has turned out an evil hour, a land of his to the 1st Defendant's father on the small Kanam of 101 F in 1809, or about 45 years ago, and after allowing the demisee to hold it for 18 years in excess of the usual term of 12 years, the demisee's brother brought a suit for redemption when the present 2nd Defendant, who appears to have been merely a name-lender to the 3rd Defendant

Defendant the real assignee of the Kanam¹², came forward as the purchaser of the Kanam and pleaded a further advance of 1299 F, in addition to the usual fee, and claimed the right to hold for a further period of 12 years (III). He gained the day: and the Plaintiff's father was bound to await the expiry of the term. Both the term and the defeated Janmi expired; and now when the Janmi's minor son comes to redeem the land, the 3rd Defendant comes forward in person, pleads, after the model of the plea in the former suit, assignment of the Kanam to himself and a second further advance of 332½ F (Rs 95) in addition to a fee of Rs 80 and an agreement to renew the demise for the now out-grown Kanam of 1732½ F (I). I cannot but hold the whole plea to be utterly false. On the one side, the Plaintiff's father was not likely, after his experience in the suit of 1864, and at a time when the ashes of that suit, as it were, was yet warm, to make a similar agreement, and that with a person who, if not his open opponent in that suit, was, at all events, the principle witness there against him, and whose relations the ostensible opponent and

the writer of the fatal document were; nor to encumber his land to so large an extent, and on the other, the 3rd Defendant, a public officer of long standing and of more than enough of shrewdness would never omit, if the transaction were true, to have the agreement duly registered, seeing that the sum advanced was short by £15 only of the amount where registration would have been compulsory and 9 years of the new term had yet to expire, that the document was executed in the neighbourhood of a registration office and that he has had, if what he swears to in 1864 were true, a knowledge of the executor's disregard for truth. Confidence is the reason alleged for the omission to register the agreement, but no man in his senses would ever think of placing his confidence in a man who has been proved to his own knowledge to be unworthy of confidence - much less would the wily 3rd Defendant. It is certain that anything whatever done in connection with the land subsequent to the litigation of 1864, would have been surrounded with all possible safeguards as either party (I must call the 3rd Defendant a party to that litigation) must have learned

a sad lesson there. A portion of the money alleged to have been paid, is said to have gone to pay the 2nd Defendant's Costs in the former suit, but that payment is admitted not to have been certified to the Court: on examining the document (I), I find that the signature there differs altogether from those in A, B, C, D, all of them genuine documents and the first of which is earlier in date even than the entry (III) of the former suit against that strong evidence, the fact of the pledge of the document with a close relation of the 3rd Defendant in 1876 (V) and the testimony of that Defendant's witnesses, one of whom is the 2nd Defendant himself, counts for nothing. That disposes of the main question at issue.

11. Three other questions remain, one as to payment of rent, another as to injury to the land and the 3rd as to the Plaintiff's competency to sue.

12. The plea of payment may be disallowed on the single ground that the Plaintiff would not accept the reduced quantity under I which he denounced as false and which has been found to be such.

land and the
13. As regards injury to the bund of the Canal

running alongside of it, the question must be reserved for settlement in execution as any decision that may now be come to will not finally set it at rest, a repetition of the injury between this and execution being ^{not} improbable.

14. The last one is as to the Plaintiffs competency to sue. The plaintiff of course is a minor, but sues through a next friend; and from her conduct of the case I must scout the imputations cast against that friend. The attack there is based upon the alleged existence of a grown-up male person in the position of a cousin to the Plaintiff. But there being no dispute that the Plaintiff is the son of the alleged grantor of I, I do not deem it worth while to travel all the way from Ponnany to Kedungamad to fetch a student in Varikasheru Illom to sue for the land. It is a matter of very little consequence to the 3rd Defendant who turns him out so long as the person who has actually come forward to do it is one of the rightful heirs of the deceased man.

15. In the result the land must be restored to the Plaintiff on payment of the khamam offered minus the rent due and the Plaintiffs

Plaintiffs costs. 2nd and 3rd Defendants must pay their own costs. The question as to injury or improvement is reserved for disposal in execution of the decree.

(Signed) S. Subramanuja Iyer
Munsiff

(True copy)

H. R. R. R.
C. Collector

Judgment

Appeal Suit n^o. 565 of 1878.

Dated 21st October 1878.

4- 3^d Defendant appeals.

5- I agree with the Munsiff that Exhibit I produced by 3^d Defendant is a most impudent forgery. In the former suit for redemption brought by Plff's uncle, a similar defence was set up by 2^d Deft. and found credit with the Munsiff, who gave a decree dismissing the suit on 22nd February 1866. That decree was confirmed on appeal on 1st March 1867 although Mr. Sharpe seems to have entertained considerable doubt as to the genuineness of the document (now filed as Exhibit III). The present suit was brought immediately after the expiry of 12 years from the

Jud 3955/82

an. 1457

9. date of the Munsiff's decree in O.S. No. 990 of 1864 and we are asked to believe that Plff's uncle whilst still smarting from his defeat gave his adversary's principal witness a right to hold for 12 years from 1875-1876 in consideration of receiving 95 Rupees wherewith to pay 2nd Def't's costs. The transaction is incredible. The signature to Exhibit I no doubt resembles the signature to exhibit III, which notwithstanding the decree in the former suit was, I have little doubt, a forgery. But compare it with the signatures in Exhibits A, B, C, D and the true signature can be at once distinguished from the false. The stamp on which Exhibit I is engrossed is one sold to a Mopla so that it is made to resemble Exhibit III

✓ 17
III as far as possible. It must be remembered that 3rd Def't was the principal witness in support of 2nd Def't's case in the former suit and I have no hesitation whatever in saying that if any transaction had taken place between him & Plff's uncle, it would have been by a registered document.

I shall affirm the Munsiff's decree and dismiss this appeal with costs. The present 3rd Def't is a public servant and his application for pension is now under consideration. I think that the circumstances of this suit should be brought to the notice of his official Superiors and that the Munsiff should

9 should order 3rd Dept's prosecution
for using as genuine a document
which he knew to be false.

(Signed) H. Wigram
Offg. Dist. Judge

(True Copy)

(Signed) M. Vythe Menon.
Sheristidar

(True Copy)

H. R. W. W. W.
Ag. Collector.

Enclosure 3 to letter W. 3648 dated 25th Nov 1882

Court of Sessions of South Malabar
Case No 62 of 1882

Judgment

Regina

Vrs

Kunipath Keli Menon

offence. Forgery and using as genuine
a forged document - Secs 465 and 471 of the
Indian Penal Code.

Opinion of Assessors

Not guilty.

Finding of Judge

Not guilty

Sentence

Acquitted.

The prisoner was defended by a Barrister.^{to}
2. The documents said to be forged are
Exhibits A and B on the records. For
the prosecution, two witnesses were exami-
ed. They state that the documents were
used in the Munsiff's Court by the prisoner
and on his behalf, and that both the
documents were found to be forgeries in
the Munsiff's Court and, on appeal,

9 in the District Court. The 1st witness says A and B are forgeries, because the plain land belongs to Parakatte Illom, and that the Nambudri never signed documents relating to that Illom as 'rivi', but with 'shara'.

On cross examination the witness admitted that the Nambudri might have some times signed 'rivi' for Parakatte Illom. The second witness was called to prove that the 'rivi' in the documents was not the signature of the Nambudri. But this witness also declined to swear that it was not the Nambudri's and when shown Defendants documents I, he could not say whether it was a defendants signature or not, though he said it might be. This is all the evidence for the prosecution and their Case has clearly broken down. The defence is that this same land was formerly demised under Exhibit I, and that this Exhibit I was found to be genuine in a previous suit both by the Munsiff and the District Judge

121
Judge (Mr. Sharpe) and in that document the Nambudri signs himself 'rivi', and not 'shara', as he should do, if 1st witness's statement be true. No doubt in the suit which gave rise to this prosecution, the Munsiff and the Judge not only found A and B to be forgeries, but assent their Conviction that document I is so too. They arrive at this conclusion apparently from the probabilities of the Case. This may be all very well as to the Civil suits and the document may be forged, but in Criminal Cases clear proof of the actual forgery must be forthcoming to warrant a Conviction. Such evidence is altogether wanting in the present Case; so agreeing with the Assessors I acquit the prisoner.

October 2^d 1882

Signed/ E. Turner
off. Sessions Judge

(True Copy)

L. R. S. S. S.
Ag. Collector

N^o 3648.

Malabar Collector's office
Calicut 25th November 1882

From

L. R. Burrows, Esquire,
Actg. Collector of Malabar.

The Honorable G. Master,
Chief Secretary to Government
Madras

Sir

Referring to G. O. Pension Department dated the 7th May 1879 N^o 211, I have the honor to enclose copies of judgments in the Civil suits in which H. Kela Menon was found to have knowingly used a forged document, and of the decision of the Sessions Judge acquitting Kela Menon.

The Acting Special Assistant Collector reports as follows:—

"With reference to your endorsement dated the 11th Instant on Petition N^o 3821/1882 presented by one H. Kela Menon, I have the honor to state that the following is a summary of the circumstances under which Petitioner was committed to the Court of Sessions.

2. Petitioner was charged with the offences of forgery and using, as genuine, two forged documents which he knew to be forged, Sections 468 and 471 I. P. C.

Indl
30/5/82

in a V^o 1457

3. These documents were produced by Petitioner in evidence in Civil Suit No. 151 of 1878 on the file of the District Munsiff of Ernad in which he was a party. The Munsiff found them to be forgeries, and in appeal No. 565 of 1878 against that decision, the District Court also held the same opinion.

4. The District Munsiff accordingly sanctioned the prosecution of Petitioner for the said offences and the Tahsildar 2nd Class Magistrate of Ernad on a reference by that officer under date the 6th November 1878, entertained the present case against Petitioner.

5. When a warrant for the arrest of Petitioner was issued immediately afterwards, he evaded it and was not found for about three and a half years. Lately, he surrendered himself to the Police, notwithstanding a warrant for the attachment of his property was, after the usual proclamation for his appearance, issued in the meanwhile.

6. Petitioner, of course, pleaded not guilty to the charge brought against him, maintaining ^{that} the deeds were genuine.

He

The evidence for the prosecution was of two persons, who stated that the deeds in question were filed by ~~the~~ Petitioner in the civil suit alluded to, that they were forgeries and that the signatures which they contained purporting to be those of the executant differed strikingly from those in certain other genuine documents (also recorded) executed and registered by him.

7. The alleged executant of the deeds having died some time prior to the institution of the civil suit and the guardian of his son (still a minor) having also died, some time subsequent to that event, their evidence was not obtainable.

8. It is clear that Kela Menon absconded for the space of three and a half years to evade execution of a Magistrate's warrant for his arrest, and that he only surrendered himself after the death of the two persons, whose evidence would have been material against him. Although the charge could not be proved in the Sessions Court, I am of opinion that the Petitioner deserves

see filed before
the 10.8.77

no

9
no indulgence at the hands of Govern-
ment, and I recommend that his
permanent pay order may be finally
Cancelled.

I have the honor to be
Your most ^{Sir} obedient Servant

L. R. S. S. S.
Ag. Collector.

GO. 11225/12

Sp 211-7-5-79 Pension

Transferred for disposal
to the Pension Dept., with
ref. to the order in that
dept of 7 May 1879. No 211.

W. S. S. S.
Chief Secretary

1/12/82.

Pension

Special Pension
1882 DEPARTMENT.

FROM,

THE AG. COLLECTOR
OF MALABAR.

TO,

THE CHIEF SECRETARY
GOVERNMENT
MADRAS.

Dated 25th

Despatched 27th

Received 28th

1882

No. 3648

ENCLOSURES 3

Subject.

Abstract.
Recommending to
Cancel finally the herma-
nent pay order of A. C. C.
menon.

1/12/82

Pension DEPARTMENT.

C. No. 1457 of 82

129

From

G. O. Pension Dept. No 211, dated 7th May 1879.
Letter from the Collector of Malabar
dated 25th November 1882
No 364.

By 173 future good conduct is an
implied condition of every grant
of a Pension. Even after the grant
the Govt reserves the right to cancel
it "if the Pensioner be convicted
of serious crime, or guilty of grave
misconduct." Altho' sufficient
evidence for a conviction was
not forthcoming when this man
chose to surrender, Mr Wigram's
judgment will probably satisfy
the Government that he was
S.O. 7th May 1879. No 211

FOR ORDERS.

The applicant qualified for Pension
of Rs: 5⁰⁰ payable from 16th October
1878 but Govt. withheld the Pension
pending further orders as he was
absconding to warrant for his
apprehension on a grave criminal
charge was out.

guilty. Here the Pension has not
been granted & it is submitted
that it ought not to be granted.

173 Civil
Pension code
7 sec
Certainly not
12/12

He was lately arrested
summoned here, was committed
to the District Court & acquitted not
because the Judge could not agree
with his predecessor that an "independent
forgery" had been committed but because
there was no proof of actual forgery
for a criminal Court. The first Judge
had made the remark quoted in
a Civil appeal.

The Collector of Malabar in
current no 1457 (Pension Dept.)
gives the facts & recommends
"that the permanent pay order
issued in the applicant's name
be cancelled."

No such order has issued & the
draft order below is
submitted for approval.

Read again S.O. 7th May 1879
no 211.
(abstract)

The (current no) letter from Coll.
of Malabar — (abstract)
dated 25 Nov 1882 No 3648

order thereon 2P
15-12-82 F/1235
in the circumstances
reported the Govt. declines to
withhold the superannuation
pension for which the applicant
has qualified. 60

To the Collector of Malabar
" Accountant General

5.12.82

Or if the current no is recorded as 14
reference to S.O. 7th May 1879 the result is the same
39586 15/12/82

FOR ORDERS.

The Board of Directors

Q15. Dec 82 no. 1235

0-250: 47-5

C-7-12-82
12/12.

Govt. of 1882 Madras.

To

7th 622/83

The Collector of Madras

Proceedings, dated 15 Decr 1882.

No. 133.

Subject.

Pension. Declining to
grant ~~the~~ superannuation
— for which K. P. K.
Munon, late Cuminah,
Valuvanad Taluk, Ma-
dhar District, has qua-
lified.