Recueil Recapitulatif

Mutuelle de Communication

Exercice 1987

Exercice N° 23 - 24

Read again the following papers.

Extract from the Proceedings of the Board of Revenue dated 2d and recorded in Diary to Consultation 14th July 1857, No. 767.

From the Government Pleader; dated 11th and recorded in Diary to Consultation 21st July 1857, No. 809.

No. 23. Read also the following letter from CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to HENRY FORBES, Esq., Acting Secretary to Government; dated Madras, 15th October 1857, No. 103.

Sir,

Minutes Consultation 11th July 1857, No. 695, Revenue Department.
Letter from Government Pleader to Acting Secretary to Government 14th July 1857, No. 73.
Minutes Consultation 18th July 1857, No. 723, Revenue Department.

Para. 1. With reference to the Minutes of Consultations and letter noted in the margin, I have the honor to report for the information of the Right Honorable the Governor in Council that since those dates I have received translate copies of the Pleadings, Evidence and Decree in the Original Suit No. 141 of 1855, on the file of the Civil Court of Masulipatam, which I have since carefully perused.

2. That Suit was brought by Moottary Vengata Charloo, styling himself Churchwarden of the Temple of Sree Venkataswera Swamywaroo, situate at Butchoopalle in the Zillah of Masulipatam, against Messrs. T. D. Eashington, the Collector, and G. A. Ballard formerly Special Assistant Collector.

3. Mr. Ballard was made a Defendant, because as Assistant Collector he made an order against the claim put forward by the Plaintiff. It is an extremely objectionable practice, that officers of Government should be thus unnecessarily harrassed, by being improperly made parties to Suits, in which they have no interest or concern.

4. The Suit was brought to recover 2 cutties of land (1 wet and 1 dry) in the village of Yeedoomoody which was formerly included in the Zemindary of Goodoor in the Masulipatam Zillah, together with mesne profits.

5. The Plaintiff claimed the land as Inkhiraj enam.

6. In his plaint, the Plaintiff alleged, that for the performance of daily offerings and lighting the lamps in the Temple "the then authorities" had on the 21 June 1764, granted an enam with a Sunnud for 4 cutties of land on Surva Doombala tenure, two in a village called Tarkatoor, and the 2, now claimed, in Yeedoomoody. Also that the villagers had executed Checkannahs for the lands. He further alleged that in 1797-8 Mr. P. R. Cazalett, the then Collector, upon examining the Sunnuds, &c., instituted enquiries and granted Doombahshs, or permits, for taking the produce of Fusly 1207-8, A. D. 1797-8, and returned the Sunnuds, &c. with his signature thereon. That in 1803 the Goodoor Purgunah was granted to the Zemindar under a permanent cowle, whom as the Plaintiff alleged, those enam lands were excluded. He further alleged that the profits of the lands had ever since been applied for the daily offerings, &c., in the Temple. As likewise that in consequence of obstacles on the part of the late Zemindar against the enjoyment of the enam produce of the land in Tarkatoor, his (Plaintiff's) father had instituted a Suit against the Zemindar in the Moonsiff's Court of Weyoor which was No. 60 of 1824, and in which a Decree was passed in favor of Plaintiff's father, whereupon the Zemindar appealed to the Zillah Court of Masulipatam in Appeal Suit No. 453 of 1828, in which the Decree in the Original Suit was confirmed. To this effect the Plaintiff further alleged that the 2 Cutties of land in Yeedoomoody had been let by him to Veeroobhotla Narsiah from Fusly 1233-4 to 1619-20 at a rent of 20 Rupees per annum. He then alleged that in 1846-47 the Zemindar's officers prevented the land in Yeedoomoody village from being brought into cultivation, whereupon he instituted a Suit against the Zemindar in the Court of the Moonsiff of Masulipatam which was No. 66 of 1850, and added that "The Zemindar having taken notice of the validity of the public documents, &c. connected with the cases entered into a compromise under date the 12th September 1850, determining the right of the

பரதூப்பு பிரிவு - 1.
செப்பனிடுபவர் பெயர்
செப்பனிடுவதற்காக எடுத்த நாள் 15/12/06
கொள்ளப்பட்ட நாள் 05/07.
செப்பனிட்ட முடிந்த நாள்
வரைகலைஞர்
உதவியாளர்
மேற்பார்வையாளர்

"enam lands to be continued to the Temple," and alleged that the lands were accordingly under enjoyment of the Temple during 1850-51. The Plaint then proceeded to allege that in 1851-52 the Zemindary was transferred to Government, and that Mr. Lushington caused the profits of the enam land in Yeedoomoody to be detained in deposit, and also prevented the land from being cultivated. The replication although lengthy, and in violation of the Regulations and Rules of procedure, does not materially vary the case put forward in the Plaint.

7. The answer was put in by Mr. Frazer then Acting as Collector of Masulipatam. It is a running commentary on the plaint, instead of an admission or denial of the allegations in the Plaint, nor does it briefly state the facts on the Defendant's side; so that it is principally from inference that one is able to arrive at the defence proposed to be set up, and the points on which it is intended to take issue. The Grant is not denied, nor the allegations contained in the plaint; doubtless it was intended to raise the question as to the Plaintiff's alleged enjoyment of the land; as also the alleged lease to Veeroobhotta Nursiah, and the right of the late Zemindar to enter into the compromise referred to, the same having been (as Mr. Lushington alleges) collusively entered into by the late Zemindar, just before the estate was about to pass out of his hands. The answer then alleged that the land was sayr, that it had not been enjoyed as Lakraj land since the permanent settlement, and had paid revenue for many years, and under the provision contained in Regulation 31 of 1802 Section 1 and the Orders of Government 22d August 1855, the Collector denied the claim of the Plaintiff.

8. In support of his case the Plaintiff put in 12 documents and examined 7 witnesses.

9. The following shews the particulars of the documents so put in by the Plaintiff.

Exhibit A. 1st. A Grant dated 2d June 1764, from the copy sent to me, it appears that this was registered in the Cutcherry of the Collector of Masulipatam, No. 353, on the 5th September 1805. The registration of the Grant has not been renewed. The Collector states, that this enam (Yeedoomoody) was registered in the registers of Messrs. Oakes and Cazalett. He does not say when, nor is there any mention of such a registration on the Grant itself. I conclude (if done) it must have been so registered *prior* to the passing of the Regulation 31 of 1802. This Grant was produced and filed in the Original Suit No. 60 of 1824; and does not appear to have been withdrawn from the Court where so filed, till the 23d September 1856, and it was presented to the Civil Court as an exhibit in the suit No. 141 on the following day.

Exhibit B. 2ndly. A Chuckramah dated the 17th of June 1764, purporting to define the limits of the land in Yeedoomoody; I have not received any intimation that the Acting Collector has any reason for doubting the authenticity of this document. It was not filed as an exhibit in the Original Suit No. 60 of 1824, but that Suit was in respect of land in the village of Tatakroor. It bears the initials of Mr. Ballard.

Exhibit C. 3rdly. A Permit dated the 28th (or 29th) January 1782 from Rachoor Latchemurson Puntoolo to Goodoor Ramdoss Puntoolloo to take the produce of the enam lands of Sree Venkataswara Swamy war of Butchoopettah situated at Tavakatoor and Yeedoomoody, of Goodoor Purgunah, for Fusly 1191 (1781-2). This is countersigned "P. R. Cazalett" and was produced as exhibit F in the Original Suit No. 60 of 1824.

Exhibit D. 4thly. A similar permit dated the 24th February 1783 from Crootteventy Venkatachellum to Mullady Puttervharamoone Garoo, this is also countersigned "P. R. Cazalett."

Exhibit E. 5thly. A similar permit dated the 13th March 1786 from Venkatachellum to Crootteventy Nacalingum.

Exhibit F. 6thly. An order signed "A. W. Gregory Acting Collector," countersigned "P. R. Cazalett," "To the Circar Ghomastahs, Meerassidars and renters of Goodoor Purgunah directing that the ch* people of the temple should be put into possession of the produce of 2 cutties of land wet & dry in Yeedoomoody, the same being excluded from the Howle resumption Fusly 1191 for the purpose of appropriating the same towards the Festivals of the Pagoda, agreeably to the Doombalahs given by Mr. Tudor the late Collector. It is not shewn who Mr. Tudor was, nor are the Doombalahs produced.

**This word is illegible. (Signed) C. D.*

6thly. A Hakeekut dated 3d January 1800 by the Capoos and Curnums of (interalia) Yeedoomoody village to John Read Esquire, Collector, &c., this Document recites the grant and uninterrupted possession from Fusly 1174 to 1206. It bears the seal of Mr. Ballard.

Exhibit G.

7thly. A certificate or order dated 8th January 1800 by P. R. Cazalett, Head Assistant Collector, to Beemavarapoo Ragava Row Tanadar of Goodoor whereby after reciting the grant (stating however the quantity of land as 4½ cutties, mentioning ½ cutty of low ground in the village of Coondoor) and the Hakeekut (exhibit G) and that under those circumstances, Moottary Condama Charloo, the Church Brahmin, was entitled to enams, Mr. Cazalett confirmed the same to him for Fusly 1207-8. This was filed in the Original Suit No 60 of 1824 and not returned out of that Court till the 23d September 1856.

Exhibit H.

8thly. An extract from a Caboleyet Khut dated the 26th July 1806 "executed by Rajah Bammadavara Nauganah Naidoo for Goodoor Purganah" in which is stated that the permanent assessment of the land tax on his Zemindary, is exclusive (interalia) of Lakerajee lands and of other alienated lands paying a small quit rent. This document appears to have been extracted from the Cutcherry of the Collector of Masulipatam in June 1824, and to have been filed by the Plaintiff in the Original Suit No. 60 of 1824, and not to have been delivered out of that Court till the 23rd September 1856.

Exhibit I.

Exhibit Z. 9thly. The decree in Original Suit No. 60 of 1824 dated 30th October 1824.

Exhibit M. 10thly. The decree in Appeal Suit No. 453 of 1824 dated the 25th February 1825, confirming decree in Original Suit.

Exhibit L. 11thly. The alleged lease dated 7th June 1843 of the 2 cutties of land in Yeedoomoody for 7 years at a rent of 20 Rupees; and

Exhibit K. 12thly. The Razeenamah dated the 9th September 1850 executed by the Rajah in Original Suit No. 86 of 1850.

10. I now propose proceeding to examine how far these several documents have been properly admitted as evidence; on the effect of the evidence generally, I purpose commenting hereafter.

11. Neither the Collector or Government Pleader at Masulipatam appear to have offered any objection to the reception of those documents; I am therefore unable to judge whether there be any objection to their reception, other than what I will point out.

12. The first 8 documents, from purporting to be more than 30 years old, require no proof of execution or signature; but before they were admitted as evidence, it should have been proved that they came from the proper custody.

13. This has not been done, indeed there is no evidence whatever regarding them, the papers have been tendered in evidence, and without a title of evidence, or the slightest question, all have been admitted by the Court as authentic.

14. It would appear that the documents C D E F G and H came from the custody of the Plaintiff (or his father) and there is no evidence to shew how, or when, they came into their possession. The presumption therefore is, that they may never have reached the parties to whom they were directed, and never acted upon; and if such were the case, those documents should not have been received as evidence.

15. There are other objections to those documents, but I do not consider it necessary now to enter more into detail regarding them.

16. With reference to the 8th document (exhibit I) it is doubtless a genuine Extract from a Caboleyet Khut executed by Rajah Bommadavara Nauganah Naidoo, but I am at a loss to conceive of what use it could be to the Plaintiff, as evidence in the present Suit. The Plaintiff in his application for leave to file that document, states it would prove that the Zemindar was not possessed of any authority to interfere with the land under dispute, which had been continued as Sarva Doombalah. That might possibly be used as an admission (if properly proved) in a Suit against the Zemindar, but cannot be used against Government, who do not claim under or through the Zemindar, or by virtue of the grant, but by virtue of their paramount title, by force

of which they had resumed the Zemindary. It however may be used against the Plaintiff himself, for if the exhibits were excluded from the summud, the Zemindar had no power to execute the Razeenamah, or to confirm the grant to the Plaintiff.

17. I am of opinion that the 9th and 10th documents (Exhibits Z and M) should not have been admitted as evidence in this Suit. The title to the land in Yendoonunody village was not a dispute in original Suit No. 60 of 1834; neither was the Collector or the Government a party to the suit.

18. The 11th document (exhibit Y) is not a lease, the Plaintiff has not signed it, it is merely an agreement by the pretended tenants. Two of those tenants however in their evidence, refer to a cowle which they *say* has been lost.

19. The nature of the evidence given by the witnesses for the *Plaintiff* is generally very objectionable, being hearsay, giving the contents of documents which were not produced; speaking to matters they could not know; not accounting for their knowledge of matters they profess to speak of; they are all strangers to the village; the land is not identified, and there are various discrepancies, while some of the witnesses appear to have wonderful memories while under examination in chief, which seemed to fail them when cross examined, but to revive most opportunely when re-examined; what evidence they did give may be summed up shortly into their proving that Plaintiff was priest of the Temple, having succeeded his father, and that the land (but what portion of land is not mentioned) was cultivated. One witness speaks of having cultivated it 32 years ago, but admits it lay some years waste; while another witness speaks of it in such terms that the land might have been the property of the Plaintiff's father, and not ours. Another witness speaks to a cowle being lost, says he saw the writer once, that it was 14 years ago, yet he undertakes to say he can remember his name, but breaks down as to his village; he also undertakes to say he remembers where the cowle was executed, and the names of the attesting witnesses; he admits that none of the villagers were present. The 7th witness swears to the exhibit M (the decree in Appeal Suit No. 153 of 1834) being the Cutcherry Khuz, and to his signature being there (!!!).

20. The Collector filed 4 exhibits, viz. 3 Kyfiats, or statements, made on the 30th July 1851, before the Tahsildar of Hunsur, and a deposition made by the Plaintiff himself before Mr. Ballens on the 6th June 1855.

21. The Collector also examined 4 witnesses.

22. The 3 Kyfiats mentioned in para. 10, are totally inadmissible as evidence, and therefore ought not to have been received by the Collector, nor filed by the Court. If they had been admissible as evidence, it would have been imprudent to have filed them, because the parties who made the statements were examined as witnesses in this suit on behalf of the defendant, and by filing the Kyfiats it afforded an opportunity to the Plaintiff and the Court of observing on evidence, in my opinion it was impolitic to receive the depositions by the Plaintiff, it evidently *does* amount to an admission by him, that he did not know, in what manner the land in question had been managed by his ancestors, yet that is more than sounds proved by the witnesses for the defendant, that of 1834 to 1842 it was improperly in Jungle Dewdhar became the property, and hence the land by failure for 4 years, the last preceding the hearing the lands were under cultivation, he pretended to the Tahsildar and Cutcherry Khuz, 3 years ago, something to prove, as the case of the previous cowle to rest for it; and the proceedings state that 9 years before he omitted the claim in order for collusion. And it is that these latter assertions are very true and undeniable, but the Collector has chosen to put in the deposition, not to make all that it contains its evidence, and it is left competent for him to select a little which he thinks tells in his favour, and this is to be found; and by rejecting the great mass that is against him, endeavours to throw discredit on his own witness. The putting in [illegible] documents moreover has unnecessarily burdened the record.

23. The oral evidence given on behalf of the defendant shows that the portion of the land called Yendoodeverie had been cultivated by the Zemindar himself for some years prior to 1846 or 1846, and that from about that period the late witness (with his brothers since deceased) had cultivated it as tenant for about 6 years, and had rent to the Zemindar. That evidence also shows that the other portion of the land called Kerry pottee, or almost waste, due over grown with weeds,

for some years after the famine (1832), and that the 1st witness (with his [illegible] quently cultivated that land for 12 years, and paid kist to the Zemindar. The witnesses to the lands being sory, and that they had not been held as enam or Sarve. Doombahah Temple, prior to Fusly 1264 (1854-55) when the Zemindar gave the Razeenamah. One witness on cross examination by the plaintiff says, that in 1801-2 lands were entered in list as the enam of this Temple, but adds they were never enjoyed as such. Most native testimony is extremely uncertain as to dates, and in that respect, the evidence under consideration is not an exception to the general rule. The accounts which were referred to by some of the witnesses, were not produced; the defendant's evidence might be objected to in this respect by the Plaintiff; independently however of that objection the production of accounts proved to have been regularly kept, having entries of the receipt of Kist, &c., would have added great weight to the oral evidence. There is no evidence to shew, or from which the Court could infer, that the Razeenamah was given in consequence of collusion with the late Zemindar and the Plaintiff.

24. The case therefore that has been made is this, the plaintiff has established the original grant in 1764, and that it was registered; and probably it may be considered the plaintiff has established the Checkunnah (exhibit E), also the alleged lease (exhibit D), and the Razeenamah (exhibit K), as likewise that he is the present Priest of the Temple (the Exhibits C to I as also Z and M having been admitted improperly, or not being evidence in this case, I exclude them from consideration for the present), and the Plaintiff's evidence (if it had been uncontradicted) would have shewn, that the land had been cultivated on his behalf, and that he had once paid kist. The case made by the Defendant is a contradiction of the Plaintiff's witnesses, denying that he, the Plaintiff, or his Tenants had occupied the land for the last 20 years, with the exception of 1 year after the Razeenamah (1851-2) and proves, although not in the most satisfactory manner, that kist had been paid for the land to the Zemindar, during a period of more than 10 years; but it shews that the kist was not paid by the Plaintiff, or any body claiming under him; and that it had not been paid to Government.

25. I take a very different view from the Civil Judge as to the amount of credibility to be attached to the evidence, for I disbelieve the Plaintiff's evidence, and probably I might be able to induce the Court of Sudr Udalut to take the same view as myself, but that is doubtful; and if this evidence is believed by the Court, and the defendant's evidence thrown aside (as the Civil Judge has done) I conceive any grounds for reversing the Decree, except as mentioned in para. 28.

26. But if the Sudr Udalut should not credit the Plaintiff's exhibit D and his oral evidence, then the Plaintiff's case would rest on the grant the Checkunnah and the Razeenamah.

27. In para. 16, I have referred to the position put forward by the Plaintiff that the Zemindar was not possessed of any authority to interfere with the land under dispute, because the enam lands were excluded by Government from his summud. This position was put forward by the Plaintiff's father in original suit No. 60 of 1834. The attention therefore of the Collector and Government Pleader was drawn to the fact, and the summud might have been referred to, and if the fact were as stated by the Plaintiff, and as intended to be proved by the exhibit I, that defence might have been raised in the answer, and in my opinion if proved, would have been an effectual answer to the Razeenamah, so much relied upon by the Plaintiff, if not entirely overruled evidence put in by the defendants. In the case under consideration the defendant did adduce evidence of that description, for he has shewn that the Zemindar did exercise acts of ownership, by cultivating part of the land himself, letting other portions, and receiving kist on the whole. I am fully aware that the Collector contended that the particular portions of land claimed by the Plaintiff, were not those which had been included in the grant of 1764, but that was not sufficiently pleaded or proved.

28. The only advantage that can now be taken of that position on behalf of Government, is by endeavouring to shew the Court of Sudr Udalut that by the exhibit I the Plaintiff had put himself out of Court; but I am not inquiring that such an attempt would be successful in the Sudr.

29. The only reason given by the Collector for rejecting the Razeenamah is that it was given collusively; there is not however any evidence to support such an allegation, and I am not aware of any law by which it could be set aside on any ground, except that the Zemindar had not any power over the land which he professed to give to the Plaintiff; so that the Razee-

namah had been obtained by fraud; but neither of those positions has been established by the Collector.

30. I am of opinion that if the Zemindary had not been resumed by Government, and the Plaintiff had sued the Zemindar, he (the Zemindar) could not have resisted the claim if supported by that Razeenamah, unless the Zemindar had succeeded in setting that Razeenamah aside.

31. Under these circumstances and looking to the fact that the defence has not been judiciously framed, I advise that the appeal should not be further proceeded with.

32. I enclose 4 parcels of papers including 1st, the pleadings and proceedings; 2d, the Plaintiff's evidence; 3d, the Defendant's evidence; and 4th, the Decree in original Suit No. 141 of 1855. I also at the request of the Board of Revenue enclose the original extract from their Proceedings under date the 24th July 1857, and request the same may be returned to me when no longer required by Government.

33. In his letter to the Board of Revenue dated the 13th July 1857, Mr. Knox refers to a commutation having been given to holders of enams, and from para. 6 of that letter, it might be inferred that the Plaintiff in the case now under consideration had received such a commutation. If such be the case it ought to have been pleaded, and if that had been done and proved, the case would have assumed a very different aspect. It is now too late to take advantage of it if it be the fact.

34. The time for putting in a detailed appeal petition will expire on the 28th Instant, and if his Lordship in Council should determine on carrying on the appeal I shall require the enclosures back a few days before that date, to enable me to prepare and file the detailed petition.

35. As regards any proceedings which may be instituted for the recovery of other lands, I should recommend that they be defended on the several grounds before alluded to, of such of them as are applicable; and evidence given of non-cultivation for a period exceeding 12 years; and payment of kist during a similar period; and to meet the other lines of defence raised. If however (as in this case) the Zemindar should have done any act, recognizing the right of the claimant, it might be desirable that I should advise on the case on full information being laid before me.

No. 24 — Order thereon, No. 1090; dated 24th October 1857.

Para. 1. In his letter of the 15th Instant, the Government Pleader reports on the Suit instituted by M. Venkatacharloo, Churchwarden of the pagoda at Butchoopettah in Masulipatam, against Mr. Lushington, the Collector, and Mr. Ballard, formerly Special Assistant Collector in that District, for the recovery of certain enam lands.

2. The enam consists of 2 cutties of land situated in the village of Yeddoonoody, formerly appertaining to the Goodoor Zemindary, and is claimed by the Plaintiff on the ground of its being a Lakhiraj, or rent free, grant to the Pagoda. On the Goodoor Zemindary being transferred to Government in 1851-52, the Collector treated the land in question as Sary or "paying revenue" and caused, it is stated, "the profits arising therefrom to be detained in deposit, and also prevented the land from being cultivated." This proceeding led to the institution of a Suit in the Masulipatam Civil Court No. 141 of 1855, and the Decree of that Court was in favor of the Plaintiff.

3. In their proceedings of the 2d July last, No. 2258, the Board of Revenue, in reporting the issue of this Suit, gave their reasons for considering "it useless to appeal against the decision of the Civil Court." The Government Pleader, after going minutely into the merits of the case, advises that "the appeal should not be further proceeded with." Under these circumstances the Government are content to adopt the course recommended, and to allow the matter to drop.

4. Ordered that the above Resolution, and the opinion of the Government Pleader, be forwarded for the information and guidance of the Board of Revenue and the Collector of Masulipatam, and that their attention be particularly directed to Mr. Dale's suggestions in para. 35. The Board's Proceedings of the 24th July 1857, will be returned to Mr. Dale as requested by him.

(Signed) H. FORBES,
Acting Secretary to Government.

No. 103

From Edward Dale Esquire Government Pleader Fort St. George
To H. Henry Forbes Esquire Acting Secretary to Government

Madras 15th October 1857.

Sir

With reference to the Minute of Consultation and letter noted in the margin — I have the honor to report for the information of the Right Honorable the Governor in Council that since those date I have received translated Copies of the Pleadings Evidence and Decree in the Original Suit No. 141 of 1855 on the file of the Civil Court of Masulipatam which I have carefully perused.

2. This Suit was brought by Venkatachalloo Pantulu Charlu Styled Shrimadh Churcharaden Pitha Temple of Shree Venkateswara Swamy or Pagoda at Butchoopettah in the Talluk of Masulipatam against Messrs. D. Lushington the Collector and G. L. Ballard formerly Special Assistant Collector

3. Mr. Ballard was made a Defendant because as Assistant Collector he issued an Order against the Claim put forward by the Plaintiff in the case. Extremely objectionable practice, that Officers of Government should be liable to Suits merely for doing what they deem right in their official capacity, and which they have no interest in Common

4 The Suit was brought to recover 2 Cottahs of Land (1 Rood and 1 Dry) in the Village of Geedoormoody which was formerly included in the Zemindary of Goodoor in the Manaelapatam Zillah, together with mesne profits

5 The Plaintiff claimed the land as Pattadary Ryuree

6 In his Plaint, the Plaintiff alleged, that for the performance of daily Offerings and Lighting the Lamps in the Temple the then Authorities "head on the 2d June 1798, granted an Enaam with a Saund for 4 Cottahs of Land on Surva Doombala Tenure, Lying in a Village called Tara Nadoor; and the 2, now claimed in Geedoormoody Also that the Villagers had Executed chucktramahs for the Lands &c. further alleged that in 1798/8 1207 PR Cazolett, the then Collector, upon Examining the Lands so instituted Enquiries and Converted Doombalahs or Jeemeets for the King, the produce of Fasly 1207/8 AD 1797/8 and returned the Lands free with his Agreement thereon And in 1804 the Goodoor Pergannah was granted to the Zemindar under a permanent Sunnud as the Plaintiff alleged those Inaam Lands were Excluded. He further alleged that the profits of the Lands that became due applied for the Daily Offerings &c in the Temple. He lastly Charged that on Consequence of obstacles on the part of the Zemindar against the Enjoyment of the Inaam produce of the Land in Tara Nadoor, his (Plaintiffs) Father had instituted a Suit against the Zemindar in the Provincial Court of Chingoor which was No. 60 of 1806 and in which an Order was passed in favor of

Plaintiff

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Plaintiffs Father, whereupon the Zemindar Appealed to the Zillah Court of Manalapatam in Appeal Suit No. 453 of 1814, in which the Decree in the Original Suit was confirmed. In his Plaint the Plaintiff further alleged that the 2 Cottahs of Land in Geedoormoody had been leased by him to Veeravbhotta Naraeah from 1846/4 to 1849/50 at a Rent of 20 Rupees per Annum the then alleged that in 1846/7 the Zemindars Officers prevented the Land in Geedoormoody Village from being brought into Cultivation, whereupon he instituted a Suit against the Zemindar in the Court of the Moonsiff of Manalapatam which was No. 60 of 1850 and added that "the Zemindar having taken Notice of the Validity of the public Documents &c connected with the Inam intended into a Compromise under Date the 12th September 1850 determining the Right of the Inam Lands to be Continued to the Temple" and alleged that the Lands were according by under Enjoyment of the Temple during 1850/1. The Plaint then proceeded to allege that on 1852/3 the Zemindary was transferred to Government and that a Mr Lushington Caused the profits of the Inam Land in Geedoormoody to be Sequestered and also prevented the Land from being Cultivated. The Replication although lengthy and in Violation of the Regulations and Rules of Procedure does not materially vary the Case put forward in the Plaint

7 The Answer was filed on by the Principal Sheristadar, as Collector of Manalapatam &c is a Lengthy Commentary on the Plaint, instead of an Explanation or Denial of the allegations in the Plaint, moreover it briefly states the facts on the Defendants side, that the Pleadings from Evidence that

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One is able to arrive at the defence proposed to be set up, and the facts on which it is intended to take issue. The Grant is not denied, nor the allegations contained in the plaint, doubtless it was intended to raise the question as to the Plaintiffs alleged Enjoyment of the land; as also the alleged lease to Veerooba the Nurasick, and the right of the late Zemindar to enter into the Compromise referred to, the same having been (as did Lushington alleges) collusively entered into by the late Zemindar, just before the Estate was about to pass out of his Hands. The Answer then alleged that the land was dry that it had not been enjoyed as Cottay land since the permanent Settlement, and had paid Revenue for many years, and under the provision contained in Regulation 31 of 1802 Section 15 and the Orders of Government 22nd May 1855, the Collector denied the Claim of the Plaintiff.

8. In support of his case the Plaintiff put in 2 Documents and Examined 4 Witnesses.

9. The following shew the particulars of the Documents to be put in by the Plaintiff.

1st A Grant dated 2d June 1764 - Found the Copy sent to me; it appears that this was Registered in the Collectory of the Collector of Chingleput on 5th September 1805. The Registration of the Grant has not been produced. The Collector states that this Enam (Pondamoody) was Registered in the Register of Mofussil Deeds and Boards. He does not say who - nor is there any mention of such a Registration on the Grant itself. It concludes (as do most) with the Reservation to the purposes of the Regulation 31 of 1802. This Grant was

Exhibit A

was produced and filed in the Original Suit No 60 of 1824; and does not appear to have been withdrawn from the Court where so filed, till the 23rd September 1856 - and it was presented to the Civil Court as an Exhibit in the Suit No 1161 on the following day -

Exhibit B

2nd A Chechenamah dated the 17th of June 1764 purporting to define the limits of the land in Pondamoody; I have not received any intimation that the Acting Collector has any Reason for doubting the Authenticity of this Document. It was not filed as an Exhibit in the Original Suit No 60 of 1824, but that Suit was in respect of land in the Village of Paraktoor. It bears the initials of the Ballard.

Exhibit C

3rd A Permit dated the 28th (or 29th) January 1782 from Rachoor Lutchemanaen Pundeer to Yoorka Ramdoss Pundeer to take the produce of the Enam Lands of Three Tim Rakawara Swamyar of Butchropettah situated at Parakoor and Pudamoody, of Goodoor Purgunah for Fasly 1192 (1781-2) This is Countersigned P R Cazalet and was produced as Exhibit E in the Original Suit No 60 of 1824.

Exhibit D

4th A Similar Permit dated the 24th February 1785 from Chokkenaty Venkatachellum to Mudlaty Putterbheramanaw Garoo. This is also Countersigned P R Cazalet.

Exhibit E

5th A Similar permit dated the 10th March 1786 from Venkatachellum Chokkenaty & Lingumpenna Chokkenaty Countersigned P R Cazalet. The Reason given for the Alienations and Orders of Government Purgunah Shewing that the Cl[illegible] of Pondamoody Pagoda [illegible] should be put into possession of the Inamdars of 2 Cottas of

a This word is illegible

of Land as Enam in Edoamoody, the same being Excluded from the Dowle Account for Pady 1204 for the purpose of appropriating the same towards the Festivals of the Pagoda, agreeably to the Decumbolahs given by Mr. Tudor the late Collector. It is not known who Mr. Tudor was, nor are the Decumbolahs produced.

6 dly A Pattah Rut dated 3d January 1800 by the Capoo and Curnums of (inter alia) Endoamoody Village to John Read Esquire Collector &c. This Document merits the Grant and uninterrupted profession from Pady 1174 to 1210 at least the Seal of Mr. Ballard. Exhibit G

7 thly A Certificate or Order dated 2d January 1809 by P. R. Carvalett Head Assistant Collector to Ramaraz Raga Row Tanadar of Goodoor whereby after reciting the Grant (stating however the quantity of Land as 4½ Cuttas - containing ½ Candy of low ground in the Village of Coondoor) and the Pattah (Exhibit G) and that under these Circumstances, Mootary Candaman Chardor the Church & Brahmins was indebted to Enams Mr. Carvalett Confirmed the same to them for Pad 120 3/8 This was filed in the Original Suit No 60 of 1824 and not returned out of that Court till the 23d September 1856. Exhibit H

8 vo An Extract from a Cowlept Book dated the 25th July 1806 Executed by Rayah Dammadanna Pauga unto Moodoo for Goodoor Purgunah in which is stated that the permanent appointment of the Land Tax on his Zemindary or Enahm (inter alia) of Pudmapoor Condo and of other adjacent Condo praying a small quit Rent. This Document appears to have been extracted from the Cutchery of the Collector of Chandergherry in Jeune 1824, and to have been filed by the Plaintiffs in the Original Suit No 60 of 1824, and not to have been delivered out of that Court till the 23d September 1856. Exhibit I

(5)

Exhibit Z 9th dly The Decree in Original Suit No 60 of 1824 dated 30th October 1824.

Exhibit M 10th dly The Decree in Appeal Suit No 153 of 1824 dated the 25th February 1825 Confirming Decree in Original Suit

Exhibit J 11 thly The alleged Lease dated 7th June 1803 of the Cuttas of land in Yeedoamoody for 5 years at a Rent of 20 Rupees Pad

Exhibit K 12th dly The Poyzeamanah dated the 9th September 1850 Executed by the Rayah in Original Suit No 86 of 1850

10 Now for the purpose proceeding to Examine how far these several Documents have been properly admitted as Evidence, on the Effect of the Evidence generally, I shall Commencing hereafter.

11 Neither the Collector or Government Pleader at Moodoolpettah appear to have offered any objection to the Reception of these Documents, I am therefore unable to judge whether there be any objection to their Reception other than what will present suit.

12 The several Documents from pages 4 to 8 were more than 30 years old, Bearing no Marks of Execution or Attestation, but before they were admitted as Evidence it should have been proved that they came from the proper Custody.

13 This has not been done, Instead thereof we find Evidence introduced Regarding them, the Pages do not appear Endorsed as Evidence, and without a Letter of Evidence on the Back, they do not seem to all have been admitted by the Court as such.

14 It would appear that the Documents C D E F Came from the Custody of the Collector of the Zemindary, which therefore was Evidence sufficient, they Came into their Possession the presumption therefore is that they were genuine, therefore the Documents

Exhibits

the Signature being there.

20. The Collector filed 6 Exhibits, Viz 3 Kyfeets Statements made on the 30th July 1851, before the Tahsildar of Bomdeer and a Deposition made by the Plaintiff himself before the Dt. Ballard on the 6th June 1853.

21. The Collector also Examined 4 Witnesses

22. The 3 Kyfeets mentioned in para 10, are totally inadmissable as Evidence, and therefore ought not to have been tendered by the Collector, nor filed by the Court; if they had been admissible as Evidence, it would have been imprudent to have filed them, because the parties who made the Statements were Examined as Witnesses on this suit on behalf of the Defendant, and by filing the Kyfeets it afforded an opportunity to the Plaintiff and the Court of observing on any little Variations, such discrepancies might arise between the Kyfeet and the Witness's subsequent Evidence. In my opinion it was improper to put in the Deposition by the Plaintiff, & certainly does not contain an admissible Evidence, that the Cadamkoil Known in what manner the Inquiries were conducted & been managed by Ramasamy, but that it arose from Conclusions drawn subsequent to the Village becoming Disaffected, and hence the Lands being farmed for another, had direct Reference to any of the Lands were under Cultivation, be produced to the Tahsildar, and they found me for 2 or 3 Years Something or Nearly on the Value of the produce Recited in that Kyfeet, and the person to state that 8 Years before he Settled the Income to a Rupee for Cultivation. True it is that these Questions were very loose, and

ambiguous, but the Collector has elected to put in the Deposition, and thus to make all that it Contains his Evidence, and it is not Competent for him to select a little bit which he thinks tells in his favor, and then to turn Round, and by rejecting the parts which tell against him, endeavour to throw discredit on his own Witness. The putting in these Documents moreover has unnecessarily burdened the Record.

23. The oral Evidence given on behalf of the Defendant shews that the portion of the Land called Vadakoocheruvoo had been Cultivated by the Zemindar himself for some years prior to 1825 or 26 and that from about that period the 1st Witness (with his 2 Brothers since deceased) had Cultivated it as Tenant for about 5 years, and paid Rent to the Zemindar. That Evidence also shews that the other portion of the Land called Jerry Sooloo Cova remained Waste and overgrown with Weeds for some years after the famine (1832) and that the 1st Witness (with his Brothers) had subsequently Cultivated that Land for 12 Years and paid Rent to the Zemindar. The Witnesses also speak to the Land being dry, and that they had not been held as Enam or Sheria Doombalah to the Temple prior to F. 1266 (1857/2) when the Zemindar gave the Rayaneemah. One Witness on Cross Examination by the Plaintiff says that in 1801 2 Land cases entered in Court at the Bramm of the Temple but decided or they were never Enjoyed or Used. Such a Native testimony is extremely uncertain as to Dates, and on that Ground the Evidence under Consideration is not an Exception to the general Rule. The Witnesses to which some Reference to by some of the Witnesses were not produced, the Defendants Evidence might be objected to by the Respondent by the Plaintiff, and consequently Ramasa-

of that objection. The production of accounts proved
to have been regularly kept, having entries of the
receipt of Rent &c., would have added great weight
to the Oral Evidence. There is no Evidence to shew,
or from which the Court could infer, that the
Rajeemamah was procured in consequence of Collusion with
the late Zemindar and the Plaintiff.

25. The Case therefore that has been made is this,
the Plaintiff has established the Original Grant in 1764,
and that it was registered; and probably it may be
considered the Plaintiff has established the Cheekramah,
(Exhibit B) also the alleged Lease (Exhibit F) and the
Rajeemamah (Exhibit K) as likewise that he is the
present Priest of the Temple (The Exhibits C to I inclusive
& to M having been admitted improperly, or not
being Evidence in this Case, should be taken from Consideration
for the present;) and the Plaintiff's Evidence (after Deducting
the Inconsistencies) would have shewn, that the
Rent had been Collected on his behalf, and that he
had not paid that the Increase made by the Defendant
was in Contradiction of the Plaintiff's Witnesses, denying
that he, the Plaintiff, or his Servants had occupied the
Land for the last 20 years, with the Exception of 1 Year
after the Rajeemamah 1851/2, and proved, although
not in the most satisfactory manner, that Rent had
been paid for the Land to the Zemindar, during a
Period of more than 12 years but it shewn that the
Rents were not paid by the Plaintiff or any body claiming
under him, and that it had not been paid to Govern-
ment

It is necessary to consider any different Cases from the
Court Judges and the Amount of Credibility to
be

be attached to the Evidence, for I do believe the
Plaintiff's Evidence, and probably I might be able
to induce the Court of Sadr Adalut to take the same
view as myself, but that is doubtful, and if the
Evidence to be believed by the Court, and the Defendants
Evidence thrown aside (as the Civil Judge has done)
I cannot see any Grounds for reversing the Decree Except
as mentioned in Para 28.

26. But if the Sadr Adalut should not
credit the Plaintiff's Exhibits, and his Oral Evidence,
then the Plaintiff's Case would rest on the Grant the
Cheekramah and the Rajeemamah

27. In Para 6 I have referred to the Question
first put forward by the Plaintiff that the Zemindar was not
possessed of any authority to interfere with the Land
under dispute, because the Inam Lands were Exempted
by Government from the Peishcush. This Question was
first put forward by the Plaintiff in the Original Petition
of Plaint. The Collector therefore of the Collector
and Government Revenue was drawn to the fact
and the Zemindar might have been Required to prove
if the facts were as stated by the Plaintiff, and as
intended to be proved by the Exhibit E, that although
it might have been proved on the Inquiry and in any
Instance if proved, would have been an Effectual
Answer to the Rajeemamah, so much Relied upon by
the Plaintiff if not Explained by Evidence put in by
the Defendant. But the Case under Consideration that
Defendant did withdraw Evidence of that description
for he has shewn that the Zemindar did Exercise Acts
of Ownership, by Cultivating part of the Land himself
letting other portions, and procuring Rents as the Inducement
to purchase, and the Collector Considered that
the particular portion of Land claimed by the Plaintiff
Ancestors which had been included in the Inquiry
of 1864 - but Collusion was specially pleaded in Answer

28 The only advantage that can possibly be Rea-
-lized from evidence on behalf of Government, is by endeavoring
to show the Court of Sadr Adalat that by the Exhibit
I the Plaintiff had furnished of Court but Jam-
-mayan that such an attempt would be successful
in the Suit.

29. The only reason given by the Collector for resisting
the Mayavaram Pattah is that it was given Collusively; there
is not however any Evidence to support such an allegation
and Jamabundy of any Land by which it could be
adjusted on any Ground, except that the Zemindar
had not any power over the Land which he professed
to give to the Plaintiff; & that the Rayeram-ah had been
assigned by Swamy, but neither of those pretences
have been established by the Collector

30 Even if after all that the Zemindary had
not been assigned by Government and the Plaintiff
had succeeded the Zemindary in the Zemindary Court
some Records the Decree of reversed by that
Government would of the Zemindary Court

31 Under these Circumstances and having
the Facts of the Case been not been judiciously
framed, Because that the Appeal should not be
further proceeded in

32 Should the Facts of the Case including, the
Petition & any proceedings of the Plaintiff Petitioner
Evidence & any proceedings of the Collector in Original
Suit & Appeal be transmitted to the Register of the
Court of Sadr Adalat & the Appeal from the
Decree of Government Dealer the Proposed Decree

from

for Proceedings under date the 24th July 1857
and Request the same may be returned to me when
no longer required by Government

33- In the letter to the Board of Revenue dated
the 13th July 1857, the Hon. refers to a Commutation
having been given to Holders of Inams, and from
para 6 of that letter, it might be inferred that
the Plaintiff in the Case now under Consideration
had received such a Commutation - If such be
the Case it ought to have been pleaded, and if
that had been done and proved the Case would
have assumed a very different aspect - It is
now too late to take advantage of it if it be
the fact -

34- The time for putting in a detailed Petition
will by June on the 28th Instant, and if the
Petition will be put in the Board determine on carrying on
Proceedings in Court should determine on carrying on
the Appeal & shall require the Enclosures back a
few days before that date, to enable me to prepare
and file the detailed Petition

35- As regards any proceedings which may be
instituted for the Recovery of other Lands, I should
recommend that they be deferred on the general
Grounds before alluded to or decide off them as are
applicable and Evidence given of non Cultivation for
a period Exceeding 12 Years and proof of that during
a similar period and to meet the other Terms of defence
pleaded - If however (as in this Case) the Zemindar should
have done any Act, recognizing the Right of the Claimant
it might be desirable that I should address on the Case
on full information being laid before me -

I have the honor to be
Sir
Your most obedient humble
Servant

No. 1

No 1092

Extract from the Minutes of Consultation
Under date the 24th October 1857.

Read again the following

Papers

Extract from the Proceedings of the Board of Revenue
dated 2d and recorded in Dy to Cons 16th July 1857 - 72 to 87.

From the Government Secretary
dated 16th and recorded in Dy to Cons 21st July 1857 - 87 to 89.

Read also the following
Letter from the Government
Secretary

(Fort St George 14th October 1857 - 92 to 103)

Ordered that the letter of the
15th instant from the Government
Secretary be forwarded to the Commissioner
in the Ceded Districts with the Papers noted
in the margin, requesting that he will
take the Orders passed thereon into
consideration, and favour Government
with his opinion

Fort St George
Consultation
24th October
1857

Present
The Hon'ble Sir Henry Pottinger Bart
Governor
Major General Sir Patrick Grant KCB
Commander in Chief
The Hon'ble Edward Maltby
Charles Elliot Esq
Thomas Pycroft Esq
Secretary to Government

Read the following Letter from the Government Secretary
dated 15th instant

Sir

I am directed by the Right Honble the Governor in Council to request that you will be pleased to submit for the consideration of the Board of Revenue the accompanying Copy of a Letter from the Government of India in the Secret Department dated 2d instant, expressing the Sentiments of the Right Honble the Governor General in Council on the Subject of the Petition of the Inhabitants of Cuddapah praying for the Establishment of a Court of Appeal in that District

I am Sir
Your most obedient Servant
(Signed) Thos Pycroft
Secretary to Government

To
The Secretary to the Board of Revenue
Fort St George

Read also the following Letter from the Secretary to the Board of Revenue
dated 16th instant

Sir

I am directed by the Board of Revenue to transmit for the information of the Right Honble the Governor in Council the accompanying Copy of a Letter from the Government of India in the Secret Department dated 2d instant, expressing the Sentiments of the Right Honble the Governor General in Council on the Subject of the Petition of the Inhabitants of Cuddapah praying for the Establishment of a Court of Appeal in that District

I am Sir
Your most obedient Servant
(Signed) Chas Elliot
Secretary to the Board of Revenue

To
The Secretary to Government
Fort St George

Ordered that a Copy of the Letter from the Government of India in the Secret Department dated 2d instant be transmitted to the Commissioner in the Ceded Districts for his information

Ordered that the Letter from the Government of India in the Secret Department dated 2d instant be transmitted to the Board of Revenue for their information

Ordered that the Letter from the Government of India in the Secret Department dated 2d instant be transmitted to the Commissioner in the Ceded Districts for his information

Ordered that the Letter from the Government of India in the Secret Department dated 2d instant be transmitted to the Board of Revenue for their information

for the Eastern Assistant
Collector in that District for
the recovery of certain Crown
Lands.

2. The Crown Converts
of 2 Cutters of Land situated
in the Village of Geelebourne,
formerly appertaining to the
Goodoor Gaol Reserve, and is
claimed by the Plaintiff as
the ground of its being a
Leasehold, or rent free grant
to the Colonist, on the Goodoor
Gaol Reserve being transferred
to Government in 1851/52, the
Collector treated the Lands
in question as part of "Crown
Lands" Occupied, &c &c
Leased, the profits arising
therefrom to be Accounted for
Licensed, and the Tenants Leases
treated as Crown Lands Tenants"
this proceeding leads to the

institution

institution of a Suit in the
Queanbeyan District Court as
№ 141 of 1855, and the Decree of
that Court was in favour of
the Plaintiff.

3. In their proceedings
of the 2nd July last № 2258 the
Board of Revenue in reporting
the issue of this Writ gave as
their reasons for Considering
it useless to appeal against
the decision of the District Court
The Government Records
after going minutely into the
merits of the Case, deemed
that the appeal should not
be further proceeded with
Under these circumstances
the Government Order Confirm
to adopt the Board's recommen
mendation, and to allow the
matter to drop.

4. Protected that the

[illegible] Resolution, and the
Directions of the Government to
Execute, be forwarded for the
Information and Guidance
of the Boards of Revenue
and the Collection of Materials
for Returns, and that therein
attention be particularly
directed to the Duties imposed
thereon by the 32d Geo. 3d
Proceedings of the 21st July 1792
will be returned to the Office
or required to be by them.

B. T.

Chief Secretary
with Board Office
Fort St. George
the 6th October
1792

21 Oct. 1792