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Revenue Department

Minutes of Consultation

7th April 1857

Back N^o 59-60

Order ne 339 dated 7th April 1857

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339
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Fort Saint George, Revenue Consultation of 7th April 1857.

No. 59. Read the following letter from H. D. COOK, Esq., Acting Civil Judge of Calicut; to T. PYCROFT, Esq., Chief Secretary to Government in the Judicial Department Fort Saint George, dated Calicut; 19th March 1857, No. 170.

SIR,

I have the honor to transmit for the information of the Right Honorable the Governor in Council, in conformity with Section XXXI. Regulation VII. A. D. 1809, copy of a Decree passed by this Court in A. S. No. 570 of 1856, in which the Collector of Malabar was a party.

Decree of the Civil Court Zillah Calicut.

Before the Sub-Court of Calicut, O. S. No. 9 of 1855.

Before the Civil Court of Calicut, A. S. No. 570 of 1856.

<p><i>Appellants.</i></p> <p>1 Shivarama Putter's son Soobramanyen Putter.</p> <p>2 His younger brother Shamoo Putter.</p>	<p><i>Versus.</i></p>	<p><i>Respondents.</i></p> <p>1 Shekary Vurnah valia Rajah of Paulghaut.</p> <p>2 T. Clarke, Esq., Collector of Malabar.</p> <p>3 Ananda Putter's son Soobramanyen Putter.</p>
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1. The original suit was instituted for the possession of one parcel of land alleged to have been granted to Plaintiffs on Kanom mortgage by the Shekary Vurnah Valia Rajah 1st Defendant, whose jenm proprietary right property the land sued for is said to be.

2. The 1st Defendant did not answer.

3. The 3d Defendant answered that he is in possession under a Pattiom coule granted by Government to whom the land had elapsed on the death of Chenatha Nair whose jenm proprietary right it was.

4. The 4th Defendant, Collector of Malabar, answered that the 1st Defendant had not and never had a jenm right to this parcel of land, that the jenm was that of Chenatha Nair, on whose decease, without heirs, it had escheated.

5. The Acting Sub-Judge dismissed the suit, being of opinion "that no case whatever has been made out by the Plaintiffs." He also deemed it clearly established that 3d Defendant alone has really possessed the land in the only sense in which possession can be used, and nothing having been adduced which in his judgment shewed that the right of possession is in the Plaintiffs or their alleged assignee the suit was dismissed with costs against the Plaintiffs.

6. The Plaintiffs appeal urging

1st. That it is proved by the document A that the property is the jenm of the 1st Defendant and held on mortgage by them (Appellants).

2d. That the exhibit B and the witnesses 1 and 3 prove the possession of the land by Plaintiffs and that it was improved prior to the transfer of it by Government to 3d Defendant.

3d. That there is a document in the Huzzoor to prove that the land is not the jenm of Chenatha Nair, that application was made for copy of this document to the Collector, who did not give it, and subsequent application was made to the Sub-Court to send for the document and inspect it or to instruct the Collector to furnish appellants with a copy, which was not done.

JUDGMENT.

7. I have gone over the original Decree with care and am clearly of opinion that there is not a scintilla of evidence on record to lead to the supposition that the land sued for is the Jenm property of the 1st Defendant. Unless this had been done, the Plaintiffs cannot possibly obtain restoration of the land shewn to be in possession of the 3d Defendant by coule granted by the Collector when it was jungle.

8. The Plaintiff's document A goes no way to prove that the Jenm right is vested in the 1st Defendant, and B is equally worthless.

9. The Acting Sub-Judge for reasons assigned discredited the evidence of the Plaintiff's witnesses, and these reasons appear to the Court legitimate and sound.

10. I consider it highly improbable that the land would have been allowed to remain waste for so long a period had it been de facto assigned to the Plaintiffs by the 1st Defendant. It does

மாதுகாம்பு பரிசீலி

செய்பனிருபவர் பெயர்

V. 5120
6-06

செய்பனிருவதற்காக

எடுத்த துணிகொள்ளப்பட்ட நாளி

7-8-06

9-06

செய்பனிரு முடித்த நாளி

சரிபார்க்கும்

சரிபார்க்கும்

உதவியாளர்

முதல் மு.நி.பா.எ.

2ம். நி.பா.எ.

கையொப்பம்

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Fort Saint George, Revenue Consultation of 7th April 1857.

not appear from the record that any application was made to the Court for the document alluded to in the 3d objection.

Conceiving that the original Decree is a just one, I affirm it and dismiss this appeal with costs against the appellants.

COSTS.

			Rs.	A.	P.
Stamp duty on institution under Sec. XIII. Reg. XIII. of 1816.....			2		
Plaintiff's costs in the original suit.....	30	3	3		
3d Defendant's Ditto.....	7	13	2		
4th Defendants Ditto.....	9	13	2		
			47	13	7
Total costs Rupees....	49	13	7		

Given under my hand and the
Seal of the Court this 23d day
of January 1857.

(Signed) H. D. COOK,
Acting Civil Judge.

EXHIBITS &c. FILED IN COURT.

Appeal petition 1, Bundle of the Original Proceedings 1, Decree in appeal 1.

Scaled and signed this 4th day of March
1857.

Appeal filed 13th October 1856.
Pleadings closed do.

Date of preliminary hearing 21st January 1857.

Subsequent Ditto. 23d Ditto. „

Date of Decree 23d Ditto. „

The period for preferring a special appeal
from this Decree will expire on the 1st June
1857, within which time the application for
special appeal accompanied by copies of the
several Decrees previously passed in the case

must be presented to the Court of Sudr Udalut, or the application will be rejected.

Application for the execution of this Decree shall not be entertained after the lapse of 12
years, unless sufficient cause is shewn for the delay as prescribed in Clause 4th, Section XVIII.
Regulation II. of 1802.

(Signed) H. D. COOK,
Acting Civil Judge.

(True Copy.)

(Signed) H. D. COOK,
Acting Civil Judge.

No. 60.

ORDER THEREON, No. 339; dated 7th April 1857.

Ordered that the foregoing letter be recorded.

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

No 170
1857

Received by the following
19th March 1857

From, H. D. Cook Esq.

Acting Civil Judge of Calicut.

H. J. Percost Esq.

Chief Secretary to Government
in the Judicial Department.

Fort St. George.

Sir,

I have the honor to transmit
for the information of the Right Honorable
the Governor in Council, in conformity
with Section XXXI Regulation VII. S. 1809,
copy of a Decree passed by this Court in
S. L. No. 570 of 1856 in which the Collector
of Malabar was a party.

Civil Court
Calicut
22
March 1857

I have the honor to be
Sir,

Your most Obedt. Servant.

H. D. Cook

Acting Civil Judge.

it has exhibited.

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5. The Acting Sub Judge dismissed the suit being of opinion "that in case whatever has been made out by the Plaintiffs" He also deemed it clearly established that 3^d Defendant alone has really possessed the land in the only sense in which possession can be used, and nothing having been shown which in his judgment showed that the right of possession is in the Plaintiffs or their alleged assignee the suit was dismissed with costs against the Plaintiffs.

6. The Plaintiffs appeal urging

1st that it is proved by the document A that the property is the joint of the 1st Defendant and held on mortgage by them (Appellants).

2^d that the Exhibit B and the witnesses 1 & 3 prove the possession of the land by Plaintiffs and that it was improved prior to the transfer of it by Government to 3^d Defendant.

3^d that there is a document in the House to prove that the land is not the joint of Chinatha. That application was made for copy of this document to the Collector, who did not give it and subsequent application was made to the Sub Court to send for the document and inspect it or to instruct the Collector to furnish appellants with a copy which was not sent.

Judgment.

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New 1837 Definitive
Case: The 1st Defendant
316.

From
The Acting Sub Judge
of Exhibits

to the Acting Secretary
to Government in the
Judicial Department
J. S. George

Dated 14th March 1837
No 263

Enclosed
No 1907 JF

Handwritten copy
of a letter from the
Court to the 1st Defendant
of 1836
which the Plaintiff
has not seen a party

1837
Recorded

1837
The 1st Defendant
1837

Application for the execution of this decree
 should for the application will be executed
 the case must be presented to the Court of Chancery
 of the several Decrees, Intervenor's papers in
 for special appeal accompanied by affidavit
 within which time the application
 report in the 17th June 1857

Date of decree — 23rd 8th — from this decree will
 Judgment with — 23rd 8th — being a special appeal
 Date of preliminary hearing 25th Jan'y 1857 the period for notice
 of appeal closed — 4th day of March 1857
 Appeal filed — 13th Dec'r 1857 Order & signed the
 decree in appeal.

Filed within 1 month of the original proceedings
 Certificate of appeal in Court.

Signed Thos. D. Cook
 Acting Court Judge
 17th January 1857

Cost of the Court the 23rd day
 given under my hand and the

Brought over from	2
Amount of costs in the original suit	30.33
32 nd Defendant's bill	7.13.2
1 st Defendant's bill	9.13.2
Total costs charged	47.13.7



shall not be entertained after the lapse of 12 years
 unless sufficient cause is shown for the delay as prescribed
 in Clause 4th Section XVIII Regulation II of 1802.

Signed Thos. D. Cook
 Actg. Court Judge

(True copy)

Thos. D. Cook
 Acting Court Judge

Rec'd Jan'y 29

Rec'd from the same N^o 339, dated 7th Apr
 I ordered that the foregoing be taken
 as correct

Signed Wm. T. Cook
 Actg. Court Judge

Enclosure 1

In a letter from the
Acting Civil Judge of
Calicut to the British
Secretary to Government
dated 19th March 1857

Copy of the above
enclosed to me the above
letter

Recd 316/57