

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	433	Press Mis.
Dated	30 - 3 - 1859	

Not to be folded or roughly handled

433

Fort Saint George, Revenue Consultation of 1st April 1859.

No. 85. Read the following Extract from the Proceedings of the Board of Revenue, dated 10th March 1859, No. 836.

Read the following letter from the Collector of Masulipatam, dated 26th January 1859, No. 11.

(In Consultation 12th February 1859, No. 544.)

With the above letter the Collector forwards the decree of the Civil Court of Masulipatam, in O. S. No. 5 of 1857.

2. As reported to Government in the Board's Proceedings, dated 7th August 1857, this suit was instituted to obtain possession of the village of Bullipurroo, held under management of the Court of Wards for the benefit of its minor proprietor.

3. The Plaintiff alleged that the minor's father had mortgaged the village to his (Plaintiff's) father, under stipulation that the property should vest absolutely in the mortgagee on failure of payment within the prescribed period.

4. The mother of the minor resisted the claim alleging that the debt had been duly satisfied. This defence has failed and the Civil Judge has awarded the property to Plaintiff with costs.

5. The Collector is of opinion that further proceedings should be dropped. He states that the surplus of the village is scarcely sufficient to furnish a six months' maintenance to the minor, and the lien on the Estate has been too strongly established to admit of further litigation.

6. The Board of Revenue do not propose to appeal against this decision. The debt seems to be clearly established as well as the lien upon the property, and if a sale was enforced in consequence of the village itself not being made over to the Plaintiff, the principal, interest, and costs of suit might probably exceed the sale proceeds. The interests of the minor would not therefore be subserved by any further steps which the Collector could take in his behalf, and the Board would consequently not interfere any further, but would leave the friends of the minor, should they think fit, to continue further proceedings at their own risk.

7. The Board observe that the Collector has not noticed the award of costs against him.

(A true Extract.)

(Signed) J. D. SIM, *Secretary.*

No. 86. ORDER THEREON, No. 433 ; dated 30th March 1859.

For the reasons stated by the Board in para. 6, the Honorable the Governor in Council concurs with them in the opinion that the suit referred to in these Proceedings should be dropped.

2. The Board will, if necessary, report respecting the 2d Defendant's costs.

(Signed) J. D. BOURDILLON,
Secretary to Government.

IN CON. 12TH FEBRUARY 1859, No. 544.
From W. KNOX Esq., Collector of MASULIPATAM,

dated Goodewada, 26th January 1859, No. 11.

Para. 1. With reference to the correspondence noted in the margin, on the subject of the suit brought against the Agent to the Court of Wards, and the guardian of the minor Proprietor of the Village of Bullepurroo, I have the honor to submit for the information of the Court of Wards, copy of Judgment given therein, under date the 29th November last, and request the instructions of the Court of Wards, as to whether it is to be appealed from.

To Board 29th April 1857, No. 64.
From Board 24th June 1857, No. 2190.
To Do. 17th July 1857, No. 130.
From Do. 7th August 1857, No. 2649.

2. Though the decree is dated last November, it was not signed, and sealed till the 24th December, and I obtained a copy of it only on the 24th instant. This delay has arisen partly from my absence from the Head Quarters, and partly from the Judges refusing to allow one of my writers to make the transcript of the Judgment, instead of employing one of the Court Volunteers on payment of a fee of one anna per side of a stamp paper, which I considered an unnecessary charge in a suit where the Collector is a party, and in contravention to the old custom, by which such copies were furnished free of cost.

3. I have this day applied for a couple of months additional time to permit my obtaining the Court of Ward's orders on the subject of appealing or not appealing from the Decree of the Court, and beg to be favored with instructions as soon as practicable.

4. My own opinion in the matter is to drop further proceedings, and to let the Village go. The surplus of the Village is scarcely sufficient to furnish a six months maintenance to the minor, and the lien on the estate, has been established too strongly to admit of further litigation. The Minor's mother has property in Madras, and Nagpore, as I am told.

ENC. 1.

Decree of the Civil Court of Masulipatam Original Suit No. 5 of 1857 Masulipatam Civil Court's file.

Plaintiff. Pillaroosetty Sameodalloo Naidoo. Pleader. Streepaty Bhadrachelliah, having died, S. Veyen- nah Deetchatooloo.	}	Versus.	}	Defendants. 1st Summata Varadaranmanoojummah, mother and guardian of the minor Ackiah Naidoo. 2nd T. J. Knox, Esq., Acting Collector of Ma- sulipatam. 1st Defendant's Pleaders V. Lutchmeenursiah and D. Seetapaty Sastry. T. Poorooshottamiah, Go- vernment Vakeel on behalf of the 2nd Defen- dant.
---	---	---------	---	--

1. The Plaintiff sets forth that the late husband of the 1st Defendant entered into a monetary transaction with Plaintiff's father (deceased) by which the village of Bullepurroo, was mortgaged upon a conditional Bill of sale to the latter, on the former failing to act up to stipulations laid down in the Bond. This Bond became absolute, and the fact was duly communicated to the Collector of the District. After the death of the 1st Defendant's husband, Plaintiff was compelled to file a Suit No. 82 of 1854 against 1st Defendant to foreclose the mortgage, and the latter presented a Rauzeenamah by which she obtained a remission of certain items claimed by Plaintiff, but transferred the mortgaged property to the Plaintiff, which Rauzeenamah was confirmed by the Court and he came into possession of the property accordingly. Some time afterwards, the then Collector Mr. Lushington having been moved to it by the Aezees of the 1st Defendant dispossessed Plaintiff of the property viz., the village alluded to, and held it under attachment, on account of the minor. That having, in vain, applied to this Court and also the Court of Sudr Udalt, to give effect to the above said Rauzeenamah, the Plaintiff has now brought the present Suit, for the recovery of the village of Bullepurroo &c., with mesne profits in all amounting to Rupees (2,238-15-6) two thousand, two hundred and thirty eight, annas fifteen, and pice six, with costs of suit.

2. The 1st Defendant denies the Plaintiff's claim, and states that the conditional transfer deed alluded to had been liquidated and the claim has been satisfied before the presentation of the Rauzeenamah in original suit No. 82 of 1854 by the surplus proceeds of another village Tolairoo. She adds that she was induced to give the Rauzeenamah in the above case by the Plaintiff, not knowing what she had done.

3. The 2nd Defendant in his answer states that he merely interfered, as was his duty to do, to protect the property of the minor, as the 1st Defendant, then other, in transferring the village to Plaintiff, had exceeded her power, and violated her own written agreement.

4. In his replies the Plaintiff states that the surplus sale proceeds of the village of Tolairoo were paid on account of a distinct Bond and duly endorsed, that the other transaction now under discussion was of entirely a different village. He denies that the 2nd Defendant was justifying in attaching the village of Bullepurroo in violation of the terms of the Rauzeenamah and Decree passed thereupon.

5. The following points were recorded on the 11th December 1857, after viva voce pleadings had been heard on both sides.

Plaintiff.

- 1st. To prove his claim to the property sued for.
- 2nd. That the circumstances were duly communicated to the Collector and acknowledged by him.
- 3rd. That the 1st Defendant attempted to carry out the conditions of the transfer deed and the causes of failure.

1st Defendant.

- 1st. That the amount of the conditional transfer deed had been liquidated in full, and that Plaintiff's claim is satisfied.

2nd Defendant.

- 1st. To show the conditions under which 1st Defendant received the charge of the estate as mentioned in his answer.
- 2nd. And the reasons for his interference when the Plaintiff sought for the execution of the alleged transfer deed.

The points given to either of the parties may be refuted by the opposite one.

Lists of Witnesses and Documents to be given in 15 days.

Plaintiff's Exhibits.

- A. A mortgage and conditional Bond dated 15th July 1850, executed by 1st Defendant's husband Lutchmeenursimha Naidoo to Plaintiff's father Venkatachellum Naidoo for Rupees 1,300-0-0.
- B. A mortgage Bond dated 8th March 1851, executed by and to the said parties for Rupees 1,400-0-0.
- C. A Bond dated 29th April 1852, executed by and to the same parties for Rupees 2,000-0-0.
- D. A Kararnamah Bond or conditional Bill of sale dated 21st July 1852, executed by and to the same parties for Rupees 460-0-0.
- E. Authenticated copy of an Arzee addressed by 1st Defendant's husband to the Collector of Masulipatam dated 21st July 1852.
- F. Authenticated copy of Kyfeyet dated 13th November 1852, presented to the Circar (Tahasildar) by 1st Defendant's husband.
- G. Authenticated copy of an Arzee dated 15th November 1852, addressed by the Tahasildar of Bunder Talook to the Collector, forwarding the said Kyfeyet, &c.
- H. Letter or Dhimut dated 1st August 1855, addressed by 1st Defendant to the Curnum and Caupoos of Bullepurroo.
- I. Authenticated copy of the Decree of the Civil Court in No. 82 of 1852.
- J. Authenticated Extract from the Proceedings of the Civil Court of Masulipatam dated 31st March 1856.
- K. Authenticated Extract of Extra Petition No. 223 of 1856, presented by Plaintiff in No. 82 of 1852.
- L. Authenticated Extract from the Proceedings of the Civil Court dated 7th July 1856.
- M. Authenticated Extract from the Proceedings of the Sudr Udalt dated 24th November 1856.

To prove Plaintiff's 1st Point.

To prove Plaintiff's 2d Point.

To prove Plaintiff's 3d Point.

To prove Plaintiff's 1st Point.

To prove Plaintiff's 3d Point.

Plaintiff's Witnesses.

- 1st. B. Pracasem.....
- 2d. D. Venkatareddy.....
- 3d. A. Govindoo.....

To prove Plaintiff's 3d Point.

1st Defendant's Exhibits.

- I. Authenticated copy of an Arzee dated 10th, August 1853, addressed by 1st Defendant's husband to the Collector of Masulipatam.
- II. Authenticated Extract from the Proceedings of the Civil Court of Masulipatam dated 31st March 1856.

To prove 1st Defendant's 1st Point.

2d Defendant's Exhibits.

- I. Duplicate copy of the 1st Defendant's Document No. 1.
- II. Authenticated copy of the Kararnamah dated 13th November 1853, executed by the 1st Defendant to the Circar.

To prove 2d Defendant's 2d Point.

To prove 2d Defendant's 1st Point.

JUDGMENT.

6. The Civil Judge upon a careful consideration of the Record before him, is of opinion that the Defence set up is a complete failure. The Documents filed by the Plaintiff clearly prove that the 1st Defendant's husband deliberately transferred the village in question to Plaintiff for value received by a conditional Bill of sale, which he subsequently confirmed in detail through the Revenue Authorities in July 1852; directing the transfer should take place on and after the 1st December following. On the 10th August 1853, the same individual repudiated the debt to Plaintiff in an Arzee addressed to the Collector, in which he states that the claim against him an account of the village in question, Bullepurroo, had been liquidated by the balance of assets on the sale of the other village also mortgaged to Plaintiff, Tolairoo, and which had been paid to Plaintiff through the Revenue Authorities in Rajamundry. No further evidence on this point is adduced, and the simple ipsi dixit of the 1st Defendant's husband on this point is inadmissible. It would appear that 1st Defendant's husband died between the 10th August 1853, and the 13th November following, as on the latter date his widow, 1st Defendant, executed a kararnamah to the Circar, engaging to manage the property of her son, truly and faithfully. A suit was brought against the 1st Defendant as guardian of the minor (original suit No. 82 of 1854) to give effect to the transfer of the village now in dispute, executed by the minor's father, and after the close of the pleadings, a compromise was entered into by the parties, when the 1st Defendant engaged to carry out the stipulations of the transfer deed or conditional Bill of sale, on the Plaintiff agreeing to forego certain advantages enumerated. This Rauzeenamah was executed and filed of Record. It was upon Plaintiff's seeking to carry the same into execution that the Collector T. D. Lushington Esquire interfered, and protested against the step, as the 1st Defendant had exceeded her powers, in disposing of the minor's property in the manner alleged. The suit has consequently been revived in the present case, and the 2d Defendant included to show cause why the Rauzeenamah filed in original suit No. 82 of 1854, should not be carried out.

7. The 1st Defendant has entirely failed in her plea, that the debt incurred on account of the village in question has been liquidated. The debt was clearly incurred by her husband, and the property alluded to is as clearly liable for the same. The matter should have been settled in the 1st instance in accordance with the Rauzeenamah Decree marked I.

8. The Civil Judge therefore has no hesitation in awarding to Plaintiff the property &c. claimed from the 1st Defendant. The 2d Defendant will pay his own costs.

9. It is further resolved that no private adjustment of this Decree shall be allowed or deemed valid unless the terms of such adjustment shall have been previously and reciprocally declared by all the parties interested herein, and made a record of the Court with their unanimous consent.

NOTE. This Decree shall not be executed after the lapse of 12 years, unless the party or parties applying for execution to shew by clear and positive proof that his or their application is, on one or other of the grounds specified in Clause 4th Section XVIII Regulation II of 1802, excepted from the general rule of limitation prescribed in that Section.

The village of Bullepurroo, paying a Peishcush of Rupees (468-15-6) four hundred and sixty eight, annas fifteen, and pice six.

AND.			
Garden situated in the said Village and valued at Rupees (450-0-0) and fifty four hundred	...	...	1
Profits payable upon the above village as set forth in the Plaint	936	0	0
Subsequent profits upon the above village from 11th July 1856 up to 11th July 1858, being 2 years...	468	0	0
Costs of Suit No. 82 of 1854...	146	3	0
Stamp duty on institution, under Section XIII Regulation XIII of 1816.	100	0	0
Fees of Plaintiff's Pleaders under Section XXV Regulation XIV of 1816.	55	15	2
To S. Bhadra Chelliah...	55	15	2
To S. Veyannah Deetchatooloo	...	...	...
Do. of 1st Defendant's Pleaders under.	111	14	4
Do. Do. Do.	...	...	...
To V. Lutchmeenursiah	83	14	9
To do. Seetapaty Sastry...	27	15	7
Fees of 2d Defendant's Pleader	111	14	4
To T. Poorooshotamiah, Government Vakeel under Section XXV Regulation XIV of 1816.	...	...	...
Value of Stamp papers filed by Plaintiff...	111	14	4
Do. Do. Do. by 1st Defendant	12	8	0
Value of Stamp papers filed by 2d Defendant...	4	8	0
Stamp duty on thirteen exhibits filed by Plaintiff...	2	0	0
Do. Do. two Do. Do. by 1st Defendant	3	4	0
Do. Do. on 2 Do. Do. by 2d Defendant	0	8	0
Expense incurred by Plaintiff for serving processes	0	8	0
Do. Do. by 1st Defendant for Do....	1	8	0
	0	9	0
Deduct amount already paid by 1st Defendant	Total.	2,011-3	0
By 2d Do.	117	7	4
	114	6	4
	231	13	8
Balance Company's Rupees	1,779	5	4

The above sum of Company's Rupees one thousand, seven hundred and seventy nine, Annas five, and Pice four, and the abovementioned village of Bullepurroo and garden should be made good to Plaintiff by the 1st Defendant.

The date on which the complaint was filed, 16th March 1857.

The date on which Pleadings were closed, 31st August 1857.

The date of the preliminary hearing, 11th December 1857.

The date of every subsequent hearing, 12th April 1858.

The date of the Decree, 29th November 1858.

Given under my hand and the seal of the Court at Masulipatam this 29th day of November 1858.

(Signed) J. J. COTTON,

Civil Judge.

The fair copy of this Decree is signed and sealed on the 24th December 1858, and the period for preferring an appeal will expire on the 3rd February 1859.

No. 836.

EXTRACT from the PROCEEDINGS of the BOARD of REVENUE, dated 10th March 1859.
Read the following letter from the Collector of Masulipatam, dated 26th January 1859, No. 11.
(In Con. 12th February 1859, No. 544.)

With the above letter the Collector forwards the decree of the Civil Court of Masulipatam, in O. S. No. 5 of 1857.

2. As reported to Government in the Board's Proceedings, dated 7th August 1857, this suit was instituted to obtain possession of the village of Bullipurroo, held under management of the Court of Wards for the benefit of its minor proprietor.

3. The Plaintiff alleged that the minor's father had mortgaged the village to his (Plaintiff's) father, under stipulation that the property should vest absolutely in the mortgagee on failure of payment within the prescribed period.

4. The mother of the minor resisted the claim alleging that the debt had been duly satisfied. This defence has failed and the Civil Judge has awarded the property to Plaintiff with costs.

5. The Collector is of opinion that further proceedings should be dropped. He states that the surplus of the village is scarcely sufficient to furnish a six months' maintenance to the minor, and the lien on the Estate has been too strongly established to admit of further litigation.

6. The Board of Revenue do not propose to appeal against this decision. The debt seems to be clearly established as well as the lien upon the property, and if a sale was enforced in consequence of the village itself not being made over to the Plaintiff, the principal, interest, and costs of suit might probably exceed the sale proceeds. The interests of the minor would not therefore be subserved by any further steps which the Collector could take in his behalf, and the Board would consequently not interfere any further, but would leave the friends of the minor, should they think fit, to continue further proceedings at their own risk.

7. The Board observe that the Collector has not noticed the award of costs against him.
(A true Extract.)

To

J. D. BOURDILLON, Esq., Secretary to Government, R. D.
Copy to Collector of Masulipatam.

Secretary.

Ben. Com. 18 Aug 7/57. 3132
— 20 Dec 1857. 1516

Revenue. 1857. Debat
201 Ave 1st April.

1857

Extract from the Proceedings
of the Board of Revenue

Dated 10th March 1857.

1857

1857

18. 18 Aug 1857. 133132

Submitting a letter from
the Collector of Madras
reporting the desire of the Board
to retain possession of the village
of 1300 acres & stating that the
Board would not advise an ad-
vice therefrom, but would leave
it to the friends of the Board. The
Secretary should they think fit
to continue further proceedings
at their own risk.

1857. 39 March 1857 -
1857. 39 March 1857 -

1857

For the reasons stated

by the Board in para 6 the Right
Honorable the Governor in Council
concur with them in the opinion
that the suit referred to in these
proceedings should be dropped.

The Board will if and
copy report respecting the 2^d or
dependants costs.

1857

1857. 39 March 1857

1857. 39 March 1857

1857

1857. 39 March 1857

1857. 39 March 1857