

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	506	Press Mis.
Dated	12. 4.	1859.

Not to be folded or roughly handled

Fort Saint George, Revenue Consultation of 12th April 1859.

No. 59. Read the following Extract from the Proceedings of the Board of Revenue, dated 14th March 1859, No. 868.

Read the following letter from the Collector of Cuddapah, dated 8th January 1859, No. 5.

(In Con. 13th February 1859, No. 159.)

Resolved that the foregoing letter and its accompaniments be submitted for the information of the Right Honorable the Governor
E. M. C. 19th in Con. 22d April 1852, No. 346, R. D. in Council, with reference to the correspondence noted in the margin.
,, 14th ,, 22d Dec. 1855, ,, 1355, ,,

2. The Collector forwards the decrees of the Civil Court of Cuddapah in the undermentioned Suits.

A. S. No. 90 of 1853.

3. This Suit was originally brought in the Sub Court for the recovery of 10 Goontahs of land with certain Tamarind trees thereon, valued altogether at about Rupees 150.

4. The Judgment of the lower Court was in favor of the Collector, the Plaintiff paying costs.

5. An appeal was preferred to the Civil Court, but the Civil Judge has confirmed the decree of the lower Court with costs.

A. S. No. 25 of 1853.

6. In this case the suit was originally instituted in the Sub Court to recover a sum of money lent to two Poligar Pensioners. The Collector was included as a defendant, because he issued an order to the Cashkeeper to pay the pension of one of the defendants, as it became due to the creditor, until the debt was cleared; and it was sought to construe this order into a guarantee.

7. The Sub Judge gave judgment in favor of the Plaintiff, but held the Collector personally responsible in default of payment by the other defendants.

8. Against this decision Mr. Murray preferred an appeal to the Civil Court. It will be seen that the higher tribunal has modified so much of the decree of the Sub Court as held the Collector liable for the debt.

9. The Civil Judge proposes that the permission of Government be obtained for transferring the arrears of pension now in deposit, in liquidation of the debt, and that the balance be defrayed by further stoppages, not exceeding one half, from the monthly allowance of the second defendant until the whole is liquidated.

10. The Board consider this proper under the peculiar circumstances of the case, and if Government approve they will issue the necessary instructions to the local authorities on the subject. In the event of second defendant dying before the debt is liquidated, the stoppages will not be continued without express orders from Government.

(A true Extract.)

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

No. 60. ORDER THEREON, No. 506; dated 12th April 1859.

The Government approve and sanction the course proposed to be followed in paras. 9 and 10 of the above Extract, and direct accordingly that the arrears of Pension in deposit be applied to the liquidation of the debt referred to in A. S. No. 25 of 1853, and that the balance be disbursed by further stoppages not exceeding one half of the monthly allowance of the second defendant until the whole amount is liquidated subject to the reservation in para. 10.

2. The Government resolve to point out to the Board that it is not readily apparent from the Proceedings of the Board that Suit No. 90 was instituted against the Collector. In all cases sent up by the Board the matter should be clearly and correctly set forth.

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

1. I have the honor to forward herewith copies of two Appeal Decisions passed by the Civil Judge of Cuddapah for the information of the Board of Revenue and Government.

2. In the first, appeal suit No. 90. of 1853, the late Sub Collector Mr. Wedderburn was Defendant and the decision was passed in his favor, no further remarks are therefore requisite.

3. In the original suit No. 55. of 1854, the Collector of Cuddapah was made the 3rd Defendant and was Appellant in appeal suit No. 25. of 1856. This decision was also passed in favor of the Appellant.

4. The Board are aware that when the appeal suit was instituted, one half of the Pension of the 2nd Defendant, who upon the death of his brother a Tavajeedar, formerly belonging to this District but now attached to Kurnool, was permitted by Government to be kept in deposit pending the decision of this suit. This was accordingly done from 3rd September 1855, up to 1st July 1858, when the Talook of Cumbum was transferred to Kurnool and the amount lying in deposit in this Treasury is Rupees 1,068—14—5. The Board will perceive from Para 10 of the Decision that the Civil Judge recommends that the amount decreed be liquidated from the stoppages from the Pension now in deposit and the remainder be paid from the Pension disbursed monthly to the 2nd Defendant by the Collector of Kurnool. This suggestion of the Civil Judge is fair and just and I therefore request the Board will authorize me to disburse the amount now in deposit in this Treasury to the Civil Judge as part payment of the amount of the decree and for the remainder the Collector of Kurnool be directed to transmit either to me or to the Civil Judge of Cuddapah in liquidation of the balance of the amount decreed by Civil Judge.

5. The Plaintiff in the original suit, or Respondent in the appeal suit, G. Soobramaniem, has applied to me for the amount held in deposit and states that as he is a Sowcar, the money is much required—I therefore request the Board will be so good as favor me with their instructions as to the disbursement of this amount as early as convenient.

ENC. 1.

Decree of the Civil Court in the Zillah of Cuddapah, Original Suit No. 228, of 1851, on the file of the Sub Court decided by A. Hathaway, Esq., on the 4th of October 1853.

Appeal Suit No. 90 of 1853.

Appellant (Plaintiff).
Ibramkhan Bittaney.
Vakeel.
Shashacharloo.

Versus.

Respondents (Defendants.)

- 1 Hyatkhan Bittaney alias Badaykhan.
- 2 Pedda Hoossain Khan.
- 3 Oomer Khan.
- 4 Curnum Chenchiah.
- 5 R. Nurrasannah.
- 6 C. Chittambarum.
- 7 R. Soobbiah, and
- 8 A. Wedderburn, Esq., Sub Collector,
Vakeel Anunthacharloo for the 1st Respondent,
Do. Ramachendrarow for 8th do.

1. This is an appeal for the reversal of the Sub Judge's decree, dismissing the Plaintiff's claim to a Puttah land valued at Rupees 150.

2. The grounds for the appeal were.

First. That the land in dispute with trees &c., thereon had been sold and made over to the Plaintiff by the 2d and 3d Defendants in satisfaction of a decree which had been passed against them. That he the Plaintiff had expended 150 Rupees on improvements and that the then Sub Collector Mr. Murray had given a Puttah in his name.

Secondly. That the 5th Defendant's father mixed up Plaintiff's land with that occupied by Moh-deen Saib and Ally Saib, close to the disputed land and enjoyed the same, but those parcels do not consist of 1½ acres although that quantity is mentioned in the Puttah.

Thirdly. That the 1st Defendant's plea that the Plaintiff had clandestinely obtained a Puttah for lands during the absence of the real owners is not to be trusted.

Fourthly. That although the 2d Defendant had through fear *denied* before the Tahsildar the execution of the deed of sale, he *acknowledged* it in his answer to the present suit, that the writer of the said deed interpolated the name of 3d Defendant at the time of writing it and the witnesses proved his, Plaintiff's, enjoyment.

Fifthly. That the said land had been in the possession of the 2d Defendant from time immemorial, yet the Sub Judge considered that without a deed of relinquishment from the 1st Defendant, any transfer was improper, although the 1st Defendant had no Puttah for the said land and then proceeded to cancel his predecessor's Puttah which was illegal.

Sixthly. That the Collector over-looked the above circumstances in the appeal preferred by the Plaintiff to him.

and Seventhly. That if an Amina was deputed it would be discovered that the land in dispute did not form part of the 1st Defendant's holding.

3. The 1st Defendant in his appeal answer, observed :

First. That the land in dispute being included in his Puttah he continues to pay the Government assessment thereon and obtains receipts for the same.

Secondly. That contrary to the Revenue rules the Plaintiff had gained over the Curnum and induced him to make out a Puttah for the land in his name without the consent of the Puttahdar the 1st Defendant the Sub Collector (8th Defendant) discovered this, on a complaint from the 1st Defendant, and cancelled the Puttah.

Thirdly. That if the land had not been included in the 1st Defendant's Puttah, there would have been no necessity for fixing Teerwajasty upon it as in the case of the remainder of the land held by him.

Fourthly. That the late Sub Collector, who is said to have given a Puttah in the Plaintiffs name, referred the complaint of the 1st Defendant to the Tahsildar and it was upon the result of his enquiry that the Sub Collector, 8th Defendant, gave a Puttah to the 1st Defendant, which proceeding was confirmed by the Collector in appeal.

Fifthly. That the 2d and 3d Defendants allowed in their Talook declarations that they had themselves no right to the land which is alleged to have been given by them to the Plaintiff; that the 3d Defendant's name is interpolated in the sale deed, and that he was not present when the same was written.

Sixthly. That the Village Officers having measured the land in dispute and finding it included in the 1st Defendant's land gave a "Haddoopatty" fixing the boundaries of the said land.

Seventhly. That if the said land had not been included in the 1st Defendant's Puttah, the Cirkar would not have collected tax upon it, together with his other lands, whilst it was proved by the evidence adduced on both sides that the 5th Defendant and his father had enjoyed the Tamarind trees situated on the disputed land and enjoyed the same after its sale to the 1st Defendant, who only enclosed so much of the land as was under cultivation to guard against the in roads of cattle.

Eighthly. That if the alleged sale of the disputed land to the Plaintiff in satisfaction of the amount decreed in Suit No. 55 of 1849 on the file of the Nundialumpett Moonsiff's Court, be true, he would not have failed to mention the same in his Petition to the Nundialumpett Moonsiff.

And lastly, That neither the 2nd nor the 3rd Defendants nor their ancestors ever enjoyed the lands in dispute, or the produce of the Tamarind trees thereon and having therefore no right, any sale by either of them was perfectly invalid.

4. The 3rd Defendant in his appeal answer denied executing the deed of sale alluded to by the Plaintiff alleging that neither he nor his father, the 2nd Defendant ever enjoyed or had possession of the disputed land, whilst on the date mentioned in the deed of sale, he, 3rd Defendant, was absent from his village—the 3rd Defendant further denied all knowledge of the said deed in which his name had been interpolated.

5. The 5th, 6th, and 7th Defendants stated that the disputed land was sold to the 1st Defendant.

6. The plaint set forth that the 2nd and 3rd Defendants in satisfaction of a decree given against them to the amount of Rupees 9-3-3, sold the land to him on the 5th of July 1848, who improved the parcel, planting trees and expending money and for which land he obtained a Puttah, but the 1st Defendant in league with the Defendants, 2 to 7 laid a claim to that parcel before the 8th Defendant, who cancelled the said Puttah in the following Fusly.

7. The 1st Defendant denied the truth of the plaint declaring that he purchased on the 23rd of August 1842, 1½ acres of the said parcel No. 104 for Rupees 150 from the 5th Defendant who executed a bill of sale on stamp paper, and that having expended 200 Rupees on the spot he had enjoyed the same for 11 years—that the Defendants 4 to 7 measured the land and gave him a memorandum on the 12th June 1843, fixing the boundaries and entering the waste land on which he paid rent—that during his (1st Defen-

dant's) absence, the Plaintiff clandestinely obtained a Puttah in his own name, but after due enquiry the said Puttah was set aside, which cancelment was confirmed by the Collector of the District who ought therefore to have been made a Defendant.

8. The 2nd Defendant on behalf of self and his son the 3rd Defendant supported the claim of Plaintiff—the 5th and 6th Defendants supported that of the 1st Defendant. The 8th Defendant justified his cancelment of a Puttah clandestinely obtained, the 4th Defendant allowed Judgment to go by default.

JUDGMENT.

9. The claim of the Plaintiff depends solely upon his actual purchase of the land from the legal owner. He affects to have believed that the land belonged to the 2nd and 3rd Defendants from whom, he states, that he obtained it. In support of this three witnesses for Plaintiff deposed to the sale by those Defendants and execution of the deed A but five of his witnesses deposed that the land belonged to the 5th Defendant who sold it to the 1st Defendant, adding however that the parcel on which there are 2 Tamarind trees and which had hitherto been enjoyed by the said 1st Defendant, was sold by the 2nd and 3rd Defendants to the Plaintiff whose 12th witness, the Carcoon, stated that having heard of certain land being so sold, went to measure it, but that the 2nd Defendant never held a puttah for the same and therefore had not the power of disposing of that land to any other person.

10. The 4th Defendant who is the cause of all this misunderstanding and impropriety, acknowledge that he gave to the Plaintiff by virtue of his office as Curnum, 10 Coontahs out of the land belonging to the 1st Defendant, because it was lying waste, and the several parties concerned were related to each other, but that the Plaintiff promised that in case of any objection being raised he would restore it. Deponent further admitted that the Puttah should not have been given to any other person without a formal razinamah.

11. The witnesses on the other side shewed the land to belong to the 5th Defendant who about 10 years previously had sold it for 150 Rupees to the 1st Defendant who enclosed a portion, but still always held the remaining land and disposed of the produce of the said Tamarind trees up to the period of Plaintiff's dispute; that he had for the two last years given over the produce to the 2nd Defendant as remuneration for watching the garden, and for the 8 previous years had rented them to the 4th witness for the 1st Defendant, for 16 Rupees per annum. It is therefore seen how the 2d Defendant had at any time come to enjoy the produce and that he must have taken that opportunity clandestinely to make over the land to the Plaintiff as if it belonged to him, but to which he had no right whatever, of this the Plaintiff would seem to have been fully aware or he would not have made the promise of restitution, the 4th Defendant speaks of in case there were any dispute. This Defendant appears to have been dismissed for the highly improper, part he, as Curnum acted, in collusion with the Plaintiff.

12. It is to be remarked that if the small parcel with produce of the Tamarind trees was annually rented for Rupees 16 and the whole of the ground numbered 104, was sold to the 1st Defendant for Rupees 150 it is not likely that the Plaintiff believed he was making an honest purchase from 2d Defendant of such portion for only Rupees 9-3-2. But in his deposition before the Tahsildar, as shewn by exhibit No. 59. the 2d Defendant repudiated the sale declaring that he told the Plaintiff that the land belonged to the 1st Defendant, but that the Plaintiff caused something to be written on a paper and told him to touch the pen which he did, but that his son the 3d Defendant was not present at the time, and the 3d Defendant in his appeal answer denied that either he or his Father ever held the said land and that he knew nothing of the asserted deed, This is doubtlessly true for his name has been clandestinely introduced or interpolated, the sale deed is therefore either a forgery or fraudulent paper drawn up by Plaintiff in collusion with the 2d Defendant, to injure the 1st Defendant. Independent of the acknowledgement of 3d Defendant, there is no doubt of the land not being their property they never had a Puttah for it whilst one was annually made out in the name of the 1st Defendant who never resigned this right and title but produced Puttahs with receipts from Fusly 1252. A. D. 1842-3 to Fusly 1261. A. D. 1351-2 nine years, and the 5th Defendant who sold him the land proved his previous title by producing the Koolwari accounts for Fuslies 1241. A. D. 1831-2 and 1251-1841-2 embracing a period of eleven years.

13. With respect to the Puttah cancelled by the 8th Defendant he was perfectly justified in so doing when he discovered that the land belonged to another and that the said Puttah had been fraudulently obtained, for even in that very Fusly 1259, the 1st Defendant had also a Puttah as usual for the whole land and receipt for the rent. But even if the 8th Defendant were not justified of his own authority in setting aside the Puttah improperly made in Plaintiff's name, it must be remembered that he had the sanction of his

superior in office, the Collector of the District, who, therefore, if the Plaintiff had any real objection to or felt aggrieved at, the act, should have been made a Defendant in the case, together with, if not in lieu of the 8th Defendant.

14. For the reasons above given the Civil Judge confirms the decree of the lower Court, the Plaintiff Appellant paying all costs in appeal and the land remaining with 1st Defendant according to his puttah.

ENC. 2.

Decree of the Civil Court in the Zillah of Cuddapah Original Suit No. 55 of 1854, on the file of the Subordinate Court.

Plaintiff.
G. Soobramaniam
Vakeel.
J. Vencata Row.

Versus.

Defendants.
1 J. Devakara Naidoo.
2 J. Ramapah Naidoo.
3 M. Murray Esq., Collector of Cuddapah.
Vakeel for 3d Defendant, Rachendra Row.

Appeal Suit No. 25, of 1856.

Appellant.
M. Murray, Esquire.
Vakeel.
J. Mullappah.

Versus.

Respondent.
G. Soobramaniam.
Vakeel.
Vencatramaniam.

1. This was an action brought for the recovery of Rupees 1,262 due on Bond dated 25th of April 1851.

2. It appears from the Plaint that the 1st and 2nd Defendants Tavajeedars or Pensioners of Government solicited the loan of Rupees 1,540 from Chaturdass, grand father of the Plaintiff and from his nephew Lutchmandass which amount they agreed to give if the Collector of the District, 3rd Defendant, would allow the payment of the Tavajee drawn from the Treasury to be made to them for 22 successive months at 70 Rupees per mensem, in conformity with the wishes of the 1st Defendant. The 3rd Defendant seeing no objection to the accommodation, issued orders on the 1st of April to the Cashkeeper to the desired effect soon after which the money was advanced, and Bond executed, the 3rd Defendant also placing his name in the said paper. In conformity with the said agreement the allowance for one month, April 1851, was paid from the Public Treasury both parties being present, but in the following month, payment was withheld on account of the absence of the 1st Defendant, who wrote to the 3rd Defendant to discontinue the payment of the allowance to any person save himself. About 23 months afterwards the 1st Defendant appeared and received the whole amount of the accumulated arrears, subsequent to which the Plaintiff received from the 1st Defendant the sum of 500 Rupees and on the 26th of May 1854 brought his action for the balance with interest.

3. The 1st and 2nd Defendants took no notice of the Suit, and the 3rd Defendant considered he had improperly been made a party in the cause, since he was acting under the provision of Regulation IV of 1831, and paid over the money to the 1st Defendant on his petition to that effect. The Subordinate Judge however passed his decree as sued for, against the 1st and 2nd Defendants and on their default against the 3rd Defendant as guarantee "in his official capacity as Collector" who was further decreed to pay his own costs.

4. The 3rd Defendant appealed to set aside so much of the decree of the Sub Judge as made him responsible for any portion of the debt.

5. The grounds for the appeal are.

First.—That the 3rd Defendant had not guaranteed the payment of the money in any other way than is customary in the mofussil in similar cases.

Secondly.—That the parties being perfectly aware that contingencies might arise, it was stipulated in the Bond, that if the money were not recovered from the allowance of the 1st Defendant, the 1st and 2nd Defendants should be conjointly responsible.

Thirdly.—That the Bond makes no mention of the responsibility of the 3rd Defendant for the amount.

6. In the answer the Plaintiff (Respondent) observed that no subsequent order of the Collector could cancel the guarantee, that the money was only paid in consequence of the 3rd Defendant's promise, and that the payment of 500 Rupees could not remove the 3rd Defendant's responsibility because although the 1st Defendant was dead, his heir had petitioned that half the allowance might be devoted to clear off the debt.

JUDGMENT.

7. The Civil Judge cannot concur in the view taken by the Sub Judge as to the responsibility of the 3rd Defendant. Had the Plaintiff on the stoppage of the allowance in May 1851 brought his action for the instalment in arrears, it would have been some proof of the sincerity of his own belief in the responsibility of the Collector, for punctual delivery; but it was not till some time after the whole period of 22 months had elapsed that he took any steps to recover the balance, having in the mean time, by his own voluntary act, virtually repudiated any guarantee on the part of the Collector, 3rd Defendant.

8. From the 1st and 2nd Defendants allowing judgment in the original suit to go by default, and offering no objection to the award, there is no reason to doubt that the full amount of Rupees 1,540 had been received by the 1st Defendant from Chaturdass and nephew, and which money the Plaintiff states was advanced solely on the agreement of the 3rd Defendant to pay the allowance of the 1st Defendant to the Bunde; which is not improbable, as the Bond was not executed till between 3 and 4 weeks after such consent, the name of the 3rd Defendant, placed at the top of the Bond although it sufficed to shew the genuineness of the deed, could be, for the liquidation of the debt, of no more utility than the signature of any other attesting witness. The Plaintiff knew the rules and regulations on the subject, and that the continuance of the allowance was liable to contingencies, such as the will and pleasure of government, the life corporal presence, or will of the Tavajeedar, and the concurrence of any co-sharers; and had the 3rd Defendant's acquiescence in the accommodation been considered a sufficient guarantee for the regular payment of the instalments, such would certainly have been so mentioned in the land itself, whereas instead of alluding to any such guarantee, it is particularly provided that if the Tavajee failed the 1st and 2nd Defendants would be conjointly responsible for the balance.

9. In conformity with the request of the yomiahdar, who was then personally present, the amount of the 1st instalment (70 Rupees for April 1851) was paid to Chaturdass, but the 1st Defendant not appearing during May, the payment of the 2nd instalment was withheld, and a petition was received by the 3rd Defendant to pay the allowance to no one but himself, which prayer, with reference to Regulation IV of 1831 could not be unattended to, whilst under the 4th Paragraph of the Circular Order of the Board of Revenue dated 18th of January 1841 no Vakeel or agent could be recognised. The Plaintiff considered that he was, by the consent, of the 3rd Defendant to pay the allowance, placed in a different position from that of agent; if that were the case, there would have been no necessity for him to take a mooktiarnamah or power of attorney from the 1st Defendant and his doing so was sufficient proof that he did not rely solely on the guarantee of the Collector of the District. But if otherwise, he should on the stoppage of the 2nd instalment, in May 1851, have sued the parties for recovery, but in lieu of adopting any such course he waited till the 11th of February 1853, after the expiry of the period during which the supposed guarantee was to exist and then merely protested against the whole of the accumulated arrears being paid direct into the hands of the Tavajeedar; up to that period, then, February 1853, the Plaintiff could have no faith in the substantial guaranteeism of the 3rd Defendant for a regular *monthly* payment during the previous 22 months and that he had no idea of the kind even so late as the 4th of April following is evinced by his accepting on that date from the 1st Defendant himself, the sum of Rupees 500 without the knowledge of, or slightest reference to, the 3rd Defendant.

10. It being obvious then that the Plaintiff did not really consider the 3rd Defendant guarantee or responsible for any payment on account of the land produced in this case. The Civil Judge modifies that part of the award of the Subordinate Judge which decrees the 3rd Defendant responsible, in default of payment by the other Defendants, and decrees therefore that the whole amount be paid with interest by the 2nd Defendant J. Ramappah Naidoo (heir to the Deceased 1st Defendant) who also signed the Bond. There would appear however to be no objection, if the permission of Government be obtained for that purpose, to satisfy the decree as far as practicable from any portion of the allowance which may now be in deposit with the Collector of the District, and the balance if any, might be made up from the payment of any of the said Tavajee which the Government may permit to be withheld for such purpose, not exceeding however one half of the monthly allowance, such being the expressed wish of both parties.

No 500

Ms. A. 24.59

(Signed) M. MURRAY,
Collector.

Revenue Dept.

No 506

Extract from the Minutes of Consultation

Under date the 12th April 1859.

Read the following
Extract from the
Proceedings of the Board
of Revenue.

/Here enter 11th March 1859

No 424/

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Lg.

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W

The Government
approve and sanction
the course proposed to
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and 10 of the above
Extract, and direct
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apparent?

Yes Sir. Para 4.

It is inferable from
Para 3 because if let in
without for recovery of
less the other must have
been a debt of 1/2

and correctly set
forth.

[Signature]

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Provision in deposit to be
applied in liquidation
of the debt referred to in
a. v. of 25th of 1853 and the
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Am. L.