M.R.O. 14—10,000—21-4-23

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No.	928	Press / Mis.
Dated	18th July	1859

Not to be folded or roughly handled

No. 33. Read the following Proceedings of the Board of Revenue, dated 7th July 1859, No. 2671.

Read the following letter from the Sub-Collector in charge of North Arcot; dated 27th June 1859, No. 179.

(In Con. 28th June 1859, No. 3086.)

Civil Court of Chittoor.
O. S. No. 38 of 1859.
Ramasashier of Vellore, Plaintiff,
versus
1. C. Whittingham, Esq.,
2. Streenevasa Row, late Tahsildar of Tiruvallum,
3. Veerasawmy Moodelly of Aryoor. } Defendants

Resolved that the foregoing letter be submitted for the orders of Government with reference to Extract from Minutes of Consultation, dated 14th March last, R. D., No. 322.

In Con. 15th March 1859, No. 1037.

2. Mr. Sullivan forwards a copy of the Proceedings of the Civil Court of Chittoor at the preliminary hearing in O. S. No. 38 of 1859, in which it is pointed out that from the loose manner in which the plaint was drawn up, the first and third Defendants have not understood the merits—that Plaintiff does not ask to be installed as Trustee, or placed in possession of the Pagoda in virtue of any inherent right or title thereto—but that he demands payment of the debt due to him and failing which to be placed in possession until he realizes the amount of his debt.

3. The Board observe that the demand was not stated in the original plaint in the above terms, and was consequently not specially pleaded to, but the Civil Judge says that all the Vakeels engaged in the case admit that this is the nature of the claim, and he requires the first and third Defendants to put in a supplemental answer stating whether Plaintiff's claim to possession is admitted to be lawful in the event of judgment being given in his favor for the money sued for.

4. Mr. Sullivan has submitted a supplemental draft answer pointing out that one of the primary duties of a Trustee is the keeping expenditure within income, and that a breach of that duty could give no claims to office.

5. But the Board are of opinion that the claim of Plaintiff in its present form is quite untenable, and may be more strongly resisted than it is in Mr. Sullivan's answer; they have accordingly prepared another draft which they now submit for the approval of Government.

6. The time for filing the supplemental answer will expire on the 17th instant.

7. The Court has struck the name of the second Defendant out of the suit.

(A true Extract.)

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

DRAFT ANSWER IN O. S. No. 38 OF 1859.

First Defendant submits that the endowment of the Pagoda is Trust property under Regulation VII. of 1817, and that, as already pleaded by him, the appointment of a Trustee or Manager rests with the village community subject to the confirmation of the Board of Revenue.

2. Though Government are not directly interested in the matter at issue, first Defendant is bound to demur to the appointment of Plaintiff or any other person, merely as a creditor, without reference to the community who are interested in the choice and entitled to the selection of a Trustee, and without regard to his fitness for the Trust.

3. The placing of Plaintiff in possession merely because he is a creditor would establish the principle that extravagance on the part of a Trustee gives himself and his heirs an indefeasible right to the Trusteeship until the debts he has himself contracted are fully liquidated.

4. Whatever decision the Court may pass as to the disposal of the surplus proceeds of the endowment can be effectually executed by the present Trustee, whose dispossession is therefore unnecessary to secure Plaintiff his rights.

5. Claims to the *management* of an endowment are not included in Sec. XIV. Reg. VII. of 1817, under which law alone, this suit can be upheld inasmuch as if Plaintiff is placed in possession, he will for the time be virtually its manager.

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

No. 34. ORDER THEREON, 12th July 1859, No. 928.

The Government approve the Draft of Supplemental answer prepared by the Board of Revenue to O. S. No. 38 of 1859 instituted in the Civil Court of Chittoor, and grant authority for its being filed.

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

IN CON. 28TH JUNE 1859, No. 3086.

From A. W. SULLIVAN, Esq., Sub Collector in charge, NORTH ARCOT,
dated Chittoor, 27th June 1859, No. 179.

With reference to the correspondence noted at foot,* I have the honor to submit for approval of the Board of Revenue, a proposed supplementary answer from this office on behalf of the 1st Defendant in Original Suit, No. 38 of 1859 on the file of the Civil Court at Chittoor, agreeably to a requisition on preliminary hearing from that Court—copy of which is forwarded for the Board's perusal.

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ENC. 1.

ORIGINAL SUIT No. 38 of 1859.

1st Defendant's Supplemental Answer.

In para. 2 of Circular Order of the Board of Revenue of the 24th June 1841, at page 301, Vol. 1, it is expressly stated that individuals vested with the administration of religious institutions, together with their subordinate officers, shall be held responsible by the Courts of Justice, for any breach of the *duties* and trusts assumed by them.

2. Admitting, the keeping of expenditure within income, to be one of the primary duties of a Trustee, it will not it is presumed be disputed, that a contrary course is otherwise than a breach of duty and one committed at the risk of the Trustee, to whom it can therefore give no claim to remain in or to be restored to possession of office. It is therefore prayed that the suit as against the 1st Defendant may be dismissed with costs.

CHITTOOR, 27th June 1859.

(Signed) A. W. SULLIVAN,
Sub Collector in Charge.

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ENC. 2.

PRELIMINARY HEARING of O. S. No. 38 of 1859.

17th June 1859.

From the loose manner in which the Plaint has been drawn up and the introduction therein of wholly irrelevant matter it is apparent that the 1st and 3rd Defendants have not understood the merits of the case. The Plaintiff does not ask to be installed as Trustee or to be placed in possession of the Pagoda in virtue of any inherent right or title thereto. He demands payment of the debt stated to be due to him from the Pagoda, and in the event of his not being paid by the Defendants for possession until he realizes the amount of his debt from the surplus proceeds derivable from the property attached thereto.

That this is the nature of the claim is admitted by all the Vakeels engaged in the case.

The Court therefore deems it necessary to require the 1st and 3rd Defendants to put in a supplemental answer in which it must be shown whether or not the Plaintiff's claim for possession on the above-mentioned terms is admitted by them to be lawful or not supposing the money claimed is adjudged to be due to him. Supplemental answer to be put in in one month. The 2d Defendant's name is to be struck out of the suit, there being no occasion for his having been made a party to it. The Plaintiff is charged with the costs of the stamp papers made use of by the 1st and 3rd Defendants in their first answers and with all 2d Defendant's costs.

(True Copy.)

(Signed) G. A. HARRIS,
Civil Judge.

(True Copy.)]

(Signed) A. W. SULLIVAN,
Sub Collector in Charge.

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* Letter to Board, dated 16th February 1859, No. 38.
Board's Proceedings, dated 11th March 1859, No. 842.
Extract Minutes Consultation, dated 14th March 1859, No. 322, with Board's Proceedings, dated 16th March 1859, No. 914.

Print^d copy of
No: 3086

To The Lett^r B^d of
Rev^e

Dated 27
Rec^d 28 } Anne 1859
Ins^d 28
E-2.

P 1279/59

Submits for approval the Draft of a proposed answer from the Office of the Coll^r of Arcot on behalf of the 1st Defendant in O.S. No 38 of 1859 on the file of the Civil Court at Chittoor -

12th July 1928

In B^d's Ltr No 2671 of 1859

Rec.d 15th March 1859 No 619 62

Rev. of Govt. for 5th July

No. 1279

Proceedings of the Board of Revenue.

Dated 7th
Desp.d 9
Rec.d 11 July 1859.
C.L.

No. 2071.

Submitting a letter from the Sub Collector in charge of North Arcot forwarding a copy of the Civil Courts proceedings at the preliminary hearing in O.S. No. 38 of 1859, and proposing for approval a fresh Draft Answer prepared by the Board to meet the requirements of the Judge.

Written order
No. 928. 12th July 1859.

No. 33484.

No. 928.

The Government approve the draft of supplemental answer prepared by the Board of Revenue to O.S. No. 38 of 1859 instituted in the Civil Court of Chittoor, and grant authority for its being filed.

Fort St. Geo.
12th July 1859.

J. D. A.

N.S. Copy to Bd of Rev.
Cir. 12
Filed to Do. 14.

Lee