M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	947	Press Mis.
Dated 22d July		1859.

Not to be folded or roughly handled

947

No. 3. Read the following Extract from the Proceedings of the Board of Revenue, dated 7th July 1859, No. 2670.

Read letter from the Collector of Salem, dated 28th June 1858, No. 117.

(In Con. 4th July 1859, No. 3191.)

Sub Court of Salem.
O. S. No. 5 of 1859.

1. Komara Cownden. } Pltffs.
2. Palamy Cownden. }

versus.

1. M. P. Cownden.
2. H G Smith, Esq., Sub-Collector. } Defts.
3. Vencatnaranapah, Tahsildar of Paramutty.

In the above letter Mr. Smith, the Sub-Collector in charge of Salem, reports the institution of a suit against him in the Sub-Court of Salem, and requests permission to defend it at the public cost.

2. The cirumstances under which this suit has been brought are as follows:—

3. Plaintiffs on the 21st May 1858, applied for two plots of waste land and three hours later on the same day first Defendant also applied for them. The complaints preferred by both parties to the Sub-Collector on the subject, were sent by him for report to the Tahsildar, who, instead of awaiting his orders on the case, placed Plaintiffs in possession. The Tahsildar's reports not appearing satisfactory, the Sub-Collector reserved the case for the Jummabundy and then decided in favor of first Defendant, adjudging him, however, to pay the Plaintiffs the expense incurred by them in bringing the land into cultivation and the mailwarum or Government share of the produce of Fusly 1268.

4. This decision, on appeal, was confirmed by the Acting Collecter as "strictly legal," though in his view incorrect.

5. Plaintiffs' object in the suit is to reverse these decisions and have a puttah for the lands issued to them.

6. The grounds on which the Sub-Collector decided in favor of first Defendant were, that he had a preferential right to the lands in consequence of having held them some years previously; that Plaintiffs' application contained a stipulation that they would forego their claims if objections were raised to a compliance with it; that first Defendant had actually commenced to cultivate the lands three days before his application and Plaintiffs cunningly anticipated him in formally applying for it, by only a few hours; that first defendant was the larger landholder and more likely in consequence to pay his assessment regularly, and that as the only channel by which the disputed lands could be irrigated, passed through first Defendant's property, their transfer to Plaintiffs was likely to cause future disputes.

7. The Board are of opinion that the plaint can be successfully answered. In their special Appeal Judgment, dated 18th December 1858, No. 136 of 1858, the Sudr Court decided, that occupancy, obtained under the sanction of subordinate Revenue officers, and unsupported by a puttah, can be legally disturbed by the superior authorities of the district. The case in which this decision was passed is strictly analogous to that under review, and the Board are of opinion that the answer should be mainly founded on it.

Decision of the Sudr Udalut, December 1858, pp. 270 and 271.

8. The Board are also of opinion that, under the circumstances, the Sub-Collector acted justly in not giving Plaintiffs the preference, merely because their application had been received three hours sooner than that of first Defendant when they knew that the latter was about to apply for the lands and had commenced clearing them with the privity of the village officers. At the same time the Board deem it proper to point out that first Defendant had no absolute *right* to the land on the plea of previous occupancy, and could not, on that ground alone, have challenged the Sub-Collector's decision, had it been adverse to him. He held the lands only up to Fusly 1239, when they passed, by a sub-division of property, into the possession of his son, who relinquished them by razeenamah in Fusly 1258, from which period up to Fusly 1267, they remained waste. There can be no doubt, therefore, that the *right* of first Defendant as well as of his son, to the lands had wholly lapsed, and that neither of them could now have demanded its unconditional recognition by Government, independent of all other circumstances. It would manifestly be unjust to the community at large, if claims to land could thus lie dormant for

years, and be revived, without prejudice, whenever an applicant comes forward and seeks it. In the present instance, however, as already stated, the Board think the Sub-Collector acted justly as well as legally.

9. The Board would propose the following answer, as it does not seem to them to be necessary to enter into details, so fully as the Sub-Collector has done.

10. The time for filing the answer will expire on the 3rd proximo.

11. The Board presume the conduct of the Tahsildar in settling the case, when ordered only to report on it, has been duly noticed.

(A true Extract.)

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

DRAFT ANSWER.

Plaintiffs having obtained possession only under sanction of the Tahsildar, and having no puttah, it was competent to the Sub-Collector and Collector to oust them, under the ruling of the Sudder Udalut dated 18th December 1858, in their special Appeal Judgment No. 136 of 1858.

2. The lands in dispute having been waste for ten years, the Sub-Collector was not bound to give them to Plaintiffs, merely because their application was received first by three hours and without reference to other circumstances.

3. The rule of priority of application is not absolutely binding on Government and does not supersede all other claims.

4. Plaintiffs' application itself contains a stipulation providing for its being null under such circumstances as have led to its being rejected in this case.

5. First Defendant has a preferential claim to the lands, having commenced to clear them with the knowledge of the village officers three days before Plaintiffs applied and having held them years ago.

6. The Sub-Collector and Collector acted officially, and, as the decision of the Sudder Udalut already quoted shows, within their jurisdiction.

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

No. 4. ORDER THEREON, 16th July 1859, No. 947.

The Honorable the Governor in Council grants authority for the defence, in the first instance at the public expense, of original suit No. 5 of 1859, instituted in the Subordinate Court of Salem against the Sub-Collector of that District and others, but will determine when a copy of the Decree is submitted, whether the costs, if any be adjudged against that officer shall be borne by him or by the Government.

The draft answer prepared by the Board of Revenue will be substituted for that proposed to be filed by the Sub-Collector.

The Board will require the Sub-Collector to explain for the information of Government the extraordinary delay that has occurred, more than two months, in reporting this case.

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

IN CON. 4TH JULY 1859, No. 3191.

From H. G. SMITH, Esq., Sub Collector in charge, SALEM,
dated Salem, 28th June 1859, No. 117.

I have the honor to submit translation of a plaint in O. No. 5 of 1859, filed in the Subordinate Court of Salem against me (Sub Collector* of Salem) the Tahsildar† of Paramutty and another‡ and the draft of an answer proposed to be filed by me and to request the Board will be pleased to obtain the sanction of Government for my defending the Suit at the public cost.

* 2nd Defendant.
† 3rd do.
‡ 1st do.

2. The Plaintiffs' object in bringing the Suit is to recover possession of certain lands which the Tahsildar had put in their possession on their Durkhast and which I ordered at the time of the settlement to be given to the 1st Defendant. My reasons for so doing are explained in the draft answer.

3. I doubt not the Board will be of the same opinion, that the claims of the persons who held lands for a length of time and left them subsequently, owing to the high assessment, should not be overlooked when the assessment has been partially and is about generally to be reduced.

4. In regard to the stipulation referred to in the answer, I beg to state that this stipulation was taken by the Tahsildar in the Plaintiffs' Durkhast with reference to an order of the Collector, Mr. Brett, dated the 26th May 1856, paras. 4 and 5, a translation of which is enclosed. Though in Mr. Brett's order it is stated that such stipulations should be taken in the Durkhasts when the applications for lands are for full teerwah, still the Tahsildar appears to have taken the order to be a general one to apply to all cases and accordingly has done so in this case in which the Durkhast was for cowle.

5. The Plaintiffs, in the stipulation above referred to, consented to give up their claims if an objection should be raised to the lands being given to them. The order of Mr. Brett directs that a sufficient time should be allowed and if within that no objection should be raised, the lands should be put in the possession of the Durkhastdar.

6. In this case a claim by the 1st Defendant was almost immediately brought. Complaints were also sent to me by both the Plaintiffs and the Defendant. The petition from the Plaintiffs complaining that they presented a Durkhast to the Tahsildar but that the Tahsildar did not make over the lands to them was received in my office on the 28th May. The 1st Defendant's petition complaining to the same effect was received on the 27th May. Both these complaints were referred to the Tahsildar for report on the 8th and 10th June respectively.

7. The Tahsildar, instead of reporting on the complaints as required or referring it as he ought to do in a case like this for my orders, made over the lands on the 27th August 1858 to the Plaintiffs for full teerwah to which they consented finding that they had not sufficient puteut land for obtaining the lands on cowle.

8. On the 14th January last, I imposed on the Tahsildar a fine of Rupees 2 for the delay and directed him to send his report immediately. He sent in his report on the 23rd January, but not being satisfactory I sent an order on the 3rd February to enter the dispute in the Takarar book at the approaching Jummabundy settlement, when I decided the case in favor of the 1st Defendant.

9. The Plaintiffs subsequently appealed to Mr. Hathaway, the late Acting Collector, who on a review of the proceedings confirmed my decision—a copy of Mr. Hathaway's order is enclosed for the Board's information.

10. Notwithstanding a claim by the former occupant (1st Defendant) was preferred 4 hours later than the Plaintiffs' Durkhast or much within the time specified in Mr. Brett's Circular Order, under which the stipulation referred to was entered in the Plaintiffs' Durkhast, viz. 15 days, the Tahsildar put the lands in possession of the Plaintiffs instead of giving preference to the 1st Defendant on the ground of his claims being stronger from his having held the disputed lands formerly, besides being in possession of the adjoining lands paying a large revenue to Government and (as would have been the most satisfactory course) without referring the matter before putting the Plaintiffs in possession of the lands for my orders, particularly when a report on the subject was called for by me.

11. If the order passed by me in favor of the 1st Defendant to remedy the Tahsildar's proceedings should not be considered by the Board to be judicious, I shall take measures to see whether the Suit cannot be compromised.

12. The two months' time allowed by the Court having expired on the 22nd instant, I have obtained a further time from that date of 6 weeks.

ENC. 1.

TRANSLATION of a plaint instituted in the subordinate Court of Salem in O. S. No. 5 of 1859, by (1) Kowara Counden, son of Sengoda Counden and another (2) Palany Counden, son of Avanasy Counden, Vellala by caste and cultivators by profession, residing at Arasampoliem in the Talook of Paramutty against Molapudoohay (1) Palany Counden of the above mentioned caste and village, (2) H. G. Smith, Esq., the Sub Collector of Salem and (3) Vencatanaruapah, Tahsildar of Paramutty, Defendants.

The Plantiff prays for a decree to confirm the possession of two plots of Mulgoozary Poonjah and

garden lands hereunder described measuring A. 9, G. 15, A. 10, assessed at Rupees 40-2-8 and producing annually a Mailwaram produce of Rupees 107, and to order a puttah to be issued for the lands in their name.

2. The Plaintiffs state that the lands under dispute are situated in the Village of Cooroombal Mahadany; that about 12 years ago the former holder, Sengoda Counden, threw them up on a Razeenamah; that on the 5th of Vyasy the year Ralayootilty, they presented to the 3d Defendant a Durkhast for the lands for Fusly 1268, that the defendant reviewed their Durkast and in supercession of the one presented by the 1st Defendant on the same date, taken from them on the 9th idem a Caboolyah for the payment of the full assessment and sent orders to the village Monigar, Palany Counden, to put the lands in their possession; that they cut down the trees on the land, levelled the ground, and improved the spot at an outlay of Rupees 42; that they cultivated the lands with Poonjah produce for Fusly 1268 and enjoyed it and paid the five kists due to the Government; that while so the 2nd Defendant at the time of the Jamabundy settlement had them and the 1st Defendant in attendance and said without any reason that the 1st Defendant had right to the lands and refused to give the Plaintiffs a puttah, and that according to the provisions of the Hookoom and cowelnamahs and to the Revenue Custom they have every right to the lands. For the above reasons the Plaintiffs have filed this suit, and pray that a Decree may be passed in their favor.

3. The lands in dispute are bounded on the East and South by the Cavary river called Molla Poodookay Poonjah on the North by the Pillyar Covil Poonjah, and the West Raj Ettary. Its Nos. and measures in extent, No 71, A. 6, G. 23, A. 15, assessed at Rupees 19-4-11 and No 72, River Channel A. 2, G. 38, A. 13, assessed 20-13-9 Rupees.

(True Translation.)

(Signed) H. G. SMITH,
Sub Collector.

SALEM,
23th June 1859.

(True Copy)

(Signed) H. G. SMITH,
Sub Collector in charge

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ENC. 2.

DRAFT of an answer proposed to be filed by H. G. Smith, Esq., the Sub Collector of Salem and the 2nd Defendant in O. S. No. 5 of 1859.

The object of this suit is to recover possession of two plots of Malgoozery Poonjah and garden lands, and to obtain a puttah for the same in the names of the Plaintiffs.

2. At the time of the survey the lands under dispute formed a part of Malapadigay Poonjah, situated in the village of Cooroombaramahadavy in the Paramutty talook, measuring Acres 13-31-9, assessed at Rupees 38-9-10, garden A. 5, G. 36, A. 8, Rs. 4, As. 11, P. 6; total A. 19, G. 28, A. 1, Rs. 80, As. 5, P. 4, and the whole extent was in the enjoyment of the 1st Defendant for several years till Fusly 1239 when a sub-division took place in which one portion was kept by the 1st Defendant and a puttah for the other portion, the two plots under dispute measuring in the aggregate* Acres 9-35-2, assessed at Rupees 40-2-8, was issued in the name of his son Yershengodagownden. This person enjoyed the lands till Fusly 1258 when he gave them up on sodee Razeenamah. They remained uncultivated till Fusly 1267.

* Poonjah.....	6	36	15	19	4	11
Garden.....	2	38	3	20	13	9
Total.....	9	35	2	40	2	8

3. On the 21st May 1858 at 2 P. M., the Plaintiffs presented a Durkhast to the 3rd Defendant (the Tahsildar) for the two plots in question. The 1st Defendant also presented a Durkhast at 5 P. M. on the same day and produced a report from the village Monegar to the effect that he had commenced to cut the trees, &c., on the lands as a preliminary step to cultivate them three days previous to the date of the Durkhast.

4. The Tahsildar put the Plaintiffs in possession of the lands and according to the usual custom the dispute concerning it was settled at the Jummabundy time.

5. The 2nd Defendant (the Sub Collector) at the time of settlement for Fusly 1268, after reviewing the proceedings and taking into consideration all the facts, decided that the lands should be put in possession of the 1st Defendant on the following grounds, and ordered that the 1st Defendant should pay the Plaintiffs the expenses incurred by them in putting the lands in a fit state for cultivation and the Mailwarum produce of Fusly 1268.

1st. That though the 1st Defendant's Durkhast was three hours later than that of the Plaintiffs in the opinion of the Sub Collector (2nd Defendant), the 1st Defendant who held the land for more than 50 years and regularly paid the assessment had more right to the lands than the Plaintiffs at a time when the assessment fixed on the lands was considered too high, and in consequence a general reduction was about to be made, and a reduction of 12½ per cent was already made under the orders of the Board of Revenue on the Poonjah portion of the disputed land in common with other Poonjah lands.

proprietary rights are violated & over assessment from perfect knowledge of tenures.

Here is a family holding lands for time out of mind (the Ryot says more than 60 yrs) obliged to memorialize from year to year, and the moment relief is afforded (a reduction of the demand, at once) Estimation of possession & became a invidious neighbor anticipated him in a matter of form (3 hours, his title is to be disregarded & his right questioned by the highest Revenue officers in the Country!

The first step for the regeneration of the agricultural classes is to uphold them & more than that, to assist them by every means in our power, in recovering their position as landed proprietors.

The Defendant has not on the simple ground of ancestral rights neutralized by mal administration & fairly reclaimed under the Ryotwar chain, if exercised as not on any such secondary motives as greater ability to pay, command of water &c - Should such be established in the grounds of this decision & should any Court of law think of set aside such a self-evident title in favor of the arbitrary rules of the Hukum-námah.

2nd. That the Plaintiffs in their Durkhast have entered into a stipulation to the effect that if any objection was raised subsequently to the lands being given to them they would forego their claims.

3rd. That in the opinion of the 2nd Defendant the Plaintiffs presented their Durkhast through jealousy seeing that the 1st Defendant was about to apply for them himself from the circumstance of his having cleared the trees, &c., on the lands three days previous to the date of the Durkhast.

4th. That the circumstance of the 1st Defendant possessing a large extent of other lands, assessed at Rupees 51, was considered a good security to Government for giving him more lands, whereas of the Plaintiffs only one of them has any land at all which pays to Government a small sum of Rupees 17-0-7.

5th. That the river channel which was in existence at the time of the survey, which is the only source of irrigation to the garden land under dispute, passes through the adjoining lands belonging to the 1st Defendant and that in consequence, in the opinion of the Sub Collector (the 2nd Defendant), it would be a cause of subsequent quarrels and complaints by giving the lands to the Plaintiffs.

6th. The 2nd Defendant also begs to submit that the general rule of granting lands to the 1st Durkhastdar cannot always be abided by. The Collector has, he believes, a discretionary power to depart from this course whenever he considers such a measure necessary for the security of Government and to prevent constant disputes and complaints.

7th. Under the foregoing grounds the 2nd Defendant prays that the Suit may be dismissed with costs.

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ENC. 3.

EXTRACT from a Circular Order issued by the Collector Mr. Brett, dated the 26th May 1856,

No. 64.

Kankoon

4. Whenever Durkasts are presented to the Thasildar or ~~harhom~~ they should immediately give a receipt to the Durkastdars to the effect that they reached them. If the Durkast is for a waste land for full teewah, orders should be given to the Ryots to cultivate the lands.

5. But in so giving they must be given on stipulation. Subsequently if any person should claim the land or should there be any objection to the land being given to the Durkastdar he will cease to possess the land. After a sufficient time has passed for an opposite party bringing forward any claims to the land applied for, the land should be put in the applicant's possession, and the Tooloo chit given him. The time for such purpose should generally be 15 days.

(True Translation.)

(Signed) H. G. SMITH,
Sub Collector.

(True Copy.)

(Signed) H. G. SMITH,
Sub Collector in Charge.

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ENC. 4.

COPY of an order passed by the late Acting Collector Mr. Hathaway.

The Acting Collector is of opinion that the land ought to have been given to the appellant inasmuch as the second applicant had forfeited any claim to the land, inasmuch as his father had relinquished it.

As however the appellant's Durkast contained a stipulation, that if any objection was raised he would yield, and the Acting Sub Collector appears to have acted upon it—the decision is strictly legal, and cannot now be upset.

(Signed) A. HATHAWAY,
Acting Collector.

(True Copy.)

7th March 1859.

(Signed) H. G. SMITH,
Sub Collector in Charge.

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Memo

It seems to me very doubtful whether this case can properly be defended.

Durkhwaste

2nd The ~~Durkhastdar~~ in order to cultivate the land were both sirrs (cultivators) & the Talr., not the Sub. Coll. do suppose & the 2d., & he accepted that of the former 2 Rs. as the first received. There is nothing to show that he did not act bonâ fide.

3. No interim decree alleged in behalf of 1st Defs. cannot be made out. The

Rev.e Dep.t

No 947

Proceedings of the Madras Government

Under date the 16th July 1859.

Read the following —

Proceedings of the Board of Revenue —

Reporting the institution of a suit against the Sub Collector of Salem and others in the Sub Court of Salem by Komara Coumdan and another for the recovery of certain waste land made over to the 1st Defendant; and proposing for approval an amended draft answer —

(Here enter 7th July 1859 No 2670)

The Honorable the Governor in Council grants authority for the defence in the first instance at the public expence of original suit No 5 of 1859 instituted in the Subordinate Court of Salem against the Sub Collector of that District and others, but will determine when a copy of the Decree is submitted, whether the costs, if any be adjudged against that Officer shall be borne by him or by the

Printed Copy of
1859 No 3191 dated 4th
August
From the Sub Collector in Charge
of Salem
To the Secretary to the
Board of Revenue
Rec.d 28th June } 1859.
Read 4th July }
Ans.d 4th July 1859.
Rec.d 4.

Submitting translation
of a Plaint in O.S. No 5 of 1859
filed in the Sub Court of
Salem against the Sub Collector
& two others & requesting the
Board to obtain the sanction
of Government for defending
the suit at the public cost. —

Dated 20th July 1859

the Government.

The draft answer prepared by the Board of Revenue will be substituted for that proposed to be filed by the Sub Collector.

The Board will require the Sub Collector to explain for the information of Govt. the extraordinary delay that has occurred, more than two months, in reporting this case.

By Order to the Bd of Rev
Dist: Hs

Revenue 1859 Sept.
Pro: of Govt. 22d. July.

No 967.

Pro: of the Madras Govt.
Dt/16th July 59.

Pro: Mr. B. of Rev: 5 Augt/62
C No 2224 - in Pl

Defence at public
Cost of O. S. No 5 of 1859 on
the file of the Sub Court
of Salem - authorized -

No 344-