M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1190 Press ~~Mis.~~

210-211

Dated 19-7-1880.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 19th July 1860.

No. 210. Read the following Proceedings of the Board of Revenue, dated 2nd July 1860, No. 3,040:—

Read the following letter from H. A. BRETT, Esq., Collector of Salem, to J. D. SIM, Esq., Secretary to the Board of Revenue, Fort Saint George, dated Oossoor, 25th June 1860, No. 175:—

1. With reference to the Board's Proceedings, dated the 30th October 1856, No. 3,578, conveying the sanction* of the Government for defending the Original Suit No. 19 of 1856, on the file of Subordinate Court of Salem, at the public expense, I have the honor to forward herewith copy of a decree passed by the Subordinate Judge of Salem, in favor of the Defendants, with costs.

* *Extract from the Minutes of Consultation, dated the 28th October* 1856, *No.* 1,139.

2. The Plaintiffs in this case were rival claimants for two plots of land, which the 1st and 2nd Defendants had held for a time, and afterwards relinquished on the ground that the water supplying the land had failed. The Sub-Judge held that the Collector (4th Defendant) was justified in preferring the 1st and 2nd Defendants' claims to that of the Plaintiffs.

In Cons., 30th October 1856, *No.* 4,423.

1. Submitted for the information of Government with reference to Extract Minutes Consultation, 28th October 1856, Revenue Department, No. 1,139.

2. The decision, it will be seen, is in favor of Government, who are also relieved from all costs.

(A true Copy and Extract.)

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

No. 211. ORDER THEREON, 19th July 1860, No. 1,190.

Ordered to be recorded.

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

Subordinate Court Zillah Salem.

Original Suit. No. 19 of 1856.

Plaintiffs.	Versus.	Defendants.
1. Veerasagharien		1. Pennah gounden.
2. Soobbien ——		2. Nunjun
Vakil Canary Pundit.		3 Nunjondien
		assum Goomastah
		4. F. A. Brett Esqr.
		Collector
		Vakil Apasawmy Pillay for 1st Defts.
		&
		Goolamoosain Sahib for 4 —— do.

1. This is a suit to recover 2 plots of Mulgorzary Punsah lands producing annually Rs. 20 bearing Nos. 30 & 31.

2. It is set forth in the plaint that the plot. No. 30 was left fallow in Fusly 1230, and the other plot in Fusly 1261, that in Fusly

Fusly 1265 the Plaintiffs cultivated the lands on abkoolh tenure i.e. without permission, that on the claim advanced by the 1st & 2d Defendants the case was recorded in the Tahavar Book, and at the Jamabundy settlement the 4th Defendant gave pottah to Plaintiffs only for Fusly 1265 and directed the lands to be given up to 1st & 2d Defendants from Fusly 1266, as recommended by the 3d Defendant, that it is contrary to the Hastoonamah and Cowlnamah in as much as the 1st & 2d Defendants resigned the lands. Hence this suit. The Plaintiffs consent to pay Kunjah Teervah if the Coottay upon which the lands in dispute are depending for irrigation be repaired. —

3. In his answer the 1st Defendant states that he and the 2d Defendant held the lands from the time of their ancestors who constructed a coottay at a large expense by the water of which

Fusly 1265 the Plaintiffs cultivated the lands on ab[illegible]h tenure i.e. without permission, that on the claim advanced by the 1st & 2d Defendants the case was recorded in the Taharan Book, and at the Jamabundy settlement the 4th Defendant gave puttah to Plaintiffs only for Fusly 1265 and directed the lands to be given up to 1st & 2d Defendants from Fusly 1266, as recommended by the 3d Defendant, that it is contrary to the Hastoonamah and Cowlnamah in as much as the 1st & 2d Defendants resigned the lands. Hence this suit. The Plaintiffs consent to pay Sunjah Teerah if the Cottary upon which the lands in dispute are depending for irrigation be repaired. —

3. In his answer the 1st Defendant states that he and the 2d Defendant held the lands from the time of their ancestors who constructed a cottary at a large expense by the water of which

two plots of Poonjah land measuring acres 3-24-8
and assessed at annas 13-2-. That the 1st & 2d
Defendants and their forefathers held these lands
for 30 years from Fusly 1230 to Fusly 1260 and
during that period cultivated them with Kunjah
crops by the aid of a Circar Coottah which they
kept in repair at their own expense; That in
addition to the Poonjah assessment they were
charged a Teerwah Jaskee of Rs 15-15-4 on the
Kunjah crops, That the Coottah having fallen
out of repair the Defendants relinquished the
lands in Fusly 1261 and in Fusly 1265 the
Plaintiffs without permission and without
applying for leave cultivated the lands with
Poonjah crops, That the former Puttadars (the
1st & 2d Defendants) having heard of this pre-
sented a petition to the Tahseldar of Trichatoor
on the 9th December 1855 setting forth their claim
and requesting that the lands of they were
to be held at the Poonjah assessment might

lee

be given to the Petitioners, that the case was investigated at the Jummabundy when it appeared that the 1st & 2d Defendants had occupied the lands for 30 years and were obliged to relinquish them in Fusly 1261 because the Cootcherry was out of repair, that he (4th Defendant) was of opinion that the 1st & 2d Defendants had the best claim to cultivate the lands on Poonjah assessment till the Cootcherry could be repaired and an order was passed permitting the Plaintiffs to occupy the lands for the current Years last directing that the lands should be made over to the 1st & 2d Defendants in Fusly 1266 and that he (4th Defn.) is vested with full authority under the Regulations to decide such disputes and the Plaintiffs asserted right to hold the lands in opposition to such a claim as that preferred by former Petitioners is not supported by any provision in the Regulations.

6. In reply the Plaintiffs state that it is false that the Cootcherry was constructed by

by the ancestor of the 1st & 2d Defendants and se-
poured by them, that it is admitted by the 4th
Defendant that it is an Ancient Custom, that in
an analogous case the Collector confirmed the title
of those who cultivated without permission or who
gave dusgast regarding the claim of those who
resigned by sodg (see Collector's Letter to the
Tahsildar. No. 116 of 1855) that the Puttah given to
1st Plaintiffs for plot. No. 30 conveys his title
to it which would not have been the case had
the 1st & 2d Defendants a title to it.

7. The 1st Defendant dispensed with his Rejoinder.

8. The 4th Defendant denies the truth of the
reply and states that it rests with him to decide
who in equity has the best claim on such occasions,
that it is true that a person who resigns land
by giving a sodg Razeenamah has forfeited his
right but this rule is for the protection of the
Government interests and that it does not preclude
the Collector from admitting an equitable claim
on the part of the person (who has) resigned the land

if

if good cause should be shewn for so doing.—

9. Points for Plaintiffs.

1. To prove that the Defendants relinquished their pleas by so doing Razzanamah.—

2. That the Cottage is circar property.

3. To file the documents referred to in Plaint.

Points for 1st & 2d Defendants.

1. To prove that the Cottage is ancestral property.—

2. That they did not relinquish their holding by such Razzanamah.

3. To file their documents.

Points are unnecessary for the 3d & 4 Defendants.

10. Plaintiffs failed 2 documents.

1. Such razzanamah executed by the 1st and 2d Defendants on the 26th July 1851.

2. Copy of a Patwah issued to the

Talook

Talooka Sheristadar by the Collector on the 16th August 1855.

11. Two witnesses were examined for Plaintiffs and Jaws for 1st & 2d Defendants.

12. Judgment.

The question is simply whether a Collector (4th Defendant in this suit) has authority to decide between two claimants to a puttah which has the prior and best right. The circumstances of this particular case out of which the question arises are as follows.

The Plaintiffs in Fasly $\frac{1265}{1858/59}$ without permission of the local authorities cultivated some lands formally relinquished four years previously by the Defendants. The Defendants who had cultivated the same plots for 20 years prior to their abandonment had been assessed with a heavy Sunsey Peeshah of Rs. 15. 15. 4 in addition to the punjah rate owing to their use of a Peicar Banh (Cottah) and from losses

losses in unfavorable seasons and the Bank becoming
weiss had been compelled to Render a razeenamah
for them. It is to be inferred from the Ple-
fendants act that they had been by some means
prevented from retaining possession of these
plots on their class assessment as it is
clear that when they found the Plaintiffs
cultivating them at the Sunsey rate the Sunsey
having been cancelled they came forward
to assert their right of the lands were to be
so held. This was the case before the Collector
who in finding that the Plaintiffs had
cultivated Brought without permission issued
a Puttah for that year and the Plaintiffs
admit that they accepted the Puttah upon the
understanding that the Collector (& Defendants)
regarded the Defendants claim as superior and
this limited their (Plaintiffs) enjoyment &
possession and they now claim to have
this Puttah renewed and perpetuated in

their

their favor whereas the issue was dependent on
their consent to forego it in favor of the Defendants
at the expiration of the Lease to which it referred.
The patents having been granted with this proviso
the Plaintiffs having accepted it with its
conditions and the parties Plaintiffs and
Defendants having been duly sworn at the same
time (for it cannot be held that the Plaintiffs
mere cultivation was a duress) I am of
opinion that the Collector (a Defendant) was
legally justified in giving preference to the
claims of the 1st & 2d Defendants in considera-
tion of their long previous enjoyment and their
relinquishment under the pressure of an excessive
assessment. Now that they had an opportunity
of holding the lands on terms, which, if acceded
originally would in all probability have pre-
vented their abandonment and on which they
had already expended much labor & some money.

The Plaintiffs claim is therefore dismissed with costs.

Costs incurred by the Plaintiffs.

Value of Stamp Papers	8 — 8 —	
Matter for Summons Peon	15 — 1 —	
Pleaders fees	1 — 10	24 - 9 - 10

Costs incurred by the 1st Defendant.

Value of Stamp Papers	6-8-0	
Batta for Summons here	2-10-0	
Pleaders fees	1-0-0	10-10-2-10

Costs incurred by the 4th Defendant.

Value of Stamp Paper	3-0-0	
Pleaders fees	1-0-0	10-4-0-10

Amount to be paid by the Pltff to the 1st Defdt 10-2-10

2nd to be paid by do to the 4 do 4-0-10

Decreed on the 23rd Decr 1859.

Sealed & Signed 1st June 1860.

Plaintiff and Defendants are hereby informed that in conformity with the orders of the S. C. No 48 no compromise entered into by the parties will be valid unless it first receives the sanction of the Court by which this Decree was passed.

No process of execution will be issued to enforce this Decree unless some proceedings shall

shall have been taken place to keep the same
in force within three years next preceding
the application for such execution -

The period for preferring an appeal
from this Decree will expire on the 1st July 1865.

Sign'd W. Hodgson
Subordinate Judge

C. Dutt
Collector.

1860 Department

In a letter from
the Collector of Salem
to the Secretary of
the Board of Revenue
Dated 25th June 60
No 175

R 1376/60

Ent 30 June 1860

Del'd 2 July

Ap 210 & 21

Copy of a decree
passed by the
Dist. Judge of Salem
on O.S. No 19 of 1856.

No. 3,040.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 2nd July 1860.

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ENCLOSURE No. 1.

ABSTRACT.—Copy of a Decree passed by the Sub Judge of Salem, in Original Suit No. 19 of 1856.

Submitted for the information of Government, with reference to Extract Minutes Consultation, 28th October 1856, Revenue Department, No. 1,139.

In Con., 30th October 1856, No. 4,423.

2. The decision, it will be seen, is in favor of Government, who are also relieved from all costs.

(A true Copy and Extract)

Secretary.

To J. D. Bourdillon, Esq., Secretary to Government, R. D.

Copy to H. A. Brett, Esq., Collector of Salem.

Exd. J. Wright.

R. Cons. 28th October 1856.
No. 25. 26

H.

No 1190
Jolie recorded

Fort St. George
19th July 1860

No 210 & 211.

Cl. July 20th 17

Rev. 1860 Dept
Pro: of Govt for July
Pc 1376

Proceedings of the
Board of Revenue

Dated 2nd
Dispd 8th } July 1860
Rec. 7th
Encr 1 of Encs

No 3040

Submitting for information a letter from the Collr of Salem forwarding Copy of a decree passed in favor of Govt in O.S. No 19 of 1856 on the file of Sub Court of Salem brought for the recovery of two plots of land. —

Nos 190–19 July
Recorded.

HSW