M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2403	Press ~~Mis.~~
234-235	
Dated 14—12—	1860.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 14*th December* 1860.

No. 234. Read the following Proceedings of the Board of Revenue, dated 27th November 1860, No. 5,507:—

Read the following letter from V. H. LEVINGE, Esq., Collector of Madura, to J. D. SIM, Esq., Secretary to the Board of Revenue, Fort Saint George, dated 10th November 1860, No. 226.

SIR,

1. In reference to the letter from the late Acting Collector Mr. Hathaway to the Board, under date the 19th February 1858, No. 53, I have the honor to state that the decree passed by the Subordinate Judge in Original Suit No. 7 of 1856, non-suiting the Plaintiff with costs, having been appealed against, the Appellate Court remanded the case to be decided on its merits, and the Sub-Court, I learn, is consequently to record the points in the suit shortly.

2. I, therefore, desired the Government Vakíl of the Madura Civil Court to prepare himself for pleading the case in the Sub-Court on behalf of the Government.

3. Copy of the decision of the Civil Court remanding the case for re-investigation is submitted herewith for the information of the Board.

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1. The Board observe that the defence at the public expense of the Original Suit, was authorized by Government in their Proceedings, dated *In Cons.*, 13*th June* 1856, *No.* 2,146. 11th June 1856, No. 596, Revenue Department.

2. The original non-suit, and the appeal judgment for a decision on the merits by the Court of original jurisdiction have in no way altered the circumstances of the case, and the Board approve of the Collector's proceedings as reported. He should, however, have quoted the previous correspondence to facilitate reference. His letter will be submitted for the information of Government, with reference to the correspondence noted in the margin.

Board to Government, 30*th May* 1856, *No.* 1,654.
Extract Minutes Consultation, No. 596, *Revenue Department*, 11*th, in Cons.*, 13*th June* 1856, *No.* 2,146.
To Government, 10*th March* 1858, *No.* 864.

(A true Copy and Extract.)
(Signed) W. HUDLESTON, *Acting Secretary.*

No. 235. ORDER THEREON, 14th December 1860, No. 2,403.

Ordered to be recorded.

(Signed) J. D. SIM,
Acting Secretary to Government.

Civil Court of Madura

Present R. R. Cotton Civil & Sessions Judge

O. S. No 7 of 1856 Sub Court fee

Plff

Chokalingom pillay

Vakeel

Ramasawmy Kaiken

vrs

Defts

1 The Sub Collector of Madura

2 Sooda Coondoo

3 Shotta Coondoo

4 Punchaunnom Pillay

5 Pallaniappa Pillay

6 Canagy Nadan

7 Pitcha Nadan

8 Comara Nadan

9 Canagy Coodoomben

10 Mookoothavera Pandaram

11 Sungum Pillay

2nd 3rd 4th 5th 6th 7th 8th Defts

Vakeel Vardenadien

Appeal Suit No 1 of 1858

Plff & Appt

Chokalingom pillay

Vakeel

Ramasawmy Kaiken

Defts Respts

1 The Sub Collector of Madura

2 Sooda Coondoo

3 Shotta Coondoo

4 Punchaunnom pillay

5 Pallaniappa Pillay

6 Canagy Nadan

7 Pitcha Nadan

8 Comara Nadan

9 Canagy Coodoomben

10 Mookoothavera Pandaram

11 Sungum Pillay

2nd 3rd 4th 5th 6th 7th 8th Defts

Vakeel Vardenadien

1 This Suit was instituted by the Plff to establish his right & title to 15 11/16 Coolies & Malagoozary Kungah Land & praying amount duly Rs pacts 114-4-9 -

2 Plaintiff pleads that the village

in which these lands are situated belonged to the ancestors of the 2d Defts. who being unable to meet the requisitions of the Circar to cultivate them, gave them to him (Plff.) in perpituity under an agreement dated 25th July 1809, that he laid out large sums in repairing the Tank, and with the exception of the lands in dispute, which were unfit for cultivation, cultivated the rest, that he offered to the 1st Defts. to cultivate the lands, if the Circar would make them cultivable by levelling them & turning the course of the channel in another direction that as the Circar would do nothing, he himself levelled the land and commenced to cultivate it, when he was visited by the Defts. 5 to 11 and on the orders of the 1st Defts. and his subordinates, that he appealed to the 1st Defts. for redress, & was referred to the Civil Court to establish any right & title he might have to the land. Hence this Suit.

III The 1st Defts. in answer pleaded the land was Government land, that it had been waste 30 years, that Plff. had neglected to cultivate it, & that it was accordingly granted to the then Defts. that often they had applied for it, Plff. came forward, but he has no claim whatever to the land.

IV The Sub Judge on a consideration of the Plaint & answer, thought it unnecessary to record points and proceeded to hear the parties in support of the Pleadings. he states that the Plff. admitted that though small portions of the land in question had from time to time been cultivated, yet as a whole, it had not been so, for 30 years, and further that the tank which irrigated it, had on 2 occasions been repaired by the Circar, thus shewing that it was not Plffs. property, that Plff. also admitted that no part of the disputed land, had been cultivated since 1840, a fact which alone would justify the Circar in acting as it has done & in taking it out of Plffs. hands, & giving to those who were able and willing to turn it to better account, and he therefore non suited the Plaintiff with costs.

V Plaintiff dissatisfied appeals, and urges, that he never admitted the

land was waste 30 years, on the contrary he stated he cultivated portions of it, to Fusly 1258, and that the Lower Court having stated the land was not cultivated since 1848, it is to be presumed it was so before.

That before the Deffts. gave digest to cultivate it, he had done so, and subsequently executed a Karar in their favour, and cultivated it to Coolies of it.

That the repair of the Bank by the Circar does not prove the Bank to be Circar property, or prove the land to belong to Government

That he was not permitted to prove his claim, and prays that the suit may be determined on its merits.

VI The Respondents answer, that Appts has at least admitted the land was waste from Fusly 1258, that the land is not a private property, but a Circar Umanee, Diffts waste for 3 years, the Government through the Collector, can give it for cultivation, to whom it pleases.

That the Bank was repaired by the Circar, is admitted by Appt that it was also repaired by Government in 1848.

That

That the Court perused the Appts digest & Karar, it will be seen, that they are no bar to the Respondents Case.

That the Respondents 1, 2, 3, 4, & 11 have no concern in this Suit.

Judgment

VII The Court has given the proceedings in this case its best attention, & is of opinion, that the Deffts Appellants, having claimed a right & title to the land as private property, should have been allowed to produce his evidence in support of such claim, his admissions that he petitioned the 1st Defft. to cultivate and order the land cultivable, and subsequently gave a digest to cultivate it, are apparently irreconcilable with his assertion, that the property is his own.

VIII On the other hand, the Court cannot accept the fact of the repair of the Bank, as conclusive evidence, as the Lower Court appears to consider it, of the Circars right to the Bank and land. It may be that under the District Kookoomanah

Government

Government lands, when left waste for 2 years can be given by the Collector for cultivation, to whom he pleases, but this can only apply to Government land, and where parties refuses to pay up arrears of Rent.

Under these circumstances the Court considers it requisite to remand the case that it may be decided on its merits, the parties being called upon to prove their respective pleas.

The Stamp duty to be refunded.

The Lower Court in its Decree provide for the payment of Defts. costs.

	Rs. ℄. ℄
Cost incurred by Plff. & Pltt. in appeal	12-3-2
Cost incurred by 2nd 3rd 4th 6th 7th 8th 9th 10th Respondents in appeal	18-11-2
Total	30-14-4

Given under my hand & the seal of the Civil Court of Madura this 3rd day of September 1860.

Appeal filed 4th July 1858
Decree passed 3 Sept. 1860

(Signed) R A Cotton
Civil Judge

(True copy)

J H Lewin
Collector

No. 5,507.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 27th November 1860.

Read the following letter from V. H. LEVINGE, Esq., Collector of Madura, to J. D. SIM, Esq., Secretary to the Board of Revenue, Fort Saint George, dated 10th November 1860, No. 226 :—

1. In reference to the letter from the late Acting Collector Mr. Hathaway to the Board, under date the 19th February 1858, No. 53, I have the honor to state that the decree passed by the Subordinate Judge in Original Suit No. 7 of 1856, non-suiting the Plaintiff with costs having been appealed against, the Appellate Court remanded the case to be decided on its merits, and the Sub Court, I learn, is consequently to record the points in the suit shortly.

2. I, therefore, desired the Government Vakil of the Madura Civil Court to prepare himself for pleading the case in the Sub Court on behalf of the Government.

3. Copy of the decision of the Civil Court remanding the case for re-investigation is submitted herewith for the information of the Board.

ENCLOSURE No. 1.

ABSTRACT.—A Decree in Appeal Suit 1 of 1858 (7 of 1856 on the file of the Sub Court) remanding the case for re-investigation, dated 3rd September 1860.

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1. The Board observe that the defence at the public expense of the original Suit, was authorised by Government in their Proceedings, dated 11th June 1856, No. 596, R. D.

In Cons. 13th June 1856, No. 2,146.

2. The original non-suit, and the appeal judgment for a decision on the merits by the Court of original jurisdiction have in no way altered the circumstances of the case, and the Board approve of the Collector's proceedings as reported. He should, however, have quoted the previous correspondence to facilitate reference. His letter will be submitted for the information of Government, with reference to the correspondence noted in the margin.

Board to Government, 30th May 1856, No. 1,654.
Extract Minutes Consultation, No. 596, R D., 11th, in Cons. 13th June 1856, No. 2,146.
To Government, 10th March 1858, No. 864.

(A true Copy and Extract.)

Acting Secretary.

To J. D. Sim, Esq., Acting Secretary to Government, R. D.

Copy to V. H. Levinge, Esq., Collector of Madura.

J. Wright.

P. - B. June 56 N. 52-53.

Re. - B. March 58 — 35-36

Vol

1860 Department

Board's Order for December

No. 2784

Proceedings of the Board

of Revenue

Dated 27th }
Rec'd 30 } November 1860
Read 1 December "

Encl. 1 Ltr. from No. 3507

Board of Revenue No. 8 P. dated 29th January 1861

Ltr. dated 17th ultimo, from Collector

Submitting for information a letter from the Collector of Madura stating that the Decree passed by the Subordinate Judge in O.S. No. 7 of 1858 has been remanded by the Civil Court, for re-investigation.

No. 2403

Recorded

14th Dec. 1860.

No. 234 & 235

C. & Dec. P8.

No. 2403

Recorded