M.R.O. 14—10,000—21-4-2

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 411 Press ~~Mis.~~

91-92

Dated 17 — 3 — 1860.

Not to be folded or roughly handled

Revenue 1860 Mar 17

No. 91. Read the following Proceedings of the Board of Revenue, dated 29th February 1860, No. 1045.

Read the following letter from the Acting Collector of Salem, dated 3rd February 1860, No. 40.

(In Con. 8th February 1860, No. 598.)

Subordinate Court of Salem.
O. S. No. 29 *of* 1856.
Plaintiff.
Saiyad Muhammad Sahih.
Versus.
1. *Muhammad Cassim Saib.*
2. *Muhammad Esoab, brother to No.* 1.
3. *H. A. Brett, Esq., Collector of Salem.*

In Con. 24*th December* 1856, *No.* 5316.

Resolved that the foregoing letter, enclosing copy of the decree of the Subordinate Court of Salem, in original suit No. 29 of 1856, be submitted to Government, with reference to Extract from Minutes of Consultation, dated 23rd December 1856, Revenue Department, No. 1337.

2. The suit was instituted to recover possession of a spot of land which plaintiff alleged he had purchased from first and second defendants for Rupees 7-10, but which the Collector assumed as Government property.

3. So far as the Collector is concerned the decree is in his favor, as plaintiff has been nonsuited, and the land declared to be the property of Government. Plaintiff is, however, permitted to proceed afresh against the first and second defendants to recover the purchase money paid to them.

4. The first and second defendants have been adjudged to pay half the costs of the plaintiff, and the whole of their own costs as well as those of the Collector.

(A true Extract.)

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

No. 92. ORDER THEREON, 17th March 1860, No. 411.

Ordered to be recorded.

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

In Con. 8th February 1860, No. 598.

From T. J. KNOX, Esq., Officiating Collector of SALEM,
dated Comarapolliem, 3rd February 1860, No. 40.

With reference to the Extract from the Proceedings of the Board, under date the 24th December 1856, I have the honor to forward herewith copy of a decree passed by the subordinate Court, dated the 27th October last, dismissing the suit with all costs so far as the Government is concerned. I will move the Court through the Government vakeel to recover our costs from the 1st and 2nd defendants.

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Enc. 1.

Abstract.—Copy of a decree passed by the subordinate Court of Salem, in O. S. No. 29 of 1856.

Exd. J. Tulloch.

Enclosure No 1 in Pro-
ceedings of the Board
of Revenue to the Chief
Secretary to Government
D/ 29th February 1860 No.
1045.
E. I. Clerk

R 468/60

Letter from the Offg Collr
of Salem to the Secretary
to the Board of Revenue
D/ 3d February 1860 No. 40.
Resg a Suit.

30th December 1845, that in 1853 the said Defendants appropriated the plot of ground under pretence that it formed part of their own holding adjoining and the 3rd Defendant claims it as belonging to Government, whilst it is not. Hence this suit.

2. The 1st Defendant states for himself and for 2nd Defendant that when the previous deed of sale was executed, the sale was not effected in consequence of the failure on the part of the Plaintiff to pay the consideration Rupees 7; that at the instance of the Plaintiff, the subsequent deed was executed for Rupees 7-10-0 and the same plot of ground adding to it 6 cubits South to North, that as the

the deed previously executed was said to have been mislaid, it was not destroyed, and that the title deed was clandestinely taken from him by Plff when he lived in it.

3. The 3rd Defendant states that the ground is Government property.

4 The Reply denies the answers adding that if the title deed had been clandestinely taken from the 1st Defendants he would have pursued it by him, he would have pursued the Plff criminally before the Magistrate, or mentioned the circumstance before that authority when enquiry was instituted on Plaintiff's Complaint.

5 Rejoinders were dispensed with.

Points

6. Points for Plaintiff.

1 To prove that on the 14th Feby 1846 Perahawatte 1st and 2nd Defendants sold to him for Rupees 7-10 a plat of ground measuring 40 cubits East to West by 26 Cubits North to South as described in the plaint by deed of sale in the possession (and to produce his title deed.

2. To prove that in 1853 the 1st and 2nd Defendants fraudulently superscribed the plat of ground sold to him under pretence that it formed part of their own holding adjoining.

3. To put in Collector's decision declaring the disputed land to be Crown property.

4 To prove that 1st and 2nd Defendants possessed and had a distinct title

title in the land sold to him.

Point for 1st Defendant.

1. To prove that the contract of sale admitted by him, was for Rupees 7-10 (and describe (and prove the extent (and boundaries of the land to sold

For the 3rd Defendant.

1, To prove that the ground in dispute belongs to Government.

2 To file all documents (and proceedings touching the matter in issue.

Plaintiffs Exhibits.

A Copy of an order from the Collector to the Sabaldan under date 30th August 1851 } To prove Plff's 3d point.

B. Bill of Sale executed by the 1st and 2nd Defendants to Plff under date the 30th December 1845 } .

C. Bill of Sale executed by 1st and 2nd Defendants to Plaintiff under date 11th February 1846 — To prove Plff's 1st 2nd

3rd Defendants Exhibits

No 1 Assignment account of Moormoothy 1801 — To prove 3rd Defts 1st point.

No 2 Copy of a deposition given by the Village Moonsiff of Salem Court on the 11th September 1853. — To prove 3rd Defts 2nd point

No 3. Do Do given by the Village Moonsiff of Salem on the 23rd Septr 1853. — To prove 3rd Defts 2nd point

8 — Witnesses examined for Plaintiff and 1st and 2nd Defendants.

1 Abdulkader
2. Venkatapun
3. Peerkhan
4. Nanderkhan examined only for Plaintiff.

Judgment

9. I personally inspected the Plffs premises as it was impossible to arrive at a decision without this Step. The Plaintiff holds 2 deeds of sale by the 1st and 2nd Defendants of two plots one measuring 40 Cubits by 18 B, the other 40 Cubits by 26 C, the first for Rupees 7-11- and the 2nd for Rupees 7-10-. On looking at the premises and the boundaries set forth in the bonds, it is evident the bonds should be for the same plot. The excess of purchase money in C is evidently for the additional 8 cubits in the measurement from North to South, and this was a fraudulent encroachment, as is apparent from the Circar vouchers, on Circar land, and this is further apparent from a partially existing wall which was the original

boundary to the South. This part of the case being disposed of, it remains to consider the 2nd point. The land sold to Plff is proved to belong to the Circar and is so entered in the Accounts - It is therefore clear that the entire land in poss. of the Plffs, and 1st and 2nd Defendants boundary (18 Cubits from the Stack wall) which is the northern boundary belongs to the Circar and their Accounts shew this, although a part of this land has evidently been appropriated by the 1st and 2d Defendants in poss of their premises to the South as well as the 8 additional Cubits they sold 18+8=26 in C to the Plff supposing the two bonds to refer to one and the same sale of course it will be for the Government to assert their right in this respect. It was necessary to allege to this fact to make clear the ground proceeded on the Plaintiff and Government by the 1st & 2d Defts in selling him more land than they were themselves entitled to retaining the Government land now in their own hand. The Plff. sued in the 1st and 2d Defendants as said to have obtained the bond B while house residing in their house during their absence - If this were so it is certainly strange that the Defendants never complained of it's abstraction to the Police - at all - It is impossible to devise the manner in which the Plff became possessed of this original bond B. It is clear however that the Defendants had no right to

to sell more than what is described
in that deed of sale (and as the
Plff is in the possession of O (and his
possession is not shewn in any
respect to have been fraudulent
(and he cannot be put in possession
of the ground it possesses, which
belongs to the Circuit. It is fair,
to give him the benefit of the doubt
in his favour, that is, his lawful
acquisition of it (and he is preferred
to a suit against the 1st (and 2d Defts
for the recovery of his purchase
money, fraudulently obtained
under C. For these reasons
the Plff is entitled with
a moiety of the costs (and the
1st (and 2d Defendants having
in my opinion forced the Plff

into Court, will pay half the costs
of this suit including those of the
3d Defendant (the Collector for the
time being).

Costs incurred by the Plff

Value of Stamp paper — 10-0-0

Batta for Summons per son 3-11-6.

Pleader's fees ——— 1-5-0 11-0 6.

Costs incurred by the 1st } 4-8-0
(and 2d Defendants — }

Pleader's fees ——— 0 5 0 4-13-0

Costs incurred by the 3d Defts 4-0-0

Pleader's fees ——— 0 5 0 4-5-0

23-2-6

Costs to be paid by 1st & 2d Defts
to Plff — 7-3-0

do do by Ds to 3d Deft 4-5-0

Total Costs 23-10-6

Decreed on the 30th June 1859
Sealed & signed on the 27th Octr 59.
(Signed) W. Hodgson
Sub Judge
(True Copy) [illegible]
Offg Collector

th February 1860.

PROCEEDINGS of th

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Secretary.

To T. PYCROFT, Esq., C
Copy to Acting Collecto

Exd. J. Wright.

N° 408)

Proceedings of the Board of Revenue.

Dated 29th Feb.y 3 Months Rec.d 5th March Ent.d with the Col.l Govt. February 1860.

N° 1045)

Submitting with the Board's observations a letter from the Ag.g Collector of Salem enclosing Copy of the decree of the Subordinate Court of Salem in O.S. N° 29 of 1856, instituted to recover possession of a spot of land, assumed as Government Property.

No 1 to 2

N° 411.

Recorded.

H.to S.t Geo.e & 17 March/60

Cy.t Mun.t 814