

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	260	Press
		Mis.
	9-10	
Dated	1-2	1861.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
1st February 1861.*

No. 9. Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sudder Adalat, to T. PYCROFT, Esq., Chief Secretary to Government, dated Madras, 15th, January 1861, No. 7:—

Sir,

In continuation of the letter I had the honor of addressing to you under the date and number noted in the margin, I do myself the honor of enclosing for the information of the Honorable the Governor in Council 3 copies of the Decree passed by the Court of Sudder Adalat under date the 17th October 1860 in Appeal Suits Nos. 127 and 129 of 1859 on the files of the Sudder Adalat.

No. 10. ORDER THEREON, 1st February 1861, No. 260.

Ordered to be recorded.

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

DECREE OF THE SUDDER COURT AT MADRAS.

*Before the Civil Court of Masulipatam, Original Suit No 3 of 1857.
Before the Sudder Court at Madras, Appeal Nos. 127 and 129 of 1859.*



In Appeal No. 127 of 1859.

Appellant.
SET GIRDHARDAS MANAKJI
TADABAYI BIRJI MOHAN-
DAS, SAHUKAR.

versus

Respondents.
RAJA NARAYA APPARAV
BAHADAR, ZEMINDAR,
and another.

In Appeal No. 129 of 1859.

Appellant.
RAJA NARAYA APPARAV
BAHADAR, ZEMINDAR.

versus

Respondent.
SET GIRDHARDAS MANAKJI
TADABAYI BIRJI MOHAN-
DAS, SAHUKAR.

The plaintiff held two decrees against the first defendant. On adjustment of the accounts thereof it appeared that Rs. 59,500 remained to be discharged. To meet this debt the first defendant, on the 24th October 1843, assigned the village of Woondrajavarum to the plaintiff on lease for ten years, authorizing him to appropriate the rent thereof estimated at Rs. 6000. The overplus of Rs. 500 was to be made good to the first defendant at the conclusion of the term. The peshkash was to be paid by the first defendant, but on his failure the plaintiff was to discharge it and was to be indemnified by a proportionate extension of the lease. These conditions appear in the exhibits *I* and *J* executed by the parties in evidence of satisfaction made of the aforesaid decrees. The above exhibits were drawn up in presence of the collector, and the revenue authorities facilitated the arrangement by declaring the specific amount of peshkash chargeable upon the village in question. The plaintiff accordingly held possession of the village for six years. Afterwards, in 1850, on first defendant's failure to discharge the peshkash of the village, demand was made upon the plaintiff, and it was intimated to him that on his meeting the same, this particular village would not be zuffed on account of the general arrear due upon the whole zemindary held by the first defendant. These particulars are to be gathered from the exhibits *H, K, L, M, P,* and *T*. Eventually the aforesaid separated peshkash was not paid, and the whole zemindary was sold and purchase of it made by the Government. The plaintiff upon this has brought the present suit for recovery of Rs. 23,500 remaining due to him on the lease, and of Rs. 1067-12-6 due by his tenants at the time that he was deprived of the possession.

The collector, as representing the Government, was made second defendant under instructions issued to the plaintiff by the civil judge.

The acting civil judge held the first defendant liable to the plaintiff for the aforesaid sum of Rs. 23,500 as it had been owing to his neglect to pay the peshkash that the whole estate, including the particular village now in question, had been sold, and plaintiff deprived of the residue of his lease. The costs on this sum were awarded to plaintiff. The second item of Rs. 1067-12-6 was disallowed, with costs, as plaintiff could recover this from his tenants. The second defendant was absolved from liability and the plaintiff was charged with his costs.

Against the above decree two appeals have been preferred to the Sudder Court, namely No. 127 of 1859 by the plaintiff, objecting to the imposition upon him of the second defendant's costs, and No. 129 of 1859 by the first defendant, objecting to the award passed against him.

Mr. Branson appeared for the plaintiff, Tirumalacharlu for the first defendant, and Mr. Dale, the Government pleader, for the second defendant.

Judgment.

At the hearing of these appeals it was admitted that the second defendant had been unnecessarily introduced into this suit, it being clear that the Government could be under no liability on account of a personal transaction between the plaintiff and the first defendant. The question was discussed by the legal representatives of the respective parties upon whom the costs of the second defendant should fall, whether on himself or on one or other of the remaining parties. The difficulty proceeded from the circumstance that the second defendant had been introduced at the instance of the civil court.

The Sudder Court observed that it was to meet the exigencies of the plaintiff's claim, as stated by him, that the civil judge, in the exercise of his judgment, pointed out the necessity of making the second defendant a party to the suit, and that the plaintiff fully adopted this suggestion and made the act his own by varying his plaint and demanding that the village in question should be taken out of the hands of the Government and conferred upon him for the unexpired portion of his lease. The Court therefore determined that the costs of the second defendant should form a part of the general costs in the suit and be imposed upon the party eventually cast.

A discussion was then raised whether Mr. Dale, the representative of the second defendant, had been warranted in making his appearance in the second of the present appeals, namely No. 129 of 1859, preferred by the first defendant.

The Court found that the second defendant had not been named as a respondent in the said appeal, but that he had received intimation from a ministerial servant of the Court to appear, and that his name had been inserted in the notice affixed of the hearing of the cause. It also appeared that the pleader of the first defendant, the appellant, had intimation from Mr. Dale that he considered himself a party in this case, and made no objection thereto. As under all the circumstances of the case the Court would indubitably have authorized the appearance of Mr. Dale had application been made to them, they resolved to overlook the defect of procedure under which he has made his appearance, and to sanction the appearance, thus entitling him to his costs.

The Court then heard the arguments of the counsel for the first defendant and the plaintiff on the merits of the said appeal, at the termination of which the parties came to an understanding, and in pursuance of the agreement between them the Court pass the following award.

The Government having relinquished to the first defendant his zemindary, the Court decree to the plaintiff possession of the village of Woondrajavarum for the unexpired portion of his lease, according to the conditions of the lease. The plaintiff and the first defendant are each to bear their own costs throughout this suit, and are to discharge the costs of the second defendant between them in equal proportions.

IN THE SUDDER COURT..

In Appeal No. 127 of 1859.

Respondent's (Second Defendant) costs.

Pleader's fee on Rs. 628-2-8...	..	..	...	...	...	31	6	5
1 Roll for appeal answer....	..	..	...	...	...	4	0	0
1 do. for vakalatnama...	..	..	...	...	...	2	0	0

In Appeal No. 129 of 1859.

Pleader's fee on Rs. 30,546-5-0...	...	...	...	655	7	4
2 Rolls for appeal answer.	...	...	...	8	0	0
1 do. for vakalatnama....	...	...	...	2	0	0
To be paid by the plaintiff, appellant in appeal No. 127 of 1859,						
and by first defendant, appellant in appeal No. 129 of 1859, in						
equal portions to the second defendant, respondent in the						
said two appeals.						
...	...	...	...	702	13	9

Given under our hands and the seal of the Court, this seventeenth day of October, in the year of our Lord 1860.

By order of the Sudder Court.

It is hereby certified that the value of the matter in dispute amounts to the sum of Company's Rs. 30,546-5-0, and the period for appealing will expire on the *17th April 1861.*

(Signed) L. F. Lhamier
Registrar.

(Signed) L. F. Lhamier
Registrar.

Second and last Sheet.

(Signed) L. F. L.
Registrar.

From Clement Dale Esquire Government Pleader Sado Adalat
To Thomas Pycroft Esquire Chief Secretary to Government

Madras 15th January 1861

Sir,

In continuation of the letter I had the
17th October 1860 N^o 155 honor of addressing to you under the
date and number noted in the margin.

I do myself the honor of enclosing for the information of
the Honorable Governor in Council 3 Copies of the
Decree passed by the Court of Sado Adalat under date
the 17th October in Appeal Suits N^{os} 127 and 129 of
1859 on the files of the Sado Adalat.

I have the honor to be

Sir,

Your Most Obedient Servant

Clement Dale

Government Pleader
Sado Adalat

Pro. of Govt. for February 1861

1861 Sep 5
From Govt. Pleader P. A.
To Chief Secretary to Govt.
Dated 15th January/61
Recd 17th 3

Pro. of Govt. for February

No. 4
With three enclosures
From P. A. of 27 February/61
Enc. 3

No. 7

Encloses for the information
of 3 Copies of the Decree
passed by the Court of Sadar
Adalat under date the 17th
12/60 in Appeal Suits
No. 127 & 129 of 1859 on the
files of the Sadar Adalat.

No. 260

Recorded.

Feb. 1/61
With an order

Ordered to be communicated
to the Secy of the Revenue with reference to the
Order of 17th Nov. 1860. No. 2061, together with two
Copies of the Decree, one for record in their Office
and the other for forwarding to the Collector.

No. 9 410.