

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2318	Press Mis.
395.396	
Dated	30. 10. 1862

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
30th October 1862.*

No. 395. Read the following Proceedings of the Board of Revenue, dated 29th September 1862, No. 6,545 :—

Read the following letter from W. D. HORSLEY, Esq., Acting Sub-Collector in charge of the Kistna District, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated Masulipatam, 12th September 1862, No. 218.

SIR,

To Board, 23rd December 1861, No. 318.
From Board, 4th January 1862, No. 18.

With reference to the correspondence noted in the margin, I have the honor to forward herewith a copy of the Decree of the Civil Court of Masulipatam in Original Suit

No. 14 of 1861, from which the Board will perceive that the Plaintiff's claim for the recovery of two Katties of Inám land, said to belong to the Sree Mallasweraswamy Pagoda at Godugupetta, in Masulipatam Town, was dismissed with costs.

ENCLOSURE No. 1.

ORIGINAL SUIT No. 14 of 1861.

In the Civil Court of Masulipatam.

Present :—C. R. PELLY, Esq.

Plaintiff.

Burra Ammaiya, Dharmakarta of
the Pagoda of Sree Mallaswera-
swamy of Godugupetta.

Pleader.

L. Subbarayudu.

Defendants.

G. Thornhill, Esq., Acting Collector of the
Kistna District, Masulipatam.

Supplemental Defendant.

Raja Bonmadevara Naganna Naidu, Bahadur
Zamindár.

Defendant's Pleader.

T. Purushottamaiy, a Government Vakil.

Supplemental Defendant's Pleader.

Y. Bollaiya.

Judgment.

1. Plaintiff as Dharmakarta of the Pagoda of Sree Mallasweraswamy, sues to recover one Cutty of Inám land situated at Vadlamannadu, an equal extent at Konkepudi, in the Pargana of Gudur, together with past produce at the rate of Rupees (56) fifty-six per annum, from Fasli 1261, (A. D. 1851-52) to Fasli 1270 (A. D. 1860-61) interest and costs. Defendant questions Plaintiff's right to sue, and pleads that if he holds any genuine Sannad, it confers no permanent right on the grantee; that his statement relative to the lands having been lately commuted to Bâd allowances by the Revenue authorities, is opposed to fact; that he has not enjoyed them as alleged; and that the suit is barred by lapse of time. Supplemental Defendant has allowed the suit to proceed *ex parte*.

2. Exhibits.

For Plaintiff.

- A. A Sannad which purports to have been granted by Alli Kholli Khan Padusha for the lands in dispute date Hiziri 1151 (A. D. 1738).
- B. Chekunama granted by the village officers of Vadlamannadu date Fasli 1171 (A. D. 1762).
- C. Do. do. do. of Konkepudi date Fasli 1172 (A. D. 1763).
- D. Dumbala of Konkepudi for Fasli 1175 (A. D. 1766).
- E. Do. of Vadlamannadu for Fasli 1176 (A. D. 1767).
- F. Do. do. for Fasli 1177 (A. D. 1768).
- G. Do. do. for Fasli 1181 (A. D. 1772).
- H. Do. do. for Fasli 1182 (A. D. 1773).
- I. Dumbala of Vadlamannadu for Fasli 1183 (A. D. 1774).
- J. Do. do. for Fasli 1185 (A. D. 1776).
- K. Do. of Konkepudi for Fasli 1185 (A. D. 1776).
- L. Do. do. for Fasli 1186 (A. D. 1777).
- M. Do. of Vadlamannadu for Fasli 1186 (A. D. 1777).
- N. Do. do. for Fasli 1187 (A. D. 1778).

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- O. Dumbala of Konkepudi for Fasli 1187 (A. D. 1778).
P. Do. of Vadlamannadu for Fasli 1187 (A. D. 1778).
Q. Do. of Konkepudi for Fasli 1187 (A. D. 1778).
R. Do. of Vadlamannadu and Konkepudi } for Fasli 1203 (A. D. 1794).
S }
T } Do. do. } for Faslis 1204, 1205, 1206, 1207, and 1208 (A. D. 1795,
U } 1796, 1797, 1798, and 1799).
V }
W. An authenticated copy of a Razinama filed in Original Suit No. 175 of 1850, on the file of the District Munsiff of Masulipatam.
For Defendants.
I to XI }
XIII to XVII } Village accounts.
XX }
XXII to XXV }
XII.—An account of Sarva Dumbala Ináms for Fasli 1209 (A. D. 1800), which contains the following entry to Godugupetta Sivakesavulu, a quarter of what, whether grain or money, does not appear.
XVIII, XIX, XXI, XXVI.—Accounts of Bâd Ináms for Faslis 1235, 1238, 1241, 1255, and 1230 (A. D. 1825, 1828, 1831, 1845, and 1820), which contain the following entries, viz.:—
XVIII. Paid up to Fasli 1235 (A. D. 1825.) Rupees 3½ of Godugupetta Mallasweraswamy, paid to Kodamanchi Ramaiya, paid up to Fasli 1236 (A. D. 1826) Rupees 3 to Godugupetta Mallasweraswamy on account of the Vadlamannadu Inám.
XIX. Rupees 3¾-23rd Godugupetta Mallasweraswamy Ináms at Vadlamannadu and Konkepudi.
XXI. Rupee 1 to Godugupetta Sree Mallaswareswamivar for Fasli 1246 (A. D. 1836 January) out of Rupees (1-12-9) one, Annas twelve, Pice nine.
XXVI. Annas 14 to Ramaiya, worshipper of Godugupetta Mallasweraswamivar.
3. Witnesses.
For Plaintiff.
1. J. Kistnaiya.
2. V. Buchi Rama Sastrulu.
3. K. Venkanna.
4. K. Bhagavanulu.
5. V. Narsanna.
6. C. Venkanna.
7. T. Venkatachellam.
For Defendants.
1. V. Kanakaraz.
2. C. Vekatakistnamma.
3. D. Triyambakarao.
4. T. Narsingam.
5. G. Padmanabhudu.
6. H. Subbarayadu.
7. C. Subbanna.
8. M. Venkatachellam.
9. V. Lingaiya.
10. V. Nagaraz.
11. K. Naganna.
12. V. Ramabramham.
13. Kannam Sahib.
4. The following is a brief outline of the circumstances connected with this action, as gathered from the present record and that of Original Suit No. 175 of 1850, on the file of the District Munsiff of Masulipatam. It is alleged that a grant of two Cutties of land situated at Vadlamannadu and Konkepudi, to the Pagoda of Mallasweraswamivar at Godugupetta in the Town of Masulipatam, made at some unknown period, was renewed about a century and a quarter ago (exhibit A) by the then ruling power; that with reference to the renewed grant two Chek-unamas (exhibits B and C) were issued by the village authorities, and that the said lands were held by the grantee, viz., the Pagoda, up to the year 1800; that they continue to be so enjoyed up to 1813, when they were rented by Plaintiff's father, the Dharmakarta, to two persons who occupied them up to 1815, in which year they were ousted by the Zamindár of the Gudur estate;

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that consequent on this, Plaintiff's father instituted the suit referred to above, (viz, No. 175 of 1850). Whereupon the Zamindár presented a Razinama engaging to restore the lands within 20 days; shortly after which the estate passed into the hands of the Government, which refused to recognize the Pagoda's title to the lands in dispute.

5. Plaintiff placing stress on what occurred consequent on the institution of Original Suit No. 175 of 1850, on the file of the District Munsiff of Masulipatam, it is necessary to see how far the Razinama therein presented affects his claim as against the present Defendant. It appears that on the institution of the above action, the Zamindár of Gudur, who was sole Defendant without offering any opposition to Plaintiff's claim, urged on behalf of the Pagoda, engaged to restore the lands within twenty days; that it also appears that this occurred, as the estate in which the lands are situated was on the point of passing away from him. Under these circumstances it became a matter of indifference to him whether Plaintiff's title, if he had any, was good or not, and as engagement to restore the lands was a very simple method of getting rid of responsibility, as far as he was concerned, he to all intents and purposes had lost his interest in the matter, but as in his capacity of Zamindár, he had no power to make a permanent alienation of the land, so his engagement to restore it, presuming this to be void of fraud, confers no title on Plaintiff; does not prove that he (Plaintiff) was possessed of any, and is not binding on the Zamindár's successors; had the Zamindár continued in possession of the estate, the Razinama would, no doubt, have been good against himself; but it will not in any way affect the title as between Plaintiff and the Government, the Zamindári having passed into the possession of the latter, and the Plaintiff's claim to the land is now in the same position as if the above suit had not been instituted.

6. The next objection urged by Plaintiff is that on the Pargana being made over to Government in 1850, the village authorities prevented the sub-renters of the then Dharmakarta his (Plaintiff's) father from cultivating the lands; that a complaint was consequently preferred to the Revenue authorities, who, after investigation entered the lands under the head of Bâd Ináms, and had the accounts prepared accordingly. To this, Defendant offers a direct denial, and states that though by the Bâd Inám accounts of the Masulipatam Collectorate, it appears that in some Faslis the Zamindár of Gudur for the time being paid small sums to the priest of the Pagoda, such payments were voluntary on the Zamindár's part, and are not binding on his successors; and that they do not create any claim which can be enforced by legal process. On reference to the documents referred to by Plaintiff, viz., a report and a statement, I find Plaintiff's assertion relative to the lands in question having then been newly entered, as Bâd Inám, to be incorrect. The Revenue Officers who drew up the statement, observe "that, like most others, the Ináms referred to were commuted to Bâd allowances about the time of the permanent settlement (A. D. 1802), since which time the Inám lar has had no connection with the lands." Bâd is a term usually applied to Seri land once given as Inám by the ruling power or officials of the said power, or renters, &c., to third parties subsequently resumed and re-converted to Seri for some reason or other, a small allowance being occasionally paid to the Inám lar out of the aggregate produce of the village, the proprietor, whoever he may be, accordingly receives his due, and as far as he is concerned, the land to all intents and purposes never ceases to be Seri, thus if it was at any time Bâd this would confer no title to it on Plaintiff while the report on which he relies, shows that his statement that it was newly commuted to allowance so designated is erroneous.

7. The first point recorded is Plaintiff's right to sue, Defendant urging ignorance as to whether he is a trustee or warden; and if so, whether he is sole trustee. The office of Dharmakarta as a rule devolves on the person at whose expense the Pagoda is erected, or, on the nominee of his family in the event, however, of the family becoming extinct, the right of nomination devolves on the local congregation who use their discretion in the selection of some influential person, who may be willing to undertake the duties. An appointment so made is verbal; its acceptance is matter of favor, as no remuneration is attached to the office which involves more or less trouble, and occasionally expense; and Sannads are not to be looked for; the oral evidence in the present instance is to the effect, that Plaintiff's father held office as Dharmakarta up to his demise, when he was succeeded by his son, the Plaintiff; and the record of Original Suit No. 175 of 1850 shows that since that year, at all events, Plaintiff has been exerting himself to establish what he considers the right of the Pagoda; the fact of his holding office has not been questioned by any member of the congregation, he has appeared as the

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Dharmakarta for years. No other claimant to the office has come forward, and these circumstances, taken in connection with the manner in which persons are nominated to offices of this description afford adequate grounds for recognizing him as Dharmakarta and upholding his right to sue.

8. The next point has reference to whether the suit is barred by lapse of time. The Sannad on which Plaintiff grounds his title is dated as far back as A. D. 1738, and this purports to be a renewal of a former grant. His Chekunamas and Dumbalas are all dated prior to 1800, and the document of the latest date which he holds is a Dumbala for Faslis 1207 and 1208, which purports to have been issued by the then Collector on the 10th March, A. D. 1800. Thus all were drawn up prior to the permanent settlement in 1802; direct evidence relative to documents of such antiquity was hardly to be expected, but no indirect evidence of the slightest value has been adduced in support of them. Admitting them, however, to be genuine, I am of opinion that the Pagoda has had no connection with the lands since prior to the permanent settlement in 1802, and that the claim is consequently barred by lapse of time. Plaintiff holds no document of any description from the Dumbala issued in A. D. 1800, to the Razinama presented in 1850; the latter of which is of no value as against Defendant. The village authorities examined on the part of Defendant, deny that the Pagoda had anything to say to the lands, the village accounts contain no reference to their having been held as Inâm, and the Pagoda's alleged possession subsequent to 1800, rests solely on oral evidence, to which I am unable to attach any credit. It bears all the appearance of having been tutored, and leads to the conclusion that the deponents were ready to hazard any assertion, however reckless, in support of Plaintiff's claim. In the case of disputed Inâm lands it is natural to expect that the witnesses called to speak to particulars connected therewith, should be inhabitants of the villages in which the lands are situated. Not one, however, of Plaintiff's witnesses is resident at Konkepudi; only one, even on his own showing occasionally so at Vadlamannadu, and the majority of these are inhabitants of Masulipatam. Of the seven witnesses examined by the Plaintiff, two (viz., 5th and 7th) profess to have rented the lands from the Pagoda subsequent to 1800. The 5th witness deposes that he rented them in Fasli 1253 from Plaintiff's father as Dharmakarta, but he holds no document in support of his assertion. He states that a Cowle and Khatt were exchanged on the occasion, but he has not produced the Khatt which he says was returned to him, nor has Plaintiff produced the Cowle which this witness says was in due course given back to him, and an account of the money paid which the witness says he did hold, he now represents to have been accidentally burned; while the 7th witness, who says that he rented the land a quarter of a century ago, is in an equally unfortunate position, his document having according to his statement been lost, and neither of these witnesses belong to either one or other of the villages in which the lands are situated.

9. Being of opinion that the Razinama presented in 1850 in no degree affects Plaintiff's title as against the present Defendant, that Plaintiff's assertion relative to the lands having been newly commuted to Bâd allowances, after which the estate passed to Government, is erroneous, and that the evidence he had adduced to prove possession subsequent to 1800, is unworthy of credit, it becomes unnecessary to enter on the remaining point which has reference to the genuineness of the grant and value of the produce. I accordingly dismiss this suit with costs.

4th August 1862.

(Signed) C. R. PELLY,
Acting Civil Judge.

(True Copy.)

(Signed) W. D. HORSLEY,
*Acting Sub-Collector in charge
of the Kistna District.*

Ordered to be submitted for the information of Government, and that copy be communicated to the Government Pleader.

(True Copies and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

No. 396.

ORDER THEREON, 30th October 1862, No. 2,318.

Ordered to be recorded.

(Signed) P. P. HUTCHINS,
Acting Deputy Secretary to Government.

comes unnecessary to enter on the remaining point which has reference to the genuineness of the grant and value of the produce. I accordingly dismiss this suit with costs.

4th August 1862.

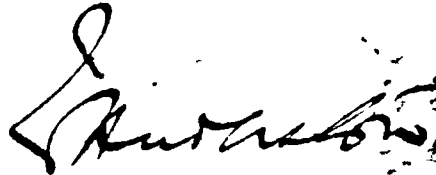
(Signed) C. R. PELLY, Ag. Civil Judge.

(True Copy.)

(Signed) W. D. HORSLEY, Ag. Sub-Collr. in charge of the Kistna Dist.

Ordered to be submitted for the information of Government, and that copy be communicated to the Government Pleader.

(True Copies and Extract.)



Secretary.

To Honorable T. Pycroft, Chief Secretary to Government.

Copy to E. B. Foord, Esq., Acting Collector of the Kistna District.

„ to C. Dale, Esq., Government Pleader.

Exd. J. Wright.

*P. 11th Oct 1861 Me 1661
167*

*Pen 1862. Department.
No. of Govt for Act.*

No. 2780.

PROCEEDINGS OF THE BOARD OF REVENUE,

*Dated 29th September 1862.
Despatched. 2 Oct 1862
Received. 3 Oct 1862*

No. 6,545.

Submitting for information a letter from the Acting Sub-Collector in charge of the Kistna District, forwarding copy of a Decree of the Civil Court of Masulipatam in O. S. No. 14 of 1861, regarding the claim of a certain Pagoda to certain Inam lands.

RECORDED.

No. 2318.

136 Chief Secy to Govt of India Dept 31st

*Chief Secy to Govt of India
30th Oct 1862*

28th Oct 1862