

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1641	Press ~~Mis.~~
83-84	
Dated	7-9-191863

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
7th September 1863.*

No. 83. Read the following Proceedings of the Board of Revenue, dated 24th August 1863, No. 5,291 :—

Read the following letter from the Honorable D. ARBUTHNOTT, Collector of Salem, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated 12th August 1863, No. 144.

SIR,

1. With reference to the Board's Proceedings dated the 6th August 1862, communicating the sanction of Government conveyed in their Proceedings dated the 6th idem, No. 1,674, to defend at the public cost the Original Suit No. 1,305 of 1861, on the file of the District Moonsiff's Court at Tripatur, since transferred to the Principal Sudder Ameen's Court at Salem, in Original Suit No. 18 of 1862, I have the honor to submit copy of a decree passed by the Principal Sudder Ameen on the 24th April 1863, in the suit in question.

2. The Board will observe from the decree that the Principal Sudder Ameen has disallowed the costs borne by Government, apparently on the ground that the act of the Head Assistant Collector was "extra judicial" though he has as it were confirmed the decision of the Head Assistant Magistrate ordering the removal of the bund.

3. Mr. Hathaway, in ordering the removal of the bund, acted under the authority contained in Clause 3rd, Section 51, Regulation XI of 1816, which runs to the following effect, though he has, not in his order to the Talook Magistrate directing the removal of the bund, quoted the authority :—"The Magistrate and under his orders, the Tahsildars and Heads of Villages shall have authority to prevent the forcible occupation, or diversion of water for cultivation."

4. Under these circumstances I propose to put in an appeal for the recovery of the costs, and beg to submit draft of an Appeal Memorandum for the approval of the Board.

5. The decree was passed on the 24th April 1863, just as the Court was closed for the adjournment. I was not therefore able to procure a copy of the decree till the re-opening of the Court. I shall urge this ground, and request the Civil Court to admit the appeal.

ENCLOSURE No. 1.

Original Suit No. 18 of 1862.

In the Court of the Principal Sudder Ameen of Salem.

Present, S. R. DAWES, Esq.

Judgment.

1. The Plaintiff maintains that the tank in question was constructed by his ancestors; that the Defendant, who raised no objection for thirty years, lately preferred a complaint to the Revenue authorities to the effect that the existence of the tank was detrimental to his house, and that upon such complaint the Head Assistant Magistrate, who is the Supplemental Defendant in the suit, ordered the removal of the bund. It is also alleged that the water of the tank is necessary for the irrigation of Plaintiff's land.

2. It is contended by the opposite side that the tank is a recent construction, whereby the Plaintiff has monopolized to himself an undue amount of water supply to the prejudice of neighbouring cultivators, and to the injury also of the Defendant's house which is contiguous to it.

3. From the evidence adduced it is perfectly clear that the Plaintiff has himself constructed the tank within a recent period apparently with the object of securing for himself a reservoir of water in the event of a failure of supply from the Anasagram tank, which always irrigated Plaintiff's fields. Certain public revenue accounts have been put in in evidence, and they show that down to at least Fasli 1269, the Plaintiff depended on the Anasagram tank alone for irrigating his lands, and this fact sufficiently demolishes his allegation that the tank in question existed since the time of his ancestors. Its contiguity to the Defendant's house rendered it a dangerous construction, while from its position and size it affected water supply of the adjacent Ryots.

*Proceedings of the Madras Government, Revenue Department,
7th September 1863.*

4. The Court therefore is of opinion that the Plaintiff has totally failed to make out his case. At the same time the Court is unable to uphold the act of the Head Assistant Magistrate in ordering the removal of the bund. This was an act altogether extra-judicial, and the Head Assistant Magistrate himself has failed to quote his authority for having passed his order. The protection afforded by Act XVIII of 1850, extends only to judicial acts done in good faith; but here the Head Assistant Magistrate had no judicial jurisdiction whatever, and his proper course was to have referred the Defendant to the Civil Courts whose especial and legitimate province it is to adjudicate upon rights and disputes such as the present.

5. With these observations the Court dismisses the Plaintiff's claim, and adjudges each party to bear his own costs.

24th April 1863.

(Signed) S. R. DAWES, *Principal Sudder Ameen.*

(True Copy.)

(Signed) D. ARBUTHNOTT, *Collector.*

ENCLOSURE No. 2.

Original Suit No. 18 of 1862.

In the Court of the Principal Sudder Ameen of Salem.

Present, S. R. DAWES, Esq.

VENCATTAN,	...	...	...	...	Plaintiff.
COOPPIEN,	...	...	...	...	Vakeel.
CHOTTARAM,	...	...	...	...	Defendant.
HEAD ASSISTANT MAGISTRATE,	...	...	...	...	Supplemental Defendant.
NARASIER,	...	...	...	...	Vakeel.

This suit laid to prevent the Defendant from removing the bund of the Plaintiff's tank situated in the village of Chengoonampetty, and which existed from the time of his ancestors.

Decree.

Suit dismissed; each party to bear his own costs.

	RS.	A.	P.	RS.	A.	P.
Value of Stamp	23	0	0			
Batta for summons Peon	8	6	0			
Pleader's fees	18	3	0			
				49	9	0

Costs incurred by the Defendant.

Value of Stamp	2	8	0
Batta for summons Peon	6	4	0
Pleader's fees	18	3	0
	26	15	0

Costs incurred by the Supplemental Defendant.

Value of Stamp	0	8	0
Pleader's fees	18	3	0
	18	11	0
Total...	95	3	0

No process of execution will be issued to enforce this decree unless some proceeding shall have been taken to keep the same in force within three years next preceding the application for such execution.

24th April 1863.

(Signed) S. R. DAWES, *Principal Sudder Ameen.*

(True Copy.)

(Signed) D. ARBUTHNOTT, *Collector of Salem.*

*Proceedings of the Madras Government, Revenue Department,
7th September 1863.*

ENCLOSURE No. 3:

Memorandum of Appeal in Original Suit No. 18 of 1862, on the file of the Principal Sudder Ameen's Court at Salem.

Appellant.

W. F. Hathaway, Esq., Head Assistant Magistrate.

Respondent.

Venkettan.

The Appellant abovenamed appeals to the Civil Court at Salem against a part of the decree of the Principal Sudder Ameen in the above suit dated the 24th April 1863, on the following grounds, namely,

1st. That the Principal Sudder Ameen has assigned no reason for adjudging the costs incurred by the Appellant to be borne by himself.

2nd. That the Principal Sudder Ameen has, in dismissing the Plaintiff's claim, confirmed as it were the decision of the Head Assistant Magistrate, ordering the removal of the bund by the Respondent.

3rd. That the Principal Sudder Ameen had no warrant for holding the act of the Head Assistant Magistrate as "extra-judicial," whereas his act was strictly judicial inasmuch as it was in accordance with Clause 3rd, Section LI, Regulation XI of 1816, and that the failure of the Head Assistant Magistrate to quote the authority in his order does not make his act extra-judicial.

4th. That under these circumstances the Appellant prays that this Honorable Court will reverse that part of the Principal Sudder Ameen's decree, which disallows the costs incurred by the Appellant.

(Signed) W. BOALTH,
Deputy Collector for the Collector.

1. Ordered to be submitted for the information of Government.

2. The Board sanction the proposed appeal to the Civil Court against so much of the original decree as saddles Government with its own cost.

No. 84.

ORDER THEREON, 7th September 1863, No. 1,641.

Ordered to be recorded.

(True Extract.)

(Signed) C. G. MASTER,

Deputy Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

ENCLOSURE No. 3.

Memorandum of Appeal in Original Suit No. 18 of 1862, on the file of the Principal Sudder Ameen's Court at Salem.

Appellant.

W. F. Hathaway, Esq., Head Assistant Magistrate.

Respondent.

Venkettan.

The Appellant above named appeals to the Civil Court at Salem against a part of the decree of the Principal Sudder Ameen in the above suit dated the 24th April 1863, on the following grounds, namely,

1st. That the Principal Sudder Ameen has assigned no reason for adjudging the costs incurred by the Appellant to be borne by himself.

2nd. That the Principal Sudder Ameen has, in dismissing the Plaintiff's claim, confirmed as it were the decision of the Head Assistant Magistrate, ordering the removal of the bund by the Respondent.

3rd. That the Principal Sudder Ameen had no warrant for holding the act of the Head Assistant Magistrate as "extra-judicial," whereas his act was strictly judicial inasmuch as it was in accordance with Clause 3rd, Section LI, Regulation XI of 1816, and that the failure of the Head Assistant Magistrate to quote the authority in his order does not make his act extra-judicial.

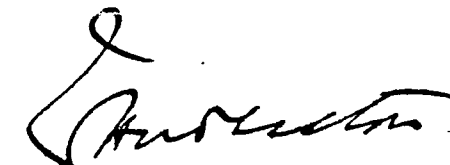
4th. That under these circumstances the Appellant prays that this Honorable Court will reverse that part of the Principal Sudder Ameen's decree, which disallows the costs incurred by the Appellant.

(Signed) W. BOALTH, Deputy Collector for the Collector.

1. Ordered to be submitted for the information of Government.

2. The Board sanction the proposed appeal to the Civil Court against so much of the original decree as saddles Government with its own cost.

(True Copies and Extract.)



Secretary.

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

Copy to Honorable D. Arbuthnott, Collector of Salem.

Exd. J. Wright.

6th Aug 1863 / 1862 No. 75-76
30-8-1863

Dep^y = 1863. Department
of Justice for the

No. 2050.
PROCEEDINGS OF THE BOARD OF REVENUE.

Pro: 1863 at Rev. C. H. 145
of 14 Jan 1864.

Dated 24th August 1863.
Despatched. 28-8-
Received. 28-8-

No. 5,291.

Sanctioning the proposed Appeal to the Salem
Civil Court against the decision of the Principal
Sudder Amin in O. S. No. 18 of 1862 regard-
ing certain Tank baul, and submitting for the
information of Government, letter from the Col-
lector on the subject. 28-8-1864.

RECORDED.

11 Copies Collected by Rev. C. H. 145
10-11-1863. 1863.

1083 484.

220 241 763 222