

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. <i>1666</i>	Press Mis.
<i>9394</i>	
Dated <i>7-9-1918</i>	1863

Not to be folded or roughly handled

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

No. 93. Read the following Proceedings of the Board of Revenue, dated 21st August 1863,
No. 5,239:—

Read the following letter from V. H. LEVINGE, Esq., Collector of Madura, to W. HUD-
LESTON, Esq., Secretary to the Board of Revenue, dated Kojakanel,
15th August 1863, No. 167.

SIR,

1. With reference to the Proceedings of Government, No. 2,179, dated 19th, communicated
by the Board on the 21st November 1861, I have the honor to submit herewith for the consi-
deration and orders of the Board, copies of the judgment given by the High Court in Appeal

* Ponnusamy Taver of Ramnad, Appellant.
Collector of Madura, Respondent.

Suit* No. 58 of 1861, preferred against the
Decree of the Civil Judge of Madura in

Original Suit No. 6 of 1861, and the order of the Civil Judge, dated 21th July 1863, passed
thereon, received with the Government Vakeel's Arzi of this station.

2. From the last the Board will perceive that the Civil Court has fixed the 3d of Sep-
tember next for the final hearing of the Suit. I therefore request the Board's early instructions
for my guidance in the matter.

ENCLOSURE No. 1.

In the High Court of Judicature at Madras, 13th June 1863.

Present.

The Honorable Mr. JUSTICE PHILLIPS.

The Honorable Mr. JUSTICE HOLLOWAY.

Regular Appeal No. 58 of 1861.

Appellant.

* versus

Respondent.

Ponnusamy Taver.

Collector of Madura.

By J. B. Norton, Esq., and

By J. Boyson, Esq., Attorney.

Honorable V. Sadagopa Chari.

This is an appeal from the decree of the Civil Judge of Madura (R. R. Cotton) in Original
Suit, No. 6 of 1861.

The Plaintiff in this suit substantially prayed that the Collector, who had refused to register
and sub-assess a portion of Zemindry alleged to have been assigned to him by the Rani Seeta-
pati of Ramnad, might be compelled to do so.

Defendant in a very elaborate answer, among other things submitted that the Court has no
jurisdiction.

The other grounds it is unnecessary to notice, as they have not at present received any
attention from the Civil Judge who dismissed the suit, because the portion which the Plaintiff
claimed as assigned to him had not been registered and re-assessed by the Collector, and because
therefore the gift could have no legal force or effect.

The only question at present before us is, whether the ground taken up by the Civil Judge
justifies his dismissal of the suit on this preliminary point. It would be a very singular conse-
quence if a Plaintiff seeking to compel a public Officer to perform a duty, alleged to be incumbent
upon him, in order that validity might be given to Plaintiff's alleged legal right, was prevented
from bringing the question to trial because the act of that public officer had prevented that legal
right from acquiring validity.

The necessity for such cyclic reasoning would alone lead to suspicion of the soundness of
the conclusion of the Civil Judge. The determination of the question however, depends entirely
upon the construction of Section 8, Regulation XXV of 1802.

That Regulation defining for fiscal and other purposes, the rights and liabilities of Zamin-
dars in Section 8, declares that landed proprietors shall be at free liberty to transfer, without
the previous consent of the Government, their proprietary right in the whole or in a portion
of their estates, and that such transfers, if not opposed to Hindoo or Mahomedan Law, or to the

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Regulations, shall be respected by the officers of Government and by the Courts of Justice. It is manifest that in the clearest and most specific terms, the right of transfer, if not opposed to Law, is distinctly given.

It then further provides that, unless such alienation has been regularly registered, and the alienated portion sub-assessed, the transaction shall be "of no legal force or effect." If therefore the argument for the Defendant was correct, the legislature have gone through the most unmeaning form, for it would be open to the Collector to decline either registering or sub-assessing. It has been argued that the meaning is shall be absolutely void as against Government. The words used are very large, but it is unnecessary to determine whether this narrow construction is or is not the true one, because the previous words of the Section have given to the proprietor and of consequence to his alienee, a perfect right to acquire by a transfer not subject to specific objections, a title good to all intents and purposes. On the familiar principle that there can be no right, without a remedy, it is manifest upon the construction of the whole of this Section that the Collector is bound to take the steps necessary to validate a transfer not subject to the objections which by the distinct declaration of the legislature can alone invalidate it. He is, as a necessary consequence, bound to determine whether the transfer is subject to any such objections, and if not, he is clearly bound to register and sub-assess.

The law clearly casts this duty upon him, because it has given to a transferor a right which would become positively null unless he performed that duty.

It is a fundamental principle, much insisted upon and illustrated in *Ferguson v Kinnoul* IX Cland Fun 251, that where the law casts a duty upon a person, which he wrongfully fails to perform, he is answerable in damages to those whom his wrongful failure injures.

Nothing is clearer than the duty distinctly specified by the law of performing the act unless there are good grounds for the non-performance, and it follows on the most obvious principle, that if the Plaintiff has a right in the present case to insist upon the act which he seeks to compel this public functionary to perform, unless there are grounds for the refusal and the determination of whether the refusal is a wrong, or whether it has proceeded upon legal and valid grounds, manifestly lies with the Courts of Justice, for it is most familiar law that where a statute imposed a duty, it, without express words, gives an action for the failing to perform it and for wrongfully performing it. The result is that the Judgment of the Civil Judge will be reversed, that the suit will be remitted to the lower Court to determine the question indicated in this Judgment after a full hearing of the parties and of such evidence as they may choose to produce.

By Order of the Court,
(Signed) T. WILKINS, Deputy Registrar.
(True Copy.)
(Signed) V. H. LEVINGE, Collector.

ENCLOSURE No. 2.
Extract from the Proceedings of the Civil Court, dated the 24th July 1863.
(Regular Appeal No. 58 of 1861, High Court.)

1. Read Proceedings of the High Court in the above suit dated 13th June 1863, received 13th July 1863, overruling the decision of the Civil Judge in Original Suit No. 6 of 1861, and ruling that the Plaintiff has right of action, and that the Defendant cannot refuse to register and sub-assess the portion of the Zemindary, assigned to Plaintiff as claimed, provided the assignment is not contrary to Hindoo Law.

2. The Court with reference to the above Proceedings fixes the 3rd of September next for the final hearing of this case when the Defendant will produce the proof oral and documentary against the validity of the said assignment by Hindoo Law, and which evidence the Plaintiff will be allowed to rebut by counter-evidence.

(Signed) R. R. COTTON, Civil Judge.
(True Copy.)
(Signed) V. H. LEVINGE, Collector.

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

The Board observe that the case is one of those in which Mr. Dale will appear on behalf of Government at the hearing before the Madura Court. The defence will of course be proceeded with on all the grounds originally selected by Mr. Dale. The fact that an appeal has been advised will not interfere with the defence under the orders remanding the suit for full hearing.

No. 94. ORDER THEREON, 7th September 1863, No. 1,646.

Recorded, with reference to the Proceedings of Government, dated 26th August 1863, No. 1,569.

(True Extract.)

(Signed) C. G. MASTER,

Deputy Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustia.

2. The Court with reference to the above Proceedings fixes the 3rd of September next for the final hearing of this case when the Defendant will produce the proof oral and documentary against the validity of the said assignment by Hindu Law, and which evidence the Plaintiff will be allowed to rebut by counter-evidence.

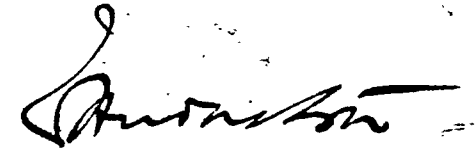
(Signed) R. R. COTTON, Civil Judge.

(True Copy.)

(Signed) V. H. LEVINGE, Collector.

The Board observe that the case is one of those in which Mr. Dale will appear on behalf of Government at the hearing before the Madura Court. The defence will of course be proceeded with on all the grounds originally selected by Mr. Dale. The fact that an appeal has been advised will not interfere with the defence under the orders remanding the suit for full hearing.

(True Copies and Extract.)



Secretary.

To V. H. Levinge, Esq., Collector of Madura.

„ C. Dale, Esq., Government Pleader, with 2 enclosures

„ J. D. Sim, Esq., Secretary to Government, R. D., for information,

Exd. J. Wright.

18019th Nov 1861 No 183-18

Re: *Contd to Enquiry*
of 29th Oct 1861 No. 21
This

Recd 1863. Department
of Govt for S. I.
No. 2032

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 21st August 1863.
Despatched 26th —
Received 27th —

No. 5,239.

Observing that the Government Pleader will
appear on behalf of Government at the hearing
of Appeal Suit No. 58 of 1861, remanded to the
Madura Civil Court by the High Court.

1893494.

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1893494.

16th 1861
1861-1866.

Remanded with reference to the
Proceedings of 22nd Aug 1863
1861-1866.

From 24th Dec 1863
1863-1866.

1861-1866.