

MADRAS RECORD OFFICE.

Government of Madras.

Rename DEPARTMENT.

G.O. No. /381

Press
~~Mis.~~

46.47

Dated

3 - 8 - 1864.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
3rd August 1864.*

No. 46. Read the following Proceedings of the Board of Revenue, dated 27th July 1864, No. 4,734.

Read the following letters:—

From the Collector of the Kistna District, dated Guntoor, 29th June 1864, No. 118.

With reference to the Proceedings of the Board of Revenue, No. 6,879, dated 27th October

* With Judgment.

1863, I have the honor to submit copy of the Decree* of the Civil Court of Guntoor in Original Suit No. 30 of 1863 on its file, from which it will be observed that the Court awarded to the Plaintiff 3 Koontas, 3 Vissums, and 15 Piras of land, and pronounced him entitled to any Lunka that may hereafter be formed on No. 3 within the limits of the former site of the Inám, with proportionate costs of the suit, dismissing his claim to the remaining 10 Koontas, as he was unable to produce evidence as to the precise locality of that parcel. I request you will be good enough to inform me if it is the wish of the Board to appeal against the decision of the Court in this case.

ENCLOSURE No. 1.

Decree of the Civil Court of Guntoor, the 14th May 1864.

Present.—W. ELLIOT, Esq., Judge.

Original Suit No. 30 of 1863, on the file of the Civil Court of Guntoor.

Kanukolanu Nagana, Plaintiff. Pleader, Kurumadali Somarazu Potturi Nityanandam,

versus

- 1st. Collector of Kistna District,
- 2nd. Kuraku China Luktchmena,
- 3rd. Jonnakarti Dondapa,
- 4th. Survisetti Kristnammah,
- 5th. Kuraku Peda Luktchmudu,
- 6th. Naralasetti Papya,
- 7th. Prabbala Gavarappa,
- 8th. Chamarti Rajanah,
- 9th. Vissamsetti Potanna,
- 10th. Survisetti Soobaya,
- 11th. Do. - Ammya,
- 12th. Appekutla Chinna Tataya,
- 13th. Bogadi Achanna,
- 14th. Bachu Narusu,

} Defendants.

} 1st Defendant's Pleader, Tolati Purushottamaya.

This suit was brought for the recovery of a piece of land known as a "Lunka" formed in the Kistna river, measuring 14 Koontas.

Decree.

The Court award to Plaintiff the lands Nos. 4 and 5 on the Commissioner's plan, measuring 3 Koontas, 3 Vissums, and 15 Piras, and pronounce him entitled to any "Lunka" that may hereafter be formed on No. 3 with proportionate costs of suit, dismissing his claim to the remainder.

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.

Costs incurred by Plaintiff in Original Suit.

	Rs.	A.	P.
1 Stamp paper for a Vakalutnamah	0	8	0
2 do. for a Plaint together with an additional sheet	2	8	0
Batta for serving process	2	4	0
	5	4	0

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Costs incurred by Plaintiff in this Court.

	RS.	A.	P.
1 Stamp paper for a Vakalutnamah	0	8	0
Batta for serving processes	3	6	0
Do. for witnesses	10	4	0
Do. for a Commissioner and a Peon	8	2	0
Stamp paper for a Petition	0	8	0
Pleader's fee	1	6	5
	24	2	5
	29	6	5

Be paid as follows, viz.,

To be paid by Defendant to Plaintiff	11	0	6
By Plaintiff to Defendant	18	5	11

Costs incurred by 1st Defendant in this Court.

2 Stamp papers for a Kyfayat	1	0	0
Batta for serving processes	7	14	0
Do. for witnesses	44	8	0
Pleader's fee	1	6	5
	54	12	5

To be paid as follows, viz.,

To be paid by Plaintiff to 1st Defendant	34	3	9
To be borne by 1st Defendant	20	8	8

Given under my hand and the seal of the Court at Guntoor, this 14th day of May 1864.

Delivered in Court this 14th day of May 1864.

(Signed) W. ELLIOT, Civil Judge.

(True Copy.)

(Signed) G. THORNHILL, Collector.

ENCLOSURE No. 2.

Original Suit No. 30 of 1863.

JUDGMENT.

1. This suit was brought for the recovery of a piece of land known as a "Lunka" formed in the Kistna river measuring 14 Koontas.

2. The Plaintiff states that his ancestors acquired one Cutty of Inám land at Machaveram in the Divi Purganah, half of which was in two separate parcels, one consisting of 10 Koontas, and the other of 6 Koontas. That 14 Koontas and six Piras had been washed away by the river, that from Fusly 1248 to 1262 (1838-39 to 1851-52), a Lunka of 10 Koontas and in 1269 (A. D. 1859-60), a Lunka of 2 Koontas were formed in the sites of his former holding, which the villagers preventing him from taking possession of, complained to the Collector of the District on the 5th of February 1857, and that Officer after some inquiry finally refused on the 3rd of October 1861, to give him possession; that the Board of Revenue on his appeal, confirmed the Collector's decision on the 27th of May 1861.

3. The 1st Defendant, the Collector, admits that prior to 1806, the Plaintiff's ancestors were entitled to one Cutty of Inám land in the said village, half of which the Plaintiff has held in possession; that of the other half which was dry land, a considerable portion had been washed away previous to 1806, in which year there only remained 8 Koontas, 13 Vissums, and 11 Piras, of which all, save 1 Koonta, disappeared between the years 1806 and 1838, the said single Koonta being yet in Plaintiff's possession.

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4. The 1st Defendant then denies the Plaintiff's claim on the ground that the land now claimed belongs to Cottalunka, or recently formed alluvium which is on the left bank of the river, whilst the village Machaveram in which Plaintiff held the Inám, lies on the right bank; that no portion of the said Lunka was proved (*formed*) on the former site of the Plaintiff's Inám; the 1st Defendant further asserts that the Plaintiff's claim is further barred by the Law of Limitation.

5. The issues to be determined in this suit are,

1st.—Whether the land claimed has been formed on the site of Plaintiff's former Inám holding.

2nd.—Whether the Plaintiff's claim is barred by the Statute of Limitation.

6. The Plaintiff asserts that his dry land consisted of two parcels, one consisting of 10 Koontas, and the other of 6 Koontas; but he is unable to produce good and satisfactory evidence as to the precise locality of that parcel consisting of 10 Koontas; the oral evidence adduced by him is not only unsatisfactory, but is also unworthy of credit. Regarding, however, the former site of the other parcel consisting of 6 Koontas, no other evidence is necessary, as a portion thereof is still visible, and Plaintiff has been in possession as admitted by the 1st Defendant. The Court therefore deputed a Commissioner to measure the land now in Plaintiff's possession, as well as the bed of the river to the south thereof to complete the 6 Koontas and furnish a plan which was done. From this, it appears that on the former site of Plaintiff's Inám of 6 Koontas, a Lunka was formed (Nos. 5 and 4) an excess of 3 Koontas (No. 3) full 13 Vissums still appear to be submerged or are not visible: (No. 2) 3 Vissums forms a pathway on the river bank, and (No. 1) consisting of 1 Koonta and 10½ Vissums is in Plaintiff's enjoyment.

7. Had a new Lunka further down the river been discovered to consist of either 10 or 6 Koontas, the Plaintiff could have no possible right to them, because it would be impossible for him to show that any portion of them ever belonged to him; but there can be no doubt that he is entitled to any Lunka formed or re-formed on the acknowledged site of his former Inám holding.

8. The 1st Defendant has not incontestibly shown that the Plaintiff's claim to the Lunka formed on the above-said 6 Koontas pertaining to the Plaintiff's Inám is barred by the Law of Limitation. The order of the Collector refusing to put the Plaintiff in possession was dated in 1861, out of which refusal the cause of action arose.

For the foregoing reasons, the Court award to the Plaintiff the lands Nos. 4 and 5 on the Commissioner's plan measuring 3 Koontas, 3 Vissums, and 15 Piras, and pronounce him entitle to any Lunka that may hereafter be formed on No. 3 with proportionate costs of suit dismissing his claim to the remainder.

14th May 1864.

(Signed) W. ELLIOT, Civil Judge.

(True Copy.)

(Signed) G. THORNHILL, Collector.

From the same Officer, dated Masulipatam, 7th July 1864, No. 128.

1. With reference to your telegram of 4th instant, I have the honor to forward herewith a translation* of the Plan alluded to. This was sent to my Office by the Deputy Tahsildar of Divi Parganah, and said to be a true copy of the Plan prepared by the Court's Commissioner.

* With original in Telugu.

*Proceedings of the Madras Government, Revenue Department,
3rd August 1864.*

2. The Court being closed for the recess, an attested copy of the Commissioner's Plan cannot be obtained at present. If required, I will get it as soon as the Court is re-opened, which will be on the 16th instant.

ENCLOSURE No. 1.—Plan.

1. Ordered to be submitted for the decision of Government, with reference to Government Order, dated 21st August 1863, No. 1,536, Revenue Department, sanctioning the defence of the suit.

2. The Board find the copy of the Plan of the ground sent by the Collector to be not only generally of the rudest description, in which respect it doubtless corresponds exactly with the original in the Court's records, but to be all deficient in the numbers by which in the decree the Court designates what has been therein awarded to the Plaintiff.

3. The Board are therefore scarcely in a position to form an opinion as to how far the judgment of the Court is reasonable, and the Collector has expressed no opinion on the points as he should have done.

4. The Board, however, understand the Court to have found as matter of fact, that the Lunka land awarded to Plaintiff has been formed on the spot formerly occupied by Plaintiff's Inám land, and that the new formation is less in extent than the land lost by Plaintiff by revision. The Court, moreover, declare that there can be no doubt that Plaintiff is entitled to any Lunka formed or re-formed on the acknowledged site of his former Inám holding.

5. This fairly raises the issue. Is Plaintiff legally so entitled, when the lunka or island is formed in deep water on a navigable river, and is not an accretion to land already in Plaintiff's possession? If not, and the Board believe that the Law on the question will not support the Judge's dictum, then from the importance of the question involved, the Board consider that however equitable the decree may at first sight appear, its correctness in law should be tested by an appeal to the higher Court.

6. The Board believe the law on the question to be that the bed of all navigable streams belongs to the Crown, and that formations by deposit in mid stream, also belong to the Crown, by reason of their being as it were accretions to that submerged bed which belongs already to the Crown, in the same manner that accretions on the bank belong to him who owns the adjacent dry land. If this be so, then in view of the frequent and perplexing disputes constantly arising between villages and individuals as to the right to newly formed islands in the Kistna and Godavery rivers, the Board deem it highly desirable that the fact of such lands being unquestionably at the disposal of Government by law, should be distinctly laid down and widely promulgated. It may however be a question whether the previously existing property in land is lost by the previous owner when such land is submerged, and has become the river bed, and the Government will probably think fit to refer the case for the opinion of the Government Pleader, who has already advised in the matter of the original defence. The decree is dated 14th May 1864. The Collector will report when the period for appeal will expire.

No. 47:

ORDER THEREON, 3rd August 1864, No. 1,381.

Miscellaneous.

Resolved that the opinion of the Government Pleader be requested as to whether an appeal to the High Court is advisable.

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

Revenue Department

N^o 1381-

*Proceedings of the Madras Government
Under date the 3rd August 1864.*

*Read the following
Proceedings of the Board of
Revenue.*

*Submitting the decree
passed in O. S. N^o 30 of 1863,
forwarded by the Collector of
the Kistna District with
the Board's opinion that the
correctness of the law as laid
down by the Decree should be
tested by an appeal to the higher
Court.*

*(Here enter 27th July 1864
N^o 4734.)*

Int

*Resolved that
the opinion of the Govt
Pleader be requested as to
whether an appeal to the
High Court is advisable.*

*3. Govt Pleader with one Plan
Despatched*

14 Bd of Rev.

2/8/64

*Proceedings of the Madras Government, Revenue Department,
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*3. Govt Pleader with one Plan
Despatched*

14 Bd of Rev.

2/8/64

MEMORANDUM.

32

to return immediately

Requested for reference the undermentioned papers on the subject of *the*
original & translation of a plan
submitted to fort with Board Pro.
927th July 1864 No 4737 - in Suit No
1763 filed in the Civil Court of
Funboor

REVENUE BOARD OFFICE,

4th Augth 1864

To

The Manager
Post Office
P.O.

Registrar.

A. A. A.

Revenue 1864 No 4737
No of Govt for 1864

No 1331

22nd of the 1864 No 4737
No 1331

22nd of the 1864 No 4737
No 1331

22nd of the 1864 No 4737
No 1331

Letter to the...

No 1331