

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2127	Press ~~Mis~~
142-143	
Dated	7-9-1865

Not to be folded or roughly handled

4

*Proceedings of the Madras Government, Revenue Department,
7th September 1865.*

No. 142. Read the following Proceedings of the Board of Revenue, dated 22nd August 1865, No. 8,102.

Read the following letter from J. FRASER, Esq., Collector of the Godavery District, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated Cocanada, 24th July 1865, No. 154:—

SIR,
1. In reply to Government Order, dated 16th March 1865, No. 573, communicated with the Board's Proceedings of the 30th idem, I have the honor to report as follows.

1. Letter from the Civil Judge, dated 4th April 1861, No. 61.
2. Do. to the Civil Judge, dated 13th April 1861, No. 119.
3. Proceedings of the Civil Court, dated 26th June 1861.
4. Translation of an order issued to the Government Vakeel by the Collector, dated 17th July 1861, No. 129.
5. Court's Proceedings, dated 31st July 1861.
6. Letter to the Civil Court, dated 25th November 1861, No. 399.
7. Civil Court's Proceedings, dated 18th December 1861, and its enclosure (Proceedings of the Sudder Court, dated 14th December 1861).
8. Letter to the Civil Court, dated 27th February 1862, No. 81.
9. Proceedings from the Civil Judge, dated 19th February 1863.

2. With reference to the first part of paragraph 2 of the above Order, I have the honor to submit copies of the correspondence noted in the margin, to shew what steps the Courts have taken from time to time after 30th October 1858, the date of the Decree of the late Sudder Court, to determine the extent of the land, and the amount of the proceeds to be made over to the Plaintiff under that Decree.

3. The portion of the lunka decreed to the Plaintiff was delivered by the Court to Janikayya, widow of the Plaintiff, in the month of February 1863, for cultivation for Fusly 1273.

4. Janikayya again presented a petition in the Court, on the 1st March 1864, for the proceeds of the land. The Judge again instituted some inquiry regarding the revenue derived from the lunka from Fusly 1255 to Fusly 1272, and adjudged the payment of the sum of Rupees 22,000 on the 18th August 1864. Warrant of the Court for the payment of the money, issued on the 23rd August 1864, was served on me on or about the 4th September.

5. It having appeared to me that the Judge's calculation was not in accordance with the Decree of the Sudder Court, I issued an order, on the 6th September, to the Government Vakeel, to apply to the Court for an authenticated copy of the Court's order; he did so on the 13th; the Court granted it on the 12th October, and it reached me on the 17th through the Vakeel, and on the same day I referred the matter to the Board of Revenue, requesting them, if necessary, to appeal to the Sudder Court, and in the meantime I applied to the Court to postpone the execution of the warrant pending an answer from the Board. Their reply, dated 27th October 1864, No. 7,104, intimating that they see no reason to complain of, or object to the orders of the Court, reached me on the 14th November, and I paid the money in the Court on the 18th idem.

6. The above explanation is a reply to the fourth paragraph of the above order.

7. The data on which the sum of Rupees 22,000 has been awarded are mentioned in paragraphs 2 and 3 of the Court's order, dated 18th August 1864, copy of

which is herewith submitted. The Court have determined the award to the Plaintiff by apportioning the assessment collected on the whole lunka from Fusly 1255 to Fusly 1272, upon the extent of land cultivated for Fusly 1273, in each of the Government's and Plaintiff's portions of the lunka. The revenue from Fusly 1255 to 1272, amounted to Rupees 29,001-12-0. The extent of land cultivated in the Plaintiff's portion, in Fusly 1273, was 204 acres and 2 cents.; and that cultivated in the Government's portion was 19 acres and 31 cents., the above amount, being apportioned, the Plaintiff's share is Rupees 26,494-2-4, and the Government's share is Rupees 2,507-9-8. I considered that this mode of calculation was objectionable, because the extent of land cultivated in Fusly 1273 in the Plaintiff's portion was much in excess of what had been cultivated in the previous Fusly, as the Kurnum's accounts will shew; and I instructed the Government Vakeel to plead to this effect; but he, it appears from the accompanying copy of the Court's Proceedings, dated 22nd July 1864, simply agreed before the Court to the Judge's calculation. On my calling upon him for an explanation why he did so, he informed me that the Court having determined to adjudge the proceeds upon the cultivation of Fusly 1273, although he pleaded that it was not proper to do so, he merely submitted to what the Court had done. He could not do otherwise. In order to insist upon the Court adjudging the proceeds for the past years upon the cultivated area in those Fuslys, I could not produce accurate accounts shewing the real extent of land cultivated in each portion of the lunka; as no such accounts were kept, and the boundaries separating the Plaintiff's portion agreeably to the Court's decree, were only placed by order of the Court at the end of Fusly 1272.

8. With reference to paragraph 3 of the Government Order above quoted, I beg to state that I agree with the Board in thinking that that part of the Decree of the late Sudder Court, to which the Government call the Board's attention, does not mean that the Plaintiff is not to receive the proceeds of the land decreed to her for any longer period than the authorities might keep possession of such land; but, as I have already stated in my letter, No. 264 of the 17th October 1864, I should infer that by rate is meant that sum for each year separately. The Plaintiff claimed the proceeds at the rate of so much for each year. She is not to receive more than that which she claimed for her portion, although the assessment collected thereon

• Fusly 1255	Fusly 1264
" 1259	" 1265
" 1260	" 1266
" 1262	" 1267
" 1263	

may have been higher. But she is not entitled to receive what she claims in those Fuslys* in which the assessment collected thereon is less than the amount of her claim. The award adjudged by the Civil Judge of the sums claimed by

the Plaintiff in some years, although the assessment collected is below it, is, in my opinion, not proper.

9. The Judge has disallowed the Government claim for commission on account of the expenses of management as decreed by the late Sudder Court, on the ground that it was wrongful appropriation of money due to another, no extra establishment having been entertained. I think that the Civil Judge ought not to have so decreed when the appellate authorities decided that the Government dues should be deducted. I applied for Government dues at the rate of five per cent.,

which is the average of the charges of the District for several years. As particularized in the statement which accompanied my letter, No. 264 of the 17th October 1864, and which was prepared according to the views of the late Sudder Court, and according to the Civil Judge's method of calculating proceeds of past years upon the cultivated area of Fusly 1273, the Plaintiff should receive only Rupees 19,490-13-5, the amount in last column of the statement.

10. As the Board have not considered it necessary to appeal, and have authorized me in their Proceedings, No. 7,104, dated 27th October 1864, I at once paid the sum of Rupees 20,000 into the Court to be paid to the Plaintiff.

11. In reply to the Government Order, No. 353, dated 17th February 1865, I have the honor to state the explanation given above in paragraph 2, will shew why the settlement of the claim has been so long delayed.

12. The Plaintiff originally claimed about ten Putties of land in a lunka in the Godavery opposite to his own village of Comaraz lunka within certain boundaries, and the late Sudder Court were of opinion, in their Decree in Appeal Suit No. 89 of 1856, that the Plaintiff is entitled to whatever land has been formed in the bed of the river opposite to his own lands, and they accordingly awarded to him so much of the lunka in dispute as lies south of the line running from No. 1 to No. 2 in the plan.

Herewith sent.

13. The Civil Judge has, agreeably to the above resolution, marked out the land for the Plaintiff, and it is found, on measurement, to be 25½ Putties or 204 acres.

14. The reason for awarding more than 13,000 Rupees, originally claimed by the Plaintiff, is principally owing to the land having been kept out of his widow's possession for nine years after the complaint was made in 1854, up to which year she claimed Rupees 13,000 as past proceeds. She also claimed, in her original complaint, the proceeds of the land in dispute for subsequent years, at the rate of 1,000 Rupees a year.

ENCLOSURE No. 1.

ABSTRACT.—Copies of correspondence between the Civil Judge and the Collector regarding a suit.

ENCLOSURE No. 2.

ABSTRACT.—Copies of Court's orders, dated 22nd July and 18th August 1864.

1. Submitted to Government, with reference to their Orders No. 353, dated 17th February 1865, and No. 573, dated 16th March 1865.

2. The points upon which Government have called for report in the matter of the Decree of the late Sudder Court in favor of the Proprietrix of the Gopalapooram Estate, (widow of the Plaintiff in a Suit No. 83 of 1856,) in which the Plaintiff claimed compensation for the loss of crops on that portion of the lunka which was ultimately made over to her, are—

First.—As to the delay which took place on the part of the Civil Court in settling the amount of the proceeds to be paid to the widow under that Decree dated

30th October 1858; and the further delay of three months on the part of the Collector in giving effect to the Civil Judge's award determined in his order, dated 18th August 1864.

Second.—As to the fact of the award being both in land and money, so much beyond Plaintiff's original claim, (viz., 10 Putties and 13,000 Rupees,) when the Sudder Court in their Decree distinctly stated that, "In making this award, the Civil Judge will, however, be careful not to adjudge to the Plaintiff proceeds for a longer period, or at a higher rate than claimed by him in his plaint."

3. As regards the first point, the Collector submits certain correspondence, shewing the steps which the Civil Court took in determining the award; and from this correspondence it appears that from 29th November 1859, (or more than a year after the date of the Sudder Court's Decree,) up to 13th April 1861, the Civil Judge was in correspondence with the Registrar of the Sudder Court, and the Collector, touching the original survey map upon which the Sudder Court's Decree was passed, and which was not forthcoming upon any of the public records.

4. Subsequently in Proceedings of 26th June 1861, the Acting Civil Judge, Mr. Sullivan, resolved to adopt in the place of the missing map two others, viz., one which the Plaintiff's widow filed with her Miscellaneous Petition praying for execution of the above-mentioned Decree; and another "which appears to have been given into the Civil Court by the Plaintiff with the fair and missing one," the former map having been declared on solemn affirmation by the Survey Goomastah, who prepared the original and missing map, to be sufficient for all essential purposes; and the latter to be an accurate rough copy prepared by the same Goomastah, of the original missing map.

5. A reference on this point was next made to the Collector and the Sudder Court, and it was decided that the settlement should be proceeded with on the maps approved by the Civil Court in substitution of the missing one, but that as suggested by the Collector the parties to the suit should be allowed a hearing if they had any objections to urge to such settlement, before a final award was made.

6. Nothing appears to have been done by the Civil Court between the 27th February 1862, the date of the Collector's last letter in the correspondence entered in the margin of the preceding paragraph, and the 19th February 1863, when the Civil Judge in his proceedings of that date directed that the Nazir should repair to the spot in dispute, and, in conjunction with the Tahsildar, (to whom the Collector was to send the necessary orders,) set out, in accordance with the definite instructions of the Sudder Court, the northern boundary of that portion of the lunka which the Sudder Court had awarded to the Plaintiff; and no time appears to have been lost in fixing the boundary, as the Collector states that the portion decreed to the Plaintiff was delivered to his widow by the Court in the same month for cultivation for Fusly 1273.

7. The delay of three months, which occurred in the payment by the Collector of the proceeds decreed, was caused by certain objections raised by the Collector

to the mode of calculation adopted in settling the amount of the proceeds, and which necessitated a reference to the Board, as explained in paragraphs 4 and 5 of his letter above recorded.

8. Government will perceive, from the foregoing explanation, that nothing could have been done before February 1863, (when only the boundary line was fixed,) towards determining the amount of proceeds to be handed over to the Plaintiff's widow.

9. As regards the amount of the award itself, which is the second point on which further report is required, the quantity of land handed over to the Plaintiff's widow, 25½ Putties, is in accordance with the boundary line fixed by direction of the Sudder Court.

10. The increased amount of mesne profits now paid, viz., Rupees 22,000, compared with that originally claimed, Rupees 13,000, is owing, as already explained by the Board in their Proceedings No. 1,265, dated 4th March 1865, to the fact that it includes the proceeds of the nine years subsequent to Fusly 1263, during which the Plaintiff and his widow were still kept out of the possession of their lands; and the Collector agrees with the Board in their opinion expressed in paragraph 2 of their Proceedings No. 1,776, dated 30th March 1865, that that part of the Decree of the late Sudder Court, to which the Government refer in paragraph 3 of their Order, No. 573, dated 16th March 1865, does not mean that the Plaintiff or his widow is not to receive the proceeds of the land decreed for any longer period than the authorities might keep possession of such land.

11. From the Court's orders, dated 22nd July 1864, and 18th August 1864, copies of which are now furnished by the Collector, it appears that the Vakeels on both sides agreed to have the mesne profits divided in the proportion which the cultivable land decreed to the Plaintiff might bear to that part of the lunka which belong to Ravallupullem, and that from the Jummahbundy accounts, which the Collector furnished to the Court for Fusly 1273, it was ascertained that while the cultivable land in the whole lunka was acres 223-33-0, that portion which had been decreed to the Judgment Creditor was acres 204-2-0; so that, as the actual collections for the whole lunka amounted to Rupees 29,001-12-0 for the whole period, the share of the widow would be Rupees 26,494-2-3½ according to the mode of calculation agreed upon. But the Civil Judge awarded only 22,000 Rupees "as the claim was for that amount" and no more; and the Board saw no sufficient reason to object to the order of the Court which appears to have had in view, while making the award, that part of the late Sudder Court's Decree referred to in the second clause of paragraph 2 above touching the rate at which Plaintiff claimed the proceeds, viz., Rupees 1,000 per annum.

ORDER THEREON, 7th September 1865, No. 2,127.

No. 143.

Land Revenue.

Ordered to be recorded.
(True Extract.)

(Signed) J. GROSE,
Acting Under Secretary to Government.

To the Board of Revenue.

17 July / 65 n: 349-350
16 March n-n-258-259

Rev. 1865. Department
Pro. of Govt for Sept.

No. 2363.
PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 22nd August 1865.
[Signature]
Rev. 264
23-05-05

No. 5,102.

Submitting with remarks letter from Col-
lector of the Godavery District forwarding ex-
planation on certain points connected with
Decree of late Sudder Court in Suit No. 69 of
1850, instituted by Proprietrix of Gopaul-
poorum Estate for obtaining compensation for
loss of crops.

82-2122
RECORDED

14 Sd. Office of the Secy. to the Govt.

C. 142 & 143.

72 26/10/65 L