

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 223	Press Mis.
93-94	
Dated	2-2-1865.

Not to be folded or roughly handled

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 223	Press Mis.
93-94	
Dated	2-2-1865.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
4th February 1865.*

No. 93. Read the the following Proceedings of the Board of Revenue, dated 12th January 1865, No. 188.

Read the following letter from G. L. MORRIS, Esq., Collector of South Canara, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Mangalore, 23rd December 1864, No. 206 :—

1. With reference to the Proceedings of the Board of Revenue, dated 29th June 1863, No. 3,932, in which the Board wished to have a further report regarding Original Suit No. 45 of 1861, I have the honor to state that since Mr. Webster addressed the Board under date the 19th June 1863, the Plaintiff appealed against the District Moonsiff's decision, and the Suit has been dismissed in appeal.

2. Translations of the original Judgment of the District Moonsiff's Court of Mangalore, of the Appeal preferred by the Plaintiff against it, and of the decision of the Principal Sudder Ameen's Court in Appeal, are herewith forwarded.

3. As the Plaintiff is a very obstinate man, and has not yet appeared before me with a view to a compromise, which he would naturally have done if he were inclined to avail himself of the Collector's offer to give him an equivalent for his Kumak land, it is very probable that he will appeal to the High Court against the Principal Sudder Ameen's decision, and I would, therefore,

To Board, 25th August 1854, No. 90, and enclosures.
Board's Proceedings 22nd S pt. 1854, Revenue Department.
To Board, 20th March 1861, No. 39, and enclosures.
Board's Proceedings, 5th April 1861, No. 1,740.
Do. do. 9th do. do. 1,853.
To Board, 9th May 1861, No. 72, and enclosures.
To do. 19th June 1861, No. 91, and enclosure.

suggest that the papers now forwarded, as well as the previous correspondence on the subject of this suit, the dates of which are quoted in the margin for facility of reference, be placed in the hands of the Government Pleader, in order that he may be prepared to defend the suit in

the event of a Special Appeal being preferred by the Plaintiff before the High Court.

4. The facts of the case have been so fully laid before the Board in the former correspondence, that I do not now reiterate them. I however deem it necessary to furnish the Board, for their own information, as well as that of the Government Pleader, with translations of the several

• Enclosures Nos. 4 to 14.

documents* adduced in evidence in Original Suit No. 22 of 1854, and referred to in the

Decree passed by the Subordinate Judge in that Suit, the execution of which, in its strictest sense, it is the Plaintiff's endeavour to enforce.

Enclosures 15 to 17.

To these documents I have added a few Extracts from the Proceedings† of the Courts, connected with the execution of the said decree,

† 1. Dated 2nd July 1858.
2. " 1st Nov. "
3. " 29th May 1860.

and which I find were not previously communicated to the Board.

ENCLOSURE No. 1.

JUDGMENT.

Court of the District Moonsiff of Mangalore.

No. 45 of 1861.

Present.—JOSE CAETANO COELHO.

Manjappa Shetti, Plaintiff.

By Vakeel Venkatramanaya.

versus

James Fraser, Esq., late Collector of South Canara, and two others, } Defendants. { The 1st and Supplemental third Defendant by Vakil Timmapaya.

1. The Plaintiff states that a piece of land, producing thatching grass of the value of Rupees 15, was given over to him in lieu of one belonging to himself, which had been taken up for a public road; that this land having along with some other land been obtained on Durkhast by the 2nd Defendant, he filed a suit against him, as also against the then Collector, Mr. Maltby in No. 22 of 1854, and obtained a decree awarding him a portion of the ground obtained by the 2nd Defendant

on Darkhast, capable of yielding the aforesaid produce; that the Sub-Judge, however, in consequence of the objections started by Mr. Fisher, the succeeding Collector, declined to carry out the execution of the said Decree, and directed Plaintiff to accept some other land in lieu of the one adjudged to him; and that the Plaintiff has, therefore, brought the present suit in order to obtain possession of the above land according to the terms of the Decree.

2. In his statement the 1st Defendant pleads that the land in question being in the possession of another party, and having been improved by him, other land was tendered to Plaintiff in lieu of it; that when this question was brought before the Court by the Plaintiff suing out the execution of the Decree in Suit No. 22 of 1854, the Court decided that he could not be put in possession of the land claimed, and that the one tendered to him in lieu was sufficient; and that as the order passed by the Civil Court on appeal in this case is final under Act VIII of 1859, the Plaintiff is debarred from bringing the present action; and that the 1st Defendant is still prepared to grant Plaintiff a suitable equivalent in land.

3. The 2nd Defendant failed to appear.

4. It appears from the statement of the 1st Defendant that the land in dispute was not made over to the Plaintiff in consequence of his own refusal to receive it when tendered in lieu of the one taken up from him for the public road; and there is nothing to support his statement that it was in his possession before it was made over on Durkhast to the 2nd Defendant. On the contrary, the Plaintiff's own statement, in paragraph 5 of his plaint, that the 2nd Defendant used endeavours to prevent the land being allotted and made over to him, clearly shews, as alleged by the 1st Defendant, that it never came into his possession. The Collector was right in refusing to make over the said land to Plaintiff, after it had been declined by him, and it had been given over to the 2nd Defendant on Durkhast, and had been improved by the latter. If the error which existed in this respect in the Decree in Original Suit No. 22 was rectified by an order passed during the execution of the said decree, instead of by a formal revision thereof, it can only be considered that that error was not rectified in a legal manner; but it cannot be supposed that the Plaintiff has suffered any injustice thereby. If the Plaintiff considered that he was aggrieved by the order passed by the Sub-Judge during the execution of the Decree, his redress lay in an appeal under Section 283 of the Criminal Procedure Code; but he was by no means competent to bring a separate Suit. As the Plaintiff admits that the order passed by Subordinate Judge was confirmed by the Civil Court on his appeal, and as the order passed by the Civil Court is final under the Section above quoted, the Court is of opinion that the Plaintiff's claim is inadmissible, and accordingly dismisses it with costs.

(Signed) J. C. COELHO,
District Moonsiff.

Dated 18th February 1863.

(True Copy.)

(Signed) J. G. THOMPSON,
Officiating Civil Judge.

(True Translation.)

(Signed) G. L. MORRIS, Collector.

ENCLOSURE No. 2.

Appeal Suit No. 188.

Memorandum of Appeal.

Original Suit No. 45 of 1861.

Plaintiff

versus.

Defendant.

Manjappa Shetti, grandson of Padma Shetti,
residing at Jeppoo Village in Mangalore
Talook.

1. James Fraser, Esq., Collector of South Canara.
2. Right Reverend Fre Miguel Antonia De S'Lues Gonzaga, Roman Catholic Bishop, residing at Mangalore.
3. A. P. Hodgson, Esq., Acting Collector of South Canara

The District Moonsiff of Mangalore having, on the 18th of February, dismissed a Suit brought for the recovery of a piece of land, producing Rupees 15, together with Rupees 60, its produce, the Plaintiff appeals to the Civil Court of the Zillah of Mangalore, adding to his original claim a further sum of Rupees 30, being the produce of two years more, for the following reasons, namely:—

I. The decision of the Moonsiff is opposed to the Circular Order of the Sudder Court, dated 17th August 1860, in which it is clearly laid down that a Plaintiff is entitled to bring an action to enforce the execution of a decree if an order is passed during its execution contrary to either the award of the decree, the law, or the regulations; and the above Suit was brought by me under the provisions of this order.

II. The land in question was decreed to me in Suit No. 22 of 1854, and the decree passed in that Suit is in force, no appeal having been preferred against it. There was no reason for an order being passed, depriving me of the benefit of the said decree on the ground of the improvements made by the 2nd Defendant on the said land after I had filed the above Suit.

III. It was neither on my Petition, nor on my appeal, nor was it with my consent, that an order was passed directing that I should accept other land in lieu of the one adjudged to me; and even the doing so was contrary to the terms of the decree.

IV. It was in consequence of the 2nd Defendant having tendered a Durkhast, and taken possession of the whole of the plain, including the piece of land in dispute, which I was enjoying as previously made over to me by the Collector, that I was led to file the Suit No. 22 of 1854; and it is a mere assumption on the part of the Moonsiff that I was not previously in possession of the said land.

V. I, therefore, pray that the original decree may be reversed, and a fresh decision passed in accordance with the Plaint.

Dated 25th March 1863.

Signature of MANJAPPA SHETTI.

Appeal Suit No. 188 of 1863.

Filed this 8th April 1863.

(Signed) R. CHATFIELD,
Civil Judge.

(True Translation.)

(Signed) G. L. MORRIS,
Collector.

ENCLOSURE No. 3.

Judgment of the Principal Sudder Ameen's Court of the Zillah of Mangalore.

Present.—Strinivassa Row.

Appeal Suit No. 188 of 1863.

Manjappa Shetty, Plaintiff, Appellant.

By Vakeel, Bijur Ramachendraya.

James Fraser, Esq., and three others, Defendants, Respondents.

4th Respondent, by Vakeel Suba Row.

1. This was an action brought for the recovery of a piece of land producing 15 Rupees, worth of thatching grass, together with Rupees 60, its produce, agreeably to the terms of a decree passed in Original Suit No. 22 of 1854, the Sub-Judge having declined to carry out the execution of the said decree, and directed Plaintiff to accept some other land in lieu of the one ordered in the said decree to be made over to him by 1st Defendant.

2. The 1st Defendant in his Statement pleaded that the order passed by the Civil Court during the execution of the decree No. 22 of 1854 declining to put Plaintiff in possession of the land claimed by him on the ground of its being in the possession of another party, and of its having been improved by him, and declaring that the one tendered in lieu of it was sufficient, being final, the Plaintiff was debarred from bringing a fresh action for the same, and that the 1st Defendant was still prepared to give Plaintiff a suitable equivalent in land.

3. The 2nd Defendant allowed the Suit to be tried *ex parte*.
 4. The District Moonsiff of Mangalore dismissed the Plaintiff's suit with costs, as untenable on the ground that the order passed by the Civil Court during the execution of the decree in Original Suit No. 22 of 1854, was final under Section 233 of Act VIII of 1859.
 5. Dissatisfied with this decision, the Plaintiff appeals for the following reasons:—
 - I. That the Suit instituted by him is in accordance with the Circular Order of the Sudder Udalt, dated 17th August 1860.
 - II. That the decree passed in Original Suit No. 22, awarding the plaint land to Plaintiff, is in force without an appeal; and that there was no reason for an order being passed depriving him of the benefit thereof on the ground of the improvements made by the 2nd Defendant on the land after the above Suit had been filed.
 - III. That it was not with his consent that an order was passed directing him to accept some other land in lieu of the one sued for, and even the passing of such an order was opposed to the decree.
 6. The Principal Sudder Ameen having perused the whole of the record of this case, and that of the Original Suit No. 22 of 1851 in which the plaintiff had obtained a decree in his favor, as also the proceedings connected with the execution of the said decree, and having heard and given due consideration to what was alleged by the Vakils on both sides, is of opinion that the decision of the Lower Court is to be upheld.
 7. The Subordinate Judge having, in consequence of certain objections raised by the Collector after the plaint land had been made over to Plaintiff in execution of the decree passed by the Subordinate Court in Plaintiff's favor, in Original Suit No. 22 of 1854 above alluded to, issued an order cancelling the former proceeding, and directed Plaintiff to accept some other land in lieu of the one adjudged to him, and refused to execute the decree in its terms; the Plaintiff has brought this Suit for the recovery of the land and its produce, in accordance with the terms of the said decree.
 8. Before entering into the merits of this case, the Principal Sudder Ameen observes that the first point to be determined is, whether the Plaintiff was competent to bring this suit.
- On a perusal of the record, the Principal Sudder Ameen observes that the Plaintiff appealed to the Civil Court in No. 326 of 1860 against the order passed by the Sub-Court, and that this order was confirmed by the Civil Court in appeal. The Plaintiff has, therefore, already adopted the only course that was open to him in order to obtain redress from an order of the above nature passed during the execution of a decree, and he was not competent, under the provisions of Section 253 of the Civil Procedure Code, and Section 11 of Act XXIII of 1861, by which the former is modified, to bring a regular Suit for the same. The Extract from the Proceedings of the Sudder Court, under date the 17th August 1860, quoted by Plaintiff, refers to proceedings of the nature alluded to in Section 246 of the Civil Procedure Code, and is not applicable to the present case.
- Under the above circumstances, the decree of the Lower Court is affirmed, and the appeal dismissed with costs.

Dated 14th October 1864.

(Signed) STRINIVASA ROW,
Principal Sudder Ameen.

(True Translation.)

(Signed) G. L. MORRIS,
Collector.

ENCLOSURES Nos. 4 to 14.

ABSTRACT.—Translation of documents adduced in evidence in Original Suit No. 22 of 1854.

ENCLOSURES Nos. 15 to 17.

ABSTRACT.—Extracts from the Proceedings of the Courts, dated 2nd July and 1st November 1853, and 29th May 1860.

The Board observe that the facts of the case are as follows:—

1. In 1843 part of the Kumaki land, (or Government waste land of which the owners of the adjoining occupied land are allowed the usufruct grass, leaves, &c., for aid (Kumak) to their cultivation) adjoining Plaintiff Munjappah Shetty's land being required for a public road, the Collector offered him the use of an equivalent portion of the neighbouring waste Government *maidan*. The Plaintiff claimed to have the whole *maidan*, which was refused as unreasonable.
2. In 1853 the Roman Catholic Bishop made a Durkhast for this *maidan*, on which the Collector ordered the extent applied for to be given; but subsequently ascertaining that this extent included the whole *maidan*, he directed that a portion corresponding with the extent of Kumaki land, of which Plaintiff had been originally deprived, should be marked off and placed at his disposal, which was done.
3. Meanwhile, however, Plaintiff had instituted a Suit, No. 22 of 1854, claiming to be put in possession of the land originally assigned in lieu of that of which he had been deprived, and a decree was passed on 20th June 1856, directing the Collector and the Roman Catholic Bishop to allot to Plaintiff a portion of the *maidan* given to the latter on Durkhast, equivalent to that of which Plaintiff had been deprived, the effect of the decree being in fact identical with that of the Collector's second order in the Durkhast case which is above-mentioned.
4. Plaintiff apparently claimed (in execution of this decree) to be put in possession of the identical plot originally offered to him in 1843, but as it was impossible to identify any particular spot where none had ever been defined, the Civil Court eventually ordered that the Collector should select the land to be assigned out of the *maidan* in question in satisfaction of the decree.
5. Plaintiff however claimed to have certain land, which had been already built upon by the Roman Catholic Bishop, and his request being refused by the Revenue Officers, and also by the Courts, he instituted another Suit in No. 45 of 1861 before the District Moonsiff, to obtain what he claimed in execution of the former decree.
6. The defence of the Suit was sanctioned in Government Order, dated 6th April 1861, No. 772, Revenue Department, and on 19th June 1863 the Head Assistant Collector in charge forwarded to the Board copy of the District Moonsiff's decree dismissing the Suit, and promising to report whether any Appeal was instituted.
7. From the papers now submitted, it appears that Plaintiff did appeal, and that on 14th October 1864, the Principal Sudder Ameen dismissed the Appeal on the ground that the Plaintiff was not competent to bring the Original Suit, the matter in issue having been already decided by a competent Court in connection with the former Suit No. 22 of 1854.
8. The Collector anticipates from the litigious character of Plaintiff that he will probably institute a Special Appeal, and recommends that all the papers be placed in the Government Pleader's hands at once, that he may be prepared to defend such Special Appeal. The Board, however, consider that it will be time enough to do this when the Special Appeal has been instituted, of which the Collector will receive due notice from the High Court.
9. Copy of these Proceedings will be submitted for the information of Government, with reference to the Government Order of 6th April 1861, above quoted.

No. 94.

ORDER THEREON, 4th February 1865, No. 223.

Miscellaneous.

The Government agree with the opinion expressed in paragraph 8 of the Proceedings of the Board of Revenue.

(True Extract.)

Under Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

The Board observe that the facts of the case are as follows :—

1. In 1843 part of the Kumaki land (or Government waste land of which the owners of the adjoining occupied land are allowed the usufruct grass, leaves, &c., for aid (Kumak) to their cultivation) adjoining Plaintiff Munjappah Shetty's land being required for a public road, the Collector offered him the use of an equivalent portion of the neighbouring waste Government *maidan*. The Plaintiff claimed to have the whole *maidan*, which was refused as unreasonable.

2. In 1853 the Roman Catholic Bishop made a Durkhast for this *maidan*, on which the Collector ordered the extent applied for to be given; but subsequently ascertaining that this extent included the whole *maidan*, he directed that a portion corresponding with the extent of Kumaki land, of which Plaintiff had been originally deprived, should be marked off and placed at his disposal, which was done.

3. Meanwhile, however, Plaintiff had instituted a Suit, No. 22 of 1854, claiming to be put in possession of the land originally assigned in lieu of that of which he had been deprived, and a decree was passed on 20th June 1856, directing the Collector and the Roman Catholic Bishop to allot to Plaintiff a portion of the *maidan* given to the latter on Durkhast, equivalent to that of which Plaintiff had been deprived, the effect of the decree being in fact identical with that of the Collector's second order in the Durkhast case which is above-mentioned.

4. Plaintiff apparently claimed (in execution of this decree) to be put in possession of the identical plot originally offered to him in 1843, but as it was impossible to identify any particular spot where none had ever been defined, the Civil Court eventually ordered that the Collector should select the land to be assigned out of the *maidan* in question in satisfaction of the decree.

5. Plaintiff however claimed to have certain land, which had been already built upon by the Roman Catholic Bishop, and his request being refused by the Revenue Officers, and also by the Courts, he instituted another Suit in No. 45 of 1861 before the District Munsiff, to obtain what he claimed in execution of the former decree.

6. The defence of the Suit was sanctioned in Government Order, dated 6th April 1861, No. 772, Revenue Department, and on 12th June 1863 the Head Assistant Collector in charge forwarded to the Board copy of the District Munsiff's decree dismissing the Suit and promising to report whether any Appeal was instituted.

7. From the papers now submitted, it appears that Plaintiff did appeal, and that on 14th October 1864, the Principal Sudder Ameen dismissed the Appeal on the ground that the Plaintiff was not competent to bring the Original Suit, the matter in issue having been already decided by a competent Court in connection with the former Suit No. 22 of 1854.

8. The Collector anticipates from the litigious character of Plaintiff that he will probably institute a Special Appeal, and recommends that all the papers be placed in the Government Pleader's hands at once, that he may be prepared to defend such Special Appeal. The Board, however, consider that it will be time enough to do this when the Special Appeal has been instituted, of which the Collector will receive due notice from the High Court.

9. Copy of these Proceedings will be submitted for the information of Government with reference to the Government Order of 6th April 1861, above quoted.

(True Copies and Extract.)

Secretary.

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

Copy to G. L. Morris, Esq., Collector of South Canara.

Exd. R. H. Lee.

Pro. Secy. Muz. 1861. 1865

Recd. 1865. Department
Pro. Secy. Muz. 1861. 1865

No. 120.

PROCEEDINGS OF THE BOARD OF REVENUE

Dated 12th January 1865.

20th 1/4 1865

22nd 1/4 1865

Pro. Secy. Muz. 1861. 1865
C. No. 383.

No. 188.

Passing orders on letter from the Collector of
South Canara reporting further regarding O. S.
No 45 of 1861 on the file the District Munsiff
of Mangalore.

1865. 1. 1865

over

with an order

82-223.

The Secy. agrees with
the opinion expressed in the
case of the proceedings of the
Board of Revenue - All

21st 1/4 1865
22nd 1/4 1865

14. 1865. 1. 1865