

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 9

Press
Mis.

15-16

Dated 4-1-1865.

Not to be folded or roughly handled

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

No. 15. Read the following Proceedings of the Board of Revenue, dated 14th December 1864, No. 8,016.

Read the following letter from V. H. LEVINGE, Esq., Collector of Madura, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated 26th November 1864, No. 336:—

1. I have the honor to forward copy of a Decree passed in the Civil Court at Madura, which I hear has been appealed against in the High Court, and as the point raised is, I consider, of much importance, I beg to suggest that the Government Pleader be advised to watch the case on the part of Government.

2. It seems, the Zemindar of Padamattur mortgaged one of his villages to a certain party, and when the Padamattur man fell into arrears, his head landlord, the Zemindar of Shevagungah, to whom the Padamattur man pays a fixed Poruppu, zufted the mortgaged village. The mortgagee brought a suit in the Principal Sudder Ameen's Court against the Shevagungah Zemindar claiming recovery of the village and release from liability. The Principal Sudder Ameen decreed,*

* Copy herewith sent.

that, as in the Istimrar accounts, a separate amount was entered against each village forming the Padamattur Estate, each village was only answerable for the amount set opposite it, and that as long as it paid that amount, no part of it could be zufted, and that a village which had not paid up its quota alone was answerable. This decree was appealed against in the Civil Court where the Principal Sudder Ameen's decree was reversed, the Civil Judge holding that the whole or any part of the Padamattur Estate was liable for any arrear due to the Shevagungah Zemindar.

3. The Principal Sudder Ameen took an erroneous view of the Istimrar account. That account only shows the amount of the Beriz of each village in the year when the amount of Poruppu was fixed on the whole Estate of Padamattur. The whole Istimrar accounts in the District are framed in the same way, and if the opinion of the Principal Sudder Ameen is to be confirmed, and the claim advanced by the mortgagee established, a great difficulty may be created in collecting arrears in a Zemindary, if each village could set up a claim that it was only answerable for the amount entered against it in the Istimrar accounts, and that as long as it paid that amount it was not answerable for arrears, and, therefore, I think, the case is of sufficient importance for the Government Pleader to watch it on the part of Government while passing through the High Court.

ENCLOSURE No. 1.

Madura Civil Court.

Present, C. R. PELLY, Esq., Acting Civil Judge, Appeal Suit No. 250 of 1863.

Judgment.

1. Plaintiff sued to recover the value of produce which he represented to have been illegally seized and sold by Defendant, then in possession of the Zemindary of Shevagungah, for arrears of Kist, and for an order to Defendant to receive from him the Kist leviable on a certain village, the Mailvarum right to which Plaintiff holds on mortgage from the Poligar of Padamattur. Plaintiff further urged that Defendant had, by his illegal proceedings, forfeited his right to the arrears of Kist for which the distraint and sale were effected. The Principal Sudder Ameen found the sale illegal, awarded Plaintiff a portion of the amount claimed, and ordered Defendant to receive the Kist in future as prayed for; but disallowed Plaintiff's claim to discharge from the arrears; and against this award Defendant appeals urging,

I. That Plaintiff's right of action is barred by Regulation XXV of 1802, the hamlets referred to in the plaint not having been registered.

II. That the award, as regards produce, is against evidence; and

III. That the villages of the Poliaput are jointly liable for the entire Kist.

2. At the hearing, Plaintiff appealed against such portion of the Decree as dismissed his claim to discharge from the arrears for which the illegal distraint was made.

3. On the appeal coming before the Court, Defendant urged that having been ousted from the Zemindary, he no longer had any interest in the matter. I however held that the mere fact of others having, as against him, been declared entitled to the Zemindary would not free him from liability for wrongful acts done while in possession, and that such liability would not pass with the Zemindary to the person, or persons, who have been, or may be declared to be, the rightful owners.

4. Want of registry will not invalidate the mortgage when the Zemindar was not the mortgager the enactment on which the Defendant relies in his first ground of appeal, or rather Section 8 of it, has reference to alienation of the principal tenure, and renders an unregistered transfer of the same in whole or part invalid; but this is as against Government only; and with reference to the public land tax it does not, as I read it, refer to third parties holding on mortgage for a limited period from a person who himself holds subject to an annual payment to the Zemindar; it applies to the Government demand under the head of public assessment leviable on an entire Zemindary, and not to the amount claimable by a Zemindar from a Poliaragar who holds subject to an annual fixed payment to him.

5. As it is usual in cases of this nature, the evidence relative to the produce appropriated by Defendant is very conflicting; the value of this has apparently been much exaggerated by the witnesses on Plaintiff's part, while those examined by Defendant have set it down at an unduly low figure, and the contradictory evidence adduced by the respective parties renders it matter of difficulty to arrive at a positive and certain conclusion on this point. The claim under this head appears, however, to have been equitably adjusted by the lower Court as far as circumstances would admit of.

6. The question raised in the third ground of appeal is, whether the whole of the Poliaput is liable to the Zemindar for a portion of the amount payable to him by the Poliaragar which may be in arrears, or whether Plaintiff, the alleged mortgager, can claim, as matter of right, to have a part separately received on the single village which he holds on mortgage. The Principal Sudder Ameen is of opinion that, as separate Kists are shown for each village in the Istimrar account, the Defendant is bound to receive the amount of Kist so entered separately from Plaintiff on the village held by him, and that this terminates the liability of Plaintiff's village. No authenticated copy of the portion of the Istimrar account, on which the above is based, accompanying the record it became necessary to call on the Collector of the District to produce it, in the absence of the original. An authenticated copy was accordingly laid before the Court; but on inspection this was found to be so framed as to throw little light on the point at issue, and the Court (under Section 355) accordingly called for what appeared to be the best available explanatory evidence.

7. The Poliaput, comprising eight villages, was originally granted to the Poliaragar for maintenance on light quit-rent, payable to the Zemindar; and the evidence shows the entries in the Istimrar account were made to admit of calculation of the lump sum payable on the whole by the grantee there can be but little doubt that when this account was drawn up, alienation by sale or mortgage of any portion of the Poliaput was not contemplated, nor can it be supposed that the amount set opposite each village was so entered in view to that village being then, or subsequently in the event of mortgage or sale, held liable for this amount alone. The Poliaragar, no doubt, might have made a private arrangement to this effect with a mortgagee; but this would not affect his relation to the Zemindar, or indeed be binding on any one but himself; in like manner the Zemindar for the time being might make a similar arrangement with the Poliaragar, but this would not be binding on his successor; the Zemindar's security for payment to him of the quit-rent fixed on the Poliaput is the Poliaput as a whole, and it is open to him to attach the whole or any part he thinks fit for an arrear due to him, in the same manner, as it is competent to the Government to attach the whole or part of the Zemindary for any arrear of Pesheush due on it, and in receiving one village of the Poliaput on mortgage, the mortgagee has taken the place of the Poliaragar as far as the Zemindar is concerned. No mortgagee of a portion of the Poliaput can assume in right of such mortgage a more favorable position than that held by the party from

whom he obtained. The Zemindar's security for the quit-rent payable to him by the Poliaragar is the Poliaput as a whole, and no subsequent act of the latter can alter this; and being of opinion that the nature of the entry in the Istimrar account has been misunderstood by the lower Court that a joint liability extends over all the villages of the Poliaput for the amount payable by the Poliaragar to the Zemindar, and that Plaintiff, as mortgagee of one village, must accept with his mortgage the position of the alleged mortgager. I reverse that portion of the Principal Sudder Ameen's Decree which directs receipts by the Zemindar for the time being of the amount of Kist entered in the Istimrar account against the village held by Plaintiff separately from him, and holds that it is not liable for the arrears due from the rest of the Poliaput.

8. The Principal Sudder Ameen observes as follows in the 19th paragraph of his Judgment "The claim made by Plaintiff that by his illegality the Zemindar has forfeited his right to the Kist according to the Regulation, I consider under all the circumstances unsustainable, "inasmuch as while the Zemindar has not been wholly legal in the procedure he adopted for the enforcement of his Kist, the Plaintiff himself has been in fault in not making himself formally known to the Zemindar as the mortgage holder of the village in question," whether the Plaintiff's omission to make himself known as mortgagee to the Zemindar freed the latter from the obligation to furnish the person deputed to attach with the demand in writing required by Clause 1st, Section 8 of Regulation XXVIII of 1802 may be a question, it however in no degree did away with the Zemindar's obligation to observe the procedure laid down in Sections 3 and 4, Regulation V of 1822, it is admitted that previous notice of the sale was not given to the Collector of the District, and the produce having been sold without such notice, and within the limit laid down in Clause 2, Section 4, the defaulter became entitled as matter of right to discharge from the arrears for which the attachment was made. I find no circumstance in the case which authorizes his being deprived of this right, and such portion of the Decree appealed against as disallowed his claim to discharge from arrear is accordingly also reversed.

9. Each party will bear his own costs in this appeal.

Pronounced in open Court, this 1st day of October, A. D., 1864.
(Signed) C. R. PELLY,
Acting Civil Judge.

ENCLOSURE No. 2.

Madura Principal Sudder Ameen's Court.

Present.—M. SADASIVA PILLAY, Principal Sudder Ameen, Original Suit No. 3 of 1863.
Judgment.

1. This is an action for the recovery of the value of produce said to have been illegally seized and sold by the Defendant, the Shevagunah Zemindar, and for an order directing him to receive from him in future, the Kist due on the villages, the Melwarum right to which Plaintiff holds in mortgage from their Proprietor, the late Poliaragar of Padamattur.

2. The point of law raised by the Defendant at the preliminary hearing, viz., that the conditions specified in Section 8, Regulation XXV of 1802, as to registry of alienated Estate, not having been fulfilled by the Plaintiff, the Defendant was not bound to recognize him as a mortgagee, was disposed of at that stage of the proceedings against the Defendant, and I will only briefly repeat here the opinion then expressed, that the requisition for registry applies only to the alienation of the principal tenure itself, that is, the Zemindary tenure, and not to the alienation of the under-tenure on which the villages in question are held of the principal tenant, the Zemindar.

3. Of the points then reserved for consideration, the first is, the admitted non-observance on the part of the Defendant of the procedure laid down in Regulation XXVIII of 1802, in regard to the method of levying distress against the property of under-farmers, that is, how far that non-observance works a forfeiture of the Zemindar's right to the Kist which remained due by the Plaintiff at the time of distraint.

4. It is admitted by the Plaintiff that he gave no formal notice to Zemindar (the Defendant) of the interest which he had in the villages in question as mortgagee of their Melwarum proceeds

from their late holder, the Padamattur Poliagar, though from certain proceedings between the Plaintiff and the Ryots of the villages which formed the subject of litigation at Court, he argues an implied notice to the Zemindar.

5. In the absence of a formal intimation direct to the Zemindar, I consider no such notice can be presumed as the Plaintiff would wish the Court to infer.

6. I am, however, of opinion that though this might be a sufficient justification for the Defendant's omission to serve the Plaintiff with the "demand" prescribed by Clause 1st, Section 8, Regulation XXVIII of 1802, his neglect to apply for and obtain the permission of the Collector for the sale, as required by Sections 3 and 4, Regulation V of 1822, or to allow the period of one month to elapse between attachment and sale as laid down in Clause 2nd of Section 4 of the above enactment, does not appear to me to stand equally justified, and it can hardly be contended that because there was no one whom the defendant was bound to recognize as the holder of the villages, he was therefore absolved from all observance of the law which provides so many safeguards against improper distraint and sale of the property of under-tenants, and which, under any circumstances, seems to require the permission of the Collector for sale.

7. The next point is one of fact, viz., the quantity of produce actually harvested and appropriated by the Defendant.

8. The Plaintiff's witnesses give the quantity at 900 Kullams, valued at Rupees 2,250.

9. The Defendant makes out the quantity of net produce appropriated by the Zemindar, after certain deductions, to be Kullams 287½, valued at Rupees 668-14-8.

10. Since the institution of the suit, the lands have been attached by the Court at the instance of the Plaintiff and the produce has been harvested and partly sold under the Court's management. The average results of that management seem to furnish a pretty safe test by which the probable out-turn of the lands of which the produce was seized by the Zemindar can be arrived at, and I accordingly find that for the extent of land of which the harvest was got in, under the Defendant's attachment, or Chains 80 and odd, there should have been for the Melwarum share 760 Kullams, which, at the rate of Rupees 2½ (the rate is not disputed) gives Rupees 1,900.

11. Defendant objects to this calculation, and says that a part of the produce was carried away by a certain individual claiming it from the Plaintiff, and that a portion remains with the Ryots on account of tank repairs; but the whole *prima facie* belongs to the Melwarum share, and whatever the truth of the allegation that these portions were actually appropriated by other individuals than the Defendant, I believe the Defendant must be debited with them, especially as everything will be presumed against a wrong doer who cannot expect the Court to make that strict scrutiny into facts, which, had his proceedings been more in accordance with the law, he would have been entitled to demand.

12. I therefore find that the Defendant has appropriated produce of the value above stated, or Rupees 1,900.

13. The next point is, whether the Zemindar (Defendant) is entitled to hold the *whole* of the Padamattur Poliapat, as it is called, for Kist due on any portion thereof, or whether the Plaintiff can claim to have the Kist separately received for the village which he holds in mortgage.

14. Plaintiff contends, that inasmuch as the Istimrar account which is an account of the assets of the Shevagunah Zemindary, and a standard of reference in all matters of dispute, gives the Kist due from the said village distinctly, the same should be separately received from him.

15. Defendant says that under a subsequent settlement with the late Proprietor of the Padamattur Poliapat, a lump sum was fixed on the whole Estate, and that he is entitled to hold any portion of the Estate available for the whole or portion of arrears due from it. This document has not been put in; but from a recital of its contents by the Defendant's Vakeel, I cannot gather that the separate and distinct levy of Kists, as settled in the Istimrar accounts, has been in any way interfered with, though a reduction in the total therefore paid by the Poliagar to the Zemindar took place.

16. That separate Kists are shown for each village in the Istimrar account is admitted by the Defendant.

17. I am, therefore, of opinion, and direct that the Defendant should receive the amount of Kist so entered in the Istimrar account against the village held by the Plaintiff separately from him, and that it be not held liable for the arrears due from the rest of the Poliapat.

18. I further decree that the Defendant do pay to the Plaintiff, Rupees 1,900, shown in paragraph 10, *minus* the amount of Kist, Rupees 535-5-4, due on account of the village for the year in which the produce was seized and sold, or Rupees 1,364-10-8 with proportionate costs.

19. The claim made by the Plaintiff that by his illegality the Zemindar has forfeited his right to the Kist according to the Regulations, I consider under all the circumstances unsustainable, inasmuch as while the Zemindar has not been wholly legal in the procedure he adopted for the enforcement of his Kist, the Plaintiff himself was at fault in not making himself formally known to the Zemindar, as the mortgage holder of the village in question.

20. The produce under Court attachment, or its value, if already realized, to be paid over to the Plaintiff.

Pronounced in open Court this 14th day of August 1863.

(Signed) M. SADASIVA PILLAY,
Principal Sudder Ameen.

(True Copies.)

(Signed) V. H. LEVINGE, *Collector.*

1. Ordered that the above letter be submitted to Government, with the request that the Government Pleader may be instructed as desired by the Collector.

2. The nature of the Padamattur Estate, consisting of eight villages in the Shevagunah Zemindary, granted on favourable quit-rent for maintenance (Jivithan) by the former Hindu Government is explained in the Board's Proceedings, dated 21st September 1861, Nos. 5,119 and 5,120, in Government Proceedings, dated 22nd July 1862, No. 1,568, Revenue Department.

3. In the suits which have led to this reference, the mortgager of one of these villages claims the right to pay separately its share of the quit-rent (Poruppu) charged on the whole Estate in the assets of the Zemindary, and thereby to free the particular village from liability on account of arrears against the Padamattur Poliapat generally, basing his claim on the ground that in the Istimrar accounts of the Zemindary the villages are entered separately with a distinct amount charged on each.

4. The original Court found for the claimant; but in appeal the Civil Judge reversed this decision, and found that all the villages in the Poliapat were jointly and severally liable for arrears against the whole.

5. From this decision a special appeal has now been filed, and the Collector is apprehensive that if the principle of the original decree be affirmed, the security of Zemindars generally, will be weakened, and, as a consequence, the stability of the Government revenue may be impaired.

6. There is no doubt whatever that the quit-rent was assessed, in the first instance, on the Poliapat as a whole, and the entries in the Istimrar account are in no way inconsistent with this fact.

ORDER THEREON, 4th January 1865, No. 9.

No. 16.

Miscellaneous.

Resolved accordingly that copies of these papers be furnished to the Government Pleader, and that he be requested to watch the case alluded to in the High Court on behalf of Government, and to report the decree which that Court may pass and its bearing on the interests of Government.

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

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portion of the Estate available for the whole or portion of arrears due from it. This document has not been put in; but from a recital of its contents by the Defendant's Vakil, I cannot gather that the separate and distinct levy of Kists, as settled in the Istimrar accounts, has been in any way interfered with, though a reduction in the total therefore paid by the Poliagar to the Zemindar took place.

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20. The produce under Court attachment, or its value, if already realized, to be paid over to the Plaintiff.

Pronounced in open Court this 14th day of August 1863.

(Signed) M. SADASIVA PILLAY,
Principal Sudder Amin.

(True Copies.)
(Signed) V. H. LEVINGE, Collector.

1. Ordered that the above letter be submitted to Government, with the request that the Government Pleader may be instructed as desired by the Collector.

2. The nature of the Padamattur Estate, consisting of eight villages in the Shevagungah Zemindary, granted on favorable quit-rent for maintenance (Jivithan) by the former Hindu Government is explained in the Board's Proceedings, dated 21st September 1861, Nos. 5,119 and 5,120, in Government Proceedings, dated 22nd July 1862, No. 1,563, Revenue Department.

3. In the suits which have led to this reference, the mortgager of one of these villages claims the right to pay separately its share of the quit-rent (Porupu) charged on the whole Estate in the assets of the Zemindary, and thereby to free the particular village from liability on account of arrears against the Padamattur Poliapat generally, basing his claim on the ground that in the Istimrar accounts of the Zemindary the villages are entered separately with a distinct amount charged on each.

4. The original Court found for the claimant; but in appeal the Civil Judge reversed this decision, and found that all the villages in the Poliapat were jointly and severally liable for arrears against the whole.

5. From this decision a special appeal has now been filed, and the Collector is apprehensive that if the principle of the original decree be affirmed, the security of Zemindars generally, will be weakened, and, as a consequence, the stability of the Government revenue may be impaired.

6. There is no doubt whatever that the quit-rent was assessed, in the first instance, on the Poliapat as a whole, and the entries in the Istimrar account are in no way inconsistent with this fact.

(True Copies and Extract.)

To J. D. Sim, Esq., Secretary to Government, R. D.
Copy to V. H. Levinge, Esq., Collector of Madura.
to C. Dale, Esq., Government Pleader.

Exd. R. H. Lee.

Secretary.

Dec 22 July 1862-1863

Dec 1864 Department
of Justice
No. 3261.

Meeting of the
of the (Revenue)

Dec 14th December 1864
No. 194.
No 8016

Copies of these papers be furnished
to the Govt. Secretary and that he be
requested to watch the case and to file the
High Court on behalf of Govt and to file the

W. G.

Respectfully according to the

decreed which that court may
pass - and its bearing on the
interests of Government.

W. G. Secretary
to the Govt. Secretary
No. 194 of Dec. 1864
No. 8016
No. 194 of Dec. 1864
No. 8016

No 15416.

can be made to be done