

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2097

Press

~~Mis.~~

399,400

Dated

16-8-1866.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
16th August 1866.*

No. 399. Read the following Proceedings of the Board of Revenue, dated 30th July 1866, No. 5,220.

Read the following letters:—

From the Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 11th June 1866, No. 90.

1. With reference to the Order of Government, under the date and number 4th May 1866, No. 1,072, Revenue Department. noted in the margin, I do myself the honor of reporting, for the information of the Board of Revenue, that the Civil Petition (No. 126 of 1866), on the file of the High Court, came on for hearing this morning, when their Lordships intimated they saw no reason for altering their Judgment given in Special Appeal Suit No. 481 of 1864, on the file of the High Court; but as the case involved questions of great importance, they would grant permission to appeal to Her Majesty in Council, although the amount in dispute is less than Rupees 10,000, if His Lordship in Council considered it desirable to pursue that course.

2. I have bespoken a copy of the Order, and will do myself the honor of forwarding the same when procured.

3. I have the honor to return the papers which accompanied the Official Memorandum, dated 8th May 1866, No. 452, as therein requested, and also the Hukumnamah and Village Manual.

From the Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 16th June 1866, No. 96.

In continuation of the letter which I had the honor of addressing to you, under the date and number noted in the margin, I do myself the honor of enclosing, for the information of the Board, a manuscript copy of the Order passed on Civil Petition, No. 126 of 1866, on the file of the High Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS.

Monday, the 11th day of June, One Thousand Eight Hundred and Sixty-six.

PRESENT.

The Honorable Sir C. H. SCOTLAND, *Knight*, Chief Justice,
and

The Honorable Mr. Justice INNES.

Civil Petition No. 126 of 1866.

H. A. Brett, Esq., late Collector of Salem, { Petitioner (Special Respondent) in Special
Appeal No. 481 of 1864,
and

Ellaiya.

{ Counter Petitioner, (Special Appellant in
Special Appeal No. 481 of 1864.)

Application, under Section 376 of the Civil Procedure Code, for review of the Judgment of the High Court, dated the 6th February 1866, reversing the Decree of the Civil Court of Chittoor, in Regular Appeal No. 108 of 1861, on the file of the Civil Court of Salem.

Opening.—This application coming on for hearing, upon perusing the Petition of review, and upon hearing the arguments of Mr. Government Pleader for the Petitioner, and Mr. Advocates

General Counsel for the Counter Petitioner; it is ordered that this application be, and the same hereby is dismissed; and it is further ordered that the Petitioner do pay to the Counter Petitioner Rupees 4-3-0 for his costs in opposing this Civil Petition.

MEMORANDUM OF COSTS.

<i>Special Appellant's (Plaintiff's) costs.</i>	RS.	A.	P.
One-fourth of the Vakool's fee under Section 7, Act I. of 1840	4	3	0
To be paid to the Special Appellant (Plaintiff) by the Special Respondent (Defendant)	4	3	0

By the Court,

(Signed) P. P. HUTCHINS,

Registrar, Appellate Side.

Read also the following Proceedings of the Madras Government, dated 15th June 1866, No. 1466, Revenue Department.

ANNAKEN.—Stating that the Government consider it desirable that an appeal should be made to the Privy Council against the Judgment given by the High Court in Special Appeal Suit No. 481 of 1861, regarding certain Agraharam land, in Salem District.

1. The Board observe that, in their Proceedings dated 3rd May 1866, No. 3,130, they explained in some detail the grounds on which they were dissatisfied with the Decree passed by the High Court in the Special Appeal. They will now recapitulate, for the information of the Government Pleader, the facts of the case in litigation, commencing from the institution of the Original Suit.

2. The Original Suit, No. 31 of 1858, in the Sub-Court of Salem, was brought by Yalliah, a shareholder in the Agraharam village of Neyakaramputal, (Salem District,) to recover from Defendant (Collector) Rupees 335-4-2, the sum collected from Plaintiff for three years from 1853-54 to 1855-56 inclusive, in excess of the permanent assessment with which his four shares were charged in A. D. 1793. The Plaintiff averred that the lands comprised in his four shares were *permanently* assessed in that year at certain specified rates; that in the same year a permanent Pattah was given to the then holder of the lands; and that, in contravention of the terms contained in that Pattah, the Collector had charged Plaintiff's shares with increased rates of assessment.

3. The Defendant pleaded, first, that the Court's jurisdiction was barred by Regulation IV, of 1831, the Plaintiff's claim having reference to India property, (the Plaintiff's objects being to recover the difference between the full rates charged on his lands from 1853-54, and the favorable quit-rent previously paid in gross by the entire village); and secondly, that the village was settled on a joint, not a severally tenure, the whole body of shareholders being jointly as well as severally responsible for the lump quit-rent.

4. As to the Defendant's first point, the Sub-Court held that the suit was cognizable by the Civil Courts, as the Plaintiff did not seek "to create a right to an Imam," but "simply to try the Defendant's right to demand a rate of assessment in excess of that fixed at the grant."

5. In appeal on this point before the Civil Courts of Salem, it was held by that Court that the suit was barred by the provisions of Regulation IV, of 1831, the object of the suit being "to settle whether this Imam or grant of land revenue

"(which has emanated from Government) can be sequestered by the Collector, who in this District represents Government."

6. The Court of Sudder Udahut in appeal on the same points, observed that the Plaintiff's object was to call in question "the act of the local Collector, who has attached certain of his property for a revenue arrear;" and that the Court did not concur in the view taken by the Civil Judge, "as the suit does not raise any question as to the right to the Agraharam, a village held on a permanent quit-rent, but intends simply to test the propriety of an act of the Collector, by which the Petitioner has suffered." The Sub-Judge was, therefore, ordered to proceed with the suit.

7. The Sub-Judge's decision was in favor of the Defendants, the Court finding that the Government, when they imposed a quit-rent on the Agraharam, intended to make the shareholders jointly as well as severally responsible for the payment of that rent; "the design and leading principle" of this kind of settlement being to secure the Government and the shareholders respectively from certain disadvantages attending individual collections—*vide* paragraph 9 of Judgment, and further finding that the true object with which separate Pattahs had been issued to the several shareholders was to prevent disagreement and disputes between these shareholders. The Court therefore saw "nothing illegal or oppressive in the course adopted by the Defendant."

8. An Appeal Suit was then filed in the Salem Civil Court, but owing to Mr. Cherry, the Civil Judge of Salem, having been, as then Acting Collector of the District, a party to the case, the High Court directed the transfer of the appeal to the Civil Court of Chittoor.

9. In the Appeal Suit (No. 108 of 1861), the Civil Judge held with the Judge in the Original Suit that the Government had a right, in the event of the quit-rent not being paid, "to resume the Agraharam," the result of which was "of necessity the amalgamation of the lands so resumed with other lands bearing 'the usual Teervali of the District,'" (*vide* paragraph 11 of first Judgment) but that on the present occasion no arrears were actually due at the time the Agraharam was resumed by the Collector. On this ground the Civil Judge decided that the Plaintiff was entitled to recover the excess of rent for which he had sued.

10. Subsequently, the same Judge, on review of Judgment, found that the quit-rent was actually in arrears at the time the village was resumed. He, therefore, made a fresh decree dismissing the Plaintiff's suit.

11. The case was then brought before the High Court of Madras, in Special Appeal No. 481 of 1864.

12. In the Judgment of the High Court it was held that the conclusion arrived at by the two lower Courts, as to the terms and conditions upon which the Plaintiff held his share of the Agraharam lands, must be considered final; but that the Collector was not empowered, by any of the provisions of Regulation XXVII, of 1802, "to determine the Plaintiff's holding, and impose a new tenancy 'at an increased rent.'" The Judges explained their views on this latter point at considerable length, and after remarking that, "what would have been the legal effect (if any) of a special order from the Government to the Collector

"directing the resumption of the lands for non-payment of rent, we are not called upon to consider," concluded by stating, as the result of their Judgment, "that the Plaintiff's rights to enjoy his share of the village lands under the original Pattah was not legally determined by resumption, and that, continuing liable only to the fixed rent, the Plaintiff is entitled to the return of the amount paid under compulsion in excess of such rent at the date of the suit."

13. On receiving a copy of this Judgment through the Government Pleader, the Board of Revenue proposed to Government (Board's Proceedings, 3rd May 1866, No. 3,133.) that an application should be made to the High Court for a review of Judgment, on the ground that the Judges were under a misconception as to the actual facts, in assuming that the Collector (Defendant) did not act under the direct orders of Government, when he charged the Plaintiff's lands with full rates of assessment, (in other words, resumed the Agraharum,) and that in any case the Government having, as remarked in the Court's Judgment, adopted the Defendant's acts, the Court was bound to consider such subsequent sanction, on the part of Government, as equivalent to the Government having given the Collector a previous authority, (as ruled in the case of the Secretary of State *versus* Kumachee Boyce Sahiba, Volume VII., Moore's Indian Appeal Cases, page 539).

14. It was also pointed out by the Board that the Collector, in resuming the Inam, (i. e., charging the Agraharum lands with full survey rates of assessment,) had not acted, as assumed by the High Court, under the provisions of Regulation XXVII. of 1802, and that the actual effect of his having charged the Plaintiff's lands with increased rates of assessment was not, as argued in the High Court's Judgment, "to determine the Plaintiff's holding and impose a new tenancy on him." In support of this view, it was pointed out by the Board that the land revenue was not, in the nature of a rent, payable by the landholder for the use of his land, but was a tax representing a certain portion of the produce, and that in this instance, the real question in issue was, whether the Government had or had not a right to cancel a certain remission made out of this revenue, by way of a charitable allowance, in favor of the land-owners in the Agraharum of Noikarapatty.

15. The Government having sanctioned the proposed application to the Judges of the High Court for a review of Judgment, and the Government Pleader having accordingly applied to the Court, by Petition No. 126 of 1866, the Judges intimated, as reported by the Government Pleader, that they saw no reason for altering their Judgment in the Appeal Suit, No. 481 of 1864, on the file of the High Court; but that, as the case was of great importance, they would grant permission to appeal to Her Majesty in Council, although the amount in dispute was less than Rupees 10,000, should the Government consider it desirable to pursue that course.

16. The present statement of the case has been taken from what is referred to in paragraph 3 of the Government Order, dated 13th June 1866, No. 4,460, directing the Government Pleader to take the necessary steps, in communication with the Revenue Board, for preferring an appeal to the Privy Council.

17. The Board presume that the intended appeal will be made to rest mainly on the fact that the Government was dealing with a mere charitable assignment of the land revenue when they "resumed the Agraharum." They also hope that it will now be in the power of the Appellant to re-open the question raised in the Original Suit, as to whether the Civil Courts were not excluded from all jurisdiction in such a case by the provision of Regulation IV. of 1831.

18. The Board are not aware that the case calls for further remark from them, except it is to observe that the Government did not charge the Agraharum lands with full survey rates of assessment, in order to enforce payment of the quit-rent then in arrears, but with the view of protecting themselves from incurring further loss by the shareholders again violating the condition on which an abatement in those rates was, by the favor of Government, originally conceded. The quit-rent that remained still in arrears, when full rates were charged, was given up by Government, and was, by their order, written off as an irrecoverable balance in the public accounts.

19. The Board think it as well to note, on this occasion, that shortly after the Agraharum village of Noikarapatty was resumed, and its lands incorporated with the Circar lands in 1854, certain shareholders of the village appealed to the Secretary of State, and that the orders of the Home Government on their petition were communicated to the Board of Revenue in Proceedings of the Madras Government, dated 8th September 1859, No. 1,203.

No. 200. ORDER THEREON, 16th August 1866, No. 2,097.

Land Revenue.

Ordered to be recorded.

(True Extract.)

(Signed) J. GROSE,

Under Secretary to Government.

To the Board of Revenue.

Pro 8 Sept 1899
104.2.106
103.5.6

Rev. 1898. Department
Pro of Govt for Aug

The quit-rent that remained still in arrears, when full rates were charged, was given up by the Government, and was, by their order, written off as an irrecoverable balance in the public account.

19. The Board think it as well to note, on this occasion, that shortly after the Government village of Neyakurupatti was resumed, and its lands incorporated with the Circular lands, certain shareholders of the village appealed to the Secretary of State, and that the order of the Home Government on their petition were communicated to the Board of Revenue in Proclamation of the Madras Government, dated 8th September 1889, No. 1,203.

(True Copies and Extract.)

To the Secretary to Government, Revenue Department.
" the Government Pleader.
" the Collector of Salem,
with spare copy of Government Order, dated 15th June 1865, No. 1,466.

No. 2336.
PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 30th July 1866.
22/1st. Augt.
No. 5,220.

Recapitulating for information of Government Pleader facts of the case in Civil Petition No 126 of 1866 presented to High Court for review of their Judgment reversing Decree of Civil Court of Chittoor in R. A. No. 108 of 1861, on file of Civil Court of Salem, regarding collection of excess assessment on certain land.

Exd. J. Wright.

RECORDED

7:399-1100.
8 Aug 1866

NON
18th Aug 1866