

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1808	Press <u>Mis</u>
655.26. Dated	29-6-1868.	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
29th June 1868.*

No. 635. Read the following Proceedings of the Madras Government in the
Judicial Department :—

Sanctioning payment of the costs in certain suits,
and directing that Mr. Sharpe be transferred } (Here enter 18th June 1868, No. 984.)
from the Calicut to the Madura Civil and
Session Court.

No. 636. ORDER THEREON, 29th June 1868, No. 1,808.

Miscellaneous.

Communicated to the Revenue Board.

(True Extract.)

(Signed) H. SEWELL,
Acting Under Secretary to Government.

To the Board of Revenue, with Proceedings Judicial Department, No. 984.

Exd. S. T. Augustin.

18th June 1868

No. 164. Read the following Proceedings of the Board of Revenue, dated 28th May 1868, No. 3928.

Read the following letter from G. A. BALLARD, Esq., Collector of Malabar, to the Secretary to the Board of Revenue; dated Calicut, 20th April 1868, No. 99.

With reference to the Proceedings of the Board of Revenue, dated 12th December 1867, No. 8029, giving cover to Government Order, No. 1961, of the 2nd idem, I have the honor to forward copies of Judgment, as well as of the Decrees in Appeal Suits Nos. 506 and 508 of 1867, on the file of the Civil Court at Calicut.

2. The original decrees in the said suits, (Nos. 239 and 277 of 1860, on the file of the District Moonsiff's Court of Calicut,) have been submitted with my letter of the 4th January 1868, No. 1, and recorded in the Board's Proceedings of the 10th idem, No. 175.

3. It will be observed the appeals have been dismissed. The Courts, refusing credence to the opposing evidence, have declared the counterpart lease deed on which plaintiff sued to be genuine, and decreed for him without going into the question of proprietary right. Direct evidence that the original first and second defendant's held from Government before 1860 not having been adducible, I am not prepared to recommend a special appeal; and request sanction for defraying the costs.

4. I must, however, request the Board's attention to paragraphs 8 and 9 of the Appeal Judgment, and beg they may be brought to the notice of Government; for it seems to me that if a Collector has been, in the recorded opinion of a Civil Judge, "found abetting a refractory tenant in resisting the just demands of his landlord," and open to the insinuation of having tampered with witnesses, the matter should not be allowed to rest there.

Appeal Suits Nos. 505 and 506 of 1867.

IN THE CIVIL COURT OF CALICUT.

Present.—G. R. SHARPE, Esq.,

Dated 14th February 1868.

No. 505.

Perumana Ererakel Cheku Nair... ..*First Defendant, Appellant.*

By Vakeel Kanna Menon.

versus

1. Karamballi Kokolli Chandu Kurup... ..*Plaintiff.*

2. Pulliakote Ukappen Nair, in person*Second Defendant, Respondent.*

3. G. A. Ballard, Esq., Collector of Malabar, *ex parte*, *Third Defendant.*

First Respondent's Vakeel Gopala Menon.

No. 506.

G. A. Ballard, Esq., Collector of Malabar... ..*Third Defendant, Appellant.*

By Government Vakeel Shekara Kurup.

versus

1. Karamballi Kokolli Chandu Kurup... ..*Plaintiff.*

2. Perumana Ererakel Cheku Nair, in person... ..*First Defendant, } Respondents.*

3. Pulliakote Ukappen Nair, in person*Second Defendant.*

First Respondent's Vakeel Gopala Menon.

Cheku Nair, first defendant above-named, appeals to the Civil Court at Calicut under No. 505, against the decree of Mr. V. P. D' Rozario, District Moonsiff of Calicut, in Original Suit No.

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239 of 1860, on the file of the late Cutcherry Moonsiff's Court, dated 19th October 1867, for the following reasons, namely—

I.—That A was not satisfactorily established; that its appearance does not lead to the belief that it is genuine; and that plaintiff's deposition contradictory of his plaint is inadmissible in evidence.

II.—That it is unlikely that the land would have been let in Vrichigom, when there would be crops on it; and that plaintiff did not explain the great delay in getting a renewal of A.

III.—That plaintiff admitted in his examination that, at the date of pottom-chit, the land was not in his possession, but had been held for a long time by first defendant's tarwad; that it is, therefore, clear that the land was not made over to the possession of Ukandan Nayar according to that pottom-chit; and what while so, the Moonsiff's remark, that the burden of proof is on defendants, and the rejection of his (first defendant's) reliable documentary and oral evidence, were incorrect.

IV.—That the plaint set forth that after the land escheated to Government, plaintiff obtained and held it only in 1020, and that in Vrichigom 1021 it was let to his (first defendant's) Karna-ven; and that, on the other hand, plaintiff deposed that, in 1020, the Government did not give him possession.

V.—That it is unjust to have awarded, on frivolous conjectures, a land with its rent which passed into the possession of the Government many years ago, and the jenm right of which was sold in 1035, and vested in the purchasers.

VI.—That third defendant's admission cannot affect him, (first defendant.)

G. A. Ballard, Esq., Collector of Malabar, third defendant above-named, appeals to the Civil Court at Calicut under No. 506, against the aforesaid decree, for the following reasons, namely—

I.—That defendants having wholly denied the plaint, the burden of proving it was on plaintiff.

II.—That plaintiff admits that possession of the land escheated to Government; that, therefore, the burden of proving that plaintiff again got the land back was on him (plaintiff); that plaintiff did not prove this; that plaintiff did neither allege nor prove that he had possession previously; and that plaintiff did not prove that he has any right, authorizing him to transfer the land to another.

III.—That the Puttah B, granted by Government to plaintiff in 1020, does not prove either the possession or even the payment of revenue; that plaintiff admits that his possession is not under the puttah, and that he did not pay revenue thereunder; that the puttah was first granted by mistake; and that it was subsequently transferred as usual into the names of those who had authority to receive it.

IV.—That he (third defendant) neither admits nor denies the genuineness of A; that even if genuine, it does not prove the plaintiff's authority to receive it; and that he (third defendant) contends that plaintiff had no such right.

V.—That plaintiff's evidence is untrustworthy; and that the statement given by plaintiff at the first hearing, and the deposition given by plaintiff as a witness, are contradictory.

VI.—That plaintiff brought the suit for possession, alleging the land to be his jenm; and that it was incorrect to decree in plaintiff's favor without entering into the question of jenm right.

The appeals having been heard in the presence of Kanna Menon, Vakeel for the appellant and of second respondent in No. 505, Gopala Menon, Vakeel for the first respondent in both numbers; Shekara Kurup, Vakeel for the appellant, and of second and third respondents in No. 506,

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the Court confirms the decree of the lower Court, and dismisses these appeals. All costs therein will be borne by their respective preferers.

Appellant in No. 505 to bear.

	RS.	A.	P.
1 Roll for Appeal Petition.....	35	0	0
Additional do. for do.	0	8	0
1 Roll for Vakalutnamah.....	0	8	0
Pleader's fee.....	17	7	2
Peon's batta.....	1	0	0
In Original Suit.....	6	15	2
	61	6	4

Appellant to pay first Respondent's costs.

1 Roll for Vakalutnamah.....	0	8	0
Pleader's fee.....	17	7	2
In Original Suit	12	15	2
	30	14	4

Third Respondent to bear.

In Original Suit	4	7	2
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Appellant in No. 506 to bear.

1 Roll for Appeal Petition.....	17	0	0
Pleader's fee.....	8	0	9
Peon's batta	1	0	0
	26	0	9

Appellant to pay first Respondent's costs.

1 Roll for Vakalutnamah.....	0	8	0
Pleader's fee.....	8	0	9
	8	8	9

Given under my hand and the seal of the Court, this 14th day of February 1868.

(Signed) G. R. SHARPE,

Civil Judge.

The period for preferring a special appeal from this decree will expire on the 14th May 1868, within which time the application for special appeal, accompanied by copies of the several decrees previously passed in the case, must be presented to the High Court of Judicature at Madras, or the application will be rejected.

No process of execution will be issued to enforce the decree, unless some proceeding shall have been taken to keep the same in force within three years next preceding the application for such execution.

1. Revenue is payable to Government on the land involved in No. 505.
2. It is not permanently settled.
3. Revenue payable to Government is Rupees 10-1-6 $\frac{1}{2}$.
1. Revenue is payable to Government on the land involved in No. 506.
2. It is not permanently settled.
3. Revenue payable to Government is Rupees 20-3-1.

(Signed) G. R. SHARPE,

Civil Judge.

(True Copy.)

(Signed) G. A. BALLARD,

Collector.

18th June 1868

JUDGMENT.

Appeal Suits Nos. 505 and 506 of 1867.

IN THE CIVIL COURT OF CALICUT.

Present.—G. R. SHARPE, Esq.,

Dated 14th February 1868.

Original Suit was brought to recover, with arrears of rent from 1034, (less received,) a land let by plaintiff to Ukandan Nair, first defendant's deceased Karnaven, on 5th Vrichigom 1021. Plaintiff sets forth that the land was plaintiff's tarwad jenm; that Kunhi Moidin Muppen (a rebel) held a Kanom right thereon; that that right was included by the Government as an escheat (Paravari); that subsequently, in 1020, plaintiff obtained a puttah from Government and holds.

2. First defendant denied the truth of plaintiff, and stated that there is no ground to pay rent, or surrender the property to plaintiff; that this land and that sued for in Original Suit No. 277 of 1860, (Appeal Suits Nos. 507 and 508 of 1867,) are the jenm property of Government; that in 995 his Karnaven (Imbichi alias Ukandan Nair) obtained the plaintiff land from Government; that in Medem 1035, the Government granted a Pattayam to second defendant; that second defendant holds, but he does not.

3. Second defendant did not appear.

4. Third defendant stated that this land, and that in Original Suit No. 277, are but one land; that Government got it, when, in 1802 and 1813, the property of the criminal above-named was constituted as escheat; that Government, either as Kanomkar or Jenmy, in 1860, lawfully carried out their right, put an end to plaintiff's possession, and gave defendants possession.

5. Moonsiff decreed for plaintiff.

6. First defendant appeals under No. 505.

7. Third defendant appeals under No. 506.

8. I am of opinion that the Moonsiff has arrived at a correct conclusion, and I regret that the Collector of Malabar should be found abetting a refractory tenant in resisting the just demands of his landlord.

9. It is of course very difficult for plaintiff to find anybody willing to state anything in his favor against the Collector and his subordinates, and it is very clear that some person or other has been guilty of tampering with such witnesses as he could get. I trust, however, that this disgraceful part of the business is attributable to second defendant, who happens to be the Karnaven of the writer of A, that is, plaintiff's first witness. I could wish that there was as good reason for thinking that the Amshom Menon has been put forward by that defendant, and not by his superiors, to depose positively as to the possession of a trifling piece of land, with which it is utterly impossible that, amid his multifarious duties, he can have had so intimate an acquaintance as he professes.

10. Of the execution of the pattom-chit I entertain no doubt, and, although plaintiff's first witness denies that he saw it executed, he is not audacious enough to deny his own hand-writing. Its own appearance indicates genuineness, and plaintiff's own evidence is sufficient to prove its execution. Nobody denies that first defendant's Karnaven then held the property, and, in the circumstances of the case, there is ample to justify the conclusion that his possession since was under the pattom-chit sued upon. The opposing evidence is worthless. There are two witnesses for first defendant, one the Amshom Menon above referred to, and the other an equally untrustworthy individual, namely, plaintiff's Karnaven's son, or, in other words, his deadly enemy.

11. There is a deposition on record, purporting to have been taken in the year in which this suit was filed. It is denied by plaintiff, and the Officer who recorded it has since been dismissed for dishonesty. I cannot attach much weight to a deposition which labours under these defects; nor do its contents (so far as a cursory view enables me to speak) appear to affect plaintiff's case. There are also some accounts of escheats which the Moonsiff has correctly refused to give any consideration to.

18th June 1868.

12. It is somewhat difficult to understand what third defendant's answer means. The plaintiff possesses a puttah of 1020, granted by a former Collector, which, it is alleged in appeal, was mistakenly granted. The third defendant also admitted that plaintiff was in possession down to 1860, when the Collector, either as Kanomkar, or as Jenmy, (delightful vagueness,) put an end thereto, and gave possession to defendants. Even had the Collector occupied both those capacities, it would be difficult to say under what law he had the power to act in the manner stated, except on the principles advocated by Rob Roy—

“ The good old rule, the simple plan,
That they should take who have the power,
And they should keep who can.”

13. Both these appellants contend that plaintiff has made contradictory statements. The third defendant merely states this generally, but does not descend to particulars. The first defendant does, however, point out, in fourth paragraph of his appeal, one imaginary discrepancy. It is based upon the supposition that plaintiff claimed to have got possession from Government in 1020 only, but he did nothing of the kind. He admitted that the property was included (in its accounts) by Government as an escheat; but that Government ever took any further steps than preparing an account he nowhere admitted. I dare say that the truth of the matter is that Government interests were neglected in the Collector's office some half a century ago, and that beyond making the said account, nothing further was done, and plaintiff quietly came again into possession. Whether this be so or not I am not about to decide the point in the present action of rejectment. It is sufficient for a decree in plaintiff's favor to say that a lessee, which position first defendant is shown to occupy relatively to plaintiff, is estopped from denying the lessor's title to grant the lease, and that the law will not suffer a tenant to abuse a possession gained by the act and confidence of the landlord, and turn it to the injury of the latter.

14. I confirm the decree of the lower Court, and dismiss these appeals; all costs therein will be borne by their respective preferers.

(Signed) G. R. SHARPE,

Civil Judge.

(True Copy.)

(Signed) G. A. BALLARD,

Collector.

Appeal Suits Nos. 507 and 508 of 1867.

IN THE CIVIL COURT OF CALICUT.

Present.—G. R. SHARPE, Esq.

Dated 14th February 1868.

No. 507.

Vetekat Pulliakote Ukappen Nair ... First Defendant, Appellant.
By Vakeel Kanna Menon.

versus

1. Karamballi Kokolli Chandu Kurup ... Plaintiff,
2. G. A. Ballard, Esq., Collector of Malabar, *ex parte*, Second Defendant, } Respondents.
First Respondent, by Vakeel Gopala Menon.
No. 508.

G. A. Ballard, Esq., Collector of Malabar... Second Defendant, Appellant.
By Government Vakeel Shekara Kurup.

versus

1. Karamballi Kokolli Chandu Kurup ... Plaintiff,
2. Vetekat Pulliakote Ukappen Nair, in person ... First Defendant, } Respondents.
First Respondent, by Vakeel Gopala Menon.

Ukappen Nair, first defendant above-named, appeals to the Civil Court of Calicut under No. 507, against the decree of Mr. V. P. D'Rozario, District Moonsiff of Calicut, in Original Suit

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No. 277 of 1860, on the Cutcherry Moonsiff's file, dated 19th October 1867, for the following reasons, namely—

I.—That the reasons, assigned in the Moonsiff's judgment in Original Suit No. 239 of 1860, do not furnish grounds for decreeing according to plaint.

II.—That the land and the Kychit being different, separate evidence was necessary on the side of the plaintiff in this case.

III.—That the interest on the amount of parapad, (Rupees 81-10-4,) if calculated from date of plaint, will not come up to Rupees 97-15-8, as entered in the decree; that in like manner the parapad, after deducting the revenue, if calculated from date of plaint to that of decree, will not come up to Rupees 435, as shown in the decree; that in that case the interest on that amount will also differ; that the entry in the plaint, that the revenue is Rupees 12, is also incorrect.

G. A. Ballard, Esq., second defendant above-named, appeals to the Civil Court of Calicut under No. 508, against the aforesaid decree, for the following reason, namely—

That as the lower Court states that this decree was passed on the grounds shown in the judgment in Suit No. 239 of 1860, his appeal (No. 506 of 1867) preferred from the above decree should be taken as applicable here also.

These appeals having been heard in the presence of Kanna Menon, Vakeel for the appellant in No. 507; Gopala Menon, Vakeel for the first respondent in Nos. 507 and 508; Shekara Kurup, Vakeel for the appellant in No. 508, and of the second respondent in No. 508, the Court modifies the decree of the lower Court by rectifying the Moonsiff's inaccuracy in the calculation of interest on the rent, and otherwise confirms that decree, and dismisses these appeals. All costs therein will be borne by their respective preferers.

Amount of interest as rectified in the Moonsiff's decree RS. A. P.
70 7 10

Appellant to bear in No. 507.

1 Roll for Appeal Petition...	96	0	0
1 Do. for Vakalutnamah ...	0	8	0
Pleader's fee ...	47	0	0
Peon's batta ...	1	0	0
In Original Suit ...	7	15	2
	152	7	2

Appellant to pay first Respondent's costs.

1 Roll for first Respondent's Vakalutnamah ...	0	8	0
Pleader's fee ...	47	0	0
In Original Suit ...	22	3	2
	69	11	2

Appellant to pay second Respondent's costs.

In Original Suit ...	7	5	2
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Appellant to bear in No. 508.

1 Roll for Appeal Petition...	10	0	0
Pleader's fee ...	4	12	9
Peon's batta ...	0	14	0
	15	10	9

Appellant to pay first Respondent's costs.

1 Roll for Vakalutnamah ...	0	8	0
Pleader's fee ...	4	12	9
	5	4	9

L. S.

Given under my hand and the seal of the Court, this
14th February 1868.

(Signed) G. R. SHARPE,

Civil Judge.

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18th June 1868.

The period for preferring a special appeal from this decree will expire on the 14th May 1868, within which time the application for special appeal, accompanied by copies of the several decrees previously passed in the case, must be presented to the High Court of Judicature at Madras, or the application will be rejected.

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.

(Signed) G. R. SHARPE,
Civil Judge.

1. Revenue to Government is payable on the lands involved in Suit No. 507.
2. They are not permanently settled.
3. Revenue payable to Government is Rupees 10-1-6 $\frac{3}{4}$.
1. Revenue to Government is payable on the lands involved in Suit No. 508.
2. They are not permanently settled.
3. Revenue payable to Government is Rupees 12.

(True Copy.)

(Signed) G. A. BALLARD,
Collector.

JUDGMENT.

Appeal Suits Nos. 507 and 508 of 1868.

IN THE CIVIL COURT OF CALCUT.

Present.—G. R. SHARPE, Esq.

Dated 14th February 1868.

Original Suit was brought to recover, with arrears of rent from 1034, a land let in Vrichigom 1021 by plaintiff to first defendant's Karnaven, Ramen Nair, (deceased). Plaint sets forth that the land was plaintiff's tarwad jenm; that Kunhi Moidin Muppen (a rebel) had a Kanom right thereon; that that right was included by the Government as an escheat; that in 1020 plaintiff obtained a Puttayom from Government, and while holding let as above.

2. First defendant stated that there is no ground to pay rent, or surrender the land to plaintiff; that Government is the Jenmy; that from 995 his Karnaven holds.

3. Second defendant stated that this land and that in Original Suit No. 239 of 1860, (Appeal Suits Nos. 505 and 506 of 1867,) are but one land; that Government got it, when, in 1802 and 1813, the property of the criminal above-named was constituted an escheat; that Government, either as Kanomkar or Jenmy, in 1860, lawfully carried out their right, put an end to plaintiff's possession, and gave defendants possession of the land.

4. Moonsiff decreed for plaintiff.

5. First defendant appeals under 507.

6. Second defendant appeals under 508.

7. The pattom-chit in this and the cognate suit were executed on the same date, and it is very clear from the record that it was with the consent of all parties that the evidence taken in the other suit, to which these defendants were parties, was to be read as evidence in the present suit. I consider the pattom-chit in this suit also to be proved; but as I have sufficiently remarked in my judgment in Appeal Suits Nos. 505 and 506 of 1867, upon the evidence as regards the main question in dispute, it is unnecessary to do more here than refer to those remarks.

8. No issue having been raised in the lower Court as to the amount of Government revenue payable on this land, I cannot, of course, permit it to be raised for the first time in appeal.

9. As regards the amount of interest on the rent, there appears to be a trifling inaccuracy in Moonsiff's calculation, which will be rectified. With this modification, I confirm the decree of

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the lower Court, and dismiss these appeals. All costs therein will be borne by their respective preferers.

(Signed) G. R. SHARPE,
Civil Judge.

(True Copy.)

(Signed) G. A. BALLARD,
Collector.

Under the circumstances stated by the Collector, the Board do not advise a special appeal.

2. They deem it necessary to call the attention of Government to the remarks of the Civil Judge, in paragraphs 8 and 9 of the judgment, reflecting on the Collector's character.

3. They are of opinion that the position of a public officer differs from that of a mere party to a suit, and that the character of an officer, such as the Collector of a district, should not be impugned except on the clearest evidence.

4. It is hardly necessary to observe that remarks such as these will sure to gain publicity through Vakeels of the Court, and in other ways; and that the scandal of the Collector being declared capable of such dishonorable practices as Mr. Sharpe implies, cannot but be injurious to the public service, especially in a district like Malabar.

5. Mr. Ballard's high character should have sufficed to protect him from such unfounded and unwarrantable insinuations.

(True Copies and Extract.)

(Signed) A. MACGREGOR,
Acting Secretary.

Transferred to the Judicial Department.

(Signed) W. HUDLESTON,
Secretary to Government, R. D.

3rd June 1868.

No. 165.

ORDER THEREON, 18th June 1868, No. 984.

The Governor in Council sanctions the payment of the costs in the suits referred to in the foregoing Proceedings of the Board of Revenue, and directs that Mr. Sharpe be transferred from the Calicut to the Madura Civil and Sessions Court.

(True Extract).

R. S. M.

Chief Secretary.

To the Revenue Department.

" Collector of Malabar.

" Accountant General.

25/8

W. S. M.

Ms. A. 9.2.1808.

Communicated to the
Reserve Board.

29 June/88

5 Acres with the 100 of River with One 1/2 Acre 984 Baskets

Thm and