M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No.	2054	Press ~~Mis.~~
467-68 Dated	30-7-	19 1868

Not to be folded or roughly handled

Read the following :—

No. 467. Proceedings of the Board of Revenue, dated 6th June 1868, No. 4,226.

Read the following letter from the Acting Collector of South Canara, to the Acting Secretary to the Board of Revenue, dated Mangalore, 30th April 1868, No. 432.

1. I have the honor to submit translation of a plaint,* with reference to which notice has been served upon me as supplemental defendant, the suit being posted for hearing on the 15th of July next.

* In Original Suit No. 104 of 1866, in the Principal Sudder Ameen's Court of Mangalore.
Talliyankul Krushna Varma Muta Arasu.
versus
G. Lee Morris, Esq.
W. M. Cadell, Esq.

2. The question involved in the case is one of general importance in the district, the object sued for being the establishment and enforcement of the alleged rights of proprietors of estates to fell and cultivate "Warag Kumeri," or tracts of forest land claimed to appertain to proprietary estates.

3. The claim of proprietary right to "Warag Kumeri" was, as the Board are aware, finally rejected by Government† in 1860, and the privilege of cultivation in such tracts of forest land was declared resumable at will by Government on remission of the corresponding items of tax entered in former years in the registers of the proprietary estates; the privilege was, in fact, so resumed in all the talooks, except that of Kassergode, where landowners were, as an act of grace, permitted‡ to continue the said species of cultivation to a limited extent, at the rate of one acre to every four Annas of the Kumeri Shist,§ or Shamil‖ appearing in the registers of their proprietary estates, subject, however, to an increased rate of tax, that is, one Rupee per acre on the extent thus cultivated.

† Government Order, dated 23rd May 1860, No. 830, paragraphs 4 to 8.

‡ Government Order, dated 23rd May 1860, No. 830, pargraph 17; Government Order, dated 24th October 1861, No. 2,032; and Board's Proceedings, dated 21st July 1863, No. 4,495.

§ Original standard land rent.

‖ Additional imposts.

4. In the present suit, the plaintiff, who is a wealthy landlord in the Kassergode Talook, and is the first member of the pensioned family of the former Rajahs of Nileshwar, asserts a claim to seventy-nine plots of forest land as forming part of two of his proprietary estates, and maintains that, of these seveventy-nine tracts, he has the right to fell and cultivate one-twelfth part annually, in turns, completing the whole area in twelve years, and renewing the same process after the expiration of that period. He, therefore, sues to set aside the restrictive rules, sanctioned by Government, for regulating the cultivation of "Warag Kumeri" in the Kassergode Talook, and seeks to establish, virtually, an absolute right of property in all the seventy-nine tracts of forest land referred to, which he would fell and cultivate in his own way, without liability to any other assessment than that entered in the registers of his estates. He claims, further, to recover the amount of Rupees 450-8-5, with interest thereon, being the excess of tax over and above the registered beriz of his estates, levied from him, in Fuslies 1274 and 1275, at the increased rate under the rules above referred to, on the extent of cultivation which he was permitted to carry on in some of the aforesaid tracts of forest land under those rules.

5. Besides the above tracts of Kumeri, or forest land, the plaintiff claims also three other pepper and cardamom jungles as likewise forming part of one of the two estates referred to in the plaint, and which, he urges, he is entitled to cultivate with any species of crop that he may wish. The jungles are those referred to in Board's Proceedings marginally noted, in which the Board declined to grant the request made by plaintiff, (then Board petitioner,) for permission to cultivate Kumeri in those jungles, and restricted his claim to the appropriation of the pepper and cardamom crops growing in the same, giving him the option of relinquishing the privilege, and thereby obtaining the remission of the corresponding tax appearing in the register of his estate.

4th January 1867, No. 27.

6. The documents on which the plaintiff relies in support of his claim of proprietary right to the Kumeri land, as well as to the three pepper and cardamom jungles, are the Durmuti Chittas,* or the registers of his proprietary estates prepared for revenue purposes in 1802 and 1803, in which seventy-nine tracts of Kumeri land, and the pepper and cardamom jungles, with the items of tax connected therewith, have been entered along with the other particulars of the estates. The plaintiff relies also on two Court decrees, in pursuance of which his ancestor is stated to have been put in possession of the two estates, inclusive of the tracts of Kumeri and the jungles now claimed by virtue of a purchase effected from the former owners.

* Translates enclosed.

7. The Court decrees relied upon are worthless in this case, as they were passed in suits brought merely to redeem the estates from a previous mortgagee, and the question, whether the proprietors of the estates had also a proprietary right to the tracts of the Kumeri and the jungles, was not at issue therein. Moreover, the decrees, had they even established that the owners of the estates had a proprietary right to the Kumeries and jungles, could not in any way be binding upon the Government, who were no party to the suits.

8. The entries in respect of the Kumeries and jungles and of the tax thereon, found in the Durmuti Chittas, or Registers of the estates, as prepared in 1802 and 1803, are the only basis on which a presumption in favor of the plaintiff's claim of proprietary right to those tracts of forest can be raised; but this presumption can, in my opinion, be successfully rebutted on the grounds embodied in the Order of Government† above quoted, and on which the decision of Government against the invalidity of the landowners' claims of proprietary right to such forests was based.

† Govt. Order, dated 23rd May 1860, No. 830.

9. As the subject of Kumeri cultivation in the Kassergode Talook is, however, now again under the consideration of Government in connection with my report to the Board, dated the 22nd September 1866, No. 130, I have the honor to solicit the Board's instructions as to whether a draft answer should be at once submitted by me for their approval as usual, or the determination of the line of defence to be adopted should be delayed until the receipt of the orders of Government on my report above referred to. Should the Board approve of the latter course, I request their instructions as to the extension of period for which it may be necessary to apply to the Court to postpone the hearing of the case.

10. Copy of an order and translation of another, both passed by Mr. Morris on petitions presented to him by the plaintiff, and now produced by the latter in Court along with the plaint, are enclosed.

TRANSLATION OF THE PLAINT.

ORIGINAL SUIT No. 104 of 1866.

Plaint under Section 26 of Act VIII of 1859.

Talliyankul Krushna Varma Muta Arasu of Nileshwar, younger brother of Rama Varma Munankul Arasu, residing at the Cusbah village of Nileshwar Magani, in Kassergode Talook. } *Plaintiff.*

versus

1. George Lee Morris, Esq., late Collector of South Canara, and now Collector of Tanjore, residing at Tanjore.
2. W. M. Cadell, Esq., present Collector of South Canara. } *Defendants.*

1. I bring this suit against the said defendants in the Principal Sudder Ameen's Court of Mangalore for being allowed to cultivate 152½ acres of Kumeri land, and 269 acres of land in the pepper and cardamom jungles, producing, as particularized below, Rupees 739-8-10 a year, and to recover Rupees 506-3-7, principal and interest on account of excess of assessment levied from me, with subsequent interest thereon.

2. An estate, registered in the name of Rama, assessed at Rupees 133-0-5, and situated at Pannatadi village, Nileshwar Magani, inclusive of 53 plots, measuring 66 vadies of Kumeri land and sowing 1,245 ajila muras of seed, which is equal to 2,613½ acres, two pepper jungles called Kadmale and Kurgimale, and one cardamom jungle called Mandimale, measuring 3,228 acres, and another estate, registered in the name of the said Rama, assessed at Rupees 43-13-3, and situated at Kallyar village, inclusive of 26 plots measuring 114 vadies of Kumeri land and sowing 587 ajila muras of seed, equal to 1,467½ acres, were purchased by my elder brother Rama Varma Munankul Arasu on the 29th Mesha (10th May) of Kollam 1013 (1838) from Tulacheri Kanna and three others, to whose ancestors the estates had belonged by proprietary right, and to which they had succeeded by inheritance, and were taken possession of by him in 1843 according to the decrees in Original Suits Nos. 323 of 1839 and 506 of 1840, on the file of the Assistant Court of Canara, confirmed in Appeal Suits Nos 35 and 36 of 1842, on the file of the then Provincial Court, and one-twelfth part of the said Kumeri land was cultivated and enjoyed by my family every year up to 1863.

3. The first defendant, as Collector of the district, in his Order of the 4th August 1864, in opposition to long standing usage, prohibited me from cultivating 116 acres of Kumeri land out of 217¾ acres of land sowing 103¾ muras of seed, which is the extent I was to cultivate annually out of the estate No. 1, and 36¼ acres of Kumeri land out of 122½ acres of land sowing 49 muras of seed in the estate No. 2, and also from cultivating in the above mentioned three jungles appertaining to the estate No. 1, any other grains than pepper and cardamom which do not grow therein. According to this order, the second defendant also enforces this prohibition.

4. Besides this, the first defendant, in his order above alluded to, directed that assessment, at the rate of one Rupee for every 4 acres, should be collected on the Kumeri lands allowed to be cultivated by me. In opposition to this direction, the first defendant himself, and after him the second defendant, directed that assessment should be levied at one Rupee per acre upon the Kumeri land cultivated in Fuslies 1274, and 1275, and they have thus levied from me in excess, Rupees 173-6-10 upon the Kumeri attached to the estate No. 1, and Rupees 277-1-7 upon the Kumeri attached to the estate No. 2.

5. I lay this suit to obtain the refund, with interest, of the amount levied by the defendants in excess, as assessment, and to set aside the restriction imposed by the defendants against my culti-

vating annually one-twelfth part of the whole Kumeri attached to both estates, and also against my cultivating other grains in the cardamom and pepper jungles.

No. of item.	Particulars.	Amount.		
		RS.	A.	P.
I.	116 Acres of Kumeri attached to Estate No. 1, producing	185	8	10
II.	36⅔ Acres of Kumeri attached to Estate No. 2 producing ... ... The defendants' prohibition against my cultivating the above extent annually should be set aside.	56	0	0
III.	Three jungles attached to Estate No. 1, producing ... ... As pepper and cardamoms do not grow in the above jungles, the defendants' prohibition against my cultivating therein other grains, as was formerly done, should be set aside.	496	0	0
IV.	Amount levied by the defendants in excess of the assessment...	450	8	5
V.	Interest thereon up to date of plaint	55	11	2
	Total ...	1,245	11	5

And further interest up to date of recovery.

6. I, therefore, pray that the defendants may be summoned and examined, and that a decree may be passed to the above effect. I have produced herewith copies of the Durmuti Chittas relating to the said estates, the first defendant's orders, and the receipts for the excess of assessment collected.

I, the above named plaintiff, do hereby declare, that what is stated herein is true to the best of my information and belief.

(Signed) TULLIYANKUL KRUSHNA VARMA MUTA ARASU.

Boundaries of ground No. 1 *in dispute.*

East, the Cardamom jungle called Chichal Munrod. South, the ground called Manatadi Kundu in the Kumeri, belonging to Manapalachal Adiyodi. West, the border of the garden called Kolichal Pukalam, the river and the ditch called Maniyar Kundu. North, the road along the river, the ground called Chichal Munrotum Bellan Biran Kolliyalam. Within these boundaries, there are 24 Podipads of Byle and Bettu fields and gardens; 7 Podipads of Byle and Bettu fields, gardens, and 66 vadies of Kumeri situated at Balantota; 12 Podipads of Byle and Bettu fields, gardens, the jungles called Karanja Male, Koda Male and Peradadi Mandi Male, and 17 vadies of Kumeri attached to these three jungles situated at Peradadi.

Boundaries of ground No. 2 *in dispute.*

East, the road which formerly belonged to the Coorg District. South, the river. West, the Kumeri belonging to Iravail Bavanaru, Betturu and Chulikolaru. North, the borders of the Kumeri belonging to Cherkare, Kodot and Areyan. Within these boundaries there are 12 Podipads of Byle and Bettu fields, gardens, and 75 vadies of Kumeri, situated at Kudumbur.

East, the Kumeri of Yedamane Bavanaru up to the road Kolichal. South, the Kumeri belonging to Adiyodi and Narna Thatle. West, the Kumeri of Munrod Churian Nagam, the Cherikal (Rajahs) and the Kodot (family.) North, the road along the river up to the Kumeri of Bavanaru. Within these boundaries there are 7 Podipads of fields, gardens and 7 vadies of Kumeri situated at Adukate; 9 Podipads of fields, gardens and 28 vadies of Kumeri situated at Kollaru.

East, the western wall of the garden called Cherakare Kara Tiyan Cunyu. South, the ground called Kolmadu on the north side of the Kumeri called Palkuchi. West, the eastern wall of the garden of Alamgota Adiyodi. North, a small stream. Within these boundaries there is one vady of Kumeri called Yedeyal Cuna, situated at Chullikare Aiyangal Vattu.

East, the western corner of the rock called Ballam Kallu. South, the water-shed of the Kumeri called Kollarantol. West, the eastern border of the Kumeri called Bala Kochi up to the stone embankment to the south. North, a small stream. Within these boundaries there is one vadi of Kumeri called Naga Kambadi situated at Chullikare Aiyangal Vattu.

East, the waste ground called Palli Mandaka. South, the ground called Barata Kolli West, the fields of the Tulacheri (family) Warag. North, the ground called Kolumadu. Within these boundaries there is one vadi of Kumeri called Karidri Kallu situated at Chullikare Aiyangal Vattu.

East, the Kumeri called Pollangallu. South, the ground called Kolumadu. West, the stone embankment on the northern side of the Kumeri called Kollaran Tottu. North, the eastern corner of the Kumeri called Nagatampadi, and the border of the waste ground called Polimae Adaka. Within these boundaries there is one vadi of Kumeri called Pollakallu situated at Chullikare Aiyangal Vattu.

East, a small stream. South, a small stream. West, the stone embankment on the eastern side of the ground called Kollarum Totti. North, the ground called Barat Kolli. Within these boundaries there is one vadi of Kumeri called Mainkallu situated at Chullikare Aiyangal Vattu.

Original Suit No. 104 of 1866.
Filed this 10th November 1866.

(Signed) T. MUTUSWAMI AIYAR,
Principal Sudder Ameen.

(True Copy.)

(Signed) C. J. COELHO,
Serishtadar.

(True translation.)

(Signed) H. S. THOMAS,
Acting Collector.

ENCLOSURE No. 2.

ABSTRACT.—Translation of Chittahs or the Registers of plaintiff's proprietary estates.

ENCLOSURE No. 3.

ABSTRACT.—Copy of an Order passed by Mr. Morris, late Collector of South Canara, on petition presented by the plaintiff.

ENCLOSURE No. 4.

ABSTRACT.—Translation of an Order passed by Mr. Morris, late Collector of South Canara, on petition presented by the plaintiff.

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1. The Collector will apply for postponement of the hearing of this suit until September 15th; and is requested, meanwhile, to forward a draft of the reply he proposes to file.

2. He should plead Section 58 of Act No. II of 1864, (Madras,) in answer to so much of the plaint as raises the question of the rate of assessment payable by the plaintiff.

No. 467A. Proceedings of the Board of Revenue, dated 10th July 1868, No. 5,099.

Read again Board's Proceedings, dated 6th June 1868, No. 4,226.

Read also the following letter from the Acting Collector of South Canara, to the Acting Secretary to the Board of Revenue, dated Mangalore, 26th June 1868, No. 604:—

1. As directed in Board's Proceedings, No. 4,226, under date the 6th June 1868, I have the honor to forward, herewith, a draft of the Written Statement proposed to be filed on my behalf in Original Suit No. 104 of 1866, on the file of the Principal Sudder Ameen's Court of Mangalore.

2. The case being an important one, and requiring to be carefully defended by the best Vakeel available on the spot, I request the permission of the Board to retain a special Vakeel for the occasion, as the Government Pleader is a man of only ordinary abilities.

Draft of "Written Statement" proposed to be filed on behalf, of the Acting Collector of South Canara, Supplemental Defendant in Original Suit No. 104 *of* 1866, *on the file of the Principal Sudder Ameen's Court of Mangalore.*

1. Neither the plantiff, nor his predecessors, ever had any proprietary right to the Kumeri lands claimed in the plaint as forming parts of his proprietary estates No. 1 of Pannatadi village, and No. 1 of Kalliar village.

2. The proprietors of these wurgs were, like several others, allowed formerly to cultivate annually certain tracts of forest land on payment of a certain amount, irrespective of the assessment on their proprietary lands, but this privilege was simply of the nature of a *rent* or *farm* resumable at will by Government.

3. The Court decrees relied upon by the plaintiff did not determine the question of his proprietary right to such tracts of forest land, and even if they had, they could not affect the rights of Government, who were no party to those suits.

4. The Government having latterly found it expedient to prevent the reckless destruction of their forests, directed the entire resumption of Kumeri farms in some places, and allowed its continuance temporarily in others, as an act of grace, as in the case of the plaintiff, to the extent of four acres for every Rupee of tax entered in a Chitta, and subject to the payment of one Rupee for each acre of Kumeri so cultivated.

5. The Collector accordingly required the plaintiff, as well as other Kumeri cultivators in Kassergode Talook, by a public notification issued in December 1862, to conform to these restrictions and revised terms, if they desired to continue to hold their farms.

6. Plaintiff's tenure of the pepper and cardamom jungles claimed in the plaint is of the same nature with that of the Kumeri lands. Moreover, they having been farmed out, according to his own admission, expressly for growing pepper and cardamom, at the low rent of Rupees 33-8-5, he has no right to make a different description of cultivation such as Kumeri.

7. The Chittas produced by plaintiff in support of his claim are simply accounts of the various taxes due from their holder to Government, and though, for convenience sake, Kumeri and other rents are found entered in one and the same total account of all the different descriptions of dues payable by the holder to Government, the fact of the total demand being as usual in such accounts (that is wurgs) thrown together, does not make them all of one nature, so that entries of rents resumable at pleasure can be argued to be entries of proprietary rights.

8. Under Section 58 of Act No. II of 1864, no Court of Civil Judicature has authority to take into consideration or decide any question relating to rate of land revenue payable to Government, much less of a rent resumable at pleasure.

9. The supplemental defendant, therefore, prays that the plantiff's suit may be dismissed with costs.

MANGALORE,
26*th June* 1868.

(Signed) H. S. THOMAS,
Acting Collector.

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1. The draft answer forwarded with the foregoing letter is approved, and the defence of the suit sanctioned.

2. The Acting Collector is also authorized to engage the services of a special Vakeel.

No. 468. ORDER THEREON, 30th July 1868, No. 2,054.

Miscellaneous.

1. The orders of the Board are approved.

2. As the Suit in question involved an important principle, the sanction of Government should have been obtained for defending it, (see G. O., under date 9th December 1862, No. 2,565).

(Signed) R. A. DALYELL,
Acting Secretary to Government.

Revenue Department

P. 2054.

Proceedings of the Madras Government

Under date the 30th July 1868.

Read the following

Proceedings of the Board

of Revenue.

Sanctioning defence of Original Suit No. 104 of 1866, filed in the Principal Sudder Amin's Court of Mangalore in South Canara district, and authorizing Collector to engage the services of a special Vakeel for the purpose.

(H.C. 10th July/68 No. 5099)

1 The orders of the Board are approved.

2. As the suit involved an important principle, the sanction of Government should have been obtained for

for defending it (see
G. O. under date 9th December
1862, pa 2565.)

14 Copies to the Dept of Rec. Dept 31st

3/12/79

28/6/1751

Revenue 1868 Deptt
Pro of Govt in for July

No 2054

Pro of the Madras Govt
Dy 30 July 1868.

From the Sec of Rev
Lr Sept Reg No 3012 In
Pro 8 Nov 1869 No 2933

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Sub Ass Lands

Nos 467-468

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