M.R.O. 1—30,000—16-10-28.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	2613	Press ~~Mis.~~
194-95 Dated	10-10-	~~19~~ 1868.

Not to be folded or roughly handled

No. 194. Read the following Proceedings of the Board of Revenue, dated 19th September, 1868, No. 6,674 :—

Read the following letter from the Acting Collector of Nellore, to the Acting Secretary to the Board of Revenue, dated 20th June, 1868, No. 1,879.

With reference to the Board's Proceedings, No. 2,300, dated the 11th April, 1867, I have the honor to forward, herewith, the Decree and Judgment of the Civil Court in Regular Appeal Suit No. 30 of 1867, reversing the Decree of the District Munsiff of Ongole in Original Suit No. 537 of 1865 on his file, and upholding the Collector's decision.

In the Court of the Civil Judge of Nellore, Wednesday, the thirteenth day of May, One Thousand Eight Hundred and Sixty-eight.

L. S.

Present.—J. R. Cockerell, Esq., Civil Judge.

Regular Appeal Suit No. 30 *of* 1867.

Chattrasi Narasimhulu..... *Appellant,* (3rd Defendant.)

versus

1. Sagi Venkatraju Rayaparazu,
2. Vulichi Kotappa,
3. ,, Kondairayudu,
4. Chattrasi Badrachalam,
5. Gandikota Ramaswamy,
6. Acting Collector of Nellore,

Respondents, (Plaintiffs.)

Regular Appeal against the Decree of the District Munsiff's Court of Ongole in Original Suit No. 537 of 1865.

Grounds of Appeal.

1. That the defendants proved the land was waste when defendants 3, 4, and 5 applied for and obtained it.

2. That plaintiff did not produce any documentary evidence to prove his title to the land.

3. That as the Collector gave defendants 3, 4, and 5 the land, the plaintiff has no right to it, with reference to Regular Appeal No. 20 of 1862, High Court's file.

4. That plaintiff admitted the land was waste for six years prior to defendants 3, 4, and 5 applying for it.

5. That by plaintiff's own showing the land is not in his puttah, and he did not pay cist for it.

6. That Exhibit 4 shows the land was waste.

7. That the land is in No. 112, not in No. 111.

8. That plaintiff's witness deposed falsely.

9. That the District Munsiff should not have taken into consideration the Order of the Sub-Collector, as that Order was cancelled by the Collector.

10. That there was excess over Puttah measurement found in No. 111, when that field was measured.

11. That plaintiff only came forward two years after defendants 3, 4, and 5 first got the land.

12. That plaintiff did not object to the issue of Puttah to defendants 3, 4, and 5.

13. The defendants 3, 4, and 5, relying on the award of the land to them by the Collector, have spent money on the land.

Decree.—This appeal coming on for hearing, upon perusing the grounds of Appeal, the Judgment and Decree of the Court of First Instance, and the material papers in this suit, and upon hearing the arguments of A. Venkaya, Vakeel for Appellant, K. Venkatakristnama Charry, Vakeel for first respondent, Abdul Alla Sahib, Vakeel for second and third respondents, N. Singara Charry, Vakeel for sixth respondent, (the fourth and fifth respondents not appearing either in person or by Vakeel), this Court doth order and decree that the Decree of the Court of First Instance be, and the same hereby is, reversed, and this appeal allowed, and this Court doth further order and decree that the first respondent (the plaintiff) do pay Rupees 50-2-1 to appellant and other defendants, for their costs in Original and Appeal.

Memorandum of cost.

	RS. A. P.	RS. A. P.	RS. A. P.
Incurred by third and fifth defendants as per original Decree, ...		10 12 8	
Costs incurred by Appellant (the third Defendant in appeal).			
Vakalutnama, ...	0 8 0		
Appeal Memorandum with an additional paper, ...	4 8 0		
Attested copy of lower Court's Decree, ...	1 8 0		
Fee for copying do.	0 8 9		
Batta for serving process, ...	10 6 0		
Vakeel's fee, ...	2 0 0		
		19 6 9	
			30 3 5
Costs incurred by second and third Respondents, (the first and second Defendants).			
Costs by second defendant as per original Decree		8 3 4	
Do. *second and third Respondents, (the first and second Defendants) in appeal.*			
Vakalutnama, ...	0 8 0		
Vakeel's fee, ...	2 0 0		
		2 8 0	
			10 11 4
Costs incurred by sixth Respondent, (the eighth Defendant,) as per original Decree		7 3 4	
Do. do. in appeal.			
Government Vakeel's fee, ...		2 0 0	
			9 3 4
To be paid to defendants by first Respondent, (the Plaintiff), ...			50 2 1
Costs incurred by first Respondent, (the Plaintiff) as per original Decree,			31 1 4
Do. do. in appeal.			
Vakalutnama, ...	0 8 0		
Vakeel's fee, ...	2 0 0		
		2 8 0	
			2 8 0
To be borne by plaintiff, ...			33 9 4

(Signed) J. R. COCKERELL,
Civil Judge.

(True Copy.)

(Signed) J. A. C. BOSWELL,
Acting Collector.

Proceedings of the Madras Government, Revenue Department,
10th October, 1868.

In the Court of the Civil Judge of Nellore, Wednesday, the thirteenth day of May, One Thousand Eight Hundred and Sixty-eight.

Present.—J. R. COCKERELL, Esq., Civil Judge.

Regular Appeal Suit No. 30 *of* 1867.

Chattrasi Narasimhulu, ... *Appellant*, (the 3rd Defendant.)

versus.

1. Sagi Venkatraju Rayaparazu,
2. Vulichi Kotappa,
3. ,, Kondalrayudu,
4. Chattrasi Badrachalam,
5. Gandikota Ramaswamy,
6. Acting Collector of Nellore,

Respondents, (the Plaintiffs.)

Regular Appeal against the Decree of the District Munsiff's Court of Ongole in Original Suit No. 537 of 1865.

This Regular Appeal coming on for hearing, the Court delivered the following Judgment :—

The plaintiff sues to recover 1¼ Gorrus of land as forming part of the land he holds of Government under Puttah with back produce for Fuslies 1272, 1273, and 1275, valued at Rupees 94-8-0.

The plaintiff sets forth in the plaint that the land had been in possession of his family for one hundred years, and had been formerly cultivated, but for the last six years had been waste, and plaintiff's cattle pastured on it ; that third, fourth, and fifth defendants having applied to the proper Revenue Officer for it as waste it was given to them ; that sometime afterwards plaintiff appealed to the Sub-Collector who put him in possession, but that on an appeal by the defendants 3, 4 and 5 to the Collector, the latter Officer reversed the order of the Sub-Collector, and ordered the land to be made over to the defendants 3, 4, and 5.

The second defendant, a Curnum, denied plaintiff's claim stating the land to be in No. 112, not in No. 111, in which is plaintiff's Puttah land, and to have been waste when third, fourth, and fifth defendants applied for and obtained it on Puttah.

The third and fifth defendants pleaded that the land having been waste, they obtained it on Puttah.

The eighth defendant, the Collector, in his written answer stated his readiness to enter the land in whosoever name the Court should order. The District Munsiff found that prior to the application of the defendants 3, 4, and 5, plaintiff enjoyed the land, and hence that it was his and must be made over to him, but without any payment for back produce. He decreed costs to be borne by first, second, third, fourth, and fifth defendants, with the exception of eighth defendant's costs which plaintiff was adjudged to pay.

Against this Decree the third defendant appeals.

Plaintiff holds Puttah land in No. 111. The area of No. 111 is in excess of the plaintiff's Puttah. Whatever that excess amounts to, as admitted by the Revenue Officers, in the excess, the land in dispute is not included. This land is land over and above the excess found in No. 111. Adjoining No. 111 is No. 112. Whether the land in dispute is in No. 112, or whether it forms part of No. 111 over and above, the admitted excess in No. 111 is not shown. The Collector himself is unable to say whether the land is in No. 111 or in No. 112.

The land is described in the public accounts as Peramboke. It is certainly not in plaintiff's Puttah. The Munsiff in his Decree says, paragraph 7 :—

"From the eighth defendant's (Collector's) plea set up in his written statement that there "is no objection to Puttah being granted to the plaintiff if the Court will decide in his favor, it "appears the Collector was of opinion that a formal inquiry was not made when the Puttah was "granted to defendants 3, 4, and 5 ; that it was not requisite for him to make that inquiry ; and "that a Decree passed after inquiry into the above point will be conformed to ;" and hence, the "Munsiff decided in plaintiff's favor. He decided in plaintiff's favor in fact, because he seemed "to think that the Collector in his written statement admitted to the Court that he had been wrong "in giving the land to defendants 3, 4 and 5, and was willing the District Munsiff should rectify

his error. But I do not gather that meaning from the Collector's answer. What I consider the Collector meant was merely—"It is a matter of indifference to me, as Collector, in whose name the "land is entered. I gave it to defendants 3, 4, and 5, because I thought it was shown to have been "waste when they applied for it, and I consequently gave their application priority over plaintiff's "subsequent late objection. But at the same time, if the Court considers plaintiff had possession "of the land, and it was his, I will transfer it at the Court's bidding to his name."

I think the Collector was not admitting his order was wrong, but merely submitting himself to the Court. That question, however, in my opinion, is not the question at which I have to look. I have to consider whether the evidence showed plaintiff possessed the land, and had a right to take it out of defendants' (3, 4, and 5) possession.

Now, as I have already stated above, the land is admittedly not mentioned in plaintiff's Puttah, and plaintiff has an area of land apart from it equal to the area expressed in his Puttah. It is further admitted plaintiff has never paid cist for the land.

Now plaintiff has no right to claim land as his, to which he has no written title, and which is claimed by the Government through their Officers to be at their disposition. His title to land as regards the Government rests simply on his Puttah, and he has no right to Government land not referred to in that document.

Plaintiff in this suit tries to take the land, in point of fact, out of the hands of Government. His suit is to override the order of the Collector.

The Courts cannot sustain such a claim. The Collector has the power to dispose of Peramboke not in any one's Puttahs, and when he has given it away, the Courts cannot say him, nay. They have no control over him. As to whether the land was ever really in plaintiff's possession, I conceive he has not shown it was. He admits it has been waste for six years, and he has grazed cattle on it. But it is clear the mere grazing of his cattle will not give him a title to the land. There is Peramboke outside my own compound on which cattle from my house graze. It is obvious I cannot claim the land as mine on that ground.

I find that this Court has no power to alter the disposition of the Collector as respects the land in dispute, and therefore I throw out the plaintiff's claim with costs throughout, thereby reversing the Decree of the District Moonsiff.

(Signed) J. R. COCKERELL,
Civil Judge.

(True Copy.)

(Signed) J. A. C. BOSWELL,
Acting Collector.

---

1. Submitted for the information of Government, with reference to their Proceedings, dated 21st August, 1866, No. 2,161, and 25th April, 1867, No. 929.

2. As the Decree of the Civil Judge in this case is at variance with the opinion of the Board already expressed in their Proceedings marginally noted, a brief *resumé* of the circumstances of the case may not be deemed out of place.

Board's Procs., 20th July, 1866, No. 4,993.
,, 6th Aug., ,, ,, 5,410.
,, 15th ,, ,, ,, 5,761A.

3. The suit was originally brought by the plaintiff, in September, 1865, to recover certain portion of land in Vulichi, in the Ongole Talook, which had been granted by the Collector to the third defendant in 1862.

4. Previous to instituting the suit, the plaintiff in 1863 petitioned that the land might be given up to him. He represented that it formed part of a plot of land held by him and numbered 111, although it was in excess of the amount entered in his puttah, and that it had been in the undisputed possession of his family for one hundred years. He also brought witnesses to prove that the land had been cultivated by him within the last four or five years.

Proceedings of the Madras Government, Revenue Department,
10th October, 1868.

5. In consequence of this petition, an order was issued by Mr. Thomas, the then Acting Sub-Collector, reversing his predecessor's proceeding, and cancelling the puttah granted to third defendant, thereby restoring the land to the plaintiff.

6. The third defendant then appealed against this decision, (stating that the land he held was 112, and not part of 111,) to Mr. Dykes, the Collector, who at first passed an order to this effect: "The decision of the Sub-Collector is upheld. The "land is on the banks of the Gundlakama. The excess found on measurement may "be the result of natural causes. The appellant (third defendant) it appears is one "of those men who go about looking for such cases. He has no cultivation in the "neighbourhood. He has now in the village some 1½ Gorrus to the east, which is "not cultivated, as village authorities state, and to allow him to come between "respondent (plaintiff) and the river would be wrong. No reliance can be placed "on the old numbers, and No. 112 may be in the bed of the river."

7. Before issuing this order, the Collector changed his mind; and on the ground that the third defendant had been in possession of the land for two years, he reversed the Sub-Collector's order, and directed that the third defendant should be allowed to remain in possession.

8. The plaintiff then brought the suit (No. 537 of 1865) to recover the land, the Collector being included as eighth defendant.

9. The Board in their Proceedings, dated 6th and 15th August 1866, numbered respectively 5,410 and 5,761A, declined to sanction the defence of the suit on the ground that the order (quoted above in paragraph 6) originally passed, but not issued by the Collector, was correct, and should not have been cancelled. The Collector accordingly undertook the defence of the suit on his own responsibility.

10. The result of the suit in the lower Court (communicated to Government in Board's Proceedings, dated 11th April, 1867, No. 2,300,) was that the Collector's decision was reversed, and the land decreed to the plaintiff who was ordered to pay the Collector's costs.

11. Against this the third defendant appealed to the Civil Court; the result being that the Civil Judge has not only adjudged the plaintiff to pay all costs, but has set aside the decision of the District Munsiff, regarding the occupancy of the land, thereby confirming the Collector's order referred to in paragraph 7 above, and of which the Board disapproved.

No. 195. ORDER THEREON, 10th October, 1868, No. 2,613.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

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

To the Board of Revenue.

Fxd. F. R. Bantleman.

Govt. of {1868} Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated October, 10*th*.

Recd. Read.

G. O., 10*th October* 1868, *No.* 2,613.

OCTOBER.

Nos. 194-195.

Suit No. 30 *of* 1867 *against the Collector of Nellore.*—Board's Proceedings submitting, with remarks, copy of Decree and Judgment of Civil Court, recorded.

Pro 21 Aug 66 No 530-1
11 Sept - 241-2-8
25 April 67 - 354-5

Rev. 1868. Department.
Pro of Guardian Patatees

No. 3044.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 19th September 1868.
Rec'd 24
Read 25

No. 6,674.

Submitting to Government with remarks letter from Acting Collector of Nellore, forwarding copy of Decree and Judgment of Civil Court in R. A. S. No. 30 of 1867, ~~reviewing~~ reversing Decree of District Munsiff of Ongole in O. S. No. 537 of 1865, on his file, regarding certain land.

RECORDED.

Collect papers for Dec 1868

No 194 & 195
194-195-