M.R.O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2929 Press / Mis.

395-97
Dated 24-11- 19 1868

Not to be folded or roughly handled

Read the following :—

No. 395. Proceedings of the Board of Revenue, dated 10th February 1868, No. 1,009A.

Read the following letter from the Collector of Madura, to the Secretary to the Board of Revenue, dated Camp at Melur, 28th January 1868, No. 5.

1. I have the honor to forward herewith, translate of a plaint filed in Original Suit No. 41 of 1867, on the file of the Madura Principal Sudder Ameen's Court, in which the Collector has been made a defendant, and draft of a proposed written statement to be presented on behalf of the Collector, and to request the sanction of the Board to conduct the defence of the suit at the public expense.

2. The suit will come on for hearing on the 4th February next, on or before which date the written statement ought to be presented to the Court.

3. The following is a short history of the case :—

4. In obedience to the orders of the Board, conveyed in their Proceedings, No. 2,280, dated 5th April 1866, the Abkarry farm of the Ramnad Zemindary was for two Fuslies, namely, 1276 and 1277, sold at public auction to Alagherisamy Naik the first defendant, and one Suppia Pillay, who made the highest bid for the sum of Rupees 61,000. The renters having allowed their rents to fall into arrears, the Abkarry farm was resold on the 15th June last, and the fact reported to the Board in my letter to them, recorded in the Board's Proceedings, No. 5,440 dated 22nd August 1867.

5. On the 22nd June 1867, I directed the Madura Tahsildar to proceed against the property of the defaulters found in his jurisdiction, under the Madras Act No. II of 1864, for the recovery of the arrears* of rent due by them, and the loss† incurred by Government in consequence of the resale. In accordance with the above order, one house at Madura, owned by Suppia Pillay, one of the two late renters, and the articles found in the distilleries established by the defaulters were attached and sold, by which a sum of Rupees 493-10-5 was realised.

* † Rupees 25,402.

6. Another house at Madura, and the property described in the plaint, belonging to the first defendant, were also attached. One Sami Naik, the brother-in-law of the first defendant, presented a petition to the Tahsildar, objecting to the sale of the house on the plea that the house has been sold to him by the first defendant on the 15th April 1867, for Rupees 1,000, and produced a bill of sale said to have been executed to him. The deed has been registered. As it appeared to me, from a report of the Tahsildar, that the property has been fraudulently conveyed by the first defendant, in collusion with Sami Naik, his own brother-in-law, with the intention of preventing the house being sold in satisfaction of the arrears, &c., due to Government, I ordered the property to be sold by public auction, which was accordingly sold, and fetched a price of Rupees 724.

7. In a petition presented to the Tahsildar by Venkatasawmy Naik, the first son of the plaintiff, on the 24th July 1867, he represented that the property shown in the plaint has been endowed by his deceased father for charitable purposes, viz., to feed indigent persons, and to meet the expenses of receiving the deity of Soon-

drarajaswamy, on the occasion of his annual visit to Madura, and solicited the orders of the Tahsildar to release the property which, he alleged, had been excluded from the division, and which cannot, under a specific condition stipulated in the deed of division entered into between him and his brothers, be alienated.

8. The first defendant and his brother Tirupathy Naik, and the two sons of the plaintiff, are the sons of one Narainasawmy Naik, the former two by his first wife, and the latter two by his second wife.

9. A deposition was taken by the Tahsildar from the first son of the plaintiff, in which he states that the property described in the plaint was, under a deed of sale, executed to him on the 3rd August 1867, by the first defendant, sold to him, and the bond registered, but that the transaction was afterwards cancelled, and that the bond, after being mutilated, was returned by him to the first defendant, the sale having been declared by certain Vakeels to be illegal. He further states that, of the property allotted for charitable purposes, he mortgaged a shop for Rupees 150 for the performance of the prescribed charities, but afterwards redeemed it from the proceeds of the tope, also granted for maintenance of the charity.

10. Tirupathy Naik, the brother of the first defendant, deposes to the effect that he has not sold his one-fourth share of the property in question to the first defendant, but he has left the management thereof to his brother, the first defendant.

11. From a deposition given by Meenachi Naik, the son of the uncle of the first defendant, Tirupathy Naik, he seems to have sold his one-fourth share to his brother, the first defendant. The allegation of the deponent is supported by the deed of sale executed by the first defendant to the first son of the plaintiff, under which a moiety of the whole property has been conveyed. Had not Tirupathy Naik sold his one-fourth share to his brother, the first defendant, the latter would not have dared to sell his brother's portion of the property in question.

12. In a report submitted to me by the Tahsildar on the objection raised by Venkatasawmy Naik, as to the sale of the property, and on inquiry held thereon, he represents that properties similarly circumstanced are being sold by orders of the Civil Courts, in satisfaction of the amounts decreed by them, and that to evade the payment of arrears of rent, &c., due to Government, a deed of sale was at first fraudulently manufactured by the mutual consent of the parties concerned, but was subsequently cancelled, thinking that the plea that the property has been given as an endowment for charitable purposes, would better suit their own purposes, and that, in his opinion, the moiety of the property belonging to the first defendant might be sold in satisfaction of arrears due to Government.

13. I concurred with the Tahsildar in his opinion, and directed him to sell the first defendant's share of the property by public auction. Dissatisfied with this order, the plaintiff has brought the present suit.

14. With reference to an injunction, issued to me by the Court on the application of the plaintiff under Section 92 of the Civil Procedure Code, the sale of the property in question has been postponed.

15. Papers, as per accompanying list, bearing on the subject, are enclosed for the Board's information. I have applied to the Principal Sudder Ameen to allow a period of one month to put in my answer.

Translation of a Plaint presented to the Court of Small Causes on the side of Principal Sudder Ameen, by

Plaintiff,	*versus*	*Defendants.*
Chuckany Ammal, of forty years old, the second widow of the deceased Narainasawmy Naik, and the guardian and mother of his minor sons, viz., Vencatasawmy Naik and Gounden, residing in a lane situated on the east side of Keela Massi street, at Madura.		1. Alagherisamy Naik, son of the said Narainasawmy Naik by his first wife, residing at Madura and Ramnad. 2. Honorable D. Arbuthnott, Collector of Madura.

Regarding the charitable property. Total amount of the cause inclusive of both the value and emoluments is Rupees 1,500.

The plaintiff institutes the suit through Court Vakeel Singamiengar, under Section 26 of Act No. VIII of 1859.

1. The first defendant is the step-brother of the minors, who are the plaintiff's sons and under her protection. The undermentioned mandapam, or choultry bazaars, house, and garden, are the acquisitions of their father, the plaintiff's husband. They were endowed by him for the celebration of Mandagapady charity of the deity called "Soondrarajasawmy," and they are accordingly used for the above purpose. Hence, the property is indivisible among the members of the family. The plaintiff's husband is dead.

2. Such being the case, the second defendant has, in liquidation of the arrears of the Abkarry rent which the first defendant had obtained from him, attached, in September 1867, a moiety of the above property as belonging to him, and issued a notice of sale. He dismissed the objecting motion presented by the plaintiff.

3. The plaintiff, therefore, prays the Court to pass a Decree directing the defendants to leave the moiety in question for the use of charitable purpose, without making it liable for the debts of the first defendant, in satisfaction of which the second has attached the same as his property, and is about to sell in public auction.

Particulars of property.

	Rs.	A.	P.
1. East of the Cocoanut tope belonging to the Zemindar of Shevagungah, south of the road leading to Trichinopoly and a piece of land belonging to the said Zemindar, west of the path leading to Tellacolom, and north of Vigay river, within these boundaries situates a Cocoanut tope, a stone Mandapam, and a Chuttrum. Half of the annual assessment of the above garden amounts to Rupees 2-6-8, which, if computed eight times, comes to Rupees 19-5-4. Estimate value of a moiety of the above Chuttrum and Mandapam	980	10	8
2. South of the road running from east to west in front of Samy Sannathy, west of Caroopana Pillay's bazaar, north of the house of Layakara Nallam Naik, and east of the shop of Meenakshi Naik, within these boundaries situates two shops in extent of 14½ feet from east to west and sixteen from south to north. Estimate value of half of the above is	300	0	0
3. North of the old Sayer Cutcherry; east of the path leading to Vigay river, south of the Anooppandy channel and a mosque, and west of the said mosque, within these boundaries situates a vacant ground in extent of twenty-six feet from east to west and 38½ from south to north. Estimate value of half of the above is	200	0	0
Total	1,500	0	0

Dated 18*th October* 1867.

(Signed) SINGAMIENGAR,
Vakeel.

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

Mark of CHUCKANI UMMAL.

Filed 23rd October 1867.

(True translation.)

(Signed) D. ARBUTHNOTT,
Collector.

Draft of a written Statement to be presented to the Madura Principal Sudder Ameen's Court in Original Suit No. 41 *of* 1867, *on the file of the said Court, on behalf of the Collector of Madura, the second defendant.*

1. The second defendant begs to submit, in the first place, that the deed under which the property forming the subject of this suit is alleged to have been made over for the performance of Soondrarajaswamy Mandagapady charities, has not been registered. The defendant, therefore, puts the plaintiff to the proof of the execution of the deed B., the genuineness of which the defendant denies.

2. The second defendant further begs to submit that he has, in satisfaction of the arrears of Abkarry rents, &c., due by the first defendant, ordered the notification of the sale of the rights and interests which he possesses over the property on the implied understanding that the purchaser should devote his share of the property towards the maintenance of the charity, and have the Parivuttum, &c. The objection of the plaintiff to the sale of such rights and interests is, therefore, untenable, inasmuch as the object for which the property has been set aside will not thereby be frustrated.

(Signed) D. ARBUTHNOTT,
Collector.

ENCLOSURE No. 3.

ABSTRACT.—Translate of a division bond filed by the plaintiff, marked B.

ENCLOSURE No. 4.

ABSTRACT.—Translate of a motion presented to the Court by the plaintiff, under Section 92 of the Civil Procedure Code.

ENCLOSURE No. 5.

ABSTRACT.—Translate of a notice of sale issued by the Madura Tahsildar.

ENCLOSURE No. 6.

ABSTRACT.—Copy of an injunction issued by the Madura Principal Sudder Ameen.

THE Board sanction the defence of the suit at the public cost on the usual terms.

2. The pleading in paragraph 2 being inconsistent with that in paragraph 1, is objectionable, and should be omitted.

3. The time for the hearing of the suit, the Board observe, is already past, but probably the Collector has applied for an extension.

No. 396. Proceedings of the Board of Revenue, dated 9th October 1868, No. 7,218.

Read the following papers:—

Board's Proceedings, dated 10th February 1868, No. 1,009A.

Letter from the Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 7th September 1868, No. 244.

1. With reference to the Proceedings of the Board, dated 10th February last, No. 1,009A, I have the honor to forward herewith, copies of the Judgment and Decree passed by the Additional Principal Sudder Ameen, in Original Suit No. 41

of 1867, on the file of the said Court, declaring that the property shown in the plaint is not liable for the personal debts of the first defendant, and ordering it to be released from the attachment of the second defendant, the Collector.

2. The defence taken by the Collector was to put the plaintiff to the proof of the execution of the division deed, which has been clearly proved by the plaintiff's witnesses.

3. I would not, therefore, recommend an appeal to the Civil Court against the said decree.

4. I take this opportunity to request the sanction of the Board for payment to the plaintiff of the costs* decreed to be paid to him.

* Rupees 219-13-0.

In the Small Cause Court of Madura, on Principal Sudder Ameen's side.

Tuesday, the twenty-fifth day of August, one thousand eight hundred and sixty-eight.

Present:—J. R. DANIEL, Esq., Acting Additional Principal Sudder Ameen.

Original Suit No. 41 *of* 1867.

JUDGMENT.

1. The Mandapam and other property in the plaint were attached by the second defendant, Collector, as being the property of the first defendant. The plaint sets forth that this property is not the private property of the first defendant, but was specially set apart at the time of division for charitable purposes. According to the terms of the deed of division, the property clearly has been so set apart; this deed has been proved by the plaintiff's witnesses, and is beyond doubt a genuine one. It is allowed by the Government Pleader that the charity for which it was set apart is still continued, and the only objection which the Collector appears to have taken is that the deed has not been registered.

2. The first defendant is absent and the case heard as against him *ex parte*.

3. The Court, therefore, declares that the property in the plaint is not liable for the personal debts of the first defendant Alagerisawmi Nayakan, and orders that it be released from the attachment of the second defendant. The costs to be borne by the second defendant.

(True Copy.)

(Signed) J R. DANIEL,
Acting Additional Principal Sudder Ameen.

In the Small Cause Court of Madura, on the Principal Sudder Ameen's side.

Tuesday, the twenty-fifth day of August, one thousand eight hundred and sixty-eight.

Present:—J. R. DANIEL, Esq., Acting Additional Principal Sudder Ameen.

Original Suit No. 41 *of* 1867.

Plaintiff,	*versus*	*Defendants.*
Chakkani Ammal, guardian of her minor sons Vencatasami Nayakan and Govindoo. Vakeels, Ramiengar, Alageriengar, and R. Vencatramier.		1. Alagerisami Nayakan, and 2. The Honorable D. Arbuthnott, Collector of Madura. Government Vakeel Ramasamier for second defendant.

Plaintiff seeks to obtain an order directing the release of certain Mandapam, Garden, Shops, &c., worth Rupees 1,500, from the attachment of the second defendant, made in satisfaction of arrears of Abkarry rent due by first defendant, on the ground that they are not his personal property but set apart for charitable purposes.

DECREE.

The Court declares that the property mentioned in the plaint is not liable for the personal debts of the first defendant, Alagerisami Nayakan, and orders that it be released from the attachment of the second defendant.

The costs to be borne by the second defendant.

Description of the above property.

A moiety of the granite Mandapam, Garden, and Chuttrum, bounded on the west by the Cocoanut tope of the Shevagungah Zemindar, on the north by the Trichinopoly road and the ground belonging to the said Zemindar, on the east by Tollacolom road, and on the south by the Vigay river.

A moiety of two shops situated in Madura, measuring 14½ by 16 English feet, bounded on the north by the Swami Sannadi street running east to west, on the east by Karoopana Pillay's shop, on the south by Nallama Nayakan's house, and on the west by Meenakshi Nayakan's shop.

A moiety of a vacant ground measuring 38½ by 26 English feet, situated in Madura, bounded on the south by Sunga Choultry, on the west by the road leading to Vigay river, on the north by Anurpanadi channel and mosque, and on the east by the mosque.

Memorandum of Costs.

Costs incurred by plaintiff—			
Value of Stamp paper	128	0	0
Peon's batta	5	12	0
Batta to witnesses...	11	1	0
Vakeel's fees	75	0	0
Total...	219	13	0
Costs incurred by first and second defendants—			
Value of Stamp paper	0	8	0
Vakeel's fees	75	0	0
Total...	75	8	0
Grand Total...	295	5	0
Deduct—			
Costs to be borne by second defendant	75	8	0
Do. paid by second defendant to plaintiff...	219	13	0

Appeal time expires on the 24th day of September, A. D. 1868.

(Signed) J. R. DANIEL,
Ag. Addl. Prin. Sudr. Ameen.

SUBMITTED to Government, with the Board's recommendation that the costs incurred by the Collector and the plaintiff in the suit, amounting together to Rupees (75-8-0+219-13-0=) 295-5-0, be sanctioned.

Proceedings of the Madras Government, Revenue Department, 24th November 1868.

2. A history of the case will be found in paragraphs 4 *et seq.* of the Collector's letter, contained in the Board's Proceedings above recorded, which authorised the defence of the suit at the public cost.

3. Government will perceive from the answer sanctioned by the Board, that the deed, under which the property litigated for was alleged to have been made over for the performance of certain charities, was not registered, and that the Collector sought to put the plaintiff to the proof of the execution of the deed, the genuineness of which was doubtful.

No. 397. ORDER THEREON, 24th November 1868, No. 2,929.

Miscellaneous.

Sanctioned, Rupees (295-5-0) two hundred and ninety-five, and Annas five.

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

To the Board of Revenue.
,, the Accountant General.

Erd. F. R. Bantleman.

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W-2929.

Sanctioned, Rs.(295-5-) Two

hundred and ninety five, and annas five.

24th Nov. 1868.

To Board of Revt. Despatch

" Acctt. General. "

Copy of 1868 29 Madras.

REVENUE.

THE BOARD OF REVENUE,

&c., &c., &c.

Dated November, 24th.

Rect. Encl.

G. O., 24th November 1868, No. 2,929.

NOVEMBER.

Nos. 395-397.

Suit against Collector of Madura—Charge incurred in its defence, amounting to Rupees 295-5-0, sanctioned.