

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	538	Press Mis.
<i>543-47</i> Dated	27.2.	1868.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
27th February 1863.*

Read the following:—

No. 543. Proceedings of the Board of Revenue, dated 15th July 1863,
No. 4,342.

Read the following letter from the Collector of South Arcot, to the Secretary to
the Board of Revenue, dated Punrooty, 4th July 1863, No. 169.

1. I have the honor to forward translation of a plaint in Suit No. 1,361 of
1861, filed in the District Munsiff's Court at Chellumbrum by Goverapett Subbroyer,
against the late Collector, Mr. Wood, and the first and second defendants, together
with a draft answer under Section 120 of Act VIII. of 1859, which I propose to put in
in the case.

2. I request sanction for the defence of the suit at the public cost.

3. The period allowed for filing the answer expires about this date, but I
have moved the Court through the usual channel to extend the time until 4th
September next.

TRANSLATION of a Plaint filed in the District Munsiff's Court of Chellumbrum in Suit No. 1,361
of 1861.

Plaintiff.

Subbaroyer, son of Pulugier, a
ryot of Goverapett, attached
to the Talook of Chellumbrum.

Defendants.

1. Seshien, elder brother of Ayavien of the
said village, who died about three years
ago, and guardian and natural father of
Vydenadian, aged ten years, and adopted
by the said Ayavien.
2. His younger brother Yeggia Ramayen.
3. Henry Wood, Esq., Collector of the Zillah
of Cuddalore.

On the Puttahdar, the second defendant, resigning on the 12th May 1853 one Cawni and 3½
Annas of Punjab land situated within the following limits, Puttah for it was made out in my name
on the right of a portion of the same field having already been held by me. The late Collector,
Mr. Hall, in Fusly 1265, forcibly dispossessed me of the land by restoring it to the second defendant
with the Puttah which was ordered to be made out in his name; and as I now sue for its recovery
with the right of Puttah and for the recovery of the costs due to me by the first and second defend-
ants as per Order of the Court passed by them in their diary in Appeal Suit No. 108 of 1857
(Original Suit No. 676 of 1856, on the file of this Court), as well as for that of the profits to be
derived from the said land, I give their particulars as follow:—

Value of ten Annas of Podari Coviladi Punjab land No. 472 situated in the village of Goverapett attached to the Talook of Chellum- brum	...	...	...	...	...	1	15	0
Tirwah of 93½ Annas of the said Punjab land No. 473	...	...	...	...	...	1	13	6
Total Cawni 1-3½ Annas or Tirwah...						3	12	6
Annual profit to be derived from the said land after deducting Tirwah thereon	...	...	...	...	...	20	0	0
Profit as above for five years from Fuslies 1266 to 1270, to be recov- ered from the first and second defendants, who enjoyed it during the above period at 20 Rupees a year	...	...	...	...	...	100	0	0
Cost born by plaintiff as per Diary Order in Appeal Suit No. 108 of 1857 (Original Suit No. 676 of 1856, on the file of this Court,	...	...	...	...	...	10	0	0
Total amount sued for						133	12	6

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On the 14th August 1858 I submitted two applications, one to the third defendant's predecessor by tappal, and another to the Collector through my agent, with a request that the disputed land with the right of Puttah to it may be given to me, as awarded by the Principal Sudder Ameen's Court in their diary. As neither the former officer or his successor, the third defendant, passed any orders on the subject, I was obliged to bring the suit.

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

2nd May 1861.

(Signed) P. M. PEDROZA,
District Munsiff.

(Signed) SUBBAROYER,
(„) SESHIER of Goverapett.

(True Copy.)

Filed 9th May 1861.

(Signed) P. M. PEDROZA,
District Munsiff.

(True Translation.)

(Signed) C. W. READE,
Collector.

DRAFT Answer in Suit No. 1,361 of 1861, on the file of the District Munsiff's Court of Chellumbrum, to be filed by the Collector, the third defendant.

The plaintiff has neither right by Puttah or by occupancy to the C. 1, A. 3, P. 3. of Punjab land in Nos. 472 and 473 as claimed by him. The second defendant held a Puttah for this land up to Fusly 1262, when he relinquished it by a Razinamah owing to inability to pay the Shamalatibunjer, some portions in the two fields for which a Puttah was held by the plaintiff being cultivated by him, while the other portions which the second defendant held on Puttah were left waste. The plaintiff cultivated his portion in Fusly 1263, and, in accordance with the Hukumnamah Rules of the district, a full cawny in each field inclusive of his portion was inserted in his Puttah, and this was done without his request, but agreeably to the rules aforesaid. Plaintiff paid nothing for that Fusly, and the assessment was remitted. In Fusly 1264, according to the system then in force, the whole land in the two fields was at his own instance deducted from his Puttah, and the plaintiff in consequence forfeited at once his right to the land. *This failure to pay the Government dues, and the relinquishment of the land placed the land at the disposal of the Government Revenue Authorities, as ruled by the Court of Sudder Adawlut in their Decrees dated 31st August 1861 and 9th October 1861, in S. A. S. Nos. 482 of 1860 and 10 of 1861.* In Fusly 1265 both parties claimed the land in dispute, and the late Collector, Mr. Hall, in consideration of their former occupancy, gave to both the exact portion in each field as held by each party prior to Fusly 1262.

Under these circumstances, the suit brought by the plaintiff is wholly without foundation, and the third defendant requests that it may be dismissed with costs.

(Signed) C. W. READE,
Collector.

1. The Board sanction the defence of the suit, and authorize the Collector to file the proposed answer with the addition made in their Office.

2. The facts of the case should have been briefly but clearly stated in the Collector's letter.

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27th February 1868.*

No. 544. Proceedings of the Board of Revenue, dated 28th July 1863,
No. 4,679.

Read the following letter from the Collector of South Arcot, to the Secretary to the Board of Revenue, dated Cuddalore, 24th July 1863, No. 191.

1. I beg to acknowledge the Board's Proceedings of the 15th instant, sanctioning the defence of the suit therein adverted to at the public cost, and approving of the proposed answer with the addition noted in italics.

2. I beg to point out, in reference to the addition proposed by the Board, that there was no actual default on the plaintiff's part in the matter of paying for the land for the Fusly under notice. The assessment was remitted at the Jummahbundy, on representation of the circumstances, so that its non-payment involved no forfeiture of right to possession. His right was forfeited by his own relinquishment of the land in the subsequent year or Fusly 1264, as mentioned in the sentence immediately preceding that introduced by the Board. The cause of that resignation was, I believe, his objection to the terms on which only he was allowed to hold it, but on his original opponent again applying for it, as is often the case, he then asserted his supposed preference right, which, as stated in the concluding sentence of the draft answer, was disallowed by the then Collector Mr. Hall.

3. Under the foregoing circumstances, I have filed the answer, omitting the italicised sentence introduced by the Board.

The Board do not approve of the Collector's proceedings. They observe that even, according to his own shewing, it would have been sufficient to have modified the Board's addition by striking out the reference to the plaintiff's failure to pay assessment retaining the reference to the relinquishment of the land and to the Decrees of the Sudder, and unless the Collector's application to extend to 4th September, the time for putting in the reply, was refused by the Court, he had no sufficient excuse for thus setting aside the Board's instructions without further reference.

No. 545. Proceedings of the Board of Revenue, dated 23rd January 1868,
No. 553.

Read the following letter from the Collector of South Arcot, to the Secretary to the Board of Revenue, dated Cuddalore, 15th January 1868, No. 14.

I have the honor to state that one Subbaroyer, of Goverapett, in the Talook of Chellumbrum, (Plaintiff in Suit No. 1,361 of 1861, on the file of the Chellumbrum District Munsiff's Court,) has preferred a Special Appeal in the High Court at Madras in Special Appeal No. 11 of 1863, against the Decree of the Principal Sudder Ameen at this station in Original Suit No. 144 of 1865, and I have been served with the usual notice from the High Court notifying that the Appeal will be heard on, or as soon as possible after the 3rd day of February next, and that on failure to appear in person, or by Pleader, the appeal will be heard and decided *ex-parte* in my absence. I enclose copy of the Appeal Decree, and copy of my answer filed by me originally in the Munsiff's Court, as approved by the Board, will be found recorded in their Proceedings, dated 15th July 1863, No. 4,342, and I request that the Board will be pleased to instruct the Government Pleader of the

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High Court, furnishing him at the same time with the above documents, to appear, if they so think necessary, and plead in the said case during its hearing; but I am not of opinion that anything more is called for than to watch the cause through the special hearing.

Judgment of the Principal Sudder Ameen's Court of Cuddalore.

Original Suit No. 1,361 of 1861.

District Munsiff's Court of Chellumbrum.

By T. Appiah Chetty.

Appeal Suit No. 144 of 1865.

In the Principal Sudder Ameen's Court of Cuddalore.

By T. Kistnasawmy Iyer.

In the Lower Court.

Subbaroyer, plaintiff.

In the Appellate Court.

Appellant by Vakeel Ramachariar.

Seshien, natural father and guardian of Vythi- nadien, aged ten years, the adopted son of his (Seshien) late elder brother Ayavien, Eggia Ramien, brother of the first defendant ... C. W. Reade, Esq., Collector of South Arcot ...	1st Defendant, 1st Respondent.	2nd do.	2nd do.	3rd do.	3rd do.	By Vakeel Soore rea Narryana Iyer. By Vakeel Ka- kerala Soobba Row, Govt. Vakeel.
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1. The object of the plaintiff in bringing this suit was to obtain the cancelment of an order passed by the Collector, third defendant, in Fusly 1265, directing the Puttah of 1-3-3 Cawnies of Punjab land to be made in the name of the second defendant.

2. Plaintiff stated that the second defendant was the original occupant of the land, and held Puttah for the same till Fusly 1262, when he having relinquished it by a razeenamah (Exhibit IV), the Collector included the land in the plaintiff's Puttah. In Fusly 1265, however, the Collector again ordered the Puttah to be transferred in the name of the second defendant, and permitted him to enjoy the land, plaintiff alleging that the Collector was not competent to pass such an order, prays for its cancelment.

3. Plaintiff also sued to recover the land with Puttah in his name for the same, and, further, to recover from the first and second defendants the profits thereof, from the Fusly 1266 to Fusly 1270, amounting to Rupees 100.

4. Plaintiff added that he had instituted a Suit No. 676 of 1856 on the file of the Chellumbrum Munsiff's Court upon the same cause of action; but that it was dismissed on appeal on the ground that the Collector was not made a party to the suit.

5. The first and second defendants resisted the claim on the ground that the plaintiff had no right whatever to the land in issue. They denied that the second defendant gave the razeenamah (Exhibit IV) before the Revenue authorities relinquishing the land.

6. The defence of the third defendant (the Collector) was as follows:—

"The plaintiff has neither right by Puttah nor by occupancy to the 1-3-3 of Punjab land in Nos. 472 and 473 as claimed by him. The second defendant held a Puttah for this land up to Fusly 1262, when he relinquished it by a razeenamah, owing to inability to pay the Shamalatibunjer, some portions in the two fields for which a Puttah was held by the plaintiff being cultivated by him, while the other portions which the second defendant held on Puttah were left waste. The plaintiff cultivated his portion in Fusly 1263, and, in accordance with the Hukumnama Rules of the district, a full cawny in each field inclusive of his portion was inserted in his Puttah, and this was done without his request, but agreeably to the rules aforesaid. Plaintiff paid nothing for that Fusly, and the assessment was remitted. In Fusly 1261, according to the system then in force, the whole land in the two fields was, at his own instance, deducted from his Puttah, and the plaintiff in consequence forfeited at once his right to the land. In Fusly 1265, both parties claimed the land in

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dispute, and the late Collector, Mr. Hall, in consideration of their former occupancy, gave to both the exact portion in each field as held by each party prior to Fusly 1262.

"Under these circumstances, the suit brought by the plaintiff is wholly without foundation, and the third defendant requests that it may be dismissed—the plaintiff's claim with costs."

7. The Munsiff dismissed the plaintiff's claim with costs.

8. The plaintiff appeals.

Judgment.

9. On a careful examination of the records of this and the former Suit No. 676 of 1856 on the file of the Chellumbrum Munsiff, and hearing the Counsel for both the parties orally, I see no reason whatever to interfere with the Judgment of the Lower Court.

10. The disputed land consists of two fields, one numbered 472 and the other 473. Some portions of these two fields had been occupied by the plaintiff, and the other portions by the second defendant. The second defendant relinquished his portions in Fusly 1263, owing to his inability to pay the kist thereon. Under the Hukumnama Rules (Exhibit J) in force at the time, which required that where the occupant of a portion of a field gives up his portion, the whole field shall be cultivated by the remaining sharer, the Collector caused the full extent of each of the two fields (Nos. 472 and 473) abovementioned to be inserted in the plaintiff's Puttah. But this, as admitted by the plaintiff himself, the Collector did without any request on the part of the plaintiff, and simply in accordance with the rules abovementioned. The plaintiff, however, far from availing himself of the opportunity thus afforded to him to cultivate the second defendant's portions, manifested his disinclination to do so—

Firstly.—By allowing those portions to be waste in that Fusly, viz., 1263, and abstaining from payment to Government of the Tirwah thereon, which was in consequence remitted by the Collector.

Secondly.—By abandoning the whole lands Nos. 472 and 473 in the next Fusly 1264, and thus allowing them to be deducted from his Puttah.

11. That he paid no Tirwah for the second defendant's portions in Fusly 1263, and that he allowed the whole lands Nos. 472 and 473 inclusive of the above portions to be waste in Fusly 1264, thus precluding the issue of Puttah in his name for the same, are facts which the plaintiff himself admits in paragraph 3 of the Appeal Memorandum.

12. The plaintiff, it is clear, had recourse to the extreme measure of giving up the whole lands Nos. 472 and 473 in Fusly 1264; as, under the Hukumnama Rules (Exhibit J) above noticed, the alternation for him, in the event of his not being disposed to cultivate the second defendant's relinquished portions, was either to pay Tirwah on such portions though he did not cultivate them, or to give up the entire fields inclusive of his own portions, by signifying his inability to cultivate the same. The latter course the plaintiff evidently preferred.

13. That he actually gave up the whole fields Nos. 472 and 473 is further inferrible from the Revenue account filed as the exhibit III in the former Suit No. 676 of 1856, which clearly shews that, in Fusly 1264, he undertook to cultivate all his lands, with the exception of the fields Nos. 472 and 473.

14. The fields Nos. 472 and 473 having thus been left waste, it was certainly competent to the Collector, in protection of the public revenue, to grant them to any one he liked for the purpose of cultivation, (*vide* Judgment of the High Court in Special Appeal No. 839 of 1861, and Regular Appeal No. 20 of 1863, Madras High Court's Report, Volume I, pages 12 and 407.)

15. When, accordingly, in Fusly 1265, both the parties offered to cultivate the fields, the Collector, in consideration of their former occupancy, thought it proper to give them both the exact portion in each field as had been held by each of them prior to Fusly 1262. Nothing was more equitable than this.

16. Now the plaintiff claims to recover for himself the second defendant's portions in the two fields, which, as above noticed, he once intentionally neglected to cultivate, though an opportunity had been given him by the Collector to do so, and in which he gave up all interest by wilful abandonment of the whole fields in Fusly 1264. The claim hence seems to me clearly unsustainable.

No. 547.

ORDER THEREON, 27th February 1868, No. 538.

Miscellaneous.

Ordered accordingly that the Government Pleader be instructed to appear on behalf of Government and defend Sp

Appeal Suit No. 11 of 1868 in the High Court.

(True Extract.)

(Signed) R. S. ELLIS,
Chief Secretary

To the Board of Revenue.

„ the Government Pleader, with Authority in duplicate.
„ the Accountant General.

Exd. F. R. Bantleman.