

MADRAS RECORD OFFICE.

Government of Madras.

Revenue. DEPARTMENT.

G.O. No.	2897	Press
		~~Att.~~
341-42		
Dated	23 rd August	1869

Not to be folded or roughly handled*23-30*

*Proceedings of the Madras Government, Revenue Department,
23rd August 1869.*

No. 341. Read the following Proceedings of the Board of Revenue, dated 6th August 1869, No. 5,765:—

Read the following letter from the Collector of North Arcot, to the Acting Secretary to the Board of Revenue, dated Chittoor, 19th July 1869, No. 206.

I HAVE the honour, with reference to the correspondence noted in the margin to forward, herewith, translation of the

To Board, 11th July 1868, No. 229.

From Board, 27th July 1868, No. 5,447.

To Board, 29th August 1868, No. 290.

From Board, 2nd September 1868, No. 6,270.

Judgment and Decree passed by the

Arni District Moonsiff's Court, in Suit

No. 46 of 1868, filed by Chinna Mira

Sultan Sahib against myself. The Board will observe from these documents that plaintiff has been non-suited.

ENCLOSURE No. 1.

Judgment.

Arni District Moonsiff's Court, No. 46 of 1868

Present.—VILLIVALEM RUNGASWAMY IYENGAR, District Moonsiff.

Plaintiff.

versus

Defendants.

Chinna Mira Sultan Sahib.

Anna Gurukul and others.

By Vakeel Streenivasa Varada Charriar.

In this suit plaintiff states that the lands in question, situated in the village of Kilminnal, were obtained on durkhast by first defendant, who had them in his possession on 18th March 1865, under the Revenue Rules and afterwards sold them to him (plaintiff) for Rupees 95, after having executed a bond, duly registered and made over the lands to him (plaintiff); that in view to the puttah being granted in his (plaintiff's) name, he (first defendant) filed a Razeenamah before the Revenue authorities on 26th August of the same year; that second defendant though aware of all this did, in collusion with first defendant, prefer a false complaint before the third defendant with a view to deprive plaintiff of these lands; that the third defendant admitted the claim, cancelled the puttah granted in the name of the first defendant, and issued an order under date the 7th May 1867, directing the lands to be made over to the second defendant contrary to the Rules, and that therefore his (plaintiff's) right to the said land measuring Cawnies 2-1-12 should be affirmed in order that he (plaintiff) may enjoy the same on puttah.

2. The first defendant admits all the facts, but pleads that the second defendant, who was his partner in business, fraudulently made a durkhast to the third defendant and obtained the lands in question, but that he did not assist him.

3. The second defendant pleads that the land in dispute does not belong to the plaintiff nor to the first defendant. It has been waste for forty years, belongs to Government, and was acquired by him on durkhast in June 1862. The assessment was reduced in August 1864, but that in order to get the durkhast fraudulently made by first defendant subsequently to his (second defendant's) durkhast cancelled, he (second defendant) preferred an appeal to the third defendant, and obtained puttah under order, dated 7th May 1867, and that therefore the purchase made by plaintiff during the time the case was in appeal cannot be held valid.

4. The third defendant argues that the land in question is Government waste; that the Collector in his official capacity has passed his decision in the dispute between the first and second defendants in respect of this land; that the purchase made by plaintiff when the case was pending in appeal is not valid; and that first defendant is responsible for the purchase-money due to plaintiff.

5. Plaintiff filed four documents:—

A. (3)—Sale bond.

B. (4)—Decision of the Collector.

C. (25)—First defendant's Razeenamah.

D. (26)—Endorsement on plaintiff's Arzi.

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23rd August 1869.*

6. The first defendant filed three documents :—
I. (13)—Puttah for Fusly 1274.
II. (14)—Do. dated 24th January 1867.
III. (15)—Do. for Fusly 1275.
7. The second defendant filed five documents :—
IV. (18)—Copy of Tahsildar's Arzi, dated 12th August 1864.
V. (19)—Takeed dated 10th August 1871.
VI. (20)—Copy of Collector's decision.
VII. (21)—Copy of Notice.
VIII. (22)—Enforcement on Board's petition.
8. The Court after considering the evidence and the arguments of the Vakeels on both sides finds there are no points remaining to be cleared up, and therefore proceeds to decide the case.
9. Both parties unanimously admit that the land in question is immemorial waste and belongs to Government.
10. The first and second defendants are mere Durkhastalars for the said land before the Revenue authorities, but the land itself does not appear to have been the property of anybody.
11. Of these two, second defendant's durkhast was made in June or July 1862, and first defendant's durkhast in November 1863. This fact was not only admitted by both parties at the time of inquiry, but it is also mentioned in the Collector's order marked B.
12. Document B. shows that third defendant, the Collector, considered the second defendant to be the first durkhastalar when the case came up in appeal, and therefore affirmed his right in preference to that of first defendant, to whom Mr. Barlow had granted a puttah as being the first of the two durkhastalars.
13. The third defendant is competent to deal with appeals made against an order or act of the Sub-Collector.
14. The Vakeel for plaintiff, who had acquired by purchase first defendant's right in the land in question when the case was in appeal, admits that the Collector has power to receive an appeal, but argues that prior right in the said land vested in first defendant who created his (plaintiff's) right in the land.
15. The Revenue authorities have full authority to decide claims respecting Government land which does not belong to any particular person, and there is no reason why Judicial authorities should interfere in such cases. The plaintiff has not attempted to show that the third defendant, who is a Revenue authority, has done any act which would give rise to a Civil action.
16. The fact that the durkhast of the second defendant was anterior to that of the first defendant is apparent. The plaintiff admits it, but argues that the Tahsildar who received it rejected it on the ground that petitioner (second defendant) was not present.
17. There is no necessity why petitioner should be present after the durkhast of the second defendant had been received and accepted on examination. It does not appear that he was informed that such was the cause, nor does the plaintiff plead any such thing.
18. The order marked 18 shows that Mr. Hathaway, the then Sub-Collector, accepted the second defendant's durkhast and put him into possession of the land. Although plaintiff has pleaded that agreeably to an order passed on appeal the first defendant's durkhast will be settled at the Jaminabundy, Mr. Barlow, who conducted the settlement of the following year, ordered the puttah to be granted in the name of the first defendant; that although he (plaintiff) was ordered to produce the said order of the Sub-Collector together with that said to have been issued by the Tahsildar cancelling the second defendant's durkhast, he has not produced them up to this time. Plaintiff is, therefore, non-suited with costs.

2nd March 1869.

(True Translation)

(Signed) J. D. ROBINSON,
Collector.

*Proceedings of the Madras Government, Revenue Department,
23rd August 1869.*

ENCLOSURE No. 2.—Decree.

SUBMITTED, together with copies of the Board's Proceedings, dated and numbered respectively, 27th July 1868, No. 5,447, and 2nd September 1868, No. 6,270.

2. The suit has been dismissed, and the plaintiff ordered to pay the costs of the third defendant (the Collector).

No. 342.

ORDER THEREON, 23rd August 1869, No. 2,399.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,
Acting Under-Secretary to Government.

To the Board of Revenue.

Exd. E. C. Shunker.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 27th July 1868.

Read the following letter from G. VANSAGNEW, Esq., Acting Collector of North Arcot, to the Acting Secretary to the Board of Revenue, dated Chittoor, 11th July 1868, No. 229:—

1. I have the honour to transmit copy of a plaint filed in the Court of the District Munsiff of Trivattoor in which the Collector, Mr. J. D. Robinson, is set down as the third defendant. I confess I feel considerable difficulty about the case.

2. It appears that in June and July 1862, one Soobroya Vadiyar (second defendant) presented three durkhasts for Cawnies 2-1-12, assessed at Rs. 5-12-10, all of which were ultimately dismissed by the Tahsildar, who appears to have been a very inefficient officer, on the ground of Soobroya Vadiyar's non-appearance for inquiry.

3. In November 1863, one Anna Gurukul (first defendant) durkhasted for the same land, and his application was similarly rejected by the Tahsildar on the same grounds.

4. In June 1864, Soobroya Vadiyar again applied for the same land, and on the report of the Tahsildar Mr. Hathaway, then Acting Sub-Collector, on the 12th August 1864, directed that it should be made over to him. In the meantime, and before a puttah was granted, Anna Gurukul petitioned the Board to the effect that he was in reality the first applicant. On the 19th September 1864, Mr. Hathaway endorsed this petition, that Soobroya Vadiyar appeared to be the first applicant, but that the matter would be disposed of at the Jummalbund in 1865.

5. Accordingly at the Jummalbund in 1865, Mr. Barlow, the Sub-Collector, who at that time was ignorant of Soobroya Vadiyar's durkhasts in 1862, granted a puttah to Anna Gurukul on the ground of his application in November 1863 having been the first.

6. Not apparently until four months after Soobroya Vadiyar applied for a copy of Mr. Barlow's Order in order to prefer an appeal against it, did Mr. Barlow record one. It bears date 30th October 1865, long after the Jummalbund. Prior to the delivery of a copy of it to Soobroya Vadiyar, it appears that Mr. Barlow discovered the fact of Soobroya Vadiyar's having been the first Durkhastdar in 1862. He accordingly added a postscript to his order to that effect, animadverting upon the

for having concealed this fact, but added that, "Soobroya Vadiyar's durkhast was actually dismissed and puttah never issued in his name, and as the land is Government waste, to which neither party had any special preferential claim under the rules, the Sub-Collector thinks the puttah already regularly granted (to Anna Gurukul) should stand."

7. Soobroya Vadiyar filed an appeal before Mr. Robinson, but not until the 6th May 1866. On the 7th June 1866, the records were sent for, and on the 7th May 1867, Mr. Robinson passed a decision cancelling the puttah granted, on the 18th March 1865, by the Sub-Collector to Anna Gurukul, and ordering the issue of one to Soobroya Vattiyar as the real original first Durkhastdar.

8. Now it appears from the plaint that, on the 5th May 1867, (or two days before Mr. Robinson's decision was passed,) Anna Gurukul, who had then been in possession of the puttah for over two years, but who must have well-known that his right to retain the same was under appeal, sold the land to the plaintiff and put him in possession of it, duly registering the Deed of Sale, and on the 26th August 1867, (or several months after he had lost his right thereto under Mr. Robinson's decision,) applied for a transfer of the puttah to the plaintiff.

9. The plaintiff filed his suit on the 22nd February 1868, making Anna Gurukul, Soobroya Vattiyar, and Mr. Robinson, defendants. He states that since he purchased the land on the 5th May 1867 he has held possession of it. He alleges collusion between Anna Gurukul and Soobroya Vattiyar, and prays for the cancellation of Mr. Robinson's decision in favour of the latter, and for the puttah.

10. His allegation of collusion with Anna Gurukul on the part of Soobroya Vattiyar can scarcely stand seeing that the latter appealed, with the object of recovering the land and the puttah, on the 8th May 1866, whereas the land was not sold to him (plaintiff) by the former until the 5th May 1867.

11. It would, of course, be easy to prepare an answer to this suit to the effect of "Current employer" that Anna Gurukul's title was not valid unless or until confirmed by the Collector, who was

legally entitled on behalf of Government to dispose of the land, being waste, as seemed to him to be in accordance with the rules prescribed for his guidance, and that the Collector's name should be struck out of the suit and the plaintiff left to seek his remedy against Anna Gurukul, the puttah being confirmed to Soobroya Vattiyar, who would have to sue plaintiff for possession of the land.

12. But I hardly think that, under the circumstances, this would be the proper course to take. This case offers a forcible example of a too prevailing laxity in regard to the acceptance of appeals, eventuating in injury and loss to third parties who have acted neither wrongly nor even unreasonably.

13. I do not think plaintiff should suffer because he purchased on the 5th May 1867, from Anna Gurukul land which the latter had held on puttah since the 18th March 1865. The acceptance by Mr. Robinson, on the 6th May 1866, of an appeal from Soobroya Vattiyar against the grant of this puttah was, in my opinion, a mistake.

14. Soobroya Vattiyar appears to have taken about three months to apply for a copy of the Sub-Collector's order in the first instance, and after getting it to have wasted another six months before presenting his appeal petition. He is, therefore, the person who should suffer for his neglect.

15. I would, therefore, propose to the Board that on this ground they should cancel Mr. Robinson's order in favour of Soobroya Vattiyar, and allow me to register the puttah in the plaintiff's name as arranged between him and Anna Gurukul, authorizing me to put in an answer to that effect. As the time expires on the 4th proximo, I request I may be favoured with a speedy reply.

ENCLOSURE No. 1.

To the District Munsiff of Trivattoor.

No. 46 of 1868.

Plaintiff.

Chinna Mira Sultan Saib, of Melvisharam,
in Arcot talook. By Vakeel Strinivassa

Defendants.

1. Anna Gurukul, of Kilminnel.
2. Soobroya Vattiyar.

3. J. D. Robinson, Esq.
(Collector of North Arcot.)

Plaint under Section 26, Act No. VIII. of 1859.

1. The undermentioned lands in the said Kilminnel village was obtained on durkhaat by the first defendant to whom a puttah was granted under the Revenue law on 19th March 1865, during the settlement of Fusly 1274, and he was in uninterrupted enjoyment of the same.
2. The defendant sold the said land to the plaintiff for Rupees 95 on the 5th May 1867, executed a document which was duly registered, and made over the lands in question to the plaintiff on the very same date. He also filed a razinamah before the Revenue authorities on 20th August of the same year, in order that puttah for the said land may be issued in the name of plaintiff.
3. Since that time the plaintiff is in possession of the said land.
4. Such being the case the second defendant who is a resident of the same village, and who is cognizant of the said sale, with the aid of the first defendant preferred a frivolous complaint to the third defendant with a view to deprive the plaintiff of the said lands. He (third defendant) accepted the complaint, cancelled the puttah issued to the first defendant and ordered on 7th May 1867, contrary to the rules in force, that the said lands should be made over to the second defendant, and promulgated the order by an advertisement. The cause of action having thus arisen, the plaintiff prays that the said order may be cancelled, that his right to 2-1-12 Cawnies of land, assessed at Rs. 5-12-10, (of which the eight years' purchase amounts to Rupees 46-6-8,) as heretofore particularized may be recognised, and that a decree may be passed in favour of the plaintiff entitling him to receive a puttah for the said lands, and to enjoy the same without any opposition on the part of the defendants.

The Sale Deed and the Order passed by the third defendant are filed.

	No.	Field No.	Extent.	Assessment.
Wet transferred to dry.	1	308	0 9 8	1 10 2
...	2	309	0 3 4	0 8 11
...	3	310	0 3 4	0 8 11
...	4	311	0 3 4	0 8 11
...	5	312	0 3 4	0 8 11
...	6	313	0 3 4	0 8 11
...	7	314	0 3 4	0 9 0
...	8	315	0 2 12	0 7 7
...	9	316	0 2 0	0 5 6
Total...	2	1	12	5 12 10

Filed on 22nd February 1868.

(Signed) SRINIVASSA VARADA CHARRIAR.

(..) CHINNA MIRA SULTANSA.

Verified in the usual mode by plaintiff.

(True translation)

(Signed) G. VANAGNEW,
Acting Collector.

The Acting Collector is directed to apply to the Court for a postponement of the hearing for a month.

(True Copies and Extract.)

(Signed) A. MacGREGOR,
Acting Secretary.

To the Acting Collector of North Arcot.

Exd. J. Wright.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 2nd September 1906.

Adverting to the Proceedings of the Board, dated 27th ultimo, I have the honour to state that time was granted until the 7th September. I am taking steps for obtaining an extension of thirty days.

(A true Copy and Extract.)

To the Atting Collector of North Arcot.

STATEMENT.

2. The case, when (as alleged) the first defendant sold the land to plaintiff, was, as the former well knew, under appeal to the Collector, and the first defendant had consequently no complete or valid title to the land.

4. As the land was admittedly the property of Government, the Officers of Government were competent to give it to either party, and their grant of it to second defendant (the original Durkhast-dar) does not give any ground for civil action.

Exd. J. Wright.

Dated 27th July 1868.

Received

No. 5,447.

Requesting Collector of North Arcot to signify to Trivelloor District Munsiff's Court to postpone hearing of suit instituted in that court regarding certain land.

*Received by the
District Judge to
R.D. and dated 1869/15/1*

1868. Department.

No. 2682/15

No.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 2nd September 1868.

Received

No. 6,270.

Forwarding Statement prepared by Board to be
filed in Suit No. 46 of 1868, instituted in Trivati
Court District Munsiff's Court, North Arcot, for
recovery of certain land.

*Received by the
District Judge to
R.D. and dated 1869/15/1*

Rev = 1869. *Wipart*
Board of Revenue,
MADRAS.

8-2682.

PROCEEDINGS, 6TH AUGUST 1869, No. 5,765.

Recd 9 Aug 1859
Received 10th

AUGUST.

No. 5,765.

Suit—No 46 of 1868 on file of Arni Moomeiff's Court in North Arcot District regarding Puttah for certain lands.—*Letter* from Collector for forwarding translation of Judgment and Decree in, submitted to Government. *no. 2399*

used to Government. *at 2399*
1676
Wm N. ...
23 Aug

16 Foster St. Hydeville. Nov 6 Dec 14 24

Forwarding Statement prepared by Board to be filed in Suit No. 46 of 1868, instituted in Travancore District Munsiff's Court, North Arcot, for recovery of certain land.

Nov. 28th Sunday 1860

C. 18. Aug 27/1898