

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 373	Press ~~Mis.~~
<u>228-229</u>	
Dated 13 th February 1910	

Not to be folded or roughly handled

373

18

*Proceedings of the Madras Government, Revenue Department,
13th February 1869.*

No. 228. Read the following Proceedings of the Board of Revenue, dated 27th January 1869,
No. 559 :—

Read the following letter from the Collector of the Godavery District, to the Acting Secretary to
the Board of Revenue, dated Cocanada, 22nd December 1868, No. 324 :—

As directed by Government in their Proceedings, dated 2nd December 1867, No. 1,961, com-
municated with the Board's Proceedings of the 12th idem, No. 8,029, I have the honor to forward,
herewith, for submission to Government, translations of the Judgment and Decree of the Principal
Sudder Ameen of Rajahmundry, dismissing the Original Suit No. 35 of 1867, the defence of which
was sanctioned at the public expense in the Board's Proceedings, dated 21st September 1867,
No. 6,093.

ENCLOSURE No. 1.

The Principal Sudder Ameen's Court of the Rajahmundry District.

PRESENT :—SAMINENI VENKATADRY NAIDU, Principal Sudder Ameen.

Original Suit No. 35 of 1867.

Plaintiff.

Adurty Lakshmi Narsimham.

Pleaders.

1. Adurty Butchi Venkappa.
2. Saripalle Gopala Kristnamma.
3. Do. Sattenna.

versus

Defendants.

1. Polnati Nagamma.

2. James Fraser, Esq., Collector of the Goda-
very District.

Nanduri Ramachendrudu, Pleader, for the
first defendant.

Chittrapu Kamarauz, Government Pleader,
for the second defendant.

Judgment.

THE plaintiff has preferred this suit, complaining that the piece of ground marked A., situated at
Cocanada, within the boundaries specified in the plaint, measuring sixty-four square yards—namely,
eight yards from east to west, and eight yards from north to south—and valued at Rupees 1,015,
which he inherited, was made over by the second defendant to the first in the month of June 1867,
and requesting an award directing the first defendant to fill up the foundations, etc., to the value
of Rupees 25, which she caused to be dug thereon, to pay him, from the date of the plaint, a rent for
the ground at the rate of Rupees 5 per mensem, and not to make any improvements on the same;
that the ground sued for be put in his possession without the hindrance of the defendants, and
that the costs of the suit be caused to be paid to him by the defendants.

2. In the statement put in by the first defendant, she stated, among other circumstances, that
the matters of the plaint are false; that at the places marked A. and B. in the plan, the tide-water
of the salt river was flowing; that the sites belonged to Government; that the Government caused
the whole of that ground to be raised; that the spot marked A. had been left to be used as a high
road; that a portion of the ground marked B. had been granted to some persons with a quit-rent
fixed on it; that another portion thereof had been given to certain others in exchange of their
former building sites occupied by the road; that, in the same manner, the ground marked E. was
granted to herself and her sister by the second defendant in the month of February 1867; that the
site under dispute has been yielding no rent; that she has no business to pay any money on that
account to the plaintiff; that she having refused to yield to the plaintiff when he asked her to sell
him the ground sued for, he, through malice propense, preferred this suit, with a view to cause
damage to the walls, etc., raised by her at a cost of Rupees 1,200; and requested that the suit
might, therefore, be dismissed, and that the costs incurred by her be paid her by the plaintiff.

3. In the statement filed by the second defendant, he stated that the plaintiff has no right
to the ground, which forms the subject of the suit; that the ground has not been under the enjoy-
ment and possession of the plaintiff; that the boundaries specified in the plaint are not correct;
that a plan showing the position and boundaries of the disputed ground has therewith been pre-
sented; that the ground in dispute and that lying between it and the wall belonging to the plaintiff

*Proceedings of the Madras Government, Revenue Department,
13th February 1869.*

are the property of Government; that the whole of the site marked with yellow color in the plan having, up to ten years back, formed part of the bed of the salt river, was liable to be flooded by the tide-water of the same; that the Government having, at their cost, caused a stone-bank to be raised along the river, the ground has been filled up with the earth dug out of the river, and raised; that out of the ground in question, the portion marked G. was occupied by the building newly erected for the use of the Post Office, the piece marked H. had been sold to Mr. Simson at a public auction, and the sites marked B., C., and D., had been given in exchange of the ground belonging to Nalam Venkatrayudu, which was occupied near the new bridge; that the site marked C. had been claimed by Badam Manikyalu as his property, and that the lot marked A. had been rented out to Mr. Linares at an yearly assessment; and requested that, for these reasons, the suit might be dismissed with costs.

4. The following issues have been framed:—

In this suit, the plaintiff asserts a title to the site in dispute, and the second defendant states that the property belongs to Government.

The issues are—

- (1.) Whether the ground at issue is the property of the plaintiff or of Government.
- (2.) Whether the disputed ground is of such a nature as can yield a rent.

5. Documents filed on behalf of the plaintiff:

A.—Plan.

B.—*To prove the first point.*—Bill of sale drawn out on a stamped paper and executed on 20th August 1830, corresponding to Friday the 3rd increasing moon of Bhadrpadum in the year Vikruti, by Srikakulapu Chalamanna to Mannyam Kanakaiya Gar, selling him for Rupees 60 his (Chelamanna's) site including fruit-trees and houses, thatched with palmyra leaves, situated in the old market of Cocanada.

C.—*To prove the first point.*—A deed of gift drawn out on common paper, executed on 30th December 1839, corresponding to Monday the 10th decreasing moon of Margasiram in the year Vikari, by Mannyam Venkataratnam Gar in the name of Ramanna, the plaintiff's father, purporting the grant of the said dwelling site.

D.—*To prove the first point.*—Copy of the order issued by the Collector to the Government Vakeel, dated 27th November 1858. This is extracted from the Entry Book of orders, sent for from the Collector at the request of the plaintiff.

E.—*This is sent for from the Officers on behalf of the Pittapur Zemindar at the request of the Plaintiff.*—Statement showing the cultivation of Patiperadoos (back-yards) in the village of Cocanada for Fusly 1263.

F.—Bhubund Account of the village of Cocanada for Fusly 1273.

G.—*To prove the first point.*—Copy of the order issued by the Collector of the Godavery District to the 2nd Class Sub-Magistrate of the Cocanada Division on 12th May 1863. This has been presented by the first witness for the plaintiff. This shows an injunction that no interference should be taken in the matter of the site belonging to the first defendant.

6. Document filed by the first defendant:

I. Plan.

7. Documents filed by the second defendant:

II. Plan.

III. Puttah granted by the Collector to the Moonsiff, Curnum, and Pettundars of the village of Cocanada for Fusly 1272. The second defendant states that from this document it appears that the Government have a right to some other land adjoining to that in dispute.

IV. Do.

do.

for Fusly 1273.

V. Do.

do.

for Fusly 1274.

VI. Account showing the measurement of sites taken up by certain other parties for depositing and selling firewood, timber, etc., out of the unoccupied ground situated along the river-bank at Cocanada for Fusly 1274.

VII. Do.

do.

for Fusly 1275.

*Proceedings of the Madras Government, Revenue Department,
13th February 1869.*

8. *To prove the first and second points.*—Witnesses examined for the plaintiff:

1. Bollapragada Kamaiya.
2. Addapalli Atchaiya.
3. Varahagiri Sarrauz.
4. Chandole Venkataswami.
5. Mandapalli Bapanna.
6. Alamur Rayappa.
7. Manukarra Sitanna.

9. *To prove the first and second points.*—Witnesses examined for the second defendant:

1. Dinavahi Rangaiya, Curnum's Gumastah of Cocanada.
2. Mumidi Jaggaiya, Village Moonsiff of do.
10. The witnesses for the first defendant have not been examined.
11. As regards the first issue:

1stly.—The exhibits marked B. and C. filed by the plaintiff are the bills of sale of the ground belonging to him: the second and third witnesses for the plaintiff speak to their production. The plaintiff gives a reason that, because the ground in dispute appears, from the first of those documents, to have been bounded on the south by the salt river, and situated between their site and the salt river, it will be determined that it forms part of his site; but, if the disputed ground is seen to be a portion of the plaintiff's site, the fact cannot be determined by those documents, as the measurement thereof is not given in them. The statement marked E. of back-yards in the village of Cocanada for Fusly 1263 has been sent for at the request of the plaintiff: it is now filed in the record, but from that nothing which is useful to the plaintiff's pleadings appears. At the application of the plaintiff himself, a book has been sent for from the Collector's Office, and perused: in it is entered a copy of the order issued by the Collector to the Government Pleader on the 27th November 1858, wherein it is mentioned that the Government have no claim to the ground of Badam Atchaiya of Cocanada. The plaintiff states that in a certain Suit it was set forth that that ground was bounded on the south by the salt river, and that the Suit was at last decided in favor of the said Atchaiya, and submits, that as the southern boundary also of his ground appears, from his document marked B., to be the salt river, the site which forms the subject of the Suit will be determined as belonging to him. But the decree in question has not been filed in this case. Setting the same aside, I remember having, while District Moonsiff of Cocanada, either passed myself or seen the said Decree, and that, in that case, there had been no discussion regarding the southern boundary of the ground in dispute. The mere statements made in the pleadings of that case that the southern boundary of that ground was the salt river, and the consequent mention of the same in that Decree, cannot, therefore, be considered as a precedent for now being claimed by the plaintiff; and for this there is also another reason: the ground belonging to the plaintiff, as appears from the evidence for the both parties, bounded on the southern side by his compound wall, and his arguments are, therefore, from collateral facts not sustainable, until he can produce a clear and reliable evidence to the effect that the disputed ground lying on the river side forms part of his site.

2ndly.—The witnesses for the plaintiff say that the disputed ground was under the enjoyment of the plaintiff, and that consequently it belongs to him. There are some contradictions in their statements regarding that enjoyment. One says that there was a hut belonging to the plaintiff; another states that there was a screen of leaves belonging to the plaintiff; and another gives a statement differing from these two. In that evidence, there are some more discrepancies; but they are not particularised, being considered to be lengthy. Leaving them as they are, there is an evident proof to the effect that the testimony of those witnesses cannot be relied on—i.e., the mouth of the salt river is situated in the immediate vicinity of the ground. Consequently, the tide-water of that river was, previous to the construction of the stone-bank along the river, and the formation of the road on its side, doubtless flowing often, and to a great extent, into the land in dispute and to the sites adjoining to it. See depositions given by the witnesses for the plaintiff, and those given by the village Curnum and Moonsiff, the witnesses for the second defendant. Further, it appears from them that the tide-water of the river was also flowing into the houses around the site through the

*Proceedings of the Madras Government, Revenue Department,
13th February 1869.*

crevices of compound walls. The witnesses for the defence deposed that, at that time, there were gullies, thorn-bushes, mangrove trees, and a large quantity of mud on the site of the disputed ground, and this could be confided in, with reference to the then existing state of the river. Thus circumstanced, it is impossible to say that, previous to the construction of the said bank, the plaintiff could enjoy the ground in dispute. The fifth, sixth, and seventh witnesses for the plaintiff say, that subsequently also the plaintiff enjoyed the ground in the way of renting it out to others for the purpose of securing firewood, etc. But no leases for rent have been produced. The Court cannot, therefore, place confidence in that testimony. The ground in question forms part of the bed of the river. It is also proved by the witnesses for the defence that the plaintiff never enjoyed the ground either previous or subsequent to the construction of the stone-bank.

3rdly.—There is no doubt that the disputed ground, having been liable to be inundated by the high tides of the river, formed part of the bed of the river. The said disputed ground lying on the river-side, as well as the other sites adjoining to the same, are put in good order, they having been levelled at the cost of Government. This circumstance will be seen from the depositions of the witnesses for the defence, and from those of some of the witnesses for the plaintiff; and as proved by the witnesses for the defence, and by the puttahs, etc., shown by the Curnum, the sites around the ground in dispute have been, from the time they were levelled, disposed of by Government: some were occupied by the building constructed for the use of a certain office, and by the high road; some were granted to certain individuals in lieu of their sites occupied for Public Works; and some were rented by Government for their benefit. The ground, which forms the subject of the suit, being of the like description, will have to be declared as the property of Government; and it was, in consequence, granted by the Collector in lieu of the first defendant's land taken up by the road.

4thly.—For the above-mentioned several reasons, the Court are of opinion that the undisputed right of Government, but not that of the plaintiff, to the land in dispute has been established; but would see whether the evidence of the first witness for the plaintiff affects this opinion in any degree. That witness deposes that the Government caused a portion of his ground, lying on the river-side, to be put in good order by having the same levelled; and that the Collector, on a perusal of his documents, etc., presented by him when a claim to the land was set up on behalf of Government, determined that the Government had no concern in it, and left the same to be enjoyed by him, and in proof of which produces an authenticated copy of the order issued by the Collector. But the plaintiff has not produced any such documents regarding the ground in dispute. Further, it appears from the testimony of the Moonsiff and the Curnum, who are the witnesses for the defence, that the Collector having caused the said ground to be measured, found that it formed part of the ground belonging to that witness, and made such a settlement. Where are the means to find out by measurement that the disputed ground forms a portion of the plaintiff's site? The said evidence of the first witness for the plaintiff is, therefore, useless.

12. As regards the second issue, reasons have been shown above to the effect that the testimony of the witnesses for the plaintiff that the ground in dispute has been fetching rent to him, is inadmissible. It is, therefore, unnecessary to make a mention of the amount of rent.

13. Nonsuited the plaintiff with costs, the Court decree that the costs incurred by the defendants be borne by the plaintiff.

19th September 1868.

(Signed) S. VENKATADRY,
Principal Sudder Ameen.

(True Translation.)

(Signed) J. FRASER,
Collector.

ENCLOSURE No. 2.—Translation of Decree in Suit No. 35 of 1867.

SUBMITTED for the information of Government.

2. The suit has been dismissed, and the costs incurred by the Collector adjudged to be paid by the plaintiff.

*Proceedings of the Madras Government, Revenue Department,
13th February 1869.*

No. 229.

ORDER THEREON, 13th February 1869, No. 373.

Miscellaneous.

Ordered to be recorded.

(True Ex. ct.)

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

To the Board of Revenue.

Exd. G. A. Turton.

in view of a defendant made over to the
first

Decree passed by the Principal Sudder Amin's
Court of the Rajahmundry Zilla 47
Present

Samineni Venkatacharya Nayudu Principal
Sudder Amin.

Original Suit No 35 of 1867.

Plaintiffs

Adurti Lakshmi Karsimham Defendants

Pleaders

1. Saripalli Sattanna

2. do - Gopalakistamma

3. Adurti Buechi Venkappa

1. Polnati Nagamma

2. James Fraser Esqre

Collector of the
Godavery District.

Panduri Ramachena

Ardule Pleader for

the 1st Defendant

Chitturam Kamaraz

Ar for the 2nd do

This suit is preferred by the Plaintiff
praying for an award directing that the building
site belonging to him situated in the village
of Ocanada within the boundaries specified
in the Plaint measuring 64 square yards viz
8 yards from East to West and 8 yards from
South to North and valued at 1015 Rupees,
which the 2nd Defendant made over to the
first.

FILE NO. 35 OF 1867 against Collector of Godavery for recovery of certain land— Duties & Assessments relating to the same reported	1867. 223-139.	GOVERNMENT OF INDIA OFFICE OF THE SECRETARY TO GOVERNMENT OF INDIA DEPT. OF LANDS & REVENUE NO. 318.	DEPT. OF LANDS & REVENUE NO. 318.	GOVERNMENT OF INDIA OFFICE OF THE SECRETARY TO GOVERNMENT OF INDIA DEPT. OF LANDS & REVENUE NO. 318.	GOVERNMENT OF INDIA OFFICE OF THE SECRETARY TO GOVERNMENT OF INDIA DEPT. OF LANDS & REVENUE NO. 318.
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first in the month of June 1867, he put in his possession without the interference of the Defendants; that the foundations &c. caused to be dug by the 1st Defendant in the said building site and agreed at 25 Rs he caused to be filled up by her; that a rent at the rate of 5 Rupees per month for the building site he paid to him by the 1st Defendant from the date of Complaint; and that the Costs be borne by both the Defendants.

2 On an enquiry held into this case it is decreed that the Plaintiff be nonsuited with Costs and that the Costs incurred by the Defendants be borne by the Plaintiff.

Costs incurred by the Plaintiff
 Value of Stamp paper for drawing out the Plaint ——— 105-0-0
 Rs. for Power of Attorney ——— 1-0-0
 Rs. for drawing Plans ——— 11-8-0
 Rs. for drawing Miscellaneous petitions ——— 24-2-0
 Batta for serving Summons — 10-0-0

Batta for witnesses ——— 28-11-0 57
 Pleaders Fees ——— 55-4-0

This amount shall be borne by the Plaintiff ——— 205-5-0

Costs incurred by the 1st Defendant

Value of Stamp paper for
 Power of attorney ——— 0-8-0
 Rs. for Petitions — 1-11-0
 Rs. for statement — 0-8-0
 Rs. for drawing Plans — 1-0-0
 Pleaders Fees ——— 55-0-0

58-11-0

Costs incurred by the 2nd Defendant

Value of Miscellaneous
 Stamp papers ——— 1-1-0
 Rs. for statement — 0-8-0
 Rs. for drawing Plan — 0-8-0
 Pleaders Fees ——— 55-0-0

57-1-0

This amount shall be paid by the Plaintiff to the Defendants ——— 115-12-0

19th September 1868

Note. Vide Proceedings of the High Court dated 27th June 1867.

The dwelling site at issue yields a rent
of 5 Rupees per month.

Note. No process of execution will
be issued to enforce this Decree unless some
Proceeding shall have been taken to keep
the same in force within three years next
preceding the application for such execution.

(Signed) S. Venkataray
Principal Sudr Amin

Under the Proceedings dated 10th Instant
Rupees 3 being batta and incurred by the
Witnesses for the 2nd Defendant shall
also be paid by the Plaintiff to the 2nd
Defendant.

10th October 1868

(Signed)

Compared

S. Venkataray

Principal Sudr Amin

(Signed) K. Venkayya
Head Gumbasta

Copy applied for on 24th September 1868 -

Do prepared 19th October

Do delivered

(Signed)

to the Pleader for
2nd Defendant

Do

Do

V. Narainharow
Shirastadar

True Translation

J. Tasse

Collector

Revenue Office
N. 320

BOARD OF REVENUE, MADRAS.
1869.

PROCEEDINGS, 27TH JANUARY 1869, No. 559.

27th Feb/69
Received 3/5

Encl. 1

JANUARY.
No. 559.

Suit—No 35 of 1867 filed in Rajahmundry
Principal Sudder Ameen's Court in Godavery
District for recovery of certain land,—Collector's
letter forwarding translations of Judgment and
Decree in, submitted to Government.

ordered to be recorded
13 Feb

14 Copies to the P. & R. Secy

1368 Regs

in a letter from the

Collector Godavery to the

Superintendent in the

Revenue

MADRAS

22nd Dec 1868

PCO

No 324

No. 320/69

in relation to the

in suit No 35 of 1867—

26th Feb/69

1. 1/1

22nd Dec 1868