

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 388

Press
~~His.~~

258-259

Dated 15th February 1969

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department.
15th February 1869.

No. 258. Read the following Proceedings of the Board of Revenue, dated 3rd February 1869, No. 724 :—

Read the following letter from G. VANSAGNEW, Esq., Acting Collector of Cuddapah, to the Acting Secretary to the Board of Revenue, dated 22nd December 1868, No. 234:—

WITH reference to the Proceedings of the Board, dated 14th November 1868, No. 8,078, I have the honor to forward copy of the Judgment in the Suit therein referred to.

ENCLOSURE No. 1.

Original Suit No. 44 of 1868 on the file of the Principal Sudder Ameen's Court of Cuddapah.

PRESENT:—G. RAMANJULU NAIDOO, Acting Principal Sudder Ameen.

Plaintiff. *versus* *Defendants.*

Wonteddu Naugi Reddy, of Purva Sugamunchipully, attached to Devagudi, Talook Jummulmadugu, Vakeel Nursa Ramiah.

1. F. B. Molony, Esq., Acting Collector of Cuddapah, since deceased.
2. Puttah Chinnabbee, of Chowdur, Talook Proddetur.
3. G. VansAgnew, Esq., Acting Collector, successor of the first defendant.
Vakeel A. Ramasomayaji, for first and third defendants.
Vakeel M. Kristnamacharlu, for second defendant.

SORT for land value Rupees 200.

The plaint, (dated 4th, and filed 10th March 1868, as Original Suit No. 219 of that year, in the Proddetur Moonsiff's Court,) sets forth that, while plaintiff was entitled to get dry land No. 214, consisting of acres 39-32-12, assessed at Rupees 20, situated at Purva Sugamunchipully, in the Jummulmadugu Talook, by reason of his (plaintiff's) possessing other lands in its neighbourhood, by reason of his being the renter of the "Reigu" Tope on it, and by reason of his being a resident of the village to which it belongs, the late Collector, Mr. H. G. Smith, in contravention of the Board's Orders, published in *Gazette* No. 40 of 1860, considering that the second defendant was the first applicant for it (land), ordered, on the 29th August 1867, that it should be annexed to his (second defendant's) puttah; and that the present Collector, being Mr. Smith's official successor, is made first defendant, and the land, valued at Rupees 200, sued with mesne profits.

2. The plaintiff filed with the plaint the Collector Mr. Smith's orders of the 29th August 1867 referred to, marked A. (3).

3. The second defendant declared the suit untenable, and argued that, as first applicant, he was entitled to a puttah for the land as ordered by the Collector, and that the plaintiff had no right to it.

4. The plaintiff and second defendant filed plans of the land B. (15) and I. (13).

5. On the 17th July 1868, the Moonsiff sent a Summons, No. 14, by post direct to the first defendant, with a request that it may be signed and returned bearing. It was for settlement of issues on the 20th October 1868.

6. The first defendant forwarded the said Summons to the Civil Court as being informal, and the Civil Court returned it to the Moonsiff that it may be served on that defendant through the Government Vakeel, as directed in Section 68 of the Civil Procedure Code.

7. Then a fresh Summons, No. 17, was served on the first defendant on the 19th September 1868, fixing the 21st of November 1868 for the settlement of issues.

8. At this stage, the suit was referred to this Court, and numbered 44 of 1868.

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9. The first defendant having died, his official successor, the third defendant, was made a party to the suit at the motion of the plaintiff.

10. The third defendant answers to the suit as follows:—"First, the plaint discloses no ground of action; second, the land, which forms the subject of the suit, is the property of Government, and plaintiff is merely a renter of a tope situated thereon: he has no right or title in the land: the Government have a right to dispose of it as they think fit; third, certain rules have been laid down for the disposal of Government lands, but they confer no rights on individual, and afford no ground of civil actions; and fourth, the Collector's acts, in regard to the disposal of Government lands and Government topes, are not subject to the revision of the Civil Court."

Judgment.

11. The suit came on for first hearing to-day, the 21st November 1868; but it appears unnecessary that neither the plaintiff nor the second defendant, the real contesting parties, nor the third defendant should be required to produce any proofs. I proceed, therefore, to judgment at once under Sections 144 and 145 of the Civil Procedure Code.

12. I am of opinion that the suit is barred by lapse of time, or, if not so, that the plaintiff had no good grounds of action, as may be seen from what follows:—

First, as to the suit being barred by time and not being sustainable, it appears that the land, No. 214, in question, on which certain "Reigu" trees stand, is unassessed (Porumboke) Government land; that the trees only were rented to the plaintiff by Government, through their representative, the first defendant's official predecessor, Mr. Smith, for three years from Fusly 1275 to 1277, ending on the 30th June 1867; that the second defendant then knowing of the Board of Revenue's Rules, published in the *District Gazette* No. 40 of the 3rd October 1863 (not of 1860, as stated in the plaint), first made an application to the Collector, Mr. Smith, for the land with trees; that the plaintiff also subsequently made an application to the same effect; and that Mr. Smith, on the 24th of July 1867, (*vide* No. 31,) gave orders that the second defendant should get a puttah accordingly for the land: he at the same time rejected the plaintiff's application. Mr. Smith made the necessary inquiry as to the second defendant's and plaintiff's applications through the village and talook officials, and being satisfied that the second defendant was the proper person to obtain the land, from his being the first applicant, irrespective of other circumstances in his favor, issued the said orders, which, it would appear, he was perfectly competent to do.

If the plaintiff was dissatisfied with those orders, the cause of action accrued to him from their date the 24th July 1867, he should have sued the Collector, Mr. Smith, or his successor, the first defendant, within six months from that date, as prescribed by Section 60, Madras Act II. of 1864, or Section 78, Madras Act VIII. of 1865. The plaintiff did not do so, but continued appealing against those orders to the Collector himself and to the Board of Revenue up to the 29th of August 1867, on which date, the Collector, Mr. Smith, gave the same final orders (Enclosure A.) on his appeal. He remained in charge of the district before proceeding to England on sick leave, till the 7th of February 1868, or till six months and fifteen days from the 24th of July 1867, or six months less twenty-two days from 29th of August 1867, which was more than ample time for the plaintiff to have sued him, if he considered himself really wronged by his orders. He remained silent during the six months and fifteen days since 24th July, or nearly six months from the 29th of August 1867, and then on the 4th or 10th March 1868 commenced this action against the succeeding Collector, the first defendant, joining the second defendant also as a matter of form. Here I cannot but remark that the suit having been brought after the limitation, is not the fault of the plaintiff, but that of his legal adviser, D. Vencatacharlu Sastry, Vakeel in the Moonsiff's Court, who prepared the plaint on the 4th March 1868, and accepted the plaintiff's Vakalatnamah on the 7th idem. In a case in which this Vakeel was plaintiff, I committed him for trial before the Magistrate under Section 209 of the Penal Code.

13. To return to the point under consideration, the Rules of Practice of the High Court, head "Cause of action," paragraph 9, declared that a person omitting to take legal steps for obtaining redress during the lifetime, or incumbency of a Collector, by whose official acts he considers himself to have been injured, has no remedy against his successor in office. The above

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ruling emanated from the late Sudder Court's Decree in Special Appeal No. 204 of 1859 (p. 65 of the Reports for 1860), which involved the construction of Sections 28 and 29, Regulation XXVII. of 1802 as to successors of Collectors not being liable to prosecution for the official acts of their predecessors; and although Regulation XXVII. of 1802 has now been repealed by Madras Act II. of 1864, Sections 28 and 29 thereof appear to have been re-enacted, as Section 60 of that Act modified to the effect that a suit may be brought against any Collector in his official capacity on account of any thing done, or purporting to have been done, by his predecessor; but the limitation in the preceding Section 59 was not overlooked—namely, that such suit should be instituted within six months from the time at which the cause of action arose, so far as to the suit being barred by lapse of time.

14. Then as to the plaintiff not having had grounds of action, he relies wholly on the Board's rules referred to in paragraph 13, and complains that they were transgressed in his case by the Collector, Mr. Smith: I cannot think there was any such transgression intentional or unintentional; but on the contrary that the land in question was properly and equitably ordered to be annexed to the second defendant's puttah, and that this defendant had better and superior claims to it than the plaintiff.

15. Paragraphs 1 to 10 of the rules are as to the disposal of applications for land, and seem to give great latitude to the village authorities and the Tahsildar; paragraph 11 constitutes the Tahsildar or the Collector appellate authority; paragraphs 12 to 14 are as to details; and the concluding paragraph 15 is in these words: "when there are two or more applicants for the same land, the preference should, as a general rule for guidance of village authorities and of the Tahsildar, be given to the applicants in the following order:—

"First,—To a ryot whose father or near relative was in last occupation of the land, if within one year.

"Second,—To a ryot whose land adjoins.

"Third,—To the first among the applicants, who is a ryot of the village, in preference to a stranger.

"Fourth,—In the absence of any of the above privileged persons, to the first applicant."

16. Now in the exercise of the discretion vested in them by the rules, the village officials and the Tahsildar were in favor of the second defendant's, and against the plaintiff's application for the land (*vide* A.), and the Collector, Mr. Smith, as an appellate tribunal, sanctioned their recommendation in favor of the second defendant.

17. It is true, as alleged and argued by the plaintiff, that neither second defendant's father nor near relative was last occupant within one year, as in the first of the above order; nor did his land adjoin, as in the second order; nor was he a ryot of the village in which the land is situate, as in the third order; but he was the first applicant only coming under the fourth order, and that all the above negatives are apparently in favor of the plaintiff.

18. But paragraph 15 of the Rules, as to the order of preference, is, the plaintiff must learn, only a general rule, implying that there may be special and peculiar circumstances under which that order may be deviated from; and these circumstances appear to be: first, that the second defendant was renter of the same tope on the land in question for seventeen years, preceding Fusly 1275, and dug a well therein, his "relatives" not having been "in last occupation" for "one year" next preceding application, being counterbalanced by these seventeen years previous possession; and second, that if second defendant's land did not "adjoin" that in dispute; if he is not "a ryot of the village" to which the land belonged, but a stranger; the fact of his father-in-law, Pedda Bauli Reddy, having planted and improved the very tope, removes all disadvantages he may be said to be laboring under: in other respects see A.

19. In fact, while the second defendant could apply for the land as a matter of some right, the plaintiff could have done so simply as a matter of favor.

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20. Being thus of opinion that the suit is barred by the limitation law, or that the plaintiff had no grounds of action, I would dismiss the suit with all costs payable by the plaintiff.
21st November 1868.

(Signed) G. RAMANJULU NAIDU,
Acting Principal Sudder Ameen.

(True Copy.)

(Signed) G. VANSAGNEW,
Acting Collector.

SUBMITTED for the information of Government.

2. The defence of this suit was sanctioned in Board's Proceedings, dated 14th November 1868, No. 8,078, and the draft answer, quoted in paragraph 10 of the judgment, was at the same time approved.

3. No costs have been awarded against the Collector.

No. 259.

ORDER THEREON, 15th February 1869, No. 388.

Miscellaneous

Ordered to be recorded.

(True Extract.)

(Signed) H. WIGRAM,
Acting Under Secretary to Government.

To the Board of Revenue.

Ed. G. A. Turton.

DEPT. OF REVENUE

REVENUE.

To

THE BOARD OF REVENUE.

Dated February, 1868.

Feed.

Incl.

G. O., 17th February 1868, No. 383.

Recd of the Secy of Revenue 28th Decr 1868

FEBRUARY.

NO. 250-253.

*Recd of the Secy of Revenue
at Washington 11th Decr 1868*

*Recd of Secy of 1868 against Collector of
Orege paid for the Treasury of certain land. Re-
port of the 3rd and 4th records.*

Revenue Office
Nr. 387.

BOARD OF REVENUE, MADRAS.
1869.

PROCEEDINGS, 3RD FEBRUARY 1869, No. 724.

Recd. 8 February 1869 Encl.
Received 9c

82-388
RECORDED.

FEBRUARY,
No. 724.

Suit—No 44 of 1868 filed in Principal Sud-
der Ameen's Court of Cuddapah for recovery of
certain land.—Letter from Collector forwarding
copy of Judgment in, submitted to Government.

1868-1869
RECORDED.

to the order

Indigra
42 V. Secy

11th February

1869
15th Feb/69

Erd F. R. Bantlemar

14th Feb 1869

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