

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	444	Press ~~Mis.~~
377-78		
Dated	22 nd February 1869.	

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
22nd February 1869.*

No. 377. Read the following Proceedings of the Board of Revenue, dated 4th January 1869, No. 4:—

Read the following letter from the Collector of the Godavery District, to the Acting Secretary to the Board of Revenue, dated Cocanada, 16th November 1868, No. 285.

As directed by Government, in their Proceedings, dated 2nd December 1867, No. 1,961, communicated with the Board's Proceedings of the 12th idem, No. 8,029, and as observed in the Board's Proceedings of the 26th ultimo, No. 7,632, I have the honor to forward, herewith, for submission to Government, copy of Judgment and Translation of Decree of the District Moonsiff of Cocanada, in Suit No. 46 of 1868, the defence of which was sanctioned at the public expense, in the Board's Proceedings, dated 4th June 1868, No. 4,142.

ENCLOSURE No. 1.

No. 46 of 1868 Cocanada District Moonsiff's file.

Present.—GEORGE WELLS.

Plaintiff.

Mrs. L. Vigie.

versus.

Defendants.

1. J. Fraser, Esq., Collector of the Godavery District.
2. P. Pundarikakshudu, Sub-Magistrate.
3. Mr. Charle.
4. J. H. Master, Esq., Present Collector.

The plaintiff claims recovery of certain articles of furniture, particularized as per list attached, valued 76 Rupees, attached while with her in her father's (third defendant's) house, for a debt of his to Government on account of rent.

For the first defendant, fourth defendant is Collector; second defendant, the Sub-Magistrate who attached the articles; the former says that the Suit is brought under Section 17, Act II of 1864, for recovery of movable property attached for arrears of Government revenue due; that the plaintiff, if interested in the property, had power to sue only after sale of distrained property under above-said Section; that if the Suit is sustainable, the plaintiff has brought this Suit claiming the property as her husband's to evade payment of the father's debt, the property having been attached while in third defendant's (plaintiff's father's) house. Third defendant says that the property claimed is his daughter's (plaintiff's).

Two witnesses for plaintiff: the first is the brother of plaintiff. He says that his sister was just come to live a little time with her father, while her husband was at Guntoor, and that with the articles attached belonging to the father, (third defendant,) some of her articles were attached, which he particularizes.

The second witness says he saw articles of furniture brought by plaintiff when she came to Cocanada, that she was then married some time.

Two witnesses for fourth defendant say that the property was attached in the house of third defendant for revenue dues: that he was absent in Toony at the time.

Judgment.

The plaintiff says she was living with her father, (third defendant,) at Jagannaikapuram when her property, according to list particularized, was attached for a revenue debt against third defendant; this property, or value 76 Rupees, she seeks to have returned to her.

The first defendant is the Collector now absent, the fourth is the Acting Collector, by order of former to second defendant, the Sub-Magistrate, the movable property of third defendant was distrained for certain revenue dues.

The Collector's statement says that if plaintiff was interested in the property attached, her cause of action would only arise according to Section 17 of Act II of 1864, after sale of said property;

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and that plaintiff claims the articles as hers to evade payment; that the articles were attached in third defendant's house.

Section 17 Act II. of 1864 says—

"When any person, not being a defaulter, or responsible for a defaulter, may claim a right to the property distrained, and the distrainer may, notwithstanding, cause the same to be sold, such claimant, on proof of such right in any Civil Court of competent jurisdiction, and in the event of the distrainer being unable to prove the responsibility for the arrear of revenue, on account of which the property may have been sold, shall recover from the distrainer, the full value of such property, with interest, costs, and damages according to the circumstances of the case, &c."

The cause of action must be deemed to have arisen at the date of distraint set on the plaintiff's property, if hers, so I understand the Section 17; but if notwithstanding the non-defaulter, the distrainer causes the articles to be sold, such claimant shall, in a competent Court, recover from the distrainer the full value, &c.

Plaintiff says her furniture was distrained for a debt of her father's. She sued for the return of the same; same time by motion to the Court prayed that an injunction may be issued to prevent the sale. This is not contrary to the above-said Section of Act II. of 1864, nor to the Code of Civil Procedure.

The issues, therefore are, whether any of plaintiff's furniture was attached for that of her father's (third defendant's), and whether she has a right to the return of the same.

The plaintiff, it would appear, is the daughter of third defendant. She is married, and came up to live with her husband who got employ under a merchant in Cocanada, but was sent soon after to Guntoor; the plaintiff remained with her father. It is said that she had brought certain articles of furniture from Masulipatam, which she had with her in her father's house when they were attached by the revenue authorities.

The first witness for plaintiff is her brother; he particularizes certain articles as his sister's and her husband's which they brought with them from Masulipatam. The other witness saw certain articles of furniture packed up, but could distinguish only an Almirah by the corner that was open; he saw these in the boat that conveyed them from Masula.

It appears to me clear that plaintiff had some of her furniture with her when living in her father's house; but I cannot say that I am satisfied by the evidence adduced that the furniture enumerated by plaintiff was all hers. Indeed, to take the evidence of her brother would be to believe that almost every article attached was hers, what then belonged to third defendant, who is an older resident, is not shewn. The third defendant, who was called up by the Court, says he had but a cot and a box. This I cannot make up my mind to believe.

As, however, two witnesses speak to the two Almirahs being plaintiff's, I decree that the same be made over to her.

All costs will be borne by third defendant on whose account the property was attached.

(Signed) G. WELLS,
District Momeiff.

COCANADA,
29th August 1868.

(True Copy.)

(Signed) J. FRASER,
Collector.

ENCLOSURE No. 2.—Translation of Decree in Suit No. 46 of 1868.

SUBMITTED for the information of Government.

2. The Board observe that the Decree is in favor of the Collector, and that no costs have been awarded against him.

3. With reference to Proceedings of Government, 6th December 1867, No. 2,919, the Board beg to suggest that when Suits are decided in favor of the

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Officer sued, the copy of Decree and Judgment should be forwarded to Government, only when an important principle is involved, or when costs have been adjudged against the Officer sued, and not as now ordered in every case.

No. 378.

ORDER THEREON, 22nd February 1869, No. 444.

Miscellaneous.

Recorded. Paragraph 3 of the Board's Proceedings will be disposed of in the Judicial Department.

(True Extract.)

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

To the Board of Revenue.
„ the Judicial Department.

Exd. G. A. Turton.

Wm. J. J.

W. J. J.

Revised. From 3 of the Bil. Procciding, will
be disposed of on the Individual Dept.

W. J. J.

11. To the Dept. of the Interior, Des. 238
6 (Ind. Dept.)

W. J. J.

229. Wiley / 69

I do not see how this
individual Dept. has anything
to do with it. I would sanction
the course proposed in para 3.
W. J. J.

CONFIDENTIAL

REVENUE.

THE BOARD OF REVENUE.

Secy. Secy. Secy.

Dated February, 22nd.

Recd.

G. O., 22nd February 1869, No. 444.

FEBRUARY.

Nos. 377-378.

Sub No. 46 of 1868, against Collector of
Mozambique. Judgment of the District Magistrate of
Goa in favor of the Collector, recorded.