M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1358 Press Mis.

361-362

Dated 15th May 1869

Not to be folded or roughly handled

Mis

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

No. 361. Read the following Proceedings of the Board of Revenue, dated 7th May 1869, No. 3,083:—

Read the following letter from the Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated Puducottai, 10th April 1869, No. 62.

With reference to the Board's Proceedings of the 13th February 1868, No. 1,073, I have the honour to report that the Suit (No. 116 of 1867) therein referred to has been dismissed with costs.

2. I enclose a translation of the District Moonsiff's order, and of the plaintiff's petition on which it was passed, from which it will be seen that the plaintiff asked for permission to withdraw the Suit under Section 97 of the Code of Civil Procedure, with liberty to bring a fresh one hereafter, but that the Court declined to grant it, and has dismissed the Suit under Section 98.

3. I do not see how Section 98 can apply to this case, inasmuch as no compromise has been made or satisfaction given to the plaintiff in respect of the matter of the Suit; but as the result is substantially the same as a formal nonsuit, I do not consider it necessary for Government to take any further action in the matter.

4. Steps have been taken for the recovery of the cost of the defence

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Enclosure No. 1.—Translation of Petition.

Submitted, together with a copy of the Board's Proceedings, dated 13th February 1868, No. 1,703, for the information of Government.

2. The Suit has been dismissed, and the Collector reports that steps have been taken for the recovery of the cost of the defence.

No. 362. Order thereon, 15th May 1869, No. 1,358.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bantleman.

Court of Sudder Adawlut, 1868.

REVENUE.

To

THE BOARD OF REVENUE.

Dated May, 15th.

Read.

G. O., 15th May 1868, No. 1,073.

Proceedings.

MAY,

Nos. 991-2002.

Suit for the recovery of a Shop-site in Tanjore.—Collector's letter reporting its dismissal, recorded.

No. 1,073.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 13th February 1868.

Read the following letter from G. L. MORRIS, Esq., Collector of Tanjore, to the Secretary to the Board of Revenue, dated Vallam, 10th February 1868, No. 33:—

1. I have the honour to report, for the information of the Board, that a suit* has been filed against me by one Kannusami Pillay in the District Munsiff's Court at Tanjore, and that the circumstances therewith connected are as follows:—

* No. 116 of 1867.

2. Outside the Fort of Tanjore and near its east gate, there is a strip of Government ground abutting on the main road running from south to north and forming part of the glacis of the ditch of the fort, which with the ditch itself has lapsed to Government as State property, in consequence of the extinction of the late Raj. This strip of ground is partially occupied by a line of bazaars or small shops, and a rent is collected for the site of each shop.

3. One of these sites was let out to the plaintiff under a Muchilka given by him to the Tahsildar on stamped paper, on the 6th April 1864, in which he agreed that he would pay a rent of Rupees 2-15-0 per mensem for it. Plaintiff continued to pay rent at this rate for three months, April, May, and June 1864, but afterwards, in collusion with the Curnum, managed to reduce the rent to Annas 12, and went on paying this reduced rate to the Curnum up to February 1866; this fact having, through the culpable neglect of the Talook authorities, remained all along undiscovered and unnoticed. Furthermore, in the month of June 1866, the Tahsildar utterly unmindful of the fact that plaintiff had given a Muchilka in 1864 as mentioned above, and had accordingly paid at the rate of Rupees 2-15-0 for three months, entertained a proposal from him that he should be allowed to erect a substantial tiled shop in place of the thatched one which he had built on the ground occupied by him, and that in consideration of being allowed to do so, he should pay Annas 2 in addition to the 12 Annas then paid; and having taken from him a document termed "Satkala Muchilka" to that effect, submitted the same to the Acting Collector Mr. Banbury, who passed an order on the 12th June 1866 accepting the proposal submitted by the Tahsildar. I must here observe that the Muchilka for the higher rate of Rupees 2-15-0 had been taken, and the site of the shop let out to the plaintiff by the Tahsildar himself in 1864 without any report being made to this office for sanction, as it ought to have been, and that the whole of the transaction was, therefore, unknown to Mr. Banbury when he passed the order just mentioned.

4. Immediately after this, however, and before a formal Muchilka on stamped paper was taken from the plaintiff, information reached Mr. Banbury that a fraud had been practised in this case, and he consequently directed Deputy Collector Srinivasa Row to institute an inquiry into the matter which brought to light all that had previously taken place.

5. In consequence of this inquiry, the difference between the amount collected at the higher rate of Rupees 2-15-0, for the whole period during which plaintiff had occupied the ground, and the amount which he had actually paid, was recovered from him, and the site of the shop was let out by the Deputy Collector by auction to another individual by name Saminada Pillay, for a monthly rent of Rupees 4-4-0 for a term of five years. Moreover, the Curnum who had colluded with the plaintiff as also the Head Natcarnum, who, notwithstanding that he was the person that had collected the higher rate of rent for three months from the plaintiff, actually misled the Tahsildar into entertaining the proposal made by the plaintiff in 1866, by concealing that fact, were dismissed.

6. Such being the facts of this case, the plaintiff has now brought a suit for the recovery of the site of the shop, as also the difference of rent recovered from him as mentioned above, on the plea that the rate of Rupees 2-15-0 stipulated for in the Muchilka originally given by him was reduced (by whom he carefully omits to say) on his representation that he was unable to pay it, and that by the Acting Collector's order of the 12th June 1866, he (plaintiff) acquired a right of perpetual occupancy to the ground subject to the payment of a rent of Annas 14 per mensem; no term of years being specified therein.

7. The plaintiff has included as second defendant in this suit the individual to whom the ground in question was eventually let out as mentioned above, and who now occupies it. A translation of the plaint is herewith enclosed.

8. It is to be observed that the Acting Collector's order, on which alone the plaintiff's claim rests, was immediately followed by an inquiry into the matter which resulted in his being ejected. A regular Muchilka on stamped paper was not taken from the plaintiff as directed by that order. The Muchilka taken by the Tahsildar in 1866, as mentioned in the plaint, was what is called a "Tatkala" or preliminary Muchilka, and on plain paper. According to the established usage of the district, this document cannot be considered to be of any force, being only intended as preliminary to the Muchilka to be afterwards taken in due course on stamped paper, and without which, therefore, the transaction specified by it cannot be considered to be complete or valid.

9. Moreover, the Acting Collector's order was, as shown above, obtained through fraud, and as it is a recognized margin of law that fraud vitiates a contract, the plaintiff's claim based on that order cannot be sustained in law.

10. It is furthermore to be observed, that the "Tatkala Muchilka" above referred to, as also the regular Muchilka given by the plaintiff in 1864, contains a distinct provision that he should remove the building and vacate the ground whenever the Circar might require him to do so, and he has no right, therefore, to make his ejection a ground of complaint or civil action. His assertion that because a term of years was not mentioned in the Acting Collector's order, his assumed lease should be considered to be perpetual, is, as I have stated in the draft answer, as preposterous as it is frivalous.

11. With respect to the plaintiff's statement that he raised a building on the ground in question at an expense of Rupees 50, it must be noted that the Acting Collector's order sanctioning his proposal was dated the 12th June 1866, and was followed by one from the Deputy Collector, dated the 15th idem, directing the proposed building to be stopped pending the inquiry then ordered. It is consequently most unlikely that during this interval of two days, plaintiff did really execute any work.

12. I beg to request the sanction of the Board to put in a written statement, as per enclosed draft, and to conduct the defence at the public expense.

13. The hearing of this suit which was originally fixed for the 10th January, has, on my application for two months further time, been postponed by the District Munsiff to only the 21st instant. I have again directed the Government Vakeel to apply for an extension of time to the 21st proximo, but beg nevertheless that I may be favoured with the instructions of the Board at as an early date as possible.

ENCLOSURE No. 1.

Copy of Plaint filed in the District Munsiff's Court, Tanjore.

Plaintiff. No. 116/1867 *Defendants.*

Kannusami Pillay, son of Verudachella Pillay residing in the northern street within the Fort of Tanjore. Collector of Tanjore and Saminatha Pillay, residing in the northern street in the Fort of Tanjore.

1. I took the undermentioned piece of Malgazari land belonging to the Aiyatorai Department of the Tanjore Palace, on a monthly rent of Rupees 2-15-0, and built thereon a thatched shop, and was in possession of the same.

2. On my representing that I was unable to pay so much rent, they, having recourse to the rentals of other shops, were collecting Annas 12 from me.

3. Subsequently I applied to be permitted to build a tiled shop, and to pay Annas 14 per month on that account, and the Tahsildar took a Muchilka from me accordingly, and wrote an Arzee to the Huzur, upon which my proposal was granted by Order No. 339 of 1866.

4. As no term of years was specified in that order, it was to be presumed that the lease thereby granted was a perpetual one, and that it cancelled the previous arrangement. Trusting to that order, I raised walls for the intended tiled building up to "Samadimuttum" at an expense of Rupees 50.

5. While such was the case, in contravention of these later proceedings, the Deputy Collector not only unjustly collected from me in the month of September 1866 the arrears of rent according to my first agreement, but has, on the 1st October 1866, let out the shop with the newly raised walls by public auction to the second defendant, stating that he has done so under Order No. 877 of 1866.

Under these circumstances, I beg that the said sale may be cancelled, and that in conformity with Order No. 339, the ground with the building above mentioned may be restored to me on perpetual tenure, together with the amount that has been unjustly collected from me.

Value of the claim.

	RS.	A.	P.
Estimated value of land situated (in the bazaar at the east gate of the Tanjore Fort) to the west of the road, east of the unoccupied land over the glacis of the Fort, north of Govindasamy Pillay's shop, and south of Saminada Pillay's shop	80	0	0
Do. do. of the brick and stone walls raised from the foundation on the said land	50	0	0
Amount collected against Order No. 339...	61	6	0
Total ..	191	6	0

(True translation.)

(Signed) G. L. MORRIS,
Collector.

ENCLOSURE No. 2.

Draft of written Statement.

1. Plaintiff does not say who it was that, at his request, collected the rent at the reduced rate of Annas 12 per month, as mentioned in paragraph 2 of the plaint.

2. The fact is, that the payment latterly made by the plaintiff, at this reduced rate, was a fraud perpetrated by him in collusion with the Curnum. There is the Muchilka duly executed by the plaintiff on stamped paper on the 6th April 1864, agreeing to pay at the rate of Rupees 2-15-0 per mensem, and there is, moreover, the fact that he paid at that rate for three months, April, May and June 1864. Had the rate been reduced by the sanction of any proper authority, this Muchilka would have been cancelled, or there would at least have been some record to show that the rate was reduced. There is, however, nothing to show that plaintiff even asked for a reduction.

3. It is true that unmindful of the real facts of the case, the Tahsildar entertained from the plaintiff and submitted to the Acting Collector in June 1866, a proposal fraudulently made by him (the plaintiff) that he should be allowed to substitute a substantial tiled building for the thatched one which he had built on the ground in question, and that in consideration of being allowed to do so, he should pay Annas 2 in addition to the Annas 12 then paid by him. It is true also that this proposal was sanctioned by the Acting Collector, but a formal Muchilka on stamped paper, as directed by the very same order of the Acting Collector that accorded sanction to the said proposal, was not taken from the plaintiff, for information having immediately reached that officer that a fraud has been practised in this case, he directed an inquiry to be instituted into the matter, which resulted in plaintiff being ejected and the balance of rent due at the rate originally agreed to, being recovered from him.

4. The Acting Collector's order above referred to, and on which the plaintiff entirely rests his claim, having thus been virtually cancelled by that officer himself, it cannot be held to convey any right whatever to the plaintiff. In fact, the question in this case is, not whether an order was sent to the Tahsildar, but whether the transaction with respect to which it was sent was completed or not; and the very fact of a regular Muchilka on stamped paper not having been taken from the plaintiff is conclusive as to the transaction not having been completed.

5. With regard to the Muchilka taken by the Tahsildar from the plaintiff in 1866, as stated in paragraph 3 of the plaint, it was only a "Tatkala Muchilka," and as such, therefore, is of no legal force, inasmuch as it denotes a transaction in itself incomplete, and only preliminary to a formal Muchilka to be afterwards executed on stamped paper without which the transaction cannot be considered to be complete.

6. Even were the "Tatkala Muchilka" a complete document, which, however, it was not, the transaction must be held to be vitiated by the fraud practised by the plaintiff.

7. The "Tatkala Muchilka," moreover, contains, as does also the regular Muchilka given by the plaintiff in 1864, a distinct provision that the plaintiff should remove the building and vacate the ground whenever he was required by the Circar to do so, and even admitting this incomplete document, therefore plaintiff was liable to be ejected at any time at the pleasure of Government.

8. Plaintiff's assertion that a term of years not being specified in the Acting Collector's order to the Tahsildar, the lease granted must be considered to be perpetual, is as preposterous as it is frivolous. There was no need for any term of years being specified in the order, and most certainly the order cannot be taken to convey to the plaintiff any more right than was defined in his own Muchilka with special reference to which that order was passed.

9. With respect to the plaintiff's allegation that he raised the walls of the intended new building up to a certain extent: if he really did so, he must himself bear the loss which a fraudulent act of his own entailed upon him; for he had no right to raise a building on a Government ground without permission duly obtained.

10. Under these circumstances, the first defendant, the Collector, begs to state that plaintiff has no right to recover either the ground or the arrears of rent which have been collected from him at the stipulated rate for the period during which he occupied it, and requests that the suit brought by him may be dismissed with costs.

VALLAM,
10th February 1868.

(Signed) G. L. MORRIS,
Collector

The Board sanction the de... of the suit on the usual terms, and approve of the draft answer.

True Copies and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Collector of Tanjore.

Copy to the Accountant General.

Exd. T. Cartledge.

PROCEEDINGS OF THE BOARD OF REVENUE

Dated 13th February 1868.
Received

No. 1,073

No.

1868. Department.

Rev. 1520/69

Sanctioning defence, on usual terms, of Suit No. 116 of 1867, filed in Tanjore District Munsiff's Court for recovery of certain shop site, and approving proposed draft answer.

To
The Court of the District Munsiff
Tanjore

Petition of Kannusami Pillai plaintiff in Suit No. 116 of 1867—

The Court are aware that I have instituted a Suit against Mr. Morris the Collector and others, Defendants, for cancellation of an injust Public Sale—

Some of the important witnesses in my behalf are now absent from their villages and are not likely to appear before the Court on the day fixed for hearing and no proceedings can therefore be taken now towards the progress of the Suit. I therefore request that I may be allowed to withdraw the Suit from the file under Section 97 of the Civil Procedure Code with liberty to bring a fresh Suit in the matter in question—

13th February 1869. (Signed) Kannusami Pillai
(Signed) Srinivasa Pitchit
Vakil

Filed 16 February 1869.

(Signed) S Raghavaiyangar
District Munsiff

Read

Order

Read petition and Deposition given by Petitioner's Vakil. The Court disbelieves that the grounds set forth in the Petition for bringing a fresh suit hereafter are true, for the Vakil has admitted and given a deposition stating his inability to substantiate the grounds urged in the Petition. If the grounds were true there could be no difficulty in proving them. The Court therefore declines to grant permission to bring a fresh suit hereafter and directs that suit be struck off the file this day under Section 98, since the Vakil requests that order be passed upon the mere statements contained in the Petition.

The Plaintiff is to pay the costs incurred by the 1st Defendant, the suit being dismissed not under Section 97.

16th February 1869. Signed S Raghavaiengar
Dft Munsiff

1st Defendant's cost.

	Rs	A	P
Stamps	2		
Vakeel's fees being a moiety	4	12	4
	6	12	4

(True translation)

E Lee Morris

Rev - 1869. Oct 4

Board of Revenue,

MADRAS.

R° 1070.

PROCEEDINGS, 7TH MAY 1869, No. 3,083.

Encl 2.

MAY.

No. 3,083.

Suit—No 116 of 1867, filed in Tanjore District Munsiff's Court, for recovery of a shop site and of collections made from Plaintiff on account of rent of site,—Letter from Collector reporting dismissal of, submitted to Government.

RECEIVED

14 May 69

361-362

Dated 10÷2/3 April 186

Exo. 62

Suit No. 1378/

Translation of Peti

of Kanuvedami Pu

Plaintiff in Suit

Exo. 116 of 1867

Recd. 16 May 189