M.R.O. 1—38,000—16-10-27.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 114 Press Mis.

231-32

Dated 22-1-1870 N.

Not to be folded or roughly handled

No. 231. Read the following Proceedings of the Board of Revenue, dated 16th December 1869, No. 9,217:—

Read the following letter from the Collector of Salem, to the Acting Secretary to the Board of Revenue, dated 10th November 1869, No. 261.

Referring to Board's Proceedings of the 26th January last, No. 521, in which the Board sanctioned the defence of Suit No. 269 of 1868, instituted in the Principal Sudder Ameen's Court, by one Streenevassa Moodelly, against myself and the Tahsildar of Salem, I have the honour to enclose the copy of a judgment, dismissing the suit and upholding the land in dispute to be a part of river-porumboke.

2. The Government Vakeel has been instructed to move the Court for the recovery of the Government's costs.

Enclosure No. 1.

Original Suit No. 269 *of* 1868.

Judgment.

This is a suit for the recovery of one-eighth gooly of punjah lands, lying on the west bank of the river at Cusbah Salem, together with trees standing thereon and a stone-wall, all valued at Rupees 110. It is further sought to compel the first defendant to issue a puttah to the plaintiff on account of the punjah land in question.

2. The plaintiff alleges that the contested land was originally porumboke waste-land; that his father converted it into a flower-garden sixty years ago, with the permission of the Salem Muttahdar, to whom it belonged; and that his father and himself planted trees and otherwise improved the land at a cost of Rupees 190, and continued to enjoy it until September 1868, when the first defendant, upon the report of the second defendant, who held no inquiry whatever into the matter, refused to grant him a puttah for the land as requested by him. Hence, the present suit for the recovery of the said property, and for the issue of a puttah in his name.

3. The defendants, the Collector and Tahsildar of Salem, contend that the plaintiff has no right whatever to the land specified in the plaint; that he neither holds any title to it, nor was he ever put in possession of it by any competent authority, nor has he ever paid assessment for it; that the land forms part of the river-porumboke entered in the accounts as Anathytaras, and as such belongs to Government; and that the plaintiff is not therefore entitled to recover the land claimed.

4. The following issue was ordered by the late Principal Sudder Ameen:—

Whether the land in issue belongs to Government or to the Salem Muttahdar, from whom plaintiff alleges he has derived his title.

5. Plaintiff filed three documents, cited 35, examined 11, and dispensed with 24 witnesses. Their evidence is quite insufficient and inconclusive to show plaintiff's title to land. He alleges that the land originally belonged to the Salem Muttahdar, who granted it to his father. In support of this, he does not possess a single document, nor does the oral evidence support the said title. All that appears from the evidence of his witnesses is, that his sister was buried in the place; that his father and himself frequented the spot and took care of the trees standing thereon; and occasionally repaired a stone-wall which stands about the place. All this is not consistently and satisfactorily proved, and all this might be true, but still the land may not belong to the plaintiff. The deceased sister of the plaintiff may have been buried there because it was a river-porumboke land, as alleged by the defendants, and having buried the body there, the plaintiff's father and the plaintiff may have planted trees and raised a wall, and done many similar things out of affection or regard towards the deceased. But all these could not confer any right upon the plaintiff. On the other hand, Exhibits I. and II. show that the Muttahdar has nothing to do with the land, and that

it is a part of the bed of the Salem river. The latter practice is further proved by the four joint witnesses and the witnesses on both sides, who depose that the land in dispute is below the surface of water during high freshes.

6. Exhibit A. is a notice issued by the President to the Salem Municipality, under Section 132 of the Towns' Improvement Act, calling upon the plaintiff to remove the prickly-pear, etc., from the land in dispute. The first defendant, who has signed the notice as the President, has no doubt called the plaintiff as the owner of the ground; but this is no such conclusive admission on the part of the first defendant as would bind him, nor could any such admission by the first defendant affect the rights of Government. It is impossible for the President of a Municipality always to inquire into and ascertain the ownership of a property before issuing his notices under Section 132 or any other Section of the Act. In this case he might have been misinformed as to the ownership of the property and issued his notice, or he may have held a defective inquiry, or he might have known nothing of the matter. The nuisance officer having reported the existence of the noxious vegetation, the Municipal Officers may have prepared the usual notice, and issued it without the knowledge of the first defendant, who has not signed it, but whose stamp has been affixed to it. I therefore think that Exhibit A. is of no avail to the plaintiff, so also Exhibits B. and C. Exhibit B. is a petition addressed by the plaintiff himself, and Exhibit C. is an endorsement of the first defendant, refusing to recognize the plaintiff's right to land.

7. Plaintiff has paid the full institution fee, and sues for recovery of possession. Defendants deny the plaintiff's title to recover. Hence, it is clear that the plaintiff cannot recover, unless he proves his title.

8. The plaintiff is admittedly out of possession, and the *onus* of proving his title affirmatively is upon the plaintiff and not upon the defendants, as supposed and argued by the plaintiff's vakeel.

9. Thus finding that the land claimed does not belong to the plaintiff, I dismiss the suit with all costs.

(Signed) R. VASSUDAVA ROW,
Principal Sudder Ameen.

SUBMITTED for the information of Government, together with a copy of Board's Proceedings, dated 26th January 1869, No. 521, in which the defence of the suit was sanctioned.

2. The suit has been dismissed with all costs.

No. 232. ORDER THEREON, 22nd January 1870, No. 114.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

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

To the Board of Revenue.

Fd. F. R. Bantleman.

ENCLOSURE No. 1.

To the Court of Munsiff of the Salem Talook.

Plaintiff.

Streenivassa Moodelliar, son of Ramasawmy Moodelliar.

Defendants.

1. Mr. C. N. Pochin, Collector of Salem.
2. Ramasawmy Iyer, Tahsildar of the Salem Talook.

This suit is instituted for the purpose of obtaining possession of one-eighth gooly of punjah land (specified below) with trees thereon yielding annually a produce valued at Rupees 10, and a stone work extending 200 yards situated on the land, and erected at a cost of Rupees 100, and for the purpose of getting a puttah for the land from the first defendant.

1. About sixty years ago my father, with a view of converting the land in question into a Durma Nundavanum or pagoda garden, requested the Muttahdar of Salem to let him have the land which was then a Porumboke free of assessment. His request was accordingly complied with. On which my father, and I after his death, enjoyed the land after spending Rupees 190 for the same.

2. As the first defendant was under an impression that the land in question belonged to Government, I presented him a petition on the 8th August 1868, requesting him to fix an assessment and issue a puttah for the land; on which an order was sent by him to the second defendant for reporting on the matter.

3. The second defendant without instituting an inquiry on my behalf, as to my occupation of the land, forwarded a report according to his own conjecture to the first defendant who, on which, issued me an order on the 28th September 1868, that I would not get the land in question as I did not occupy it.

4. The above order has been issued to me without obtaining any proof as to the fact of my having occupied the land in question.

(*Specification of land in question.*)

North, new road; south, the Salem river; west, pagoda garden of Kattavasari; east, a certain land on the bank of the Salem river. The land situated within these boundaries measures one-eighth or gooly containing five Iluppa trees, one Cocoanut tree, three Naga trees, one Palmirah, two Mavalinga trees, and one Baniyan tree with a stone work.

I beg to enclose herewith the following:—

1 Notice No. 4 issued by the Municipal Commissioners on the 19th March 1868.

1 Petition addressed by Streenivassa Moodelly to the Collector of Salem, on the 8th August 1868.

1 Endorsed order passed by the Collector on the 28th September 1868.

I, plaintiff, do solemnly declare, that what is stated in this plaint, is true to the best of my knowledge.

21st October 1868. (Signed) STREENIVASSA.

Filed on the 2nd November 1868.

(Signed) J. H. SHUNKER,
District Munsiff.

(True Translation.)

(Signed) C. N. POCHIN,
Collector.

ENCLOSURE No. 2.

Draft Answer.

THE defendants submit that the plaintiff has no right whatever to the land specified in the plaint. He neither holds any title to it nor was he ever put in possession of the land by any competent authority.

2. They further submit, and are prepared to prove, that the land forms part of the river Porumboke entered in the accounts as "Anathy tharus," and as such belongs to Government.

3. That under the foregoing circumstances the defendants pray that the suit may be dismissed with costs.

(Signed) C. N. POCHIN,
Collector.

THE proposed answer is approved with the following addition to paragraph 1, and the defence of the suit sanctioned on the usual terms:—

"Nor has he ever paid assessment for it."

(True Copies and Extract.)

(Signed) A. MACGREGOR,
Acting Secretary.

To the Collector of Salem.

Copy to the Accountant General.

Exd. T. Cartledge.

Revenue Dept
No. 4300

Board of Revenue,
MADRAS.

1869.

PROCEEDINGS, 16TH DECEMBER 1869, No. 9,217.

Encl 1

Rep 21 Decr 1869.
Received 24th Dec

DECEMBER.

No. 9,217.

Suit,—No 269 of 1868, on file of Salem Principal Sudder Ameen's Court, instituted for recovery of certain land with trees and stone work thereon,—Letter from Collector forwarding copy of Judgment in, submitted to Go-ing copy of Judgment in, submitted to Government.

RECORDED.

22 Pages.

(True Copies and Extract.)

Acting Secretary.

To the Acting Secretary to Government, Revenue Department,
with copy of Board's Proceedings, No. 520 of 1869.
Copy to the Collector of Salem.

Ed. G. A. Turton.

Encr in the Pro. of the Bd of Rve to the Secretary to Govt Rl dated 16 Decr 1869 No. 9217.

1869. Department.

No.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 26th January 1869.
Received

Rep 4300/69

No. 521.

Suit filed against Government in Salem District Munsiff's Court for recovery of certain land with trees and stone-work thereon.—Defence of—, sanctioned. Proposed draft answer approved with certain addition.

Proc 22d Jany/70 Ln Dr 231