M.R.O. 1—38,000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1677 Press ~~Mis.~~

860-61
Dated 31-10-1820 R.

Not to be folded or roughly handled

No. 360. Read the following Proceedings of the Board of Revenue, dated 3rd September 1870, No. 5,572:—

Read the following letter from the Acting Collector of Chingleput, to the Acting Secretary to the Board of Revenue, dated Sydapet, 5th August 1870, No. 315.

Vide Proceedings of Government, 31st August 1869, No. 2,458, and the Government Pleader's letter, dated 12th August 1869, No. 328.

It will be in the recollection of the Board that the Special Appeal preferred to the High Court against the decree of the Civil Judge of Chingleput in Original Suit No. 29 of 1867, by the Mirassidars of Pillapaukam in the Conjeveram Taluq, was decided against Government.

2. I have the honour to forward copies of the decree and of judgment of the High Court, from which it will be observed that the total amount of costs adjudged to be paid by the Collector to the plaintiff is Rupees 121-14-5. If to the above-named sum be added Rupees 88-9-11, being the amount of costs adjudged to be paid by the Collector to the plaintiff in the Original Suit, the total amount which Government will have to pay is Rupees 210-8-4. I request that the Board will obtain the sanction of Government to my disbursing the above amount to the parties concerned. They do not seem to have as yet made any motion for the recovery of the costs, but I have no doubt they will do so before long.

3. I also beg to forward a statement showing the costs incurred by the Collector in conducting the Suit, both in original and appeal, amounting in the aggregate to Rupees 143-8-7, the whole of which having been debited to the head "Advance Recoverable," I have the honour to request that the Board will be good enough to obtain the sanction of Government to my adjusting the same in the Treasury accounts, the Accountant-General having called upon me to expedite the adjustment without further delay.

Enclosure No. 1.

In the High Court of Judicature at Madras.

Tuesday, the Thirty-first day of August, One thousand Eight hundred and Sixty-nine.

Present: The Honourable Sir C. H. Scotland, Knight, Chief Justice.
The Honourable Mr. Justice Innes.

Regular Appeal No. 34 of 1869.

Appellants (*1st and 2nd Defendants*). Kullappa Naick and another.

Respondents (*1st Plaintiff's heir and 2nd to 12th Plaintiffs*). Ramanuja Chariyar and 11 others.

Regular Appeal No. 61 of 1869.

Appellant (*67th Defendant*). Collector of Madras.

Respondents (*Plaintiffs*). Ramanuja Chariyar and 11 others.

Regular Appeal against the Decree of the Civil Court of Chingleput in Original Suit No. 29 of 1867.

These Regular Appeals coming on for hearing, the Court delivered the following:—

Judgment.—The plaintiffs in this Suit and the defendants from Nos. 3 to 31 are the Mirassidars of the village of Pillapaukam in the Zillah of Chingleput, and have brought the Suit to establish their right to the grant of a puttah of certain waste lands in the village of which the

1st and 2nd defendants were in occupation as Sugavasi tenants under a puttah granted to them by the Collector, and to obtain the issuing of a puttah to them, and the eviction of the 1st and 2nd defendants. They rest their claim on the ground that, as Mirassidars, they have a right to the pre-occupancy of waste lands as against strangers, who apply to become tenants of such lands for cultivation, upon giving sufficient security for the payment of the full revenue assessment, and that they had tendered such security before the puttah was granted to the 1st and 2nd defendants.

The 1st and 2nd defendants and the other defendants claiming under them pleaded and at the trial relied upon the right of the Collector to grant the puttah to them notwithstanding the objections of the plaintiffs and the other Mirassidars. The Collector upon being made a supplemental defendant put in a written statement which sets forth that the land was given to the 1st and 2nd defendants as durkhastdars for the protection and security of the Government revenue. That the proceedings in that respect were in keeping with the Hookumnamah Rules of the district, which directed that lands should be given to Mirassidars on their tendering sufficient and trustworthy security. That the plaintiffs as the Mirassidars of the village had on previous occasions competed for lands for which offers had been made by Paycarries, and were allowed to take them up *in consideration of their preferential rights*, but they had failed to cultivate the lands or pay the assessment in breach of their agreements to do so, and consequently the late Collector (his predecessor) had not in the Mirassidars that security for the due and punctual payment of the Government revenue that the interests of Government demanded.

The recorded issue raised the question whether the Collector had authority in the circumstances of the case to grant the lease to the 1st and 2nd defendants, and at the trial the case on both sides was rested upon the admission contained in the Collector's written statement and repeated and accepted by the Vakeels of the contesting parties that the Mirassidars had a preferential right to a tenancy of the land in dispute on entering into an agreement to pay the revenue assessment whether they cultivated or not, and giving sufficient security for the payment of the same. The evidence on the part of the plaintiffs was confined to showing that such agreement and security had been duly tendered before the grant of the puttah to the 1st and 2nd defendants, and on the part of the 1st and 2nd defendants and the Collector the only evidence adduced was in proof of the averment in the Collector's written statement that the plaintiffs had failed to cultivate the waste lands granted to them on a former occasion, and to pay the assessment thereon. The Civil Judge was of opinion that this default was no ground of defence, and considering it proved that the proper agreement and sufficient security had been tendered, he decreed the relief prayed in the plaint.

From that decree the Collector and the 1st and 2nd defendants have brought the present appeals, and the ground on which it is sought on their behalf to invalidate the decree is, that the plaintiffs as Mirassidars have not a preferential right to the occupancy of waste lands which the Collector is bound to recognize. The Civil Judge's conclusion in regard to the tender of the proper agreement and sufficient security is not objected to, and it is conceded that the refusal to entertain the plaintiff's application because of their breach of former agreement was not sanctioned by any authoritative rule or custom. We are of opinion that it is not open to the appellants now to set up that the Mirassidars have no right whatever to claim the occupancy of waste *lands*. Their preferential right subject to the conditions already stated has been deliberately and distinctly admitted, and on that admission the Suit was heard and determined by the Civil Court. If on the part of the Government a judicial decision as to the right of pre-occupancy is desired, the question may be properly raised in another Suit when the Mirassidars will have the opportunity, to which they are entitled, of adducing evidence of custom in support of their claim.

For these reasons the decree of the Civil Court must be affirmed with costs.

(A true Copy.)

(Signed) H. WIGRAM,
Acting Registrar, Appellate Side.

Proceedings of the Madras Government, Revenue Department,
31st October 1870.

ENCLOSURE No. 2.—Decree of the Civil Court of Chingleput in Original Suit No. 29 of 1867.

ENCLOSURE No. 3.—Decree of the High Court in Special Appeal Suit No. 61 of 1869.

ENCLOSURE No. 4.

ABSTRACT.—Statement showing the costs incurred by the Collector in conducting Original Suit No. 29 and Special Appeal Suit No. 61, by the Mirassidars of Pillapaukam in the Conjeveram Taluq.

SUBMITTED for the information and orders of Government, with reference to Proceedings of Government, dated and numbered respectively 29th April 1869, No. 1,168, and 31st August 1869, No. 2,458.

2. Sanction is requested for the adjustment of the costs as mentioned in paragraph 3 of the Collector's letter.

No. 361. ORDER THEREON, 31st October 1870, No. 1,677.

Miscellaneous.

THE Collector of Chingleput is accordingly authorized to disburse to the plaintiff the sum of Rupees 210-8-4, and to adjust the costs incurred by Government on the Suit in the manner proposed in paragraph 3 of his letter.

(True Extract.)

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

To the Board of Revenue.
,, the Accountant-General.

Exd. F. R. Bantleman.

Revenue Department

Dr. 1677.

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 31st October 1870

Read the following ~~letter~~ Proceedings of the Board of Revenue.

Subm.ⁿ letter from Coll.ʳ forwarding Copies of decree & judgment in Appeal against decision of Civil Judge of Chingleput regarding certain waste lands claimed by Merasidars of Pillapakam & requesting sanction for adjustment of costs incurred by Coll.ʳ in conducting suit

H.E. 3.ᵈ Sept.ʳ 1870. No. 5572

The Collector of Chingleput is accordingly authorized to disburse to the plaintiff the sum of Rs 210. 8. 4 and to adjust the costs incurred by Govt on the suit in the manner proposed in para 3 of his letter.

14 Folios Bk Revenue Mad Rec Dec 1870 Rev
6 " Acctt Genl

Bdl. of 1870 containing

REVENUE.

To

THE BOARD OF REVENUE.

&c. &c. &c.

Dated October, 31st.

Recd.

Encl.

G. O., 31st October 1870, No. 1,677.

OCTOBER.

Nos. 360-361.

Suit instituted by Mirasidars in Chingleput in connection with certain waste lands.—Collector authorized to disburse to the plaintiff the sum of Rupees 210-8-4, and to adjust the costs incurred by Government in the manner proposed.

Govt. of {18 } Madras.

To _____

Dated 31 Oct 22 } 18 22, No.
Recd.

Nos. 1677

Govt
Grants of waste lands &c
Land assessment by Collectors
Mem. of Lands &c