

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 787

Press
Mis.

337-38

Dated 30-5-1870.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
30th May 1870.*

No. 337. Read the following Proceedings of the Board of Revenue, dated 5th May 1870, No. 2,967:—

Read the following letter from the Acting Collector of Coimbatore, to the Acting Secretary to the Board of Revenue, dated 29th March 1870, No. 63:

With reference to the correspondence noted in the margin I have the honour to forward copies of Decree and Judgment of the Civil Court at Coimbatore in Suit No. 36 of 1867 on the file of that Court, in which the Collector of this district was included as one of the defendants, from which it will appear that the Suit in question has been dismissed with costs.

2. The total amount of expenditure incurred by this Office in defending the Suit is Rupees 134-8-5 as shown in the margin, of which Rupees 133-6-5 have been admitted by the Court and ordered to be paid by the plaintiffs, as will be seen from the Decree. For the recovery of the latter sum application will be made to the Court in due course;

the remaining portion of the expenditure, Rupees 1-2-0, will have to be borne by Government.

ENCLOSURE No. 1.

In the Civil Court of Coimbatore, Saturday, the Eighteenth day of December, One thousand Eight hundred and Sixty-nine.

PRESENT: F. M. KINDERSLEY, Esq.

Original Suit No. 36 of 1867.

Plaintiffs.

versus

Defendants.

1. Vencatasoobien.
2. Ramakristnien.

1. Narasimnamoorthy Iyen.
2. Collector of Coimbatore.

THIS Suit coming on for hearing the Court delivered the following Judgment:—

The plaintiffs sue to recover a sum of Rupees 2,648-10-0 as compensation allowed for certain land taken up for the Madras Railway.

2. The land is stated in the plaint to be $8\frac{1}{2}$ Cawnies of land, No. 64, called "Nanoovien Cadumbamarathoo Cawny" situated in the village of Coorichy in the talook of Coimbatore, which plaintiffs allege belongs to them and their minor brothers, Soondramien and Ramalingien. The first defendant is sued as having represented to the Collector, the second defendant, that he was entitled to the compensation granted for the land, whereupon the Collector published a notice in the *District Gazette* on 31st August 1867, directing that plaintiffs should establish their right by a Civil Suit.

3. The first defendant pleads that no cause of action is shown in the plaint. That on 25th October 1863 the plaintiffs' father, Vadamalien, conveyed to first defendant under an agreement, Exhibit I. $8\frac{1}{2}$ Cawnies out of $13\frac{1}{2}$ Cawnies of the land, No. 64, mentioned in the plaint, and that the plaintiffs' claim in regard to this is barred. That on 22nd March 1856 the remaining

*Proceedings of the Madras Government, Revenue Department,
30th May 1870.*

5½ Cawnies were mortgaged to defendant by plaintiffs' father for Rupees 35 under Exhibit II., the term for re-payment being 11th April 1859. That subsequent to the date of II., the Railway Company purchased 1½ of the said land from plaintiffs' father who, failing to re-pay to first defendant the mortgage amount, made over the remaining 4½ Cawnies absolutely to first defendant in 1859, according to the terms of the mortgage deed. That thus first defendant obtained 12½ Cawnies, out of which Government took 3½ for village common, and the remainder 8½ vested absolutely in first defendant who improved the same and dug a well at a cost of Rupees 600. Out of this land 1½ Cawnies were taken for railway purposes, and Rupees 2,348-10-0 were allowed as compensation for the land, and Rupees 300 for the well. That the remaining ½ Cawny was subsequently taken from first defendant, and a separate compensation of Rupees 238-2-0 allowed for the same.

4. The Collector was made second defendant in this Suit by order of the Court. He pleads that, owing to the opposing claims of plaintiffs and first defendant, he was unable to pay the compensation-money to either party, and that he is ready to pay it to whosoever the Court decrees it.

5. The plaintiffs file A., an agreement executed to plaintiffs' father by first defendant on 25th October 1853, and B. a puttah for Fusly 1276, both of which first defendant admits. The plaintiffs do not admit first defendant's documents I. and II., and plead that, even if true, they are not valid against them. They say they do not know who dug the well.

6. The following are the issues settled:—

1st,—Whether the plaint shows a cause of action;

2nd,—Whether plaintiffs' father made over the land to first defendant under the Exhibits I. and II., and whether the said deeds are valid against plaintiffs;

3rd,—Whether first defendant dug the well in the land;

4th,—Whether any portion of plaintiffs' claim is barred by lapse of time.

7. The first issue must clearly be decided in favour of the plaintiffs. They claimed certain money awarded as compensation for lands taken up for the railway, the first defendant also claimed the money, and the Collector, being unable to decide the question of title between the parties, referred them to a Civil action, pending which the money was retained in deposit. This, I think, clearly gives plaintiffs a right of action to establish their title to receive the money.

8. The second issue embraces two questions. First, whether the Deeds I. and II. are true; second, whether they are valid against plaintiffs.

9. Now I have no doubt in my own mind as to the truth of the said documents; they are deposed to by the defendant's witnesses, and there is no ground for supposing that those witnesses have not spoken the truth.

10. The Exhibits I. and A. are dated the same day, and the first defendant's contention is that they were executed at one and the same time. The plaintiffs argue that more attestations appear in I. than in A., and that from the difference in the terms of the two documents, it is impossible I. should be true.

11. The additional attestations to I., however, are those of the Curnum and Monigar of the village where the land is situated, and their subsequent attesting of this document is satisfactorily explained; I. is a document purporting to transfer to the first defendant all the lands in the said No. 64, "Nanoovien Cadumbamarathoo Cawny," which plaintiffs' father had just obtained on durkhast, with the exception of two bullahs (which would be rather more than five Cawnies) which plaintiffs' father reserved for himself, and it is only natural that the attestations of the village-officers should be taken to such a document. Of course, it would have been more satisfactory had they attested the document at the time of its execution, but their absence from the place is accounted for—they were at the Talook Cutcherry.

12. Then it is urged that, if this account be true, the attestations of these village-officers would also have been taken to A. But the terms of A., as it stands by itself, are merely that first defendant is to pay the Government demand on the lands which plaintiffs' father had given

*Proceedings of the Madras Government, Revenue Department,
30th May 1870.*

him for cultivation. A. does not expressly convey the title in the land to first defendant, and, as deposed by the defendant's witnesses, was only executed in order to guard plaintiffs' father from having to pay the Government demand. There was not therefore the same necessity for getting A. attested by the village-officers.

13. Then it is said that it is impossible A. being admitted that I. should be true. But I do not think that the difference existing between the two documents is sufficient to warrant a supposition that I. is a forgery. What took place between first defendant and plaintiffs' father is deposed to by the witnesses who attested A. as well as I. They declare that the transaction between the parties was one of absolute transfer of the land to first defendant as expressed in I., and that A. was only executed in order to protect plaintiffs' father from having to pay the Government demand on the land conveyed by him to first defendant. The plaintiffs have not a single witness on their side, and they must admit that the witnesses who have attested A. were present at the transaction.

14. The terms of I. are also not contrary to those of A., but only a fuller expression of what the contract was between the parties. Thus I. states that plaintiffs' father, having that year obtained 13½ Cawnies of land No. 64 "Nanoovien Cadumbamarathoo Nunjah" on durkhast, has kept two bullahs of the same for himself, and given the remainder to first defendant of his free will. It then goes on, "you will therefore cultivate the same from the current Fusly 1263, enjoy it, and pay the Government assessment. You have the right to sell, etc., the land." The document A. is as follows:—"As you kept two bullahs out of it (the said 13½ Cawnies) for your own use, and gave me the rest for cultivation and executed a document to that effect, I will accordingly cultivate the remaining land, and pay the assessment."

15. Now these two documents are by no means irreconcilable the one with the other, and it is to be observed that A. distinctly refers to another document then executed, which, beyond a doubt, was Exhibit I.

16. As regards II. the question is merely one of credibility of evidence, and I must say, looking at the fact that first defendant certainly had possession, and that plaintiffs have failed to account for his possession, unless under II., and considering the evidence of the defendant's witnesses, that I have no hesitation in pronouncing II. to be true.

17. The next point is whether these deeds are valid against the plaintiffs. And, under ordinary circumstances, I should say they were not, for there has been no necessity whatever shown for the alienation made by the plaintiffs' father, and as regards I. there has been no consideration; it was merely a gift of certain land, which plaintiff's father had just obtained on durkhast. But looking at the form in which the present action has been brought, I think that, as regards this Suit, the documents I. and II. are sufficient to negative plaintiffs' right to recover the money sued for.

18. The plaint is not to set aside alienation made by plaintiffs' father, but to recover money allowed as compensation for lands, which, it is clearly shown, were in first defendant's possession under a good title as long as that title was not set aside. And as regards the title under I. acquired by first defendant in 1853, it would seem that plaintiffs would now be barred from seeking to set it aside, first defendant having held it for more than twelve years; and as regards II., though, as already remarked, no necessity is shown for the alienation of the property, yet looking at the framing of the plaint which does not admit the alienation at all, but would suggest the plaintiffs themselves had held the land, I think the bona-fide nature of the alienation has been sufficiently established for the purposes of this Suit.

19. And I would remark briefly on the nature of the alienation under II. The first defendant does not claim to have got the land at the date of II., which is only a mortgage deed without possession, but on the expiration of the term for re-payment, first defendant, as deposed by his first, sixth, and seventh witnesses, demanded re-payment from plaintiffs' father, the mortgagor, who then put first defendant in possession of the property in discharge of the debt and according to the terms of the bond. In fact, first defendant foreclosed.

*Proceedings of the Madras Government, Revenue Department,
30th May 1870.*

20. But the Suit, as said above, is not for land, but for compensation granted, because the land was taken under the Railway Act. And when so taken it was clearly in the then undisturbed and undisputed possession of the first defendant; and I look upon it that the compensation must be looked upon in the same light as purchase-money, which it virtually is. Now supposing first defendant had sold the land to some third party, whatever might be plaintiffs' right to recover the land, it is, I think, beyond question that they would have no right to recover the purchase-money from first defendant, and I do not see that the fact of Government or Railway Company being the purchasers makes any difference. First defendant had the land under a title, which was up to that time good, not having been disputed or set aside, and his transfer of the land to the railway was a good contract as between him and the Railway (or Government,) and gives plaintiffs no right to recover the purchase-money in a contract to which plaintiffs were no parties.

21. The fourth issue has already been disposed of in paragraph 18 of this judgment, referring as it does only to first defendant's rights under Exhibit I.

22. The result is that I dismiss the plaintiffs' Suit, and direct that they pay the costs of the first and second defendants.

List of documents and witnesses examined plaintiffs' documents.

A.—Deed executed to plaintiffs' father by the defendant regarding his having taken from them the plaint land for cultivation, dated 11th Arpisi of Premaducha, (25th October 1853.)

B.—Puttah granted by the Collector to the plaintiffs and their younger brothers for the plaint land, dated 29th April 1867.

First defendant's documents.

I.—Carar executed to the defendant by the plaintiffs' father, dated 11th Arpisi of Premaducha (25th October 1853.)

II.—Mortgage bond executed to do. by do. mortgaging two bullahs of land for Rs. 35, dated 11th of Pungooni of Ratchasa, (22nd March 1856.)

(Signed) F. M. KINDERSLEY,
Acting Civil Judge.

ENCLOSURE No. 2.—Copy of Decree.

SUBMITTED to Government together with a copy of Board's Proceedings, dated 22nd September 1869, No. 7,055, in which the defence of the Suit was sanctioned.

2. The first defendant in this Suit was in occupation of certain land which was required for railway purposes and for which he had agreed to accept compensation, when plaintiffs came forward and claimed the amount on the ground that they held the puttah for the land in question.

3. They were called on to make good their claim within three months, and the compensation-money was meanwhile held in deposit, the Collector (2nd defendant) expressing his readiness to pay the money to whichever party the Court might award it.

4. The Suit has been dismissed.

5. The Collector's costs amount to Rupees 134-8-5, of which plaintiffs have been ordered to pay Rupees 133-6-5, leaving a balance of Rupees 1-2-0 to be borne by Government.

*Proceedings of the Madras Government, Revenue Department,
30th May 1870.*

No. 338.

ORDER THEREON, 30th May 1870, No. 787.

Miscellaneous.

RECORDED.

2. The Collector should pay the amount of compensation (Rupees 2,648-10-0) to Narasimmamoorthy Iyen, when the appeal time expires. It is presumed that this sum has already been recovered from the Railway Company, for it would appear from paragraph 3 of Mr. Best's letter, dated 17th September 1869 that the land in question comes under Class C. of "lands taken up for railways," having been intended for the construction of work-men's houses.

(True Extract.)

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

To the Board of Revenue.
„ the Accountant-General.
„ the Public Works Department.

Ed. F. R. Bantlemen.

Revenue Department

1787.

Proceedings of the Madras Government

Under date the 30th May 1840.

Read the following
Proc. of the Board of Revenue

Submitting letter from
the Collr of Coimbatore with
copies of Memo and judgment
in Suit No. 36 of 1834 on file of
Civil Court, regarding compensation
for certain lands taken up for
Railway purposes

(Then enter 5th May 1840 No. 274)

Recorded.

2. The Collector should
pay the amount of compen-
sation (Rs 2648.10.0) to
Parasimnamoorthy Iyer.
when the appeal time expires.
It is presumed that this
sum has already been re-
covered from the Railway
Company.

Does not get
sub by bank?

pleased see
over.
S. P. S.

Cobl. of 1870: 31415.

REVENUE.

76

THE BOARD OF REVENUE.

Ac. Ec. An.

Butel May, 30th.

Recd.

Encl.

G. O., May 30th 1870, No. 787.

1147.

105. 337-333.

Write to 2193 of 1871
New 18-12-1870

Suit No. 36 of 1834, regarding certain lands
taken for Railway in Coimbatore. — Orders
issued to the Collector, regarding the payment of
compensation, when the appeal time expires.

for it would appear
from para 3 of Mr
Best's letter dated
19th Sep. 1869 that
the land in question
comes under class C
of "lands taken up
for railways" having
been intended for
the construction of
workmen's houses

Yours
J. M. D.

14 To the Board of Revenue with a memo. re. 21 being
to the Revenue and General S.
21 to the Public Works Dept. S.

vide p. p. 116 & 117 of Board's Stand-
ing Order. I conclude from para 35
of Mr Best's letter printed with
Board's Proceedings dated 22nd Sept
1869, No 7,055 that the land in
question comes under Class C, because
it was taken up "for the construction
of workmen's houses". The land
was the Railway Company ought
to bear the cost.

Yours
J. M. D.

The Building
 The City of
 The State of
 The People of
 The Capital