

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	848	<u>Press</u> <u>Mis.</u>
112-116 Dated	9-6-1820	19.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
9th June 1870.*

No. 112. Read the following Proceedings of the Board of Revenue, dated 24th January 1870, No. 484:—

Read the following letters:—

From the Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated Madras, 18th December 1869, No. 394.

I HAVE the honour to acknowledge receipt of copy of the Board's Proceedings noted in the margin, forwarding to me a letter from the Acting Collector of the

Dated 15th December 1869, No.—. Kistna District and the copy of the Proceedings of the Civil Court of Guntoor and other papers accompanying the same, for my advice thereon.

2. The result of the application on behalf of Government, disposed of by the above Proceedings of the Guntoor Civil Court, is in accordance with my anticipations expressed in my letter to the Board of the 19th January 1869, No. 209; but I do not think the Court is right in the way in which it has disposed of the application. The contention on behalf of Government is, that the precept of the Sudder Court for a general attachment of all the property of Vasireddy Lakshmipathy Naidu extended to these bonds, which became part of his property as transferee of the decree in Original Suit No. 2 of 1861; and that therefore the bonds, as soon as they came into the possession of the Civil Court, were virtually attached by force of that precept for satisfaction of the amount due to Government under the Privy Council Decree, and have been held by the Court, subject to that claim, ever since. Hence, I think it may be said that at the time when the bonds were first attached, they were held by the Court in trust for the person against whom execution is sought within the meaning of Section 246 of the Civil Procedure Code, and under that section the Court might have decided between the Government and the other claimants.

3. But whether the order of the Civil Court be right or wrong I think it leaves no other course open to Government, if desirous of further prosecuting their claim, than a regular suit. The order must be considered to have been made under Section 246, and that section expressly says that orders under it are not open to appeal, but that the party against whom an order is made may bring a suit within a year from its date to establish his right.

4. The difficulties in the way of such a suit were pointed out by me in my letter of the 18th January 1869, No. 208, and a further difficulty is now disclosed by the statement of the widow of V. Lakshmipathy Naidu (Enclosure D.,) that her husband was not a transferee for value of the decree, but only a trustee for the original plaintiff, Chava Veerama, who accordingly received the money realized by the transfer to Ananta Lakshminarsu Pantulu. Of course, this statement may be collusive and false, but it may be true, and it has some probabilities in its favour. It is not unlikely that Chava Veerama, being a woman, may have entrusted her relative with the task of realizing the decree for her, and it is perhaps rather unlikely that V. Lakshmipathy Naidu, after being reduced to poverty by a long course of litigation, should have money to spend in buying up decrees from other people. It is to be observed, too, that the widow's statement is against her interest, or rather that of her son; for, of course, it would be better for them that the

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debt due from V. Lakshmipathy Naidu's estate to Government should be satisfied out of these bonds, in which they have no other interest. At any rate, this is opposition to the claim of Government from a fresh quarter, and makes the chance of success still more doubtful.

5. It appears from the Proceedings of the Civil Court that an appeal is pending in the High Court from the decree in Original Suit No. 3 of 1867. I do not know whether the Collector has received notice of this appeal; I have heard nothing of it until now, or I should have suggested deferring the application to the Civil Court until the appeal had been decided. If the result of the appeal should be that the case was remanded to the Lower Court for trial on the merits, then the conflicting claims of Government and Ananta Lakshminarsu Puntulu might be decided in that suit. Whatever course, therefore, Government may resolve to take in the matter, it will be advisable not to take any decided step until the result of the appeal is known.

6. I return the enclosures forwarded to me with the above Proceedings.

ENCLOSURE No. 1.—Proceedings of Guntoor Civil Court, dated 18th October 1869.

ENCLOSURES Nos. 2 to 4.—Petitions.

From the Officiating Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 27th December 1869, No. 382.

ADVERTING to my Report, No. 362, dated 30th ultimo, I have the honour to forward herewith translation of an Arzi from the Government Vakeel in the Civil Court at Guntoor, dated 4th December 1869.

2. The Board will observe from the above that the Civil Court ordered the attachment of the decree in Suit No. 2 of 1861, which was transferred to Mungamur Ananta Lakshminarsu Puntulu by the late Vasireddy Lakshmipathy Naidu, and the bonds therein referred to, in satisfaction of the decree in Suit No. 15 of 1865, at the instance of the plaintiff, Tota Gopaya.

3. This order is diametrically opposed to the Proceedings of the High Court, dated 16th August 1867, communicated with the Board's Proceedings, dated 25th October 1867, in which they declared that the bonds in question are the property of the transfer plaintiff, and that they should be detained in Court to meet any claim of the Government against the present transferee on the basis of any rights acquired by them against the intermediate transferee, Lakshmipathy Naidu.

4. The Board are aware that the Government have not relinquished their claim to the bonds, and that they are proposing to bring a fresh suit for the recovery of the same, in satisfaction of the costs incurred by the late East India Company in bringing the Cases No. 4 of 1820 and 11 of 1827 to a hearing before Her Majesty in Council.

5. I therefore request the Board will be pleased to communicate the above circumstances to the Government Pleader at Madras, and request him to inform me what course I should pursue in the matter. In the meantime, I will direct the Government Vakeel at Guntoor to present a petition to the Civil Court on behalf

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of Government, praying that the attachment on the decree and bonds in Suit No. 2 of 1861 should be removed, with reference to the Order of the High Court, dated 16th August 1867.

6. A translation of Tota Gopaya's petition to the Civil Court is herewith forwarded, and copy of the Civil Court's Proceedings thereon, dated 4th December 1869.

ENCLOSURE No. 1.—Translation of Arzies, dated 4th December 1869.

ENCLOSURE No. 2.

Translation.

Miscellaneous Petition No. 923 of 1869.

Original Suit No. 15 of 1865.

Appeal Suit No. 5 of 1868.

To the Zillah Court of Guntoor.

<i>Plaintiff (Respondent.)</i>	<i>versus</i>	<i>Defendants (Appellants.)</i>
Tota Gopaya Naidu, an inhabitant of Puru-shottapatam.		1. Mungamur Ananta Lakshmi Narsu Puntulu Garu. 2. Do. Narasimha Puntulu Garu, inhabitants of Madras.

Application made by the plaintiff for the issue of a warrant, under Section 212 of the Civil Procedure Code.

Although the warrant has been uninterruptedly enforced by your Court for the recovery of the amount due by the first and second defendants, agreeably to the Original and Appeal Decrees in this suit, yet they did not at all pay the money. The original and appeal decrees were passed on the 20th April 1867 and 28th July 1869, respectively.

Amount of the original and appeal decrees, viz.—

	RS.	A.	P.	RS.	A.	P.
Amount of the Original Decree	32,769	11	3			
Do. of the Appeal Decree	677	8	4	33,447	3	7
Interest at 8 annas per cent. per mensem, from the date of the High Court's Decree up to this day, on the amount, Rupees 28,421-3-3, being the amount of the claim as well as the original and appeal costs as stated in the High Court's Decree				383	11	0
Value of the Stamp paper of this petition				0	8	0
Value of the Stamp paper of the Vakalatnamah executed in the first instance for getting this decree enforced				0	8	0
				33,831	14	7

This amount, together with the subsequent interest and the costs incurred for the execution of the warrant, is due.

As the decree in Suit No. 2 of 1861 on your Court's file, which had become the property of this defendant, and the ten documents which were the subject of that suit (No. 2), and which were made over to the first defendant of this suit by the Potturi people, being the defendant in that suit, in liquidation of the principal amount of the decree above referred to, are in deposit in your Court for the first defendant, I pray the Court will be pleased to execute the warrant, and to pay me the money by means of—

Attaching and putting up to sale the aforesaid documents for the recovery of the amount of this decree; issuing an injunction directing Potturi Venkatappaya and others, defendants in Suit No. 2, not to pay directly to the first defendant of this suit the sum of Rupees 7,500, adjusted

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to be paid to the latter, agreeably to Petition No. 27 of 1867, as well as the interest, Rupees 2,550, at 1 Rupee per cent. from 20th December 1866, the date of that petition, up to this day; making in all Rupees 10,050, being the consideration of the decree No. 2.

Holding in deposit the amount which was yesterday ordered to be paid out of the aforesaid amount to the said Potturi people (without paying it to them), ordering at the same time the aforesaid Rupees 10,050 to be paid to me.

And issuing an injunction to Rajah Venkata Narsimha Naidu Bahadur, Zemindar, heir and successor to Rajah Bomma Devara Naganna Naidu Bahadur, Zemindar, not to pay directly to the first and second defendants in this suit the money due to them on account of Abkarry rent, sending for, at the same time, the said money to your Court, together with the regular account particular thereof, and directing it to be paid to me.

Please to consider this.

11th October 1869.

(Signed) V. VENKATARAMAYYA,
Pleader.

N.B.—The fraudulent and collusive petitions presented by the Potturi and Mungamur people (even after the amount was confirmed in the appeal decree of the Suit No. 15) with a malicious intent to prevent the liability of the property to the amount of the decree, are inadmissible.

(Signed) V. VENKATARAMAYYA,
Pleader.

(Signed) V. CHENTSURAMAYYA,
Sheristadar.

(True Translation.)

(Signed) J. A. C. BOSWELL,
Officiating Collector.

ENCLOSURE No. 3.

Extract from the Proceedings of the Civil Court of Guntoor, dated the 4th December 1869.

As a general rule the Court does not refuse an attachment; the pleader for the petitioner insists that the decree in Original Suit No. 2 of 1861 is still in force; that the decree-holder is able to recover some thing under it; that if sold, the purchaser will be able to do so.

The decree will be attached and advertised for sale in suitable terms, that is, not the paper, but the right of the decree-holder to recover any thing. The bonds also will be attached, the date of sale to be fixed at not less than three months.

(Signed) R. SWINTON,
Civil Judge.

From the Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated 7th January 1870, No. 5.

With reference to the Proceedings of the Board noted in the margin, I have the honour to forward, for the information of the Board, copies of a letter received by me from the Officiating Collector, Kistna District, and its three enclosures, and of my reply thereto. The further Proceedings of the Civil Court, reported in the above letter, make it desirable that a decision should be come to as to the intentions of Government in the matter of this litigation as soon as possible.

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ENCLOSURE No. 1.

From the Officiating Collector of the Kistna District, to the Government Pleader, Madras, dated Masulipatam, 27th December 1869, No. 653.

With reference to your letter, dated 30th September 1869, I have the honour to inform you that the instructions therein contained were communicated to the Government Vakeel at Guntoor, but that before they reached him the Civil Court held Proceedings on 18th October last, ordering the bonds in Suit No. 2 of 1861 to be made over to the transfer plaintiff, Mungamur Ananta Lakshminarsu Pantulu. I forwarded to the Board of Revenue copies of the same, and of the petitions presented by the parties concerned, for their information and communication to you. I presume you will have received all the papers by this time, and I now beg to forward, herewith, for your information, translation of an Arzi from the Government Vakeel at Guntoor, explaining the points referred to in your letter under acknowledgment.

2. One Tota Gopaya Naidu, plaintiff in Original Suit No. 15 of 1865, and respondent in Appeal Suit No. 5 of 1868, has since presented a petition to the Civil Court at Guntoor, praying that the decree in No. 2 of 1861 and the bonds therein referred to might be attached in satisfaction of the decree in No. 15 of 1865. The Court held proceedings thereon on 4th December 1869, ordering the attachment and sale of the decree and the bonds therein referred to. Copies of these papers are forwarded for your information, from which you will observe that the date of sale will be fixed at not less than three months. I therefore request that you will be pleased to inform me of the course I should adopt, to prevent the sale of the documents and to establish the claims of Government on them.

3. You are aware that the transaction between the deceased Vasireddy Lakshmipathy Naidu and Mungamur Ananta Lakshminarsu Pantulu was collusive from the beginning, but it is very difficult to prove the same.

ENCLOSURE 2.—Translation of an Arzi, dated 1st November 1869.

ENCLOSURE 3.—Copy of translation of Petition from Tota Gopaya Naidu.

ENCLOSURE 4.—Extract from Proceedings of Guntoor Civil Court, dated 4th December 1869.

ENCLOSURE No. 5.

From the Government Pleader, Madras, to the Officiating Collector of the Kistna District, dated 6th January 1870, No. 4.

I HAVE the honour to acknowledge receipt of your letter, dated 27th December 1869, No. 653, and its enclosures. The Arzi from the Government Vakeel of the Guntoor Civil Court (Enclosure 1) does not seem to require any notice from me, further than the remark that it certainly does not dispel the idea I had previously expressed that he did not quite understand the nature and object of the application made to the Civil Court on behalf of Government, by the petition of which I prepared the draft. Of course, I need not tell you that I did not, as he suggests, write the letter alluded to by him in forgetfulness of the wording of the petition drawn by myself, nor advise the Government as to the course to be pursued without carefully taking into consideration all the previous proceedings and circumstances connected with the case. Perhaps it would have been as well if, before venturing to pass strictures upon the advice given by me, he had informed himself rather more accurately what that advice was. As it is, his remarks are slightly impertinent in a double sense.

2. Copies of your letter to the Board of Revenue of 30th November 1869, and its enclosures, were forwarded to me some little time ago, and I advised the Board on the course to be pursued in consequence of the Proceedings of the Guntoor Civil Court of the 13th October 1869. The substance of my advice was, that the only course now open for the assertion of the claim of Government

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upon the bonds, the subject of all this litigation, was by regular suit; that the prospect of success in such a suit was at least doubtful; and that it would be better not to take any further steps until the appeal from the decree in Original Suit No. 3 of 1867, of the pendency of which I learnt for the first time from the Proceedings of the Civil Court, was decided.

3. It does not appear to me that any further steps on behalf of Government are necessary or possible, in consequence of the Proceedings of the Civil Court of the 4th December 1869—(Enclosure 3.) As I understand these Proceedings, it is not the bonds themselves which are ordered to be sold, but only the right of M. A. L. Narsu Puntulu to the decree in Original Suit No. 2 of 1861. If any person should be found to purchase that right, he will only be in the same position as M. A. L. Narsu Puntulu himself, i.e., entitled to the bonds subject to any claim which Government may succeed in establishing, as execution creditors of V. Lakshmipathy Naidu. The position of Government, therefore, is not in the least altered by these proceedings. Moreover, after the result of the last application on behalf of Government for the attachment of the bonds, Government has no *locus standi* to interfere in the matter until its claim has been established by a suit, and any further application to the Court on its behalf must meet the fate of the former one. The further Proceedings of the Civil Court in the matter should, however, be carefully watched, and if it appear that the Court intends to part with the custody of the bonds, such intentions should be at once reported, and pending the decision of Government upon the course to be pursued, application should be made to the Court to retain possession of the bonds.

4. I have forwarded copies of your letter and its enclosures, and of this letter, to the Board of Revenue.

RESOLVED that the foregoing papers be submitted for the orders of Government.

2. An outline of the circumstances connected with the institution and progress of Suits Nos. 3 and 4 in the Civil Court of Guntoor was laid before Government in the Board's Proceedings, dated 1st May 1869, No. 2,954, and Government, in their Order, dated 17th May, No. 1,370, sanctioned the adoption of the course proposed by the Government Pleader in his letter to the Board, dated 18th January 1869.

3. The petition which he proposed should be filed by the Collector was forwarded for the information of Government in Board's Proceedings, dated 5th July, and the Collector's letter reporting that the petition had been filed was submitted with the Board's Proceedings of 5th August 1869.

4. The unsuccessful result of the application was communicated to the Board in a letter from the Collector, dated 30th November 1869, No. 362, which, together with a copy of the Court's Proceedings, dated 18th October, was forwarded to the Government Pleader in Board's Proceedings of 15th December 1869, No. 9,195, a copy of which is herewith submitted for the information of Government.

5. Mr. Handley's letter of December 18th is his reply.

6. It will be seen that he considers no course open to Government, should it be decided to take further measures, but the institution of a regular suit.

7. He points out in paragraph 5 of his letter that an appeal has been preferred against the decree of the Civil Court in Original Suit No. 3 of 1867, and recommends that further action on the part of Government should be stayed until the result of the appeal is known.

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8. Mr. Handley reports in paragraph 4 of the same letter that the widow of Lakshmipathy Naidu states that her husband never had any real interest in the bonds which form the subject of this litigation, and it appears to the Board highly probable that this statement is true, and that his name was made use of for some purpose unknown by Narsu Puntulu, in his fraudulent attempt to deprive the Devaracotta Zemindar of the documents.

9. In his letter, dated 27th December 1869, the Collector forwards an extract from the further Proceedings of the Civil Court of Guntoor, dated 4th December 1869, ordering the attachment of the bonds, and in his letter of 7th January 1870, the Government Pleader forwards a correspondence between himself and the Collector on the same subject.

10. It will be seen from the Board's Proceedings marginally noted, (copies of which are herewith submitted), that the Government Vakeel in the Guntoor Civil Court misunderstood the wording of the petition prepared by Mr. Handley, and it appears from Mr. Boswell's letter of 27th December 1869, (enclosed in Mr. Handley's to the Board, dated 7th January,) that the explanation conveyed in Mr. Handley's letter of 30th September 1869 did not reach Guntoor until after the Court had passed their decree of October 18th.

11. The Government Pleader considers that a decision as to the further Proceedings of Government in the case should be arrived at as soon as possible.

12. A copy of these Proceedings will be communicated to Mr. Handley, who will be requested to watch the progress of the appeal referred to in his letter of 18th December, and report the result.

13. The Collector's letter, dated 27th December, No. 382, may perhaps call for some remark.

On a careful consideration of the circumstances of this case, and the views expressed by the Government Pleader, the Board are of opinion that no good results are likely to ensue from the further prosecution of this litigation, and that the best course will be to let it drop, and not to renew it unless some fresh facts come to light.

No. 113. Proceedings of the Board of Revenue, dated 22nd February 1870, No. 1,228.

Read the following letter from the Officiating Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 28th January 1870, No. 411.

IN continuation of my report, dated 27th December 1869, No. 382, I have the honour to forward herewith copy of the Proceedings, dated 6th January 1870, held by the Civil Court at Guntoor, on a petition presented by the Government Vakeel on behalf of the Collector, requesting to remove the attachment placed on the bonds inserted in decree of Suit No. 2 of 1861, at the instance of Tota Gopaya Naidu, plaintiff in Suit No. 15 of 1865. The Court observed that the claim of Government should be raised within a reasonable time, and that the petition in ques-

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tion will be heard again before the bonds are sold. I therefore request the Board will be pleased to communicate the same to the Government Pleader at Madras, and request him to inform me what further steps should be taken on the matter.

ENCLOSURE No. 1.

Extract from the Proceedings of the Civil Court of Guntoor, dated the 6th day of January 1870.

Read Miscellaneous Petition No. 11 of 1870, presented on the 4th January 1870, by Toleti Purushottamayya, Government Vakeel, on behalf of the Collector of the Kistna District, stating that the Collector of the Kistna District issued to him instructions to represent to this Court that the bonds inserted in decree of Suit No. 2 of 1861 on this Court's file, may be kept in deposit until the claim of Government, with regard to the costs of the Privy Council, is disposed of; that these bonds were transferred to the late Rajah Vasireddy Lakshminpathy Naidu, who is to bear the costs of the Privy Council, by Chara Veerama; that M. Ananta Lakshminarsu Puntulu has no right to recover the amount on them; that upon the request of the lawyers for both parties, the High Court held Proceedings that these bonds should be kept in deposit in the Court, until the debt due to Government is disposed of; that the Government are considering to bring a suit for the recovery of the amount of those bonds under the said costs; that while the High Court ordered to keep those bonds in deposit, Tota Gopaya, plaintiff in Original Suit No. 15 of 1865, has no right to apply to attach those bonds under his decree; that the Collector informed the Board of Revenue as to the procedure to take place in future in this affair; and that the petitioner therefore prays the Court to order that those bonds may not be put in the possession of Tota Gopaya, etc., but that they may be kept in Court as usual.

ORDER.

I did not see how to refuse the request of the plaintiff in Suit No. 15 of 1865, Tota Gopaya, to have these bonds, *prima facie* the property of the defendant in the suit attached. The High Court, by its Order of August 16th, 1867, declared the bonds to be the property of the transfer plaintiff (the defendant above, referred to), but that they should be detained in Court to meet any claim of the Government against the present transferee on the basis of any rights acquired by them against the intermediate transferee, Lakshminpathy Naidu. This claim should be raised within a reasonable time; it may be that the appearance of Government in Suits Nos. 3 and 4 of 1867 was the urging such a claim. Before the bonds are put up for sale, the appeal in Suit No. 3, which I observe has been set down for hearing before the High Court, may be decided. Petition will be heard again before the bonds are sold.

(Signed) R. SWINTON,
Civil Judge.

COMMUNICATED to the Government Pleader in continuation of Board's Proceedings, dated 24th January 1870, No. 484.

No. 114. Proceedings of the Board of Revenue, dated 4th April 1870, No. 2,249.
Read the following letter from the Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated Madras, 15th March 1870, No. 22.

With reference to the Board's Proceedings noted in the margin I have the honour to forward copy of the decree and Judgment of the High Court in the

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appeal (Regular Appeal No. 51 of 1869) preferred by M. A. Lakshminarsu Puntulu from the decree of the Guntoor Civil Court, in Original Suit No. 3 of 1867.

2. It will be seen that the High Court has decided that there was no fraudulent concealment of necessary documents in this case within the meaning of Section 9 of the Limitation Act. It follows that Section 9 has no application, and any suit upon the bonds, even if brought for the purpose of enforcing them against the lands hypothecated by them, would be barred by the Limitation Act, unless brought within twelve years from their date (August 1851). This settles the question of the expediency of further litigation in respect of the claims of Government upon these bonds. Even if possession of the bonds were obtained, nothing can be recovered on them.

ENCLOSURE No. 1.

In the High Court of Judicature at Madras.

Tuesday, the First day of March, One thousand
Eight hundred and Seventy.

Present:

The Honourable Mr. Justice Holloway.
The Honourable Mr. Justice Collett.
Regular Appeal No. 51 of 1869.
Mungamuru Ananta Lakshmi Narsu Puntulu,

Appellant.
(Plaintiff.)

Srimant Rajah Yarlagedda Ankund Bahadur, Zemindar, and twenty-two others,
Respondents.

(1st to 23rd Defendants.)

Regular Appeal against the Decree of the Civil Court of Guntoor, in Original Suit No. 3 of 1867.

Ground of Appeal.

"That the Civil Judge was wrong in holding that the suit was barred by the Statute of Limitation.

Decree.—This Regular Appeal coming on for hearing. Upon perusing the ground of appeal, the Judgment and Decree of the Lower Court, and the material papers in the suit, and upon hearing the arguments of Mr. Mayne, Counsel for the Appellant, and of Parthasarathy Aiyangar, Vakeel for the 1st and 2nd Respondents, the other Respondents not appearing in person or by Counsel, this Court doth order and decree that the decree of the Lower Court be, and the same is, hereby confirmed, and this appeal dismissed, and this Court doth further order and decree that Appellant do pay to the 1st and 2nd Respondents, Rupees 1,009-14-8 for their costs in opposing this Regular Appeal.

(Signed) W. Holloway. } Judges.
Charles Collett. }

Memorandum of Costs.

	RS.	A.	P.
1st and 2nd Respondents (1st and 2nd Defendants) costs—	2	0	0
1 Stamp for Vakalatnama	1,000	0	0
Vakeel's fee on Rupees 1,13,359-10-8	7	14	8
1 Printed copy purchased			
To be paid to the 1st and 2nd Respondents (1st and 2nd Defendants) by the Appellant (Plaintiff)	1,009	14	8

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

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ENCLOSURE No. 2.

In the High Court of Judicature at Madras.

Tuesday, the First day of March, One thousand
Eight hundred and Seventy.

Present :

The Honourable Mr. Justice Holloway.

The Honourable Mr. Justice Collett.

Regular Appeal No. 51 of 1869.

Mungamuru Ananta Lakshminarsu Puntulu,

Appellant.

(Plaintiff.)

Srimant Rajah Yarlagedda Ankund Bahadur, Zemindar, and twenty-two others,

(1st to 23rd Defendants.)

Regular Appeal against the decree of the Civil Court of Guntur in Original Suit No. 3 of 1867.

This Regular Appeal coming on for hearing, the Court delivered the following :—

2. *Judgment.*—The question is whether the Civil Judge has rightly decided that a suit for recovery of the money due upon two documents, dated August 1851, is barred by the Act of Limitations.

3. It is clearly barred unless saved by the exception contained in Section IX., and the meaning of that exception and its application to the facts of this case are the points for our determination. The first part of the section deals with the concealment by fraud from the plaintiff of knowledge that there is a right of action and the section then goes on "if any document necessary for establishing such right shall have been fraudulently concealed." It seems to us that the preceding words of the Section show clearly that the document must have been fraudulently concealed from the knowledge of the plaintiff, he must through the fraudulent concealment be unaware of its existence, and when this is so, the Statute runs against the person guilty of the fraudulent concealment or necessary thereto, from the time at which plaintiff had the means of producing or compelling its production; if it is a document necessary for establishing such right of action. The facts of the present case are, as they were shown in Regular Appeal No. 50 of 1861, to which the assignor of the plaintiff and the obligor were both parties, that in execution of a decree against the obligee's mother, these bonds were in consequence of the pressure of his proceedings and the tenor which they created, delivered to one Potturi Ananda Row, now represented by the 24th defendant.

4. On 11th February 1861, the obligee brought her suit against P. Ananda Row, and the obligor for the return of the documents or their value. Ananda Row alleged an assignment and that he had been paid off by the obligor and the obligor answered that this was the case and that the documents had been mislaid. The Civil Court of Guntur decreed for the plaintiff, directed the delivering up of the documents on payment of the principal with interest and costs, and this Court in appeal confirmed that decree. Now it certainly seems to us that this is no case of concealed documents within the meaning of this section. It is a case of extorting documents by illegal pressure from the bailee. The documents were never fraudulently concealed, they were wrongfully extorted. The plaintiffs' documents were not fraudulently concealed from her knowledge. Further, if it were a fraudulent concealment, we are of opinion, as the result clearly showed, that the plaintiff had, in 1861, the means of compelling their production, and this suit for the money lent would be barred because not brought within six years of that time; these words in the alternative furnish a strong support to the construction that the documents to be within the exception must be fraudulently concealed from the knowledge of the plaintiff. Moreover, we are of opinion that the documents were not necessary within the meaning of the section. In one sense every document may be said to be necessary if the word necessary is to mean anything which it would be more prudent to be provided with. In 1851, the execution of the documents was admit-

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ted, the defence was that they had been assigned. Their non-production was almost fatal, not to the plaintiff's contention, but to that of the defendants.

5. No reasonable man would or could believe, that the obligor would really destroy or mislay these documents, and the Court did not believe it, and if the plaintiff had at that time framed her suit for the recovery of the money, she must have recovered it. It is easy to put cases in which the document would be necessary, as in the case of a will or a codicil fraudulently concealed from the knowledge of the legatee, but the documents in the present case do not seem in themselves, and still less upon the facts of the case, to be necessary within the meaning of the section. The documents are only evidence of the obligation, and it seems difficult to see when the Statute is to apply, if such documents are to be declared necessary.

6. We think, therefore, that there was no fraudulent concealment at all within the meaning of the section, that if there was, it was not a fraudulent concealment of documents necessary within that meaning, and that if both these requirements had been fulfilled, this suit would still be barred, because in 1861, the plaintiff had the means of compelling their production. In our opinion this appeal should be dismissed with costs.

(A true Copy.)

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

The Board resolve to communicate this letter and enclosure to Government, in continuation of the subject of their Proceedings of the 24th January 1870, No. 484.

2. The decree of the High Court is to the effect that, even if possession of the bonds could be obtained, it would be impossible to recover the debt secured on them, as it is barred by the Statute of Limitations.

3. In paragraph 13 of their Proceedings of the 24th January the Board gave their opinion that no good results were likely to accrue from further litigation, and recommended that it should be allowed to drop.

4. The papers now forwarded finally settle the question.

No. 115. Proceedings of the Board of Revenue, dated 20th April 1870.

Read the following letter from the Officiating Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 28th March 1870, No. 1,247.

With reference to the correspondence noted in the margin I have the honour to report the death of Tota Gopaya Naidu, plaintiff in Suit No. 15 of 1865 on the file of the Civil Court at Guntur, at whose instance the bonds inserted

in decree of Suit No. 2 of 1861 were attached.

2. The Civil Court issued a notice to the heirs of the deceased Gopaya Naidu to appear before the Court within one month for the settlement of their claims to the bonds.

3. The Government, Vakeel in the Civil Court at Guntur has informed me that the Court will not continue to hold in deposit the bonds in question to meet the Government claim thereon unless sufficient grounds are shown, for the Civil

*Proceedings of the Madras Government, Revenue Department,
9th June 1870.*

Court and the High Court have already declared in their Proceedings, dated 8th August 1865, and 16th August 1867, that the Government should bring a regular suit for the recovery of the bonds. He adds, moreover, that mere representations to the effect "that the Government are about to establish their title to the bonds, and that the bonds should not be made over to the party applying," will not receive attention. In conclusion, he requests instructions how to proceed in the matter, as the time fixed for the final disposal of the matter is approaching.

4. I request the Board will be pleased to ask the opinion of the Government Pleader as to the measures to be adopted hereafter in the matter, and inform me the result of the same.

5. Under all the circumstances of the case, ~~as already reported to the Board~~ in my letter, No. 362, dated 30th November 1869, I see no reason to oppose the sale of the bonds already attached at the instance of the plaintiff in Suit No. 15 of 1865.

6. It appears that the High Court rejected the appeal of Mungamury Ananta Lakshminarsu Puntulu against the decree of the Civil Court of Guntoor in Original Suit No. 3 of 1867, brought by him against the Zemindar of Devaracottah Paragana for the recovery of the value of the bonds in question.

SUBMITTED to Government in continuation of Board's Proceedings, 4th April 1870, No. 2,249.

2. It will be seen that Tota Gopaya Naidu, (plaintiff in Suit No. 15 of 1865 in the Guntoor Civil Court) at whose instance the bonds were attached is dead; and that the Civil Court has issued notice to his heirs to bring forward their claims to the bonds within one month.

3. The Civil Court have decided not to continue to hold the bonds in deposit on account of any claim that Government may advance, but as the bonds themselves have been declared valueless, there appears to be no need for further action on the part of Government.

No. 116.

ORDER THEREON, 9th June 1870, No. 848.

Miscellaneous.

THE Government resolve to discontinue further litigation in connection with the bonds executed by the

Devaracottah Zemindar, which are now shown to be of no value. All claim to them on behalf of Government is therefore to be waived, and intimation to this effect should be given to the Civil Court of Guntoor.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

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

Exd. F. R. Bantleman.

Govt. of 1870

REVENUE.

THE BOARD OF REVENUE.

Secy. Secy. Secy.

Dated June, 9th.

Recd.

Aut.

G. O., 9th June 1870, No. 848.

JUNE.
Nos. 112-116.

Bonds executed by the Devaracottah Zemindar.—Further litigation in connection with them ordered to be discontinued and all claims on their behalf of Government to be waived.

Memo. for Orders on No 275 & 654

I have perused the
 file over this case
 with Mr. Dole &
 concurred with
 him that the trans-
 action was a fraudu-
 lent one. I would
 there fore press the
 claim of put. by
 suing for the bonds
 in the ^{audy} for Execu-
 tion of the original
 decree - 2 of 1861.
 I put H. Pannu
 to the proof of his
 counter claims.

The Proceedings of
 the Board of Revenue dated
 24th January, and 22nd February
 1870, raise the question whether
 it is advisable for the Govern-
 ment to prosecute a regular
 suit on the chance of gain-
 ing possession of certain
 bonds now in the hands
 of one Latschmi Narasa
 Pantulu, or whether it is
 better to drop further litiga-
 tion. The case is intricate,
 but

J. D. S. my m. A. A.

but owing to the conclusion drawn in para 10, it is believed that a brief abstract of it will suffice.

2. N. Lakshmi pati Naidoo, the late ex-Governor of the Nasoreddy estate, incurred a debt to the late East India Company of 1,01,380 Rupees, owing to a suit which was carried before the Privy Council. This sum has never been recovered from him. No attempt to recover it directly from him appears to have been made, because it was believed he was unable to pay, living as he

he was on a pension from Govt.

3. But in 1865, the Govt. learnt that N. Lakshmi pati Naidoo had become the transferee of a decree, in which, one Chavv Nierammah, widow of a money-lender was declared by the High Court in Suit No 2 of 1861 entitled to the possession of certain bonds, the aggregate value of which was Rs 4,100 and in security of which the Devaracottah Zemindar's lands were hypothecated. These bonds had been given by the Devaracottah Zemindar to her husband in return for loans. One Pottury Ananda Row had obtained the bonds from her by force or illegal means, and had then endorsed them to the effect that

that he had received the amount of their value from the Devarachetty Gminda and had returned them to him. This occasioned the suit, and in deciding it on appeal the High Court forbore to enter into the question whether the Gminda had or had not satisfied the bonds, merely declaring Phau Vera-mah entitled to their possession as against Pottur Ananda Row. This is an important point.

4. When the Govt. (in 1865) learnt that Lakshmi Naidoo had become transferee of this decree, he was on the point of transferring it in his turn to M. A. Lakshmi Narsu Puntale (son of the ex Dy. Collector), and the Govt. ordered that the latter transfer should be opposed on the ground that they had a prior claim on Lakshmi Naidoo's property & consequently to the bonds which were the subject of Suit No 2 of 1864. (Buck)

10
But on the Vakeel of Narsu Puntale stating that the transfer would not be considered by his client as barring the claim of Government against Lakshmi Naidoo, the Civil Court allowed the transfer to take place. Mr. Stoddley however, considers that this statement on the part of the Vakeel would not affect a future decision in the case.

5. Shortly afterwards the bonds came into possession of the Court and

and were impounded in order to afford means of satisfying the Government claim.

6 The Devanacottah Zemindar then brought suit No. 4 of 1867 against the heirs of Chanda Row for the return of the bonds which he stated had only been produced as evidence, and which, as he alleged, he had satisfied by paying to Chanda Row Rs. 78,800. This suit was subsequently withdrawn by him. But about the same time that this suit was filed, Karsan Pantulu

Pantulu on the 20th Decr 1866 filed a Counter suit (No. 3 of 1867) against the Devanacottah Zemindar for the recovery of Rs. 1,13,387 being the principal and interest then due on the bonds. The Civil Judge threw out this suit as barred by the Statute of Limitations, but he expressly declared that had the suit been brought for the lands hypothecated in the bonds and not for their value in money, the Law of Limitation would not have operated. His decision was confirmed, on appeal by the High Court. Therefore if a suit is brought by Govt. it must be so framed as to seek a remedy against the lands hypothecated.

7. Ultimately the High Court declared

declared that the bonds were the property of Narsu Puntalu, but ordered them to be retained by the Civil Court to meet any claim of Govt. against Narsu Puntalu as representative of Lakshminipati Raidoo.

8. In consequence of this decision, the Govt. under Sec. 246 of the Civil Procedure Code made application to the Civil Court for the release of the bonds from attachment in satisfaction of Suit 2 of 1861, on the ground that the Govt. had a prior claim to them as the creditor of Lakshminipati Raidoo. This application was rejected by the Civil Judge. A decision profered under Sec. 246 is not subject to appeal. Consequently the Govt. can now only obtain possession of the bonds by a regular suit.

9. Both the Doord & the Govt. Pleaders are of opinion that further litigation is not advisable. The

The success of Govt. in a regular suit would depend on the following considerations -

(1) Upon the Govt. being declared entitled to a claim on the decree in suit No. 2 of 1861 - Mr. Salk was always of opinion that the priority of the claim of Govt. on this decree was undoubted. But Mr. Handley entertains considerable doubt on this matter - He points out that the claim of Govt. on the decree in question was never asserted while the same was in the hands of V. Lakshminipati Raidoo, and that it was only after the decree had been transferred to Narsu Puntalu that any claim on the part of Govt. was set up - Another possible obstacle to the success of Govt. is disclosed by the statement of the widow of V. Lakshminipati Raidoo alluded to in para 4 of Mr. Handley's letter dated 18th Decr 1869 No. 394 to the effect that

But Mr. Salk did not know of the existence of the bonds, till their transfer.

This is not worth much, as her husband never advanced the plea.

that her husband was
not a transferee for the
value of the decree but
was only a trustee for the
original plaintiff Chamar
Ammal. - This statement
is, at the least, unlikely,
but it renders the affair
complicated.

(2) Upon the bonds not
having been already satis-
fied by the ~~decedent~~ ~~decedent's~~
decedent - He maintains
that he has paid this
amount to Kothari Anand-
rao Row. Mr. Handley thinks
that such a payment
even if bona fide made
would not extinguish the
debt, because Ananda
Row has been declared
to have come into possession
of

I do not understand
Mr. Handley on this
point - He wants to
get possession of the
bonds - when we have
them we can decide
how far we shall en-
force them.

G. O. 17th May 1869 No. 1370. Dated 18th January 1867,

No. 208-

10. But the corner-
stone on which ^{the} policy
of further litigation is
based has been hitherto
overlooked by the Board.
It is this - the value of the
bonds, when obtained by
Govt. - their aggregate
monetary

of the bonds by fraud
(3) Upon the suit
against the lands by
mortgaged not being
barred by the statute of
Limitation - Will para-
graph of Mr. Handley's letter
dated 18th January 1867,

monetary value is ~~Rs~~
4,1000 - and it may be
presumed that the lands
hypothecated & present at
least an equal value -
the Zemindars of Sevarac-
cotta is the debtors
on the bonds, and who
eventually ob-
tain them will have
to recover their value
from him - if at all - Now
the Zemindars of Sevaracotta
already

True - but if we get
the bonds, we prevent
H. Penn to be from
enforcing them. &
so he shall lose the
gem? He may ^{also} recover

already been declared
a fit subject for the
bounty of Government (vide
G. O. dated 6th Dec^r 1867.
N^o 2925) who in 1867
granted him a remission
of Rs 36,000. owing to his
losses from the diastion
cyclone of 1864, and his
estate is still retained
under the management
of the collector. This was
done to prevent the breaking
up of the estate and the
ruin of one of the few
remaining zemindaries
in the Kistner district.

Therefore the Government
will probably not be
disposed to enforce a
claim against the
zemindars

remains intact now.

11. It is therefore sub-
mitted that further
litigation in the case
may be abandoned.

OK

the amount from
him have after by
late installment

P.B.

Thurs. 14. 84
L. J. H. H.
D. H. H.

C. H. C.

L. J. H. H.

-C 18 June 1904 R. 12 off

Recd Sept 4

Memo: for orders
on Nos 245.654-1182
and 1171 -
— 4 —

4th April 1870, No 2249 -
20th — " — " — " — 1171 -

The decision of the
High Court renders
the two provisions
useless

J. D. S.

Ap

N.

The marginally noted proceedings of the Board relate to the Passeroddy bonds case. At the time of writing the letter embodied in the first named proceedings, the Court Clerk informs the undersigned of its purpose who, therefore repeating daily that the Board would communicate it to Court, postponed drafting an order on the minutes of Court passed on the former memo: on the subject. It is observed that Mr. Handley's letter, is dated March 15th & that the Board's Pro: dated 4th April 1870.

1870, with which it is printed, were not despatched to the Govt office till April 21st -

3. Mr. Handley's letter entirely alters the aspect of the case, for the High Court in their judgment a copy of which is forwarded by him, declare that the suit on the bonds is barred by the Act of limitation, even were it directed against the lands hypothecated. This result had been anticipated by Mr. Handley in his letter dated 18th January 1869 No 208 (L.D. dated 17th May 1869, No 1370.)

4. The bonds are shown to be simply valueless, and the object which the Govt would have had in view in instituting a suit for the purpose of gaining possession of them is shown to be as much a fraud by

by which Ananda Row obtained possession of them is defeated.

5. In Pro: of the Board dated 20th April 1870, the Acting Collector of the District reports that one of the parties to suit No 15 of 1865 is dead and that the Civil Judge will not continue to hold the bonds in deposit unless a regular suit is brought by Govt to recover them.

6. It is submitted that, as the bonds are shown to be of no value, litigation on account of them may be dropped.

Y^{rs} M^{rs} Bell

Y^{rs} M^{rs} Bell

*Revenue Department
Proceedings of the Madras Government
Under date the 9 June 1870*

Revenue Department

N^o 848

Proceedings of the Madras Government
Under date the 9 June 1870

Read the following proceeding
of the Board of Revenue.

Submitting, with remarks certain
papers relating to bonds forming subject
of Suits Nos 3 and 4 of 1867, on file of
Quntor Civil Court in Kistna District (H. E. 24th January 1870 N^o 484)

Letter from collector forwarding copy
of Court proceedings on petition presented
by Govt. Vakeel requesting that attach-
ment placed on Bonds inserted in Decree
in Suit N^o 2 of 1861, on file of Quntor Civil
Court in Kistna District, may be removed (H. E. 22nd February 1870 N^o 1228)

Forwarding letter from Government
Pleader, communicating, with remarks
copies of Decree and Judgment in
Regular Appeal Suit N^o 51 of 1869 filed
in High Court, against decree of
Quntor Civil Court in Original
Suit N^o 3 of 1867. (H. E. 4th April 1870 N^o 2249)

Submitting letter from collector
of Kistna District, reporting death
of plaintiff in Suit N^o 2 of 1861. (H. E. 20th April 1870 N^o)

The Government resolve
to discontinue further litigation in
connection with the bonds executed
by the Devaracottah Zemindar
which are now shown to be of
no value. All claim to them on
behalf

If Government is therefore to be
waived, and intimation to this
effect should be given to the civil
court of Guntoor.

Mr

14, Little Br. Street, 6 Rupee D. 10
6 — North Street

Edith D. 10