

*Proceedings of the Madras Government, Revenue Department,
17th May 1871.*

No. 233. Read the following Proceedings of the Board of Revenue, dated 22nd April 1871, No. 1,675:—

Read the following letter from the Collector of South Arcot, to the Acting Secretary to the Board of Revenue, dated Porto Novo, 23rd February 1871; No. 58.

AGREEABLY to the Standing Order of the Board, No. 295-2, I have the honour to transmit copies of Judgments and Decrees in the three suits entered in the margin, in which the Sub-Collector and Deputy-Collector were respectively among the defendants, and the defence of which was sanctioned at the public cost.

2. The Board will observe from the Decrees that in Suit No. 40 the Sub-Collector has been adjudged to pay his own costs, while in the two other suits the costs incurred by the Sub-Collector and Deputy-Collector have been decreed to be paid by the plaintiffs.

ENCLOSURE No. 1.

Judgment of the Small Cause Court at Cuddalore.
(On the Principal Sadr Amin's side.)
Original Suit No. 24 of 1868.
By H. W. BLISS, Esquire.

<i>Plaintiff</i>	<i>versus</i>	<i>Defendants</i>
Ariaputra Pillay. By Vakil Ramasawmy Iyer.		1. Strinivassa Pillay. 2. Appu Pillay. 3. Venkatachella Pillay. 4. Sinnasawmy Pillay. 5. Runganada Pillay. 6. Rasa Pillay. 7. Nulla Pillay. 8. Periaperuma Pillay. 9. W. F. Hathaway, Esq., Sub-Collector, South Arcot. 10. Appasawmy Pillay. 7th and 8th defendants, by Vakil Narasimma Charry. 9th defendant, by Vakil Janakiram Puntuloo. 2nd and 3rd defendants, by Vakil Strinivassa Row. 10th defendant, by Vakil K. Soobba Row.

- I. The suit is for the establishment of the plaintiff's rights to certain house-grounds and lands, the ancestral property of his family, which he alleges to have fallen to him on a division with his co-sharers about 30 years ago, and for the transfer of puttah into plaintiff's name.
- II. Defendants 1 to 6 inclusive, who are all either sons or grandsons of plaintiff's elder brother, Ramasawmy Pillay (deceased) admitted plaintiff's claim.
- III. The 7th and 8th defendants (plaintiff's brothers) also admitted the plaintiff's claim, except with regard to three small pieces of land numbered 6, 38, and 40 in the plaint. Of the first

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III. The 7th and 8th defendants (plaintiff's brothers) also admitted the plaintiff's claim, except with regard to three small pieces of land numbered 6, 38, and 40 in the plaint. Of the first

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of these, the plaintiff claimed the northern portion which these defendants maintained belonged to 7th defendant. Of Nos. 38 and 40 plaintiff claimed one-fourth of each, but the defendants argued that he was entitled to half of No. 38 and none of No. 40.

IV. The 9th defendant was the Sub-Collector who stated his willingness to issue the puttah in the name of whomsoever the Court should order.

V. The 10th defendant was made so at his own request. He maintained that as he had bought a portion of the lands from the plaintiff (as the latter indeed admitted) it was he and not the plaintiff who should get a puttah for them.

VI. The following documents were filed :—

By Plaintiff.

A. Extract from the Vaza Putti of Nundimungalum in Chedumbaram Talook for Fasli 1277, containing genealogical table.

B. Petition presented by plaintiff to the Sub-Collector on the 10th January 1868, requesting him to order the puttah to be issued in his name in the Jummahbundy of the current year, and the endorsement of the said officer thereon.

By 7th and 8th Defendants.

i.—Bill of sale of house-ground executed to 7th defendant's son, Petha Pillay, by Shunmooga Mudali and his son, Moottoocomaru Mudali, for Rupees 40 on the 15th December 1855, or 2nd Margali of Rautshasa.

By 10th Defendant.

ii.—Deed of Sale executed to the 10th defendant by plaintiff, dated 15th July 1864, or 2nd Audi of Ractatchi, selling 2.85 acres of nunjah land for Rupees 199.

iii.—Cutchat given to the 10th defendant by Village Nottakaurun, dated 23rd December 1864 and 26th March for Fasli 1274.

iv.—Do. given to do. by do. do., dated 26th November 1865 and 24th March for Fasli 1275.

v.—Do. given to do. by do. do., dated 19th December 1866 and 25th April for Fasli 1276.

VII. The following issues were framed :—

i.—Plaintiff affirms and 7th and 8th defendants deny that in the division one-fourth of each of plaint Nos. 38 and 40 fell to his share, and not half of No. 38 and no part of No. 40 as stated by defendants 7 and 8.

The first issue therefore is, what portions of plaint Nos. 38 and 40 fell to plaintiff's share in the division.

ii.—Plaintiff affirms and 7th defendant denies that the northern portion of plaint No. 6 fell in the division to his share.

The second issue therefore is, whether in the division the northern portion of plaint No. 6 fell to plaintiff's or 7th defendant's share.

VIII. The following witnesses were examined :—

By 7th and 8th Defendants.

i. Appasawmy Pillay.

ii. Tiruvarisha Pillay.

iii. Petta Perumah Pillay.

iv. Periya Perumal Pillay, 8th defendant.

JUDGMENT.

1. The evidence adduced by the 7th and 8th defendants shows clearly that ever since the division of the family property between the plaintiff and his brothers some thirty years ago, the plaintiff and the children of his brother, Ramasawmy Pillay, have always lived on the house-ground which is numbered 38 in the plaint, the plaintiff occupying one-half and Ramasawmy Pillay's descendants the other; and that house-ground No. 40 has similarly been occupied the whole time

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by the 7th and 8th defendants. The witnesses who prove this are the Curnum and Putta Monigar of the village and a cousin of the litigants who was actually present at the division thirty years ago, and who satisfactorily explains the arrangement under which two of the brothers succeeded in keeping to themselves No. 40 on which the ancestral mansion, a substantial building apparently, was built.

2. To controvert the evidence of these witnesses who appear to me perfectly credible, the plaintiff has adduced no evidence at all. I have therefore no hesitation in deciding the first issue against him.

3. The plaintiff having stated that if the 8th defendant would swear that his (the plaintiff's) share of the disputed land specified in the second issue was not the northernmost portion, he would withdraw his claim to have the northernmost portion; the 8th defendant was examined as a witness and distinctly swore that the land specified in the plaint as No. 6 was divided into three portions whereof the northernmost fell to 7th defendant, the southernmost to himself, and the middle portion to the plaintiff. Plaintiff then withdrew his claim to the northern portion. The second issue is therefore also decided against plaintiff.

4. A decree will be passed declaring the plaintiff's right to the lands sued for except the northern portion of No. 6 and a quarter of No. 40, and including the middle portion of No. 6, and half instead of a quarter of No. 38, and directing the grant of a puttah in his name for the same.

5. The costs of the plaintiff and of the first nine defendants will be borne equally by the plaintiff and the 7th and 8th defendants, whose litigious and obstructive conduct appear to me to have been the sole cause for this suit not having been amicably adjusted, as might easily have been done, considering the trifling value of the property really in dispute, had not the parties wished, as it would seem, to involve one another in trouble and expense.

6. The 10th defendant will bear his own costs, as he appears to me to have intervened in this case without due reason, since it is evident that the plaintiff never could have had any disposition to refuse to transfer to him the puttah for the lands he has in this suit freely admitted having sold him. His proper course would have been not to have intervened now, but to have waited until this suit was decided, and then sued the plaintiff for transfer of puttah if he refused to make it voluntarily.

Promulgated at Cuddalore on the 14th day of December, in the year of our Lord One thousand Eight hundred and Seventy.

(Signed) H. W. BLISS,
Acting Judge.

ENCLOSURE No. 2.—Copy of Decree in Original Suit No. 24 of 1868.

ENCLOSURE No. 3.

Judgment of the Small Cause Court at Cuddalore.

(On the Principal Sadr Amin's side.)

Original Suit No. 40 of 1868.

By H. W. BLISS, Esq.

Plaintiff

versus

Defendants.

Sevagamy Ummal.

By Vakil Ramasawmy Iyer.

1. W. F. Hathaway, Esq., Sub-Collector, South Arcot.

2. Mungalummal.

3. Soondara Pillay, husband of the 2nd.

4. Ramanuja Pillay, father of the 3rd.

Vakil for defendants 2 to 4, K. Sooba Row.

Do. for 1st defendant, Janakiram Puntuloo.

This is an action for the cancelment of 1st defendant's order, dated 30th March 1868, directing the inclusion of 2nd defendant's name in plaintiff's puttah for 10.82 acres of nunjah and

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punjab lands, assessed at Rs. 51-3-1 per annum, and valued at Rs. 400-8-8, being eight times the assessment; for an injunction prohibiting defendants 2 to 4 from interfering with plaintiff's enjoyment of the said land and a house worth Rupees 600, and for the recovery from defendants 2 to 4 of Rupees 90 being the damages sustained by the plaintiff in consequence of their having prevented her from cultivating the above-mentioned land in 1863.

2. The plaint goes on to state that the plaintiff is in the enjoyment of the house and lands with right of puttah; that 2nd defendant is the daughter of her deceased husband Savanthia Pillay by his first wife; that on the 4th defendant representing to 1st at the time of Jummaabundy in Fasli 1277, that the 2nd defendant had a right to the land, the 1st defendant ordered, on the 30th March 1868, that a joint puttah should be issued to the contrary within six months; that thereupon the plaintiff presented a petition to the 1st defendant on the matter and he passed an order on the 7th September 1868 that she (plaintiff) was only entitled to receive maintenance from the family; that on the strength of the said order the defendants 2 to 4 prevented the plaintiff from cultivating the land and unlawfully entered into her house; that she again petitioned the 1st defendant, who, by an endorsement thereon, directed her to have recourse to a Civil action; that the 2nd defendant has no right to the property in dispute, nor is there reason for the 1st defendant ordering the inclusion of her name in plaintiff's puttah; and that the plaintiff is compelled to bring this suit solely on account of the 1st defendant's order for the inclusion of 2nd defendant's name in her puttah.

3. The 1st defendant's statement was as follows:—
“He is perfectly willing to give puttah to any one who can prove his or her right by the production before him of the judgment of a competent Court to that effect. He has decided no question of right, and merely entered the name of the daughter of the puttahdar's first wife in order to prevent improper injury to the property of the deceased, and waste.”

4. In their statement, the 2nd, 3rd, and 4th defendants deny plaintiff's claim *in toto*, and state that the 2nd defendant is plaintiff's step-daughter; that plaintiff is the 2nd wife of Savanthia Pillay alluded to in the plaint; that plaintiff has no issue; that therefore the 2nd defendant alone has a right to the whole of the deceased Savanthia Pillay's property according to the Hindu Law, and plaintiff is only entitled to maintenance out of the family property; that the said Savanthia Pillay before his death in 1866 executed a Will in favour of the 2nd defendant bequeathing to her all his property for her absolute use with the exception of a portion which was left to the plaintiff for maintenance for her life-time and to revert to the 2nd defendant after her death; that 2nd defendant's possession of the land in dispute is in accordance with the terms of the Will in question, which is not at once produced, only because it is not in possession of 2nd defendant but of her grand-mother Ponnammal, mother of the deceased Savanthia Pillay; that the produce of the land in dispute would not be worth more than Rs. 50 per annum; and that the house sued for has been improperly over-valued so as to bring the suit within the jurisdiction of this Court.

5. The following documents were filed by plaintiff:—
A.—Copy of the order of the 1st defendant, the Sub-Collector, directing the inclusion of 2nd defendant's name in plaintiff's puttah.
B.—Puttah issued in plaintiff's name in Fasli 1276 for the lands in dispute.
C.—Endorsement made by the 1st defendant on the petition presented by plaintiff's man, Mooruga Pillay, dated 21st April 1867, regarding the puttah.
D.—Copy of the order of the 1st defendant, dated 7th September 1868, on a petition presented by plaintiff.

Judgment.
1. The Vakeel for the 2nd, 3rd, and 4th defendants not having insisted on the alleged over-valuation of the house sued for, and having admitted his inability to produce and prove the Will

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stated to have been executed by the deceased Savanthia Pillay in favour of the 2nd defendant, it is clear that judgment must be given in favour of the plaintiff, since the decision of the High Court, in Special Appeal No. 736 of 1862, (reported at page 223, volume 1, High Court Report), has settled that, in the event of the death of a Hindu leaving no male heirs but only a widow and daughters by another wife pre-deceased, it is the widow who succeeds to the property and not the daughters who take only after her death. Now this is exactly the case in the present instance, with the exception that the plaint is framed as if the object of the plaintiff was to obtain a decree establishing her absolute right to the property in question. This of course is more than she can claim since she can have only a life-interest in the property of her husband; but, with this exception, decree will be passed in her favour. She will also be awarded Rs. 60, being the sum agreed on by the parties as fair compensation to be given by defendants 2—4 to the plaintiff for the loss caused her by their unlawful occupation of the lands in the year 1868.

2. Defendants 2—4 will pay their own and plaintiff's costs.

3. The 1st defendant will be left to pay his own costs which will be calculated only on that portion of the suit, namely, the contention as to the rights of the parties to the lands, which calls in question his conduct in the matter. I make this order because I consider that the 1st defendant's order that in default of an order to the contrary within six months from a competent Court the name of the 2nd defendant should be added to that of the plaintiff in the puttah for the lands was quite uncalled for, and an improper interference with the rights of the plaintiff. Had this order been passed immediately on the death of Savanthia Pillay, the case would have been different, because in such cases where there is any doubt as to who is the proper person to succeed to the property of a deceased puttahdar, it is usual (and unobjectionable in my opinion) for the Revenue authorities to insert in the puttahs the names of all *bona fide* claimants, leaving their respective rights to be decided by subsequent Civil Suit. But in the present instance, the 2nd defendant did not apply for the inclusion of her name in the puttah, nor the 1st defendant pass the order complained of, until the plaintiff had been for a year the sole registered owner of her deceased husband's property. I think, therefore, that 1st defendant's interference constituted an undoubted injury to the plaintiff, and indeed this can scarcely be disputed since it is admitted that it was under colour of his orders that 2nd defendant succeeded in dispossessing the plaintiff in 1868. Even had this consequence not resulted from the order complained of, there would still have been an injury, I think, from the fact that a puttah, though conferring no rights, is universally admitted to have considerable weight as evidence in all cases of disputed ownership, so that the plaintiff was, as it were, forced to bring this suit to protect herself from being in the future possibly prejudiced by the inclusion in her puttah as joint-owner of another person not entitled during her own life-time to any share of the property. The 1st defendant states that his motives were “to prevent improper injury to the property of the deceased and waste,” but the interference of a Revenue-officer is not the method provided by law for the attainment of these, no doubt desirable results.

Promulgated at Cuddalore on the 19th day of December in the year of our Lord One thousand Eight hundred and Seventy.

(Signed) H. W. BLISS,
Acting Judge.

ENCLOSURE No. 4.—Copy of Decree in Original Suit No. 40 of 1868.

ENCLOSURE No. 5.—Copy of Judgment in Original Suit No. 986 of 1869.

ENCLOSURE No. 6.—Copy of Decree in Original Suit No. 986 of 1869.

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Board's Procs., 7th Sept. 1868, No. 6,368.
" 12th Jan. 1869, " 197.
" 6th April 1870, " 2,314.

SUBMITTED, with copies of the
Board's Proceedings noted in the
margin, for the information of Gov-
ernment.

2. Suits Nos. 24 and 986 call for no remarks. The Government officials (Sub-Collector and Deputy-Collector) who were defendants in these cases have been exonerated from the payment of costs.

3. The facts of Suit No. 40 are as follow :—

4. On the death of her husband, plaintiff applied for his puttah which was accordingly granted. Subsequently a daughter of the deceased by another wife claimed the puttah. The Sub-Collector then added her name also to the puttah on ground that it was expedient to do so in order to prevent improper alienation of the property by the widow. Upon this the latter filed the suit.

5. In their Proceedings, dated 12th January 1869, No. 197, the Board observed that Mr. Hathaway's action was not defensible, and directed that if the property were that of an undivided Hindoo family, the daughter's name should be struck out, and the plaintiff be asked to withdraw the suit; but that if it were not quite clear, or if plaintiff wished to proceed with the suit in view to the settlement of the claim to the property advanced by the daughter, the Sub-Collector was authorized to put in an answer to the effect that he was prepared to issue the puttah to the person in whose favour the Court might decide.

6. The Court has decided in favour of plaintiff, and has directed the Sub-Collector to pay his own costs.

7. As Mr. Hathaway no doubt acted in good faith, the Board recommend that his costs, Rs. 21-0-7, be paid by Government.

No. 234.

ORDER THEREON, 17th May 1871, No. 873.

Miscellaneous.

It appears here, from the judgment of the Small Cause Court at Cuddalore, that after the plaintiff had been for a whole year the sole registered owner of her deceased husband's property, the Sub-Collector thought proper, on an application to that effect coming before him, to include the daughter's name in the puttah, under colour of which order, the daughter and her people ousted the plaintiff from possession. Plaintiff brought this suit in consequence, praying, amongst other things, for the cancelment of the Sub-Collector's decision.

2. Mr. Hathaway was joined as defendant, and pleaded that he had acted solely with a view of "preventing improper injury to the property of the deceased, and waste;" but the Judge left him to pay his own costs (Rs. 21-0-7), the interference of a Revenue-officer not being the method provided by law for the attainment of these, no doubt, desirable results.

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3. The Board of Revenue observing that Mr. Hathaway's action is not defensible, nevertheless recommend that his costs be paid by Government on the ground that he acted in good faith.

4. On this recommendation the Government are pleased to sanction the disbursement in question.

(True Extract.)

(Signed)

D. F. CARMICHAEL,
Acting Secretary to Government.

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

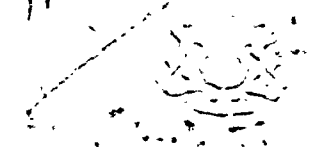
Exd. F. R. Batleman.

17 May 71.
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873.

Prop. Bd. Rev. No 1,675
of 22nd April 71

W. Jones



It appears here, from the judgment
of the S. C. C. at Cuddalore that
after the Poff had been for a
whole year the sole registered
owner of ten deceased husband's
property, the Subj. brought
proper, on an application to
that effect coming before him,
to include the daughter's name
in the Putch under colour of
which order, the daughter & her
people ousted the Poff from
possession. Poff brought his suit
in consequence, praying among
other things for the cancellation
of the Subj.'s decision.
2. Mr. Habbany was joined as
defendant, & pleaded that he had
acted solely with a view of
"preventing improper injury
to the property of the decd, & that

but the Judge left him
to pay his own costs (No 21.07), the
interference of a Revenue Officer
not being the method provided by
law for the attainment of
these, no doubt, desirable results.

3. The Bd of Rev observing that
Mr. Hattaway's action was not
defensible, nevertheless recommends
that his costs be paid by Govt on
the ground that he acted in good
faith.

4. But as similar acts of
"vicious intromission" are not
uncommon upcountry, it is
submitted that the Govt should
not interfere for his subsequent
belief - the amount will not break
him, & be an example.
will be salutary -

Costs - 21/- per

L. D. L. A. A.

233-234

Menu

Page of notes in
an old book in
South West list