

*Proceedings of the Madras Government, Revenue Department,
18th May 1872.*

No. 200. Read the following Proceedings of the Board of Revenue, dated 8th May 1872, No. 744:—

Read the following letter from J. H. GARSTIN, Esq., Collector of South Arcot, to the Secretary to the Board of Revenue, dated Cuddalore, 12th April 1872, No. 129:—

I HAVE the honour to forward, herewith, copies of the Decree and Judgment of the Principal Sadr Amin of Cuddalore, in Original Suit No. 16 of 1870, on the file of his Court, in which although the suit is dismissed the Collector is left to bear his own costs, because the Court thought that it would have been equitable on the part of the Revenue officers to have offered the lands sued for, which were assigned to the 3rd Defendant, to the plaintiffs as water-spread for their tank on their paying the tirvah (assessment) assessed upon them if the plaintiffs retained them for that purpose.

2. The costs amount to Rupees 124-8-1, and I request sanction to pay them, and instructions as to filing an appeal against the judgment.

3. I confess that while I think the decree dismissing the suit and yet saddling the Collector with his own costs on the grounds above set forth, is wrong, I think it probable that on appeal, the Appellate Court may hold that the plaintiffs have established a prescriptive right to use the disputed land as a tank, and am therefore doubtful about recommending an appeal.

4. The Judge holds that the use of the land as a tank previous to 1850 cannot to it.

5. Two issues were raised viz.:—

1st.—Whether Plaintiffs had acquired a right to use the land in dispute as the water-spread of their tank.

2nd.—Whether Plaintiffs had a prior right to the land if given for cultivation.

6. With regard to the first point the Court found upon the evidence that the land had been used for storing water for at least 30 years, but as there was nothing to show that the Revenue Authorities were until 1851 aware that the land, which is Government property, was so used, it held that such use previous to 1851 did not bar Government from assigning it for cultivation, on the principle of law that "the owner of a servient tenement must have known that an easement was enjoyed and must also have been in a situation to interfere with and obstruct its exercise if so disposed."

7. As regards the second point it was argued on the part of the Plaintiffs that by their own rules Government are bound to assign the assessed lands of a village to the Ryots of the village in preference to a stranger. To this it was replied on behalf of the Revenue Authorities that the rules referred to have not the force of law, that they were simply laid down for the guidance of Revenue Officers generally in the disposal of waste lands but that they do not prevent Government assigning lands to other than the ryots of the village in exceptional cases.

8. The Court admitting the force of this argument found for the defendants on the second issue also. The suit was accordingly dismissed.

9. Considering however that it would have been equitable on the part of the Revenue Officers after such long enjoyment to have offered the lands to the

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2. In 1868 it was decided that a small tank which had become useless should be abandoned. Arrangements were previously made for irrigating all the lands dependent on it from another tank. A portion of the bed of the abandoned tank was under the orders of the Board assigned to Appavoo Naick, 3rd Defendant in this case.

3. Plaintiffs, Ryots of Trivenanulloor, the village in which the tank was situated, sued for the restoration of the land on the following grounds:—

(1.) That the land in question formed the bed of a tank in their village and should be reserved as such for irrigation purposes, otherwise the supply of water would be insufficient for their lands.

(2.) That assuming the Revenue Authorities have the power to assign the land for cultivation it should be given to the plaintiffs, Ryots of the village, in preference to 3rd Defendant, a stranger.

4. On behalf of the Collector and Deputy-Collector, 1st and 2nd Defendants, it was pleaded—

(1.) That the tank referred to was constructed without the permission of Government and was not kept in an efficient condition by the plaintiffs or any one else.

(2.) That plaintiffs suffered no injury by the cultivation of the land in question or by its ceasing to store water.

(3.) That the tank and tank bed belonged to Government who had a right to give the land in dispute to 3rd Defendant and that Plaintiffs had no valid claim though the claim of the plaintiffs to prescriptive use for some years before 1850, and for at least 30 years altogether, appears to be well founded, because there is nothing to show that the Revenue officials were aware until 1851, that the land was used by the plaintiffs as the water-spread of their tank. He says "The use of the land therefore as a tank previous to 1850, cannot bar the Government from resuming it and giving it out to cultivators, for it is a well established rule of law that the owner of a servient tenement must have known that an easement was enjoyed and must also have been in a situation to interfere and obstruct its exercise, if so disposed, and again it seems to me impossible not to hold that this course of conduct on the part of the Government officers since 1851, did not amount (quære-amounted) to a public assertion that Government had not parted, and would not part, with the right to assign their lands for cultivation." Now it seems to me that the burden of proving ignorance of the acts of the plaintiffs prior to 1851, lay on the Revenue officers of Government, and that it was not incumbent on the former to prove that the Government officers knew of the existence of the tank, while from its very nature, the tank being situated close to a large village was a thing discernible and capable of being objected to, at any moment, and therefore I doubt whether on appeal the judgment will not be reversed.

ENCLOSURE No. 1.—Copies of Decree and Judgment.

SUBMITTED to Government with reference to G. O., dated 14th December 1870,
No. 2,025.

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villagers on condition of their paying the annual assessment the Court decreed that all parties should pay their own costs. The costs of the Collector are Rupees 124-8-1.

10. The Board see no reason to question the propriety of the decision as to costs. It is clear from the tenor of the Judgment that there was nothing frivolous or vexatious in the action and that though the plaintiffs suffered no injustice at the hands of the Government Officers yet their case had a show of hardship. The Board therefore recommend that no appeal be made and that payment of the costs incurred by the Collector be sanctioned.

No. 201.

ORDER THEREON, 18th May 1872, No. 801.

Miscellaneous.

THE Government concur with the Board and sanction payment of the costs awarded against the Collector.

(True Extract.)

(Signed)

W. HUDLESTON,
Secretary to Government.

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

Exd. F. R. Bantleman.

File No. 4012 & 11/13/12
D 12 Dec 17.
File 130 11/13/12
122109.

Rev 1872. Dep.
Board of Revenue,
MADRAS.

PROCEEDINGS, 8TH MAY 1872, No. 744.

Dep. 14th May 1872

Encl. 2

Cal

Received 15th Dec.

Hon. Mr. Justice

MAY.

No. 744.

Suit—No. 16 of 1870—filed in Cuddalore
Principal Sadr Amin's Court, in South Arcot
District, to establish plaintiffs' right to a por-
tion of the bed of an abandoned tank.—Letter
from Collector, reporting dismissal of—and stat-
ing that Collector has been decreed to bear his
own costs,—submitted to Government, with
recommendation to sanction payment of costs.

With Orders
No 801-18 May 1872

The Govt. concurs with the Sd. and
sanction payment by the Collector.

At 801.

14th May 1872
18th May 1872
15th May 1872

No 200-201
15th May 1872