No. 78. Read the following Proceedings of the Board of Revenue, dated 13th November 1873, No. 2,307 :—

Read again Board's Proceedings, dated 23rd September 1873, No. 1,916.

Read also the following letter from J. R. DANIEL, Esq., Acting Collector of Vizagapatam, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 30th October 1873, No. 1,641 :—

I HAVE the honour to report upon the points mentioned in Board's Proceedings, No. 1,916, dated September 23rd, 1873.

(1). The Sale Certificate was received in the Taluq Cutcherry, February 22nd, 1872, it was afterwards given to the purchaser who was put in possession in November 1872. The exact date when the Sale Certificate was given and the purchaser was put in possession have not yet been furnished me by the Principal Assistant-Collector. He has directed the Tahsildar to furnish them, but meantime I send this information to the Board.

(2). Application was made to the Principal Assistant-Collector for cancellation of the sale on October 30th, 1872, by Baddi Appadu (Plaintiff).

(3). The land is now in the possession of the auction purchaser, second defendant.

(4). It is not used as village site.

2. I have made attempts according to the direction of the Board to effect a compromise, the land which is now in litigation was never used for village site; the order of 1840 was a vague one; under that order some houses have been built but none of such land has been interfered with; other portions of the ground have been cultivated, and the plaintiff's wish under cover of the order 1840 to get this land free of assessment.

3. The Principal Assistant Collector reports that he visited the place before passing the order refusing to cancel the sale, and says that some of the ryots had large pieces of ground enclosed behind the village, and were suffering no inconvenience. The plaintiffs themselves who appeared before me stated that they had been cultivating it, and expressed their willingness to pay the assessment of the land if it were given to them, but they ought to have done that before the sale took place.

4. The purchaser is willing to give up the land only on conditions which the plaintiffs are unwilling to accept. I believe now that the plaintiffs appear satisfied that the land cannot be allowed them free of assessment, they may be willing to accept the conditions imposed by the purchaser, and I hope even now to be able to effect a compromise. The hearing of the case is, however, fixed for December 8th, and I would, therefore, ask the Board to sanction the defence of the suit if the compromise be not effected; the plaintiffs can have no claim whatever to hold the land free of assessment; they have been cultivating the land under the Puttadar Appal Raz, and the assessment has been paid since 1855 and the land has never been used as village site.

5. The documents called for by the Board are herewith, submitted, with the exception of No. 2, the Principal Assistant Collector's order of 1855; this was a document which I tried before to find, but it is in no records.

ENCLOSURE No. 1.—Copies of documents.

SUBMITTED for the orders of Government.

2. The facts of the case are stated in the following Extract from Board's Proceedings, dated 23rd September 1873:—

3. "The land in dispute was in 1840 assigned free of assessment for four years as village site on condition that the applicants should bring certain waste land under cultivation. It was held free of assessment until 1855 when it was by order of the Principal Assistant Collector fully assessed whether on the ground that the conditions of the grant had not been complied with or because Government directed that assessed land should not be granted free of assessment without their sanction the Collector is unable to say. Half of the land was granted on putta in 1855 to one Jaganad Raz and the other half in 1857 to the same person. * * * * * * * On Jaganad Raz's death the putta was transferred to his son Appal Raz. In 1864 plaintiffs the occupants of the land complained that Appa Raz was asserting his claim to their land under a putta which he had fraudulently obtained. The Principal Assistant Collector dismissed the complaint on the ground that complainants were mere tenants at will under the Puttadar. This order was reversed (21st February 1865) by the Collector who upheld the possession of plaintiffs and referred the Puttadar to a Civil action. He accordingly brought a suit in the Munsif's Court and obtained a decree which on appeal wa reversed by the Civil Judge whose decision was confirmed by the High Court. After this the Puttadar Appal Raz having neglected to pay the assessment the land was attached for arrears (Rupees 10-8-0) and was sold to second defendant fo Rupees 20 on the 9th September 1872. One of the ryots concerned petitioned th Principal Assistant Collector requesting that the sale might be cancelled. Th he declined to do and his order was confirmed by the Collector on the 8th Marc 1873." Plaintiffs instituted the suit on the 5th June 1873 to have the sale can celled and to establish their right to hold the land free of assessment.

4. From the Collector's second letter it appears that the land in dispute wa never used for village site but for cultivation. In these circumstances the Boar are of opinion that the charge of assessment was right but that the assignment the land to Jaganad Raz was wrong. Plaintiffs might have prevented the sale the land by payment of the arrears under Section 35, Act II. of 1864, but the neglected to do so.

5. The Collector hopes to effect a compromise between the plaintiffs and t purchaser who is now in possession of the land. In case he should not succe the Board recommend that the defence of the suit be sanctioned. It is clear th plaintiff's claim to hold the land free of assessment is inadmissible and there is n doubt that the sale of the land under Act II. of 1864 is legal. If plaintiffs ha suffered thereby it is their own fault.

ENCLOSURE No. 1.

Proceedings of the Board of Revenue, dated 23rd September 1873, No. 1,916.

Read the following letter from J. R. DANIEL, Esq., Acting Collector of Vizagapatam, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Vizianagram, 6th September 1873, No. 1,326.

I HAVE the honour to forward the translation of a plaint presented by Baddi Appadu and three others in Suit No. 27 of 1873, on the file of the District Court at Vizagapatam, against myself and another.

2. The facts of the case are as follow:—

3. In 1840, certain ryots applied to the Principal Assistant Collector to give them the piece of jeroyti land, three vissams in extent, called Yedalamaguru, assessed at Rs. 10, free from assessment, for the purpose of building houses. The Principal Assistant Collector granted it to them, free from assessment for four years to build houses, on condition that they brought certain waste land into cultivation; if they did not, the assessment and arrears was to be collected and the fixed assessment levied from them.

4. In 1855, the then Principal Assistant Collector ordered that the land should be fully assessed.

5. Half of the land was granted on putta to Gottemakala Jaganad Raz in 1855, and the other half in 1857, so that he became the puttadar for the whole. The putta on his death was transferred to the name of his son, G. Appal Raz.

6. In 1864, certain ryots (now plaintiffs) petitioned the Principal Assistant Collector that they had been granted this land and had erected houses upon it, but that Appal Raz had fraudulently obtained putta and was claiming the land as his own.

7. The Principal Assistant Collector, on the ground that Appal Raz was the puttadar and the ryots his tenants-at-will, upheld the puttadar in his possession and referred the ryots to a civil suit.

8. The Collector, in his order, 21st February 1865, however, reversed this decision, upholding the possession of the ryots and referring the puttadars to a regular suit. Upon this Appal Raz instituted Suit No. 352 of 1865 in the District Munsif's Court of Rayaveram, and the Munsif, for reasons not very apparent, awarded the land and trees, etc., and directed the defendants to remove the houses and timber; but the Civil Judge reversed his decision and dismissed the suit on 3rd September 1868. This was confirmed by the High Court. After this suit had been dismissed in Special Appeal, the assessment of the land fell into arrears for fasli 1281 and the land was attached for Rs. 10-8-0 and sold on 9th September 1872.

9. One Baddi Appadu, one of the ryots successful in the civil suit, petitioned the Principal Assistant Collector to set aside the sale on the ground that the land was village-site and their right to it had been established in the civil suit; but the Principal Assistant Collector, on 14th, January 1873, passed an order refusing to set aside the sale, and the Collector, on 8th March 1873, confirmed this order.

10. The land was purchased at the public auction, 9th September 1872, for Rs. 20 by the 2nd defendant; the present suit has consequently been instituted. The plaintiffs seek a decree against the Collector declaring that he has no right to collect any assessment on the land, and that it is rent-free. Their claim is based upon the original order of the Principal Assistant Collector in 1840 allotting this piece of ground free of assessment as building-site on condition that the neighbouring waste lands were brought under cultivation. In this order it is not specified that the land is given to any particular ryots free from assessment; it is merely an order to the Tahsildar telling him that he may give this land to some ryots on certain conditions. The land never was absolutely given to any one rent free, and the Principal Assistant Collector in 1855 directed the full assessment to be collected.

11. The assessment has been regularly paid from the years 1855 and 1857 to the year 1870. It has always been paid by the puttadar, G. Appal Raz, and his father before him; at least, it

has been paid in their names, and they have been held responsible for it. The question between the puttadar and the ryots has been determined by the Civil Court, and is a question in which the Collector has no concern. The puttadar is held by him responsible for the assessment, and, as the assessment was regularly paid, there was no necessity for him to inquire into other rights.

12. The present plaintiffs, of course, allege that the puttadar, Appal Raz, purposely allowed the land to be sold, because he was unsuccessful in the civil suit. The plaintiffs might have paid the amount of arrears under Section 35 of Act II. of 1864, and so saved the land from sale, but, as they failed to do so, the land was rightly sold.

13. I therefore request the sanction of the Board to the defence of the suit at the public expense. The draft answer proposed is annexed.

14. The order of the Principal Assistant Collector in 1855, directing the land to be fully assessed, has not yet been obtained, and I cannot say whether it was fully assessed by him, because the condition was not fulfilled, or because the Government directed that assessed land should not be granted for village-site without their sanction.

15. No assessment was collected on the land between 1840 and 1855, but this is not sufficient to support the claim of the plaintiffs that the land should be held rent-free; it has been charged, and assessment paid upon it for the last sixteen years.

16. The date fixed for first hearing is 30th September.

ENCLOSURE No. 1.—Translation of Plaint.

ENCLOSURE No. 2.—Draft Answer.

IT appears that the land in dispute was in 1840 assigned free of assessment for four years as village-site on condition that the applicants should bring certain waste land under cultivation. It was held free of assessment until 1855, when it was, by order of the Principal Assistant Collector, fully assessed, whether on the ground that the conditions of the grant had not been complied with, or because Government directed that assessed land should not be granted free of assessment without their sanction, the Collector is unable to say. Half of the land was granted on putta in 1855 to one Jaganad Raz, and the other half in 1857 to the same person. How this came to be done is not clear; for at the time the land was not unoccupied waste at the disposal of Government. On Jaganad Raz's death the putta was transferred to his son, Appal Raz. In 1364, plaintiffs, the occupants of the land, complained that Appal Raz was asserting his claim to their land under a putta which he had fraudulently obtained. The Principal Assistant Collector dismissed the complaint on the ground that complainants were mere tenants-at-will under the puttadar. This order was reversed (21st February 1865) by the Collector, who upheld the possession of plaintiffs and referred the puttadar to a civil action. He accordingly brought a suit in the Munsif's Court and obtained a decree, which, on appeal, was reversed by the Civil Judge, whose decision was confirmed by the High Court. After this the puttadar Appal Raz having neglected to pay the assessment, the land was attached for arrears (Rupees 10 8-0), and was sold to 2nd defendant for Rupees 20 on the 9th September 1872. One of the ryots concerned petitioned the Principal Assistant Collector, requesting that the sale might be cancelled. This he declined to do, and his order was confirmed by the Collector on the 8th March 1873.

2. Plaintiffs instituted this suit on the 5th June 1873 to establish their right to hold the land free of assessment, and to have the sale cancelled.

3. In the answer proposed by the Collector it is stated that the land was *never* granted to plaintiffs free of assessment. This assertion is hardly consistent with the history of the case given in the Collector's letter, from which it appears that they actually so held the land from 1840 until it was sold in 1872, and that when they resisted the claim of the puttadar they were upheld by the Collector, who referred the puttadar to a civil action in which he was defeated.

Proceedings of the Madras Government, Revenue Department,
19th November 1873.

4. If the land continued to be used as village-site,—the purpose for which it was originally granted,—the Board are of opinion that its assessment on putta to Jaganad Raz in 1855 was clearly wrong, and that, when the Court decided in favour of plaintiffs and against Appal Raz, instead of selling the land for arrears application should have been made for the formal sanction of Government to its assignment to plaintiffs free of assessment as a village-site. As far as the Board can judge from the information before them, they are decidedly of opinion that the case is one that should, if possible, be settled by compromise, and they would wish that the Collector would use his best endeavours to effect one on the following terms, viz., 2nd defendant to relinquish his claim to the land on the refund of the purchase-money by Government; plaintiffs to withdraw the suit on the assurance that the land will be assigned to them free of assessment so long as it is used as village-site.

5. Meanwhile, the Collector is requested to submit the under-mentioned documents and report on the following points:—

(1.) When was the auction sale given effect to either by grant of sale certificate or by putting the purchaser in possession?

(2.) What is the date of the application to the Principal Assistant Collector for the cancellation of the sale, and by whom was it made?

(3.) In whose possession is the land now?

(4.) Is it still used as village-site?

List of Documents.

(1.) Original grant of 1840.
(2.) Order of 1855 assigning the land on putta.
(3.) Order of Principal Assistant Collector rejecting the complaint made by plaintiffs in 1864.
(4.) Collector's order, dated 21st February 1865.
(5.) Decree and Judgment of Civil Court dismissing Appal Raz's claim.
(6.) Collector's order, dated 8th March 1873.

No. 79. ORDER THEREON, 19th November 1873, No. 1,268.

Miscellaneous.

THE defence of the suit is sanctioned.

(True Extract.)
(Signed) D. F. CARMICHAEL,
Secretary to Government.

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

Exd. F. R. Bantleman.

No. 1641.

Vizagapatam
October 30th 1873.

From

J. P. Daniel Esquire
Acting Collector

To

J. Grose Esquire
Secretary to the
Board of Revenue
Fort Saint George

Sirs,

I have the honor to report upon the points mentioned in Board's Proceedings No. 1946 dated September 23d 1873.

1. The sale certificate was received in the Salary Cutcherry February 22d 1872, it was afterwards given to the purchaser who was put in possession in November 1872. The exact date when the sale certificate was given and the purchaser was put in possession I have

Govt. of Madras
1873
REVENUE.

To
The Board of Revenue,
&c., &c., &c.

Dated November 10th.
Recd.
Encl.

G. O., 10th November 1873, No. 1,268.

NOVEMBER.
Nos. 78-79.

Suit No. 27 of 1873 on file of District Court of Vizagapatam regarding cancelment of Sale of certain Land for arrears of Revenue — Sanctioning the defence of the —.

B. of R. Public Dept.
No. 1946

have not yet been furnished me by the Principal Assistant Collector. He has directed the Tahsildar to furnish them, but meantime I send this information to the Board.

2. Application was made to the Principal Assistant Collector for cancellation of the sale on October 30th 1872 by Baddi Appadu (Plaintiff).

3. The Court is now in the possession of the auction purchaser, 2d Defendant.

4. It is not used as Village site

2 I have made attempts according to the direction of the Board to effect a compromise, the land which is now in litigation was never used for village site; the order of 1840 was a vague one, under that order some houses have been built but none of such land has been interfered with: other portions of the ground have been cultivated and the Plaintiffs wish under cover of the order of 1840 to get this land free of assessment.

3 The Principal Assistant Collector reports that he visited the place before passing the order refusing to cancel the sale, and says that some of the ryots had large pieces of ground enclosed behind the village and were suffering no inconvenience. The Plain= =tiffs themselves who appeared before me stated that they had been cultiva= =ting it and expressed

their

their willingness to pay the assessment of the land if it were given to them, but they ought to have done that before the sale took place.

4. The purchaser is willing to give up the land only on conditions which the Plaintiffs are unwilling to accept. I believe how that that the Plaintiffs appear satisfied that the land cannot be allowed them free of assessment, they may be willing to accept the conditions imposed by the purchaser and I hope even now to be able to effect a compromise. The hearing of the case is however fixed for December 8th and I would therefore ask the Board to sanction the defence of the suit if the compromise be not effected; the Plaintiffs can have no claim whatever to hold the land free of assessment; they have been cultivating the land under the puttadar Appalrag and the assessment has been paid since 1855 and the land has never been used as Village Site.

5. The documents called for by the Board are herewith submitted with the exception of No. 2 the Principal Assistant Collectors order of 1865; this was a document which I tried before to find but it is in no records.

I have &c

[Sigd] J R Daniell
Ag Collector

[True Copy]

J Cole
Secretary

Col J K Bardale

you will therefore inform this to the ryots and see that they bring the fallow lands of the village under cultivation, building houses in the said place. So that I may be able to know the measures you may have adopted in connection with this matter you will report the same to me in the Report on the condition of the Taluq.

1st June 1840. Office of the Principal Assistant Collector of Vizagapatam

Camp Vizagapatam

(Signed) S. Conway
Pro. Asst. Collector

No. 18 Proceedings of the Acting Princ. Assist. Collector dated Vizagapatam 7th December 1864

Read again Petition presented by Baddi Achanna and others ryots of Appaharam in Survasidhi Taluq stating that in the year 1840 they were granted by the authorities a piece of land (Gedullama Garuvu) for building sites free for the first four years on condition that they afterwards paid Rupees 10 a year for the same.

They complain that one Gottumukkala Appalraz now claims this ground as part of the land entered in his deceased father's patta. They pray that they may be upheld in occupation of the ground on which their houses are built and that the sist of Rupees 10 a year may also be struck off.

Read Principal Assistant Collector's endorsement referring the said Petition to the Tahsildar of Survasidhi for enquiry and report.

Read also Arzi from the Tahsildar of Survasidhi reporting the result of his enquiry into the circumstances of the said petition No 357 dated 17 October 1864.

The Village Karnum deposed that the land in question is entered in the accounts as 3 viswams bearing an annual sist of

of Rupees 10- That in 1840 the Principal Assistant Collector granted the site for building purposes for four years free That in 1855 the Principal Assistant Collector ordered the land to be brought under rent, half of it was accordingly leased out That Mudr to G. Sagamadraz (the father of the Appalrah against whom the petitioners complain) at a rent of Rupees 5 per annum, and in 1857 the same individual took up the other half also. G. Sagamadraz was then the Puttadar of the whole land paying Rupees 10 rent per annum and his son G. Appalrah has succeeded to his right. Up to this time however the Puttadar has permitted the Petitioners to occupy the Land and to pay the rent for him He now seeks to eject them and recover possession of the Land.

The Petitioners admit that G. Appalrah is Puttadar of the Land but urge that they have been his undertenants many years and have built Houses, sunk wells, and planted trees on the Land. They can show no written documents conferring on them a right in the Land.

The Puttadar G. Appalrah states that he sublet the Land to one Baddi Ayana a relative of the Petitioners, who allowed them to occupy it. That he now requires the land himself and he claims the right to resume it.

It is clear that Gothinakala Appalrah is Puttadar of the land in question, that Petitioners were merely tenants at will: As there are no written engagements between the Parties the Principal Assistant Collector can only

reject

To

Athidat Asar

Govindaraju Venkata Krishnayya

Amin of Sarvasidhi.

Befsd Bashaud

As you have addressed to me a petition dated 14th Instant stating amongst other things that the village of Agraharam of Sarvasidhi hereby having for a long time been a separate village, is now included in Rajala; that the ryots have represented to you that a great number of them will join and bring all fallow lands under cultivation, if permission be granted to build houses on the dry land of 10 Rupees assessment called Gedullammagaruvu situated to the west of Potukonda and which is under the cultivation of Pinnemraj Venkataramraj that the assessment of 10 Rupees may be withheld from being collected for 4 years; that if the fallow lands be brought under cultivation the assessment may be cancelled; together with the arrears and that otherwise the assessment may be collected with the arrears; I hereby permit You to keep the Collection of the assessment of Rupees 10 in abeyance for 4 years.

You

Enclosures Bas 28
Proceedings dated
13th December 1873
to the Ry Secretary
& Engd RDs

Rev 2/3672/73

Copy of letter from the Collector of Kistna dated 13th December 1873

uphold the Puttadar as in occupation
of the Land and the Petitioners must
go to the Civil Court for their remedy.

Signed John M Boswell
A. Pl. Asst Collector

Memo

Complainants Buddi Atchena and five others of the village Appa-
rauam of the Dar-
wasiddi Taluq } Defendant Gotiumuttula Appalaraz of do

This was an appeal against
the decision of the Actg Principal Assist-
ant Collector dated 7th December 1864.

Defendant it would seem
cut down some tamarind and other
trees belonging to Complainants who
live on his Puttah land.
Complainants remonstrated. Upon
which Defendant asked them to
quit. This led Complainants
to lay their case before Mr Boswell
who found for Defendant on the
ground that he is the Puttadar.

Sd

10

It is true that he is the Puttadar
but the Complainants have been living
there since 1840.

They were first allowed to erect
the houses on the jeroyati land by the
then Principal Assistant, rent free for
four years, afterwards to pay Ru-
pees 10 a year. They however did not pay
any thing upto 1854. In 1855 another Princi-
pal Assistant ordered that the Land should
be regularly assessed. The father of defend-
ant applied and got one half at 5 Rupees
Complainants paid for him upto 1857.
In 1857 the remaining portion of the Land
was leased out to Defendant for 5 Rupees
from them. Complainants have paid
the 10 Rupees yearly.

Receipts issue in the name of the Puttadar
It is contrary to G. C dated 5th
September 1850 to allow jerayati lands
to be occupied by Ryots houses (with-
out sanction)
& this has been allowed to continue so long
from 1840 or 24 years. I think the Defendant
cannot be ousted the party by a Civil suit.

Signed J.W. McMurray
Sheristadar

21st February 1865.

Mr Conway

Mr Lane

In

In the Civil Court of Vizagapatam
Thursday the third day of September
One thousand eight hundred and sixty
eight-

Present
S. G. Thompson Esqre
Civil Judge

Appeal suit No. 35 of 1868.

Buddi Yellayya and 4 others } Appellants
(Defendants 2 to 5)

versus

Gotamukkala Appalaraz Inamdar. } Respondent
(Plaintiff)

Appeal against the Decree of the District Munsiff of Rajava-ram in Original suit No 352 of 1865

Grounds of Appeal

1 Because the suit is barred by the Statute of limitations

2 Because the decision is opposed to the Rules for guiding purposes-

3 Because the Plaintiff has not proved his case-

4 Because the Defendants have fully proved their plea and

this appeal coming on to be heard and debated in the presence of Mr S. G. Lee and B. S. Sub-barayudu Vakils for the Appellants (Defendants 2 to 5) and V. Layanna Sastry Vakil for the Respondent (Plaintiff) and the oral and documentary evidence relied upon before this Court by the Vakils for both parties respectively having been heard and due consideration having been given to what was alleged by the Vakils for the parties, this Court doth order and decree that the decree of the Court of First Instance be modified by the Plaintiff's suit

suit being dismissed in toto. And it is also ordered that the Respondent Plaintiff do bear all costs both original and in Appeal

Costs incurred by the Appellant (Defendant) to the value of the Appeal

Stamps ——— Rs. 72-4

Do. of two Vakalat nama Stamps ——— 1-2-

Process Batta ——— 2---

Vakils fees and the appeal amount Rs. = } 35-10-3

fees 713-1-6

Total — 110-10-3

Costs incurred by the Respondent Plaintiff

Vakalatnama Stamp Rs.—-8—

Vakils fees ——— 35-10-3

Total — 36-2-3

(Signed) Jg. Thompson

Civil Judge

No adjustment of this decree in part or in whole will be recognized by the Court unless such adjustment be made through the Court, or be certified to the Court by the person in whose favor the decree has been made or to whom it has been transferred.

No process of execution will be issued to enforce the above decree unless some

proceedings

proceedings shall have been taken to keep the same in force within three years next preceding the application for such execution

The application for special appeal accompanied by copies of the several decrees previously passed in the case must be presented to the High Court of Judicature within the appeal time or the application will be rejected

(Signed) J. G. Thompson
Civil Judge

In the Civil Court of Vizagapatam Thursday the third day of September One thousand Eight hundred and sixty Eight.

Present

J. G. Thompson Esquire

Civil Judge.

Appeal Suit No. 55 of 1868

Appellants (Defendants 2 to 6) Respondent

Plaintiff

2. Baddi Yellayya
do Parasharamudu
4 do Appayya
5 do Kannayya
6 do Gosamah

Gottimukkala Apparao Inamdar

The Plaintiff sued defendants 1 to 8 before the District Munsiff of Narsapuram in O.S. No. 352/865, for a piece of Revenue paying dryland, called Yedallamma garuva yielding one candy and one Kist of Rs 10 - - - -
For mesne profits for past years " 20 - - -
For removal of houses built thereon valued at " 100 - - -
" Value of Tamarind trees felled by defendant 2 to 8 " 100 - - -
For 2 Jack fruit plants thereon valued at " 20 - - -
" 200 palmyra trees thereon do " 20 - - -
" 100 Tamarind trees thereon do " 25 - - -
" 40 Drumstick plants do " 1 - 4 -
Total Rs 296 - 4 - -

and for subsequent mesne profits together with interest

interest as the Plaintiff has himself been paying to Government the annual revenue due on the land viz Rs 10.

He alleges that the land sued for has been leased out to his late father Gotimukkala Dyagannadha Radzu for the last 20 years, that the 1st defendant has been cultivating it from Faslie 1268 to 1270 with his father's permission; that as there was no accomodation for cattle in the houses of (defendants 2 to 6) situated in the garden, the 1st defendant gave them (defendants 2 to 6) who are his Kinsmen (Gnyatlu) a portion of the land situated on the southern side and that they and defendants 7 and 8 on their advice built sheds thereon for cattle that they thereupon built houses and lived therein that his late father ejected the 1st defendant from the land in Faslie 1271 and brought it under cultivation himself and had been calling on defendants 2 to 8 to vacate it before he died 4 years ago, that the defendants prevented plaintiff from taking possession of it in Ruddrodgiri and complained before the Principal 1863-64 Assistant Collector requesting that the lease of the land might be granted to them, and that after investigation the authority decided on the 4th December 1864 that the Plaintiff cannot be ousted from it and that the Collector on appeal referred plaintiff

plaintiff to a civil suit on the ground the defendants were in possession of it in the preceding year.

Defendants 2 to 6 in their written statement presented on the 6th November 1865 pleaded that the houses referred to in the plaint were valued at Rs 3000, and the trees at Rs 600; that the plaint is contrary to Sec: 7 of the Civil Procedure Code; that it is established by an official document; that the houses sued for were built as per an order of the Collector dated 1st June 1840, and that the suit is barred by the Statute of Limitations.

They allege that as the village called Agraharam had become desolate (a village called Agraharam was erected) on the land called Yeddulamma a garuvu as per order of the Collector for the use of the Ryots required to cultivate the lands lying waste in that village; that with the exception of defendant 1, all the remaining defendants and the mirasidar &c have been living in it for the last 25 years that they set up a Deity called Yeddulamma dug 5 wells and improved the village by planting several trees.

They further state that ever since the village was erected thereon, the remaining portion only has been an open piece of ground which was left for public purposes and

for

for which the sist was remitted for some years that afterwards as the Government officers assessed that very piece of land, they cultivated a portion of it and paid the sist to Government in full, but that the Plaintiff had never the enjoyment of it.

They also state that as the plaintiffs late father fell out with the ryots 4 or 5 years ago and took the lease of the land then under cultivation they applied to the Revenue authorities to have the said lease cancelled, and the plaintiff and his late father applied to have them ejected, for which there being no sufficient reason, the Plaintiffs cowle was not enforced, that the 1st defendant never cultivated the land but has been the instigator of the suit and that they had been occasionally cutting trees, and planting new ones, but that ever since there have been dissentions between the plaintiff and themselves they ceased to cut any.

The District Munsiff of Royavaram decreed that the land sued for should be cleared of the houses on it by the defendants and made over to the plaintiff with the trees on it - He exempted the 1st Defendant from the suit awarded Plaintiff Rs 20 on account of Government revenue due for two years and dismissed the suit for value of banbul trees with proportionate costs.

The defendants 2 to 6 appeal to this Court upon the following grounds:-

1 Because the suit is barred by statute of limitations

2 Because the decision is opposed to the Rules for building purposes.

3 Because the Plaintiff has not proved his case.

4 Because the defendants have fully proved their plea and their possession for a series of years.

Judgment

1 The Plaintiff alleges that the plaint land was by the Collector leased to his late father 20 years ago, that in faslis 68 to 70 (1858 to 60) the 1st defendant cultivated it under the father and that the occupation by the other defendants is based upon the said possession by the 1st defendant. But the plaintiff admits that the lease which his father once had was cancelled; and the first document he has produced is his lease of 1860 - so that he has no documentary evidence (pattah) to show that 1858 he had any thing to do with the land, or that the 1st defendant had

had occasion to look to him for authority to cultivate it.

2. The Munsiff treats at some length of accounts produced by the village accountant, but they are not on the record, and would be of very little value if they were. Plaintiffs witness 4 states that by consent of plaintiffs father the 1st defendant cultivated the land 10 years ago and witnesses 5-6-and 7 depose that it was plaintiffs father who made over the land to him. There seems to be nothing against the credit of these witnesses, and in cross-examination no attempt was made to shake their evidence. But the assertion is easily made; there is no document from the first defendant in support of it; the plaintiff has not examined the 2nd defendant, though the latter has not defended the suit, he has no evidence of title earlier than 1866, and each of his witnesses says he does not know who gave the defendants the building sites I do not feel at liberty to eject the defendants upon was unsupported assertions like these especially as the defendants have evidence upon their side.

3 Their witnesses depose that as a fact the defendants houses were built 14, 16, or 18 years ago; but what they say about the right to possession of the sites is almost exclusively hearsay: and hearsay derived from the defendants themselves. It should not have been placed on the record and yet it is quoted largely in the Munsiffs judgment.

4. The defendants assert that they built under authority granted to them by the Collector, but their exhibit No 1 does not help them to prove that. It is merely an order from the Collector to the tahsildar, directing him to give the land to some ryots.

5 On modification of the Munsiffs decree, the suit is dismissed and the plaintiff will bear all costs both original and in appeal

(signed) J. G. Thompson
Civil Judge

Proceedings of the Asst Collector of Vizagapatam dated Vizagapatam 8 March 1873 in Case No 1 of 1873.

Read appeal petition presented by Baddi Appadu against the

the endorsement of the Principal Assistant Collector dated 15th January 1873 No 19

Read also record in the above case.

In 1840 the then Principal Assistant Collector issued an order to the Amin of Lavasid by granting a piece of land assessed at Rupees 10 to certain Cyots to build their houses on free of assessment for the first 4 Years. In Fusli 1209 (1800 and Gotte Mukkalal Lagganna haraz obtained a pattah for the Lekwa and used to pay the Assessment Rupees 10 - In Fusly 1272 (1863) Lagganna haraz died. His son Appalaraz obtained a pattah for the same. He fell in arrears for Fusli 1281 and

No

his moveable property having been found in his possession the saleable interest in the land was sold by the Tahsildar. Petitioner (B. Appadoy) presented an appeal to the Principal Assistant Collector urging that his and other Cyots' houses etc. have been unlawfully sold for arrears due by Appalaraz and requesting him to cancel the sale.

The Principal Assistant Collector dismissed the appeal

Two Petitioners appeals -

Grounds of Appeal -

1st That Mr. Conway, Principal Assistant in 1840 allotted to them (Cyots) the piece of land free of assessment for house sites on the ground that they would cultivate and improve the adjacent waste lands, that they

they have since improved their land and no assessment had ever been collected from them -

2d. That Appellaray sued them for the land but that both the Civil Court and the High Court dismissed his suit and decreed that the right to the land was vested in the ryots -

The saleable interest of the pattadars in the land was sold in September last. Petitioner applies in January that the sale may be set aside - The Principal Assistant Collector refused to do this. His order now appealed against is a proper one

/sd/ R. I Sewell
Ag Collector.

Vizagapatam
Recd 10/73

/ True copies /
R Daniell
Ag Collector

1873
Regd in Book No 1.
Folios of the
Collector's Cutcherry
dated October 31st 1873

1644.

Regd No 3/3672/73

Office of Collector and
Proceedings suspended upon
the Land registered in
Suit No 2/7/1873.

To

The District Court

Vizagapatam

Plaintiffs

1 Baddi Appadu
2 Do Yellayya
3 Do Appadu
4 Do Narsimhulu

Cultivators of Gedallamma garuvu, situated within the jurisdiction of the Subordinate Magistrate of Yellamanchili

Defendants

1. J R Daniel Esquire Collector of Vizagapatam for the Madras Govt
2. Baddi Ayyannah Cultivator of Gedallamma garuvu situated within the jurisdiction of the Subordinate Magistrate of Yellamanchili

Suit instituted under Sections 15 and 26 of the Code of Civil Procedure

Relief sought for.

Prayer that it may be declared that the 1st Defendant has no right to collect an assessment of Rs 10 on the building site named Gedallamma garuvu and for the recovery from the 2d Defendant of a site valued 100 Rs; Gadallamma garuvu, together with compound walls valued 500 Rs; 3 ring wells valued Rs 150, 400 palmyra trees worth 400 Rupees, 40 Mangoza trees worth 200 Rs, 10 Guava trees valued 100 Rs, and 400 standing Tumma (X) trees valued 800 Rs; and Rs 750 value

value of trees cut down and carried away-
Rs 600 being the value of 300 tumma trees
and Rs 150 of 3 mangoe trees at 50 Rs each

Particulars of Suit.

2. As the village of Agraharam was for
a great length of time a separate village
and included in Rajalu, an application
was made to the then Principal Assistant
Mr Conway by the 1st Plaintiff and the
father of 2d 3d & 4th Plaintiffs, stating that
they would bring the lands of Agraharam
under cultivation, if the above said
Gedullamma garuva be allowed to be
built upon. The Principal Assistant,
granting their request, cancelled the
assessment of Rs 10 which had been
fixed on it, and issued an order on
1st June 1840, to the Amin of the Jana
directing him to make over the land
to the Plaintiffs as applied for by them.
The Plaintiffs having accordingly
obtained possession of Gedullamma
garuva have built a house on it
and brought the lands of the village
of Rajalu under cultivation.

3. While the said Gedullamma garuva
was ever since in the enjoyment of the
Plaintiffs, being enclosed by compound
walls, they were dispossessed of it in
March 1873

4. While such was the case one
Gottimukala Appalaraz, on account
of ill will towards the Plaintiffs, and
with a view to usurp the enclosed
place together with the trees therein,
obtained a puttu by fraudulent means
and brought a Suit No 352 of 1865 against
the Plaintiffs in the District Munsiffs
Court of Rajamundry. It was decided
in his favor by that Court. On appeal
being made in No 35 of 1865, the decision
of the lower Court was reversed by
your Court. A special Appeal No 39
of 1869 was then made to the High Court,
who confirmed the decision of your
Court.

5. He concealing the existence of the
decrees in question, charged an assessment
of Rs 20 for Gedullamma garuva for
Fushes 1281 & 82 as if it was in his posession.

For

For that amount he caused the said land and other property to be attached and sold on 2d September 1872 under orders of the Tahsildar of Surnavaddy. The 2d defendant purchased it for Rs 20 and obtained possession there of.

6. These circumstances having come to the knowledge of the Plaintiffs, they duly presented petitions to the Tahsildar, the Principal Assistant Collector, and the Collector, requesting cancelment of Assessment on Yedullamma garuvu. The Principal Assistant Collector endorsed the petition on 15 January 1873, referring the Plaintiffs to the Civil Court. Hence the cause of action.

We therefore pray that the Court may decide the suit in our favor, awarding Subsequent costs.

5th June 1873

(Sd) D Jagannadha Subbadoo
Pleader.

We the Plaintiffs in the above suit do declare that what is contained in the plaint is true to the best of our knowledge and belief.

Mark of Appadu
" — Yellayya
" — Appadu
" — Narsimhulu

Boundaries of Yedullammagaruvu

1 On the East. Kolakonda
2 On the South. Ponnadu Virajugaruvu
3 On the west. Back water
4 On the North. the Outskirts of Kalapalli village

(Signed) D Jagannadha Subbadoo
Pleader

(Original)
Monnel
Ag. Collector

1873
Dec 5th
Secretariat

Ans a letter from the Collector of Vizagapatam dated 27th September 1873 No 1641

Ans Resolution dated 23rd December 1873 No 1976

Ans Proceedings of Board of Revenue dated 13th November 1873

Ans Proceedings of Board of Revenue dated 23rd September 1873 No 1976

Ans Section 327 Civil Procedure Code

Ans Section 15 and 20 Act VIII of 1859 Civil Procedure Code

M. Arnold Reserve Ledger

1-a

Revenue Department

Proceedings of the Board of Revenue

Dated 13th November 1873.

Read again Board's Proceedings dated 23rd September 1873 No 1976.

Read also letter from the Collector of Vizagapatam, dated 30th October 1873 No 1641 submitting for orders details of Suit No 27 of 1873 on the file of the District Court at Vizagapatam.

Submitted for the orders of Government.

The facts of the case are stated in the following extract from Board's Proceedings dated 23rd September 1873.

"The land in dispute was in 1840 "assigned free of assessment for four "years

"years as Village site on condition that
"the applicants should bring certain waste
"land under cultivation. It was held
"free of assessment until 1855, when it
"was by order of the Principal Assistant
"Collector fully assessed, whether on the
"ground that the conditions of the grant
"had not been complied with or because
"Government directed that assessed
"land should not be granted free
"of assessment without their sanction
"the Collector is unable to say. Half
"of the land was granted on Putta
"in 1833 to one Jagunad Raz and the
"other half in 1854 to the same per-
"-son. × × × × × × × On Jagunad Raz's
"death the puttah was transferred
"to

"to his son Appal Raz. In 1864, plaintiffs
"the occupants of the land, complained
"that Appal Raz was asserting his
"claim to their land under a puttah,
"which he had fraudulently obtained.
"The Principal Assistant Collector dis-
"-missed the complaint on the ground
"that complainants were tenants-
"at will under the puttadar. This order
"was reversed (21st February 1865) by the Col-
"-lector who upheld the possession of
"plaintiffs and referred the puttadar to
"a Civil action. He accordingly
"brought a suit in the Munsiffs'
"Court and obtained a decree, which
"on appeal was reversed by the Civil
"Judge whose decision was confirmed on
"by

"by the High Court. After this the
"Puttadar Appaji Raz having neg-
-lected to pay the assessment the land
"was attached for arrears (Rupees 10-8-0)
"and was sold to second defendant for
"Rupees 20 on the 9th September 1872. One
"of the ryots concerned petitioned the
"Principal Assistant Collector, requesting
"that the sale might be cancelled. This
"he declined to do and his order was
"confirmed by the Collector on the 8th
"March 1873."

Plaintiffs instituted the suit on the 5th June 1873 to have the sale cancelled and to establish their right to hold the land free of assessment.

From the Collector's second letter it

it appears that the land in dispute was never used for village site but for cultivation. In these circumstances the Board are of opinion that the charge of assessment was right but that the assignment of the land to Jagannad Raz was wrong.

Plaintiffs might have pre-
-vented the sale of the land by payment of the arrears under Section 35 Act II of 1864, but they neg-
-lected to do so.

The Collector hopes to effect a compromise between the Plaintiffs and the purchaser who is now in possession of the land. In case he should not succeed the Board recom-
-mend

-pound that the defence of the Suit
be sanctioned. It is clear that Plaintiffs'
claim to hold the land free of assess.
-ment is inadmissible, and there is
no doubt that the sale of the land
under Act II of 1864 is legal. If
Plaintiffs have suffered thereby, it
is their own fault.

(True Extract)

J. Gole
Secretary

To
The Ag. Secretary to Government
Revenue Department
with Copy of Collector's letter with
its original Enclosure to be returned
and Board's Proceedings dated
23rd September 1873
No. 1916.

Copy Standen

pure

Revenue Department.

No. 1268

PROCEEDINGS of the MADRAS GOVERNMENT.

Under date the 19th November 1873.

Read the following Proceedings of the Board of Revenue.

Submitting for orders. Suit No. 27 of 1873 on file of District Court at Vizagapatam regarding cancelment of sale of certain land for arrears of revenue.

(M.E. 13th November 1873 No.)

The defence of the suit is sanctioned.

Note. Briefly the case seems to be:—

Plaintiffs in 1840 obtained possession of the land in dispute as village site free of assessment for four years on condition of bringing certain waste land under cultivation. They appear to

Rev: 1613: Dept
No. 36) 2

Proceedings of the Board of Revenue

Dated 13th November 1873
Received 14th
Read 3—

No. 1268—19 Nov: 73
Subject

Suit—No. 27 of 1873—on file of District Court at Vizagapatam regarding cancelment of sale of certain land for arrears of Revenue—Particulars submitted for orders of Government.

C16-Law/73 1613

to have retained possession until lately, although between 1855 and 1857 the whole of the land was granted on assessment to one Jagomad Raz, after whose death the Putta was transferred to his son Appal Raz, who endeavoured to obtain possession of the land on the strength of the Putta, but failed the final order in the case being passed by the High Court. Thus defeated, he naturally ceased to pay the assessment and as the occupants (plaintiffs) took no steps to do so, the land was sold under Act II of 1864 and the auction purchaser put in possession. Plaintiffs sue to establish their right to hold the land free of assessment, a plea obviously inadmissible as the land is used for cultivation. If the plaintiffs have suffered, they have themselves to blame for not tendering

tendering the arrears of revenue before the sale took place. The Collr is trying to get a compromise.

Clk Chan 1731 #15.