1157/6

M.R.O. 1—20,002—12-8-65.

(1) Number of Pages 12.

(2) Date of repair 6-1-67.

(3) Initials of the Referencer

MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue. DEPARTMENT

G.O. No. / B.P. No.	1157	Press / Mis.

Dated 10-9-1874. 196

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
10th September 1874.

No. 108. Read the following Proceedings of the Board of Revenue, dated 3rd September 1874, No. 2,495 :—

Read the following letter from W. S. FOSTER, Esq., Acting Collector of the Godavery District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Cocanada, 22nd August 1874, No. 306 :—

WITH reference to paragraph 3 of the Board's Proceedings of the 27th July 1874, No. 1,97[illegible] I have the honor to forward, herewith, for approval, the draft of the answer to be filed in Suit No. 12 of 1874, on the file of the District Court at Rajahmundry, preferred by Mannyam China Kanakayya, Proprietor of Gutala, for the recovery of the Villages of Sivagiry and Chiduru, in the Yernagudem Taluq.

2. The plaintiff claims the two villages as part of the Gutala Estate which he holds on permanent settlement. The villages are not separately assessed in the Collector's Registers, and do not form any definite portion of the Estate ; and as such, should be valued under (d) clause V., Section 7 of the Court Fees Act, according to the market value of the land. The plaint calculates the value under (a) of the same clause at ten times the revenue payable to Government. But I do not think that objection should be taken to the value of the suit, as the market value cannot materially differ from the amount calculated on in the plaint.

3. The plaint claims the recovery of the peishcush of Rupees 904 from Faslies 1268 to 1283, on account of the villages. I cannot see how this can be claimed. Allowing that the two villages were part of the Gutala Estate, and that they therefore paid a proportionate amount of peishcush, which plaintiff calculates at 56½ a year, because the whole peishcush of the Estate had been paid by plaintiff to Government, the plaintiff could not avoid paying the peishcush. There can be no pretension of claim therefore to the recovery of the peishcush, especially as he claims all the past proceeds of the villages during those years.

4. The amount of mesne profits claimed is correct with certain exceptions. The collections of Faslies 1269 and 1270 of Sivagiry were Rupees 50 and 60, but the plaint says Rupees 40 and 64. The collections of Faslies 1269 and 1270 of Chiduru were Rupees 50 and 60, not 40 and 64 as entered in the plaint.

5. The difference spoken of in paragraph 5 of my letter of the 10th July 1874, No. 226, in the particulars of the amounts claimed in the plaint and the total is the value of the two villages sued for, so that there is no objection to be taken to the amount claimed on that account.

6. Plaintiff claims the mesne profits for sixteen years. Under paragraph 109, Schedule II., Act IX. of 1871 (The Indian Limitation Act), the profits of only three years can be claimed.

7. Under paragraph 145 of the Schedule quoted, claims to immoveable property not otherwise provided for have twelve years time from the time when the possession became adverse to plaintiff. The two villages claimed were taken by Government, under their possession, sixteen years ago, *i. e.*, in 1858. The plaintiff contends that he petitioned the local officers in 1858 to give back the villages, but that as his claim was finally rejected in 1873, the possession of the Government became adverse then. The fallacy of this reasoning would be clear under the following circumstances. Suppose the Government never gave the plaintiff an answer to his petitions, would the plaintiff have been prohibited from suing the Government because their reply was not obtained ? Suppose the plaintiff had sued Government as soon as they had taken the villages in 1858 without asking the Government by petition, would the suit have been barred ! The answer to these questions should certainly be in the negative, as the injury to the plaintiff's rights occurred in 1858, not in 1873. If then the plaintiff could have sued the Government in 1858 if he had chosen, would the cause of action have arisen in 1873 because he had not chosen to bring the suit earlier ? I am therefore of opinion that the suit is barred, and I propose in consequence to put in an alternative pleading.

8. The suit has been adjourned to the 23rd November 1874.

ENCLOSURE No. [illegible]—Draft answer.

Proceedings of the Madras Government, Revenue Department,
10th September 1874.

SUBMITTED for the approval of Government with reference to their Order, dated 1st August 1874, No. 961.

No. 109. ORDER THEREON, 10th September 1874, No. 1,157.

Miscellaneous

THE Board of Revenue will send the draft answer, with the papers, to the Government Pleader for any revision that may be necessary, and then transmit it to the Collector, to be filed in the Court.

(True Extract.)

(Signed) C. G. MASTER.
Acting Secretary to Government.

To the Board of Revenue.
„ the Government Pleader.

Exd. G. A. Turton.

Revenue Department.

3/1157

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 3rd September 1874.

M. 2495.

Read the following

No. 306

From

W. L. Foster Esquire

Acting Collector

To

J. Grose Esquire

Secretary to the Board of Revenue

Madras.

Sir,

With reference to para 3 of the Board's Proceedings of the 27 July 1874, No. 1974, I have the honor to forward herewith, for approval, the draft of the answer to be filed in Suit No 12 of 1874 on the file of the District Court at Rajahmundry preferred by Mamyam China Kanakayya, Proprietor of Gutala for the recovery of the Villages of Sivagery and Chiduru in the Gennāpudem

Taluq

Govt. of {1874} Madras.

REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated September 10th.

Read.

Encl.

G.O., 10th September 1874, No. 1,157.

SEPTEMBER.

Nos. 108-109.

Suit No. 12 *of* 1874, *on the file of the Rajahmundry District Court.*—Directing Revenue Board to forward the draft answer to the Plaint in — for the recovery of Sivagiry and Chiduru villages, in Godavery District, to the Government Pleader for any revision that may be necessary, and then transmit it to the Collector to be filed in the Court.

Salug.

2. The Plaintiff claims the two Villages as part of the Gutala Estate which he holds on perpetual settlement. The villages are not separately assessed in the Collectors Registers, and do not form any definite portion of the Estate; and as such should be valued under (d) Clause I Section 7 of the Court Fees Act according to the market value of the land. The Plaint calculates the value under (a) of the same clause at 10 times the revenue payable to Government. But I do not think that objection should be taken to the value of the suit, as the market value cannot materially differ from the amount calculated on in the Plaint.

3. The Plaint claims the recovery of the Peishcush of Rupees 904 from fasles 1268 to 1283, on account of the villages. I cannot see how this can be claimed. Allowing that the two villages were part of the Gutala Estate and that they therefore paid a proportionate amount of peishcush, which Plaintiff calculates at 56½ a year, because the whole peishcush of the Estate had been paid by Plaintiff to Government, the Plaintiff could not

not avoid paying the peishcush.

There can be no pretension or claim therefore to the recovery of the peishcush, especially as he claims all the past proceeds of the Villages during three years.

4. The amount of mesne profits claimed is correct with certain exceptions. The collections of Fasles 1269 and 70 of Sivagiri were Rs 50 and 60, but the plaint says Rupees 40 and 64. The collections of Fasles 1269 and 70 of Chidurur were Rupees 50 and 60 not 40 and 64 as entered in the plaint.

5. The differences spoken of in para 5 of my letter of the 10th July 1874, No 226, in the particulars of the amounts claimed in the Plaint and the total is the value of the 2 villages sued for, so that there is no objection to be taken to the account claimed on that account.

6. Plaintiff claims the mesne profits for 16 years. Under para 129, Schedule II Act IX of 1871 (The Indian Limitation Act), the profits of only 3 years can be claimed.

7. Under para 145 of the Schedule proceeded claims to immoveable property not otherwise provided for have 12 years time from the time when the possession became adverse to Plaintiff. The 2 villages claimed were taken by Government under their possession 16 years ago, i.e. in 1858. The Plaintiff contends that he petitioned the local officers in 1858 to give back the villages, but that as his claim was finally rejected in 1873,

the possession of Government because adverse them. The fallacy of this reasoning would be clear under the following circumstances. Suppose the Government never gave the Plaintiff an answer to his petitions, would the Plaintiff have been prohibited from suing the Government because their reply was not obtained. Suppose the Plaintiff had sued Government as soon as they had taken the villages in 1858 without asking the Government by petitions, would the suit have been barred. The answer to these questions ~~should~~ certainly be in the negative as the injury to the Plaintiff's rights occurred in 1858, not in 1873. If then the Plaintiff could have sued the

the Government in 1858 if he had chosen, would the cause of action have arisen in 1873 because he had not chosen to bring the suit earlier. I am therefore of opinion that the suit is barred and I propose in consequence to put in an alternative pleading.

8. The suit has been adjourned to the 23rd November 1874.

Godavary District
Collectors' Office
Cocanada
22nd August 1874

I have &c
(Signed) W. S. Foster
Ag. Collector.

Submitted for the approval of Government with reference to their Orders dated 18th August 1874 No 961.

(True copy & Extract)

J. Grose
Secretary

To
The Secretary to Government
Revenue Department
with Draft Answer

Govt Pleader Aug.ta 6/74 No 2

Regd 3rd Sept. 1874 Department.
Proceedings of the Board of Revenue

Dated 3rd
Despd 3rd
Rect 4th
} September 1874

No 1157.

The Bd of Rev. will send the draft answer, with the papers, to the Govt Pleader for revision and then transmit it to the Collector to be filed in the Court.

10 Sept. 74.

To Govt Pleader & Pr in Jr S Copy with the Enclo 14-9-74 PC Dis-18/9

Govt Pleader — Dis-18-9-74

Subject

Suit — No 12 of 1874, in file of Rajamundry District Court, for recovery of Sirazir and Chiduru Villages in Godavary District — Letter of Collector forwarding draft answer proposed to be filed in — Court for approval of Government with reference to their order dt 27th Dec 1861

With Order

Dis 14/9/74 Sr.

108-109

C to Sept 74 Rect