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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Rev. DEPARTMENT

G.O. No.	70	Press
B.P. No.		Mis.
Dated	16-1-1874	196 .

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
16th January 1874.*

a particular method of procedure is legal. Moreover, the universal rule is that the creditor, if payment be disputed, shall be at the expense and risk of pursuing his debtor; and although the purpose of Act VIII. of 1865 is in a certain degree to relieve landlords of this obligation, I do not think that the principle of the Act is to be carried so far as to throw upon tenants all the expense of a regular suit for the purpose of proving their non-liability to the Summary process prescribed by the Act.

3. The defendant's first objection to the entertainment of plaintiff's petition I, therefore,

4. As to defendant's second objection it seems to me that the circumstances of the present case are on all fours with referred Case No. 23 of 1871, in which the High Court ruled that registration of the lease was necessary. As to defendant's statement that plaintiffs are not now in a position to insist upon any advantage they may be able to draw from the non-registration of the lease, because they have already acted upon and profited by it, the considerations involved might possibly be entertained by a Court of equitable jurisdiction, but it is not within my province to discuss them.

5. Defendant's second objection I, therefore, hold to be invalid. Hence defendants are not entitled to distrain plaintiff's property, and this being the real point in issue, it is unnecessary to inquire into the merits of the case at large.

6. Plaintiff's property must be released, and defendant will pay Rupees 5 (five) as costs.

(Signed) J. C. HUGHESDON,
Acting Sub-Collector.

THE Board concur with the Collector and Mr. Hughesdon.

No. 134. Proceedings of the Board of Revenue, dated 24th November 1873,
No. 2,407.

Read the following letter from R. W. BARLOW, Esq., Acting Collector of the Chingleput District, to J. GROSS, Esq., Secretary to the Board of Revenue, dated Saidapet, 22nd October 1873, No. 491:—

I HAVE the honour to forward, for the information of the Board, copies of the correspondence noted in the margin between myself and the District Judge To District Judge, 8th October 1873, No. 1,304.
From " 10th " " " 561.
regarding the Stamp duty on summary suits, filed under Section 18 of Madras Act VIII. of 1865, in case the Board deem it advisable to consult the Advocate-General.

ENCLOSURE No. 1.

From R. W. BARLOW, Esq., Acting Collector of the Chingleput District, to E. B. FOORD, Esq., District Judge of Chingleput, dated Saidapet, 8th October 1873, No. 1,304:

With reference to paragraph 5 of your Judgment, in Appeal Suit No. 5 of 1873, dated 19th September 1873, I have the honour to observe, that the late Assistant Collector, Mr. Boyle, admitted an 8 Anna stamped plaint, with reference to the instructions of the Board of Revenue, conveyed in their Proceedings, dated 18th October 1871, No. 4,422.

(True Copy.) (Signed) R. W. BARLOW,
Acting Collector.

*Proceedings of the Madras Government, Revenue Department,
16th January 1874.*

ENCLOSURE No. 2.

From E. B. FOORD, Esq., District Judge of Chingleput, to R. W. BARLOW, Esq., Acting Collector of the Chingleput District, dated 10th October 1873, No. 561.

With reference to your letter, dated 8th instant, No. 1,304, I have the honour to point out that, as no authority has been conferred by the Legislature on the Board of Revenue, to decide questions relating to valuation for the purpose of determining the amount of any fee chargeable on a plaint admitted by the Assistant Collector, I am unable to do so.

2. Under paragraph 2 of Section 12 of the Court Fees Act, 1870, it is the duty of the Appellate Court to decide whether the valuation is, in its opinion, right, and in that view, I pointed out in my judgment by which the suit in question was remanded, that the plaint was insufficiently stamped.

(True Copy.)

(Signed) R. W. BARLOW,
Acting Collector.

THE Board resolve to forward to Government copy of their Proceedings, dated 18th October 1871, No. 4,422, and request that the opinion of the Advocate-General may be obtained as to the proper fee in summary suits under Section 18, Act VIII. of 1865, (Madras).

No. 135. ORDER THEREON, 16th January 1874, No. 70.

Stamp	Revenue No. 7
Stamps.	

COPY of these papers will be referred to the Advocate-General, for his opinion on the point raised.

(True Extract.)

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

To the Board of Revenue.
.. the Advocate-General through the Government Solicitor.

Exd. G. A. Turton.

Stamp duty in Summary suits.—Referring for opinion of the Advocate-General, question raised by Board as to proper amount of — under Section 18 of Rent Recovery Act VIII. of 1865. (Madras).

JANUARY.
Nos. 133—135

G. O., 16th January 1874, No. 70.

Recd.
Dated January 16th.

Encl.

THE BOARD OF REVENUE.

REVENUE.

6061. OF 1874

Fuller (M190/74).

Read the following:—

No. 4,422.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 18th October 1871.

Read the following letter from J. C. HUGHESDON, Esq., Acting Sub-Collector, to the Collector of Nellore, dated Ongole, 4th September 1871, No. 404:—

I HAVE the honour to inform you, that it is my practice to entertain on an eight Anna Stamp "appeals against distraints" under Section 18, Act VIII. of 1865. In a recent case, the opposite party (representing the interests of the Rajah of Venkatagerry) pleaded that the Stamp admitted was insufficient, and that the duty should be levied in accordance with the provisions of Act VII. of 1870, in respect of regular suits. This objection I over-ruled. The point nevertheless is a doubtful one, and the practice of other Revenue Officers may be different. Should this be so, perhaps you may think it expedient to take steps to insure uniformity. The view that I take is in the interests of the ryot, and I hope it will be supported. The contrary view places the tenant at such disadvantage, when disputing the land-lord's claim, that I do not think it should be accepted in the absence of an authoritative ruling affirming it.

2. I enclose copy of my Proceedings in Summary Suit No. 7 of 1871, in which I have discussed the question.

No. 1,825.

SUBMITTED to the Board of Revenue for their consideration and orders, with copy of Mr. Hughesdon's Proceedings.

2. I am inclined to think that Mr. Hughesdon's views are correct.

NELLORE,
1st September 1871.

(Signed) G. VANSAGNEW,
Collector.

ENCLOSURE No. 1.

Proceedings of the Acting Sub-Collector of Nellore, dated 4th September 1871.

DEFENDANT'S answer contains the following objections in limine:—

1st.—That the plaint does not bear stamps of the proper value.

2nd.—That, as regards the allegation that the lease granted to the plaintiffs should have been registered, the plaintiffs having accepted and taken advantage of the lease, cannot now plead any irregularity in its execution.

2. As to defendant's first objection, I consider that a stamp of half a Rupee is sufficient. The present proceedings do not constitute a regular Suit for the determination of a substantive right; the only question involved is whether or not defendant is entitled to proceed in a summary and exceptional manner to recover the amount of his claim. I consider that the statement of their case by the plaintiffs is not a plaint in the ordinary sense of the term, but "an application or petition to a Revenue Court;" and, as such, liable to Stamp duty, under Article I., Schedule II., Act VII. of 1870. The "Suit," though so termed in Act VIII. of 1865, under which it is instituted, is also therein styled "Summary;" its object is to determine, as I said before, no Civil right, but whether a particular method of procedure is legal. Moreover, the universal rule is that the creditor, if payment be disputed, shall be at the expense and risk of pursuing his debtor; and although the purpose of Act VIII. of 1865 is in a certain degree to relieve land-lords of this obligation, I do not think that the principle of the Act is to be carried so far as to throw upon tenants all the expense of a regular suit for the purpose of proving their non-liability to the Summary process prescribed by the Act.

3. The defendant's first objection to the entertainment of plaintiff's petition, I, therefore, over-rule.

4. As to defendant's second objection it seems to me that the circumstances of the present case are on all fours with referred Case No. 23 of 1871, in which the High Court ruled that registration of the lease was necessary. As to defendant's statement that plaintiffs are not now in a position to insist upon any advantage they may be able to draw from the non-registration of

the lease, because they have already acted upon and profited by it, the considerations involved might possibly be entertained by a Court of equitable jurisdiction, but it is not within my province to discuss them.

5. Defendant's second objection I, therefore, hold to be invalid. Hence defendants are not entitled to distrain plaintiff's property, and this being the real point in issue, it is unnecessary to inquire into the merits of the case at large.

6. Plaintiff's property must be released, and defendant will pay Rupees 5 (five) as costs.

(Signed) J. C. HUGHESDON,
Acting Sub-Collector.

THE Board concur with the Collector and Mr. Hughesdon.

(True Copies and Extract.)

(Signed) J. B. PENNINGTON,
Acting Secretary.

(True Copy)

(Signed) J. T. MAYNE,
First Assistant.

To the Collector of Nellore.

Copy to all other Collectors.

„ to the Superintendent of Stamps.

Exd. G. A. Turton.

Stamp on appeals against distresses—
under Section 18 of Rent Recovery Act VIII of
1865.—Concurrence expressed with Collector
and Acting Sub-Collector of Nellore, that such
appeals should be entertained on an eight Anna
Stamp.

OCTOBER.
No. 4,422.

Received
P.S. 27/16/97/173
Encd.

PROCEEDINGS, 18TH OCTOBER 1871, No. 4,422.

1871.
Board of Revenue,
MADRAS.

No. 2,407.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 24th November 1873.

Read the following letter from R. W. BARLOW, Esq., Acting Collector of the Chingleput District, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Saidapet, 22nd October 1873, No. 491:—

I HAVE the honour to forward, for the information of the Board, copies of the correspondence noted in the margin between myself and the District Judge To District Judge, 8th October 1873, No. 1,304. From „ 10th „ „ „ 561. regarding the Stamp duty on summary suits, filed under Section 18 of Madras Act VIII. of 1865, in case the Board deem it advisable to consult the Advocate-General.

ENCLOSURE No. 1.

From R. W. BARLOW, Esq., Acting Collector of the Chingleput District, to E. B. FOORD, Esq., District Judge of Chingleput, dated Saidapet, 8th October 1873, No. 1,304.

With reference to paragraph 5 of your Judgment, in Appeal Suit No. 5 of 1873, dated 19th September 1873, I have the honour to observe, that the late Assistant Collector, Mr. Boyle, admitted an 8 Anna stamped plaint, with reference to the instructions of the Board of Revenue, conveyed in their Proceedings, dated 18th October 1871, No. 4,422.

(True Copy.)

(Signed) R. W. BARLOW,
Acting Collector.

ENCLOSURE No. 2.

From E. B. FOORD, Esq., District Judge of Chingleput, to R. W. BARLOW, Esq., Acting Collector of the Chingleput District, dated 10th October 1873, No. 561.

With reference to your letter, dated 8th instant, No. 1,304, I have the honour to point out that, as no authority has been conferred by the Legislature on the Board of Revenue, to decide questions relating to valuation for the purpose of determining the amount of any fee chargeable on a plaint, their Proceedings quoted by you in support of the valuation admitted by the Assistant Collector, are *ultra vires* of the Board.

2. Under paragraph 2 of Section 12 of the Court Fees Act, 1870, it is the duty of the Appellate Court to decide whether the valuation is, in its opinion, right, and in that view, I pointed out in my judgment by which the suit in question was remanded, that the plaint was insufficiently stamped.

(True Copy.)

(Signed) R. W. BARLOW,
Acting Collector.

THE Board resolve to forward to Government copy of their Proceedings, dated 18th October 1871, No. 4,422, and request that the opinion of the Advocate-General may be obtained as to the proper fee in summary suits under Section 18, Act VIII. of 1865, (Madras).

(True Copies and Extract.)

Acting Sub-Secretary.

To the Secretary to Government, Revenue Department,
with Board's Proceedings, dated 18th October 1871, No. 4,422.

Copy to the Acting Collector of the Chingleput District.

Exd. G. A. Turton.

1873.

BOARD of REVENUE
MADRAS

PROCEEDINGS, 24TH NOVEMBER 1873, No. 2,407.

Decy 25 01 1073.

Encl. 1

Received

29. Nov 1873

NOVEMBER.

No. 2,407.

Stamp duty in Summary suits—under Section 18 of Rent Recovery Act VIII. of 1865 (Madras).—Government requested to obtain opinion of Advocate-General as to proper amount of—
18th October 1873. No. 4,422, on this subject, forwarded.

*Copy of same 13/11/73 will be referred to the Adv. Genl. for his opinion on the point raised.
11. Jan 1874 by 20712.*

14. 11. 73 Adv.

3 advs. & 1. Adv. (Adv. Whistler) } Adv. 17/11/73