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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. 1471
B.P. No.

Press
Mis.

Dated 8-10-1875 1968

[Handwritten signature]

Not to be folded or roughly handled

No. 51. Read the following Proceedings of the Board of Revenue, dated 18th September 1875, No. 2,622:—

Read the following letter from J. KELLALL, Esq., Acting Collector of the Godavery District, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Cocanada, 28th August 1875, No. 352.

I HAVE the honor to forward herewith copy of a petition presented to the District Court at Rajahmundry by Gummedithala Venkatanarsimharow and others, representatives of the late Uppu Lakshmiboyamma, plaintiff in Original Suit No. 2 of 1863 on the file of the Civil Court of Rajahmundry, asking for a review of the Civil Court's decision, dated the 12th day of September 1864, by which the suit was dismissed.

2. The suit was preferred by Uppu Lakshmiboyamma to prevent the imposition of water-tax on her inam land called Turpulanka, which she claimed as wet, and as such entitled to exemption under the water-rate rules then in force.

3. The correspondence noted in the margin will give the further particulars of the suit. The suit was first dismissed by Mr. Innes for want of jurisdiction, but the High Court held he was wrong and remanded the case. Mr. Kindersley, the Judge, dismissed it again because the plaintiff did not prove that she had a legal right to use the water of Konsika without paying for it, and because the lands exempted under the Rule 10 of the water-tax rules are such as have been granted as nunjah inams, and it did not appear that the plaintiff's lands were so granted. The plaintiff appealed to the High Court (*vide* High Court's judgment printed in Board's Proceedings of

Board's Procs.,	22nd Jan. 1863,	No. 433.
Board's Telgm.,	29th " "	594.
Board's Procs.,	4th Feb. " "	686.
"	11th " "	834-A.
"	24th " "	1,106.
"	17th Mar. " "	1,613.
"	4th April " "	1,998.
"	24th " "	2,390.
"	6th May " "	2,718.
"	9th July " "	4,167.
"	8th Aug. " "	4,962.
"	25th " "	5,330.
"	6th Oct. " "	6,343.
"	24th Nov. " "	7,450.
"	3rd Dec. " "	7,611.
"	2nd July 1864, " "	4,091.
"	21st Dec. " "	8,177.
"	11th Jan. 1865, " "	172.
"	14th " " "	223.
"	21st June " " "	3,406.

the 21st June 1865, No. 3,406), and they have dismissed the appeal on almost the same grounds. The Civil Court also observed that neither the original grant nor the register under Regulation XXXI. of 1802 has been put in, and the High Court, in paragraph 4 of their judgment, said that a memorandum said to have been made by Sir H. C. Montgomery to the effect that the plaintiff had an undeniable right to the land was not before them. The plaintiffs having since found copy of the original grant and a receipt granted by a former Collector to the effect that the original was filed in this office for registration under Section 9, Regulation XXXI. of 1802, as also copy of the memorandum prepared by Sir H. C. Montgomery, have now applied for a review of the judgment of the Civil (now District) Court.

4. The application is made under Section 376 of the Civil Procedure Code, which says: "Any person considering himself aggrieved by a decree of a Court of original jurisdiction from which no appeal shall have been preferred to a Superior Court * * * and who from the discovery of new matter or evidence which was not within his knowledge, &c., may be desirous of obtaining a review of

Proceedings of the Madras Government, Revenue Department,
8th October 1875.

judgment passed against him, may apply for a review of judgment by the Court which passed the decree." It is, therefore, clear to me that the application could only be made to the High Court, whose decision is now final. The Original Court could interfere only when "no appeal shall have been preferred," and in the present case it was preferred and disposed of. On this ground I wish to oppose the application and request instructions. The hearing has been fixed for the 1st day of September 1875. The summons issued to me is dated the 31st May, but it was served on the Government Vakeel on the 28th July probably on account of the recess. I have, therefore, applied for two months' extension.

5. I beg to send English translations of the papers* filed by the applicants.

* Nos. 1, 2, and 3.

A copy of the receipt (No. 2) is entered in this office book, and therefore there is no doubt that the receipt is genuine. The original grant (No. 1) is embodied in the receipt. It does not say that the land was granted as nunjah. The original papers are being searched for. Sir H. C. Montgomery's memorandum† is on record, but I cannot think it confers any title on the plaintiff. No. 3‡ has been filed by plaintiff, but it is of no use to either party.

6. I shall shortly send a report on the merits of the case in case the review should be granted.

ENCLOSURE No. 1.—Copy of Petition for review of Judgment.

ENCLOSURES Nos. 2, 3, and 4.—Translations of Papers filed by Applicants.

ENCLOSURE No. 5.—Copy of Sir H. C. Montgomery's Memorandum, dated 24th March 1870.

G.O., 28th Jan. 1863, No. 192.
" 20th Feb. " " 366.
" 21st April " " 695.
" 7th July " " 1,221.
" 2nd Dec. " " 2,188.
Board's Procs., 21st Dec. 1864, No. 8,177.
G.O., 12th Jan. 1865, No. 50.
" 28th June " " 1,465.

SUBMITTED for the orders of Government with reference to the orders noted in the margin.

2. Plaintiff in Original Suit No. 2 of 1863 claimed exemption from water-rate in respect of certain inam land.

The suit was dismissed by the Civil Court on the ground that there was no proof that the land had been granted as nunjah inam. On appeal the High Court in 1865 confirmed this decision. The legal representatives of the plaintiff have now applied to the District Court for a review of judgment on the ground that they have recently found evidence in support of the claim.

3. The Board agree with the Collector in thinking that the application is inadmissible, and that it should be opposed.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

Proceedings of the Madras Government, Revenue Department,
8th October 1875.

No. 52. ORDER THEREON, 8th October 1875, No. 1,471.

Miscellaneous.

THE Government consider that the application for review should be opposed on both the grounds, i.e., (1) that

Section 376 of the Code of Civil Procedure does not permit of a review of judgment by the Court from whose decision an appeal has been preferred and (2) that the documents which the plaintiffs have now discovered do not supply the defect in the original suit.

(True Extract.)

(Signed) L. A. CAMPBELL,
Under Secretary to Government.

To the Board of Revenue.

Exd. J. W. Fischer.

Recd (1875/11/15)

Vide c. N. 453 of 1875

Original Suit No. 2 of 1863 in Civil Court.
District. — Considering that the application by the
representatives of the late Lakshmiyamma
plaintiff in — asking for a review of the Civil
Court's decision, should be opposed on the ground
stated.

OCTOBER.
Nos. 51-52.

G. O. 9th October 1875, No. 1371.

Latest Order, 8th
Recd.

THE BOARD OF REVENUE.

REVENUE.

Govt. of 1875 MADRAS

In the

R.B. 3rd

Revenue Department.

Proceedings of the Board of Revenue

Dated 18 September 1875

Read the following

No 352

From John Kelsall Esquire
Ag Collector

To H. C. Stokes Esquire
Ag Secretary to the Board of Revenue
Madras.

Sir,

I have the honor to forward here-
with copy of a Petition presented to the District
Court at Rajahmundry by Guimmet, thata
Venkata Narsimharow and others, repre-
sentatives of the late Uppu Lakshmiyamma,
ma, Plaintiff in Original Suit No 2 of
1863 on the file of the Civil Court of Rajah-
mundry asking for a review of the Civil
Court's decision dated the 12th day of Septem-
ber 1864, by which the suit was dismissed.

2. The suit was preferred by Uppu Lakshmi-
yamma to prevent the imposition of

of water tax on her Inam land called Turpu-
Lanka, which she claimed as wet and as
such entitled to exemption under the water
rate rules then in force.

3. The correspondences noted in the

margin will give the further
particulars of the suit. The suit
was first dismissed by Mr.
James for want of jurisdiction,
but the High Court held he
was wrong, and remanded the
case. Mr. Hindersley, the Judge
dismissed it again because the
Plaintiff did not prove that
she had a legal right to use
the water of Kousika without
paying for it, and because the lands

Bis Pro:	22 nd January 1863	10438
Bis Telegram	29 th do	594
Bis Pro:	1 st February 1863	1686
"	11 do	8348
"	24 do	1106
"	17 March 1863	1613
"	4 April	1998
"	24 do	2390
"	6 May	2718
"	9 July	4167
"	8 August	4962
"	25 do	5330
"	6 October	6343
"	24 November	7450
"	3 rd December	7611
"	7 th July 1864	4091
"	21 st December	8177
"	11 January 1865	172
"	14 do	223
"	21 st June	3406

exempted

exempted under the Rule of the Water Tax -
rules are such as have been granted as Kunjah
Inams and it did not appear that the
Plaintiff's lands were so granted. The
Plaintiff appealed to the High Court -
(vide H. Court's judgment printed in Board
Proceedings of the 21st June 1865, No. 3406)
and they have dismissed the appeal on
almost the same grounds. The Civil
Court also observed that neither the
Original grant, nor the Register under
Regulation XXXI of 1802 has been put
in, and the High Court in Para 4 of their
judgment said that a Memorandum
said to have been made by Sir, H.
C. Montgomery to the effect that
the Plaintiff had an inalienable right
to the land was not before them. The
Plaintiffs

Plaintiffs having since found copy of
the original grant and a receipt granted
by a former Collector to the effect that the
original was filed in this office for regis-
tration under Section 9 Regulation XXXI
of 1862 as also copy of the Memorandum
prepared by Sir H. B. Montgomery, have
now applied for a review of the judgment
of the Civil (now District) Court.

4. The application is made under
Section 376 of the Civil Procedure Code,
which says "any person considering him-
self aggrieved by a Decree of a Court
of Original jurisdiction from which no
appeal should have been preferred to
a Superior Court, & & and who
from the discovery of new matter or
evidence

evidence which was not within his know-
ledge & may be desirous of obtaining
a review of judgment passed against
may apply for a review of judgment by
Court which passed the Decree". It is
therefore clear to me that the appli-
cation could only be made to the High
Court whose decision is now final.
The original Court could interfere only
when "no appeal shall have been
preferred" and in the present case it
was preferred and disposed of. On this
ground I wish to oppose the appli-
cation, and request instructions. The
hearing has been fixed for the 1st day
of September 1875. The summons issued to
me is dated the 31st May, but it was

served

served on the Government Wakeel on the
28 July probably on account of the recess
I have therefore applied for 2 months
extension.

5. I beg to send English translations Nos 1, 2, & 3.
of the papers filed by the applicants.

A copy of the receipt (No 2) is entered in
this office book, and therefore there is no
doubt that the receipt is genuine. The
original grant (No 1) is embodied in the
receipt. It does not say that the land
was granted as Kunjah. The original
papers are being searched for. Sir
H. C. Montgomery's Memorandum is
on record, but I cannot think it con-
fers any title on the Plaintiff No 3. Decree
has been filed by plaintiff but it is
of

of no use to either party.

6. I shall shortly send a report on
the merits of the case in case the
review should be granted.

I have &c
Goswami District }
Collis Office - Coanada } Signd J. Kelsall
28 August 1875 } By Collector.

Submitted for the orders of Govern-

G.O. 28 January 1863, - No 192.

" 20 February 1863, - 366

" 21st April 1862 - 695

" 7 July 1863 - 1221

" 2nd December 1863 - 2188 = q in.

12th Dec 21st December 1864 - 8177

G.O. 12 January 1865 - 50

" 28 June 1865 - 1465

- merit with reference to

the orders noted in the mar-

Plaintiff in O.S. No 2 of

1863 claimed exemption from

water rate in respect of certain Swam
land. The suit was dismissed by the
Civil Court on the ground that there
was no proof that the land had been
granted as Kunjah Swam. On

appeal

appeal the High Court in 1865, confirmed
this decision. The legal representatives
of the plaintiff have now applied to the
District Court for a review of judgment
on the ground that they have recently
found evidence in support of the claim.

The Board agree with the collector
in thinking that the application is
inadmissible and that it should be
opposed.

(True copy and Extract)

W. Stokes

Acting Secretary

To The Secretary to Government
Revenue Department with
5 original enclosures to be
returned.

Chas. Smith
C. Smith

Revenue Department

No 1471

Proceedings of the Madras Government
Under date the 8th Oct/75

Sub? for orders of Govt.
with certain remarks, letter
from Collector of the Godavery
District forwarding copy of
petition presented by G. Nara-
sinharau & others representa-
tives of the Late Upper Lakshmi
Narasimma Plaintiff in C.S.
No 2 of 1863, asking for a review
of the Civil Courts decision
dated 12th September 1864.

(A. C. 18th Sept. 1875.)

The Government
consider that the applica-
tion for review should
be opposed on both the
grounds i.e. (1) that Sec.
37b of the Code of
Civil

25th Jan/13 No 381- 52
20th Feb/13- 125- 58
21st April - 181- 67
2nd July - 142- 43
12th Nov - 49- 57
12th Jan/15 - 111- 12
14th do - 123- 14
28th June/15- 601- 62

Aut: 1575: 244
No 1289: 3711
Proceedings of the
Board of Revenue

Order 187
Sept 1875
in 50315
submitting for order

Government with certain
remarks letter from G. Nara-
sinharau & others forwarding
copy of petition presented by
G. Narasimma & others
representatives of the Late
Upper Lakshmi Narasimma
Plaintiff in C.S. No 2
of 1863, asking for a review
of the Civil Courts decision
dated 12th September 1864
No 8 & dated 15th Nov 1875

Civil Procedure does
not permit of a review
of judgment by the
Court from whose
decision an appeal
has been preferred and

2) that the documents
which the Plaintiffs
have now discovered

do not supply the
evidence of title the
aspects in the
absence of which
original
as to the suit being
dismissed both by the
trial and appellate
courts.

x - x
I think this is not
quite correct as these
documents do show a
one title though they
fail to show that
the title was to
"Kanyah Namu"
I would say
"that evidence as
to the lands having
been granted as
Kanyah Namu"
and I would omit
the words
"and appellate"

14 L. R. 25/10
The L. R. is quoted as para 13
the District Court's judgment in
Board. Pts: 21/10/1904 No 3348. This judgment shows that
the Government went on the ground
that the title was not granted as Kanyah
Namu but as Kanyah Namu.

90.

Petition presented by the
representatives of Little Abnau
Saksentombogunda, placed
in Oct No 2 of 1863 in
H. asking for a review of the
Court's decision.

As per
as all
for
Circ