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A. V. 2.68

MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENTG.O. No.
B.P. No.

859

Press
Mis.

Dated

2/6/1871 - 196

Not to be folded or roughly handled

No. 6. Read the following Proceedings of the Board of Revenue, dated 22nd May 1875, No. 1,407 :—

Read the following letter from C. T. LONGREY, Esq., Collector of Salem, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Oosoor, 8th May 1875, Extra No. 3 :—

WITH reference to the Proceedings of the Madras Government, dated the 30th October 1873, No. 1,218, conveyed in the Board's Miscellaneous No. 7,362, of the 1st November 1873, sanctioning the defence in Suit No. 6 of 1873, for cancelment of sale of Thorapalli Agraharam, filed in the District Court of Salem by the Agraharamdars of the Thorapalli Village in the Oosoor Taluq, I have the honor to report that the suit in question was, after repeated adjournments, heard finally on the 1st ultimo, when the judgment was given in favor of the plaintiffs, together with the costs, amounting to about Rupees 1,271-12-0, which are decreed payable by the 3rd defendant (the Collector).

2. It will be seen from the enclosed copy of the judgment that the Judge's decision in favor of the plaintiffs is based on the sole ground that the notice of sale was not posted up for one month. Four witnesses were, however, cited on behalf of Government to prove that the notice was published on the 2nd of April 1872, and not on the 12th, as alleged by the plaintiffs. The chief of these witnesses was the Tahsildar of Oosoor, who, I regret to say, was, owing to illness, unable to attend on the day of the final hearing; but I instructed the Vakil on behalf of Government to move the Court either to obtain an adjournment or to apply for a Commission of Enquiry to examine the Tahsildar. The Vakil has not reported to me the result of his motion, and I have called upon him to do so. The three witnesses who were called to speak to the sale notice having been published on the 2nd April are (1st)—a Gumustah of the Oosoor Taluq, who deposed to the due despatch of the notices to the village offices of the Agraharam on the 31st March, and produced in support of this statement the Taluq Office Despatch Book; (2) the Curnam of the Agraharam, who deposed that he received the notices on the 2nd of April and published them on the same day, after doing which he handed over the Tahsildar's takeed to the Agraharam Munsif; (3rd) one Sabapathy Iyah, a share-holder in the Thorapalli Agraharam, who stated that the notice was duly proclaimed on the 2nd, and though he does not remember the exact date at this distance of time, he traces it to a new moon and by the annual ceremony of his father which falls on a particular day.

3. Of the three witnesses on the plaintiffs' side, one is the Agraharam Village Munsif. He is the 1st plaintiff in the suit, and the 2nd and 3rd of plaintiffs' witnesses are more or less related to him and other plaintiffs.

4. It will be seen that the Judge lays great stress on the fact that the joint report of the Village Munsif and Curnam stating that they had published the sale notices was not made till the 16th April, though it was proved by the Government witnesses that the notices were received on the 2nd. This delay is not to be wondered at when the fact that the Village Munsif was the chief man among the Agraharamdars, and the Curnam was naturally interested in the continuance of the Agraharam on the tenure on which it stood. The Village Munsif must have burked the Tahsildar's takeed issued to the village officer

sending the notices and directing their publication, and it will be seen from the joint report of the 10th April how carefully these officers have avoided mentioning the date of either the receipt of the notices, or of the Tahsildar's takeed, or the date of publication of the notices. The careful manner in which this report is worded, and the petition which the Munsif sent subsequently (Exhibit C.) with others prove, I submit, the very opposite to what the Judge assumes, viz., the improbability of the plaintiffs writing the petition in view to subsequently disputing the validity of the sale. The Curnam has, however, accounted for the delay in making the report. He states that after proclaiming the notice and handing over the takeed to the Munsif, he went away to Oosoor for ten or fourteen days, and that thinking that the Munsif would make the report, he did not do so; and it was only on his return to the Agraharam that it was made. I am of opinion that it is most important that an appeal should be preferred against the District Court's decision. If the Board are of the same opinion, I trust that they will send the necessary instructions to the Government Pleader, High Court.

It is to be observed that the judgment of the District Court relates to 53½ out of 55 shares, of which the Agraharam is composed.

6. Enclosed is a list of the material papers in the case.

ENCLOSURE No. 1.—Copy of Decree.

ENCLOSURE No. 2.—Copy of Judgment.

ENCLOSURES Nos. 3 and 4.—Statements of Witnesses.

ENCLOSURE No. 5.—Translation Report of Village Officers.

ENCLOSURE No. 6.—Translation of Petition of Agraharamdars.

ENCLOSURE No. 7.—List of papers connected with the Suit.

SUBMITTED for the information and orders of Government, with reference to G. O., 30th October 1873, No. 1,218.

2. The Agraharam of Thorapalli having been sold for arrears of revenue under Act II. of 1864, plaintiffs (Agraharamdars) sued to have the sale cancelled on the following grounds:—

(a.) That the arrears had been tendered previous to the sale, Section 37.

(b.) That the purchase money was not paid within the prescribed time, Section 36, Clause 4.

(c.) That more land was sold than was sufficient to discharge the arrears, Section 45.

(d.) That due notice of the intended sale had not been given, Section 36, Clause 2.

3. For the defence it was contended that the sale was in every respect regular and legal.

4. It is proved that payment of the arrears was tendered too late, and that the purchase money was paid within the prescribed time. In regard to the third

plea, the Court holds that Section 45 does not preclude the sale of the entire property.

5. As to the last point, whether due notice was given, the oral evidence is conflicting. Plaintiffs' witnesses headed by the Munsif, one of the plaintiffs, assert that the notice was published in the village on the 12th April 1872 (the sale took place on the 9th May), while for the defence the Curnam, supported by one of the Agraharamdars, affirms that the notice was published on the 2nd April. The oral evidence being thus pretty evenly balanced, the Judge looking for extraneous matter in support of either side finds that the joint report of the Munsif and Curnam to the Tahsildar regarding the receipt and publication of the notice, though it does not mention the date of publication, is itself dated 16th April; and that in a petition addressed to the Sub-Collector a few days before the sale, it is distinctly stated that the notice was published on the 12th April. The Judge considers that this turns the scale in plaintiffs' favor and proves satisfactorily that the notice was not published a month previous to the sale, which is consequently invalid. He has, therefore, decided in plaintiffs' favor, and decreed that the amount of Rupees 1,271-12-0 be paid by the Collector.

6. The Collector suggests an appeal on the very doubtful ground that the decision is against the weight of evidence.

7. The Board observe that in a case like this, as a rule, nothing can be expected from plaintiffs except oral evidence, but the Revenue authorities should be able to produce something more in the shape of returns showing the date and mode of service of their legal processes. When the regularity of a sale under a rigorous law is impeached, the Court has a right to expect that the Revenue authorities should be prepared to prove satisfactorily that the prescribed formalities have been complied with. The Judge considers they have not done so in this case.

8. The fact that the report regarding the receipt of the notice did not mention the date of receipt or publication, should have necessarily excited immediate inquiry as to the date of publication and the cause of its omission in the report, and such inquiry became the more imperative when some days previous to the sale plaintiffs formally complained that the notice was not published until the 12th April, and asked for further time. But from the Judge's remarks it appears that no inquiry was made, and that it "was assumed as impossible" that any delay or irregularity could have occurred.

9. It appears further that the service of the notice was entrusted to a peon, and that instead of delivering it himself and obtaining an acknowledgment he handed it over to the village toty who gave it to the Munsif. The latter says he received it on the 12th April. The peon and toty were not cited as witnesses to contradict him and show when the notice was actually delivered, and this omission, unexplained as it is, weakens the case for the defence.

10. As a rule, an Appellate Court accepts the lower Court's appreciation of evidence as to facts unless there are clear and cogent reasons for doing otherwise. Considering all the circumstances of the case, it seems improbable that the High Court will hold that the lower Court has not rightly appreciated the evidence.

Proceedings of the Madras Government, Revenue Department,
2nd June 1875.

There is a very important principle involved, and the only object in appealing is to the Board from the heavy costs, Rupees 1,271-12-0; but the Board fear an appeal involves considerable risk of having the amount doubled. They accordingly recommend that if an appeal be made, and that payment of the costs be sanctioned.

12. The Collector should explain why the peon and toty were not cited as witnesses for the defence.

(A True Copy and Extract.)

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

No. 7.

ORDER THEREON, 2nd June 1875, No. 859.

Miscellaneous.

Under the circumstances set forth by the Board, Government agree that it is not advisable to carry the case to the higher Court.

2. The costs, amounting to Rs. 1,271-12-0, are sanctioned.

(True Extract.)

(Signed) A. MACGREGOR,
Acting Secretary to Government.

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

Exd W. H. French.

Revenue Department

Proceedings of the Board of Revenue
dated 22nd May 1875 No. 1407.

Read letter from the collector of Salem dated 8th May 1875, Extra n^o 3 requesting that an appeal be preferred against the judgment in the Thorapalli suit decided against Government.

Submitted for the information and orders of Government with reference to G. O. 30th October 1873 N^o 1218.

The Agraharam of Thorapalli having been sold for arrears of revenue under Act 2 of 1864 plaintiffs, agraharam-dars sued to have the sale cancelled on the following grounds.
(a) That the arrears had

Boat. of 1875 1

REVENUE.

THE BOARD OF REVENUE,

Do, do, do.

Dated June, 2nd.

Recd.

Encl.

G. O., 2nd June 1875, No. 859.

JUNE.
Nos. 6-7.

Suit No. 6 of 1873, filed in the District Court of Salem for the cancellation of the sale of Thorapalli Agraharam, for arrears of revenue.—Concurring with the Board that it is not advisable to appeal to the higher Court in —, and sanctioning the costs, amounting to Rs. 1,371-12-0.

been tendered previous to the sale. Section 37.

(b) That the purchase money was not paid within the prescribed time. Section 36 clause 4.

(c) That more land was sold than was sufficient to discharge the arrears. Section 45.

(d) That due notice of the intended sale had not been given. Section 36 Clause 2.

For the defence it was contended that the sale was in every respect regular and legal.

It is proved that payment of the arrears was tendered too late and that the purchase money was paid within the prescribed time. In regard to the third plea the Court holds that

that section 45 does not preclude the sale of the entire property. As to the last point, whether due notice was given, the oral evidence is conflicting. Plaintiffs witnesses headed by the Munsiff, one of the plaintiffs, assert that the notice was published in the village on the 12th April 1872 (the sale took place on the 9th May) while for the defence the Hearnan supported by one of the Agraharamdars affirms that the notice was published on the 2nd April. The oral evidence being thus pretty evenly balanced the judge looking for extraneous matter in support of either side finds that the joint report of the Munsiff

and Kurnane to the Tahsildar
regarding the receipt and
publication of the notice, though
it does not mention the date
of publication, is itself dated
16th April; and that in a petition
addressed to the Subcollector
a few days before the sale it
is distinctly stated that the
notice was published on the 12th
April. The Judge considers that
this turns the scale in plaintiffs
favor and proves satisfactorily
that the notice was not published
a month previous to the sale which
is consequently invalid. He
has therefore decided in plaintiffs
favor and decreed that the
costs Rupees 1271-12-0 be paid by
the Collector.

The

What can be more
satisfactory than
the Kurnane's admit-
receipt on the 12th April
The Tahsildar's Register
shows that the notice
was published on
the 31st March.

883
6
The collector suggests an
appeal on the very doubtful
ground that the decision
is against the weight of evidence.
The Board observe that in
a case like this as a rule nothing
can be expected from plaintiffs
except oral evidence but the
Revenue authorities should
be able to produce something
more in the shape of returns
showing the date and mode of
service of their legal processes.
When the regularity of a sale
is under a rigorous law is impeached
the Court has a right to ex-
pect that the Revenue autho-
rities should be prepared
to prove satisfactorily that
the prescribed formalities

have been complied with.

The Judge considers they have not done so in this case.

The fact that the report regarding the receipt of the notice did not mention the date of receipt or publication should have necessarily elicited immediate inquiry as to the date of publication and the cause of its omission in the report, and such inquiry became the more imperative when some days previous to the sale plaintiffs formally complained that the notice was not published until the 12th April and asked for further time. But from the Judge's remarks

It is not necessary
in delivering an
order that the
Munsiff should
insert in the
notice of the
date of the
sale or the date
when it should
be known.

This was told
Laffoley; not
to the Plaintiff.

remarks it appears that no inquiry was made and that it was assumed as impossible that any delay or irregularity could have occurred.

It appears further that the service of the notice was entrusted to a Peon and that instead of delivering it himself and obtaining an acknowledgement he handed it over to the Village Lote who gave it to the Munsiff. The latter says he received it on the 12th April. The Peon and Lote were not cited as witnesses to contradict him and show when the notice was actually delivered and this omission unexplained as it is weakens the

This is slightly
irregular but
doesn't look like
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affect the case.

the case for the defence - as
a rule an appellate court ac-
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unless there are clear and
cogent reasons for doing otherwise.
Considering all the circumstances
of the case it seems improbable
that the High Court will hold
that the lower Court has not
rightly appreciated the evidence.

There is no important
principle involved and the only
object in appealing is to be
relieved from the heavy costs
Rupees 1271-12-0 but the Board
fear an appeal involves con-
siderable risk of having the
amount doubled. They accordingly
recommend that no appeal
be

851
be made and that payment
of the costs be sanctioned.

The collector should explain
why the Pon and Giti were
not cited as witnesses for the
defence.

| True Extract |

H. E. M.

Acting Secretary

To,
The Secretary to Government
Revenue Department
with copy of collector's letter & en-
closure to be returned.

M. Narasimam

Salem Collector's Office
Camp Cotton, 8 May 1875

Extracts

From

The Collector of
Salem

To
The Secretary to the
Board of Revenue
Madras

Sir,

With reference to the Pro-
ceedings of the Madras
Government, dated the 30th
October 1873, No 1218, conveyed
in the Board's Miscellaneous
No 7362 of the 1st November
1873, sanctioning the
defence in suit No 6 of
1873 for cancellation of
Sale of Thorapully Agrar-
haram, filed in the District
Court of Salem by the
Agraharamdars of the
Thorapully village in the
Ooster

1030 Oct 10/73 of 1873

No: 1873: 244
4:2013.

Proceedings of the
Board of Revenue

Dated 23rd May 1875
Recd 28th May 1875

28-7-1875

No 849 of June 1875

Suit No 6 of 1873 filed

in District Court of Salem

for the cancellation of sale of

Thorapully Agraharam

for arrears of Revenue, -

which is the same as the report

made of - submitted before

with recommendation that

cost incurred may be sustained.

Sanction of an appeal con-

sidered necessary.

Possessor Taluk, I have the
honour to report that the
suit in question was
after repeated adjourn-
ments, heard finally
on the 1st ultimo, when
the judgment was given
in favour of the Plaintiffs
together with the costs
amounting to about
Rupees 127/-12/-, which
are decreed payable by
the 3rd Defendant (the
Collector).

2. It will be seen from
the enclosed copy of the
judgment that the Judge's
decision in favour of
the Plaintiffs is based on
the sole ground that the
notice of sale was not
posted up for one month.

Yours

Four witnesses were how-
ever cited on behalf of
Government to prove
that the notice was
published on the 2^d of
April 1872, and not on
the 12th as alleged by the
Plaintiffs. The Chief of
these witnesses was the
Tahsildar of Bassoos
who, I regret to say, was
suffering from illness, unable
to attend on the day of
the final hearing, but I
instructed the Vakeel on
behalf of Government
to move the Court either
to obtain an adjournment
or to apply for a Com-
mission of Enquiry
to examine the Tahsildar.
The Vakeel has not re-
ported to me the result
of

of his motion and I
have called upon him
to do so. The three witnesses
who were called to speak
to the sale notice having
been published on the
2^d April are: (1st) a Gummastah
of the Oassan Suley
who deposed to the due
despatch of the notices
to the Village Officers of
the Agraharam on the
37th March and produced
in support of this state-
ment the Suley Office
Despatch Book; (2^d) the
Kurnam of the Agraha-
-ram who deposed that
he received the Notices
on the 2^d of April and
published them on
the same day, after
doing

doing which he handed
over the Sahildar's Sakeed
to the Agraharam Moonsiff;
3rd, one Sahapathy Syeah,
a shareholder in the
Thorapully Agraharam
who stated that the
notice was duly pro-
-claimed on the 2nd
and though he does
not remember the exact
date at this distance
of time he traces it to
a New Moon and by
the Annual Ceremony
of his father which
falls on a particular
day.

3. Of the three witnesses
on the Plaintiff's side, one
is the Agraharam Village
Moonsiff. He is the 1st Plaintiff

in the suit and the 2nd
and 3rd of Plaintiffs' wit-
-nesses are more or less
related to him and
other Plaintiffs.

4. It will be seen that
the Judge lays great
stress on the fact that
the Joint Report of the
Village Moonsiff and
Kurmans stating that
they had published
the sale notices was not
made till the 16th April
though it was proved by
the Government witnesses
that the Notices were
received on the 2nd. This
delay is not to be won-
-dered at when the fact
that the Village Moonsiff
was

was the Chief man among
the Agraharandars and
the Kurman was natu-
-rally interested in
the continuance of the
Agraharans on the
tenure on which it stood.
The Village Moonsiff must
have hurked the Tah-
-sildar's Saleed issued
to the Village Officer
sending the notices and
directing their publica-
-tion, and it will be
seen from the joint
Report of the 16th April
how carefully these
officers have avoided
mentioning the date
of either the receipt
of the Notices, or of
the Tahsildar's Saleed,
or

on the date of publication
of the Notices. The careful
manner in which the
Report is worded and
the Petition which the
Monsiiff sent subse-
-quently (Exhibit C) with
others prove, I submit,
the very opposite to what
the Judge assumes, viz:
the improbability of the
Plaintiffs writing the
Petition in view to
subsequently disputing
the validity of the sale.
The Kurnam has how-
-ever accounted for
the delay in making the
report. He states that
after proclaiming the
Notice

Notice and handing over
the Sale to the Monsi-
-iff, he went away for
passion for 10 or 14 days
and that thinking that
the Monsiiff would
make the report, he
did not do so; and it
was only on his return
to the Agraharam that
it was made. I am of
opinion that it is most
important that our
appeal should be
preferred against the
District Court's Decision.
If the Board are of
the same opinion, I
trust that they will send
the necessary instructions
to the Government Pleader,
High

High Court.

5. It is to be observed
that the judgment of the
District Court relates
to $53\frac{1}{2}$ out of 65 shares
of which the Agraharam
is composed.

6. Enclosed is a List of
the material papers in
the case.

Shane vs.

(Sd/-) B. J. Longley
Collector.

(True Copy)

W. L. L.

Ag Secretary



C. P. Waddell

In questions of fact
the Appeal. It will not
lighten questions the finding
of the jury. It appears
from the dict. that

It is the understanding
that it was for the
interest of the Affs.
of whom the Vols: Affs:

1897 No: 223 was 1875 no.

The point on which the whole question turned was whether the money that premiums were as required by the Act was given before sale was effected. The date sale was 9 May 1872; the date on which notice was published on the land is contained by the Statute to be 12th April & by the Defendant's Counsel

Enclosure in 38th
Proceedings dated
22nd May 1875 at
the Secretary's
Government
Revenue Dept^y.

Rev $\frac{1}{2013/75}$

Copy of letter
from Rochester
of Salem dated
8th May 1875. 14. 10.

included 2^d April 1872
 The Tahsildar's order, directing
 publication of notice, was
 addressed to the Village Munsiff & Curman jointly. The
 former (Munsiff) is one of the
 Ramliffs & naturally in-
 creased in having the sale
 cancelled. He says he read
 the Takered on the 12th, while the
 Curman, who is admitted
 to have opened the Takered
 in the presence of the Munsiff.
 appears it was on the 2^d April.
 The Civil Judge finding the evi-
 dence on both sides so evenly
 balanced, bases his judgment
 on the following circumstances:
 1. Report of the Village Munsiff
 & Curman, replying to the Tah-
 sildar's Takered, regarding
 notice of sale, being dated
 16 April 1872
 2. Petition by Plaintiffs to the
 Subcollector, presented six
 days prior to the sale, having
 stated that the notice was
 published only on the 12th
 instant, & the fact having
 remained unnoticed
 by the Subcollector -
 It is submitted that

as an & delay
 proof. It is probable
 the fact if possible
 & I don't think
 the fact of that
 but the is sufficient
 to establish & invalidate
 the inherent probabilities
 of the opposite case
 being true. L.B.
 24.5.73

I agree with the
 above remarks &
 would not appeal
 NB.

Under any circumstances
 the case was a hard one
 worthy of consideration
 and the rectification in
 this manner is not to
 be regretted 16/6

the cannot have any
 bearing on the point
 The fact of his report having
 been made on the 16th cannot
 prove that the Takered reached
 the Village officers only on the
 12th & not on the 2^d as proved
 by the Collector. On the contrary
 the Takered having been dated
 31st March 1872, its receipt
 after a delay of 12 days
 we have been brought to the
 notice of the Tahsildar by
 the Munsiff, if the facts were
 as alleged by him - but he
 has made no mention of the
 delay in his report. If
 he had added the fact that
 he was interested in supplying
 information in the procedure
 in view to the sale being
 ultimately pronounced a
 nullity, & also that the Village
 Curman makes a statement
 quite different from that
 made by the Munsiff, it is
 clear that no delay whatever
 occurred in the delivery of the
 publication of the notice in the

note

The statement contained
in the petition to his Lordship
should not have been made so
much of. The Lordship would
not have known as well as
the Plaintiff the dates of sale
&c.; & it cannot be expected
that such complete scrutiny
of statements ^{contained} in a petition
ought to be made.

There is thus no real ground
at all for the decision of his
Lordship & yet the House of
Commons will not appeal.
Need be made & with the costs
awarded to the Plaintiff.

Orders are requested in
the subject.

The date on which the time
fixed for appeal expires
is not stated either in the
Collector's letter or the R.D.
No. 1; but according to the
Limitation Act, 90 days from
the date of judgment is fixed
as the limit for appeal to
the High Court. The appeal
if made, should be made before
the 29 June 1875.

The Collector advises
an appeal

28/5/75

64869

Under the circumstances set forth by the Board govt. again. that it is not advisable to carry the case to the higher Court - The cost, amounting to Rs 1271.. 12. are sanctioned.

Adm

2 June 1876—

Indcopy to the Board of Revenue and Despatch 14th March 2 Copy to 16 June
6. the Secretary and General 16 June. 112