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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue. DEPARTMENT

G.O. No.	972	Press
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Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
26th June 1875.*

No. 231. Read the following Proceedings of the Board of Revenue, dated 15th June 1875, No. 1,633 :—

Read the following letter from W. S. FOSTER, Esq., Acting Collector of the Godavery District, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Cocanada, 19th May 1875, No. 206.

With reference to the Board's Proceedings of the 14th and 21st November 1874, Nos. 3,285 and 3,353, respectively, I have the honor to report that the suit has been compromised as therein directed. I agreed to give up the plaintiff's half share in the land, and to pay him Rupees 25 for his costs and mesne profits of the land.

2. The plaintiff's and his brother's land brought in Rupees 385 at the auction for Government arrears, of which Rupees 278-7-0 were credited to Government for the arrears of revenue due to them, and Rupees 106-9-0 were paid, under the orders of the District Munsif of Peddapur, to plaintiff in Suit No. 233 of 1870, in which Garikipati Venkatarayadu, the renter of the Government grazing land, was defendant.

3. As half the land sold is now to be made over to the defaulter's brother, the purchaser of the land claims a refund of half the purchase money, *viz.*, Rupees 192-8-0, and this claim seems to be reasonable.

4. As the suit has been compromised, I do not think that the party, who took the Rupees 106-9-0, will pay back the money, as he will probably say that the suit would have gone against the plaintiff had the suit been properly conducted. I, therefore, request that the Board will sanction the amount to be paid to the purchaser Kalukoti Venkataswami of Samulcottah. I have sent the Rupees 25 to be paid to plaintiff.

SUBMITTED for the orders of Government.

2. For arrears of revenue, Rupees 278-7-0, due on a pasture farm held by one Venkatarayadu, an Inam, the joint property of himself and his brother, was sold under Act II, of 1864, and realized Rupees 385. Of this sum Rupees 278-7-0 was credited to Government in payment of the arrears, and the balance, Rupees 106-8-0, was paid by order of a Court to a creditor of the defaulter.

3. The defaulter's brother sued to have the sale cancelled in respect of his share of the property. As it appears that he had no interest in the pasture farm, the Board, doubting his liability, consulted the Government Pleader who considered that the suit could not be successfully defended. The Collector was, therefore, directed to effect a compromise. He reports the terms agreed upon. Half the property is to be restored to plaintiff with Rupees 25 for costs and mesne profits. The purchaser, who agrees to this, claims the refund of Rupees 192-8-0, half the purchase-money to which he is of course entitled.

*Proceedings of the Madras Government, Revenue Department,
26th June 1875.*

4. The sanction of Government is requested for payment of Rupees 25 to plaintiff and for the refund to the purchaser of Rupees 192-8-0 which was credited to Government more than two years ago.

5. After the refund has been made, the Collector should take steps to recover the amount, Rupees 192-8-0, from the defaulter under Act II. of 1864.

6. Nothing can be done in respect of Rupees 106-8-0 paid to the defaulter's creditor by order of the Court.

(A true Copy and Extract.)

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

No. 232.

ORDER THEREON, 26th June 1875, No. 972.

Miscellaneous.

The Government sanction the payment of Rs. 25 to the plaintiff, and the refund of Rs. 192-8-0 to the purchaser as proposed.

2. The Collectors should be warned against effecting sales of property of the kind now brought to notice without due inquiry into the right of ownership of the party concerned. It should always be expressly stated that the interest of the defaulter in the property is also offered for sale.

(True Extract.)

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

To the Board of Revenue,
the Accountant-General.

H. A. G. G. G.

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2152

Not filed in Pundarikunta's Court in 1874
for recovery of 2 annas 10 paise of arrears
due for arrears of revenue for 1874 and 1875
by order of the District Munsif of Pundarikunta
dated 14th November 1874, No. 3,285.
Sanctioning payment of Rs. 25 to the
plaintiff and the refund of Rs. 192-8-0 to the
purchaser. Remarking that the plaintiff's
claim against the defendant is not valid and
that the plaintiff is not entitled to the
refund of the purchase money.

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G.O. 26th June 1875, No. 112.

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No. 1,533.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 15th June 1875.
Read the following letter from W. S. FOSTER, Esq., Acting Collector of the
Godavery District, to H. E. STOKES, Esq., Acting Secretary to the Board
of Revenue, dated Cocanada, 19th May 1875, No. 206:—

With reference to the Board's Proceedings of the 14th and 21st November
1874, Nos. 3,285 and 3,353, respectively, I have the honor to report that the suit
has been compromised as therein directed. I agreed to give up the plaintiff's half
share in the land, and to pay him Rupees 25 for his costs and mesne profits of the
land.

2. The plaintiff's and his brother's land brought in Rupees 385 at the
auction for Government arrears, of which Rupees 278-7-0 were credited to Govern-
ment for the arrears of revenue due to them, and Rupees 106-9-0 were paid,
under the orders of the District Munsif of Peddapur, to plaintiff in Suit No. 233
of 1870, in which Garikipati Venkatarayadu, the renter of the Government
grazing land, was defendant.

3. As half the land sold is now to be made over to the defaulter's brother,
the purchaser of the land claims a refund of half the purchase money, viz.,
Rupees 192-8-0, and this claim seems to be reasonable.

4. As the suit has been compromised, I do not think that the party, who
took the Rupees 106-9-0, will pay back the money, as he will probably say that the
suit would have gone against the plaintiff had the suit been properly conducted.
I, therefore, request that the Board will sanction the amount to be paid to the
purchaser Kelukoti Venkateswami of Samulcottah. I have sent the Rupees 25 to
be paid to plaintiff.

Summary for the orders of Government.

2. For arrears of revenue, Rupees 278-7-0, due on a pasture farm held by
one Venkatarayadu, an Inam, the joint
Board's Proceedings, dated 14th November 1874, No. 3,285. property of himself and his brother, was
sold under Act II of 1864, and realized
Rupees 385. Of this sum Rupees 278-7-0 was credited to Government in pay-
ment of the arrears, and the balance, Rupees 106-9-0, was paid by order of a Court
to a creditor of the defaulter.

3. The defaulter's brother sued to have the sale cancelled in respect of his
share of the property. As it appears that he had no interest in the pasture farm,
the Board, doubting his liability, consulted the Government Pleader who considered
that the suit could not be successfully
Board's Proceedings, dated 21st November 1874, No. 3,353. defended. The Collector was, therefore,
directed to effect a compromise. He
reports the terms agreed upon. Half the property is to be restored to plaintiff
with Rupees 25 for costs and mesne profits. The purchaser, who agrees to this,
claims the refund of Rupees 192-8-0, half the purchase money to which he is of
course entitled.

4. The sanction of Government is requested for payment of Rupees 25 to
plaintiff and for the refund to the purchaser of Rupees 192-8-0 which was credited
to Government more than two years ago.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 14th November 1874.

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 October 1874, No. 374:—

I HAVE the honor to forward, herewith, English translation of plaint in Suit, No. 655 of 1873, filed by Garikapati Venkatasubbaroydu of Samulcotta in the Munsif's Court at Peddapur.

2. The plaintiff and the third defendant G. Venkataroydu are brothers; they hold some Inam lands in Bhimaveram, a village in the Cocanada Division, jointly with their uncles. The third defendant took on rent for Fasli 1281 the land within the cantonment at Samulcotta for grazing purposes for Rupees 436; he paid a part, and fell in arrears to the amount of Rupees 278, including interest; and the share of himself and his brother (the plaintiff), which measured Acres 3 and Cents 43, was sold under Madras Act II. of 1861 to the second defendant for Rupees 385 on 20th September 1872 under the orders of the then Assistant Collector Mr. Cox, as it was reported that the two brothers were undivided. The plaintiff then applied to Mr. Cox to cancel the sale of his half share of the land sold. An inquiry was held by the Deputy Tahsildar of Cocanada. The man stated that he and his brother lived in the same house; they divided moveable property; they divided also the produce of lands, though they did not divide the lands themselves; and that they both still performed the annual ceremony of their father together. This last circumstance is conclusive evidence to show that the family was undivided, and there was other evidence to prove that they were living together for all purposes. Mr. Cox, therefore, refused to cancel the sale of plaintiff's share, and I dismissed the plaintiff's appeal on the same grounds. He now brings the present suit to recover his moiety in the land, and I request sanction may be granted for defending the suit at the public expense.

3. I beg to send the draft answer for approval.

4. The suit comes on for hearing on the 28th November 1874.

ENCLOSURE No. 1.—Translation of Plaint.

ENCLOSURE No. 2.—Draft Answer.

REFERRED for the opinion of the Government Pleader.

2. Plaintiff and third defendant in this case are brothers. The latter rented certain land as pasture in Fasli 1281 for Rupees 436. He owed a balance of Rs. 278 on this account. For this certain Inam land the joint property of himself and plaintiff was sold under Act II. of 1861.

3. Plaintiff sues to recover his share of the property sold. It is proposed to justify the sale on the ground that plaintiff and the third defendant are undivided brothers.

4. It does not appear, however, that plaintiff had a joint interest in the pasture farm. Assuming that he had not, the Board wish to know whether the sale of his share of the property is valid.

5. As the 28th instant is the date fixed for the hearing of the case, the favor of an early reply is requested.

(A true Copy and Extract.)

(Signed) J. GROSE,
Secretary.

To the Acting Government Pleader, with two original enclosures, to be returned to the Acting Collector of the Godavery District.

Edw. A. Grubert.

5. After the refund has been made, the Collector should take steps to recover the amount, Rupees 192-8-0, from the defaulter under Act II. of 1864.

6. Nothing can be done in respect of Rupees 108-8-0 paid to the defaulter's creditor by order of the Court.

(A true Copy and Extract.)

Acting Secretary.

To the Officiating Secretary to Government, Revenue Department

with copies of Board's Proceedings, dated 14th November

1874, No. 3,285, and 21st November 1874, No. 3,353.

Copy to the Collector of the Godavery District.

Edw. A. Grubert.

My 22
The for translation at payment of Rs. 25 2-0
to Plaintiff & no dependants of Rs. 192-8-0 to the
purchase as proposed.

The Collector should be required to furnish a copy of the
order of sale of the land sold to the plaintiff and the third defendant
and to the plaintiff and the third defendant.
It is proposed to justify the sale on the ground that plaintiff and the third defendant are undivided
brothers.

22.10.74

sent to the Collector of the Godavery District in
order to recover the amount of Rupees 192-8-0 from
the defaulter under Act II. of 1864 and the interest
thereon.

J. GROSE.

Received 25th Nov 1874

Enclosure 10th Nov 1874, No. 3,353

BOARD OF REVENUE,
MADRAS.

1874.

22.10.74

No. 3,353.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 21st November 1874.

Read the following letter from W. M. SCHLARBIEB, Esq., Acting Government Pleader, Madras, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 17th November 1874, No. 176 :—

I HAVE the honor to acknowledge the receipt of the Proceedings* of the Board of Revenue, dated 14th November 1874, referring for my opinion the question of

* All the enclosures returned herewith.

the validity of the sale, by the Assistant Collector of the Godavery District, of a piece of Inam land held by two undivided brothers for the failure of one of the brothers to pay up the rent of a pasture farm he had taken up at Samulcotiah. The brother, who had no interest in the pasture farm, now sues for the cancellation of the sale and the surrender to him of his half share in the Inam land, and the Assistant Collector, the purchaser, and the defaulting brother, are made first, second, and third defendants, respectively, in the Suit (Original Suit No. 655 of 1873) which has been brought in the Court of the District Munsif of Peddapur. I am of opinion that this suit cannot be successfully defended by the Assistant Collector. Unless it can be shown, which I presume it cannot be, that the taking up of the pasture farm was a joint adventure, the entire land held by the two brothers cannot be made liable for the failure of one of them. All that ought to have been attached and sold was the right, title, and interest of the defaulter, Garipati Venkatroyda, in the Inam land in question. The sale of any thing beyond was not justifiable.

2. Under these circumstances, I would advise that the first defendant put in an answer to say that, as the plaintiff and third defendant were undivided brothers holding a piece of land in common between them, the first defendant, on the failure of third defendant to pay in full the rent of the pasture farm taken up by him, proceeded to attach and sell the joint land under the impression that the taking up of the pasture farm was an adventure entering for the benefit of the two undivided brothers; but that, if it should appear that the speculation was for the individual benefit of the third defendant alone, the first defendant has no objection to the sale being cancelled, and the plaintiff's share in the Inam land being restored to him.

3. When the sale is cancelled by the Court's decree, and the purchase-money returned to the second defendant, the third defendant's share of the land may be re-attached and sold in satisfaction of the arrears of pasture rent originally due by him. There can, however, be no objection to the parties to the suit coming together and agreeing to a Razeenamah, making arrangements for the return of the plaintiff's share of the land and the payment of costs as between themselves. The Court will then simply pass a decree in the terms of the Razeenamah, which will remain to be executed.

Communicated to the Collector of the Godavery District.

2. Assuming that plaintiff had not a joint interest in the pasture farm, a compromise should be effected if possible, otherwise the answer suggested in paragraph 2 must be filed.

(A true Copy and Extract.)

(Signed) J. GROSE,

Secretary.

To the Acting Collector of the Godavery District, with copy of
Acting Government Pleader's letter.

Copy to the Acting Government Pleader.

Edw. A. Grubert.

1874
Court of Munsif,
MADRAS.

PROCEEDINGS, 14th NOVEMBER 1874, No. 3,353.

Received

NOVEMBER,
No. 3,285.

Suit No. 655 of 1873, on file of Peddapur Munsif's Court in Godavery District for recovery of plaintiff's share of certain land sold for arrears due by his brother, the third defendant. Letter from Collector requesting sanction for recovery of—of public expense, referred to early opinion of Government Pleader as to whether sale of plaintiff's share is valid.

1874.

Board of Revenue,
MADRAS.

RECEIVED, 21st NOVEMBER 1874, No. 3,353.

Received

Encl.

NOVEMBER.
No. 3,353.

Given land—held by two undivided brothers in Godavary District.—Opinion of Government. Elsewhere regarding the validity of sale of — the failure of one of the parties to pay up rent at a falling rate, he had taken up at Samulochli, communicated to Collier & Co. with request to contribute, if possible, its suit filed to cancel the sale. If attempt at compromise fails, the matter suggested by the Government Pleader must be tried.