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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.	87.	Press
B.P. No.		Mis.

Dated 22-1-1876 ~196 .

Not to be folded or roughly handled

No. 173. Read the following Proceedings of the Board of Revenue, dated 17th January 1876, No. 124:—

Read the following letter from W. LOGAN, Esq., Acting Collector of Malabar, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Calicut, 22nd December 1875, No. 364:—

REFERRING to the correspondence noted in the margin, I have the honor to G.O., dated 1st October 1874, No. 1,251. forward, for the Board's information, Board's Proceedings, dated 4th August 1875, copy of the decree and judgment passed No. 2,171. in Appeal Suit, No. 221 of 1875, by the District Judge of South Malabar, modifying in a material point the decree in Original Suit, No. 408 of 1874, on the file of the District Munsif of Themmelprom, in which the Government sued for the recovery of certain escheat lands which had been unlawfully taken possession of by the 1st defendant from the 2nd.

2. The Board will observe that the Appellate Court, while confirming the Lower Court's finding as to the Jenm right of Government to the lands in question, has reversed the original decree so far as it related to the surrender of the lands, holding that the Government as plaintiff have no reason to seek for the possession of their property so long as no default is made in the instalments of the purchase money which 2nd defendant agreed to pay for the Government title to the lands.

3. To understand the position in which the Government is placed by this decree reference to the previous litigation between 1st and 2nd defendants is necessary. I forward copies of judgments of the District Munsif's Court in Original Suit, No. 577 of 1872, and of the District Court Appeal Suit, No. 273 of 1873, and it will be seen that the 1st defendant originally sued 2nd defendant under an otti deed granted by 1st defendant as Jenmi to 2nd defendant as mortgagee for these and other lands. Second defendant in that suit pleaded that he had purchased the lands now in question from Government as an escheat. It seems, however, that he failed to produce any evidence on this point, and under those circumstances it seems to have been rightly decided that the plea was of no avail. First defendant therefore ousted 2nd defendant from possession, and that act led to my predecessor's addressing the Board in the letter printed with Board's Proceedings, No. 2,781, dated 25th September 1874, for permission to institute this suit in which, relying on general title, possession of the lands in dispute was sought. It seems to me that the District Judge has been misled by the fact that a contract of sale was entered into between the Government and the 2nd defendant and was in part fulfilled. That contract had in reality nothing whatever to do with this suit. The fact was alluded to in the plaint to explain 2nd defendant's position with regard to Government, but it was of no importance so long as 1st defendant rested his plea for retaining possession on general title similar to that put forward by Government. When the District Judge found that the title put

*Proceedings of the Madras Government, Revenue Department,
22nd January 1876.*

forward by the Government was the stronger of the two, 1st defendant's possession, without the consent of Government, became mere trespass and he should certainly, it seems to me, have been ousted from possession.

4. There are many obvious objections to the reasoning made use of in the appeal judgment, and I do not consider it necessary to set them out in detail.

5. I therefore recommend that a special appeal be made to the High Court to have the appeal decree revised so far as it affects the original decree, and accordingly request that, if the Board agree with me, the Government Pleader may be authorized to take the necessary steps in the matter. The period for preferring the appeal expires on the 19th February 1876.

6. The papers that may be required for reference in the case are under preparation and will be sent as soon as ready.

ENCLOSURES Nos. 1, 2 and 3.—Copies of Judgments.

ENCLOSURE No. 4.—Copy of Decree.

G.O., dated 1st October 1874, No. 1,251.

... dated 12th August 1875, No. 1,219.

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

2. In 1870 certain escheat land was sold conditionally to the 2nd defendant, the condition being that title should pass on payment of the full amount of purchase money which is payable in fifteen yearly instalments.

3. In 1872 N. Bhimanachen (1st defendant) sued the 2nd defendant for the recovery of certain land, including part of the escheat land above referred to. It appears that though the 2nd defendant pleaded that it was escheat land purchased from Government he failed to prove the fact. The suit was decided in favor of Bhimanachen and the land was made over to him. To this suit Government was no party.

4. A suit was then filed on behalf of Government for the recovery of the land from Bhimanachen. The Court of first instance decided in favor of Government, but on appeal by 1st defendant the District Judge, though agreeing with the Lower Court in finding that the title to the land vests in Government, holds that they cannot claim its surrender until default on the part of 2nd defendant in payment of the instalments of the purchase money. The result is that, though the title of Government is established as against the 1st defendant, the latter is to retain possession of the land. The Board agree with the Collector in thinking that the decision of the Appellate Court is wrong and that a special appeal should be preferred to the High Court.

5. The appeal time expires on the 19th February 1876.

(A true Copy and Extract.)

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

*Proceedings of the Madras Government, Revenue Department,
22nd January 1876.*

No. 174.

ORDER THEREON, 22nd January 1876, No. 87.

Miscellaneous.

The Government Pleader is authorized and instructed to prefer a special appeal to the High Court accordingly.

(True Extract.)

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

To the Board of Revenue.
,, the Government Pleader.

Exd. J. Tulloch.

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Revenue Department

Proceedings of the Board of Revenue

Dated 17th January 1876
No. 124

Read the following

No. 264.

From W. Logan Esq.
Ag. Collector of Malabar.

To A. E. Stokes Esq.
Ag. Secretary to the
Board of Revenue
Malabar.

Sir,

Referring to the correspondence
noted in the margin, I have

G.O. of 1st October 1874
No. 125. the honor to forward, for the
Board's Proceedings Board's information, copy
dated 4th August 1875.
No. 2171.

of the Decree and judgment passed
in Appeal Suit No. 221 of 1875,
by the District Judge of South
Malabar, modifying in a material
point, the Decree in O.S. No. 408

Malabar 17/1/76

Govt. of 1876: 33 Adms.

REVENUE.

THE BOARD OF REVENUE.

Ag. Secy. to the Board.

Dated January, 1876.

Recd.

Print.

G.O. of 22nd January 1876, No. 87.

JANUARY.
No. 173-174.

Sub. 221 of 1875 in District Court of
South Malabar. Authorizing the Government
pleader to prefer a special appeal to the High
Court against the decision of the District Judge
in—

of 1844, in the file of the District
Municipality of Thermanalprun, in
which the Government sued for
the recovery of certain escheat
lands which had been unlaw-
fully taken possession of by
the 1st defendant from the 2nd.

2. The Board will observe
that the Appellate^{Court} while confirming
the Lower Court's finding as to
the true right of Government
to the lands in question, has
reversed the original decree so
far as it related to the surrender
of the lands, holding, that the
Government as plaintiff have
no reason to seek for the possession
of

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of their property so long as no de-
fault is made in the instalments
of the purchase money which 2nd
Defendant agreed to pay for the
Government title to the lands.

3. To understand the position
in which the Government is
placed by this decree reference
to the previous litigation between
1st and 2nd defendants is necessary.

I forward copies of judgments of
the District Municipality Court in
D.S. No. 547 of 1842 and of the
District Court at S. No. 273,
of 1843, and it will be seen
that the first defendant originally
sued

Sued 2nd defendant under an
other deed, granted by 1st defen-
-dant as joint to 2nd defendant
as mortgage for these and other
lands. 2nd Defendant in that
suit pleaded that he had pur-
-chased the lands ^{now} in question
from Government as an escheat.
It seems, however, that he failed
to produce any evidence on this
point and under those circum-
-stances it seems to have been
rightly decided that the plea
was of no avail. 1st Defendant
therefore ousted 2nd defendant
from possession, and that act
led to my predecessor addressing
the

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the Board in the letter printed
with Board's Proceedings No. 2481,
dated 25 September 1874, for per-
-mission to institute this suit
in which, relying on general title
possession of the lands in dispute
was sought. It seems to me that
the District Judge has been misled
by the fact that a Contract of
Sale was entered into between
the Government and the 2nd
defendant and was in part
fulfilled. That Contract had,
in reality, nothing whatever
to do with this suit. The fact
was alluded to in the plaint
to explain 2nd Defendant's position

with regard to Government, but
it was of no importance so long
as 1st Defendant rested his plea
for retaining possession on general
title similar to that put forward
by Government. When the
District Judge found that the
title put forward by Govern-
-ment, was stronger of the two
1st Defendant's possession entitled
the consent of Government
became mere trespass and he
should certainly it seems to
me have been ousted from
possession.

4. There are many obvious
objections to the reasoning made
use

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use of in the Appeal Judgment
and I do not consider it necessary
to set them out in detail.

5. I, therefore recommend that
a Special Appeal be made to
the High Court to have the appeal
decree revised so far as it
affects the original Decree, and
accordingly request that if
the Board agree with me,
the Government Pleader may
be authorized to take the necessary
steps in the matter. The period
for preferring the appeal expires
on the 19th February 1876.

The papers that may
be required for reference in

the case are under preparation
and will be sent as soon as
ready.

Memphis, Mississippi } I have re
Calicut } (13) W. Logan
22nd December 1895 } Affdect

Submitted for the orders of
Government with reference to

the orders noted in the margin

G.O. 1st October 1894.
No: 1257.

G.O. 12th August
1895. No: 1219.

In 1890, certain escheat

land was sold conditionally

to the 2nd Defendant, the

condition being that title should

pass on payment of the

full amount of purchase

money which is payable in

15 yearly instalments.

In 1892, S. Bhimanachan

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(1st Defendant) sued the 2nd
Defendant for the recovery of
certain land including part of
the escheat land above referred.
It appears that though the 2nd
Defendant pleaded that it was
escheat land purchased from
Government, he failed to prove
the fact. The suit was decided
in favor of Bhimanachan, and
the land was made over to him.
To this suit, Government was
no party.

A suit was then filed on
behalf of Government for the
recovery of the land from Bhima-
-chan. The Court of first instance

decided in favor of Government
but on appeal by 1st Defendant
the District Judge though ag-
reeing with the Lower Court
in finding that the title to
the land vests in Government
holds that they cannot claim
its surrender until default
on the part of 2nd Defendant
in payment of the instalments
of the purchase money. The
result is that though the title
of Government is established
as against the 1st Defendant
the latter is to retain possession
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of the land. The Board agree
with the collector in thinking
that the decision of the Appellate
Court is wrong and that a
Special Appeal should be
preferred to the High Court.

The appeal was entered
on the 19th February 1896

(See Appendix)

Attest
Secretary

To the Secretary Government
Revenue Department, with
4 orig. encls. & 1 photo

E. H. Knight

By O. M. C. 1907-10
12 Aug 95-126-9

Res. 1876-1877

1877

Proceedings of the
Board of Directors

Special Order

Dated 17th June 1876

Res. 1876-1877

By O. M. C. 1907-10
(12 Aug 95-126-9)

By O. M. C. 1907-10
12 Aug 95-126-9

Suit No. 221 of 1875 by the
District Judge of the
Malabar - C. M. C. 1907-10

For order of the court
to the effect that the
proceedings, accompanying
that case should be put
in order to the effect that

The Court is authorized and instructed
to prefer a special appeal to the High
Court accordingly.

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14 To the Board of Directors 22nd January 1876
15 The Court of Directors 22nd January 1876