

(1) Number of pages 26
(2) Date of repair 17-7-23
(3) Initials of the Referencer _____

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

REV.

DEPARTMENT

G.O. No.	1977	Press
B.P. No.		Mis.
Dated	15-6-1877	197

Not to be folded or roughly handled

1927

GOVERNMENT OF MADRAS.
REVENUE DEPARTMENT.

13th June 1877, No. 1,977.

Read the following papers:—

No. 253. Proceedings of the Board of Revenue, dated 7th June 1877.

Read the following letter from W. LOGAN, Esq., Collector of Malabar, to H. E. STOKES, Esq., Secretary to the Board of Revenue, dated 26th May 1877, No. 134.

I HAVE the honor to report that I have been served with a Notice, including me as Collector of Malabar as 44th defendant in Original Suit No. 26 of 1876 (V. Avisu Uma (F) plaintiff *versus* P. A. Orkatiri Mamed and 47 other defendants), now pending in the Court of the Subordinate Judge of South Malabar, a translate of the copy of the plaint being herewith forwarded.

2. The suit is filed for the recovery of one-third share, together with the value of produce up to date in eleven pieces of land situated in the marginally-named amshoms of Ponany Taluq, alleged to belong to the plaintiff's deceased father, and which are now in the possession of the children and wife (defendants 1 to 6) of her brother, the deceased K. J. P. K.

3. The action was at first brought against these six defendants only, after which the other defendants, who are tenants of the lands, were added; and it was on the allegations of some of these defendants, that the lands belong to Government, that the Collector, on the application of the plaintiff and in the discretion of the Court, was joined as a defendant in the suit. The Government is only concerned in the properties described in the schedule to the plaint as Nos. 1 and 2, and situated in the amshom first-named above.

4. These lands being at the mouth of the Chitway estuary were formerly covered with water, but in process of time, by means of the alluvial deposits annually brought down, they accreted from the river.

Places similarly formed by accretion from the sea or river belong to Government. So the jenm of these lands belongs to Government, and not to plaintiff or anybody else.

In this same part of the district these are not the only lands thus situated, but there are many similar places both to the north and south of them.

5. For want of information, the condition of these lands was only recently brought to the notice of the authorities, previous to which influential men and jenmies, such as the Mauhalavil Nairs and others, took possession of them as their jenm properties, and granted them on kanom and kui-kanom leases to various ryots.

6. In 1849, somehow or other information was received at the Huzur regarding the nature of these lands, and, subsequently, on the petition of a ryot applying for the grant of these lands on cowle, and on a report of the Tahsildar of the Old Chowghaut Taluq (the disposal of which was long delayed), the Sub-Collector, after inquiries had been made by his Sheristadar, sent an order in 1859 to the Tahsildar,

that although these lands are alluvial deposits, in consideration of the lapse of time and the many changes and transactions that have been effected thereon, the Government see no reason to interfere for the present, and the matter was there dropped.

7. But on the appointment of the special establishment to inquire into the lands of the district, that department alighted on the lands in question, and after a searching investigation in 1864 declared them to belong to Government; and in 1867, in the operation of the Escheat Superintendent, the whole of the lands were measured as belonging to Government, and as they were in the hands of several ryots in many small portions, they were required to be so registered; some of these were sold by the Escheat Department, and the others are left for sale.

8. During the operations of the Escheat Department, the aforesaid jenmies advanced their claims to the Superintendent; but being found to be false, they were rejected.

9. Of these lands, the portions involved in the plaint only have now been inspected by the Escheat Inspector and an account prepared, of which six pieces in land No. 1 and seventy-three pieces in land No. 2 are in the hands of ryots; several of these pieces pay in addition to land-tax the jenmabhogum as well. The jenm right of some have been sold by Government, while others have been granted on cowles, and there are other pieces which having no fruit-trees, no jenmabhogum has been yet fixed by Government. The jenm value of the above 79 plots of land, after deducting the value of improvements, is estimated at Rs. 29,000.

10. Such being the real state of the case, the plaintiff has no right to these lands. She has filed no documents in support of her claim, nor has she shown in what manner these lands have been acquired by her father.

But as her brother the deceased Kunhi Paki had before the Escheat Superintendent contended that he received the jenm right from the Pyancheri Parivadi in 1018 M.E., and produced a jenm deed to support it, it is possible that the plaintiff may advance a similar plea.

11. Assuming that the deed is *bona fide*, the executing party to it, the Pyancheri Maubhalavil Nair, not having jenm rights to the land, the right obtained from a member of that family is undoubtedly of no value.

12. Except alleging that on many of the pieces of land he possesses jenm rights, the Pyancheri Maubhalavil Nair, either in the petitions formerly given or in his present answer as a defendant, does not state that he has sold the jenm right of any portion of them.

13. Of the above lands, Nos. 1 and 2, about three pieces only are in the possession of the defendants Nos. 1 to 6; the other portions are neither directly nor indirectly in their hands.

14. On these three pieces in their possession, defendants 1 to 6 pay jenmabhogum to Government, which fact is admitted in their statements.

15. The deceased Kunhi Paki (father of defendants 1 to 5 and husband of No. 6) did the same. And as this acknowledgment of the Government title has been quietly acquiesced in for over twelve years by the person (deceased Kunhi Paki) who then admittedly (*vide* Plaint) represented plaintiff's interests, it seems quite clear that plaintiff has no right now to maintain this suit on any other footing except as a tenant of the Government.

16. In this case almost all the defendants who are ryots have put in their statements, in which they have admitted the jenm right of Government, except the 19th defendant, Maubhalavil Nair; and most of them averred that they hold on tenures from Government, only a few stating that they hold from private individuals. Maubhalavil Nair, although in his statement he alleges that in the above land No. 2 some portions are his jenm property, still admits that some other portions are Government land.

17. In the claims of jenm property set up by him before the Escheat Department, he produced as documents in support some patom chits from 100 M.E. downwards, and copy of the above alluded to order of the Sub-Collector, and as being very ancient jenmum, no jenm deed is forthcoming. The above chits are on (unstamped) plain cadjans. Such documents can be easily manufactured. Besides which, more than 100 years have elapsed since 950 M.E., and if transactions had taken place at so early a date, the lands should have had very old trees on them and their assessment fixed in the old Pymaish accounts. Nothing of the kind, however, exists in connection with them.

So the only thing whereby the title of Government can be impugned is the order of the Sub-Collector above alluded to, and translation of which is enclosed. In it and in the reports which gave rise to it, the lands are described as having been formed by silting up from the sea, but owing to the long possession of the ryots, the Sub-Collector would not disturb it.

18. Therefore, even by the strict terms of his order, the original title of Government was admitted; and as he had no authority to relinquish the Government rights, I don't fancy the Courts will attach much weight to his order on the subject, followed up as it was by over twelve years' peaceable possession by Government. Further, it appears that some of the influential neighbouring jenmies disputed with some of the tenants and obtained decrees from Courts conferring jenm rights in their favor. Such decrees having been obtained *without Government being included as a party* are not, however, sufficient to invalidate the title of Government. For these reasons I am of opinion that this case should be defended by Government.

19. The date of hearing of this case having been fixed for the 19th June 1877, I have the honor to apply for the early sanction of the Board to file the answer framed by me, and herewith submitted accordingly.

SUBMITTED for the orders of Government.

2. Plaintiff originally filed this suit against the widow and children of her deceased brother, defendants 1 to 6, claiming, with mesne profits, one-third share of the property referred to in the plaint. Subsequently, several other parties who hold possession of portions of the land were made defendants, and with reference to the allegations of some of them that they hold from Government, the Collector has also been made a defendant. Of the eleven plots of land entered in the Plaint Schedule, only two, Nos. 1 and 2, are claimed as the property of Government. These lands are accretions to river-bank, which, according to the established usage of the Malabar District, are regarded as Government property, and are treated as such. It appears, however, that the right of Government to this with other land of the same description was for some time lost sight of, and that the lands were appropriated by certain influential parties. This matter attracted the attention of the Revenue Authorities in 1849, and upon inquiry the Sub-Collector in 1859 passed an order asserting the right of Government to the accretions, but considering that they were not recent, he observed that "*at present*," he deemed it inexpedient for Government to interfere and disturb long possession.

3. Nothing further was done in the matter until 1864, when the Escheat Department, after full inquiry, rejected the claims put forward by certain parties of whom plaintiff's brother was one, and declared the land to be the property of Government, and in 1867 it was measured and registered as Government land.

4. The land thus disposed of included plots Nos. 1 and two in the Plaint Schedule, of which 79 pieces are held by ryots who pay both land-tax and jenmabhogum to Government, and the estimated jenm value of these, after deducting the value of improvements, is Rs. 29,000. The jenm right of some portions of Nos. 1 and 2 has been sold by Government, while other portions have been given on cowle. Of lands Nos. 1 and 2, defendants 1 to 6 hold only three pieces, and for these

Revenue Department, 13th June 1877, No. 1,977.

they pay jennabhogum to Government, as plaintiff's brother did before them. Government have been in possession for more than twelve years, and their jennabhogum is admitted by most of the defendants.

5. It is proposed to deny plaintiff's right to lands Nos. 1 and 2, to assert the claim of Government, and to plead limitation.

6. The Board recommend that the defence of the suit be sanctioned and the draft answer approved. The suit is to be heard on the 19th June 1877.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Secretary.

No. 254.

ORDER THEREON, 13th June 1877, No. 1,977.

Land Revenue, No. 7.

HIS GRACE the Governor in Council sanctions the defence of the suit referred to in these Proceedings and the filing of the draft answer prepared by the Collector. He observes that the foreshore and all accretions thereto in tidal and navigable rivers and estuaries are the property of the Crown, and that in the present instance the Government claim is apparently good and ought to be defended.

(True Extract.)

(Signed) C. G. MASTER,
Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

Wm 1522/78

Govt. of 1877: 3000000

REVENUE.

THE BOARD OF REVENUE.

Dated June, 1877.

Recd.

End.

G.O. 1304 June 1877, No. 1,977.

JUNE.

Nos. 253-254.

Sub-Judge of South Malabar. —Sanctioning, with certain remarks, the defence of — for recovery of half share of certain land in Ponnani Taluk, and the filing of the draft answer prepared by the Collector.



Rev Sep^r

No 136

Proceedings of the Board of Revenue
Dated 7th June 1877.

Read the following:-

No 136. From

W. Lofan Esquire
Collector of Malabar.

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

Sir,
I have the honor to report that I have
been served with a notice including me as Collector
of Malabar as one of the defendants in original suit
No 26 of 1876. - V. Ajisa Ima (S). Plaintiff, Versus
P. A. Orskatin named and 47 other defendants
now pending in the Court of the Subordinate Judge
of South Malabar, a translate of the copy of the
Plaint being herewith forwarded.

1. The suit is filed for the recovery of 1/3
Share to share with the value of produce up to date
in 11 pieces of land situated in the marfina, named
Anthonis of Ponang taluk alleged to belong
to the Plaintiff's deceased father and which are now
in the possession of the children and wife (defend-
-ants 1 to 6) of her brother the deceased, Kumbi Paki.

2. The action was at first brought against
the 6 defendants only, after which, the other defend-
-ants, who are tenants of the lands were added and
it was on the allegations of some of these defendants
that

1877

Rev. Messrs. Esq. 1877

Rev. Messrs. Esq. 1877

Rev. Messrs. Esq. 1877

For order

1877

Suit. Official - No 26 of 1876 instituted
in the Court of the Subordinate Judge of
South Malabar, for the recovery of 1/3
Share of certain land in Ponang taluk
to share with the value of produce, -
submitting to Govt. letter from Collector
on the subject of the - and recommending
that the copy of the suit
be forwarded and the draft answers
approved.

Kidana - falls
Orummanur
Chinnakad
Kudikad

R. 13: 1877
C. 8: 1877
R. 13: 1877
R. 13: 1877

253

that the lands belong to Government that the Collector on the application of the Plaintiff and in the discretion of the Court was joined as a defendant in the suit. The Government is only concerned in the properties described in the Schedule to the Plaintiff, as Nos 1 and 2, and situated in the Amshom first named above.

These lands being at the mouth of the Curruway Estuary were formerly covered with water, but in process of time, by means of the alluvial deposits annually brought down, they accreted from the river.

Plains similarly formed by accretion from the sea or river belong to Government. So the tenure of these lands belongs to Government and not to Plaintiff or anybody else.

In this same part of the District, there are not the only lands thus situated, but there are many similar places both to the north and south of them.

5. For want of information, the condition of these lands was only recently brought to the notice of the authorities, previous to which, influential men and Jemmas, such as the Maunaharail Nairs and others took possession of them as their Jemman properties and granted them on Ransom and Run-Ransom leases to various ryots.

6. In 1869 some new or other information was received at the Survey regarding the nature of these lands, and subsequently on the petition of a ryot applying for the grant of these lands on Cowle, and on a report of the Subcollector of the Old Chowphant taluk, (the disposal of which was long delayed) the Sub Collector, after inquiries had been made by the Sheristadar, sent an order in 1879 to the Subcollector, that although these lands are alluvial deposits, in consideration of the lapse of time and the many changes and transactions that have been effected thereon, the Government

By nature of the usual laws of the land

By the

Are they are
- rutions
+ Escheat
estate

Law & equity
Real don't

All land
assessable
for tax

Government see no reason to interfere for the present - and the matter was there dropped.

7. But on the appointment of the Special Establishment to Enquire into the Escheat lands of the District, that Department alighted on the lands in question, and after a searching investigation in 1864 declared them to belong to Government, and in 1867 in the operation of the Escheat Superintendent, the whole of the lands were measured as belonging to Government, and as they were in the hands of several ryots in many small portions, they were required to be so registered; some of them were sold by the Escheat Department and the others are left for sale.

8. During the operations of the Escheat Department, the aforesaid Jemmas advanced their claims to the Superintendent but being found to be false they were rejected.

9. Of these lands, the portions involved in the Plaintiff only have now been inspected by the Escheat Inspector and on account prepared, of which, 6 pieces in land No 1 and 73 pieces in land No 2 are in the hands of ryots. Several of these pieces pay, in addition to land tax, the Jemathogum as well. The Jemman right of some have been sold by Government - must which others have been granted on Cowle and there are other pieces which having no fruit trees, no Jemathogum has been yet fixed by Government. The Jemman value of the above 79 plots of land, after deducting the value of improvements, is estimated at Rs 29000.

10. Such being the real state of the case, the Plaintiff has no right to these lands. She has filed no documents in support of her claim, nor has she shown in what manner these lands have been acquired by her father.

Now as her brother the deceased Annabi Paki had before the Escheat Superintendent

Continued

Contended that he received the same right from the Panchen Sarivad in 198 M.E. and produced a Jumu deed to support it. It is possible that the Plaintiff may advance a similar plea.

11. Allowing that the deed is bona-fide, the executing party to it, the Panchen Manhalavil Nair not having Jumu rights to the land, the right obtained from a member of that family is undoubtedly of no value.

12. Except alleging that on many of the pieces of land he possesses Jumu rights, the Panchen Manhalavil Nair, either in his petitions formerly given or in his present answer as a defendant, does not state that he has sold the Jumu right of any portion of them.

13. Of the above lands Nos. 1 and 2, about 3 pieces only, are in the possession of the defendants 1 to 6, the other portions are neither directly nor indirectly in their hands.

14. On Nos. 3 pieces in their possession. Defendants 1 to 6 pay Samabhojan to Government which fact is admitted in their statements.

15. The deceased Amchi Paki (father of Defendants 1 to 5 and husband of No. 6) did the same. And as his acknowledged must of the Government title has been quietly acquiesced in for over 12 years by the person (deceased Amchi Paki) who was admitted (vide Plaintiff's statement) as the plaintiff's representative, it seems quite clear that Plaintiff has no right now to maintain his suit on any other footing except as a tenant of the Government.

16. In this case almost all the defendants who are ryots, have put in their statements, in

naturally in which they have admitted the Jumu right of Government, except the 19th Defendant Manhalavil Nair; and most of them avowed that they hold on tenures from Government, only a few stating that they hold from private individuals. Manhalavil Nair, although in his statement he alleges that in the above land No. 2. Some portions are his Jumu property, still admits that some other portions are Government land.

17. In the claims of Jumu property set up by him before the Echeat Department he produced as documents in support some paton Chits from 950 M.E. downwards, and copies of the above alluded to order of the Subcollector and that as being very ancient Jummum, no Jumu deed is forthcoming. The above paton Chits are on (unstamped) plain Cadjans.

Such documents can be easily manufactured. Besides, which, more than 100 years have elapsed since 950 M.E. and if transactions had taken place at so early a date, the lands should have had very old trees on them and their assessment fixed in the Old Plymouth Accounts. Nothing of the kind however exists in connection with them.

So the only thing whereby the title of Government can be improved is the order of the Subcollector above alluded to and transmission of which is enclosed. In it and in the reports which gave rise to it, the lands are described as having been formed by piling up from the sea, but owing to the long possession of the ryots, the Subcollector would not disturb it.

Thompson

18. Therefore even by the strict terms of his order, the original title of Government was admitted. and as he had no authority to relinquish the Government rights, I don't fancy the Courts will attach much weight to his order on the subject, followed up as it was by over 12 years peaceable possession by Government. For.

Now it appears that some of the influential neighbouring Jemmis disputed with some of the tenants and obtained decrees from Courts conferring Jamm rights in their favour. Such decrees having been obtained without Government being included as a party are not however sufficient to invalidate the title of Government. For these reasons I am of opinion that this case should be defended by Government.

19. The date of hearing of this case having been fixed for the 19th June 1877. I have the honor to apply for the early sanction of the Board to file the answer framed by me, and herewith submitted accordingly.

Malabar
Collector's Office
Calicut
26th May 1877

I have &c.
Sd. W. Loufan
Collector.

Submitted

Submitted for the orders of Government.

2. Plaintiff originally filed this suit against the widow and children of her deceased brother, defendants 1 to 6, claiming with means profits one third share of the property referred to in the plaint. Subsequently several other parties who hold possession of portions of the land were made defendants and with reference to the allegations of some of them that they hold from Government the Collector has also been made a defendant. Of the 11 plots of land entered in the plaint Schedule only two, Nos 1 and 2 are claimed as the property of Government. These lands are accretions to river bank which according to the established usage of the Malabar District are regarded as Govt property and are treated as such. It appears however that the right of Govt to this with other land of the same description was for some time lost sight of and that the lands were

1
were appropriated by certain influential parties. This matter attracted the attention of the Revenue Authorities in 1849 and upon enquiry the Sub-collector in 1859 passed an order asserting the right of Government to the accretions but considering that they were not recent he ^{observed} ~~passed~~ that "at present" he deemed it inexpedient for Government to interfere and disturb long possession.

3. Nothing further was done in the matter until 1864 when the Escheats department after full inquiry rejected the claims put forward by certain parties of whom plaintiff's brother was one and declared the land to be the property of Govt, and in 1867 it was measured and registered as Government land.

4. The land thus disposed of included plots Nos 1 and 2 in the plaint Schedule of which 77 pieces are held

5 ^{only}
by ryots who pay both land tax and Jamma bhogam to Government and the estimated gemm value of these after deducting the value of improvements is Rs 29000. The gemm right of some portions of Nos 1 and 2 has been sold by Government while other portions have been given on Cowle. Of lands Nos 1 and 2 defendants 1 to 6 hold only 3 pieces and for these they pay Jamma bhogam to Government as plaintiff's brother did before them. Government have been in possession for more than 12 years and their gemm right is admitted by most of the defendants.

5. It is proposed to deny plaintiff's right to lands Nos 1 and 2, to assert the claim of Government and to plead limitation.

6. The Board recommend that the defence of the Suit be sanctioned and the draft answer approved. The Suit

is to be heard on the 19th June 1877.

(True Copy & Extract)

Respectfully
Secretary

To
The Secretary to Government R.D.
with 4 Enclosures to be returned.

I agree with Mr. Huddleston and even if his statement should ultimately be deemed right. I see no harm in the question being tried out. I am Mr. Huddleston's opinion. The Board's proceedings.

I would not defend this suit without at least further enquiry. It seems to me to arise probably from out of bad law and wrongful actions on the part of the Escheat Department. at least we want more facts.

There is no presumption as respects the general law of accretion in Malabar. On the contrary it is the law of the land and the principle in connection with whose property accretion takes place takes possession of the accretion as a matter

12/6

is to be heard on the 19th June 1877.

(True Copy & Extract)

myself of course & right; and
appears to me that this may
be the legal position of the cause
of action here.

The pieces (2) of land
about which Government finds
itself involved in a law
suit, are such accretions
but it is not alleged that
the adjacent terra-ferma
is or ever was State land.
and if this be not the case
we have no standing in law.
and must decline to defend.

We must not plead
limitation as respects
what may be usurpation
in lost abinitio

I would tell the Collector
that unless the pieces of
land

land in which the Govt
is said to be interested
are accretions to old Crown
Escheat Estates, we will
not defend the suit and
accept the decree against
us with costs.

If they are accretions
to old Escheat Estates
the answer must be
modified and this states
as the ground of action
and defence.

My Honble. Colleagues
may ask, whether, as it
appears that the Escheat
Department is so entangled with
the matter, it does not
follow that they were
accretions to Crown Escheat
Estates. Unfortunately this is not
necessarily

The draft answer prepared

by

2nd

M

True Cohn & Sutherland

most certainly the case. This
is pertinent, unfortunately
in some cases, without
of their way - be the matter
what they may - to meddling
with just such matters
and I fear not always
lawfully or judiciously.

such as have to fight to free
the negro by fighting the cause of
liberty & peace.
We welcome the abolition
for many years by a highly educated
and well educated v. of the
his family have accepted of the
cause is not less a friend
is accepted by the negroes & the
which is to be formed of
one claim. Let

Before I can judge from these
papers the Gov. claim is good on
right the defendant.

The former with accretions
lands in tidal & navigable rivers
pretensions are the property of
the Crown, and a bar there has been
nevertheless. - It seems clear that
the land partly answers the description
of the phrase limitation cannot be
regarded as part of the Crown's right.
I see no reason why the Crown should
be claimed in favor of the former of
R.C. 11. June 17. R.B. June 17.

The adjoining Letter from Dec
1841 has been forwarded to you
the new of them into. All I think is plain & the
that is very in many. I have
written to you in Nov. 1841. I
think you have been of the
interest. I hope to see you
very soon to try. I am not however
to know if it is of any use to see
you.

N^o. 1977 6 Revenue Sep^r
Proceedings of the Madras Government
Under date the 13 June 1877.

Read Proceedings of
the Board of Revenue dated
7th June 1877 N^o: 2656 recom:
= manding to sanction defence
of original suit N^o: 26 of 1876
instituted in the Court of the
Sub Judge of South Malabar
for recovery of $\frac{1}{2}$ share of certain
land in Ponari Talug together
with the value of produce.

His Grace the Governor in Council sanctions the defence of the suit re: - ferred to in these Procees: - dings and the filing of the draft answer prepared

by

by the collector. He
observes that the foreshore
and all accretions thereto
in tidal and navigable
rivers and estuaries are
the property of the Crown
and that in the present
instance the Government
claim is apparently
good and ought to be
defended.

CW

¹⁶⁷
M. S. C. P. W. of Revenue 13-6-97
printed copy 26-6-97. with the same.
110

G.O.

Sanctioning of fence
of Sub N^o 26 of 1876 insti-
tuted in the Court of the
Sub Judge of South Malabar

1907
13
G.O.