(1) Number of pages 26.

(2) Date of repair 17.10.79

(3) Initials of the Referencer

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No. 3108 Press.
B.P. No: Mis.

Revenue Dept

Dated 15 — 10 — 1877 197—.

Not to be folded or roughly handled

Archives I—5,806—24-2-78.

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

15th October 1877, No. 3,168.

Read the following paper :—

No. 122. Proceedings of the Court of Wards dated 8th October 1877, No. 4,675.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras, to H. E. STOKES, Esq., Secretary to the Board of Revenue, dated 5th October 1877, No. 125 :—

With reference to the Board's Proceedings noted in the margin, I have the honor to submit the following opinion.

2nd October 1877, No. 4,608.

2. I concur with the Collector and Principal Assistant Collector in thinking that the suit should be defended by the Collector on behalf of Government, as well as in his capacity as Agent to the Court of Wards. Government would be liable for the mesne profits claimed for the years before the Inam was transferred to the zemindari, and are also interested in the village to the extent of the increased peishcush paid by the Zemindar on account of it, which would have to be foregone if the plaintiff succeeded. The suit as at present framed appears to be only against the Collector as Agent to the Court of Wards. Application should, therefore, be made to the Court to add the Collector *qua* Collector as a party.

3. The written statement to be filed on behalf of the Collector as representing Government should, I think, set out more fully the history of the Inam and the dealings of the Revenue authorities with it than is done by the Collector's draft. I enclose draft such as I should advise being filed. I do not think the suit is barred either by the Pensions Act or the Law of Limitation, but there can be no harm in raising both pleas.

4. As to the Pensions Act. I agree with the Board in doubting whether a grant of an Inam by a former Zemindar can be said to be a "grant of land revenue made by a former Government" within the meaning of the Act. Even if the Zemindar of Purla Kimedy was at the time of the grant practically an independent Chief, still there was a Government to which he was nominally subject, and it is that Government whose acts the Pensions Act is intended to protect from being questioned by the Civil Courts. Neither do I think that the fact of the Inam having been allowed to continue until 1848 can be said to amount to a grant by the Government. The services, if any, were rendered not to Government but to the Zemindar, and the reason probably why the Inam was not disturbed before by Government was that it escaped notice. As soon as it was brought to the notice of the Revenue authorities it was resumed.

5. As to the bar by limitation. If it be the fact that the plaintiff was in possession jointly with the widow Judamma in 1863, and continued so until her death in 1865, the case would seem to be governed by No. 143 of Schedule 2 of Act IX of 1871, and the suit would not be barred. It may be, however, that No. 129 of the schedule would be held to apply, and in that case the suit would be barred, as plaintiff alleges his adoption took place in 1831. I do not think it can be said that the cause of action occurred in 1848, the date of Mr. Bannorman's order, for possession does not appear to have been disturbed at that time.

6. I think that the defence on behalf of the Zemindar should take the same line as that raised on behalf of Government, only beginning with the transfer of the village to the zemindari in 1873. I enclose draft written statement.

7. I observe that the Collector states that the first hearing stands fixed for the 15th instant, and that the Court refused to allow any further adjournment.

8. I return all the enclosures.

The Court of Wards sanction the defence of the suit as against the Purla Kimedy Zemindar, for whom the Collector, in his capacity of Agent to the Court of Wards, will file the answer suggested by the Government Pleader. He will also move the District Court to make him a defendant *quâ* Collector as representing the interests of Government. Meanwhile the sanction of Government is requested for the defence of the suit as against Government.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Sub-Secretary.

No. 123. ORDER THEREON, 15th October 1877, No. 3,108.

Miscellaneous.

SANCTION is granted for the defence of the suit on behalf of Government and for the filing of the answer proposed by the Government Pleader.

(True Extract.)

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

To the Board of Revenue, with five enclosures.

Ent. A. F. Goodall.

Vide ent 40 45/40

Govt. of (1877) Madras.
REVENUE.

To
The BOARD of REVENUE.

Dated October 15th. Encl.
Received

G.O., 15th October 1877, No. 3,108.

OCTOBER.
Nos. 122-123.

Suit No. 28 of 1876 instituted against the Zemindar of Purla Kimedy.—Sanctioning the defence of the — on behalf of Government for filing the answer proposed by the Government Pleader.

In the District Court of Ganjam
O.S. No. of 1877.

Madana Gopala Patnaick
Plaintiff

v.

The Zemindar of Purla Kimedy & another — Defendants

Written Statement of the Defendant the Collector of Ganjam on behalf of Government

1. The Suit is barred by the Pensions Act 1871 & by the Law of Limitation

2. The Village of Degalapolam is not a Mokassa Village. It was originally granted before the Permanent settlement by the then Zemindar of Purla Kimedy to Khanja Gopi who was a Cutwal or supplying peon to the

Zemindar, on service tenure, determinable when the occasion for the services no longer existed. The village was not included in the assets upon which the Rishcush of the Zemindary was fixed. In 1848 Judamma in the plaint mentioned & one Gouranji petitioned the then Collector Mr. Bannorman that the grant might be registered in the name of the latter who was alleged to be the adopted son of ~~Hurridoss~~ Hurridoss in the plaint mentioned.

The Collector however refused to recognize the adoption & ordered that the grant should be resumed, as the services were no longer [illegible] As a matter of favour however he allowed Judamma to remain in possession during her life.

2 Judamma died in 1865 & upon her death as the village was in possession of a lessee whose lease did not expire until 1867 he was allowed to remain in possession as tenant paying rent to the Government. In 1867 the village was taken possession of on behalf of Government.

3. In 1873 the village was transferred to the Purla Kimedy Zemindary in consideration of an annual addition to the Rishcush of Rs 93.

4. This Defendant puts the Plaintiff to the proof that he is the adopted son of

58

Le of Hurridoss in the Plaint
de mentioned & submits that
f even if he were he has no
ex right to the village in question
in which was properly resumed
wh by Government in 1848 as
Le aforesaid

18 5. This Defendant therefore
pe prays that the Suit may
G be dismissed with Costs.
th 6. The Plaintiff cannot
re in any case recover mesne
la profits for more than 3
be years prior to the institution
of the suit.

I declare that what is herein
stated is true to the best of
my knowledge & belief

(True copy)

[illegible]
Sub Secretary

In the District Court of Ganjam

O.S. No 28 of 1876

Madana Gopala Patnaick
Plaintiff

v.

The Zemindar of Pusla Kmedy
& another —— Defendants

Written statement presented by the 2nd defendant the collector & agent to the Court of Wards on behalf of the 1st Defendant.

1. The village in question was transferred by the Government to the Zemindary of Pusla Kmedy in 1873, an addition of Rs 93 per annum being made to the Peishcush on account of such transfer

2. The said village is not an hereditary Mocassa as alleged by the Plaintiff

Enclosure in Rd
Bro. of 8th October
No 4675 to the Sec
Govt Rd

Rs 15-10-7) No 3108

Rs 4325/11

but was originally granted by a former Zemindary before the Permanent Settlement on Service tenure & was resumed by Government in 1848 not having been included in the assets of the Zemindary at the time of the permanent Settlement

3. This defendant does not know whether Plaintiff is the adopted son of Hurridoss in the plaint named or not but he puts him to the proof thereof

4. The Suit is barred by the Pensions Act of 1871 & by the Law of Limitations

5. The 1st Defendant is only liable, if at all for mesne profits from the time the village was transferred to the Zemindary in 1873.

6. The Plaintiff can not recover mesne profits for more than 3 years before the institution of the Suit

7. This defendant submits that the Suit should be dismissed with Costs

I declare that what is herein Contained is true to the best of my knowledge & belief

(True copy)

[signature]
Sub Secretary

Rev. Dept.

No. 4675

Proceedings of the Board of Revenue

Dated 8th October 1877

Read the following

No. 125.

From

J. W. Handley Esqr.
Govt. Pleader
Madras.

To

H. E. Stokes Esqr.
Secretary to the
Board of Revenue

Sir

With reference to the Board's Proceedings noted in the margin I have the honor to submit the following opinion

2nd October 1877 No. 4608

2. I concur with the Collector & Principal Asst. Collector in thinking that the Suit should be defended by the Collector on behalf of Government as well as in his Capacity as agent to the Court of Wards. Government would be liable

Enclosures in Bd Proc. of 8th October 1877 No. 4675 to the Secy to Govt. B

Pd 15-10-77 No. 3108

2
Q 4325/77

for the mesne profits claimed
for the years before the
Estate was transferred to the
Zemindary & are also interested
in the village to the extent of,
increased Rents paid
by the Zemindar on account
of it, which would have to
be forgone if the Plaintiff
succeeded. The suit as at
present framed appears
to be only against the Collector
as agent to the Court of Wards.
Application should therefore
be made to the Court to add
the Collector qua Collector
as a party.

3. The written statement to be
filed on behalf of the Collector
as representing Government
should I think set out more
fully the history of the Inam

and the dealings of the Revenue
Authorities with it than is
done by the Collectors draft.
I enclose draft but to
I should advise being filed
I do not think the suit is
barred either by the Provisions
Act or the Law of Limitation
but there can be no harm
in raising both pleas.

4. As to the Provisions Act I agree
with the Board in doubting whether
a grant of an Inam by a former
Zemindar can be said to be
a grant of land Revenue
made by a former Government
within the meaning of the Act.
Even if the Zemindar of
Parlah Kimedy was at
the time of the grant practically
an independent Chief still
there was a Government to
which he was nominally
subject & it is that Government

whose acts the Russian Act is
intended to protect from
being questioned by the Civil
Courts. Neither do I think
that the fact of the Inams
having been allowed to continue
until 1898 can be said to
amount to a grant by the
Government. The Services, if
any, were rendered not to
Government but to the Zemindar
& the reason probably why the
Inam was not disturbed
before by Government was
that it escaped notice. As
soon as it was brought to
the notice of the Revenue Authorities
it was resumed.

5. As to the bar by limitation.
If it be the fact that the
Plaintiff was in possession
jointly with the widow Judgment
in 1863 & continued so until
her death in 1865, the case
would seem to be governed
by No 143 of Schedule 2 of
Act IX of 1871 & the suit
would not be barred. It
may be however that No 129
of the Schedule would be held
to apply & in that case
the suit would be barred
as Plaintiff alleges his
adoption took place in 1861.
I do not think it can be
said that the cause of action
occurred in 1848, the date of
Mr Baker Ingram's Order, for
possession does not appear
to have been disturbed at
that time.

6. I think that the defence
on behalf of the Zemindar
should take the same line

as that raised on behalf of Government only beginning with the transfer of the Village to the Zemindary in 1873. I enclose draft written Statement.

7. I observe that the Collector states that the 1st hearing stands fixed for the 15th Instant & that the Court refused to allow any further adjournment.

8. I return all the enclosures.

Madras
5th October 1877

I have &c
(Sd) J. W. Handley
Govt Pleader

The Court of Wards sanction the defence of the Suit as against the Parla Kimedy Zemindar for whom the Collector in his capacity of agent to the Court of Wards, will file the [illegible]

Suggested by the Government Pleader

He will also move the District Court to make him a defendant qua collector as representing the interests of Government.

Meanwhile the Sanction of Government is requested for the defence of the Suit as against Government.

(True copy & extract)

[illegible]
Subsecretary

To
The Secretary to Govt R D
with Copies of revised answer
& (Copy of Bd's Proc 2nd October 1877 no 4608) (Its 5 encls In no. 10327/77 to be retd)

X Despatched yesterday

No. 3108

Sanction is granted for the defence of the Suit on behalf of Govt, and for the filing of the answer proposed by the Govt. Pleader.

15-10-77

To W. of Revd 15-10-77 with 5 Enc: C.C. 20-10-77

Vide C. No. 4313/27

Revd 1877 Depa

No. 432

Proceedings of the Board of Revenue

Dated 8th October 1877

Regd. 11

Subs. Summons & Enc. Pleader & requesting sanction of Govt. for defence of Suit of Sol. 1876 on file of the District Court of Tanjam.

With Order

---

12 REVENUE DEPARTMENT.

No. 4325 & 4313

From Pres: Board of Revenue

Dated 2d & 8: Octr — 1877.

FOR ORDERS.

Sanction the defence on behalf of Govt.

FOR ORDERS.