

(1) Number of pages 14 sheets

(2) Date of repair _____

(3) Initials of the Referencer _____

TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No.	6462	Press.
B.P. No.		Mis.
Dated	3.12.1877.	1977.

Not to be folded or roughly handled

In the District Munsiff Court at
Trivellore. 6462
1

Wednesday, the 19th day of July 1876.

Present

K. Kristnasawmy Rao

District Munsiff.

Original Suit No 191 of 1876.

This suit coming on for hearing,
the Court delivered the following
judgment.

I. The Plaintiff seeks to cancel the
sale of the land specified in the
plaint, held on the 25th December 1875,
under Act II of 1864 (Madras) for rea-
lization of arrears of revenue. The
1st Defendant is the purchaser of
the land at the revenue sale. The
2^d Defendant is the Tahsildar of
Conjeveram within whose juris-
diction the land is situated. The
3^d Defendant is the collector of

the Chingleput District. The Plaintiff states that he was the holder of the land in dispute, that in the notice of demand served upon him, he was directed to discharge the arrears on or before 4th January 1876, and the sale was advertised to take place on the 5th January 1876, that he (Plaintiff) paid the arrears in full on the 23rd December 1875, to the village Mamuru, Ragavulharry and obtained a receipt from him, and that the Revenue authorities, ignoring all these facts, caused the land to be sold on the 25th December 1875.

2. The 1st Defendant admits the irregularities in the sale.

3. The 2nd Defendant being the subordinate of the 3rd Defendant who is the executive head of the District, was exonerated by the Plaintiff.

4. The 3rd Defendant's defence is

in the following words:—

1st The land referred to in the plaintiff's was advertised to be sold for arrears of revenue on the 5th January 1876, but it was sold on the 25th December 1875. For this irregularity, the Revenue Inspector Ramanyaswamy who conducted the sale is responsible.

2. As this Defendant had no authority to cancel the sale, he referred Plaintiff to a Civil Court.

3. The village accounts do not show that the arrears were paid prior to the sale as alleged in the plaintiff.

4. Prays that the suit may be dismissed with costs.

5. The admissions and allegations in the pleading being sufficient to dispose of this case, no issues were recorded, and the parties were not called upon to adduce evidence.

6. It is admitted that the land was advertised to be sold for arrears of revenue on the 5th January 1876. The Plaintiff was, by law, entitled to pay off the arrears before the sunset on the 4th January 1876. It is only on default to pay the arrears before the sunset of the 4th January 1876, that the sale can legally take place. There can be no question that the sale which took place on the 25th December 1875 i.e. 10 days previously to the date fixed in the advertisement, is highly prejudicial to the interests of the Plaintiff. The fact that the irregularity was committed by the Revenue Inspector who is a subordinate of the 3rd Defendant, cannot legalize the sale which is otherwise void. If this was an action for damages, & there might be something in the

defence that Ramamya Chetty is responsible. But the 3rd Defendant, by his refusal to cancel the sale, impliedly confirmed it, and the Plaintiff is therefore fully justified in making him a party to this suit which seeks the cancellation of the sale.

The 3rd Defendant being under Section xxxviii of Act IV of 1864, the sole Competent authority to issue certificate of sale, the public cannot but look to him and to him alone, for redress.

7. In the 2^d para of his written statement, the 3rd Defendant pleads absence of authority in him to grant redress to the Plaintiff. I am upon a deliberate consideration, unable to endorse his views. The subordinate revenue officials in conducting sales, act as agents of the collector; their

acts bind him, only when they
act according to the instructions
they have received from him, or
according to the law and establish-
ed procedure; but when they act
contrary to law, practice, and
distinct instruction, they cannot,
by their acts, bind their superior
(the Collector) who may justly
refuse to recognize the sale and
to issue the necessary certificate.

The mere fact that the principal
in this case, happens to be a
public officer, does not deprive
him of the powers legally vested
in every principal, with reference
to the unauthorized acts of his agents.
There is nothing in Act II of 1864
(Madras) to take away from the
Collector, the natural right of a
principal. The Collector may justly
say

say to a purchaser at an irregular
sale conducted by his subordinate.
"My subordinate has not acted
"according to instructions. I am
"not therefore bound by his acts."
"I cannot recognize you as a pur-
"chaser. If you have any objection
"to receive back your purchase
"money and to consent to the re-
"sale of land, you may go to a
"Civil Court to establish your
"title to a certificate. Remember
"that the Court would not compel
"me to issue a certificate to you
"unless the sale is proved to have
"been regular, but you know that
"it was not". The purchaser would
after such plain reply, be loath
to embark on a litigation, especially
when he is certain of getting back
the money he paid in the purchase
of

of the property, on consenting to the resale of the property. This course would prevent innumerable suits, which are daily brought for the cancellation of irregular sales by the defaulters. It is also a mistake to suppose that the Courts can do what parties could not. The aid of the Courts is solicited when parties would not do what they should do. If an act is irrevocable by the party, even the Courts cannot cancel it. In my opinion whatever Courts are competent to direct to be done by one party on the complaint of another, the parties may do it themselves. I think that the 3^d Defendant was competent to cancel the sale when he found that it was irregularly conducted by his subordinate.

8. With reference to the allegation in the 3^d para of the written statement, I deem it my duty to make a few observations. Both in the plaint in this suit and in the petition which the Plaintiff presented to the Collector on the 22^d January 1876, the Plaintiff has distinctly stated that he paid the arrears on the 23^d December 1875, to the Mauicue of the Village, who is the local agent of the Government to receive payments, and obtained a receipt. This allegation of the Plaintiff is not traversed by the 3^d Defendant. An allegation not traversed, is considered as admitted. If the 3^d Defendant meant to say that no arrears were paid to the Village Mauicue on the 23^d December 1875, he should have distinctly stated so. The allegation made in the 3^d para, to

the effect that the village accounts do not show that the payment was made, previous to the date of sale, is wholly irrelevant as far as the Plaintiff is concerned. The responsibility of a ryot for arrears ceases the moment he makes the payment to a maniem and obtains a receipt from him in due form. In this case, the Plaintiff holds a receipt (printed Kychayet) in evidence of his having paid the arrears on the 23^d December 1875, duly signed by the Maniem. Whether or not the Maniem brought the collections to the public accounts, the Plaintiff, as a ryot, is not legally bound to enquire, and it is for the Government to see whether its agents do faithfully perform their allotted functions with reference to it. From a deposition

which the 1st Defendant gave this day before me, it appears that the Maniem Ragunaharry, gave 2 Contradictory statements before Seethapathi Naidu, Acting Sahildar; that in the first statement, he stated that the Plaintiff paid the arrears on the 23^d December 1875, but it was not brought to account until 7th January 1876, owing to the Christmas holidays intervening, but in the 2^d statement, he stated that the Plaintiff paid the arrears only on the 5th January 1876, but to oblige him (Plaintiff), he (Maniem) antidated the receipt. If the Maniem had really made such statements, it is hoped that the 3^d Defendant would take the matter into his serious consideration. With unscrupulous local agents, the

work of the Government must
fare ill. As the Plaintiff's allega-
-tion in the plaint, is not tra-
-versed, I did not enter upon
the investigation as to whether the
arrears were paid on the 28th Decem-
-ber 1875, or in January 1876. I may
also add that even if the Plaintiff
had not paid the arrears on the
23rd December 1875, the sale which
took place on the 25th December
1875, contrary to the advertisement,
is illegal and liable to cancellation,
and it therefore were waste of time
as far as this litigation is concern-
-ed, to hold investigation as to the
date on which the arrears were paid.

9. I declare that the sale which
took place on the 25th December 1875,
is irregular, and is accordingly
set aside. The 3rd Defendant shall
pay

pay the costs of this suit. 2.
Pronounced in open Court this
19th July 1876.

(signed) K. Kristnaswamy Rao
District Munsiff

/ True Copy /

M. M. M.
Collector.

Memorandum of appeal. S.
O.S. No. 191 of 1876 on the file of the District
Munsiff of Trivellore.

Sreenivasa Iyengar, son of
Cadaba Venkatachari of
Bangalore - - - - - } Plaintiff

Ahmed Khan Saib alias
Khalay Khan Saib - 1 - - -
Tahsildar of Coysenuram } 2.
Dahur }
Collector of the Chingleput
District. 3 } Defendants.

The Collector and 3rd defendant
above named appeals to the District
Court of Chingleput against that
part of the decree of the Munsiff
of Trivellore which adjudges that the
costs of the suit shall be borne
by the 3rd defendant for the following
reasons. -

I. That the decree of the Lower Court
is contrary to law, in that the Munsiff

3
01/12/77
Munsiff of Trivellore
L. L. M. S.

Recd from
the Collector of
Chingleput 2/10/77
October 1876 e/1877
Recd 1/12/77

lays down that the 3^d Defendant has power to cancel the sale under the provisions of Act II of 1864 - a course directly opposed to the Board's Circular Order No. III of 1875.

II. That in declining to entertain the appeal of the plaintiff against the sale, the 3^d Defendant acted entirely in accordance with the above order of the Board who are his official superiors.

III. That in the circumstances of the case and the plea put in by the 3^d Defendant, the Munsiff should have made the Revenue Inspector a Defendant in the suit, and held him responsible for all risk & losses.

IV. That the remarks of the Munsiff as to payment of arrears were totally

uncalled for in the circumstances of the case, more especially as he recorded no evidence beyond taking statement from the plaintiff himself -

V. That the 3^d Defendant having virtually admitted the claim of the plaintiff to the restoration of the land by pleading that the sale was conducted on the wrong date, the question of payment of arrears was only of secondary importance; consequently the answer filed by the 3^d Defendant was sufficiently explicit; the more so as the allegation of payment came to the notice of the 3^d Defendant after all legal power

of interference had passed out of his hands.

VI. That if the Munsiff thought the plea as to payment was insufficient, it was quite open to him to have called on the 3^d Defendant to amend the same at the first hearing of the Suit.

VII. That, assuming that the Munsiff was justified in entering on the question of payment of arrears, the 3^d Defendant submits that such was not made to the distrainer or the auctioneer as contemplated by Section XXXVII, Act II of 1864, and that the Munsiff is wrong in laying down that, after an attachment and

under all circumstances, the responsibility of a ryot for arrears ¹⁰ ceases the moment he makes the payment to a Munsiff and obtains a receipt from him in due form.

VIII. The Appellant prays for the foregoing reasons that the decree of the lower Court as regards costs may be reversed with such order as the Court may deem fit as to the Munsiff's remarks disparaging the Revenue Department.

(Signed) R. M. Barlow.
Collector.

(True copy)

M. M. Barlow
Collector

Suit No 191 of 1876 on the file of
the Trisellore District Munsiff Court.

Present

H. Kristasamuney Rao
District Munsiff

Plaintiff
Sreenivasaswamy
by Vakil
Bhashyam Swamy.

- Defendants
1. Ahmed Khan Sahib
alias
Kalyan Khan Sahib.
 2. Doraswamy Swamy
Tahildar of Conjeerawoddy.
 3. The Collector of
the Pungleput St.
- The 1st Defendant by
himself; 2nd Defendant
has been withdrawn
by Plaintiff - and
3rd Defendant by
Sreenivasaswamy.

Plaintiff has brought this
suit praying to cancel the sale
unlawfully held by the Revenue
authorities, of Kunjah land No 13
included in puttah No 1 standing
in his name in the village of
Amlaktham, Conjeerawoddy Taluk.
The

11/10/76
11/10/76

11/10/76

Shree Katter for

the Collector of

Pungleput 17/10/76

October 1876

24/

Rev. 2/4/77
4.6.3 Dec 17/76

The purchaser at the sale has
been made a party in the suit
as 1st Defendant.

Decree

It has been decided that the
sale has been cancelled and that
3rd Defendant do bear Plaintiffs' Costs.

Particulars of Court Costs incurred

By Plaintiff

Value of stamp for plaint	Rs. as. P.
10 - - -	10 - - -
Do - - - other stamps	1 - 8 - -
Fees for serving processes to Def ^{ts}	2 - 8 - -
Amount of the Vakils' Fees	3 - 4 - -
Total	17 - 4 - -

This amount to be paid to Plain-
- tiff by 3rd Defendant.

By the 3rd Defendant

Value of stamps	Rs. as. P.
1 - 8 - -	1 - 8 - -
Amount of the Vakils' Fees	3 - 4 - -
Total	4 - 12 - -

This amount to be borne by
the said Defendant himself.

Signed and sealed by me this 19th
13th
day of July 1876.

(Signed) H. Krishnaswamy
Dist. Munsiff

/ True Translation /

M. M. M.
Collector

22
70

No. 244

Chingleput District, Collector's Office,
Saidapet, 10th October 1877

14

From

P. W. Barlow Esq^r,
COLLECTOR OF THE
Chingleput District.

To

C. G. Master Esq^r,
Secretary to Government
Madras

Sir,

As directed in your Official
Memorandum No. 421 of the 25th
Ultimo, I have the honor to for-
ward copies of records which
accompanied my letter No. 485
dated 20th August 1876 to the Board,
in Suit No. 191 of 1876 on the file
of the District Munsiff of Trivellore.

I have the honor to be,

Sir,

Your most obed^t servant

P. W. Barlow

Collector

Rev^d 5
No. 244

from the collector
of Chingleput
10th October 1877
No. 244.

11/10/77
2
04227/77

C. 1489-

Recd 1877 Sept 27

From

Collector of the

CHINA AND DE

To

The SECRETARY

TO GOVERNMENT

Head

Dated

10th October 1877

Received

ENCLOSURE

No. 224

Forwarded copies of Judge
ments and decrees and
other records sent with
No 485 of 7th Dec 1876 in
which No 191 of 1876 in
the file of the *Prinville*
is with *Prinville*
Prinville
30 Dec 1877

C. 1489-1877
C. 1489-1877
C. 1489-1877