(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. / B.P. No.	6462	Press. / Mis.
Dated	3.12.1877.	197 .

Not to be folded or roughly handled

Archives 1—10,006—19-4-79.

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 realization of arrears of revenue. The 1st Defendant is the purchaser of the land at the revenue sale. The 2d Defendant is the Tahsildar of Conjeeveram within whose jurisdiction the land is situated. The 3d 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 advertized to take place on the 5th January 1876, that he (Plaintiff) paid the arrears in full on the 23d December 1875, to the village Maniem, Ragava Charry 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 2d Defendant being the subordinate of the 3d Defendant who is the executive head of the District was exonerated by the Plaintiff.

4. The 3d Defendants defence is in the following words:—

"1st The land referred to in the plaint "was advertized 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 Ramanuja Charry "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 "plaint.

"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 landwas advertized 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 sun-set 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 advertizement, 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 Ramanujah Chary 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 II 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 2nd 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 established 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 loth to embark on a litigation, especially when he is certain of getting back the money he paid in the purchase

of

of the property, or consenting to the resale of the property. This course would prevent innumera-
-ble 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 com-
-plaint of another, the parties may do it themselves. I think that the 3rd Defendant was com-
-petent to cancel the sale when he found that it was irregularly conducted by his subordinate.

8. With reference to the allegation in the 3rd para of the written state-
-ment, I deem it my duty to make a few observations. Both in the plaint in this suit and in the
-petition which the Plaintiff pre-
-sented to the Collector on the 22nd January 1876, the Plaintiff has distinctly stated that he paid the arrears on the 23rd December 1875, to the Mauiem 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 3rd Defendant. An allegation not traversed, is considered as admitted. If the 3rd Defendant meant to say that no arrears were paid to the Mauiem on the 23rd December 1875, he should have distinctly stated so. The allegation made in the 3rd para, to

the effect that the village accounts do not show that the payment was made, previous to the dated sale, is wholly irrelevant so far as the Plaintiff is concerned. The responsibility of a ryot for arrears ceases the moment he makes the payment to a manieam and obtains a receipt from him in due form. In this case the Plaintiff holds a receipt (printed Exhibit) in evidence of his having paid the arrears on the 23rd December 1875, duly signed by the manieam. Whether or not the manieam 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 the day before me, it appears that the manieam Ragavachary, gave 2 contradictory statements before Seethapathi Naidu, Acting Tahsildar; that in the first statement, he stated that the Plaintiff paid the arrears on the 28th December 1875, but it was not brought to account until 7th January 1876, owing to the Christmas holidays intervening, but in the 2nd statement, he stated that the Plaintiff paid the arrears only on the 5th January 1876, but to oblige him (Plaintiff), he (manieam) antidated the receipt. If the manieam had really made such statements, it is hoped that the 3rd 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 allegation in the plaint, is not traversed, I did not enter upon the investigation as to whether the arrears were paid on the 28th December 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 advertizement, is illegal and liable to cancellation, and it therefore were waste of time so far as this litigation is concerned, 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.

Pronounced in open Court this 19th July 1876.

(signed) K. Kristnaswamy Rao
District Munsiff

/True Copy/

Collector.

Memorandum of Appeal. 8

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

Sreenivasa Iyengar, son of Cadaba Venkatachariar of Bangalore - - - - - 3 } Plaintiff

Ahmed Khan Saib alias Kalay Khan Saib - 1 —
Talsildar of Coyeneram Yalung 2.
Collector of the Chingleput District. 3 } Defendants.

The Collector and 3d 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 3d defendant for the following reasons. —.

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

Memorandum of Appeal
The Collector of
Chingleput
Petitioner
vs
Sreenivasa Iyengar
Respondent

lays down that the 3d 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 3d 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 3d 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 3d Defendant having virtually admitted the claim of the plaintiff to the restoration of the land by pleading that the sale was conducted on the day date, the question of payment of arrears was only of secondary importance; Consequently the answer filed by the 3d Defendant was sufficiently explicit; Nevertheless as the allegation of payment came to the notice of the 3d 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 3d defendant's Vakeel 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 3d 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 ceases the moment he makes the payment to a mamiem 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. W. Barlow.
Collector

(True copy)

W W Boulton
Collector

10

Suit No. 191 of 1876 on the file of the Trivellore District Munsiff's Court. 12.

Present

K. Kristnasawmy Rao
District Munsiff

Plaintiff
Sreenivasa Iyengar
by Vakeel
Bhashyam Iyengar.

Defendants
1. Ahmed Khan Sahib alias Kalaykhan Sahib
2. Dorasawmy Iyer Tahsildar of Conjeveram
3. The Collector of the Chingleput Dt.

The 1st Defendant by himself; 2d Defendt has been withdrawn by Plaintiff — and 3d Defendant by — Sreenivasa Iyengar.

Plaintiff has brought this suit praying to cancel the sale, unlawfully held by the Revenue authorities, of Nunjah land No. 13 included in puttah No. 1 standing in his name in the village of Amlakkum, Conjeveram Taluq.

The

From a letter from the Collector of Chingleput, dated 10th October 1876 No. 244.

Rec: 2/4332 D. Dr. 16/12

S.C. 3 Dec. 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 3d Defendant do bear Plaintiff's Costs.

Particulars of Court Costs incurred

By Plaintiff

Value of stamps for plaint	Rs. as. P 10 — " — "
— Do — other stamps	1 — 8 — "
Fees for serving processes to Defts.	2 — 8 — "
Amoiety of the Vakeels Fees	3 — 4 — "
Total	17 — 4 — "

This amount to be paid to Plaintiff by 3d Defendant.

By the 3d Defendant

Value of stamps	Rs. as. P 1 — 8 — "
Amoiety of the Vakeels Fees	3 — 4 — "
Total	4 — 12 — "

This amount to be borne by the said Defendant himself.

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

(signed) K. Krishnasawmy Rao
Distt Munsiff

/True Translation/

W. W. Bourdillon
Collector

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

No. 244

14

From

R. W. Barlow Esqre.,
COLLECTOR OF THE
Chingleput District.

To

C. G. Master Esqre.,
Secretary to Government
Madras

Sir,

As directed in your Official Memorandum No. 421 of the 25th Ultimo, I have the honor to forward 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 obedt. Servt.
R W Barlow
Collector

1489

Ins. Letter
from the Collr.
of Chingleput &
Encs. dated 10th October 1877
No. 244.

Rev. 3/1327/77

Munsiff's Court
Trivellore
2/4327/77

Rec'd 1877 Dec 3rd

C. No. 1489-

From No. 4827

COLLECTOR OF THE

CHINGLEPUT DIS

To

The SECRETARY

TO GOVERNMENT

Madras

Dated 10th October 187

Received 14th

3 ENCLOSURE.

No. 244

Forwards copies of judgments and decrees and other records sent with No 485 of 76 & 82 in suit No 191 of 1876 on the file of the Trivellore District Munsiff's Court

Lodged

3rd Dec 1877

C. 20: Rec'd 22/11/77 R.C. 22/11/77 Rec'd 22/11/77

C. 120 dt 7/7 R 26/11/77