

(1) Number of Pages 30(2) Date of repair 27.1.1969(3) Initials of the Referencer S. U. R.**MADRAS RECORD OFFICE****GOVERNMENT OF MADRAS**Revenue DEPARTMENT

G.O. No.

406.

Press

B.P. No.

Mis.

Dated

22.3.1876 196 .

Not to be folded or roughly handled

No. 214. Read the following Proceedings of the Board of Revenue, dated 20th March 1876:—

Read the following letter from H. W. BLISS, Esq., Acting Collector of Madura, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 11th March 1876, No. 100.

I HAVE the honor to submit herewith translation of the plaint in Original Suit No. 231 of 1875 on the file of the Madura Additional Munsif, or Original Suit No. 1 of 1876 on the file of the District Court to which it has since been transferred, in which the Collector and the General Duty Deputy Collector are 1st and 2nd defendants, and the answer I propose to put in; and to request sanction for the defence of the suit at the public expense.

2. The circumstances of the suit are as follow:—

3. The tank of the Government (formerly Devasthanam) village of Anuppavady is filled by a channel from the river Vigai. The surplus water of the tank passes through its calingulah into a channel which leads into the Krithimal river, which flows to the south of and receives the drainage of a considerable part of Madura Town from the Krithimal river branch channels which irrigate some of the Anuppavady nunjah lands, and fill the tank of the village of Chintamani, belonging to Government. Another channel branching further on from this river flows into the tank of the Devasthanam village of Samanatham, the property of the plaintiffs.

4. The plaintiffs contend, in the first place, that they are entitled to one-third of the water of the Anuppavady channel, to be taken off just above the point at which it enters the tank, through a channel which, they say, runs into the channel which leads from the calingulah of that tank into the Krithimal river, until the Anuppavady tank is filled; secondly, that after the Anuppavady tank is full, they are entitled to all the water coming down the channel from the Vigai; thirdly, that the calingulah of the Anuppavady tank is a new work which causes them damage, and should be removed; and, fourthly, that the ryots of the Anuppavady village (defendants 3 to 32) should be prevented from raising dams in the Krithimal river to irrigate their lands.

5. The Board will see that the main portion of the plaintiffs' claim to one-third of the water of the channel which supplies the Anuppavady tank is a curious one, inasmuch as it is not to a direct supply of water thereby, but that the water should be turned into a natural drainage, the Krithimal river, over which Government, as the proprietors of Anuppavady and Chintamani villages, have rights as riparian proprietors above the point at which its waters enter the limits of the plaintiffs' village. The claim is, however, a long standing one, and was first preferred as far back as 1851. Inquiry was then made by the Tahsildar and by the Naib Sheristadar of the Collector's Office, on the report of the latter of whom Mr. Parker passed an order that the plaintiffs' village was to be allowed the one-third of the water they claimed, and that as a necessary consequence they were to be made to pay one-third of the cost of repairing the channel down to the point of separation.

6. I must confess that I do not think that Mr. Parker's conclusion was warranted by the Naib Sheristadar's report, which was to the effect that from the Fysul to fasli 1218, inclusive, Samanatham village received no water from the channel, but

only from the calingulah of Anuppavady tank; but that from fasli 1219 the ryots of the former village had been allowed to take water from the channel leading to the latter as a matter of favor, apparently, which is easy to be understood when it is remembered that both the villages were originally Devasthanam villages. Whether Mr. Parker's order was or was not warranted by the facts, however, it does not appear to have ever been acted on, for a further dispute arose in 1859 in consequence of an attempt of the Samanatham people to erect a regulating dam at the head of the branch channel which was resisted by the Anuppavady people. Mr. Clarke, who was then Collector, put a stop to this; and afterwards in disposing of two Board petitions on the same subject remarked: "The prescriptive right alluded to in the late Collector's order is not so clearly and fully established as to warrant the building the sluice which will at once establish the right of the Samanatham village to the water which has been taken by sufferance and that not regularly. It also appears that Samanatham ryots do not at all contribute to the keeping open the channel from the Vigai. The Collector has put a stop to the building the sluice. As he does not consider desirable to afford the ryots of Samanatham facilities for drawing off the water of the large Government tank, but he has not in any way interfered with any of the supposed existing rights." The claims of Samanatham village were not, therefore, then admitted. They allowed the matter to drop, however, at the time, and took no further steps therein. In 1863 the question came up again, but no definite settlement was arrived at. In 1873 the dispute was revived and Deputy Collector Appaji Row passed an order upholding the right of the Samanatham people to the channel. The Anuppavady people appealed to Mr. McQuhae who pointed out to the Deputy Collector the superficial character of his former inquiry, and ordered a re-investigation of the question, the result of which was an order from the Deputy Collector, in reversal of his former order, disallowing the Samanatham people's claims. This was not appealed against to the Collector, otherwise than by the institution of the present suit.

7. The plaintiffs' arguments appear to be—

1st.—That the channel they claim is there on the ground for any one to see.

2nd.—That in the Olugu account of fasli 1215 of Anuppavady village is entered the Samanatham channel, 247 rods in length.

3rd.—That among the sources of irrigation entered in the accounts of Samanatham for faslis 1219—1225 is entered "Anuppavady branch channel."

4th.—That the alleged branch channel is mentioned in the accounts of the same village for faslis 1239—1260.

5th.—That during the inquiry on which Mr. Parker's order was passed some of the Anuppavady people admitted the Samanatham people's claim.

6th.—That in the inquiry of 1859 the right of the Samanatham people was upheld.

7th.—That in the A Register the boundary of a certain field is stated to be Samanatham branch channel.

8th.—As to these arguments I have to remark—

1st.—That the Rev. Mr. Labarthere (3rd defendant), who holds some lands close by, states that he cut the channel himself quite recently, and that there was no

channel there before. This so-called Samanatham channel is now hardly discernible on the ground. On the other hand, from the calingulah of Anuppavady tank to the Krithimal there is a large and well-defined channel.

2nd.—This measurement must be taken along the channel which is winding. The distance along the channel itself is 330 rods. The measurement of 247 rods from the Krithimal goes only a little way beyond the calingulah which is 225 rods, as now measured, from that river. The difference is under 10 per cent. and less than one-third of the difference between the length of the channel as claimed and as actually measured. I therefore consider that the entry of "Samanatham channel 247 rods" applies only to the channel from the calingulah to the Krithimal, as to the existence of which there is no dispute.

3rd.—In the accounts of Anuppavady for the same years no such branch channel is mentioned. Nor is it mentioned in the Samanatham accounts up to fasli 1218 inclusive, or for fasli 1226. In Mr. Hurd's accounts the Vigai is mentioned as the source of irrigation of Anuppavady and the Krithimal as that of Samanatham. The Samanatham people never paid their one-third share of the expense of maintaining the main channel, which, of course, they would have been obliged to do if they were entitled to one-third of the water.

4th.—The mass of the Anuppavady people strenuously opposed the claim of the Samanatham people. What was the motive or inducement of those who favored it cannot now, of course, be ascertained.

5th.—Mr. Clarke did not uphold the right of the Samanatham people, but the contrary.

6th.—The A Register was prepared after the dispute had arisen by a Curnam who held lands in Samanatham, and was therefore an interested party.

9. The plaintiffs admit that they have got no water through the branch channel for ten years. I cannot find that they have done so since 1851. Certainly they have never contributed their share of the cost of maintaining the main channel which they would no doubt have been made to do if they had taken any of its water. I therefore think their claim is barred.

10. With regard to the dams in the Krithimal river I propose to plead prescription and the rights of riparian proprietors.

11. I have requested the District Engineer to get a proper plan made. In the mean time, that enclosed (copy of that filed with the plaint) will enable the Board to understand the questions at issue.

12. The suit is posted for settlement of issues on the 31st instant, and is valued at Rs. 2,360.

SUBMITTED for the orders of Government.

2. The origin of this suit is an irrigation dispute of long standing between Samanatham, a Devasthanam Inam village, and Anuppavady, a Government village.

3. The tank of the Government village is supplied by a channel from the river Vigai. Plaintiffs, the holders of the Inam village, assert their right to take one-third share of the water of this channel until the Government tank is filled, after which

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

they claim the entire supply, the water to be taken off at the point A (see plan) through a channel AB, which they allege is their branch channel.

4. Plaintiffs sue to establish this alleged right and for the removal of obstructions to their enjoyment of it.

5. It appears that the dispute first arose in 1851 when on inquiry it was found that from the Fysul to fasli 1218 the Inamdars had received water only from the surplus channel of the Government tank, but that from fasli 1219 they were allowed as a favor to take water from the supply channel. The then Collector, Mr. Parker, conceiving that they had acquired a prescriptive right admitted their claim on condition that they should pay one-third share of the cost of keeping the river-channel in repair.

6. In 1859 the Inamdars attempted to construct a regulating dam at the head of their branch channel. To this the ryots of the Government village objected, and the Collector, Mr. Clarke, decided in favor of the latter, remarking that the prescriptive right referred to in his predecessor's order was not so clearly and fully established as to warrant building the sluice which would at once establish the right of the Samanatham village to water which had been taken on sufferance and that not regularly. He also observed that the Samanatham people had not contributed anything for the maintenance of the channel. He prohibited the construction of the sluice as it was not desirable to afford facilities for drawing off the water of the Government tank, but he disclaimed any intention of interfering with "supposed existing rights." The dispute was revived in 1863, but nothing was definitely settled. It again cropped up in 1873 when the Deputy Collector decided in favor of plaintiffs' claim; but on appeal the Collector remanded the case for fuller inquiry, the result of which was that the Deputy Collector reversed his former order. Upon this plaintiffs filed the present suit.

7. As regards certain entries in the village accounts on which plaintiffs rely as supporting their claim to the channel, the Collector points out that they refer to the surplus channel of the Government tank. As to an entry in the A Register of the Government village, he observes that it was made after the dispute arose by a Curnam who, as the holder of land in the Inam village, is an interested party. Plaintiffs admit that they have got no water from the channel for the last ten years, but the Collector believes they have got none since 1851. He points out that they have not paid a share of the cost of repairing the channel as they would have been required to do if they had obtained a share of the water.

8. The Collector proposes to file an answer denying plaintiffs' right, and to plead limitation. As regards the dams raised in the river by the Government ryots, it is proposed to plead prescriptive and riparian rights.

9. The Board are of opinion that the right claimed by plaintiffs is of the nature of an easement, and that the suit is barred (*vide* Section 27, Act IX of 1871). They accordingly recommend that the defence of the suit be sanctioned on the grounds suggested by the Collector.

10. The 31st March 1876 is the date fixed for the hearing of the suit.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

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

No. 215.

ORDER THEREON, 22nd March 1876, No. 406.

Miscellaneous.

THE Government sanction the defence of the suit, and approve the draft statement proposed to be filed by the Collector.

(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bantleman.

Madura
Collector's Office
11th March 1876

N^o 100

From,

J. B. W. Bliss Esquire
Acting Collector of Madura

To

C. A. Galton Esquire
Acting Secretary to the
Board of Revenue
Madras

Sir,

I have the honor to
submit herewith translation of the
Plaint in O. S. N^o 231 of 1875 on the
file of the Madura Additional
Munsif or O. S. N^o 1 of 1876 on the
file of the District Court to which
it has since been transferred, in
which the Collector and the
General Duty Deputy Collector
are 1st and 2nd Defendants and the
answer I propose to put in, and to

Dist. of 1876: 33

REVENUE.

THE BOARD OF REVENUE.

Dated Madras, 22nd.

Recd.

Encl.

C.O., 22nd March 1876, No. 406.

MARCH

Nos. 214-216.

Sub No. 281 of 1875 on the file of the Madura
Additional Munsif's Court. — Sanctioning the
reference of — in connection with certain irrigations
dispute, and approving the draft statement pro-
posed to be filed by the Collector.

request sanction for the defence
of the suit at the public expense.

2. The circumstances of the
suit are as follow:—

3. The Tank of the Government
(formerly Devasthanam) village of Anup-
panady is filled by a channel from
the river Vigai. The surplus water
of the tank passes through its calingulah
into a channel which leads into
the ~~Brithimal~~ river, which flows to
the south of, and receives the drainage
of a considerable part of Madurai
Town. From the Brithimal River branch
channels which irrigate some of the
Anuppanady nanjah lands and fill
the Tank of the village of Chintamani,
belonging to Government. Another
channel branching further on from
this

V
this river flows into the tank of
the Devasthanam village of Lama-
nutham, the property of the Plaintiffs.

4. The Plaintiffs contend, in
the first place, that they are entitled
to $\frac{1}{3}$ of the water of the Anuppanady
channel, to be taken off just above the
point at which it enters the tank,
through a channel which, they say, runs
into the channel which leads from
the calingulah of that Tank into the
Brithimal river, until the Anuppanady
Tank is filled; secondly, that after the
Anuppanady tank is full, they are entitled
to all the water coming down the channel
from the Vigai; thirdly, that the calingulah
of the Anuppanady Tank is a new
work which causes them damage
and should be removed; and, fourthly, that
the

the rights of the Anuppanady village
(Defendants 3-32) should be prevented
from raising dams in the Krithimal
river to irrigate their land.

5. The Board will see that the
main portion of the Plaintiffs' claim,
to one third of the water of the channel
which supplies the Anuppanady Tank,
is a curious one, inasmuch as it is
not to a direct supply of water thereby,
but that the water should be turned
into a natural drainage, the Krithimal
river, over which Government is the
proprietors of Anuppanady and
Chintamani villages have rights as
riparian proprietors above the
point at which its waters enter the
limits of the Plaintiffs' village. The claim
is, however, a long-standing one and
was

was first preferred as far back
as 1851. Enquiry was then made by
the Tahsildar and by the Naib Sheris-
tadar of the Collector's Office, on the
report of the latter of whom Mr.
Parker passed an order that the
Plaintiffs' village was to be allowed
the one third of the water they
claimed and that as a necessary
consequence they were to be made to
pay one third of the cost of repairing
the channel down to the point of separation.

6. I must confess that I do not
think that Mr. Parker's conclusion was
warranted by the Naib Sheristadar's
report, which was to the effect that
from the Jygal to Jashy 1218 inclusive
Samanaatham village received no water
from the channel but only from the Calingulak
of Anuppanady tank; but that from Jashy 1219
the

the ryots of the former village had been allowed to take water from the channel leading to the latter, as a matter of favour, apparently, which is easy to be understood when it is remembered that both the villages were originally Devasthanam villages. Whether Mr. Parker's order was or was not warranted by the facts, however, it does not appear to have ever been acted on, for a further dispute arose in 1859 in consequence of an attempt of the Samanatham people to erect a regulating dam at the head of the branch channel which was resisted by the Anuppany people. Mr. Clarke, who was then collector, put a stop to this; and afterwards in disposing of 2 Board petitions on the same subject remarked "The prescriptive right alluded to in the late collector's

order is not so clearly and fully established as to warrant the building the sluice which will at once establish the right of the Samanatham Village to the water which has been taken by sufferance and that not regularly. It also appears that Samanatham ryots do not at all contribute to the keeping open the Channel from the Vigai. The collector has put a stop to the building the sluice. As he does not consider desirable to afford the ryots of Samanatham facilities for drawing off the water of the large Government Tank but he has not in any way interfered with any of the supposed existing rights." The claims of Samanatham village were not therefore then admitted. They allowed the matter to drop, however, at the time, and took no further steps therein. In 1863 the question came up again, but

but no definite settlement was arrived at. In 1873 the dispute was revived and Deputy Collector Appaji Row passed an order upholding the right of the Samanatham people to the channel. The Anuppanady people appealed to Mr. McDubae who pointed out to the Deputy Collector the superficial character of his former enquiry and ordered a re-investigation of the question, the result of which was an order from the Deputy Collector, in reversal of his former order, disallowing the Samanatham people's claims. This was not appealed against to the collector, otherwise than by the institution of the present suit.

7. The Plaintiffs' arguments appear to be -
1st. That the channel they claim is there on the ground for any one to see.
2nd

2nd That in the Blugu account of Jasty 1215 of Anuppanady village is entered the Samanatham Channel, 247 rod long length.

3rd That among the sources of irrigation entered in the accounts of Samanatham for Jasties 1219-25 is entered "Anuppanady Branch Channel".

4th That the alleged branch Channel is mentioned in the accounts of the same village for Jasties 1239-60.

5th That during the enquiry on which Mr. Parker's order was passed some of the Anuppanady people admitted the Samanatham people's claim.

6th That in the enquiry of 1859 the right

right of the Samanatham people
was upheld.

7th That in the A Register the
boundary of a certain field is
stated to be Samanatham branch
Channel.

8th As to these arguments I
have to remark

1st That the Reverend Mr.
Labarthere (3^d Defendant) who
holds some lands close by
states that he cut the channel
himself quite recently, and that
there was no channel there before.
This so called Samanatham Chan-
nel is now hardly discernible
on the ground. On the other hand
from the Calingulah of Amppanady
tank to the Krithimal there is

a large and well defined channel.
2nd This measurement must be
taken along the channel which
is winding. The distance along the
Channel itself is 330 rods. The
measurement of 247 rods from the
Krithimal goes only a little way be-
yond the Calingulah which is 225
rods, as now measured, from
that river. The difference is under
10 per cent and less than one third
of the difference between the length
of the Channel as claimed and as
actually measured. I therefore
consider that the entry of "Samanatham
Channel 247 rods" applies only
to the channel from the Calingulah
to the Krithimal, as to the existence
of which there is no dispute.

3^d In the accounts of Anuppanady
for the same years, no such branch
Channel is mentioned, nor is it
mentioned in the Samanatham acc.
Commenced in 1218 inclusive or
for 1226. In Mr. Hurdis accounts
the Nigai is mentioned as the source
of irrigation of Anuppanady and
the Arithumel as that of Samanatham.

The Samanatham people never
paid their one third share of the
expense of maintaining the main
Channel which of course they
would have been obliged to do
if they were entitled to one third
of the water.

4th The mass of the Anuppanady
people strenuously opposed
the claim of the Samanatham people
What

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What was the ^{intention} routine or inducement
of those who favoured it, cannot now
of course be ascertained.

5th Mr. Clarke did not uphold
the right of the Samanatham people
but the contrary.

6th The A Register was prepared
after the dispute had arisen by a
Curmure who held lands in Sama-
natham and was therefore an interested
party.

7th The Plaintiffs admit that they
have got no water through the branch
Channel for 10 years. I cannot find
that they have done so since 1851.
Certainly they have never contri-
buted their share of the cost of
maintaining the main channel
which they would no doubt have
been made to do if they had taken
any

any of its water I therefore think
their claim is barred.

10 With regard to the dams in
the Kuthumal river I propose to
plead prescription and the rights
of riparian proprietors.

11 I have requested the District
Engineer to get a proper plan made
In the meantime that enclosed
(Copy of that filed with the Plaintiff)
will enable the Board to understand
the questions at issue.

12 The suit is posted for settle-
ment of issues on the 31st instant and
is valued at Rupees 2360.

I have got
/Sd/ J. Rama Rao
By for & by (allotted)
/Enclosure/

W. C. S.
Acting Secretary

Sd/

Revenue Department

Proceedings of the Board of Revenue
dated 20.th March 1876

Read letter from the M. Col-
lector of Madras dated 11th March 1876,
N^o 100, submitting translation of
plaint in O. S. N^o 231 of 1875 on the file
of the Madras Additional Munsiff
together with a draft of proposed
answer and requesting sanction
for the defence of the suit.

Submitted for the orders
of Government.

The origin of this suit is an
irrigation dispute of long standing
between Samanatham a Devasthanam
Iruam village and Anuppanady
a Government village. The

The

Enclosure Receipts
of the Board of Education
of the County of York
New York State 20th March
1876

Dec 1186/5

90 22 March 1964

The tank of the Government village is supplied by a channel from the river Vigay. Plaintiffs, the holders of the Inam village assert their right to take $\frac{1}{3}$ share of the water of this channel until the Government tank is filled after which they claim the entire supply, the water to be taken off at the point A (see plan) through a channel A. B. which they allege is their branch channel.

Plaintiffs sue to establish this alleged right and for the removal of obstructions to their enjoyment of it.

It appears that the dispute first arose in 1851 when on enquiry it was found

10
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found that from the Hyal to Fushy 1218 the Inamdars had received water only from the surplus channel of the Government tank but that from Fushy 1219 they were allowed as a favor to take water from the supply channel. The then collector Mr. Parker, conceiving that they had acquired a prescriptive right admitted their claim on condition that they should pay $\frac{1}{3}$ share of the cost of keeping the river channel in repair.

In 1859 the Inamdars attempted to construct a regulating dam at the head of their branch channel. To this the regts of the Government village objected and the collector Mr. Clarke decided in favor of the latter remarking

remarking that the prescriptive
right referred to in his pre-
decessors order was not so clearly
and fully established as to warrant
building the sluice which would
at once establish the right of
the Samanatham village to
water which had been taken on
sufferance and that not regularly.
He also observed that the Sama-
natham people had not contributed
any thing for the maintenance of
the channel. He prohibited the
construction of the sluice as it was
not desirable to afford facilities
for drawing off the water
of the Government tank but he
disclaimed any intention of
interfering

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interfering with "supposed existing rights".
The dispute was revived in 1863 but
nothing was definitely settled. It
again cropped up in 1873 when the
Deputy Collector decided in favor
of Plaintiffs claim, but on appeal
the Collector remanded the case for
fuller inquiry the result of which
was that the Deputy Collector
reversed his former order. Upon this
Plaintiffs filed the present suit.
As regards certain entries in
the village accounts on which Plain-
tiffs rely as supporting their claims
to the channel, the Collector
points out that they refer to the

Surplus channel of the Government
tank. As to an entry in the A.
registers of the Government village,
he observes that it was made after
the dispute arose by a ferman
who as the holder of land in
the Suam village is an interested
party. Plaintiffs admit that they
have got no water from the channel
for the last 10 years but the collector
believes that they have got none
since 1851. He points out that they
have not paid a share of the cost of
repairing the channel as they would
have been required to do if they had.

obtained a share of the water.

The collector proposes to file an
answer denying Plaintiffs' rights and
to plead limitation. As regards the damages
raised in the river by the Government
ryots it is proposed to plead prescriptive
and riparian rights.

The Board are of opinion that
the right claimed by Plaintiffs is of
the nature of an Easement and
that the suit is barred, vide Sec. 27
Act 9 of 1871. They accordingly re-
commend that the defence of the
suit be sanctioned on the grounds
suggested by the collector.

The 31st March 1896, is the date
fixed for the hearing of the suit.
(In Extract)

[Signature]
Collector

[Signature]
Ag. Secretary
The Secretary to Government R. D., with
3 such blue returned copy of Collector's letter.

No 406

The Justices the defense of the
suit and approve the draft statement
proposed to be filed by the Collector

And Copy to the Oddy Dec 22 1876
14 Overhead paper Dec 27 or

22 March 1876

Prudence 1876 & 1877
No 1186

Proceedings of the
Board of Officers.

No 406. 22 March 1876

Dated 20 March 1876.

Recd 20
Mar 20 1876

with 1876

Recommendation

to sanction defense of the
suit Dec 23/76 1876 on the
file of the Washington
Additional documents
found on reference
supplied by the collector.

C-21: Mar 1876 22/3/76 22/3/76