

- (1) பக்கங்களின் எண்ணிக்கை 30  
 (2) புதுக்கித் திருப்பிய நாள் 27/2/19  
 (3) ஆதாரங்குறிப்பவர் சுருக்கொப்பம் 6/1

தமிழ்நாடு ஆவணக் காப்பகம்.

தமிழ்நாடு அரசு

2/3/2019 துறை

|                                       |           |                  |
|---------------------------------------|-----------|------------------|
| அரசாணை எண்.<br>மு. கோப்புத் தாள் எண். | 148       | அச்சகம்<br>பலவகை |
| நாள் :                                | 20-1-1879 | 198 .            |

6/2

மாடிக்கலோ கண்டபடி கையாளவோ கூடாது

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

20th January 1879, No. 148.

Read the following paper :—

No. 363. Proceedings of the Board of Revenue, dated 11th January 1879, No. 48.

Read again Board's Proceedings, dated 27th November 1878, No. 3,174.

Read also letter from the Government Pleader, Madras, dated 21st December 1878, No. 155 :—

SUBMITTED for the orders of Government.

2. This suit was originally brought by Lakshmi Ammal as the owner of one-eighth share, comprising three villages, of the Kadathur Muttah against one Streemivasa Iyengar, lessee of the villages in question, for the recovery of arrears of rent. In reference to an objection raised by the defendant that the suit is not sustainable because the muttah is under attachment and management for arrears of revenue under Act 2 of 1864, the Court, under Section 27, Civil Procedure Code, removed Lakshmi Ammal's name from the record and substituted the name of the agent appointed for the management of the estate under Act 2 of 1864.

3. The Government Pleader is of opinion that the Court's proceedings are rather precipitate, and that the Government Agent should not have consented to be made a party to the suit without instructions from the Collector. Mr. Haudley observes that as the sub-divisions of the estate have not been registered according to law they are not binding on Government, and that Government, suing for rent due to the estate, is not precisely in the same position as the original plaintiff suing for rent of villages which she claims as her share of the estate. He suggests that this should be pointed out to the Court and that, in case Government wish to carry on the suit, application should be made to amend the plaint so as to make it a suit on behalf of the estate and not of a particular share.

4. The chief point for consideration is whether it is advisable for Government to carry on the suit. It is a course Government would not pursue had not the Court interfered, and, as pointed out by the Government Pleader, the Court cannot compel Government to proceed with the suit. There is no knowing how long the litigation may continue or what difficulties may arise in the mean time. It is possible that the shareholders may apply for the subdivision of the estate and the separate registration of their respective shares and thus lead to complications which are not anticipated. Besides, if while litigation is pending the arrears due to Government are paid, or it is considered either necessary or expedient to sell the whole or a part of the estate for arrears of revenue, Government would then have no *locus standi* in the suit and all the trouble and expense would be in vain.

\* Board's Procs., 21st Oct. 1876, Mis. No. 9,059.  
Do. 24th Nov. „ No. 2,945.

It was with reluctance that the Board\* allowed the estate to be placed under management, and they did so on the understanding that the arrangement should continue only for such time as might be required for the preparation of accounts for the subdivision of a portion of the estate in view to its sale for arrears of revenue.

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REVENUE DEPARTMENT, 20TH JANUARY 1879, No. 148.

More than two years have elapsed since the estate was placed under management, and it is to be presumed that the requisite accounts should be available shortly, when the arrears due to Government might be recovered by sale of a part of the estate as originally intended.

5. In these circumstances, and considering that there is nothing to prevent the sale of the entire muttah for arrears of revenue at once, the Board consider it inadvisable to have recourse to the tedious process of a law suit for the recovery of a small portion of the estate. They are of opinion that the Government Agent should be directed to withdraw from the suit, and that in case the Collector anticipates any difficulty in obtaining, in a reasonable time, the accounts necessary for the subdivision of a part of the muttah, steps should be at once taken for the sale of the entire estate under Act 2 of 1864 (Madras).

The 25th January 1879 is the date fixed for the hearing of the suit.

(A true Copy and Extract.)

(Signed) J. STURROCK,  
Acting Secretary.

No. 364.

ORDER THEREON, 20th January 1879, No. 148.

Miscellaneous.

His GRACE the Governor in Council is decidedly of opinion that the Government should not accept the position of plaintiff or have any concern with the suit.

(True Extract.)

(Signed) H. S. THOMAS,  
Acting Secretary to Government.

To the Board of Revenue.

Exd. W. H. French.

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No. 48.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 11th January 1879.

Read again Board's Proceedings, dated 27th November 1878, No. 3,174.

Read also the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras, to J. STURROCK, Esq., Acting Secretary to the Board of Revenue, dated 21st December 1878, No. 155:—

I HAVE the honor to acknowledge the receipt of the Board's Proceedings noted 27th November 1878, No. 3,174. in the margin referring for my advice papers relating to a suit for arrears of rent due to the Kadathur Mittah, Salem District, now under Government management.

2. The Proceedings of the Court in making the Amin who is acting as Agent of Government for this estate a plaintiff in substitution for the original plaintiff seem to have been rather precipitate, and that officer should not, I think, have consented to be made a party without first obtaining instructions from the Collector. Section 27 of the Civil Procedure Code no doubt does empower the Court to make such a change of plaintiffs, but of course it is not intended that any person should be made a plaintiff against his will. As I understand, the sub-divisions of the mittah have not been registered under the regulations and are not binding on the Government, and therefore Government, suing for rent due to the estate, is not precisely in the same position as the original plaintiff in this suit suing for rent of villages which, she says, have fallen to her share. I think this should be pointed out to the Court and, if Government wish to carry on the suit, leave should be obtained to amend the plaint so as to make it a suit on behalf of the estate and not of a particular share. If the present plaint is allowed to stand it may commit Government to a recognition of the various divisions and family arrangements by virtue of which Lakshmi Ammal claims to be entitled to the three villages in question in the suit, and this may be prejudicial to the interests of Government.

3. As to the various questions raised by the defendant's answer, the only ones that seem to require notice from me are those comprised in the third, fourth, and fifth issues. The Head Assistant Collector's remarks dispose of the others, I think, very satisfactorily.

4. *Issue 3 and 4.*—It is clear that no such claim as that set up by the defendant in respect of collections of rents alleged to have been made by Lakshmi Ammal while unlawfully in possession could be made by way of set-off in a suit in which she was plaintiff. The code requires that a debt to be the subject of set-off must be an ascertained amount. This claim is in the nature of a claim for damages for trespass and is from its nature unascertained in amount. *A fortiori* this claim cannot be set off in a suit on behalf of Government for rent.

5. *Issue 5.*—I do not understand why this issue was raised or at whose instance. The Head Assistant says it has reference only to the defendant's plea that the suit is not maintainable because puttalis and muchilkas have not been exchanged; but, if so, it must be the plaintiff who asserts and the defendant who denies that he holds under a permanent lease, which is the exact opposite of what they appear respectively to have maintained in former proceedings. It seems absurd to suppose that the defendant for the sake of a triumph on this technical point should be ready to sacrifice his right as permanent lessee, and equally absurd that Lakshmi Ammal, when plaintiff, should concede rights to him which she had previously denied merely to get over a plea to which there is a much better answer. But, however the issue came to be raised, I think it is out of place in the suit, now that Government is the plaintiff. The permanent lease if made at a favorable rate is not binding on the Collector unless made for any of the special purposes enumerated in Section 32 of Act II of 1864, and there

Part of the following proceedings are in relation to the suit in which the Government is plaintiff and the defendant is the Kadathur Mittah, Salem District, now under Government management.



JANUARY.  
NO. 48.

GOVERNMENT OF MADRAS.

REVENUE.

REVENUE.

GOVT. OF MADRAS.

*Original*

*Vide ent. 908.*

is no necessity for going out of the way to recognize it in this suit and thus preventing any objection to it which it may hereafter be desirable in the interests of Government to make. The proper issue would be—"Is the fact that puttahs and muchilkas have not been exchanged any bar to the suit?" And the simple answer to the defendant's plea is that he who has always claimed to hold under a permanent lease cannot now contend that he has not agreed to dispense with puttahs and muchilkas. If there was a permanent lease, puttahs and muchilkas were of course unnecessary and he cannot, and probably will not, deny there was a permanent lease, while at the same time there is no necessity for admitting it on behalf of Government. I suspect there may have been some idea on the part of the defendant of getting this question of permanent lease decided in his favor in this suit, and this may account for the issue. I think the Court should be asked to strike out this issue and frame one directly raising the question as to the effect of non-exchange of puttahs and muchilkas.

6. I forward herewith the copies of plaint and written statement and Court's Order sent to me by the Collector and return the original enclosures to the above Proceedings.

SUBMITTED for the orders of Government.

2. This suit was originally brought by Lakshmi Annal as the owner of one-eighth share, comprising three villages, of the Kadathur Muttah against one Streemivaasa Iyengar, lessee of the villages in question, for the recovery of arrears of rent. In reference to an objection raised by the defendant that the suit is not sustainable because the muttah is under attachment and management for arrears of revenue under Act 2 of 1854, the Court, under Section 27, Civil Procedure Code, removed Lakshmi Annal's name from the record and substituted the name of the agent appointed for the management of the estate under Act 2 of 1864.

3. The Government Pleader is of opinion that the Court's proceedings are rather precipitate, and that the Government Agent should not have consented to be made a party to the suit without instructions from the Collector. Mr. Handley observes that as the sub-divisions of the estate have not been registered according to law they are not binding on Government, and that Government, suing for rent due to the estate, is not precisely in the same position as the original plaintiff suing for rent of villages which she claims as her share of the estate. He suggests that this should be pointed out to the Court and that, in case Government wish to carry on the suit, application should be made to amend the plaint so as to make it a suit on behalf of the estate and not of a particular share.

4. The chief point for consideration is whether it is advisable for Government to carry on the suit. It is a course Government would not pursue had not the Court interfered, and, as pointed out by the Government Pleader, the Court cannot compel Government to proceed with the suit. There is no knowing how long the litigation may continue or what difficulties may arise in the mean time. It is possible that the shareholders may apply for the subdivision of the estate and the separate registration of their respective shares and thus lead to complications which are not anticipated. Besides, if while litigation is pending the arrears due to Government are paid, or it is considered either necessary or expedient to sell the whole or a part of the estate for arrears of revenue, Government would then have no *locus standi* in the suit and all the trouble and expense would be in vain.

\* Board's Procs., 21st Oct. 1876, Mis. No. 9,059. It was with reluctance that the Board\* allowed the estate to be placed under management, and they did so on the understanding that the arrangement should continue only for such time as might be required for the preparation of accounts for the subdivision of a portion of the estate in view to its sale for arrears of revenue. More than two years have elapsed since the estate was placed under management, and it is to be presumed that the requisite accounts should be available shortly, when the arrears due to Government might be recovered by sale of a part of the estate as originally intended.

5. In these circumstances, and considering that there is nothing to prevent the sale of the entire muttah for arrears of revenue at once, the Board consider it inadvisable to have recourse to the tedious process of a law suit for the recovery of rent due on a small portion of the estate. They are of opinion that the Government Agent should be directed to withdraw from the suit, and that in case the Collector anticipates any difficulty in obtaining, in a reasonable time, the accounts necessary for the subdivision of a part of the muttah, steps should be at once taken for the sale of the entire estate under Act 2 of 1864 (Madras).

The 25th January 1879 is the date fixed for the hearing of the suit.

(A true Copy and Extract.)

Acting Secretary.

To the Secretary to Government, Revenue Department,  
with four original enclosures to be returned, and copies of  
Board's Proceedings, 21st November 1876, No. 2,945;  
21st October 1876, Mis. No. 9,059; 1st October 1877,  
Mis. No. 8,886; 27th November 1878, No. 3,174,  
and 20th December 1878, No. 3,467.

Copy to the Collector of Salem.  
" " Government Pleader.

Ed. G. Freeman.

Revenue Department.

Mis. No. 8886.

Proceedings of the Board of Revenue.

Dated 1st October 1878.

Read the following.

No. 286.

From  
To

The Collector of Salem

The Secretary to the  
Board of Revenue, Madras.

Sir,  
I have the honor to request the Board's instructions relative to the arrears outstanding against the Muttas of Kadathur in the Uttarkarai Taluk.

2. The Muttas in question is held by six Proprietors, one of whom is a Minor. They are all at variance with each other, and will not in consequence pay up the arrears, which amount to Rupees 3143. The Tahildar reports that no movable property of the Proprietors is forthcoming, and recommends that the Muttas may be placed under Govt. management. I am of opinion that the arrears will be speedily forthcoming, if a portion of the Muttas is advertised for

*Recd 16/10/79*  
*Dec: 1879. 9/11*

Board of Revenue,

MADRAS.

To

THE SECRETARY TO GOVT.,  
REVENUE DEPARTMENT.

*Recd 11/12/79*  
Dated January 11th.

Printed 16th.

Received 16th.

PROCEEDINGS, 11TH JANUARY 1879, NO. 48.

*Dec 11/11/79*  
BANKALIN 40/12

No. 48.

\* Suit—instigated for recovery of the arrears of rent due to Kodathur Muttas in Salem District now under Government management.— Submitting to Government papers relating to the —, and expressing opinion that the Government Agent for the estate should be directed to withdraw from the suit, and that, in case the Collector anticipates any difficulty in obtaining, in a reasonable time, the accounts necessary for the sub-division of a part of the muttal, steps should be at once taken for the sale of the entire estate under Act 2 of 1864 (Madras).

for sale, and, as I understand, the orders  
 noted in the margin allow the Estate of an  
 incapacitated Person (minor) being sold for  
 arrears of Peishenah during his minority. If  
 the Board approve of my proposal, I shall  
 take steps for dividing a portion of the Estate  
 and advertising the same for sale.

Board's Resolution  
 dated 10<sup>th</sup> August  
 1871 No. 3324.

3. The Muttia contains 21 villages and  
 pays a peishenah to Government of Rs 7962.

Salem Collis Office }  
 Salem 21<sup>st</sup> Sept 1875 }  
 I am &c  
 (Sd) C. T. Langley  
 Collector.

Approved.  
 (True Copy and Extract)  
 (Sd) H. E. Stokes  
 Secy. Secretary.

To the Collector of Salem.  
 (True Copy)  
 J. Sturrock  
 Secy. Secretary.

M  
 C. H.

Here, Mr. J. W.  
Burlington in No. of  
the Board of Revenue  
dated 11<sup>th</sup> Jan'y 1878  
No. 47 & sent. D. D.

and rec'd. 2/20 Jan'y 1879  
Jan. 14/8

Rev:  $\frac{9}{490/39}$ .

Proceedings of the Board of Revenue, dated 21st October 1878.  
 Read the following  
 Resolution of 18th.

Annual Balance Proposed agency and  
 Excess and undistributed -  
 Revenue - 1000000  
 Excess - 1000000  
 Total - 2000000

Monthly  
 1. 1000000  
 2. 1000000  
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Salem, Collector's Office,  
 Camp Bazar, Krishnagiri District,  
 22nd September 1878

(Signed) C. S. Langley  
 Collector

To the Secretary to the Board of Revenue, Madras

The Board are anxious to place the Mutas under management, and therefore that on the previous occasion, the Collector was of opinion that the arrears would be forthcoming on attachment in present state. It is requested to state whether through complete accounts cannot be had, sufficient information for a substantially complete division of the postpaid cannot be got.

(True Copy Distinct)  
 (Signed) C. S. Langley  
 Secretary

To the Collector of Salem  
 (True Copy)  
 Secretary

2/10/76  
No. 2,945.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 24th November 1876.

Read the following letter from C. T. LONGLEY, Esq., Collector of Salem, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated 31st October 1876, No. 285:—

With reference to the Board's Proceedings, Miscellaneous No. 9,059, dated 21st instant, I have the honor to state that it was not my intention to place the Muttah under attachment till such time as the arrears could be paid out of its proceeds. I am still of opinion that the arrears will be forthcoming if a portion of the estate is advertised for sale, but as no correct accounts are available for apportioning the peishcush on each village with reference to its revenue it appeared to me that the only course open was to attach and place the Muttah under attachment till the accounts are prepared with the assistance of Curnams, who will then be under the orders of the Government officials. When the accounts are once completed there will be no difficulty in proceeding with the sale of a portion as formerly proposed.

2. If the Board are averse to this proposal there is the alternative of selling the whole Muttah for the arrears which have now accumulated to Rupees 5,428-6-11 under Section 44 of the Arrears Recovery Act, in which case the entire estate might be proceeded against at once.

3. With regard to the last query contained in the Proceedings I beg to state that the accounts now furnished by the Muttahdars are not reliable. I request that the sanction be accorded to proceed under sections 20, 27, and 28 of Act II. of 1864 on the whole estate.

The Collector should have explained his proposal more clearly in his previous communication. In the circumstances the Board resolve to sanction it, and also the establishment proposed.

(A true Copy and Extract.)

(Signed) H. E. STOKES,  
Acting Secretary.

To the Collector of Salem.

Copy to the Accountant-General, with copy of Board's Proceedings,  
dated 21st October 1876, Mis. No. 9,059.

Edw. J. Tulloch.



Read the following letter from G. T. LONGLEY, Esq., Collector of Salem, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 17th December 1878, No. 502:—

ENCLOSURE No 1.—Copy of Court's Order.

(A true Copy and Extract.)

To the Government Pleader, with copy of enclosure.  
Copy to the Collector of Salem.

Exd. J. Tulloch.

PROCEEDINGS, 21TH NOV. 1876, PG. 2, 343.

2008

**Desired**

NOVEMBER.

No. 2,015.

*Modellor Schiff*—an Ulmgaard Tug, Captain Bismarck.—Sponsoring attachment of — for service of revenue, and the establishment proposed for its management.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 27th November 1878.

Read the following letter from C. T. LONGLEY, Esq., Collector of Salem, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 11th November 1878, No. 450:—

I HAVE the honor to request Board's sanction for the maintenance of the suit referred to in the accompanying letter of the Head Assistant Collector. The suit was first brought by Lakshmiammall, one of the Mittadars of Kodathur, against one Srinivasa Iyengar, a lessee, for the recovery of arrears of rent due to her for Faslis 1284 and 1285, but on the latter objecting to her right to sue on the ground that the mitta is under Government management having been attached for arrears of revenue, the Sub-Court made the Government Agent sole plaintiff in place of Lakshmiammall. The particulars of the case are given "in extenso" in Mr. Nicholson's letter above referred to.

2. This mitta has been placed under management under Board's Proceedings, dated 21st November 1876, No. 2,945, from Fasli 1286.

## ENCLOSURE No. 1.

From F. A. NICHOLSON, Esq., Acting Head Assistant Collector, to C. T. LONGLEY, Esq., Collector of Salem, dated Tirupatur, 31st October 1878, No. 1,029.

I HAVE the honor to submit my report upon the marginally-noted suit. Mr. Dawes' report accompanies. The delay in submission will be separately noticed. Hearing is fixed for the 14th December 1878.

2. In December 1877 Lakshmiammall, holder of one-eighth share in the mitta, sued defendant as her lessee for arrears of Faslis 1284 and 1285 (*vide* plaint). In June last the Court, on considering the first and second objections of the defendant, and on the request of Lakshmiammall, removed Lakshmiammall's name from the plaint and substituted that of the Government Agent as sole plaintiff. Government has thus been made plaintiff in an intricate suit without its own consent.

3. The plaint prays to recover arrears of Faslis 1284 and 1285 from defendant as lessee of three villages as marginally noted\*. Plaintiff Lakshmiammall's ownership of these villages is not disputed, nor does defendant deny his lease (Fasli 1249) from the then mittadars. The three villages in question fell to plaintiff's husband's share in 1863 at the partition of the mitta and in 1876 were confirmed to Lakshmiammall as sole heir of her husband, who died in 1872.

4. Non-payment of the rent for the faslis in question is not denied by defendant (expressly admitted in fact in Special Suit No. 23 of 1877 before Temporary Deputy Collector), but he has filed a series of objections (*vide* written statement) which may be abstracted as follows:—

Issue 1 (a).—Objections 1 and 2, that plaintiff has no right to sue.

Issue 5 (b).—Objection 3, that no puttah and machūka were exchanged.

Issue 3 (c).—Objection 4, that she is barred by her own previous actions and proceedings in Court, &c.

Issue 2 (d).—Objection 5, that Venkatadripatti is not in defendant's possession.

Issues 3 and 4 (e).—Objection 6, that Lakshmiammall illegally collected about Rupees 3,000 which must be set off.

Issue 2 (f).—Objection 7, that the amount claimed is incorrect.

On these objections and the rejoinders the Court framed five issues (*vide* issue paper). These issues and the various objections I will now discuss.

5. Issue 1.—This issue has been decided by eliminating Lakshmiammall's name and substituting that of the Government Agent. Objection 1 denies Lakshmiammall's right to sue while the estate is under attachment. Whether the suit is legally maintainable (i.e., by Lakshmiammall)?

Objection 2 denies her right, seeing that she is only one of eight shares. These objections are of

1878.

Board of Revenue

MADRAS.

THE GOVERNMENT PLEADER.

Dated December 20th.

Printed January 16th, 1879.

Received

No. 2  
49/77

PROCEEDINGS, 20TH DECEMBER 1878, No. 3,417.

DECEMBER.

No. 3,467.

Suit—instituted for recovery of the arrears of rent due to the Kodathur Mittah in Salem District.—Requesting Government Pleader to favor the Board with an early reply to the Board's Proceedings relating to the—

course met by the substitution of the Government Agent. Mr. Dawes, who has gone into the merits of Objection 2, points out that the shares have been actually divided and therefore each shareholder would ordinarily be entitled to sue, &c, as has often been done (*vide* Regular Appeal, No. 172 of 1874, District Court of Salem). Defendant, in fact, acknowledges Lakshmiammall as his Mittadarnae (Special Suit, No. 23 of 1877, Temporary Deputy Collector).

6. *Issue 2.*—This is based on Objections 5 and 7. Objection 5 states that the village of Venkatadripatti has all along been with one Ramasami Iyengar, who got a *sub-lease* and finally a permanent lease of that village from the mittadars, of whom plaintiff's husband was one, which lease has been confirmed by several Courts. This objection is vague and useless, if not false. The date of the alleged permanent lease is not given nor the "several Courts" particularized. But as plaintiff's husband died in 1873, this alleged permanent lease must have been either in or before 1873. Now, in 1874

defendant filed a suit\* in the District Court against Lakshmiammall, in which he seeks to recover from her the three villages in question including Venkatadripatti, which, he states, has all along been in his possession through his *Sub-lessee* Ramasami Iyengar: this plaint he verified and supported on oath by his deposition as a Court witness. Exhibit E in that suit was the counterpart of the sub-lease granted by him to Ramasami Iyengar. The Court decided that he had never been dispossessed of these villages and dismissed his suit. These papers will be filed as our documents, and defendant will be summoned to produce his Exhibits A to E filed in that suit, viz., his Sasmitha puttah, and receipts given to him for his lease, amount from 1250 to 1282, and the counterpart of his sub-lease to Ramasami Iyengar. It is clear that defendant is the person responsible as he admits in that suit, and that this village stands on the same footing as the other villages. Mr. Dawes appears to dissent, but basis his opinion on the Head Assistant Collector's judgment, which is not authoritative. The "several Courts" are not known; presumably defendant refers to a judgment of the Head Assistant Collector in a rent suit, No. 92 of 1875; that judgment *would* not decide the question of title, but merely decided as to Ramasami's possession as against Lakshmiammall. It is true that in that judgment the Head Assistant Collector spoke of Ramasami Iyengar as being "admittedly (*vide* Exhibit B 65 of 1875) the permanent Izardar," but on this I must remark (1) that the admission was not by Lakshmiammall, &c., but only by a *ryot* whom Ramasami was suing to compel acceptance of a puttah; (2) that the *ryot* could have had no possible knowledge of the document which he so readily admitted, and that his ready admission of *all* Ramasami's documents looks like collusion; (3) that this document (of 1869), though a permanent lease of immovable property, was not registered and was therefore inadmissible (Sections 17 and 49 of Act XX of 1866); (4) that whereas this document recites that Strinivasa Iyengar (present defendant) had (in 1869) requested that Venkatadripatti might be struck out of his own puttah and given to Ramasami Iyengar, yet in 1874 we find Strinivasa Iyengar suing (Original Suit No. 2 of 1874, District Court) to get possession of the village which he then swore he had *sub-leased* to Ramasami. Hence defendant cannot possibly raise this point; nor do I believe in the alleged permanent lease to Ramasami by the Mittadars, seeing that Ramasami has never stirred in the present matter as he would do if he were really the permanent Izardar. Objection 7 states that the amount is incorrect, presumably because Venkatadripatti is included: the amount claimed is that of the defendant's lease with interest. The road-cess is regularly calculated at six pies upon the lease amount and annas one in the rupee upon the profits (Section 48, Act IV of 1871) of Rupees 1,479 as taken from the chitta.

7. This chitta will be filed as our document together with the Curnam's account on which it is based.

8. *Issue 3* is based upon Objection 6 and includes Objection 4. As for Objection 4 it is true that Lakshmiammall did in 1873 and 1874 decline to recognize defendant as her lessee. She spoke of him as "nominal lessee" and attempted to get the villages to herself by issuing puttahs and muchilkas to some of the ryots and by making certain collections. I presume that these are the proceedings which are supposed to estop Lakshmiammall, and, if valid, might possibly bind us if, as Mr. Dawes suggests, such entry upon the villages might operate as a waiver of the contract. But I cannot think that any Court would take this view, nor would defendant, I should think, care to argue that there is now no contract; for if so he would have no further title. All that Lakshmiammall could be liable for would be a suit for damages for making an illegal entry and unauthorized collections; defendant's lease and therefore his liability cannot be terminated by Lakshmiammall's act. Moreover the Salem District Court (Original Suit No. 2 of 1874) has expressly ruled that Lakshmiammall's act did not prejudice defendant's possession. It is clear then that her acts and words do not affect our right to sue for arrears admittedly (Objection 6) unpaid. Then defendant states that Lakshmiammall owes him Rupees 3,000 unlawfully collected by her from his tenants during his temporary absence. This was his six months' absence in jail where Lakshmiammall put him for misappropriation of her property. Now he has

given no particulars whatever of these collections, and the receipts filed by him as given by Lakshmiammall to the ryots only cover about Rupees 100. Moreover, in the marginally-noted paper he admits that he collected his dues by distraint, &c, from some of the ryots who had paid Lakshmiammall for Faslis 1283 and 1284; hence he cannot sue Lakshmiammall, as he has sustained no loss and it was open to him to have similarly proceeded against any other such ryots. And that this is the case is shown by the fact that in Original Suit No. 2 of 1874, District Court, heard after his release from jail, he mentions no word of any such collections, nor does he seek for damages. Hence these objections may be disregarded; he must prove his plea if he can.

9. *Issue 4* is a legal issue. Defendant has not satisfied the provisions of Section 3 of the Civil Procedure Code, which provides that a set-off, if claimed, must be contained in a detailed statement; here we have only a vague allegation, not an ascertained amount. But defendant cannot claim a set-off (1) because, as shown above, he has sustained no loss unless by his own failure to proceed against ryots, (2) because, as he himself urges in Objection 2, it is the estate of him by Lakshmiammall who is only a *sharer*. In other words a claim to a set-off on account of a sharer's debt is inconsistent with his Objection 2 and with the position of plaintiff, who represents not merely Lakshmiammall but the estate.

10. *Issue 5* relates to Objection 3, viz., the non-exchange of puttah and muchilka. The issue can only be decided in our favor as defendant has over and over again admitted this point. In Original Suit No. 2 of 1874, District Court, Salem, he expressly basis his title\* on a "permanent lease" (Sasmitha kuttigai) and permanent title-deed (Sasmitha kuttigai puttayam) which he filed. In Special Suit No. 102 of 1875 he also filed this Sasmitha puttayam, and in Special Suit No. 23 of 1877 before the Temporary Deputy Collector he has stated on oath that he holds the villages under a "Sasmitha puttayam." The decision then is certain, and cannot be affected by Lakshmiammall having called him "nominal lessee," especially as this is explained in Original Suit No. 2 of 1874 by her allegation that the actual possession was with ryots and others.

11. This being granted, it follows that no further exchange of puttah and muchilka is necessary. A permanent puttah once granted is a puttah for ever, and defendant cannot argue that every fresh successor is bound to give a fresh puttah (1) because that would be contrary to his own deed, (2) because that would argue a defect in his own title; for if his puttah requires to be renewed on every fresh succession, it is evident that his lease is not a permanent one, but only a lease for the life of the grantor or renewer and therefore terminable at the demise of each successive Mittadardar. I do not think defendant will care to plead this. I assume that a permanent lease can be granted, though I cannot see how it is consistent with Section 15, Regulation XXX of 1802. Mr. Dawes suggests that as Lakshmiammall entered upon the villages in 1873-74, such entry might operate as a rescission of the contract and necessitated a fresh puttah as a recognition of defendant's title, in other words, that defendant has a weak title because Lakshmiammall did what perhaps she should not have done. As stated above I think that neither Court nor defendant will agree in this view.

12. As for the muchilka given by defendant to the Mittadars its absence is accounted for by the criminal case under Section 404, Indian Penal Code, brought by Lakshmiammall against defendant. This muchilka is said to have been one of the documents misappropriated by defendant; unfortunately the lists of property in that case have been destroyed with other records according to rule, but the private copy of these lists exists and can be proved; a public copy exists and will be put in if found. I do not, however, anticipate any difficulty on this point if the issue as it stands is decided affirmatively.

13. If the Court should decide that a fresh exchange of puttah and muchilka was necessary, it could well be pleaded for plaintiff that as defendant has made no attempts hitherto to get a puttah from Lakshmiammall, and has hitherto rested his claims as lessee entirely upon the lease and puttayam of Fasl 1249, he may be considered to have tacitly agreed to dispense with any further puttah.

14. Under these circumstances I beg to recommend the adoption of the present plaint as it stands. The defendant will have to prove everything as the case stands, if he can, be got to produce the documents for which he will be summoned.

(True Copy.) (Signed) C. T. LONGLEY,  
Collector.

In Fasil 1286 the Collector under Sections 27 and 28, Act II of 1864 (Madras), attached and assumed the management of the Kadathur Muttah. In December 1877 Lakshminammall, the owner of one-eighth share comprising three villages, sued one Strinivasa Iyengar, her lessee, for the recovery of arrears of rent due for Fasilis 1284 and 1285.

2. There appears to be no doubt as to the facts that Lakshminammall is the owner and the defendant is the lessee of the property in question, and that he has not paid the arrears claimed. But in view to evade the claim he has raised a series of objections, viz:—

(a) Plaintiff has no right of action, (b) putta and muchilka were not exchanged, (c) plaintiff is estopped by her previous conduct and proceedings in Court, (d) one of the villages is not in defendant's possession, (e) plaintiff illegally collected Rupees 3,000 which must be set off, (f) the amount claimed is incorrect.

3. These points are discussed at length in the Head Assistant Collector's letter above recorded. In reference to the first objection, based on the fact that the muttah is under Government management, Section 28, Act II of 1864, the Court with plaintiff's consent ordered the removal of her name from the record and the substitution of the name of the agent appointed under Section 28. Before submitting the case for the orders of Government, the Board resolve to refer it for the advice of the Government Pleader.

4. The Collector will without delay send direct to the Government Pleader translation of the pleadings filed in the case and copy of the Court's order making Government a party to the suit.

(A true Copy and Extract.)

(Signed)

J. STURROCK,  
for Acting Secretary.

To the Government Pleader, with one original enclosure, to be returned, and copies of Board's Proceedings, dated 24th November 1876, No. 2,945; 21st October 1876, Mis. No. 9,059; and 1st October 1875, Mis. No. 8,886.

Collector of Salem.

Exd. W. J. Lewis.

Noted — instituted by Lakshminammall, one of the Mitthadars of Kadathur in Salem District, against one Strinivasa Iyengar, a lessee, for the recovery of arrears of rent due for Fasilis 1284 and 1285. — Referring for the advice of Government Pleader papers relating to —, and requesting Collector to send direct to Government translation of the pleadings filed in the case and copy of Court's Order making Government a party to the suit.

NOVEMBER  
No. 3,174.

PROCEEDINGS, 27th November 1878, No. 3,174.

Revenue

Dated November 27th.

Printed January 1879, 1879.

THE GOVERNMENT PLEADER,  
Ec., Ec., Ec.

BOARD of SECRETTARY,  
MADRAS.

1878.

Revenue receipt

Memo. for orders.

Proceedings of the Board of  
Revenue dated 11<sup>th</sup> January 1879  
No. 48.

Submitted for orders.

2. The facts of the case are  
succinctly stated in the Board's  
Proceedings.

3. The Board's recommendation  
in paragraph 5 appears to be  
safe and reasonable.

4. The suit comes on for hearing  
on the 25<sup>th</sup> instant.

I am decidedly of  
opinion that the Govt.  
shd. not accept the  
position of Plf. or  
have any concern  
with the suit.

4/10/78. J. H.

Wm

13  
148

Revenue Dept  
No 148

Proceedings of the Madras Government  
under date the 20 January 1879

Read the following Proceedings  
of the Board of Revenue dated  
11<sup>th</sup> January 1879 No 1, 8.

His Grace the Governor  
in Council is decidedly of opinion  
that the Government should not  
accept the position of plaintiff  
or have any concern with the  
suit.

M  
Asst. Secy

Ind. Secy  
To the Board of Rev. on 20 Jan  
11<sup>th</sup> Board of Rev. on 28<sup>th</sup> 0.

List from orders.

c 18 Jan 1879 R. 20 Jan 1879

15  
148

90.

Rev. Department

Pro. Sp. of Aug 1879

Letter in Book 353 & 354

Back Nos 353 & 354

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