

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 75	Press ~~Mis.~~
146-147	
Dated 11-1-	1861.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
11th January 1861.*

No. 146. Read the following Proceedings of the Board of Revenue, dated 7th January 1861, No. 60:—

Read the following letter from P. GRANT, Esq., Collector of Malabar, to W. HUDLESTON, Esq., Acting Secretary to the Board of Revenue, Fort Saint George, dated Calicut, 28th December 1860, No. 253:—

SIR,

1. I have the honor to lay before the Board a translate of the *Plaint* in a *Suit** filed, before the Munsif of Velliangode, in South Malabar,

* *O. S. No. 22 of 1860.*

Cheratha Seyed Ally of Edakayur Deshom
and Umshom in Chowghat Taluq.

† *Translate enclosed.*

by the party named marginally, in which I have been included as a Defendant at the request of the Plaintiff, in a Supplemental *Plaint*† subsequently presented.

2. I enclose also the draft of my proposed answer to be filed before the Subordinate Court of Calicut, to which Court the *Suit* has been transferred in consequence of my having been made a party to it as above stated; and on the grounds set forth in the answer, I solicit that the required authority of Government may be obtained for defending the *Suit* at the public expense.

3. The *Plaint*, it will be observed, gives the names of only two persons as Defendants, viz., 1st, Veyomparambatha Tachoony Mootha Nair, and 2nd, Aysa Oomah, a girl eight or nine years old. But after the *Suit* was filed, two

† *Oomaya Oomah (female) and Coonhy Koya.*

other parties‡ came forward and applied to be admitted as Defendants, one of them, the mother of the girl, asserting that she should be allowed to defend the *Suit* on behalf of her daughter, who is under age, and the other, alleging (though the allegation is obviously untrue) that the land in dispute belongs to him, having been purchased,

NOTE.—*This purchase is asserted to have been effected with an ancestor of the 1st Defendant, who had himself no right whatever to the land.*

with other lands, by his deceased father; and that, if the *Suit* be decided in favor of any other party than himself, he would be a loser by such decision.

These two persons were, therefore, admitted as 3rd and 4th Defendants in the *Suit*.

Pahur Moidoony.

4. The individual named in the margin, who obtained the land on Cowle from me, and is managing it, presented a *Petition* bringing that circum-

stance to the notice of the Court, and praying that he might also be made a Defendant in the *Suit*. This led to his inclusion in it as 5th Defendant, while I have been put down as 6th Defendant.

5. I will now enter into such particulars as seem requisite to enable the Board to arrive at a fair estimation of the merits of the case.

The land in dispute is situated on the sea shore, and has undeniably been formed by an accumulation of sand deposited by the sea. Such lands are, by ancient usage, the property of the State, and this right of property has been admitted with reference to the lands surrounding that under litigation, and lying further inland, which have been granted on Cowle to various parties. In fact, a portion of these inland adjacent lands, is held by the Plaintiff himself on Cowle from Government, a fact demonstrative of a perfect recognition on his part of the right of the State to those lands, though comparatively remote from the sea board. In the face of such recognition, his claim to the land in dispute, which lies nearer to the sea, must be utterly untenable.

6. This land was never in possession of the 1st Defendant, whom the Plaintiff asserts to be its *Jenmy*, or Proprietor, nor could it ever be in the hands of the 2nd Defendant, who is alleged to have obtained it on mortgage.

7. The 1st Defendant claimed the *Jenm* right of the land when it was granted on Cowle to the 5th Defendant, but failed entirely to substantiate his title. Indeed, when called upon by the *Tahsildar* of Chowghat to produce documents in support of his pretensions, he had nothing

*Proceedings of the Madras Government, Revenue Department,
11th January 1861.*

more to exhibit than a single counterpart deed of lease, bearing no signature, and acknowledged his inability to produce any other evidence. If he had any right to the land, it would certainly have been in his power to substantiate it at that time by documents of a tangible character.

According to local custom, the Jennies or Proprietors of land, should have at least their "Grendavaries," or Registers of family property in their possession. The non-production of any such document by the 1st Defendant, in the absence of other unexceptionable evidence is fatal to his claim, and marks it as utterly false.

8. So far as the alleged mortgage of the land to the 2nd Defendant is concerned it will suffice to remark that no mortgage could possibly be effected at a time when that Defendant was not actually in existence. She is now as I have shown above, a girl of eight or nine years only, while the land is alleged to have been assigned to her on mortgage in the Malabaryear 1021 i. e. (A. D. 1845-46) fourteen years prior to the institution of the Suit. In short the present tender age of the 2nd Defendant is confirmed by her mother having asserted* it as a ground for seeking admission as a Defendant in the case.

* *Vide paragraph 3.*

9. To my mind it is clear that this mortgage has been asserted by the Plaintiff to favor the interests of the 1st Defendant as well as his own. They are both acting in collusion in this matter. If the 2nd Defendant's alleged mortgage is admitted, it will of course be an acknowledgment of the 1st Defendant's pretended Jenm right, and, consequently, of the Plaintiff's claim, which rests solely on such right.

10. This Suit, which is only for about 2½ acres lying in the centre of lands hitherto acknowledged as the Jenm property of the State, is manifestly a tentative one. If, therefore, the rights of Government are not upheld in the present instance Suits may be laid for all the surrounding lands (especially those lying further inland), which are now considered the property of Government.

11. As the period allowed by the Court for putting in my answer, expires on the 31st instant, I have, in anticipation of the Board's approval of the draft, directed the Government Vakil to file the answer on that date, should no further period be allowed for the purpose, on his application. I regret that circumstances prevented me from submitting the draft earlier.

The land in question being situated within the sub-division, a reference was made to my Sub-Collector for the requisite information, and that Officer's reply was only received on the 10th instant. A sketch† of the locality had to be drawn out in view to showing the actual position of the land. To do this an inspection of the place was indispensable. After the receipt of the required information and documents from the Sub-Collector's Office, the draft answer had to be prepared in my Office by a careful reference to the papers connected with the case. All this led to considerable delay.

1. Ordered to be submitted to Government with the Board's recommendation that the defence of the Suit, at the public expense, be sanctioned.

2. The Board approve of the grounds of defence, and as the period allowed for putting in the answer expired on the 31st ultimo, and the Vakil, was instructed to file it as drafted, if an extension of time was refused, verbal criticism would be useless. The Collector should be careful in such cases to apply for any necessary extension of time at a sufficiently early date to allow of a reference to Madras as to his proceedings. The interests of Government might suffer seriously from such delay as occurred in the present instance.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, *Acting Secretary.*

No. 147.

ORDER THEREON, 11th January 1861, No. 75.

1. The Governor in Council approves of the orders passed by the Board of Revenue in this case. The delay in the submission of the Collector's report appears to have been caused by the Sub-Collector, and its occurrence has been properly animadverted on by the Board.

2. Orders will be passed regarding the costs of suit hereafter if the decision of the Court be adverse to Government.

(Signed) J. D. SIM,
Acting Secretary to Government.

No. 60.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 7th January 1861.

Read the following letter from P. GRANT, Esq., Collector of Malabar, to W. HUDLESTON, Esq., Acting Secretary to the Board of Revenue, Fort Saint George, dated Calicut, 28th December 1860, No. 253 :—

1. I have the honor to lay before the Board a translate of the Plaintiff in a Suit* filed before the Munsiff of Velliangode, in South Malabar by the party named marginally, in which I have been included as a Defendant at the request of the Plaintiff, in a Supplemental Plaintiff† subsequently presented.

* Original Suit No. 22 of 1860.

Cheratha Syed Ally of Edakayoor Deshom and Umshom in Chowghaut Taluk.

† Translate enclosed.

2. I enclose also the draft of my proposed answer to be filed before the Subordinate Court of Calicut, to which Court the Suit has been transferred in consequence of my having been made a party to it as above stated; and on the grounds set forth in the answer, I solicit that the required authority of Government may be obtained for defending the Suit at the public expense.

3. The Plaintiff, it will be observed, gives the names of only two persons as Defendants, viz., 1st, Veyomparambatha Tachony Mootha Nair, and 2nd, Aysa Oomah, a girl eight or nine years old. But after the Suit was filed, two other parties* came forward and applied to be admitted as Defendants, one of them, the mother of the girl, asserting that she should be allowed to defend the Suit on behalf of her daughter, who is under age; and the other, alleging (though the allegation is obviously untrue) that the land in dispute belongs to him, having been purchased, with other lands, by his deceased father; and that, if the Suit be decided in favor of any other party than himself, he would be a loser by such decision. These two persons

* Oomaya Oomah (female,) and Coonhy Koya.

NOTE.—This purchase is asserted to have been effected with an ancestor of the 1st Defendant, who had himself no right whatever to the land.

were therefore admitted as 3rd and 4th Defendants in the Suit.

4. The individual named in the margin, who obtained the land on Cowle from me, and is managing it, presented a Petition bringing that circumstance to the notice of the Court, and praying that he might also be made a Defendant in the Suit. This led to his inclusion in it as 5th Defendant, while I have been put down as 6th Defendant.

5. I will now enter into such particulars as seem requisite, to enable the Board to arrive at a fair estimation of the merits of the case.

The land in dispute is situated on the sea shore, and has, undeniably, been formed by an accumulation of sand deposited by the sea. Such lands are, by ancient usage, the property of the State, and this right of property has been admitted with reference to the lands surrounding that under litigation, and lying further inland, which have been granted on Cowle to various parties. In fact, a portion of these inland adjacent lands is held by the Plaintiff himself on Cowle from Government, a fact demonstrative of a perfect recognition on his part of the right of the State to those lands, though comparatively remote from the sea-board. In the face of such recognition, his claim to the land in dispute, which is nearer to the sea, must be utterly untenable.

6. This land was never in possession of the 1st Defendant, whom the Plaintiff asserts to be its jenmy, or proprietor, nor could it ever be in the hands of the 2nd Defendant, who is alleged to have obtained it on mortgage.

7. The 1st Defendant claimed the jenm right of the land when it was granted on Cowle to the 5th Defendant, but failed entirely to substantiate his title. Indeed, when called upon by the Tahsildar of Chowghaut to produce documents in support of his pretensions, he had nothing more

to exhibit than a single counterpart Deed of Lease, bearing no signature, and acknowledged his inability to produce any other evidence. If he had any right to the land, it would certainly have been in his power to substantiate it at that time by documents of a tangible character.

According to local custom, the jennies, or proprietors of land, should have at least their "Grendawaries," or Registers of family property, in their possession. The non-production of any such document by the 1st Defendant, in the absence of other unexceptionable evidence, is fatal to his claim, and marks it as utterly false.

8. So far as the alleged mortgage of the land to the 2nd Defendant is concerned, it will suffice to remark, that no mortgage could possibly be effected at a time when that Defendant was not actually in existence. She is now, as I have shown above, a girl of eight or nine years only, while the land is alleged to have been assigned to her on mortgage in the Malabar year 1021 (A. D. 1845-46,) i. e., 14 years prior to the institution of the Suit. In short, the present tender age of the 2nd Defendant is confirmed by her mother having asserted* it as a ground for seeking admission as a Defendant in the case.

9. To my mind, it is clear that this mortgage has been asserted by the Plaintiff to favor the interests of the 1st Defendant as well as his own. They are both acting in collusion in this matter. If the 2nd Defendant's alleged mortgage is admitted, it will of course be an acknowledgment of the 1st Defendant's pretended jenn right, and, consequently, of the Plaintiff's claim, which rests solely on such right.

10. This Suit, which is only for about $2\frac{1}{2}$ acres, lying in the centre of lands hitherto acknowledged as the jenn property of the State, is manifestly a tentative one. If therefore the rights of Government are not upheld in the present instance, Suits may be laid for all the surrounding lands (especially those lying further inland,) which are now considered the property of Government.

11. As the period allowed by the Court for putting in my answer, expires on the 31st instant, I have, in anticipation of the Board's approval of the draft, directed the Government Vakeel to file the answer on that date, should no further period be allowed for the purpose, on his application. I regret that circumstances prevented me from submitting the draft earlier.

12. The land in question being situated within the sub-division, a reference was made to my Sub-Collector for the requisite information, and that officer's reply was only received on the 10th instant. A sketch* of the locality had to be drawn out in view to showing the actual position of the land. To do this, an inspection of the place was indispensable. After the receipt of the required information and documents from the Sub-Collector's office, the draft answer had to be prepared in my office, by a careful reference to the papers connected with the case. All this led to considerable delay.

ENCLOSURE No. 1.

To the Court of the District Munsiff of Velliangode.

The Bill of Complaint of NARAINA MENON, Vakeel on behalf of the Mortgagee CHERATHA SYED ALLY of Edakayur Amshom and Deshom, in the Chowghaut Taluk.

The following is my Bill of Complaint against 1st, the Jenny Veyomarambatha Tachoonny, styled Mootha Nair; and 2nd, Eramathan Kaka Illatha Poodiavitil Arapakel Abdool Khader Aysa Oomal (female,) residing in the aforesaid Deshom.

1. In Dhana 1021 (December 1845 and January 1846,) the deceased Norton Ittoonyka Mootha Nair, the Karnaver of Norton Coonhoony Nair, to whom the 1st Defendant is nephew or Ananderaven assigned to the 2nd Defendant the jenn property of the 1st Defendant, situated in the aforesaid

Deshom and specified hereunder, on a mortgage of Rupees 12-13-9 and an annual rent of 1 Fanam and 20 Edangalies of Paddy, equal to Rupees 1-15-5; on condition that after deducting the interest on the mortgage money, a Porapad (surplus rent) of 10 Edangalies of Paddy, which, at the rate of 4 Annas and 7 Pies for 4 Edangalies, is equal to 11 Annas and 5 Pies, should be paid. As the Micharom (proprietor's share) due was only paid up to 1028 (1852-53) and was in arrear afterwards, the aforesaid Coonhoony Norton assigned the property in Tulam 1034 (November 1858,) to the Plaintiff, on a higher mortgage of Rupees 17-6-11, inclusive of Rupees 4-9-2, the amount paid over and above the (former) mortgage claim, and 1 Rupee the balance of Micharom; on condition that, after deducting the interest on the mortgage money from the rent of 2 Fanams and 20 Edangalies of Paddy, equal to 2 Rupees, a Porapad of 10 Edangalies of Paddy, equal to 11 Annas and 5 Pies, should be paid him, and accordingly, on the 24th Tulam (8th November) of the same year, he gave a Yennuck (Deed of Transfer) to the 2nd Defendant, to vacate the property, and give up the Mortgage Deed (to the Plaintiff) after effecting an adjustment of the accounts of Micharom, and receiving the mortgage money. When the Yennuck was presented to the 2nd Defendant, she refused to receive the mortgage money, and vacate the property.

2. I pray therefore that the Defendants may be summoned and examined, the Porapad at 2 in 10 for eight years, from 1028 (1852-53) to 1035 (1860,) amounting to 16 Edangalies of Paddy, valued at Rupee 1-2-3 recovered and paid, the aforesaid Mortgage Deed for Rupees 12-13-9, caused to be returned, the mortgage money Rupees 12-13-9 received, and the property, yielding annually a rent of 20 Edangalies of Paddy, valued at Rupees 1-6-10, and also Fanams 2, equal to 9 Annas and 2 Pies, or total Rupees 2-0-0 restored with future rent and costs.

Number.	Name of the property.	Extent in koles of 6 feet each.		Boundaries.			
		From East to West.	From North to South.	East.	South.	West.	North.
1	Totil-kuttil Paramba and Tanile Chalaca land.	80	40	The Paramba assigned to Bajaruden.	To Paramba assigned to Bajaruden.	Tondala.	Land called Pala assigned to Ayderman.

The Mortgage Deed executed as above, and the Yennuck (Transfer Deed) are herewith produced.
Dated 16, Magarom 1035, (28th January 1860.)

Signature of the Vakeel NARAINA MENON.

I do hereby declare that what is stated above is true, to the best of my information and belief.

Date as above.

Signature of the Plaintiff SYED ALLY.

(True Translation.)

(Signed) P. GRANT,
Collector.

ENCLOSURE No. 2.

To the Court of District Munsiff of Velliangode.

Supplemental Complaint presented by the Vakeel for the Plaintiff in Suit No. 22 of 1860.

1. Pahur Moidoony of Tiroovatre Deshom, Edakayur Umshom, having presented a Petition to the effect that he obtained the property alluded to in the above Suit on Cowle from the Collector of Malabar, &c., and is managing the same, I pray that the aforesaid Moidoony and the Collector Mr. Grant may be included as Defendants.

2. This Petition is presented agreeably to Section 73, Act VIII of 1859.
Dated 25, Karkedagom 1035, (7th August 1860.)

Signature of the Vakeel NARAINA MENON.
(True Translation.)
(Signed) P. GRANT, *Collector.*

ENCLOSURE No. 3.
To the Subordinate Court of Calicut.

The answer of P. GRANT, Esq., Collector of Malabar,
6th Supplemental Defendant in Original Suit,
No. 22 of 1860, on the file of the Velliangode
Munsiff's Court.

1. The land under litigation was formed by an accumulation of sand deposited by the sea. Lands owing their formation entirely to such natural causes are, by local usage, the property of Government, and therefore the land sued for has been granted by them on Cowle, to the 5th Defendant and is managed by him.

2. The lands surrounding it, and formed in exactly the same manner, have been granted on Cowle to several parties for cultivation as the property of the State, and the Plaintiff himself is one of those parties. The assertion, therefore, that the ground under litigation, lying in the centre of such lands belongs to a private individual is not true.

3. The alleged assignment of the land to the 2nd Defendant, who is now a girl of eight or nine years only, is stated to have taken place in 1846, when, it is evident, she could not have been even in existence.

4. When the land in question was about to be granted on Cowle, the 1st Defendant advanced his claim to the jenm right thereof, but, when examined before the Tahsildar of Chowghaut in July 1859, he produced only a Mavooputtom or counterpart Deed of Lease, bearing no signature, in support of his pretension and expressed his inability to produce any other document, a circumstance which has rendered his plea utterly worthless.

5. The Plaintiff and 1st Defendant are acting in collusion in this matter, and have got up the present Suit by fabricating and antedating documents.

Under these circumstances, I pray that the Suit may be dismissed with costs.

(Signed) P. GRANT, *Collector.*

ENCLOSURE No. 4.—Plan.

1. Ordered to be submitted to Government with the Board's recommendation, that the defence of the Suit at the public expense be sanctioned.

2. The Board approve of the grounds of defence, and as the period allowed for putting in the answer expired on the 31st ultimo, and the Vakil was instructed to file it as drafted, if an extension of time was refused, verbal criticism would be useless. The Collector should be careful in such cases to apply for any necessary extension of time at a sufficiently early date to allow of a reference to Madras as to his proceedings. The interests of Government might suffer seriously from such delay as occurred in the present instance.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Acting Secretary.

To J. D. Sim, Esq., Acting Secretary to Government, R. D.
Copy to P. Grant, Esq., Collector of Malabar,

Exd. J. Tulloch.

Dec 1861 Department
of State for Washington
Proceedings of the
Board of Revenue

Dated 7th
Dec 12th 1861
Dec 12th 1861
Enc 14-52 1861
Ch 660

Submitting a letter
from the College of Naval
with the Board's decision
in relation to that the
defence of the O & H 22
of 1860 filed against
him by certain persons
at the public expense
as sanctioned -

Dec 11th January
With my order

Dec 15 75

The fine amount of
the order passed by the
1st of Dec. in the case.
The delay in the set-
tlement of the case what
appears to have been caused
by the subplots and its
recurrence has been
probably minimized on
by the 1st

Order with the passed
regarding the case of the
fine also, if the decision of
the court be adverse to the
1st of Dec. 11th January
and the 1st of Dec. 11th January
to the 1st of Dec. 11th January