M R. O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1097.	Press ~~His.~~
472-73		
Dated	22nd April.	1869.

Not to be folded or roughly handled

No. 472. Read the following Proceedings of the Board of Revenue, dated 20th March 1869, No. 1,932 :—

Read the following letter from the Collector of Malabar, to the Acting Secretary to the Board of Revenue, dated Calicut, 10th March 1869, No. 68A.

I HAVE the honor to forward translate of plaint filed, by Tacharakavil Manavikaraven *alias* Nelambur Tirupad, in the Civil Court, Calicut, including the Collector of Coimbatore and myself as defendants.

2. The suit, it will be seen, relates to certain lands and hills comprised in the extensive tract of country, the right to which formed the subject of the correspondence noted.

Letter from Mr. Ouchterlony, to Government, dated 22nd October 1862.
Government Order, dated 11th November 1862, No. 2,384.
Collector to Board of Revenue, dated 10th December 1862, No. 244, Government Order, dated 10th January 1863, No. 59.
Collector to Government, dated 2nd December 1864, No. 119A., enclosing letter from Deputy Collector, Wynaad, 7th March 1863, No. 37, and letter from Collector of Coimbatore, dated 29th August 1864, No. 476.
Government Order, dated 30th March 1865, No. 701.
Government Order, dated 13th October 1865, No. 2,477.

A reference to the papers will show that the Tirupad all along professed to have acquired possession of the extensive property from the family of the Nambalakotta Varnavar, formerly a considerable landed proprietor of Wynaad; and that Government in their Order, dated 30th March 1865, after full and mature consideration, disallowed the claim of the Tirupad to the tract of country lying between the eastern boundary of Nambalakotta and the Pykara river.

Vide Government Order, dated 13th October 1865.

Nambalakotta proper was claimed as purchased by the Tirumalpad at a Moonsiff's sale in 1835—See the report of Mr. Chatfield, dated 21st June 1849.

Mr. Richardson, Deputy Collector of Wynaad, endeavoured in 1863 to identify and fix the eastern boundaries as described in the deed of sale, etc., and the tract west of these is supposed to be Nambalakotta proper. This tract Government determined not to interfere with.

Vide enclosed sketch of the boundaries in Nambalacode Amshom.

3. The claims to the tract to the eastwards on the slopes and plateau of the Neilgherries were, at the time of Mr. Chatfield's inquiries,* based on two mortgage deeds which Mr. Chatfield considered "impudent and gross forgeries." This tract Government determined to assert its right to. These deeds, however, are not *now* brought forward. The Tirumalpad now adduces two other deeds: one a mortgage deed purporting to be executed by the late Varnavar himself to the Tirumalpad, making over all his property in Wynaad to the Tirumalpad with some small exceptions, (excepting also that sold at the Moonsiff's sale aforesaid,) in consideration of Rupees 1,217-12-10 acknowledged to have been received. Mr. Chatfield makes no mention of this deed which is strange, as, if genuine, it must have been in existence. It purports to have been executed in 1837. His report is dated 21st June 1849.

Mr. Richardson remarks on this deed: "All the names of the hills and other lands are distinctly named, and are all situated to the west of the boundaries marked in the map, *viz.*, 1 to 3, and no mention whatever is made of the Pykara river as a boundary, or of the hills which are called Dovarahbetta, Kokala Coonoo, Kullyade Vattam, and Ralagatha or Kalavatha Vattam, and situated to the east of the boundaries mentioned in the Sunnud"; that is, the deed, if admitted, in no way supports claim to the disputed tract, and it is matter for wonder why it should be brought forward in this suit.

The other deed purports to be a deed of sale by the sister of the late Varnavar, conveying the jenm or proprietary right of a great tract of country to the Tirumalpad, in consideration of a sum of Rupees 20,000. It is dated May 1853. Mr. Richardson says: "These documents speak for themselves, and show what faith can be placed in all These transactions. The Varnavar's sister (Soobathriah), by whom these are said to have been executed in 1853, has been out of her mind for very many years, and some say from infancy. The Nelambur Rajah sends for her to Nelambur, where she is still residing, and gets her to make over all her property. I saw and conversed with her myself in December last, and she was then certainly insane".

That the woman was insane when Mr. Richardson saw her in 1862 is of course no proof that she was insane in 1853; but there is the independent evidence of many that she was insane then and since. She was taken (apparently by violence) by the Rajah in or about 1850, and was a resident at his place almost uninterruptedly thereafter.

The vagueness of the deed, considering the vast properties concerned, seems almost sufficient to condemn it were other objections absent.

4. Before the decision of Government above recorded was arrived at, the Nelambur Rajah had leased, or otherwise disposed of, valuable lands to several private persons without objection from Government Officers.

Government, therefore, offered in the Order referred to, to leave the Rajah in the enjoyment of the payments which the holders of lands, *bona fide* granted by him up to that date, might have agreed to make to him in commutation of jenm rights, provided the Rajah acquiesced in their decision.

5. Dissatisfied with this decision of Government, the Rajah has brought the present suit. The reasons which then led to the assertion by Government of their right to the tract were briefly, that the Varnavar's family (through whom the Tirumalpad claimed) had no right to dispose of the lands; and that had they had rights none of the family did make valid dispositions at any time, or were in a condition to make valid disposition at the time of the alleged conveyances. If the land did belong to the Varnavar's family, and was not legally alienated by it, then it lapsed to Government on the extinction of the family; for it is not pretended that there are surviving heirs.

The opinion expressed by Messrs. Sullivan and Chatfield formerly, and by Messrs. Grant and Richardson latterly, supported Government in these conclusions.

6. In 1845 Mr. Ouchterlony acquired a considerable tract of land, "The Ouchterlony Valley," from the Tirumalpad.

Mr. Ouchterlony had some demi-official correspondence with Mr. Conolly, the then Collector, and the latter gentleman certainly appears to have considered the Tirumalpad the owner of the land. Mr. Conolly recommended the Tirumalpad to deal with Mr. Ouchterlony, and though he (Mr. Conolly) as Collector declined to complete the actual arrangements, he certainly assisted them.

Mr. Sullivan's report had been written in 1841. In that the greatest discredit is thrown on the Tirumalpad's claims; I have not found intermediate correspondence.

Whether Mr. Conolly had Mr. Sullivan's report in remembrance and differed from Mr. Sullivan's views, or whether he overlooked the serious objections that had been raised to the Tirumalpad's claims, I cannot discover.

7. The Government must rely mainly on the absence of valid claims on the part of the Tirumalpad or other. Government have no documentary evidence of any kind on their side. Oral testimony, not of a very satisfying nature, is all that can be had. I have written to the Deputy Collector of Wynaad to inquire whether the original deponents in 1863, before Mr. Richardson, when Deputy Collector of Wynaad, are now living, and whether other evidence is now forthcoming on the Government side, though this I do not anticipate. Meantime, I beg formal sanction for conducting the defence on behalf of Government.

The hearing of the case is fixed for the 22nd March; but I have directed the Government Vakeel to apply for further postponement of a month-and-a-half till after the recess.

* In 1849.

Mr. Chatfield says: "I cannot for an instant suppose these two mortgage deeds anything but impudent and gross forgeries; and if they are not forgeries, the Rajah's Agent, acting, I presume, under his instructions, has, by making a formal purchase of land on which he asserted the possession of a previous mortgage claim, either directly vitiated that claim or shown indirectly that it would not bear the scrutiny of a Court of Law. Is it within the probability that a man should for a mere trifle make so injurious and so absurd a disposal of his property? To make a contract binding a *quid pro quo* ought to be apparent; but here it seems that a man resigns comparative wealth and independence for beggary and dependence. This might alone substantiate the rumour of insanity; if the deeds were worth anything, why were they not mentioned in the original decree, or produced to stay the sale altogether? The deed said to have been written in 1830 (1025) resigns every thing the Vanavar possesses into the hands of the Rajah, and the second deed is consequently altogether superfluous. I leave my strongest argument for the last—namely, that since an heir, the Varnavar's nephew, was living when the mortgages or rather alienations are said to have been effected, it was necessary, according to the customs of Malabar, to obtain the sanction and signature of the heir and his guardian; without this no alienation could be valid; and as this was not done, the deeds are worthless."

I have also directed the Vakeel to move the Court to include the Commissioner of the Neilgherries as defendant, instead of the Collector of Coimbatore, as portion of the land sued for is included within the jurisdiction of the former.

8. I beg to enclose a draft Answer to be filed by the defendants in the suit for the approval of the Board and Government.

ENCLOSURE No. 1.

(*Translation.*)

To the Civil Court, Calicut, under Section 26 of Act VIII. of 1859.

Plaintiff.	*versus*	*Defendants.*
Tirumalpad of Nelambur, in Ernad Talook, called Tacharakavil Manavikaraven.	1. G. A. Bellard, Esq., 2. A. Wedderburn, Esq.,	As representing the Madras Government.

The amount of the suit being twenty times the annual net income from the lands in dispute, deducting all expenses, Rupees 11,000.

The prayer in the Plaint—

1. That an order termed Declaration be issued, confirming the jenmam right of the plaintiff to the mountains and valleys belonging to plaintiff, situated within the limits distinctly shown below and under the head of "Particulars of plaintiff's rights," and which, contrary to justice, Government in their Order, dated 30th March 1865, directed the defendants to take into their possession.

2. That the several pieces of land clearly described and distinctly pointed out in the "Particulars of plaintiff's rights" given below, and which the defendants have either taken possession of, or have caused to be taken possession of, be taken from their present possessors and restored to plaintiff.

3. That an Order called Injunction be issued to prevent the causing of any expenditure on, damage to, or alienation of, the said lands in dispute by the defendants.

4. That the costs incurred by the plaintiff be recovered and paid him.

5. The prayer embraces all other requests which, during the progress of the suit, may become necessary in the Court's opinion.

6. The present suit relates to all the land in the Nambalacode Amshom lying within the under-mentioned boundaries, excepting the portion specified in Original Suit No. 69 of 1866, in the Principal Sudder Ameen's Court, Calicut. Boundaries: on the east, Paykarra Poya; south, Mukaracheepattam Thodu, Naduvattam Peak, and public road; west, Kumbala Muthan Thodu; north, Keelatha Poya.

The particulars of plaintiff's rights—

1. The lands in dispute formerly belonged to the deceased Varnavar called Nambalacode Oorakara Velamben.

2. In Edavom of 1012, the said lands in dispute were, with some others, made over by the said Varnavar to plaintiff's late uncle as Palisha Madak (or Otti) on a consideration money of 50,871 fanams and 3½ vesam, equivalent to Rupees 12,717-15-6, and executed a deed to the above effect.

3. On the execution of the said deed, the possession of the land was made over by the said Varnavar to the plaintiff's said uncle.

4. In Edavom of 1028 the next heir and sister of the said Varnavar, named Soobathriah, gave over the jenm right of the said lands to the said uncle of plaintiff for 80,000 fanams or Rupees 20,000.

5. In virtue of these rights, the lands in dispute remained in the continued possession of the said plaintiff's uncle, and after him in that of the plaintiff till 1861, when, without the knowledge or consent of the plaintiff, the defendants took possession of the several pieces of land described below, and commenced to cut trees, to expend money on the lands, and exercise other rights. Plaintiff then raised objections to these proceedings, and the matter was under inquiry and consideration till 30th March 1865, when Government issued an Order declaring that plaintiff's claims were ungrounded, and that the rights of Government to the lands in dispute should be affirmed and protected.

6. Since 1861, the defendants have unlawfully taken possession of the several pieces of land specified hereunder, and exercised, and are still exercising, various acts of ownership, contrary to all justice.

The boundaries of these lands taken possession of since 1861, comprising several mountains and valleys are—

EAST.—Chathera Poya, otherwise called Alapoya,
SOUTH.—Public road.
WEST.—Kumbala Muthan Chola.
NORTH.—The southern slopes of the hills on the southern bank of the Chathera poya.

7. The cause of action dates from the issue of the Government Order, illegally directing that the said lands be taken possession of from the plaintiff.

8. As the said lands lie partly within the jurisdiction of the Collector of Malabar, and partly within that of the Collector of Coimbatore, it has become necessary to include them both as defendants.

The said Palisha Madakadaram and Jenmadaram were produced in the said Suit No. 69 of 1866.

A copy of the Government Order, signed by the Collector of Malabar, and an original letter received from that gentleman are herewith submitted.

7th Menam 1,043, corresponding to 18th March 1868.

(Signed) MANA VIKARAVAN TIRUMALPAD.
(Signed) KANNA MENON,
Plaintiff's Vakeel.

I, Mana Vikaravan, here declare that the statements above made are correct to the best of my belief and knowledge.

(Signed) MANA VIKARAVAN TIRUMALPAD.

MEMORANDUM.—The said lands were all formerly included in the Malabar District. Recently by an Order of Government, half was included within the limits of the Coimbatore District, and half within those of the Malabar District.

The Thogapattam Peak called also Chatheripatham and Naduvattam is the present limit. All to the west of it belongs to Malabar, and all to the east to Coimbatore.

(Signed) KANNA MENON,
Vakeel.

ENCLOSURE No. 2.

Plaintiff's Allegations.	*Draft Answer.*
1. Lands formerly belonged to the Varnavar.	1. Defendants deny that the lands in dispute formerly belonged to the Varnavar, and put plaintiff to the proof of his statement.
2. The said lands in dispute were, with some others, made over as Palisha Madak to plaintiff's uncle on payment of Rupees 12,717 in 1012, (1837.)	2. Defendants neither admit nor deny here the genuineness of the mortgage deed said to have been executed by the Varnavar in 1837; but the lands now in dispute are not included in it. Neither the Payakara Poya, nor the hills, etc., immediately to the west of it, is included or mentioned in the said deed.
3. The possession of the lands were then made over to plaintiff's uncle.	3. Defendants deny legal possession to plaintiff. Plaintiff should prove his statement.

4. Varnavar's sister sold jenm right of the lands to plaintiff's uncle on payment of 20,000 Rupees in 1028 (1853.)	4. Vide No. 1.—Jenm right denied. Even supposing the jenm right to vest in the Varnavar and his family, the sister who is stated to have sold the jenm right was notoriously insane, and consequently not in a condition to make a valid disposition of the property. The document, even if genuine, is worthless.
5. Lands were in possession of plaintiff's uncle.	5. No. If acts of ownership were exercised by plaintiff, etc., they were exercised wrongfully.
6. Defendants' occupation of the lands is unlawful.	6. The defendants have occupied, but not unlawfully. They have exercised, and are exercising acts of ownership.

(Signed) G. A. BALLARD,
Collector.

THE Board resolve to submit this case for the orders of Government.

2. The matter is one of great importance, and has been more or less in dispute for thirty or forty years. The suit now filed brings it to an issue.

3. It seems desirable that the case should be submitted to the legal Officers of Government.

No. 473. ORDER THEREON, 22nd April 1869, No. 1,097.

Miscellaneous.

ORDERED accordingly that the papers be transmitted to the Government Pleader for his advice and opinion. Mr. Handley should also confer with the Government Solicitor and the Advocate-General on the case.

2. The hearing of the suit, as at present arranged, (paragraph 7 of the Collector's letter) will apparently take place early next month. The Acting Collector should accordingly be directed to apply for a further postponement.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Government Pleader.
,, the Board of Revenue.

Exd. F. R. Bantleman.

Govt. of {1869} Madras.

REVENUE.

To

THE GOVERNMENT PLEADER,

&c., &c., &c.

Dated April, 22nd.

Read. *Encl.*

G. O., 22nd April 1869, No. 1,097.

APRIL.

Nos. 472-473.

Nelambur Tirupad's Suit against Collector of Malabar for the recovery of certain lands. —Papers relative to it, transmitted to Government Pleader for advice. Collector to apply for a further postponement of the case.

ther postponement of the case.

R. D.

No. 1097

From Proceedings of the Madras Govt.
Under date the 22nd Apl. 1869
Read the following Rpt.
of the Board of Revenue
dt. 20 March 1869 &c.

Ordered accordingly

That the papers be
transmitted to the
Govt Pleader for his
advice and opinion
The hearing of the
suit, as at present
arranged, (para 7 of the
Coll.s letter) will apparently
take place early next
month. The Coll.s should
accordingly be directed
to apply for a further
postponement

WOR

Apl

K.

Remember belongs to
the office of the Govt Pleader.
Like other cases of
importance are to pass thro
to the Govt Pleader, & must
be returned to the latter

WOR

Mr. Handley should also
confer with the Govt. Solicitor
and the Advocate General
in the case

3 Copies to the Govt Pleader with Mr. Stokes's Desp. dt. 28th
14 — Rept of Revenue Board

RWD

D.D. 4