M.R.O. 1—30,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1367 Press Mis.

262-244

Dated 11th May 1809

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
11th May 1869.

Read the following :—

No. 242. Proceedings of the Board of Revenue, dated 4th November 1868, No. 7,845A.

Read the following letter from the Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 19th October 1868, No. 276.

I HAVE the honor to forward, herewith, translate of a plaint filed by certain Ryots at Melur, in the District Moonsiff's Court of Madura in No. 555 of 1867, including me as the tenth defendant.

2. The plaintiffs have instituted the suit to obtain a decree to recognise their right to a piece of land which the first defendant acquired by Durkhast, and which is in his occupation up to date. This piece of land was originally waste on which Mettoo Chavady was erected, the site of which was, in the first instance, applied for by the first plaintiff, and secondly by the first defendant, but as the Chavady was then serviceable, their applications were rejected. Subsequently the building was found to be no longer required for public purposes, when one Ramasawmy Iyen and Neeroobeebee Saibah, the wife of the second plaintiff, applied for its site, and it was given to the former as he was the first applicant; but as the first defendant immediately after this, applied for the site, stating that he was the first Durkhastdar, in 1860, it was made over to him and the former order revoked, and the first plaintiff has also failed to appear and apply for it.

3. I beg to enclose, for the Board's approval, the draft of a written Statement which I propose to file on my behalf in the Moonsiff's Court.

4. The suit will come on for hearing on the 31st instant, and I have directed the Government Pleader to apply to the Moonsiff to grant a period of six weeks more to file the answer.

ENCLOSURE No. 1.

Translation of a Plaint filed before the District Moonsiff of Madura in Suit No. 555 of 1867, *by*

Plaintiffs.	*versus.*	*Defendants.*
1. Mustan, son of Caderbavah Rowtten, of Cusbah, Melur.		1. Veloyudom Pillay, son of Chinnacoottia Pillay,
and		2. Chinna Iyulu Chetty,
2. Thoola Saib, Vakeel of the Small Cause Court of Madura.		3. Amma Mootten Chetty,
		4 Manien Chetty,
		5. Chinna Poolaver,
		6. Koonee Chetty,
		7. Aroonachellum Chetty,
		8. Abdulkader Rowtten,
		and
		9. Casi Mohideen, all of Melur.
		10. Honorable D. Arbuthnott, Collector of Madura.

Land, etc., valued at Rupees 102-8-0.

THIS suit is instituted to obtain a Decree recognising the plaintiff's right to a piece of land in extent of $\frac{1}{16}$ Cawny litigated in Original Suit No. 353 of 1863, on the file of the said Court, and directing to put them in possession thereof after removing, at an outlay of 2½ Rupees, the roof of seven shops which have been erected thereon by the first defendant.

2. The piece of land in extent of $\frac{14}{16}$ Cawny described below was lying waste. With reference to Durkhast Rules, the first plaintiff applied for the land in the first instance, while the first defendant, one Ramasawmy Iyen and Nooroobeebee Saibah, the wife of the second plaintiff, subsequently applied for it in order; but the Collector illegally gave it to the first defendant without considering the justice and rules. In the prosecution of claims between the first and second defendants before the Civil tribunals regarding the land in question, the former basing his claim on the above illegal order, and the latter, on his ownership to it, the claim of the first defendant, who is the second Durkhastdar, has been upheld. In consideration of this principle, the first plaintiff, who is the first Durkhastdar, becomes entitled to it. The first and second plaintiffs are equal sharers in the Durkhast. During the progress of the above Civil actions, the first plaintiff had gone to Colombo, and the second was sick and insane. Consequently they were not able to lay their claims at the time. Plaintiffs, therefore, pray that this plaint may be admitted, and justice rendered.

Particulars of land.

West of the second defendant's land at Melur, north of the shop belonging to one Kalenjia Rowttan, east of the Road No. 4, and south of the toombs of Paria caste people.

Within these boundaries, situates a piece of Nunjah land in extent of $\frac{14}{16}$ Cawny.

Dated June 1867.

(Signed) MUSTAN, 1st Plaintiff.
(,,) THOOLA SAIB, 2nd Plaintiff.

We, the plaintiffs, do hereby certify that the contents of this plaint are true to the best of our belief.

(Signed) MUSTAN, 1st Plaintiff.
(,,) THOOLA SAIB, 2nd Plaintiff.
(,,) SIED MOMOMED MUSTAPA SAIB,
Moonsiff.

From the time the first plaintiff attempted to apply for the land, up to the date it was given to the first defendant, the second plaintiff rendered all assistance to the first both in pecuniary and writing matters. Consequently the first plaintiff had promised at the beginning to give him half share in the land. Accordingly he has been included in the suit as second plaintiff. He is prepared to bear the costs of suit. It is, therefore, requested that he may be admitted as second plaintiff.

Dated 29th October 1867.

(Signed) MUSTAN 1st Plaintiff.
(,,) THOOLA SAIB, 2nd Plaintiff.

Filed 22nd November 1867.

(Signed) SIED MOHOMED MUSTAPA SAIB,
Moonsiff.

(True translation.)

(Signed) D. ARBUTHNOTT,
Collector.

Enclosure No. 2.—Proposed Written Statement.

The defence of the suit is sanctioned, on the usual terms. The Draft Answer to be filed is annexed.

Draft Answer.

Plaintiffs have not and never had any title of the land.

2. The land applied for was Government waste at the disposal of Government.

3. Though certain rules regarding the disposal of waste have been laid down departmentally, they confer no rights on individuals, and afford no ground of Civil actions.

4. The land when applied for by plaintiff, in 1860, was required for Government purposes.

5. On its becoming available for disposal in 1863, first plaintiff did not come forward, and thereby forfeited any priority of claim to which his former application may be supposed to have entitled him.

6. The Collector's acts, in regard to the disposal of waste land, are not subject to the revision of the Civil Courts.

7. If dissatisfied plaintiff should have appealed to the Board of Revenue.

No. 243. Proceedings of the Board of Revenue, dated 28th April 1869, No. 2,864.

Read the following letter from the Officiating Collector of Madura, to the Acting Secretary to the Board of Revenue, dated 24th March 1869, No. 109.

As requested in the Proceedings of the Board, No. 7,845A, dated 4th November last, I have the honor to forward, herewith, translations of a Judgment and Decree passed by the District Moonsiff, non-suiting the plaintiffs with costs.

Enclosure No. 1.

Original Suit No. 555 of 1867, on the file of the District Moonsiff of Madura.

The plaintiffs state that the 1st plaintiff, the 1st defendant, one Ramasawmy Iyen and the wife of the 2nd plaintiff, applied [illegible] $\frac{14}{16}$ Cawny of land which had been lying waste; that the Collector gave over the land to the 1st defendant contrary to Rules; that the claims brought by the 2nd defendant regarding the above land as his hereditary property, are adjudicated in favor of the 1st defendant; that the 1st and 2nd plaintiffs having entered into an agreement to share the land between them, the 2nd plaintiff renders his pecuniary aid in bringing this suit; and that their right to the above land, valued at Rupees 100, and forming the matter of dispute, in Original Suit No. 353 of 1863, on the file of this Court, should be recognised, by putting them in possession thereof after removing at an outlay of 2½ Rupees, the thatched building which has been erected thereon by the 1st defendant.

2. In his written statement, the 2nd defendant urges that $\frac{2}{16}$ Cawny of the disputed land forms a part of his puttah land; that it has been accordingly delivered over to him by precept, with reference to the Decree passed in Original Suit No. 353, and confirmed both in Appeal and Special Appeal; and that he has no right to the excess of land if any.

3. The 10th defendant states in his written statement, that the land when applied for by the plaintiff in 1860, was required for Government purposes; and that on its becoming available for disposal in 1863, the 1st plaintiff did not come forward, and thereby forfeited his claim.

4. The 1st, 3rd, 4th, 5th, 6th, 7th, 8th, and 9th defendants allowed the case *ex parte*.

5. No evidence either oral or documentary was adduced on behalf of both parties.

Judgment.

The point for consideration is, whether the plaintiffs are entitled to receive the land in dispute on Durkhast.

2. Out of the disputed land of $\frac{14}{16}$ Cawny, $\frac{2}{16}$ has become entitled to the 2nd defendant, in virtue of the Decree passed in Appeal Suit No. 342 of 1865, on the file of the Principal Sudder Ameen's Court, and there remains only $\frac{12}{16}$ Cawny of land in dispute.

3. The reason assigned by the 10th defendant that the land when applied for by the 1st plaintiff in 1860, was required for Government purposes; that on its becoming available for disposal

in 1868, he did not come forward; and that consequently, it was given up to the 1st defendant, is satisfactory and leads the Court to conclude, that the plaintiffs have no right whatever to $\frac{4}{16}$ Cawny of land referred to above.

Decree.

For the reasons given in the Judgment, the plaintiffs are non-suited with costs of suit.

Dated 2nd March 1869.

(Signed) SIED MOHOMED MUSTAPA SAIB,
Moonsiff.

(True Translation.)

(Signed) J. R. ARBUTHNOTT,
Officiating Collector.

ENCLOSURE No. 2.—Translation of Decree in Original Suit No. 555 of 1867.

SUBMITTED, (together with a copy of Board's Proceedings, dated 4th November 1868, No. 7,845A,) for the information of Government.

2. The circumstances are clearly stated in the "Judgment."

3. No costs have been awarded against the Collector.

No. 244.

ORDER THEREON, 11th May 1869, No. 1,303.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,
acting Under Secretary to Government.

To the Board of Revenue.

Exd. E. C. Shunker.

Revenue 1869. Dept.

Board of Revenue,
MADRAS.

No. 1402.

PROCEEDINGS, 28TH APRIL 1869, No. 2,864.

Encl 2

Received 1st May

APRIL.

No. 2,864.

130 to 1303

Original Suit—No 555 of 1867, on file of District Munsiff of Madura, regarding certain land,—Letter from Collector, forwarding translations of Judgment and Decree in, submitted for information of Government.

RECORDED

11th May.