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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. 31
B.P. No.

Press
~~Mis.~~

Dated 10-1-1876 196 .

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Not to be folded or roughly handled

No. 64. Read the following Proceedings of the Board of Revenue, dated 6th January 1876, No. 22:—

Read the following letter from H. S. THOMAS, Esq., Collector of Tanjore, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Vallam, 18th December 1875, No. 5,564.

I HAVE the honor to enclose herein translation of plaint in Original Suit No. 265 of 1875 on file of the Court of District Munsif of Negapatam, and to state that the plaintiff in that case, one Aiyarapa Mudali, has sued me and the Negapatam Tahsildar, as the first and second defendants respectively, for the recovery of 16 valis, 3 mahs, and 36 gulis of waste lands, which, according to his statement, forms portion of what he darkhasted for, and of which he was not, however, put in possession, as he ought to be, along with the remaining portion of his darkhast lands.

2. The history of the case is simply this: The plaintiff applied to the Sub-Collector in September 1865 for 26 valis of waste lands to be given him under the darkhast rules in the villages of Orathur and Seeramangalam. He, however, did not specify the position of the fields or their number. The Tahsildar, to whom the petition was referred, sent for plaintiff and asked him to go with his (Tahsildar's) natkurnam to the villages and point out the position of all the lands he wished to have on darkhast. This the petitioner (plaintiff) did, and an account of the lands was prepared and signed by him. All that he pointed out and wished to have came up to only 18 and odd valis. The Tahsildar then issued a notice to the mirassidars communicating to them the offer of the present plaintiff, who was no mirassidar, of the villages in question, in order that they might have the usual refusal. This notice, like others of its kind, failed to procure the mirassidars' attendance at the prescribed time, in consequence of which darkhast petitions remained undisposed of for very long periods, and this state of things coming to the then Collector's notice, he issued a circular in the *District Gazette* of the 17th February 1866, whereby he notified that, if mirassidars should fail to appear before their Tahsildars within one month of the dates of such notices, they would be considered to have waived their claim for the land as resident mirassidars. In pursuance of this circular the Tahsildar sent, on the 7th March 1866, a fresh notice to the mirassidars, making also allusion therein to the one he first sent them. The mirassidars accordingly appeared and offered to take 3 valis, 14 mahs, and 53 gulis for cultivation from Fasli 1276, and prayed to be allowed 4 valis, 17 mahs, and 93 gulis as grazing ground. This was granted them with the Sub-Collector's permission. The rest of the lands, to the extent of 9 valis, 15 mahs, and 78 gulis, was accepted by the plaintiff for cultivation in Fasli 1276, and he executed a muchilka therefore on the 11th June 1866, and signed also the two lists of the several fields with their number and extent, which he finally took up for cultivation. This land, however, he does not seem to have cultivated up to 1869, when he sold it to one Chinna-kamalam, of Trivalore, reported to be his concubine. Subsequent to this transfer plaintiff appears to have found that the whole of the land he took up was unfit for cultivation, and that there was other waste land in the villages suitable for cultivation. He consequently revived his old darkhast in 1873, that is, after the lapse of seven years, and urged that at the time of the examination of the fields by the taluq official he was deceived by the curnam, who made him believe that all the

waste land, except the aforesaid 18 and odd valis, had been given over for cultivation to others. Plaintiff prayed, therefore, that fresh lands might be allowed out of the waste available for cultivation, as well as the land reserved for cattle, in lieu of the useless land taken up by him and sold by him, and further that whatever land may be left after this should be given over to him for cultivation in fulfilment of his original darkhast for 26 valis. This prayer was, however, rejected by the Sub-Collector and, on appeal, by my predecessor on the ground that plaintiff had, when the examination of his darkhast land by the natkurnam took place, restricted his offer to 18 and odd valis, and that out of these 18 valis the mirassidars had been allowed 8 valis, 12 mahs, and 46 gulis for cultivation and cattle-grazing.

3. These are the facts of the case, and now for the allegation contained in the plaint. The plaintiff begins his claim by stating (1) that his offer was for 26 valis and (2) that, as the mirassidars failed to appear within the time prescribed by the notice, they should have been, under the terms of the notice, considered to have waived their claim to bid for the land in preference to plaintiff. With regard to this allegation, the Board will notice, from what has already been narrated, that plaintiff had his offer reduced to 18 and odd valis when, on examination of the lands by the natkurnam in his company, he represented he needed only so much and nothing more and when he signed the account sent in by that officer to the taluq for the aforesaid 18 and odd valis. The other allegation also falls to the ground when we consider whether the failure of the mirassidars to appear was with reference to the first or the second notice from the Tahsildar. The first, which is not forthcoming from the records, prescribed, it would appear, no penalty for non-appearance in time, and as for the second, the mirassidars did appear and state their case before the expiry of the time prescribed thereby. But, however this may be, plaintiff has, by the execution of a muchilka and the fieldwar statements for the 9 and odd valis he was given, waived all claim (if he ever had any) to the rest of the land, and all objection on the score of the mirassidars' failure to attend in time even if they had so failed. The plaintiff, moreover, when he appealed, made no mention of the notice on which he now grounds his suit.

4. I take this opportunity to state that plaintiff is known to be a troublesome character, always disposed to annoy and threaten the mirassidars by putting in darkhast petitions for lands which the mirassidars would not like that a stranger like plaintiff should take up, and which plaintiff himself never meant to cultivate. That he played with these darkhast petitions and lands will be seen from the fact that he obtained a large extent of lands on darkhast in the sub-division and did not cultivate them; and in order, therefore, to protect the interests of Government and of the public, my Sub-Collector has rightly prohibited darkhast petitions being received from plaintiff in both the taluqs of the division. Furthermore, as an evidence of plaintiff's litigious character, I shall add that he has since brought a case against me for a similar cause in another village, which will be duly reported to Board. In case the Board should, with reference to paragraph 2 of

* Page 476 of the papers on mirassi right. their Proceedings,* dated 11th November 1841, wish to strike out the first plea in the defence, their attention is specially invited to it.

5. I have, therefore, the honor to request the Board will approve of the enclosed draft answer, and sanction my defending the suit at Government expense as against me and the Tahsildar, who only acted under orders of his superior. The hearing of the case is posted for the 15th January 1876.

6. The other defendants in the case are mirassidars of the villages now in possession of the whole or any portion of the plaint lands.

ENCLOSURE No. 1.—Translation of Plaint.

ENCLOSURE No. 2.—Draft Answer.

SUBMITTED for the orders of Government.

2. In 1865 plaintiff, who is not a mirassidar, presented a darkhast for 26 valis of waste land; but, on examination of the land pointed out by him, its actual extent was found to be about 18 valis. The usual notice was issued to the mirassidars, which they failed to attend to; but, on the issue of a second notice, they appeared and offered to take up Valis 3-14-53 for cultivation, and asked that Valis 4-17-93 might be reserved for pasture. Their proposal was acceded to, and the remainder (Valis 9-15-78) was offered to, and accepted by, the darkhastdar (plaintiff), who afterwards, finding it unfit for cultivation, sold it in 1869.

3. In 1873 he presented a petition complaining that he had been deceived by the curnam as to the extent of waste available, and requesting that the land reserved for pasture and as much available waste as would make up 26 valis originally applied for might be given in lieu of the useless land previously assigned to him. This petition was rejected.

4. Plaintiff then filed this suit claiming the land granted to the Mirassidars, as also that reserved for pasture, on the ground that the Mirassidars having failed to appear according to notice, the whole of the land should have been granted to him.

5. The Board are of opinion that plaintiff has no just cause of complaint. They accordingly recommend that the defence of the suit be sanctioned. They would suggest the omission of clause 1 of the draft answer and the insertion of the following as clauses 4 and 5:—

Clause 4.—“Granting that the Mirassidars had failed to appear as alleged in the plaint, it was discretionary with the revenue authorities to admit or reject plaintiff's application, because, as a mere darkhastdar, he could not claim the land as of right.”

Clause 5.—“Subject to mirassi claims, unoccupied waste land is at the disposal of Government, and the complaint of a non-mirassidar, as regards the manner in which such land is disposed of by the revenue authorities, is a matter not within the cognizance of the Civil Courts.”

6. The date fixed for the hearing of the suit is 15th January 1876.

(A true Copy and Extract.)

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

*Proceedings of the Madras Government, Revenue Department,
10th January 1876.*

No. 65.

ORDER THEREON, 10th January 1876, No. 31.

Miscellaneous.

The defence of the suit is sanctioned, and the draft answer, with the modification suggested by the Board, is approved.

(True Extract.)

(Signed) W. HUDLESTON,
Chief Secretary.

To the Board of Revenue.
„ the Collector of Tanjore.

Exd. J. W. Fischer.

Revenue Department

Proceedings of the Board of Revenue
dated 6th January 1876.

Read letter from the
Collector of Tanjore dated 18th
December 1875 & No. 5084, en-
-suing translation of Plaint in
C.S. No. 265 of 1875 on file of the
District Munsiff Court, Neg-
-apatnam, and stating that the
Plaintiff in that case has sued
the Collector and Tahsildar of
Negapatnam for the recovery of certain
land, and requesting that the Board
will approve of the enclosed draft
answer and sanction the defence.

Submitted for the orders of Government.

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Boat. of 1876: 31

REVENUE.

To
THE BOARD OF REVENUE.

cc. cc. cc.

Dated January, 10th.

Recd.

Encl.

G.O., 10th January 1876, No. 31.

JANUARY.

No. 64-65.

But No. 265 of 1875 on file of District Munsiff's
Court at Negapatnam.—Sanctioning the defence of
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Revenue.

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nizance of the Civil Courts."

b. The date fixed for the hearing of the
Suit is 15th January 1876.
(Enc Extract)

Yours
Ag Secretary

To
The Secretary to Government
Revenue Deptt with original
letter & its 2 enclosures to be
returned

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10 January 1876

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C. G. Sawyer 176 Wth 10th January 1856