

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT

G.O. No.	415	Press Mis.
236-35 Dated	31-3-	12 18 20

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
31st March 1870.*

No. 234. Read the following Proceedings of the Board of Revenue, dated 22nd February 1870, No. 1,233:—

Read the following letter from the Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated Vallam, 21st December 1869, No. 296.

With reference to the Board's Proceedings, dated 25th October 1869, No. 7,930, I have the honour to submit, for their information, a copy of the Judgment passed by the Court in the Suit therein referred to, from which it will be seen that the Court has absolved the Chuttrum funds from all liability for the debt sued for, and has adjudged the second defendant to pay it to the extent of the property inherited by him from his father, the late Trustee, with interest and costs. It will be seen also that the plaintiff has been adjudged to pay my costs.

ENCLOSURE No. 1.

Original Suit No. 56 of 1869.

Plaintiff sues to recover Rupees 2,894-11-0, principal and interest on two Bonds, said to have been executed by the late father of second defendant in 1862 on behalf of a charity of which he had the management, and which is now under the charge of the Collector, the first defendant.

2. First defendant pleads that he does not know, and therefore is not prepared to admit that the amount of Melvaram sued for by the plaintiff was applied to the support of the Chuttrum now under his charge, but begs to state that even admitting that it was so applied, the funds of the Chuttrum cannot be legally held liable for the debt thus incurred.

3. The duty of the late Trustee, father of the second defendant, merely consisted in appropriating its actual net income to the support of the Chuttrum under his charge. He was not bound to carry on the expenses of the Chuttrum beyond its income, and if he did so carry on its expenses, and in so doing appropriated thereto the Melvaram, which he ought to have paid to the Vedararniem Pagoda, he alone is personally liable.—*Vide* Decree of the Sudder Court, in Regular Appeal Nos. 19 and 20 of 1860, dated the 23rd December 1861. It cannot be alleged that such an unwarranted application of funds which did not belong to the Chuttrum was necessary to save the Chuttrum itself or its endowment from ruin.

4. The first defendant therefore begs that he may be exonerated from this claim, and that the plaintiff may be adjudged to pay his costs.

5. Second defendant pleads that he knows nothing of Bonds A. B., that the Collector should be answerable if the bonds are genuine; that the documents are barred as the Suit is for kist, and comes therefore within the three years' limitation; that the price of paddy should be charged according to what ruled when the bonds were executed, and that certain property descended to him from his father from which he has to pay certain debts.

Issues.

1. Whether plaintiff's Suit is barred under Section 1, Clause 8?
2. If not barred, whether the bonds are genuine, and whether the property in the custody of first defendant is liable for their amount?

Plaintiff cites,

1. Ramasamiyan.
2. Saminadaiyan.

Second Defendant cites,

1. Chandasami Pillay.

Plaintiff files,

6. A. Bond, 9th January 1862.
- B. Do. do.
- C. Endorsement on petition by first defendant to plaintiff's petition, 1st January 1869.

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D. Muchilika by Thopian, 5th September 1865 to Circar.

E. Do. do. to first defendant, 4th April 1869, and Circar document.

7. First defendant produces Olai Accounts of the charity asked for by plaintiff.

8. Second defendant files No. 1 appeal decision on Original Suit No. 128 of 1865.

9. This is the second Suit instituted against the plaint charity on bonds executed by the late Trustee, and it has been mentioned in the progress of the case that other similar bonds have yet to be discharged.

10. The present bond is dated 1862. Second defendant's father died about 1861 and 1865, and the plaint is not filed until 1869.

11. There seems to be no doubt that the father of second defendant executed the bond sued on. The purport to have been given for the Melvaram of the lands allotted to the charity, and the question to determine is, whether the charity should be charged with the debt or whether it should be recovered from the estate of second defendant's father.

12. The first defendant has further raised the question of limitation bar.

13. The Court is of opinion that the twelve year's bar is the limit for this Suit as law applies. This claim is not for the current kist, to which Section 1, Clause 8 applies. It is true that the bonds represent that they were given for arrears of kist, but the Court holds that that explanation of the debt does not alter the character of the present bonds as affected by the Limitation Act from that of any other mortgage claim.

14. The Court is of opinion that there is force in first defendant's second contention that second defendant's father was not justified in saddling the charity with such debts as these bonds represent.

15. The charity could and should only have been conducted by second defendant's father to the extent of its income after the payment of the charges attending the cultivation of the land which was allotted for the support of the charity.

16. Here the bonds purport to have been given for kist of said land. It is not shown whether the giving of these bonds was an imperative necessity on the part of the then Trustee, neither is it shown how the produce of the land, for which the kist is said to have been due, was disposed of by the Trustee, and even if it were so satisfactorily shown, the question arises whether the Trustee was then warranted in incurring expenses so much in excess of the income of the charity.

17. Under such circumstances the Court holds the property in charge of the first defendant, absolved from plaintiff's claim, and adjudges that second defendant do pay plaintiff to the extent of the estate inherited from his father. Rupees 2,894-11-0 with costs and interest at 12 per cent. per annum, on the sum principal from date of Suit to this date with further interest at 6 per cent. per annum on the aggregate sum from this date to date of payment.

18. The first defendant's costs to be borne by plaintiff.

8th December 1869.

(Signed) M. CROSS,
Judge.

COMMUNICATED to the Government Pleader for his information, together with a copy of the Board's Proceedings, dated 25th October 1869, No. 7,930.

2. This case is almost precisely similar to that concerning which an appeal has been preferred to the High Court and the result so far as the present case has gone is the same, though the grounds on which the judgment has been given are somewhat different.

3. A full report will be submitted to Government as soon as both cases are finally decided.

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31st March 1870.*

No. 235.

ORDER THEREON, 31st March 1870, No. 415.

Miscellaneous.

ORDERED to be recorded.

(True Extract.)

(Signed) H. WELLESLEY,
Acting Under-Secretary to Government

To the Board of Revenue.

Edw. F. H. Bantleman.

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 " 1792 4930
 " 1799 1903
 " 1799 1199
 " 1799 3201

Revenue 1870. *Op*
 Board of Revenue,
 MADRAS.
 8-680

PROCEEDINGS, 22ND FEBRUARY 1870, No. 1,233.

Q. P. S. March 1870 Encl.
 Received *4. 1.*

FEBRUARY.
 No. 1,233.

415
 Suit.—No. 56 of 1869, filed in Negapatam Small Cause Court in Tanjore District, by Trustees of Vedaraniem Pagoda, for recovery from funds of Kallimodu Chittram, now under Government management, of a sum of money alleged to be due on certain Bonds.—Letter from Collector submitting copy of Judgment in, communicated to Government Pleader.

3rd March 1870

28 March 1870

San. H. & G. Revenue
 17th May 1870
 17th May 1870
 17th May 1870

Govt. of 1870: 31st March.

REVENUE.

THE BOARD OF REVENUE

1st March, 1870.

1st

1st

1st, 1st March 1870, No. 415

MARCH

NO. 234-235.

Suit No. 56 of 1869, regarding a Pagoda in Tanjore.—Board's Proceedings submitting copy of Judgment in connection with it, recorded.