

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 789

Press
Mis.

584-586

Dated 22nd March 1916

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
22nd March 1869.*

Read the following :—

No. 564. Proceedings of the Board of Revenue, dated 22nd May 1868,
No. 3,808A.

Read the following letter from the Collector of Malabar, to the Acting Secretary
to the Board of Revenue, dated Calicut, 16th May 1868, No. 144.

1. I have the honor to forward, herewith, translation of plaint filed by a female
named Cherupenna Amma, in the District Munsiff's Court at Calicut.

2. First defendant in the present suit was a prisoner in Case No. 303, on the
Register of the second class Sub-Magistrate of Calicut Talook. First defendant
absconded with a view to evade justice when a warrant was out for him, and his
property, as specified in the plaint, was attached and eventually sold under Section
184 of the Criminal Procedure Code, and credited to "Law and Justice." The
proceeds of the sale only amounted to Rupees 23-2-9, and not to Rupees 63-0-6, as
valued by plaintiff.

3. I am sued as Collector. I acted in the case as Magistrate, and under Act
No. XVIII. of 1850, I am protected from all liability for an act done in good faith
in the exercise of my powers as Magistrate. I, therefore, propose filing the
accompanying statement, and request that sanction may be accorded for conduct-
ing the suit at the public expense.

4. The period for filing my statement expires on the 27th instant.

ENCLOSURE No. 1.

Plaint in Original Suit No. 185 of 1866.

(Translation.)

To the District Munsiff's Court, Calicut.

Plaintiff, versus Defendants.

Chambil Ponnath Cheruvanna Amma,
(a female,) of Cutcherry Amshom,
of Calicut Talook.

1. Cheriyaath Kanara Nair, of the same
Amshom.
2. O. Punnet, Esq., of Kottully Amshom.
3. G. A. Ballard, Esq., Collector of Malabar.

1. Under Section 26 of Act No. VIII. of 1859, the plaintiff prays that the auction sale,
which was conducted by orders of the third defendant at the instance of the second may be can-
celled, and that the value of the undermentioned articles and house sold, amounting to Rupees 63-0-6,
may be decreed to plaintiff with interest.

	R.	A.	P.
2 old Cots	8	0	0
1 Wooden Box	4	0	0
1 Brass Cup	0	9	6
1 Iron Lamp	0	4	0
1 Iron Chatty	1	0	0
1 Copper vessel	0	6	0
1 Bedding	3	8	0
1 Pillow	0	5	0
1 House with cadjan roofing	45	0	0
	63	0	6

2. On the 26th and 27th May 1866, the above articles and house were sold under the orders
of the third defendant, as belonging to the first defendant who had stolen some property of the
second defendant.

3. The first defendant has had no right whatever to the said articles and house.

4. I had made for me all the said articles; the house was purchased by me for Rupees 35,
when, in Vrichikam 1031, the paramba on which it stands was assigned to me on kanom by its
Jenmi Cheriattamma. I have since repaired the house.

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5. I present, herewith, the Deed of Sale of the house executed in the said Vrichikam, written on the 23rd May 1866.

6. The amount has to be recovered from the second and third defendants.

(Signed) CHERUVANNA AMMA.

(Signed) SUBRAMANIAN CHETTY,

Vakeel.

(True translation.)

(Signed) G. A. BALLARD,

Collector.

ENCLOSURE No. 2.

Draft Statement.

TO THE DISTRICT MUNSIF'S COURT, CALCUT.

Original Suit No. 185 of 1866.

Plaintiff,

versus

Defendants.

Chambil Poonath Cheruvanna Amma,
(a female,) of Cutcherry Amshom,
of Calicut Talook.

1 Cheriyalath Kanara Nair, of the same
Amshom.

2 O. Punnet, Esq., of Kottully Amshom.

3 G. A. Ballard, Esq., Collector of Malabar.

1. The Collector, as such, denies having taken any action whatever in the subject matter of the suit.

2. The Magistrate, in 1863, issued orders for the attachment and sale of certain properties of a prisoner who was at large, under Sections 183 and 184 of the Criminal Procedure Code, which properties it appears plaintiff now endeavours to make the subject of a Civil suit; but the Magistrate submits, that he is not imbie to be sued in the case in any Civil Court. — *Vide* Act No. XVIII of 1850.

(Signed) G. A. BALLARD,

Collector.

The proposed answer is approved, and the defence of the suit sanctioned on the usual terms.

No. 565. Proceedings of the Board of Revenue dated 3rd March 1869,
No. 1,384.

Read the following letter from the Collector of Malabar, to the Acting Secretary to the Board of Revenue, dated Calicut, 13th January 1869, No. 11.

Adverting to the correspondence
Collector to Board of Revenue, 18th May 1868,
No. 144, noted, I have the honor to forward, for
Proceedings Board of Revenue, 22nd May 1868,
No. 3,808A, the information of the Board, copy of
the Judgment passed by the District
Munsif of Calicut, in Original Suit No. 185 of 1866.

ENCLOSURE No. 1.

(COPY.)

Suit No. 185 of 1866.

1. Suit for Rupees 63-0-6, being the value of a house and certain moveable articles belonging to plaintiff sold under the orders of third defendant, the Collector of Malabar, as the property of first defendant, who was charged with theft of second defendant's property. Plaintiff prays also for the cancelment of the sale.

2. First, second and fourth defendants did not answer.

3. Third defendant denies having taken any action whatever in the subject matter of the suit as Collector. He states that in his capacity of Magistrate, he, in 1863, issued orders for the

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22nd March 1869.*

attachment and sale of certain properties of a prisoner who was at large, under Sections 183 and 184 of the Criminal Procedure Code, and pleads that under Act XVIII. of 1850 he is not liable to be sued.

Judgment.

4. The plaint in this case is loosely framed, due no doubt to the ignorance of plaintiff as to his actual rights, and to his uncertainty as to the parties really liable to him for the alleged tort. He prays for the cancelment of the sale, and rather inconsistently asks for the value of the properties sold. He sues for the recovery of this value from second and third defendants, and still makes first defendant a party to the suit. The plaint does not disclose the ground upon which third defendant has been made a party, whether as representing Government or by reason of his personal liability.

5. Third defendant states that in ordering the sale of the properties, the subject matter of the suit, he acted as Magistrate under Sections 183 and 184 of the Criminal Procedure Code. Plaintiff admits this. Act XVIII. of 1850 is therefore a sufficient protection to the Magistrate from liability to a Civil action. A Magistrate would of course be liable if he had acted maliciously, but this is not alleged.

6. If third defendant has been made a party because he represents Government in order to recover from them damages for the alleged malefeasance of their servant, it is clear that the action is not sustainable. "The State is not liable for the misfeasances or nonfeasances of its Agents, for it cannot guarantee their fidelity."—Collett on Torts, Section 116.

7. No cause of action has been alleged against second defendant. It is not stated that the Magistrate acted upon any wilful misrepresentation made by him, nor is second defendant shown to have obtained the proceeds of the sale.

8. I am not to be understood as deciding that in cases like the present an innocent party, injured by the sale of his property, would be wholly without a remedy. In a properly framed suit, he would no doubt be entitled to recover any unappropriated proceeds of the sale.

9. On the short ground that the plaint does not disclose any valid cause of action, I dismiss the suit with costs.

(Signed) V. P. D'ROZARIO,

Munsif.

5th December 1868.

(True Copy.)

(Signed) G. A. BALLARD,

Collector of Malabar.

SUBMITTED, together with a copy of Board's Proceedings, dated 22nd May 1868, No. 3,808A, for the information of Government.

2. It will be observed that the plaint was dismissed as disclosing no ground of action.

No. 566.

ORDER THEREON, 22nd March 1869, No. 789.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

(Signed) R. A. DALYELL,

Acting Secretary to Government.

To the Board of Revenue.

Exd. G. A. Turton.

Revenue Office.
87-733.

BOARD OF REVENUE, MADRAS.
1869.

PROCEEDINGS, 3RD MARCH 1869, No. 1,384.

206-20
Received 8th

Encl.

MARCH.
No. 1,384.

Suit—No 185 of 1866 filed in Calicut District Munsif's Court in Malabar District, for cancellation of sale of certain property.—Letter from Collector forwarding copy of Judgment in, submitted to Government.

87-789
RECORDED.

22nd March/69

THE BOARD OF REVENUE

22nd March 1869.

No. 1,384. 22nd March 1869. No. 750.

MARCH

Nos. 564-566.

Suit No. 185 of 1866 against Collector of Malabar in the Calicut District Munsif's Court.—Report of its dismissal, recorded.