M.R. O. 1—8P,000—16-10-39.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	971	Press Mis.
211-12 Dated	9-4-1869	19

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 9th April 1869.

No. 211. Read the following Proceedings of the Board of Revenue, dated 10th March 1869, No. 1,600:—

Read the following letter from the Acting Collector of South Canara, to the Acting Secretary to the Board of Revenue, dated Mangalore, 2nd February 1869, No. 126.

With reference to the Board's Proceedings, dated 29th May 1868, No. 4,020A, I have the honor to forward, herewith, for their information, copy of the Decree and Judgment passed by the Civil Judge of Mangalore, in Appeal Suit No. 373 of 1868, in favor of the Collector.

Enclosure No. 1.

In the Civil Court of Mangalore.

Present:— The Honorable J. C. St. Clair.

Before the District Moonsiff of Bekal, Original Suit No. 462 of 1866.

Before the Civil Court of Mangalore, Appeal Suit No. 373 of 1868.

Under Act VIII. of 1859.

1. Kelu ... ...
2. Rama ... ... } Plaintiffs (Appellants).

By Vakeel Venkatarao.

versus.

1. H. S. Thomas, Esq., Acting Collector of South Canara.
2. Hammed Beari. } 7th and 8th Defendants, (Respondents).
1st Respondent, by Vakeel Subbarao.
2nd do. by Vakeel M. Ramachendraya.

Kelu and Rama, the plaintiffs aforesaid, appeal to the Civil Court of Mangalore against the decision of the Bekal Moonsiff, dated 22nd August 1868, on the following grounds:—

I.—The Moonsiff's decision is opposed to law and justice.

II.—It is proved by the evidence of the plaintiffs' witnesses that the plaint ground belongs to plaintiffs on proprietary right.

III.—The Moonsiff was not justified in taking some groundless exceptions to the evidence.

IV.—The evidence on the part of the plaintiffs is corroborated by the testimony of the 7th defendant's witness 1.

V.—Under the Law of Evidence the Moonsiff was wrong in impeaching only that part of the testimony of the witness which is in the plaintiffs' favor.

VI.—On the four sides of the plaint ground there are fields belonging to plaintiffs on proprietary right.

VII.—There is no doubt that the plaint ground lying in the midst of the fields forms part of the plaintiffs' warg.

VIII.—The undisputed bond A. shows that plaintiffs sold the granite stones of the Devasthan on the plaint land.

IX.—On an inquiry the Assistant Collector was satisfied that the plaint ground belongs to plaintiffs on proprietary right, and confirmed the sale of the stones by plaintiffs.

X.—The third defendant has no proprietary estate near the plaint ground. The estate in his possession belongs to plaintiffs, and is mortgaged by their ancestors to him.

XI.—Under the Board's Circular Orders the plaint ground should have been granted on Darkhast to plaintiffs, the nearest Wargdars, even if it be held to be Government property.

XII.—Before the lower Court the seventh defendant did not object to granting the ground in question to plaintiffs. This fact alone was sufficient to pass a judgment in favor of plaintiffs, who consented to pay the beria thereof.

XIII.—The documents filed by the eighth defendant could not be admitted as evidence against the plaintiffs, inasmuch as they are founded on an inquiry held by the second defendant at the instigation of the third, and in the absence of plaintiffs.

ORDER.—This case coming on to be heard and decided this day, the Court doth confirm the decree of the lower Court, and dismiss this appeal with costs.

No process of execution will be issued to enforce this decree, unless some proceedings shall have been issued to keep the same in force within three years next proceding the application for such execution.

	Appellant's costs.	1st Respondent's costs.	2nd Respondent's costs.	Total.
	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
Stamp duty	1 0 0	.....	.....	1 0 0
Vakeel's fees	0 5 7	0 5 7	0 5 7	1 0 9
Value of Stamp papers	1 8 0	0 8 0	1 0 0	3 0 0
Expenses for serving processes and ferry toll...	1 14 0	.....	.....	1 14 0
Registration fees	.....	.....	.....	.....
Total ...	4 11 7	0 13 7	1 5 7	6 14 9

The land in dispute in this suit is temporarily settled, and the annual assessment payable to Government thereon is Rupee 0-15-6.

Given under my hand and the seal of the Court at Mangalore, this 30th day of November 1868.

(Signed) J. C. ST. CLAIR,
Acting Civil Judge.

JUDGMENT.

In Appeal Suit No. 373 of 1868.

PRESENT :—The Honorable J. C. ST. CLAIR.

THERE is no documentary evidence that the plaint land forms part of the plaintiffs' ancestral estate, and the oral evidence is of a very inconclusive nature. The plaintiffs base their claim upon three grounds : first, that the plaint land is surrounded by fields belonging to their warg ; second, that they have been in the habit of performing occasional ceremonies on the site of a temple said to have formerly stood on the spot ; and third, that they have exercised rights of ownership by selling stones belonging to the ruins of the said temple.

With regard to the first ground it appears from the plaint, which has been put in by the seventh defendant and admitted by the plaintiffs, that the fields adjoining the land are registered not only in the name of the plaintiffs' ancestor, Chendu Kurpu, but also in that of the eighth defendant's ancestor, Maine. It has been alleged that the latter fields originally formed a portion of the plaintiffs' estate, and have been mortgaged to Maine ; but of this no proof has been adduced.

The fact that the plaintiffs have occasionally performed ceremonies on the spot affords no proof that the temple originally belonged to their ancestors, nor is the fact that they recently sold some of the stones, evidence of their proprietary title to the same. It appears, moreover, that the fifth witness, to whom the stones were sold in 1862, considered it advisable to obtain the permission of the Revenue authorities for their removal, and neither in the order of the Head Assistant Collector, permitting him to remove them, nor in the proceedings upon which that order was based, is there anything to be found recognising the plaintiffs' title.

The plaintiffs state that they are willing to pay the assessment fixed on the land should their title be declared to be defective, and pray that the land may be made over to them instead of to the third defendant. It is not, however, within the province of the Courts to interfere with the assign-

ment of Government land by the Collector, and the only question to be considered is, whether the plaintiffs have made out their claim to the land on proprietary right. As they have failed to do so, their suit was properly dismissed by the lower Court.

This appeal is accordingly dismissed with costs.

(Signed) J. C. ST. CLAIR,
Acting Civil Judge.

30th November 1868.

SUBMITTED, together with a copy of Board's Proceedings, dated 29th May 1868, No. 4,020A, for the information of Government.

2. The costs have been awarded against the Collector.

No. 212. ORDER THEREON, 9th April 1869, No. 971.

Miscellaneous.

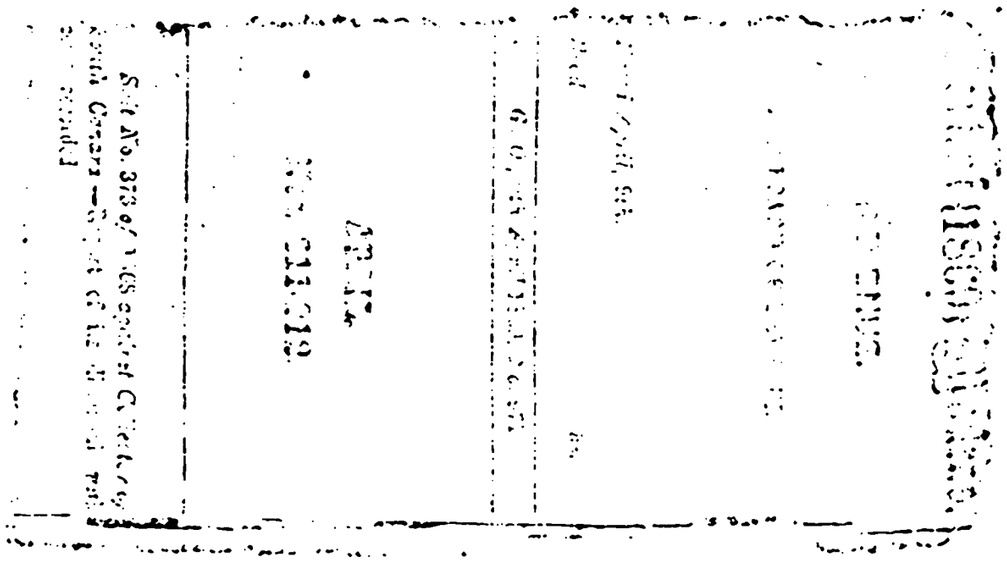
RECORDED. The word "The" in paragraph 2 of the Board's Proceedings, dated 10th March 1869, is evidently a misprint for "No".

(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bantleman.



No. 4,020A.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 29th May 1868.

Read the following letter from H. S. THOMAS, Esq., Acting Collector of South Canara, to the Acting Secretary to the Board of Revenue, dated Mangaloro, 14th May 1868, No 447:—

1. With reference to the enclosed translation of a plaint* to which I have been made a supplemental defendant, I have the honour to submit, for the approval of the Board, a draft of the Written Statement which I propose to put in, and request their sanction for conducting the defence at the public expense.

* In O. S. No 462 of 1856, on the file of the District Munsiff's Court of Bekal.

2. The plaintiff's claim to recover as part of their ancestral proprietary estate a piece of land which, they state, is the site of a ruined temple belonging to their ancestors, but which was, in 1864, assessed and assigned as Government waste to the third defendant by the first who was then the Officiating Tahsildar of the Kasergode Talook.

3. The land claimed is a small piece of waste ground† surrounded by rice fields, some of which are held by the first plaintiff, and others by the third defendant's father.

† Acres. O. A.
0 19 6½

4. The third defendant offered to take up the land on assessment, when Kelu, the first plaintiff, and Kanna a brother of the second plaintiff, opposed his application, on the ground that the land is the site of their temple, and forms part of their estate. The Officiating Tahsildar having, however, found the land to be unassessed ground, fixed the proper assessment‡ thereon, and granted it to the third defendant the original applicant, though the first plaintiff Kelu had also offered to hold it on assessment if it were considered to be the property of Government. The third defendant's offer was preferred, because the greater portion of the surrounding rice fields is held by his father who consented to the land in dispute being assigned to his son.

‡ A. P.
15 6

5. Kanna, the brother of the second plaintiff, thereupon appealed to the Head Assistant Collector, and finally to the Collector, but both Messrs. Webster and Cadell did not think it expedient to disturb the Tahsildar's arrangement. The appellant's brother Rama, together with Kelu the other original opponent to the third defendant's application, have now had recourse to the present suit.

6. Plaintiffs have no evidence to show that the land in question forms part of their ancestral estate. They admit that the Register of their estate prepared in 1801-2, makes no mention of this piece of ground. Their assertion in the plaint that the land lies in the middle of their rice fields is also unfounded, for the greater portion of the surrounding rice fields is held by the third defendant. In the appeal before the Head Assistant it was urged, as is now averred in paragraph 9 of the plaint, that that portion of the surrounding rice fields which is held by third defendant's father, also appertains to them (the plaintiffs) by proprietary right, and is occupied by him (third defendant's father) merely on a mortgage right, but the truth of this averment was not satisfactorily proved; for, though it was apparent that forty-six years back some rice fields had been transferred from plaintiff's ancestor to that of the third defendant's father, and incorporated with the other holdings of the latter in consequence of a mortgage, it was not discernible whether the mortgaged fields were those that surround the land now in dispute.

7. As regards the plaintiff's assertion that the land in dispute is the site of their temple, it has been found that no temple existed therein within the memory of those now living. There is, however, a well and some materials of an ancient ruined building which are reported to be very probably those of a Hindu temple; but, as observed by Mr. Cadell in his order on the plaintiffs' appeal, there is nothing to show what connection the plaintiffs had or could have had with such an institution. Plaintiffs' assertion that religious ceremonies are still performed on the ground was found to be false.

8. Plaintiffs allude in paragraph 5 of the plaint to the circumstance that on a former occasion the Head Assistant Collector had permitted certain parties to remove from the ground in question some granite materials stated to have been sold to them by the second plaintiff and his relation

one Ambu, This is true, but the Head Assistant does not appear to have meant thereby to acknowledge the proprietary right of the plaintiffs to the land. Certain parties who stated they had bought from the above individuals some granite stones existing on the land, sought the Head Assistant's permission to remove the same, in order that the then Tahsildar, who was stated to bear malice towards them, might not throw obstacles against their removing the said stones. The Head Assistant ordered an inquiry, and as nobody objected to the removal of the stones, he granted the solicited permission.

9. In conclusion, I have to observe that the party to whom the piece of land in dispute has been granted on assessment is a Mahomedan, while the plaintiffs are Hindus. As the place presents some marks of an ancient building, very probably a Hindu temple, having stood thereon, the plaintiffs, it seems, are induced to view the Mahomedan's possession with jealousy, and hence apparently the present suit for a piece of waste ground which is not otherwise of great importance.

10. The "Written Statement" must be filed on the 27th instant, on which date the Court is to re-open after the adjournment, but a fortnight respite will be sought.

ENCLOSURE No. 1.

Original Suit No. 462 of 1866.

Plaint.

1. Kelu, nephew of Melot Ramre, residing at Bendat, in Tekilla village, Paduvannad Magani, } *Plaintiffs.*
2. Rama, nephew of Melot Kanna, residing in the said Tekilla village.

versus.

1. Shantappaya, Sheristadar of Bekal talook, Kasergode Cusbah. } *Defendants.*
2. Subroa, Shanabog of Paduvannad Magani, ditto.
3. Hassan Cutti, son of Tekilla Moidin Cutti, residing in the said Tekilla village.

We, the plaintiffs, institute this suit against the said defendants under Section 26 of the Civil Code, in the Bekal Moonsiff's Court, for the recovery of a land, the produce of which may be estimated at Rupees 4.

1. Though both of us are divided members of the same family, a partition having taken place formerly, still as the Devastan called Pallitambadi, situated in the Tekilla village, belonged to both our ancestors, it belongs to our family, and is situated on our wurg land.

2. Though the Devastan is now in ruins, it will doubtless be re-built by us when our means permit of our doing so. Besides, as the same is the seat of the deity, worship is sometimes performed to the deity there, tender cocoanuts offered, and other ceremonies performed, and it is the place which is resorted to for the performance of the ceremony called Kola, in honour of the demon belonging to the said Devastan, and where these ceremonies and our worship are still continued.

3. The third defendant having presented a petition, praying that this ground might be assessed as Hossagame and made over to him, the first plaintiff, and Kanna, the younger brother of the second, filed a petition before the Tahsildar, representing the above circumstances. Besides this, the first plaintiff represented before the second defendant that he would even bear the loss of paying the beriz, to avoid the hardship of giving up the ground where religious services were performed, but he got up a fraudulent Mahazernama in favour of the third defendant from his dependants, without our knowledge, and submitted his recommendation to the first defendant who was then in charge of the office of Tahsildar, who, contrary to justice and the provisions laid down by Government that no impediment should be offered to the performance of religious ceremonies, assessed the land at Rupees 0-15-6, and passed an order on the 4th instant, directing it to be made over to the third defendant.

4. With regard to ground on which religious ceremonies are performed, the Government do not deprive the holder of possession even though it should belong to them. As this is not Government property, and is surrounded by paddy fields belonging to our Muli Wurg, and situated in the midst of them, there was especially no reason whatever to consider it as belonging to Government.

5. Besides, it was from the fact that the ground belonged to us, that the first and second defendants and others had purchased in 1862, in the name of Murtiappa, from the second plaintiff and his nephew, Ambu, with the consent of the first plaintiff, the granite materials standing thereon for the use of the Devastan newly erected by them at Kasergode; and during the inquiry held by the Government authorities in connection with the removal of the said stones, our right has been proved, and it has further appeared that the prescribed services have been performed, and the Head Assistant Collector had passed an order stating that there was no objection to the stones being removed, by virtue of the right transferred to them by their sale by us. The first and second defendants are aware of all these facts, and the first defendant, also from personal observation, by having come to the spot to have the said stones removed.

6. The said Devastan having gone to ruins previous to the year Durmuti, it was not included in the survey made in that year. To re-assess it on this ground, our wurgs ought only then to have come under cultivation, and to have been newly assessed by the Company's Government; but as they were old assessed lands, such a supposition could not have been admitted.

7. Although the foundation of the outer walk round the Devastan, the basement of its verandahs and of the room where the deity was being kept, of the respective heights of one and a half guz or four feet, three-quarter guz and one guz from the surrounding paddy fields, a stone platform, also a well built up with stones can still be clearly seen, the second defendant has reported that no such things are to be found, and the first defendant who has personally inspected the spot has also admitted this.

8. The notice mentioned in the report of the second defendant was not served. The third defendant's father was summoned and his consent obtained. In the same way had it been necessary, the second plaintiff and his nephew, Ambu, ought to have been summoned and their consent obtained in favour of the petitioner. To protect the right of his relative, the proceedings of the petitioner would itself have been legally sufficient.

9. The father of the third defendant enjoys the paddy fields lying adjacent to some of the sides of the Devastan, or the fields, the wurg whereof stood in the name of the Wurgdar, Dodda Chandu Kurupu, and latterly, in that of the mortgagee, Maine, merely on mortgage executed in his favour by the [illegible] and this fact is evident from the Chittah itself. It has several times been determined that grounds lying contiguous to wurgs should be granted to the proprietors thereof, and not to their mortgagees, and even if a beriz were imposed, it should have been fixed in our names, as we are the proprietors, adjoining holders, as well as enjoyers.

10. We, therefore, pray that the defendants may be examined and a decree passed, that the order of the first defendant affecting our right may be cancelled, that a fresh assessment should not be imposed on the wurg land, or that in case it should be ultimately decided that, at all events, the imposition of a beriz cannot be dispensed with, the ground should be assessed and made over to us, as the same being a place of worship, cannot, at any rate, be given up. The estimated annual produce of the said ground is Rupees 4.

11. The boundaries of the said ground on all the four sides are the paddy fields of our Muli wurg, called Sanna Chandu Kurpu, as also those of the wurg, Dodda Chandu Kurupu, latterly standing in the name of the mortgagee, Chambanad Maine. Within these boundaries is situated the Devastan ground and the Devastan tank surrounded on all four sides by the paddy fields of the said wurg.

Verified on the 22nd June 1864.

(Signature of the plaintiffs.) (Signed) RUNGAPPA,
Vakeel.

Filed on the 7th July 1866.

(Signed) TIMMAPPAYA,
Munsiff.

(True translation.)

(Signed) H. S. THOMAS,
Acting Collector.

6.
5.

ENCLOSURE No. 2.

Draft of "Written Statement" proposed to be filed on behalf of the Acting Collector of South Canara, Supplemental Defendant in Original Suit No. 462 of 1866, on the file of the District Munsiff's Court of Bekal.

I. The piece of ground claimed forms no part of the plaintiffs' proprietary estate. Plaintiffs themselves admit in their plaint that the Durmurti Chittah or the Register of their estate as prepared in 1801-2 makes no mention of this piece of ground. Moreover the plaintiffs' former request made before the Revenue authorities, and their present prayer urged in paragraph 6 of the plaint to be allowed to hold the ground on fresh assessment if it be declared liable to such, are *quasi*-admissions, which show the ground is unassessed land and consequently the property of Government.

II. No Devastanam existed on the piece of land claimed, within the memory of those living, and if any existed in more remote times, there is nothing to show what connection the plaintiffs had with such an institution.

III. Plaintiffs' assertion that religious ceremonies are performed by them on the ground in question is false, and even had they performed any, that circumstance cannot give them a claim to land which was not otherwise theirs.

IV. The permission accorded by the Head Assistant Collector for the removal of certain granite stones from the land in question cannot be construed into an admission of the plaintiffs' proprietary right to the land.

V. The piece of ground in question being unassessed land, and the property of Government, the first defendant was fully competent to dispose of it in the manner he did, and the disposal by him has been confirmed by the Collector. Plaintiffs have, therefore, no right to question the propriety of the assignment of the ground to the third defendant.

VI. The first and second defendants, as well as the supplemental sixth defendant, are subordinates of the Collector, and no separate "Statement" will be put in on their behalf.

VI. The supplemental seventh defendant therefore prays that plaintiffs' suit may be dismissed with costs.

(Signed) H. S. THOMAS,
Acting Collector.

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1. The Board approve the proposed answer, and sanction the defence of the suit on the usual terms.

2. The Collector should add to his statement that, "It is immaterial to Government which "party obtains possession of the land, so that the assessment is paid, and the Collector has no desire "to take part in the litigation."

(True Copies and Extract.)

(Signed) A. MACGREGOR,
Acting Secretary.

To the Acting Collector of South Canara.

Copy to the Accountant General.

Exd. T. Cartledge.

Sanctioning defence, on usual terms, of Original Suit No. 462 of 1866, filed in Bekal District Munsiff's Court in South Canara, for recovery of certain land, and approving proposed answer, with certain addition.

No. 4,020.

Dated 29th May 1868.

Received

PROCEEDINGS OF THE BOARD OF REVENUE,

No.

1868. Department

Revd. 971.

Recorded.

The word "The" in para 2 of the Board's Proceedings dated 10th March 1869 is evidently a misprint for "to."

9d. 29/1/69

Rec'd 6/4/69
H. 857

1869.

Board of Revenue,

MADRAS.

PROCEEDINGS, 10TH MARCH 1869, No. 1,600.

Rec'd 16 March 1869 Encl. 1
Received 17

MARCH.

No. 1,600.

Copy 9 Mch 69

Appeal Suit—No 373 of 1868 on file of Mangalore Civil Court in South Canara District from decree in Suit No 462 of 1866 filed in Bekal District Munsiff's Court for recovery of certain land,—Letter from Collector forwarding copy of Decree and Judgment in, submitted to Government.

Final order