M.R.O. 14–5,450—22-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1073 Press Mis.

1872 . 183

Dated 13 — 5 — 1873 .

Not to be folded or roughly handled

1172
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No. 182. Read the following Proceedings of the Board of Revenue, dated 29th April 1867, No. 2,610 :—

Read again letter from the Collector of Madura, dated 15th December 1866, No. 415, recorded in Board's Proceedings, dated 1st February 1867, No. 675.

Read also the following letter from the same Officer, dated 22nd March 1867, No. 73.

1. In obedience to the order of the Board, conveyed in their Proceedings, dated 1st February, No. 675, I have the honor to submit the information called for.

Question I.

Whether the petitioner was present when Mr. Levinge, on the 14th May, decided that the Puttah should be entered in Abdool Kader's name, and if not, why not?

Answer.

2. Neither the petitioner nor his mother was present when Mr. Levinge, on the 16th May, (not 14th May as mentioned by the Board,) issued an order to register the Puttah, No. 15, in Abdool Kader's name; but no reason is given for their absence, except that such orders are frequently passed in the absence of parties concerned.

Question II.

What was the date of Abdool Kader's petition, praying that Puttahs No. 15 and No. 4 should be entered in his name.

Answer.

3. Abdool Kader's petition is dated 24th April 1866, marked I. The petition and copy of the order passed thereon is enclosed; Order No. 3, dated 16th May 1866. The Board will observe that this Order, No. 3, has reference to Puttah No. 15 *only*.

Question III.

Collector will reply to the statements made in Questions E, F, G. and 5 L.

Answer to Questions E. and F.

4. Abdool Kader *did* object in Petition I, dated 24th April 1866, to petitioner's name being entered in Puttah No. 4, and this objection was, of course, previous to the criminal proceedings regarding Puttah No. 15, which were held on the 6th June 1866. On the previous day* Shaik Nuttud Saib, son of Abdool Kader, presented a Petition, No. 4, to the Collector, complaining that, up to Fusly 1272, Puttah No. 4 stood in the name of his grand-father; that for Fuslies 1273 and 1274 Puttahs were made in his father's name, and for Fusly 1275 that the Curnum had fraudulently entered the name of Shaik Moideen (son of Adam Saib) in the said Puttah No. 4. On the 9th June an Order, No. 2, was issued by Collector, ordering a fresh Puttah to be made out in Abdool Kader's name *alone*.

* *i. e.*, 5th June 1866.

Answer to statement C.

5. In Fuslies 1273 and 1274, Puttah No. 4 stood in the name of Abdool Kader alone; but for reasons stated in paragraphs 5 and 6 of Mr. Levinge's letter, (see margin,) the Puttah was changed, in Fusly 1275, to the names of Abdool Kader and petitioner; and afterwards, with reference to Abdool Kader's son's Petition No. 4, an order was issued to strike out petitioner's name from the Puttah, and prepare a fresh Puttah as mentioned above.

Letter, dated 15th December 1866, No. 415.

Answer to 5 L.

6. There is no mention made in any of the orders passed by Collector, nor in any other document connected with the proceedings of the agreement* between petitioner's father and petitioner's uncle; but Mr. Levinge says, in paragraph 9 of his letter to the Board, that the documents were produced before him at the time of Jummabundy in Fusly 1275. In the Order No. 3,† ordering Puttah No. 15 to be altered, and in Order No. 2,‡ ordering Puttah No. 4 to be altered, reference is made only to the Court's decree.§

* Marked A.

† Dated 16th May.

‡ Dated 9th June.

§ Marked C.

7. There is nothing whatever to shew that the "allusion to this agreement is an *after-thought*." The latter part of paragraph 5 L, to the effect that when miscellaneous petition‖ was presented to Court, the Serishtadar held petitioner's father's lands on a fictitiously high mortgage, must be utterly untrue, because the Petition B was presented to the Court on the 12th December 1859, whereas the Serishtadar's mortgages are dated 10th March and 24th September 1862.

‖ Marked B.

8. There is, however, one extraordinary fact which requires explanation (given marginally). Adam Saib mortgaged his property to the Serishtadar in 1862, after presenting a Miscellaneous petition to the Court, declaring he held no property in 1859.

The Serishtadar explains, with reference to this, that the two brothers, Adam Saib and Abdool Kader, were living together, and that he, Serishtadar, knew nothing *then* of what had taken place between them when he accepted Adam Saib's mortgage.

PUTTAH No. 4.

1. Extract of Kyfeit, dated Fusly 1273, as far as it relates to Puttah No. 4, containing Collector's order thereon.
2. Do. of do. prepared with reference to Mooneyandy's complaint, with Collector's order thereon.
3. Original Petition from Abdool Kader, dated 24th April 1866, marked I.
4. Do. from Shaik Nuttud Saib, son of do., dated 5th June 1866, marked IV.
5. Copy of an order issued to the Tahsildar of Madura Talook, marked II.

PUTTAH No. 13.

6. Extract of a Kyfeit, dated Fusly 1273, as far as it relates to Puttah No. 13.

PUTTAH No. 15.

7. Do. of do. dated Fusly 1273, as far as it relates to Puttah No. 15, with the Collector's order thereon.
8. Do. of do. dated Fusly 1275, with do. do. marked III.

9. The orders, as per margin, having reference to Puttahs 4, 13, and 15, are herewith submitted.

Question.

What did Mr. Levinge refer to in paragraph 6?

Answer.

10. Mr. Levinge referred to the circumstance which led to petitioner's name being ordered to be included in

Puttah No. 4, after it had stood in Abdool Kader's name for two Fuslies, viz., 1273 and 1274. This occurred in consequence of a complaint by one Mooneyandy against the Curnum of the village (Aripoleum), and not on a petition from the petitioner.

11. The Government Petition No. 2,487 of 1866, and ten documents, are herewith returned.

ENCLOSURE No. 1.—Petition.

ENCLOSURE No. 2.—Documents.

1. Resolved that the foregoing letters be submitted to Government, with reference to their Order dated 30th October 1866.

2. With the second letter above recorded, the Collector sends a copy of the several orders passed by Mr. Levinge, regarding the transfer of the Puttahs referred to by the petitioner Shaik Moideen, and replies to certain points on which the Board called for further information on the receipt of Mr. Levinge's letter, dated 15th December 1866, No. 415.

3. The Board wished to know whether the petitioner Shaik Moideen (or any one on his behalf) was present when the person named Abdool Kader was examined on the subject of his claim to have Puttahs Nos. 4 and 15 transferred to his name. They also requested the present Acting Collector to reply to certain allegations made by the petitioner, when commenting on an endorsement which Mr. Levinge gave to the petitioner, under date the 27th July 1866, when returning to Shaik Moideen his petition to the Board, with the Board's endorsement, dated 14th July 1866.

4. In his petition to the Board, under date 21st June 1866, the petitioner complained that certain lands held by his deceased father in the village of Rowtapoliem had been transferred after his father's demise to the name of his uncle Abdool Kader without petitioner's consent. For part of this land petitioner's father held a Puttah in his own name (No. 15), part stood in the name of Shaik Ebraham, the father of Adam Saib and Abdool Kader, and part in the name of one Mooneyandy deceased. At the time of Adam Saib's death (on the 7th June 1863) all the lands entered in No. 13 and a portion of those in Puttahs Nos. 4 and 15 were under mortgage to Venkatasawmy Naick, the Collector's Serishtadar, and the remainder to one Mooneyandy Pillay and his two brothers.

5. It appears from the petition that, in October 1864, Abdool Kader, the brother of the deceased Adam Saib, brought a Suit, No. 96, in the Court of the Principal Sudder Ameen of Madura, against Mooneyandy and his two brothers to establish his right to redeem the land in the possession of these defendants. In this suit a decree was passed in favour of the plaintiff by consent of the parties (petitioner, however, not being one); the right of plaintiff, (Abdool Kader,) to redeem was decreed, he undertaking to hold defendants harmless against any claims which might be established by the representatives of Adam Saib (petitioner's father). This decision was passed on the 1st February 1866.

6. The land included in Puttah No. 15 continued in the name of Adam Saib (petitioner's late father) till Fusly 1275, when Abdool Kader succeeded with the

aid, as alleged, of Venkatasawmy Naick, the Serishtadar, in getting an order passed on the 14th May 1866, directing Puttah No. 15 to be issued in his own name, this transfer being made on the strength of the decree in Suit No. 96, though that suit related exclusively to the land held on mortgage by Mooneyandy and his brother, and had no reference to any of the land in the same Puttah which Venkatasawmy Naick held on mortgage.

7. In Fusly 1272, Puttah, No. 4 stood in the name of Shaik Ebraham, the father of Adam Saib. In 1273 Abdool Kader, *alias* Chapmia, the petitioner's uncle, caused this Puttah to be made out for Fusly 1273 in his own name alone, and thereby ignored petitioner's and his late father's right. Subsequently, Mooneyandy Pillay, the mortgagee, having complained in regard to this transfer, the Collector, under date 16th December 1865, directed that petitioner's name should be also inserted in Puttah No. 4 for Fusly 1275, and at the same time dismissed the Curnum for, among other grounds, having omitted to insert it in the Puttah for Fuslies 1273 and 1274.

8. The petitioner further stated that, on the 25th May 1866, he addressed a petition to Mr. Levinge, complaining of the injury done to petitioner, and of the Serishtadar's fraudulent conduct, and that the Collector, after having summoned petitioner's witnesses, &c., instead of inquiring into his complaint, charged the petitioner with defamation against the Serishtadar, and sentenced him to two months' imprisonment for this alleged offence.

9. The Board returned the petition, dated 21st June 1866, with the following endorsement, dated 14th July 1866 :—"Petitioner should produce the Collector's "endorsement regarding the Puttah dispute. The Board have no jurisdiction in "the matter of the Magisterial decision."

10. The petitioner on the same date as he addressed the Board also forwarded a petition to Government, enclosing copy of his petition to the Board, and stating that he was compelled to bring his case before Government, as neither the Board of Revenue, nor the Session Court, to whom petitioner had appealed for redress in the Magisterial case, could take into consideration the whole of Mr. Levinge's oppressive and unjust conduct.

11. This petition was returned to petitioner with an Order, dated 9th July 1866, directing him to re-submit it, shewing the result of his appeals to the Revenue Board and the Session Court, if the petitioner were still dissatisfied.

12. On the 1st September petitioner again brought his case before Government by petition, praying, with reference to the Session Judge's decision in appeal that Government would do the petitioner justice in respect to Mr. Levinge's oppressive conduct in his Magisterial capacity; and complaining, with reference to the Board's endorsement, dated the 14th July, that their order was unintelligible, as the petitioner had presented no petition to the Collector previous to the one dated 25th May, and petitioner had merely prayed the Board would inquire from Mr. Levinge what he had done on the petition of the 25th May as Collector, apart from the criminal proceedings, and report the same to the Government. He, therefore, looked upon the Board's order as indicating a desire on their part not to inquire into the improper conduct of the Collector, and was obliged in consequence to avail himself of the permission given him by Government in their endorsement of the 9th

July, to re-submit his petition, and solicit the interference of Government. With this petition was enclosed a copy of the Session Court's order in the appeal, and a paper containing the petitioner's observations on the Collector's endorsement, dated 27th July 1866.

13. The Government, under date the 30th October 1866, forwarded this petition through the Board of Revenue to Mr. Levinge, and required him to report without delay upon the whole case both in its Magisterial and Revenue phases. He was also directed to report particularly on the following points :—

First.—Under what circumstances he was induced to prosecute, criminally, the youth Shaik Mohideen on a charge which, under Section 68 of the Criminal Procedure Code, he was precluded from taking cognizance of, without complaint.

Second.—In what the alleged defamation consisted, and how the facts elicited on inquiry constituted the offence as defined in Section 499, Indian Penal Code. He was also required to forward, with translations, the records on which his decision in the Magisterial case was based.

14. The Board of Revenue was by the same order desired to report fully, as to the right of the petitioner to have his original request complied with; as to the procedure observed by the Collector in the first instance, and by the Board, to whom the case was referred for inquiry and disposal on the revenue side; and also to ascertain and report the extent of land held by the Collector's Serishtadar, in the district, whether held on mortgage or any other more permanent tenures.

15. In Mr. Levinge's reply, dated 15th December 1866, No. 415, he explains (paragraph 15) that he ordered Puttahs Nos. 4 and 15 to be made out in Chapmia's name on the strength of certain documents produced before him by Abdool Kader, *alias* Chapmia, viz., the decree of the Principal Sudder Ameen in No. 96 of 1864, marked C, a document filed in that suit marked D, "which caused the decree to be given in Chapmia's favour," and documents B, E and F.

16. Suit No. 96 was preferred by Abdool Kader, *alias* Chapmia, to establish his right to redeem so much of the lands entered in Puttahs Nos. 15 and 4 as were held by Mooneyandy Pillay and his brothers on mortgage. The judgment in this case sets forth that the plaintiff's claim to redeem the lands held by the defendants in mortgage, was based on the alleged transfer by Adam Saib to the plaintiff of all his right and title to the lands in question, and that the judgment was by consent of the defendant in favour of the plaintiff, on the understanding that the plaintiff became "responsible for any claims to the mortgaged property by any parties calling "themselves heirs of the late Adam Saib."

17. The document marked D, is a bond on stamp paper, whereby Adam Saib, on the 12th January 1860, confirmed a previous document executed on unstamped paper (paragraph 9 of Mr. Levinges' letter) by which, "for a certain consideration, "Adam Saib had made over to his brother Chapmia all his lands in Rowtapolliem, "that he should redeem the mortgaged lands and enjoy them."

18. Document B is the copy of a motion presented to the Civil Court, under date the 12th December 1859, by Adam Saib, setting forth that he had made over all his property under document A to his brother Chapmia.

19. Document E is a motion presented by petitioner's mother, Adam Saib's wife, in the Principal Sudder Ameen's Court, asserting that Chapmia had no right

to institute Suit No. 96 for her husband's lands, and praying that the suit might be dismissed, or that she might be admitted as a supplemental defendant.

20. The Principal Sudder Ameen passed an order on this motion, document "F, stating that the Court see no reason for including the petitioner as a party in "the case, which has been disposed of according to the wishes of the parties "concerned."

21. On referring to Mr. Levinge's order, dated 16th May 1866, (one of the enclosures marked III. in Mr. Arbuthnott's letter,) the Board do not find that Mr. Levinge made any reference in that order to any document besides the decree, The terms of the order are as follow:—"From the verbal statement of the Curnum. "and the copy of the decision produced by Abdool Kader, it appears that Abdool "Kader having filed a suit in the Court for the recovery of some lands attached to "these Puttah lands, (viz., the lands entered in Puttah No. 15,) and mortgaged by "Adam Saib, the decree was passed in his favour. Consequently this Puttah ought "to be issued in the name of Abdool Kader."

22. It also appears from enclosure marked II., (an order passed by Mr. Levinge on the 9th June 1866,) that he did not order at one and the same time the name of Abdool Kader (Chapmia) to be entered in Puttahs Nos. 15 and 4, as the explanation given in his letter, paragraph 19, implies. The order, dated 15th May, related only to Puttah No. 15. The order, dated 9th June, was issued on a petition presented by Shaik Nolad Saib on the 4th June (the date on which the petitioner, Shaik Moideen, was sentenced to two months' imprisonment). In this petition Shaik Nuttad prayed that the Puttah, issued in 1275 in the joint names of his father Abdool Kader, and Shaik Moideen, might be cancelled, and a fresh Puttah issued in his father's name only. The reason which Mr. Levinge gave in his order of the 9th June for cancelling this Puttah was as follows:—"It appears that on Abdool Kader "preferring a complaint in the Court to recover possession of the lands mortgaged "with Mooneyandy Pillay, stating that all the lands of Adam Saib had been made "over to him, a decision was passed in his favour. Moreover, many of the said "lands seem to be included in this Puttah. You (the Tahsildar) must, therefore, "prepare and send a separate Puttah in Abdool Kader's name. We hereby cancel "the order permitting the name of Adam Saib's son to be included in the Puttah."

23. So far as can be gathered from the orders now quoted, it must be allowed that Puttahs Nos. 15 and 4 were issued in the name of Abdool Kader solely on the strength of the decree passed in Suit No. 96 as urged by the petitioner; but Mr. Levinge has explained that besides the decree, certain other documents (viz., all the documents enumerated in his letter, dated 15th December) were laid before him by Abdool Kader, and the Board cannot doubt that these other documents, particularly those marked B and D, did influence Mr. Levinge when he decided that Abdool Kader had a fair claim to both the Puttahs. He appears to have thought that the Bond marked D, and the copy of the motion marked A, afforded full proof that the deceased Adam Saib had transferred all his lands in Rowtapolliem to his brother, and that such evidence justified him as Collector in issuing Puttahs for the same to Abdool Kader.

24. The Board presume that Abdool Kader's claim in respect to the land entered in No. 4 was not brought before Mr. Levinge in May, when he passed

orders in regard to Puttah 15; and that when on the 4th June Abdool Kader's son presented his petition, praying that this Puttah might be entered, as in the preceding two years, in his father's name, Mr. Levinge considered that the several documents which led him to recognise Abdool Kader's exclusive right to all the land entered in Puttah 15, would equally justify him in recognising his exclusive right to the lands in Puttah No. 4. Abdool Kader, in his petition dated 24th April, objected to Shaik Moideen's name being entered in Puttah No. 4. The petitioner is, therefore, wrong in alleging that no objections were made on this point by Abdool Kader till after the Magistrate held criminal proceedings, but however this may be, Mr. Levinge ought to have seen, after reading the petition of 25th May, that further inquiry was needed, and he ought especially to have investigated the alleged fact that the Serishtadar was personally interested in some of the lands entered in the two Puttahs.

25. As to the question whether Mr. Levinge was right in allowing Abdool Kader to have all the lands entered in his name, the Board are of opinion that he was at liberty to transfer the lands to which Suit No. 96 applied, provided Abdool Kader, the plaintiff in that suit, had redeemed the lands, and had entered into possession. In that case if Shaik Moideen objected on the ground that he was the mortgager's heir, the Collector might have referred him to the Civil Courts to establish his right.

26. With regard to such of the lands in Puttahs 15 and 4 as the decree did not embrace, the Board understand that they are in the possession of the Serishtadar Venkatasawmy Naick, who acquired them on mortgage from the petitioner's father. In the case of these lands Adam Saib's brother had not established his right to them in the Civil Courts, and therefore unless Shaik Moideen, as the mortgager's heir, consented to their being transferred, the Collector was no doubt in error in making the transfer. He was also in error in not requiring the petitioner to appear before he passed a decision one way or the other.

27. With regard to the Board's procedure in dealing with Shaik Moideen's petition, the Board observe that their endorsement, directing him "to produce the Collector's decision regarding the Puttah dispute," had reference to the order passed by the Collector on the 16th May (not 14th, as stated in the petition.) The unjust character of that order was the subject of Shaik Moideen's petition, dated the 25th May, and whether Shaik Moideen was present or not when it was passed, he ought to have followed the usual practice on his appealing to the Board, by annexing to his petition a copy of that order. The Board believe that petitioner has put this point in a wrong light, (as though the Board had only to deal with the petition of the 25th May) merely to excuse himself for again bringing his complaints against Mr. Levinge directly under the notice of the Government, though he had not obtained from the Board any final order on the point properly within their cognizance. The question whether Mr. Levinge acted rightly in making Shaik Moideen's petition of the 25th May the ground for a criminal prosecution was for the Session Court to decide, the Board of Revenue having no jurisdiction on that point, and this was pointed out to petitioner in the latter part of the Board's endorsement.

28. The petitioner has also taken a distorted view of the reasons which prompted Mr. Levinge to attach an endorsement to Shaik Moideen's petition at the

time that petition was returned under the Board's order to the petitioner. This endorsement set forth the principal facts in the case as they were viewed by the Collector, and the petitioner on receiving it was, of course, at liberty to proceed with his appeal shewing what he had to urge against Mr. Levinge's statement of the case.

29. The Board are now of opinion that the present Collector should be instructed to cancel the Puttahs Nos. 15 and 4 as issued by Mr. Levinge; to give Abdool Kader a fresh Puttah for the lands to which the judgment of the Principal Sudder Ameen in Suit No. 96 of 1864 applied; and to give a Puttah for the remaining lands to Shaik Moideen as the heir of the deceased Adam Saib. This mode of proceeding, as it regards Puttah No. 15, would be in accordance with the course recommended by the Tahsildar in the Kyfeit on which Mr. Levinge's order of the 16th May was passed. The petitioner has pointedly remarked on the fact that the Collector's order was adverse to the opinion expressed by the Tahsildar, but this opinion was apparently based on what the Tahsildar considered to be the usual practice, without regard to the documents produced by Abdool Kader before the Collector at the Jummabundy.

30. Mr. Levinge has submitted, as required, the record of the Magisterial case, and a list of the Serishtadar's lands.

31. As it regards the latter, the Board observe that the Serishtadar does not, at present, appear to hold any land in the village of Rowtapolliem on mortgage. The Board cannot account for this fact in the case, for it is evident from paragraph 8 of Mr. Arbuthnott's letter, dated 22nd ultimo, that the Serishtadar acknowledges having had a mortgage on Adam Saib's remaining lands, as stated in the petition.

32. The Board are of opinion that the Serishtadar is greatly to blame on this occasion, even though Mr. Levinge may have acted, as he avers, on his own judgment. The Serishtadar was the ministerial officer by whom Mr. Levinge's orders in such cases were prepared. It was his duty to state explicitly to Mr. Levinge what the usual practice was, (a point on which the Serishtadar could have had no doubt), and looking at the fact that he had a personal interest in the land, he ought to have brought this point prominently forward, so that if Mr. Levinge determined to change the Puttahs in Abdool Kader's favour, not merely for the lands to which the judgment in Suit 96 applied, but likewise for the lands mortgaged to the Serishtadar, the mortgager's heir should have had no room for complaining that the Serishtadar had exercised an undue influence on the Collector's decision.

33. The Serishtadar will now be called upon to state what steps he took to bring the true circumstances of the case, as it regards himself, to the knowledge of the Collector, to produce the original mortgage deeds, and explain all particulars connected with the mortgage which he has held, or now holds, on any of the lands in Puttahs 4, 15, and 13. Also, to state for what sum the lands were mortgaged, in whose possession they now are, and have been, and why, if the Serishtadar has a lien on the lands, he did not object on that ground to the Puttahs being transferred as it regards this portion of the late Adam Saib's property. He should further explain how he accepted a mortgage on the lands entered in Puttah No. 13, when these lands were registered in the name of one Mooneyandy. The Collector should state how the lands (Puttah No. 13 included) have been entered in his Register of

lands held by public servants from the date on which this Register was opened up to the present year. On the receipt of this information, the Board will be able to give a definite opinion on the Serishtadar's conduct.

No. 183. ORDER THEREON, 13th May 1867, No. 1,073.

Miscellaneous

The Government will await the Board's further report on the additional information now called for by them.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.

Exd. J. Tulloch,

№ 188

Memorandum

The undersigned requests the Registrar, Government Office, Revenue Department, to forward to this Office for immediate reference, Petition № 2487 of 1866 and 17 Original Enclosures which accompanied Boards' Proceedings dated 29th April 1867, № 2610- The enclosures are required by 1st Member-

Regarding pattahs for certain land in Madura-

Revenue Board Office,
Madras,
17th August 1867-

Registrar

17th Aug 1867

To, The Registrar of the Government Office, Revenue Departt

N° 1075

Mr Gov. Wilkinson
to Sec. Smith respecting
Col. Burr's Intrigues
& advises his proceeding
from Cincinnati for Kentucky

13 May 1806

14 Copies Letter to Sec. of War Dec. 14th 1806