M.R.O. 14—18,000—27-9-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1422 Press
~~Mis.~~

373 374

Dated 26 — 6 — 1867.

Not to be folded or roughly handled

No. 373. Read the following Proceedings of the Board of Revenue, dated 25th June 1867.

Read again the following papers:—

Proceedings of the Board of Revenue, dated 18th May 1867, No. 3,075.
Do. do. ,, 27th ,, ,, ,, 3,263.
Do. do. ,, 14th June ,, ,, 3,654.

Read also the following letter from the Government Pleader, under date 21st June 1867, No. 109.

1. Resolved that the papers above recorded be submitted for the consideration of Government, with the Board's request that the usual order may be forwarded to the Government Pleader to file a Special Appeal against the order of the Civil Court of Guntoor, to which he refers.

2. It will be observed from the correspondence which has passed between the Collector of the Kistna District, the Board, and the Government Pleader, that the late proprietor of the Vissanapettah estate had filed a suit against one of his tenants under Regulation V of 1822 before the Head Assistant Collector, which was rejected, and that he then appealed to the Civil Court. Before the disposal of his appeal by the latter Court, the Vissanapettah estate had been decreed to Government by the High Court, and was accordingly placed in the possession of the Collector. The Civil Judge thereupon called upon the Collector to state whether he was prepared to proceed with the Appeal Suit, and, on his declining to do so, dismissed the appeal with costs against the Collector.

3. The late Collector applied for the Board's sanction for the payment of the costs; but as they had grave doubts of the propriety of the Civil Court's ruling, they referred the case for the opinion of the Government Pleader. Mr. Brockman considers that an appeal will lie against the Civil Judge's order for costs, and the Board are of opinion that it should accordingly be filed. They would not, however, raise the other point, to which the Government Pleader adverts at the close of paragraph 3 of his letter.

4. The Acting Collector should lose no time in forwarding the documents required by the Government Pleader, as set forth in paragraph 4 of his letter.

No. 374. ORDER THEREON, 26th June 1867, No. 1,422.

Miscellaneous.

1. Ordered accordingly that an order be issued, in duplicate, to the Officiating Government Pleader in the usual form, empowering him to prosecute the Special Appeal before the High Court so far as regards the award of costs against the Collector.

2. It is observed that as regards the subject matter of the original suit, the appeal decision upholds that of the Head Assistant in the original summary suit.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Government Pleader.
,, the Board of Revenue.
,, the Accountant General.

Exd. S. T. Augustin.

No. 3,075.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 18th May 1867.

Read the following letter from G. THORNHILL, Esq., Collector of the Kistna district, to the Secretary to the Board of Revenue, dated Masulipatam, 29th April 1867, No. 122:—

1. In forwarding the accompanying copy of Proceedings of the Civil Court of Guntoor, dated 30th ultimo, I have the honour to request the Board will obtain sanction for the payment of the costs in question.

2. The Government having succeeded to the right of the Zemindar, and this suit being necessarily withdrawn, there can be no doubt, I apprehend, that the Government should bear the costs.

ENCLOSURE No. 1.

Summary Suit No. 1 *of* 1865.—*File of Head Assistant Collector.*

Appeal Suit No. 37 of 1865.

1. The plaintiff brought this suit to eject defendant from lands yielding annually Rupees 668-4-6, and to recover the costs thereof for one Fusly (1274) at Rupees 668-4-6.

2. The defendant denied the plaintiff's claim in *toto*.

3. The Head Assistant Collector dismissed the plaintiff's suit.

4. The plaintiff appealed.

5. While this appeal was pending in this Court, the right of the plaintiff to the Zemindary of Vissannapett, to which the plaint land appertains, was negatived as the Zemindary was declared to be an escheat to the Crown, and under the Decree of the High Court, the Zemindary was put in possession of Government.

6. The Collector having declined to prosecute the appeal in plaintiff's stead, the appeal is dismissed. The plaintiff (the Collector) must bear the defendant respondent's costs in appeal.

30th March 1867.

(Signed) W. HODGSON,
Civil Judge.

(True Copy.)

(Signed) G. THORNHILL,
Collector.

The Acting Government Pleader will be requested to inform the Board, whether, under the circumstances stated, the Collector can be held liable for costs. Mr. Brockman will observe that the late holder of the Vissannapettah estate made an appeal to the Civil Court in regard to a portion of the estate, and that the Collector having declined to prosecute this appeal, he has been declared liable to costs of suit by the Civil Judge.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Acting Government Pleader,
with copy of enclosure.

Copy to the Collector of the Kistna district.

Exd. J. Wright.

Requesting Acting Government Pleader to inform Board, whether Collector of the Kistna district can be held liable for costs for withdrawal of suit connected with Vissanapettah estate.

No. 3,075.

Received

Dated 18th May 1867.

PROCEEDINGS OF THE BOARD OF REVENUE.

No.

1867. Department.

No. 3,263.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 27th May 1867.

Read the following letter from H. J. BROCKMAN, Esq., Acting Government Pleader, to the Secretary to the Board of Revenue, dated 25th May 1867, No. 91:—

1. With reference to the Proceedings of the Board of Revenue noted in the margin, I have the honour to inform you that before I can advise upon the question referred to me by the Board, I wish to be informed—

Dated 18th May 1867, No. 3,075.

First.—The names of the parties to the Summary Suit No. 1 of 1865, on the file of the Head Assistant Collector, referred to in the Proceedings of the Board, and the date of institution of the Suit, and its object.

Second.—Whether there were any orders or proceedings of Court making the Collector or the Government in any way a party to the Suit.

3. The best mode of furnishing me with the required information would be to procure and send me copies of the plaint, or petition, decree, and other orders, (if any,) of the Assistant Collector in the Summary Suit 1 of 1865, and of all proceedings, including the decree of the Civil Court of Guntoor, in the Appeal Suit No. 37 of 1865.

3. In consequence of the Civil Court of Guntoor being closed for the recess, it may not perhaps be possible to procure copies of the proceedings in the Appeal before that Court. If however, the Government Vakeel appeared before the Court he will perhaps be able to furnish you with such sufficient information respecting the proceedings in the Appeal as will, together with the required copies of the proceedings in the Summary Suit before the Assistant Collector, enable me to advise upon the point referred to me.

Communicated to the Acting Collector of the Kistna district, who will furnish the papers and information desired by the Government Pleader with as little delay as possible.

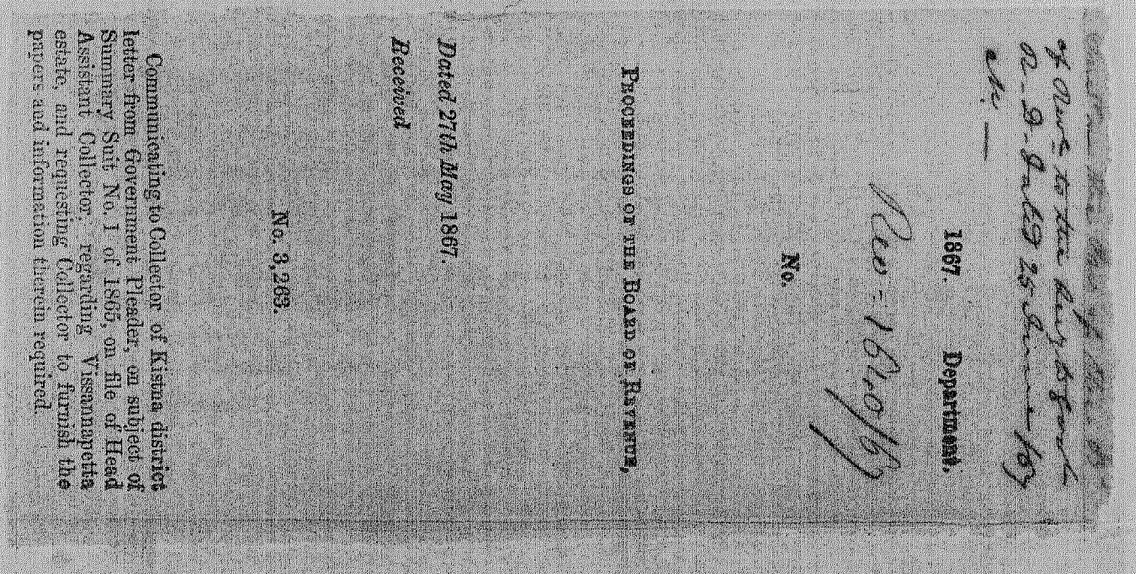
(A true Copy and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Collector of the Kistna district.

Copy to the Government Pleader.

Exd. J. Wright.



From the Board of Revenue
to the Secretary to Govt
No. —

1867. Department.

Rec'd 16th May

No.

Proceedings of the Board of Revenue,

Dated 27th May 1867.

Received

No. 3,263.

Communicating to Collector of Kistna district letter from Government Pleader, on subject of Summary Suit No. 1 of 1865, on file of Head Assistant Collector, regarding Vissannapetta estate, and requesting Collector to furnish the papers and information therein required.

No. 3,654.

Proceedings of the Board of Revenue, dated 14th June 1867.

Read the following letter from G. D. LEMAN, Esq., Acting Collector of the Kistna district, to the Secretary to the Board of Revenue, dated Masulipatam, 4th June 1867, No. 177 :—

1. With reference to Board's Proceedings of the 27th ultimo, I have the honour to enclose copy of the Proceedings* in Suit No. 1 on the Head Assistant Collector's file.

* Enclosure A.

2. The parties to the suit are,

Plaintiff Kavali Venkata Narrainappa, Zemindar of Vissannapeta.

Defendant, Hassan Sharuf, ryot of Vissannapet, Tataguntla, and Maribanda, in Vissannapeta estate.

3. The suit was brought by the Zemindar to eject the defendant from the lands he held in the Zemindary, because he would not take his putta for them. It was dismissed by the Acting Head Assistant Collector.

4. Plaintiff then appealed to the Court to reverse the Collector's decision.

5. Pending the decision of the appeal, the Zemindari was made over to Government in accordance with a decree of the High Court.

6. The Civil Judge then wrote a letter† to the Collector, (copy enclosed,) to which he replied declining to carry on the appeal, and the Court recorded the Proceedings‡ already forwarded with Mr. Thornhill's letter, No. 122, dated 29th April 1867.

† Enclosure B.

‡ Enclosure C.

7. I am informed, by the Government Vakeel, that no further proceedings than these were made by the Court in the matter.

Enclosure No. 1, A.

ENDORSEMENT.

Summary Plaint, No. 1 *of* 1865, *presented under Section* 10, *Regulation* XXX. *of* 1802, *and Section* 8, *Regulation* V. *of* 1822.

Plaintiff.	*versus*	*Defendant,*
Kavali Narrainappa, Zemindar of Vissannapeta.		Hassan Sharuf, ryot of Vissannapeta, Tataguntla, and Maribanda, in the Vissannapeta estate.

1. This is a summary suit for ejectment presented under Section 10, Regulation XXX. of 1802, and Section 8, Regulation V. of 1822.

2. The plaintiff is Zemindar of the permanently settled estate of Vissannapeta, and the defendant is a ryot holding lands in three of the villages comprised in the plaintiff's estate.

3. A similar plaint was presented by the plaintiff on the 8th October 1864, but was rejected and returned for amendment in certain points. The amended plaint is accompanied by a letter from the plaintiff, which I shall have occasion to refer to hereafter, as it makes certain statements that have led me to the conclusion that this plaint must be rejected.

4. To render my reasons for this conclusion clear, it will be necessary to consider, briefly, the provisions of Regulations XXX. of 1802, and V. of 1822.

5. The former, usually styled the Putta regulation, prescribed the mutual exchange of Puttas and Muchilikas between proprietors and the ryots on their estates. This was, however, not compulsory, for mere non-feazance is not penal: penalties are prescribed for refusal on the part of either to accept the offer, or to accede to the demand made by the other, but none for mere neglect or tacit disobedience. To be in accordance with the terms and to call into action the penalties of the Regulation, the offer or demand and the refusal to accept or accede must have been made and given within six months of the date of the permanent settlement of the estate whereon the lands that were the subject of the putta were. Should six months have elapsed from this date without an offer on the one hand, or a demand on the other, the parties must be understood to have agreed to dispense with the use of Putta and Muchilika, and that they might do so is seen from the express wording of Section 9 of the subsequent Regulation V. of 1822. In this case I do not consider that the provisions of the Regulation could have been enforced by the one against the other, because to secure the penalties of, and obtain the advantages held out by the Regulation, the party setting it in motion must have shown that he himself had acted as the Regulation prescribed.

6. Regulation V. of 1822 was framed for the further protection of the ryots for whom, as one of the parties, Regulation XXX. of 1802 had been passed. The summary power of ejectment, for refusal of a putta given by the earlier enactment, was restrained in the later, by the necessity of submitting the putta forming the ground of dispute for the approval of the Collector. The Collector's first duty is to examine the putta and its rates, and the question therefore arises, what is this putta. Looking to the earlier Regulation, I am of opinion that the putta, to be submitted to the Collector in a summary suit under Regulation V. of 1822, must be a renewal of the original putta issued within the time and in the form prescribed by the Regulation XXX. of 1802, (Section 12,) or a new putta issued on a transfer, by sale or otherwise, for Government arrears of the estate to a new proprietor (Section 13), or a renewal of such putta.

7. Regulation V. of 1822 was framed to give greater and more speedy effect to what was done in accordance with Regulation XXX. of 1802; it made a change in the cognizing authority, but added nothing that rendered the provisions of the earlier Regulation more compulsory than before. It left these as before, and it, therefore, follows that a case, not cognizable by the Civil Court under Regulation XXX. of 1802, cannot be cognized summarily by a Revenue Officer under Regulation V. of 1822. Should, then, the use of Puttas and Muchilikas have been dispensed with by agreement, or neglect of parties from the time within which the Regulation prescribed that they should be exchanged mutually between proprietors and their ryots, Regulation V. of 1822 manifestly cannot be called in to enforce the acceptance of a putta offered subsequent to the time prescribed, for to do so would be to call upon it to do what the Regulation, whose provisions it enforces, cannot.

8. Applying this reasoning to the present plaint, I am constrained to reject it. A reference to the plaintiff's letter of 1st November 1864, filed with the plaint, shows that he came into possession (it does not appear how) of the estate in Fusly 1265, and that from that time till the close of Fusly 1269, the use of Putta and Muchilika was dispensed with between himself and the defendant, and the old system of sharing called "Palipadhavoti" which had prevailed in the time of the last holder was reverted to. In another part of his letter, the plaintiff states that this sharing system has been the custom of the estate. It did not involve a Putta and Muchilika. The plaintiff now, more than sixty years after the permanent settlement of the estate, seeks an order of ejectment for refusal of a putta, the original of which must have been granted within six months of the permanent settlement. The putta is, however, a new thing, and has no original. Regulation XXX. of 1802 could not enforce its acceptance, and therefore Regulation V. of 1822 cannot.

BEZWADA,
10th January 1865.

(Signed) H. WILSON,
Acting Head Assistant Collector.

(True Copy.)

(Signed) G. D. LEMAN,
Acting Collector.

ENCLOSURE No. 2, B.

From W. HODGSON, Esq., Civil Judge of Guntoor, to the Collector of the Kistna district, dated 3rd January 1867, No. 1.

1. Kavali Venkata Narrainappa, late Zemindar of Vissannapeta, filed an appeal suit in this Court, No. 37 of 1865, from the decision of the Head Assistant Collector at Bezwada, against the respondent Hassan Sharuf, for ejecting him from certain lands, situated in the villages of Kataguntla, &c., attached to the said Zemindary.

2. The High Court having finally decided that the Zemindary should revert to Government, it was accordingly put in your possession on your moving the Court in execution of the decree. The long litigation between Venkata Narrainappa and the Government, has thus come to an end.

3. The Appeal No. 37 of 1865, is still pending on my file. As you are now in the possession of Venkata Narrainappa in respect to the Zemindary, I have the honour to request that you will forthwith instruct the Government Vakeel whether or not you are prepared to prosecute this appeal.

(True Copy.)

(Signed) G. D. LEMAN,
Acting Collector.

ENCLOSURE No. 3, C.

Summary Suit No. 1 *of* 1865; *file of Head Assistant Collector, Appeal Suit No.* 37 *of* 1865.

1. The plaintiff brought this suit to eject defendant from lands yielding annually Rs. 668-4-6, and to recover the costs thereof for one Fusly (1274) at Rupees 668-4-6.

2. The defendant denied the plaintiff's claim *in toto*.

3. The Head Assistant Collector dismissed the plaintiff's suit.

4. The plaintiff appealed.

5. While this appeal was pending in this Court, the right of the plaintiff to the Zemindary of Vissannapet, to which the plaint land appertains, was negatived as the Zemindary was declared to be an escheat to the Crown, and under the Decree of the High Court, the Zemindary was put in possession of Government.

6. The Collector having declined to prosecute the appeal in plaintiff's stead, the appeal is dismissed. The plaintiff (the Collector) must bear the defendant respondent's costs in appeal.

(Signed) W. HODGSON,
Civil Judge.

30th March 1867.

(True Copy.)

(Signed) G. D. LEMAN,
Acting Collector.

Communicated to the Government Pleader.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Government Pleader.

Copy to the Collector of the Kistna district.

Exd. J. Wright.

Entered in Book No 8 Page 6 to 10 Pages
Dated 25 June 1867

1867. Department.

Rec'd 16th July 1867

No.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 14th June 1867.

No. 8,654.

Communicating to Government Pleader letter from Acting Collector of Kistna district forwarding copy of Proceedings in Suit No I of 1865 on file of Head Assistant Collector regarding Vissampett Estate.

Recorded in Letter Book

No 109.

High Court House
Madras 21st June 1867.

From

H. J. Brockman
Officiating Government Pleader

To.

R. A. Dalyell Esqre.
Secretary to the Board of Revenue
Madras.

Sir

Dated 14 June 1867 No 8654.

I have the honor to acknowledge the receipt of the Proceedings of the Board noted in the margin.

2. With reference to those Proceedings and the Proceedings of the Board No 3075 Dated the 18th May last, I have the honor to advise that the Collector of the Kistnah District might not to have been ordered to pay the costs of the Respondent in Appeal Suit No 37 of 1865 before the Civil Court of Guntoor, being an Appeal from Summary Suit No 1 of 1865 on the file of the Head Assistant Collector.

3 In my opinion, a Special Appeal will lie against the order of the Civil Court of Guntur dated the 30th March 1867 on the ground that the Collector who was not properly before the Civil Court might not to have been ordered to pay the costs of an appeal to which he

the was no party. While appealing on this ground, advantage can be taken of the opportunity to urge as an additional ground of appeal, that the decision of the Head Assistant Collector was right and the decision of the Civil Judge was wrong in point of law.

4 Should it be decided to appeal against the order of the Civil Judge of Guntur, I shall be glad to receive a copy of the evidence in the original summary suit before the Head Assistant Collector, and a stamped copy of the decree of the Head Asst. Collector, and the Civil Judgment on appeal of the Civil Court of Guntur. The three latter documents are the most important, as they must be filed with the Petition of Appeal

5 On receiving the three latter documents with the order authorizing me to present the Special Appeal to the High Court, I will lose no time

in

preferring it

Yours &c.

(Sd) W. J. Brockman

Officiating Govt. Pleader.

/True Copy/

Walker

Secretary

Exd. W. Love

Revenue Department

No. 1422

The Government Pleader is authorized to prefer and prosecute before the High Court on behalf of the Collector of the Kistna District a Special appeal from the decision of the Civil Judge of Guntoor-zillah in Appeal Suit No. 37 of 1865 on the file of that Court in which Suit Cavaly Vencata Narrain appa was Appellant and Hasan Sharuf Respondent but costs were awarded against the Collector

Fort Saint George
26 June 1867

Incl Copy consultations also Mofsil Board

Cause This Day for Hearing
Board of Rev. & to the
Legl Mr Ford R.D. & D.D
25 June 1867 &c

Rev: 1620/67

Copy Ford Pleadings
Letter to the Rev Board &c &c
Rec Rets 21 June 1867
Ac 1109 1291 e/Rec 37
F 1865.

Rec'd Govt Pleader 26/6

Rec. Vicar 26 June/67
Ans. Dec 3/73

[illegible]

[illegible] 1822.

[illegible] accordingly
[illegible] not to intervene in the pleas
of the Bp of [illegible] in the mandate
from the Governing Commissary
of the Chancel against the Bp of
Lismore regards the award of
costs after the Coll. It is observed
that as regards the subject matter
of the original suit, the appeal decision
upholds that of the Ld Consist. in the
original sentence of suit. [illegible]

26 June/67.

Ins. Cly [illegible] Dec. 3 & C. 3. Dec. 28th
Mr [illegible] Dec. 14 - Dec. 28th
Sc. 6 [illegible]