

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 3004 A

Press
~~Mis.~~

320 . 321

Dated

17 — 12 — 1867.

Not to be folded or roughly handled

3004

*Proceedings of the Madras Government, Revenue Department,
17th December 1867.*

No. 320. Read the following Proceedings of the Madras Government in the
Judicial Department :—

Passing orders on letter from Acting Registrar
of High Court of Appellate Side regarding the
conduct of Mr. Agnew, the Acting Magistrate,
and Ragoonatha Row, the Deputy Magistrate
of Trichinopoly. (Here enter 11th December 1867, No. 2,039.)

No. 321. ORDER THEREON, 17th December 1867, No. 3,004 A.

Miscellaneous.

Communicated to the Revenue Board.

(True Extract.)

(Signed) F. BRANDT,
Under Secretary to Government.

To the Board of Revenue, with Proceedings Judicial Department, No. 2,039.

Exd. S. T. Augustin.

*Proceedings of the Madras Government, Judicial Department,
11th December 1867.*

Read the following letter from the Acting Registrar of the High Court of Judicature, Madras, Appellate Side, to the Chief Secretary to Government, Fort Saint George; dated Madras, 30th November 1867, No. 60.

I am directed to submit to you the marginally noted letters with their enclosures, with a view to Government passing such orders upon them as may seem proper in the circumstances of the case.

From the Acting Civil Judge, Trichinopoly, No. 329, dated 14th October 1867.
From do. No. 349, dated 30th October 1867.

2. Before stating the opinion of the Chief Justice and Judges of the High Court with regard to the conduct of the Acting District and Deputy Magistrates of Trichinopoly in the matter now under notice, it will be advisable to give an abstract of the enclosed correspondence, and to show succinctly the circumstances in which it appears to have originated.

3. It seems that, on the 9th of August last, the Deputy Magistrate of Trichinopoly issued an order, under Section 308 of the Criminal Procedure Code, to one Tatamiengar and two others, to pull down certain houses situated in Thencadam Chitrai street and the northern row of the Ulthiravithi street at Srerungum. The individuals to whom the order was addressed seem to have objected to its terms, and, on the 6th of September, instituted three suits in the Court of the District Moonsiff of Trichinopoly, praying that the Deputy Magistrate's order might be cancelled, and the peaceful possession of their property secured to them; and, together with the complaints, they seem to have presented applications for injunctions to be issued under Section 93 of the Code of Civil Procedure, with the object of restraining the Deputy Magistrate from carrying his order into execution.

4. The complaints appear to have been admitted and registered, and the District Moonsiff seems to have issued three processes in the usual form, giving notice to the Deputy Magistrate to appear and answer in the suits brought against him.

5. These notices seem to have been duly served on the Deputy Magistrate, and that Officer appears to have done thereupon the first of a series of most unusual, and, in the opinion of the High Court, most reprehensible, acts.

6. On the 10th September, he appears to have placed on record a Magisterial Proceeding, in which he declared that the "papers from the Court of the District Moonsiff" were not legal processes; and it was ordered that a copy of this Proceeding should be furnished to the District Moonsiff "for his information," and another to the Acting Magistrate of the District, with a view to the latter moving the Civil Court to interfere in the matter.

7. On the 17th September, the Deputy Magistrate appears to have written a letter to the Acting Magistrate of the District, submitting an extract from his Proceeding of the 10th, above noticed, and setting forth his views on the subject of jurisdiction.

8. Upon receipt of this, the Acting Magistrate of the District would seem to have placed on record a Magisterial Proceeding, under date the 20th September, in which he declared his concurrence in the view of his subordinate touching the illegality of the notices served upon that Officer, and directed that an extract from the said Magisterial Proceeding should be forwarded to the Civil and Session Judge, "with a request that he would take such notice of the proceedings of the District Moonsiff as he might think fit."

9. On the following day, being the 21st September, three processes in the form of injunctions, under Section 93 of the Civil Code, appear to have issued from the Court of the District Moonsiff to the Deputy Magistrate, by the terms of which he was prohibited from carrying his order into execution, and was, at the same time, directed to furnish security, in compliance with the requisition of the Court.

10. Upon this, the Deputy Magistrate seems to have passed a Proceeding, under date the 24th September, in which he declared "the papers to be nullities," and threatened to punish, under the provisions of the Penal Code, all and any who should attempt to enforce the order of the Court of the District Moonsiff, and ordered that the District Moonsiff should be furnished with a copy of the said Proceeding for his information, and that another copy should be forwarded to the Acting District Magistrate.

11. Upon receipt of a copy of this Proceeding, the Acting District Magistrate appears to have passed a Proceeding, under date the 5th October, in which he resolved to forward a copy of the Deputy Magistrate's Proceeding to the Civil and Session Judge; declared that the District Moonsiff had rendered himself liable to a punishment under Section 189 of the Indian Penal Code; threatened to "treat the District Moonsiff as a private individual under the provisions of the Indian Penal Code;" and stated that the Deputy Magistrate "remained under the special protection of the Police from the threatened illegal action of the District Moonsiff", pending the receipt of an answer from the Civil and Session Judge to the request conveyed in the Proceeding of the Acting District Magistrate of the 20th September.

12. On the 24th October, the Acting Civil Judge wrote a letter to the High Court, submitting for their consideration an extract from the Proceedings of the Acting District Magistrate of the 5th, together with other documents, of which the substance has been shown; and on the 30th October, the Acting Civil Judge wrote a second letter to the High Court, submitting, at the request of the Acting District Magistrate, extracts from the Proceedings of that Officer held on the 12th and 14th October respectively, from which it appears—

1st.—That the Acting District Magistrate forwarded to the Acting Civil Judge, on the 12th October, an extract from the Proceedings of the Deputy Magistrate, showing that the Deputy Magistrate had declined to submit to be arrested by an Officer deputed by the District Moonsiff's Court to arrest his person.

2ndly.—That the Acting Magistrate of the District, on the 14th October, essayed to prove to the Acting Civil Judge the impropriety and illegality of the Moonsiff's conduct, and informed him that the District Moonsiff was about to be tried in the Court of the Acting Head Assistant Magistrate on a charge of bribery.

13. Such is the substance of the correspondence now submitted for the consideration of Government, and I have now to convey to you the opinion of the Chief Justice and Judges of the High Court regarding the action which has been taken in this matter by the Deputy Magistrate and his superior Officer, the Acting Magistrate of the District of Trichinopoly.

14. The Chief Justice and Judges of the High Court are unanimous in thinking that the Deputy Magistrate grossly misconducted himself by contemptuously setting at defiance the several processes of the Court of Justice of which the District

Moonsiff is the Judge, issued in the pending suits, and by using his power as a Magistrate to enforce his defiant resistance.

15. They also agree in thinking that the Acting Magistrate of the District acted most improperly in supporting his subordinate in the illegal course pursued by him, and in threatening to support that illegal resistance by the Police placed under his authority for purposes very different. In the presence of acts probably unexampled, the subordinate but grave improprieties of the Magistrate's language and demeanour towards the Session Judge sink into relative insignificance.

16. Assuming for the present purpose that the Proceedings of the District Moonsiff were an utterly unfounded assumption of jurisdiction, the same legal course by defence and appeal was open to the Deputy Magistrate as to an ordinary defendant, and no other course. And if the District Moonsiff's conduct amounted to an offence, or was thought to render him unfit for his office, he was amenable to a regular proceeding under the Criminal Law, or might be removed, or otherwise punished, by the proper authority. The notion, even, that a Subordinate Magistrate, or any other functionary, may assume the power to determine for himself the legality or illegality of the proceedings of a Civil Court, and act on that determination, in the opinion of the High Court, calls for repression so decisive as to prevent the possibility of its being even entertained by any other Magistrate.

17. If the Magistracy of Trichinopoly be permitted to indulge with impunity in active antagonism to the law, it would seem to be impossible that the administration of justice in that district can be rendered effectual. If, in consequence of these proceedings, the Courts had used the powers vested in them by law with the intemperance displayed by the Magistrate and his subordinate in the assumption of powers which they have not, it is obvious that excessive public scandal, for which those Courts would have been in no way responsible, must have resulted.

18. In conclusion, I am directed to inform you that the Moonsiff has been acquitted of the charge of bribery instituted with obvious virulence by the Deputy Magistrate, and the Judges who have considered that case see no reason for dissenting from the conclusion of the Acting Session Judge, that the charge was a false one. There are other matters affecting the conduct of the Moonsiff still under the consideration of the Court, but they have no connection with the present proceedings.

From W. McQUHAE, Esq., Acting Civil Judge of Trichinopoly, to the Acting Registrar of the High Court of Judicature at Madras; dated Trichinopoly, 14th October 1867, No. 329.

I have the honor to submit, for the information of the High Court, an extract from the Proceedings of the Acting Magistrate of Trichinopoly, dated 5th October, in the latter part of which he complains that I have not interfered to restrain the District Moonsiff of Trichinopoly from taking cognizance of three suits. Proceedings of the Magistrate, dated 20th September, and a report from the Moonsiff, dated 11th October, with translations of three complaints and an injunction, are also enclosed.

2. In these Proceedings the Magistrate complains of two acts done by the Moonsiff. The first is the registration of the three complaints above referred to and the issue of the usual summons upon them, and the second is the issue of injunctions under Section 93 of the Procedure Code.

3. The complaints have been withdrawn from the Moonsiff's Court, and placed on the file of the Civil Court, and, as a criminal prosecution of the Moonsiff for receiving money subsequently has been ordered by the Magistrate, any misconduct of which he may be found guilty must be dealt

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with hereafter. The Magistrate also does not appear to see the difficulty which exists about treating the Moonsiff's act in filing these plaints as misconduct before they have been disposed of judicially.

4. At present, I consider it my duty to lay these papers before the Judges, and to bring to notice the unusual action taken by the Magistrate in the matter of these suits.

5. It appears to me that, when a plaint is filed against a Magistrate, he should either answer it in the manner prescribed by law, or not answer it at all; and I think that the Proceedings of the

Deputy Magistrate, dated 24th September,* are written in a style which should not be used by a Magistrate in addressing any Civil Court. The

injunctions complained of could have been brought before me judicially by appeal; but the Magistrate, having arrived at the conclusion that these plaints ought not to have been filed, threatens the Moonsiff with the penalties of the Penal Code, and thus adopts the dangerous course of deciding himself on the legality of a process issued by a Civil Court, and using his powers as a Magistrate for the purpose of quashing it.

EXTRACT from the Proceedings of the Acting District Magistrate, dated 5th October 1867.

Read again Extract from the Proceedings of this Court, dated 20th September 1867.

Read also the following Extract from the Proceedings of the Deputy Magistrate, dated 24th September 1867.

Extract from the Proceedings of the Deputy Magistrate, dated 24th September 1867.

Read papers alleged to be signed by the District Moonsiff of Trichinopoly, and professing to be injunctions.

With reference to the Proceedings of the Deputy Magistrate under date the 10th instant, copy of which was furnished to the District Moonsiff, it is observed that the papers, being illegal, are nullities.

Any trespass committed in connection with the above papers, or any attempt to use criminal force, or to commit an assault, will subject the perpetrator thereof, his aiders, and abettors, to the penalties prescribed in Sections 352 and 353 of the Indian Penal Code.

Resolved that an Extract from these Proceedings be forwarded to the District Moonsiff of Trichinopoly, also to the District Magistrate for information.

(True Extract.)

(Signed) R. RAGOONATHA ROW,
Deputy Magistrate.

Resolved that an extract from these Proceedings be furnished to the Civil and Session Judge.

The nullities in law, in the shape of the papers purporting to be injunctions, issued by the individual holding the office of District Moonsiff of Trichinopoly to the Deputy Magistrate, contain a demand for security under a threat of imprisonment, and thereby render the author amenable to the provisions of Section 189, Indian Penal Code. The Acting District Magistrate approves the Proceedings of the Deputy Magistrate, dated 24th September, and should the District Moonsiff attempt to enforce the threat held out by him, the Acting District Magistrate will consider it to be his bounden duty to take notice that the District Moonsiff is acting *ultra vires*, and to treat him, accordingly, as a private individual, under the provisions of the Indian Penal Code.

The Acting District Magistrate is not aware that any notice has been taken by the Civil and Session Judge of the facts brought to his notice in the Extract from the Proceedings of the Acting District Magistrate, dated the 20th September, and, meanwhile, the Deputy Magistrate remains under the special protection of the Police from the threatened illegal action of the District Moonsiff.

With a view to close this public scandal, the Acting District Magistrate requests the Civil and Session Judge will intimate to him whether it is his intention to interfere to restrain his subordinate.

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In the event of the Civil and Session Judge declining to interfere, the Acting District Magistrate will be prepared himself to bring the misconduct of the District Moonsiff to the notice of the Judges of the High Court.

(True Extract.)

(Signed) C. W. W. MARTIN,
Ag. Head Asst. Magistrate,
for Ag. District Magistrate.

PROCEEDINGS of the Court of the District Magistrate of Trichinopoly, 20th September 1867.

Read the following letter from the Deputy Magistrate of Sreerungum, dated 17th September 1867.

Read also the following Extract from the Proceedings of the Court of the above Deputy Magistrate submitted therewith, and dated the 10th idem.

From the Deputy Magistrate, Sreerungum, to the Acting Magistrate of Trichinopoly; dated Trichinopoly, 17th September 1867.

In submitting an Extract from the Proceedings of this Court, I beg to lay before you my views on the subject of jurisdiction.

2. A Magistrate can pass an unjust order in either of the following two ways—corruptly or maliciously, or unintentionally.

3. In the first case, Section 219 of the Indian Penal Code, as governed by Chapter XI of the Code of Criminal Procedure, is applicable.

4. In the latter case, the remedy, as appears to me, is not against the Magistrate, but against his order.

5. A Magistrate may pass an unjust order unintentionally either by mistake of fact or of law. Regarding the former, the injured party can obtain redress from the Jury sanctioned by law, or from the Appellate Authority. If the Magistrate has exceeded his jurisdiction by mistake of law, the High Court will afford redress to the injured party.

6. Thus it will be seen full remedy is afforded by law, without reference to the Civil Courts, to parties who may be injured by Magistrates, who are Judges, in Criminal Courts—vide Sections 11 and 19 of the Code of Criminal Procedure, and of the Indian Penal Code, respectively.

7. I hold that no Court can command another Court which is not subordinate to the former, and appeals from which have not been declared by law to lie to it.

Extract from the Proceedings of the Deputy Magistrate of Sreerungum, under date the 10th September 1867.

Read the following papers from the Court of the District Moonsiff of Trichinopoly, calling upon the Deputy Magistrate to appear to answer the plaints filed by one Tatamiengar and two others, complaining against certain notices issued by the Court for the removal of their houses, &c.

(Here enter 7th September 1867, in O. S. Nos. 333, 334, and 335).

The Deputy Magistrate observes that the aforesaid papers are not legal processes. The notice complained of having been issued under Section 308 of Criminal Code Procedure from this Court, and a complaint against its having been issued having been dismissed by the Session Court, its propriety or legality can only now be adjudicated upon by the High Court, and not by any Civil Courts. The District Moonsiff has no jurisdiction in this case—vide Section 311, Criminal Procedure Code, and Section 1, Civil Procedure Code, and Section 11 of Regulation II of 1802.

Ordered that a copy of these Proceedings be forwarded to the Court of the District Moonsiff for his information.

That a copy be also submitted to the District Magistrate, with a request that he will address the Session Judge with a view to the latter Officer directing the District Moonsiff to refrain from issuing similar processes to Criminal Courts.

(Signed) R. RAGOONATHA ROW,
Deputy Magistrate.

This Court concurs with that of the Deputy Magistrate in considering the action of the District Moonsiff to be illegal and the process issued by him to be null and void, and resolves, accordingly, to forward an Extract from these Proceedings to the Civil and Session Judge, with a request that he will take such notice of the Proceedings of the District Moonsiff as he may think fit.

(Signed) J. D. B. GRIBBLE,
Asst. Magistrate,
for Acting Magistrate.

From T. RAJAGOPAL NAIKER, District Moonsiff of Trichinopoly, to the Acting Civil Judge of the Zillah of Trichinopoly; dated Trichinopoly, 11th October 1867.

In obedience to the Takeed received yesterday at $\frac{1}{2}$ past 4 p. m., accompanied with an Extract from the Proceedings of the District Magistrate, under date the 5th instant, calling upon me to furnish explanation in the matter, I most humbly beg to submit that, on the 6th ultimo, one Tatamiengar and two others of Sreerungum respectively presented three plaints, accompanied with motions applying for injunctions under Section 93 of the Code of Civil Procedure.

2. I considered that the plaints contained a cause of action, and that the defendant was amenable to the Civil jurisdiction, inasmuch as Section 311 of the Criminal Procedure Code only prohibited the Civil Courts from entertaining suits in respect of anything *necessarily* or *reasonably* done to give effect to an order of the Magistrate in these instances. By the introduction of the words "*necessarily*" or "*reasonably*" in the above Section, it is apparently implied that the Civil Courts are empowered to take cognizance of suits of this nature if the order of the Magistrate be given *unnecessarily* or *unreasonably*. In the plaints, it is set forth that the buildings did not encroach upon the high way, as would be found by the survey and pymash accounts, and that they were standing on the site for a very long period.

3. Independent of this, Section 308 of the Code of Criminal Procedure applies only to new buildings, as there appears no provision in the Section as regards long standing ones. To suppose that the words "obstruction" or "nuisance" in the first part of the above Section applies to old buildings, would be incorrect, inasmuch as that Section is a re-enactment of the English Law, and the expression "obstruction" in a thoroughfare is identical with the technical expression "Purpresture." This is defined (by Blackstone, volume IV, page 167, 25th edition) to be house erected or an enclosure made upon any part of the King's demesnes or of any highway, &c. This only speaks of a house erected, *i. e.*, *apparently newly*, and it does not seem to apply to an old building of long standing; and as a separate provision is made in Section 308 as regards new buildings, the expression "obstruction or nuisance," therein alluded to, cannot but mean any obstruction or nuisance caused in any high-way by throwing down stones, &c.

4. Irrespective of this, the houses in question were situated within the third wall of the Sreerungum Pagoda.

5. Under these circumstances, I considered that an action might be against the defendants.

6. With this my humble opinion I entertained the suits, and then gave my attention to the grounds of the plaintiffs' motions applying for writs of injunction under Section 93 of the Civil Code, which appeared to be emergent, since they represented in their affidavits that the houses will be positively demolished the very next day but one, which was Sunday. I, therefore, complied with the petitioners' request, and directed the issue of a notice under Section 95 of the Civil Code, adding thereto that both the parties should not interfere in the demolition of the buildings, *till the specific time* given in the notice for passing a final order regarding the issue of an injunction expires.

7. The notice was duly served on the defendant, and returned on the 10th ultimo with the signature and the official seal of the defendant. The next day I received the accompanying Extract from the Proceedings of the defendant; but as the defendant was required by law to put forth his objections in writing upon stamp paper, either in person or by an authorized Vakeel, I did not take any legal notice of it.

8. There is no doubt that the issue of the above notice from my Court tended to stay the proceedings of the defendant, but as the Courts in India are Courts of Law as well as Equity, I think I am justified in issuing it (Goldsmith's Doctrine of Equity, page 124).

9. On the 13th ultimo, the plaintiffs again applied to me that, after the service of the above notice, the defendant ordered the Sub-Magistrate of Trichinopoly Taluq to demolish the houses on that day, and that they (plaintiffs) received a notice from the latter Officer to make arrangements for the removal of their family chattels, &c., and requested me to issue an injunction forthwith under Section 93 of the Code; but I did not comply with their request, thinking that the few words added to the notice were tantamount to an injunction, and ordered that I will not interfere in the matter until the defendant actually infringes the law. On the 17th ultimo, the plaintiffs again presented a motion informing me that, as represented by them in their last motions, the defendant and the 1st Class Sub-Magistrate of Trichinopoly with some others mentioned therein, actually razed the houses to the ground, with the exception of the foundations, and praying that the further proceedings of the defendant may be stayed, and the materials of the buildings, which the plaintiffs stated that the defendant was about to put to public auction, may be attached and brought to Court, and that, otherwise, no trace of the buildings will be left behind. On this, I issued an injunction under Section 93 of the Code, enjoining the defendant to *refrain from continuing* the wrongful act complained of.

10. On the 24th ultimo, the written order given to the peon to serve the above injunctions on the defendant was returned, with an endorsement that he defendant refused to receive the writ, on the ground that it was illegal, and that the copy thereof was stuck up to a post near the demolished buildings.

11. On the 25th ultimo, I received the accompanying Extract from the defendant's Proceedings, under date the 24th idem, of which I took no notice, as being unwarranted by law.

12. On the 28th ultimo, the plaintiffs again presented a motion representing that, after the issue of the injunctions, the defendants destroyed even the foundations, leaving no traces of the buildings behind, and sold all the materials for low bids, in contradiction to the Court's processes, and that the defendant intends to make some use of the site where the buildings lately stood, and that he may, therefore, be directed to abstain from further proceedings.

13. In this state of circumstances, I found that I had no other alternative left to me by the law than to issue a warrant, as directed in Section 93, and in consequence I issued the warrant, and directed the peon with whom it was entrusted for execution not to *arrest* the defendant *actually*, but merely to inform him that he has a warrant of arrest to be executed, and to make a return of the reply he (defendant) may make; and the peon has returned it yesterday, stating that he was *unable to execute it*, unless he used physical power, because he (defendant) who had Police Constables by him at the time, besides his own servants, said that the process was illegal, and that he would not mind it, and that he (peon) may be off.

14. Under the foregoing circumstances, I beg to submit to your Honor that I have conducted myself in my capacity as far as the law permits me to do, and as I am at a loss to know what measures I should adopt in this predicament, I beg your Honor to instruct me as to the proper course I ought to pursue in this case.

15. With this my humble explanation, I beg to submit, for your honor's perusal, the petitions of the plaintiffs as well as the processes that have been issued by me in the aforesaid suits.

ORIGINAL SUIT No. 333 OF 1867.

To the District Moonsiff of Trichinopoly.

Plaintiff.

Defendant

Tatamiengar, son of Nadamuni Seshadri Iyengar, living in Sreerungum, Trichinopoly Taluq.

R. Ragoonatha Row, Deputy Magistrate of Trichinopoly, living in Sreerungum.

SUIT, under Section 26 of the Civil Procedure Code, to establish the plaintiff's right to a terraced house and shop, and to the ground on which they stand, worth Rupees 600.

1. The terraced house which has been in existence from a long time, and which is situated in Sreerungum, within the boundaries herein below specified, formerly belonged to one Renga Iyengar of Sreerungum ancestrally, and was sold by him to Venkatam Iyengar, from whom plaintiff

purchased it on the 9th April 1866, for Rupees 190. He also bought another piece for Rupees 25, on the 3rd November 1866, from one Sesha Iyengar. The plaintiff repaired the building at a cost of Rupees 385, and is ever since in the enjoyment thereof.

2. The defendant has issued a notice on the 9th August last, directing the building to be demolished within thirty days, on the ground that it is an encroachment upon the public road. Neither the survey accounts nor the old pymash accounts, which the defendant alleges have led him to issue the notice, show that the ground in question is entered as public road.

3. The plaintiff, therefore, seeks to establish his right to the building and the ground, and to stop the execution of the notice improperly issued by the defendant.

The terraced building and the ground on which it is built, are worth Rupees 600, and are situated in the northern row of the south Ulthiravithi in Sreerungum, and are bounded on the west by Kurathalvar Gopuram, on the north by the Mathal (Pagoda wall), on the east by Ariyamangalum Sesha Iyengar's house and by the ground around plaintiff's half well, and on the south by the street running east to west, and measuring 27 feet east to west, and 25 feet from north to south.

The two deeds of sale alluded to in this plaint are herewith filed.

I, plaintiff, do hereby declare, that what is herein stated is true.

(Signed) NADAMUNI TATAMIENGAR,

6th September 1867.

Filed 7th September 1867.

(Signed) T. RAJAGOPAL NAIKER,

District Moonsiff.

(True translate).

(Signed) W. McQUHAE,

Acting Civil Judge.

ORIGINAL SUIT No. 334 of 1867.

To the District Moonsiff of Trichinopoly.

Plaintiff.

Ranga Iyengar, son of Nadamuni Seshadri Iyengar, residing in Ulthiravithi, Sreerungum, Trichinopoly Taluq.

Defendants.

1. R. Ragoonatha Row, Deputy Magistrate of Trichinopoly, living in Sreerungum.
2. Sesha Iyengar, son of Iya Iyengar, living in the village of Ariyamangalum, Trichinopoly Taluq.

Suit, under Section 26 of the Civil Procedure Code, to establish the plaintiff's right to enjoy a terraced building which he holds under a mortgage for Rupees 150 till the expiration of the stipulated time.

The plaintiff paid Rupees 150 on the mortgage of the undermentioned house and obtained a deed of mortgage on the 14th September 1865, from the 2nd defendant, the owner of the house in question, providing that the plaintiff shall enjoy the house for four years, that is, till 13th September 1869, in lieu of the interest; and he enjoys it under this right. The 1st defendant has, on the 9th August last, issued a notice to the 2nd defendant, directing him (2nd defendant) to knock down the house within 30 days, alleging that it is an encroachment upon the public road. The 2nd defendant having received some money from the 1st defendant as compensation for the house, the 1st and 2nd defendants try to deprive the plaintiff of his mortgage right before the expiration of the stipulated time. The plaintiff, therefore, prays for a decree to the effect that he sha" occupy the house till the expiration of the time, and then surrender it on receipt of the mortgage amount; and that the notice in question shall not be carried into execution.

The Manai and the terraced building measure 37 feet from east to west, and 25 feet from north to south, and is situated in the northern row of the southern street called Ulthiravithi, in Sreerungum, to the west of Anaikattimedu, north of the street, running east to west; east of the

Manai belonging to the plaintiff's brother Tatamiengar, the well and the lane which measures five feet north to south, and which was sold by the plaintiff's brother to the 2nd defendant; and to the south of the pagoda wall (Mathal).

Amount of mortgage, Rupees 150.

I shall produce the deed of mortgage herein alluded to at the first hearing, as I have pledged it with one Vettithirumutham Singam Iyengar in Sreerungum.

I do hereby declare that what is herein stated is true.

6th September 1867.

(Signed) NADAMUNI RANGA IYENGAR.

Filed 7th September 1867.

(Signed) T. RAJAGOPAL NAIKER,

Moonsiff.

(True Translate).

(Signed) W. McQUHAE,

Acting Civil Judge.

ORIGINAL SUIT No. 335 of 1867.

To the District Moonsiff of Trichinopoly.

Plaintiff.

Iya Iyengar, son of Ramasami Iyengar, living in Kila Adiyavalanjan Street, Sreerungum.

Defendant.

R. Ragoonatha Row, Deputy Magistrate of Trichinopoly, living in Sreerungum.

Suit, under Section 26 of the Civil Procedure Code, to establish the plaintiff's right to the terraced house and shops, and the ground on which they stand, worth in all Rupees 400.

1. The ground, as well as the house and shops thereon situated, within the boundaries herein-below specified, formerly belonged to Vethaviasatirumalai Bhattar Iyengar, of Sreerungum, whose forefathers have been enjoying it for generations; and he sold it in the year 1825 to one Gundo Panditor, and his father Kupparoyer. The plaintiff's father, Ramasami Iyengar, purchased them for Rupees 330 on the 28th June 1848, from Lechumi Ammal and others, heirs of the said Gundo Panditor and his father Kupparoyer, and laid out Rupees 500 for repairing the same. The plaintiff subsequently sold the southern half of the house, measuring 22 feet, and is now in possession of the northern half, consisting of the house, shops, &c., in dispute.

2. On the 9th August last, the defendant has unjustly issued a notice to bring down the house, &c., within 30 days, alleging they are encroachments on the public road.

3. The plaintiff's claim to the ground on which the disputed house, &c., stand is established by the pymash accounts of Fusly 1244, when this ground also was surveyed. The plaintiff, therefore, seeks to establish his title to the disputed house, &c., and to stop the execution of the notice improperly issued by the defendant.

The estimated value of the house and the shop is Rupees 400. They are situated at Then-candam in the eastern Chitrai street at Sreerungum, within the boundaries, viz., south to the road of Domodaram Gopuram, north to the house sold by plaintiff, east to Rajavidi, and west to Domodaram Gopuram.

I have herewith produced the deed of sale.

I verify that what is stated herein is true.

6th September 1867.

(Signed) IYA IYENGAR,

(") CHINNASAMI NAICK, Vakeel.

Filed 7th September 1867.

(Signed) T. RAJAGOPAL NAIKER,

District Moonsiff.

(True Translate).

(Signed) W. McQUHAE,

Acting Civil Judge.

NOTICE.

Under Section 93 Act VIII of 1859 (Batta Peon).

District Moonsiff's Court at Trichinopoly.

ORIGINAL SUIT No. 333 of 1867.

Plaintiff.

Defendant.

Tatamiengar, son of Nadamuni Sashadri
Iyengar, residing in the east Ulthiravithi, at
Sreerungum, Trichinopoly Taluq.

R. Ragoonatha Row Avergal, Deputy Magistrate
of Trichinopoly, residing in the said village.

To you the Defendant.

Whereas application has been made to this Court by the plaintiff abovenamed for an injunction to restrain you from committing the injury hereinunder specified, you are hereby commanded, on penalty of imprisonment, to refrain from the repetition or the continuance of such wrongful act, and from the committal of any injury of a like kind relating to the same property or right, and to furnish, on or before the 26th September, security in the sum of Rupees 700 duly to obey this injunction.

Specification of the act.

You should not demolish the terraced house in dispute, which is situated east of Kurathalvar Gopuram in Ulthiravithi street at Sreerungum; and if any portion of the building had been demolished, you should not interfere with the other portion which was not demolished, and with the materials of that already demolished.

(Signed) RAJAGOPAL NAIKER,

District Moonsiff.

21st September 1867.

(True Translate).

(Signed) W. McQUHAE,

Acting Civil Judge.

From W. McQUHAE, Esq., Acting Civil Judge of Trichinopoly, to the Acting Registrar of the High Court of Judicature, Madras; dated Trichinopoly, 30th October 1867, No. 349.

At the request of the Acting Magistrate of Trichinopoly, I have the honor to submit, herewith, Extracts from his Proceedings, dated 12th and 14th October, in continuation of my letter dated the 14th October. The Moonsiff has been committed to take his trial at the next Criminal Sessions for an offence punishable under Section 165 of the Penal Code. I, therefore, say nothing further regarding his conduct at present.

Extract from the Proceedings of the Acting District Magistrate of Trichinopoly, dated 12th October 1867, No. 142.

Read the following letter dated the 11th instant, from the Deputy Magistrate of Sreerungum:—

From the Deputy Magistrate, Trichinopoly, to the Acting Magistrate, Trichinopoly; dated Trichinopoly, 11th October 1867.

In continuation of my several Proceedings submitted to you, I beg to inform you that, on the morning of the 10th instant, while I was engaged in official business at home at Sreerungum, my orderly brought a message that a peon wanted to come to me, stating that he had certain processes of the Court. He was permitted to appear before me, and he very respectfully placed three papers before me, and stated that they were warrants from the District Moonsiff. They contained a requisition to the peon to produce me before the District Moonsiff on the 10th instant, with a false assertion, amongst other things, that a notice under Section 95 of the Civil Procedure Code had been served on me.

2. I told the peon that these papers were not legal processes, and that, with this knowledge, if he chose, he might act upon them. He took the papers back very respectfully and went away.

3. Unless you move to put a stop to such illegal conduct of the so-called District Moonsiff, the Magistracy cannot perform their functions properly in administering the law entrusted to them.

Resolved that an Extract from these Proceedings be furnished to the Civil and Session Judge, with reference to the Proceedings of the Acting District Magistrate, dated 20th September and 5th instant.

(True Extract).

(Signed) G. VANS AGNEW,

Acting District Magistrate.

Extract from the Proceedings of the Acting District Magistrate, dated 14th October 1867.

Read Extract from the Proceedings of the Session Court, dated the 10th instant.

The Acting District Magistrate observes that there are no "points", in connection with the subject of his Proceedings of the 20th ultimo and 5th instant, which he "wishes to have determined" nor any "questions" which he "wishes to refer for the decision of the Judges."

The Acting District Magistrate is of opinion that there is no occasion to ask the Judges to pronounce upon the illegality of the District Moonsiff's proceedings: that illegality he believes to be sufficiently patent.

In communicating to the Civil and Session Judge Extracts from his Proceedings of the 20th ultimo and 5th instant, the Acting District Magistrate's object was to bring to his notice the gross and culpable illegality of the acts, therein set down, of the District Moonsiff, with a view towards the Acting Civil and Session Judge interfering to control his subordinate and bringing his misconduct before the Judges of the High Court for such notice as they might deem fit.

The misconduct of which the Acting District Magistrate complains consists in that, whereas by the Rules of Practice (under head jurisdiction) it is laid down that "every plaint, on its presentation, should be examined, to ascertain, with reference to Sections 1 and 2 of the Code, and Sections 3 and 4, Act XXIII of 1861, whether the Court has jurisdiction in respect of the subject matter of the suit," and whereas, by Section 1 of the Civil Code, Civil Courts are prohibited from taking cognizance "of suits of which their cognizance is barred * * by any Regulations of the Codes of * * Madras * *" and whereas Section 11, Regulation II of 1802, prohibits Civil Courts "from interfering in any respect in any cause or matter of a criminal nature declared cognizable by the Magistrates * *," and whereas by Section 308 of the Criminal Procedure Code, the removal of nuisances has been declared cognizable by the Magistrate of a District or of the division of a District, in admitting upon his file plaints in the matter of the removal of nuisances, praying for decrees directing that the orders of the Deputy Magistrate should not be carried into effect, the District Moonsiff not only acted wholly without jurisdiction but in bad faith, inasmuch as he cannot be considered to have acted with that "due care and attention," which constitutes good faith, in neglecting to take notice of the above quoted clear provisions of the law, of which it is impossible to suppose a Civil Judge of his standing could be ignorant, also in that the District Moonsiff issued injunctions in order to prevent the Deputy Magistrate from acting in the execution of his legally bounden duty, under Section 311, Criminal Procedure Code, notwithstanding that the concluding lines of the Section itself forbid the interference of any Court, and that he demanded security from the Deputy Magistrate, and, in default of compliance, threatened his person, and actually issued warrants for the production of his person before him, every one of these acts being palpably undertaken in bad faith.

And not only does the Acting District Magistrate impute to the District Moonsiff bad faith, but, on the 12th instant, he became aware of facts which warrant him in stating that the District Moonsiff lies under the gravest suspicion of having acted throughout from corrupt motives. The Acting District Magistrate has already directed the institution against him of criminal proceedings, under Chapter IX of the Indian Penal Code, and the District Moonsiff will very shortly have an opportunity, if innocent, of clearing himself before the Acting Head Assistant Magistrate from

the charge of receiving a bribe of Rupees 2000 from parties interested in the subject matter of his proceedings now in question.

Whatever may be the result of this charge, the Acting District Magistrate deems it to be his duty, on this occasion, to state that the habitual corruption of this District Moonsiff is a matter of the utmost notoriety. In public estimation he weighs as a curse upon the people subject to his jurisdiction, and covers with disgrace the administration of justice.

The Acting District Magistrate, who has many sources of information, believes the judgment of the public to be correct. He vouches that what he has stated is their judgment.

(True Extract.)

(Signed) C. W. W. MARTIN,
Acting Head Asst. Magistrate,
for Acting Magistrate.

To the Session Judge, Trichinopoly.

No. 143. ORDER THEREON, 11th December 1867, No. 2039.

In the letter above recorded, the Chief Justice and Judges of the High Court bring to the notice of Government certain proceedings of Mr. Agnew, the Acting Magistrate, and of Ragoonatha Row, the Deputy Magistrate of Trichinopoly, by which those Officers have, in a manner which is justly described as unexampled, placed themselves in a position of open antagonism to the law, and have set at defiance the authority of the Civil Courts, to which it was their duty to have shown respect and obedience. The Deputy Magistrate has not only treated with contempt the processes of the District Moonsiff's Court, by declaring these processes to be "nullities," but he has gone still further in his defiance of the law, by refusing to be arrested by an Officer deputed by the Moonsiff's Court to arrest his person, and by threatening to punish, under the provisions of the Penal Code, all or any who should attempt to enforce the order of the District Moonsiff.

It was the obvious duty of the Acting Magistrate to restrain the illegal action of the Deputy Magistrate. Instead of following this natural course, Mr. Agnew actively supported Ragoonatha Row in his contemptuous resistance to the processes of the District Moonsiff's Court, and, in a formal Proceeding which he communicated to the Civil and Session Judge, stated that the Deputy Magistrate remained under the special protection of the Police from what the Acting Magistrate took upon himself to describe as the illegal action of the District Moonsiff.

3. The conduct pursued by the Acting Magistrate and the Deputy Magistrate has been throughout characterized by extraordinary want of temper and by an insensibility of official responsibility which are in the highest degree worthy of blame, and which, had it not been for the wise forbearance shown by the Civil and Session Judge, must have brought the Magistracy and the Civil Courts into open collision, and have caused a scandal which was calculated to bring discredit on the Government.

4. The conduct of these Officers appears to the Governor in Council without any excuse. The original object which the Deputy Magistrate had in view was the removal of a house situated within the third wall of the great Pagoda at Sreerurum, and which he considered an obstruction. The parties aggrieved by the order for the demolition of this house sought the only means of redress open to them, by a civil action, and by applying for an injunction to restrain the Deputy Magistrate from carrying his order into execution.

5. Even if the Court of the District Moonsiff had assumed a jurisdiction which it did not possess, the Deputy Magistrate had his legal remedy in the defence of the suit filed against him in the Court of the District Moonsiff, and by appeal to higher judicial authority from the decision of the District Moonsiff. Nor can the conduct of Mr. Agnew and Ragoonatha Row be justified by inexperience: both are officers of considerable standing in the Service, and they have for many years exercised Magisterial powers.

6. Under these circumstances, the Governor in Council considers it his duty to mark the grave displeasure of the Government, by removing Mr. Agnew from his present responsible office and remanding him to his substantive appointment of Joint Magistrate and Sub-Collector of Tanjore. Mr. Agnew will give over charge of his office to the Head Assistant, Mr. Crole.

7. With reference to the remark of the High Court that the charge of bribery against the District Moonsiff, of which that Officer has been acquitted by the Session Court, was preferred by Ragoonatha Row with "obvious virulence," the Governor in Council directs that an application be made to the High Court for the record of the case, with a view to determining whether Ragoonatha Row should be allowed to remain in the Public Service. Under any circumstances, he will be removed from the Trichinopoly District, and will not be allowed to exercise Magisterial powers.

Chief Secretary.

To the Honorable the Judges of the High Court.
To G. Vans Agnew Esq., Acting Magistrate of Trichinopoly.
To the Revenue Department.

Exd. J. H. Burns.

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