M.R.O. 14-5,450—22-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 398 — Press / Mis.

224.225

Dated 18-2- 1867.

Not to be folded or roughly handled

398
18-2-67

Proceedings of the Madras Government, Revenue Department,
18*th February* 1867.

No. 224. Read the following Proceedings of the Madras Government in the Public Works Department:—

Recording letter from Superintending Engineer, 6th Division, forwarding copy of the Judgment and of the Decree by the Civil Judge at Trichinopoly on the Original Suit regarding the proprietorship of the Rock Citadel Wall. } (Here enter 15th February 1867, No. 442.)

No 225. ORDER THEREON, 18th February 1867, No. 398.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

(Signed) J. GROSE,
Under Secretary to Government.

Exd. S. T. Augustin.

No. 253. Read the following letter from the Superintending Engineer, 6th Division, to the Secretary to Government, Department Public Works, dated Keelapalur, 30th January 1867, No. 1,286 :—

Enclosure 1. As directed in G. O. No. 123, dated 14th instant, I have the honor to forward a copy of the Judgment and of the Decree by the Civil Judge at Trichinopoly on the Original Suit regarding the proprietorship of the Rock Citadel Wall.

DECREE.

ORIGINAL SUIT No. 3 of 1865.

In the Civil Court of Trichinopoly.

Present.—Æ. R. McDONELL, Esq., Civil Judge.

(L. S.)

Plaintiff.

Manunathumbiran Andina Karter of the Thayamanswamy Temple in the Rock Fort of Trichinopoly.

Vakeels.

Veeraragavier and Kristnama Chariyaur.

Defendants.

1. W. C. Palmer, Executive Engineer, Trichinopoly.
2. Maistry Moonisami Naick, Trichinopoly.

P. Subbier, Vakeel for 1st Defendant.

1. This suit was instituted to recover, from the defendants, Rupees 999, being the value of certain granite stones which they had illegally removed, these stones being the property of the Pagoda.

2. The Civil Judge dismisses the plaintiff's claim with all costs.

	RS.	A.	P.
To be paid to 1st Defendant by Plaintiff.			
Value of Stamp papers used for statement, &c.	3	8	0
Peon's batta	0	4	0
Vakeel's fee	49	14	9
	53	10	9
To be paid to 2nd Defendant by Plaintiff.			
Peon's batta	0	4	0
To be borne by Plaintiff.			
Value of Stamp papers used for plaint, &c.	53	0	0
Peon's batta	1	0	0
Vakeel's fee	49	14	9
	103	14	9

Given under my hand and the seal of the Civil Court of Trichinopoly this 5th December 1866.

The period for preferring an appeal is ninety days from this date.

(Signed) Æ. R. McDONELL,
Civil Judge.

JUDGMENT.

ORIGINAL SUIT No. 3 of 1865.

In the Civil Court of Trichinopoly.

Present.—Æ. R. MCDONELL, Esq., Civil Judge.

1. This suit was instituted to recover from the defendants Rupees 999, being the value of certain granite stones which they had illegally removed, these stones being the property of the Pagoda.

2. In the plaint it is stated that the plaintiff, as the "Andina Karter" of the Thayamanaswamy Temple in the Rock Fort, sues for the value of these stones, which the defendants removed and carried away from the wall which surrounds the rock, and that he prays for a decree prohibiting the defendants from further interfering with the walls, which he asserts are the property of the pagoda, being from time to time kept in repair from the Pagoda funds, and that this wall is not the property of the Government.

3. The 1st Defendant, Captain Palmer, who was then Executive Engineer in this district, in his written statement denies the plaintiff's title to bring this suit, at the same time maintaining that the wall in dispute does not belong to the Pagoda, but forms a portion of the fortification constructed for the Military defence of Trichinopoly, and as such the property of Government; that this wall was never repaired from Pagoda funds, but when such repairs were needed, they were carried out under estimates prepared by the Department of Public Works, and at the expense of the State; that as this citadel wall was in a dilapidated state, the removal of these stones was ordered to prevent them from falling and causing injury.

4. The 2nd defendant was *ex-parte* Points were recorded.

5. Plaintiff filed nine documents, from A. to I., and examined six witnesses.

6. First defendant filed twenty-four documents, numbered 1 to 24, and examined three witnesses.

7. This suit was originally filed in the Court of the District Moonsiff of Conad, but under Order No. 501, 25th January 1865, No. 240 of the Proceedings of Government, in the Department of Public Works, the Collector of this district requested it might be called up and placed upon the file of this Court, under the provisions of Clause VI., Act VIII. of 1859, and this Court ordered accordingly.

8. Of the six issues recorded, two are very important, and on them the whole case turns, viz.,
I. Whether the wall in dispute belongs to the Pagoda or to the Government?
II. Whether the plaintiff has any title to bring this suit?

9. By the evidence of plaintiff's witnesses, it is proved that the plaintiff is the principal Stalather of the Pagoda; that he has the management of the Maniem lands attached to the Pagoda; and that from the proceeds thereof, he defrays the expenses of two poojahs a day; the Civil Judge is therefore of opinion that the Thumberan has full authority and title to institute suits for any claims referred on behalf of this institution.

10. With regard to the other point, viz., that the disputed wall is Pagoda property, the Civil Judge observes that the plaintiff has failed most signally to adduce any satisfactory evidence either oral or documentary.

11. The Civil Judge has visited the Pagoda and the disputed locality on several occasions, and a brief description of it here will not be out of place.

12. The Pagoda building in which are the idols, sacred rooms, Muntapums and Stambams, is situated on the apex of the Trichinopoly Rock, some four hundred feet above the level of the surrounding plain; near the base of this rock, and surrounding it are streets and a citadel wall known as the inner fort wall, in contradistinction to the outer fort wall, built near the moat which encircles the fort; plaintiff claims the wall (the inner wall) as Pagoda property, and objects to the stones of this wall having been made use of for Government purposes.

Proceedings of the Madras Government, Public Works Department,
15th February 1867.

13. In support of his plea, the plaintiff filed nine documents, but these are of little use to him. Document A. is a Yadast addressed by the Town Subordinate Magistrate to the Pagoda Trustee, calling upon him to repair a cross stone supporting the roof of the gateway of the stone stair-case leading to the pagoda. Document B. is a copy of a petition, presented so far back as 1814, by the Pagoda "Kothian," or bricklayer, to the then Collector of this district, complaining that certain ryots were withholding certain dues to which he was entitled as holding a "Maniem" to remunerate him for keeping the Temple Pracarums, Muntapams, &c, clear of all brushwood, &c., and requesting that the collections on this account be at once realized. C. purports to be a copy of an order issued to the Deputy Peishcar on the 14th July 1814, directing this officer to recover the said allowances due to the petitioner in B.

14. The plaintiff throughout assumes (but he has entirely failed to prove) that the Temple Pracarum wall, alluded to in the said documents B. and C., is the very wall now in dispute, and from which the defendants removed the stones. The Civil Judge is, however, satisfied that this is not the Covil "Pracaram" or Covil "Mathel," or a wall in any way belonging to the Pagoda. Higher up on the rock, and encircling the Pagoda building, is another wall, the Covil "Pracarum;" to clear this wall, which in some places it is hardly possible for man to climb, there being an abrupt precipice on one side, is a work of great difficulty, and attended with much risk to life and limb, it is quite necessary, too, that the brushwood up here should not be allowed to get too much headway, or there would be danger to the masonry, it is but natural that for services of such a nature where a skilled hand is required, a Maniem and its allowances should be assigned; on the other hand, to clear brushwood from the wall in dispute, ordinary cooly labor would suffice, and there could be no attendant risk in the work to be performed. Document D. purports to be a copy of another Takeed, said to have been issued in 1815, directing the Head Peishcar to have all the walls and streets cleared of the overgrowing brushwood; this document is brought forward evidently because in it, beyond a doubt, the wall in dispute is pointedly referred to. However, the Civil Judge refuses to accord the slightest credit to this document, the original of which this purports to be a copy, is nowhere to be found. Secondly, it is not a copy of the original, but is a copy of a copy said to have been prepared from the original document, and this copy, from which it is said to have been taken, does not bear the Collector's or any officer's signature in attestation of its genuineness. Thirdly, if such a document had been really in existence, the plaintiff or some other of the Pagoda people would most undoubtedly have provided themselves with a copy at the time when the Documents B. and C. were obtained from Mr. Collector Maltby in 1851.

15. Documents E., F., and G. are irrelevant; the first document relates to a piece of ground within the Rock Fort, the other documents refer to a tank and its parapet walls. Document H. needs no consideration; it is a sale certificate granted by Lieutenant Mead of the Royal Engineers, and is filed, because the wall now in dispute is termed in this document as "Mallai Kottai Mathel."

16. With regard to the oral evidence of plaintiff's six witnesses, it is just so much trash, they do not point out any specific marks to show that the disputed wall is Pagoda property; all these witnesses are persons residing in the street within this wall, their sympathies and prejudices (pretty strong too) are all with the Pagoda, their evidence must therefore be cautiously accepted. However, taking it at its full worth, the plaintiff has completely failed to establish that the wall in dispute forms a portion of the Pagoda property.

17. So much for the plaintiff's claim, and although it may be considered unnecessary to make any long notice of the defence urged on behalf of the Government servants, the Civil Judge considers it advisable, with a view to putting a stop to further disputes, to declare that this wall is the property of the State.

18. Twenty-four documents were filed by the 1st defendant; these are principally English correspondence, being letters that have passed between the Government, Collector, Engineer, and Military authorities between the years 1818 and 1846 relating to the Trichinopoly Fort.

19. To the most inexperienced observer, one visit to the Rock Fort would at once satisfy him that this inner or citadel wall is an integral portion of the Military fortifications of Trichinopoly, as

shown in Document No. 21, a plan of the Fort, there are bastions and flanking defences to this disputed wall, and just within this wall, in some places abutting on it, are the Government Granaries, Stores, Powder Magazine, and Guard Rooms now in possession of the Government. Had this wall been built as a "Covil Pracarum," there was no necessity for fortifying it.

20. Documents 8 to 13 show that in the year 1845-46 a portion of this wall, in the eastern or Tanjore side, was pulled down under the sanction of Government, and the stones so removed were made use of by the State for public purposes. Documents 14 to 16 show that this wall was repaired from time to time at the expense of the State.

21. Under these circumstances, there is not one shadow of doubt that the wall in dispute (as established by the documentary and oral evidence of the defendants) forms a portion of the fortifications of the Trichinopoly Fort; that as such it is State property, and that Government has never ceased to exercise its authority over it, or allow its interest in it to lapse.

22. For the foregoing reasons, the Civil Judge dismisses the plaintiff's claims with all costs.

(Signed) Æ. R. McDONELL,
Civil Judge.

TRICHINOPOLY,
5th December 1866.

(True Copy.)
(Signed) R. F. OAKES, Captain, R. E.,
Superintending Engineer.

No. 254. ORDER THEREON, 15th February 1867, No. 442.

CIVIL WORKS, No. 34.

Ordered to be recorded.

(True Extract.)

Colonel, R. E.,
Secretary to Government.

To the Superintending Engineer, 6th Division.
" Board of Revenue.
" Revenue Department.
" Collector of Trichinopoly.
" Government Pleader.

Exd. S. T. Augustin.

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Revenue 1867 Oct 15th
Box of Court for July.
No. 1410.

Proceedings in the
S. M. Vespasian.

Dated 15th July
Received 18th July 1867.

No. 1412.

Recording letter from
Supdt. Engr. & Dir. forwarding
copy of the Judgment & the
Decree by the Civil Judge
& Prothonotary on the Right
Suit regarding the proprie-
torship of the Rock Ci-
tadell Wall. —

No. 398

18th July 67

No. 224-225.