

CONFIDENTIAL.

G.O., No. 1461 Mds

Confidential No. 918.

DATED 16 March 1897

[Despatch Abstract.]

Communicated to the Collector of Ganjam on the
Board of Revenue with remarks letter from the
Govt Pleader forwarding the memoranda of the
Honorable the Advocate General & the Govt Pleader
regarding the written statement to be filed
in O.S. No 26 of 1896 on the file of the District
Court of Ganjam -

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Mis	261	Rev.	15-2-97				

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
Mis	1583	Rev.	24-3-97				

Revenue
Judicial (1897) Department.

CURRENT No. 2129
Confidential No 23.



Issue this evening
private

Honble W. Gore C. to
Order of 16 March 1897 No 1461/97
16/3/97

The Govt Pleader
Madras

No. 205

Communicated to the Collector of
Panjam & the Board of Revenue. As
recommended by the Advocate General,
a preliminary application for the
rejection or amendment of the plaint
should forthwith be made. If such ap-
plication is unsuccessful, the written
statement of defence shall be revised in
accordance with the suggestions of the
Advocate General & the Govt Pleader.
2 Paragraphs 8, 11 & 12 of the statement
appear to require further revision
with reference to the decision of the
High Court in I.L.R. Madras 11.20.
which recognized the adoption of
the present plaintiff's father. The
nature of the amendment necessary

Dated 8th March 1897
Received 9th
Registered 9th
Enclosures returned
Spare copies

SUBJECT.

Forwarding the memorandums
of the Honorable the Acting
Advocate General & the Govt Pleader
Scrutinizing the written statement
to be filed in O.S. No 26 of 1896 on
the file of the S^d Court of Panjam.

Recd 5.45 pm
9/3/97

will be referred to the ~~Advocate~~
~~General~~ by the ² Pleader for report.

favor of opinion. ² Limitation with
 the Advocate General.

3. The attention of the Board & the
 Collector will be drawn to G.O.

no. 504 Rev. J. 23-7-88 respecting

a petition presented by the plaintiff
 for a share in the Hattighan

allowance

14-3-97

The Collector, Ganjam. A10

The Board (C.R.). A10

The Govt. Pleader } G.O. with G.O. no.

~~The Govt. Pleader~~ } 504 Rev. J. 23-7-88

in original for reference &
 return. also a file of 22 incl. in
 a separate cover.

Office

If this order is approved, it
 must be copied & despatched to
 same day to the Ganjam Colr. &
 the Govt. Pleader.

14-3-97

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Memorandum

I would allow the first clause of para: 6 to
 remain as it is; and for the remainder of that para:
 I would substitute as follows:-

It was resolved by the Government of that date
 that as the family of the Ex: Zemindar was reduced to
 great straits, the sum of Rs 5000. should be granted as
 an allowance to his widow as a matter of grace and favor
 and in recognition of the Ex: Zemindar's signal loyalty
 to the British Government. But the Government at the
 same time declared that the allowance was a personal one
 to the widow for her life and subject to revision on her
 death. In accordance with that Resolution the allowance
 of Rs 5000 is still paid to the 3rd Defendant (the widow)

The rest of the Written Statement with the amend-
 ments suggested by the Board may stand.

The issues relating to the question of Limitation,
Res judicata, and Pension must be fatal to the Plaintiff's
 suit.

[Signature]

Government Pleader

Madras }
 23. 2. 97

No Civil Suit No. 26 of 1896 District Court of Ganjam

It does not appear from the plaint what is the cause of action against the 2nd defendant, nor does it appear what the cause of action is against the 1st defendant or the 3rd defendant. I wanted to see what is the cause of action set forth in the notice given to Government under Section 424 C. P. C., which notice is referred to in para 10 of the plaint. That Section requires the cause of action, as well as the relief prayed for, should be set forth in such notice. I do not, however, find the notice among the papers, nor the petition alleged in para 9 to have been sent to Government during his minority by his mother and guardian. In para 12 of the plaint, the prayer is for a declaration that the Plaintiff's right to receive year by year from the 1st defendant either directly or through the medium of Government the money allowance of Rs. 5000. be established. This is a claim by the Plaintiff directly against the 1st defendant and the 1st defendant only, and there is no claim against Government. If the 1st defendant is to be at liberty to pay the money to Plaintiff through the medium of Government instead of making such payment directly to the Plaintiff, that is not making a claim against

Government. But strange to say in the latter part of para. 12, there is a prayer for a decree directing all the defendants to pay to the Plaintiff Rs. 5000. per annum subsequent to the date of decree. This is really inconsistent with the former portion of this para. so far as 2nd. and 3rd. defendants are concerned, and why the 3rd defendant should be ordered to pay him Rs. 5000. yearly is incomprehensible. This plaint ought not to have been admitted at all, but should have been rejected or returned for amendment. It is not too late even now to do so, the issues not having been settled yet vide Section 53 C.P.C. The first paragraph of the written statement should be directed towards this, and I would suggest the following to be inserted in the written statement.

The plaint discloses no cause of action against this defendant, and the prayer in the plaint for a declaration that the 1st. defendant is bound to pay to the Plaintiff every year the sum of Rs. 5000. either directly or through the medium of this defendant is inconsistent with the prayer that this defendant along with the other defendants do pay to Plaintiff the sum of Rs. 5000. every year subsequent to the date of decree."

The written statement is prepared virtually to meet an amended plaint, and it is certainly

too elaborate an answer to a plaint which is not only loose and vague, but in fact discloses no intelligible cause of action. From the facts of the case which I gather from the papers including the pleadings and judgment in the former suit, it seems quite clear that the Plaintiff has no cause of action at all against the 1st. defendant, and that the only possible claim he can have against him is for the recovery of the villages, which claim has long ago been barred, and is also now res judicata by the decision in L.R. I Indian Appeals p. 335.

The 5000 Rupees paid by the 1st defendant to the 2nd defendant seems to be no other than the assessment payable to Government on the villages, and I presume it is paid as such.

The Government no doubt has been paying and still continues to pay that amount to the 3rd defendant. Whether such payment be purely one made as a matter of grace and favor, or in lieu of some claim or right on the part of the ex-Temindar to the villages in question, it falls within the purview of Section 4 of the Pension Act, and Section 6 bars the jurisdiction of civil courts without a certificate from the collector. This is the only possible claim which the Plaintiff can make against

against Government and if he does so, he will at once be put out of Court by the Pensions Act. If the Plaintiffs' claim were viewed in this light, the decree in the former suit cannot operate as *res judicata*, nor is it clear that his claim will be barred by the law of limitation.

Article 131 Schedule II of the Limitation Act provides a period of 12 years for a suit to establish a periodically recurring right, such period to be reckoned from the date of refusal. However, considering the vague nature of the plaint, and the fact that the written statement is framed in view to meet every possible claim which the Plaintiff may ~~irregularly~~ be irregularly allowed, as is not uncommon in India, to urge during the progress of the suit or even while summing up his arguments at the end of the case, though such case is not set forth in the plaint, and may be even inconsistent with it, there will be no harm in allowing the pleas of *res judicata* and limitation to stand in the written statement.

As there seems to be some doubt whether in estimating the assets of the Zemindary for the purpose of fixing the *peishkush*, the Kattubady alone in regard to the villages in question was included in the assets or the full

full assessment payable in respect thereof was included, I would suggest an amendment as follows of para 2 of the draft written statement, namely -

"The fifty *Inotchasa* villages referred to in para 3 of the plaint being alienations of public revenue, the permanent settlement of Hautghur Zemindary was, under Section 4 of Regulation XXV of 1802, exclusive of the said villages, and the right to resume them by imposing full assessment of the land tax thereon was reserved by law to Government."

It seems to me that such reservation is made by the Legislature itself, and the mode in which the accounts were prepared as a basis for calculating the *peishkush*, cannot legally affect such reservation. If the accounts were prepared on a wrong principle, and there is nothing presented in the Regulation as to the principle on which the *peishkush* is to be fixed, such error might afford an equitable ground for revising the *peishkush*, but it cannot affect the reservation made by the law itself, except possibly in cases in which such rights reserved to Government were expressly surrendered or abandoned. I presume that the

Estimidar

Istimirar sunnud which was issued for the Hatghur
 ag Zemindary when it was permanently settled contained
 one the usual reservation of the articles of revenue men.
 If tioned in Section 4 of Regulation XXV of 1802. In the
 the case reported in I.L.R. Madras Series pages 21.25
 res. 26, it was held that the insertion in the sunnuds
 be of a clause repeating the declaration contained
 in Section 4 is a surplusage, and that even in the
 absence of such a clause the legal effect will
 es be the same. I do not think these questions can
 re arise in the present suit.

The amendments suggested by the Board of
 a Revenue and by the Government Pleader may be
 adopted. I think a preliminary application should
 at once be made to the District Judge for reject-
 ing the plaint or returning it for amendment
 on the ground that it is vague, and discloses no
 cause of action against the 2nd defendant,
 and that as it now stands it is impracticable
 to meet it by an intelligible or satisfactory
 written statement. If such application be granted,
 the draft statement should be thoroughly revised
 and considerably abridged. If the application
 be refused on the ground that it was not made
 at the earliest opportunity, or on any other ground,
 then only the proposed written statement

revised as suggested should be filed.

Madras

5th. March

1897.

Albushyall Dyar
 Acting Advocate General.

To

The Government Pleader.

Madras.

Madras, 8th March 1897.Confidential.

No. 205.

From

E. B. POWELL, Esq.,

GOVERNMENT PLEADER,

Madras,

To

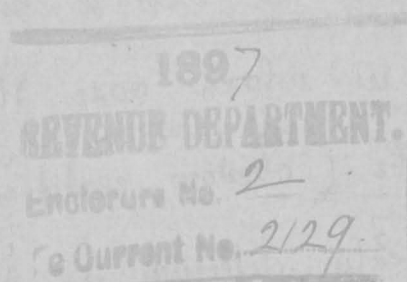
THE Secretary to Govt.Revenue Department

Sir,

With reference to the Proceedings of Government dated the 15th February 1897, N^o 861 and I have the honor to state that, I have made a memorandum of the alterations I consider advisable and the Acting Advocate General has made a separate Memorandum embodying his views. It appears to me that it will be unnecessary to go into many of the questions. Either the Rs 5000 is claimed as representing the profits of the Cauds in which case the suit is Res judicata or it is claimed as a pension in which case the Plaintiff cannot sue without the Collector's certificate.

The Plaintiff is undoubtedly defective as not showing a cause of action and should have been rejected for that reason, but I do not think the Court will

reject



reject it now, it not having had rejected in the first instance.

I have the honor to be,
Sir,

Your most Obedt Servt,

W. W. W.

Government Pleader

Hautphen Pension Suit Revenue Deptt
Patd for 29th March at Gangan
Recd C. N. 2129 of 1897

The Hon'ble Mr. J. G. G. C. S. E.

For orders.

With the current read above, the Govt Pleader forwards a memorandum of ^{the} alterations he proposes to make in the draft answer to be filed in the Hautphen Pension suit, C. S. no 26 of 1896 on the file of the S^t. Court of Gangan and another by the acting Advocate Genl, embodying his views.

Both officers agree that the plaint is defective as not showing a cause of action against the Secretary of State and the acting Ad Genl suggests that a preliminary application should at once be made to the Court for rejecting the plaint or returning it for amendment under Sec 53 of C. P. C. but the Govt Pleader thinks that the Court will not reject it now as it was not rejected in the first instance. The section it is submitted, gives a wide discretion to the Court either

to reject or to return for amend-
ment 'on or before the first hearing',
the written statement not yet having
been filed, the first hearing is to come
off still and it is not too late to make
the preliminary application suggested.
The Collector may, it is submitted, be
directed by telegraph to make the
application.

1/15/97

Since the receipt of the
above memoranda, G.O. No 504,
dated 23 July 1888 has been traced
and has a very important bearing
upon the case. An application on
behalf of the present plaintiff to
participate in or to succeed to the
allowance, was fully considered
and the case for and against the
petitioner was fully discussed by
the Hon'ble Mr. C. G. Master on the one
hand and by the Hon'ble Sir Henry
Stokes and Sir Phillip Hutchins on
the other. Another important point
that has been made out is that the
adoption of the plaintiff's father
has been upheld by the High Court
(II Madras L.R. 20) and the
plaintiff has been recognised by
the court as the legal heir to the
Hantighur family and granted a

Certificate to collect debts due to his
father's maternal grand mother

In the light of the above
circumstances, paras 8 and 11 of
the written statement regarding
the validity of adoption, should be,
it is thought, expunged and para
12 should be materially modified

For orders as to whether the
papers should go back to the legal
advisers of Govt with the G.O. No 504
of 1888, for the Hon'ble the Advocate
Genl says in the first para of his
memorandum that he searched
in vain for the petition referred to
in para 9 of the plaint and disposed
of in the G.O. quoted above. With the
G.O. before them, they may advise
further amendments in the
written statement.

The case is posted for hearing
to the 29th Instant

Please see the draft order on the
behave of the docket of the
current

14-2-87
1/15/97

I have passed the drafts

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16/3/97

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