

Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 5269

DATED 9 Oct 97

[Despatch Abstract.]

Sanctioning with remarks the defence of
a suit brought by one Pillayar Thar Chetty
of Coimbatore against the Supt, Madras
Survey for rectification of certain boundaries.

BACK PAPERS.

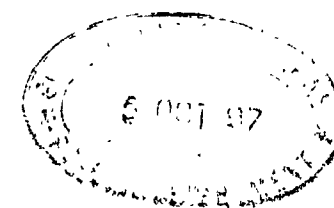
G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

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G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

Revenue (1897) Department.

CURRENT No.



From
The Superintendent
Madras Survey

No. $\frac{125}{g.}$

Dated 3rd October

Received

Registered

Enclosures 7

Spare copies

Order

SUBJECT.

Two Civil Suits of
1897 on the file of
the District Munsiff's
Court, Cojebore
Requests permission
to defend — at
the Cost of Government

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

(G. O. Form No. 13-A)

SURVEY OFFICE, MADRAS.

125. 3 October 1897

No.

From

H. O'C. Cardozo, Esq., C.I.E.,

Superintendent, Madras Survey,

To

The Secretary to Government,

Revenue Department.

REFERENCE.

Sir,

I have the honour
to request permission to defund
at the Cost of Government,
the following two Civil Suits.

Original Suits Nos 574
and 575 of 1897 on the file
of the District Munsiff's
Court, Cojeveram,
Chingleput District.

2. Copy of the plaint in the
2 Suits is enclosed together to

with my proposed reply -
 Copy of letter No: 544 dated
 20 September 1897 from the
 Government Solicitor, Madras,
 And Copy of my letter to the
 Government Pleader, Chingleput,
 are also enclosed for
 information -

3. The date of hearing
 of the Suits is the 9th October 1897.

I have the honor to be
 Sir
 Your most obedt Servant

Superintendent
 Madras Survey

24/10/97

D 1,000-8-4-97.

REVENUE DEPARTMENT.

C No. 8548

From the Supt of Survey

Dated 3 October 1897.

FOR ORDERS.

Am Mr. C. Ross C.E.

Flg A

The Supt of Survey asks Govt to
 sanction the defence, at the
 public expense, of two suits
 brought against him (Am) -
 The subject matter of
 the two suits is similar.
 A reference to the sketch
 submitted by the Supt.
 will make it clear. The
 piece of land marked
 yellow in sketch is in
 dispute between the owner
 of house no 169 & the owner
 of houses nos 151 & 152.

After enquiring Mr Hatchell
 Sg Supt of Survey found
 possession to be with the
 owners of Nos 151 & 152 &
 so had the stones 4, 5, & 6
 planted. The owner of
 No 169 now brings a
 suit to declare his title to

The owner of No 169
 appealed to the Supt
 who confirmed
 Mr Hatchell's decision.

24/10/97

the yellow land. He also
prays that the Court do
direct the Supt of Survey
to remove the stones 4, 5, 6
& plant them down at 1, 2, 3.

Under the act recently
repealed (Act XXVIII of 1860
please see section XXV marked
with tape in the Madras
Survey Manual put up)
an aggrieved party
could appeal to the Civil
Courts from the Supt's
decision provided the
suit was preferred
within six calendar
months of the date of
such decision.

In this case the
Superintendent's decision
was passed on the 10th Nov 86
& was communicated to
the owner of No 169 on the
23rd November 97. Hence
the suit was time barred
on the 23rd of May 1897.
Further the Supt of Survey
passing a decision under
section XXV of Act XXVIII of 1860
would seem to act judicially

FOR ORDERS.

Vide translation of plaints B & C.

It is clear, I submit that Fort-chinner defend
the suit.

[Signature]

* This was first published
in the Fort St. George
Gazette on that date.
Vide § 5 of the Madras
General Clauses Act
I of 1891.

A suit operates to revive a right
if one which has been barred by
limitation.

[Signature]
16/10/97.

The date of filing the present suit
has not been reported. ~~The plaintiff~~
~~however did not get the~~
summonses ~~filed~~ are however
dated 6th Sept 97. (Vide 764 E.)

An appeal does

[Signature]

F

and therefore no suit
~~could~~ ^{can} be brought against
him vide Act XVIII of 1850.

The ag. Govt Solicitor whom
Mr Cardozo ^{Amended} seems to be
of the above opinion. Vide
letter flagged F.

h. Act XXVIII of 1860

was repealed by h. Act IV of 1897
which came into force on
the 29th June 1897. The latter
Act (section 13) gives one year
as the period within which
the suit must be instituted.
But this provision cannot, I
submit revive the expired
term of limitation under
the old Act (Vide please
Sec 8(c) of the Genl Clauses
Act I of 1891).

Supposing therefore that
the Supt's decision of the 20th
Nov 1896 was given under
Sec XXV of Act XXVIII of 1860
his answer to the present
suit would seem to be
hardly (1) that the suit
is time barred (2) that no
suit lies against ^{him} for
acts done judicially in
good faith.

Sec XXV of Act XXVIII of 1860
however, presumes (1) a
dispute (2) an enquiry
into that dispute (3) a
consequent demarcation.

Here it would appear
(please see reply 3 to plaint
Flag 9)

That the stones were planted
apparently in ignorance
of any dispute. Subsequently
the present plaintiff com-
plained to Mr Hatchell
who saw no reason to
alter the stones as originally
fixed.

Apparently the plaintiff
defaulted to ~~appear~~ in the
beginning (vide Section
VI of Act XXVIII of 1860).
If that was the case, then
apparently Mr Hatchell
should not have entertained
any subsequent objection.

The Supt has not
upheld the case fully. The
above facts are gathered
from his replies to the
plaint (Flag 9). It will
be seen that the Superintendent

(the spirit of the dishonest surveyor
moving them apparently is not material)

I don't see this. An appeal
is allowed.

It only states that
the land was in two parts
of dispute when it was
demarcated.

P.S.O. No 143
para 586.

See also section 423 of
the Civil Procedure
Code.

Yes. I think, too, the High Court
have decided that the limitation
time is to be counted from the date
of the original decision, not of
the date of the appellate decision.
This should be looked up.

I do not understand how VIII
of the Act allows an appeal
to be made.

Brings up two draft replies
(Flags 9 & 11). It is hard to
make out which of them
he intends to file. The
draft (Flag 9) seems dicta-
torial in as much as it
is therein expressly denied
that the land is plaintiff's
which is probably going
too far. On the other hand
the reply Flag 11 seems
insufficient if the decision
of Nov 10th was not as a
matter of fact under
Section XXV of the 1860 Act.

The suit is posted to the
9th instant. Courts have
been instructed to allow
Supt. 3 months for
documents produced within
filing these replies. In
the present case apparently
only about a month has
been allowed.

Submitted that the
Supt be informed ^{given} to get an
adjournment requested
to report fully on the matter
in the meantime, that
he be ~~allowed~~ to be asked
by telegram to direct the
Supt-Plaintiff to obtain an

Sec XXV

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(Please

May 9)

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adjournment for at least
a month.

Wm
6/10/97

The folly telegram is submitted
to the Secy for approval

From
Madar Res To
Supt of Survey

Your 1259. Third
instant. I instruct
Govt Pleader Chinglat
to obtain adjournment
for one month. section
423 civil procedure
code.

Wm
6/10/97

Wm
6/10/97

The plain is to be opposed
to a suit not an appeal
in order of priority

28
6/10/97

Secy for

The Hon. Secy for
the Govt. has been
informed of the
fact that the
Supt. of Survey
has been ordered
to attend to the
case.

Wm
6/10/97

Why is this returned & not
I passed it. 4/10/97

Wm
6/10/97

It was evidently
to the Secy by a
mistake

Wm
6/10/97

Read
Am No 8548 P

Ex. misc. No 52 of 19 Oct 97

The defence of the suits
at Govt expense is sanctioned

2. The Supt has not
reported the facts of the case
fully and the Govt is
not in a position to judge
whether his proceedings
and those of Mr. Hatcher
were judicial proceedings
taken under Section 25 of
Act XXV of 1860. In the
present case, the demarcation
complained of appears to
have been made under
Section 6 of the Act previous
to cognisance being taken
of any dispute.

3. If the proceedings of
the Supt & Dy Supt were
judicial proceedings under
Sec 25 of the Act, then an
appeal would lie
to a Civil Court, if not
barred by limitation. It
seems doubtful, however,

Whether such a suit
ought not to be brought
against the Secy of State
for India in Council
rather than the Supt of
Survey.

4. With regard to the
question of limitation
the Govt observes that
according to *Mun Singh
v. Venkataramin* (H. R.
3 Mad. 92) the term of
limitation runs from
the date on which the
District decision was
communicated to the
plaintiff.

5. With this letter read
above, the Supt forwards
two draft replies. In one
the Supt pleads only
limitation and privilege.
In the other, the averments
of the plaintiff are ^{traversed}
in detail. It is not clear
which reply the Supt
intends to file. From
the remarks made above
it is to be seen that both
replies appear open to

objection. The latter reply
is open to the further
objection that it expressly
denies that the land in
dispute belongs to the
plaintiff. It would be
insufficient to plead that
the land was in the
possession of the 2nd & 3rd
defendants at the
time of demarcation.

6. The Supt ^{is requested} ~~will~~
~~accordingly to place himself~~
~~in communication with~~
~~the Govt Pleader Chingleput~~
is accordingly, requested,
accordingly, to draw
up a revised reply in
consultation with the
Govt Pleader Chingleput
and to submit the same
for the approval of the
Govt ~~after~~ with a full
report on the facts of
the case.

7. The Supt has already
been requested ^{by telegram} to obtain
an adjournment of the
suits.

To the Supt of Survey P.O.
with encs. returned

Recd
8/10/97
Des. 12-10-97

8/10/97