

MADRAS RECORD OFFICE.

Government of Madras.

Industrial DEPARTMENT.

G.O. No.	1388	Press
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	16-17	
Dated	21-10-1887	

Not to be folded or roughly handled

Fort St. George, Judicial Consultation, 29th October 1857.

No. 16. Read the following letter from C. F. CHAMIER, Esq., Acting Register to the Court of Sudr Udalut; to E. MALTBY, Esq., Acting Chief Secretary to Government, dated 10th October 1857, No. 102.

SIR,

1. Circumstances having transpired in the ordinary course of the Judicial business of the Sudr Udalut, which tend to throw some light on the origin of the unsatisfactory relations which for some months past have existed between the Civil Judge of Cuddapah and a numerous and influential party in the district, who are supported by some of the Court servants, I am directed by the Judges to report the same for the information of the Government.

2. In the year 1852, a suit (No. 1 of 1852) was instituted in the Civil Court of Cuddapah by the widows in the family of the late Sarabiah Chetty, a wealthy merchant of that Zillah, to recover from their relations nearly five lacs of Rupees out of the family estate.

3. The suit was one which, from the position in life of the litigant parties, must under any circumstances have attracted some degree of public notice; but it seems latterly to have acquired positive notoriety from the fact becoming known that Mr. H. Faure de Fondclair, an intimate friend of the Judge who was to decide the case, had entered into dealings with the plaintiffs, and was deeply interested in the issue.

4. Judgment was delivered by Mr. Elliot, on the 3rd May 1856, and, only two days afterwards, an action was brought by Mr. Fondclair against two of the widows, in order to obtain payment to him of one-fifth of the amount awarded by the Civil Judge to the 4th plaintiff.

5. In his plaint in original suit No. 1 of 1856, it was stated by Mr. Fondclair, that the four widows, plaintiffs in original suit No. 1 of 1852, had borrowed money, &c., from him, and, at a settlement made on the 10th September 1855, had given him a bond for Rupees 40,000; but that the 3rd and 4th plaintiffs had become alone responsible for the amount, by executing to him a stamped bond, dated 12th February 1856, in which they bound themselves to make over to him, in liquidation of the debt, one-fifth of such sum as might be awarded them in the said suit; and, that the decree having been given, he sued to recover Rupees 96,840-7-8, being one-fifth of the sum awarded to the 4th plaintiff.

6. On the same day that the 1st defendant filed her answer (15th July 1856,) acknowledging the debt but pleading that not more than Rupees 40,000 was payable until execution of the decree in original suit No. 1 of 1852, had been carried out, Mr. Fondclair put in a motion praying that his suit (No. 1 of 1856,) might be struck off the file, as the matter had been compromised and the 1st defendant had assigned to him one-third of the amount decreed to her in original suit No. 1 of 1852. Mr. Fondclair's claim, therefore, against the widows under the bond for Rupees 40,000, dated 10th September 1855, had on the 12th February 1856, or three months before the decision, increased to Rupees 96,840-7-8, or more than double, and on the 15th July 1856, or two months after the date of the decision, had risen to Rupees 161,400-2-7, *i. e.* more than four times the amount of the demand as it stood about ten months previously.

7. It appears from an endorsement on the back of the decree, that, in conformity with the terms of a motion filed on the same date by the successful plaintiff in original suit No. 1 of 1852, who admitted Mr. Fondclair's claim to one-third of the sum awarded her, the Civil Judge directed that the first Rupees 40,000 realized in execution should be paid to Mr. Fondclair.

8. All these matters are found upon the public records of the Sudder Udalut, and the Judges consider that there is quite enough upon the face of them to account for the feeling of discontent which has been for some time prevalent in the native mind at Cuddapah.

9. Without expressing any extra-judicial opinion on the nature of Mr. Fondclair's dealings with the widows in question, the Judges feel perfectly at liberty to state that, not having been elucidated by any public enquiry, they were sufficiently inexplicable to give rise to the impression which has seized the native mind, that the valuable estate of a respected Hindoo family was being dissipated, without any corresponding benefit accruing to its members.

10. The Judges are of opinion that the Civil Judge's order allowing the transfer of a fractional part of the decree to one who was no party to the suit, was particularly injudicious and objectionable, as being contrary to the general practice of the Courts, and calculated, in the present instance, to involve him in some measure in the circumstances which had caused the disaffec-

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tion among the natives; for they would naturally infer that, in passing so unusual an order, the Civil Judge had been influenced by his feelings of friendship towards Mr. Fondclair.

11. That this was the effect produced is clear from the fact that, from the time of those occurrences, an influential party have ranged themselves against Mr. Elliot, and, by petition and every other means in their power, have been secretly endeavouring to undermine his authority and injure his character. In these endeavours they, for a time, so far succeeded as greatly to impede the business of the Court, and cause the most unprecedented delays, which have necessarily drawn upon the Civil Judge the severe displeasure of the Judges of the Sudder Udalut.

12. Had this state of things continued, the Judges would have considered it their duty to recommend that Mr. Elliot should be exchanged to some other Zillah, where his talents and exertions might have been more profitably employed; but, as a very material improvement has taken place in the dispatch of the business of the Cuddapah Court and the Civil Judge appears to have regained the influence over those subject to his authority and jurisdiction which, by his want of discretion in the instance named, he had temporarily lost, the Judges do not consider it necessary to do more than merely bring the whole circumstances to the notice of the Government, as explaining the cause of the excitement and discontent which for some months prevailed among the native inhabitants of Cuddapah and some of the Court servants.

(Signed) C. F. CHAMIER,
Acting Register.

No. 17. ORDER THEREON, No. 1388; dated 21st October 1857.

In this letter, the Judges of the Sudr Udalut bring to the notice of Government some circumstances which had diminished the authority of Mr. W. Elliot, the Civil Judge of Cuddapah, and impeded the administration of justice in that Province.

2. In the year 1852, the widows of a wealthy merchant Sarabiah Chetty, brought an action against their relations to recover nearly five lacs of Rupees out of the family estate, and the public attention which a suit of such magnitude would have always excited was much increased by its becoming known "that Mr. H. Faure de Fondclair an intimate friend of the Judge who was to try the case had entered into dealings with the plaintiffs and was deeply interested in the issue."

3. Judgment was given in favor of the plaintiffs and only 2 days afterwards, Mr. Fondclair brought an action against two of the widows to obtain payment to him of one-fifth of the amount which had been awarded by the Civil Judge to the 4th plaintiff. Mr. Fondclair's claim was originally Rupees 40,000, but in "2 months after the date of the decision had risen to Rupees "161,400-2-7, *id est* more than four times the amount of the demand as it stood about 10 months "previously," and an impression consequently "seized the native mind that the valuable estate "of a respected Hindoo family was being dissipated without any corresponding benefit accruing "to its members." This unfavorable feeling was heightened by the Civil Judge passing an order that the first Rupees 40,000, realised in execution of the decree was to be paid to Mr. Fondclair, although that person was not a party to the suit, and the order was therefore objectionable not only in point of judiciousness "but as being contrary to the general practice of the Courts."

4. The effect of these proceedings is described to have been that "an influential party "ranged themselves against Mr. Elliot and by petition and every other means secretly endeavour- "ed to undermine his authority and injure his character." The business of the Court was thus seriously impeded, and the Judges of the Sudr Udalut would have consequently recommended Mr. Elliot's removal to another Judgeship, but as he has latterly appeared to have regained his in- fluence over those subject to his authority, they "do not consider it necessary to do more than "merely bring the whole circumstances to the notice of the Government as explaining the cause "of the excitement and discontent which for some months prevailed among the native inhabitants "of Cuddapah and some of the Court servants."

5. Before acquiescing in this conclusion the Government wish to receive information regard- ing the position in which the Civil Judge has hitherto stood and now stands towards Mr. Fond- clair, and also to learn whether the litigation in which the widows of the late Sarabiah Chetty are interested, has been brought to a full and final settlement. It is accordingly requested that the Judges of the Sudr Udalut will be good enough to give information on these points, since if

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the Civil Judge's intimacy with Mr. Fondclair continues as before and the litigation under notice is not closed, Government can feel no assurance that a display of dissatisfaction and discontent on the part of the native community will not be repeated.

(Signed) E. MALTBY,
Acting Chief Secretary.

For Orders

The orders of Govt are requested in this letter. — Is the matter to end here,

or is more explanation to be called for to the Judges position toward Mr. Fondclair, and the claims which that person still brings against the Widow's property? J. M.

It appears to me that further explanation is required — & yet it is difficult

to ~~write~~ call for it after this history of the Ind. in which they express present satisfaction — I cannot — after the state of mind in this letter — as there is the possibility of other prejudicial orders being made. —

It is a sort of such magnitude which would have been excited was much increased by its becoming known that Mr. H. Fausse de Fondclair an intimate friend of the Judge who was to try the case had entered into dealings with the Plaintiffs & was ^{deeply} ~~deeply~~ interested in the issue.

3 — Judgment was given in favor of the Plaintiffs

I am quite of opinion that this case should be fully investigated - it has been only too long deferred already ~~and~~ ^{and} ~~many~~ ^{many} months ago, the necessity which appeared to me to call then for a searching enquiry into the allegations reported by some Rattais in the Cuddapah Distt. impugning the official conduct of Mr Elliott in reference to Mr Foulclaire.

I think it is incumbent on the Govt to ascertain whether M. de Foulclaire is still connected with the Cuddapah Court.

Looking to the enormous ~~vast~~ ^{disproportionate} remuneration exacted by him in Feb. 1852; - to the unusual course pursued by the Judge in issuing an order characterised by the terms employed in the G.O. of S.H. in para 10 of the order and to the impression which seems to have been created among persons connected with the Court in consequence, I do not think it possible to avoid drawing the conclusion that M. de F. has obtained an influence detrimental to the fair administration of justice in that Court. The existence of that influence - if it still exists - is in my opinion, the removal of Mr Elliott to assist their cause. Did the H. of C. ever reply to the inquiry made by the H. of C.?

N^o 1308 J.D.

Ex: from H. of C. of 21st Oct. 1857.

Read letter from the Actg. Register to the Court - of Judge K. d. d. 10 October 1857/102

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3 - judgment was given in favor of the Plaintiffs

and only 2 days afterwards, Mr. Foulds brought an action against 2 of the widows to obtain payment to him of one fifth of the amount which had been awarded by the Civil Judge to the 4th Plaintiff - ~~However~~
~~he strongly believed that~~ Mr. Foulds' claim was originally Rs 40000, but in "2 months after the date of the decision" had risen to Rs 161400 - 2-7 i.e. at least more than four times the amount of the demand as it stood about 10 months "previously" - & an impression consequently " seized the native mind that the valuable estate of a respected Hindoo family was being depopulated without any corresponding benefit accruing to its members" - This unfavourable feeling was heightened by the Civil Judge passing an order that the first Rs 40000 realised in execution of the Decree was to be paid to Mr. Foulds, although that person was not a party to the suit, &

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not only on point of jurisdiction "but
"as being contrary to the general practice
of the Court."

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interested has been brought to a full & final
settlement. - It is accordingly reported
that the Judge of the Sud. Adawlat will
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the litigation under notice is not closed,
Govt. can feel no assurance that a
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part of the Native Community will
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Yr.

Copy to the Judges of the
Sud. Adawlat } Disp. 21st

Copy to Govt. 29th Oct.

1687

29th Cont. 29th & 30th

Provincial 1807 & 1808

28/1/1808

Contract to Moring of land

2/21/1808