M.R.O. 1—39,000—16-10-20.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT

G.O. No. 1718
39-40

Press
~~Mis~~

Dated 21-12-~~19~~ 1847

Not to be folded or roughly handled

No. 39. Read the following letter from G. R. SHARPE, Esq., Officiating Sub Judge of Calicut; to T. PYCROFT, Esq., Chief Secretary to Government, Judicial Department, Fort Saint George, dated 8th December 1859, No. 154.

In accordance with the provisions of Section XXXI Regulation VII of 1809, I have the honor to transmit for the information of the Honorable the Go-
* *O. S. No.* 634 *of* 1855. vernor in Council, copy of a decree* passed by me.

DECREE OF THE SUBORDINATE COURT ZILA CALICUT.

Original suit, No. 634 of 1855 on the file of Betatnad Moonsiff Poodiagatha Kadia Oomah by Vakils Koonha Menon and Rama Menon.

Versus.

1. Mithelepidigakel Moideen Bhima Oomah.

Supplemental.

2. Mithelepidigakel Soopy.
3. W. Robinson, Esq., Acting Collector of Malabar.
4. P. Grant, Esq., Collector of Malabar, by Vakils Amboo Podwall and Shangaren Nair.

1. This suit referred hither by the Civil Court was brought to recover a Paramba annually yielding produce valued at 8 Rupees alleged to have been sold to plaintiff in $\frac{1023}{1847\text{-}48}$ by one deceased Oomariath Oomah on redemption of an otti right, amounting to Rupees 50 alleged to be outstanding in 1st defendant since $\frac{1002}{1826\text{-}27}$. Purchase from deceased in $\frac{1025}{1849\text{-}50}$ was alleged.

2. The 1st defendant answered that she had obtained this otti in $\frac{1002}{1826\text{-}27}$ from the deceased Oomariath Oomah, that she had paid 70 fanams in addition and that there were improvements to the amount of Rupees 300 and upwards.

3. The 2nd defendant answered as to the right as the 1st defendant had done and asserted that in $\frac{1012}{1836\text{-}37}$ the Government had entered the land as the property of the deceased Betatnad Rajah and therefore theirs by escheat, that he bought for Rupees 105 the Jenm from Government and had paid the rent before the purchase to Government.

4. The 3rd defendant (Collector of Malabar,) answered that the suit was barred by the statute and that the property is that of Government by escheat from the Betatnad Rajah.

5. Points were recorded on the 30th September 1858.

Plaintiff.

1. To show possession by 1st defendant under an otti right of Rupees 50 derived from the former Jenmy Oomariath Oomah.
2. That plaintiff is the present Jenmy by purchase from her.

3rd Defendant.

That the land was the Jenm of the Betatnad Rajah.

6. Plaintiff's Vakil filed 5 documents and cited 7 witnesses, of whom 5 were examined, and 3rd defendant's Vakil filed 2 documents and cited 2 witnesses, who were also examined.

7. On the 29th January 5 witnesses were examined for plaintiff, viz:

3. Mayenkandagatha Mayen.
4. Shekalikandeagatha Koonhally. } To prove 1st and 2nd points.

5. Chooria Kanaren..... To negative the contention raised by 3rd defendant.

6. Potinjerry Ramen Nambiar.
7. Poodia Vittil Paree. } To prove 1st and 2nd points for plaintiff.

3rd Defendant's witnesses.

1. Velootat Naranen Namboodry.
2. Mannayee Govina Menon. } To prove the point recorded for 3rd defendant.

8. Plaintiff's documents.

A. Jenm deed shewing the purchase of the Paramba sued for on Jenm right from Valatoor Ramen Menonby Cherachemvittil Taricooty from whom Oomariath Oomah (under whom plaintiff claims,) has purchased it, dated 915.
1739-40

B. Jenm deed shewing the purchase of the Paramba on Jenm right by mother of Oomariath Oomah's husband from Cherachemvittil Taricootty, dated 946.
1770-71

C. Copy of the otti deed granted to 1st defendant by Oomariath Oomah dated 1002 (no
1826-27
signature.)

D. Stamp deed shewing the purchase of the Paramba on Jenm by plaintiff from Oomariath Oomah dated 1023.
1-47-48

E. An Enack (deed of attornment), by the former Jenmy Oomariath Oomah to 1st defendant informing her of the sale to plaintiff and commanding her either to surrender the Paramba to or acknowledge herself as tenant of plaintiff.

3rd Defendant's documents.

No. 1. Paimâish account shewing the Jenm to reside in Betatnad Rajah dated 1000.
1824-25

No. 2. A part of the account particulars of Betatnad Rajah's property prepared by Public officers shewing this Paramba to be the property of that Rajah dated 1013.
1837-38

Judgment.

9. To determine whether 1st and 2nd defendants (mother and son), obtained possession under an otti right derived from the former Jenmy Oomariath Oomah, there are the admissions of those defendants and the evidence of 3rd and 7th witnesses for plaintiff. It is true that 2nd defendant asserts that he subsequently to the alleged demise on otti, and at a recent date, purchased the Jenm right from Government. But I have nothing to do with such assertions in this suit. It is proved by their own admission, (an admission receivable against them as being clearly against their own interest), as well as by other evidence that 1st and 2nd defendants came into possession in 1002 under an otti right granted by Oomariath Oomah whose rights
1826-27
(whatever they may be), plaintiff is proved, both by oral and documentary evidence of a satisfactory nature, to have purchased. It is monstrous that 2nd defendant after making the above admission should now after so long a possession under that otti be permitted to turn round and deny the interest and estate out of which that otti was granted. Such conduct is manifestly inconsistent and in direct violation of that elementary rule which forbids a man to blow hot and cold with reference to the same transaction, to insist at different times on the truth of each of 2 conflicting allegations according to the prompting of his private interests.

10. I deem it unnecessary therefore to go into the question as to the Jenm right or to pronounce upon the claims advanced by 3rd defendant thereto. Upon the short ground that the late Oomariath Oomah whose representative plaintiff now is, passed the land to 1st and 2nd defendants and that she or her representative is therefore entitled to its return, I decree the return of the Paramba to plaintiff on payment by her of Rupees 50 and 70 fanams additional,

(both admitted to be due), and of improvements according to the Amin's account, and adjudge costs to be paid by 2nd defendant whose contention alone has led to this litigation.

L. S.

Given under my hand and the seal of the Court this 18th October 1859.

(Signed) G. R. SHARPE,
Officiating Sub Judge.

(True Copy.)

(Signed) G. R. SHARPE,
Officiating Sub Judge.

No. 40. ORDER THEREON, 24th December 1859, No. 1718.

To be recorded.

(Signed) T. PYCROFT,
Chief Secretary.

. S. T. Augustin.

Judicial 1859 D 6
From Pres of ~~Oct~~ 31 Dec
The offg Sub Judge of
Cuttack

To The Chief Secretary
to Government
Judicial Departt
Fort St George
Dated 8th December 1859
Received
No 2041 No 154.

Enclosure 1.

Transmitting copy of a decree for the information of the Honorable the Governor in Council.

No 1718.
To be recorded.
24 Dec 1859.

C 17 Dec
R 23 " 39840

Sub Court

I have the honor to be,
Sir,