

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No. 366	Press Mis.
37-3840	
Dated 4. 3. 1882	19 .

5/6

Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
4th March 1862.*

Read the following papers:—

No. 37. From J. W. CHERRY, Esq., Civil Judge of Salem; to C. F. CHAMIER, Esq., Registrar of the Sudder Udalt, dated 21st February 1862, No. 10.

I have the honor to furnish the explanation called for by you under date 19th February 1862, received by me this day, agreeable to the Orders of Government, 17th February 1862, No. 248, on paragraphs 13 to 25 of Mr. Advocate General's letter to Government, 15th February 1862.

2. On Thursday evening the 19th December 1861 at the close of a long day in Court, the Vakeel for the Plaintiff in an original suit subsequently filed in this Court, made a verbal application to me to write at once to the Collector to retain in his possession certain property alleged to have been zifted by him, and about to be made over to one Appoo Row the next morning; the Collector being at that time on circuit.

3. The Vakeel represented that it was a matter of the greatest moment that the Collector should be at once addressed, and that he wished to send him the communication by a special messenger.

4. Accordingly he was furnished by me with an official letter the copy of which I enclose.

5. I was under the impression at the time that I wrote to the Collector, that he was merely making over certain lands and property in dispute, which had been under his attachment, and the course thus pursued by me is one that is usually adopted between Judge and Collector, and has been more than once followed by my predecessors.

6. The Advocate General in the 23rd paragraph says, "this disposal of legal business by private letters, &c.," and again "a private letter is no authority, &c."

7. I beg to submit that mine was not a private but an official letter, directing the Collector to do nothing until he received formal orders from the Court, and which letter I think I was justified in sending upon the urgent representation made to me at the time.

8. Had I been aware that the Collector had been made a party to the suit as 5th Defendant, it would have no doubt been more regular to have issued the same directions in the form of an order, tantamount to an injunction.

9. An injunction to the 1st Defendant and the appointment of a receiver were formally moved for, evidence tendered and the injunction granted under this Court's signature, on the 8th February and communicated to the Collector through the Government Pleader upon his application on the 15th February.

10. The appointment of a receiver which would have relieved the Collector of the charge of the property, the Court finds some difficulty in making, and though that officer has begged to be relieved, it seems not improbable that I shall be unable from force of circumstances to comply with his request, and that he will continue in charge of the certain lands other than the Poliem.

11. I may in conclusion as well mention that I have received no intimation that there was an action in the Supreme Court against the Secretary of State for a part of the same property sued for in this Court.

From J. W. CHERRY, Esq., Civil Judge of Salem; to H. A. BRETT, Esq., Collector of Salem, dated 19th December 1861.

Adverting to an application verbally made this day to me, by Soobramunya Iya, Pleader on behalf of Pethamoothooveerammanee, I have the the honor to request you will be so good as to retain possession of the property alleged to have been zifted by you and about to be made over by you to Appoo Row until you hear again from this Court.

(True Copy)

(Signed) J. W. CHERRY,
Civil Judge.

*Proceedings of the Madras Government, Judicial Department,
4th March 1862.*

No. 30.

Forwarded to Government with reference to their Order dated 17th instant. The Judges abstain from making any remarks upon the Civil Judge's explanatory communication, as it affects matters under judicial cognizance.

By Order,

(Signed) C. F. CHAMIER,
Registrar.

SUDDER COURT,
REGISTRAR'S OFFICE,
26th February 1862.

No. 38. Read the following Proceedings of Government in the Revenue Department, dated 25th February 1862, No. 412.

Communicating certain papers relative to the disputed succession to the Poliput of Ankusagiri and the Government Order thereon, stating that the nomination of Dalavoy Appa Rau as the Poligar to the Estate should be defended on the ground that it is an act of State.

(Vide Proceedings Revenue Department, dated 25th February 1862, Nos. 501 and 502.)

No. 39. Read the following Proceedings of Government in the Revenue Department, dated 26th February 1862, No. 423.

Communicating with reference to Proceedings of Government, No. 248, dated 17th instant, copy of a letter from the Collector of Salem reporting on the private property and lands of the deceased Poligar of Ankusagiri.

(Vide Proceedings Revenue Department, dated 26th February 1862, Nos. 524 and 525.)

No. 40. ORDER THEREON, 4th March 1862, No. 366.

Copies of the above papers, and the enclosures in original received with the Proceedings of Government in the Revenue Department, will be forwarded to the Advocate General, in reference to paragraphs 13 to 25 of his letter of the 5th February.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. F. Cartledge.

REVENUE DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Proceedings of the Board of Revenue, dated 25th February 1862, No. 1,322:—

Read Proceedings of the Madras Government in the Revenue Department, dated 22nd February 1862, No. 389.

(In Cons. 24th February 1862, No. 1,072.)

1. Forwarded to the Collector for report. A copy of his letter dated 17th February 1862, will be submitted for the information of Government which in great part supplies the information required.

2. The Collector's report on the Salem Suit is already before Government.

(A true Extract.)

(Signed) W. HUDLESTON, Secretary.

ORDER THEREON, 26th February 1862, No. 423.

The Government will await the Collector's further report. Meanwhile the papers now sent will be communicated to the Judicial Department, with reference to the Order in that Department, dated 17th February 1862, No. 248.

(True Extract.)

(Signed) C. G. MASTER,

Deputy Secretary to Government.

To the Board of Revenue.

„ Judicial Department with original enclosure.

Exd. S. T. Augustin.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following Proceedings of the Board of Revenue, dated 21st February 1862, No. 1,266:—
 Read the following letter from the Collector of Salem, dated 18th February 1862, No. 31.
 (In Cons. 20th February 1862, No. 991.)

Board's Proceedings dated 20th February 1861, No. 955.
 Government Order, dated 9th April 1861, No. 794.

1. Ordered to be submitted to Government with reference to the correspondence noted in the margin, and with the Board's recommendation that the defence of the Suit at the public expense be sanctioned.

2. The Plaintiff Pedda Mudu Vira Ummani of Ankusagiri is the widow of Chocka Gowda, who as eldest son succeeded his father Kunpu Gowda as Poligar, and was himself succeeded by his second half brother Timmaraza Gowda, after whose death without issue the Estate passed to his (Timmaraza's) widows, the junior of whom Vira Ummani died on 15th February 1860 leaving a Will in favor of her own sister Akkachi Ummani, widow of Careyappa Gowda, who was the youngest half brother of Timmaraza Gowda, and died during his brother's life-time.

3. The succession to the Poliam on Vira Ummani's decease was awarded by Government to Dalavoy Appa Ráu, as the eldest grandson of Poligar Kunpu Gowda through his eldest daughter.

4. As the Government are aware an action of Ejectment and a bill of complaint in Equity have been brought against Government in the Supreme Court by Akkachi Ummani on the strength of her sister's Will.

5. The Plaintiff in the present Suit in the Salem Court claims to inherit the Poliam and other property under the Hindu Law as senior widow.

6. The Board observe that the present Poligar, under the law as enunciated in the Daya Bhaga, is the proper heir, and that the Mitacsbara opposes the claims of sister's sons as heirs, not expressly but by omission to name them in the list of heirs; and that, moreover, both the Pundits of the Sudder Court declared that the surviving widows in the Ankusagiri family were entitled only to maintenance. But be the right as heir to the personal property of the last Poligar with whom it may, there can be no question whatever that under the Decrees of the Court of Sudder

A. S. S. U. No. 6	of 1,807.
" "	13 1,813.
" "	14 1,817.
" "	4 1,818.

Adalat, noted in the margin, the Estate being of the nature of a Zamindári not held under an Istimrari Sanad the decision as to the succession to the Poliput rested with Government, and that in nominating Dalavoy Appa Ráu

to be Poligar, the Government acted in the full exercise of their rights with which the Courts have no power to interfere.

7. The Draft answer submitted by the Collector declares that he holds the personal property merely as *interim* custodian for the rightful owner, to whom he is ready to deliver it on production of evidence of right, and so far appears to the Board to be unobjectionable; but it goes on to declare that the Poliput is held on Inám tenure, and that consequently the jurisdiction of the Court is barred by Regulation IV of 1831, and Act XXXI of 1836.

8. The Board consider that the defence is here placed on entirely wrong grounds. There is nothing whatever to show that the Estate is of the nature of an Inám. It pays a Peshkash of Rupees 7,940-13-4, and although this amount as compared with the computed revenues at the present time, viz., Rupees 20,000, may appear a *favorable rent*, yet it is to be remembered that the family is of great antiquity, that according to Mr. Cockburn's information, the Ankusagiri Poliam had in 1822 been some 450 years in their possession, and that the

See Board's Proceedings above quoted.

disproportion of revenue to Peshkash was probably far less when the State charge on the Estate was first fixed, than it now is.

9. The Board would, therefore, modify the conclusion of the Collector's draft answer in the following manner, "and that the Poliput of Ankusagiri being of the nature of a Zamindári not permanently settled, succession to it depends upon the will of the ruling power, as more fully declared in the decrees of the Court of Sudder Adalat in Sp. A. S. Nos. 6 of 1807, 13

"of 1813, 14 of 1817 and 4 of 1818, and that, therefore, the Court has no jurisdiction in the matter so far as regards the Plaintiff's claim to succeed to the Poliam and to its appanages."

10. The time for putting in the defence expires on 11th March.

(A true Extract.)

(Signed) W. HUDLESTON, Secretary.

ORDER THEREON, 25th February 1862, No. 412.

1. The Government sanction the defence of the Suit at the public expense in the first instance, but will determine when a copy of the Decree is submitted whether the costs if any be adjudged against the Collector, shall be borne by that Officer or by the Government.

2. The Government are of opinion that the nomination of Dalavoy Appa Rau as the Poligar, should be defended on the ground that it is an act of State beyond the power of a Municipal Court to question.

3. As regards the private property the Government can form no judgment until furnished with the full report called for in their Order of the 22nd instant.

4. The Board will consult the Government Pleader in the preparation of the answer, furnishing him with copies of the correspondence connected with the Proceedings in Her Majesty's Supreme Court at Madras.

5. A copy of these Proceedings and papers will be communicated to the Judicial Department.

(True Extract.)

(Signed) C. G. MASTER,

Deputy Secretary to Government.

To the Board of Revenue.
" Judicial Department.

Exd. S. T. Augustin.

Judicial.

Proceedings of the Madras Govt.

Read Indorsement
by the Sudder Court

Read also Pros: in the

Rev: Dept:

Inter 26 Feb. '62 N^o 30.

25-8-26-60. N^o 412
8-4-23.

Order - 4 March 1862. N^o 366.

Copies of the above
papers, & the enclosures
in original received
with the Pros: of Govt.

The defence of this
action is going on in
the Revenue Dept.
I think that the
endorsement in the
letter from the Govt.
should be sent to the
Judicial Dept.
The matter will be
sent in two different
ways - one to the
Judicial Dept. & the
other to the Revenue
Dept.

in the Rev: Dept., will
be forwarded to the
Advocate Genl. in
reference to paras
13 & 25 of his letter of
the 5th Feb.

sent to the
Advocate Genl. 3
With 2 printed & 5 MS. papers
2 pp. Enclosure
3 pp. Enclosure
4 pp. Enclosure
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*Passing orders respecting
the District Revenue
Department*

Dated 4 March 1862.
F. No. 463 - 542 - 840.

PROCEEDINGS of the MADRAS
GOVERNMENT.

No. 366
Local 1862. Department
Provincial

26th Dec 1861

There is a suit
in the Mestral
& one in the Revenue
Court. This G.O.
had been for as
the Rev. order has
already been is-
sued. The same
papers can be
referred to Rev.
Dept & the order
there passed, can
be decided by +