M.R.O. 1—30,000—16-10-33.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 709 Press ~~Mis.~~

129-130

Dated 6-5- ~~11~~ 48.3

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Not to be folded or roughly handled

No. 129. Read the following letter from the Honorable T. SYDNEY SMYTH, Advocate General; to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 12th May 1863.

I have the honor to report, for the information of His Excellency the Governor in Council, the final termination of all the proceedings of all the numerous claimants to the money—originally Pagodas 6,784 or thereabouts, now, by accumulation of interest, about Rupees 6,30,000—paid into Court by the East India Company after filing their Bill of Interpleader on the 4th August 1800; as the purchase money of some 52 grounds, part of the Fort Esplanade, purchased by them about December 1800.

2. On the 5th instant, after nearly two months' deliberation, the Court decided to dismiss the Bill filed by Vundavasee Vencatarungum Chetty, the representative of V. Narsimmah Chetty, [the original owner of the ground, as was agreed on all hands] but none of whose representatives had been made a Defendant to the East India Company's Interpleader suit; principally upon two grounds, viz., that although he did prove possession of, and produced in Court the genuine original title-deed of the ground, the old Choultry Bill of sale executed in 1738 to V. Narsimmah Chetty, yet he failed to prove, though he had said he could do so, actual possession of the ground from January 1752 to December 1767, or at any subsequent period; and also failed to give any satisfactory answer to the many and grave objections arising from his and his ancestors delaying to take any step to assert their claim for upwards of sixty years.

3. In the Interpleader suit, it appears that the Master at last reported in favor of the representatives of Collah Ravanapah Chetty.

4. My former letters to Government, dated as per margin, have given Government all the actual information of which I was then in possession. Since then, myself and the Government Solicitor having been excluded from attending any of the proceedings in the Master's Office, I can only speak from hearsay, which, however, well founded I may consider it, is perhaps hardly a fitting basis whereon to ground an official report.

* 29th November 1859.
11th April 1862.
16th May "

5. As matter of record, however, I may mention, that the Collah Ravanapah Chetty, in favor for whose claim the Master has reported, and who consequently has got a decree in his favor of the whole amount, in his Bill filed 16th October 1799, set up a sale to himself of the whole ground, for Pagodas 1,500, on the 4th November 1780, by the same S. C. Kistnamah Chetty, who in December 1780 sold to Government for Pagodas 6,784 or thereabouts; but gives no sort of credible explanation of his delaying for nearly twenty years to mention that he had any such claim; nor of his delaying, after he had been compelled in 1800 to answer the East India Company's Interpleader Bill, to take any effectual step during the rest of his life (he died about 1825-28) to urge on the suit.

6. His Bill, filed on the 16th October 1799, was only against S. C. Kistnamah Chetty; the East India Company were not made parties to it until the 3rd April 1800, by amendment. The probable object of the original may pretty easily be guessed from the following facts.

7. S. C. Kistnamah Chetty, the vendor of the ground to Government, was heavily in debt to Government, as a defaulter in a Betel-nut contract, and was then in Jail at their suit, and therefore sure that the East India Company, if the ground was found to be really his, would appropriate its price to the payment of his debt to them. It was therefore clearly his interest, whether his claim to the ground were true or false, to set up some friendly name lender as the ostensible owner. There was also the fact that some of the records of the Choultry Court pointed to one Narnamah, S. C. Kistnamah's relation, as the real owner of the ground, and she was then suing him, on the ground that he had promised to sell the ground for her, as her agent, and had defrauded her by representing himself to Government as the real owner.

8. Be the truth where it may, on the 29th October 1799, thirteen days only after the filing of Collah Ravanapah's Bill against him, S. C. Kistnamah filed his answer, admitting every fraud charged against him; that he had sold the ground on the 4th November 1780 for Pagodas 1,500 to Collah Ruvanapah; had received the purchase money; and had now *no claim or title to anything*.

9. Nevertheless, it now appears that under a Deed of Compromise, alluded to in paragraphs 13 and 17 of my letter, dated 11th April 1862, the present representatives of this S. C. Kistnamah Chetty, whose admission, in October 1799, that he had no claim whatever to ground or purchase money, stands on record, is to get at least Rupees 1,55,705; and the representatives of Collah Ravanapah, who made no claim for nearly 20 years after his alleged purchase, and then remained dormant for the remaining 28 years of his life, is to take Rupees 1,44,622. That is, if the Deed of Compromise is still in force; and a highly respectable witness, one of C. V. Cunniah Chetty's Executors and now a Defendant, swore, at the hearing of Venkatarungum's suit, that it was then in force.

10. The Counsel of the successful Defendants moved for and obtained an order according to the Master's report. The other Defendants made piteous appeals for their costs, alluding to the "*very* peculiar circumstances," of this case, and the great lapse of time. The Court however said pointedly that it knew of *no* "peculiar circumstances," none such having been mentioned to it; and as to lapse of time, it was at least unusual to put forward as a meritorious circumstance, that the losers had kept the successful party so long out of his own. The Court went on to ask pointedly whether this was put forward as a case of *Compromise*; but a dead silence was the only reply.

11. I could say nothing; the Court having already twice decided (see letters of April and May 1862) that Government had no longer any interest that entitled them to be heard.

12. I cannot regard that decision as satisfactory in this particular case, for I feel a very strong conviction, that, if Government had been represented in the Master's Office, so as to ensure a *bond fide* opposition, whatever might have become of the claim of the numerous representatives of Narnamah, who take altogether about two lakhs of Rupees under the Compromise, neither S. C. Kistnamah's representatives, nor those of Collah Ravanapah, would have got one single pie. I must admit however that the decision is in accordance with the decided cases, so far as they are an authority where circumstances differ so widely as do the facts of those cases, from the facts of this present case.

13. Government has nothing whatever to pay consequent upon this decree. The fund has been in the hands of the Court since A. D. 1800, invested in Government Securities, which will now, I presume, be soon handed over to the successful claimants.

14. I cannot but feel the result of this case is any thing but satisfactory; ending, as it appears to me to do, in the success of gross fraud and collusion on the part of the ancestors of the present Defendants; but, situated as the Master and the Court were with regard to facts, and unable as Government was, notwithstanding strenuous attempts to the contrary, to intervene, I confess I do not see how the result could have been prevented.

No. 130.

ORDER THEREON, 19th May 1863, No. 759.

To be recorded.

(Signed) A. J. ARBUTHNOT,
Chief Secretary

Rxd. T. McMoorw.

1 Sir. Ltr. Govt 18th Dec. 59 No. 940.
Pub. Cons. 7th April 1862 No. 128
129.
27th Feby 1863 No. 141-142.

Jud. Dept. 1863 Sept. 2

Pro. 19 May

From
The Advocate
General

Rd 12th } May 1863
Rg 13th }

No. 1005

Report to the
final termination of
the proceedings of the
numerous Claimants
to the money paid into
Court by the late E. I. Company
after filing their Bill of
Interpleader for a part of
the Fort Egmore Estate
claimed by them in 1800

19th May 1863 No. 759.

Recorded

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Rjs