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# TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Judicial DEPARTMENT

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Not to be folded or roughly handled

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*Proceedings of the Madras Government, Judicial Department,  
3rd February 1868.*

Read the following papers:—

No. 26. From the Registrar General of Assurances, to the Chief Secretary to Government, Fort Saint George; dated Madras, 9th January 1868, No. 6.

I have the honor to submit the following remarks, with reference to the annexed letter, of the 8th instant, from the Registrar of Madras.

2. It will be observed that Vyavoor Appathoray Moodelly and Canakammal executed, on the 23rd June 1865, a deed of sale, in favor of Punccheekaday Moodookistnama Chetty, of certain salt pans situated at Ennore. At this time Act XVI of 1864 and Act IX of 1865 were in force, and as the property was in the Taluq and Sub-District of Ponnery in the Registration District of Chingleput, the instrument might have been registered either in the office of the Deputy Registrar of Ponnery under Section 21 of Act XVI of 1864, or in the office of the Registrar General under Section 26 of the same Act. It could not have been registered by the District Registrar of Chingleput, because the case neither fell under Section 24 of Act XVI of 1864, nor under Section 4 of Act IX of 1865, and no other District Registrar had any authority whatever to register the instrument.

3. It does not appear that the instrument was ever presented and registration refused. Under Section 23 of Act XVI of 1864, it was necessary that the executing parties should themselves present the instrument, either in person or by agent, and it was probably owing to their unwillingness to do so that Moodookistnama Chetty brought a suit against them to enforce the registration of the instrument. This suit he instituted, not in the Court of the District Moonsiff in whose jurisdiction the salt pans lay, but in the High Court, in its ordinary original jurisdiction, and the relief sought for was not merely a declaration of his right to have the instrument registered, but an order for the registration of the instrument by the Registrar of Madras, who under the Acts in force had no authority to register it. This order, which seems to have been entirely beyond the competency of the Court, was, it will be observed, obtained, although Mr. Mayne appeared as Counsel for the defendants: in the Order, he is described as the Advocate General, but he could not have appeared in that capacity.

4. I am not aware whether the Order can now be amended. It seems to me doubtful how the High Court in its ordinary original jurisdiction can order the registration of the instrument by the Deputy Registrar (now Sub-Registrar) of Ponnery, as suggested by Mr. Ferrand, but possibly it might order me to register the instrument. I would suggest, therefore, that the papers be referred for the opinion of the Advocate General as to the proper course to be pursued under the circumstances.

From J. G. FERRAND, Esq., Registrar of Madras, to the Registrar General of Assurances; dated Madras, 8th January 1868.

I beg to forward for your information an Order of the High Court, dated 25th April 1866, and received by me on 21st December 1867, directing me to register a deed of sale of certain salt-pans situated at Ennore, executed by Vyavoor Appathoray Moodelly and Canakammal in favor of Punccheekaday Moodookistnama Chetty.

2. I am of course prepared to obey the order; but, before doing so, I would suggest for your consideration that it be brought to the notice of the Honorable Chief Justice who had passed the order that I am not the Officer who should under the law have been ordered to register the deed, but the Deputy (now styled Sub) Registrar, to whom it should have been presented, and within whose Sub-District the property or any part of it is situated—vide Sections 21 and 23, Act XVI of 1864.

*registered in the office of the Registrar of Madras*

*Proceedings of the Madras Government, Judicial Department,  
3rd February 1868.*

3. The Decd. with translation, and the Order of Court are herewith transmitted. Please return them when no longer required.

Referred to the Advocate General for his opinion.

Fort Saint George,  
15th January 1868.

(Signed) R. S. ELLIS,  
Chief Secretary.

No. 27. From the Government Solicitor, Madras, to the Chief Secretary to Government, Fort Saint George; dated Madras, 22nd January 1868;  
No. 40.

I have the honor to acknowledge the Order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion as to the course to be pursued by the Registrar of Assurances at Madras, under the Decree of the High Court at Madras in O. S. No. 83 of 1866, on the files of that Court.

2. I have submitted the matter for the consideration of the Advocate General, and I now forward a copy of his Opinion on the subject.

3. I likewise return the Order and enclosures above noted.

**OPINION.**

The order of the Court appears to me to have been wrongly drawn up. If it were brought to the notice of the Court, I have no doubt it would be at once rectified. The Court cannot order a Registrar to do an act which by law he cannot do. A very trifling alteration alone is necessary to get over the present difficulty. If the order directed the proper Registry Officer to register, it would suffice. The proper person to get the order rectified is the plaintiff's Solicitor. I think the Registrar General, or the Registrar of Madras, should formally, by official letter, at once bring this error in the order to his notice, pointing out that, as it stands, there is no one who can carry it out, and calling on him at once to take the necessary steps to obtain its rectification. The letter should also show that the Registrar General could register, if directed. If this course be adopted, the Solicitor, it is to be presumed, will do what is necessary. But should he not, this course will save the Registrar harmless, in event of his being called on by the Court hereafter to show cause why he has not obeyed its order, and thus purge what would otherwise bear the appearance of a contempt.

21st January 1868.

(Signed) J. B. NORTON,  
Advocate General.

(True Copy).

(Signed) H. J. BROCKMAN,  
Government Solicitor.

No. 23.

ORDER THEREON, 3rd February 1868, No. 171.

Ordered that the Opinion of the Advocate General, received with the second letter above recorded, be forwarded to the Registrar General of Assurances, for his information and guidance.

(True Extract).

Chief Secretary.

To the Registrar General of Assurances, with three documents returned.

" Government Solicitor.

Edw. J. H. Barrs.

No. 6

General Registry Office  
Madras, 9th January 1868

From

The Registrar General of Assurances

To, The Chief Secretary to Government  
Fort St George

Sir  
I have the honor to submit the following remarks with reference to the annexed letter of the 8th instant from the Registrar of Madras.

2. It will be observed that Vyasarod Appadachary Moodley and Kanchamma executed on the 23rd June 1865 a deed of sale in favor of Pincheekadai. Moodleychettan Chetty of certain salt pans situated at Ennore. At this time Act VII of 1864 and Act IX of 1865 were in force, and as the property was in the Saluk and Salt District of Ponnery in the Registration District of Chingleput, instrument might have been registered in the Office.

the Deputy Registrar of Ponnery under Section 21 of Act XXII of 1864 or in the Office of the Registrar General under Section 26 of the same Act. It could not have been registered by the District Registrar of Chingleput, because the case neither fell under Act 24 of Act XXII of 1864 nor under Section 4 of Act IX of 1865, and no other District Registrar had any authority whatever to register the instrument.

3. It does not appear that the instrument was ever presented and registration refused. Under Section 28 of Act XXII of 1864 it was necessary that the executing parties should themselves present the instrument, either in person or by agent, but it was probably owing to

that Moodookistamma Chetty brought a suit against them to enforce the registration of the instrument. This suit he instituted, not in the Court of the District Munsiff, in whose jurisdiction the salt pans lay, but in the High Court, in its ordinary Original Jurisdiction, and the relief sought for was not merely a declaration of his right to have the instrument registered, but an order for the registration of the instrument by the Registrar of Madras, who under the Acts in force had no authority to register it. This order, which seems to have been entirely beyond the competency of the Court, was it will be observed, obtained although Mr. Mayne appeared as counsel for the Defendant. In the Order is described

Registry Office  
Madras, 5<sup>th</sup> January 1868

From  
The Registrar of  
Madras  
To  
The Registrar General of Assurances  
Madras.  
Sir.

I beg to forward for your information an order of the High Court dated 25<sup>th</sup> April 1866 and received by me on 21<sup>st</sup> December 1867 directing me to register a Deed of sale of certain salt pans situated at Ennore executed by Dyavoor Appathoray Moodely and Bandhammal in favor of Pancher Kaday Moodokristnana Chetty.

I am of course prepared to obey the order but before doing so, I would suggest for your consideration that it be brought to the notice of the Hon<sup>ble</sup> Chief Justice who has passed the Order. But I am not the Officer who should under the law.

the Advocate General and could not have appeared in that capacity.  
I am not aware whether the order was amended. It seems to me doubtful whether the High Court in its ordinary original jurisdiction can order the registration of the instrument by the Deputy Registrar (now Sub-Registrar) of Bangalore as suggested by the Advocate General. Possibly it might order me to register the instrument. I would suggest therefore that the paper be referred for the opinion of the Advocate General as to the proper course to be pursued under the circumstances.

I have the honor to be  
Your most obedient servant  
The Registrar

to register the Deeds and the De-  
futy (now styled Sub) Registrar  
to whom it should have been  
presented and within whose  
Sub District the property or  
any part of it is situated.  
Vide Acts XXI & XXII of 1864  
Act XX of 1864

3. The Deeds with Translations  
and the Order of Court are  
herewith transmitted. Please  
return them when no longer re-  
quired.

I have the honor to be  
Sir  
Your most obedient servant  
(Signed) J. G. Howard

Registrar  
(True Copy)

W. H. Howard  
Registrar General

How

The Honorable R. L. Ellis. Esq.  
Chief Secretary to Government  
Madras.

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1. I have the honor to acknowledge the order of Government noted in the margin, with its enclosures, requesting the Advocate General's opinion as to the course to be pursued by the Registrar of Assurances at Madras, under the Decree of the High Court at Madras in O.S. N<sup>o</sup> 83 of 1866, on the files of that Court.

2. I have submitted the matter for the consideration of the Advocate General, and I now forward a copy of his opinion, on the subject.

3. *Thickwias*, retaining the order and  
subdivisions above noted.

ms. C. 6. 1.  
I have the honor to be,  
Sir,  
Your most Obedt. Servant.

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Fort St. George  
15 Aug. 1853

2. To the Honorable Secretary.

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*Mrs. M. J. Harding*  
*To Government*

March 9<sup>th</sup> 1863  
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[illegible]



17/86

Opinion.

The order of the Court appears to me to have been wrongly drawn up. If it were brought to the notice of the Court, I have no doubt it would be at once rectified. The Court cannot order a Registrar to do an Act, which by law he cannot do - A very trifling alteration alone is necessary to get over the present difficulty - If the order directed the proper Registry Officer to register, it would do so. The proper person to get the order rectified is the Plaintiffs' Solicitor. I think the Registrar General, or the Registrar of Madras, should formally, by official letter, at once bring this error in the order, to his notice, pointing out that as it stands, there is no one, who can carry it out; and calling on him at once to take the necessary steps to obtain its rectification. The letter should also show that the Registrar General could register, if directed. If this course be adopted, the Solicitor, it is to be presumed, will do what is necessary. But should he not, then it will be necessary to apply to the Court.

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The Chief Clerk & Co.

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his being called on by the Court hereafter to  
show cause why he has not obeyed its orders,  
and thus purge what would otherwise  
bear the appearance of a contempt.

Signed John Bruce Norton.  
Adv. Genl.

21 Aug 1868.

(True Copy.)

A. B. Williams  
Government Solicitor.

171  
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P.

The cause to be pursued  
by the Legislature of  
Massachusetts at the  
next the Session of  
the High Court at  
Boston in Oct. 1853  
of 1856 in its ordinary  
original jurisdiction

Respectfully

Wm. Adams General

of 1856 dated 21<sup>st</sup> Aug.

and a letter from Genl.

of 1856 dated 22<sup>nd</sup> Aug.

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