

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1180

Dated 31<sup>st</sup> May 1895.

INDEXED.

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[Despatch Abstract.]

TANJORE JUDGMENT FORGERY CASE.

Communicating, with remark, to the District Magistrate of Tanjore, the Advocate-General's opinion regarding the claim of Kuthur Subbarayan's two sons to the property attached under section 38 of the Code of Criminal Procedure.

# BACK PAPERS.

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2507  
CURRENT NO. 2564  
Judicial (1895) Department

From Ernest Barclay  
Government Solicitor  
Madras

To The Chief Secretary to  
Government  
Cotacamund

(G.O. met No 2507/95 (ak))

abst No 300

Dated 21<sup>st</sup> May 1895  
Recd 22<sup>nd</sup> } do.  
Regd 23<sup>rd</sup> }

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May 1895 No 910 Judicial

Ernest Barclay  
Government Solicitor

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80 1111: 23.5 95 mis (ak)  
80 910/1: 3.5 95 mis + papers  
80 1832: 25.7 94. mis (ak)

80 1235/94.  
d/31<sup>st</sup> May 1895 No 1180.  
Read again 3.0d 3. May 95, No 911

H M  
under  
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L 120 2564  
29/5/95

The Advocate General's opinion  
will be sent to the S. Magistrate  
of Tanjore with the intimation  
that no action need be taken  
on the notice given by the minor  
on behalf of the minor sons  
of K. Subbarayar; - the suit should  
be awarded

27. 3. 95  
28/5/95

25/5/95  
To the S. Magistrate, Tanjore (ak)  
DETAILED  
with enclosure  
2 return  
IN S.

27/5  
23/5

Re claim of Kuthar Subbarayer's two sons to the property attached under  
Section 88 of the Code of Criminal Procedure.

22 MAY 1895

GOVERNMENT OF MADRAS

Opinion.

1. Attachment under section 88 of the Code of Criminal Procedure can only be of property belonging to the proclaimed person and therefore only such property shall be at the disposal of Government.

What is that property in this case?

2. I had to consider a similar question when I gave my opinion dated the 13th July 1894, in the matter of the petition of Krishnasawmyyer and others sons of Venkatrama Iyer 4th prisoner in Calandar case No.1 of 1894 on the file of the Sessions Court of Tanjore.

3. Assuming that all the provisions of section 87 were duly complied with, the attachment was legal and, as the proclaimed person did not appear within the time specified in the proclamation, his property under attachment was by operation of law at the disposal of Government.

4. His sons contend that the family is undivided and that the property under attachment is ancestral property in which they have a joint interest with their father. The presumption of law is in favor of the first contention and probably the second contention may be easily proved but it must be proved. However, the father had an undefined interest in the whole of the property attached which was in his possession and under his management. If the property was ancestral his sons were joint owners entitled to maintenance and to claim a partition and an account as incident to that right.

5. There was no procedure whereby the contentions of the sons could be enquired into and adjudicated upon by the Court which attached the property. The Civil Courts alone can ascertain declare and secure for the sons of the proclaimed person the shares if any to which they may

be entitled.

6. The allegation that the whole of the attached property is ancestral is one which the sons who make it must establish for there is no presumption that a family, because it is joint, possesses joint property or any property. <sup>(a)</sup>In the threatened suit, if launched, they should be put to the proof of their allegation. Until the disposal of that suit or until a reasonable time has elapsed during which it may be brought, I think no sale of the property should take place.

J. H. Spring Branson

Ootacamund.

Advocate General

18th May 1895.

( True Copy )

*Lucretia Barclay*

*Government Solicitor*

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189.

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189

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STATEMENT WITH DITTO.

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