3/5/15

Judicial (1895) Department.

ORDINARY MS.

G.O., No. 1503

Dated 17th July 1895

[Despatch Abstract.]

AGENCY SUITS.

Declining, with remarks, to interfere on behalf of Sanyasi Razu in the matter of his petition praying that the High Court may be moved to have this case (which has been remanded by that Court to the Agent in Vizagapatam for trial and disposal of certain issues) transferred to the file of some other Magistrate.

BACK PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
	1403	Judl	27-8-96				

INDIA COURTFEE INDIA

22-12-94

GOVERNMENT OF MADRAS
25 JAN 95
DEPARTMENT

His Excellency the Governor in Council
Madras.

O.S No $\frac{3}{1886}$ on the file of the court of the principal assistant agent Vizagapatam

No. $\frac{3}{1888}$ on the file of the court of the agent to the Governor Vizagapatam.

Revision petition $\frac{827}{1889}$ on the file of the High court Madras.

Appellant plaintiff	Respondent Defendant
The Maharajah of Jeypur	S. Sanyasiraju resident of Pinakota Viravilli Taluk Vizagapatam Dt.

The humble petition presented by the respondent defendant Sanyasiraju in the above case most respectfully sheweth as follows:—

(1) That the above suit has been remanded by the High court to the agent to the Governor Vizagapatam for trial and disposal of certain issues.

(2) That Mr. W. C. Wolfe murray, the acting agent to the Governor, to whose court the case has been remanded, tried this very suit as principal assistant agent Narsipatam and adjudged in the plaintiff appellant's favour i.e against the petitioner.

Initials of

Initials of

(3) The said Mr. W. C. Wolfemurray is also agent to the Court of Wards and as such managing the estate of petitioner's rival claimant

(4) That in as much as the said agent's mind is prejudiced against the petitioner and as Jeypur's manager he is interested therein, petitioner moved the said agent for a transfer of the said case.

(5) That the said agent referred petitioner to your Excellency's Government as per orders dated 10.12.94 annexed hereto.

(6) That for the ~~reason~~ reasons stated above as the trial of the case by the agent is prejudicial to the interest of the petitioner, petitioner prays that your Excellency's Government may be pleased to move the High Court for a transfer of the case in to the file of some ordinary civil court having jurisdiction in the district.

(7) That the petioner is a very poor man living in the agency tracts.

21-1-95

COLLECTOR
8 MAR. 95
VIZAG

Judicial

~~REVENUE~~ DEPARTMENT.

In a letter from the ~~Collector and~~ Agent to the Governor, Vizagapatam, to the Chief Secretary to ~~the Commissioners of Land Revenue~~ Government, Madras, No. Disposal 414 dated 25. April 1895.

ENCLOSURE No. 4

1895
Jud. Dep
Enclos. No. 4
To
O. No. 2143.

Jud.

CURRENT No. 298

Judl Dept

Petn. re Confidential D.O. about transfer of Parlakimedi Case; about June or July, August 1894. — also Agency rules.

D/4-2

G.O. d 30-6-94, No. 1638

C.S.

From

Sanyasi Raju

Pinakota

Veravilli Taluk

Subt. for orders

Eh/2/2 No precedent can be traced

Dated 21-1-95

Recd. 25-1-95

Encl. 1

Subject

Praying to move the High Court for a transfer of his case which has been remanded by ~~the High~~ Court to the Agent to the Governor, Vizagapatam for trial and disposal of certain issues, to the file of some ordinary Civil Court having jurisdiction in the Dt.

Put up a precedent Eh

1895 16 Sept 93

Please see G.O. [illegible] as a precedent as long back as [illegible] 7/2

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[5]
500—20-6-94.

DEPARTMENT.

Papers to be read in Proceedings :—

Again G.O., dated 18 , No.

Again G.O., dated 18 , No.

Current No. of 18 , dated from

~~Current No. of 18 , dated~~ ~~from~~

Refce. Orders d/ 4-3-95 No. 448

Referred to the ~~Distt.~~ Govt. Agent, Vizagapatam ~~[illegible]~~ for a report as to the nature of the case to be accompanied by copies of the original, appellate & revisional orders passed, and by a statement of the Agent's reasons for directing the Petr. to ask Govt. to move the High Court in his behalf.

Copy D 2 3 95 4/3

The Agent, Vizagapatam with C. 298 desptd 4/3/95

move the High Court to

For orders.

The petition is not quite clear, but the state of affairs appears to be as follows:— The petitioner was ~~[illegible]~~ party to a civil suit before the Principal Assistant Agent, Vizagapatam (O.S. No 3 of 1886). Mr. Wolfe-Murray, as holding that appointment, decided the case against the petitioner and in favour of his adversary, the Maharaja of Jeypore. An appeal to the Agent seems then to have been made (Appeal(?) No. 8 of 1888), & subsequently a revision petition was put in to the High Court ~~presumably~~ against the appellate decree (Revn. petition 827 of 1889). The High Court, with reference presumably to No. XX of the Agency rules, remanded the decree to the Agent for review. — The suit then became Remand appeal no. 9 of 1891 on the Agent's file, but in the meantime Mr. Wolfe-Murray who originally heard the case had become Agent.

2. The Petitioner ~~therefore~~ now asks that the Govt. will move the High Court to transfer the case to the file of some ordinary civil Court, (a) because Mr. Wolfe-Murray must be prejudiced by having already tried the original suit & decided it against Petr., (b) because as Agent to the Ct. of Wards ~~Manager~~ of Jeypore

N.S. 4/3

he has to do with the Administration of Jeypore to ~~pore~~, ~~he~~ must be prejudiced in favour of petitioner's adversary, the Maharajah of Jeypore.

3. The Agency Rules do not provide for such a case, & it appears questionable if any transfer is required. Agency Rule no. XX gives the Sadr Court power "to require "the agent to review his judgment, "as directed by them"! - Mr Wolfe-Murray as agent is therefore in all probability bound ~~to~~ in this case to do what the High Court has told him, & has no option as to the way in which to decide the appeal. At the same time it is possible that the High Court has merely directed him generally to reconsider matters with reference to their remarks. -

4. Why Mr Wolfe-Murray directed the P.A.A. to address Govt to move the High Court for a transfer is not apparent. The rules do not provide for such a procedure. Perhaps before sending this to H.C. it would be wise to call for a report, as to the nature of the case, accompanied with copies of the original & appellate decrees, the order in revision & a statement of Mr Wolfe-Murray's reasons for issuing the proceedings submitted by the P.A.A.

D

23-2-95

The High Court does not seem to have any power to order a transfer

25/2/95

Agency petition

on special grounds

For orders.

In the court of the Principal Assistant Agent Vizagapatam dated 17th December 1887.

Present H. D. A. O. Wolfe Murray Esquire
Ag: Principal Assistant Agent

Agency civil suit No: 2 of 1886

Gade Apparow Pantulugaru
Dewan of Maharajah of Jeypore } Plaintiff

Versus

Siragani Ramachendraraju
alias Nukaraju of Pedakota } Defendant

Judgment

The Plaintiff in this suit sues for Kattubadi from Defendant which is stated to be due for the village of Pedakota for Faslis 1292-93 and 94, the amount payable in each of these Faslis being Rs 2/75 and land-cess on that sum with certain other fees amounting to Rs 17.3.0.

Defendant denies that his Kattubadi

for this village is Rs275 and States it to be Rs50 only. The village is in the Madgole Zamindary and Defendant is Mokhasadar thereof while plaintiff is its landlord, it having been mortgaged to him in 1869 along with the rest of the Madgole Zamindary by Krishna Bhoopati the then Zamindar

The points at issue are:—

1st Has Defendant ever since the mortgage paid Kattubadi to Plaintiff, and if so, how much?

2d issue. Is plaintiff entitled under the mortgage deed to receive the amount he claims as Kattubadi &c?

1st issue

The Plaintiff filed accounts kept by Jeypore officials from 1869 to 1872 containing particulars of sums received from the various villages of Madgole.

These accounts are copies of the original accounts, which were burnt at Madgole two years ago, but it is sworn that these copies were made month by month and despatched regularly to Jeypore. I believe the entries to be correct. It is in evidence that Defendants' father who was also Mokhasadar of Pedakola for a long time died above 20 years ago, Defendant being then a very young boy he is now about 26. Defendants' father seems to have been succeeded by Defendants' grand-mother Sangasamma and his uncle Ramachendraraju, by whom payments up to Rs275 annually were made for this village. It is also in evidence however that when Madgole Estate was taken over on mortgage, Lingam Lakshmaji was put in as Agent or Manager and it is suggestion that he raised the rents all round. No doubt is Pedakotā figures in the list of Madgole accounts made over to Jeypore at the time of mortgage in 1869 as having an annual Kattubadi of Rs 275, but this was two years or more after Defendants father had died. About 6 years back Defendant seems to have assumed charge of his estate or Mokhasa, and he states that he has twice paid Rs 50 as Kattubadi therefor, but got no receipt, and there is no doubt that Plaintiff's Agent did not acknowledge the payment of this sum to satisfy their claim; but as I believe and it is not contested that Defendant paid Rs 50. I did not examine witnesses concerning

concerning it.

Plaintiff has failed to prove by documentary or other evidence that defendant ever paid the sum of Rs 275 as Kattubadi since the mortgage, though he proved that defendant's grand-mother and uncle did so for several years after the mortgage. No doubt L. Lakshmaji enhanced the Kattubadi as perhaps he conceived he was entitled to do.

The first issue is decided in the negative. Is Plaintiff entitled under the mortgage deed to receive the amount claimed as Kattubadi?

The Madgole estate was mortgaged because the Madgole Zamindar wanted money and the more security he could offer, the more money he was likely to get: it is therefore not improbable that his Agents in giving in lists of sums receivable from his villages should make these sums as elastic as possible.

There is no document produced by Plaintiff to show that before the mortgage the sum of Rs 275 was ever levied from this village. On the contrary defendant shows receipts for payments of Rs 50 on several occasions between the years 1840 and 1850 - Exhibits I to V. He also shows a demand notice for 1843 Exhibit I for the sum of Rs 50 for the Pedakotā Kattubadi. Plaintiff says these are not genuine, they may or may not be, but I think they are, as if he was going to fabricate receipts he might well have fabricated two or three more, as such things are not expensive to buy probably. Further he produces a copy of the Permanent Settlement
accounts

accounts of 1797; wherein this Pedakota village is shown to be a mokhasa grant along with Pinakotā and Jinabadu; the total value of these three being Rs 930, of which the mokhasadar is to enjoy Rs 792 and pay a nuzzir or Kattubadi of Rs 138 to the Zamindar, that is Rs 50 for each of Pedakotā and Pinakotā and Rs 38 for Jinabadu.

Looking to this account, and the fact that no accounts of payments up to the amount of Rs 275 previous to the mortgage are produced by Plaintiff such if they ever existed being said to have been all burnt in a great fire that occurred at Madgole 2 years ago, I consider that this village is an old mokhasa grant paying Rs 50 annual Kattubadi up to the year 1867 about when defendant's father died, that the defendant
then

sums receivable from his villages

then being a minor, the Estate Agent took the opportunity to enhance it, knowing that the grand-mother being a woman would probably pay up, and that thus in 1869 the village came to be entered as having a Kattubadi of Rs 275 in the mortgage deed. But I find regarding the 2d issue that owing to its being an old mokhasa, Plaintiff is not entitled to enhance the Kattubadi or to receive the amount of Rs 275 under the mortgage deed.

The Plaintiff agrees to forego the demand of Rs 17.3. miscellaneous fees and the Defendant admits that he ought to pay a Rs 5-0 Kattubadi.

It is therefore ordered that Defendant pay to Plaintiff Kattubadi at the rate of Rs 5-0 for faslis 1292-1293 and 1294 together ~~of~~ Rs 5-0 with land-cess thereon at one anna in the Rupee or Rs 3.2.0 annually, total Rs 159-6-0.

As both parties have been disputing from a long time about this matter and as defendant has been claiming apparently sums for Horats to which he is not entitled, and Plaintiff says that Rs 50 occasionally paid by Defendant was not the full amount he ought to have paid, it will be equitable that each party pay their own costs in the suit.

17.12.1887 } Sd/ O. Wolfe-Murray
Vizagapatam } Ag: Principal Assistant Agent

Memo of costs

Costs incurred by Plaintiff

Value of Stamp duty	Rs 69-12-0
do Vakaltnama stamps	1-0-0
Process fee for notice to Defendant and summons to witnesses	6-4-0
Travelling allowance and batta to witnesses	149.0.0
Vakil's fee on Rs 930 at Rs 5 per cent	46.8.0
Total	Rs 272.8.0

Total Rupees Two hundred and seventy two annas eight only to be borne by Plaintiff

Costs incurred by Defendant

Value of answer stamp —	0-8-0
Do of Vakalatnama do —	0-8-0
Vakil's fee as above —	46-8-0
Total Rs	47-8-0

Total Rupees forty seven annas eight only to be borne by defendant.

Sd/ O. Wolfe Murray
Ag: Principal Assistant Agent

(True Copy)

Sd/ P. Hodandarao
Sub-Sheristadar

(True Copy)

~~For~~ Agent to the Governor
Madras

Compd. – SR

sums receivable from his villages

Judicial
~~REVENUE~~ DEPARTMENT.

In a letter from the ~~Collector and~~ Agent to the Governor, Vizagapatam, to the Chief Secretary to ~~the Commissioners of Land Revenue,~~ Government Madras, No. Disposal 414 dated 25 April 1895.

ENCLOSURE No. 1

5
Jud.l Dept.
1
to
2143.

In the court of the Agent to the Governor
of Fort St: George at Vizagapatam

Thursday the 4th day of April 1889
Present H. G. Turner Esquire

Appeal Suit No: 4 of 1888

Appellant Plaintiff	Respondent Defendant
The Maharajah of Jeypore by his Head Dewan and Mukhtyar P. Purniah Pantulu Garu Rao Bahadur-	Sirigam Rama-chendraraju, alias, Nookaraju of Pedakota in Madgole.

Judgment

1 The appeal is similar in every aspect to that of 3 of 1888, with the exception that Plaintiff claims Rs 275 in respect to Pedakota while he claims at Rs 225 for Penakota.

2. Plaintiff produced almost the same documentary evidence in the two cases in support of his claim. He examined however 5 witnesses in this case in support of his claim. The 1st witness who is

a

a mokhasadar says that he collected during the life-time of the Madgole Zamindar and prior to mortgage a Kattubadi of Rs 275 from Pedakola for five or six years. The 5th witness an Inamdar of Madgole verifies the signatures in the accounts produced by Plaintiff and corroborates the 1st witness. The other witnesses are all Estate servants of Plaintiff and state that the exhibits produced by Plaintiff are all genuine. The Defendant contended that the Kattubadi due by him was only Rs 50 per annum for the years 1882, 1883 and 1884 and stated that Pedakola was granted to his ancestors as a "Vasati". He filed Exhibits Nos I to V which purport to be demand notices and receipts obtained by his ancestors for the payment of Rs 50 and they are all dated prior to 1869.

The Lower court disbelieved the documentary evidence of the Defendant and admitting the evidence of the Plaintiff remarked that the Defendant was a minor when Plaintiff came into the possession of Madgole Estate and was therefore not bound by the acts of his guardians (Defendants grand mother and uncle) who might have colluded with Lingam Lakshmaji Plaintiffs muktyar at the time. The Lower court therefore held that Plaintiff should recover from the Defendant Kattubadi at Rs 50 per annum for the years 1882, 1883 and 1884 with proportionate land-cess.

In appeal the Plaintiff files certified

copies of the "Kham Vasool Baki" account of the Madgol estate for the years 1855 and 1856 (dates prior to 1869) in which the Kattubadi of Pedakota is stated to be Rs275 per annum and contends that inasmuch as Defendant did not, after attaining majority, take the necessary steps within the prescribed time to invalidate the acts of his guardians he is bound to pay the enhanced sist.

The court on perusing the records of the Lower court and hearing the arguments adduced on both sides finds that the Defendant is bound in every way by the acts of his guardians in this case, but that until Plaintiff can show some agreement between Defendant and Madgol or [illegible] binding him to pay the [illegible]

enhanced Kattubadi, the mere entries to that effect in the mortgage deed and in Plaintiff's own accounts cannot be taken to establish Plaintiff's claim conclusively.

As mortgagee Plaintiff is surely empowered to demand and claim the Kattubadi entered in the Schedule, but when the entry is impeached he should either establish it by other independent evidence or recover the balance from the mortgagor.

That Pedakota is an old "Vasati" there is no doubt and Plaintiff's exhibits A and C produced in appeal are open to the same criticism as his other accounts with regard to their binding on Defendant.

For these reasons the Lower Courts decree is upheld with the exception that land-cess cannot be levied in the Agency tracts and is therefore inadmissible.

Plaintiff will bear his own costs in appeal and pay the costs of Defendant.

Costs of the Appellant Plaintiff in the Governor's Agent's court.

(Signed) H. G. Turner

Plaint	Rs 54-–-–
Stamp on the judgment of the Lower court.	–·8·–
Vakaltanama	–·8·–
Motion stamp	–·8·–
Stamps on expenditure statements	1·–·–
	Rs 56·8·–

Costs of Respondent Defendant in the Governor's Agent's court.

Stamp on application for copies	Rs 0·8·0
Vakaltanama	0·8·–
Total	R 1·–·–

The Lower court.

Value of stamp duty	Rs 69·12·–
Vakaltanama	R 1·–·–
Process fee	Rs 6·4·–
Travelling allowance and batta to witnesses	Rs 149·–·–
Vakil's fee	Rs 46·8·–
Total	Rs 272·8·–

Costs of Respondent Defendant in the Lower court.

Value of answer stamp	Rs –-8-–
Vakaltanama	–·8·–
Vakil's fee	Rs 46·8·–
Total	Rs 47·8·–

(Signed) H. G. Turner
Agent to the Governor

(True Copy)

For Agent to the Governor

Compd.

Judicial
~~REVENUE~~ DEPARTMENT.

In a letter from the ~~Collector and~~ Agent to the Governor, Vizagapatam, to the Chief Secretary to ~~the Commissioners of Land Revenue~~ Government, Madras, No. Judicial/1414 dated 25 April 1895.

ENCLOSURE No. 2.

1895
Jud
Enclos. No 2
To
C. No 2143.

In the High Court of Judicature
At Madras

Thursday, the twelfth day of February
one thousand eight hundred and ninety one

Present:

The Honorable Mr Justice Parker

Civil Miscellaneous Petition No. 827 of 1889

Sri Sri Sri Vikrama Devu, minor by his next friend the Agent to the Governor Vizagapatam } Petitioner (Plaintiff)

Sirangam Sanyasirazu - Respondent (Defendant)

Application praying that, in the circumstances stated therein, the High Court will be pleased to direct the Government Agent of the Vizagapatam District to review his decree dated 4th April 1889 passed in appeal suit No. 3 of 1888 modifying the decision of the Principal Assistant Agent of the said District in Original Civil Suit No. 3 of 1886.

This application coming on for hearing: Upon perusing the application and the judgments of the Lower Courts and upon hearing the arguments of Mr H. G. Wedderburn, Counsel for the Petitioner and of Mr S. Subramaniem Vakil for the Counter-Petitioner the court made the following

Order:- The only issue on which the parties went to trial was whether Defendant paid Kattubadi at the rate of Rs. 200 from 1869 to 1872. On this issue there is no finding and it was evidently framed with a view to determine whether there had been any agreement between the parties to pay at that rate.

In this view the fact that the Kattubadi had been originally fixed at Rs 50 would not be
conclusive

conclusive and if it is proved that the accounts had been destroyed by fire, there is no reason why secondary evidence of their contents should not be admissible. I must ask the present Agent to review the decision. The costs will abide and follow the result.

Memorandum of costs

Petitioner's costs:

Stamp for Vakalatnamah.	Rs : as : Ps „ : „ : „
Do used for the C. M. P. memo.	33 . 12 . „
Do for copy of the Agent's judgment	. . „ . 8 . „
Do for Do of the District Court's Order	. . „ . „ . „
$\frac{1}{4}$ of the Pleader's fee on Rs 450 . . .	5 . 10 . „
Printing charge . . . . . : :	4 . „ . „
Batta and Postage	2 . „ . „
	45 . 14 . „

Counter-Petitioner's costs

Stamp for Vakalatnamah.	Rs. As. Ps 2 . „ . „
$\frac{1}{4}$ of the Pleader's fee on Rs 450 . .	5 . 10 . „
One printed Copy purchased.	2 . 10 . „
	10 . 4 . „

By the Court

(Signed) W. Morgan
Deputy Registrar
Appellate Side

(True Copy)

Agent to the Governor

Comp^d – SR

Judicial
~~REVENUE~~ **DEPARTMENT.**

In a letter from the ~~Collector and~~ Agent to the Governor, Vizagapatam, to the Chief Secretary to ~~the Commissioners of Land Revenue~~ Government, Madras, No. Disposal 414 dated 25 April 1895.

Enclosure No. 3

1895
Jud! Dept.
Enclo. No. 3
To
C. No. 2143.

~~R. C.~~ Disposal No. 414

CURRENT NO. 2143.
VIZAGAPATAM COLLECTOR'S OFFICE.
Dated 25 April 1895

From

F. D'A. O. Wolfe-Murray Esq.,
Ag. ~~Collector~~ Agent to the Governor,
Vizagapatam District.

To

The Honorable J. H. Price
Chief Secretary to Government,
Judicial Department,
Madras.

Sir,

Referring to memorandum of Government No. 448 dated the 4th Instant, forwarding to me for report petition from S. Sanyasiraju of Pinakota, Viravilli Taluk, herewith returned, I have the honor to report as follows:-

2. The late Maharajah of Jeypore to whom the Madgole zamindary had been mortgaged in 1869 brought a suit against the petitioner, a mokhasadar in O.S. 2 of 1886 on the

file of the Principal Assistant Agent for Kattubadi which was stated to be due for the village of Peda Kotā for faslis 1292, 1293 and 1294 the amount payable in each of the faslis being Rs 275 and land cess on that sum with certain other fees amounting to Rs 17. 3. 0. The defendant contended that the Kattubadi for the village was Rs 50-0-0 but not Rs 275-0-0. I tried the case as Principal Assistant Agent in 1886, as I see from the record, but of course I have forgotten all about it now and decided that the defendant should pay Plaintiff Kattubadi at the rate of Rs 50-0-0 only together with land cess at one anna in the rupee or Rs 3. 2. 0 annually.

3. Against this decision of mine the Maharajah of Jeypore appealed to Mr Turner the then Agent to the Governor (A.S. 3 of 1888) who upheld the decision of the Lower Court with the exception that the land cess could not be levied in the Agency tracts.

4 Mr Willock, on behalf of the present minor Raja of Jeypore moved the High Court (civil miscellaneous petition No: 827 of 1889) to direct, under rule XX of the Agency rules, a review of Mr Turner's decree passed in appeal suit No 3 of 1888 and that Honourable Court ordered that the only issue on

which the parties went to trial was whether defendant paid Kattubadi at the rate of Rs 275-"-" from 1869 to 1872, that there was no finding on that issue that it was evidently framed with a view to determine whether there had been any agreement between the parties to pay at that rate, that the fact that the Kattubadi had been originally fixed at Rs 50-"-" would not be conclusive and if it was proved that the accounts had been destroyed by fire there was no reason why secondary evidence of their contents should not be admissible and asked the late Mr Laffan to review Mr Turner's decree accordingly. 5

5. On receipt of that order that officer observed that the particular modifications which were required to be made in Mr Turner's judgment were not specifically stated and wanted the instructions to be amplified. The High Court treated the reference by mistake as one disposed of and the matter was lost sight of till I moved that court in June 1894, on the representation of the petitioner when it replied that a finding should be recorded on the only issue referred to above.

6 Copies of original, appellate and revisional orders asked for by Government are herein enclosed.

7 As for the reasons for my

directing the petitioner to ask Government to move the High Court, I beg to state that I first said that I had no personal feeling in the matter and that if the parties had no objection I would dispose of it myself. But the party insisted on my not taking up the case at all on the ground that I had originally decided the case and that I now represented the minor Rajah of Jeypore, the plaintiff respondent. Thereupon I told him he could move the High Court in the matter if he liked which is in accordance with the principle followed in such matters. It is the duty of the party who fears failure of justice at the hands of a court

to move the appellate tribunal for the transfer of the suit to some other court of competent jurisdiction. More than three very important suits covering sums of Rs 22000 to Rs 50000 have been thus transferred by the High Court from my court to that of the District Judge in this way since the Jeypore Estate has been taken under management. The petitioner demurred to doing this and pleading poverty insisted on my doing it. I therefore ordered him to petition to Government if he liked, as my appellate authority, so that it might decide what is to be done.

I have the honor to be
Sir
Your most obedient Servant

For Ag: Agent to the Govr.

Compd.. SR

7

CURRENT NO. 2143

Refer No 448/95 + [illegible]

1895.

Judicial ~~Revenue~~ Department.

Cur. 298 + 2143/95

FROM

THE AGENT TO THE GOVERNOR,
VIZAGAPATAM.

For orders.

TO Chief
THE SECRETARY TO ~~THE COMMISSIONERS~~ Government
~~OF LAND REVENUE,~~
MADRAS.

DATED 25th April 1895
DESPATCHED 28th
RECEIVED Regd 1-5-95

CHIEF SECRETARIAT
30 APR 1895
GOVERNMENT OF MADRAS

Disposal No. 414.

ENCLOSURES. * 3 + C No 298 with Encl. reqd

SUBJECT.

Reporting on the petition of S. Sanyasiraju of Pinakota as to why the Agent did not himself move the High Court for transferring the trial of Remand Appeal No: 9/1891 on his file to another court in the ordinary jurisdiction.

[illegible] 9/5
ICS 8/5

For orders

[G. / 25.]
600—8-3-95.

Judicial DEPARTMENT.

C. Nos 298 + 2143/95

FOR ORDERS.

~~Please see the ..~~

The petr was defendant in O.S. No 2 of 1886 on the file of the Principal Assistant Agent, in which the plaintiff, the representative of the Jeypore Estate, sued him for Kattubadi at the rate of Rs 275 per fasli. ~~[illegible]~~ The defdt admitted a liability of Rs 50 only & the Principal Assistant Agent decided in his favour, holding that he was further bound to pay land-cess. The case went on appeal to the Agent who modified the decision by disallowing the land-cess. — On a revision application the High Court directed the Agent to review his judgment, pointing out that a [illegible] particular finding had not been made, & that certain evidence wa admissible. – The Agent now is Mr. Wolfe-Murray who tried the original suit. – The petr. objects to his trying the case on the grounds that he is prejudiced by having heard the case before & (b) that as representative of the Court of Wards he is prejudiced in favour of the ~~Defe~~ plaintiff-appellant who is the Raja of Jeypore.

Ground (a) is absurd inasmuch as Mr. Wolfe-Murray decided the case in the petitioner's own favour, x & ground (b) is not of much importance. As far therefore as this petr. is concerned, the matter might be allowed to drop.

But, what requires notice, is that the Agency Rules do not provide for a transfer in such a case as this. Mr. Wolfe-Murray does not notice this point – but Agency Rule XX clearly lays down that the High Court can only interfere "on special "grounds to require the Agent to review his judgment" Neither the Govt. nor the High Court (apparently) has power to transfer a case before the Agent, & I cannot understand the remark at the end of Mr. Wolfe-Murray's letter that "more "than three very important suits

FOR ORDERS.

x. He has moreover forgotten all about the case.

[G./25.]
600—8-3-95.

DEPARTMENT.

C. No.

FOR ORDERS.

"have been transferred by the "High Court from my Court to that "of the District Judge"

The following reference is suggested

Refce only ~~R~~ current 2143 — 9/ No. 1080 d/ 18.5.95

With refce to para 6 of his letter the Agent is requested to state under what provision of law ~~certain~~ the suits which he mentions ~~have~~ were transferred by the High Court from his file to that of the ~~Agency~~ District Judge. Transfers of this description do not appear to be authorized by the Agency Rules

D
9-5-95

17/5/95

To the Agent to the Governor,
Vizagapatam.

Despd
18/5

Transfer
Agency suit.

FOR ORDERS.

C

[illegible]
within

D/18/5

[V. G. P.—22-10-94.—100.]

CURRENT No. 2740

F. D. No. 587/Agency.

VIZAGAPATAM GOVERNOR'S AGENT'S OFFICE,

Dated 31 May 1895.

From

R. Morris
~~F. D'A. O. Wolfe-Murray~~ Esqre.
Ag. Agent to the Governor,
Vizagapatam District.

To

The Honorable J. F. Price,
Chief Secretary to Government
Judicial Department
Madras.

Sir,

I have the honor to report that a suit was brought by the Kurapam Estate which is now under the management of the Court of Wards in the Court of the Senior Assistant Agent against Vulaka Jamman Dora and four others of Vodayapuram, a village within the limits of the Agency tracts for the recovery of that village which was granted by the late Zamindar of Kurapam on the 9th March 1858 to Vulaka Yerakan Dora, the father of the first Defendant on "Talapudevani mokhasa" (service tenure) the conditions of the grant being that the grantee should enjoy the village as long as the granter pleased, paying to the Estate a quit rent of Rs 50 annually and rendering service with 25 persons.

2. The suit having been decided in favor of the Estate by the Senior Assistant Agent, the Defendants have appealed to this Court against his decision and requested me to move the High Court for

its transfer to another Court as the suit has been virtually instituted under the orders of the Agent in the capacity of the Agent to the Court of Wards.

3. I therefore beg to submit the case for the orders of Government with reference to para 7 of my letter No 414 dated 25th Ultimo.

G.O. 2143/95 Rep to the Agent.

I have the honor to be,

Sir

Your most obedient servant,

for Ag Agent to the Governor

Copied by A.P.S.
Compd " S.R.

CURRENT NO. 2740

Rafce No. 1080 of 18.5.95
Papers

JUDICIAL DEPARTMENT.

From

THE AGENT TO THE GOVERNOR
VIZAGAPATAM.

To

THE CHIEF SECRETARY TO
GOVERNMENT MADRAS.

For orders.

Perhaps the agent's reply to Refce no. 1080 of 18 May 95 may be awaited?

Yes
D
11.6.95

Sent a [illegible]

D
[illegible]

Subd.
MR
11/6/95

Results with Cur. 3178/95.
MR
5.7.95.

Reminder sent
11/6/95

Dated 31
Despatched 31.
Received. 4th June
Regd 6th do.
} May 1895

Dis. No. 587

ENCLOSURES. "

CHIEF SECRETARY'S
4 JUN. 1895

Subject.

Submitting for orders the case of Vlaka Ramadora and others requesting a transfer of their appeal to another Court.

MR 6/6
Ws 7/6

[V. C. P.—22-10-94.—100.]

CURRENT NO. 3178

F. D. No. 742
Agency.

VIZAGAPATAM GOVERNOR'S AGENT'S OFFICE,
Dated 29 June 1895

From

L. C. Miller.
~~F. D'A. O. WOLFE MURRAY~~ Esqr.
Ag. Agent to the Governor,
Vizagapatam District.

To

THE HONORABLE Mr J. F. Price,
Chief Secretary to Government
Judicial Department
Madras.

SIR,

Referring to Memorandum No 1080 Judicial dated 18th May last, I have the honor to state that the suits referred to were transferred by the High Court from my file to that of the District Judge under Section 15 XXIV and XXV Victoria Chapter 104. The transfers were however all made at the instance of my predecessors as one of the parties in each of them was a minor whose Estate was under the management of the Agent to the Governor and the question as to the power of the High Court to make the transfer does not appear ever to have been raised or discussed when the applications were dealt with.

I have the honor to be,
Sir,
Your most obedient Servant

For Ag. Agent to the Governor

Copied by J. K.
Compd. [illegible]

Judicial Depts

CURRENT No. 3178

Refce No 1080/95
& notes

The Agent to the Governor
Vizagapatam

E

To

The Chief Secretary to
Government
Judicial Department,
Madras

Dis: No 772

Dated 29 } June 95
Despatched 29 }
Recd 4-7-95 Enclosures nil

CHIEF SECRETARY
04 JUL 1895
GOVERNMENT OF MADRAS

Informing that the Suits referred to by Government were transferred by the High Court from his file to that of the District Judge under Section 15 XXIV and XXV Victoria Chapter

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[G./25.]
600-7-5-95.

Judicial DEPARTMENT.

C. No. 298, 2143, 2740 & 3178/95.

FOR ORDERS.

These ~~two~~ 4 currents raise questions as to transfers of civil suits in the Agency tracts* from the Court of one Agent to that of another.

2. Madras Act XXIV of 1839 excludes the agency tracts of Ganjam & Vizagapatam from the "operation of the Rules for the "administration of Civil and Criminal "Justice" (sec. II), & empowers the Govt. in Council to "prescribe such rules as "he may deem proper for the guidance "of" the Agents & their subordinates and "to determine to what extent the decision "of the agents in civil suits shall be "final and in what suits an appeal "shall be to the Sadder Adawlat" (sec IV). Finally sec. VI directs the Sadder Adawlat to try & determine appeals made under the rules prescribed under sec IV.

3. The High Court is thus only constituted an appellate Court as regards the Agents in virtue of the Rules issued sec IV of Act XXIV of 1839.

4. These rules only permit the High Court

*of Ganjam & Vizagapatam

I dont think it advisable to raise questions as to the jurisdiction of the H.C. over the Agents' Courts. Fortunately in the present cases there is no real reason for doing so, as there is a new Agent who knows nothing of the cases & who is not in the least likely to be affected in their disposal by the fact that he is the agent of the Bd. of Rev. & Court of W. in managing Jeypore & Kurupam respectively, which are estates of which he can hardly as yet know more than the names — I wd. reject the petition for transfer without assigning reasons & tell Mr. Miller to get on with the cases & dispose of them before the return of Mr. Willock, who is of course much more personally interested both in Jeypore & Kurupam —

15/7/95

appellate powers proper in viz.: that of decrees upon original suits passed by the Agent (vide Rule XXI) provided that "in ~~such~~ suits wherein "the landed possession of a zamindar "Bissoye or other feudal Hill chief "may have formed the subject of litigation "an appeal will lie to the Governor in "Council alone who may refer any such "appeal to the Sadr Court" x x x. (vide Rule XXII).

The only other power of interference conferred on the High Court is that specified in Rule XX which permits the Court "on "special grounds to require" the agent "to review his judgment as directed by "them" in the case of his appellate decrees.

The High Court has thus only a limited appellate jurisdiction over Agency Courts

5. The Agency rules contain no provision for the transfer of suits from the Court of the Agent in Ganjam to that of the Agent in Vizagapatam or to any other Court & the question for decision in these currents is whether the High Court can direct such a transfer. The Civil Procedure Code, section 25 of which provides for transfers, is not in force in the agency tracts & the only law under which such a transfer can be made appears to be 24 & 25 Vict. cap 10

[illegible]

FOR ORDERS.

[G. / 25.]
600—7-5-95.

DEPARTMENT.

C. No.

FOR ORDERS.

High Court power to "direct the "transfer of any suit or appeal from "any Court subject to its appellate "jurisdiction to any other court of equal "or superior jurisdiction".

In respect of original suits filed in the Agent's court, an appeal from which lies to the High Court (Rule XXI), the power of transferring appears to exist in virtue of this statute, but it is doubtful whether the High Court could direct a transfer of a suit in which the appeal lies to the Govr. in Council for in respect of such suits (Rule XXII) the Agent's court is not "subject to the appellate jurisdiction of the High Court"; similarly it is doubtful whether the High Court could transfer from the Court of the Agent an appeal against a decree passed by one of his subordinates, for under Rule XX no second appeal lies to the High Court in such cases, & the High Court is restricte terfering except "on special " & in a special manner.

It appears desirable to ask the Advocate General his opinion on these two points as the matter is of considerable importance.

6. It now remains to discuss the currents. Current 3178 and the papers connected with it relate to a petition for transfer presented under the following circumstances

The pet.r is the defendant in a suit (O.S. 2 of 1886 on the file of the Principal Asst. ~~Mag.~~ Agent, Vizagapatam) in which the plaintiff viz.t the representative of the Jeypore Rajah sued him for Kattubadi alleged to be due in respect of a mokhassa* village in the Madgole Zamindari. This zamindari was mortgaged

5: to Jeypore & the plaintiff was the mokhassadar of the village in question. – The suit hinged on the amount of Kattubadi due, & the Principal Assistant Agent decided it in favour of the pet.r (defendant). The Agent on appeal modified the decision slightly and the High Court acting under Agency Rule XX directed him to review his judgment.

Mr Wolfe Murray as Principal Assistant Agent decided the original suit & the defendant-pet.r prays Govt. to ~~transfer the~~ ~~[illegible]~~ ~~[illegible]~~ move the High Court [illegible]

FOR ORDERS.

*: held on service tenure

[G. / 25.]
600—7-5-95.

DEPARTMENT.

C. No.

FOR ORDERS.

Court of the Agent to some other Civil Court in the district. The grounds on which the transfer is sought are (i) that Mr Wolfe Murray who is now Agent is prejudiced by having already decided the original suit, (ii) that the Agent is prejudiced in favour of the plaintiff (the minor Raja of Jeypore) in virtue of his position as Agent to the Court of Wards. – The first reason for a transfer no longer exists as Mr Wolfe Murray is not returning to Vizagapatam, but the second reason is still operative & will continue so until December next when the Raja attains his majority.

7. In any case, it is submitted, that Govt. has no reason to move in the matter; if the pet.r wishes the appeal to be transferred he should move the High Court himself.

It is, as already remarked, doubtful

whether the High Court can legally direct a transfer, inasmuch as the Agent is only ~~directly~~ subject to its appellate jurisdiction to a limited extent. It is proposed therefore to say

"The petitioner is at liberty to "move the High Court to direct the "transfer of the appeal, if so advised; "the Govt sees no reason to interfere"

As the suit relates to the Kattabadi of ~~the~~ a mokhassa village in the Madgole zamindari, it ~~may~~ might be held to fall under rule XXII which deals with decrees in suits ~~(original not appellate apparently)~~ "wherein the landed possession of a "zamindar may form the subject of "litigation" But this rule, apparently only relates to original & not appellate decrees passed by the Agent.

8. In current 2740 the Agent reports for the orders of Govt. the question of the transfer of another appeal pending on his file. The Collector as agent to the Court of wards on behalf of the Karapam Estate sued the defendant for the recovery of a mokhassa village granted to him by the Karapam zamindar in 1858. The Court of original jurisdiction (the

FOR ORDERS.

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(95)

[G./25.]
600—7-5-95.

DEPARTMENT.

C. No.

FOR ORDERS.

the suit in favour of the Estate and the defendant now appeals to the Agent to the Govt. and requests him to move the High Court for a transfer on the ground that, in his capacity as agent to the Court of Wards, he is interested in the suit. Here again, if this were an original & not an appellate suit, Agency Rule no XXII would probably apply. The obvious course seems to be to ~~inform~~ tele the agent that "the Govt. is not ~~clear~~ certain whether ~~such~~ a transfer ~~can be~~ is authorised by law, & that he should inform the parties that they are at liberty to move the High Court if so advised. Orders are now solicited as to whether the legal points raised should not be referred to the Hon. the Advocate General for his opinion, with instructions to oppose the applications for transfe made, in order that the High Court may be forced to give an authoritative decision.

D
10.7.95

I submit that as the law stands the High Court has no power to order the transfer of any but an original suit on the file of the Agent alone — not being one of the class mentioned in Rule XXII. Govt. too has it appears to me no power whatever in this direction. I cannot see anything in section 4 Act XXIV of 1839 conferring any such authority.

The course suggested in the ~~Office~~ L.S.'s Note appears to be the proper one. If the H. Ct. holds that it has not the power of transfer it would appear necessary to legislate on the subject.

11/7/95

Transfers of Agency Suits

FOR ORDERS.

H. M.

G.
24.
500—21-5-95.

Judicial DEPARTMENT.

Papers to be read in proceedings :—

Again G.O., dated 189 , No.

Again G.O., dated 189 , No.

Current No. 298 of 1895, dated 21-Jany from Sangasi Raja

" " 2143 " 1895, " 25 April " the Agent to the Govr., Vizag.

" " 3178 " 1895, " 27 June; "

2740 31 May

ORDER. G.O. 17th July 1895 No. 1503.
Mis

The petr. Sangasi Raja will be informed that Govt. sees no reason to interfere in his behalf.

2. ~~[illegible]~~ The acting Agent will be directed ~~again~~ to proceed with the hearing of the suit brought on behalf of the Karapam Estate, as also the petr. Sangasi Razu, appeal & if possible to dispose of them before the return to the district of Mr. Willock who is much more personally interested in both Jeypore & Karapam, than is Mr. Miller.

15/7/95

D
15-7-95

The Agent, Vizag. (O.O.)
Rev. (Para 1 of O.)
Letter & Encl.

Copied 27/7
28
24 JUL 95
M.S

Agency suits

C.S.

ms/From orders

m given for copying
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en examined
en signed

} 189 .

AGAIN G.O., No. DATED 189 ,							
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