M.P.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1449 Press ~~Mis.~~

289.290

Dated 22-7-1861.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 22nd July 1861.

No. 289. Read the following Proceedings of the Board of Revenue, dated 11th July 1861, No. 3,646 :—

Read the following letter from CLEMENT DALE, Esq., Government Pleader, Sudder Adálat, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, dated Madras, 21st June 1861, No. 114.

SIR,

1. With reference to the Proceedings of the Board of Revenue, and the Order of Government, under the dates and numbers noted in the margin, I have the honor to report for the information of the Board, that I have carefully perused the Judgment and Decree of the Civil Judge of Madura in Original Suit No. 3 of 1856 on the file of his Court, and after having given the matter full consideration, I advise that under all the circumstances no appeal should be preferred on behalf of Government against that Decree.

* Proceedings of the Board of Revenue, 26th April 1861, No. 2,178.
Do. 14th May 1861, No. 2,446.
Proceedings of Government, dated 14th June 1861, No. 1,205, Revenue Department.

2. Doubtless the Civil Judge in one respect is in error. I consider therefore it is desirable that I should here enter into a consideration of the case a little more fully than might otherwise have been required, and showing my reasons for advising that no appeal should be preferred against a Decree admitted to be erroneous.

3. The Decree embraces four heads :—

(1.) It negatives the 1st Plaintiff's right to succeed to the Zamíndári under any circumstances ;

(2.) It orders the 1st Defendant (or the 5th Defendant if Decree in Original Suit No. 1 of 1860 is permitted to stand) as "the Zamíndár for the time being" (on the 12th April 1861) to pay to the two Plaintiffs, back maintenance at the rate of Rupees 400 per month, with interest and proportionate costs ;

(3.) It orders "the Zamíndár of Ramnad for the time being" to pay 1st Plaintiff Rupees 300 and 2nd Plaintiff Rupees 100 monthly for future maintenance ; and

(4.) It orders all the Defendants to pay their own costs.

4. As regards the 1st head, the Government have nothing to complain of the Decree of the Civil Judge, in negativing the 1st Plaintiff's claim to succeed to the Zamíndári ; that being in accordance with the case set up by the Collector.

5. The order embraced under the 2nd head does not affect Government.

6. Referring to the ruling contained under the 3rd head, that may conveniently be sub-divided into three parts.

(*a.*) Is Government included under the Title "The Zamíndár of Ramnad for the time being."

(*b.*) Is the 1st Plaintiff entitled to maintenance ? And if so, is Rupees 300 an excessive amount ? And

(*c.*) Is the 2nd Plaintiff entitled to maintenance ?

7. As regards the 1st sub-division, the only point which I consider it is necessary for me to touch upon, is to show whether Government is prejudiced by so much of the order as is embraced in that portion of the Decree. In my opinion if the Zamíndári escheated to the Crown Government would not be prejudiced, because in my opinion under THIS Decree Government would not be BOUND to continue the payment of the maintenance to either of the Plaintiffs ; inasmuch as the Crown would not be entitled as "Zamíndár" but as lord paramount ; and it might be argued that the Civil Judge had advisedly worded his Decree in the way he has. Of course Government could voluntarily continue the maintenance to such extent as they might deem it just and equitable.

8. As regards the 2nd sub-division, if the 1st Plaintiff were the legal wife of Saithape she is entitled to maintenance ; The Civil Judge has found that she was legally married to

him; and on this point I think the Civil Judge is right (although the evidence is far from being so satisfactory to my mind as it appears to have been to that of the Civil Judge); and I should not feel myself justified in advising an appeal on that point. As regards the amount of the maintenance, I do not consider it is excessive, assuming her to be a legal widow of a former Zamíndár.

9. But as regards the 3rd sub-division, there is no doubt the Civil Judge is wrong. Females on marriage "are considered as provided for" (1st Strange 172); they become estranged from their family, and are not entitled to maintenance. Under these circumstances it may be desired that I should give my reasons for not advising an appeal. One reason is, that if I be right in the view given in paragraph 7, the Government are not affected by it; another reason is, that if I be wrong in that view, the interest of the Government is not a present interest; and I think under any circumstances it might be left to the 1st and 5th Defendants to question the soundness of the Civil Judge's decision on that point, if they thing fit to do so. But my principal reason is, that I do not consider myself justified in advising Government to appeal in cases where the *only* consideration is a small money payment, and by submitting to which no principle is involved or violated. If I saw grounds for appealing on other (real and substantial) grounds, I would advise the point being raised; but that is a very different thing from instituting an appeal on that sole ground.

10. As regards the 4th head, the observation made by the Board in paragraph 3 of their Proceedings under date the 14th May 1861, No. 2,446, "that although the Judge's act in "directing the inclusion of Government as Defendants has been ruled by the Sudder to have "been erroneous, still Government is required to bear its own costs" is very apposite; yet it must be borne in mind that such inclusion was not the act of the Plaintiffs; they could not prevent the Judge from making an erroneous order. Consequently it would have been hard to have mulcted them in the costs of five Defendants, improperly made supplemental Defendants by order of the Civil Judge; and I submit that (if sustainable) it would not be becoming in Government to appeal against the Decree on that ground; the more especially when it is considered that the Civil Judge is a servant of Government, appointed to his present office, and may be removed from it by Government; and that although Government is ordered to pay to the extent named, that is insignificant, when placed in comparison with what the other Defendants are made to suffer, through the want of knowledge on the part of the Civil Judge.

11. It appears to me to be very likely that the Plaintiffs, and probably the 1st and 5th Defendants, may appeal from this Decree. If the former it is possible they may include the Collector as a Respondent, in which case Mr. Levinge would apprise the Board of the appeal. But it is quite possible an appeal may be preferred, and the Collector may not be included as a Respondent. Should such be the case, I think the appeal in the Sudder should be watched on behalf of Government; but if the Collector is not made a Respondent, I shall not be likely to hear of an appeal being preferred. I advise therefore that the Government Vakíl at Madura be directed to apprise the Collector if an appeal or appeals by any of the parties be preferred. I further advise that an order of Government be passed directing that in the event of an appeal being preferred, and the Collector not being made a Respondent, I should watch the proceedings on behalf of Government, such an order being necessary to enable me to get copies of papers from the Sudder. The order should be forwarded to me in duplicate, and this letter should not appear in full preceding the order.

Ordered to be submitted for the information of Government, in continuation of the Board's Proceedings dated 14th May 1861, No. 2,446. The Board concur in opinion with Mr. Dale that for the reasons stated by him it is not advisable to prefer an appeal from the decision of the Madura Civil Court in Original Suit No. 3 of 1856, and they recommend that the course suggested in paragraph 11 of the above letter be followed in the matter.

(A true Copy and Extract.)

(Signed) W. HUDLESTON, *Secretary.*

Proceedings of the Madras Government, Revenue Department, 22nd July 1861.

No. 290. ORDER THEREON, 22nd July 1861, No. 1,449.

Under the circumstances stated, the Government will not appeal in this case. The Board will issue instructions to the Collector to direct the Government Vakíl in the Madura Court to give timely notice if the other parties to the Suit appeal in the manner surmised by Mr. Dale in paragraph 11, and the Board will, in such case, apply to Government for the order required by Mr. Dale, to enable him to watch the case on their behalf in the Court of the Sudder Adálat.

(Signed) J. D. SIM,

Secretary to Government.

Revenue Dept.

No 1449

Proceedings of the Madras Government

Under date the 22nd July 1861.

Read the following

Proceedings of the Board

of Revenue.

Communicating a letter from the Government Pleader and concurring with him in opinion that it is not advisable to prefer an appeal from the decision of the Madura Civil Court in O.S. No 3 of 1856 regarding the Ramnad Zemindary.

Here enter 11th July 1861 No 3646

Under the circumstances stated, the Government will not appeal in this case. The Board will issue instructions to the Collector to direct the Government Vakeel in the Madura Court

to

Relating to O.S. No. 3 of 1856 in the Madura Civil Court regarding the Ramnad Zamindari

Revenue 1861 Septr.
Pro: of Govt. for July.

No. 1469.

Pro: of the Madras Govt:
Dy 22d. July 61.

Copy in Letter to Govt.
Dy 11th Sept 61 No. 111.

150 60
14-8-61

No. 289 & 290.

Passing orders on the Pro: of the Board concurring with the Govt. Pleader in his opinion as to the inadvisability of preferring an appeal from the decision of the Madura Civil Court in O.S. No. 3 regarding the Ramnad Zamindari.