Revenue Department

No 249

Dated 26 — 2 — 1859

249

No. 7. Read the following Extract from the Proceedings of the Board of Revenue, dated 25th February 1859, No. 707.

Read letter from the Collector of Madura, dated 18th February 1859, No.—.

(In Con. 23d February 1859, No. 701.)

Ordered that the foregoing letter be submitted for the consideration and orders of the Right Honorable the Governor in Council.

2. Mr. Clarke brings to notice that in the Suit brought against the Collector for the Erracheckanaiknoor Pollam, in the Madura District, which has been assumed by Government as an escheat, there has been an omission to file on behalf of the Defendant certain documents of great importance, and to cite oral evidence. He is also desirous to add to the answer the plea that in Zemindaries for which no Sunnud Istimrar has been granted, the succession to the estate is determined not exclusively by the law of inheritance but is dependant on the will of the ruling power.

Para. 10.

3. With the view of making these amendments he moved the Civil Court of Madura, which is about to decide the case, to allow it to be re-opened, and to grant him a further period of one month to produce the evidence he needed, but the Court has declined to accede to the request further than to allow another hearing on Saturday the 19th.

4. The case turns on whether Pollams held by individuals of the Cumbla Tottier caste can be held by females. On the ground that they cannot Government assumed Erracheckanaiknoor as an escheat. It is justly urged by Mr. Clarke that a right determination of the question is of great importance to the public as well as to Government, inasmuch as there are several Pollams in the possession of individuals of this caste, to which brothers and uncles expect to succeed in preference to daughters and widows.

5. He therefore proposes that the Government Pleader be authorized to move the Court of Sudder Udalut to set aside the Civil Judge's order and obtain for him the indulgence he has requested—and the Board resolve to recommend that Government may grant sanction for this step being taken.

6. One ground for refusing the application of Mr. Clarke given by the Civil Judge was that Messrs. Hathaway and Parker who succeeded Mr. Sullivan, by whom the evidence to be adduced was notified to the Court *must* have been perfectly aware *how the case stood*—but this alligation is incorrect. Mr. Parker was in the District only a month, and it does not appear that during this time or the incumbency of Mr. Hathaway any proceedings took place in this Suit.

(A true Extract.)

(Signed) J. D. SIM, *Secretary.*

No. 8. ORDER THEREON, No. 249; dated 26th February 1859.

The Governor in Council authorizes the application to the Court of Sudr Udalut proposed by the Collector, and recommended by the Board in para. 5 of these Proceedings.

(Signed) J. D. BOURDILLON,
Secretary to Government.

IN CON. 23RD FEBRUARY 1859, No. 701.

From T. CLARKE, Esq., Collector of MADURA,

dated Madura, 18th February 1859, No. —

To Board 6th September 1853 No. 95.
From do. 2d November „ „
To do. 17th February 1854 No. 16.
From do. 1st May „ „
To do. 15th April „ No. 70.
To do. 9th August 1855 No. 149.
From do. 25th September „ communicating Min. Con. 18th September No. 1055.
To do. 28th September 1855.
To do. 3d October No. 182.
To do. 9th do. No. 184.
From do. 17th November No. 3055 communicating Min. Con. of Govt. 3d November No. 1215.
To do. 19th November No. 216.
From do. 24th December No. 3434.
To do. 25th January 1856 No. 18, submitting Plaint and proposed answer in No. 1 of 1856 on the file of the Civil Court of Madura.
From do. 7th March 1856 No. 723, communicating approval of do.
To do. 6th July 1857 No. 147.
From do. 22d do. No. 2471.
From do. 14th August No. 2708 communicating Min. Con. of Govt. 4th August No. 780.

1. With reference to the correspondence noted in the margin, I have the honor to submit for the information of the Board of Revenue a copy of the Diary order of the Civil Judge of the 14th instant, passed on a petition presented on my behalf requesting that the case No. 1 of 1856, in which Veerakamooamal sued to be put in possession of the Polliem of Erracheckanaiknoor and its mesne profits might be re-opened and I have an opportunity afforded me of adducing evidence in support of the averment that no female of the Cumbla Tottier caste could succeed to a Polliem and further to grant me a period of one month to produce the evidence I needed. The Civil Judge declines to accede to my request though he allows me a further hearing on Saturday 19th instant and further promises to take into consideration any Documents I may wish to file in support of my plea.

2. I have taken the opportunity of placing in the hands of the Vakeel employed to defend the suit the accompanying paper of hints and regret the short period allowed me does not permit of my preparing it more completely.

Board's Proceedings 25th Sept. 1855, No. 2489.

3 The Board will recollect that the Polliem of Erracheckanaiknoor escheated to Government in 1855, in default of male heirs. The law of the caste to which the late Zemindar belonged making it impossible that any female should succeed to a Polliem held by a Cumbla Tottier in this District.

To Board 26th Octr. 1835.
From do. 28th Jany. 1836.

4. This Law was in 1836 violated through inadvertance or ignorance and Chinnamaul the Step Mother of the Plaintiff was permitted to succeed her husband in the Estate. On her death the Government decided that the Estate had escheated and an application of the Plaintiff to the Court to be put in possession of the Polliem in virtue of an interlocutory judgment passed in her favor by a Zillah Judge in a case* in which the Polliem was not under litigation nor the Government or herself parties before the Court. The Sudder Udalut Court ruled† that the Government were in possession, and that the Plaintiff if she claimed any right in the Estate must establish it in a Court of Law. Accordingly Veerakamooamal in 1856 brought a Suit in the Civil Court of Madura for the recovery of the Polliem and its mesne profits. The Plaintiff rested her claim on her relationship to Chinna Obala Naik the Poligar who died in 1835‡ and on the judgment declared in A. S. No. 20 of 1838 above quoted. The Plea of the Plaintiff was met by the averments "that according to the custom of the Cumbala Tottier caste to which the Plaintiff belongs, females could not succeed to a Polliem in proof of which precedents were quoted"—that Chinnamal had succeeded by neglect of the Government Agents that Plaintiff being a married woman and a step daughter to the late Zemindar her succession was barred by the Hindoo Law and that as the judgments quoted were inter parties they could not affect the Government who was not a party in those suits.

* A. S. No. 20 of 1838 on the file of the late Zillah Court of Madura.

† Extract Proceedings 26th February 1855 transmitted to Board with 9th August 1855 No. 145.

‡ Vide Correspondence marked A in margin.

5. On the 13th July 1857 points were given by the Court and the Collector was called on "to "prove the existence and validity of the custom on which he grounds his right and that the Plaintiff un- "der existing circumstances is obnoxious thereto,"

6. On the 25th idem the Collector in obedience to this call filed authenticated copies of the answers given in 1826 and 1836 by the father and the step-mother of the Plaintiff to the effect, that females were by the custom of the caste precluded from succeeding to the estate; he also filed one or two documents to shew in oppposition to the insinuation of Plaintiff in her reply that at the time the answer was said to have been made by her father as Zemindar he was not so as her grandfather was still alive. No witnesses whatever were cited.

7. When I took charge of the Collectorate I called for a list of the suits pending and was told this suit had long been closed and was ready for hearing. I confess I was remiss in not looking into the case to see what had been done in the matter. I had called for all the papers but had not looked into them. I was out on circuit when I received a request from my Sheristadar for permission to file certain documents which I had conceived had already been put in, and on enquiry, I found no witnesses were cited. I immediately put in my motion which is referred to at the commencement of this letter.

8. It struck me whether the Court might deem the present a case of such public and general interest as to allow of Hear say evidence being received and though the evidence adduced, the testimony of the Plaintiff's father and of her step mother the last Poligar, was of an unimpeachable character, yet it seemed desirable that it should be supported by oral evidence in regard to the custom and by other documentary and oral proof as to the same custom prevailing in all the Polliems of the District held by the Cumbal Tottiers. It also seemed necessary to prove the precedents quoted and to shew that the Hindoo Law debarred married women and step daughters from succeeding to the property of a step mother.

9. The right decision of the first point is of material importance not only to the Government but also to the greater number of the Poligars of this District for if the custom be not maintained wives and daughters would under the Hindoo Law succeed to the estate in preference to Uncles and male relatives.

10. One point in which I have dwelt at some length at the conclusion of my paper of hints appears to have been overlooked in the answer, viz., that in Zemindaries for which no Istimrar Sunnud has been issued the succession to the estate is determined not exclusively by the Law of inheritance but is dependent on the will of the ruling power. I have also endeavoured to urge that our rights cannot be barred by the Law of limitation which cannot apply to this case. I am afraid though such a plea may not have been advanced by the Plaintiff it may be used against us.

11. Should the Board see reason to agree with me in the necessity of having the case re-opened and investigated perhaps they would advise the Government Pleader to move the Court of Sudder Udalut to set aside the Civil Judge's order and obtain for me the indulgence I have craved.

12. In order to save time I will forward copies of all the correspondence that I think may be required and which may not be on the records of the Board's office and have noted those records in the Board's office which it appears to me the Government Pleader should see.

ENCLOSURE. 1

Copy of Petition presented to the Acting Civil Judge of Madura on behalf of the Collector dated 11th February 1859.

The 1st Defendant in this suit prays the Court to reopen the case and examine his Witnesses and allow him to file documents in support of the Statement made in his answer, that no female of the Cumbalata Tottia caste can legally succeed to a Polliem.

The right decision of this question is of grave and considerable importance not only to the Government a party in this suit, but to the numerous Poligars of this caste scattered through the District on the South of India.

The 1st Defendant is unable to explain satisfactorily why Witnesses were not named nor documents submitted on his behalf at the proper time, he can only conceive that the ill health of the then Collector who was compelled to proceed to England and eventually died under the disease he was then suffering from, prevented his giving his attention to the matter and that the duty was ill performed by those on whom it devolved.

One month's time should be applied for to the Court to produce all these documents and Witnesses.

ENCLOSURE 2.

Copy of order of the Acting Civil Judge of Madura dated 14th February 1859 on M.P. No.—of 1859.

The 1st Defendant (Petitioner) by Vakeel on the 10th August 1857 filed 2 exhibits in support of his answer and stated to the Court that he had no Witnesses to be *examined*.

The Court declines to re-open the case and examine Witnesses *now*. The Petitioner having shown no good cause for its so doing. Mr. Sullivan, to whom Petitioner would seem to allude, left the District about 16 *month ago*, and has been succeeded by Messrs. Parker and Hathaway who must have been perfectly aware, if Petitioner was not, how the case stood. The suit is an old one of 1856 and has been some months ready for decision, and was posted for final hearing on the 5th instant. The Petitioner's Vakeel then produced a mass of Cutcherry records which the Court declined to wade through desiring the Petitioner to *file* in a week such as he deemed necessary to support his case, which would be considered before passing decision. The Petitioner has had ample time and opportunity to defend the present action and justify the course pursued by him in 1853. The Court however will allow him a further hearing on Saturday the 19th instant, and take into consideration any Documents he may wish to file in support of his plea.

(Signed.) R. R. COTTON,
Acting Civil Judge.

No. 707.

Copy to Collector of Madura.

Copy in a Dr to Engd
Dy 2d August 1859 No 34

Letter from Collector
of Madura
8/18th February 1859.

Rec No 317/59.

1st March/59
798

No. 707.

Extract from the Proceedings of the Board of Revenue, dated 25th February 1859.

Read letter from the Collector of Madura, dated 18th February 1859, No. —.

(In Con. 23rd February 1859, No. 701)

Ordered that the foregoing letter be submitted for the consideration and orders of the Right Honorable the Governor in Council.

2. Mr. Clarke brings to notice that in the Suit brought against the Collector for the Erracheckanaiknoor Pollam, in the Madura District, which has been assumed by Government as an escheat, there has been an omission to file on behalf of the Defendant certain documents of great importance, and to cite oral evidence. He is also desirous to add to the answer the plea, that in Zemindaries for which no Sunnud Istimrar has been granted, the succession to the Estate is determined not exclusively by the Law of Inheritance but is dependant on the will of the ruling power.

Para. 10.

3. With the view of making these amendments he moved the Civil Court of Madura, which is about to decide the case, to allow it to be re-opened, and to grant him a further period of one month to produce the evidence he needed, but the Court has declined to accede to the request further than to allow another hearing on Saturday the 19th.

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(A true Extract.)

[signature]

Secretary.

To

J. D. BOURDILLON, Esq., Secretary to Government, R. D.

Copy to Collector of Madura.

Revenue 1859. Dep^t
D^o to Cons 1st March
No. 317.

Extract from the Proceedings of the Board of Revenue

Dated 25th Feby 1859.
Rec^d 26
1. Enclo.

From Govt Pleader 4th March/59
C. No. 376. in Cons: 15

Submitting a letter from the Coll^r of Madura respect^g the Suit brought Agt him for the recovery of the Errachekanaikoon Pollium assumed by Govt as an Escheat, & recommends that the Govt Pleader be authorized to move the Court of Sudr Adalut set aside the Civil Judge's Order in the case & to obtain for the Coll^r the one month's Extension he desires to put in certain further pleas in defence of the Suit. —

No. 249 — 26 Feb.
With an Order

No. 249

The Govr in Council authorizes the application to the C^t of Sudder Adalut, proposed by the Coll^r, & recommended by the 18^d in Para 5 of these Proc^s —

Fort St Geo:
26th February 1859.

3 Copies to the B^d of Rev.
Disp^d 28

1 — Govt Pleader with B^d's Pro & Enclo.

The Court will not interfere & I altered Decreet — the case is before the Civil Judge & in the interlocutory

From B^d of Reve: d/15th Mar/59
C No. 436 in Cons: 22^d

From the D^o d/27th Apl/59
C No. 721 in Cons

No. 748.
Copy in a L^r to Eng^d
D/2^d August 1859 No. 34

C 26th Feby R 28th