Revenue Department

N° 699

Dated 23rd May 1859.

No. 34. Read the following Extract from the Proceedings of the Board of Revenue, dated 19th May 1859, No. 1831.

Read letter from the Collector of Tanjore dated 7th May 1859, No. 104.

(In Con. 12th May 1859, No. 2146.)

With the foregoing letter the Collector of Tanjore forwards a plaint filed in the Civil Court of Combaconum, by Iyavoo Mooppanaur, the adopted son of the late Appavoo Mooppanaur, whose Estate of Cabistalum is now under management of the Court of Wards on behalf of his minor son. The adoption was made before the birth of the minor, and the object of the suit is to obtain a fourth of the whole property and its surplus funds which proportion, according to the opinion of the pundits of the Sudder Udalut, is the legal share of an adopted son in case of the birth of a child in the course of nature after the adoption has taken place.

E. M. C. 25th March 1857.
C. O. B. Vol. 1 *p.* 562 *Note* 16.

2. The Collector thinks that the adoption of the Petitioner cannot be said to have been adequately or fully established, or indeed to have been regularly brought before a Court of Justice at all, he therefore recommends that the Suit should be defended at the expense of the Estate, and that the Government Pleader should be requested to prepare an answer to the plaint.

3. As regards the legality of the Plaintiff's adoption, the Court of Wards observe that this question has been decided in the affirmation by a Court of Law, and the decision confirmed both in appeal and special appeal. The original and appeal decrees are not on their records but in the special appeal it is distinctly stated that "the evidence given in the original suit proves in the cleares manner that Plaintiff was adopted by 1st Defendant" and maintenance was awarded to Plaintiff accordingly.

From Collectors 31*st Dec.* 1846, *in Cons.* 10*th February* 1847.

4. These suits were moreover brought by the present Plaintiff against his adoptive father, who denied the validity of the adoption. The question was therefore tried under circumstances peculiarly favorable to the discovery of the truth.

5. The Court of Wards therefore apprehend that the present action cannot be resisted on the ground of the invalidity of the adoption.

6. The Collector also raises another question viz. as to whether the claim of Plaintiff is not barred by the statute of limitation. Mr. Cadell apparently does not place much reliance on this plea in consequence of the Plaintiff's proceedings, after the decease of his adoptive father, as shewn in the correspondence quoted.

Para 3. *of Collector's letter.*

7. Plaintiff's adoptive father died on the 21st August 1846, and the orders of Government to assume charge of the Estate bear date 29th July 1847. The Court do not distinctly gather from their records whether Plaintiff intermediately sought possession of a fourth of the estate, but from the Collector's letter dated 15th February 1848, it appears that he had then been told that without a decree or order of Court, no more could be granted to him than the maintenance awarded to him by the former decrees, and his claim to be vested with manager ment if the property was disallowed by the Collector and Court of Wards.

In Con. 6th March 1848, *No.* 463.

8. It seems to the Court that it would be useless now to question the fact of the adoption or its validity. The only possible ground of defence in their view therefore is that Plaintiff's right of action is barred by clause 4 Section XVIII. Regulation II. of 1802, more than 12 years having elapsed since the death of his adoptive father, when he should have asserted his right to succeed to a fourth of the property in virtue of the adoption. But it seems doubtful whether the Court would maintain that the time for bringing his action has not been extended by the proceedings connected with the assumption of the estate by the Court of Wards. And another question suggests itself viz. whether the adoption having been affirmed and the family being an undivided one, the possession of the Court of Wards on the behalf of the minor can be

held adverse to Plaintiff who has all along received a certain maintenance from the Estate. In other words it is doubtful whether Plaintiff is not to be considered a member of the undivided family and as such entitled at any time to claim partition according to Hindoo Law.

9. The answer of the Collector should be simply that as Agent of the Court of Wards he holds the Estate for the minor son of the late Porprietor and is prepared to admit Plaintiff's claim if he can establish his title in the Courts of Udalut and shew that he has brought forward his claims within the legal time.

10. The guardian of the minor is of course free to plead the invalidity of the adoption if she thinks fit, though the Court of Wards deem this useless. The Collector does not state whether he has communicated with her or the manager on the subject, or whether they admit Plaintiff's claims or are desirous of contesting it. In the latter case the Collector will secure the services of the Government Vakeel, and afford the guardian every aid in the preparation of the answer she may desire to put in, as well as watch the conduct of the suit.

11. Under the circumstances the Court see no use in taking a legal opinion on the case.

12. If the guardian is willing to compromise, Mr. Cadell will apply for an extension of time and report the circumstance to the Board.

13. Ordered that a copy of these proceedings be submitted for the information of Government.

(A true Extract.)

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

No. 35. ORDER THEREON, 23rd May 1859, No. 699.

The Honorable the Governor in Council sanctions the defence in the first instance at the public expense of suit No. 1 of 1859, instituted against the Collector of Tanjore in the Civil Court of Combaconum by Iyavoo Mooppanaur, but will determine, when a copy of the decree is submitted, whether the costs if any be adjudged against the Collector, shall be borne by that officer or by the Government.

2. The Collector's answer will be to the effect proposed by the Board in para. 9 of their Proceedings, and the remarks and orders of the Board in paras. 10 to 12 are approved.

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

Rev Dept

N° 699

Proceedings of the Madras Government
Under date the 23d May 1859
Read the following
& from the Proc.s of
the Court of Wards.

(Here enter 19th May 59
N° 1831)

The Honorable
the Governor in Council
sanctions the defence
in the first instance
at the public expence
of ~~the~~ suit No. 1 of 1859
instituted against the
Collector of Tanjore
~~in the~~ in the Civil
Court of Combaconum
by Iyavoo Mooppanaur
but will determine,
when a Copy of the
decree

cleared is submitted, whether the costs if any be adjudged against the Collector, shall be borne by that Officer or by the Government.

2. The remarks of and orders passed by the Board of Revenue in paras 10 to 12 of the above proceedings are approved.

2 The Collectors answer will be to the effect proposed by the Board in para 9 of their Proceedings. And the

Ans. 1. Copy to Court of Wards with Bl. Proc. 2 Copies Ack to do. Diff. 23. & 25.

List

Revenue 1859 Sept 10.
Cons 27th May.

№699.

Pres: of the Madras Govt
Dy 23d May 59.

Defence at public
Cost of the Suit № 1859
instituted by Syavoo
Moopsamy against the
Collector of Tanjore in the
Civil Court, Sanctioned.

№ 34 & 35.

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