M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1845	Press ~~Mis.~~
187-188	
Dated 11 Oct 1860.	

Not to be folded or roughly handled

No. 187. Read the following Proceedings of the Board of Revenue, dated 21st September 1860, No. 4,292:—

Read letter dated 6th September 1860, No. 129, from C. DALE, Esq., Government Pleader, Sudder Court, forwarding a printed copy of the decree passed by the Sudder Court in Special Appeal Suit No. 140 of 1859.

(In Cons., 7th September 1860, No. 4,459.)

1. Resolved that the letter above recorded together with its enclosure, and Mr. Dale's letter of the 19th July 1860, No. 110, be submitted for the information of Government.

In Cons., 21st July 1860, *No.* 3,540.

2. It will be perceived that the result of the above appeal has been adverse to Government, the decree of the Civil Court of Madura having been affirmed with costs.

3. The particulars of the Suit in question which was instituted by Veerakamoo Ammaul for the recovery of the Polliem of Eracha Naicknoor in Madura, assumed by Government as an escheat, were reported in the Board's letter, dated 21st April 1859, No. 1,440. In recommending an appeal to the Sudder on that occasion, the Board relied upon the fact that there was no doubt as to the custom of the Caste to which the Plaintiff belonged, excluding female succession, a doctrine which was acted upon in the case of the Polliems of Nuttom and Ramgherry in the same District, when they were assumed by Government on the death of the last Poligars without male heirs.

4. From Mr. Dale's letter, dated 19th July last, it will be seen that the failure of the Suit has resulted from the above custom not having been legally proved at the original trial, and from its being forbidden to raise in appeal pleas different from those set up in the Court of original jurisdiction. The Sudder Court also observed at the hearing of the appeal that Government were barred from questioning the right of the Plaintiff to succeed to the vacant Polliem, by the fact of their having themselves formerly allowed the succession of Chinnamaul and Papamaul; and hence the Court refused to allow Mr. Dale to adduce any evidence or argument that was not brought forward in the lower Court. Under these circumstances, the issue has been necessarily unfavorable to Government.

In Cons., July 1860, *No.* 3,540.

5. Mr. Dale now advises that the decree of the Sudder should be submitted to, as the real facts of the case have not been pleaded, nor the proper line of defence taken during the original trial. The Board agree with him, for as the case stands they do not see how the Privy Council can come to any other decision than that which the Sudder Court have pronounced.

(A true Extract.)

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

No. 188. ORDER THEREON, 11th October 1860, No. 1,845.

The Government agree with the Board of Revenue that, under the circumstances, an appeal to the Privy Council from the decree of the Sudder Adálat in this case is inexpedient.

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

In Con. 21st July 1860, No. 3,540.

From C. DALE, Esq., Government Pleader, Sudr Adalat,
dated Madras, 19th July 1860, No. 110.

With reference to the Order of Government and a letter from your department, under the dates and numbers noted in the margin, I have the honor to report, for the information of the Board of Revenue, that the Special Appeal Suit, No. 140 of 1859, instituted in the Sudr Adalat on behalf of the Collector of Madura against the Decree in Original Suit No. 1 of 1856, on the file of the Civil Court of Madura, came on for hearing on Monday last the 16th instant, when the Court of Sudr Adalat affirmed the Decree of the Civil Court.

Minutes Consultation, 27th April 1859, No. 573, Revenue Department.
Letter from Sub-Secretary to the Board of Revenue, to Government Pleader, 4th May 1859, No. 1,593.

2. I send a printed copy of the record so far as the same was translated and printed for the use of the Court.

3. In page 2 of that print is set out a translation of the Answer put in by the Collector (Mr. Parker), from which the Board will see the defence set up in the Original Suit, and in page 14 is set out the petition of appeal with the grounds on which it was proposed to support such appeal in the Sudr.

4. From a perusal of the Plaint and Answer, the Board will gather that although the Collector by his general denial in the first paragraph of his Answer put the plaintiff to the proof of her whole case, yet that he really rested his defence on two issues, viz., 1st, the custom in the Cumbala Totiar caste, and 2ndly, that Chinnamal (not Chinna Obala Naick) having died without male heirs, the estate escheated. My impression is that Mr. Parker meant to aver in his answer that Chinnamal and Papamal were suffered to enjoy the estate without opposition by Government from ignorance of the custom of caste and oversight of Government rights, and that on the death of Chinnamal, there being no male heirs of Chinna Obala Naick, the estate was taken possession of by Government, &c. The defence is otherwise senseless, but from the language used in the Answer, a person unacquainted with the defence, which was really intended to be set up, would not suppose such a defence was contemplated.

5. I may observe that in appeals no party should be allowed to set up a case different from that raised in the Court of original jurisdiction.

6. The only evidence put in originally were the two Exhibits referred to in page 7 as Exhibits No. 1 and No. 2. They were not proved, nor was any oral evidence of any description tendered by the Collector then in charge.

7. The correspondence that took place with the late Collector (Mr. Clarke), on the subject of his application to the Civil Court for leave to put in further evidence on behalf of the Government, will be in the recollection of the Board, and its result, I observe, Mr. Clarke did subsequently get in the Exhibits Nos. 3 to 24, mentioned in pages 8 and 9, but they were not proved.

8. When the Appeal Suit was called on, I was proceeding to show to the Court the facts of the case, when the judges noticed that no evidence had been given by the Collector to prove the alleged custom in the Cumbala Totiar caste, and asked me for explanation; in giving this, I drew the attention of the Court to the Exhibits put in by the Collector, and explained that although further evidence had been tendered by the Collector to the Civil Judge, the latter had refused to admit it.

9. The Court then stated that instead of going into the whole case they wished me to confine my argument in the first instance to three points, viz.,

1st. The effect on the succession consequent on no Milkeut Istimrar Sunnud having been issued (the 2nd of my grounds in the appeal petition.)

2ndly. The effect of the acquiescence of Government in allowing Chinnamal and Papamal to enjoy the estate after the death of the plaintiff's father, Chinna Obala Naick; and,

3rdly. That under the circumstances of this case as shown by the record, the plaintiff was not entitled on the death of Chinnamal (her father's senior widow and her own *step* mother), to succeed to the zemindary.

10. On my coming to the 3rd of these grounds, an objection was taken by the Vakeel for the plaintiff that it was not competent for me to go into that ground, the decree in A. S. No. 20 of 1838 being "a judgment in rem." The Court, however, decided that such decree was not binding on the Government, and intimated that I might now argue such of the other points of the case as I thought it was open to me to urge. I thereupon was proceeding to argue that females cannot succeed, but the Court stopped me observing, it was not open to me to show this, the Government themselves having put in Chinnamal and Papamal, that act precluded the Government from putting forward that ground. I, however, urged upon the Court that on the strength of the judgments of the Sudr Adalat, reported in the 1st volume of the Sudr Decisions, it was clear the succession to Zemindaries not

held under Sunnud, was not governed exclusively by the laws of inheritance; but that the
power created, tolerated, abolished, or disposed of those tenures as might be considered most expe
that so soon as Government had put in Chinnamal, it was not competent to Government, or ev
Courts to divest *her* of that right which extended, however, merely for her life and on her de
power of Government revived. The Court avoided giving any decision on the point by observ
point had not been raised by the Collector in the Court below; it was not, therefore, compet
me to raise it for the first time in a Court of Appeal. I then proposed to go into the other
raised in my appeal petition, but the Court would not allow me to do so, observing it is admitt
the plaintiff is. It has not been shown that *Chinnamal* has any heirs, it was therefore to be pr
she had none, indeed the Collector had so averred in his Answer. They (the judges) would there
the pundits whether plaintiff is the lawful heir and if they answered in the affirmative that
decide the case.

11. I urged that the Collector had never intended to admit that Chinnamal had died
male heirs, and submitted that the defence intended to be set up was that to which I have refe
paragraph 4, and that by reading the 2nd and 3rd paragraphs together such might be inferred
honors, however (and I think rightly), decided that by the fair construction which should be put u
Answer, the defence was that Chinnamal had died without male heirs.

12. The question was then put to the pundits, they did answer in the affirmative
course I was precluded from carrying the case further.

13. It only remains for me to offer my opinion regarding the carrying the case further by a
to the Privy Council, and I unhesitatingly advise that such a course should not be pursued. If
facts of the case and the real defence had been raised in the Original Suit, I do not think i
have made any difference in the decree of the Civil Judge, because he decided the case on
which (although somewhat difficult to gather and when gathered to understand) would hav
ridden such a line of defence; yet if the grounds raised in the petition of appeal had been ple
the Original Suit, and proper evidence had been adduced, I entertain little doubt the Sudr wo
decided in favor of Government, or if they had mistaken their way, I should have had no h
in advising an appeal to the Privy Council. Unfortunately, however, neither the proper defe
pleaded, nor was evidence adduced, I consequently advise that Government should subm
decree of the Sudr.

14. I will forward a copy of the decree so soon as it is obtained from the Court.

15. I return the papers received from you as per Memorandum annexed.

MEMORANDUM.

LIST of papers returned to the Board of Revenue.

1804, January	31,	Letter from Collector of Madura to Board of Revenue, No. 141, with 6 e and their accompaniments.
1821, Do.	13,	Reply of the Zemindar of Ediacottah.
„ Do.	16,	do. of the do. of Bodynachenoor.
„ Do.	24,	do. of the do. of Maumbaray.
„ December	29,	Reply of Conda Bomanaicken, Zemindar of Tavaram.
1822, January	10,	Reply of the Zemindar of Codavoor in Dindigul District.
„ Do.	19,	do. of the do. of Kigoody and Rettyembaudy.
„ Do.	21,	do. of the do. of Errachickanaickoor.
„ Do.	25,	do. of the do. of Doddapa Naickenoor in Madura.
„ Do.	25,	do. of the do. of Jothel Naickenoor in Madura.
1848, August	17,	Letter from Collector of Madura to Board of Revenue, No. 108, with 3 e
1853, September	6,	do. from do. to do. No. 95, with 7 e
1854, March	16,	do. from the Board of Revenue to Government, No. 592.
1855, September	18,	Extract Minutes Consultation, No. 1,055, Revenue Department.
„ Do.	19,	do. from a letter from the Honorable the Court of Directors, No. 1
1856, January	5,	do. Minutes Consultation, No. 6, Revenue Department.
„ Do.	25,	Letter from Collector of Madura to Board of Revenue, No. 18, with 2 e
„ March	5,	Extract Minutes Consultation, No. 257, Revenue Department.
„ April	26,	Reply in Original Suit No. 1 of 1856.
		Rejoinder in Original Suit No. 1 of 1856.
1859, February	18,	Letter from Collector of Madura to Board of Revenue, with 2 enclosu
„ March	30,	Decree in Original Suit No. 1 of 1856 in the Civil Court of Madur
„ April	11,	Letter from Collector of Madura to Board of Revenue, No. 60, with 3
„ Do.	21,	Letter from the Board of Revenue to Government, No. 1,440.
„ Do.	27,	Extract Minutes Consultation, No. 573, Revenue Department.

Madras, 19th July 1860.

Exd. J. Tulloch.

No. 4,292.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 21st September 1860.

Read letter dated 6th September 1860, No. 129, from C. Dale, Esq., Government Pleader, Sudder Court, forwarding a printed copy of the decree passed by the Sudder Court in Special Appeal Suit No. 140 of 1859.

(In Cons., 7th September 1860, No. 4,459.)

1. Resolved that the letter above recorded together with its enclosure, and Mr. Dale's letter of the 19th July 1860, No. 110, be submitted for the information of Government.

In Cons., 21st July 1860, No. 3,540.

2. It will be perceived that the result of the above appeal has been adverse to Government, the decree of the Civil Court of Madura having been affirmed with costs.

3. The particulars of the Suit in question which was instituted by Veerakamoo Ammaul for the recovery of the Polliem of Eracha Nairknoor in Madura, assumed by Government as an escheat, were reported in the Board's letter dated 21st April 1859, No. 1,440. In recommending an appeal to the Sudder on that occasion, the Board relied upon the fact that there was no doubt as to the custom of the Caste to which the Plaintiff belonged, excluding female succession, a doctrine which was acted upon in the case of the Polliems of Nuttom and Ramgherry in the same District, when they were assumed by Government on the death of the last Poligars without male heirs.

4. From Mr. Dale's letter dated 19th July last, it will be seen that the failure of the Suit has resulted from the above custom not having been legally proved at the original trial, and from its being forbidden to raise in appeal pleas different from those set up in the Court of original jurisdiction. The Sudder Court also observed at the hearing of the appeal that Government were barred from questioning the right of the Plaintiff to succeed to the vacant Polliem, by the fact of their having themselves formerly allowed the succession of Chinnamaul and Papamaul; and hence the Court refused to allow Mr. Dale to adduce any evidence or argument that was not brought forward in the lower Court. Under these circumstances, the issue has been necessarily unfavorable to Government.

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(A true Extract.)

Secretary.

To J. D. Bourdillon, Esq., Secretary to Government, R. D.

Copy to C. Dale, Esq., Government Pleader, Sudder Udalut.
„ to V. H. Levinge, Esq., Collector of Madura.

Exd. J. Wright.

21st April 1854 Nos 21-22.
24th March 1859 Nos 7-8-
" 15th March " Nos 35-36
" 22nd March " Nos 45-46
" 29th April " Nos 41-42

Vide

Pro. of the Bd of Rev.
9th June 1860 Nos 2532
in Pro. 24th Nov. Nos 2232

Copy in a Letter to Engd
dated 7th February 1861 No 20

No 187 & 188.

8th October 1861

(21) Rev. 1860 Department
Pro. of Govt for October
No 2101

Proceedings of the
Board of Revenue

Dated 21st
Dorsd 26th } Sept. 1860
Recd 27
Encl 2 with 20 encl
4 Encls No 4292

Submitting for information Correspondence from the Govt. Pleader Sudr Court forwarding a printed Copy of the decree passed by the Sudder Court in Special appeal Suit No 140 of 1859 affirming with Costs the decree of the Civil Court of Madura.—

No 1845. 11th October
With an order

No 1845.

The Government agree with the Board of Revenue that, under the circumstances, an appeal to the Priy Council from the decree of the Sudr Adalut in this case is unprecedented.

Fort St. Geo.
11th October 1860

Board of Rev. with 2 Encls Disp 12