

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No.	1006	Press
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57	58	
Dated	6 35	1861.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
6th May 1861.*

No. 57. Read the following Proceedings of the Board of Revenue, dated 23rd April 1861, No. 2096 :—

Read letter, dated 25th March 1861, No. 95, from the Collector of Madura, forwarding for the information of Government, copy of the Judgment given by the Civil Judge of Madura in Original Suit No. 1 of 1860.

(In Cons. 15th April 1861, No. 2291.)

1. The Suit in question was brought by Mutuvijya Raganada Muturamalingam, against ; 1st, the Zamindár of Ramnad ; 2nd, the Collector of Madura, to obtain possession of the Zamindári Estate of Ramnad, and the Plaintiff rests his claim on his adoption by the 1st Defendant.

2. The Ramnad Estate, it will be recollected, escheated to Government in 1795, on account of the rebellion of its proprietor, Muturamalinga Saithoopathy, who was deposed, and confined a prisoner in Madras. It was then conferred, under an Istamarar Sannud on his sister Mungalishwara Nachiar, who being childless was succeeded by her adopted son Annasamy Saithoopathy. He married Mootoo Veroyee Nachiar, but having no children, was succeeded by their adopted son Ramasamy Taven, who married Purvada Vardany Nachiar, and had two daughters. At the time of his death, he wrote to the Collector requesting that the Estate might be conferred on his daughters, and that his adoptive mother (who was also his sister) might be appointed their guardian, and Mootoochella Taven his half brother, the manager of the Estate. His wishes were acceded to ; both daughters successively obtained the Zamindári, but dying in their minority and childless, were succeeded by their father's widow and own mother, the aforesaid Purvada Vardany Nachiar, the present Zamindár, and 1st Defendant in

the Suit. Against her, Mootoo Veroyee Nachiar the widow of Annasamy Saithoopathy brought a Suit in the Civil Court of Madura, but withdrew the same on a Rajeenamah, by which she recognized the right of Purvada Vardany Nachiar to the Zamindári, and to adopt her successor.

From Madura, 31st May, in Cons.
21st June 1847, No. 1,451.

From Madura, 1st, in Cons. 12th March
1849, No. 669.

To Collector, 10th March 1849.

3. The adoption was made in 1847 ; the Collector immediately objected to it, as being made without sufficient authority, and when the demise of the Zamindár was hourly expected in 1849, on the ground that there appeared to be no lawful heir to the Estate, he solicited instructions as to how he was to act on her death. Instructions were issued to the Collector, which he construed to convey an indication of the disapproval by Government of the adoption, and an authority to him to assume charge of the Estate directly it became vacant by the death of the Zamindár.

4. The Zamindár recovered ; and on the 29th July 1855, the Collector was informed by Government that he had misinterpreted their intention, and was instructed, through the Board of Revenue, to recognize the adopted son as the lawful heir of the Zamindár, subject to any orders or decisions that might issue from the Civil Court.

5. In consequence of an opinion delivered by Mr. J. B. Norton, the Government Pleader, that a widow succeeding her husband cannot alienate the Estate to the injury of Government any more than she could to the injury of her husband's relatives if any, and that, in default of heirs of her husband, the Government succeed to the property, not as her heirs but as heir to the husband, the Government, in their Proceedings of 29th October 1855, modified their views as to the validity of the Plaintiff's adoption, and on the 6th November 1855 authorized the Collector being instructed to take possession, of the Ramnad Estate, " leaving the claims to succeed to it to future decision."

6. This order, and the purport of the previous one of the 29th October were communicated to the Zamindár, by the Collector, in an order dated 15th November 1855, filed with the plaint, and marked A in the pleadings, and an order was also on the 3rd November sent

In Cons. 31st October 1855, No. 3,120.

In Cons. 31st October 1855, No. 3,120.

In Cons. 7th November 1855, No. 3,221.

by the Collector to the Salt Amildar and Head of Police of Ramnad to assume charge of the Estate on behalf of Government, immediately on the death of the Zamindár.

7. In his plaint, the Plaintiff referring to his adoption as having been made in accordance with the express injunction of Ramasamy Saithoopathy, the late husband of the 2nd Defendant, in conformity with the provisions of the Hindoo Law, and the consent of the Zamindár's mother-in-law, and her relatives, and to his having attained his majority; prays that the Collector's order A, of the 15th November 1855 above referred to may be cancelled, and be placed in possession of the Zamindári.

8. The Civil Judge, unwilling to enter into an examination of the validity of the adoption on which act alone the Plaintiff rests his claim to the Estate, "with reference to the Law enunciated by the Court of Sudder Adálat on the rights of the Crown under the law of escheat, called on the Collector, whose proceedings he alleged had given rise to the Suit, to show that there are no heirs to the present Rance of Ramnad, and his right to order an escheat of the property on the death of the present Rance, and in the event of there being no heirs, his right to prevent her making any assignment of the property she may please during her life time; also to prove the illegality of the alleged adoption and to file his documents and lists of witnesses in ten days."

9. The Collector in submitting these proceedings of the Court, informed the Board of Revenue that he had applied to the Court for an extension of the period allowed him in which to submit his documents and list of witnesses. The Civil Judge refused to grant the extension solicited, and the Collector, compelled to do the best in his power, filled a list of documents and witnesses, and at the same time took exception to the course adopted by the Court. In doing this the Collector denied the existence of any collateral heirs to the Estate of Ramnad on the death of the 1st Defendant, and observed, that it therefore naturally followed that, in the absence of any rightful heirs the Estate must become an escheat, and the ruling power had a right to object to any illegal assignment of the property contrary to the intention of Section 8, Regulation IV of 1802. These latter remarks of the Collector were uncalled for, and militate against the instructions of the Government Pleader; but the Collector acted to the best of his judgment. It seems, however, to the Board to be desirable in cases of importance like this when Government are acting under the instructions of a professional Officer, that the Courts in the interior should be required to afford the Collector the time to obtain the advice of their legal advisers. Such appears to be the intention if not the exact wording of Sections 67 to 69 and 146, Act VIII of 1859, and they would suggest that the Court of Sudder Adálat should be moved to issue the necessary instructions to the Officers subordinate to them in the matter.

10. On the 18th March 1861, the Civil Judge gave judgment in the case. In this judgment he declares that the whole case turns on the rights of the Government to challenge the adoption of the Plaintiff. Such right, he states, can only be recognized in cases in which from want of heirs a property becomes apparently an escheat to the Crown. In this case he finds from the pleadings of the Collector, the records of his Courts, and the evidence of the Plaintiff's witnesses, that there are heirs, and consequently he cannot admit the right of Government to interfere with the power of the Zamindár to make whatever assignment she may please of the Estate; should the assignment be null or illegal it is the province of the heirs, whose rights would be affected by it and not of the Government, to question the act. So long, therefore, as there are heirs, the Government has no right to challenge such assignment except "so far as it affects the revenue, assessment and Government tax on the land."

11. But even were there no heirs, as asserted by Government, the Civil Judge holds that the Zamindár is fully at liberty, under the decree of the Sudder Adálat, to alienate her property at any moment before her death, whether with or without consideration, and that the Government are not entitled to question her right to do so. "The long and short of the matter is therefore," observes the Civil Judge, "if the Zamindár has heirs the Zamindári is not heirless property, and the right of Government to escheat is barred. If the Zamindár has no heirs, she can alienate to the last moment of her life, and the Government has no right to question her act."

12. Having thus disposed of the right of Government to challenge the adoption of the Plaintiff by the Zamindár, who, whether she has heirs or is heirless, he pronounces to be equally free to make an assignment of the Estate without consulting the Government, and having ascertained that the Zamindár, the only other party to the Suit, admits the adoption, the Civil Judge did not consider himself called on to go into and give a judicial decision on a point regarding which there was no question before him, and he thus sums up his judgment in the following words:—

13. "As it is clear to the Civil Judge that the Ramnad Zamindári, now in possession of the first Defendant, is her undisputed property, and that the Government have no grounds whatever for ordering its being escheated as an heirless property; and as they have no right, while there are legal claimants to it, to interfere with it or with the owner of it, for the time being, save in such manner as the Regulations prescribe for the due collection of Revenue, the Civil Judge decrees, that the order of the Collector of 15th November 1855 A, and those to the Salt Amildar and Head of Police, dated 3rd idem, referred therein as directing the attachment of the Zamindári be cancelled; and since the Government have failed altogether to establish any right to interfere with the Estate, or to question the acts of the Zamindár, they are prohibited from all interference; and the Zamindár is declared competent, subject to the provisions of the Hindoo Law, and Section 8, Regulation XXV of 1802, to assign and transfer, without the previous consent of the Government, or of any other authority, to the Plaintiff or whomsoever she may think proper, by sale, gift or otherwise, her proprietary right in the Ramnad Zamindári."

But the Judge has, though it appears to the Board somewhat inconsistently, declared that this award does not bar the right of the Government to bring a regular action for the Estate, if they may consider themselves to be in a position to establish a superior right to the party in possession. The only effect the judgment is intended to have, being that Government are prohibited summarily seizing the Estate while as at present, there are heirs.

14. The Civil Judge further awards each party to pay his own costs.

15. In his judgment, the Civil Judge has attempted to overrule the objections taken by the Government Pleader to the course adopted by the Court, of abandoning the pleas raised by the Plaintiff as the ground-work of his claim, and himself framing fresh ones, establishing, not the right claimed by the suitor, but setting forth the general status and relative possession of one of the two Defendants, in regard to the other.

16. On this point the Civil Judge observes, that the right of Government, the 2nd Defendant, to object to the 1st Defendant's, the Zamindár's assignment, i. e., the adoption of the Plaintiff, is a question of law for the Court to determine, whether pleaded or not, and that the Collector is in error in putting on the Plaintiff the burthen of the proof of adoption, the adoption being admitted by the adopter, it is for the challenger of its validity to prove its illegality.

17. The doctrine on the first point is opposed to that laid down by the Civil Judge in the Enacknaiknoor case, in which though the law was pointed out to him as barring his jurisdiction in the case, the Judge refused to act on it, because it had not been quoted in the pleadings on the second point, and as the Plaintiff claimed the Estate, on the ground of the adoption, it was undoubtedly his duty to prove the validity and legality of his plea.

18. In regard to the objection taken by the Collector to his being called on by the Court to prove a negative, i. e., that there are no heirs.

19. Mr. Cotton replies that as the Government had no right to escheat the Estate if there were heirs, and they had ordered the Estate to be escheated, the Court called on them to justify the act, which they could only do by proving there are no heirs, he was accordingly called to do so.

20. The third objection taken by the Collector to the course adopted by the Court was, that even had the Zamindár any heirs, his being called to prove it was premature; the Civil Judge overruled this objection by stating that the point "was raised by Government itself, in the order which was only justifiable in the event of there being no heirs, the prematurity of which cannot be questioned."

21. To the objection that it was premature to require the Government to maintain their right to order an escheat seeing the Zamindar is in actual and recognized possession, and that till the escheat was effected he should not have been called on to support such an act, the Civil Judge considers that, as the Government have notified their intention to escheat the Estate, it would have been absurd for the Plaintiff to wait till it was done, and he illustrates his remarks by an illustration as little apposite to the point as it is dignified or becoming, in which robbery and murder form the subject of the analogy.

22. The Board do not consider that the judgment of the Civil Judge can be sustained in law or equity.

23. Without attempting to follow the Judge through his arguments it would seem sufficient to point out, that Mr. Cotton has assumed, without apparently any proof whatever, that there are heirs competent to succeed to the Estate. This point was most carefully and diligently inquired into by the late Collector, Mr. Parker, and he laid the result of his inquiries before the Government, from which it is clear that there are not any persons alive who could claim to stand in a position of an heir to the Estate.

24. Mr. Cotton has arrived at the conclusion that there are heirs from the pleadings of the Collector, the records of his Court, and the testimony of Plaintiff's witnesses.

25. The Board cannot discover how the Judge has construed the pleading of the Collector to convey such a meaning as he has extracted from them; there is nothing in them that the Board can find which would justify the Judge in drawing the conclusion he has from them.

26. Neither is it sufficient, regular, or just that in so material a point of his decision, he should boldly state that he gathers the first from the evidence of Plaintiff's witnesses, without showing who those witnesses are, their ability to testify on such a point, and how they establish it.

27. Neither is the Judge in such a matter as this justified, in referring to the records of his Court, as proving the fact, and the less so, inasmuch as it was in a suit from the Court of Madras and one which has been lately under his observation, that the Judicial Court of the Privy Council so strongly pointed out the impropriety and injustice of a Court forming its judgment on pleadings or admissions not found on the record, but gleaned from the records of a case wholly unconnected with it.

28. The Civil Judge was not called on to determine whether there were any other heirs to the Estate than those then before him. The point was not raised by the Plaintiff, and could not advance his claim. It was one which might have suggested itself to a pleader anxious to stare off and divert the Judge from the consideration of the real point at issue, viz., the legality of the adoption, but if, in the opinion of the Bench, it was an *in limine* objection to the progress of the suit, it appears to the Board that it deserved to be treated more at large than it has been. The Judge has met the difficulty by a mere assertion and thus prejudged a point on which he was not strictly called on to give an opinion and which may materially embarrass the Government in future proceedings.

29. Neither did the Plaintiff plead as a bar to the action of Government the rule of law which formed the judgment of the Civil Judge in regard to the right of the widow to devise the property in what way she pleased, neither does that law appear at all applicable to the Plaintiff's claims.

30. His claims rested not on an assignment of the Zamindar and her right to make it, but on an adoption undertaken at the instance and under the order of her late husband; an act, therefore, not emanating from her but from her husband; and though (if the law which the Judge quotes is sound) it might be open to the widow to make a new assignment of the Estate in her own name, yet such was not the question submitted to the Court; it was whether the adoption already made and on which the Plaintiff claimed to succeed to the Estate, was made by one competent to make it and with all due formality.

31. Further the soundness of the law or rather the interpretation of the law on which the Civil Judge has based his judgment has been questioned by the Government legal adviser, and

with their permission Mr. Dale has been requested to prepare an appeal from the decree of the Sudder Adalat in which it is found. So that were the Civil Judge's judgment unexceptionable in every other respect, except that it was unfounded on an interpretation of the law at present under appeal, the Board of Revenue would deem it advisable on that point only to recommend that the Government Pleader should be instructed to prefer an appeal from the decree of the Civil Judge to the Sudder Adalat, lest the act of Government in abstaining from an appeal should be construed into an acquiescence of the justice and soundness of the view held by Mr. Cotton, and they be involved in future difficulties and confusion. It is true the Civil Judge has reserved to the Government the right, at any future time, to bring a suit against any one in possession of the Estate, but the Board fail to comprehend the object of this reservation and look on it as mere surplusage. The concession carries with it no substantial advantage, for the Judge has distinctly declared there are heirs to the Estate, and that as long as they exist the Government have no right to question any act of the Zamindar in alienating the Estate and hence can have no right to question the occupation of the Estate by any party to whom it may be so alienated; it is clear, therefore, that the Government could not bring a suit for dispossession since if they did they would have no *locus standi*, and even were this difficulty overcome by the death of the heirs referred to by the Court still as any assignment of the Estate made by the Zamindar, though it might be questioned and annulled by a relative, is good against the Government, the Board are unable to discover on what ground the Government could in the face of the Civil Judge's decree bring a suit for dispossession.

32. Under the opinion above expressed the Board resolve to forward a copy of these Proceedings and of the Civil Judge's decrees to the Government Pleader with a view to his expressing his views as to the propriety of preferring an appeal to the Court of Sudder Adalat.

(A true Extract.)

(Signed) J. D. SIM, Secretary.

No. 53.

ORDER THEREON, 6th May 1861, No. 1,006.

The Government will await the report of the Government Pleader, which they trust will be submitted without delay.

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

IN Cons. 15th APRIL 1861, No. 2,291.
From V. H. LEVINGE, Esq., Collector of MADURA,
dated Kilakarai, 25th March 1861, No. 93.

I have the honor to forward, for the information of the Board and Government, copy of the
Judgment of the Madura Civil Court in Original Suit No. 1 of 1860, the Ramnad adoption suit.

ENC. 1.

ABSTRACT.—Copy of the Judgment passed by the Civil Judge of Madura on Ramnad adoption suit.

not emanating from her but from her husband ; and though (if the law which the Judge quotes is sound) it might be open to the widow to make a new assignment of the Estate in her own name, yet such was not the question submitted to the Court ; it was whether the adoption already made and on which the Plaintiff claimed to succeed to the Estate, was made by one competent to make it, and with all due formality.

31. Further the soundness of the law or rather the interpretation of the law on which the Civil Judge has based his judgment has been questioned by the Government legal adviser, and with their permission Mr. Dale has been requested to prepare an appeal from the decree of the Sudder Adalat in which it is found. So that were the Civil Judge's judgment unexceptionable in every other respect, except that it was unfounded on an interpretation of the law at present under appeal, the Board of Revenue would deem it advisable on that point only to recommend that the Government Pleader should be instructed to prefer an appeal from the decree of the Civil Judge to the Sudder Adalat, lest the act of Government in abstaining from an appeal should be construed into an acquiescence of the justice and soundness of the view held by Mr. Cotton, and they be involved in future difficulties and confusion. It is true the Civil Judge has reserved to the Government the right, at any future time, to bring a Suit against any one in possession of the Estate, but the Board fail to comprehend the object of this reservation and look on it as mere surplusage. The concession carries with it no substantial advantage, for the Judge has distinctly declared there are heirs to the Estate, and that as long as they exist the Government have no right to question any act of the Zemindar in alienating the Estate and hence can have no right to question the occupation of the Estate by any party to whom it may be so alienated ; it is clear, therefore, that the Government could not bring a Suit for dispossession since if they did they would have no *locus standi*, and even were this difficulty overcome by the death of the heirs referred to by the Court still as any assignment of the Estate made by the Zemindar, though it might be questioned and annulled by a relative, is good against the Government, the Board are unable to discover on what ground the Government could in the face of the Civil Judge's decree bring a Suit for dispossession.

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(A true Extract.)

[Signature]
Secretary

To C. Dale, Esq., Government Pleader, Sudder Adalat.

Copy to J. D. Bourdillon, Esq., Secretary to Government, R. D., for information.

Exd. J. Wright.

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Enrolled in Proceedings
of the Sudder Adalat
of the 23rd of June 1853
Decree of the Civil Judge
dated 23rd of June 1853
No 2098

Enrolled in Court

1027/61

Letter from the
of the Sudder Adalat
to the Civil Judge dated
25th March 1853
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[Signature]

57-58

6th May 61-57/8

2-29 Oct 1855 H 15-16

2-10 April 1855-103

2-23 June 1855-2752

2-19 March 1855-3567

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Proceedings of the

Board of Revenue

Dated 23rd April 1857

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The Govt will

consider the Report of the

Commissioner, and will

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