M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1146 Press ~~Mis.~~

438. 439

Dated 23 - 5 - 1862.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 23rd May 1862.

No. 438. Read the following Proceedings of the Board of Revenue, dated 8th April 1862, No. 2,304:—

Read again Board's Proceedings, dated 28th January and 14th February 1862, Nos. 656 and 1,076.

Read also the following letter from J. W. B. DYKES, Esq., Collector of Nellore, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated Indukurupett, 12th March 1862, No. 48.

SIR,

1. I have the honor to acknowledge the receipt of the Proceedings of the Board of Revenue, under date the 14th ultimo, No. 1,076, and request that the Board will be pleased to obtain sanction for the disbursement of the sum awarded against me in Original Suit No. 2 of 1861.

2. This Suit was brought against me by Boddula Ragavalu Náyudu, whose plaint set forth that I had attached his property for arrears of revenue due by his younger brother; that according to Hindu law he and his younger brother had no right to each other's property; that he had requested me by Petition on the 19th and 28th August to release his property; and that as I had not, he brought the suit.

3. In answer I pleaded that the property had been released; that the property had been attached being the property of an undivided family; that the Plaintiff had subsequently represented the property was self-acquired, viz., in the Petitions of the 21st and 29th August, referred to by himself in his plaint; that inquiry was made; and the property having been released, I was entitled to costs.

4. Leaving on one side the Petitions on which the Plaintiff based his case, the Judge gave decision in his favor with reference to a Petition he had presented on the 9th July, and awarded that I should pay the costs.

5. Showing that the Judge was wholly in error with reference to the Petition of the 9th July, and that it did not in any way contain the information on which I subsequently acted, in my letter of the 16th January,* I requested leave to appeal against the Court's decision.

* To the Board.

6. And the Board refuse to authorize an appeal neither on the grounds taken up by the Plaintiff, or the Judge, but on a deposition given before the Tahsíldár; and with reference to this deposition, give it as their opinion in the Proceedings under acknowledgement that the correctness of my original answer could not be maintained.

7. In giving this opinion, however, I cannot help thinking that the Board overlooked the terms of the original plaint, and that on considering the facts of the case as now laid before them, they will see that the original answer was strictly correct as viewed both by the Plaintiff and myself when the Suit was filed.

8. The deposition given before the Tahsíldár was given in regard to the family being undivided, and as detailed in my letter of the 16th January, admissions were made then that fully justified my proceeding against the Plaintiff's property and rendered it equally inexpedient to him to refer to it.

9. Whilst as regards myself I only regard the deposition as evidence of the family being undivided, and as regards the property being self-acquired, based my decision, as stated to the Court, entirely on inquiries subsequently made.

Costs incurred by the Plaintiff.	Rs.	A.	P.
Stamp duty on a plaint under Act XXXVI of 1860.....	500	0	0
Stamp duty on two additional papers under Act VII of 1860.....	1	0	0
Do. on a Vakalutnamah under Act XXXVI of 1860.....	0	8	0
Stamp duty on two papers of the Motion.....	0	8	0
Fee to Pleader under Section 25, Regulation XIV of 1816, and Sections 6 and 7, Act I of 1846.....	480	2	2
This amount to be paid by Defendant to Plaintiff.....	982	2	2
Costs incurred by Defendant.			
Stamp duty on a Kyfiet.....	0	8	0
Fee to Pleader under Section 25, Regulation XIV of 1816, and Sections 6 and 7, Act I of 1846.....	480	2	0
This amount to be borne by Defendant.....	480	10	2
Grand Total.....	1,462	12	4

10. The amount for which decree has been given, and for the disbursement of which sanction is requested, is Rupees 1,462-12-4.

11. In accordance to the orders conveyed in the 5th paragraph, I have the honor to state that I have directed the release of the property therein referred to, and will apply in due course for permission to write off the difference between the profits and original rent on the farms under management prior to being re-sold, viz., Rupees 1,243-15-0.

Proceedings of the Madras Government, Revenue Department, 23rd May 1862.

1. Ordered to be submitted to Government, with reference to their Proceedings, dated 21st October 1861, No. 2,021, Revenue Department, and with the Board's recommendation that sanction be granted for the charge of Rupees 1,462-12-4, costs in Original Suit No. 2 of 1861, in which the Collector has been cast.

2. The Board abide by their opinion that no appeal could be prosecuted with reasononable expectation of success.

3. The Collector's defence proceeded on the pleas that the attachment was made in ignorance of the property being self-acquired by a member of a divided family, and that as soon as the Collector was satisfied that such was the fact, *which was not brought to his notice by Petitioner in the earlier stage of the proceedings*, he released the property. It however appears that the same statement on which the Collector eventually modified his proceedings, was made in a deposition before the Tahsíldár, which reached the Collector before the property was attached, and such being the case, the defence cannot, in the Board's opinion, be upheld, and appeal would be useless.

(A true Copy and Extract.)

(Signed) R. A. DALYELL, *Sub-Secretary.*

No. 439. ORDER THEREON, 23rd May 1862, No. 1,146.

Sanctioned. The Board should have stated if provision has been made for this charge in the Budget, they will now supply the omission. If no such provision has been made, they will, in communication with the Accountant General, report how the charge can be met.

(Signed) J. D. SIM,

Secretary to Government.

No. 656.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 28th January 1862.

Read the following letter from J. W. B. DYKES, Esq., Collector of Nellore, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Chepauk, dated Udayagiri, 16th January 1862, No. 10:—

1. With reference to my letter of the 12th ultimo, I have the honor to submit copy of the decree passed against Government under date the 3rd ultimo, in regard to the attachment of Boddula Ragavulu Nayadu's property, for arrears due by his brother Boddula Krishnaswami Nayadu, the Abkarry defaulter for the Guduru Taluk.

2. Boddula Ragavulu Nayadu and Boddula Krishnaswami Nayadu being members of an undivided family, on arrears accruing on the Guduru Abkarry Farm, I attached the property of both brothers; but, subsequently finding that Boddula Ragavulu Nayadu's property would be considered self-acquired, I released it; and an action having been brought against me, I pleaded the release and requested that the suit might be dismissed with costs.

3. Boddula Ragavulu Nayadu's property was attached, as set forth in the decree, in two portions, one being moveable property, couches, &c., in the house of the brother valued at Rupees 16, and attached on the 6th July, the other real and personal property in the direct possession of the Plaintiff himself valued at Rupees 16,507-14-0, and attached subsequently; and the Board will observe that decision is given in favor of the Plaintiff, because the grounds on which I subsequently released the whole property were set forth in the Petition presented to me by the Plaintiff on the 9th July, when the property valued at Rupees 16 had been attached; and the Court is of opinion I should have disposed of this Petition before proceeding to attach the remainder of the property.

4. The Court further observe that the Plaintiff addressed me by Petition against the general attachment of his property on the 21st and 28th August; and as I paid no attention either to these Petitions, the Court considers the Plaintiff was fully justified in filing a Suit on the 3rd September for the removal of the attachment; and that I was to blame for keeping the property under attachment till the 22nd September, the date on which I ordered its release, and must be held responsible for the costs incurred.

5. As regards the delay in ordering the release, I pleaded press of business, 8th paragraph. through the Government Vakil; and this plea the Court decrees* to be unreasonable and unsound.

6. This judgment I beg to recommend be appealed against on two grounds—1st, the Petition of the 9th July did not set forth the grounds on which I subsequently released the property; and 2nd, I was not allowed opportunity of proving my plea of press of business, which I could abundantly.

7. In his Petition of the 9th July, the Plaintiff simply stated that the property found in the house of his brother belonged to him నాశ్వంతవస్తువులు, which term would have been used had the property been attached in my house, or in the house of any other man in no ways related to him, Whereas the grounds on which I released the property, were that it was not only his, but also "self-acquired," a very different matter, and which in the vernacular would have been స్వార్జితం.

8. Not having left his father's house till after the age of 25, Boddula Ragavulu Nayadu strictly speaking was incapable of possessing self-acquired property, according to the Hindu law. But this point I found from Strange was not upheld by our Courts.

9. The grounds on which I determined subsequently to release the property were not therefore set forth in the original Petition of the 9th July, copy of which I enclose with translation; and as regards press of business it will be equally easy to uphold an appeal. In deciding that the Petitioner might be considered possessed of self-acquired property, the case was by no means disposed of. It was necessary to inquire into the circumstances under which he left his father's house. Of his liability as a member of a joint family there was no doubt. If he did not bring property

with him to Nellore, it was necessary to see whether he had not subsequently inherited; and all these inquiries had to be made by local officers, who at the time were further attaching, for arrears, other property to the amount of upwards of half a lac, all of which had conflicting claims to be disposed of. Whilst I myself issued the order for release from Ongole, 80 miles off; had been revising Income tax returns; had just been arranging for the Ongole, and Kottapatnam Cotton road, and was to start next day for Kacherlakota on the extreme limits of the District, where the Superintendent of Kurnool Police had reported to me a fight with 300 aside a few days before; nothing of which was I given an opportunity of setting forth in support of my plea of press of business.

10. The Petition of the 21st August, which is dated 19th, and received on the 22nd August, did set forth that the property was "self-acquired." But the Suit was filed within 11 days of this date, viz., on the 3rd September.

11. And under these circumstances I trust that the Board will be pleased to recommend that the requisite steps be taken for presenting an appeal, the period for which expires on the 3rd March.

12. I enclose copies of all papers likely to be required, and trust that the details given will be sufficient to place the Government Pleader in full possession of the facts of the case.

13. Since writing the above it has been brought to my notice, that in a deposition* given before the Tahsildar on the 9th July, the Plaintiff asserted the property then attached was self-acquired. But this point he did not bring forward before the Court, probably because he admitted in the said deposition, his father had left property, though he asserted it had gone to meet the debts.

* Copy and translations forwarded.

ENCLOSURE No. 1.

ABSTRACT.—Copy of Decree of the Civil Court of Nellore in Original Suit No. 2 of 1861, in which Boddula Ragavulu Nayadu preferred a complaint against the Collector of Nellore for attaching his property in satisfaction of arrears due to Government by Plaintiff's brother.

ENCLOSURE No. 2.

ABSTRACT.—Copy of Petition (with translation) dated 9th July 1861, presented by Boddula Ragavulu Nayadu, to the Collector of Nellore, and referred to in paragraph 9 of the Collector's letter.

ENCLOSURE No. 3.

ABSTRACT.—Copies of certain papers referred to in paragraph 12 of the Collector's letter as likely to be required to the issue of the appeal.

ENCLOSURE No. 4.

ABSTRACT.—Copy and translation of deposition given on the 9th July 1861 before the Tahsildar of Nellore, by Boddula Ragavulu Nayadu, and referred to in paragraph 13 of the Collector's letter.

The Collector will please to report on what date the deposition of 9th July given before the Tahsildar was forwarded to the Huzur, and whether his order for zufting Ragavulu Naidu's property was issued after the receipt of the Tahsildar's report sending this deposition.

(A true Copy and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To J. W. B. Dykes, Esq., Collector of Nellore.

Exd. J. Wright.

Court in the Proceedings of the Board of Revenue, dated 2. 2. 1862 No. 23054.

PROCEEDINGS OF THE BOARD OF REVENUE.

R. No. 1110

Dated 28*th January* 1862.

Despatched

Received

No. 656.

Requesting certain information regarding the Suit brought by an Abkarry Defaulter.

No.

1862 Department.

No. 1,076.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 14th February 1862.

Read again letter from the Collector of Nellore, dated 16th January 1862, No. 10.

(In Cons. 27th January 1862, No. 396.)

Read also the following letters from the same Officer:—

Letter dated 27th January 1862, No. —.

1. In forwarding copy of my answer in Original Suit No. 2, on the file of the Civil Court of Nellore for 1861, which should have accompained my letter of the 16th instant, I beg with reference to the Proceedings of the Board of the 15th and 25th October last, Nos. 5,618 and 5,882, to be favored with further instructions in regard to the property, the attachment of which was reported in my letter of the 17th September.

2. In my letter of the 17th September, in the 12th paragraph, I brought to the notice of the Board, that the property attached for the Nellore Farm belongs to Damegunta Ramachendra Reddi, one of our leading Ryots, and consists chiefly of large herds of cattle. In like manner that the property attached for Atmakura and Udayagiri Farms consists chiefly of agricultural stock, whilst for the Kanigiri Taluk, the property attached almost wholly belongs to a very respectable Ryot in the Kota Taluk, one Pelleti Subba Reddi, whose brother-in-law is involved, in the said Abkarri Farm, the brother-in-law and himself being one undivided family; and I recommended that the arrears for which this property was attached, viz., Rupees 69,750, should be written off and the attachment removed.

3. Whilst recommending that the bulk of the arrears should be written off, I recommended that the defaulters of Venkatagiri and Guduru should be proceeded against according to law for the sake of example.

4. In their Proceedings of the 15th October, the Board gave it as their opinion, that sufficient reason had not been shown for drawing the proposed distinction, and considering that the increase over the past revenue would still be considerable, they recommended to Government that the claim should be wholly remitted. The Government, however, in their Proceedings of the 21st October, having suggested that such a course might probably compromise me in the suits then pending before the Civil Court, and having left the matter to the Board's discretion, the Board were pleased in their Proceedings of the 25th October to leave the matter open as regards all cases; and, as this is the precise point at which the business rests as regards the large amount of property above referred to as now under attachment, I beg to be favored at an early date with precise instructions as to the course I am now to pursue in its respect. It is now more than six months since it came under the charge of Government Officers. Numerous counter claims have been set up, which are in course of inquiry, and therelease of the property will put an end to inquiries that must be vexatious, and will be the carrying out of the intentions of the Board, as recorded in their Proceedings of the 15th October, No. 5,618, so far as these parties are concerned.

5. As regards the Venkatagiri defaulter, should the Board think fit, all further proceedings can be stayed in respect to this man; but I am still of opinion he should be proceeded against according to law to secure the interests of Government at future sales.

6. In respect to Boddula Krishnasami Nayadu, who has gone to Madras, it is said, to take advantage of the Insolvent Court, should he find an appeal to the Sudder unsuccessful, and against whom I am directed to take no further steps, pending the period allowed for appeal, I beg to be favored with anticipatory orders, as to the course I should pursue in the event of the said Boddula Krishnaswami Nayadu attempting to take advantage of the Act.

ENCLOSURE No. 1.

ANSWER to be filed in Original Suit No. 2 of 1861, before the Civil Court of Nellore.

1. Plaintiff's brother having rendered himself liable for arrears of revenue, Plaintiff's property was attached, being an undivided family.

2. Subsequently, the Plaintiff represented that the property was "self-acquired," and inquiry having been made, the release of the property was ordered.

3. And the distrained property having been released, the Defendant pleads, that there is no cause of action, and that he is entitled to a verdict in his favor with costs.

22nd November 1861. (Signed) J. W. B. DYKES, Collector.

(True Copy.)

(Signed) J. W. B. DYKES, Collector.

Letter dated 5th February 1862, No. 22.

I have the honor to acknowledge the receipt of the Board's Proceedings of the 28th ultimo, No. 656, and state that the deposition given by Boddula Ragavulu Nayadu on the 9th July, before the Tahsildar of Nellore, was received at this Office the day following the 10th July, and that the Takid to the Tahsildar to zuft Ragavulu Naidu's property was written subsequently, and is dated the 19th idem.

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1. In the first of the above letters the Collector reported the result of the Suit brought against him by B. Ragavulu Naidu on account of the attachment of his property for the default of his brother in the matter of the Gudur Abkarry contract, the defence being that the family was an undivided one, and that the Plaintiff's representation that the property was "self-acquired" was made *subsequently* to the attachment of the property which was released without further undue delay.

2. The Court held that the Collector ought at an earlier date to have satisfied himself of the grounds on which he eventually on 22nd September released the property, and Mr. Dykes argues that the point was not raised by the Plaintiff until his petition received on 22nd August, the Suit being filed on 3rd September, and that therefore such delay as did occur was justified by press of business.

3. It however appears that the Plaintiff in his deposition before the Tahsildar on 9th July, regarding the first portion of his property attached in his brother's house, distinctly stated that the whole of his property was "self-acquired," and that he had no common interests with his brother the defaulter, which deposition reached the Collector's Office on the 10th July, while the order to attach the remainder of the Plaintiff's property was not issued till the 19th.

4. Under these circumstances the fact of Plaintiff having in his Petition of the 9th July, claimed certain of the property attached on the 6th idem in his brother's house simply stating it to be his "own" property, and not declaring it to be "self-acquired" property, will certainly not afford sufficient ground for an appeal to the Sudder from the decision of the Zillah Court, and in fact the correctness of the Collector's original answer could not be maintained. Such being the case no course is left but to acquiesce in the decree.

5. In his letter of 27th January the Collector seeks instructions as to the disposal of the property of the other Abkarry defaulters, and as recommended by him, the Board authorize its release in all the cases save those of the Gudur and Venkatagiri Farms, in which cases the Collector will proceed according to law.

6. The Collector will communicate with the Government Pleader in the matter of the Gudur defaulter taking the benefit of the Insolvent Act. Of course his property under the Collector's attachment is liable for the Government demand, but for any balance it is presumed that the Government claim must be advanced in the usual form.

(True Copies and Extract.)

(Signed) W. HUDLESTON,

Secretary.

To J. W. B. Dykes, Esq., Collector of Nellore.

Exd. J. Wright.

Enclosure in Proceedings of the Board of Revenue dated 8th April 1862 No. 2304.

PROCEEDINGS OF THE BOARD OF REVENUE.

1862 Department.

No.

Dated 14th February 1862.

Despatched

Received

No. 1,076.

Authorizing him to release with certain exceptions the property of certain Abkarri defaulters.

No. 2,304.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 8th April 1862.

Read again Board's Proceedings, dated 28th January and 14th February 1862, Nos. 656 and 1,076.

Read also the following letter from J. W. B. DYKES, Esq., Collector of Nellore, to W. HUDLESTON, Esq., Secretary to the Board of Revenue, Madras, dated Indukurupett, 12th March 1862, No. 48:—

1. I have the honor to acknowledge the receipt of the Proceedings of the Board of Revenue, under date the 14th ultimo, No. 1,076, and request that the Board will be pleased to obtain sanction for the disbursement of the sum awarded against me in Original Suit No. 2 of 1861.

2. This suit was brought against me by Boddula Ragavulu Nayadu, whose plaint set forth that I had attached his property for arrears of revenue due by his younger brother; that according to Hindu law he and his younger brother had no right to each other's property; that he had requested me by Petition on the 19th and 28th August to release his property; and that as I had not, he brought the suit.

3. In answer I pleaded that the property had been released; that the property had been attached being the property of an undivided family; that the Plaintiff had subsequently represented the property was self-acquired, viz., in the Petitions of the 21st and 29th August, referred to by himself in his plaint; that inquiry was made; and the property having been released, I was entitled to costs.

4. Leaving on one side the Petitions on which the Plaintiff based his case, the Judge gave decision in his favour with reference to a Petition he had presented on the 9th July, and awarded that I should pay the costs.

5. Showing that the Judge was wholly in error with reference to the Petition of the 9th July, and that it did not in any way contain the information on which I subsequently acted, in my letter of the 16th January,* I requested leave to appeal against the Court's decision.

* To the Board.

6. And the Board refuse to authorize an appeal neither on the grounds taken up by the Plaintiff, or the Judge, but on a deposition given before the Tahsildar; and with reference to this deposition, give it as their opinion in the Proceedings under acknowledgment that the correctness of my original answer could not be maintained.

7. In giving this opinion however I cannot help thinking that the Board overlooked the terms of the original plaint, and that on considering the facts of the case as now laid before them, they will see that the original answer was strictly correct as viewed both by the Plaintiff and myself when the Suit was filed.

8. The deposition given before the Tahsildar was given in regard to the family being undivided, and as detailed in my letter of the 16th January, admissions were made then that fully justified my proceeding against the Plaintiff's property and rendered it equally inexpedient to him to refer to it.

9. Whilst as regards myself I only regarded the deposition as evidence of the family being undivided, and as regards the property being self-acquired, based my decision as stated to the Court entirely on inquiries subsequently made.

	Rs.	A.	P.
Costs incurred by the Plaintiff.			
Stamp duty on a plaint under Act XXXVI of 1860.....	500	0	0
Stamp duty on two additional papers under Act VII of 1860.....	1	0	0
Do. on a Vakalutnamah under Act XXXVI of 1860.....	0	8	0
Stamp duty on two papers of the Motion.....	0	8	0
Fee to Pleader under Section 25, Regulation XIV of 1816, and Sections 6 and 7, Act I of 1846.....	480	2	2
This amount to be paid by Defendant to Plaintiff.....	982	2	2
Costs incurred by Defendant.			
Stamp duty on a Kyfiet.....	0	8	0
Fee to Pleader under Section 25, Regulation XIV of 1816, and Sections 6 and 7, Act I of 1846.....	480	2	2
This amount to be borne by Defendant.....	480	10	2
Grand Total.....	1,462	12	4

10. The amount for which decree has been given, and for the disbursement of which sanction is requested, is Rupees 1,462-12-4.

11. In accordance to the orders conveyed in the 5th paragraph, I have the honor to state that I have directed the release of the property therein referred to, and will apply in due course for permission to write off the difference between the profits and original rent on the farms under management prior to being resold, viz., Rupees 1,243-15-0.

1. Ordered to be submitted to Government, with reference to their Proceedings, dated 21st October 1861, No. 2,021, R. D., and with the Board's recommendation that sanction be granted for the charge of Rupees 1,462-12-4, costs in Original Suit No. 2 of 1861, in which the Collector has been cast.

2. The Board abide by their opinion that no appeal could be prosecuted with reasonable expectation of success.

3. The Collector's defence proceeded on the pleas that the attachment was made in ignorance of the property being self-acquired by a member of a divided family, and that as soon as the Collector was satisfied that such was the fact, *which was not brought to his notice by Petitioner in the earlier stage of the proceedings*, he released the property. It however appears that the same statement on which the Collector eventually modified his proceedings, was made in a deposition before the Tahsildar, which reached the Collector before the property was attached, and such being the case, the defence cannot, in the Board's opinion, be upheld, and appeal would be useless.

(A true Copy and Extract.)

Sub-Secretary.

To J. D. Sim, Esq., Secretary to Government, R. D.
Copy to J. W. B. Dykes, Esq., Collector of Nellore.

No. 1146.

sanctioned. The Board should have stated if provision has been made for this charge in the Budget, they will now supply the omission. If no such provision has been made, they will communicate with the Accountant General report how the charge can be

Ord, J. Wright.

23rd May 1862.

Rev. Dept. 23rd May

Rev. 1862. Department.

Read Letter from Collr of Nellore dated 8th April 1862 No. 2,304 forwarding Petition of Rajah of Kalastry praying for remission of Rupees 1,462-12-4 costs in Original Suit No. 2 of 1861 in which the Collector has been cast.

No. 1110.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 8th April 1862.
Despatched, 18
Received, 18
Encl 2.

No. 2,304.

Submitting letter from the Collector of Nellore with the Board's recommendation for the sanction therein requested, of the charge of Rupees 1,462-12-4, costs in Original Suit No 2 of 1861.