

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 745	Press Mis.
275-276	
Dated	29-4-1918

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
29th April 1863.*

No. 275. Read the following letter from G. N. TAYLOR, Esq., Inam Commissioner, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Ootacamund, 24th March 1863, No. 15:—

SIR,

1. With reference to the Order of Government, dated 28th January 1863, No. 185, on the Memorial presented by Devarapalli Kamāya of the Godavry District, for transmission to the Secretary of State, I have the honor to submit the following report on the subject.

2. As reported to Government on former occasions, this Department does not undertake to adjudicate upon disputed claims to Ināms; but simply makes a settlement of the reversionary interests of Government with the rightful holders; and a person in possession, supported by a *prima facie* title, is held to be a rightful holder for this purpose. In the case under notice, I accordingly confirmed the Ināms and granted Title Deeds to the Memorialist, who has held possession of them for the last twenty years under *bona fide* Deeds of Transfer; and I considered that the proper course for his opponents, who afterwards came forward to dispute his title, was to institute a regular Suit in the Civil Courts.

3. On the appeal of the latter parties, however, my decision was reversed by the Order of Government, dated 4th June 1862, No. 1,230; the reasons assigned being that the mortgage to the Memorialist was, in the first instance, granted by an unauthorized person, that it was at variance with Regulation IV of 1831, and that the principal and interest had already been recovered.

4. I beg, with deference, to submit that the above objections to the Memorialist's title were not such as could, with propriety, have been taken cognizance of by this Department. A *bona fide* transfer having taken place under the authority of the legal guardians of the Ināmdars, which was not objected to at the time, I conceived that the Memorialist thereby acquired a *prima facie* title which I was not justified in questioning. It did not appear to me that the objections raised by the Ināmdars several years afterwards, in regard to the title of the parties who made the transfer, were proper subjects for summary enquiry by this Department. There were no admitted provisions in the Deeds of Transfer for the payment of the principal and interest out of the proceeds of the Inām; and the settlement of such accounts could not, moreover, be authoritatively made by the Deputy Collector; and much less by the Tahsildār upon whose report the Deputy Collector based his recommendation. And as regards the effect of Regulation IV of 1831, on this case, I beg to submit that the prohibition contained in it against the alienation of Ināms for the protection of the reversionary interests of Government, has been virtually renounced by the present rules, which respect all *bona fide* alienations and simply subject them to a compulsory enfranchisement.

5. I must not, however, omit to mention that the settlement is not usually made with acknowledged Mortgagees holding merely a temporary possession; because, if such were invariably done, injury might arise to the right of the original Ināmdars who, under the rules, are allowed the option of enfranchisement, whereas it is compulsory with the Mortgagees. In the present case, however, it will be observed that the Memorialist claims more than the mere right of mortgage and considers that he has acquired the absolute ownership of the Ināms. The Deputy

Collector disallowed his claim on the ground that under a recent

Decisions of the Sudder Adalat for September 1859, page 150. ruling* of the late Sudder Court, Special Appeal No. 78 of 1859, no provision of foreclosure in Mortgage Deeds is considered

sufficient to confer an absolute title, after the stipulated period, on the Mortgagee. Without entering upon a discussion of the principles of the above ruling, which was not concurred in by the Chief Judge, Mr. Morehead, and which clearly admits of many exceptions, I must observe that the Deputy Collector was wrong in asserting that the deeds held by the Memorialist were of the ordinary form of a Mortgage Bond, and came under the ruling above quoted. In the case

of the Ināms situated in Kurukallapalli, the Memorialist holds, not a Deed of Mortgage but, an actual Deed of Sale† executed to

him by the two brothers and their mother, dated 22nd December

is an inam in three villages though there

*Proceedings of the Madras Government, Revenue Department,
29th April 1863.*

1842; and a counter deed was given by the Memorialist stipulating to return the Inám, if the purchase money was paid back within a given period; and as this was not done, the vendor under the ruling of the Sudder Court in Special Appeal No. 162 of 1859, has no equity of redemption, and the title of the purchaser becomes absolute.

6. As regards the Ináms situated in the other three villages, viz., Morattipád, Gumaleru, and Kudápúr, the title held by the Memorialist is a deed executed to him by the eldest brother, Vádayaróo Sundarappa and his mother, as guardian on behalf of his younger brothers, Shenkarappa, &c., who under the will of their father became owners of the Inám to the exclusion of the eldest brother. The deed provided for the sale of the Ináms in question to the Memorialist for a stipulated sum which was to be paid by him in discharge of certain demands against the

Inámdar's family. The money was paid and the Ináms were put in possession of the Memorialist, but no formal Deed of sale was obtained by him in ratification of the bargain. Meanwhile, the younger brother petitioned the Collector against the sale of the Ináms by the eldest brother who had no interest in them, and that Officer declined on that score to register the Memorialist's title. If the transactions between the parties had stopped here, there would have been sufficient ground for this Department to refuse the recognition of the Memorialist's title. He had no Deed of sale and the transaction was objected to by the real owners of the Inám, and was not recognized by the Collector. But it will be observed that in the subsequent counter-deed, executed by the Memorialist to both the brothers on the 22nd December 1842 and accepted by them, these three Ináms, as well as the Inám referred to in the preceding paragraph, are included, and it is provided that they should become the absolute property of the Memorialist in the event of the money advanced upon them not being repaid within the stipulated time. In accepting this deed, I consider that Vadaravoo Shenkarappa virtually waived his previous objection and acquiesced in the title of the Memorialist; and as he made no complaint afterwards for ten years, that is until 1853, this Department cannot, according to my view, take notice of the objections now brought forward by him, however imperfect the Memorialist's title might ultimately prove to be upon an enquiry in a regular Suit.

7. Under the above circumstances, I can discover no grounds for a modification of my Original decision in the case of these four Ináms, and I beg to recommend that the Title Deeds which I issued to the Memorialist may not be disturbed, but that his opponent may be referred to the Civil Courts to establish his alleged rights.

8. The Memorial forwarded with the Government Order under acknowledgment is herewith returned.

No. 276. ORDER THEREON, 29th April 1863, No. 741.

1. In their Order of 4th June last, No. 1,230, the Government, upon the Petition of one Vadaravgo Shenkarappa, directed that a Title Deed which had been issued by the Inam Commissioner in favor of a certain Mortgagee should be cancelled and a new one made out in the names registered in the Collector's accounts.

2. This Mortgagee, Devarapalli Kamāya by name, subsequently sent in for transmission to the Secretary of State, a Memorial;† praying that, as the lands in question became his absolute property under certain deeds (translations of which he appended) which were fully admitted by the head of the family and had been confirmed and upheld by the Civil Court of Rajahmundry, the decision of this Government above referred to might be set aside and the Title Deeds granted by the Inām Commissioner be confirmed in his name.

3. The Order objected to having been based on the supposition that the transactions under which Memorialist gained possession of the lands in question were of the nature of mortgages only, the Government resolved to forward a copy of the Memorial to the Inam Commissioner for

*Proceedings of the Madras Government, Revenue Department,
29th April 1863.*

consideration and report, and to direct that pending further instructions no action should be taken on the Order appealed against.

4. The letter recorded above contains Mr. Taylor's reply. After stating his reasons for considering that the objections to the Memorialist's title raised in paragraph 6 of G. O. dated 4th June 1862, No. 1,230, could not, with propriety, have been taken cognizance of by his Department, he proceeds to explain that while settlements are not usually made with acknowledged Mortgagees holding merely a temporary possession, the circumstances of the present case rendered a different treatment necessary, because as regards the Inams in Kurukallapalli the

Memorialist holds, not a Mortgage Deed, but an actual Deed of sale, while in respect to the Ináms in the other three* villages though there is no Deed of sale, and though the transaction was in the first instance objected to by the real owners of the Inám, a counter deed was subsequently executed by the Memorialist and acquiesced in by them, in which it is provided that the Ináms in all four villages should become the absolute property of the Memorialist in the event of the money advanced upon them not being repaid within the stipulated time.

5. On these grounds the Commissioner is of opinion that, however imperfect the Memorialist's title may be, it is for the original Inámdar's family to prove their claims by regular Suit, and that in the meantime the Title Deeds already issued to Memorialist should be left undisturbed.

6. In consideration of the circumstances now reported and which were not known when G. O. 4th June 1862, No. 1,230, was passed, the Governor in Council resolves to adopt Mr. Taylor's recommendation and to cancel that Order.

7. The copy of the Memorial containing the original Title Deeds granted by the Inám Commissioner will be forwarded through the Board of Revenue to the Collector of the Godavari District for delivery to the Memorialist, who will be at the same time informed of the purpose of the present Order. The other copies of the Memorial will be retained in the Government Office.

(Signed) C. G. MASTER,
Deputy Secretary to Government.

three villages though there

Continuation of Memo. dated
14 January 1863 on which G.O.
28 Jan No. 185 was passed

In his present letter (24 March
1863 No. 15) Mr Taylor replies to
G.O. 28 January last No. 185.
After stating his reasons for con-
sidering that the objections
to the Memorialist's title raised
in Para 6 of G.O. of 4 June 1862
No. 1230, could not, with pro-
priety, have been taken cog-
nizance of by his Department,
he proceeds to explain that
while settlements are not u-
sually made with acknow-
ledged mortgages holding
merely a temporary pos-
session, the circumstances
of the present case ^{rendered} ~~required~~
a different treatment, ^{necessary} be-
cause ~~in the~~ as regards the ~~main~~
in Kunkallapalli the Memo-
rialist holds, not a mort-
gage deed, but an actual
deed of sale, while in respect
to the Enams in the other
three villages though there

Chorattipad
Gumalera
Kudapur

is no deed of sale, and though
the transaction was in the
first instance objected to
by the real owners of the land,
they subsequently acquiesced
in a counter deed executed
by the memorialist in which
it is provided that the
land in all four villages
should become the abso-
lute property of the memo-
rialist in the event of
the money advanced upon
them not being repaid
within the stipulated
time.

2. On these grounds the
Commissioner is of opinion
that however imperfect the
memorialist's title may be
it is for the original landowners
primarily to prove their claims
by regular suit and that
in the meantime the title
deeds already issued to memo-
rialist should be left undis-
turbed.

It remains now for the

Government to decide whether
in consideration of the further
light thrown upon the sub-
ject they will reverse their
order of 4 June 1862 No 1230
and leave memorialist in
possession with his title deeds,
or whether they will order
that decision to be carried
into effect, in which case
the memorial now returned
by Mr Taylor must be
sent home to the Secretary
of State.

cc. W.
13/4/66

When the original S.O. was
passed the memorialist was
described as being a mortgagee
only - as his title is now
shown the much story is
I think the S.O. should be
cancelled. He is in fact
a purchaser - not mortgagee.

I.D.S.

leaves for orders

Revenue Department

No. 741.

Proceedings of the Madras Government
Under date the 29th April 1863

741

Read the following
letter from the Indian Com-
missioner. —

Reports upon the Memorial
of Devanapalli Kamanna forward-
ed with the order of Government
dated 23rd January 1863 N^o. 185, and
recommends, for reasons assigned, that
the original decision in favor of the
Memorialist may not be disturbed. —

(Here enter 24th March 1863 N^o. 75.)

1. In their order of 4th
June last N^o. 1230 the Government,
upon the Petition of one Vada-
rao Shan Karappa, directed
that a Title deed which had
been issued by the Indian Com-
missioner in favor of a
certain Mortgagee should be
cancelled and a new one made
out in the names registered
in the Collector's accounts —

2. This Mortgage, Devana-
palli Kamanna by name, sub-
sequently sent in for transmission
to the Secretary of State, is
Memorial praying that, as the
lands

* 29th Nov^r 1862.
Rec^d. 16th Jan^y 1863.

C-15 April/63. R22P

lands in question because
his absolute property under
certain Deeds (translations
of which he appended) which
were firstly admitted by the
head of the family and had
been confirmed and upheld
by the Civil Court of
Rajahmundry, the decision
of this Government above
referred to might be set ^{to}
aside and the Title Deeds
granted by the Inam & ^{to}
Commissioner be confirmed
in his name.

3. The order objected to
having been based on the
supposition that the ^{to}
transactions under which ^{to}
Memorialist gained possession
of the lands in question were
of the nature of mortgages.
only, the Government resolved
to forward a copy of the ^{to}
Memorial to the Inam
Commissioner for consideration
and report and to direct
that

that pending further ^{to}
instructions no action should
be taken in the order ^{to}
appealed against.

4. The letter recorded
above contains Mr. Taylor's
reply. After stating his
reasons for considering that
the objections to the Memo-
rialist's title raised in Para-
b of G. O. 2/4th June 1862
No. 1230, could not, with
propriety, have been taken
cognizance of by his Depart-
ment, he proceeds to explain
that while settlements are
not usually made with ^{to}
acknowledged mortgages,
holding merely a temporary
possession, the circumstances
of the present case rendered
a different treatment necessary
because as regards the inams
in Kurikallapalli the
Memorialist holds, not
a mortgage deed, but an

actual deed of sale, while
in respect to the Inams in
the other three villages ^{to}
though there is no deed of
sale, and though the
transaction was in the
first instance objected to
by the real owners of the
Inam, a counter deed was
subsequently executed by
the Memorialist and
acquiesced in by them in
which it is provided that
the Inams in all four
villages should become
the absolute property
of the Memorialist in the
event of the money advanced
upon them not being
repaid within the stipu-
lated time.

5. On these grounds
the Commissioner is of
opinion that however ^{to}
imperfect the Memorialist's
title

* Morattipad
Gumaluru
Kudapur

title may be it is for the
original Inamdar's family
to prove their claims by
regular suit, and that in
the meantime the Title
Deeds already issued to
Memorialist should be left
undisturbed.

6. In consideration
of the circumstances now
reported and which were
not known when G. O.
4th June 1862 No. 1230 was
passed the Governor in Council
resolves to adopt Mr. Taylor's
recommendation and to cancel
that order.

7. The copy of the ^{to}
Memorial containing the ^{to}
original Title Deeds granted
by the Inam Commissioner
will be forwarded through
the Board of Revenue to the
Collector of the Godavery ^{to}
District for delivery to
the Memorialist who will
be at the same time informed
of

of the purport of the ⁱⁿ
present order - The other
copies of the Memorial
will be retained in the
Government Office. —

ccw

14. Copies To the B of R. with orig^l Memorial & Little Reed Sept 20
5. Isaac Comins

Pro. No. 47-47A+48

4-6-62

366-368

28-1-63

Revenue 1863 Dept^{to}
Pro. of Govt. for April

N. 741

Pro. of the Madras Govt.
Dy 29 April 1863.

Memorial to Home
Government presented by
Dammayalli Sannaya of
the Godavari District with
interest thereon.

N. 275+276