M.R.O. 14—13,000—27-3-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1350 Press ~~Mis.~~

468. 469

Dated 28. 7. 1864.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
28*th July* 1864.

No. 468. Read the following Proceedings of the Board of Revenue, dated 14th July 1864, No. 4,384.

Read the following letter from the Collector of the Kistna District, dated Bezwada, 2nd July 1864, No. 123 :—

I have the honor to forward herewith copy [of the report of the Civil Court of Guntoor in the Vissanapett case Regular Appeals Nos. 103 and 136 of 1857, on the file of the late Court of Sudder Udalut.

ENCLOSURE No. 1.

The Civil Court of Guntoor.

Present.

WILLIAM ELLIOT, Esq., Civil Judge.

Regular Appeals No. 103 and 136 of 1857, on the file of the late Court of Sudder Udalut.

Cavaly Venkatanarayanapah, Appellant.

versus.

The Collector of Masulipatam, Respondent.

1. In obedience to the instructions of the High Court of Judicature at Madras, under date the 2nd of May 1863, directing the Civil Court of first instance (Masulipatam) [now transferred to Guntoor] to take evidence, and to return its finding on the following three issues framed, in the abovementioned appeals, by the Judicial Committee of the Privy Council, the Civil Judge of Guntoor has the honor to report, for the information of the Honorable the Chief Justice and the Judges of the High Court that he has taken the evidence adduced on both sides, and begs to submit the whole record together with his finding on the said issues.

2. The first issue is, whether the right of the Crown was absolutely defeated by the Razinamah in the pleadings mentioned.

3. To determine this issue, it appeared necessary to ascertain whether the alienation in question, was for the purposes for which a widow can, under Hindu law, alienate her husband's real property as against the next heir.

4. In order to show that such alienation was perfectly legal, the Defendant produced the following documents, to wit.

No. 1.—An attested copy of a Plaint in Suit No. 1,132 of 1805, on the file of the late Adalut Court at Masulipatam, by the Attorney for the Trustee of the Estate of Cavaly Narayanapah against Varegonda Ramanapah (husband of Lakshmidavaumah) for the recovery of Rupees 9,070-12-0, advanced for the payment of Peshkush, due on his Zemindary.

No. 2.—An attested copy of the Decree in the above said action dismissing the suit as not cognizable under Section 8, Regulation II of 1802. But it never was denied that the said debt was due by the estate, nor was the said suit rejected on the grounds of such debt not having been truly incurred.

No. 13.—A Kararnamah dated in 1804, and executed by the said Varegonda Ramanapah to Chungalavala Gurraz and two others, for Rupees 4,400 borrowed for the payment of arrears of Peshkush due on his Zemindary, &c., mortgaging therein twelve villages belonging to the said Zemindary. This Kararnamah bears an endorsement to the effect that the balance due had been paid by Cavaly Seetiah. The document also bears the signature of the then Collector of the District, Mr. Cazalet.

No. 14.—Is a Mortgage Bond executed by Varegonda Lakshmidavaumah to Cavaly Seetiah on the 20th of December 1810, for Rupees 23,691-8-0, found due on adjusting the accounts relative to certain pecuniary transactions which had taken place between her husband and herself and the said Cavaly Seetiah from the 16th of May 1795, mortgaging thirteen villages of the said Zemindary with the agreement that the said Seetiah should manage the affairs of the Estate, and that any surplus remaining after payment of the Government Peshkush, should be credited to his account in liquidation of the debt due to him. This document is on stamped paper

No. 15.—Is a Receipt granted by the Collector of Masulipatam for Rupees 620-6-3, paid on the 26th December 1810, by Cavaly Seetiah for Varegondah Lakshmedavaumah on account of the arrears of Peshkush Kists, or instalments due for October and November 1810.

No. 16.—Is a document engrossed on stamp paper executed by the said Cavaly Seetiah to Cavaly Venkata Lakshmiah (Defendant's father) on the 28th May 1813, acknowledging the receipt from the latter of the balance due on the documents Nos. 14 and 15, &c., and delivering over the said documents to him. The Defendant's 4th, 5th and 7th witnesses depose to the signatures on the documents Nos. 13, 14, and 16 being those of V. Ramanapah, Lakshmidavaumah, and Cavaly Seetiah.

No. 18.—Is an attested copy of an Arzee addressed by V. Lakshmidavaumah to the Collector of Masulipatam, under date the 18th of May 1822, stating that she was indebted to certain persons to the amount of Rupees 20,000, on account of the payment of arrears of Peshkush due on her Zemindary, which had failed to yield sufficient to meet the demands of the Circar added to her own requisite expenditure.

No. 21.—Is an attested copy of the Mortgage Bond executed by Varegondah Lakshmidavaumah to the Defendant's father on the 20th of April 1838, on which document was brought the Suit No. 18 of 1838 on the file of the late Provincial Court for the Northern Division, for the recovery of 48,614-13-6 found due on an adjustment of accounts relative to the advances made on Bonds, &c, from Monday Veisakha Suddhadasmi of Pramodoota (14th of May 1810). In the 2nd paragraph of the Decree in the abovesaid Suit, No. 18 of 1838, the corresponding English year was entered as 1813, which has tended to create considerable confusion touching the date of commencement of these pecuniary transactions. The Government Vakeel, attached to this Court, even objected to the introduction of Defendant's documents Nos. 14, 15 and 16 as referring to matters anterior to 1813. By what party entered, or with what intent is not clear, but the corresponding English year to Pranodoota in the said English Decree, is an interpolation or interlineation, and has hitherto been successful if intended to mislead. On account of the debt for which the said suit was brought, the estate was alienated by the said widow through the Razinamah in the pleadings of the present Suit.

5. From the abovementioned documents, it appears that a great portion of the debt was contracted, and the Estate made security for it, by the late husband of Lakshmidavaumah.

6. In order to show that the said widow Lakshmidavaumah received ample funds from her Zemindary, which would enable her to pay off various incumbrances, and amongst them, the debts contracted by her husband and sufficient to prevent her from contracting further liabilities, the Plaintiff produced certain accounts and a Memorandum (Plaintiff's document marked K K) said to have been prepared under his orders, exhibitive of the dowle, and actual collections of the estate from Fuslies 1219 to 1226 (A. D. 1809-10, 1816-17) from Fuslies 1228 to 1231 (A. D. 1818-19, 1821-22) and for Fuslies 1234 (A. D. 1824,) to 1240 (A. D. 1830-31) and 1244 (A. D. 1834-35), and from 1251 to 1258 (A. D. 1841-42, 1848-49).

7. On examining the accounts for Fuslies 1219 to 1226 (A. D. 1809-10, 1816-17), certain sums have been deducted on account of village expenditure (repairs, &c.), and the balance only stated as having been received by the Zemindar. In the Memorandum K K however, no sums on such account were deducted. Had such been done, the amount mentioned in column 7 of the said Memorandum as "profits," would have been materially decreased. The said Memorandum shows that the collections for Fusly 1222 were less by 23 Rupees than even the Peshkush demandable on the estate, and does not afford any information with reference to the collections during the Fuslies 1227, 1232, 1233, 1235, 1236, 1237, 1238, 1239, 1241, 1242, 1243, or from 1245 to 1250. It may therefore be inferred that the estate yielded no profit during those years, whilst the collections themselves may have been far from sufficient even to meet the Government demand. The estate was attached for arrears of Peshkush in Fusly 1238 (A. D. 1828-29) (see Defendant's document No. 25), and there are thousands still alive in the Northern Circars, and adjoining Districts, in whose memory the withering effects of that desperate year of famine, Nundanah 1242 (A. D. 1832-33) are still vivid. For that and the following year, there was scarcely anything collected, because there was little or no tillage, and no one alive to pay

Proceedings of the Madras Government, Revenue Department,
28th July 1864.

All the Zemindaries in Guntoor were affected for years afterwards, and at last were attached and sold for arrears of Peshkush. The extent of the Government loss of revenue from individual Ryots, in consequence of the famine of 1832-33 and following year, the destitute state of the province and loss of cultivators, will afford some idea of the injury done to the various Estates during succeeding years, the Peshkush not being reduced, and the Zemindars unable to obtain loans.

8. The expenses, which the widow felt necessary for her public and private establishments as a Zemindarni on the frontier, as well as for her own subsistence, annual ceremonies for her late husband, &c., do not appear to have been much less than Rupees 5,000 annually, as explained by the Defendant's 7th witness, and the sums entered in the document K. K. as profits during eleven years, viz., 1222, 1226, 1230, 1234, 1244, 1251, to 1255 and 1258, are far below what was considered necessary even for her own expenditure. Under such circumstances, it does not appear to have been possible for her to pay off the debts left by her late husband, or to manage her own customary and requisite expenses, and at the same time meet the demand of the Government on account of the fixed Peshkush.

9. In 1841, it appears that Lakshmidavaumah being unable to pay the debt against the Estate which had accumulated to the amount of Rupees 67,444 up to the date of the Razinamah, alienated the Estate, which was already security for the said debt, and under the circumstances of that period, did not appear to be worth more than the amount then due. Had the Estate been sold for arrears of Peshkush, or for the satisfaction of the debt due to the Defendant according to the precept of the Provincial Court in 1841 (Defendant's document No. 8) neither the Government, nor the heirs of Lakshmidavaumah's husband could have inherited the Estate, or have possessed it except by purchase or payment at the time, of all its liabilities. Had there been any waste suppository or real, it would seem to have been the duty of the Circar, or the legal heir to have at the time looked after the Estate and their own interests; and which, if done, would at least have had the effect of preventing any further accumulation of debt; but whilst other Zemindaries were entirely ruined, Lakshmidavaumah appears to have been determined to hold on to the very last, having credit sufficient to enable her to borrow money from time to time to satisfy the more urgent demands, and thereby save her estate from sale for arrears of tribute.

10. For the foregoing reasons, the Civil Judge is of opinion that the alienation by the widow was for legal purposes, sanctioned by Hindu law; and that the right of the Crown as next heir to her husband was therefore absolutely defeated by the Razinamah in the pleadings.

11. The second issue is, what were the advances, if any, made by Cavaly Venkata Lakshmiah, the Defendant's father, to Varegonda Lakshmidavaumah, and whether all or any, and which of such advances were made for purposes for which, according to Hindu law, she would have been entitled to alienate the estate in dispute as against the next heirs of her husband, if any.

12. There are no means of deciding the said issue from the evidence on record; the Defendant's document No. 21 contains a clause setting forth that all the previous Bonds, letters, and accounts relative to their pecuniary transactions were returned to Lakshmidavaumah by the Defendant's father, and the records of the estate appear to have since passed through the hands of the Revenue authorities. The Defendant asserts that it is therefore beyond his power to produce any of them. The accounts adjusted and amount settled as due by the estate up to the date of the said document No. 21 (April 1838), was Rupees 48,614-13-6, and this amount was mentioned in the document as having been advanced for truly lawful purposes. Up to the date of the Razinamah filed in 1841, the said amount had with interest accumulated to Rupees 67,444-12-0. The Civil Judge has no data to go upon to enable him to fix any other amount than the above as the aggregate of sums really advanced by the Defendant's father with interest accruing thereon, or for declaring that they were advanced for any other than legal purposes, as alluded to by him when considering the first issue.

13. The Plaintiff produced certain documents LL to CCC to show that the Defendant's father was not, in the year 1838, in such circumstances, as would enable him to make any

pecuniary advances to the widow Lakshmidavaumah; but the advances said to have been made to her were alleged to have been at various intervals between 1810 and 1838, but not during the latter year (1838), such documents are therefore of no consequence except perhaps as tending to show that after all the advances he had made in the vain hope of some re-payment, he found himself in reduced circumstances. The Defendant's document No. 3 may be received as evidence to show that the Defendant's father, in 1811 was only induced to make advances to the widow on the security of the Estate.

14. The third issue is to ascertain what other property besides the Estate in dispute, the said Varegonda Ramanapah died possessed of, and whether at the time when such advances, if any, were made, the said V. Lakshmidavaumah, his widow, had any such property; and if so, whether the same was sufficient to answer the purposes for which the advances were made by the said C. Venkata Lakshmiah to the said V. Lakshmidavaumah.

15. The Plaintiff had not adduced any evidence to show what property the said Varegonda Ramanapah died possessed of, besides and except the Estate in dispute. The Defendant's documents Nos. 1 and 13 clearly show that the said Zemindar Ramanapah died in debt, for which he had mortgaged the said Estate, but which he certainly would not have done had any other property been available. Had such existed, moreover, the said Estate would not have been attached for arrears of Peshkush in the year 1811, after the said Zemindar's death (*vide* document No. 17), and his widow would scarcely have felt under the necessity of borrowing money for the performance of his funeral rites, &c. The accounts produced by the Plaintiff for Fuslies 1219, 1220, and 1221 (A. D. 1809-10, 1810-11, and 1811-12) show that Ramanapah was accustomed to receive advances from Cavaly Seetiah.

16. The entire property connected with the Estate, consisting of houses, grounds, ready money, gold, silver, and brass pots and pans, wooden and other sundry utensils, beds, &c., found on the death of the widow Lakshmidavaumah, amounted to about 12,000 Rupees. This is at least sufficient to show that she was not herself extravagant and would tend to the belief that she was never in possession of sufficient and available property to meet any of the purposes for which the advances had been made to her by the Defendant's father.

17. For the foregoing reasons, the Civil Judge is of opinion that Varegonda Ramanapah died possessed of no property available for any purpose save and except the estate in dispute, which at his death was not unencumbered.

18. The Civil Judge is unable to place much weight on the oral evidence adduced by either party, but sees no reason to suspect the genuineness of the Defendant's documents Nos. 1, 2, 3, 13, 14, 15, 16, 18 and 21.

(Signed) W. ELLIOT, *Civil Judge.*

(True Copy.)

(Signed) G. THORNHILL, *Collector.*

---

1. Ordered to be submitted for the information of Government, and that copy be communicated to the Government Pleader.

2. The Board request Mr. Dale's opinion as to the propriety of proceeding any further with the Suit on behalf of Government.

No. 469. ORDER THEREON, 28th July 1864, No. 1,350.

Miscellaneous.

The Government will await Mr. Dale's advice.

(True Extract.)

(Signed) C. G. MASTER,

Deputy Secretary to Government.

To the Board of Revenue.
,, the Government Pleader.

Exd. S. T. Augustin.

Rev = 1864. Department.
Proc. of Govt for July

No. 1858.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 14th July 1864.
Rec'd 15th —
Rec'd 18th —
Read Stamp Rep. dated 1st Sept. 1864
Print
No. 2350-1150.

No. 4,384.

Submitting for information letter from the Collector of the Kistna District forwarding copy of the report of the Civil Court of Guntoor in R. A. Nos. 103 and 186 of 1857, filed in the late Sudder Court regarding the Vissanapett Estate.

No 1850 28 July
With an Order.

1857 No 1350.
The Government will await Mr Dalis advice.

Fort St George
28th July 1864

To Chief Secy to the Govt of Fort St George
& — Govt Pleaders