M.R.O. 14—18,000—27-9-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1352. Press Mis.

472-473

Dated 28-7-1862.

Not to be folded or roughly handled

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

No. 472. Read the following letter from CLEMENT DALE, Esq., Government Pleader, to J. D. SIM, Esq., Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 20th July 1864, No. 151 :—

SIR,

1. With reference to the Proceedings of Government and letters noted in the margin, I have the honor to report for the information of the Honorable the Governor in Council that Regular Appeal Suits Numbered 35 of 1861 and 49 of 1861 (with summary Petitions presented by the parties connected with the Suits) came on for hearing on the 12th, 19th, 21st and 24th December 1863, when after hearing the arguments on both sides, the Judges reserved their Judgment, their Lordships intimating that they proposed during the Christmas vacation going through their notes and the cases and authorities cited, and that they expected to be prepared to deliver Judgment soon after the recess.

26th June 1861, No 1,257, Revenue Department.
20th September 1861, No. 1,844, Revenue Department.
Letter from Government Pleader, 29th April 1863, No. 35.
Letter from Government Pleader to Board of Revenue, 11th September 1863, No. 109.

2. I am now informed that these cases are posted on the board of the Court, with an intimation that they are to be re-heard in the second week of August.

3. My Gumashta also informs me there is a rumour that since the last hearing the Pleaders for the Respondents in Regular Appeal Suit No. 35 of 1861, have lodged with the Court some authorities not quoted by them on the hearing, but which they contend support their view of the case.

4. No notice of such a proceeding has been given to me ; but my Gumashta some time since applied at the Offices of the Court for information and copies of such papers, if any, as had been put in ; no information could then be obtained and no copies have been furnished to me.

5. I have heard that one of the Native Vakeels retained by the Respondents has been engaged in searching in some Sanscrit works for passages bearing on the subject of adoption by widows ; and that translations of such portions as are considered favourable to the theory that Hindu widows can adopt have been made ; from which I infer some application must have been made to the Court, and that the Court has been induced to have the Suits put down again for re-hearing, with the view of allowing the Respondent's Pleaders to quote these passages.

6. This, however, is mere surmise, as I have not had any notice served on me, or received any intimation that such a course was to be pursued. It is a most anomalous proceeding, and one which the English Courts would never permit, until after a Decree has been completed ; and no provision for such a practice is made in the Civil Code, provision is there made (Sections 376 to 380) for a "review of judgment," but an order for review can only be obtained after Decree, and founded on the discovery of new matter, or evidence which was not within the party's knowledge, or could not be adduced by him at the time when the Decree was passed, or some other good and sufficient reason and on previous notice given to the opposite party.

7. If the Sanscrit authorities, which it is said the Pleaders now wish to cite, be authentic, it can scarcely be alleged that they could not have been adduced at the hearing in December last, but I have heard that none of the works have ever in extenso been translated, while many of them are mere manuscripts. To admit of a fair argument by Counsel, and a just judgment by the Court, it is essential that the work quoted should be perused by them, for without a perusal of the context, and other passages bearing on the point, it is not possible to arrive at a correct conclusion as to the proper construction which should be put on the principles laid down by the writers. Moreover, the translations which rumour says it is now proposed to put in will be made by persons employed and paid by the Respondents, and the translations could not consequently be received with the confidence that is accorded to translations made by parties known and acknowledged as competent, and who have made a translation of the whole work unbiassed by any particular view, or interest, or object. Moreover, I infer the works must be, comparatively speaking, if not wholly unknown ; and none of those which are usually quoted are relied upon by authors and Courts.

8. The course proposed to be pursued by the Court is also extremely inconvenient. The case is of such magnitude that it required great labour to work it up; and after an interval of nearly eight months similar labour must be bestowed upon it before I could attempt to argue the case.

No. 473. ORDER THEREON, 28th July 1864, No. 1,352.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

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

To the Board of Revenue.

Exd. S. T. Augustin.

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7. Of the Sanscrit Authorities which it is said the Readers now wish to cite, the authenticity, it can scarcely be alleged that they could not have been adduced at the hearing in December last, but I have heard that none of the works have ever in Extenso been translated, while many of them are mere manuscripts. To admit of a fair argument by Counsel, and a just judgment by the Court, it is essential that the work quoted should be perused by them, for without a perusal of the Context, and other passages bearing on the point, it is not possible to arrive at a correct conclusion as to the proper construction which should be put on the principles laid down by the Writers. Moreover the translations which previous Courts it is now proposed to refer to will be made by persons employed and paid by the

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I have the honor to be

Sir

Your most Obed. Servant

[illegible]

Government Advocate