M.R.O. 14—18,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 390 D Press ~~Mis.~~

54.55.

Dated 4 — 3 — ~~19~~1864

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 4th March 1864.

No. 54. Read the following letter from the Honorable J. B. NORTON, Advocate General, to the Honorable A. J. ARBUTHNOT, Chief Secretary to Government, Fort Saint George, dated Madras, 20th June 1863:—

SIR,

1. I have the honor to report, for the information of His Excellency the Governor in Council, the result of the hearing of the case of Akkachi Amani Gauroo *vs.* the Secretary of State.

2. At the date of filing the Bill the Plaintiff had obtained Probate of an alleged Will in her favor by the late Poligar Veera Amani, bequeathing the Poliaput and all her property, real and personal to the Plaintiff.

3. The Plaintiff therefore sued, in accordance with the facts, in her capacity "of Executrix with Probate," and as such, she treated the Secretary of State as a wrong doer, and prayed that he might be decreed to deliver over to her possession of all the property taken possession of by the Officers of the Government and to account to her in respect thereof.

4. In the interim between the filing of the Bill and the hearing, an Ecclesiastical Suit had been brought to compel Akkachi Amani Gauroo to prove the Will in solemn form. It was alleged that there were no *bona notabilia* of the deceased within the jurisdiction of the late Supreme Court, and therefore that the Ecclesiastical Court had no jurisdiction to grant Probate.

5. This cause came on for hearing on the 10th June, when the Probate was revoked, and called in, as it was found that the only assets alleged, viz., certain debts said to be due to the deceased by parties who had followed Akkachi Amani Gauroo to Madras, were fictitious.

6. Thus, when the Equity case came on on the 19th of June, the Plaintiff was no longer *Executrix with Probate.*

7. Mr. Branson and Mr. Arthur Branson appeared for the Plaintiff, I and Mr. Mayne for the Secretary of State.

8. The case involved many important points, such as the ability of Veera Amani to make a Will, good as against the Government; the authority of the Government to deal with the Poliput as an act of State; the legal right of the Collector to take possession of, and retain the private property.

9. On the morning of the 19th I, for the first time, saw a Despatch from the Secretary of State, authorizing the Plaintiff to try her right to the Poliaput at Law, a circumstance well known to the Plaintiff, as she had given the Government Solicitor notice to produce the original at the hearing, and which rendered it very questionable whether the defence that the bestowal of the Poliaput an Appa Row, was an *act of State*, could be sustained.

10. On the whole I thought it was the best course to take the objection *in limine* that the Plaintiff not being any longer *Executrix with Probate*, could not sustain her present Bill.

11. The objection is very far from being a technical one. The effect of Probate is to preclude all question as to the *factum* of a Will. The mere production of Probate excludes all dispute as to the genuineness and authenticity of the Will in all other Courts, so long as Probate granted by a competent Ecclesiastical Court stands unimpeached.

12. At the time of filing the answer in the present Suit the Plaintiff *had* Probate, and the Secretary of State could not therefore then deny it, he came therefore to the hearing utterly unprepared to contest the *factum* of the Will; our contention being confined to the justification of those acts of our own which were alleged to be tortuous.

13. It has been held that it is not ordinarily *necessary* for a Hindoo to take out Probate; and no doubt the Bill *might* have been framed with another aspect. The Plaintiff might have sued as Legatee under the Will, although she had never obtained nor even applied for Probate, and have sought to establish the factum of the Will in the Equity Suit. In that event, however it would have been open to the Secretary of State to have taken issue upon the factum of the Will, and have contested its genuineness at the hearing.

14. There is every reason to believe that the Will is in fact a forgery, and yet as the present Bill is framed, the Secretary of State was altogether precluded from questioning it.

15. It was argued on the other side, that the words "Executrix with Probate" were more matter of description, surplusage, and that they might be struck out accordingly. That the Will was set out on the face of the Bill, and that the Plaintiff might therefore recover upon her title as Legatee which sufficiently appeared upon the Will itself; and that although the Plaintiff could no longer substantiate her case as Executrix with Probate, she had a right to fall back upon the superior title of Legatee, and obtain relief as such under the wording of the *prayer* which made no reference to her capacity of Executrix.

16. I argued on the other hand that the general principles of pleading were well known and founded on common sense; that it was indispensable for the Plaintiff to state the specific character in which she sued; as well as all the circumstances essential to show her interest and title. That though, true it was, she might have framed her Bill with a double aspect, both as Executrix and as Legatee, so as to have obtained relief as the one, if her title as the other failed; yet she had not done so: and that none of the necessary allegations to support her title as Legatee were contained in the Bill. That there was no prayer even that the Will might be established; and that in fact it was the ordinary well known Bill by an Executrix against an alleged wrongdoer. That no other title had ever suggested itself to the Plaintiff, who at the time of launching her Bill *was* Executrix with Probate; and that the present attempt to get rid of the only character in which she sued, and to be allowed to sustain her Bill in a character in which she did not sue, was nothing more than the ingenious argument of her Counsel, to which he was driven by the exigencies of his position. That general rules and principles must be abided by, and that the Plaintiff had no reason to complain, for though it might be urged that it was a hardship on her to be shut out from proving her right on such an objection as this, it must be remembered that her putting herself forward as Executrix with Probate, was her own act; and that it now appeared that she had obtained that Probate upon allegations which had been proved to be altogether false and unfounded.

17. A suggestion was made that the Bill might be amended; but this the Judges at once agreed could not be done, on my pointing out that the amendments necessary to present the Plaintiff's case at Legatee, would make an entirely new case.

18. After hearing the point fully argued on both sides, the Court held that it was fatal; and dismissed the Bill with costs, though properly enough without prejudice to the Plaintiff's taking any further proceedings which she may be advised.

No. 55. ORDER THEREON, 4th March 1864, No. 390.

Ordered to be recorded.

(True Extract.)

(Signed) C. G. MASTER,

Deputy Secretary to Government.

To the Advocate General.

Exd. S. T. Augustin.

9 April 1861. No. 794.

the 28 February 1861 Petn
Summana, Exposition of the
the Living of Vellama and
the Salem District, and
Sons, after considering
the claims of the dif
ferent members of the
family, invited Mr C
Vellama Chetty and
made over to Valiama
Appa Rau, the nearest
male relative of the last
male incumbent.
The decision has
been regarded with
troublesome contention
and litigation
and the Collector of Salem is re
quested to ascertain
certain landed and move
able property stated
to have been the private
property of the late
Vecra Summana and
further complicated
matters.
3. The most fortunate
of the four Chief Claim
ants who are widows
of the three brothers
of the late incumbent

late husband is named
Akachee Illumaiee.
She claimed by power
of attorney, signed by the
late Veera Illumaiee
appointing her assignee
thereof & the Pollium.
Her first step was
to appeal to the Secretary
of State against the
decision of the Court
nominating D. Asspa
Row: the appeal came
duly sent home, the
Secretary of State having
referred to the papers
recorded in the Order
of the 6th April as con-
taining a complete
history of the trans-
actions in the time
an answer was received
the Sec. of State remarked
that "the question whether
according to the Hindu
Law of inheritance the
present memorialist
whose husband was
next heir to the last male
possessor, has or has not
a better right to the suc-
cession than the collateral
relation, by a female
line, in one which appears

* d/8 July 1861.

* G.O. 5 August 61. No 1551.

* Despatch 6 Aug/61.
No. 97.

* d/30 November 1861.
No. 83.

to be judicially decided.
I therefore desire that
the memorialist may
be informed that she
is at liberty to refer her
claim to the Supreme Court
This despatch was
duly communicated to
the memorialist & a
draft answer and
order were prepared
explaining that the
Pollium was given to
her by an unalterable
the nomination of D. Asspa Rau as
Poligar was made by
State and could not be
executed in any Mu-
nicipal Court. Inter-
im the memorialist
had filed a petition
in the Supreme and
Sudder Courts in the
matter of the Pollium
The Secretary directed
that these drafts of
the order till the results
were known.
6. Before finally closing the
Pollium it will be convenient
to allude briefly to the
Collector's proceedings
in regard to the private
property of the late Veera
Illumaiee to which reference

have been made in favour
of above ...
7 ... Mr Knox who was acting
Collector of Salem when
Veera Munnance died
took charge along with
the Poliagar of certain
property, real and per-
sonal, claimed to be
the private estate of
the deceased. He informed
the four widows at the
time that it would be
given up to any one who
should produce a certi-
ficate from the Civil Court
authorizing him or her to
receive it. Then the Poliagar
was placed in the possession
of Ossia Rau, Mr Brett
issued a notice informing
all parties concerned
that the property would
be delivered up to the
Poligar if within six weeks
no person produced an
order of Court directing
that the property should
be retained. The real pro-
perty consisted of dry
& wet lands, amounting
to about acres 184-21-13
assessed at Rs. 731-13-7.
Besides this there were
moveables, money, jewels
&c — By order of the
Civil Court of Salem the
whole of this still remains
in charge of the Collector.

from Collector & Board
dy 13 Nov 1861. No. 222

* dated 23 Sept/61

From Coll. & Board dy 17 Feb/62
No. 29 & 12
& correction B.R. Pro. 19 Feb/62
No. 203.
G.O. 15 April/62
No. 845

Letter from Govt Solicitor
recd in G.O. 14 Sept/61
No. 1531

* G.O. 23 Sept/61.
No. 1850.

* 24 Sept. 1861. No 71

Whether Munnance
the Widow who applied
to the Secretary of State
as stated in para 4 of
Lewis [illegible] letter,
instituted the subsequent
suit in the Supreme Court against
the Secretary of State for
India to recover possession
of the Authorities Poliam
&c, the Govt Solicitor
was called upon to report
on the various circumstances
under which the suit
had been brought in
the Supreme Court
(2) the jurisdiction of the
Court in the matter
(3) the bearing of the suit
on the interests of Govt
and (4) the measures
adopted to protect
the latter. He replied (1) that Munnance
Munnance brought the suit
the Secretary of State
defendant as the remain
in possession (2) that
the Supreme Court had
jurisdiction irrespective
of Local Laws, Codes &
Equity, when the party
in possession is within
its local limits (3) that
as the Government were
not in possession of

the estate there interested were not minors and therefore (4) that there appeared no necessity for the intervention of Govt in the matter either in the way of asserting the rights or defending the title of the parties in possession. 9. The said Memorialists considered it advisable that the Collector should be empowered to grant licenses to Pollians, not held under a permanent award, the right of determining the question vesting in Govt, and cannot be made the subject of suit in any Municipal Court. They further considered it of importance that their right should be upheld.

10. The Advocate General was of opinion that the decision of Govt was an "act of State", and as such not questionable by any Municipal Tribunal. He considered however that the action with reference to the claim that Govt should appoint Curators to manage the estate, pending the suit, was open to question.

25 Sept. 1861. No. 1863

vide G.O. 9 Oct. 1861. No. 1960

1. That action of Government was in abeyance, until recommended and the plaintiff confined to certain lands other than the Pollams.

1. The difficulty to those landholders which the Collector of Salem had stated to exist in obtaining possession of their lands, the Advocate General was of opinion, could be removed by the Collector's causing the Pollians to be ejected according to Act [illegible] and therefore advised the Collector to notify to the Vannias that they were ready to deliver the private property to those entitled to it on application for a certificate under Act 27 of 1860. The Collector of Salem had it appears, previously brought to the notice of the Board of Revenue that Akkachee Munian the claimant of the character of the executrix with probate of Veera Munian, the late Polygar, had applied for immediate delivery of all property, real and personal, belonging to the testatrix, and that the Board referred to, whom the Board referred recommended that the

vide G.O. 15 November 1861

vide para 13 of the Advocate General's Letter dd 5th Feb/62 recorded in G.O. 17 Feb/62 No. 248; J.D. and G.O. 22 Feb 1862. No. 389 J.D.

13 November 61. No. 2224

16 November 61. No. 6343

property in question al-
be delivered to Akkachee
Ummanee on the Collector's
being satisfied by the pro-
duction of the probate
under seal of the Supreme
Court that such probate
had been granted her-
The Collector was about
& comply with these in-
structions when (19 de-
cember 1861) he received
a letter from the
Civil Court of Sultanpet
retain possession of the
property and (15 Feb 62)
was subsequently informed
by order of Court that
he would be relieved of
the charge of the property
as soon as that
could secure a suitable
tenant.

12. That because the
"Action of Ejectment"
does not lie; such
as the 1st January 1862
and in consequence it
would seem of the Collec-
tor's refusal to give up
the property notwithstan-
ding the production
of "probate" Akkachee
Ummanee commenced
a suit in Equity charging
that the Secretary of
State has by interfering
with the Estate of Veera
Ummanee deceased

Bd. Pro. 26 Nov. 1861. No 558

vide, inter 19 of the Advo-
cate General's letter d/s
Feb/62 referred to above

Govt Solicitor's letter d/4 Feb
1862. No 76. recorded in G.O.
22 Feb/62 No 388.

vide Bd's Rec'd letter to the
Board d/17 Feb/62. No
29. paras 6-10.

© This letter was written on
the application for relief
Claimant who was stated
a Plaint for the Polygrant
the private property.
from Advocate Gen.
5 Feb/62. p. 22

G.O. 7 April 1862.
No. 778.

vide G.O. 21 March/62. No. 479
G.O. 25 March/62. No. 655.
R.D.

made himself Executo
de son tort & that he
much therefore account
with her as Executor
with Probate in respect
of the said Estate".
The Bill of Compl. Amb
tho' quoting the will
of the deceased Veera
Ummanee as authori-
zing Akkachee Um-
manee to succeed to the
Poligrant makes no di-
rect application for
relief in any thing but
as regards the private property of
the deceased. The answer
of the Plaintiffs was
prepared by the Govt
Solicitor in communi-
cation with the Advo-
cate General & sent
to the Govt Office for
signature but no copy
of it was returned to
support therefore can-
not be entered here.
Allusion to this answer
is made in a letter from
the Advocate General
dated 14 March 1862
to Smyth further re-
marked that we are
assured that the alleg
will of Veera Ummanee
was a forgery and that
the affidavit alleging

Ch[ar]d
Clarke Esqre. with £20 per Ann.
of the Revenue &c. within
the Jurisdiction of the
Supreme Court (which Ch[ar]d
Black Probate could not
have being Executor) and
whereby false, it would
be an Act to confirm
the present Proceedings and
Adjudication (another of the Judges
who had Commenced an
Suit in the Salem Court)
without that the Royal
Assent & the Supreme
Court citing Akkaches
Testament to prove the
Probate on, and prove
the same in solemn form
per testes - Wch the parties
in Question agreed to
do.

13. The result of these
previous proceedings is
recorded in Mr Martin's
Letter of 20 June last.
Before the Equity Suit
came on for hearing
another on the Eccle-
siastical side had been
heard & determined before Dr Swabey
the Probate granted to
Akkaches Executor
revoked and called in
because it was found
that the Ecclesiastical
Court had no Jurisdiction

vide G.O. 14 April 66
No. 835

1P

to grant Probate
much as there were
no bona notabilia
within the Jurisdiction
of the late Supreme
Court. The Plaintiff
in the Equity Suit chal-
lenging this caused to
be Executrix with
Probate, in which cha-
racter she had moved
the Secretary of State,
the Court held that
she was unable to
sustain her Equity
Bill which was there-
fore dismissed with
Costs.

14th Notwithstanding the
no doubt application
was made in the Equity
Bill for the delivery
to the Plaintiff of the
Ankuwaree Policy
it appears that one of
the points litigated
was the authority of
the Govr to seal up the
Policy as an
Act of State. It fur-
ther appears that
one of the reasons

* Vide Mr Secy Norton's
Letter of 20 June 66

influenced the Advocate General in adopting the line of defence which resulted in the dismissal of the Bill was the discovery, on the day that the Equity Suit came on for hearing, of the existence of the despatch from the Secretary of State authorizing the Plaintiff to buy her right to the Poliagum Estate, a circumstance which, in the opinion of Mr Morton, rendered it very questionable whether the defence that the Ecclesiastical Court of the Province was an "Act of State" could be sustained.

15. This declaration seems important because there is now pending before the Salem Court a suit filed by Pedda Lenda Veera Munnaee, the senior of the four widows already referred to, and who, in that capacity, claims to inherit the Polliem Estate and other property under the Hindoo Law.

16. The correspondence connected with this suit will be found in the papers marginally noted. The nomination of Dr Appa Rau was directed by Govt & the defended on the ground that it was an act of State beyond the power of a municipal Court & questions an attempt was made to eject Appa Rau summarily by an order of Court to the Collector to take charge of the Poliagum. This was objected to & ultimately negatived by the Sudder. The draft answer was prepared by the Dalavoy. Eventually the suit was struck off the file for some informality, but the Plaintiff has now been allowed to institute it under Govt orders for hearing in a few days.

17. What now is to be done in regard to the

* i.e. that the Plaintiff in nothing any longer Executrix to the Probate could not sustain her present Bill.

* see above para 4

Go. 25 February 1862. No. 412.
" 4 March 1862. No. 484.
" 7 March 1862. No. 491.
" 25 March 1862. No. 654.
" 12 April 1862. No. 822.
" 25 April 1862. No. 891.
" 28 April 1862. No. 905.
" 7 May 1862. No. 995

* about Sept. 1862

vide Bd. Pro: 14 April 1863 No. 2135

Portland Canal
is the communication
of the Board of Trade,
submitted to be
taken of the opinion
expressed in the
[illegible] and
is to be directed to
Secretary of State
despatch of 30 Nov
ember 1861.

CGW
7/9/63

9 D

This is an embarrassing
matter in consequence
of the Secretary of State's
Despatch of 30 Nov. 1861
having so long remained
unreplied to.

2. It does not seem to
me that any order is
required on the Portland
letter of 20 June last. It
may simply be recorded
in the Treasury Reports
that the Board did not deem
it advisable to oppose
Attached Mineral Claims
claims on the ground
of it conferring a Right
or Dues. Appears to be
an act of State, and the
Question resolved on
another plea objected to
it. was not an Execu-
tive [illegible] under protest in
that character the
Board instructed the Lords
[illegible]

incompt. to K's suit
was dismissed but with-
-out prejudice to her
bringing any further proceed-
that the magistrate advised
this Lower Court has not
done. If the Court it
might be a question whether
Court ought to
take under it Secretary
of States despatch.
3- But another witness,
Elizabeth Clarke Potter
of A the husband has
brought a suit in the
Hillsborough Court of Salem
against K Poinsett, K
Poinsett and others for the
Poinsett's property
purposes - This, as re-
-gards K Poinsett-K
is all that for an con-
-cern in, has been de-
-fended on K ground
that the disposal of K
Poinsett was an act of
State not to be questioned
in any Municipal Ct.
by Mr. Richard Hall Rebecca

10

State order had direct
reference only to the
whose Memorial was
upon before him, it must
be understood to imply
this with that K Poinsett
should part to any one
who could establish a
valid claim to it accor-
-ding to the Mahometan law of
Inheritance, and as
Elizabeth Clarke Potter
-mer, K Plaintiff in
K Salem Suit, has appea
-red to support a prima
facie claim as A K - if that
be as being K widow
of the elder brother, his au-
-thority of post to dispose
of K Poinsett as they
pleased should not
be pleaded in bar of
the claim or even of
that of A K —
5- On K other I think
we have both parts of
K testimony of State
and depend with K
reconsideration of his order,
that in which the State

time that is the reason
of the undertaking Politicians
and the right of fort
ifications thereunder.
- pray that our original
ordinance for the institution
of Departments may not
be disturbed it would be
awkward if we were
to eject civilians.
6. Ireland which I take
civil may for now
for plus I maintain.
ed. The issue of the
civil Bill and any cate
dit. rising the title
of Police Commands as
regards the principle for
of the Constabulary,
and that point with
ch of course should be
eventually decided
that the succession of the
Police and its detailed
control to be forthcoming.
25/9/63 JP

I concur in the course
proposed by the Chief Secretary.
Ellis

Revenue 1863 No 15.
Ex. Govt. for March 64
No 1476.

From the Hon. J. B. Norton Advocate Genl.

Written 20th June
Recvd 23rd 1863.

No.

Reporting the receipt & the bearing of the case of Arabella Thomas & the Secretary of State.

No 390.

Acc'd
20th March 1864 - C.G.H.

Encl in a Letter to England 5th March 1864 No 86.

No 54 & 55.