M.R.O. 14—13,000—27-9-24.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 96 Press ~~Mis.~~

186 187

Dated 16—1— ~~19~~ 1864

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 16th January 1864.

No. 186. Read the following Proceedings of the Board of Revenue, dated 6th January 1864 No. 40:—

Read the following letter from the Collector of Ganjam, dated Chetterpore, 26th Novembe 1863, No. 247.

With reference to my letter of the 14th instant, No. 227, I have the honor to forward fo the information of the Board copies of Judgment and Decree passed by the Civil Judge in Cause No. 11 of 1863, on the file of his Court dismissing the Suit brought against me.

ENCLOSURE No. 1.

Court of the Zillah of Chicacole, dated 17th October 1863.

Original Suit No. 11 of 1863.

Present.—T. J. KNOX, Esq.

Judgment.

1. The Plaintiff states that when the husband of 1st Plaintiff and son-in-law of 2nd Plaintiff died according to his Will his Estate, valued at Rupees 12,897-13-3, was taken possession of by 1st Defendant on behalf of Government, which was named Executor.

2. That according to the terms of this Will 1st Defendant was bound to pay them (Plaintiffs) the interest on 8,000 Rupees for their yearly maintenance, and to apply the interest on the remainder to the support of a Choultry.

3. The Plaintiffs assert that Government declined to take upon themselves the administration of this Estate according to the Will.

4. That though 1st Defendant has paid another person 700 Rupees, and he has only paid Plaintiff 300 Rupees.

5. The Plaintiffs pray that the entire Estate may be made over to them, and calculating its present value to be Rupees 20,985-2-1, they sue for Rupees 19,985-2-1, giving the 1st Defendant credit for his payments of 1,000 Rupees.

6. The 1st Defendant answers that the Government did consent to the Collector executing the Will, and 1st Defendant, as Collector by a Power of Attorney, appointed 2nd Defendant his Agent in the matter.

7. The 1st Defendant affirms that the Estate has been duly administered, and the provisions of the Will carried out.

8. That Government Notes for 8,000 Rupees have been bought, the interest of which is all under the Will that the Plaintiffs can claim.

9. That Plaintiffs have already received 300 Rupees of this interest, and there is more in the Treasury which they will not draw, the 1st Defendant remarks that interest could not be paid before it accrued or of out capital, hence some delay has arisen.

10. The 1st Defendant states that as soon as further assets are realized and investments made in Government securities, the endowment of the Choultry will be proceeded with.

11. The 1st Defendant remarks that Plaintiffs in this Suit seem anxious to get entire possession of an Estate which the testator showed particular anxiety should not fall into their hands.

12. The 1st Defendant claims a dismissal of the Suit as he has done his duty in good faith. The 2nd Defendant signed the above statement.

13. The Civil Judge having considered the pleadings in this case and the documents offered by each party, is of opinion that this Suit may be at once disposed of.

14. The Plaintiffs are clearly proved to have made a false statement when they said that Government were not the Executors to the Estate; it is true, as the official documents show, when 1st Defendant as Collector on 22nd November 1860 reported the death of Strenevasa Row, the Tahsildar of Poobacondah on the 30th October and reported the purport of his Will, praying that Government should administer, and here it must be presumed by Government he intended its immediate local representative, 1st Defendant, the Honorable the Governor in Council, in an Order dated the 20th December 1860, was not disposed to accede to the request, and directed that 1st Defendant, Mr. Forbes, should refrain from taking any steps in the matter, beyond advising present Plaintiff at the close of a trustworthy person to help her in carrying out the wishes of her husband. It never on further representation of the matter, and in accordance with the opinion of the Board of Revenue, the Government, in an Order dated 27th September 1861, consented to the Collector as its representative executing the Will, as a special case, so far it is clear that 1st Defendant is a lawfully constituted Executor under the Will, and authorized

to employ 2nd Defendant as his Agent, and there is ample proof that the trust has not been neglected.

15. It is clear the Plaintiffs have no claim whatsoever to the Estate beyond what the testator actually and distinctly bequeathed them. The Plaintiffs do not affirm facts which would show that 1st Defendant as Executor has committed any breach of his trust, either towards them or others. He affirms and has brought documentary evidence to prove that as required by the terms of the Will he has invested 8,000 Rupees in Government securities for Plaintiffs' benefit, and Plaintiffs themselves admit they have received a portion of the interest, namely, 300 Rupees, nor does it appear that the Plaintiffs have any further right of action in the matter, for even supposing 1st Defendant as testator was capable of defrauding the Choultry of its endowments, Plaintiffs are not the persons to come forward to protect its interest, moreover as Collector 1st Defendant has special duties connected with such endowments, and was the most suitable person the testator could have found to carry out his wishes.

16. The 1st Defendant has submitted to this Court a number of accounts showing receipts and expenditure on account of this Estate, and the Civil Judge cannot suppose that they are incorrect, and the Plaintiffs make no objection to them, and they afford *primâ facie* proof that the Estate has been properly administered to.

17. The fact is that this Suit is an attempt made not by the Plaintiffs, who are respectable widows and probably content with the very liberal arrangement the testator has made for their maintenance but by their own family; no doubt the testator, a man of experience, well knew that if he did not make some such stringent Will, his Estate would be swallowed up by his wife's family, and his wife and mother-in-law probably left destitute. His Will must be maintained, and it is clear its provisions as regards Plaintiffs have been fairly provided for and carried out by 1st Defendant.

18. The misfortune is that through the intrigues of their relatives, and the ignorance, if not worse of the Vakeel who advised them, Plaintiffs have incurred heavy costs for no use whatsoever; the most they could have sued 1st Defendant for was their yearly income, the interest on 8,000 Rupees, and yet they are advised to bring a Suit for 19,900 Rupees, without one decent plea to advance.

19. The Decree of this Court is that Plaintiffs' claim be dismissed, and Plaintiffs pay all costs.

(Signed) T. J. KNOX, *Civil Judge.*

(True Copy.)

(Signed) G. S. FORBES, *Collector.*

ENCLOSURE No. 2.—Decree.

Ordered to be submitted to Government in continuation of the Board's Proceedings No. 7,842, dated 12th December 1863.

No. 187. ORDER THEREON, 16th January 1864, No. 96.

Ordered to be recorded.

(True Extract.)

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

To the Board of Revenue.

Exd. S. T. Augustin.

Pro. 20 Dec. 60 No
24 Sept. 61 - 348-349
21 Dec. 63 - 255-256
363-364

Rev. 1864. Department.

Pro. of Govt. for Lany.

No. 81.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 6th January 1864.

No. 40.

Submitting a letter from the Collector of Ganjam forwarding for information copies of Judgment and decree passed by the Civil Judge of Chicacole dismissing O. S. No. 11 of 1863 for recovery of Rupees 19,985-2-1 being the value of the Estate of Strecnivasse Row late Tahsildar of Poobacondah.

No. 96.

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14 Copies

Nos. 186 & 187.