

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 3059

Press

~~Mis.~~

152. 155

Dated

19-12-1865.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
19th December 1865.*

No. 154. Read the following letter from the Registrar General of Assurance, to the Chief Secretary to Government, dated Madras, 5th December 1865, No. 309:—

1. I have the honor to submit the following remarks with reference to the Government Order No. 2,064 of the 1st September, Revenue Department, the delay in replying to which has been occasioned by my having only received the information necessary to enable me to form an opinion on the subject within the last two or three days.

2. As Mr. Fane observes that all the work which the special establishment for the Registration of Title Deeds has hitherto been engaged in will now be done by the new Registration Department, under Act XVI. of 1864, it is necessary to consider what that work is. The following seem to be the principal duties devolving on the establishment:—

I. The preparation and issue of Certificates and Government Grants in supersession of the old Choultry Certificates, Sheriff's Bill of Sales, Certificates, Bills of Sale in the old form, and private Deeds of Sale.

II. The registration of all sales, gifts, and mortgages of landed property held on any of the above tenures, except the Certificates of the Choultry Court.

III. The registration of all original leases of Government land in Military Cantonments, and all subsequent transfer of such leases.

IV. The issue of Freehold Title Deeds.

3. As no change is to be made with regard to the performance of the two last of these duties, beyond transferring them to a smaller establishment, no remarks with regard to them seem necessary.

4. The process of issuing a certificate or registering a transfer is thus described by Mr. Cunliffe, in his letter No. 23 of the 29th June 1861, to Mr. Pelly.

(11.) "On an application for a certificate or for registry of transfer, the property is measured by one of the Maistries, assisted by his Lascar, to convey the chain, &c., that it may be seen, if the actual, correspond with the declared area, and whether there is an encroachment on a public thoroughfare. Notices are then prepared by the Notice Writer and affixed on the premises by the notice serving Peons, and remain there for thirty or sixty days according to certain rules, are then

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brought back by the Peons to the office, and these notices call upon all opposing the issue of the title to come forward and state their objections.

(12.) "As nearly all the land in Madras is under dispute, there are adverse claims raised to the great majority of applications, and the important duty of the Peons is to see that the notices really remain up for the period specified, for it is sometimes the aim of the applicant to remove the notice, so that those interested in the case should not learn that it had been made, and no objections coming forward, that the title should issue.

(13.) "A Memorandum of the whole case is then prepared in English, with the dates on which all the requisite formalities had been carried out, and the nature of opposing claims set forth; a day being then fixed for the hearing, and notice served on each individual to appear on the day mentioned.

(14.) "The Collector, or as at present, the Deputy Collector, then decides the question, and issues or refuses the application.

(15.) "You will see then that this decision is really a Civil Judgment on the merits of the case. It is an important procedure, and though the adjudicating Officer does not disturb possession, he often by declining a certificate or registry of transfer, stops a proposed sale. In Madras a purchaser generally requires a certificate to be issued in the name of the seller, as by the subsequent enquiry he is enabled to discover what claimants there are to the property, and from what parties it is necessary for him to procure a release. The Hindu or Mahomedan Law of Inheritance is observed, and so much care is taken to grant a certificate only to those who show a reasonable title to one, that the community attach great value to them, and they are seldom, if ever, set aside in the Supreme Court."

5. As the issue of certificates has been suspended since the 19th September 1861, and as the Advocate General and the Board of Revenue are of opinion that such certificates should only be issued for land newly taken in, this branch of work may be considered as virtually at an end.

6. There is therefore only one which really requires to be considered, viz., the registration of sales, gifts, and mortgages of land paying quit-rent to Government.

7. There is no doubt that much of this work must, under the existing system, be done in two different offices, but it is to be observed that it is not done at all on the same principle. The Deputy Collector endeavours to ascertain whether the party who conveys or mortgages the property has a right to do so, and if he is not satisfied on this point, he refuses to register, his main object being apparently to know from whom he has to demand quit-rent. The duty of the District Registrar is limited to ascertaining the fact of execution, and the identity of the parties. Not only is he unable to prevent illegal or fraudulent transfers by giving public notice of them, as suggested by Mr. Fane, but he is altogether prohibited from attending

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to objections to registration made by third parties on the ground of want of title. The following is the Advocate General's opinion on this point:—

QUERY.

OPINION.

In Bengal Registering Officers are directed to attend to petitions containing objections to the registration of instruments on the ground of want of title or authority on the part of the person executing the same, to alienate the property affected by it, and if the objections appear to be *prima facie* reasonable, they are ordered to refuse to register the instrument—(Vide instructions paragraph 16). In the North-West Provinces Registering Officers are, on the contrary, directed to bear in mind that registry cannot be refused merely on account of the objections of a third party, who thinks his interests affected, unless there is actual criminal frauds (Vide Rule 13). Which of these views is correct?

I am of opinion that the registering officer has no such discretion as is pointed out in this question. It was judicially ruled that Registrars had no such power under the old Regulations, and it appears to me that the reasons for such a decision are equally applicable to the law as it at present stands.

The Bengal rule above quoted has since been altered, and now stands as follows:—

(19.) "The only enquiry allowable is an enquiry as to the fact and date of the execution, and to prove the identity of the parties appearing with the parties who executed the instrument. There shall be no enquiry as to the right of the parties executing to make the instrument. But if at the time of presentation of the instrument, a petition is filed denying such right, a note of the objection made will be appended to the entry on the Register, and also endorsed upon the instrument; this will be appended to abstracts, and copies made by the authority of the Registering Officer."

8. It will thus be seen that registration under Act XVI. of 1864 gives no sort of title, and there are other reasons which seem calculated to render our Registers incomplete and unreliable guides for revenue purposes. Conveyances and mortgages affecting immoveable property of less than Rupees 100 in value are not necessarily registered at all, yet much of such property must be liable to quit-rent. In cases of death, a son may succeed to his father without any instrument having been executed or registered. In other cases, a person may inherit under a Will, and the Will may not have been registered. Even if the Will has been registered, it does not follow that it has been registered at the Presidency, and in that case there will be no record of it in the General Register Office.

9. In paragraph 3 of the Board's Proceedings, it is suggested that I should furnish the Deputy Collector with copies of all transfers registered in my Office. I presume that copies in extenso of the instruments registered in the District Office

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or even of the abstracts entered in my books will not be required, and that all that will be necessary, will be that certain forms should be filled up. As however upwards of 200 transfers are registered every month, the preparation of these papers will interfere with the ordinary duties of one of the Clerks, and as the Government are aware that they are at present totally unable to get through their own work, I beg to suggest that any returns of this description which may be necessary be prepared by some one deputed by the Deputy Collector, who can be allowed to extract whatever may be required from the Registers.

10. Whether however this information is really necessary for the collection of quit-rent, seems a matter for further consideration. I am informed that demands for quit-rent are constantly made in the names of persons whose very existence has been almost forgotten, and that these demands are paid year after year as a matter of course by the present owners of the property. One instance in particular has been brought to my notice, in which this sort of thing has gone on for a quarter of a century.

No. 155. ORDER THEREON, 19th December 1865, No. 3,059.

Land Revenue.

Referred to the Board of Revenue and the Government Solicitor for their remarks, with reference to the Order quoted by the Registrar General of Assurances.

(True Extract.)

(Signed) J. D. SIM,

Secretary to Government.

To the Board of Revenue.
,, the Government Solicitor.
,, the Registrar General of Assurances.

Erd. S. T. Augustin.

Dec 7. 1866. No. 173
106th St. 68-13-14

Dec 10. 1866. No. 3508.
No. 173. 106th St. 68-13-14

The Registrar General of
the State of New York
at Albany

Office of the Secretary to
the Board of Regents

Dec 17. 1866. No. 3509.
Dec 17. 1866. No. 3509.

(Continued)

That meeting, the same is in the
office of the Registrar General
the registration of the State

No. of the Board of Regents
13 Dec 1866. 1866.

No. 173. 106th St.

No. 3509. 10 Dec

With answer

Referred to the Board

Revenue and the State

their records with reference to the same

reported by the Registrar General

Revenue.

19 Dec 1866

To
The Board of Regents, Dec 1866
14 - 10 - 1866
1 - 1 - 1866
1 - 1 - 1866