M.R.O. 14—18,000—27-9-24

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 2244 Press ~~Mis.~~

714-715

Dated 28-8-1866.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 28th August 1866.

No. 714. Read the following Proceedings of the Board of Revenue, dated 16th August 1866, No. 5,775.

Read the following letter from the Acting Government Solicitor, to the Secretary to the Board of Revenue, dated Madras, 13th August 1866, No. 472 :—

1. I have the honor to acknowledge the Proceedings of the Board of Revenue noted in the margin, with two enclosures, relative to the issue of a grant for certain land purchased by the late Mr. Schnarre in the District of Coimbatore.

Dated 9th August 1866, Revenue Department.

2. I submitted them with the former correspondence on the subject for the consideration of the Acting Advocate General, and have also conferred with him thereon.

3. I now forward a copy of his opinion, and return the two enclosures above noted.

Copy—Opinion.

1. After most careful consideration, I have come to the conclusion that there are insuperable difficulties in the way of granting any title deed in this case ; and that Government cannot act with safety, except under the orders of the Court.

2. It is clear that a valid contract was entered into between Mr. Schnarre and Government, the benefit of which descends to his heirs. The first question then is, who are his heirs, and what shares do they take ? If Mr. Schnarre had only deferred his death until the 1st of January 1866, this part of the case would have presented no difficulty. Landed property descends according to the *lex loci*, and the Indian Succession Act governs all intestacies arising subsequent to that date. But till the passing of that Act, there was no *lex loci* in India, and with regard to persons who were neither Mahomedans, Hindus, nor British subjects within the limits of the Supreme Courts, the devolution of their property was a matter to be ascertained by the usage of their particular class, (see Abraham *v.* Abraham, 9 Moo. I. A. 240). What Mr. Schnarre's class was, or what its usages are, it would be difficult to ascertain. No opinion that I can offer could be more than a conjecture.

3. It is, however, quite clear that the children take some share ; and, therefore, ought to be included in the deed as parties to whom the land is conveyed. But the deed (see Form X.) provides for covenants by the grantees, and the infants cannot covenant. It might, no doubt, be possible for the widow to get herself appointed guardian under Act IX. of 1861, and then to covenant for them. But this would involve a decision what share, if any, she took for herself, and what shares each of the children took. For this decision, as I have already said, the Government possess no materials.

4. I think, therefore, that Mrs. Schnarre should be informed that Government can grant no conveyance, except under the orders of a Court. As the Government of Madras is one of the contracting parties, and as the conveyance would have to be executed in Madras, I think the High Court would have jurisdiction. A case could be stated for the opinion of the Court with little expense under the provisions of Act XVII. of 1852, or Act VIII. of 1869, S. 328. Government would, of course, appear and assist in the settlement of the case, without any cost to the family.

5. I presume that Mr. Schnarre left no assets which are now within the jurisdiction of the High Court. If he did, Mrs. Schnarre might take out administration, and Government would then be justified in making out the title deed in her name, as administratrix."

(Signed) J. D. MAYNE,
Acting Advocate General.

11*th August* 1866.

(True Copy.)

(Signed) H. J. BROCKMAN,
Acting Government Solicitor.

Proceedings of the Madras Government, Revenue Department,
28th August 1866.

1. Submitted for the consideration and orders of Government, with reference to Government Order, dated 17th January 1866, No. 126.

2. The Collector of Coimbatore will ascertain and report without delay how the case stands with reference to the concluding paragraph of the Advocate General's opinion.

No. 715. ORDER THEREON, 28th August 1866, No. 2,244.

Land Revenue

Ordered to be recorded.

(True Extract.)

(Signed) J. GROSE,
Under Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

No. 5,520.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 9th August 1866.

Read the following letter from P. GRANT, Esq., Collector of Coimbatore, to the Secretary to the Board of Revenue, dated Ootacamund, 31st July 1866, No. 195 :—

With reference to Board's Proceedings of 28th March 1866, No. 2,228, I have the honor to forward an original Certificate of Mrs. Schnarre's marriage, and copy of her letter containing the information called for regarding the state of the late Mr. Schnarre's family. It now remains to be decided whether the title deed already sent should be revised; and if so, whose names should be entered with that of Mrs. Schnarre.

ENCLOSURE No. 1.

From Mrs. M. SCHNARRE, to the Special Assistant Collector, Ootacamund, dated 2nd July 1866.

1. In reply to your letter of the 20th April 1866, No. 112, I have the honor to enclose a Certificate of my marriage, and beg to state that Mr. Schnarre has left by me two sons, aged respectively nine and five years, and two daughters, the eldest twelve years and the youngest seven years of age. Mr. Schnarre's mother is also alive, and residing with me.

2. I trust that you will now be able to issue, without delay, the necessary title deed of the land purchased by Mr. Schnarre at Mailkoonda.

(True Copy.)

(Signed) J. C. HANNYNGTON,
Special Assistant Collector.

ENCLOSURE No. 2.—Marriage Certificate.

Ordered to be communicated to the Acting Solicitor to Government, with the original enclosure (to be returned) with reference to Mr. Boyson's letter to the Board, dated 26th March 1866, No. 174, and with the request that he will obtain the opinion of the Acting Advocate General, as to the proper person in whose name the title deed for the land at Melkoondah, purchased by the late Mr. Schnarre, should be drawn.

(True Copies and Extract.)

(Signed) W. HUDLESTON,
Secretary.

To the Acting Government Solicitor,
with two enclosures to be returned.

Copy to the Collector of Coimbatore.

Exd. J. Wright.

Rev. 17 Jan/66 A 246+247

1866. Department.

Proceedings for Grant of Land

No. 2655

PROCEEDINGS OF THE BOARD OF REVENUE,

Rec'd 16th & read 24th Aug 1866 A 4727.

Dated 16th *August* 1866.

No. 5,775.

RECORDED.

Submitting for consideration and orders of Government opinion of Acting Advocate General relating to issue of a grant for land purchased by late Mr. Schnarre in Coimbatore district, and requesting Collector to ascertain and report if any assets were left by that individual which are now within jurisdiction of High Court.

Rec'd 24th

Recorded

28th August 1866

Submitted to Govt in Cyphers Secy

Approved

a 22nd Aug/66 A 246

1866. Department.

No.

PROCEEDINGS OF THE BOARD OF REVENUE.

Dated 9th *August* 1866.

Received

No. 5,590.

Communicating original Certificate of Mrs Schnarre's marriage, and copy of a letter from her containing information regarding the state of the late Mr. Schnarre's family, and requesting to obtain opinion of Acting Advocate General as to proper person in whose name title deed should be drawn for land purchased by him at Mélkoondah, in Coimbatore District.