M.R.O. 14-5,450—22-10-25.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 184 Press ~~Mis.~~

108-109

Dated 7—8— 1867.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 7th August 1867.

No. 108. Read the following Proceedings of the Board of Revenue, dated 31st July 1867, No. 4,908.

Read the following letter from the Acting Collector of the Kistna District, to the Acting Secretary to the Board of Revenue, dated Masulipatam, 25th July 1867, No. 241 :—

I have the honor, with reference to the Proceedings noted in the margin, and the enclosed copy of Guntoor Civil Court's Proceedings, dated 26th March 1867, to inform you that I have just received information from the Government Vakeel that an appeal to cancel the order of the Court, and to obtain the release of the attached property, has been presented to the High Court, and comes on for hearing on the 29th July. The Government Vakeel informs me that he had just received intimation of the fact. As the lien of the Government on the property attached, and for which suit on behalf of Government is now pending, would be affected by the reversal of the order, I have the honor to suggest that the Government Vakeel be instructed to oppose the appeal.

Board's Procs., 7th March 1867, No. 1,416.
Government Procs., 16th March ,, ,, 640.

ENCLOSURE No. 1.

Extract from the Proceedings of the Zillah Court of Guntoor, dated 26th March 1867.

PRESENT.—W. HODGSON, Esq., Judge.

Read Miscellaneous Petition No. 27 of 1867, presented jointly by Jooloor Apparow, Mooktear Agent for Mungamuri Ananta Lutchmi Narsoo Puntulu, transfer-plaintiff in Original Suit No. 2 of 1861, and by Pottur Venkatappayya Puntulu, 2 do. China Venkatappayya Puntulu, and 3 Calidoss Puntulu heirs of the second defendant, Pottoor Anandarow in the said suit, mutually agreeing upon the following arrangements in full satisfaction of the decree in that suit (Warrant Case No. 270 of 1865):—

That the transfer-plaintiff was to receive the bonds, the subject of the suit, in satisfaction of the amount of the decree; that the transfer-plaintiff was to receive the money in deposit in Court on account of costs, &c., in the suit; that in satisfaction of the balance of costs, viz., Rupees 7,500, which may be found still due to the transfer-plaintiff, the heirs of the second defendant undertake to sell to Mungamuri Nursimha Puntulu their moveable and immoveable property; that after the property is released from attachment, the heirs of the second defendant agree to execute the deeds of sale, and get the same registered; that the sum of Rupees 7,500 on account of costs was to be paid by the said Mungamuri Nursimha Puntulu to the transfer-plaintiff; and the second defendant's heirs pray that the property under attachment, which was sold under the terms of this petition, may be released in favour of the said Nursimha Puntulu, and the remaining property, for which cross-claims were advanced, may be released in such cross-claimants' favour.

1. This is a joint application filed by the transfer-plaintiff, (Mungamuri Ananta Lutchmi Narsoo Puntulu,) and Pottur Venkatappayya Puntulu and two others, heirs to the second defendant in Original Suit No. 2 of 1861, in which certain amicable arrangements are accepted on both sides in full satisfaction of the decree in that suit adverse to the second defendant.

2. To make intelligible the circumstances under which this settlement is put forward by the parties, it is necessary to give a history of the transactions which led to the institution of Original Suit No. 2 of 1861, and have transpired since. The second defendant was thereby adjudged to deliver certain bonds or their value (Rupees 78,800) to Chava Verramma, the original plaintiff in that suit.

3. The third defendant in that suit, the Zemindar of Sallapally, whose wife and the plaintiff Chava Verramma were daughters of Vasireddy Ramanadha Baboo, was then, and is now, the holder for valuable consideration of the bonds, which were the subject of Original Suit No. 2 of 1861.

4. The plaintiff (Chava Verramma) sought by her suit (Original Suit No. 2 of 1861) to set aside the alleged transfer of these bonds by herself to the second defendant, and so far she succeeded; the Civil Judge (Mr. Onslow) holding that such transfer had never been made to the second defendant by the plaintiff and passing Judgment in her favour in the following words:—

5. Paragraph 47. "The Civil Judge, therefore, decrees that second defendant do restore the bonds he obtained to plaintiff, or in default thereof, that he do pay plaintiff the sum of Rupees 78,800, being the sum which he has received on the bonds from third defendant (including both the principal and interest) and all costs of suit." An appeal was preferred to the late Sudder Court by the second defendant. The lower Court's decree was affirmed with costs. The second defendant then put in a petition for review of Judgment in No. 24 of 1864, High Court's file, when he filed the bonds which were the subject of Original Suit No. 2 of 1861. These he had then obtained by a separate Suit (No. 31 of 1863) from the Zemindar of Sallapally, the third defendant in Original Suit No. 2 of 1861, not by a decree of Court, but under the terms of a razinamah into which he (second defendant) as plaintiff entered with the Zemindar of Sallapally, defendant therein. The application for review of Judgment was rejected. The second defendant then preferred an appeal to Her Majesty's Privy Council, which was dismissed for default of prosecution. It was readmitted but finally withdrawn, as stated in Court, by the second defendant's heirs.

6. The plaintiff in Original Suit No. 2 of 1861, transferred her decree on the 2nd June 1863, to Rajah Vasireddy Lutchmiputty Naidu, who was at that time the representative of the Vasireddy family, enjoying a pension of Rupees 1,000 from Government, and living at Conjeveram. He was largely indebted, at this time, to Government for bringing an appeal to a final hearing, before Her Majesty's Privy Council, in the year 1848, in respect of the Vasireddy estate, out of possession of which he had been kept by the rival claimant Ramanada Baboo, his uncle. The decree of the Privy Council was in his favour, but, for reasons to which it is unnecessary to allude here, he never entered upon possession under that decree; subsequently the estate was zufted for arrears, sold by auction and bought in by Government for a few thousands of Rupees.

7. V. Lutchmiputty Naidu continued to live at Conjeveram as a Government pensioner.

8. In the year 1849, the late Sudder Court issued precepts to the Civil Courts of Guntoor and Masulipatam, to attach the property of the Vasireddy family, and remit the proceeds of sale to Madras. The property consisting of gold and silver jewels, guns, brass utensils, tents, live-stock, and immoveable property, was sold and realized the sum of Rupees 11,192-13-8 from Guntoor, and Rupees 576 from Masulipatam, and this amount was remitted by bill to the late Sudder Court, and credit having been given for this sum, there remained due to Government Rupees 1,00,804-13-11, as appears from Petition No. 241 of 1866, put in by the Government Vakeel, under the authority of the Collector, to complete satisfaction of its claim against V. Lutchmiputty Naidu, the recognised representative of the Vasireddy family.

9. The transfer by the plaintiff (Chava Veeramma) to him was duly recognised, and under it he applied, in 1864, for execution of his transfer decree. The following is an abstract of his petition:—

States that this Court passed a decree on 3rd May 1861, to the effect that the second *defendant should pay plaintiff Rupees* 78,800 *and costs*, which was confirmed by the High Court in appeal; that it was transferred to him (petitioner) by plaintiff on 2nd June 1863; that the second defendant, with a view to leave no property available for the satisfaction of the decree, instituted a Suit in No. 36 in this Court upon a bond for Rupees 52,471, and transferred the same six days afterwards to Kanamarlapudy Pulliah and Ramaraz Ramiah his brother-in-law; petitioner therefore requests the Court to enforce the provisions of Sections 206 and 207 of the Penal Code towards the said transferees, and to take security from the second defendant for the amount of the decree, or to cancel the said transfers above referred to, and attach his real and personal property, as per list herewith produced, and also to issue an injunction restricting the second defendant from alienating his property by such transfer.

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10. His application was rejected by the Civil Judge (Mr. Elliot) on the following grounds:—The petitioner has misrepresented the nature of the decree in Original Suit No. 2 of 1861, which was for the return of certain documents or their value; the second defendant states, by Petition No. 122, that he produced the documents to the High Court with his petition for a review of Judgment. The petitioner's request, therefore, for the attachment of defendant's property, cannot, at present, be granted, nor can he object to the transfer of certain specific documents to others by the second defendant. Section 338 of the Civil Procedure Code is not applicable to the present case, but Section 36, Act XXIII. of 1861 is applicable.

11. He took no further steps in the matter in this Court.

12. It appears from his Miscellaneous Petition No. 269 of 1865, that he retransferred his decree to M. Ananta Lutchmi Narsoo Puntulu, the present holder, and the transfer-plaintiff already referred to.

13. The transfer-plaintiff first took out execution of his decree (Original Suit No. 2 of 1861) by Warrant Petition No. 270 of 1865, when the whole of the property, moveable and immoveable, of the second defendant (deceased) was attached by this Court, and, with the exception of a few cross-claims which were admitted, has been ever since so held. At this stage of the execution, the Government Pleader moved this Court on behalf of Government in the matter of its claim (Rupees 1,00,804-13-11) against Lutchmiputty Naidu. In the course of the hearing, the Pleader (Karunagara Menaven) who appeared on behalf of the transfer-plaintiff pressed for speedy execution, as second defendant's heirs were alienating their property, and desired it to be made a record of the Court that nothing done by, or conceded to him upon his application, should in any way prejudice the claim of Government.—See order on Petition No. 335 of 1865, page 333, Court's Diary, Volume II. of 1865.*

* Original sent to the High Court.

14. The second defendant's heirs, by Miscellaneous Petition No. 580 of 1865, moved the Court to attach the bonds, under Section 237, Code of Civil Procedure, in view to their being made available for the satisfaction of the present execution in terms of the Judgment in Original Suit No. 2 of 1861. The bonds were accordingly attached, and transmitted from Madras to this Court, and have since been in deposit here. When these bonds, ten in number, reached the Court, they were tendered to the transfer-plaintiff's Vakeel in completion of the execution of his decree; but he refused to accept them (see Miscellaneous Petition No. 122 of 1866) on the ground that two enclosures in Document III. were not forthcoming; that transfer-plaintiff was "entitled, from the defendants, "under the decree to interest on the sum of Rupees 78,800, the subject value of the suit from the "date of the plaint being the sum of the profit which the plaintiff lost by delay, even if the thing "converted and trespassed be returned, (*vide* Collet on Torts, Sections 262, 408, 409 and 410,)" and he finally prayed that execution of the decree might be satisfied by sale of the property under attachment.

15. On this, and other petitions in the matter, (74, 162, 114, 213 of 1866,) the Civil Judge passed the following order under date the 6th August:—

1. The petitioners in Miscellaneous Petition No. 162 of 1866 pray for the release of their property taken in execution of the decree of this Court in Original Suit No. 2 of 1861, such portion of their property being alone retained by this Court as will be sufficient to defray the amount of costs due under the said decree as against the petitioners.

They further pray the Court to disallow the interest claimed by the transferree of the said decree on the bonds for Rupees 78,800 in executing the same. This suit was for the restoration to plaintiff of certain bonds executed for the amount specified above, or in default of such delivery then for their value, and the decree of this Court was in terms the same.

2. These bonds were attached by this Court while deposited in the High Court of Judicature at Madras as security for plaintiff's costs in appeal to Her Majesty's Privy Council, and on the requisition of this Court were remitted to its custody. The transfer-plaintiff's Vakeel objected to the execution of his decree by handing him over these bonds, as some enclosures of Document No. III were not forthcoming, and he claimed to have interest paid to him from the date of the plaint.

3. The Civil Judge, however, considers this objection untenable, for it is clear, from the record and the bonds themselves, that these missing papers could not affect the transfer-plaintiff's interests under the bonds in the slightest decree one way or the other, and that the interest claimed cannot be allowed on a summary order in execution of this decree, as it is a matter for adjudication when the bonds themselves may come to be sued on.

4. The order of the Court, therefore, is that the bonds, the subject of the Original Suit No. 2 of 1861 on this Court's file, be made over to the transfer-plaintiff in full execution of his decree therein, and that the costs due to them thereunder be collected from the second defendant's representative, or representatives, and paid to the transfer-plaintiff. The property of the second defendant's heirs, which is now under attachment, will be released from attachment, except in so far as it may be found necessary to continue such attachment to cover the costs incurred by the plaintiff in the above suit. One month's time is allowed for the purpose of enabling the second defendant's heirs to pay into Court the amount of costs due, viz., Rupees 3,267-11-8: on their complying with this order, the residue of their property, now held under the attachment of this Court, will be released.

16. When this order was pronounced in Court, the Mooktear agent of the transfer-plaintiff (M. Ananta Lutchmi Narsoo Puntulu) opposed the release of the attachment, and declined to receive the bonds. His petition was in these words—

1. "Your Honourable Court has declared the delivery of the bonds and payment of the costs to the plaintiff by keeping under attachment a proportionate portion of the property, and ordered the release of the rest.

2. This Mooktear agent then informed the Court of having presented a petition, dated 19th February 1866, to recover the loss of interest occasioned by the detention of the said bonds in the possession of the heirs of the second defendant, and of the loss of some of the documents enclosed, under the provisions of Section 11 of Act XXIII. of 1861, which also authorizes him to appeal against the order thereon, which he is ready to do.

3. The agent further brought to the notice of the Court the serious loss accruing to him from the release in the event of a decree in his favour by the appellate authority, and thereon the Court required him to present a petition to that effect.

4. The plaintiff, therefore, prays the Court to stay the execution of that order for release, and the property to be continued under attachment till the appeal is decided, and if otherwise (he regrets to say) that he will be at a loss to recover the sum of interest and the amount of lost bonds from the said defendant's heirs, who, I am afraid, would conceal all property, both moveable and immoveable, by collusion, and evade the execution of the decree."

17. The order passed on the petition, on the 8th August 1866, was as follows :—

"Under the circumstances set forth in this petition, and the great difficulty there has been in getting at the second defendant's property, and would again be if this Court's order of release from attachment should be set aside in appeal, the release from attachment, ordered in Miscellaneous Petition No. 162 of 1866, &c., is stayed pending the result of petitioner's appeal to the High Court. The continuance of the attachment is also necessary to protect the interest of Government; since, if the petitioner were by any means to succeed in appeal in recovering interest from the second defendant on the bonds made over to him (petitioner), there would be a still further sum available for the liquidation of the Collector's bill of costs.

18. On the 20th December, Petition No. 27 was filed in which he (transfer-plaintiff, M. Ananta Lutchmi Narsoo Puntulu,) and the three heirs of Pottoor Anandarow, second defendant in Original Suit No. 2 of 1861, have come to an amicable settlement in complete execution of the decree in that suit against the second defendant.

19. It is this petition that the Civil Judge will have presently to dispose of.

20. Before doing so, however, it is necessary that the conduct of the second defendant should be reviewed prior to the institution of Original Suit No. 2 of 1861, by which Chava Verramma, the plaintiff therein, sued for the restitution by him of the ten bonds, the subject-matter of that

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suit, and of these proceedings. The decree directing him to restore these bonds or their value (Rupees 78,800) is dated 3rd May 1861. By it, third defendant was exonerated from liability for costs, and second defendant was made to bear them. On the 13th October 1860, that is, a few months before the institution of that suit, the second defendant obtained a bond from the Zemindar of Sallapally, (who was third defendant in Original Suit No. 2 of 1861,) for the sum of Rupees 50,001, in which the consideration is clearly recited as being the restitution to him (Zemindar) of all bonds held by the second defendant, which bound the Zemindar and his mother. It is, therefore, clear that such bonds were no other than those ten bonds belonging to Chava Verramma, of which second defendant had fraudulently possessed himself, and of which she sued for restitution in Original Suit No. 2 of 1861, and which were eventually produced by the Zemindar when pressed for their production by second defendant as plaintiff in Original Suit No. 31 of 1863, the Zemindar as defendant handing the documents into Court by his Vakeel (the present Government Vakeel) without filing any answer, or in any way opposing their use for the purpose specified, viz., production as evidence in the High Court. In the plaint in this suit, (Original Suit No. 31 of 1863,) the plaintiff (second defendant) himself describes the bonds as "discharged bonds," తీరుబూనమైన దస్తావేజులు. (see B), but at the same time requires them for production as "evidence in his appeal," or sues for damages in the sum of Rupees 82,809-5-0. The defendant (Zemindar) in the same suit then put in Petition No. 465 of 1863 (A), with the bonds, for the purpose of production in the High Court; on which the parties withdrew from the action by Petition No. 470 of 1863 (C). The second defendant in Original Suit No. 2 of 1861, then deposited the bonds, which this Court had made over to him for the purpose, in the High Court. If this had not been the mutual understanding upon which they were produced by the Zemindar, how is his prompt surrender of them to be accounted for?

21. Until Petition No. 27 of 1867 (joint petition by transfer-plaintiff and second defendant) was presented to the Court, the property of the second defendant was continuously under attachment, from 14th October 1865, to 20th December 1866, at the instance of the transfer-plaintiff, and when that petition was filed, it was opposed by petitions (Nos. 33 and 136 and Memorandum 63) on behalf of Government, and one month's time was granted to enable the Collector to communicate with the Board of Revenue and the Government of Madras. On the expiration of this period the Government Vakeel applied for a further extension of time, and it was during the agreements on this occasion that the Civil Judge was led to believe that his order of the 6th August 1866 was erroneous, and, viewing the petition of Government as an application for review of that order, he reconsidered it, and stated in Court that he was not prepared to give effect to it, or the amicable settlement at which the transfer-plaintiff and the second defendant's heirs had suddenly arrived after being so long at arms length, as he believed his first order to be wrong, and the alleged satisfaction of the decree on the basis of Petition No. 27 of 1867 to be a fraudulent and collusive adjustment between the transfer-plaintiff and second defendant's heirs.

22. The Civil Judge will now proceed to explain his reasons for holding this adjustment in final execution of the decree in Original Suit No. 2 of 1861 collusive and fraudulent.

23. In the first place, the Judgment of the Civil Judge (Mr. Onslow) though *prima facie* susceptible of the interpretation which this Court first put on it, and the transfer-plaintiff and second defendant still contend for, is not so when scrutinized more closely by the additional light thrown on it by the subsequent dealings in respect of it by the second defendant, and by the production of the bonds themselves since the date of that decree. These were not before the Judge when he passed his decree, though the second defendant admitted before him (see paragraph 4 of the Judgment) that he had been satisfied in respect of them by the third defendant, the Zemindar of Sallapally, who was the executor of them in favour of Chava Paupiah, the husband of Chava Verramma, plaintiff in Original Suit No. 2 of 1861.

24. For convenience, paragraph 47 of the Judgment is produced:—

"The Civil Judge (Mr. Onslow) therefore decrees that second defendant do restore the bonds "he obtained to plaintiff, (Chava Verramma,) or in default thereof, that he do pay plaintiff the

" sum of Rupees 78,800, being the sum which he has received on the bonds from the third defen- " dant, (Zemindar of Sallapally,) including both the principal and interest, and all costs of suit."

25. From the previous paragraphs of the Judgment in which he had declared the alleged transfer by the Chava Verramma, (plaintiff,) to Pottoor Anandarow, (second defendant,) of her interests in the ten bonds fraudulent and false, the Civil Judge (Mr. Onslow) seems in this paragraph (47) to have said, "Though you, second defendant, have admitted that you have received Rupees 78,800 from Ankineed Bahadar, Zemindar of Sallapally, in discharge of the bonds, I only accept that admission for what it is worth in the absence of the bonds themselves. It may be true, or it may be false. If you produce them, I shall then be able to judge whether your statement is true or false, and then I will determine whether you are liable to Chava Verramma for the money, or whether she must sue the Zemindar of Sallapally. This, if you can produce them in a condition to allow her to sue, and then if you cannot, why you must pay the value of them, principal and interest, yourself. It is impossible, on going fully into the record, to conceive that the late Civil Judge's intention was that the second defendant was to be at liberty to give up the bonds to Chava Verramma, plaintiff, if it should really turn out that they had been discharged, that she, plaintiff, might have the gratification of suing the Zemindar, (third defendant,) and he in his turn should be put to the expense of recovering his money from the second defendant by suit also, while the second defendant admitted them to have been discharged, and the bonds themselves evidenced the truth of his admission. Why this complicated settlement? Why should the machinery of the law be set in motion in this round-about way? If the decree had been for a watch, or its value, could the defendant come into Court and say here is the watch," that is the case, (for I have sold and been paid for the works by A,) take that in satisfaction of the decree, and could the plaintiff join with the defendant in agreeing to accept the *case* in satisfaction of his decree, because he knew whom to sue for the works, and so make up the *watch* decreed his sole reason for this course, instead of requiring the value of the watch being that it would annoy the purchaser of these works from defendant to sue him for the works, and oblige the purchaser to sue defendant for his purchase money. The two cases are sufficiently on four legs to illustrate that the defendant must either deliver up the watch in the condition he received it by an alleged transfer which had been pronounced to be false as to its original owner, or he must pay the value of it. So the late Civil Judge's decree held that the alleged transfer by the plaintiff to second defendant was invalid, and that he must either give up the bonds in the precise negotiable condition in which they came into his possession from her, or he must pay their value. But the transfer-plaintiff and second defendant's heirs, by Miscellaneous Petition No. 27 of 1867, now came into Court, and the latter say, we are quite willing to surrender the bonds to the transfer-plaintiff if he will accept them, and, in consideration of certain thing which he is to do for us, we hereby make over nearly all our property to him. We know that he is about to sue the third defendant for money already paid to us, and we know also that the third defendant will sue us, but then, don't you see we have transferred some of our property to the father of the transfer-plaintiff, and when our property is released we shall be able to transfer the rest, and there will be nothing left out of which to satisfy third defendant when he has got his decree, and besides this, we have already had a bond for Rupees 50,001 from the third defendant for these bonds, which bond we have since transferred for valuable consideration, and the proceeds of that will be clear gain to us, if the transfer-plaintiff may only be satisfied by the third defendant instead of by ourselves. To admit second defendant by his heirs to adjust the decree in the manner proposed, would be to allow them to reap the full benefit of his fraud by conversion to the third defendant, as it could not be said that there had been specific delivery of the negotiable bonds which he was ordered to restore. It was hinted by the Civil Judge (Mr. Onslow), and a decided opinion was expressed by the Judges of the High Court in the appeal, that there had been collusion between the second and third defendants. But be this as it may, and even admitting that it was so, we have against this the incontrovertible fact that the third defendant was wholly exonerated from costs, and that the second defendant was made to pay his (third defendant's) costs, which would scarcely have been the case if the Judge who passed the decree had found that the transaction between them was tainted with fraud; we have also the second defendant's admission that he received Rupees 78,800 as the fruits

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of the conversion to the third defendant, and we have the records of this Court to prove that second defendant, by his transferrees, has reaped the fruits of that conversion through this Court on a bond for Rupees 50,001, whether that was the whole or a part consideration for the Rupees 78,800 admittedly received by him from the third defendant.

26. The transfer-plaintiff's object is equally apparent. He formerly rented the Zemindary of Davaracotta, usually called the Sallapally Zemindary, which is the property of the third defendant in this suit. These are three suits in this Court in respect of the lease forfeited by the transfer plaintiff, numbered Original Suits Nos. 15, 16 and 17 of 1865. In the bonds, the subject of Original Suit No. 2 of 1861, nearly the whole Zemindary was mortgaged to Chava Verramma, the plaintiff, and the transfer-plaintiff, by Miscellaneous Petition No. 69 of 1867, has moved this Court for attachment before Judgment. He, therefore, seeks, by possession of the bonds, to put pressure on the third defendant in Original Suit No. 2 of 1861, in respect of the villages mortgaged under these bonds, which are proved by the endorsements themselves, and which have been admitted by the third defendant, in his written statement in that suit, to have been discharged by the third defendant's bonds for Rupees 50,001 in Original Suit No. 36 of 1863, which the second defendant transferred before Judgment to Ramaraz Ramiah and Kanamarlapudy Poollayya, who have taken out execution and drawn considerable sums of money through this Court in respect of that bond for Rupees 50,001 on the 19th December 1866; the Honourable G. Lutchminarsoo Chetty, who was then at Guntoor during the trial of Original Suit No. 15 of 1865, as the friend of the late Deputy Collector, M. Nursimha Puntulu, the father of the transfer-plaintiff, purchased the transferred razinama (which is now and was then under the attachment of the Court) in Original Suit No. 36 of 1863, which was the suit by which second defendant (Pottoor Anandarow) and his co-defendant (third) the Zemindar of Sallapally on this very bond for Rupees 50,001. Under the operation of the order, which the Civil Judge is about to pass, this razinamah would obviously be released from attachment. Nevertheless, the transfer in such circumstances discloses the tactics of the second defendant's heirs, and this is the last link in the numerous instances which could be adduced from the records of this Court to show that, ever since 1861, the second defendant and his brother and sons have been alienating their property, in the hope and for the purpose of defeating the Judgment which has rendered these proceedings necessary, and which they felt sooner or later must be brought to bear on their property, even though for a time they might probably succeed in palming off the bonds in satisfaction of it. The seller to G. Lutchminarsoo Chetty is Ramaraz Ramiah, the brother-in-law of Pottur Venkatappayya, who is the brother and heir of the second defendant, and it is to be borne in mind that second defendant, immediately on bringing Original Suit No. 31 of 1863 against the third defendant (Zemindar of Sallapally) for the production of the ten bonds, the chief subject of these proceedings, and which, as he contends, he was adjudged to restore by the Judgment in Original Suit No. 2 of 1861, followed up that suit by Original Suit No. 36 of 1863, on a bond by the third defendant, which, as he well knew, was given in full discharge of what he was suing for in Original Suit No. 31 of that year; could any series of transactions more distinctly evidence the fact that he was well-aware that these bonds had been wholly discharged by the third defendant, and that he now fraudulently seeks to make them the basis of a compromise in execution of this decree.

27. The transfer-plaintiff's father was Deputy Collector of this district from October 1862, to December 1863. The transfer-plaintiff is a weak lad of 20 years of age, who may be said to have been acting throughout for his father.

28. Most of these facts must have been known to transfer-plaintiff, through his father, when he made the alleged purchase of this decree. When, therefore, he comes in, after keeping the second defendant's property under attachment for sixteen months, for the value of the bonds, and suddenly requires the bonds, and will be satisfied to take them in full satisfaction of the decree, admitting for the moment that he has any right under the decree as a purchaser for valuable consideration, the strongest presumption is raised that he is colluding with the second defendant in order to secure the release of the second defendant's property from attachment, and to get possession of the bonds as a means of harassing the third defendant, the Zemindar of Sallapally.

29. The Civil Judge will now dispose of the claim by Government to the bonds themselves, or the proceeds of sale of the attached property on its present footing in the execution.

30. The transfer-plaintiff alleges that he purchased the decree in Original Suit No. 2 of 1861 for Rupees 60,000; and registered the transfer under Act XVI. of 1864; but, unless it can be shown that he is a purchaser for good and valuable consideration, he must stand in this execution in the position that V. Lutchmiputty Naidu would have held if these bonds had come into possession of Government by transfer to them, or been brought within the jurisdiction of this Court in the course of its execution by Government as a judgment creditor against him in the matter of its claim by decree of Her Majesty's Privy Council. It is open to question whether the transfer-plaintiff is any thing more than a name lender to defeat the Government lien under these bonds or their value, inasmuch as the transfer-plaintiff, when examined on oath as a witness in Original Suit No. 15 of 1866, in which he was first defendant, swore that he only paid Rupees 29,000 for this decree; whereas, in his Petition No. 163 of 1867 he says that he paid Rupees 60,000. With this transfer before the Court, the Civil Judge can only treat Government as a third party, whose claim must, for the present, be dealt with either under Section 246 or under 271 of the Code of Civil Procedure. Any right that Government may advance to set aside the transfer of his decree in Original Suit No. 2 of 1861, by V. Lutchmiputty Naidu to the present transfer-plaintiff, and have it transferred to itself, must be the subject of a separate suit. Until that or some similar course has been taken, the execution will proceed on the principle laid down in Section 246, and the transfer-plaintiff treated as the judgment creditor executing this decree.

31. On the whole matter, therefore, the following order is passed:—

Order.

32. The Civil Judge holding that this decree can only be properly executed by the sale of the second defendant's property as he is unable to restore the bonds decreed in the specific terms of the decree, that is, in the negotiable condition in which they were when the original plaintiff, Chava Verramma, was deprived of them by him, and the alternative decreed is their value, principal and interest; his property, now under attachment of this Court, will be sold on the 1st day of August 1867.

33. The petition of adjustment No. 27 of 1867 is rejected on the ground that it is, as it has been shown in these proceedings to be, a collusive and fraudulent attempt at compromise to harass the third defendant, and to get the second defendant's property released from attachment in view to evade the subsequent probable liability of it to third defendant, and also to defeat the lien which Government have advanced against this decree as the property of V. Lutchmiputty Naidu.

34. The proceeds of sale will be paid to the transfer-plaintiff. But as the transfer-plaintiff has by his Vakeel, C. Karunagara Menaven, given an undertaking, entered at page 333 of this Court's Diary, Volume II., 1865, that the interests and rights of Government in this matter should in no way be prejudiced by the execution, it is hereby ordered that the transfer-plaintiff shall not take under the decree in Original Suit No. 2 of 1861, until he has furnished good and sufficient security for the sum to be paid out to him by this order from the proceeds of sale of second defendant's property in order to meet the contingency of the Government, as a judgment creditor, being successful in a suit to be brought, if it should be so advised, to cancel the transfer of the decree in Original Suit No. 2 of 1861, by Vasireddy Lutchmiputty Naidu to the present transfer-plaintiff. It may here be remarked that in the execution of a decree of Her Majesty's Privy Council the Statute of Limitation (Act XIV. of 1859) has no application; and that, therefore, the Government is not barred, as the transfer-plaintiff contends, from the prosecution of its claim as a third party under this execution.—(See Revenue Register, Calcutta, September 18th, 1866, No. 6, page 202,) or even as plaintiffs in a regular suit to set aside the present holder's alleged title by transfer.

35. The ten bonds now in deposit in this Court, which were made over to second defendant with the express understanding and for the sole object of their being produced by him in evidence in the High Court at Madras, will be restored to the Zemindar of Sallapally (third defendant) upon his receipts.

(Signed) W. HODGSON,
Civil Judge.

(True Copy.)

(Signed) W. WILSON,
Acting Collector.

Communicated to the Government Pleader, with reference to the Order of Government, under date 26th July 1867, No. 1,713. Mr. Brockman is requested to inform the Board whether he desires to have any other documents connected with the suit.

No. 109. ORDER THEREON, 7th August 1867, No. 1,811.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.

Exd. S. T. Augustin.

Pro. 16th March 67 — N° 278-9
26 July — 538-8

Rev. 1867. Department.
Pro. of Govt for Aug.

No. 2064.

PROCEEDINGS OF THE BOARD OF REVENUE,

Dated 31st July 1867.
Received 3 Aug.

No. 4,908.

Pro. 2 Aug. 67 Cur. 2372

Communicating to Government Pleader, letter from Collector of Kistna district, requesting that Government Vakeel may be instructed to oppose appeal preferred in High Court against order of Guntoor Civil Court in Suit filed in that Court, in consequence of Collector's objection to transfer to M. Ananta Lakshmee Nursu Puntulu, of Decree of former Court in Appeal Suit No. 50 of 1861, regarding Vassereddy estate; requesting Government Pleader to state whether any other documents in connection with the Suit are required.

RECORDED

N° 1811.

N° 108-109.

Pro. 3 Aug. 67