M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1821	Press Mis.
Dated 30 - 6 - ~~19~~ 1868	

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
30th June 1868.

No. 661. Read the following Proceedings of the Board of Revenue, dated 9th June 1868, No. 4,302.

Read the following papers :—

Proceedings of the Madras Government, dated 19th March 1868, No. 721, Revenue Department.

ABSTRACT.—Forwarding a copy of the Judgment of the Privy Council on the Appeal of Cavaly Vencata Narrainappa from the High Court of Judicature of Madras, respecting the Vissannapetta Zemindary, Kistna District, and requesting the Board to report on the question of asserting the right of redemption on behalf of the Crown.

Proceedings of the Madras Government, dated 19th March 1868, No. 722, Revenue Department.

ABSTRACT.—Communicating a letter from the Officiating Government Pleader, reporting the result of the Civil Petition, No. 39 of 1868, in the Appellate High Court, respecting Vissannapetta Zemindary, and stating that the Government have no desire to oppose the transfer of possession to the decree-holder, and that the question of exercising the reserved equity of redemption has been referred for the Board's opinion.

Letter from the Officiating Government Pleader, Madras, to the Secretary to the Board of Revenue, dated 19th March 1868, No. 53.

1. I have the honor to forward, herewith, for the information and instructions of the Board of Revenue, a copy of a letter I have received from the Collector of the Kistna District, under date the 29th ultimo, No. 68, together with the two enclosures which accompanied it, respecting the institution of a suit, at the instance of Government, against Cavaly Vencata Narrainappa in the Civil Court of Guntoor, for the recovery of mesne profits of the Vissannapetta Zemindary, from the time he was placed in possession thereof down to the 7th of July 1866.

2. Having regard to the Judgment and Decree of Her Majesty's Privy Council upon the last appeal regarding the Zemindary, as reported in my letter to Government of the 12th instant, No. 42, (a copy whereof was furnished to the Board with my letter, No. 43, of the same date,) under which Judgment and Decree Cavaly Vencata Narrainappa is declared entitled, as mortgagee thereof, to the immediate possession of the Zemindary, I am of opinion that the necessity for the institution of any suit in respect of mesne profits no longer exists.

3. If the Government decide upon redeeming the Zemindary on payment to Cavaly Vencata Narrainappa, he will have to account to the Government and give them credit for all such mesne profits as he may be found to have received. If he and the Government cannot come to some settlement of accounts, the only way in which the account can properly be taken will be in a suit brought by the Government to redeem the Zemindary.

From the Collector of the Kistna District, to the Officiating Government Pleader, Madras, dated Circuit Cutcherry at Repalli, in Repalli Talook, 29th February 1868, No. 68.

1. With reference to Mr. Dale's letter, No. 8, dated 9th January 1867, I have the honor to forward draft of a plaint, to be presented to the Civil Court at Guntoor, against Cavaly Vencata

Narrainappa, at present residing in Madras, for the recovery of mesne profits of the Vissannapetta estate from the time he was put in possession of the Zemindary up to the 7th July 1866, on which the Government took charge of the estate as an escheat.

2. On the receipt of Mr. Dale's letter forwarding draft of the plaint, the Government Vakeel in the Guntoor Civil Court was sent for; and, after consulting him as to the several sums that must be recovered from Cavaly Vencata Narrainappa, orders were issued to the Sub-Magistrate of Vissannapetta Division, to prepare and send detailed accounts, showing the Demand, Collection, and Balance of the fourteen villages composing the Vissannapetta estate, from Fuslies 1265 to 1275, of Vencata Narrainappa's management, as well as another statement of his houses and lands occupied by himself in that estate. This information has been now received, and the blanks in paragraphs 1 and 2 of the draft have been supplied.

3. With respect to paragraph 3 of the draft, I beg to observe that, in the Proceedings of the late Sudder Adawlut, dated 13th February 1854, no mention is made of the mesne profits.

4. In their Proceedings, dated 3rd April 1854, the Sudder Adawlut directed the realization of the mesne profits. This order appears to have been suspended* by the Sudder Adawlut upon the application of the Government Pleader in 1855, until the suit preferred by Government against C. Vencata Narrainappa for the recovery of the estate was disposed of.

* *Vide* Proceedings, 22nd October 1855.

5. This suit was decided by the Civil Court of Masulipatam in 1857.

6. Search was made in the records of this office, as to whether the mesne profits, amounting to Rupees 21,368, as shown in the Statement forwarded to the Sudder Adawlut through the Civil Court of Masulipatam on 21st November 1855, were subsequently paid to C. Vencata Narrainappa; but it does not appear that they were paid.

7. It may, however, be desirable to ascertain if any note of such payment is forthcoming in the High Court records.

8. I regret to find that these references have led to considerable delay in replying to Mr. Dale's letter.

ENCLOSURES Nos. 2 and 3.—Plaints.

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1. In the first Order the Government call on the Board to state whether they would recommend the redemption of the mortgage on the Vissannapetta Zemindary, and the assumption of the property which has been declared an escheat.

2. From the accounts of the estate during the period that it has been under the Collector's management, the Board learn that it is a valuable and improvable property.

3. The present rental would in a few years re-imburse the outlay, leaving Government in possession of an estate yielding 6,000 Rupees a year, in addition to the contingent income derivable from a tract of unassessed waste of 22,000 acres.

4. The position of the mortgagee is merely that of judgment debt-holder, whose claim against the widow of the late Zemindar has, after a long course of litigation, been established against the estate.

5. The Board consider that there are no circumstances in the case which would justify the mortgagee being created a Zemindar, or enriched by a large assignment of public revenue.

6. Against the sum payable by Government will be set off mesne profits due from the mortgagee.

7. The Board, therefore, propose that, on execution of the decree being obtained, measures be commenced for exercising the equity of redemption.

Proceedings of the Madras Government, Revenue Department,
30th June 1868.

No. 662. ORDER THEREON, 30th June 1868, No. 1,821.

Miscellaneous.

1. The final decree of the Privy Council in this case has determined that the Vissannapetta estate was duly charged with the sum of Rupees 48,611-13-6 by the mortgage of 20th April 1838, and that the mortgagee, Cavaly Vencata Narrainappa, is entitled to hold the Zemindary against the Crown as security for so much of the said sum and interest thereon as now remains unpaid, but without prejudice to the right of the Crown to assert its equity of redemption (if it shall so think fit) in a suit properly framed for that purpose.

2. The Board recommend that, on execution of the decree being obtained, measures be commenced for exercising the equity of redemption.

3. The Government observe that the mortgagee was in possession of the estate from 21st July 1855 to 28th July 1866, and they presume that he is now again in possession under the recent decree.

4. The mesne profits received by him during his possession (with, it is presumed, interest thereon) will be a set off against the amount claimable from Government, if the equity of redemption be asserted.

5. But before the Government can form any opinion as to the expediency or otherwise of asserting their right, it is necessary that they should have before them a statement of the account shewing the total amount due on the mortgage; and the set off claimable from the mortgagee on account of mesne profits received, together with such valuation of the estate as the Collector may be able to furnish from the knowledge obtained from July 1866, when it came under his direct management.

6. The Board are accordingly requested to obtain and submit this information, with their own remarks, for the consideration of Government.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.
,, the Accountant General for information.
,, the Government Pleader do.

Exd. J. Tulloch.

L.S.

At the Court at Osborne House, Isle of Wight

The 20th day of December 1867

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY

LORD PRESIDENT
DUKE OF BUCKINGHAM AND CHANDOS
LORD ROBERT MONTAGU
LORD CLAUD HAMILTON
SIR FRANCIS BOND HEAD, BART.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated this day in the words following viz:

"Your Majesty having been pleased by your General Order in Council of the 10th November 1866 to refer unto this Committee the matter of a humble Appeal from Madras between Cavaly Vencata Narrainapah Appellant and the Collector of Masulipatam Respondent and likewise a humble Petition of Cavaly Vencata Narrainapah the above named Appellant setting forth that in the year 1855 a Suit No. 103 of 1855 was instituted in the Civil Court of Masulipatam by the above named Respondent against the Appellant praying that the Government might be declared entitled to the zemindary of Vissanapet (valued at an annual rental of Rupees 12,405 : 10 annas 11 pies,) and then in the possession of the Appellant as an escheat and free from incumbrances as from the death of Lakshmi Devamma the last proprietress and widow of a Brahmin Varegonda Ramanapah to whom the zemindary had been granted by Government in perpetuity subject to the payment of revenue and who had died without heirs in the year 1810: that the grounds of such Suit were therein stated to be that the said Lakshmi Devamma had no right by Hindoo law to alienate the zemindary and that the Deed of Transfer thereof to the Appellant being a razinamah filed on the execution of the decree in a Suit No. 18 of 1838 was invalid: that the Appellant filed his Answer and other pleadings were had and points given in such first mentioned Suit: that on the 8th day of April 1857 the Judge of the said Civil Court decreed that the zemindary should be sold to raise and pay the amount due to

"the Appellant at the date of the aforesaid decree of 1838 only and that if it failed to realize that amount should be handed over to the Appellant: that the Appellant and the Respondent both appealed to the late Sudder Adawlut at Madras from the Decree of the Civil Judge aforesaid and their Appeals were heard on the 8th day of May 1858 when the Sudder Court holding that the property of a Brahmin could not escheat dismissed the Suit with costs: that the Respondent being dissatisfied with the last mentioned Decree appealed to Your Majesty in Council when the Lords of this Committee expressed their opinion that the Crown had a general right to take by escheat even the land of a Brahmin and remanded the case for further evidence on certain points to the Sudder Court but suggested that the Suit ought to be compromised by the Government taking the estate and pay the Appellant what should appear on investigation to be actually due to him: that no arrangement was effected and the Suit was heard again by the Sudder Adawlut on the 22nd October 1860 when the Court considered that it was not necessary to call for any additional evidence and held that the Crown could not take the place of an heir to challenge an assignment by a former owner and therefore again dismissed the Suit: that the Respondent being dissatisfied again appealed to Your Majesty in Council the Appeal was heard on the 31st December 1861 and the Lords of this Committee considered that as the restrictions imposed on the power of alienation of a Hindoo widow were inseparable from her estate and did not depend on the existence of heirs capable of taking at her death the Crown must have the same power as an heir to challenge an alienation by her and by an Order in Council dated 6th January 1862 Your Majesty was pleased to remit the Cause to the Sudder Court to make certain inquiries therein specified and to proceed in the cause according to the result of such inquiries: that on the 2nd of May 1863 the High Court of Judicature of Madras (then representing the Sudder Court of that Presidency) directed certain issues to be tried by the Civil Judge of the Zillah Court of Guntoor in accordance with the last mentioned Order in Council: that such issues were tried by the Judge of the Court of Guntoor on the 16th May 1864 who found the facts referred to him in favour of the Appellant and made a Decree accordingly in his favour: that the Respondent appealed from such Decree to the High Court at Madras and the cause coming on to be heard on the 22nd January 1866 the Judges of that Court recorded their Judgment on the issues of fact finding them in many points differently from the Civil Judge of Guntoor and decided that the Respondent (the Plaintiff) was entitled on behalf of the Government to take the estate by escheat unincumbered with charges and that both parties should bear their respective costs: that the Appellant feels himself aggrieved by the last-mentioned Decree of the High Court and being advised that the same is unjust and erroneous has craved leave to appeal therefrom to Your Majesty in Council which leave was granted upon the usual conditions with which the Appellant has duly complied and humbly praying Your Majesty that the said Decree of the High Court of the 22nd January 1866 may be reversed varied or altered or for other relief in the premises THE LORDS OF THE COMMITTEE in obedience to Your Majesty's said General Order of Reference have taken the said humble Petition and Appeal into consideration and having heard Counsel on both sides their Lordships do this day agree humbly to recommend Your Majesty to reverse the Decree of the High Court of Judicature at Madras and to declare that on the 20th of April 1838 there was due from the widow to the father of the Appellant in respect of advances for which she would have been entitled to alienate

"the estate as against the next heirs of her husband if such there had been the sum of 48,611 rupees 13 annas 6 pie that that sum was duly charged upon the estate by the mortgage of the 20th of April 1838 and that accordingly the Appellant is now entitled to hold the zemindary against the Crown as a security for so much of the said sum and of the interest thereon as now remains unpaid and as a consequence of the foregoing declaration their Lordships do further agree humbly to report to Your Majesty that the suit of the Respondent ought to stand dismissed without prejudice to the right of the Crown to assert its equity of redemption (if it shall so think fit) in a suit properly framed for that purpose.

"And in case Your Majesty should be pleased to approve of this Report and to declare and order as is herein recommended then their Lordships do direct that there be paid by the Respondent to the Appellant the sum of four hundred and thirty five pounds nineteen shillings and eight pence sterling for the Costs of this Appeal and the Respondent is likewise to pay to the Appellant the general Costs of the Suit in the Courts below except such portion of them as was occasioned by his contesting the title of the Crown to take by escheat which latter portion of the costs is to be borne by the Appellant and unless already paid is to be set off in the usual manner and the said High Court is to give the necessary directions for the apportionment and payment of these Costs in the manner herein specified."

HER MAJESTY having taken the said Report into consideration was pleased by and with the advice of Her Privy Council to approve thereof and to order as it is hereby ordered that the Decree of the High Court of Judicature at Madras of the 22nd June 1866 be and the same is hereby reversed and that it be and it hereby is declared that on the 20th of April 1838 there was due from the widow to the father of the Appellant in respect of advances for which she would have been entitled to alienate the estate as against the next heirs of her husband if such there had been the sum of Forty eight thousand six hundred and eleven rupees thirteen annas six pie that that sum was duly charged upon the estate by the mortgage of the 20th April 1838 and that accordingly the Appellant is now entitled to hold the Zemindary against the Crown as a security for so much of the said sum and of the interest thereon as now remains unpaid and Her Majesty is further pleased to order and it is hereby ordered as the consequence of the foregoing declaration that the Suit of the Respondent do stand dismissed without prejudice to the right of the Crown (if it shall so think fit) to assert its equity of redemption in a Suit properly framed for that purpose and the costs of this Appeal as well as the general costs of the Suit below are to be awarded in compliance with the terms of the Report. Whereof the Judges of the High Court of Judicature at Madras for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

EDMUND HARRISON.

In the Privy Council.

Caruty Venkata Narainappah
v.
The Collector of Masulipatam

Copy
Her Majesty's Order in Council dated 20th December 1867. —

Revenue Department

No. 1821.

Proceedings of the Madras Government

Under date the 30th June 1868

Read the following Proceedings of the Board of Revenue

Submitting correspondence together with an expression of the Board's views, on the question referred to them of asserting the right of re-demption of the Vissanapett Zemindary on behalf of the Crown.

(Here enter 9th June /68 No. 4302).

The final decree of the Privy Council in this case has determined that the Vissanapetta Estate was duly charged with the sum of Rs. 48,611-13-6 by the mortgage of 20th April /38 and

W.H.   N.

that

that the mortgagee Kavaly Vencata Narrainappa is entitled to hold the Zemindari against the Crown as security for so much of the said Sum and interest thereon as now remains unpaid. but without prejudice to the right of the Crown to assert its equity of redemption (if it shall so think fit) in a suit properly framed for that purpose.

The Board recommend that on execution of the decree being obtained, measures be commenced for exercising the equity of redemption.

The Government observe that the mortgagee was in possession of the Estate from 21st July 1855 to 28th July 1866. and they presume that he is now again in possession under the

the recent decree.

The mesne profits received by him during his possession (with, it is presumed, interest thereon) will be a set off against the amount claimable from Government, if the Equity of redemption be asserted.

But before the Govt can form any opinion as to the expediency or otherwise of asserting their right, it is necessary that they should have before them a Statement of the Account showing the total amount due on the mortgage, and the set off claimable from the mortgagee on account of Mesne profits received together with such valuation of the Estate as the

Collector

Collector may be able to
furnish from the knowledge
obtained from July /66.
when it came under his
direct management.

The Board are ac-
=cordingly requested to obtain
and Submit this information
with their own remarks
for the consideration of
Government.

14 copies Letter Acc.t Revd Dept.t 9 July
6 Acc.t Genl. for information
3 Govt Pleader do. N

Revd Pay Comm.t forwd. 40/4
& Govt Pleader with
GO- 31 Aug.t/67 & M 2465

Exp.d J.A

Revenue 1865 Dep.t
Bo of Cust.s Lon Since

Rec.d 18 March 1868 J.P.

Rec.d 561-562

Rec.d 18 Aug.t 1821.

Bo of Cust.s Madras Court
Dep.t 30 June 1865.

C.
Dep.t
Loan

C 25 June/68