M.R. O. 1—33,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No.	2623	Press ~~Mis.~~
246		
Dated	12 – 10 – 19 1868	

Not to be folded or roughly handled

2623

Proceedings of the Madras Government, Revenue Department,
12th October 1868.

Read the following :—

No. 214. Proceedings of the Board of Revenue, dated 12th September 1868, No. 6,587A.

Read the following letter from the Acting Collector of the Godavery District, to the Acting Secretary to the Board of Revenue, dated Cocanada, 24th August 1868, No. 223 :—

1. I have the honor to state that Row Ramarow, the Proprietor of the Viravallipalem estate in this district, died in the year 1856, leaving a childless widow named Venkataramanayya.

2. A man named Row Venkata Juggarow applied to the Civil Judge for a certificate under Act No. XXVII of 1860, on the ground that he had been adopted by Venkataramanayya at the dying request of her husband. Venkataramanayya denied it. The adoption not having been proved, no certificate was granted to him, and this decision was confirmed by the High Court on appeal.

3. In the the year 1867, a Regular Suit (No. 1 of 1867) was filed by Venkata Juggarow in the Civil Court, against Venkataramanayya, for the recovery of the estate on the ground of his being her adopted son. It having been reported to the Collector that this suit had been brought by him with the concurrence of Venkataramanayya, and that she was inclined to agree to the adoption, Mr. Fraser caused a petition to be presented to the Civil Court, through the Government Vakeel, stating, that she being a childless widow, the Government would be the successors to the estate after her death under the Privy Council Order, and that it was evident that in order to deprive the Government of their right, the suit had been instituted, and requesting him to consider the former summary record in which Venkataramanayya denied having adopted the plaintiff.

4. Then Venkataramanayya filed a statement denying the adoption of the plaintiff. The Civil Judge after considering the whole circumstances of the case, and the evidence adduced on the present and former occasions, dismissed the plaintiff's suit. Against this decision Venkata Juggarow preferred an appeal to the High Court, and they have, at the request of the parties, referred the case to arbitrators. Upon this I have caused a Petition (No. 1,000) to be presented to the Civil Judge, requesting that this Petition, as well as the Petitions (Nos. 554 and 742) presented in the year 1867, should be forwarded to the High Court for their consideration. The Civil Judge has passed proceedings, ordering that the petitions should be sent to the High Court for their orders. A copy of these proceedings, and a translation of the Petition No. 1,000, are herewith submitted for the information of the Board, and I beg to request that the Board will, under the foregoing circumstances, if they think fit, ask the Government Pleader to plead in the High Court on behalf of Government on the subject

Original Suit No. 1 *of* 1867, *on the file of the Civil Court.*
Appeal Suit No. 18 *of* 1868, *on the file of the High Court.*

Plaintiff.	*versus*	*Defendant.*
Row Venkata Juggarayaningar.		Row Venkataramanayyagar.

To the Civil Court of Rajahmundry.

Petition presented by Chetrapu Kamaraz, Pleader for Government.

1. The said defendant, the Proprietor of Viravallipalem, denied, in this Court, having adopted the plaintiff, and the adoption was accordingly cancelled by this Court, which decision was upheld by the High Court in the appeal.

2. The said defendant being a widow, destitute of legal heirs, the Government is her successor to her estate, according to a decision passed by the Privy Council.

3. As the case is thus, the said Suit No. 1 was brought with the concurrence of both parties with a view to defraud Government of their legal right.

4. While the suit was pending in your Court, the late Government Vakeel presented Petitions Nos. 554 and 742 of 1867, requesting to admit the Collector on behalf of the Government as a supplemental defendant.

5. Though your Court did not then include the Collector as supplemental defendant, yet your Court dismissed the suit cancelling the adoption; consequently, the Government claim was concluded.

6. Afterwards, a nominal appeal was preferred to the High Court in the name of the plaintiff, and before it was tried by that Court, the both parties, in violation to the legal right of the Government, collusively applied to that Court to refer the case to arbitrators; though the case involves no question of money transactions concerned with accounts, and though the nature of the case is not such as to require the decision of a Punchayet.

7. As the foregoing circumstances and the plea of the Government were not brought to the notice of the High Court, and as they have no opportunity to call for and peruse the Petitions Nos. 554 and 742 of 1867, mentioned in paragraph 4, it appears that that Court admitted the petition, thinking it to be a common application to name Punchayets.

8. For the foregoing reasons, it would be useless in this case to convince a Punchayet, and to obtain their decision. The Punchayets were also interested with the parties, and none of them were nominated by the Government.

9. I, therefore, pray the Court that you will be pleased to forward this petition, as well as Petitions Nos. 554 and 742 of 1867, to the High Court, in order to convince them of the above circumstances, and that the Government have a claim in this case; that if you receive the opinion of the High Court on this subject, you will inform the arbitrators that the Government has a claim in this case, and that to permit me to obtain a copy of the proceedings which you may hold on this petition. I further pray that you will be pleased not to refer the record of the case to the arbitrators pending the answer of the High Court.

7th August 1868.

(Signed) C. KAMARAZ,
Government Vakeel.

(True Translation and Copy.)

(Signed) J. H. MASTER,
Acting Collector.

Extra Petition presented by Government Vakeel, 7th August 1868, *No.* 1,000.

This Petition, and Petitions Nos. 554 and 742 of 1867, will, according to the Collector's request, be forwarded to the High Court for their orders. As the record was returned by the High Court, it has already been forwarded to the appointed arbitrators, to whom, as the case has been taken out of the Civil Judge's hands by appeal and referred to the arbitrators direct by High Court, no orders of any kind will be sent. A copy of these proceedings to be given to the Government Vakeel.

13*th August* 1868.

(Signed) H. MORRIS,
Civil Judge.

(True Copy.)

(Signed) J. H. MASTER,
Acting Collector.

Forwarded to the Government Pleader, who is requested to advise the Board as to the measures which should be taken to protect the interests of the State.

No. 215. Proceedings of the Board of Revenue, dated 7th October 1868.

Read again Board's Proceedings, dated 12th September 1868, No. 6,537 A.

Read also the following letter from the Officiating Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 24th September 1868, No. 155.

1. I have the honor to acknowledge the receipt of the Proceedings of the Board, dated the 12th September 1868, (and the enclosures which accompanied them,) passed upon a letter from the Acting Collector of the Godavery District to the Board, dated the 24th August 1868, in which Proceedings I am requested to advise the Board as to the measures which should be taken to protect the interests of the State with reference to the Proceedings in Original Suit No. 1 of 1867, in the Civil Court of Rajahmundry, relative to the Viravallipalem estate, the late proprietor of which died in the year 1856, leaving a childless widow.

2. I have considerable doubts whether the High Court will hear me, on behalf of the Government, upon the subject of the Petition No. 1,000 of 1868, and the prior petitions Nos. 554 and 742, which have been transmitted to it by the Civil Court of Rajahmundry. The only way in which, as it appears to me, I could be heard on behalf of the Government is, on my presenting to the High Court a Miscellaneous Petition setting out the facts stated in the Petition No. 1,000 of 1868, and applying for leave for the Government to attend the proceedings before the arbitrators on the reference to them by the High Court in Regular Appeal No. 18 of 1868.

3. I do not, however, anticipate that such an application, if made, will be granted. The High Court will probably hold that the Government, not being parties to Original Suit No. 1 of 1867, in the Civil Court of Rajahmundry, and the Regular Appeal No. 18 of 1868 in the High Court, are not bound by any of the proceedings therein respectively; and that, if the Government were dissatisfied with the Order of the Civil Court of Rajahmundry declining to make the Government supplemental defendants in Original Suit No. 1 of 1867, they should, on or prior to the hearing of the Regular Appeal No. 18 of 1868, have applied to the High Court for leave to be heard on that appeal, or have themselves appealed against the Decree and Order.

4. If, however, the Board resolve on my applying to the High Court in the manner suggested in paragraph 2 of this letter, or otherwise, I shall be ready to act upon their instructions as soon as the High Court re-opens. In this case, I should be glad to receive, as soon as possible, plain copies of the Decree and Judgment in Original Suit No. 1 of 1867, of Petitions Nos. 554 and 742 of 1867, and of the Order of the High Court in Regular Appeal No. 18 of 1868, referring the matter in question between the parties thereto to arbitration. On receiving these papers, and the further instructions of the Board, I shall be prepared with the necessary application to the High Court by the time that it re-opens after the vacation.

5. There is one other course which, if the Government and the Board think fit, may be pursued, and that is for the Government to institute a suit against the plaintiff and defendant in Original Suit No. 1 of 1867, in the Civil Court of Rajahmundry, alleging the collusion between the parties to that suit, and praying for a declaratory Decree that, subject to the life interest of the plaintiff in Original Suit No. 1 of 1867, in the Viravalipallem estate, that estate is the property of the Govern-

ment consequent upon the death of the late proprietor without heirs. For the reasons stated in the first part of paragraph 3 of this letter, however, I do not think such a course necessary. But if it is decided upon adopting it, the suit may well be filed after the High Court refuses to grant the application suggested by me in paragraph 2 of this letter.

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1. Resolved that the foregoing papers be submitted for the consideration and orders of Government.

2. The circumstances of the case are concisely stated in the Collector's letter, embodied in the above Proceedings of the Board. The subject was referred to the Government Pleader for his advice, and his reply is conveyed in his letter of the 24th September.

3. The Board would suggest to Government that the course recommended in paragraph 2 of that letter be adopted, the alternative of a declaratory suit being reserved until the decision of the High Court is known.

4. A copy of these Proceedings will be forwarded to the Collector of the Godavery District, who will furnish the Government Pleader with copies of the documents referred to in paragraph 4 of his letter.

No. 216. ORDER THEREON, 12th October 1868, No. 2,623.

Miscellaneous.

1. Under the circumstances reported in the foregoing papers, the Government authorize the Government Pleader to adopt the course proposed in paragraph 2 of his letter to the Board of Revenue, under date 24th September 1868.

2. Should the Government Pleader's application prove unsuccessful, the alternative course proposed in paragraph 5 of his letter will still be open, but no suit of the nature indicated should be brought until a full report on the whole bearings of the matter has been obtained from the Collector, together with a history of the Zemindary and its holders up to the demise of the late Zemindar.

3. The Collector should be required to submit this report directly the result of the Government Pleader's application to the High Court is known.

4. The Government further desire that if, as it would appear, the Collector urged the claims of Government, in the first instance, without any orders from the Board, he be called upon to explain his proceedings in so doing.

(True Extract.)

(Signed) R. A. DALYELL,
Acting Secretary to Government.

To the Board of Revenue.
,, the Government Pleader.

Exd. S. T. Augustin.

Rev.e Department

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Memo: for early order

No. 3194

In 1856 the pro-
-prietor of an estate in Go-
-davery died leaving, as
his heirefs, a childless
widow - One Vencata Jugga
Row maintained that he was
the adopted son of the wi-
-dow, by her husband's desire.
The widow denied this, and
his application to be declared
heir to personal property under
act XXVII of 1860 was rejected
by the Civil Court and
High Court - Ten years
after, or in 1867, this
man filed a regular
suit against the widow

for

Govt. of [1868] Madras.

REVENUE.

To

THE BOARD OF REVENUE.

&c, &c, &c.

Dated October, 12th.

Recd. Encl.

G. O., 12th October 1868, *No.* 2,623.

OCTOBER.

Nos. 214-216.

Viravallipallem Estate Suit in Godavery District.—Passing orders with reference to the Government Pleader appearing on behalf of Government at the High Court.

for the estate, as her adopted son. It was reported to the Collector that this was a collusive suit, as the widow would not oppose the adoption, and he (Mr. Fraser) without any orders from the Board, apparently, addressed a petition to the Court stating that there was collusion between the parties to deprive the Govt. of their reversionary interest in the estate of a childless widow. The widow thereupon filed a statement denying the collusion, and the suit was dismissed by the Civil Judge. Inggah Dow appealed to the High Court and

the appeal has been, by desire of the parties, referred to arbitrators. The Actg. Collr. thereupon addressed the Court again by petition to the effect that the arbitrators would probably decide in favor of appellant by collusion between him and respondent and so defeat the Govt. rights, and this petition as well as the two former ones addressed by the late Collr. to the Court have been forwarded to the High Court.

The Actg. Collector's report of the case was referred to the Government Pleader who does not think that the Court will

will allow him to plead in sup-
port of the petitions of the
Collector, but is of opi-
nion that possibly he
might be heard on a mis-
cellaneous petition to the
same effect as that presented
to the Civil Court. The
only other course he re-
commends is that a suit
should be brought against
the Plaintiff and Defendant
in the original suit and
appeal, alleging collusion
between them in order to
defeat the rights of Govern-
ment. The Board recom-
mend that the Government
Pleader be authorized to
file the proposed petition
in

in the first instance. If
it be determined to assert
the right of Government,
the course proposed by
the Board may, it is sub-
mitted, will be followed,
but this point seems to
deserve some consideration
in the first instance. In
any case the right should
apparently not have been
asserted by Mr. Fraser
without reporting for
orders. It is perhaps
questionable policy to urge
such rights as situated as
the British Govt. is in
India. I believe that
some similar right
which the Crown possesses
in England in regard
to

Mr. Fraser was, I am
surprised, quite out of
order in doing this without
instructions. W.H.

I should think this Govt. should
forego the advantage of a
doubtful & unauthorised escheat.
W.H.

+ The property of bastards &c^a are rarely exercised the right being usually waived in favor of devisee.

+ The right in question appears accrue to the Govt. but if it should be thought right that the Collr should be directed to make inquiry as to the existence of any such relatives - W.R.

If there be a will and a devisee under it, I doubt see how any right can accrue to the Govt., as the right of making a will belongs to every one after attaining majority. In cases of intestacy only would there be an escheat to the Govt., but there is a proforma application to enable them to relinquish any thing the intestacy may have brought them - W.R.

The Collector, Mr. Fraser, has doubtless exceeded his powers in permitting himself without instructions from the Bd of Rev: or the Govt., to assert a right of escheat which, on a consideration of the circumstances of the family, might have been determined to waive. As matters have proceeded to the extent herein reported, I would request the Govt Pleader to adopt the course suggested by him in his para 2, and trust to the High Court making the order anticipated by him in the first part of his para 3. If that order be not made, it will still rest with the Govt to direct the institution of a pert de droit suit against the widow & the collateral Plaintiff - but it seems desirable that no such action be brought until we have received a full report from the Collector on the whole bearings of this matter with a history of the origin of the Zemindary and its holders up to the decease of the late Zemindar & their report the Collector of

+ should be instructed to institute duly this suit of the Govt Pleader's application to the High Court is known.

W.R.

October 1868.

B.A.

Memo for early Orders. —

Certain Estates in Gos dive ys Deeds

No 3194

Ft. 2623.

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Lieut Evans orders

12th Oct/68

Under the circumstances reported in the foregoing papers, the Govt authorise the Govt Steamer to adopt the course proposed in para 2 of his letter to the Board of Revenue under date 26th Sept 1868.

Thanked the Govt Steamer's application proves unnecessary, the alternative course proposed in para 5 of his letter will still be open, but I do not think of the nature indicated should be brought until a full report on the whole

12 Oct/68 R12

case remains of the
matter has been obtained
from the Collector, together
with a history of the Zemin
dary, and its holders
up to the demise of the
late Zemindar.

The Collector views be
quested to submit this
report directly the result
of the first Revenue appli
cation to the High Court
is known, ~~and he should~~
~~be called upon at the~~

The first further desire
that if, as it seemed appear,
the Collector urged the
claims of Govt., in the
first instance, without
any orders from the Board,

he be called upon to explain
his proceedings in so doing.

H.T.D.

M.S. Copy to the Bd of Rev Dept 1/13 Sec 14 Dec 14 No 14
Govt Resolution S. 3 Dept 14

Revenue 1868 Despte
Bo of Govt for Octr

No 2623

Bo of the Madras Govt
of 12 October 1868.

Despatch
Forbury 4 Nov

From the Govr Madras No Decr 1868
& No 2867.

From the Bd of Rev
No 29 Jany 1869 Cls. 328.

Nos 214-215

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