M.R. O. 1—32,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1731 Press ~~Mis.~~

404-405

Dated 17 th June 19 1869

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department,
17th June 1869.

No. 404. Read the following letter from the Government Pleader, Madras, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated Madras, 14th June 1869, No. 294 :—

With reference to the Order of Government, Revenue Department, marginally noted, I have the honor to submit the joint opinion of the Advocate-General and myself upon the papers transmitted to me therewith. To save time I also enclose for the approval of Government draft of the written statement to be filed by the defendants in the suit in accordance with that opinion.

Dated 22nd April 1869, No. 1,097.

2. I return the original papers transmitted to me by the Collector of Malabar, and the plan which accompanied the above Order of Government.

No. 405. Order thereon, 17th June 1869, No. 1,731.

Miscellaneous.

Communicated to the Board of Revenue with reference to the G. O., under date 22nd April 1869, No. 1,097.

2. The Government sanction the defence of the suit as proposed, and approve of the written statement submitted by the Government Pleader which should accordingly be filed by the Collector.

(True Extract.)

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

To the Government Pleader.
„ the Board of Revenue.

Exd. E. C. Shunker.

Revenue Department

Proceedings of the Madras Govt.
Read the following

We have considered in consultation the papers on which our opinion is requested by the Order of Government dated 22nd April 1869, No 1097.

2. The question to be decided in the suit therein referred to is the genuineness and effect of the three deeds on which the plaintiff relies in support of his claim translations of which form enclosures 2, 3 and 4 in the Report of the Deputy Collector, Wynaud, dated 7th March 1863. Their genuineness is entirely a question of evidence, as to which it is impossible now to form any confident opinion. The smallness of the consideration compared with the value of the lands comprised in them, the fact that these deeds do not appear to have been produced in

Cart. of 1[illegible] & Indian.

REVENUE.

To

THE [illegible]

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JUDL.

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[illegible]

[illegible]

in the course of any of the former in-
quiries relating to these matters, &
other circumstances in the case tend
to throw suspicion upon the genuine-
ness of the deeds and will doubtless
induce the Court to scrutinize very
carefully the evidence which the
Plaintiff will have to adduce,
of their due execution. Even if the
due execution of the deeds by the
Nambalakatta Varnavar and his
sister be proved, it will be open
the defendants to contend on be-
half of Govt. that the partici-
cating the deeds were of unsound
mind or under intimidation or
undue influence and should they
be established of course the claim
founded upon these deeds cannot
be upheld.

3. The only question upon which we can now usefully advise is, whether, assuming that these deeds were duly executed by the Varnavar and his sister and can be enforced by the Courts, they operate to vest in the Plaintiff the proprietary right in the lands claimed by this suit and to entitle him to recover possession of those which have been taken by Govt. This question again subdivides itself into two (1) whether the deeds com-prise the lands in question (2) if so what operation they have upon those lands.

4. As to (1) both Mr. Richardson and Mr. Grant concur in stating that the lands in question are not included in the deed of 1837 (encl. 2) by express description, a point upon

which

which from their knowledge of the language and locality they are the best judges, but it by no means follows, as the Collector in para 3 of his letter of 20th March 1869, concludes, that the deed in no way supports the plaintiffs claim. The deed, as translated, purports to convey "all my property in the Wynaad Taluk Kumbalacote Pathur Kurmam" except a certain portion which had been previously sold. The follows, as we understand it a specific description of the lands belonging to the estate and at the end the following general words "all the Kunduru, Pudum (uncultivated lands), hills, Pazunkus building sites" &c &c. Now these

general words are large enough to include all the lands forming part of the Varnavars property in the Wynaad Taluk not before expressly described and indeed they are the sort of words we might expect to find used if it were intended to convey along with the described lands, a tract of unoccupied jungle many parts of which were without names and the exact boundaries of which were not very clearly known. Were the lands in question then ever part of the Nambalakatta estate? Did the Varnavar and his ancestors ever exercise any proprietary rights over them? The plaintiff must prove the affirmative and it is difficult to see how he can do so. Certainly the deed (encl 8) by the Todas will

not help him much for it mentions
no particular lands and regis-
=tering of any rights in land,
at the utmost it is only corro
slight evidence that at the time
the authority of the Ramalekatta
Varnavar as a chieftain was
recognised by those living as far
east as the Pycara river. The deed
by the Varnavar's sister (encl. 3) follows
almost identically the description
given in the former deed and the
above remarks apply equally to it.
The other deed by the sister (encl. 4)
appears to refer to other lands than
the two deeds before mentioned,
but whether forming part of those
claimed by this suit, we are unable
to say, probably not.

5. The most important question (2)
remains to be con-

the operation of these deeds upon the
lands comprised therein? We are
unable from the translations to
perceive any important distinction
between the nature of the two
deeds (encls 2 & 3) or to understand
how it can be maintained as
is alleged by the plaint, that the
first was only a mortgage
and the 2nd an absolute sale.
It is true the 2nd deed (encl 3) pur-
ports to make over the Attyparium
Neeruthayamayi, which words are
translated perpetual Jeum and
do not occur in the 1st deed (encl 2).
But that deed purports to make
over all the Varnavars right and
title and is no more in terms a
mortgage than the other. It appears
to be that both deeds in fact amount
only to mortgages. That the first was

to

so is shewn by the statement in the plaint and by the fact that the consideration of the 2nd purports to be 80000 fanams being principal and interest meaning the presume principal and interest there due upon the former deed; and the first deed being a mortgage it is difficult to see why the 2nd is anything more than a confirmation of that mortgage by the Varnavar's sister and heir, at any rate, as a purchase by a mortgagee in possession in consideration of the amount due on his mortgage, it cannot we think be upheld and the Govt under their title by escheat would probably be entitled to redeem on payment of the principal and interest

due at the date of the deed. The 3rd deed (encl 4) is a mortgage of other lands for 8,000 fanams and appears to have nothing to do with this suit b. Supposing it to be established that the deeds amounted to an absolute alienation of all the alienable interest of the Varnavar and his sister in the lands comprised therein, the question remains what that interest was. If the descent of the estate was governed by the ordinary law of Malabar, the Varnavar as Karnavan or head of the family could not have alienated the family property without the assent of the Anandravan, i.e. other members of the family which consent must have been evidenced by the signature

of

If the defendants the plaintiff has to prove his title and we think it will be best to meet him by a simple denial of it reserving any special grounds of defence to be taken at the hearing and of course being prepared with evidence in support of such grounds

(Sd) John Bruce Norton
Advocate General
I. H. Hambley
Govt Pleader

part thereof.

3. The said lands are in the possession of Government whose property they are.

We the above named defendants do each of us declare that the statements herein contained are true to the best of the knowledge and belief of each of us

Signed

In No. 1961.

Civil Court of Calicut

O.S. No. of 1868.

Tacharakavil Manukaraven

v.

Collr. of Malabar &
Coimbatore.

Draft

Written Statement of
defendants.

Agent Handley
for Pleader.

In the Civil Court of Calicut.

O.S. No. of 1868

Tacharakavil Manivekaraven
Trumalpad of Nelumbur - - - Plaintiff

Versus

1 The Collector of Malabar
2 The Collector of Coimbatore } - - Defendants.

Written Statement of the defendants on behalf of the Government of Fort Saint George.

1 The defendants deny that the plaintiff has any right or title to the lands the subject of this suit or to any part thereof and they put him to the strict proof of his title thereto and of his whole case

2 The defendants deny that the plaintiff has or ever had or that any person under whom

whom he claims ever had possession of the said lands or of any part thereof

3 The said lands are in the possession of Government whose property they are.

We the above named defendants do each of us declare that the statements herein contained are true to the best of the knowledge & belief of each of us.

(signed)

In No: 1951

Civil Court of Calicut
O. S. No. of 1868

Tacharakal Manukaran
v.
Collr of Malabar &
Coimbatore

Draft
Written Statement of
defendants.

(Sgd) Handley
Sol for Defdts

We have considered in Consultation the papers on which our opinion is requested by the Order of Government dated 22nd April 1869 No 1097.

2 The Question to be decided in the suit therein referred to is the genuineness & effect of the three deeds on which the plaintiff relies in support of his claim translations of which form enclosures 2, 3 & 4 in the Report of the Dpmty Collector Wynaad dated 7th March 1863. Their genuineness is entirely a question of evidence, as to which it is impossible now to form any confident opinion. The smallness of the consideration compared with the value of the lands comprised in them, the fact that these deeds do not appear to have been produced in the course of any of the former inquiries relating to these matters, & other circumstances in the case lend to throw suspicion upon the genuineness of the deeds & will doubtless induce the Court to scrutinize very carefully the evidence which the plaintiff will have to adduce, of their due execution. Even if the due execution of the deeds by the Nambalakotta Varnavar & his sister be proved, it will be open to the defendants to contend on behalf of Government that the parties executing the deeds were of unsound mind or under intimidation or undue influence; & should this be established of course the Claim founded upon these deeds

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cannot be upheld.

3 The only question upon which we can give usefully advice is, whether, assuming that these deeds were duly executed by the Varnavar & his sister & can be enforced by the Courts, they operate to vest in the Plaintiff the proprietary right in the lands claimed by this suit & to entitle him & Mr Comer possession of those which have been taken by Government. This question again sub divides itself into two (1) whether the deeds comprise the lands in question (2) if so what operation they have upon those lands.

4 As to (1) it is for Mr Richardson & Mr Grant to aver in stating that the lands in question are not included in the deeds of 1837 (encl: 2) by express describing a point upon which from their knowledge of the language & locality they are the best judges, but it by no means follows, as the Collector in para 3 of his letter of 23rd March 1869, concludes, that the deeds in no way support the Plaintiff's Claim. The deed, as translated, purports to convey "all my property in Wynaad Talook Mundalacate Puthur Nuremanu except a certain portion which has been previously sold. Item follows, as we understand it, a specific description of the lands belonging to the estate under the following general words "all the Kundums, Pudums (uncultivated lands), hill, Parambas, building sites" &c &c. Now these general words are large enough to include all the lands forming part of the Varnavar's property in the Wynaad Talook not before expressly described & — indeed they are the sort of words we might expect to find used if it were intended to convey along with the described lands, a tract of unoccupied jungle many parts of which were without names & the exact boundaries of which were not very clearly known. Were the lands in question then ever part of the Mambalakkate estate? Did the Varnavar & his ancestors ever exercise any proprietary rights over them? The plaintiff must prove the affirmative & it is difficult to see how he can do so. Certainly the deed (encl 8) by the Tolas will not help him much for it mentions no particular lands & says nothing of any rights in land, at the utmost it is only some slight evidence that at one time the authority

authority of the Nambalan Kalla Varnava as a Chieftain was recognized by those living as far east as the Pyeanza river. The deed by the Varnavar's sister (encl: 3) follows almost identically the description given in the former deed and the above remarks apply equally to it. The other deed by the sister (encl: 4) appears to refer to other lands than the two deeds before mentioned, but whether forming part of those claimed by this suit we are unable to say, probably not.

5 The most important question (2) remains to be considered. What is the operation of these deeds upon the Lands Comprised therein? We are unable from the translations to perceive any important distinction between the nature of the two deeds (encls 2 & 3). or to understand how it can be maintained, as is alleged by the plaint, that the first was only a mortgage and the 2nd. an absolute sale. It is true the 2nd deed (encl: 3) purports to make over the Ally pareum Neerattayamayi, which words are translated perpetual possession and do not occur in the 1st deed (encl: 2) But that deed purports to make over all the Varnavar's right & title & is no more in terms a mortgage than the other. It appears to us that both deeds in fact amount only to mortgages. That the first was so is shown by the statement in the plaint & by the fact that the Consideration of the 2nd. purports to be "80,000 fanams being principal and interest" meaning we presume principal and interest then due upon the former deed; and the first deed being a mortgage it is difficult to see why the 2nd is any thing more than a Confirmation of that mortgage by the Varnavar's sister & heir; at any rate, as a purchase by a mortgagee in possession in Consideration of the amount due on his mortgage, it Cannot we think be upheld and the Government, under their title by escheat would probably be entitled to redeem on payment of the principal and interest due

due at the date of the deed. The 3rd deed (encl: 1) is a mortgage of other lands for 8,000 fanams & appears to have nothing to do with this suit.

6 Supposing it to be established that the deeds amounted to an absolute alienation of all the alienable interest of the Karnavan & his sister in the lands comprised therein the question remains what that interest was. If the descent of this estate was governed by the ordinary law of Malabar, the Karnavan as Karnavan or head of the family could not have alienated the family property without the assent of the Anandravan, i.e. other members of the family which Consent must have been evidenced by the signature of the Senior Anandravan or by other direct evidence. See 1 Madras High Court Reports p.p. 268, 359 Strange's Manual of Hindu Law p. 89. No such signature appears to the deed (encl: 2), & there is no other evidence of the necessary Consent having been given. Moreover one of the Anandravan, the respondent appears to have been a minor at the date of the deed (see W. Chadfield's letter encl: 3

in W. Grant's report) & therefore the Consent of his guardian would be necessary to a valid alienation & also those relying on the alienation must show that it was made for necessary family purposes. These Considerations would seem to be fatal to the validity of the alienation by the Karnavan as against his heirs. But we gather from the papers before us that at the date of the deed (encl: 3) the sister was the only remaining member of the family & if so we know of nothing to prevent her from disposing absolutely of the lands. If therefore she did, when of sound mind & not under undue influence, execute a deed of absolute sale for good consideration, we think such a deed would, if duly registered, defeat the claim of Government to succeed by escheat & the extent of the lands actually Comprised in it

7 With regard to the defence set up by the written statement of the defendants, the plaintiff has to prove his title & we think it would be best to meet him by a simple denial of it reserving any special grounds of defence to be taken at the hearing & of Course being prepared with evidence in Support of such grounds.

I. W. Bensley
Advocate

J. W. Handley
Govt. Pleader

Nº 1731. 1/9.0

Proceedings of the Madras Govt. under date the 17 June 1669

Read the following letter from the Government & Council Fort St. George 16th June 1669 & 294

Cont to the Board of Revenue with Mr. Co. & the G. O under date 22 April 1664 Nº 1097.

The Govt consulted the defence of the suit as proposed, and approved of the written Statement submitted by the Govt Vakeel thereof standing to plead by the Collectr

W.O.M

17th June 69.

3 To the Govt. Pleader. Des. 17
with Duplicate
16 Do of Letr. V.

29th May 1869.

~~Ex. M 8-1961~~

~~Exhibit Index 19 de 2 604~~

Re

The Neelambur Rajah's suit against the Collector of Malabar for the recovery of certain lands in the Talook of the Valluvanad

The Honorable
Sir Edward Creasy
Page 25.
Conference Page 15.
Interlocutory
Order

Will be filed on Thursday the accompanying Papers and the Order thereon in consultation with the Government Pleader.

Ord 29th May 69
Filed in consultation
29th June 69.

Richmond
Acting Govt Solr