

# MADRAS RECORD OFFICE.

Government of Madras.

*Revenue* DEPARTMENT.

G.O. No. 228

Press  
Mis.

473-475

Dated 26<sup>th</sup> January 1969

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,  
26th January 1869.*

Read the following:—

No. 473. Read the following Proceedings of the Court of Wards, dated 14th December 1868, No. 8,776.

Read the following letter from the Government Pleader, to the Acting Secretary to the Court of Wards, dated 4th December 1868, No. 187.

1. I have the honor to acknowledge the receipt of the Proceedings of the Court of Wards, noted in the margin, requesting my opinion as to the advisability of filing an appeal against an order of the Civil Court of Chittoor in the matter of the Pullicherla Polliem.

2. I am decidedly of opinion that there is no right of appeal in this case. Section 364 of the Civil Procedure Code, Act VIII. of 1859, declares that "no appeal shall lie from orders passed after decree and relating thereto, except as is hereinbefore expressly provided." The only express provision which could apply to this case, is that in Section 283, for which Section 11 of Act XXIII. of 1861 is substituted, and that Section applies only to questions arising between parties to the suit. In a case reported in the 6th Volume of Sutherland's Weekly Reporter, page 21, it was expressly decided that no appeal lies from an order after decree affecting third parties who must have recourse to a separate suit.

3. If, therefore, it is still desired to dispute the authority of the Civil Court to interfere with the revenues of the Polliem, the only way left open to do so appears to be by declining to comply with any further order of that Court relating to the same matter, and if an attempt should be made to enforce any such order by attachment or otherwise, a suit must be filed to set it aside. Whether it is worth while to adopt such a course, considering that there is no objection to the plaintiff's demand, but only to the way in which it is asserted, it will be for the Court of Wards to consider. The rights of Government in respect of Polliems are not at all concluded by the decision of the Court, and can be asserted at any future time when the occasion arises.

4. It might be sufficient for the Court of Wards to make an order for the payment of the amount claimed by the plaintiff, without reference to the Order of the Civil Court, but as an entirely gratuitous act suggested by the relationship of the plaintiff to the minor Poligar, and the consequent expediency of providing maintenance for her.

5. As to the abstract question of the rights of Government in regard to Polliems, it seems to me by no means clear that the doctrine enunciated in paragraphs 4 and 10 of the Proceedings of the Court of Wards can be maintained in its entirety. The decision reported in Volume 3 of the Madras High Court Reports, page 303, certainly is in favor of that view; but the question does not seem to

have been argued in that case, and it is difficult to reconcile it with the Narganty

Polliem case, noted in the margin, referred to by the Civil Judge, and with another case in the Privy Council reported at page 446 of the same volume.

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6. It is true that, in the first of these cases, the definition of a Polliem is merely a dictum, and apparently a quotation from the Report of the Select Committee on the affairs of India in 1812, and the question now under discussion was not directly in issue, the Government having granted leave to bring the Original Suit under the provisions of Madras Regulation IV. of 1831. Still the question was discussed, and the Sudder Court, whose decree was affirmed, decided against the contention that succession to a Polliem is, in each individual case, dependent upon the will of Government (page 78.)

7. In the latter of the two above-mentioned Privy Council cases, the Original Suit was brought on behalf of Government for recovery of a Polliem as an escheat for want of male heirs, and on the appeal to the Sudder Court, it was contended that unsettled Polliems "are not hereditary, but are held at the will of Government who, on each lapse, may appoint thereto whom they please," (page 453). The Sudder Court declined to entertain this plea as being "novel in its nature and inconsistent with the former pleadings," and the decision was affirmed by the Privy Council. The main ground, however, for the decision appears to have been the acquiescence of the Government in the succession of the Polliem to female heirs.

8. On the whole, there seems to be sufficient doubt on the question, to render it desirable that a definite judicial decision should be obtained at some time or other; but for the reasons before mentioned, it may be doubted whether the present case affords a good opportunity.

In the letter recorded in Board's Proceedings, 13th June 1868, No. 4,397, the Acting Collector of North Arcot reported that the Civil Court had directed him to hold, subject to further orders, Rupees 1,138-2-0 out of the revenues of the Pullicherla Polliem, with reference to a dispute regarding the succession to the Polliem.

2. As the Board consider it unquestionable that the Courts have no right to interfere with the act of State, by which the Government determine the succession to an unsettled Polliem, they approved the Collector's proposal to apply to the Judge to have the order cancelled.

3. The application of the Collector was heard on the 5th October 1868, and from the judgment of the Court, it appears that the sum of Rupees 1,138-2-0 is made up of maintenance awarded to Rangumma Garu, one of the widows of the minor's father, and of the costs of the suit brought by her against the late Poligar. The reference to the disputed succession in the order did not imply that any such dispute was *before the Court*, or that jurisdiction was claimed with regard to it.

4. Although the Court of Wards were quite prepared to give an allowance to Rangumma Garu, they considered that certain portions of the Judge's decree imperilled the rights of Government, and accordingly submitted the case to the Government Pleader.

5. The Government Pleader now advises that no appeal can be made, because the order of the Court was passed after a decree and related to it, and that the rights of Government in respect of Polliems are not at all concluded by its decision.

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6. Under these circumstances, the Court of Wards resolved to move no further in the matter.

7. With regard to paragraphs 5 and 6 of the Government Pleader's letter, they remark, that in one of the cases cited, the Government formally waived their rights, and in the other did not assert them in the pleading.

No. 474. Proceedings of the Board of Revenue, dated 19th January 1869.  
Read Proceedings of the Madras Government, Revenue Department, dated 11th January 1869, No. 68.

COMMUNICATED to the Collector of North Arcot. Copy of Board's Proceedings, 14th December 1868, No. 8,776, will be communicated to Government.

No. 475. ORDER THEREON, 26th January 1869, No. 228.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

(Signed) H. WIGRAM,

Acting Under Secretary to Government.

To the Board of Revenue.

Exd. G. A. Tutton.

Revenue. 3  
 1869. Department.  
 77.162.  
 Proceedings of the  
 Board of Revenue

Dated 19<sup>th</sup>  
 Decr 19 January 1869.  
 Received  
 E.I.

As  
 Co.

Forwarding copy of  
 Board's Proceedings  
 dated 14 December 1868  
 No. 8776

228.  
 26<sup>th</sup> Jan 1869.

14 Copies to Mr. O. C. & Mr. D. & Mr. J.

GOVT. OF 1869  
 REVENUE.  
 THE BOARD OF REVENUE.  
 Dated January, 1869.  
 G. O. 26th January 1869, No. 228.  
 JANUARY.  
 NO. 413-415.  
 Pottighera Pottion East—Board's Pro-  
 ceedings resulting to move further in the matter  
 recorded