M.R.O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2458 Press
~~Mis.~~
457-458

Dated 31-5 Agmt 19-1869

Not to be folded or roughly handled

Ph/13/2

No. 457. Read the following letter from the Government Pleader, Madras, to the Acting Secretary to Government, Revenue Department, Fort Saint George, dated 12th August 1869, No. 328:—

WITH reference to the order of Government noted in the margin, I have the honour to report that the Appeal (Regular Appeal No. 61 of 1869), therein sanctioned, from the decree of the Chingleput Civil Court, in Original Suit No. 29 of 1867, against the Collector of Madras and others came on for hearing yesterday before the Chief Justice and Mr. Justice Innes, when I appeared in support of the appeal.

Dated 29th April 1869, No. 1,168.

2. The Court held that the question of the rights of Mirassidars in waste lands was not open to argument in this case, not having been raised in the Court below; that, in fact, the preferential rights of the plaintiffs as Mirassidars to the occupation of the lands in dispute was admitted by the Collector in his written statement, and appeared to have been assumed throughout; and the Civil Procedure Code gave the Court no power to send down an issue to be tried by the Lower Court upon a question not raised by the pleadings. The question was, in the opinion of the Court a very proper one to be tried, but it must be in a suit where it was fairly raised in the Court of first instance, so as to give either party the fullest opportunity of adducing evidence upon it. The only question therefore that remained open upon this appeal was, whether the failure by the plaintiffs on a former occasion to perform their agreement for the cultivation of waste land was sufficient to justify the Collector in refusing to recognise their preferential right in the present case, and the Court held that it was not; accordingly the Court confirmed the decree of the Lower Court, and dismissed the appeal with costs.

No. 458. ORDER THEREON, 31st August 1869, No. 2,458.

Miscellaneous.

COMMUNICATED to the Board of Revenue with the remark that the decision in this case does not affect the general question of the right of Mirassidars in waste lands.

(True Extract.)

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

To the Board of Revenue.
„ the Government Pleader.

Exd. F. R. Bantleman.

Revenue Department

No. 2458.

Proceedings of the Madras Government.

Under date the 31st August 1869.

Read the following letter from the Government Pleader.

Reporting result of Appeal (R. A. No. 61 of 1869) from Decree of Chingleput Civil Court in O.S. 29 of 1867 against Collector of Madras and others. (M. G. 12th August 1869 No. 328)

Communicated to the Board of Revenue, with the remark that the decision in this case does not affect the general question of the right of Mera-sidars, in waste Lands.

14 Fitter P. of Rev. Dept. 6/10

B. — Govt. Pleader

Court of 1869 (31st August)

REVENUE.

TO

THE BOARD OF REVENUE,

&c. &c. &c.

Dated August, 31st.

Recd.

Answd.

G. O., 31st August 1869, No. 2,458.

AUGUST.

Nos. 457-459.

Suit No. 61 of 1869, against Collector of Madras.—Government Pleader's letter reporting the decision of the High Court, communicated to Board of Revenue with the remark that the decision does not affect the general question of the right of Meerasidars in waste lands.