M.R.C. 1—38,000—16-10-23.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 505. Press ~~Mis.~~

2007 501

Dated 26th February 1869.

Not to be folded or roughly handled

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

No. 500. Read the following Proceedings of the Board of Revenue, dated 5th February 1869, No. 811 :—

Read the following letter from the Collector of Madras, to the Acting Secretary to the Board of Revenue, dated Sydapet, 18th January 1869, No. 15.

Board's Procs. dated 28th Feb. 1868, No. 1,437.
Do. ,, 19th March. ,, ,, 1,969.
Govt. Procs. dated 27th do ,, ,, 815.

With reference to the correspondence noted in the margin, I have the honor to forward copy of a Decree passed by the Civil Judge of Chingleput, in Original Suit No. 24 of 1864, dismissing the Suit.

In the Civil Court of Chingleput.

Original Suit No. 24 of 1861.

JUDGMENT.

The plaint set forth that the late Streerungar Ammungar sold the village of Karasengal to the plaintiff's late father on the 25th November 1845, for Rupees 1,200, and put him in possession of the same ; but that after her death the late first defendant sued the plaintiff in the Mufty Sudder Ameen's Court (Suit No. 5 of 1859,) and obtained a decision setting aside the above sale on the grounds that Streerungar Ammungar had only a life interest in the said village, and consequently could not alienate it to the prejudice of her heirs. This decision was finally confirmed by the High Court on appeal. The plaintiff now sues to recover from the present first defendant Rupees 1,200, being the purchase money aforesaid, and Rupees 400 on account of costs incurred by her in defending the above actions, together with interest.

2. The second defendant was included as a defendant, because he was first defendant's Gumastah.

3 The third defendant (the Collector) was included by the late Acting Civil Judge, because he was of opinion that as the late first defendant was a childless Hindoo widow, her prope: ty had lapsed to the State.

4. The other defendants were included as being in possession of portions of the village in question.

5. The first defendant pleads, that as the sale of the village to plaintiff's late father was illegal, the plaintiff must stand the consequence, and is not entitled to recover the purchase money, which was never, in fact, paid.

6. The second defendant disclaims all concern in the subject matter of the suit.

7. The third defendant disclaims all interest in the property in question, which he states is in possession of one Varadachary, who pays rent to the Government for the same.

8. The 4th, 5th, and 6th defendants plead that they have possession of one-fourth of the village by virtue of a registered Deed of Sale executed in 1865 in their favor by the late first defendant and her heir the present first defendant.

9. The seventh defendant pleads that some of the lands of the village were mortgaged to him by the above-mentioned parties.

The following exhibits were filed :—

Plaintiff's Exhibit.

A. Copy of the Decree of the late Sudder Adawlut, in Special Appeal Suit No. 27 of 1858.

1st Defendant's Exhibits.

I. Copy of the Decree in Original Suit No. 5 of 1859, passed by the late Mufty Sudder Ameen.

II. Copy of the Judgment in Appeal Suit No. 105 of 1861, Civil Court's file.

III. Copy of the Decree in Special Appeal Suit No. 312 of 1863, High Court's file.

Fourth, fifth, and sixth Defendant's Exhibits.

IV. Deed of Sale executed by Streerungar Natchiar Ammungar (first defendant) and Appen Vencata Chariar in favor of these defendants, selling to them one-fourth of the village of Charichingal for Rupees 800, in 1865.

V. Puttah for the year 1866 in the names of the fourth, fifth, and sixth defendants, regarding the said share.

VI. Copy of the order of the Civil Court to the Nazir directing to attach three-fourths of the village, except the one-fourth share sold to fourth defendant and others.

10. The question which arises in this suit turns on a point of law or rather of Equity.

11. The point for the determination is, whether the plaintiff is entitled to recover the purchase money, the sale having been set aside as illegal.

12. I am of opinion that the purchase money cannot now be equitably recovered by the plaintiff from the first defendant. The sale of the property to plaintiff's late father held good until the death of the vendor, and it is clear from the plaint, that he had possession and enjoyment of it until then, that is, for about fifteen years. It is altogether inequitable under these circumstances, that he should now recover the purchase money and the costs of defending the suit brought to set aside the sale, from the heirs of the vendor. His late father was in all probability quite aware of the period during which the sale was of effect, but if he was not, I think it is a case in which the maxim *Caveat emptor* applies.

Decision of High Court in Special Appeal No. 173 of 1865.

13. The plaintiff has no cause of action by his own shewing against second defendant.

14. I do not concur with my predecessor as to the necessity of including third defendant in this suit. It is clear that under no circumstances could plaintiff have any claim against the fourth fifth, sixth, and seventh defendants, who were wrongly included as defendants in this suit.

15. Nothing remains but to dismiss this suit with costs.

Pronounced this 10th November 1868.

(Signed) E. B. FOORD,
Civil Judge.

SUBMITTED for the information of Government, with reference to their Proceedings, dated 27th March 1868, No. 815.

2. The Collector was included by the Court as a defendant, to enable him to assert, if necessary, the claim of Government to the property as an Escheat. This claim Government waived.

3. The suit has been dimissed, and no costs are awarded against the Collector.

No. 501. ORDER THEREON, 26th February 1869, No. 505.

Miscellaneous.

Ordered to be recorded.

(True Extract.)

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

To the Board of Revenue.

Exd. G. A. Turton.

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Ag V. Sec

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18th Feby 1869

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In Cyclo Suits Agt Govt Collr &c

Govt. of {1869} Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated February, 26th.

Read. Ind.

G. O., 26th February 1869, *No.* 505.

FEBRUARY.

Nos. 500-501.

Suit No. 21 *of* 1864 *against Collector of Madras.*—Report of its dismissal by the Civil Judge of Chingleput, recorded.