M.R.O. 1—38,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 1389 Press Mis.

46-47
Dated 7-9-1870 19 .

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 7th September 1870.

No. 46. Read the following Proceedings of the Board of Revenue, dated 13th July 1870, No. 4,848:—

Read again Board's Proceedings, 26th July 1869 and 19th January 1870, Nos. 5,426 and 387.

Read also the following letter from the Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated 22nd June 1870, No. 81.

With reference to the Board's Proceedings, dated 19th January 1870, No. 387, I have the honour to forward copies, just obtained from the High Court, of the Decree and Judgment in Regular Appeal No. 59 of 1869, relating to Nadium Muttum in the Tanjore District. It will be seen that the Court has decreed the restoration of the lands of the Muttum to the plaintiff with mesne profits from 1st January 1864, but without costs either in the Lower or Appellate Court.

Enclosure No. 1.

In the High Court of Judicature at Madras.

Monday the Thirteenth day of June, One thousand Eight hundred and Seventy.

Present:

The Honourable Sir C. H. Scotland, Knight, Chief Justice.

The Honourable Mr. Justice Holloway.

Regular Appeal No. 59 of 1869.

Plaintiff	*versus*	*Defendant.*
Insagheri Gosamiar, Pauper (Appellant.)		The Collector of Tanjore (Respondent.)

Regular Appeal against the Decree of the Civil Court of Tanjore in Original Suit No. 10 of 1867.

2. This Regular Appeal coming on for hearing the Court delivered the following Judgments:—

Scotland, C.J.—The plaintiff claiming to be the rightful owner of a Mutt and certain land attached to it under a grant by the Rajah of Tanjore in 1744, from the possession of which he had been ejected by the Collector of Tanjore in 1856 on charges of breach of trust by misappropriation of the property of the Mutt and other misconduct, has brought this Suit to recover possession of the land and the mesne profits. The recorded issues raised the questions whether the land was granted for the performance of religious services, or for the charity of affording food and shelter to travellers; and whether the plaintiff had been guilty of malversation of the land or the income derived therefrom.

3. The Civil Court found that the grant was for the performance of religious ceremonies and pious observances only, and that the plaintiff had led a vicious life, and been guilty of malversation in his office of Trustee; and being of opinion that he had on that ground been properly deprived of the lands belonging to the Mutt under Regulation VII. of 1817, decreed the dismissal of the Suit.

4. The main objection relied upon on the part of the appellant is, that the lands formed a religious endowment of a private nature to which Regulation VII. of 1817 did not apply; but that if applicable, it had been repealed by Act XX. of 1863, and under Section 4 the plaintiff became entitled on the passing of the Act to the restoration of the endowment.

5. I have no doubt that the Regulation was applicable to the endowment, but I am of opinion that the objection is well founded as respects the effect of Act XX. of 1863. By the passing of the Act all the powers relating to the superintendence and management of religious establishments, which had been vested by the Regulation in the Board of Revenue and the Collectors throughout the country, were completely determined; and either the District Committees appointed under the Act or the Trustees, Managers, or Superintendents referred to in

Sections 4, 5, and 6, became entitled to the possession and management of all religious endowments ; the former of all those of the class described in Section 3, and the latter of all within the description in Section 4.

6. Now the Mutt and endowment in dispute appear unquestionably not to be of the class of religious establishments, the nomination of the Trusteeship of which at the time of the passing of the Act was vested in or exerciseable by or subject to the confirmation of the Government or any public officer, and therefore not an establishment of the kind described in Section 3, and which passed to the District Committees appointed under the Act.

7. The point then to be considered is the applicability of Section 4. If the terms of the description in that Section admit of the inclusion of the land in dispute, the plaintiff is the only person who, as Trustee, can be said to have become entitled to the transfer of such land. The Section provides that in the case of religious establishments "which at the time of the passing of this Act shall be under the management of any Trustee, Manager, or Superintendent, whose nomination shall not rest in, nor be exercised by, nor be subject to the confirmation of, the Government or any public officer, the local Government shall as soon as possible, after the passing of this Act, transfer to such Trustee, Manager, or Superintendent, all the landed or other property which at the time of the passing of the Act shall be under the superintendence, or in the possession, of the Board of Revenue or any local agent, and belonging to such religious establishment." It further provides for the determination of all the powers and responsibilities of the Board of Revenue and the local agents in respect to such establishments and all the land and other property so transferred. The Government Pleader has contended that by the use of the words "under the management of any Trustee," etc., the Section is restricted to endowments which at the time of the passing of the Act were personally managed by Trustees, Managers, or Superintendents.

8. These words by themselves no doubt import personal management ; but what follows in the Section shows clearly that the words were not intended to be applicable in that sense to the property of religious establishments, for it is expressly provided that the property in *the possession* of the Board of Revenue at the time of the passing of the Act shall be transferred. Giving effect to the language of the whole Section, and reading it with Sections 5 and 6, I think it must be construed as including the endowments of all religious establishments, the management of which had belonged to independently appointed Trustees. A different construction would leave in the hands of the Government the landed property of some religious establishments which would be contrary to the plainly declared purpose and whole scope of the Act.

9. The plaintiff then being the Trustee to whom the land in dispute was made transferable by the Act, the only point remaining to be noticed is whether the plaintiff's conduct which led to his being deprived of the management of the endowment presents a ground for refusing him a decree in this Suit for the restoration of the property as the Civil Court has decided. I do not see that any effect can be given to the evidence as to the plaintiff's incontinent course of life, and with respect to such of the appropriations of portions of the endowment as have been proved against him and charged to be improper, I think their effect as a disqualification for the trust is not a defence open for consideration in the present Suit. The Act makes no distinction as to the property of religious establishments which had been taken from the management or control of Trustees, Managers, or Superintendents, because of their misconduct. It provides alike with respect to all endowments under the superintendence or in the possession of the Board of Revenue, that they should be transferred immediately after the passing of the Act. It appears to me therefore that the intended operation of the Act is opposed to the entertaining as a defence to the present Suit, the acts of mismanagement which led to the endowment being placed under the management of the Collector. A Suit may at any time be brought to remove the plaintiff and make him liable in damages for misconduct in his office of Trustee by any person interested in the Mutt and its endowments.

10. For these reasons the decree of the Court below should, I think, be reversed, and the plaintiff declared to be the Trustee of the Mutt, and as such entitled to the possession and management of the land claimed, subject to the trusts and purposes for which it was granted as an endowment.

11. With respect to the claim of mesne profits, I think that no ground has been shown for making the defendant accountable to the plaintiff for a period further back than the date for the passing of the Act, not reckoning the time to be allowed for transferring the land, and to the end of the year in which the Act was passed seems sufficient to allow on that account. The Court below must therefore, I think, be directed to ascertain the amount of mesne profits since the 1st of January 1864, by taking a proper account in execution of the decree, and payment of the amount found due must be ordered to be paid to the plaintiff to be applied to the same trusts and purposes. I think the case is one in which the defendant should not be ordered to pay costs either in this or the Lower Court.

12. *Holloway, J.*—It has been contended that the endowment is not within the Act. If it depended upon the documentary evidence, it would be difficult to say whether this is so or not. Taken, however, with the plaintiff's allegations, the evidence does show that it was an endowment for some religious purpose. This being so, Section 4 seems to provide for the very case of the Board of Revenue or a local agent being in possession to the exclusion of the Trustee, and taken with preamble to point the provisions of the Section to a case in which it or he has assumed the superintendence by virtue of the old Regulation. They must have acted under the Regulation, or they were simply wrong-doers, and the plaintiff would, on that ground, be entitled to our judgment.

13. If in possession under the Regulation at the passing of the Act, they are bound to restore the property to a Trustee in the position of the plaintiff. With regard to the defence on the ground of the plaintiff's misfeasance and malfeasance, I put my judgment on the ground that there is no such evidence before us as to the purpose of the institution as to enable us to say that the acts of the plaintiff are such a violation of that purpose as to disqualify him for holding the property. Bare immorality according to common ethical standards is not so according to some religious standards. In some cases of public religious endowments the disqualification of a Trustee would in consequence of the precepts of the particular religion be shown by faults perhaps of no great ethical enormity, while faults morally much graver would not disqualify. In each case, it is a question upon the precepts and practices of the particular religion and the special purpose of that religion to which the institution is devoted.

14. Even supposing, therefore, that the acts stated would have afforded a good defence, and a defence available as this Suit is framed, I am of opinion that it is not made out. The evidence undoubtedly leads to a strong suspicion that the course of life of the plaintiff is not very edifying, but we are wholly without evidence as to the purpose of the endowment from which we could properly conclude that the plaintiff ought to be removed. Reference to the precepts and practices of the religions of antiquity to which in many points the Hindu bears strict resemblance, will, without unsavoury illustration, explain my meaning. I have had some doubt whether if another starting point for the account than the taking possession is selected, it should not be the period of the institution of the Suit. I do not feel, however, sufficient confidence in my view to urge by way of dissent, either the one or the other.

ENCLOSURE No. 1.

In the High Court of Judicature at Madras.

Monday, the Thirteenth day of June, One thousand Eight hundred and Seventy.

PRESENT :

The Honourable Sir C. H. SCOTLAND, Knight, Chief Justice,

The Honourable Mr. Justice HOLLOWAY.

Regular Appeal No. 59 *of* 1869.

Plaintiff *versus* *Defendant.*

Insagheri Gosamiar, Pauper (Appellant.) The Collector of Tanjore (Respondent.)

Regular Appeal against the Decree of the Civil Court of Tanjore in Original Suit No. 10 of 1867.

Grounds of Appeal.

I. "Regulation VII. of 1817 does not apply to the present case, and it is besides repealed by Act XX. of 1863.

II. "The plaintiff therefore is not responsible to the Revenue Board or any other authority for the manner in which he may have disposed of the property in dispute.

III. "The plaintiff has not misappropriated the funds of the Mutt in question.

IV. "Nor is he a person of an immoral character.

V. "Even if he were so, that circumstance would not give the defendant any right to oust the plaintiff from the possession of the property in dispute.

VI. "For nearly four centuries the property in question has remained in the possession of the plaintiff's predecessors and plaintiff, each Gosami in office appointing his successor according to his own will and pleasure at the time of his death."

Decree.—This Regular Appeal coming on for hearing. Upon perusing the grounds of appeal, the Judgment and Decree of the Lower Court and the material papers in the Suit, and upon hearing the arguments of Sunjiva Row, Vakeel for the Appellant, and of Mr. Government Pleader for the Respondent, this Court doth order and decree that the Decree of the Lower Court be, and the same hereby is, reversed, and this Court doth adjudge and declare that the plaintiff is the Trustee of the Mutt, and as such entitled to the possession and management of the land claimed, subject to the trusts and purposes for which it was granted as an endowment, and to the mesne profits derived from the said land since the 1st of January 1864, to be applied to the same trusts and purposes; and this Court doth order and direct that the Civil Judge do ascertain the clear amount of mesne profits received by the defendant since the 1st of January 1864, by taking a proper account in execution of the Decree, and that the amount found due be paid by the defendant to the plaintiff, and by him applied to the same trusts and purposes; and this Court doth further order and decree that there be no costs allowed against the defendant in this Regular Appeal or in the Lower Court.

(Signed) C. H. SCOTLAND,
Chief Justice.
(,,) W. HOLLOWAY,
Judge.

The Board resolve to submit the Decree and Judgment of the High Court in Regular Appeal No. 59 of 1869 for the information of Government.

2. The facts of the case are detailed in the papers recorded with Government Order, 22nd April 1869, No. 1,094. The plaintiff, Insagheri Gosamiar, was the Madathiputti, or proprietor of the Ghosayi Muttum in Tanjore. It was found that he was misappropriating the proceeds of the estate, alienating parts of it, and living in an immoral manner, and Mr. H. Forbes, the Collector of Tanjore, attached the Muttum in 1856. At that time it was believed that the endowment was of a charitable nature, but when the proprietor filed a Suit for its recovery, it was held to be proved in the Tanjore Court that it was an endowment for religious purposes only.

3. The Judge of Tanjore held that the resumption of the endowment in 1856 under Regulation VII. of 1817 was right and proper. The plaintiff then appealed to the High Court.

4. The High Court hold that under Act XX. of 1863, which came into force on the 10th March 1863, Government were bound to give the Muttum back to the delinquent proprietor "as soon as possible," and have taken the 1st January 1864 as the precise date by which this should have been done. They have consequently decreed that the Muttum must be handed back to the Ghosayi with mesne profits

from the 1st January 1864, but without costs. This sum will be about Rupees 12,447.

5. The Government Pleader was disposed to doubt this construction of the law, and desired to confer with the Board as to the desirability of appealing against it to the Privy Council.

6. The conference has now taken place, and the Government Pleader and the Board concur in thinking that there are no sufficient grounds for an appeal.

7. Act XX. of 1863 was designed to divest Government of *all* connection with religious endowments. If the nomination of the Trustees, Manager, or Superintendent of any such endowment was vested in Government, or if it was subject to their confirmation, the law required them to hand over the property to Committees. If the nomination was not vested in them, and the property was under the management of any Trustee, etc., the law required them to hand over the property to the Trustee for the time being.

8. The law implies that this division of religious endowments was intended to be exhaustive, but in order that this may be the case, the word "management" must be understood to mean something different from the *personal* management of the property which the law supposes to be in the hands of the Board of Revenue and its agents.

9. In this case the Ghosayi, though the personal management of the property had been taken from him, continued to be "*the Trustee for the time being,*" and Government had never formally deprived him of that title, or attempted to appoint another Trustee in his place.

10. All that can be said is that the case was not contemplated by the law.

11. The Collector will be directed to report on the amount of the mesne profits. It must, of course, be paid from the Endowment Fund.

No. 47. Order thereon, 7th September 1870, No. 1,389.

Miscellaneous.

The Government do not consider that there are sufficient grounds for an appeal to the Privy Council. The refund due to the plaintiff should be made from the Endowment Fund, if the mesne profits have been paid into this Fund, if not, from the Public Treasury.

(True Extract.)

(Signed) H. E. STOKES,
Under-Secretary to Government.

To the Board of Revenue.
,, the Accountant-General.

Exd. F. R. Bantleman.

Exhibited in Suit No. 1 of 1870
Filed on 15th October 1870

7a

THE BOARD OF REVENUE.

&c., &c., &c.

Dated September, 7th.

Read "

"

G. O., 7th September 1870, No. 1,630.

CERTIFIED
TRUE COPY.

Exhibited in Madras Matters.—Proceedings Board of Revenue, intimating that there are not sufficient grounds for appealing to the Privy Council, with orders thereon.

6

No. 5,426.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 26th July 1869.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, to the Acting Secretary to the Board of Revenue, dated Madras, 23rd July 1869, No. 320:—

WITH reference to the Board's Proceedings noted in the margin, I have the honour to forward, for the information of the Board, copy, just obtained from the High Court, of the printed record in Regular Appeal No. 59 of 1869 relating to the Nadiem Muttum in Tanjore District.

Dated 10th July 1869, No. 4,961.

2. The appeal has now been set down for hearing on the 2nd August. I have not yet received an answer from the Collector to my application for copies of such of the depositions and documents in the case as might be in his possession. Should I not hear from him in time, I shall apply for a postponement of the case.

3. It will be observed that the case set up by the plaintiff on appeal is shortly this—1*st*, Regulation VII. of 1817 has no application to the case, (I. and II.); 2*ndly*, if it did apply, it would not authorize the summary ejectment of the plaintiff from the lands in dispute, though he were guilty of misconduct, (VI.); 3*rdly*, he has not been guilty of misconduct. I do not see how the *first* point can be maintained. The plaintiff's own case is, that the lands in dispute were originally given to maintain certain religious ceremonies, (paragraphs 2 and 4 of plaint,) which seems to bring them clearly within the words of Section 2 of the Regulation. That Regulation is no doubt repealed as to religious endowments by Act XX. of 1863; but all acts done under it before its repeal are lawful, and the latter Act nowhere enjoins the restoration of endowments to managers who have been removed for misconduct. When once it is finally decided that this endowment is a religious one, it will be for the Board to take the proper steps under the Act to divest themselves of the management of it; but that has nothing to do with the present suit. As to the second point, a case reported in Volume III. of the Madras High Court Reports, paragraph 334, seems conclusive against the plaintiff. The question directly at issue in that case was the power of a Committee appointed under Act XX. of 1863; but the Court holding that their powers were the same as those given to the Board of Revenue by Regulation VII. of 1817, it became necessary to decide upon the effect of that Regulation, and it was decided that the authority to suspend or remove a manager for just cause was implied, though not given in express terms. The third point is a question entirely of evidence, as to which I can pronounce no opinion until I have read the depositions.

4. I have forwarded a copy of the grounds of appeal to the Collector.

ENCLOSURE No. 1.—Printed record in Regular Appeal No. 59 of 1869 relating to the Nadiem Muttum in Tanjore District.

THE Board concur with the Government Pleader in his view of the case.

(A true Copy and Extract.)

(Signed) J. GROSE,
Acting Secretary.

To the Government Pleader.
,, the Collector of Tanjore.

Exd. A. S. Rodgers.

Revenue Bd Proceedings 13 July 1869 No 4961

1869.

Board of Revenue,

MADRAS.

Rec'd 22 July

PROCEEDINGS, 26TH JULY 1869, No. 5,426.

Encl.

Received

JULY.

No. 5,426.

Regular Appeal,—No 59 of 1869, preferred to High Court from Decree of Tanjore Civil Court dismissing Suit filed in that Court by one Iuisagiri Gosayi for recovery of Nadiem Mattam and its endowments.—Concurrence with Government Pleader in his views regarding.

7

No. 387.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 19th January 1870.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated 16th December 1869, No. 390:—

Dated 10th July 1869, No. 4,961.
Do. 26th „ „ „ 5,426.

WITH reference to the Board's Proceedings noted in the margin, I have the honour to report that the appeal, therein referred to, (Regular Appeal No. 59 of 1869,) relating to the Nadiem Muttum in Tanjore district, came on for hearing yesterday before the Chief Justice and Mr. Justice Holloway, when I appeared, as instructed, on behalf of Government to oppose the appeal.

2. The learned Judges said that they would record their decision and the reasons for it in writing, but they stated the conclusion to which they had arrived to be that the plaintiff must succeed on the ground that, whether he was rightly or wrongly removed from the office of manager of the Muttum, Section 4 of Act XX. of 1863 made it incumbent upon the Board of Revenue to restore the lands and other property belonging to the institution, to him.

3. It appears to me, with the greatest deference to so high an authority, that the Court has entirely misunderstood the effect of the Act. The point was not insisted upon by the appellant's vakeel, and therefore I was not perhaps as well prepared to meet so novel a view, as I should otherwise have been, but I maintained, and I still think I was right, that Section 4 does not and cannot apply to the present case, that it falls under Section 3, and that under that Section and Section 12 the proper course for the Revenue authorities to pursue was to hand over the property of the Muttum to a Committee duly appointed under Sections 7 to 11, which course would be pursued now that it has been decided that the institution in question is a purely religious one.

4. The wording of the Act however is very obscure, and of course I feel considerable diffidence in my own opinion upon the question, seeing that it is opposed to that of the learned Judges abovenamed. I propose therefore that, as soon as I can obtain a copy of the written Judgment of the High Court, the Board should favour me with an interview to discuss the whole question and confer upon the desirability of taking further proceedings by way of application for review of Judgment or appeal to the Privy Council. The case is a very important one, not merely considered by itself, but as likely to give rise to many other suits, if the construction put by the High Court upon the Act is ultimately established.

THE Board will fix a day to confer with the Government Pleader on this subject, when the Judgment of the High Court has been submitted to them.

(A true Copy and Extract.)

(Signed) J. GROSE,
Sub-Secretary.

To the Government Pleader.
E., the Collector of Tanjore.

Exd. T. Cartledge.

Encl. to R.D. No. 2220
R.D. 7/13 July 1870
No. 4846.

1870.

Board of Revenue,

MADRAS.

PROCEEDINGS, 19TH JANUARY 1870, No. 387.

Received Rev. / 2220/70 Encl.

From - Sept. 70 & 4 b

JANUARY.

No. 387.

Regular Appeal Suit,—No. 59 of 1869, filed in High Court against decree of Tanjore Civil Court in Suit, No. 10 of 1867, relating to Nandiam Muttum and its endowments,—Government Pleader informed that Board will fix a day to confer with him upon desirability of applying for a review of Judgment in, or of preferring a Special Appeal to Privy Council, when Court's written Judgment has been submitted to them.

[illegible]

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Umbala

C. 10 Aug 70. 11.36

R.D.

Pro: of the Madras Govt.
Under date the Septr 1870.

Read the following
Pro: of the Bd of Rev:

(A.C. 15th July /70
No. 4848)

The Govt do not consider that there are sufficient grounds for an appeal to the Privy Council. The refund due to the Plaintiff should be made from the Endowment fund, if the mesne profits have been paid into the fund, if not, from the Public Treasury.

2. The decision of the High Court establishes

establishes an important principle which should be carefully kept in view. It is now shown that Regulation VII of 1817 has, so far as religious establishments are concerned, been repealed by Act XX of 1863, and that the Revenue authorities have no longer any control over such institutions. The Board should therefore communicate the decision to all Collectors.

Rev: Dept.

No 1389

Proceedings of the Madras Government
Under date the 7th Sept: 1870.

Read the following
Rep: of the Board of Rev:
(M.R. 13th July 1870 No 418)

The Govt do not consider that there are sufficient grounds for an appeal to the Privy Council. The refund due to the Plaintiff should be made from the Endowment fund, if the mesne profits have been paid into this fund, if not from the Public Treasury.

14 Folios B of 6 Rev Dept No 14
6 — A Sheets Genl V

4 Oct