M.R. O. 1—82,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 15-75 Press ~~Mis.~~

153-54
Dated 15—10— 1870

Not to be folded or roughly handled

No. 153. Read the following letter from the Government Solicitor, Madras, to the Acting Secretary to Government, Revenue Department, Ootacamund, dated 6th September 1870, No. 488 :—

O. S. No. 69 *of* 1866.
Thacharakavil Manavikarnavur, Tirumalpad of Nellambur,
versus
Mc. C. Webster, Esq., and another.
and
O. S. No. 10 *of* 1868.
Thacharakavil Manavikarnavur, Tirumalpad of Nellambur.
versus
A. Macgregor, Esq., and others.

At the request of the Advocate-General, I have the honour to forward herewith, for the information of Government, a copy of his report on the Suits noted in the margin, together with a copy of the judgments delivered in those Suits by Mr. C. Culling Carr, the Acting Civil and Session Judge of Calicut.

2. The copy judgments abovementioned were made, at my request, from the originals by Mr Herbert Richardson, late Deputy-Collector of Wynaad.

3. As the conduct of Mofussil Suits in which the interests of Government are concerned forms no portion of the duties of my appointment as Government Solicitor, I beg most respectfully to bring the following facts to your notice, with a request that you will be good enough to submit them to Government, and trust that they will give them their favourable consideration.

4. The usual course in Mofussil Suits in which Government are interested, and where the services of the law officers of Government are required, is, for the Board of Revenue and the Collector of the district in which the Suit is brought, to consult the Government Pleader; but as in the Suit noted in the margin, Government were desirous of obtaining the services of the Advocate-General, they, by their Order, dated 21st September 1869, No. 2,625, Revenue Department, authorized the Board of Revenue to do so, and for the purpose of enabling the Advocate-General to appear for Government, I was directed by the Board of Revenue to instruct him on their behalf. In consequence of the above Order, it devolved upon me to carry on all correspondence connected with the Suit, to instruct the Advocate-General in all proceedings relating thereto, and I had also to prepare the Brief for the hearing; and as both the Advocate-General and Mr. Mayne were of opinion that it was desirable for the interests of Government that I should be present at the final hearing of the Suit, I accompanied the Advocate-General to Calicut, and was present throughout the proceedings, and afforded the Advocate-General and Mr. Mayne such assistance as they required.

O. S. No. 10 *of* 1868.
Thacharakavil Manavikarnavur, the Tirumalpad of Nellambur,
versus
A. Macgregor, Esq., and another.

5. The above Suit, being a very heavy and important one, occupied a great deal of my time and entailed upon me a considerable amount of additional work, which would not have fallen to me had not the Advocate-General appeared throughout the Suit; and in addition to this, I was obliged to be absent from Madras for six days on the occasion of the final hearing; and I would therefore most respectfully submit that, like the Advocate-General, I am entitled to a fee for the care, labour, and time, devoted by me to the above Suit. The amount of such fee, however, should Government deem me entitled to one, I leave entirely to them.

ENCLOSURE No. 1.

From the Advocate-General, Madras, to the Government Solicitor, dated 26th August 1870.

I SHALL thank you to transmit this report on the Nellambur Rajah's case to the Chief Secretary to Government at your earliest convenience, together with a copy of the judgments of the Civil Court in that Suit and No. 69 of 1866 in the Principal Sadr Amin's Court.

2. The judgment of the Civil Court in the more important Suit No. 10 of 1868 in the Civil Court of Calicut is so full, lucid, and conclusive, that I have but very few remarks to make upon it.

3. There were only two issues practically before the Court, first, the plaintiff's title, second, the bar by limitation, arising on want of possession for twelve years last past.

4. On both points the plaintiff's case most completely broke down; should he appeal, it is quite certain that he must be defeated; and I gather that parties in Malabar, who are anxiously watching the result of this Suit, with the hope of bringing forward similar claims on their own behalf, have been thoroughly disconcerted.

5. I deemed it expedient, in a case so important to Government, to suggest to the Government Solicitor the propriety of his being personally present at the hearing, and I beg to acknowledge the services which Mr. Prichard rendered. I should not be acting rightly, if I neglected to bring to the favourable notice of the Government the highly satisfactory manner in which Mr. Herbert Richardson, specially detailed to attend the Commissioner, and get up the evidence, performed his duties. Nothing was left undone; the case was thus presented in a complete form. This was a matter of more consequence, as I cannot but feel that the plaintiff's case was capable of being much more strongly supported than it was, had he secured the services of an able Barrister instead of relying on the Native Vakils of the Court. I do not say that the Rajah would ever have been able to establish himself on the plateau, but had he brought forward his many unquestioned acts of ownership on the slopes, his leases to Messrs. Ouchterlony, Godfrey, and others, I think it would have been a very up-hill task on the part of the Counsel for Government to have prevented the Rajah forcing the line of boundary which the Commissioner's report and Mr. Richardson's map demarcated for him at the foot of the Hills.

6. The Civil Judge is, I think, not quite accurate in the way in which he introduces the issue as to limitation. From the judgment it would look as though the Counsel for Government had overlooked this issue, and that it had been introduced *sponte sua* by the Court. I am induced to draw attention to this point, because unexplained or unnoticed it might lead to the inference that a very important line of defence had been lost sight of by the Government Counsel. The written statement, however, explicitly denies that the plaintiff ever had possession of the disputed land. This, of course, necessarily raised the question of limitation, as twelve years' hostile possession by Government, next preceding the date of Suit, would raise a complete statutory bar.

7. At the settlement of issues the only issue framed on this point was the fourth, which manifestly was perfectly immaterial. On the issues being submitted to Counsel in Madras, this was immediately seen, and the Government Pleader at Calicut instructed to bring it to the notice of the Court. The matter was argued, and the issue as to limitation framed accordingly.

8. With respect to the Court's observations on the admissibility of the bamboo Deed F., I would remark that I still feel strongly of opinion that, as a matter of law, this document ought not to have been admitted. My objection was not exactly as the Court puts it that no execution is discernible *now*, but that the document never had been executed, and that though thirty years would dispense with the necessity of proving that signatures were genuine, they would not make a document, which never had been executed, of any validity. The only ground out of those taken by the Court, which has a semblance of reason in support of the admissibility of the bamboo, is that of the servants of Government having very many years recognized it *as a deed*, though I am inclined to think, from the old transaction taken at that date, that this was a mere loose expression, as the translation, even at that time, did not purport to show that any one individual had signed or put his mark to it.

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15th October 1870.

9. But it is of no use to pursue these observations, as the Court, though deciding in favour of the admissibility of the document, has declared that it is utterly ineffective to convey any title to the plaintiff. Indeed, it is rather a matter of congratulation that the document, now that it has been declared of no effect, was admitted; because the plaintiff might otherwise have said or thought that he had lost his case upon a technicality, whereas he cannot now complain that he has not been heard upon all the merits he could produce. The Court translation of F. is still more in favour of the Government's contention than that with which I was furnished as part of my instruction. It shows that the Todas do not even profess to give any title to land. They simply contract to renew an old offer, viz., of fanams and paddy according to a neglected custom. The sole remaining force of this instrument is the admission in its recital that the Todas were the jenme property of the Varnavar. This, I think, shows one or two things; either that the instrument is a forgery, no such right as that of jenme being known on the plateau, or that the instrument was executed by Todas who though "west" of the Pykara river which assumes various names during its course, were living, as I am informed some do, not on the plateau, but far down the Hill. The "Todas' huts" is such a locality very well known at the present day.

10. The only other observation that occurs to me is as to the observations of the Court in paragraph 22 of the judgment in which it is said that the decree, but for the unsatisfactory nature of the plaintiff's oral testimony, would have carried costs on the ground that he was "advancing, what he believed, a valid claim."

11. I respectfully conceive that this is not a sound principle with respect to costs; many a plaintiff, indeed, the great majority have a *bona fide* belief in the validity of their claim, but without just cause they drag a defendant into Court, and put him to the expense of defending himself; it is a sound general principle that costs follow the event.

12. With respect to O. S. No. 69 of 1866 on the Principal Sadr Amin's file, it has followed the event of the chief Suit. As soon as I ascertained that the whole of the land, sued for in O. S. No. 69, was comprised within the boundaries set out in O. S. No. 10 of 1868, I consented that the evidence taken in the latter Suit should be taken to be the evidence also on the former. The plaintiff's Vakil consenting to this, the earlier Suit has necessarily been dismissed with the later.

No. 154. ORDER THEREON, 15th October 1870, No. 1,575.

Miscellaneous.

THE Right Honourable the Governor in Council resolves to pass a fee of Rupees 2,000 to the Government Solicitor for his services in connection with the Nellambur Suit.

(True Extract.)

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

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

Exd. F. R. Bantleman.

Revenue Department.

No. 2712

From the Government Solicitor

Dated 6th September 1870. No. 4288

For Orders.

Under the circumstances stated by the Collector in his letter of the 2nd instant, I do not consider it advisable to allow the Government Solicitor any fee in addition to the amount already sanctioned.

J. D. B.

Secretary to Govt.

Pro. Superintendent

No. 2 Office

M. A.

Govt. of {1870} Madras.

REVENUE.

To

THE GOVERNMENT SOLICITOR.

&c., &c., &c.

Dated October, 15th

Read. Encl.

G. O., 15th October 1870, *No.* 1,575.

OCTOBER.
Nos. 153-154.

Nellambûr Suit.—Fee of Rupees 2,000 sanctioned to the Government Solicitor for his services in connection with it.