

*Proceedings of the Madras Government, Revenue Department,
6th July 1871.*

No. 50. Read the following Proceedings of the Board of Revenue, dated 22nd June 1871, No. 2,498:—

Res. Board's Proceedings dated 22nd May 1871, No. 2,112.
to the Actin.
Madras, 7th June 1871.

No. 99.

I HAVE the honour to acknowledge the receipt of the Board's Proceedings noted in the margin, requesting my opinion as to the course to be pursued to obtain possession on account of Government of the estate of one Ambabayi Ammal deceased.

2. Assuming that the estate has escheated to Government, possession may be obtained under Act XIX. of 1841. This appears to have been the course adopted in the case of the Vissanapetta estate claimed as an escheat by Government in 1848. Application must be made to the Civil Court by petition under the Act, and if the Court, after proper inquiry, is satisfied that the present possessor has no legal title, and that the Government is entitled to the estate, and is likely to be materially prejudiced if left to the ordinary remedy of a regular suit, possession will be delivered to Government, and the party at present in possession left to assert any claim he may have by regular suit. The application must be made within six months from the death of the late holder of the estate, and must be supported by satisfactory evidence of the facts upon which the title by escheat depends.

3. Although it may be as well to try to obtain possession by the above summary method, I think it very probable that the attempt will not succeed. The Court may hold that Soobboo Pandithar is not in possession without lawful title. It is true the Civil Court appears to have rejected his claim to a certificate of heirship on the ground that he is not in the line of heirs, and that there is no Will; by which, I presume, is meant no written Will, for he distinctly sets up a nuncupative Will, which has been decided to be sufficient to pass all property of a Hindoo, movable or immovable (II., Madras High Court Report, page 37). Ambabayi Ammal had doubtless no power to make such a Will as regards the property which came to her from her husband; and the Government taking his estate by escheat in default of heirs, has a right to dispute the Will as well as other unauthorized alienations (Collector of Masulipatam v. Cavalry Vencata Narrainappa; VIII., Moore's Indian Appeal, 529); but it may be a question whether possession under an alleged Will of property, admittedly last in the possession of the present possessor's sister or of himself by her permission, should be disturbed until the right of Government is established by a regular suit. If the Civil Court does give possession under Act XIX. of 1841, there is no appeal.

4. Before any steps are taken either under Act XIX. of 1841, or by regular suit, I think the estate should be formally declared by order of Government to have escheated to Government for want of heirs, and the order should be communicated to Soobboo Pandithar with a formal demand for possession on behalf of Government.

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5. I return all the original enclosures forwarded with the above Proceedings.

Summary of
on VII. of 1841

2. In his letter dated Tanjore reported that one Ambabayi Ammal, a widow and Merassidar of Kilayur and other villages, died on the 10th February last without any legal heir, leaving considerable landed property, the value of which is not mentioned.

3. The estate which she inherited about forty years ago from her husband comprised 19 houses and about 178 Velies of land, namely, 166 Velies of assessed land and 11 Velies of Inam. At present the extent registered in her name is only Velies 43, assessed at Rs. 1,170. The rest is alleged to have been alienated during her life-time. A considerable portion has been given to her own relatives, some to other parties, and some for religious and charitable purposes. Of the 19 houses 15 were given to Brahmins, and the rest were assigned for religious and charitable purposes.

4. During her life-time her brother, Soobboo Pandithar, was in possession of the estate as her agent, and since her death he still continues to hold possession. He claims the estate as his sister's heir and under a nuncupative Will of hers. He applied to the Civil Court for a certificate of heirship under Act XXVII. of 1860, to enable him to collect the debts due to the estate. This application was rejected on the grounds that, according to his own showing, he was not in the line of heirs, and that there was no Will.

5. The Collector states that there are some distant "Dayadis" or husband's cousins, but observes that their claim will have to be proved "in due course of law."

6. As Soobboo Pandithar is in possession the Board have consulted the Government Pleader as to the course to be pursued to obtain possession on behalf of Government if the land is an escheat. The letter above recorded is his reply.

He says that, assuming the estate to be an escheat, an application for possession might be made to the Court under Act XIX. of 1841 on the grounds that the present possessor has no legal title; that the Government are entitled to the estate, and are likely to be materially prejudiced if left to the ordinary remedy of a regular suit. He apprehends, however, that such an application will very probably not be successful, as the Court may hold that Soobboo Pandithar is not in possession without lawful title. Having regard to the alleged Will, he seems to be of opinion that Government may be required to establish their claim by a regular suit.

7. Previous to adopting either of the courses suggested, he considers that the estate should be formally declared, by order of Government, to have escheated to Government in default of heirs, and that the order should be communicated to Soobboo Pandithar, with a formal demand for possession on behalf of Government. The law does not require Government to declare the land an escheat, but they may authorize the Collector to claim it as such, and to get possession of it on their behalf.

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8. The Board think it will be better to wait for the Collector's report as to whether there are any heirs, however distant, before taking this course. At all events he can ascertain whether the "Dayadis" are any.

... absolutely no title to it, and the precariousness of his tenure will probably lead him to injure the property, and as there have been numerous alienations by the deceased which will be recoverable by Government if the land is an escheat, provided that inquiries are made in time, the Board resolve to submit these Proceedings for the orders of Government.

10. The time for making an application to the Court for possession under Act XIX. of 1841 will expire on the 9th July.

No. 51. ORDER THEREON, 6th July 1871, No. 1,163.

Miscellaneous.

It is observed that the Government Pleader is of opinion that an attempt to get possession under Act XIX. of

1841 is not likely to succeed. It need not therefore be made.

2. The Collector has been directed by the Board to ascertain if there are any kinsmen, however remote, of the deceased woman's late husband, and if they intend to prosecute their claims. The result of these inquiries will be reported in due course. Meanwhile, the Collector should serve Notice at once on deceased's brother, claiming the land as an escheat, as advised by the Government Pleader. Should he withhold possession a regular suit must be brought, unless it appears in the interim that *Dayadis* of the deceased's husband exist, and are coming forward.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Acting Secretary to Government.

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

Exd. F. R. Bantleman.

2^d 11/63
 6th July 1871
 Pro. Bd. Rev. d/22nd June 71
 No 2498.

It is ordered that the Govt. Pleader
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 in due course. D. B. J.
 Meanwhile the Collector
 shall serve notice at
 27/6/71.

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 claiming the land as an ascendant,
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27/6/71

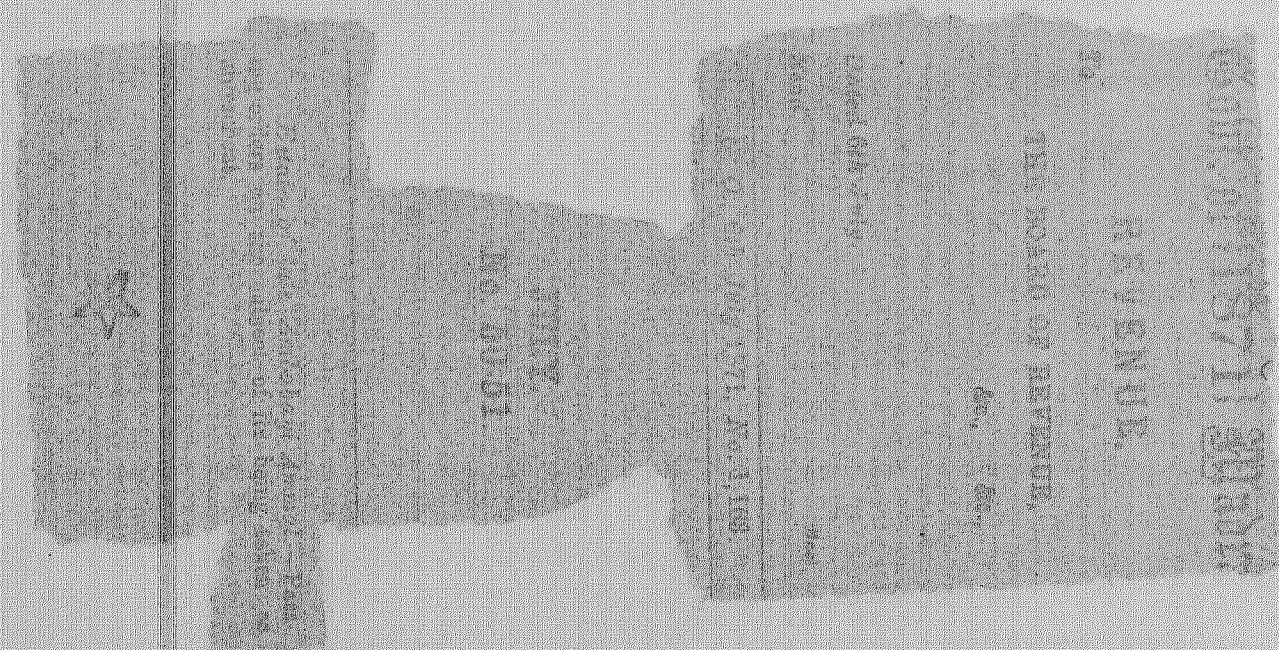
1. To the Govt. Pleader
 2. To the Collector
 3. To the Govt. Pleader

I would an order
 to file to claim
 the land as an
 ascendant at once.
 The Govt. Pleader can
 also say to each
 of any real kin
 can be found.

D. B. J.

D. B. J.

11/6/71



19-2-51

25 June 1929 - K29° 40' E. 414