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*Proceedings of the Madras Government, Revenue Department,
20th May 1871.*

No. 261. Read the following Proceedings of the Board of Revenue, dated 25th April 1871, No. 1,723 :—

Read again Board's Proceedings, dated 25th April 1870, No. 2,750.

" " " " 21st October " " 6,249.

" " " " 22nd do. " " 6,262.

Read also—

Petition No. 2,670 of 1870 by J. D. Mayne, Esq., on behalf of Sheshadri Iyengar.
Petitions Nos. 3,148, 3,241, 3,322, 3,705, 3,834, and Government Nos. 2,071 and 2,108 of 1870, and Board's Nos. 51, 581, 850, 852, and 853 of 1871.

Read also the following letters :—

From the Collector of Madura, to the Acting Secretary to the Board of Revenue, dated Bodinaicknur, 8th November 1870, No. 321.

With reference to my letter to you noted in the margin, I have the honour to submit herewith, for the Board's information, copy of a letter addressed to the Head Assistant Collector by the Zemindar of Ramnad, objecting to the registry of the sub-division granted to the late Ponnusami Tever.

ENCLOSURE No. 1.

From V. MUTTURAMALINGA SETHUPATHY, Zemindar of Ramnad, to the Head Assistant Collector of Ramnad, dated 24th October 1870, No. 3.

In acknowledging the receipt of your letter, No. 254, of the 11th instant, enclosing a copy of the letter from the Collector, I have the honour to inform you that I have consented to register Polliampatty and Pandelgudy in the name of Ponnusami Tever simply to save myself from the difficulties arising from him, and to effect the fulfilment of certain stipulations which he had left unperformed under previous verbal agreements; and that Ponnusami Tever having now died without fulfilling the said stipulations, I humbly submit that I cannot now do so to his family.

2. Under these reasons, I don't like now that those divisions be registered in his name. The Yadast written by me to the address of the Collector to have them registered is by all means genuine.

From J. W. HANDLEY, Esq., Government Pleader, Madras, to the Acting Secretary to the Board of Revenue, dated 17th January 1871, No. 10.

With reference to the Board's Proceedings noted in the margin, I have the honour to submit the following opinion.

21st October 1870, No. 6,249.

22nd " " " 6,262.

2. My opinion is requested upon three questions relating to the proposal

to place the estate of the late Ponnusami Tever under the charge of the Court of Wards :—

First, how the apportionment of the peishcush on so much of the estate as forms portion of the Ramnad Zemindari can be compelled; the object being to bring the estate under the jurisdiction of the Court of Wards as paying revenue to Government within the meaning of Regulation V. of 1804; secondly, whether the estate does not fall within the scope of the Regulation without such apportionment;

thirdly, how possession of the estate is to be obtained, should it be determined to place it under the Court of Wards. I think the second question may more conveniently be answered first.

3. In my opinion the estate in question, so far as it consists of portions of the Ramnad or any other Zemindari, is subject to the jurisdiction of the Court of Wards, whether it be separately registered in the Collector's Office and the peishcush thereon fixed or not. There is a curious difference in the wording of Sections 2 and 3 of Regulation V. of 1804, which define the jurisdiction of the Court. The former declares that the jurisdiction shall not extend to the "property of persons not paying rent or revenue directly to Government," while the latter gives the Court power to interfere when "property charged with direct payment of rent or revenue to Government" devolves on an incapacitated person. The former Section might be interpreted so as to make the test of jurisdiction the payment of rent or revenue to Government direct by the person whose estate is to be administered; but I think this Section must be explained by the latter Section, and that the test of jurisdiction is meant to be the liability of the estate to payment of rent or revenue to Government—certainly a more reasonable and intelligible test than the other. Now, whichever is the correct construction of Regulation XXV. of 1802, that held by the majority of the Court in the case reported at page 5 of the 3rd Volume of the Madras High Court Reports, or that held by Mr. Holloway in the same case, it is quite clear, and is assumed by all the learned Judges in that case, the Regulation makes unregistered alienations by a Zemindar void as against Government. Until registration and apportionment of the revenue, the alienated portion of the Zemindari remains equally with the rest of the estate, the security for the revenue as such liable to attachment and sale for arrears, and therefore, in the fullest sense, "charged with the direct payment of revenue to Government" in the words of Regulation V. of 1804. In fact, as far as the liability to the payment of revenue to Government is concerned, the unregistered alienation has no effect whatever.

4. The answer to the first question becomes unimportant if my view of the second is correct, and registration and apportionment of revenue would not give the Court of Wards any more power over the estate than it had before. But if there were any object in the Government attempting to compel such registration and apportionment, I am of opinion that there are no means of doing so. As before observed, the interests of Government are in no way affected by the non-registration, consequently Government have no ground for interfering in the matter. The application for registration must be made by the Zemindar, who may or may not choose to take such a step, and thereby perfect a title which, according to the decision of the majority of the Judges in the case before quoted, is invalid. If the alienation was made by a former Zemindar, the present one may dispute it; and if it was made by himself, his successor may do the same as long as it is unregistered. Clearly, therefore, no suit would lie on behalf of Government to compel the Zemindar to do an act prejudicial to himself or his heir, and in the performance of which the Government have no interest, except the indirect object of bringing the estate under the Court of Wards. In short, the estate cannot be made into a separate Zemindari without the Zemindar's consent, and I see no means of compelling that consent, even if there were any object in doing so, which, in my view, there is not.

I am not sure also whether registration can be effected without the consent of the alienee or his representative, who, in this case, would be the very man whom it is sought to dispossess by means of such registration.

5. There is one objection to the interference of the Court of Wards in this case, raised in the petition presented by Mr. Mayne on behalf of Sheshadri Iyengar, upon which my opinion is not directly asked, but which, I think, requires consideration; namely, that the Regulation has no application at all to property legally vested by Will in an executor. The argument in the petition seems to be this. The Regulation does not apply when there is a person legally entitled to possession of the property. The appointment, by Will, of a guardian and manager, where the heirs are minors, is perfectly valid by Hindu law, and the person so appointed is, therefore, legally entitled to possession of the property, and, therefore, the Regulation does not apply, and the Court of Wards cannot interfere. This argument, if fully carried out, would exclude the jurisdiction of the Court of Wards, not only in the case of a guardian and manager appointed by Will, but in every case where there is a person who, by Hindu law, is entitled to be the guardian of a minor and manager of his property during his minority, which would limit the jurisdiction of the Court in a way quite inconsistent, in my opinion, with the plain meaning and intention of the Regulation. As I read it, the simple question is in each case, is the person *beneficially* interested in the property incapacitated from personally managing it? If so, the Regulation gives the Court of Wards control over the property, whether there is a person who, but for the Regulation, would be entitled to possession or not. The wording of the Preamble, as well as that of the Sections relating to the appointment of guardian, shows, I think, that the case of there being a legal manager and guardian existing, was directly contemplated, and that the object was to put a check upon the power of such persons, and to separate the offices of guardian and manager, the union of which was found to be often prejudicial to the interests of the beneficiaries. The cases quoted by Mr. Mayne do not, I think, support his argument. They only show that an executor or administrator of a Hindu is entitled to possession of his estate as against outsiders, but by no means that he is entitled to such possession as against the Court of Wards to whom the Regulation gives general control over property, which those beneficially interested in are incapacitated from managing. In my opinion, therefore, the fact of an executor having been duly appointed by Will to manage the estate in question during the minority of the sons does not oust the jurisdiction of the Court of Wards, which may, if it thinks fit, appoint another person to be manager.

6. A question connected with the one last discussed, but not raised by Mr. Mayne's petition, is, whether the property comprised in a Will comes within the meaning of the words "property which has devolved by inheritance" in the Regulation? Upon this question I have felt considerable doubt, but on the whole I am of opinion that, in the present case at any rate, it does. According to the decided cases in this Presidency, the Will of a Hindu is only effectual to the extent of his power of alienation *inter vivos*. In this case, so far as the immovable property of the testator, ancestral or self-acquired, is concerned, he could not have alienated it in his lifetime, so as to defeat the right of his sons to share,

without their consent; therefore neither could he do so by Will. And the Will does not attempt to do anything of the sort. It leaves the immovable property to devolve according to the ordinary course of law, and merely makes certain arrangements as to its management during the sons' minority, the time and method of division, and other details of a like nature. I think, therefore, that, notwithstanding the Will, in this case the property may be said to "devolve by inheritance" within the meaning of the Regulation.

7. Whether supposing, I am right in thinking that the Court of Wards has power to interfere, the present case is one for such interference is a question, of course, entirely for the Board and Government to decide; but I may remark that expediency and justice seem to require that the arrangements made by deceased proprietors for the management of their estates should not be set aside, unless there are strong reasons for thinking that the interests of those beneficially entitled to the property require it, and that the reasons given by the Collector are founded principally on inference and rumour. Possibly, the appointment of Sheshadri Iyengar as Manager, subject to the control of the Court of Wards, and of some other person as guardian of the minors, might meet the exigencies of the case. But of this the Board can judge better than I can.

8. With regard to the means to be adopted to obtain possession of the estate, should it be determined to place it under the Court of Wards, a suit would, no doubt, be necessary in case of the Manager duly appointed by the Court of Wards under Regulation V. of 1804, being obstructed in obtaining possession of the property by a person actually in possession. Practically, I suppose, by giving notice to the tenants to pay their rents to the Manager, possession of the greater part of the estate would be obtained, and the rest could be recovered by suit. In such a suit the Manager duly appointed by the Court of Wards would be the plaintiff, and the defendants those who obstructed his possession.

ENCLOSURE No. 1.—Petition.

THESE papers will be submitted for the orders of Government.

2. In his letter of the 16th March 1870, No. 85, recorded in the first of the papers quoted above, the Officiating Collector reported the death of Ponnusami Tever, and was requested to state his opinion as to the propriety of placing the estate under the Court of Wards.

3. It was stated that Ponnusami Tever had left a Will in which he had appointed one Sheshadri Iyengar (formerly his Agent) to be his sole executor, and the Board observed that the most important point for consideration was the character of this Sheshadri Iyengar.

4. In reply to these Proceedings the Collector (the Honourable D. Arbuthnott) Proceedings, No. 6,299, dated 21st October 1870. reported very unfavourably as to Sheshadri Iyengar's antecedents, and expressed a very strong opinion in favour of the estate being placed under the

management of the Court of Wards; but pointed out at the same time that Sheshadri Iyengar disputed the right of Government to place the estate under the management of the Court at all.

5. The Board referred this point for the opinion of the Government Pleader, and its reply is recorded at the head of these Proceedings.

6. On further consideration, and after some demi-official correspondence (copies forwarded in MSS.) with the Collector, the Board have resolved to recommend Government not to put the estate under their charge at present for reasons which are fully detailed below. It is unnecessary, therefore, to discuss Mr. Handley's letter at present. They would merely observe that they entirely agree with him in thinking that the estate may be taken charge of at any time; and that the fact of Sheshadri Iyengar's having been appointed executor is no bar whatever to the exercise of the powers of Government under Regulation V. of 1804.

7. In deciding to recommend Government not to take charge of the estate, the Board have been influenced partly by the considerations stated by Mr. Handley in paragraph 7 of his letter, and principally by the fact that it seems unnecessary and inexpedient to interfere with arrangements deliberately made by the deceased, so long as Sheshadri Iyengar conducts the affairs of the estate with the same ability he has shown in managing it hitherto.

8. If, at any time the Collector should receive trustworthy information that he is not consulting the interests of the minors, or if all the widows should apply for the protection of the Court, it will then be time to interfere.

9. From the Collector's last demi-official communication, it would appear that Sheshadri Iyengar has made satisfactory arrangements for the education of the minors. For the present, therefore, the Board would recommend that he be recognized as guardian also under Section 19, Clause 5 of Regulation V. of 1804.

No. 262.

ORDER THEREON, 20th May 1871, No. 886.

Miscellaneous.

THE question here is whether the estate of the late PONNUSAMI TEVER is to be placed under the Court of Wards.

2. It appears that some time ago the Ramnad Zemindar gave the deceased, who was his elder brother, the Polliamputty and Pandelgudy tracts of his Zemindari, yielding at present a rental of nearly Rs. 90,000, and applied to the Collector to register them, with the usual sub-assessment of the public demand in the grantee's name.

3. These transactions had not been completed, when the grantee suddenly dies, and the Zemindar recalls his authority to the Collector.

4. The Government Pleader (who has been consulted by the Board in the case) after pointing out that the estate cannot be made into a separate Zemindari

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without the Zemindar's consent, and that he (Mr. Handley) sees no means of compelling that consent, even were there any object in doing so, which there is not, the interests of Government being in no way affected one way or the other, goes on to observe that, as far as bringing the estate under the Court of Wards is concerned, its registration and assessment are not necessary preliminaries to that course. To deal with an estate under Regulation V. of 1804, the primary requisite is that it is one "chargeable with the direct payment of revenue to Government;" and inasmuch as these two alienated taluqs, so long as they continue unregistered and separately assessed, remain equally with the rest of the Ramnad Zemindari, the security for the payment of the Ramnad Peishcush, and as such liable to attachment and sale for arrears, they are, in the fullest sense, "charged with the direct payment of revenue to Government" in the words of the above-mentioned enactment.

5. The Governor in Council considers this argument to be altogether untenable. By parity of reasoning, the meanest ryot in the Zemindari may be said to pay revenue directly to Government. In short, where is the estate—a few of the recent Fee Simple Inams excepted—which may not be brought within the same category?

6. The Board, however, concur with Mr. Handley. There is some discussion whether one Sheshadri Iyengar, the testamentary manager and guardian, is fitted for the post, but ultimately the Board propose to recognize him in both capacities—a decision which is, however, precluded by the express terms of the Regulation:—

Section IX.—"Persons being guardians of minors *shall not in any case be* eligible to be appointed managers of the property of the said minors."

The Government have further to remark that, when for any estate a manager and guardian are nominated or approved by the Board, such parties can only conduct their duties under the numerous checks and direct scrutiny contemplated by the Regulation as the estate is then in Ward. The alternative is to leave the estate to itself.

7. The whole proposal, however, is, in the opinion of His Excellency in Council, based in erroneous assumption as to the effect (so far as concerns the present reference) of the transaction between the brothers. The Zemindar gave the deceased a portion of the estate, but it has not been registered or separately assessed. Consequently the transaction, so far as Government are concerned, is, according to Section 8, Regulation XXV. of 1802, "of no legal force or effect." The assessment on the Inams enjoyed by the deceased was paid through the Zemindar, as, of course, the portion of the peishcush on the gift above referred to must also have been. There was, therefore, no property in the possession of the deceased "paying directly rent or revenue to Government;" and Regulation V. of 1804 does not apply. The Zemindar refuses now to complete his gift by registration and assessment; whether he can be compelled to do so now, seeing that Section 8, Regulation XXV. of 1802, seems to make assessment a preliminary step, is a question between the Zemindar and the heirs of the deceased, but until the transaction is legally complete, Government cannot recognize it.

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8. The result is that the Board must retire from the position they have taken in the matter.

(True Extract.)

(Signed)

D. F. CARMICHAEL,

Acting Secretary to Government.

For Orders

20 May 1911

W 886.

Pat's Prop. No 1728

d/25th April 1911.

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3. These transactions had not been completed, when the grantee suddenly dies, & the Zamindar recalls his authority to the Collector.

4. The Hon^{ble} Pleader, who has been consulted by the Bd in the case, after pointing out that the estate cannot be made into a separate Zamindari without the Z's consent, and that he (Mr Handley) sees no means of compelling that consent, even

23-3-11
26-5-11
29-6-11

2/2037/21

Dated May 20th.

Recd.

Recd.

G. O. 20th May 1911, No. 933

TAZ.

No. 201-262.

Notice of late Ponnusami Tever in Madam District. - Recommendation of the Board of Revenue not to place it under the charge of the Court of Wards, but to recognize Sheshaiah Iyer as manager of the property, as guardian of the minor's m^t, with orders thereon.

were there any object in doing
 do, which there is not, the interests
 of Govt being in no way affected,
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7. The Bd again appear to suppose - another misapprehension on their part - that here is a third course under the Reg. Always under the sanction of Govt, the Bd must either take charge, or decline to take charge. But here in one breath they advise Govt. not to take charge of the 'Estate' and to proceed under Sect 19 of the Reg. (which they specifically quote) to confirm the Guardian nominated in the deceased man's will.

8. As to 'taking charge' there are just two ways of doing it (1) under close supervision by the Bd, as he manages one of his own Parganah taluqs, which is the common practice. (2) leaving it to the Manager & Guardian under the checks & scrutiny provided by the Reg. But the Bd, after appointing these two officials & so taking charge of the Estate, appear to disperse into these checks, merely charging the Bd to keep a general 'lookout'. (Parg. 8). The whole of the proposal however is based in error. The dead's Estn strongly objects to Govt. interference. He is well advised - & no time should be lost, his submission, in directing the Bd to recede from their position. 21/5/71

The Zamindar gave the deceased a portion of the estate; but it has not been registered or formally assessed - consequently the transaction, so far as Govt. is concerned, is, ~~so far~~ according to Sect 8 Reg. of 1802, 'of no legal force or effect'. The assessments on the means enjoyed by the deceased was ~~so~~ paid through the Zamindar as if under the portion of the Parganah on the gift above referred, ^{must} have been. There is, therefore, no ^{substantive} estate in the possession of the deceased "paying directly rent a revenue of Rs 1000" and Rs 500 of 1804 does not apply. The Zamindar (the Zamindar) is however bound to complete his gift, by registration and assessment - & latter he can be compelled to do so under, seeing that Sect 8 Reg. of 1802

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L. D. L.

A. A.

I agree with the
view expressed by
W. H. M. N. P.

8. The results that the Vot. must
refer from the position they
have taken in the matter -

C. J.

14. Followed by the 14. Encl.
Desp. 22