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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.	140	Press
B.P. No.		Mis.

Dated 27. 2. 1873 196 .

Not to be folded or roughly handled

COURT FEES
ONE RUPEE
MADRAS

STAMP OFFICE
19 DECEMBER 71
MADRAS

10 DEC 1872

High Court House
Madras 14 February 1873

From
Messrs Prichard and Barclay
Solicitors, Madras.

To the
Chief Secretary to the Council
of Fort Saint George.

Sir,

We have the honor to apply to you for assistance under the following circumstances:-

Dated 18th Nov 1872 from Rajah Venkata Rumiah Row Bahadur to Mr R. Molloy

In the month of November last we prepared a Mortgage of the Zamindari of Karvati Nagaram for the purpose of enabling the Zamindar to pay off incumbering charges on the Zamindari and his personal liabilities, and to enable him by payment of instalments at an easy rate of interest to arrange for the ultimate clearance of the Zamindari and settlement of his personal affairs. Under the Summud of this Zamindari and the Madras Regulation No XXV of 1802, which forms the basis of the Zamindari Summuds, it appears "that proprietors of land shall be at free liberty to make transfer xxx by sale gift or otherwise their proprietary right in the whole or in any part of their Zamindaries such transfer of land shall be valid, and shall be respected by the Courts of Judicature, and by the officers of Government xxx But unless such sale gift or transfer shall have been regularly registered at the office of the Collector xxx such sale gift or transfer shall be of no legal force or effect xxx"

It has been held by the Sudr Court that this Regulation is of no force except as between the Government and the Zamindar and therefore does not affect the title of third persons who may have taken transfers of the Zamindari lands and consequently that a failure to register transfer under this section does not make the transfer of no legal force or effect but merely leaves the Zamindar still liable to Government for the Peishcush of the land transferred. In the case of the present mortgage the Deed was required to be used in England and as on the face of the Document, by a recital of the Summud, it appears that no transfer of the proprietary right of the Zamindar shall be of any legal force or effect unless registered in the Collectors' office, we were of opinion that the absence of Registration would put in question the validity of the Document in a Country where Indian matters are so little understood. We accordingly took steps to have the Document registered and upon a reference to the Board of Revenue by the Collector of North Arcot the registration was ruled to be proper and ordered to be proceeded with.—

We

We understand that this decision was subsequently overruled by Government, and that a Government order was passed to the effect that the Document ought not to be registered, as it did not pass the whole proprietary right of the Zamindar, and the Board of Revenue accordingly countermanded the Registration. As there was nothing on the face of the Regulation No. XXV or the Summud to shew that Registration was unnecessary except in cases of the Transfer of the whole proprietary right in any part of the Zamindari, this decision we presume to have been founded upon the spirit of the Regulation, and we are therefore of opinion that our Title, from an English point of view, will still be affected by the absence of Registration. We have accordingly applied to the Board of Revenue for a Copy of their minute on the Government order above referred to, for the purpose of shewing that registration of the Transfer of the proprietary right in the Zamindari under the Madras Regulation was in the present instance unnecessary and impracticable. Our application for a Copy has however been refused.

In the absence of the decision of Government on the point we think it may well be contended that as the Regulation created the power of alienation, which does not spring out of ownership as a matter of right but is an appendage to it specially conferred, and it is under this power only that the Zamindar can grant a valid Mortgage, so that any provision relating to or qualifying the power of alienation must affect every alienation made under such power, whether of the whole or only a part of the proprietary right, irrespectively

Upon these grounds we respectfully submit that the Government order in question is of considerable importance to our client the Mortgagee of the Zamindari and have therefore to request that you will be pleased to lay over our application for a copy of such order before the Council, for such directions in the matter as they may think fit.

We have the honor to be,
Sir,
Your Most Obedient Servants,

Richard & Barclay

Avenue 1873 Department

No 434

From

Messrs Prichard & Barclay
Solicitors.

Dated 14 Feby. 1873
Recd. 15 " G-O No. 140.

The Govt declines to comply with this request -

25/2

27th Feby /73

Circ

No 140.

Requesting, for reasons stated, to be furnished with a copy of the Govt order, requiring the registration of the Mortgage deed of the Zemindari

I would not give a

I would simply decline

I do not see any objection to giving the deed - but as the Govt considers it may lead to future trouble I have refused this request.

Sent to H. E. the Govr & Hon'ble Mrs 20 Feb R 25th Feb

C. 19 Feb/73 R 19 Feb

I Dr Brief on Brickwood & Co 28 Feb