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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Rev. DEPARTMENT

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B.P. No.		Mis.
Dated	8 th November 1966	

Not to be folded or roughly handled

49
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Proceedings of the Madras Government, Revenue Department,
9th July 1873.

No. 69. Read the following Proceedings of the Board of Revenue, dated 5th June 1873, No. 943:—

Read the following letter from the Hon. D. ARBUTHNOTT, Officiating Collector of Tanjore, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Vallam, 6th May 1873, No. 172:—

WITH reference to the Board's Proceedings, dated 1st April 1873, No. 498, I have the honour to submit, for their consideration, whether in the event of Samyan's wife and the two creditors remaining to be paid, coming to a compromise, the former withdrawing the suit now instituted by her on behalf of her minor sons, the land held under attachment by the Revenue authorities may not be restored to her.

2. The land now in the hands of the Revenue authorities, after deducting the small portion sold for Rupees 400 for discharging the decree of the first claimant, is 7 V. 4 M. 98½ Gs., and the two-thirds of the whole, which Samyan's wife seeks to recover on behalf of her two minor sons, is 5 V. 2 M. 6 Gs. The remainder, therefore, which is all that is forfeited to Government by Samyan, is 2 V. 2 M. 92½ Gs., and this, if sold, would realize about Rupees 2,000, while the amount for which the two creditors whose claim remain to be paid, hold

decrees, (they have obtained decrees since the date of Mr. Cadell's letter* of the 1st July 1872) is Rupees 3,567.

3. My object in considering a compromise between the parties preferable to their being left to fight out their respective claims in the usual course of litigation, is firstly, that Government may not be involved in unnecessary litigation, since, having the land in their possession, they cannot avoid being made a party to every one of the suits severally instituted by these parties; and secondly, that the heirs and creditors of Samyan might share between themselves what there is, without those heavy expenses of prolonged litigation, which must necessarily considerably reduce the available assets.

4. The case of the creditors, as it stands, is rather hard; they sued and obtained, each a decree for the money for which they held a prior mortgage upon the landed property attached under the criminal law, and when the Court was proceeding to execute the decrees, it was pointed out on behalf of the Collector, that the decrees could not operate as against the property under his charge, inasmuch as he had not been a party to the suits. The Court accordingly withdrew, and told the creditors to bring fresh suits including the Collector as a defendant. They have thus to go over the same ground again with all the incidental expenses of a regular suit, and all this with assets which, after all, would only partially liquidate their claims.

5. The three including the one already adjusted, are all the claims yet brought forward, and these were brought forward at the very first. If, however, any more claims turn up, hereafter, (which, however, does not seem likely), the heirs of the absconding delinquent will alone be answerable, and after having made

*Proceedings of the Madras Government, Revenue Department,
9th July 1873.*

over the land to them, the Government need not be involved in any future litigation.

SUBMITTED for the orders Government.

2. One Samyan alias Lakshminarasimhayan, who was accused of forgery having absconded to evade a warrant his landed property was, in December 1870, attached through the Collector by order of the Sub-Magistrate of Madhwarjunam under Section 184 of the Criminal Procedure Code. As he failed to appear within the time specified in the proclamation issued under Section 183, the property was declared to be at the disposal of Government. Samyan having subsequently surrendered himself, he was tried and convicted of forgery; but on appeal the conviction was quashed by the High Court. He then applied to the Session Court for the restoration of his property, but his application was rejected. The land is still under attachment.

3. In August 1871, one Siyaswami Rayer brought a suit for Rupees 973, principal and interest on a bond executed by Samyan in 1869, by which a portion of his land was hypothecated as security for the debt. As the land was in the Collector's possession, he was made a defendant in the case. The decree was in Plaintiff's favour. As the mesne profits that accrued after attachment were insufficient to satisfy this claim, the balance was realized by the sale of a small portion of the land.

4. In December 1872, Samyan's wife filed a suit on behalf of her two minor sons to recover two-thirds of the land attached, as their share of the property which is alleged to be ancestral. The Collector having ascertained that the property is ancestral, and that the sons are minors, it was not considered expedient to dispute the claim. The Collector's answer was to the effect that the land was attached, and declared to be at the disposal of Government, under the provisions of the Criminal Procedure Code, and that he had no objection to the claim being adjudicated upon according to law. No decision has yet been passed.

5. It appears from the letter above recorded that two other creditors, to whom portions of the land had been mortgaged prior to its attachment, have obtained decrees for Rupees 3,567. On the Court proceeding to execute these decrees, it was objected, on behalf of the Collector, that they could not operate against the land, as he was not a party to the suits. Execution was then stayed, and the decree-holders were advised to bring fresh suits against the Collector. After deducting the two-thirds claimed by Samyan's wife, what remains of the land under attachment is not likely to realize more than Rupees 2,000, a sum considerably less than that due to the two decree-holders. As their claims are no doubt valid, and as the claim of Samyan's wife cannot be disputed, the Collector, in order to avoid further litigation, suggests for consideration the advisability of restoring to Samyan's wife the land under attachment, in case she withdraws the suit and comes to terms with the two decree-holders. The Board approve of this proposal, and recommend that the Collector be authorized to act according to his suggestion.

*Proceedings of the Madras Government, Revenue Department,
9th July 1873.*

No. 70. ORDER THEREON, 9th July 1873, No. 706.

Miscellaneous.

It is to be regretted that the late Collector originally stayed the sale of the land; but as matters now are the

Government authorize the Board to instruct the Collector to make the proposed arrangement with Samiyar's wife.

2. Before doing so, he should, however, satisfy the Board that the suits brought by the alleged mortgagees were based on *bona fide* claims, and were decided on their merits. For all that now appears, their claims may have been purely fictitious, and the suits, instigated by Samiyar, have been allowed by him to go by default.

(True Extract.)

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

To the Board of Revenue.

Exd. F. R. Bantleman.

No. 2,133.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 17th October 1873.

Read the following letter from the Hon. D. ARBUTHNOTT, Collector of Tanjore, to H. E. STOKES, Esq., Acting Secretary to the Board of Revenue, dated Negapatam, 29th September 1873, No. 340:—

With reference to the Board's Proceedings, Miscellaneous No. 4,524, dated 18th July 1873, I have the honour to report that there is no reason to suppose that the claims of the two mortgagees, referred to in paragraph 2 of the Government Order, are otherwise than *bona fide*. In both these cases, the mortgage bonds bear dates anterior to the occurrence of the events which led to a warrant of arrest being issued against Samiyyan, and had been duly registered. Unless, therefore, the registering officer had been also in collusion, the documents must be taken to be genuine.

2. As to the question whether the suits were decided on their merits. From the judgments of Mr. Nelson, then Judge of the Combaconum Court of Small

* Suit No. 99 of 1871.

† „ „ 90 of „

Causes, I find that in one* case, viz., that of Saminathayyar, the decree is based on the defendant's confession of

judgment; and that in the other,† viz., that of Venganaranappayan in which the defendant allowed the case to go by default, Mr. Nelson gives judgment in the following terms:—

“ The instrument sued on has been duly registered, and endorsement of the Registrar shows that the defendant admitted the execution thereof. As I see no reason to doubt the genuineness of the instrument sued on, I give judgment for the plaintiff, etc.”

Inquiries instituted through the local revenue-officers have elicited nothing suspicious, and, on the whole, there seems to be no warrant for supposing that the suits, if contested, would have had a different result.

3. I enclose copies of the judgments in both cases for the Board's information.

ENCLOSURES Nos. 1 and 2.—Copies of Judgments in Suits Nos. 90 and 99 of 1871.

THERE seems to be no reasonable doubt that the mortgages were *bona fide*, and the Collector is authorized to proceed with the proposed arrangement as sanctioned in paragraph 1, G. O., dated 9th July 1873, No. 706, Revenue Department.

(A true Copy and Extract.)

H. E. Stokes

Acting Sub-Secretary.

To the Collector of Tanjore.

Copy to the Acting Secretary to Government, Revenue Department,
with copies of two enclosures.

Ed. F. R. Eastman

In the Court of Small Causes at Combaconum⁴²
(On the Principal Sudder Ameer side)
On Friday the Twenty sixth day of
April one thousand eight hundred
and seventy two.

Present James Henry Nelson Esq^r
Judge

In original suit No 90 of 1871.
Vengai Narayanappaier
being the Plaintiff
and
Lakshminarasimmaier
being the Defendant

This suit coming on this day for
hearing the Court delivered the following
Judgment. This is a suit for payment
of money due under the terms of an
instrument of hypothecation dated
the 6th October 1868.

2. On the day fixed for the hearing
of the suit, the Defendant did not
appear though proved to have been
duly served and the suit proceeded
in

7th July 1873 No 69-7

Recd: 1873 No 2415
No 3494

1873.

Board of Revenue,
MADRAS.

Procedence, 17th October 1873, No. 2,133.

Depd 30 Oct 1873

Recd 31 Nov

Facd 2

Received

OCTOBER.
No. 2,133.

Land belonging to Samiyan—of Tanjore
District, attached and declared to be at disposal
of Government under provisions of Criminal
Procedure Code in December 1870.—Collector
authorized to proceed with proposed arrangement
in regard to restoration to Samiyan's wife of
portion of—now under attachment.

RECEIVED
1873

8th Nov 1873

1873

18th of Nov. des. 13 Nov.

in his absence.

3. The instrument sued on has been duly registered and endorsement of the Registrar shows that the Defendant admitted the execution thereof.

4. As I see no reason to doubt the genuineness of the instrument sued on, I give judgment for the Plaintiff for the amount sued for, with costs and of further interest, and unless payment be made, within three months from this date, the hypothecated interest will be sold and this judgment debt satisfied out of the proceeds of the sale.

Signed J. H. Nelson

(On the Principal Ledger ^{Judge} ~~Trinity~~ 21st)
Certified to be true copy of the original
Court of Small Causes ^{By order of} signed by Ramachandrasekhar
Sankaranarayanan
3rd September 1873

True copy

(Sd) D. Arjuna Rao
Collector

True copy


C. N. Vasanthanarayana

Attest
Acting Sub Secretary

49

In the Court of Small Causes at Combaroom
 ("On the Principal Sudder Amin side)
 On Tuesday the thirteenth day of Feb-
 ruary one thousand eight hundred
 and seventy two
 Present James Henry Nelson Esq^r Judge
 In the original suit n^o 99 of 1871
 Saminathaiyan being the Plaintiff
 and
 Lakshminarasimmaiyan
 being the Defendant

This suit coming on this day
 for hearing, the Court delivered the following
 Judgment:— In this case the Plaintiff
 sued for money due on a deed of hypo-
 thecation bearing date the 28th May 1868.
 2. On the day fixed for the hearing,
 the Defendant appeared in person,
 and confessed Judgment.
 3. I therefore consider I must give
 Judgment for Plaintiff for the amount
 sued

—Entered in Proceedings
 of the Board of Revenue
 to the Acting Secretary
 to Government at R. S.
 at Calcutta 17th October 1872
 122133.

Rev: 3454/73

Copy of Judgment
 in C. S. No 99 of 1871

sued for, with costs, and further in-
terest at the rate of six per centum per
annum from the date of the institution
of this suit to the date of payment.
And unless the amount hereby
adjudged shall be paid within
two months from this date, the
right title and interest of the
Defendant in the hypothecated
immovables will be sold, and
the judgment debt satisfied out of
the proceeds of the sale.

(Signed) J. F. Nelson

Certified to be the true ^{Judge} copy of the original.
/ By order /

(Signed) H. Ramachandran
Court of Small Causes at Bombay
6th September 1873

/ True copy /

(Signed) F. D. Abbot
Collector

/ True copy /

Witness

² M. Narasimachari
acting Sub Secretary

-Conclusions in Proceedings
of the Board of Revenue
the Voling there being to
Examine... L.R. & date
17th October 1873 vol 1 p 2133.

Rev. $\frac{2}{3494}$ / 73

Copy of proceedings
in W.C. & N. 99 of 1871