

No. 160. Read the following Proceedings of the Court of Wards, dated 25th June 1873, No. 1,108:—

Read again Proceedings of the Court of Wards, dated 8th May 1873, No. 747.

Read also the following letter from J. W. HANDLEY, Esq., Government Pleader, Madras, to H. Sr. A. GOODRICH, Esq., Acting Sub-Secretary to the Board of Revenue, dated 2nd June 1873, No. 92:—

I HAVE the honour to acknowledge receipt of the Proceedings of the Court of Wards noted in the margin, requesting my opinion as to certain alienations and exemptions from revenue and rent made by the late Zemindar of Ramnad in favour of his brother Ponnusawmy Taver.

2. The questions upon which my opinion is sought are summarised in paragraph 4 of the Collector's letter. The first is whether the Court of Wards should take steps to set aside the alienations in the interest of the minor Zemindar. The alienations referred to are grants of two taluqs or sub-divisions of the Zemindari: the first made, in 1858, by the late Zemindar's adoptive mother, and confirmed by him in 1863; the second made by the late Zemindar, also in 1863.

3. A decree having been obtained against the Collector and late Zemindar to compel registration and sub-assessment of these alienations, I do not think that their validity can now be impeached on the ground of non-registration under Regulation XXV. of 1802. That which has been decreed by a competent Court to be done would be considered as done as against the parties who were decreed to do it and those claiming under them; or perhaps, more correctly speaking, they would not be allowed to set up non-compliance with the decree as a ground for assailing the title of the alienee.

4. I am of opinion, however, that steps may properly be taken to set aside those alienations as not binding upon the minor by Hindu law. Neither of the three deeds of grant purport to be made for valuable consideration. The grantee was probably not even entitled to maintenance at all out of the Ramnad estate, and certainly not to an absolute grant of so large a portion of the estate for that purpose. For his services as Manager, which are mentioned in the grants by the Zemindar as one of the reasons for making them, he was, I believe, amply remunerated by a salary or commission; and even if this were not so considered as remuneration for those services, these alienations would be out of all proportion to their value. Altogether, on the facts as they appear from the papers before me, I do not see how these alienations can be upheld as against the minor consistently with the decisions upon the subject, which require proof of *bona fide* necessity for such alienations, and throw the *onus* of such proof on those who seek to support them.

5. Assuming, then, that a suit will lie to set aside these alienations, the further question arises, is it barred by the Limitation Act. The question does not

at present arise as to the Pandalgudy Taluq, the grant of which was made in 1863 but as to Polliamputty; it might arise in the following way:—Mr. Mayne gave

Proceedings of Govt. dated 23rd June 1871.

as his opinion that the suit by the late Zemindar to set aside this alienation on the ground of non-registration was barred by lapse of time, the original grant which was ratified by him, having been made in 1858. If this were so, a suit on behalf of the present Zemindar for the same purpose would also be barred; and though the suit now contemplated would seek to set aside the grant on another ground, it would still be a suit to resume rent free lands for which, by the new Limitation Act (IX. of 1871, Schedule II., No. 130), the period of limitation is twelve years from the time when the right to resume the land first accrued; so that it might be held that, even as against the proposed suit, the time runs from the date of the original grant. It appears to me, however, that the late Zemindar's suit was not barred, neither is that on behalf of the present Zemindar. The original grant was made when the late Zemindar was a minor. Even if invalid, *ab initio*, a tenancy-at-will was created by the delivery of possession, which, until determined, made the possession not hostile as against the original grantor (the adoptive mother), and prevented the statute from running against her. On the Zemindar's coming of age, the possession of the grantee would have become hostile as against him, but for his having executed a confirmation of the grant which, as Mr. Mayne observes, relates back to the original grant; so that matters stood in the same position as if he had joined in the original grant, and therefore, on the above principle of a tenancy-at-will being constituted by permissive possession, there was no hostile possession as against him during his life. This theory of a tenancy-at-will being created by the invalid grant and entry was alluded to in the judgment in the case at page 67 of the 3rd volume of the Madras High Court Reports quoted by Mr. Mayne, and has been followed in a recent decision, where it was held that a son of a Zemindar seeking to recover a portion of the estate granted by his father, the grant not having been registered as required by Regulation XXV. of 1802, was not barred, although more than twelve years had elapsed from the date of the original grant. In this case, I think the minor is, under the circumstances, in precisely the same position, as regards limitation, as if his father had been the original grantor, and, therefore, that his suit for possession of the alienated portions of the estate is not barred until the expiration of twelve years from his father's death, which may be further extended by his minority. The point is, of course, open to doubt, but not sufficiently so, in my opinion, to make it imprudent to bring a suit.

6. I should advise, therefore, that steps be taken by the Court of Wards to set aside the alienations in the interest of the minor Zemindar. Considering the position of the late Ponnusawmy Taver as Manager of the Ramnad estate, and that he seems to have made use of that position in this and other instances to enrich himself at the expense of the estate, there seems no reason for abstaining from asserting the minor's legal rights. The steps to be taken should be by a suit to set aside the alienations, and recover possession of the alienated property brought by the Collector as Agent of the Court of Wards on behalf of the minor against the representatives of Ponnusawmy Taver.

7. The second and third questions propounded by the Collector relate to an Agreement executed in 1867 by the late Zemindar and his adoptive mother to Ponnusawmy Taver, by which it was agreed that, in consideration of a debt stated to have been found due to Ponnusawmy on a settlement of accounts, the latter should be exempt for twelve years from payment of his share of peishcush upon the sub-divisions made over to him and of rent upon other lands in the Zemindari held by him. This arrangement is, of course, not binding on the Collectors as representing Government who have a right to look to these sub-divisions equally with the rest of the estate for their revenue. But as against the minor, I think it is binding if the purposes for which the debt was contracted are correctly stated in the Agreement. If the arrangement were disturbed by the Collector, no doubt a suit would at once be brought for the debt, and unless it were proved that the purposes for which it was incurred are not correctly stated in the Agreement, a decree would probably be obtained. If the sub-divisions are recovered for the minor, that part of the Agreement which relates to their proportion of the peishcush will become inoperative. Assuming the debt to be really a binding one, the arrangement for its payment may be fair enough, and, in fact, beneficial to the estate. On the whole, I do not advise that the Agreement of 1867 be disputed at present.

8. I return the enclosures to the above Proceedings.

THE Collector of Madura will observe from the above opinion that there is reasonable ground for believing that a suit to set aside these alienations in the interest of the minor Zemindar would be successful, and he is authorized to take the necessary steps.

2. With respect to the second and third questions propounded in paragraph 4 of the Collector's letter, the opinion of the Government Pleader is against the advisability of disputing the Agreement of 1867 at present.

3. These Proceedings will be laid before Government for their information.

No. 161.

ORDER THEREON, 19th July 1873, No. 749.

Miscellaneous.

APPROVED.

(True Extract.)

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

To the Court of Wards.

Exd. F. R. Bantleman.

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