827

Proceedings of the Madras Government, Revenue Department,
11th August 1873.

No. 59. Read the following Proceedings of the Board of Revenue, dated 30th July 1873, No. 1,438 :—

In a large number of suits against Revenue-officers, which have come before the Board lately, the following question has been involved :—" A holds a putta for two fields, Nos. 200 and 201, but has sold one of them, No. 201, to B ; B pays the assessment on No. 201 regularly, but A falls into arrears. Can No. 201 (which is in A's putta, though it belongs to B) be attached and sold on account of arrears due by the puttadar, A ?"

2. It is often the case that when a puttadar sells land, it still remains in his putta. Collectors not being the proper officers to decide the validity of sales or other transfers of land, always refuse to take a field out of A's putta and enter it in B's, unless A and B jointly apply for the subtraction and entry to be made. The cases are numerous in which one party sues another, in order to get land entered in the putta of the latter transferred to the putta of the former, and such suits are generally successful.

3. But it is clear that even if a sale of putta-land without a change of putta is invalid so far as regards Government, it is not invalid so far as regards the purchaser : thus, in the case reported at page 134, Volume III., High Court Reports (Special Appeal No. 79 of 1866), Collett, J., says, " It is clear to me, as well from the preamble as the terms of Section 3,* that it is as against the Government alone and for the purpose only of exemption from liability to revenue that a transfer without a change of registry is declared not to be valid".

* Regulation XXVI. of 1802.

4. Therefore, in the case stated in the question, field No. 201 belongs to B, and A has no rights over or property in it; and if the field can be and is sold for arrears due by the puttadar A, the Collector must notify, under Section 39, Act II. of 1864,† that the purchaser has bought *nothing*: the Sale Notice (Board's S. O. No. 275, Form 7) will notify that *nothing* is to be sold ; and the Certificate of sale (Form 8) will declare that the purchaser has succeeded to *nothing*.

†The Collector * * * shall publish * * * a declaration of the lawful succession of such purchaser to all the rights and property of the former land-holder in such lands (the land-holder being the defaulter on account of whose arrears the land is sold).

5. Hence, it seems to the Board clear that even if the received opinion, that all the fields entered in a putta are liable for arrears due by the puttadar, is correct, Section 39, Act II. of 1864 and the Forms in Board's S. O., No. 275, must be altered.

6. But the correctness of the received opinion is by no means obvious, and as the matter is one of considerable importance, the Board think it should be laid before the law officers of Government.

7. The arguments in favour of the opinion resolve themselves into two: one based on common law ; and the other on statute law.

8. The first is that the puttadar, having contracted with Government to pay certain sums on the security of certain land, cannot transfer any of that land to another party, unless Government consent, in which case the putta will be changed. The Board cannot pronounce on the validity of this argument, but it seems to them to require very careful examination.

9. The second is that the received opinion is supported by Section 3, Regulation XXVI. of 1802, which is as follows :—

" Transfers of land made by individual persons without being so‡ registered in the registers of the Collectors shall not be valid in the Courts of Adawlut, and such transfers of land being unregistered shall not exempt the persons in whose names the entire estates are registered from paying the revenue due to Government from such lands."

‡ *Vide* Section 2.

10. It is very doubtful whether this Regulation applies to ryotwary land.

11. In their Circular Orders of the 16th August 1827 and 11th October 1827, the Sudder Court expressly ruled that Regulation XXVI. of 1802 does *not* apply to ryotwary land; *e.g.*, " All the revenue Regulations were framed with reference to this particular right§ which, at the time when they were passed, it is well known, was intended to be made universal throughout the

§ The right established by Regulation XXV. of 1802, and conferred by the Sanad-i-milkiat Istimrar.

Exd. F. R. Bantleman.

territories of the Government ; afterwards, when that intention was suspended, certain of those Regulations were expressly declared by Regulation II. of 1806 applicable to districts where the land-revenue was not permanently settled, and consequently that particular right not introduced ; but Regulation XXVI. was *not* so extended, nor has been since." "That Regulation* applied exclusively to the particular proprietary right established by Regulation XXV. of 1802 and conferred by the Sanad-i-milkiat Istimrar".

* Regulation XXVI. of 1802.

12. This view is confirmed by the fact that the registers of transfers, which Collectors are directed to keep in Section 2, are not kept for ryotwary lands in Collectors' offices, though they are in Tahsildars'.

13. On the other hand, in a note to Campbell's Edition of the Regulations (A.D. 1840), he states a belief that the Sudder Court's ruling was erroneous ; because the Regulation purports to apply to *all* land paying revenue direct to Government, and because Regulation VI. of 1832 expressly extends Section 20 of it to lands of every description. It will be found, however, on referring to Regulation VI. of 1832 that a new law was deemed necessary, because Regulation XXVI. of 1802 was believed to refer only to lands held under Regulation XXV.; and this belief was in no way contradicted.

14. In the case before referred to (page 134, High Court Reports, Volume III.) Justices Collett and Innes assume right through their judgments, as if it were an undisputed fact, that Regulation XXVI. of 1802 applies to ryotwary lands ; *e.g.*, Collett, J., says, " Section 3, Regulation XXVI. of 1802, may be said to be the corresponding enactment to Section 8, Regulation XXV. of 1802 in regard to lands not permanently settled".

15. The fact that the first three Sections of Regulation XXVI. of 1802 are left unrepealed by Madras Act II. of 1864 is not conclusive either way; because the Act applies to permanently settled as well as ryotwary land.

16. The applicability of Regulation XXVI. of 1802, Section 3, to ryotwary land is, therefore, doubtful at best.

17. It appears to the Board to be desirable to get these doubts laid at rest. So far as they are aware, no practical inconvenience in realizing arrears has been experienced hitherto in consequence of them; but there are signs that the claims of Government are being more strictly examined by the Courts now than they used to be, and any ruling against Government on this cardinal point of revenue administration, finding the authorities unprepared, would disarrange the whole administration. Moreover, an immediate modification of Section 39, Act II. of 1864 and of the Sale Notices and Certificates of sale seems to be required.

No. 60.

ORDER THEREON, 11th August 1873, No. 827.

Miscellaneous.

RESOLVED accordingly that the Advocate-General and the Government Pleader be requested, through the Government Solicitor, to advise on the points raised by the Board of Revenue in the foregoing Proceedings.

(True Extract.)

(Signed) R. A. DALYELL,
Offg. Chief Secretary.

To the Board of Revenue.
,, the Government Pleader.
,, the Government Solicitor.

Exd. F. R. Bantleman.

5N)

Pro: Board of Revenue

Attachment + sale of a field entered in patta of one ryot but sold by him to another, for arrears of revenue due by former.

30 July 1873, N. 1438.

N. 827. 11 Augt. 73

Resolved accordingly that the Advocate General and the Govt Pleader be requested through the Govt Solicitor, to advise on the points raised by the Bd of Revenue in the foregoing Proc^gs

F. R. B.

To Govt Pleader
Govt Solicitor

29-659

£20 ~

Attachment Debt of a fuel
entered in pretty of one sort
but sold by him to another for
arrears of weekly due by
former

Dr Sons

C. 8 Aug 1/28 R H Aug 1/28 R H Aug 1/28

29-9-1873

Gobt. of {1873} Madras.

REVENUE.

To

THE BOARD OF REVENUE,

&c., &c., &c.

Dated *August* 11*th*.

Read.

Red.

G. O., 11*th August* 1873, *No.* 827.

AUGUST.

Nos. 59-60.

Fields entered in Putta of one Ryot but sold by him to another.—Requesting the Advocate-General and Government Pleader, through the Government Solicitor, to advise on the points raised by the Board of Revenue as to the liability of the — to attachment and sale for arrears of revenue due by the former.