

468

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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.	468	~~Press~~
B.P. No.		Mis.
Dated	21. 4.	1966 1874

Not to be folded or roughly handled

M. P. O. 1-20,002-12-8-65.

*Proceedings of the Madras Government, Revenue Department,
21st April 1874.*

No. 129. Read the following Proceedings of the Board of Revenue, dated
20th March 1874, No. 639 :—

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, to J. GROSE, Esq.,
Secretary to the Board of Revenue, dated Madras, 13th February 1874, No. 16 :—

With reference to the Board's Proceedings noted in the margin, I have the honour to report
that the Special Appeal (No. 540 of 1873) in the
20th August 1873, No. 1,713. suit relating to Kumari cultivation in South

Canara was disposed of this day. The case had come on for hearing on the previous Monday
when the Court (Morgan, Chief Justice, and Holloway, Justice) raised the objection to the suit that
it was improperly framed as a suit for a declaration of title merely, inasmuch as the real object
of the suit was to establish plaintiff's proprietary right to the whole tract of land in question as
against the Government, who also claimed to be proprietors, and who were as much in possession as
the plaintiff. The suit was, therefore, in the nature of an action of ejectment, and ought to pay
Stamp duty on the full value of the lands in dispute. The case was ordered to stand over until
to-day to allow the appellant's Vakeel to consider the question of stamp. To-day Sunjeva Row, who
appeared for the appellant, asked for leave to withdraw the appeal with liberty to bring a fresh
suit properly framed, and the Court made an order accordingly. I shall forward a copy of the
order when obtained.

2. It is perhaps not to be regretted that the case should have thus gone off without any
decision upon the question at issue between Government and the plaintiff and other proprietors
in South Canara as to this Kumari cultivation, because there really were no materials for such a
decision before the Court. As it stood I think, and the Court intimated the same opinion, the
plaintiff's case must have failed on the merits for want of evidence of either possession or title.
The only possession he could show was that of a small portion of the land at a time by the method
of Kumari cultivation, and this was quite consistent with the proprietary right asserted on behalf
of Government. In short he showed no possession under a title independent of Government, and
he showed no title at all. If, as seems probable from the various Proceedings of the Board and
Government on the subject, there is something more substantial than this in the claim of the
plaintiff and other land-holders in the district it would be better that it should be decided in a
suit in which all the available materials for a final determination of the question may be laid
before the Court, as was certainly not the case in this suit.

3. I return the enclosures to the above Proceedings.

G. O., dated 30th July 1868, No. 2,054.
" " 8th Nov. 1869, " 2,938.
" " 6th March 1871, " 400.
" " 14th April " " 675.
" " 13th Sep. 1873, " 1,003.
Board's Proceedings, dated 13th Aug. 1873, No. 1,580.
" " 15th Feb. 1873, " 217.
" " 25th July " " 1,402.

SUBMITTED for the information of Govern-
ment with reference to the correspondence noted
in the margin.

2. Plaintiff claimed the right to cultivate
"Kumari" on certain forest land, and to raise
optional produce on Cardamom and Pepper
jungles without restriction on the part of Government. He claimed a proprietary right in the
land as belonging to his "Warg."

3. In the defence on behalf of Government the proprietary right was denied, and it was
contended that plaintiff's tenure of the Kumari land and of the Cardamom and Pepper jungles
was "of the nature of a rent or farm resumable at will by Government."

4. The Principal Sadr Amin decided in plaintiff's favour, affirming his proprietary right.
On appeal this decision was reversed by the District Judge. Plaintiff then preferred a special
appeal to the High Court, which has now been withdrawn with liberty to bring a fresh suit. This
course was pursued with reference to the objection raised by the Court, that "the suit was

*Proceedings of the Madras Government, Revenue Department,
21st April 1874.*

improperly framed as a suit for a declaration of title merely, inasmuch as the real object of the suit was to establish plaintiff's proprietary right to the whole tract of land in question as against Government, who also claimed to be proprietors, and who were as much in possession as plaintiff."

5. The Government Pleader thinks the withdrawal of the appeal is not to be regretted, because there were no materials before the Court for a decision on the question of proprietary right at issue between Government and the plaintiff and other proprietors in South Canara.

6. The question which was involved in this suit, and which has thus been left undecided, is the one laid before Government in Board's Proceedings, dated 21st March 1871, No. 1,222.

No. 130.

ORDER THEREON, 21st April 1874, No. 468.

Miscellaneous.

RECORDED.

(True Extract.)

(Signed) C. G. MASTER,
Acting Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bartleman.

Special Appeal preferred in High Court
(No. 540 of 1873) in the Suit relating to
Kumari cultivation in South Canara District.
—Records Board's Proceedings relating to the
result of the —

APRIL
Nos. 129-130.

G. O., 21st April 1874, No. 403.

Dated April 21st.
Recd.

THE BOARD OF REVENUE.

To

REVENUE.

G.O. of 1874

No. 639.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 20th March 1874.

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" " 14th April " " 675.
" " 18th Sep. 1873, " 1,003.
Board's Proceedings, dated 13th Aug. 1872, No. 1,580.
" " 15th Feb. 1872, " 217.
" " 25th July " " 1,403.

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(A true Copy and Extract.)

J. Erle

Secretary.

To the Acting Secretary to Government, Revenue Department.

Copy to the Government Pleader.

.. to the Collector of South Canara.

Ed. J. Talloch.

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To the R of Rev. Sec. 29 April 74.

Received 1874. Sept 10

BOARD of REVENUE

MADRAS.

129/73

PROCEEDINGS, 20th MARCH 1874, No. 639.

Copy to Government Pleader

Encl.

Received 25th

MARCH

No. 639.

Suit, Special Appeal—No. 540 of 1873, preferred to High Court by respondent in Kumari Appeal Suit in South Canara District. Government Pleader's report of result of — submitted to Government with remarks.

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129-130