M.R.O. 1—20,002—12-8-65.

(1) Number of Pages 6

(2) Date of repair 25. 7. 1966

(3) Initials of the Referencer CBV

MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No. / B.P. ~~No.~~	468	~~Press~~ / Mis.
Dated	21. 4.	196~~-~~ 1874 .

Not to be folded or roughly handled

M R 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 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.

29th August 1873, No. 1,713.

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, " 2,933.
" " 6th March 1871, " 400
" " 14th April " " 675.
" " 18th Sep. 1873, " 1,003.
Board's Proceedings, dated 13th Aug. 1872, No. 1,580.
" " " 15th Feb. 1873, " 217
" " " 25th July " " 1,402.

SUBMITTED for the information of Government 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

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. Bantleman.

Govt. of {1874 Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated April 21st.

Recd.

Book.

G. O., 21st April 1874, No. 468.

APRIL.

Nos. 129-130.

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 —.

No. 639.

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

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 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.

Board's Proceedings, dated 28th August 1873, No. 1,712.

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, " 2,933.
" " 6th March 1871, " 400.
" " 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.

SUBMITTED for the information of Government 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

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.

(A true Copy and Extract.)

J Grole

Secretary.

To the Acting Secretary to Government, Revenue Department.

Copy to the Government Pleader.

" to the Collector of South Canara.

Exd. J. Tulloch.

Recd 1874. Apr 10

Board of Revenue

MADRAS.

No 923

PROCEEDINGS, 20TH MARCH 1874, No. 639.

Read the Order of 24th Feby 1874.

Entd

Received 25

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.

1129-130

To the Govt of Rev Dep 29 April 74.

No 1456 28th April 74