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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

REVENUE DEPARTMENT

G.O. No. 833 Press

~~B.P. No.~~ Mis.

Dated 6-7-1874 196 .

Not to be folded or roughly handled

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No. 28. Read the following Proceedings of the Board of Revenue, dated 15th June 1874, No. 1,452 :—

Read again Board's Proceedings, dated 19th August 1873, No. 1,608.

Read also the following letter from the Hon. D. ARBUTHNOTT, Collector of Tanjore, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Muttupettai, 16th May 1874, No. 128 :—

WITH reference to the Board's Proceedings, dated 19th August 1873, No. 1,608, I have the honor to forward, herewith, copies of judgment and decree of the Subordinate Court of South Tanjore, in Suit No. 14 of 1873.

2. The decision of the Court is based obviously on an erroneous view of the case. In the written statement approved of by the Board, it was distinctly set out that the plaintiff's application for registry was refused, because the registered holder did not agree to its transfer to the plaintiff. The judgment of the Subordinate Court, however, totally misses the issue thus plainly raised, *i. e.*, whether or not the Collector was bound to register the Zemindari in plaintiff's name without the consent and against the will of the registered holder, the 1st defendant. It is true, that in Mr. Cadell's endorsement on plaintiff's petition, the reason for refusing his application for the registry was apparently through oversight, not specifically stated; but the Court had the Collector's reason in his written answer to the suit before it, and the question the Court had to consider was, not whether the Collector stated his reason to the applicant or not, but whether he was or was not right in refusing.

3. The Court, taking it for granted as it would seem that the consent of the registered holder was immaterial, exonerates the registered holder, the 1st defendant, from the suit, and decrees that the Collector "shall interfere in the matter, and in causing the registry to be transferred in the name of the plaintiff, he shall act in conformity and in accordance with the above noted decision of the High Court, and the provisions of the law on the subject."

4. The terms of the decree, it will be seen, are not very intelligible or consistent; but the decision of the High Court in the case* of Ponnusami Tever *versus* Collector of Madura, which the Subordinate Judge quotes in his judgment, is totally inapplicable to this case, inasmuch as in the case to which that decision refers, the High Court did not undertake to decide the issue raised in this. The question raised in that case was, whether the Collector's refusal to register and sub-assess a portion of a permanently settled Estate alienated by its holder to another party, was, as held by the Civil Judge, in itself conclusive against the validity of the alienation and shut him up from suing for registry in the established Courts. The High Court decided that it was not optional with the Collector to render an alienation valid or invalid, by complying or not complying, just as he thought fit, with an application for the registry and sub-assessment of the portion alienated. They held, it is true, that the Collector was bound to determine whether the alienation was opposed to law or not; but they certainly did not (as indeed Section 8, Regulation XXV. of 1802, quoted by the High Court clearly does not) mean to empower the Collector to dispense with the essential condition, viz., the consent of the registered holder, thus transferring to him the functions appertaining to the Civil Judicature of deciding upon the legality of a transfer of property where the alleged transferrer repudiated it.

* (High Court Reports, Volume III. page 35.)

5. Indeed, if the effect of the High Court's decision quoted by the Subordinate Judge is what he takes it to be, the present procedure with respect to the transfer of registry based on the Board's Circular, No. 140, and the Sadr Court's Proceedings, dated 17th September 1832, thereto appended, must be completely altered.

6. I am unable to see why the Government Vakil did not call the attention of the Court to the issue distinctly raised in the written statement put in by him on my behalf, and if the Court refused to notice it, why he did not report the fact to me. I have called upon him for explanation.

7. The decision of the Subordinate Court in this case, besides materially affecting the established procedure [illegible] the Revenue administration, subjects Government to an unnecessary

charge for costs ; as the decree adjudges each party to bear his own costs, and if it is submitted to, the Government will have to bear the costs of the defence conducted on behalf of the Collector. It appears to me, therefore, that the case should be referred for the advice of the Government Pleader as to whether, from the nature of the case, a reversal of the decree can be obtained by an application to the same Court by which it has been passed, for review of judgment, under Section 376 of the Code of Civil Procedure, or whether it is necessary to appeal to the High Court ; Mr. Handley being requested in the latter case to prefer an appeal accordingly. The time for application for review and for appeal alike runs to the 25th July 1874.

ENCLOSURES Nos. 1 and 2.—Copies of Judgment and Decree.

SUBMITTED for the information and orders of Government.

2. In 1872 the Zemindar of Kallakotai died without issue leaving an undivided brother (present plaintiff) and a widow (1st defendant) who was then pregnant.

3. The widow then executed an agreement in plaintiff's favour and intimated to the Collector that the charge of the Estate and the maintenance of the family devolved on her husband's brother. The latter at the same time addressed the Collector in similar terms. The Collector suggested that the brother should be registered as the holder of the Estate for the time being, but the Board directed that pending the widow's confinement no change of registry should be made. Shortly afterwards the widow was confined of a daughter that died soon after birth. In default of male issue, the undivided brother became the undoubted heir and the Estate should have been registered in his name, but through mistake the Board directed its registration in the name of the widow which was accordingly done. This gave the brother a good cause of action against the Collector. Instead of suing, however, he obtained from the widow a deed of gift transferring to him whatever right she had in the Estate under the orders of the Board, and contains a promise, which she did not keep, to get the registry transferred to the brother. Fortified with this document and the agreement previously referred to, he applied to the Collector to register the Estate then in his possession in his name. The Collector refused to comply with his request, apparently because the widow had not given a razinamah, but he assigned no reasons. Upon this plaintiff filed this suit against the Collector and the widow to enforce registration. Upon the facts of the case, the Board are of opinion that plaintiff was clearly entitled to a decree with costs. The Court, however, has not decided on the facts. Plaintiff based his claim on the fact that the Estate being ancestral he as undivided brother is the rightful heir. He also claimed under the documents executed by the widow. She admitting their execution pleaded that they were void on account of fraud and undue influence. She also pleaded misjoinder. The Collector's plea was that in the absence of a razinamah he was precluded from altering the registry. The Court admitting the plea of misjoinder, proceeded to dispose of the case as between plaintiff and the Collector alone. In this the Board are of opinion the Court erred. First defendant, as the registered holder, was a party interested in the suit. She alleged that documents under which plaintiff claimed were void, and it was distinctly pleaded that she had not assented to the transfer. In these circumstances there was no misjoinder, and it was clearly necessary that the Court should first decide as to the relative rights of plaintiff and first defendant before it could determine whether the Collector was justified in refusing to alter the registry. The Court, however, thinking otherwise, observed that the only question for decision is whether the Collector was right in refusing to comply with plaintiff's request and it decided that he was not because "plaintiff had a *primâ facie* case to ask for the transfer of registry. He holds the registered documents A and B (about the validity or otherwise of which no determination is come to now) and has further obtained a certificate of heirship from the District Court to collect the debts of the Zemindar. When he made his application the Collector was bound to determine whether the transfer was subject to any legal objections."

Proceedings of the Madras Government, Revenue Department,
6th July 1874.

4. On this so called *primâ facie* case, viz., documents impeached as void, the validity or otherwise of which has not been determined, and a certificate simply authorizing administration, the Court decrees the transfer of registry in plaintiff's name notwithstanding that neither the Collector nor the Court has determined whether the transfer is or is not subject to "any legal objection."

5. It seems to the Board that in giving a decree in plaintiff's favour the Court has arrived at a right conclusion though on wrong grounds. They are therefore of opinion that an appeal is not advisable. The result of an appeal would probably be that the suit would be remanded for trial and decision on its merits and as plaintiff has a good case nothing would be gained and costs would be lost.

6. The Board regret that though the value of the suit exceeds Rupees 1,000 through an oversight, its defence was sanctioned without reference to Government.

No. 29. ORDER THEREON, 6th July 1874, No. 833.

Miscellaneous.

THE Government concur with the Board in considering that an appeal is not advisable.

(True Extract.)

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

To the Board of Revenue.

Exd. G. A. Turton.

No. 1,452.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 15th June 1874.

Read again Board's Proceedings, dated 19th August 1873, No. 1,608.

Read also the following letter from the Hon. D. ARBUTHNOTT, Collector of Tanjore, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Muttupettai, 16th May 1874, No. 128:—

WITH reference to the Board's Proceedings, dated 19th August 1873, No. 1,608, I have the honour to forward, herewith, copies of judgment and decree of the Subordinate Court of South Tanjore, in Suit No. 14 of 1873.

The decision of the Court is based obviously on an erroneous view of the case. In the

REVENUE DEPARTMENT.

C No. 2056

From Board of Revenue Dated 15th June 1874.

FOR ORDERS.

I do not think we should admit the appeal

Sd/ 2/6

Certainly not 29/6 Sd

I agree. Appeal was not to lay whether the respondent referred to in Board's para 6? Sd

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6. The Board regret that though the value of the suit exceeds Rupees 1,000 through an oversight its defence was sanctioned without reference to Government.

(A true Copy and Extract.)

J Grote

Secretary.

To the Acting Secretary to Government, Revenue Department,

with two original enclosures and Board's Proceedings,
dated 19th August 1873, No. 1,603.

,, the Collector of Tanjore.

Exd. G. A. Turton.

No. 1,608.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 19th August 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 11th August 1873, No. 281 :—

I HAVE the honour to forward, herewith, translation of plaint, in a Suit (No. 14 of 1873) which has been instituted in the subordinate Court of South Tanjore by Vijaya Raghunatha Rangasami Singapuliaur, brother of the late Zemindar of Kallakottai, and in which I have been included as a defendant.

2. The facts of the case out of which this suit has arisen are these—

The late Proprietor of this Estate died on the 8th March 1872, without any issue, but leaving a widow, then in an advanced stage of

Suit No. 14
Tanjore
Zilla
1452-

Registrar.

approved.

OKES,
ing Secretary.

Rec. 1874. Dept.
Board of Revenue,
MADRAS.

PROCEEDINGS, 15TH JUNE 1874, No. 1,452.

Despatched June/74 - 3 Encl
2 Enclosures returned to Board - 2 Sept/74.
Received 23rd

JUNE
No. 1,452.

Suit—No. 14 of 1873, filed in Subordinate Court of South Tanjore by brother of late Zemindar of Kallakotai for procuring transfer of registry of Zemindari from name of widow of late Zemindar to that of plaintiff.—Collector's letter forwarding copies of Judgment and Decree passed in favour of plaintiff in—submitted to Government. Opinion expressed that it is not advisable to appeal.

For orders

No. 1,608.

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2. The facts of the case out of which this suit has arisen are these—

The late Proprietor of this Estate died on the 8th March 1872, without any issue, but leaving a widow, then in an advanced stage of pregnancy, and a brother.

MEMORANDUM.

REQUESTED for immediate reference the undermentioned paper on the subject of Suit No. 14 of 1873 on file of Sub Court of South Tanjore

the Original Enclosures sent to 9th with Board's Proceedings 15th June 1874 No 1452 — returned in J. C. 6 July 1874 No 833.

REVENUE BOARD OFFICE,
27th July 1874

Registrar.

To
The 2nd Assistant Govt Office
Revenue Depart

ENCLOSURE No. 3.—Translation of Agreement.

ENCLOSURE No. 4.—Translation of Deed of Gift.

THE defence of the suit is sanctioned and the draft answer approved.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

To the Collector of Tanjore.

Copy to the Accountant General.

Exd

FOR ORDERS.

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2. The facts of the case out of which this suit has arisen are these—

The late Proprietor of this Estate died on the 8th March 1872, without any issue, but leaving a widow, then in an advanced stage of pregnancy, and a brother, the present plaintiff. The latter, with the consent of his brother's widow, claimed to be recognized as successor to the Zemindari; but his claim was rejected, and under instructions from the Board, (*Vide* Proceedings, Miscellaneous No. 2,868, dated 19th April 1872,) the alteration of registry was deferred till the latter's confinement. The widow then gave birth to a daughter, who died soon after its birth, and consequently agreeably to the Board's instructions referred* to, the Estate was registered in the widow's name, and so stands now.

* *Vide* also Proceedings, dated 2nd July 1872, Miscellaneous No. 4,607.

3. Plaintiff had, in the meantime, secured possession of all the property of the Zemindari, both moveable and immoveable, and had obtained from his brother's widow a document, bearing date, the 10th April 1872, which purported to constitute him successor to the Zemindari. Seeing perhaps that this was not sufficient, he further, on the 10th August following, obtained from her another document, purporting to convey the whole of her inheritance to him by way of gift. Before, however, he could take the necessary steps for the transfer of the registry to himself, the widow retracted; and consequently, when plaintiff applied for the same, Mr. Cadell, by his endorsement, dated 12th March last, refused to transfer the registry without the consent of the registered holder; hence the present suit, of which the object is merely to procure the transfer of registry, and it is for this purpose that the Collector has been included as 2nd defendant; the late Proprietor's widow being made the first.

4. Of course, the only answer to this suit is that the Collector will abide by such decision as the Court may pass, and I enclose a draft of the written statement to this effect for the Board's approval. The suit is posted for hearing on the 24th September.

5. I enclose also translations of both the documents executed to the plaintiff by the late Proprietor's widow, and duly registered.

ENCLOSURE No. 1.—Translation of Plaint.

ENCLOSURE No. 2.—Draft Answer.

ENCLOSURE No. 3.—Translation of Agreement.

ENCLOSURE No. 4.—Translation of Deed of Gift.

THE defence of the suit is sanctioned and the draft answer approved.

(A true Copy and Extract.)

(Signed) H. E. STOKES,
Acting Secretary.

To the Collector of Tanjore.

Copy to the Accountant General.

Exd [illegible]

1873.

Board of Revenue,

MADRAS.

PROCEEDINGS, 19TH AUGUST 1873, No. 1,608

Rev. 2056/74 Encl.

Rev 598/72

Received

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AUGUST.

No. 1,608.

Suit—No. 14 of 1873, filed in Subordinate Court of South Tanjore by brother of late Zemindar of Kallakottai for procuring transfer of registry of Zemindari from name of widow of late Zemindar to that of plaintiff.—Defence of —sanctioned; and proposed answer, approved.