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# MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

*Revenue* DEPARTMENT

|          |             |       |
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| Dated    | 10. 8. 1875 | 196   |

*Not to be folded or roughly handled*

1198

*Proceedings of the Madras Government, Revenue Department,  
10th August 1875.*

No. 84. Read the following letter from H. H. SHEPHARD, Esq., Officiating Government Pleader, to A. MACGREGOR, Esq., Acting Secretary to Government, Revenue Department, dated Madras, 27th July 1875, No. 74:—

With reference to the Proceedings of Government, Revenue Department, noted in the margin, I have the honor to inform you that, in consequence of a recent decision of the Privy Council, the report of which has just arrived, I am compelled to alter my opinion as to the probability of obtaining a declaratory decree in the suit instituted on the infant's behalf against the widows.

Dated 10th March 1875, No. 392.

2. In the case of *Kathama Natchiar* versus *Dorasinga Tever* (L. R., 2 Ind. App., 169) the Privy Council, while reversing the decree of the High Court passed in the plaintiff's favor, lay down the law with regard to declaratory decrees in terms which are wholly opposed to the generally-accepted notion on the subject here. In that case, the facts of which are very similar to those of the present case, the High Court had granted a declaratory decree on the ground that it appeared that acts had been done by the defendants "which had worked, or were likely to cause, injury or serious prejudice to the plaintiff's alleged title." It was also stated in the judgment that "it has been decided by this Court that the rule of the Equity Courts in England is not applicable to declaratory suits here, and it is now settled that a suit praying nothing more than a declaration of title is maintainable under the 15th Section of the Code of Civil Procedure, although no consequential relief be grantable upon the ground that a good ground for seeking the execution of such a suit is shown to exist."

3. Further, Mr. Justice Holloway said, "when once the doctrine of the English Courts as to declaratory decrees is abandoned, I can scarcely conceive a case more fit for one than the present. The title is likely to become obscured by lapse of time; the point of law is a doubtful one; there was no admission of the pedigree until the case was about to be tried. It certainly seems to me that the quieting of doubtful titles is a better reason for such a suit than the fact of alienations having been made. The peril from the disappearance of testimony in these cases is that of the defendant, not of the plaintiff and reversioner. Many suits much more objectionable than this have been permitted, and I see no reason to doubt that this should be."

4. Since the delivery of this judgment up to the present time, the passages cited have been supposed to contain a correct exposition of the law; and, although some of the recent conflicting cases in the Privy Council might appear to create doubts as to its soundness, there has been no judgment of that tribunal directly impugning it.

5. In this last-reported judgment, however, the Privy Council, after elaborately reviewing all the authorities, decide that the view taken by this Court as to declaratory decrees is erroneous, and that, according to the proper construction of Section 15 of Act VIII. of 1859, a declaratory decree cannot be made "unless there be a right to consequential relief capable of being had in the same Court, or in certain cases in some other Court."

6. I am of opinion that this decision is a distinct authority for dismissing the suit now in question. In that suit all the relief that could be granted is a declaration of title. The plaintiff is not in a position to ask for any immediate relief or for any decree upon which execution could issue; and, although the plaint asks for a

*Proceedings of the Madras Government, Revenue Department,  
10th August 1875.*

cancellation of the agreement executed by the widows, I do not think that the Court could actually decree such cancellation because the agreement is not wholly invalid, but only so far as it purports to deal with the minor's rights.

7. Under these circumstances, I am of opinion that it is useless to continue the suit at least in its present form. The question, however, remains whether by any other form of suit the rights of the minor may be protected. The only other form of suit which I can suggest is a suit to restrain the widows from improperly dealing with the estate, and that is a suit which might, I think, be maintained successfully under the circumstances of the present case.

8. The matter is not by any means free from difficulty, and I am doubtful whether the acts complained of are such as to form ground for the interference of the law. There is, however, some authority for the maintenance of such a suit in the very judgment of the Privy Council to which I have already referred. The plaint in *Kathama Natchiar versus Dorasinga Tever* had originally alleged a case of waste, and asked for relief on that ground; but the Civil Judge had refused to try that question, and confined the plaintiff to his claim for a declaratory decree. The question of waste was, however, again raised before the judicial committee, and it was then said, as well in the course of the argument as in the judgment, that a suit confined to the object of restraining the widows from committing acts of waste might have been successful.

9. Relying upon this authority, I would recommend the withdrawal of the present plaint and the institution of a new suit in which the minor should be defendants, stating that the defendants have committed certain specified acts of waste, and praying that they may be restrained from committing such acts.

10. A decree following the terms of a plaint so framed might not have all the advantages of a declaratory decree passed against the widows and Moothialammal, but it would have the practical effect of preserving the minor's rights from the danger to which the dealings of the widows are, after the lapse of time, calculated to expose them.

No. 85. ORDER THEREON, 10th August 1875, No. 1,198.

Miscellaneous.

UNDER the circumstances set forth  
by the Officiating Government Pleader,  
the Government acquiesce in the advisa-

bility of withdrawing the suit, and the Officiating Government Pleader is authorized to take the necessary steps.

2. His Excellency the Governor in Council is of opinion that the interests of the minor may be left to the protection of her uncle, and that action on behalf of the possible ultimate reversionary right of the State under the law of escheat is not called for.

(True Extract.)

(Signed)

A. MACGREGOR,

Acting Secretary to Government.

To the Officiating Government Pleader,  
„ the Court of Wards.

REVENUE DEPARTMENT.

No. 2964

From *John Plummer*

Dated *27 July*

1875.

FOR ORDERS.

The interest of the pub  
is remote & I agree  
with Mr. Buelleston that  
we had better leave  
the interests of the  
minor to the protection  
of her uncle J.R.  
I con in Mr

I am not disposed  
to advocate action by  
Govt. in view of protecting  
their possible ultimate  
marriage rights  
under the law of  
Essex. & I don't  
see that they are  
called on to act  
on behalf of the minor  
widow or child - as  
"the nearest friend" - the uncle  
of the minor widow

Oct. of 1875

REVENUE.

THE OFFG. GOVERNMENT PLEADER.

to  
cc,  
cc,  
cc.

Printed August, 1875.

Recd.

Encl.

G. O., 10th August 1875, No. 1,198.

AUGUST.

Nos. 84-85.

*Naheal and certain other Members in Salem District.*—Acquiescing in the advisability of withdrawing the suit instituted on behalf of the minor infant for a decree declaring her right to —, and observing that the interests of the minor may be left to the protection of her uncle, and that action on behalf of the possible ultimate reversionary right of the State is not called for.



has moved in the weather  
seems competent  
Capt. L. D.

FOR ORDERS.

*Subscribed by the  
Hon. Secy to the  
Govt.*

No 74

1/2/98

Madras  
27<sup>th</sup> July 1875

From. H. H. Shephard Esqre  
Off<sup>r</sup> Government Reader  
Madras

To. A. Macgregor Esqre  
Ag Sec<sup>y</sup> to Government  
Revenue Department

Sir,

With reference to the Proceedings  
of Government Revenue Depart-

Dated 10<sup>th</sup> March  
1875  
No 392

- ment noted in the margin  
I have the honor to report for  
the information of the Govern-  
- ment that in consequence of  
a recent decision of the Privy  
Council the report of which  
has just arrived, I am compelled  
to alter my opinion as to the  
probability of obtaining a  
declaratory decree in the suit  
instituted on the infant's behalf  
against

against the widows.

2. In the case of Kathama Katchian v. Doradunga Sen (L. R. 2. Ind. app. 169) the Privy Council, while reversing the decree of the High Court passed in the Plaintiff's favor, lay down the law with regard to declaratory decrees in terms which are wholly opposed to the generally accepted notion on the subject here. In that case, the facts of which are very similar to those of the present case, the High Court had granted a declaratory decree on the ground that it appeared that acts had been done by the Defendants "which had worked or were likely to cause injury or serious prejudice to the Plaintiff's alleged title." It was also stated in the

Judgment

6/195

Judgment that "It has been decided by this Court that the rule of the Equity Courts in England is not applicable to declaratory suits here, and it is now settled that a suit praying nothing more than a declaration of title is maintainable under the 15<sup>th</sup> Section of the Code of Civil Procedure, although no consequential relief be grantable upon the declaration, if a good ground for seeking the protection of such a suit is shown to exist."

3. Further Mr Justice Holloway said "when once the doctrine of the English Courts as to declaratory decrees is abandoned, I can scarcely conceive a case more fit for one than the present. The title is likely to become ob-

-sured

- Scured by lapse of time, the point of law is a doubtful one; there was no admission of the pedigree until the case was about to be tried. It certainly seems to me that the quieting of doubtful titles is a better reason for such a suit than the fact of alienations having been made. The peril from the disappearance of testimony in these cases is that of the Defendant, not of the Plaintiff and reversioners. Many suits much more objectionable than this have been permitted, and I see no reason to doubt that this should be."

4. Since the delivery of this judgment up to the present time the passages cited have been

Supposed

7/11/98  
Supposed to contain a correct exposition of the law, and although some of the recent conflicting cases in the Privy Council might appear to create doubts as to its soundness, there has been no judgment of that tribunal directly impugning it.

5.2 In this last reported judgment however, the Privy Council after elaborately reviewing all the authorities, decides that the view taken by this Court as to declaratory decrees is erroneous and that, according to the proper construction of Section 15 of Act VIII of 1859, a declaratory decree cannot be made "unless there be a right to consequential relief capable of being had in the same Court or in certain cases in some other Court."

6 I

6. I am of opinion that this decision is a distinct authority for dismissing the suit now in question. In that suit all ~~that~~ the relief that could be granted is a declaration of title. The Plaintiff is not in a position to ask for any immediate relief or for any decree upon which execution ~~could~~ issue; and although the plaintiff asks for a Cancellation of the agreement executed by the widows, I do not think that the Court could actually decree such Cancellation because the agreement is not wholly invalid but only so far as it purports to deal with the minor's rights.

7. Under these circumstances I am of opinion that it is useless to continue the suit at

at least in its present form. The question, however, remains whether by any other form of suit <sup>the</sup> rights of the minor may be protected. The only other form of suit which I can suggest is a suit to restrain the widows from improperly dealing with the estate, and that is a suit which might, I think, be maintained successfully under the circumstances of the present case.

8. The matter is not by any means free from difficulty and I am doubtful whether the acts complained of are such as to form ground for the interference of the law. There is however some authority for the maintenance of such a suit in the very judgment of the Privy Council to which I have

have already referred. The plaintiff  
in Kathama Katchiar v. Dorasinga  
Pur had originally alleged a case  
of waste and asked for relief on  
that ground, but the Civil Judge  
had refused to try that question  
and confined the plaintiff to his  
claim for a declaratory decree.  
The question of waste was however  
again raised before the Judicial  
Committee, and it was then said  
as well ~~in~~ in the course of the  
argument as in the judgment  
that a suit confined to the object  
of restraining the widows from  
committing acts of waste might  
have been successful.

9. Relying upon this authority  
I would recommend the withdrawal  
of the present plaint and the  
substitution of one, to which the  
widows only should be defendants,  
stating that the defendants have

2/11/95  
have committed certain specified  
acts of waste and praying that  
they may be restrained from  
committing such acts.

10. A decree following the terms  
of a plaint so framed <sup>might</sup> ~~would~~ not  
have all the advantages of a  
declaratory decree passed against  
the widows and Moorthialammal,  
but it would have the practical  
effect of preserving the minor's  
rights from the danger to which  
the dealings of the widows are  
after the lapse of time calculated  
to expose them.

I have the honor to be,  
Sir,  
Your most obedient servant

H. H. K. L. K.  
Offg. Government Receiver

Mr. 2964

Wachs

Sept 20

30

24<sup>th</sup> 1874

don't withhold on  
behalf of the minor  
infant for a decree  
declaring her right  
to husband and child  
Other Grantees in that  
District—

Recommend  
of Plaintiff

With Dear

Dr 1198. 10 August 1874-

10 August 75.

Under the circumstances at  
 York by the 27<sup>th</sup> of Nov<sup>r</sup> under  
 the good acquiescence in the  
 advisability of withdrawing the  
 mail. On the 27<sup>th</sup> of Nov<sup>r</sup> 1864

authentic & take the  
meaning of -  
this. & the forum in which  
is of opinion that the interests  
of the Union are better  
protected by her uncle. That  
action on behalf of the people  
ultimately receiving rights of the  
North. under the law of Federal  
is not called for. After.

And Copy to the App<sup>ts</sup> Geo<sup>l</sup> Proctor and to Henry  
J. Pennell copy on 2<sup>nd</sup> August  
14 Geo<sup>l</sup> Proctor of Warr on 25<sup>th</sup> 21.

14. 28th. Received of Wm. on 25. a.