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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revee DEPARTMENT

G.O. No. / ~~B.P. No.~~ 322 Press / ~~Mis.~~

Dated 10.3.1875 ~~196~~.

Not to be folded or roughly handled

X Y/392

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

Read the following papers :—

No. 126. Proceedings of the Court of Wards, dated 6th February 1875, No. 281.

Read again Board's Proceedings, dated 18th December 1874, No. 3,681, and 13th January 1875, No. 67.

Read also the following letter from H. H. SHEPHARD, Esq., Officiating Government Pleader, Madras, to H. E. STOKES, Esq., Acting Sub-Secretary to the Court of Wards, dated Madras, 15th January 1875, No. 3.

Dated 13th January 1875.

WITH reference to the Proceedings of the Court of Wards noted in the margin, I have the honor to state that the opinion which I expressed in my letter of 6th instant, No. 1, was that two courses were possible by which the interests of Veerammal's infant daughter might be protected: either a suit might be instituted on Veerammal's behalf to set aside the agreement of January 1874; or, on the infant's behalf, to obtain a declaratory decree, confirming her rights to the property on the death of the widows.

2. If the Court of Wards thought fit to adopt the former course, they would undertake the management of Veerammal's property, and file a suit in the usual way, *viz.*, in the name of the Collector as their Agent; but, as to the advisability of this course, I did not, with the information before me, venture to offer an opinion.

3. With regard to the possibility of instituting a declaratory suit, I deemed it unnecessary to say more, because I did not suppose that the Court of Wards would, when informed as to the rights of the parties, consider the infant's case one in which they could immediately interfere; indeed, it does not seem to me that they have, under the Regulation, any power to interfere, except for the protection of incapacitated persons upon whom property has actually devolved; whereas in this case there has been no devolution of property on the infant.

THESE papers will be submitted to Government, with reference to G. O., dated 4th November 1874, No. 1,395.

2. From the opinions of the Government Pleader, the Court regret to find that there is no room for their interference as regards the property left by the late Lavanga Reddy. It is clear that Muthealammal has no claim to the share which she has secured under the distribution made in January 1874 between her and the widows of Lavanga Reddy, who are his proper heirs; but the Court see no prospect of success in attempting to invalidate that distribution. They could only take possession on behalf of the two widows and on the ground of their incapacity. The immediate consequence of such a step would be the institution of a suit to establish their competence, and such a suit could not probably be successfully defended.

3. The Court, therefore, think that the Collector must be directed to effect the registry, which, however, will not affect the titles or rights, immediate or deferred, of any of the parties; and that the petitions praying for the Court's interference must be rejected.

(A true Copy and Extract.)

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

No. 46.

No. 127. OFFICIAL MEMORANDUM.

The undersigned is directed to forward to the Government Pleader the accompanying Proceedings of the Court of Wards, dated 6th February 1875 (to be returned), to draw his attention to the under-mentioned points connected with the Namkal and other Muttahs in the Salem District, constituting the estate of the late Lavanga Reddy, and to solicit his further opinion thereon:—

Firstly.—The Court of Wards cannot, it is true, interfere till the property has actually devolved on the infant daughter, which will not occur till after the death of the two widows. But a widow can hold the property only in trust for certain uses; so much so, that, should she make waste, they "who have the reversionary interest have clearly a right to restrain her from so doing." The Government will have a reversionary right, probably at no remote period, in this very extensive and valuable landed property. During the apparently prolonged and excited investigation before the Collector and in the Courts, none of the *Sapindas* or *Dayadis* in the family have turned up, and the presumption is that there are none. The infant daughter, of course, has the first reversionary right, but should she pre-decease the widows or die childless, the property must escheat to Government after the death of the two widows. Their mother-in-law, *i.e.*, the adoptive mother of Lavanga Reddy, the father of the infant, has no right whatever to the property, and it is apparently to destroy the reversionary right of Government and to secure a very large portion of the estate to herself that she is using her great influence over her ignorant daughters-in-law to alienate the property. The daughter has the right to sue at once to prevent waste, but as she is an infant, can Annamallay Reddy, a relative of Veerammal, the junior widow, step in as next friend of the child, and institute a suit at once to prevent the alienation of the property?

Norton's Leading Cases, Part II., page 501.

Norton's Leading Cases, Part II., page 501.
Macnaghten's Hindu Law, Chapter I., Section II., page 25.

Secondly.—But as Annamallay Reddy can at any moment be persuaded by the opposite party to withdraw, is there any provision in the law to prevent the Collector instituting the proposed suit as the next friend of the child?

Thirdly.—One of the rules of Equity is "that particular persons in contracts and other acts shall not only transact *bona fide* between themselves, but shall not transact *mala fide* in respect to other persons who stand in such a relation to either as to be affected by the contract or the consequences of it." Under this provision, can Government who, next to the daughter, possess the reversionary right to the property institute the suit in their own behalf?

Section 333 of Story's Equity Jurisprudence.

Fourthly.—Another section (339) of Story's Equity Jurisprudence stipulates that, if a fraudulent transaction "has been fully made known at the time to the parent or other person standing *in loco parentis*; as for example, to the person from whom the *spes successionis* is entertained or after the expiration of whose present estate the reversionary interest is to become vested in possession, and it is not objected to by him, the

extraordinary protection generally afforded in cases of this sort by Courts of Equity will be withdrawn. *A fortiori*, it will be withdrawn if the transaction is expressly sanctioned or adopted by such parent or other person standing *in loco parentis*." Would, under this rule, the registration of the sub-divisions of the property in the names of Muthealammal, her daughters-in-law, and one Ramasawmy Reddy, by the Collector on behalf of Government with full knowledge of the fraudulent character of the transaction prejudice the rights which may accrue to Government hereafter as already stated? And can the Collector refuse registration, and so leave the parties to institute a regular suit, in which Government can, as one of the defendants, represent to the Court the fraud proposed to be committed on the child and eventually on Government?

The Government Pleader is also requested to give his opinion on each point, and to state clearly which of the courses proposed can safely be adopted.

(By Order,)

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

22nd February 1875.
To the Government Pleader.

No. 128. From H. H. SHEPHARD, Esq., Officiating Government Pleader, Madras, to C. G. MASTER, Esq., Acting Secretary to Government, Revenue Department, dated Madras, 1st March 1875, No. 23.

With reference to your official memorandum of 22nd February 1875, No. 46, I have the honor to state that, in reply to the first question, namely, whether Annamallay Reddy, a relative of Veerammal, can institute a suit as next friend of the child to prevent the alienation of the property, I am of opinion that it is competent to the person mentioned, or any other person approved by the Court before which the suit is to be tried, to institute proceedings, on the infant's behalf, for the purpose of obtaining a decree declaring the infant's right to the property in question. Although a widow has an absolute right to the fullest beneficial life-interest in her husband's property, and may therefore make alienation valid during her lifetime (3, Madras High Court, 116), I think, as I have already stated in my previous opinion, that the character of the alienation made by these two widows is such that the infant's right might thereby be seriously prejudiced, and therefore a declaratory decree would probably be granted.

2. There is nothing, as far as I am aware, to prevent the Collector from instituting a suit of the character indicated; but, as I have already stated, it does not seem that he could do so as Agent for the Court of Wards, because the Regulation is inapplicable to the particular case.

3. As to this question I have some doubt. There is no doubt that, according to the principle stated in the passage cited, third persons may obtain relief when transactions are entered into by others *mala fide* by which the interests of such third persons may be affected. The property in question will, it appears, fall to the Government by escheat on the death of the widows and the minor, and in the absence of heirs of the deceased. The possibility of an escheat being so remote, I doubt whether

it can be said that any material interest of Government are prejudicially affected in such a manner as to give occasion for a declaratory suit. I am not aware that there is any precedent for proceedings by Government founded on such a contingency, and, without saying that such proceedings cannot be adopted, I am clearly of opinion that it would not be advisable to adopt them in this case.

4. As to the question regarding registration by the Collector of the sub-divisions, the Collector is bound and can be compelled to register, unless the proposed transfer is opposed to Hindu law. As far as the proposed transfer affects the interest of the widow, I think that the transferees are entitled to have the transfers registered; further than that they are not entitled, and it would be as well for the Collector to refuse registration. On this point the special form in which registration is applied for and granted will, of course, be material. However, in any case, I doubt whether the fact of the registration even of an unpermitted transfer could prejudice the right of the crown under the law of escheat; for the acts of a Government officer bind the Government only within the limits of the authority under which he is acting, and it cannot be supposed that power to waive rights of the crown is included within the authority of a Collector. As to the effect of the registration on the rights of the minor, I am clearly of opinion that they could not be prejudiced by it in the manner suggested. The principle stated in the passage cited from Story, Section 339, has been called in question by so great an authority as Lord St. Leonard, and may now be considered to be overruled.

5. On the whole, I am of opinion that in case of there being no relative of the minor ready and willing to institute a suit on her behalf, the best course for the Government to adopt is to institute a suit on behalf of the infant, praying for a decree declaring her right to the Muttahs, and such a decree, if obtained, will effectually secure both the minor's rights and those of Government.

6. I beg leave to add that, in the official memorandum in reply to which this opinion is written, a perfectly new view of the case is presented to me. Hitherto I understood that I was asked to advise what course the Court of Wards could adopt for the protection of the infant's interests; I therefore confined myself to stating what action the Court of Wards could, under the Regulation, take in the matter. It is only from the memorandum that I learn that the Government are, independently of the Court of Wards, prepared to move in the case, and that they are anxious to provide as well for rights of the crown under the law of escheat as for the interests of the minor.

7. I return the enclosures forwarded to me with the above official memorandum.

No. 129. ORDER THEREON, 10th March 1875, No. 392.

Miscellaneous.

THE Government having given their careful consideration to the subject, resolve to adopt the course suggested in paragraph 5 of the letter from the Government Pleader recorded above. The Board of Revenue will issue the necessary instructions to the Collector, and the plaint should be prepared in communication with Mr. Shephard if it is determined that the suit should be instituted by the Collector on behalf of the infant.

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2. The order of Government, dated 4th November 1874, No. 1,395, authorising the *Court of Wards* to intervene for th protection of the heir-at-law, is cancelled.

(True xtract.)

(Si ed) D. F. CARMICHAEL,
Secretary to Government.

To the Board of Revenue.
" the Court of Wards.
" the Government Pleader.

Exd. F. R. Bantleman.

Govt. of [1875] Madras.

REVENUE.

To

The BOARD of REVENUE,

&c., &c., &c.

Dated March 10th.

Read.

Recd.

G.O., 10th March 1875, No. 60.

MARCH.

Nos. 128—129.

Mankal and other Muttahs in Salem District.—Resolving to adopt the suggestion of the Government Pleader to institute a suit on behalf of the minor infant for a decree declaring her right to the —, and requesting the Board to issue the necessary instructions to the Collector.

Vide C. N. of Rev. Board No. 1245 of 1875.

V.C. No 1433/75

No. 67.

PROCEEDINGS OF THE COURT OF WARDS, dated 13th January 1875.

Read the following letter from H. H. SHEPHARD, Esq., Officiating Government Pleader, Madras, to H. E. STOKES, Esq., Acting Sub-Secretary to the Court of Wards, dated 6th January 1875, No. 1:—

Dated 18th December 1874, No.

I HAVE the honor to acknowledge the receipt of the Proceedings of the Court of Wards noted in the margin, and, in reply, to state that the following is my opinion.

2. It appears from the papers submitted to me that, independently of the Agreement of 16th January 1874, the persons immediately entitled to the enjoyment of the property of the deceased Lavanga are his two widows, Machammal and Veerammal, their mother-in-law being entitled to maintenance, and that on the death of the survivor of the two widows, the daughter of Veerammal comes in as sole surviving member of the family of her deceased father.

3. How the rights of Lavanga in respect of his adoptive father's property might have been affected by the latter's testamentary disposition, it seems unnecessary to discuss, inasmuch as it appears that Moothialammal had charge of the muttahs during Lavanga's minority only, and that on his coming of age he assumed possession of them and continued in such possession till his death.

4. On the supposition then that the widows were, on Lavanga's death, entitled to joint possession of the muttahs, I am of opinion that they were in a position to make what arrangement they pleased with regard to the enjoyment of them, so long as that arrangement did not prejudice the rights of the infant-daughter.

5. The arrangement made in January 1874 is undoubtedly very prejudicial to the interests of the widows themselves, and may, if acquiesced in, endanger the rights of the infant.

6. With regard to the widow Veerammal, I cannot safely say, upon the materials before me, whether or not the Courts would set aside the transaction. In order to answer such a question, it would be necessary to have a particular account of the circumstances under which the Agreement of 16th January 1874 was arranged and executed. At present, there is nothing more than the character of the transaction itself to show that it is one which ought to be set aside.

7. With regard to the infant-daughter of Veerammal, I think that the Court would consider her rights imperilled by the Agreement of January 1874, and consequently that a declaratory suit might be successfully maintained.

8. I am of opinion that Act XIX. of 1841 is inapplicable to the present case; that Act being intended to provide a speedy remedy in cases where a mere trespasser without shadow of title had obtained possession upon the decease of a previous owner, and not being directed to cases where a person has obtained possession by force of a transaction which is valid till set aside by a Court of Justice. Moreover, it can hardly be said in this case that the parties are "likely to be materially prejudiced if left to the ordinary remedy of a regular suit."

9. I return all the papers forwarded to me with the above Proceedings of the Court of Wards.

THE Court of Wards must again refer to the Government Pleader, as he has not advised them as to the method of intervention, nor has he stated that their intervention is impossible. In paragraph 7, he says that a declaratory suit might be maintained in the interests of the infant-daughter of Lavanga Reddi, but he has not stated by whom.

(A true Copy and Extract.)

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

To the Government Pleader.
Copy to the Collector of Salem.

Exd. W. H. French.

1875.

Court of Wards,

MADRAS.

PROCEEDINGS, 13TH JANUARY 1875, No. 67.

Encl.

Received

JANUARY.

No. 67.

Namkul and certain other Muttahs—in Salem District.—Government Pleader requested to advise Court of Wards as to the method of their intervention to protect the rights of the infant-daughter of the late Muttadar, Lavanga Reddi, to —, and as to the possibility or otherwise of their intervention.

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No. 3,681.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 18th December 1874.

Read the following letter from C. T. LONGLEY, Esq., Collector of Salem, to J. GROSE, Esq., Secretary to the Board of Revenue, dated 4th December 1874, No. 451 :—

WITH reference to the Board's Proceedings of the 13th ultimo, No. —, I have the honor to state that Muttyalammal's name was registered jointly with Lavanga Reddy, under the following circumstances:—

2. Polama Reddy, the husband of Muttyalammal and the registered proprietor of the five Muttahs now in question, and two others (Minnampulli and Pudukotai), died on the 16th June 1864. On the same day prior to his death, he sent a petition to Gopalaswamy Mudeliar, the then Tahsildar of Namkul, stating that as he was very ill and had no male issue, he adopted Lavanga Reddy as his son, and that, on his death, five of the seven Muttahs standing in his name should be registered jointly in the names of his widow Muttyalammal and his adopted son Lavanga Reddy, and that the remaining two Muttahs, Minnampulli and Pudukotai, should be registered, respectively, in the names of Papayammal, his uncle's daughter (a girl of two years old), and Venkatarama Reddy, his brother-in-law.

3. On the receipt of the above petition, the Tahsildar applied for instructions to the then Deputy-Collector, Mr. V. Ramiangar, who directed the Tahsildar to proceed at once to Polama Reddy's house, and to take a deposition from him regarding the subject-matter of his petition. The Tahsildar accordingly took a statement from the deceased, who also produced a will which he had made. The will and the deposition agreed in every respect with the petition, which he had sent to the Tahsildar.

4. Agreeably to the wishes expressed by the deceased Polama Reddy in the statement given by him before his death, and to the will made by him, the then Collector, the Honorable D. Arbuthnott, registered the five Muttahs now in question in the joint names of Muttyalammal and Lavanga Reddy who was a Minor ; and the Civil Court having refused to appoint a guardian until the validity of the adoption was established, Muttyalammal, the joint proprietrix, has had the entire possession and management of the estates.

1. Letter to Board, No. 193, dated 6th October 1864.
2. Board's Procs., No. 6,893, dated 19th ,, 1864.

5. The correspondence noted in the margin refers to the registry of these Muttahs in 1864.

6. The Petition, No. 2,778, which accompanied the Board's Proceedings, is herewith returned.

ENCLOSURE No. 1.—Petition.

Read also Petition, No. 3,024, from Sabapathi Ayyar, Counsel for Annamalai Reddy.

IN G. O., dated 4th November 1874, No. 1,395, the Government] authorized the interference of the Court of Wards for the protection of the heir-at-law to the Namkul and other Muttahs in the Salem District ; but suggested that the Court should take legal advice as to the mode of intervention, after ascertaining the exact position of Muttyalammal, who had been registered jointly with the late Lavanga Reddy, her adopted son, as proprietors of the Muttahs.

2. From the Collector's report now received, it appears that the husband of Muttyalammal, who died in 1864, adopted before his death the late Lavanga Reddy, and on his death-bed made a will, and petitioned the Revenue Authorities that five out of the seven Muttahs he was possessed of should be registered jointly in the names of his widow and adopted son, and two other Muttahs in the names of two of his relatives ; and that the registry was made accordingly.

3. It appears to the Court of Wards that this disposition of his property was beyond his power to make ; that Lavanga Reddy was heir to his adoptive father's whole estate, including

the two Muttahs registered in the name of that person's other relatives; that Muttyalammal, as the widow of the adoptive father, is entitled to maintenance only; that the second widow, Virammal, is the heir of Lavanga Reddy and has a life-interest in the estate; and that the agreement which she has been induced to make as to the registry of the estate is so flagrantly opposed to her interest as well as to that of her infant daughter who will ultimately inherit, as to prove, that even if major, she is incapable of managing her affairs.

4. In a Petition, No. 3,024, from Mr. Sabapathi Ayyar, Counsel for Annamalai Reddy, a relative of Virammal, it is stated that when Lavanga Reddy came of age, the possession of the five Muttahs was made over to him by Muttyalammal, who executed an agreement to that effect; and it is suggested that the Court should proceed under Act XIX. of 1841, Section 2.

Board's Procs., 19th October 1864, No. 6,893, 6th August 1874, No. 2,125, 22nd October 1874, No. 3,073.
G. O., 4th November 1874, No. 1,395.
Court of Wards, Procs., 13th November 1874, No. 3,265.
Petition No. 3,024 of 1874.

5. The papers noted in the margin will be forwarded in original (to be returned) to the Acting Government Pleader, and he will be requested to advise the Court upon the case, and state what steps should, in his opinion, be taken by the Court in pursuance of the order of Government.

(A true Copy and Extract.)

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

To the Government Pleader, with Proceedings, 6th Aug. 1874, No. 2,125 with its three original enclosures; 19th Oct. 1864, No. 6,893, with its two original enclosures; 22nd Oct. 1874, No. 3,073, and its five original enclosures; G. O., 4th Nov. 1874, No. 1,395; Proceedings 13th Nov. 1874, No. 3,265; and Petitions Nos. 2,778 and 3,024 of 1874, to be returned.

To the Collector of Salem.

Exd, W. H. French.

1874.
Board of Revenue,
MADRAS.

PROCEEDINGS, 18TH DECEMBER 1874, No. 3,681.

Received | Encl.

Rec 2/3/75
Rec 778/75

DECEMBER.
No. 3,681.

Namkul and certain other Muttahs—in Salem District.—Papers relating to registry of—in names of mother and widows of late owner Lavanga Reddy, forwarded to Acting Government Pleader for advice as to the steps to be taken by the Court of Wards in their interference for the protection of the late Muttahdar's infant daughter who is the heir-at-law.

Namkul

Revenue Department

Read the following paper 6/39

No.

Proceedings of the Court of Wards dated 6th February 1875, No. 281.

Read again Board's Proceedings 18th December 1874 No. 3681 & 13th January 1875 No. 67

No. 3

Read also the following

From,

H. H. Shephard Esquire
Offg. Government Pleader
Madras

To,

H. E. Stokes Esqre.
Ag. Sub Secretary to the Court of Wards

Sir,

Dated 13th January 1875.

With reference to the Proceedings of the Court of Wards noted in the margin I have the honor to state that the opinion which I expressed in my letter of 6th Instant No. 1, was that two courses were possible by which the interests of Veerammal's infant daughter might be protected. Either a suit might be instituted on Veerammal's behalf to set aside the agreement of January 1874 or on the infant's behalf to obtain a declaratory decree confirming her rights to the property on the death of the widows.

2. If the Court of Wards thought fit to adopt the former course, they would undertake the management of Veerammal's property and file a suit in the usual way viz: in the name of the Collector as their Agent but as to the advisability of this course I did not with the information before me venture to offer an opinion

3. With regard to the possibility of instituting a declaratory suit, I deemed

1/39

deemed it unnecessary to say more because I did not suppose that the Court of Wards would, when informed as to the rights of the parties, consider the infants case one in which they could immediately interfere; - indeed it does not seem to me that they have, under the Regulation any power to interfere, except for the protection of incapacitated persons upon whom property has actually devolved; Whereas in this case there has been no devolution of property on the infant:

I have &c

Madras
15th January
1875 } (Sd.) H. H. Shephard
Offg. Government Pleader

These papers will be submitted

to Government with reference to G. O. 4th November 1874, No. 1395.

2. From the opinion of the Government Pleader the Court regret to find that there is no room for their interference as regards the property left by the late Lavanga Reddi. It is clear that Mutyalammal has no claim to the share which she has secured under the distribution made in January 1874 between her and the widows of Lavanga Reddi who are his proper heirs; but the Court see no prospect of success in attempting to invalidate that distribution. They could only take possession on behalf of the two widows and on the ground of their incapacity; The immediate

consequence

consequence of such a step would be the institution of a suit to establish their competence and such a suit could not probably be successfully defended.

3. The Court therefore think that the Collector must be directed to effect the registry, which however will not affect the titles or rights, immediate or deferred, of any of the parties, and that the petitions praying for the Courts interference must be rejected.

(True copy & Extract)

H. E. Stokes

Acting Secretary

To,
The Acting Secretary to Government
Revenue Department
with copies of Board's Proceedings dated
18th December 1874 No. 3681 & 13th January 1875
No. 67.

E. Langhoff

Cd. M. Narasimachary

4th November/74 No 26-27

No. 444

Revenue 1875 Deptt

Proceedings of the Court of Wards

Rev 778/75

Dated 6th Feby/75
Despd 6 — " —
Recd 8 — " — "

en 2.

No. 392. 10 March 1875
Submitting to Government, with remarks, letter off.g Govt. Pleader & copies of Board's Pro: dated 18th Decr 1874 No. 3681 & 13th Jany/75 No. 67 regarding Namkal and other Muttahs in Salem District

For orders

No. 126.

C 4 March/75. No. 8 March/75.
R C 18 Feby/75. No. 22d Feby/75.
C 10 Feby/75. No. 12 Feby/75.

No 46

Revenue Department.

Official Memorandum.

The undersigned is directed to forward to the Govt. Pleader the accompanying Proceedings of the Court of Wards dated 6th February 1875 (to be returned), to draw his attention to the under-mentioned points connected with the Namkal and other Muttahs in the Salem district constituting the estates of the late Lavanga Reddy, and to solicit his further opinion thereon.

Should not the Bd. of Rev. be asked to do this? J.D.S

20/2

J.D.S.

Firstly. The Court of Wards cannot it is true interfere till the property has actually devolved on the infant daughter, which will not occur till after the death of the two widows. But a widow can hold the property only in trust for certain uses; so much so that should she make waste, they "who have the reversionary "interest have clearly a right to "restrain her from so doing". The Govt. will have a reversionary right, probably at no remote period, in this very extensive and valuable landed property. During the apparently prolonged and excited investigation before the Collector and in the Courts, none of the *Sapindas* or *Dayadis* in the family have turned up and the presumption is that there are none. The infant daughter of course has the first reversionary right, but should she predecease the widows or die childless, the property must escheat to Govt. after the death of the two widows. Their mother-in-law, i.e. the adoptive mother of Lavanga Reddy the father of the infant, has no right whatever to the property, and it is apparently to destroy the reversionary right of Govt. and to secure a very large portion of the Estate to herself that she is using her great influence over her ignorant daughters-in-law to alienate the property. The daughter has the right to sue at once to prevent waste, but as she is an infant can Annamallay Reddy, a relative of Veeranmal the junior widow, step in as next friend of the child and institute a suit at once to prevent the alienation of the property?

Norton's Leading Cases Part II p: 501.

Norton's Leading Cases Part II p. 501.
Macnaughten's Hindu Law Chapter I
Sec: II Page 25.

Secondly. But as Annamallay Reddy can at any moment be persuaded by the opposite party to withdraw, is there any provision in the law to prevent the Collector instituting the proposed suit as the next friend of the child?

Section 333 of Story's Equity Jurisprudence.

Thirdly. One of the rules of Equity is "that particular "persons, in contracts and other

"acts, shall not only transact
"bonâ fide between themselves,
"but shall not transact malâ
"fide in respect to other persons,
"who stand in such a relation to
"either as to be affected by the
"contract or the consequences of
"it". Under this provision can
Govt. who, next to the daughter, possess
the reversionary right to the property
institute the suit in their own
behalf?

Fourthly. Another section (339)
of Story's Equity Jurisprudence
stipulates that if a fraudulent
transaction "has been fully made
"known at the time to the parent
"or other person standing in loco
"parentis; as for example, to the
"person from whom the spes successionis
"is entertained or after the expiration
"of whose present estate the
"reversionary interest is to become
"vested in possession, and it is
not

"not objected to by him, the
"extraordinary protection generally
"afforded in cases of this sort by
"Courts of Equity will be withdrawn.
"A fortiori, it will be withdrawn
"if the transaction is expressly
"sanctioned or adopted by such
"parent or other person standing
"in loco parentis". Would under
this rule the registration of the
sub-divisions of the property in
the names of Muthealummal,
her daughters-in-law and
one Ramasawmy Reddy by
the Collector on behalf of Govt.
with full knowledge of the
fraudulent character of the
transaction prejudice the rights
which may accrue to Govt. here-
-after, as already stated? and
can the Collector refuse registration
and so leave the parties to
institute a regular suit in
which

12/392

which Govt. can as one of the Defendants represent to the Court the fraud proposed to be committed on the child and eventually on Govt.?

The Govt. Pleader is also requested to give his opinion on each point and to state clearly which of the courses proposed can safely be adopted.

(By order)

22d February 1875

To
The Govt. Pleader Des 23d Feb

17/2/75

O.M.

Nambal Kottey
Mittahs in Se
[illegible] District

S.O. No. 392. 10' March 1875

[illegible]

P.
Dsd
in M.S.

Dont print
till reply is
rec

2: 127.

No 23 | 13/3 | Madras
1st March 1875

From
H. H. Shephard Esqre
Offg: Government Pleader
Madras

To
C. G. Master Esqre
Ag: Secretary to Government
Revenue Department

Sir,

With reference to your Official Memorandum of 22d February 1875 No 46, I have the honor to state that in reply to the first question namely whether Annamalay Reddy a relative of Veerammal can institute a suit as next friend of the child — to prevent the alienation of the property, I am of opinion that it is competent to the person mentioned or any other person approved by the Court before which the suit is to be tried to institute proceedings on the infant's behalf for the purpose of obtaining a decree declaring the infant's right to the property in question. Although a widow has an absolute right to the fullest beneficial life interest in her husband's property and may therefore make alienation valid during her life time (3. Mad: H. C 116) I think, as I have already stated in my previous opinion, that the character of the alienation made by these two widows, is such that the infant's right might thereby be seriously prejudiced and therefore a declaratory decree would probably be granted.

2. There is nothing as far as I am aware to prevent the Collector from instituting a suit of the character indicated, but, as I have already stated, it does not seem that he could do so as agent for the Court of Wards

because

because the Regulation is inapplicable to the particular case.

3. As to this question I have some doubt. There is no doubt that, according to the principles stated in the passage cited, third persons may obtain relief when transactions are entered into by others mala fide by which the interests of such third persons may be affected. The property in question will, it appears, fall to the Government by escheat on the death of the widows & the minor, and in the absence of heirs of the deceased. The possibility of an escheat being so remote I doubt whether it can be said that any material interest of Government are prejudicially affected in such a manner as to give occasion for a declaratory suit. I am not aware that there is any precedent for proceedings by Government founded on such a contingency and without saying

that such proceedings cannot
be adopted I am clearly of opinion
that it would not be advisable
to adopt them in this case.

4. As to the question regarding registration by the Collector of the Sub divisions, the Collector is bound and can be compelled to register unless the proposed transfer is opposed to Hindu Law. As far as the proposed transfer affects the interest of the widow I think that the transferees are entitled to have the transfers registered; further than that they are not entitled, and it would be as well for the Collector to refuse registration. On this point the special form in which registration is applied for & granted will of course be material. However in any case I doubt whether the fact of the registration even of an unpermitted transfer

Could

could prejudice the right of the Crown under the law of escheat; for the acts of a Government Officer bind the Government only within the limits of the authority under which he is acting and it cannot be supposed that power to waive rights of the Crown is included within the authority of a Collector. As to the effect of the registration on the rights of the minor I am clearly of opinion that they could not be prejudiced by it in the manner suggested. The principle stated in the passage cited from Story §339 has been called in question by so great an authority as Lord St Leonards and may now be considered to be overruled.

5. On the whole I am of opinion that in case of there being no relative of the minor ready and willing to institute a suit on his

behalf, the best course for the Government to adopt is to institute a suit on behalf of the infant praying for a decree declaring her right to the Mutthahs, and such a decree, if obtained, will effectually secure both the minor's rights and those of Government.

I beg leave to add that in the Official Memo in reply to which this Opinion is written a perfectly new view of the case is presented to me. Hitherto I understood that I was asked to advise what course the Court of Wards could adopt for the protection of the infant's interests. I therefore confined myself to stating what action the Court of Wards could, under the Regulation, take in the matter. It is only from the Memo that I learn that the Government are, independently of the Court of Wards, prepared to move in the Case and that they are anxious to provide as well for rights of the Crown under the law of Escheat as for the interests of the minor.

I return the enclosures forwarded to me with the above Official Memorandum.

I have the honor to be
Sir
Your most obedient Servant

H H Shephard

Offg Government Pleader

Revenue 1875 Depto

From No. 778

The Offg Govt Pleader Madras

to

The Acg Secy to Govt Rev. Dept

Dated 1st March

Recd 3d —

(Enclosures three)

E/WS

S.O. No. 392 - 10 March 1875

Naunkul and certain other Muttahs - in Salem District

Advises further as to —

h-128

24 March/75: 10th March/75

17/392

REVENUE DEPARTMENT.

No. 444.

From Court of Wards.

Dated 6th February 1875.

FOR ORDERS.

It is sufficiently clear that the Ct of W. must [illegible] & [illegible]. — Shd be called for

10/2

12/2

FOR ORDERS.

Namkul Mutt

446

Vide Offl. Memo. No. 46

d/ 22d Feb 1875

Revenue Department.

No. 392

Proceedings of the Madras Government.

Under date the 10th March 1875

Read the following papers—

Pro: Court of Wards.

Subm.g letter from Offg. Govt. Pleader and copies of Board's Pro.gs regarding Namkul and other Muttahs in Salem Dt.	(H.E. 1st February 1875)
Official Memorandum from the Secretary to the Govt. to the Government Pleader.	(H.E. 22d February 1875 No. 46)

Offg. Govt. Pleader.

Forwg. further advice as to Namkul and other Muttahs in Salem Dt.	(H.E. 1st March 1875. No. 23.)

The Government having given their careful consideration to the subject, resolve to adopt the course suggested in para 5 of the letter from the Government Pleader

5/3

WR 4/3

WR

I keep my doubts about the exped.y of this course but it will be well to try whether the Govt. has the power of protecting State & "minor" interests in this way — [illegible]

Pleader recorded above. The Board of Revenue will issue the necessary instructions to the Collector, and the plaint should be prepared in communication with Mr Shephard if it is determined that the suit should be instituted by the Collector on behalf of the infant.

2. The order of Government dated 4th November 1874 No. 1395 authorizing the Court of Wards to intervene for the protection of the heir-at-law is cancelled.

3/3

Case on which to try the principle sd be devised. I pass the Dft. M

3/3/75

14 The Board of Revenue Dec 11 Mar
10 " Court of Wards
3 " Government Pleader.

G. D.

[illegible] and other [illegible]
in [illegible] D^r.

[illegible]
Copy
Despatched
Soon

[illegible] March/75. P^d 8 March/75.