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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue. DEPARTMENT

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Registration.

Read the following papers:—

No. 105. From the Hon. V. RAMIEUX, R., c.s.i., Inspector-General of Registration, to the Hon. W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 7th June 1876, No. 138.

With reference to the accompanying letter* from the Registrar of Madura, I have the honor to request the favor of Government obtaining for me the

* 30th May 1876, No. 49 (with three enclos). opinion of the Advocate-General on the following point:—

2. Section 38, Act (Madras) II of 1864, prescribes that "Lands purchased at a public sale (under the Act) shall be registered in the name of the actual purchaser, who shall receive a certificate of sale signed and sealed by the Collector, which shall be conclusive evidence of the fact of the purchase, &c." The Government are aware that, under this provision of the law, a large number of sale-certificates are annually granted by Revenue Officers for lands sold for arrears of revenue. Now, the point on which I wish to have an authoritative opinion is whether such a certificate is a document falling within the meaning of clauses 2 and 1, Sections 17 and 18, of the Indian Registration Act, and therefore a document compulsorily registerable, if the value amounts to Rupees 100 and upwards. Sale-certificates granted by the Civil Courts, under Section 259 of the Civil Procedure Code, have been expressly pronounced (though extra-judicially) by the Madras High Court to be instruments declaring an interest in property, and it has accordingly been ruled that, if the value of the interest so declared is 100 Rupees and upwards, the registration of these instruments is compulsory. This view is only in accordance with the express wording of Section 259 itself, by which the certificate required to be granted has the effect of an instrument of transfer or conveyance. But the words used in Section 38 of Act II of 1864 in the case of sale-certificates granted by Revenue authorities are not the same, and the question is what is the precise effect of the words employed, viz., that the certificate "shall be conclusive evidence of the fact of the purchase in all Courts and tribunals where it may be material to establish the same." It will be seen that the sale under the Civil Procedure Code is a sale of "the right, title, and interest of the defendant in the property sold," whereas under Act II of 1864 the lands are sold "free of all encumbrances," and the law further specially

Vide Section 42.
" " 40.

provides for the absolute transfer of possession of the property to the purchaser. I therefore see no reason why the sale-certificates of Revenue Officers should not be held to be instruments of transfer as much as those issued by the Courts under the Procedure Code; but it will be seen that doubts are entertained on the point, and certificates of the description in question are seldom presented for registration. It is desirable that these doubts should be removed, and the most satisfactory way in which this can be done is of course by a decision of the High Court, but the point may not come before them judicially for a long time, and meanwhile the interests of purchasers at sales held under Act II of 1864 may be endangered.

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3. If it should be held that the sale-certificates in question are, like those issued under Section 259 of the Civil Procedure Code, instruments of transfer or conveyance, then I would suggest that in issuing them the Collectors be instructed to add a foot-note to them informing purchasers that unless the same are registered they will probably be held inadmissible as evidence of title.

From T. RAM ROW, Registrar of Madura, to the Hon. V. RAMIENGAR, C.S.I., Inspector General of Registration, dated Madura, 30th May 1876, No. 49.

In forwarding, for your kind consideration and orders, a letter (in original) with two enclosures from the Sub-Registrar of Madura, dated the 22nd May 1876, No. 29, I have the honor to submit my opinion upon the points mentioned therein.

2. As regards sale-certificates granted by Revenue authorities, I concur with the Sub-Registrar in his view that their registration is compulsory when the value is Rupees 100 and upwards; but I do not agree with him in thinking that they are in all respects similar to those granted by Judicial authorities as, in the case of the former, the transfer of property is effected free of all encumbrances, whereas in the other case only such right or interest in the land as the judgment-debtor possesses is sold.

3. It is true that the sale-certificates granted by Courts do not, in many cases, contain the necessary particulars, and consequently some difficulty is felt in preparing indexes.

4. The Sub-Registrar's objection to the Courts entering the deceased person's name in the sale-certificates does not seem to be sound, as his representatives and heirs might under the Act present the document for registration.

5. Under the measures adopted as per Circular Order, No. 3, dated the 5th April 1876, the advantage of registering copies of decrees or orders is likely to be more generally known to the public, and the end will be still better attained if the Sub-Registrar's suggestion to append a foot-note to the document be approved of.

From the Sub-Registrar of Madura, to the Registrar of Madura, dated Madura, 22nd May 1876, No. 29.

I have the honor to request you will be so good as to submit this letter to the kind consideration of the Inspector-General of Registration, in view to his taking such notice as he may deem fit of the points stated below.

2. At present, sale-certificates issued by Revenue Officers are seldom presented for registration. It does not appear there is anything in Sections 17 and 18 of the Indian Registration Act to exempt them from their operation; and this view is strengthened by a paragraph in the *Madras Mail* of the 12th instant, in which it is stated that the Collector of Bellary has issued a notice that the registration of sale-certificates of the value of 100 Rupees and upwards is compulsory. During my nine years' experience as Sub-Registrar, I remember having registered only two or three Revenue sale-certificates issued under Act II of 1864, and that in the district of Tanjore, and about sixty at Madura, issued under Act VIII of 1865 under peculiar circumstances, and not one either in Tinnevely or Trichinopoly. It cannot be alleged for a moment either that lands are rarely sold by Revenue Officers for arrears of revenue, or that no sale certificates are issued by them, as by the District Judges and District Munsifs, and that consequently they are never presented for registration. Section 38 of Act II of 1864 seems to enjoin the issuing of sale-certificates, and every District Gazette will show beyond doubt the frequency of the change of title in immovable property for failure to pay the Government kist. Very probably they are for small values and therefore not registered. But I think there is a general impression that such certificates need not be registered, because they are issued by the highest Revenue Officer in the district, viz., the Collector. It is inconceivable why such an impression should prevail, when sale-certificates issued by District Judges are presented for registration.

It may be that the sale-certificates issued by Judicial Officers are presented for registration, because the holders thereof are generally informed by a note at the foot of the certificate that the same cannot be treated as evidence of title unless registered. I remember distinctly that when I was at Trichinopoly in 1872, a pretty large number of Judicial sale-certificates was admitted to registration on payment of penalty, simply because the public were not aware that they should be registered under the present Registration Act, until, I believe, it was pointed out by the High Court that their registration is compulsory. It should here be stated that their Lordships, the Judges of the High Court of Madras, seem to be of opinion (*vide* enclosed copy of the judgment of 19th October 1875) that a certificate of sale issued under Section 35 of Act VIII of 1865 is not a conveyance, as it is simply evidence of the fact of sale. Hence, it has to be inferred that they are also of opinion that such a certificate is not an instrument falling under Sections 17 and 18 of the Registration Act. It is doubtful what construction their Lordships will put on Section 38 of Act II of 1864. Probably it is to be construed in the same light as Section 35 of Act VIII of 1865, inasmuch as a certificate issued under Section 38 is only evidence of the fact of the purchase. It is not clear why a distinction should be made, so far as registration of it is concerned, between a certificate issued by a Revenue Officer and that issued by a Judicial Officer. I need hardly state at any length the necessity and importance of an authoritative ruling on the point and its natural effect upon the operation of the Registration Department, if it is decided that Revenue sale-certificates, at least those issued under Act II of 1864, are instruments falling under Sections 17 and 18 of the Registration Act VIII of 1871.

* *Vide* Proceedings of the High Court, dated 18th November 1871.

3. I humbly beg leave to take advantage of this opportunity to state that most of the particulars required by Registration Rule 2 are generally omitted in the sale-certificates issued by Judicial Officers. In some cases even the name of the village in which the property is situated is omitted, that of the taluk and hamlet alone being given in the certificate. The consequence is much inconvenience is experienced by Registering Officers in preparing the indexes and the memorandum under Section 64, when necessary; and in determining the sub-district in which it should be registered, as a taluk is generally divided into two sub-districts. Also, in some cases, only the name of the purchaser is entered in the certificate without the necessary addition, such as his place of residence and father's name, to identify the purchaser. The result is there is room for false personation, more especially as the public including some vakeels seem to be laboring under the erroneous impression that a Registering Officer can register a sale-certificate by whomsoever presented, because its authenticity is beyond doubt, by reason of its having been executed and issued by a Court, and because no third party is injured by a wrong man presenting it, or by one committing false personation in the course of its registration. In fact, a case did actually occur in my office, in which a wrong person attempted to present a sale-certificate for registration as one given to him, because he happened to bear the same name as that of the person who bought the land at the Court sale, and as there was nothing in the certificate except the bare statement that the sale is concluded in the name of one A B, the highest bidder. It seems therefore very desirable that some measures should be adopted to remedy these defects.

4. I may also mention that, in some cases, the sale-certificate is issued in the name of a deceased purchaser. This happens under the following circumstances:—As a rule sale-certificates are issued only after some months and even after some years from the date of sale, and that only, I believe, at the request of the party. It so happens sometimes that the purchaser dies before he applies for the certificate, or one is issued on application. Even when the application is made by the representative of the purchaser on his death, the Courts seem to issue the certificates in the name of the deceased, because the sale was concluded in his name. I am not sure whether this is a correct course, because, as a sale-certificate does not differ much from an ordinary sale deed, with the exception that in the former case some Court is taken as the executing party and in the latter a private party as the executant, it does not seem desirable to execute a document in favor of a deceased person, simply on the ground that the transaction was concluded during his life-time.

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*Proceedings of the Madras Government, Judicial Department,
24th July 1876. No. 1503.*

5. Under Act XX of 1866, it was the practice of all Judicial Courts to transmit to Registration offices memoranda containing the operative part of every decree passed by them affecting immovable property. Under this system there was a public record of all decrees passed by Courts like that of all private registered documents. After Act VIII of 1871 came into force this practice was discontinued, and parties are now required to register certified copies of decrees in their entirety at their option. Notwithstanding the advantage derivable under Article 168 of Schedule II of the Indian Limitation Act by registering certified copies of decrees, very few such copies are presented for registration. In my humble opinion, if the Courts granting the certified copies could be induced, if necessary through the High Court, to append a note at the foot of each copy, stating the advantages of registering it, as they now do in the case of sale certificates granted by them, stating the disadvantage of not registering them, better results may probably be expected.

No. 870.

Referred, through the Government Solicitor, for the opinion of the Advocate General.

OOTACAMUND,
12th June 1876.

(Signed) W. HUDLESTON,
Chief Secretary.

No. 106. From E. BARCLAY, Esq., Government Solicitor, to the Honorable W. HUDLESTON, Chief Secretary to Government, Fort St. George, dated Madras, 26th June 1876, No. 312, forwarding the following Opinion of the Advocate-General:—

OPINION.

I concur in the Inspector-General's opinion that certificates of sale, issued under Section 38 of Madras Act II of 1864, must be regarded as instruments falling within clause 2 of Section 17 of the Indian Registration Act, 1871, and also in his recommendation that a note should be appended to the certificate warning the recipient of the effects of non-registration.

2. As the Registration Act, 1871, is at present undergoing revision in the Legislative Department of the Government of India, it might be well to bring the matter to the notice of the Government, with a view to the insertion of a clause exempting documents of this description from the necessity of registration. It is of course quite unnecessary in such cases, and it would be well to do away with a needless and troublesome formality.

(Signed) H. S. CUNNINGHAM,
Advocate-General.

22nd June 1876.

No. 107. ORDER THEREON, 24th July 1876, No. 1508.

As the Advocate-General concurs in opinion with the Inspector-General of Registration that certificates of sale issued by Collectors under the provisions of Section 38 of the Madras Areas of Revenue Recovery Act II of 1864 must be regarded as instruments coming within clause 2 of Section 17 of the Indian Registration Act VIII of 1871, the registration of which is compulsory, the Government approve the suggestion of the Inspector-General that a foot-note should

*Proceedings of the Madras Government, Judicial Department,
24th July 1876. No. 1508.*

hereafter be appended to such certificates warning the recipients that unless the certificates are registered under the Registration Act, they may possibly be held to be inadmissible as evidence of title. Collectors granting certificates of sale under Section 38 of Madras Act II of 1864 are hereby directed to append a foot note to them to the effect above stated.

2. The Governor in Council is of opinion that the registration of such evidence of title is in accordance with the intention of the Legislature on the subject which contemplates the establishment of a complete record of transactions transferring interest in property of a certain kind and value, available to the public for inspection.

(True Extract.)

W. H. Barclay
Chief Secretary.

To the Inspector-General of Registration.
„ the Advocate-General.
„ the Board of Revenue.
„ all Collectors.
„ the Revenue Department. ✓

Exd J. Wright.

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