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TAMIL NADU ARCHIVES

GOVERNMENT OF TAMIL NADU

Revenue DEPARTMENT

G.O. No. / B.P. No.	1286	Press. / Mis.
Dated	12.8.1878	197 .

Not to be folded or roughly handled

Archives I—6,806—24-2-78.

1286

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

12th August 1878, No. 1,286.

Read the following paper :—

No. 155. Proceedings of the Board of Revenue, dated 13th May 1878, No. 1,296.

Read the following letter from J. W. HANDLEY, Esq., Government Pleader, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Madras, 7th May 1878, No. 60 :—

I HAVE the honor to acknowledge receipt of the Board's Proceedings noted in the margin referring for my opinion a
17th April 1878, No. 1,086
proposal by the Collector of Vizagapatam to appeal to the High Court against the decree of the District Court of Vizagapatam in Original Suit No. 4 of 1877 on the ground that the Collector's costs are not provided for thereby.

2. I do not think an appeal on the subject of costs alone would have the least chance of success. The judgment makes no mention of the Collector's costs, and it is probable that the Judge did not intend to allow them; indeed, it is not easy to say how either of the other parties could in justice be made to pay them. The plaintiff was driven to make him a party by the form of the notice as to registration, which challenged an injunction from some competent Court. Moreover, the Collector's answer denied or at least threw doubts upon plaintiff's title, and plaintiff having now established it could hardly be made to pay the Collector's costs. Neither could the defendant be made to do so I think, for she had nothing to do with the Collector's being a party, and his costs were in no way caused by any act of hers.

3. If the copy of the decree sent to me is correct, it does not provide for payment of any costs by anybody. This no doubt was a mistake, for the judgment expressly gives plaintiff his costs; but unless it is set right he cannot possibly get them in execution. Probably some application may be made on behalf of the plaintiff in this matter at the hearing of the appeal by the defendant (which I believe either has been or will shortly be filed), and if the question of costs is thus opened, there may be an opportunity to mention the matter of the Collector's costs. I shall watch the proceedings in the appeal with this object.

4. I return all the enclosures.

SUBMITTED to Government with reference to G.O., 1st October 1877, No. 3,052.

2. On the death of the late Zemindar of Siripuram, the Collector at first recognized plaintiff, a Minor, as the heir with reference to a will and a deed of adoption; but on further inquiry he came to the conclusion that these documents were forged. He then ignored plaintiff's claim and recognized that of the late Zemindar's widow, first defendant.

3. Upon this a suit was filed against the widow and the Collector to establish plaintiff's claim as adopted son and to recover possession of the property.

4. Judgment has been given in plaintiff's favor with all costs. As no provision was made for the Collector's costs, he proposed to appeal to the High Court. The Government Pleader is of opinion that an appeal as regards costs is not advisable, but he promises to watch the proceedings in the appeal by the first defendant in case an opportunity of mentioning the matter of the Collector's costs should arise.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

ENCLOSURE No. 1.

Proceedings of the Board of Revenue, dated 17th April 1878, No. 1,086.

Read the following letter from H. ST. A. GOODRICH, Esq., Acting Collector of Vizagapatam, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated 4th April 1878, No. 397.

GOVERNMENT in their Order, No. 3,052, dated 1st October 1877, sanctioned the defence of the suit brought by the adopted son of the late Proprietor of Siriparam Estate against the proprietor's widow and myself as Collector of the district.

2. The District Judge gave decree for plaintiff with all costs as will be seen from the authenticated copies of the decree and judgment herein enclosed.

3. The Collector is always added as party in cases where the registration of an estate in plaintiff's name is sought, and his costs must be provided in the decree. The decree and judgment in this case are silent as to the Collector's costs, neither the plaintiff nor 1st defendant are ordered to pay them, nor is it stated the Collector, 2nd defendant, is to bear them. The Court assigned no reason for such omission. The costs incurred by me in the District Court amount to Rs. 1,006-10-0 as shown in the margin, and I request you will be so good as to cause an appeal to be preferred to the High Court against the decree of the District Court regarding the costs incurred by the Collector.

Vide High Court's Report, Vol. III, page 35.

	Rs.	A.	P.
Stamp for miscellaneous petition	0	8	0
Vakil's fee on Rupees 12,506	1,000	0	0
Stamp for authenticated copy of decree ..	1	0	0
Do. for authenticated copy of judgment ..	0	8	0
Do. for application	0	1	0
Volunteer's fee for decree and judgment ..	4	1	0
Total ..	1,006	10	0

* Volunteer's fee and value of paper 3 6 0

4. A further sum of Rupees 3-6-0* has been incurred by me in procuring unauthenticated copies of plaint and written statement, &c., and I request you will be good enough to obtain the sanction of the Board for the above expenditure.

5. In ordinary cases a motion for review of the Court's judgment might be made before the Court itself; but in the present case the Judge whose order I desire to be reviewed is absent on leave and a junior is acting for him; I therefore think it more convenient to prefer an appeal against the terms of the decree as above stated.

ENCLOSURE No. 1.—Authenticated copy of Judgment.

ENCLOSURE No. 2.—Authenticated copy of Decree.

REFERRED with previous papers to the Government Pleader whose opinion is requested as to whether an appeal as regards the Collector's costs is advisable.

2. As regards paragraph 3, the Board observe that plaintiff did not sue for the registration of the estate in his name.

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary.

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No. 156. ORDER THEREON, 12th August 1878, No. 1,286.

Miscellaneous.

IN the case referred to the Collector of Vizagapatam has become liable, it is stated, for costs amounting to Rs. 1,010.

2. The Government Pleader thinks that an appeal as regards these costs alone would not have the least chance of success, but promises to watch the Proceedings in the appeal by the 1st defendant in hopes of recovering the Collector's cost if possible. To this proposal the Government have no objection and resolve to leave the matter to Mr. Handley.

3. His Grace the Governor in Council does not understand how the Collector, who was only a formal or official defendant, was justified in paying to the Vakil employed the excessive fee of Rs. 1,000. He is requested to explain why this was necessary for merely filing an answer. The fee is regulated apparently by Section 25, Regulation XIV of 1816, which allows a maximum sum of Rs. 1,000; but as the Collector had no interest whatever in the matter, all that his pleader had to do was to put in an answer that his client was prepared to act as the Court directed. The Vakil had nothing to say on the merits of the case (which would be debated by the pleaders of the widow and her adopted son), but simply to ask for the Collector's costs and the Collector should therefore have made a special arrangement with his Vakil for a sum commensurate with the actual trouble incurred. As a matter of fact the same Vakil appeared for the widow as well as for the Collector.

4. Nor does it appear why an application for a review was not presented. The reasons given in paragraph 5 of the Collector's letter, dated 4th April 1878, No. 397 (Board's Proceedings, 17th April 1878, No. 1,086) are not, in the opinion of Government, sufficient for the omission to follow so easy and effectual a course.

Special Appeal 79-66 M. H. Court Report Volume III, Part II, Page 134.

5. The suit was not, it is observed, one to compel registration of the estate, in which case alone the Collector must of necessity be made a party.

(True Extract.)

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

To the Board of Revenue.
" the Government Pleader.

Exd. W. H. French.

Revenue Reports

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Memo for Orders.

On Note, Bd of Rev dated 15 May 1878 & 1296,
submitting opinion of Govt Pleader relative to
Coll^r's proposal to prefer an appeal to High
Court as regards his costs in Suit № 4 of 1877
filed in District Court of Vizagapatam by the
adopted son of the late proprietor of Sini-
puram Estate to obtain registration of the
Estate in his name.

1. In this case the Collector of Vizagapatam has become liable for costs amounting to over Rs 1000 and the Govt will have to defray the charge unless the Appellate Court can intervene casually in the matter.

2. Collectors are bound to keep registers and to enter

Lemuel Smith Esq^r
Actg Secy to Govt
Board of Revenue
Fort St George

No costs have been
awarded - & we leave
the case & the Govt Pleader
as he proposes

20 May

enter all transfers of land from one proprietor to another, and though this cannot confer a title the act is an important one in the eyes of land holders.

Regulation XXVII of 1802 Sec 23 Reg II of 1803.

† Bd S.D. 440.

3. On the death of the settlement proprietor Mr Goodrich issued a eventual registry in the name of the adopted son but on the remonstrance of the widow of the deceased, he saw reason to reconsider the matter and issued a notification that the registry would be in her name unless

any

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C.D. 21 Nov 1876 No 1767 R.D.

C.D. 1st Oct 1877 No 3052

an injunction of a competent Court prohibiting such registry was produced within three months the Bd and the Govt approved his procedure.

4. The adopted son then filed a suit against the widow & the Collector to establish his adoption & the Collector was authorized to withdraw his defence - He denied his liability to be sued for making a transfer; expressed his willingness to abide by the decision of the Court; and asked for his costs from Plaintiff or Defendant.

5. The judge found for the Plaintiff "with all costs"

but

but could not a word
about the Collectors costs.
The decree merely shews
that he is liable. On his
proposing to the Board
to appeal they asked
the Govt. Pleader who
is of opinion that such
an appeal would not
have the least chance
of success.

6. Mr. Handley goes
on to say that he doubts
whether the Judge ever
intended to allow the
Collector his costs and
he cannot see any reason
why either Plaintiff or
1st Defendant should
be called on to defray
them. Next I would
submit

Bd's Proc 17 Apl 1878 ¶

1878/5

submit that Mr. Handley
is mistaken in supposing
that there was any neces-
sity for making the
Collector a party to the
suit at all. As he had no
interest in it, he was
ready to register either
party's name as the Court
might decide but he was
bound to exercise his
discretion in the first
instance in his decision.

7. It seems clearly a
case in which his costs
should come out of the
Estate and yet it depends
on the caprice of the Judge
whether the charge is
not thrown on the Govt.

Mr.

8. Mr Goodrich quotes High Court Reports Vol III page 35 to show that his costs must be provided in the decree but the case (Regular Appeal 58 of 1861) does not apply.

EJCC

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Revenue Department

No. 1286

Proceedings of the Madras Government

Under date the 2nd June 1878.

Read the following

Proceedings of the Board

of Revenue dated 13th May

1878 No 1295.

In the case referred

to the Collector of Vizaga-

patam has become liable,

it is stated,

for costs amounting to

Rupees 1010-

2 The Government Pleader

thinks that an appeal

as regards these costs

alone would not have

the least chance of success

but promises to watch

the Proceedings in the

appeal C

C 29 May 78. RC. 26-6-78.
R 11 June — R. 5-8-78.
RC. 10-8-78. RC 5-8-78.
R 22-6-78. RC 7-8-78 R 12-8-78

appeal by the first defendant in hopes of recovering the Collector's costs if possible. To this proposal the Government have no objection and resolve to leave the matter to Mr Hundley

3. His Grace the Governor in Council does not understand how the Collector, who was only a formal or appeal defendant, was justified in paying to the Vakil employed the ~~Collector~~ fee of Rupees 5000. He is requested to explain why this was necessary for the ~~Collector~~ merely

See separate papers

1886

filing an answer. Nor does it appear why an application for a review was not presented. The reasons given in paragraph 5 of the Collector's letter dated 4th April 1878 No 397 (Boards Proceedings 17th April 1878 No 1085) are not in the opinion of Government sufficient for the omission to follow so easy and effectual a course and even now it may not be too late to file such an application if the 90 days allowable* runs from the date of delivery of the copy

* (Clause 173 Schedule II Act XV of 1877.

V

of the decree in March
27th 1878.

4. The suit was
not, it is observed,
one to compel registration of the Estate
in which case alone
the Collector must
if necessarily be made
a party.

Spencer appeal 79/60
M.H. Court Report Vol III
Part II Page 134.

Revenue Department

No. 1286

1878

Proceedings of the Board of Revenue
Dated 13 th May 1878.

Read the following
Board's Proceedings dated 17th April 1878 No 1086 —
No 60.

From

J. W. Handley Esqr
Government Pleader
Madras

To

C. A. Galton Esqr
Ag Secretary to the
Board of Revenue

Sir,

I have the honor to acknow-
-ledge receipt of the Board's Pro-
17 April 1878. -ceedings noted in the margin
No 1086. referring for my opinion a
proposal by the Collector of
Vizagapatam to appeal to
the High Court against the
Decree of the District Court
of Vizagapatam in O.S.
No

Recirculated with
Mr Schwabe's reply

Struck Mr Handley's
remarks Mr Galton's
in the draft.

certainly —
but I doubt the Rs 4000
being due to the Plaintiff —

19-6-78. RC 5-8-78
R 22-6-78. R 5-8-78
RC. 26-6-78. RC 5-8-78
R 5-8-78. R 12-8-78

Sh 4 of 1877 on the ground that the Collector's costs are not provided for thereby.

2 I do not think an appeal on the subject of costs alone would have the least chance of success. The judgment makes no mention of the Collector's costs and it is probable that the Judge did not intend to allow them; indeed it is not easy to say how either of the other parties could in justice be made to pay them. The Plaintiff was driven to make him a party by the form of the notice as to Registration, which challenged an injunction from some competent Court. Moreover the Collector's answer denied or at least threw doubt upon Plaintiff's title and Plaintiff having now established it could hardly be made to pay the Collector's costs. Neither could the defendant be made to do so, I think, for she had nothing to do with the Collector's being a party and his costs were in no way caused by any act of hers.

3. If the copy of the Decree sent to me is correct, it does not provide for payment of any costs by anybody. This no doubt was a mistake for the judgment expressly gives plaintiff his costs, but unless it is set right he cannot possibly get them in execution. Probably some application may

may be made on behalf of the plaintiff in this matter at the hearing of the appeal by the defendant (which I believe either has been or will shortly be filed) and if the question of costs is thus opened there may be an opportunity to mention the matter of the Collector's costs. I shall watch the Proceedings in the Appeal with this object.

4. I return all the enclosures.

I have &c

Madras
7th May 1878

(Signed) J. McHardy
Government Pleader

Submitted to Government with reference to G.O. dated 1st October 1877. No. 3052.

On the death of the late Zemindar of Sirkpuram, the Collector at first recognised plaintiff, a minor, as the heir with reference to a will and a deed of adoption, but on further enquiry he came to the conclusion that these documents were forged. He then ignored plaintiff's claim and recognised that of the late Zemindar's widow, first defendant.

3. Upon this a suit was filed against the widow and the Collector to establish plaintiff's claim as adopted son and to recover possession of the property.

4 Judgment has been given in

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in plaintiff's favor with all costs.
As no provision was made for the
Collector's costs he proposed to
appeal to the High Court. The
Government Pleader is of opinion
that an appeal as regards costs
is not advisable but he promises
to watch the proceedings in
the appeal by the first defend-
-ant, in case an opportunity of
mentioning the matter of the
Collector costs should arise.

(True Copy: Extract)

A.J. Clayton
Ag. Secretary

To

The Secretary to
Government, R.D.

with 2. original enclosures
the returned and copy of
Board's Proceedings, dated
17 April 1878, No 1086.

W.B.L.
R.D.

1886
Rev. Dept.

No 1286

Proceedings of the Madras Government.
Under date the 13th August 1878

Read the following Proceedings of the Board of Revenue dated 10th May 1878 No 1296.

In the case referred to the Collector of Vizagapatam has become liable, it is stated, for costs amounting to Rupees 1010.

2. The Government Pleader thinks that an appeal as regards these costs alone would not have the least chance of success but promises to watch the Proceedings in the appeal by the first defendant in hopes of recovering the Collector's cost of

if possible. To this proposal the Govt. have no objection and resolve to leave the matter to Mr. Handley.

3. His Grace the Governor in Council does not understand how the Collector, who was only a formal or official defendant, was justified in paying to the Vakil employed the excessive fee of Rs 1000. He is requested to explain why this was necessary for merely filing an answer. The fee is regulated apparently by Section 25 Regulation XIV of 1816 which allows a maximum sum of Rs 1000 but as the Collector had no interest whatever in the matter all that his pleader had to do was to put in an answer that his client was prepared to act as the Court directed. The Vakil had nothing to say on the merits of the case which would be debated by the pleaders of the widow and her adopted son but simply to ask for the Collector's costs and the Collector should therefore have made a special arrangement with his Vakil for a sum commensurate with the actual trouble incurred. As a matter of fact the same Vakil appeared for the widow as well as for the Collector.

4. Nor does it appear why an application for a review was not presented. The reasons given

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in paragraph 5 of the Collectors
letter dated 4th April 1878 (F.397
Boards Proceedings 17th April 1878
F. 1086) are not, in the opinion
of Govt sufficient for the omis-
sion to follow so easy and
effectual a course.

5. The suit was not, it is
observed, one to compel registra-
tion of the Estate in which case
alone the Collector must of
necessity be made a party.

Special appeal 79/66 M.H.

14 Sols Stamp Remanded accordingly
to the Government Pleaders

50 4