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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.
B.P. No.

775

Press
Mis.

Dated 9.6.1876.196

Not to be folded or roughly handled

72/1

*Proceedings of the Madras Government, Revenue Department,
9th June 1876.*

No. 105. Read the following Proceedings of the Court of Wards, dated 26th April 1876, No. 1,103 :—

Read the following Proceedings of the Madras Government, dated 7th January 1876, No. 16, Revenue Department.

ABSTRACT.—*Estates under the Court of Wards.*—Reviewing the report on the management of the — during Fasli 1283 (1873-74).

COMMUNICATED to the Collectors concerned for their information and guidance.

2. The attention of the Collectors of Vizagapatam, Nellore, and Madura is drawn to the remarks of Government at paragraph 4 of the Government Order. The estate of Irungadukotta, in the Chingleput District, has been since made over to its proprietor.

3. The renter of the Salur estate having hopelessly fallen into arrears, his lease has been cancelled and the estate taken under the direct management of the Court. As regards the Meringhy estate, the Court find that the collections are improving.

	Demand including arrears.	Collections.	Sub-Collections.
	RS.	RS.	RS.
Fasli 1283 ...	46,844	31,050	4,614
„ 1284 ...	61,247	40,612	6,015

4. The Collector has since reported that the unsatisfactory state of collections is due in a great measure, not to remissness on the part of the manager, but to the inefficiency of the establishment, and the Court have accordingly increased the establishment—*Vide* Court's Proceedings, 20th July 1875, No. 2,028.

5. The Court have, after consultation with the Government Pleader, decided not to contest the validity of the document executed by the late Zemindar to Ponnusami Taver, and have accordingly requested* the Collector to include the arrears under irrecoverable.

* Court's Proceedings, 22nd January 1875, No. 142.

6. In the Annual Report for Fasli 1284, the Collector has stated that the petty creditors in the Salur estate would not come to receive their debts, although they were sent for more than once. As regards Meringhy, the Court have since, at the advice of the Government Pleader, ordered† the decision of the Panchayet to be carried out. When this is done, the debts falling to the share of the minor will be reduced to a fourth of the amount (Rupees 1,19,303). The Collector is requested to take early steps for its recovery.

Paragraph 14 of the Government Order.

† Court's Proceedings, 21st July 1875, No. 2,037.

7. The debt due by the Guntamanaikanur estate has been since paid up. The non-entry of the debt in the statement was accidental.

Paragraph 21 of the Government Order.

8. Rupees 4,900 have been since invested in Government securities.

Paragraph 23 of the Government Order.

775 ✓

*Proceedings of the Madras Government, Revenue Department,
9th June 1876.*

9. In the Administration Report for Fasli 1284, which will shortly be submitted to Government, the age of majority as fixed by Act IX. of 1875 will be given in Column 10 of Statement No. I.

(A true Extract).

(Signed) E. GIBSON,
Acting Sub-Secretary.

No. 106.

ORDER THEREON, 9th June 1876, No. 775.

Miscellaneous.

RECORDED.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Secretary to Government.

To the Court of Wards.

Ed. W. J. Lewis.

No. 142.

PROCEEDINGS OF THE COURT OF WARDS, dated 22nd January 1875.

Read the following letter from H. H. SHEPHARD, Esq., Officiating Government Pleader, to H. E. STOKES, Esq., Acting Sub-Secretary to the Court of Wards, dated Madras, 14th January 1875, No. 2:—

I HAVE the honor to state that the Advocate-General and myself have considered the points referred to us by the Court of Wards in Proceedings, No. 3,074, of 22nd October 1874, and we are of opinion on the first point that an application for a review of judgment in Regular Appeal, No. 42 of 1874, could not be supported on the grounds indicated in the reference. We do not understand that any additional evidence on the question of undue influence as affecting the validity of the agreement of 1867 has come to light since the hearing the case; and unless this be so there is no case whatever for a review, inasmuch as the question was thoroughly discussed on the evidence then on the record, and the Judges came deliberately to the conclusion that, as regarded the agreement of 1867, there was no such evidence of undue influence as ought to invalidate the contract. We observe, however, that Mr. Lee-Warner speaks of the document as "entirely fictitious," and it may be that he has evidence which was unknown to Counsel at the hearing of the case, which would go to show that the document was not authentic. This point, however, has as we believe not been raised at any previous stage of the case, and it would doubtless be regarded with great disfavor and suspicion by the Court at the present late stage of the proceedings. Unless, therefore, the evidence was of a very cogent character indeed we should regard any attempt at present to impugn the authenticity of the document as hopeless.

2. As to the second question, the document, if upheld at all, must be considered as upheld for all purposes which it purports to effect. It would not, therefore, be now open to the parties to it to dispute the balance of accounts to which it pledged them, or the remission of rent for a term of years which was one of its items.

3. As to the third point, we think that a suit for an account against Poonnusawmy Tever's representatives is barred by Article 64 of the 2nd Schedule to the Limitation Act, 1871. It appears from Mr. Lee-Warner's letter that a demand for an account was made on Poonnusawmy Tever before his death, which took place December 19th, 1869; and if this were not so more than three years have elapsed since the termination of the agency. On either ground the suit is barred. This appears to us the less to be regretted as, after the lapse of so long a period, the death of the two persons principally concerned, and the abundant opportunity there has been for the destruction of books and papers, there would be really no reasonable chance of any substantial advantage to the present Zemindar from any such investigation.

COMMUNICATED to the Collector of Madura.

(A true Copy and Extract.)

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

To the Collector of Madura.

Copy to the Officiating Government Pleader.

Exd. J. Tulloch.

Vol. of 1876, Madras.

REVENUE.

COURT OF WARDS.

Dated June, 9th.

Recd.

Encl.

G.O., 9th June 1876, No. 775.

JUNE.

Nos. 105-106.

Being under charge of the Court of Wards.
Recording Proceedings of the Board of Revenue
communicating to Collectors concerned G.O.
reviewing Annual Report on the management of
for 1875-76.

No. 2,028.

PROCEEDINGS OF THE COURT OF WARDS, dated 20th July 1875.

Read the following letter from G. VANSAGNEW, Esq., Collector of Nellore, to H. E. STOKES, Esq., Acting Secretary to the Court of Wards, dated 7th July 1875, No. 1,864 :—

I HAVE the honor to acknowledge the receipt of the Proceedings of the Court of Wards, dated 26th April 1875, No. 1,031.

2. With reference to paragraph 16, I beg to furnish the following details :—

	RS.	A.	P.
The present balance in the Huzur Treasury is	24,194	8	6
Balance of interest with the Court of Wards	1,005	0	0
Total balance	25,199	8	6
Expected receipts	31,141	0	0
Expected cost	56,340	8	6
	27,442	0	0
	29,298	8	6

3. As the receipts will be coming in gradually, and funds will be required for expenditure, particularly by the Department Public Works, at any time, a sum of Rupees 10,000 only can be spared immediately for investment in Government paper.

4. As regards the omission to include in my financial statement the receipts and charges by the Court of Wards as per their account current referred to, the Treasury Deputy-Collector explains that the financial report of the estate did not pass through his department. He will be requested to make the requisite adjustment in this year's accounts.

5. As regards the other points raised in paragraphs 2, 5, 6, 10 and 13, I have not received detailed information from the Sub-Collector, who will be requested to submit the explanation as early as possible.

6. I beg, however, to enclose copy of a letter from the Head Assistant Collector in charge of the Sub-Collector's office, under date 16th June 1875, No. 397, which throws a good deal of light on those points. I entirely concur in what Mr. Mackenzie states about the Manager. If he were deposed, he would return to his own home in the Hyderabad Territory, and there is not a single other trustworthy or respectable member of the family with whom we could deal. He has done his best, but he is not a trained man of business, and he has had many difficulties and annoyances to encounter.

7. I beg therefore to support Mr. Mackenzie's recommendation that two efficient hands from my establishment be deputed to the Manager's office and paid from the estate. I would take one from my Account Department and one from among the Taluq Gumastahs. Rupees 50 would be a sufficient salary for the first, and Rupees 30 for the last.

8. I propose to give the Manager the three months' leave he has been asking for for some time past, as he is going to Shorapur, and may be able to pacify the disappointed suitor, Kistnappa Naick, of that place. During these three months, I would place the able Tahsildar of Kandukur in charge of the estate, and, with the aid of the two proposed hands, I share Mr. Mackenzie's confidence that he will succeed in introducing into Chundi affairs more order than has hitherto prevailed.

9. I request early orders.

ENCLOSURE No. 1.—Copy of Sub-Collector's letter.

1875.

Court of Wards,

MADRAS.

PROCEEDINGS, 22ND JANUARY 1875, No. 142.

End.

Received

JANUARY.

No. 142.

Removal of Estate—under management of Court of Wards in Madras District.—Report of Government Pleader on certain points in connection with the agreement executed in 1867 by late Zemindar of — in favor of Ponnuswamy Iyer and on advisability of filing a suit for an account of latter's management of the estate, communicated to Collector.

THE Court authorize the purchase of Government securities to the amount of Rupees 10,000, and the Collector will remit the necessary funds, say Rupees 10,400, with as little delay as possible, whereupon steps will be taken to invest the money.

2. It appears from the Collector's report that the unsatisfactory state of the collections is due in a great measure to the inefficiency of the establishment and not to remissness on the part of the Manager, whose services it is desirable on several grounds to retain. The Court approve the Collector's proposals to give him the assistance of two Accountants on Rupees 50 and 30 respectively, and to place the Tahsildar of Kandukur in charge during the Manager's absence on leave.

(A true Copy and Extract.)

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

To the Collector of Nellore.

Mrd. W. J. Lewis.

Chundi Estate—under charge of Court of Wards in Nellore District.—Purchase of Government securities for Rupees 10,000 on behalf of — authorized, and Collector directed to remit necessary funds for the purpose without delay. —Proposals to give the Manager the assistance of two Accountants and to place Tahsildar of Kandukur in charge of the estate during Manager's absence on leave, approved.

JULY.
No. 2,028.

Received

Recd. 20/7/75

Encl.

PROCEEDINGS, 20th July 1875, No. 2,028.

Court of Wards,
MADRAS.

1875.

No. 2,037.

PROCEEDINGS OF THE COURT OF WARDS, dated 21st July 1875.

Read the following letter from H. H. SHEPHARD, Esq., Officiating Government Pleader, Madras, to C. A. GALTON, Esq., Acting Sub-Secretary to the Court of Wards, dated 6th July 1875, No. 54 :—

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.

Dated 8th June 1875, No. 1,543.

As to the first question, I am of opinion that the Zemindar's undivided brothers are not, according to the decision in the case referred to (5 Mad. H. C. 31), excluded from sharing with his son the profits which accrued from the Zemindari during the late Zemindar's life-time.

The words quoted, *viz.*, "it is only when the personal fund acquired from the Zemindari estate becomes by the death of the acquirer paternal property in the hands of a successor that any right of co-parcenership can arise" (p. 42) are used in reply to the argument previously mentioned (p. 41) that if the division were allowed in that case, it would follow that a son might during his father's life-time demand a share of his savings. The first answer to this argument is that the law vests the whole proprietary right to a Zemindari in the holder for the time being; the second answer is that the only occasion on which division can be claimed is the death of a holder. I do not think it was intended, nor indeed that there is any authority for holding, that, except in those respects, the brothers of a deceased Zemindar and his son stand in a relation to each other different from that in which they would stand if they were members of an ordinary undivided family. If the immoveable family property in this case were not impartible, it would clearly have to be divided in equal shares among all the parties, and I see nothing in the fact of the Zemindari's impartibility to make it necessary to alter the rule of division with regard to other property.

As to the profits which have accrued since the Zemindar's death, there can be no doubt that the Minor is, independently of the award, entitled to them.

2. As I am of opinion that profits accrued previously to the late Zemindar's death from part of the partible property, it becomes unnecessary to answer this question.

3. I think that the Court of Wards cannot with any chance of success impeach the validity of the award. The award was, I understand, made without the intervention of the Court and in pursuance of an agreement between the parties. Under Section 327 of the Civil Procedure Code such an award may be filed and enforced as an award made under the provision of the chapter in which that section occurs.

The unsuccessful party is not allowed to resist such enforcement through the Court unless he can bring the case within the terms of Sections 323 or 324; and the only question which can arise under these sections is, whether there is an objection to the legality of the award apparent on its face. It is not within it can be said that there is such an objection. The agreement states that the objects for division are to consist of all moveable and immoveable property with certain exceptions, which do not comprise the particular property in question. The award in setting out the property in dispute states that particular class of property as part of item 1, and, subsequently, in consistency with the agreement, treats it as partible property. How can it be said that in doing so the arbitrators committed an error in law which is apparent on the face of the award? When the matter can be explained by supposing an agreement in the nature of a compromise or a mistake on the part of the persons submitting to the arbitration, it cannot be certainly said that the arbitrator has committed any error in law; and in this case it appears as a matter of fact that the mistake, if it existed at all, was attributable to the late Collector. When all the parties have agreed that certain property shall be divided according to the award of a Panchayet, and the award of the Panchayet has been made upon the footing of that agreement, it is impossible to say, that because one of the parties erroneously included in the list of property something which he was not legally bound to include that therefore there is an objection to the legality of the award apparent on its face. The Panchayet simply adopted the agreement as they found it, and it was not part of their business to correct wrong impression of law existing in the minds of the parties submitting to arbitration.

For these reasons I am of opinion that, except with the consent of all parties, no amendment of the award can be obtained, there being no legal grounds for impeaching its validity.

I return all the papers forwarded to me with the above Proceedings.

COMMUNICATED to the Collector of Vizagapatam.

2. It is clear from the opinion of the Government Pleader, that there is no ground for impeaching the validity of the award, and although the interests of the Minor have been prejudiced by the inclusion of the profits which have accrued since the late Zemindar's death, as the other parties will, of course, not consent to an amendment of the award which would have the effect of diminishing their shares, there is no course open but to accept the decision in its integrity, and the division should accordingly be carried into effect with as little delay as possible.

3. The discrepancies in the figures referred to in the Court's Proceedings of 8th June 1875, No. 1,543, are those noted below:—

	Punchayet's figures, vide paragraph 7, Collector's letter, dated 12th December 1874.	According to the Annual Accounts.		Remarks.
		Fasli.	Rs.	
Profits from the Zemindari in Faslis 1280, 1281, and 1282 ...	29,050	1280 1281 1282	5,663 5,109 3,392	
Debts collected up to Fasli 1282...	24,776	1279 1280 1281 1282	14,164 9,786 8,901 12,748 7,375	
		...	38,810	
	53,826	...	52,974	
Cash left on the death of the Zemindar	8,957	...	14,446	Vide Board's Proceedings, dated 20th December 1870, No. 7,225.

As, however the award has been agreed to by all parties, it does not appear necessary to refer the matter to the arbitrators again.

(A true Copy and Extract.)

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

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

Exd. W. H. French.

Meringhy Estate—under charge of Court of Wards in Vizagapatam District.—Opinion of Government Pleader regarding validity of the decision of Panchayet assembled for division of personal property and rents, &c., of —, communicated to Collector with instructions.

JULY.
No. 2,037.

Received

16/7/76
16/7/76

Encl.

PROCEEDINGS, 21st JULY 1875, No. 2,037.

Court of Wards,
MADRAS.

1875.

No. 1,103.

PROCEEDINGS OF THE COURT OF WARDS, dated 26th April 1876.

Read the following Proceedings of the Madras Government, dated 7th January 1876, No. 16, Revenue Department:—

ABSTRACT.—*Estates under the Court of Wards.*—Reviewing the report on the management of the — during Fasli 1283 (1873-74).

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2. The attention of the Collectors of Vizagapatam, Nellore, and Madura is drawn to the remarks of Government at paragraph 4. The estate of Irungadukotta, in the Chingleput District, has been since made over to its proprietor.

3. The renter of the Salur estate having hopelessly fallen into arrears, his lease has been cancelled and the estate taken under the direct management of the Court. As regards the Meringhy estate, the Court find that the collections are improving.

4. The Collector has since reported that the unsatisfactory state of collections is due in a great measure, not to remissness on the part of the manager, but to the inefficiency of the establishment, and the Court have accordingly increased the establishment—*Vide* Court's Proceedings, 20th July 1875, No. 2,028.

5. The Court have, after consultation with the Government Pleader, decided not to contest the validity of the document executed by the late Zemindar to Ponnusami Taver, and have accordingly requested* the Collector to include the arrears under irrecoverable.

6. In the Annual Report for Fasli 1284, the Collector has stated that the petty creditors in the Salur estate would not come to receive their debts, although they were sent for more than once. As regards Meringhy, the Court have since, at the advice of the Government Pleader, ordered† the decision of the Panchayet to be carried out. When this is done, the debts falling to the share of the minor will be reduced to a fourth of the amount (Rupees 1,19,303). The Collector is requested to take early steps for its recovery.

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8. Rupees 4,900 have been since invested in Government securities.

	Demand including arrears.	Collections.	Sub-Collections.
	RS.	RS.	RS.
Fasli 1283	46,844 ...	31,050	4,614
„ 1284	61,247 ...	40,612	6,015

* Court's Proceedings, 22nd January 1875, No. 142.

† Court's Proceedings, 21st July 1875, No. 2,037.

Paragraph 21 of the Government Order.

Paragraph 23 of the Government Order.

9. In the Administration Report for Fasli 1284, which will shortly be submitted to Government, the age of majority as fixed by Act IX. of 1875 will be given in Column 10 of Statement No. I.

(A true Extract.)

Handwritten signature
Acting Sub-Secretary.

To the Secretary to Government, Revenue Department,
with copies of Board's Proceedings, dated 22nd January 1875,
No. 142, 20th July 1875, No. 2,028, and 21st July 1875, No. 2,037:
,, Collector of Ganjam, with copy of G. O.
,, ,, of Vizagapatam, with do.
,, ,, of Godavery, with do.
,, ,, of Nellore, with do.
,, ,, of Chingleput, with do.
,, ,, of North Arcot, with do.
,, ,, of Tanjore, with do.
,, ,, of Trichinopoly, with do.
,, ,, of Madura, with do.
,, ,, of Tinnevely, with do.
,, ,, of Coimbatore, with do.
,, ,, of Malabar, with do.

Ed. W. J. Lewis.

14 To the Comdng Wards Dec 3 July

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Court of Wards,
MADRAS.

PROCEEDINGS, 26TH APRIL 1876, No. 1,103.

Depu'ts 11 May 1876
Encl. 3

Received 5 June 1876

APRIL.
No. 1,103.

Estates under charge of Court of Wards
Communicating to Collectors concerned, order of Government on the Annual Report on the management of — for Fasli 1283, and furnishing information on certain points called for on the subject.

C.S. June 1876 R.G. June 1876
W. Lewis
9 June 1876