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MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1711 Press / Mis.

Dated 16. 8. 1879.

Not to be folded or roughly handled

GOVERNMENT OF MADRAS.

REVENUE DEPARTMENT.

16th August 1879, No. 1,711.

No. 285. READ THE FOLLOWING PAPER:—

From H. H. SHEPHARD, Esq., Acting Government Pleader, to J. H. GARSTIN, Esq., Acting Secretary to Government, Revenue Department, dated Madras, 29th July 1879, No. 119.

WITH reference to the Proceedings of Government, Revenue Department, as per margin, I have the honor to forward to you, for approval of Government, copies of the Revised Standing Order relative to the realization of arrears of revenue on land attached by Civil Courts; as also to submit my remarks thereon as by the above Proceedings directed.

Dated 21st April 1879, No. 846.

2. I think that the proposed Standing Orders are sufficient for the purpose in hand and will give effect to the view expressed by Mr. Handley as to the authority of Collectors to attach and sell lands which are already under attachment by a Civil Court.

3. With regard to the scope of Section 503 of the Civil Procedure Code, I agree with the opinion expressed by the Board.

Whereas in the Code of 1859, the Receiver is merely empowered to collect rents, &c., and to pay and apply them towards the payment of the amount of the decree, &c.; in the present Code all such powers as the owner himself has for the purposes specified may, at the discretion of the Court, be conferred upon him. Having regard particularly to the marked contrast between the restricted terms of Section 243 and the very wide expression used in the section now in force, I think that it would be competent to a Court to order a Receiver to pay revenue out of the rents and profits collected by him.

ENCLOSURE No. 1.

Proceedings of the Board of Revenue, dated 19th June 1879, No. 1,765.

Read the following papers:—

Proceedings of the Madras Government, dated 21st April 1879, No. 846, Revenue Department.

ABSTRACT.—*Board's Standing Order No.* 37 *of* 1866.—Approving the Board's proposal to cancel — and to draw up a revised one, in connection with the subject of the right to attach for arrears of revenue lands already under attachment by a Civil Court, with remarks.

From H. J. STOKES, Esq., Acting Collector of Madura, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Kodaikanel, 3rd May 1879, No. 177.

WITH reference to the suggestion of Mr. Handley in paragraph 4 of his letter embodied in the Board's Proceedings, No. 2,710, dated 5th October 1878, and submitted by the Board for the sanction of Government, I have the honor to report as follows.

2. To avoid collision between the Civil Courts and Revenue authorities and injury to the parties, Mr. Handley proposes (1) that the Collector should watch notices of attachment by Civil Courts fixed up in his office and communicate the existence of arrears to Civil Courts, and (2) that he should do the same with regard to any attachment subsequently made by him.

3. As to the 1st point, the sales of land by Civil Courts throughout the district are very numerous. Collectors have no information in their offices as to the amount of arrears which each individual has to pay. For this they have to refer to the taluk officers, who in their turn have to ascertain it from the village officers. This will increase the work of the village and taluk officers and great delay will be occasioned. On the other hand, the information may be of no use. For it may happen that after the information is furnished by the Curnam and before it reaches the Court the arrears will either wholly or partially be paid.

4. The sales of land by Civil Courts are generally subject to incumbrances. It is the duty of the judgment—creditors and purchasers to be on the alert and ascertain the amount of arrears due on lands which they wish to have attached or purchased. It is possible for them to do this by application to the taluk authorities as observed in Standing Order No. 115.

5. As to the 2nd point, I do not at all understand what is meant by collision, or clashing between the Civil Courts and Revenue authorities; as in my experience I have never encountered any such process, and I cannot imagine a case in which it can occur. If a Court at the request of A attaches B's rights in a piece of land on which arrears are due, A cannot expect to escape liability, and the Court certainly can have no interest in A's proceedings. Notices of attachment of lands for arrears of Revenue are published in District Gazettes, and this, I think, is sufficient intimation to the Courts and parties if they deem it necessary to take any steps thereon.

As directed in the Government Order read above, the following revised Standing Order will be submitted to Government through the Government Pleader.

2. The Board regard as impracticable Mr. Handley's suggestion that when lands are attached by a Civil Court the Collector should inform the Court of any arrears due thereon. Besides the objections to this course pointed out by the Collector of Madura, there is another, viz., that our Revenue system is such that the accounts show the arrears due on the entire holding, and it would often be very difficult to determine the amount due on the portion of the holding attached by the Court.

3. The suggestion that when the Collector attaches for arrears land under the Court's attachment the fact should be communicated to the Court is adopted and provided for in paragraph 3 of the Standing Order.

4. As regards the possibility of collision between the Courts and Revenue authorities, the Board observe that there is at least one case in which it is possible, viz., in case the Collector under Section 28, Act II of 1864 (Madras), should attach and assume the management of land which is already under attachment in execution of a decree and for which a receiver has been appointed by the Court under Section 503, Civil Procedure Code.

5. The observance of Standing Order No. 37 of 1866 caused very serious difficulty in realizing arrears due on land for which a receiver was appointed under Section 243, Act VIII of 1859, as the Courts held that they had no power to pay arrears of revenue out of the rents and profits which they considered should be applied solely towards payment of the amount of the decree and costs. The Board observe that the scope of Section 503 of the new Civil Procedure Code is much wider, and they are inclined to think that under its terms the Courts would have no difficulty in directing payment of the Government arrears out of the rents and profits of the land. Mr. Shephard's attention is requested to this point which was not noticed by Mr. Handley.

CIRCULAR ORDER No. OF 1879.

STANDING ORDER No. 116/1.

"ACTING on legal advice the Board resolve to cancel Standing Order No. 116, and to issue the following instructions regarding the realization of arrears of revenue on land attached by Civil Courts.

2. Attachment of land by the Courts whether before or after judgment is no bar to its attachment for arrears of revenue. Collectors have the same authority to attach and sell lands and the crops standing on them for arrears of revenue after attachment by a Civil Court as before it; what the Courts attach and sell being only the right, title, and interest of the judgment-debtor in the lands and crops, while the Revenue authorities sell the land itself and the crops standing on it.

3. If when land and the crops standing thereon are distrained for arrears of revenue, it be found that the right, title, and interest therein of the defaulter have been previously attached by orders of the Civil Courts, notice of the distraint for arrears and of the intention of the Revenue authorities to bring the land and crops to sale in default of the arrears being liquidated, shall be given to the Civil Court under whose orders such attachment has been made."

(A true Copy and Extract.)

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

No. 287. ORDER THEREON, 16th August 1879, No. 1,711.

Land Revenue, No. 6.

THE Government Pleader's opinion will be communicated to the Revenue Board for their information.

2. The Revised Standing Order No. 116-1 is approved subject to the addition of the word "*it*" after the words "as before" in line 4 of paragraph 2.

(True Extract.)

(Signed) J. H. GARSTIN,
Acting Secretary to Government.

To the Board of Revenue.
„ the Government Pleader.

Exd. W. H. French.

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8.8.40 II.
21.11.40 II

Original
Govt. of Madras
REVENUE.
To
THE BOARD OF REVENUE,
&c., &c., &c.
dated August 16th.
dated 23rd.
ed.
Encl.
G.O. 16th August 1879, No. 1,711.
AUGUST.
Nos. 286-287.

Arrears of Revenue on land attached by Civil Courts.—Communicating to the Board of Revenue for information the opinion of the Government Pleader regarding the realization of arrears and approving the revised Standing Order to be substituted therefor.

(5) X

No. 1,765.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 19th June 1879.

Read the following papers:—

Proceedings of the Madras Government, dated 21st April 1879, No. 846, Revenue Department.

ABSTRACT.—*Board's Standing Order No.* 37 *of* 1866.—Approving the Board's proposal to cancel — and to draw up a revised one, in connection with the subject of the right to attach for arrears of revenue lands already under attachment by a Civil Court, with remarks.

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3. The suggestion that when the Collector attaches for arrears land under the Court's attachment the fact should be communicated to the Court is adopted and provided for in paragraph 3 of the Standing Order.

4. As regards the possibility of collision between the Courts and Revenue authorities, the Board observe that there is at least one case in which it is possible, viz., in case the Collector under Section 28, Act II of 1864 (Madras), should attach and assume the management of land which is already under attachment in execution of a decree and for which a receiver has been appointed by the Court under Section 503, Civil Procedure Code.

5. The observance of Standing Order No. 37 of 1866 caused very serious difficulty in realizing arrears due on land for which a receiver was appointed under Section 243, Act VIII of 1859, as the Courts held that they had no power to pay arrears of revenue out of the rents and profits which they considered should be applied solely towards payment of the amount of the decree and costs. The Board observe that the scope of Section 503 of the new Civil Procedure Code is much wider, and they are inclined to think that under its terms the Courts would have no difficulty in directing payment of the Government arrears out of the rents and profits of the land. Mr. Shephard's attention is requested to this point which was not noticed by Mr. Handley.

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3. If when land and the crops standing thereon are distrained for arrears of revenue, it be found that the right, title, and interest therein of the defaulter have been previously attached by orders of the Civil Courts, notice of the distraint for arrears and of the intention of the Revenue authorities to bring the land and crops to sale in default of the arrears being liquilated, shall be given to the Civil Court under whose orders such attachment has been made."

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Secretary

To the Secretary to Government, Revenue Department,
through Government Pleader.

Copy to the Collector of Madura, with copy of
G.O., 21st April 1879, No 846.

Exd W. J. Lewis.

No 119 Revenue
29th July 1879

From
H. A. Stoddard Esqre
Govt Pleader
Madras

To L. H. Garstin Esqre
Secretary to Government
Revenue Department

Sir,

With reference to the Proceedings of Government of Revenue Department dated 21st April 1879 No 876 I have the honor to transmit herewith for approval of Government Circle Circular No 1 of 1879 Order relative to the realization of arrears of revenue on land attached by Civil Courts, as also a draft Standing Order as directed by the above Proceedings.

2. I think that the Board should also be supplied with a copy of the Judgment of the Privy Council in the case referred to in the Circular Order.

I have &c
H. A. Stoddard
Govt Pleader

Rev. 6072/79

1879.

Board of Revenue,
MADRAS.

To

THE SECRETARY TO GOVT.,
REVENUE DEPARTMENT.

Dated June 19th.
Printed July 3rd.
Received

PROCEEDINGS, 19TH JUNE 1879, No. 1,765.

JUNE.
No. 1,765.

Realization of Arrears of Revenue on Land attached by Civil Courts.—Submitting to Government through the Government Pleader, revised Standing Order regarding —.

Govt. Rev. G. O. No 1711
dt 16th August 1879

expressed by Mr. Handley as to the authority of Collectors to attach and sell lands which are already under attachment by a Civil Court.

3. With regard to the scope of Section 503 of the Civil Procedure Code. I agree with the opinion expressed by the Board.

Whereas in the Code of 1859 the Receiver is merely empowered to Collect rents &c and to pay and apply them towards the payment of the amo[unt] of the decree &c, in the present Code all such powers as the owner himself has for the purposes specified may at the discretion of the Court be conferred upon him. Having regard particularly to the marked contrast between the restricted terms of Section 243 and the very wide expressions used in the Section now in force I think that it would be competent to a Court

Court to order a Receiver to pay revenue out of the rents and profits collected by him.

I have the honor to be
Sir
Your most obedient Servant

W. W. Shepherd

Ag. Government Pleader

Allgem. Reichsarchiv
Nr. 6072
Zum
Abschriftenakt
betreffend
Akten
Datum 29. Juni
Regist. 19
Bd. III

Beglaubigte Abschrift
des Testaments des Kanzl.
Rats Lud. Conr.
Schmitz Grollé
Verfasser Kanz.
Schmitz Grollé
Bonn 1711 - 16. August 1719
Testament

Ich Endes Unterschriebener bekenne hiermit vor Jedermann, daß ich mein Testament und letzten Willen in folgender Weise errichtet habe:

1. Befehle ich meine Seele in die Hände Gottes des Allmächtigen, meines Schöpfers und Erlösers, und meinen Leib der Erde, aus der er genommen ist.

2. Will ich, daß meine Schulden, die ich bei Lebzeiten gemacht habe, nach meinem Tode bezahlt werden.

3. Vermache ich meiner Frau Gemahlin Maria Elisabeth, geb. Schmitz, die Nutznießung meines ganzen Vermögens, solange sie mit meinen Kindern in Witwenstand bleibt.

4. Vermache ich meinem Sohne Johann Wilhelm Ludwig Conrad Schmitz Grollé, geb. zu Bonn am 17. Juli 1711, meine Bibliothek, meine Kleider, meine Waffen und meine Uhr.

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