Revenue Department

G.O Ms 1258 dt 15-9-1888

Book No 7-8

Diary 21-9-58

No. 7. Read the following letter from the Honorable Company's Solicitor; to the Chief Secretary to Government; dated Madras, August 30th 1858, No. 462.

Sir,

I have the honor to acknowledge the Extract from Minutes of Consultation noted in the margin and its enclosures.

Minutes Consultation dated 23d August 1858, No. 1174, Revenue Department.

2. I obtained such further information as seemed to me needful, and then submitted the papers for the consideration of the Advocate General with whom I subsequently conferred.

3. I now forward a copy of the Advocate General's opinion and return the enclosures above noted.

Copy—Opinion.

I do not see what business it is of Mr. Acting Collector Knox to espouse the interests of Rutnala Naidoo's son against his father, and the Decree of a competent Court and to question the judgment and jurisdiction of such Court, unless the Court of Wards has confided the young man to Mr. Knox's care.

If the rights of Government are in any way affected by the Decree, the Government not having been a party to the suit, that might be a legitimate ground for opposing, in the proper way, the execution of the Decree, but upon this subject Mr. Knox says nothing, as the Board of Revenue expressly observe in para. 3 of the Extract Proceedings of 18th August 1858. This is the only ground upon which Government or any servant of Government ought to question the Decree.

As to the Court's jurisdiction, Rutnala was residing within it when the suit was instituted, and as he admitted the jurisdiction, no one else can question it as regards him.

The pleadings state the two villages to be self acquired property. If this be the fact, Mr. Knox's statement that "the object in view is to defraud the applicant's son, who is his next heir," is quite gratuitous, for if self acquired, Rutnala has a right to do as he likes with it, unless it be his *only* property, which is not suggested to be the case.

If it really be the case that the suit was instituted to defraud the son, and the property was not self acquired, but ancestral or family property, neither the Decree nor the registration can prejudice the son, who can at *any* time come in and set them aside, on proving these facts and shewing that the Decree was obtained without notice to him of the suit.

But *Government* has *nothing to do* with all this.

August 30th 1858. (Signed) THOMAS SYDNEY SMYTH,
Advocate General.

(True Copy.)
(Signed) J. R. BOYSON,
Honorable Company's Solicitor.

No. 8. Order thereon, No. 1258; dated 15th September 1858.

1. In their Proceedings of the 18th August 1858, No. 3149, the Board of Revenue brought to notice a case submitted by the Acting Collector of Ganjam, in which an individual, by name Ruthnala Naidoo, had applied under a decree of the Supreme Court, for the registry in his wife's name of two proprietary estates in that district; the object being, Mr. Knox said, to defraud the applicant's son, who is his next heir. On the suggestion of the Board, Government referred the matter for the report of the Honorable Company's Solicitor; and that officer now forwards in reply the opinion of the Advocate General.

2. Government observe that the decree of the Supreme Court is in an equity suit filed by the wife against the husband, to compel him in fulfilment of a written agreement granted by him to her, to convey possession to her of the two estates in question, and have them registered in her name in the Collector's Cutcherry at Ganjam. Mr. Smyth does not see how the decree of a competent Court of jurisdiction can be questioned; and that the Supreme Court had juris-

diction in the case is clear, as Ruthnala Naidoo was residing within its limits. Mr. Smyth is further of opinion that if the rights of Government are affected in any way, it will be competent for them to oppose the execution of the decree in the legitimate way, as they were not parties to the suit; but if otherwise, the only party affected is the son, whose interests it is not for the Government to espouse. If the property is self acquired, Ruthnala Naidoo has the right to do with it as he likes; but if it is ancestral property, the son's rights can never be prejudiced, either by the decree or the registration in his step mother's name.

3. Ordered that the Advocate General's opinion be communicated to the Board of Revenue, for the information and guidance of the Collector of Ganjam.

(Signed) T. PYCROFT,
Chief Secretary.

Revenue Department

№ 1258

Extract from the Minutes of Consultation
Under date the 15th September 1858.

Read the following letter
from the Honorable Compa-
-ny's Solicitor
(November 30th Augt 1858 №662)

In their Proceedings
of the 18th August 1858, №3149,
the Board of Revenue brought to
notice a case submitted by the
Acting Coll of Ganjam, in which
an individual, by name Ruthn-
-nala Naidoo, had applied under
a decree of the Supreme Court,
for the registry in his step's name
of two proprietary estates in that
district, the elder being, Mr. him
said, to depend the applicant's
son, who is his next heir. On the
suggestion of the Board, I re-
-ferred the matter for the short
of the Hon'ble Company's Solici-
-tor, and that Officer now forwards
in reply the opinion of the

Advocate General.

Sorh observe that the decree of the Supreme Court is in an equity suit filed by the wife against the husband, to compel him in fulfilment of a written agreement granted by him to her, to convey propepim to her if the two estates in question, and have them registered in her name in the Colo's Cutcherry at Sanjaun. Mr. Smyth does not see how the decree of a competent Court of jurisdiction can be questioned; and that the Supreme Court had jurisdiction in the case is clear, as Ruttenala Naidoo was residing within its limits. Mr. Smyth is further of opinion that if the rights of Sorh are affected in any way, it will be competent for them to oppose the execution of the decree in the legitimate way, as they were not parties to the suit; but if otherwise, the only party affected is the son, whose interests it is not for the Sorh to oppose. If the property is self acquired, Ruttenala Naidoo has the right to do with it as he likes; but if it is ancestral property, the son's rights can never be prejudiced, either by the decree or the registration in his step mother's name.

Ordered that the Advocate Genl's opinion be communicated to the Board of Revenue, for the information and guidance of the Colr of Sanjaun.

3 Copies to the Bd of Revl Dated 16th

Revenue 1858 Dept.
Dr. to Cons 21st Sept.

No. 1258.

Extract Mins of Cons.
D/ 15th Sept: /58.

Dy cons 4th Augst 58 No 434

No. 7 48.

Under the opinion of the Advocate Genl it is not for the Govt. to interfere in the case stated by the Collr. of Ganjam in which one Ruthnala Naidu had applied under a Decree of the Supreme Court for the registry in his wife's name of certain Godades in that District, unless the rights of the Govt. are affected thereby.

decision
thereby. This to be communicated to the Board of Revenue and the Collr. of Ganjam.

C. Sp 113 c13