

Revenue Department

Minutes of Consultations

4th May / 1858

Back no. 22, 23 & 24

Order no. 548 d/29th April

1858

(12 Clarks)

* செப்பனிடபவர் பெயர் *Deodoss* *

* செப்பனிடவதற்காக எடுத்தது 6/08 *

* கொள்ளப்பட்ட நாள் *

* செப்பனிட முடிந்த நாள் 8/08 *

* *25/10/08* *சுரமதி உதவி* *

* சாபார்க்கும் *சுரமதி உதவி* *

* மு. ந. பா. எ. யாளர் *

* கையொப்பம் கையொப்பம் *

Fort Saint George, Revenue Consultation of 4th May 1858.

No. 22. Read the following letters.
From CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to HENRY FORBES, Esq., Acting Secretary to Government; dated Madras, 21st April 1858, No. 36.

SIR,

Para. 1. With reference to the Extract from the Minutes of Consultation noted in the margin and the subsequent correspondence thereon, I have the honor to report for the information of the Right Honorable the Governor in Council that the Appeal Suit No. 103 and 136 of 1857 (appealing in cross Appeals from the decree passed by the Civil Judge of Masulipatam in O. S. No. 103 of 1857) came on for hearing on the 14th instant before the Court of Sudr Udalut; when the Counsel for Cavally Vencata Narrainapah asserted, that it being the Estate of a Hindoo of the Brahmin caste, the property could never escheat to the Sovereign Power; I shewed to the Court that it was not pleaded either in the lower Court or in their Court, that Vargonda Ramanapah the Zemindar who died in 1810 was a Brahmin, that in fact the question was never mooted; the Court referred to the questions propounded to the Pundits, as set out in the 8th para. of the Civil Judges Decree, where the word "Brahmin" is introduced in a Parenthesis in alluding to the Hindoo widow, the Court also referred to their Head Interpreter to know whether the name Ramanapah was that of a Brahmin, he answered in the affirmative, the Court then asked me to admit that Ramanapah was of Brahmin caste, which I declined to do, as I had nothing before me to shew how the word "Brahmin" had been introduced into that question, it being totally irrelevant to the question in which it was introduced, and because, as I apprehend, it does not necessarily follow that a man with a name usually borne by the Brahmin caste, must be a Brahmin.

2. The Court ultimately determined to adjourn the case for 14 days (28th Instant) to enable me to enquire whether Vargonda Ramanapah, the Zemindar who died in 1810, was really and in fact a Brahmin; and to consider whether there was any objection to offer on that point.

3. One of the officers of the Sudr Udalut informed me, in answer to a question I put to him, that the name is not such an one as would be as a matter of course taken even by natives, as the name of a Brahmin, and on my subsequently shewing the name to an intelligent native, he thought the name was that of a man of Naidoo caste, upon what grounds he arrived at that conclusion I do not know; it however has convinced me, it would not have been safe to have made the admission asked for from the Court, merely on the Interpreter pronouncing it to be the name of a Brahmin; moreover I believe among Mahrattas it is not at all unusual for men who are not Brahmins to bear names similar to those usually borne by Brahmins.

4. I have the honor to state that on the 14th instant I addressed the Acting Collector of Masulipatam requesting him to satisfy himself upon the point, and if there should be any doubt as to Vargonda Ramanapah having been of Brahmin caste, that he would inform me on what evidence his not being so could be supported; letting an intelligent writer, or the Government Vakeel, take down a statement of the evidence each witness could give, with the names &c. of each witness as also that he would favor me with any observations he might think it desirable to make on the point.

5. I have solicited Mr. Knox's immediate attention to the matter, in order that I may receive his reply in time to communicate it to Government, and obtain the necessary instructions previously to the 28th Instant, so soon as Mr. Knox's reply is received I will do myself the honor of again addressing you.

6. In preparing for the argument of this case, I had prepared myself for what appeared to me the fact that Vargonda Ramanapah was not of Brahmin caste; I have carefully looked over all the correspondence, Minutes of Consultation &c. relating to the case and now in my office, and I cannot find the slightest allusion to his having been of Brahmin caste; I cannot tell what information was laid before Mr. Norton, my predecessor, for I observe he on requisition from time to time returned all the papers laid before him; (a very inconvenient practice by the bye but which has become very general) on looking however at his letter of the 14th March 1855, it appears to me that in penning that letter he was under the impression that Vargonda Ramana-

Fort Saint George, Revenue Consultation of 4th May 1858.

pah was not of Brahmin caste, for his quotation "virtuous Brahmins" is the term used in strange 148 where treating of the lawful heirs of Chastya Vaisya and Sudra castes.

7. The pleadings also are silent on the point, the defence referring to the advances by the Defendant's Father &c. to the widow for the discharge of the peishcush and other liabilities incurred on account of the Estate; the Suit No. 18 of 1838, The Razeenamah, the subsequent proceedings and the Defendant's rights under that Razeenamah; the answer traverses the attachment of the Estate by the Collector as an *escheat* and denies that the title of the Government is paramount to that of the Defendant, proceeding to assert that the widow had authority under Hindoo Law to alienate, or incur the Zemindary in perpetuity, and beyond her own life as against those entitled to the Zemindary next in possession, and that on her death (if not incumbered or alienated) it would have vested in her heirs and that "the estate is of such a nature as could under no circumstances escheat to Government, the order of succession to such property being expressly pointed out by Hindoo Law;" and in his answer to the Collector's Petition of Appeal after setting out the same grounds of defence as to the power of the widow to alienate or incur the Defendant submits "that by Hindoo Law Government cannot under any circumstances claim the property in question as an *escheat*." It is under such pleadings as these, and by introduction of the word "Brahmin" in a question to the Pundits, that the Court of Sudr Udalut entertain the question of Vargonda Ramanapah having been a Brahmin. The Counsel for the Defendant felt naturally that the Privy Council would not be likely to view such pleadings through a similiar medium, and pressed that the Court should make a Declaration that Vargonda Ramanapah was a Brahmin, fearing that if not made the Honorable Company might by a Jesuitical evasion prevent the Privy Council from pronouncing a Judgment on that point; most assuredly, if by the pleadings I have alluded to, it were intended to raise the question of Vargonda Ramanapah having been a Brahmin, that epithet might most justly be applied to the pleadings filed on behalf of the Defendant.

8. The object of the Government in instituting the suit was mainly, as I understand, to obtain a Judgment whether under such circumstances as are disclosed in this case, a Hindoo widow has the power to alienate or incur real estate inherited from her husband, to the prejudice of Government who claim as *ultimus hæres* to her husband, he having died without natural heirs; the disclosure now made as to the caste of the husband, the question to be decided is enlarged, but as it appears to me the question can be satisfactorily settled in the present suit, if the fact of Brahmin or no Brahmin be ascertained and admitted on the record; I therefore propose to admit the fact as it may be communicated to me by the Collector, if positive, without requiring the Court to remand the case, or to take further evidence themselves under the powers reserved by the regulations; but if the information from the Collector be not positive, then I propose to suggest that further evidence to prove the fact be taken in this suit.

9. Having given the matter much earnest consideration since it was before the Court, I am of opinion, that the law with regard to the *escheat* of property belonging to a Brahmin dying without heirs, is too general and vague or (to use the words of Sir Thomas Strange when treating of the right of *escheat* in respect of property belonging to the lower castes) "too comprehensive" as laid down in the text books, where it is stated that the Estate of a Brahmin so dying "descends eventually and ultimately to Brahmins or learned priests" and although, so far as I have at present ascertained, there is no case in which the question as regards Brahmins has been decided, I agree with Mr. Norton in opinion that the Courts would not uphold or enforce such a proposition at the present day.

10. By the course adopted by the Sudr Udalut in passing the order of the 21st October 1854, that Court has placed the parties in false position it is clear that the Defendant has no right to the estate but from his being Defendant, such wrongful possession will be maintained, if the fact should prove to be that Vargonda Ramanapah was of Brahmin caste, and the Court should hold that therefore the Government are not entitled to take by *escheat*.

11. If the Collector should inform me that Vargonda Ramanapah was of Brahmin caste I propose on the case again coming before the Court submitting that the law as regards the succession to Brahmins as laid down in the text books is too vague and general to be carried out, and that as in the case of succession to the other castes, the text must be narrowed in construction, and that the estate has *escheated* to Government.

Fort Saint George, Revenue Consultation of 4th May 1858.

No. 23. From CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to HENRY FORBES, Esq., Acting Secretary to Government dated Madras 26th April 1858, No. 40.

SIR,

Para. 1. In continuation of the letter I had the honor to address to you under the date and No. noted in the margin I have the honor to report for the information of the Right Honorable the Governor in Council that in consequence of my not having then received from the Acting Collector of Masulipatam any reply to my letter of the 14th Instant (referred to in para. 4 of my letter noted above) the Court of Sudr Udalut were pleased this morning to direct that the further hearing of the Appeal Suits should stand over till next Wednesday week the 5th May 1858.

2. I have now the honor to inform you that I have since received a reply a copy which I do myself the honor of enclosing for the information and instructions of His Lordship in Council.

From T. J. KNOX, Esq., Acting Collector of Masulipatam; to CLEMENT DALE, Esq., Government Pleader Court of Sudr Udalut Madras, dated Masulipatam 21st April 1858, No. 166.

SIR,

Para. 1. In reply to your letter dated 14th Instant, regarding Appeal Suit Nos. 103 and 136 of 1857 on the file of the Court of Sudr Udalut, I have the honor to state that V. Ramanappah the late Zemindar of Vissinnapettah who died in 1810, was a Brahmin, and this fact must be admitted.

2. It appears to me, our answer to the ruling of Hindoo Law that the Estate of a Brahmin can never *escheat* to the crown, is that in the succession to ancient Zemindaries, common Hindoo Law gives place to the usages of the country, or the pleasure of Government, and hence eldest sons succeed. The Sudr Court's decree in a suit No. 20 of 1846 declares this and for a similar reason, Hindoo Law in this instance must give way because that the sovereign of England is ultimate heir of all British subjects, and the prerogative of the crown, cannot be affected by any law not made by the Imperial Parliament.

3. I may remark that the Hindoo Law gives childless widow an indefeasible right to maintenance, and the usufruct of her deceased husband's immoveable property, and apparently if maintenance cannot otherwise be procured she may to obtain it, sell a portion of the immoveable property but neither the question of *escheat* nor of the widow's necessities have been thoroughly discussed before the lower Court, and I am quite prepared to hear that the Sudr Court order a review of judgment, if not a trial *denovo*.

(True Copy.)

(Signed) CLEMENT DALE,

Government Pleader.

No. 24. ORDER THEREON, No. 548; dated 29th April 1858.

The Right Honorable the Governor in Council approves the course which the Government Pleader proposes to pursue in regard to the point at issue before the Sudder Court in Appeal Suits Nos. 103 and 136 of 1857, whether Vargundah Ramanapah the Zemindar who died in 1810, was a Brahmin or not.

2. The Government remark from the Government Pleader's letter of the 26th that the Collector of Masulipatam has furnished Mr. Dale with the information required by him on the subject, and they will be glad to learn how the point of law as to the *escheat* of the Estates of Brahmins is finally disposed of.

3. The Board will be requested with reference to para. 6 of Mr. Dale's letter to furnish him, whenever practicable, with copies of papers instead of the originals themselves to be afterwards returned, and the same course will be pursued in the Government office.

(Signed) H. FORBES,

Acting Secretary to Government.

N. 36
From Clement Dale Esquire. Government Pleader Sudr Udalut
To Henry Forbes Esquire. Acting Secretary to Government

Madras 21st April 1858

Sir

Para 1. With reference to the Extract from the Minute
of Consultation noted in the Margin and the
Subsequent Correspondence thereon I have the honor to

report for the information of The Right
Honorable the Governor in Council that
the Appeal Suit N^o 103 and 136 of 1857

(Appealing in Cross Appeals from the Decree passed by
the Civil Judge of Masulipatam in O. S. N^o 103 of 1857
Came on for hearing on the 14th instant before the Court
of Sudr Udalut; when the Counsel for Cavalry Venkata
Narainapah asserted, that it being the estate of a
Widow of the Brahmin Caste, the property could
never Escheat to the Sovereign Power; I referred to the Court
that it was not pleaded either in the lower Court or
in their Court, that Varesonda Ramanaiah the
Zemindar who died in 1810 was a Brahmin, that
in fact the question was never mooted; the Court referred
to the questions propounded to the Pundits, as set out
in the 8th para of the Civil Judge's Decree, where the word
"Brahmin" is introduced in a Parenthesis in allusion
to the Widow widow; The Court also referred to their Head
Interpreter to know whether the name Ramanaiah
was that of a Brahmin, He answered in the affirmative
The Court then asked me to admit that Ramanaiah

M/L 16th May 1857 N^o 461
Rev^d Department

was of a Brahmin Caste, which I declined to do, as I had nothing before me to shew how the word "Brahmin" had been introduced into that question, & being totally irrelevant to the question in which it was introduced, and because, as I apprehend, it does not necessarily follow that a man with a name usually borne by the Brahmin Caste, must be a Brahmin.

The Court ultimately determined to adjourn the Case for 14 days (28th Instant) to enable me to enquire whether Varezonda Ramanapah, the Zemindar who died in 1810, was really and in fact a Brahmin, and consider whether there was any objection to offer on that point.

One of the Officers of the Sudr Udaltit informed me, in Answer to a question I put to him, that the name is not such an one as would be as a matter of course taken, even by natives, as the name of a Brahmin, and on my subsequently shewing the name to an intelligent native, he thought the name was that of a Man of a Vaidoo Caste, upon what grounds I arrived at that Conclusion I do not know. It however has convinced me, it would not have been safe to have made the admission asked for from the Court, merely on the Interpreter pronouncing it to be the name of a Brahmin; moreover I believe among Mahorattas it is not at all unusual for men who are not Brahmins to bear names similar to those usually borne by Brahmins.

I have the honor to state that on the 14th instant I addressed the Acting Collector of Masulipatam

requesting him to satisfy himself upon the point; and if there should be any doubt as to Varezonda Ramanapah having been of Brahmin Caste, that he would inform me on what evidence his not being so could be supported, letting an intelligent writer, or the Government Vakil, take down a statement of the evidence each witness could give, with the names of each witness. It is also that he would favor me with any observations he might think it desirable to make on the point.

5 I have solicited Mr. Knox's immediate attention to the matter, in order that I may receive his reply in time to communicate it to Government, and obtain the necessary instructions previously to the 28th Instant, so soon as Mr. Knox's reply is received. I will do myself the honor of again addressing you.

6 In preparing for the argument of this case, I had prepared myself for what appeared to me the fact that Varezonda Ramanapah was not of Brahmin Caste. I have carefully looked over all the Correspondence, Minutes of Consultation &c. relating to the Case and now in my Office, and I cannot find the slightest allusion to his having been of Brahmin Caste; I cannot tell what information was laid before Mr. Norton, my Predecessor, for observe he on requisition from time to time returned all the papers laid before him; (a very inconvenient practice by the bye, but which has become very general) on looking however at his letter of the 14th March 1825, it appears to me that in penning that letter he was under the impression that Varezonda Ramanapah was not of Brahmin Caste, for his quotation "virtuous Brahmins" is the term used in Strange 148 - where treating of the lawful Heirs of Chhatras Vaisya and Sudra Caste.

7 The Readings also are silent on the point, the

reference referring to the advances by the Defendant's Father
to the widow for the discharge of the peishush and other
debts incurred on account of the estate, the Suit No. 18
1838, the Razzenamah, the subsequent proceedings,
and the Defendant's rights under that Razzenamah; the
issue traverses the attachment of the estate by the Collector
as an Escheat, and denies that the Title of the Government
is paramount to that of the Defendant, proceeding to assert
that the widow had authority, under Hindoo Law, to alienate,
incumber the Zemindary in perpetuity, and beyond her own
life as against those entitled to the Zemindary next in
possession, and that on her death (if not incumbered or
alienated) it would have vested in her Heirs; and that
the estate is of such a nature as could under no
circumstances Escheat to Government, the Order of Succession
such property being expressly pointed out by Hindoo Law;
and in his Answer to the Collector's Petition of Appeal
after setting out the same grounds of defence as to the power
the widow to alienate or incumber, the Defendant
limits "that by Hindoo Law Government cannot under any
circumstances claim the property in question as an Escheat."
It is under such pleadings as these, and by introduction
the word "Brahmin" in a question to the Pundits, that
the Court of Subordinate Judges entertain the question of Vazondra
Ramanapah having been a Brahmin. The Counsel for
the Defendant felt naturally that the Privy Council would
not be likely to view such pleadings through a similar
medium, and pressed that the Court should make a
declaration that Vazondra Ramanapah was a Brahmin,
leaving that if not made the Honorable Company might
by a jesuitical evasion prevent the Privy Council.

6E
from pronouncing a Judgment on that point; most assuredly,
if by the Pleadings I have alluded to, it were intended
to raise the question of Vazondra Ramanapah having
been a Brahmin, that Epithet might most justly be
applied to the Pleadings filed on behalf of the Defendant
8. The object of the Government in instituting the
suit was mainly, as I understand, to obtain a Judgment
whether under such circumstances as are disclosed in
this case, a Hindoo widow has the power to alienate or
incumber real Estate inherited from her husband, to the
prejudice of Government who claim as ultimate Heirs
to her husband, he having died without natural Heirs;
by the disclosure now made as to the Estate of the husband,
the question to be decided is enlarged, but as it appears
to me the question can be satisfactorily settled in the
present suit, if the fact of Brahmin or no Brahmin
be ascertained and admitted on the record; therefore
I propose to admit the fact as it may be communicated
to me by the Collector, if positive, without requiring the
Court to remand the case, or to take further evidence
themselves under the powers reserved by the Regulations;
but if the information from the Collector be not positive
then I propose to suggest that further evidence to
prove the fact be taken in this suit.

9 Having given the matter much earnest
consideration since it was before the Court, I am of
opinion, that the law with regard to the Escheat of property
belonging to a Brahmin dying without heirs, is too
general and vague or to use the words of Sir Thomas
Strange when treating of the right of Escheat in respect

N^o 40 8E

From Clement Dale Esquire Government Pleader Sadr Udulat
To Henry Forbes Esquire Acting Secretary to Government

Sir

Para 1 In continuation of the letter I had the honor
to address to you under the Date and N^o noted in the
margin. I have the honor to report for the

2nd April 1858 N^o 36 information of the Right Honorable The
Governor in Council that in consequence of my not having
then received from the Acting Collector of Masulipatam
any reply to my letter of the 14th Instant (referred to in
para 4 of my letter noted above) the Court of Sadr Udulat
were pleased this morning to direct that the further
hearing of the Appeal suits should stand over till
next Wednesday week the 5th May 1858.

2 I have now the honor to inform you that I
have since received a reply a Copy which I do myself
the honor of enclosing for the information and instructions
of His Lordships in Council.

I have the honor to be

Sir

Your Most Obedient Servant

Clement Dale

Govt Pleader

Revenue 1858 Repts
Potomac 1st May.

No. 632

From the Govt & Pleas
and Marshal.

Dated 26th April 1858

1. Each.

J. S. No. 548. 29 April 1858

of the circumstances of the
fact, the bond of the
State and opinion of the
5th Army, the
further hearing of
the appeal and the
and 136 of 1857, regarding
V. O. and the
late Governor of
Virginia.

1858
29 April 1858

N^o 166

10^E

Masulipatam Collectors
Cutcherry 21st April 1858

From
S^r J. Knox Esq,
Acting Collector of
Masulipatam

To
Clement Dale Esq,
Government Pleader
Court of S^rs Abdulut
Madras

Sir,

Para 1 In reply to your letter dated 14th Instant,
regarding Appeal Suits Nos 103 and 136 of 1854 on the
file of the Court of S^rs Abdulut, I have the honor to state
that W. Ramappa the late Zemindar of Nippon
mahpetta who died in 1819, was a Brahmin, and this
fact must be admitted.

2 It appears to me, our answer to the ruling
of Hindoo Law that the estate of a Brahmin can never
revert to the Crown, is that in the succession to
Ancient Zemindaries, Common Hindoo Law gives
place to the usages of the Country, or the pleasure of
Government, and hence eldest sons succeed. The S^rs
Court's Decree in a Suit No 20 of 1846 declares this
and for a similar reason, Hindoo Law in this Instance
must give way because that the Sovereign of
England is Ultimate heir of all British subjects,
and the prerogative of the Crown, cannot be affected
by any law not made by the Imperial Parliament.

3 I may remark that the Hindoo Law gives
a Childless Widow an indefeasible right to
maintenance, and the usufruct of her deceased

N^o 33

husbands' immovable property, and apparently
maintenance cannot otherwise be procured she
may to obtain it, sell a portion of the immovable
property - but neither the question of escheat nor
the widow's necessities have been thoroughly dis-
cussed before the lower Court, and I am quite
prepared to hear that the Sudder Court Order a
view of judgment, if not a final decree.

I have the honor to be

Sir

Your most Obedient Servant

J. J. Knox

Acting Collector

(True Copy)

[Signature]

Govt. Pleader

Sec. A. P. 62

1847 Sudder Udat

Mac^m Hind

Law Vol II. Pa

211

11E

Revenue Dept

No 548

Extract from the Minutes of Consultation

Dated date the 29th April 1858.

Read the following

letter from the Government

Headed Sudder Udat.

and 26th

1st Res. enter 21st April 1858/

[Signature]

[Signature]

Will

The Right Hon^{ble}
the Governor in Council
approves the course which
the Government Headed
proposes to pursue in
regard to the points at
issue before the Sudder
Court in appeal Smils
nos 103 and 106 of 1857,
wherein

whether Vargundale Ram-
manapah the Zamindar
who died in 1810 was a
Brahm or not.

2. The Government remark from the
Govt Pleader's letter of the 26th is
that the collector of Sta-
nlypalam has furnished
Mr. Dale with the
information required by
him on the subject, and
they will be glad to
learn how ~~this point of~~
~~fact~~ the point of
law as to the escheat of
the Estates of Brahmans
is finally disposed of.

3. The Board will
be requested with re-
ference to para 6 of Mr
Dale's letter to furnish
him, whenever practicable,
with copies of papers
instead of the Originals
themselves to be after-
wards returned and the
same

12^E

18
same course will be
pursued in the Govern-
ment Office.

BB

Copies to Bd of Gov. Dist^{ry}
with copies of letters.

1 - to Govt Pleader

no 19 May 1878 No 34 -

Revenue 1858 -
20 to Court 4 May

10548.

Contracting Co.

29th April 1878.

From the Govt. of Madras to the
5 June 1878 No 894 or 22 June

Regulating the
in the

1878/1879

No 22 of 1874.

Approving the course
which the Government should
propose to pursue, in regard
to the point at issue before
the Board of Revenue in appeal
No 103 and 130 of 1874,
whether the Government should
revoke, the Government of
Madras, the Government of
Madras, the Government of
in 1870, was in the same or
not.

27 April