P1

Revenue Department

Minutes of Consultation

2nd July 1858

Back nos 6 * 7

Order no 868 dt 23rd June 1858

(Quit)

பாதுகாக்கும் பிரிவு

செப்பனிடுபவர் பெயர்: மா இராமலிங்கம்

செப்பனிடுவதற்காக எடுத்துக்- 07/08
கொள்ளப்பட்ட நாள்.

25/8/08 — சரிபார்க்கும் முதல் முறியாள கையொப்பம்

12/1/09 — சரிபார்க்கும் 2ம் முறியாள கையொப்பம்

8/2/09 — ஒதாய்ச்சி உதவியாளர் கையொப்பம்

P2

Fort Saint George, Revenue Consultation of 2d July 1858.

No. 6. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudr Udalut; to W. H. BAYLEY, Esq., Acting Secretary to Government; dated Madras 16th June 1858, No. 58.

SIR,

Para. 1. With reference to the Extract from the Minutes of Consultation and the letter noted in the margin, I have the honor to report for the information of the Right Honorable the Governor in Council, that I have received a copy of the Decree passed by the Moofty Sudr Ameen of Calicut in O. S. No. 20 of 1856 on the file of that Court; as also a copy of a Petition of Appeal preferred to the Civil Court of that Zillah by the Defendant (Police Ameen of Calicut) in the O. S. I have also received a communication from the Acting Collector, from which I learn that the Plaintiff in that Suit has preferred to the Civil Court a cross Appeal from the Decree; and that the Defendant has not filed any answer in such (cross) Appeal Suit.

M. C. 19th March 1858, *No.* 356, *Revenue Department.*
Letter from the Govt. Pleader to Govt. 23d March 1858, *No.* 28, *para.* 8.

2. The Petition of Appeal presented by the Plaintiff is objectionable. The 2nd para. is mere argument, while the 4th para. contains strictures on the Decree in the O. S. in terms highly indecorous and unbecoming and imputing to the Judge ignorance; para. 5 contains a bold and impudent statement, quite unsupported by the so called admission; while in the 3d para. the Plaintiff quotes a Decision, as an authority for his position, but by which it was held, that an action did not lie for words spoken in detraction of the honor, title, and dignity of a party who had subsequently died.

3. I advise that an answer be put in by the Defendant; and enclose a form for the guidance of the Government Vakeel at Calicut.

4. As regards the question of moving the Court of Sudr Udalut, to call up the Appeal Suits from the decree passed in that original Suit, I have the honor to submit that I see no grounds for so moving that Court (if it possessed the power to comply with such a motion). It is true the question appears to be the same, in the case now under consideration, as is raised in O. S. No. 2 of 1856, but the amount in dispute in this case is under Rupees 10,000, no appeal therefore lies to Her Majesty in Council, as of right, and I consider it objectionable that by a step of the character suggested by the Acting Collector of Calicut, Government should lay itself open to an imputation of endeavouring to deprive or curtail a subject of his rights of Appeal. From the Decree passed in O. S. No. 2 of 1856 it may be inferred what will be the result of the Appeal against the Moofty Sudr Ameen's Decree, if the same Gentleman should preside in the Civil Court when that appeal is heard, as passed the Decree in No. 2 of 1856; but it is not to be supposed that the Court of Sudr Udalut will refuse the admission of a special Appeal, on a question of law so very clear, and supported as it is by a Decision of the Privy Council; I therefore advise that the Appeal and Cross Appeal from the Decree in O. S. No. 20 of 1856 be allowed to proceed in their regular course, and when Decrees have been passed in such Appeal Suits further advice can be taken if necessary.

In the Civil Court of the Zillah of Calicut.

The answer of Mangada Vittil Kanaren the Respondent to the Petition of Appeal presented to this Honorable Court by or on behalf of Mana Vikrama Moonarpaad Appellant and Nod. of 185

I. This Respondent submits to the Judgment of this Honorable Court that the said petition of Appeal contains matter in contravention of the Regulations and Rules by which the procedure in your Honorable Court is governed, the same containing matter that is argumentative and impertinent, and this Respondent submits to your Honorable Court that such Petition should be taken off the files of this Court and returned to the Appellant, and this Respondent further submits for such Judgment whether he is bound to answer such Petition in its present form.

II. This Respondent submits such Petition is objectionable in the following particulars.

1st. That the paras. in the said Petition which are Nod. 1 and 2 are argumentative.

2ndly. That the para. in that Petition which is Nod. 4 is couched in language which this Respondent submits is highly indecorous and unbecoming, groundlessly imputing ignorance to the Judge who passed that decree. And

3dly. That the said Petition does not state specifically what was Decreed by the original decree, nor are grounds of objection stated distinctly and concisely without argument or narrative. And for want of attention to those rules and Regulations great difficulty is thrown upon this Respondent in framing an answer thereto.

III. If however your Honorable Court should be of opinion that the said Petition should be retained on the files in its present form; and that this Respondent should answer the same; he not confessing or acknowledging all or any of the matters or thing to be true as in and by the said Petition of Appeal mentioned and set forth and reserving to himself all right to exception to the said Petition saith.

IV. With reference to the para. in the said Petition which is Nod. 3 this Respondent submits himself to the judgment of your Honorable Court for a construction of the 14th para. of the decree passed in No. 20 of 1856, on the file of the Court of the Moofty Sudr Ameen of Calicut, and this Respondent shews to your Honorable Court that by the decree of the Court of Sudr Udalut passed in A. S. No. 15 of 1824, (in that para. cited by the Appellant) it was held that that action (No. 15 of 1824,) could not lie for words spoken in detraction of the honor, title and dignity of the Plaintiff's predecessor then deceased.

V. With reference to the para. in the said Petition which is No. 5. This Respondent submits to the judgment of this Honorable Court what is the legal effect of the admission of the assertion in the Decree and of the exhibits to which the Appellant in that Petition refers.

VI. And this Respondent submits that there is not any other matter in the said Petition contained material or necessary for him to make answer unto and not herein well and sufficiently answered or denied and prays that the said Petition may be dismissed out of this Honorable Court with costs.

No. 7. ORDER THEREON, No. 868; dated 23d June 1858.

Ordered to be communicated to the Board of Revenue for their information and guidance, with reference to para. 6 of their Proceedings dated 8th March 1858, No. 835.

(Signed) W. H. BAYLEY,
Acting Secretary to Government.

No 58

From Clement Dale Esqre - Government Pleader Sudr Udalut
To W H Bayley Esqre - Acting Secretary to Government

Madras 16th June 1858

Sir,

Para 1 With reference to the Extract from the Minutes of Consultation and the letter noted in the margin, I have the honor to report for the information of the Right Honorable the Governor in Council, that I have received a Copy of the Decree passed by the Moofty Sudr Ameen of Calicut in O.S. No. 20 of 1856 on the file of that Court, as also a Copy of a Petition of Appeal preferred to the Civil Court of that Zillah by the Defendant (Police Ameen of Calicut) in the O.S. I have also received a Communication from the Acting Collector, from which I learn that the Plaintiff in that Suit has preferred to the Civil Court a Cross Appeal from the Decree, and that the Defendant has not filed any Answer in such (Cross) Appeal Suit.

M/C 19th March 1858 No. 956
Revenue Department
Letter from Govt Pleader to Government
23d March 1858 No. 28 para 8

2 The Petition of Appeal presented by the Plaintiff is objectionable - The 2d Para is mere argument, - while the 4th Para contains strictures on the Decree in the O.S. in terms highly indecorous and unbecoming, and imputing to the Judge ignorance; Para 5 contains a bold and impudent statement, quite unsupported by the so called admission, while in the 3d Para the Plaintiff quotes a Decision, as an Authority for his position,

but by which it was held, that an action did not lie for words spoken in detraction of the honor title and dignity of a Party who had subsequently died.

3. I advise that an Answer be put in by the Defendant; and inclose a form for the guidance of the government Vakeel at Calicut

4. As regards the question of moving the Court of Sudr Adalut, to call up the Appeal Suits from the Decree passed in that Original Suit, I have the honor to submit that I see no grounds for so moving that Court (if it possessed the power to comply with such a Motion) It is true the question appears to be the same, in the Case now under Consideration, as is raised in O. S. No. 2 of 1856, but the amount in dispute in this Case is under Rupees 10,000, no appeal therefore lies to Her Majesty in Council, as of right, and I consider it objectionable that by a step of the character suggested by the Acting Collector of Calicut, Government should lay itself open to an imputation of Endeavouring to deprive or curtail a subject of his right of Appeal. From the Decree passed in O. S. No. 2 of 1856 it may be inferred what will be the result of the Appeal against the Moofty Sudr Ameens Decree, if the same Gentleman should preside in the Civil Court when that Appeal is heard as passed the Decree in No. 2 of 1856; but it is not to be supposed that the Court of Sudr Udalut will refuse the admission of a Special Appeal, on a question of Law so very clear and supported as it by a Decision of the Privy Council. I therefore advise that the Appeal and Cross Appeal from the Decree in O. S. No. 20 of 1856 be allowed to

proceed

proceed in their Regular Course and when Decrees have been passed in Such Appeal Suits further advice can be taken if necessary.

I have the honor to be
Sir
Your Most Obedient Servant

Govt. Pleader

Coast 19th March/58 No 39 440
" 30th " " " 19 420
" 4th May " " 8 488.

Revenue Dept
To Coast July
(With 1 Enclosure)

No 966

From Govt Pleader S. C.

To Acting Sec'y to Govt

Dated 16th June No 58
Rec'd 18 — "
1 Encls.

Coast Informing that Govt has received a Copy Decree passed by the P. S. C. of Calicut in A S No 29 of 1856 & Annexe Copy Petition of Appeal preferred by the Defts also Communication from the Acting Collector that the Plaintiff in that Suit had preferred to the Civil Court a Cross Appeal and that the Defts had not filed any Answer in such Cross Appeal

3. Advising that an Answer be put in by the Defts & Enclosing a form for the guidance of the Govt Pleader

4 Advises that the Govt should not be moved to call up those Appeal Suits

No 1868 - 232 - June 1858.

No 868

Ordered to be communicated to the Board of Revenue for their information and guidance with reference to para 6 of their Proceedings dated 8th March 1858 No 535.

For the Secy to Govt
23rd June 1858.

3 Copies to the Pleader Despd 24th

W. A. B

24