Revenue (1897) Department.

MISCELLANEOUS SERIES.

G.O., No. 1656

DATED 26th March 97

[Despatch Abstract.]

Confirming Board's Proc. sanctioning the filing of an appeal in O.S. No. 16/94 on the file of the Pilghat Sub Court (regarding certain property declared escheat).

BACK PAPERS.

G.O	No	Department.	Date.	G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
cir. 1605-97							

Revenue (189 7) Department.

CURRENT No. 2521

The Hon. Mr Grose &c.

Rp 26-[illegible]

Rp 26 March 97

Order nis No. 1656 d 26 March 97

25 26/3/97

The Board's Proc. are confirmed.

[illegible] 24/3/97

20 MAR 97

From The Board of Revenue, Land Revenue, Madras.

No. 1005 Misc.

Dated 17th March 1897.

Received 20th

Registered 20th

Enclosures 3.

Spare copies

Letter Bd of Rev (L.R.) with encls } Rec 31-3-97

24 March 97

C. 26-3-97

2-25/-97

Rappelek 10.3.97

SUBJECT.

Sanctioning the filing of an appeal against the decision in O.S.No.16 of 94 on the file of the Palghat Sub-Court (regarding certain property declared escheat) requesting the Collector of Malabar to amend the draft Memo of appeal submitted by him as suggested by the Govt. Pleader & submitting a copy of those Proceedings for the confirmation of ~~the~~ Government.

BACK PAPERS.

G.O.	No.	Department.	Date.
	1480		11-3-97

FURTHER PAPERS.

G.O.	No.	Department.	Date.

3,000
10-12-96.

REVENUE BOARD OFFICE MADRAS

Proceedings of the Board of Revenue

(Land Revenue)

No.1005 Misc.,dated 17th March 1897.

Read letter from G.W.Dance,Esquire,Ag.Collector of Malabar, to the Secretary to the Commissioners of Land Revenue,Madras, Ref.on C.No.558/P-97,dated 7th March 1897.

And the following Reference thereon dated 13th March 1897.

Referred to the Government Pleader;Madras,for favor of advice as to whether an appeal may be preferred against the Sub-judge's decision with a fair prospect of success.

2. He is also requested if necessary to revise the draft memo of appeal submitted by the Collector.

3. The circumstances under which the plaint property was escheated are detailed in the Collector's letter printed in Government Order No.846 Rev.,dated 13th August 1892 a copy of which is forwarded herewith.

4. The Collector will be requested by wire to send a copy of the local Pleader's opinion referred to in the B form Memo to the Government Pleader direct,to save delay.

5. As the appeal time expires on the 22nd instant,an early reply to the present reference is requested.

Read also the following letter from E.B.Powell,Esquire,Government Pleader,Madras,to the Secretary to the Board of Revenue,No.239,dated 16th March 1897.

Adverting to the Board's reference on General No. 1265 of the 13th instant,I have the honor to submit the following :-

Opinion

Whether the defendants are heirs to Payyapalli Illam is a question of fact and without having the evidence before me it is impossible to give a satisfactory opinion regarding the chances of success if an appeal is preferred.

2. However I can give my opinion regarding some of the questions raised by the Local Government Pleader in his grounds of appeal, the materials of which appear either in the Collector's letter or in the judgment itself.

3. I think the Sub-Judge is wrong in throwing the burden of proof on Plaintiff. No doubt it was incumbent on Plaintiff to show in the first instance that the suit was not barred. It being admitted by the Defendants that the Payyapalli illam was extinct, the onus seems to me to be upon them to show how they came into possession of the property of that illam. Plaintiff and Defendants both claim to succeed to the last male owner, the Government as ultimus haeres and the defendants as preferential heirs. The status of Government as ultimus haeres is unquestionable and it therefore lies on the defendants to prove their preferential title. Their relationship is a fact peculiarly within their own knowledge and moreover throwing the onus on the Plaintiff would amount to making him prove a negative.

4. At any rate as soon as the Plaintiff proved that the Payyapalli illam was not a tavari of the Panayur illam as set up by the defendants, the onus clearly lay upon the latter to prove their title. I have not been furnished with a copy of the Defendants' written statement, but as far as I can gather from para 2 of the Judgment the case set up by them at the trial and referred to in para 8 was quite new and not suggested in the written statement .

5. In the Collector's letter printed in G.O.No.846 dated 13th August 1892 there are certain important pieces of evidence referred to, which I do not find noticed in the judgment. Whether they were before the Sub-Judge or not I am not in a position to say. They include certain "flagrant discrepancies" in the statements made at different times by Panayur Nambudri which ought to have been sufficient to stamp the whole of his conduct in reference to this property as fraudulent.

6. I think the following grounds of appeal in the draft Memorandum may be omitted as unnecessary :-

Nos.1,3,4,19 and 20 and for 5 I would substitute

The Court, having found that the main contention set up by the defendants, viz, that there was community of property between the two illams was false, ought not to have allowed them to set up a new case-and for 6-The onus lay on the defendants to establish their alleged right as reversionary heirs to the extinct Payyapalli illam and this they have not done.

P.S. Since writing the above I have received a letter from the Collector of Malabar forwarding Calicut Government Pleader's notes on the judgment and the depositions in the case but I have no time to go through them as the appeal time expires on the 22nd instant. Any how I am of opinion that an appeal should be filed.

/signed/ E.B.Powell
Govt.Pleader.

Resolution

The Government Pleader's opinion read above will be communicated to the Collector of Malabar

2. The filing of an appeal against the decision in O.S.No.16 of 1894 on the file of the Palghat Sub-Court is sanctioned; but the draft Memo of appeal submitted by the Collector should be amended as suggested in para 6 of the Government Pleader's letter .

3. A copy of these Proceedings will be submitted to Government for confirmation with reference to the correspondence ending with G.O.No.1480 Rev., dated 11th April 1894.

(True Copies & Extract)

Secretary.

To

The Collector of Malabar, with the Judgment retd.
The Secretary to Govt.R.D., with the Collector's letter decree & draft Memo of appeal to be returned.

Md.R.H.

When given for copying ____
When copied ____
When examined ____
When signed ____
} 189

READ AGAINST G.O., No. 189 , DATED



CURRENT No.

ENCLOSURES TO C. No.

ORDER OF GOVERNMENT	A	A	A	A	A	A	A	
LETTER OF GOVERNMENT								
STATEMENT WITH DITTO								
PAPERS NOT FILED UP, BEING MEANT FOR DESPATCH IN ORIGINAL.								

N.B.—
A = Copy in full.
B = Not to be copied.
P = Copy abstract only.
Q = Copy heading only

...contention set up by the