M.R.O. 1—[illegible],000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Judicial **DEPARTMENT.**

G.O. No. 306 Press
~~Mis.~~

51-52

Dated 7-5-1861 19

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Not to be folded or roughly handled

No. 51. Read the following:—

MEMORANDUM.

The Registrar of the Sudder Court has the honor, with reference to the Orders of Government, dated 19th January 1860, to forward a copy of the Decree of the Sudder Court in Appeal No. 140 of 1859, from which an Appeal has been preferred to Her Majesty in Council.

SUDDER COURT, REGISTRAR'S OFFICE,
2nd March 1861.

(Signed) C. F. CHAMIER,
Registrar.

To the Chief Secretary to Government.

DECREE OF THE SUDDER COURT AT MADRAS.

Before the Civil Court of Madura.....Original Suit No. 1 of 1856.
Before the Sudder Court at Madras.....Appeal No. 140 of 1859.

(Signed) T. L. STRANGE.
(„) H. FRERE.

L. S.

Appellant. *Respondent.*

The Collector of Madura. *versus.* VIRACAMU AMMAL, daughter of the late Zemindar of Erasaca Naiknoor.

The Zemindary of Erasaca Naiknoor was held by Chinna Obolla Nayak in succession to his father. On his demise in 1835, his two widows Chinnammal and Papammal were installed therein by the Board of Revenue as his lawful heirs, the claim of one Jakkama Nayak as nearest male descendant being disallowed. Papammal died leaving a daughter, the plaintiff. The whole Estate then vested in Chinnammal. She died in 1853, and the Government disallowing plaintiff's title to succeed, assumed the Estate as an escheat. The suit has been brought by plaintiff to recover her rights.

The defence made by the first defendant, the Collector of Madura, is, that females cannot inherit the Zemindary in question.

This question the Civil Judge decided in favor of the plaintiff, and finding her to have been declared in certain Decrees (Appeals 20 of 1838, and 18 of 1847), to be the next entitled to succeed after Chinnammal, he gave Decree in her favor.

Against this decision the first defendant appeals and is answered by the plaintiff.

Mr. Dale appeared for the first defendant, and Sadagopacharlu for the plaintiff.

Judgment.

The Court are of opinion that the first defendant is precluded from challenging the succession of females to the Estate in issue by the act of the Revenue Board, representing then the Government, in installing Chinnammal and Papammal as the legitimate heirs of the previous Zemindar, a condition of things that was kept up unchallenged until the death of the survivor of the said widows, eighteen years afterwards. It has not been shown that this recognition of these widows was made under any limitation or reservation. It must be taken therefore to have been absolute.

It is urged that Zemindaries of the description of that in question, namely, not assured by Istimrar sunnud, are not hereditary, but are held at the will of the Government, who on each lapse may appoint thereto whom they please. This plea the Court notice was not advanced in the Court below. The plea there urged was in fact inconsistent therewith. It was then contended that the Estate had fallen to the Government by escheat from lack of heirs, implying

therefore clearly that had there been an heir, that person would have been entitled to the property. The plea is also inconsistent with the installation and recognition by the Government of Chinnammal and Papammal as heirs of the preceding Zemindar, and with the allegation that plaintiff's pretensions are to be negatived, not because such is the will of the Government, but as she is a female; a certain rule, being a rule of *descent*, being cited against her. The Court decline to entertain a plea thus urged upon them, not only novel in its nature, but inconsistent with the former pleadings upon which the defence has been based.

The Court do not view the Decrees cited by the Civil Judge as declaring the plaintiff's heirship to be conclusive against the Government who were no parties to the suits in which they were given; but it being clear that on the demise of Chinnammal without personal heirs the property reverts to the line of her husband, whose daughter the plaintiff is, it is apparent to them that plaintiff is the next entitled to succession.

The Court finding no ground for interfering with the Decree of the Civil Judge, dismiss this appeal with costs.

IN THE SUDDER COURT.

Appellant's Costs.

Pleader's fee on Rupees 27,803-15-2...	628	0	6
1 Roll for brief Appeal petition...	750	0	0
3 do. , for the special grounds of Appeal...	12	0	0
To be borne by the Appellant, 1st defendant...			1,390 0 6

Repondent's Costs.

Pleader's fee as above...	628	0	6
1 Roll for Vakalatnama...	2	0	0
To be paid to the Appellant by the Respondent (first defendant, Collector of Madura)...			630 0 6

IN THE ORIGINAL SUIT.

Respondent's (Plaintiff's) Costs.

Costs as entered in the Original Decree to be paid to the Respondent by the Appellant (1st defendant)... ... ... 880 0 4

Given under our hands and the Seal of the Court, this sixteenth day of July, in the year of our Lord 1860.

By Order of the Sudder Court.

(Signed) C. F. CHAMIER,
Registrar.

Signed and Sealed in Court, this 1st day of September 1860.

It is hereby certified that the value of the matter in dispute amounts to the sum of Company's Rupees 27,803-15-2, and the period for appealing will expire on the 1st March 1861.

(Signed) C. F. CHAMIER,
Registrar.

(True Copy.)

(Signed) C. F. CHAMIER,
Registrar.

No. 52. ORDER THEREON, 7th March 1861, No. 306.

Ordered that a copy of the Decree submitted be forwarded to the Secretary of State.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. T. O'Connor.

Dist. 10th March.

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From The Registrar of the Sudder Court. Madras.

Judicial Dept

Rec'd 2nd Branch 161.

Sept 2nd

Rec'd 22nd 1860

Forwarding a Copy of the Decree of the Sudder Court in Appeal No 140 of 1859 from which an Appeal has been preferred to Her Majesty in Council.

Rec'd 20th January 1862.

Judicial Letter to Madras 5th March No 52 of 1861.

No. 306 — 7th March 1861.

Ordered that a copy of the Decree submitted be forwarded to the Secretary of State.

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