

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1815	Press
		<u>Mis.</u>
Dated	19-12-1918	

159-160

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Not to be folded or roughly handled

*Proceedings of the Madras Government, Judicial Department,
19th December 1865.*

No. 159. Read the following letter from the Advocate General, to the Chief Secretary to Government, Fort Saint George; dated 4th December 1865.

I do myself the honor of submitting, for the information of His Excellency the Governor in Council, copy of the Decree passed by the High Court in its original Civil side, in Suit No. 346 of 1864.

2. I appeared, so far back as the 11th August last, in behalf of Government. The result is that the Court was not satisfied that the plaintiff had established his case, and his suit was accordingly dismissed with the costs of those defendants who had appeared, including the Government.

3. The Court expressed a strong leaning against the fact of any adoption having taken place, but believed that the statement of an adoption was put forward by the alleged adoptive father and mother in after years, to suit their own purposes, when disputes had arisen touching the succession to the Zemindary.

4. The Court also stated that, though it could not have given the 5th defendant any relief in the present suit, it would have expressed such an opinion upon her rights as might have induced the Government to act upon it, if the Court had been satisfied that the 5th defendant had established a title. But the Court was not satisfied as to the fact of her marriage, or the legal effect of such marriage, if in fact it ever took place.

5. The practical result of this case will probably be that the Government will hear no more of any claim to the proceeds of those jewels.

6. It was suggested to the plaintiff that he should bring this suit to establish his claim if he could, and to give a similar opportunity to all other claimants. I do not think that, under these circumstances, the Government should press for costs. The question only affects my own fees, and those of the Government Solicitor. The suit was in fact an amicable one.

7. I have to apologize for the delay which has occurred between the delivery of the judgment and my Report. But it was only this day that the Government Solicitor obtained a copy of the judgment from the Registrar's Office, although he applied for it at the time, and has made constant applications for it since.

HIGH COURT,
MADRAS.

O. S. No. 346 of 1864.

Sri Muth Pratapa Sinniah Parasoopani Sathoopatti of Ramnad, Hindoo Gentleman, the legal personal representative of Mootoo Ramalinga Sathoopati, deceased, late Zemindar of Ramnad, at present residing in No. 38, in Thatha Mutiappen Street in the Black Town of Madras, plaintiff;

and

The Government of Fort Saint George, carrying on business at Madras, Ranee Paravata Vurthanee Natchiar, residing at Madura, Mungala Sawmy Taver, and Ranee Natchiar, the son and wife of Pattaby Ramasawmy Taver, deceased, also at Madura, and Sathoo Carasoo Natchiar, also at Madura, defendants.

COPY—JUDGMENT.

The plaintiff seeks by this suit to establish his right to a sum of money, the sale proceeds of certain jewels belonging to Mootoo Ramalinga Sathoopati, the late Zemindar of Ramnad, and which, at his death, in Madras, in 1809, came into the hands of the local Government. There is

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no question as to the liability of the Government to pay the money to the legal representative of the late Zemindar, and the plaintiff's claim of right, as such legal representative, rests on the ground that his father, Kungiasawmy Sathoopati, was the adopted son of the Zemindars only child, Sathoopati Shevagami Natchiar, and her husband, Vigia Gopauloo Sathoopati, and that they also, by Will executed in 1835 (the document marked A), bequeathed to Kungiasawmy, as their adopted son, all their property. All these persons, as also the widow of the Zemindar, are dead, and the first point to be considered is whether the evidence is sufficient to establish the alleged adoption.

The Zemindar, it appears, died on the 24th January 1809, and his widow on the 8th June 1815, and the case put forward by the plaintiff is that his father's adoption took place in the year 1814, when he was 11 years old, and about 10 years after the marriage of Shevagami Natchiar and Vigia Gopauloo, and the evidence adduced in support of this is both oral and documentary. Referring first to the evidence given by the Officiating Priest and the four other witnesses (cultivators), who represent themselves to have been present at the ceremony of adoption, and at the performance by Kungiasawmy of the funeral ceremonies of Vigia Gopauloo and Shevagami Natchiar, we think no reliance whatever can be placed upon their general assertions. On such a question as the present, the evidence in itself is of a kind wholly unsatisfactory, and it is contradicted by witnesses called for the 5th defendant, although not as usual by an equal number—a circumstance probably attributable to the suit being tried at this distance from Raminad. But besides this, discredit is thrown upon three of the witnesses, by the conclusion to which we have come as to the falsity of their testimony in respect of the execution and attestation of the document (A). We may, however, from the oral evidence on both sides, take it as a fact that Kungiasawmy was a relation of V. Gopauloo, and did act in the management of the property and affairs of Shevagami.

Considering next the plaintiff's documents admitted in evidence: The earliest in date is the agreement purporting to have been made in 1819, as to the marriage of Kungiasawmy (marked E), and this as well as all the other documents are offered for the sole purpose of proving, from the statements they contain, that both Shevagami and Vigia Gopauloo represented Kungiasawmy to be their adopted son, and caused him to be recognized as such. Now all that we have in evidence about these documents (excepting A and B), beyond their production, is the plaintiff's own statement that they were kept in his father's life-time in a box, in Shevagami's room, and on his father's death came into his possession with the box, and that (E) bears the signature of Shevagami. This is not evidence on which we can, in a suit brought after such an interval of time, safely act as proof that Shevagami executed the Agreement (E), and consequently as early as 1819 stated in writing the adoption of Kungiasawmy. There are no attesting witnesses to the document, and the stamp instrument does not mention the purpose for which, nor the person by whom, it was purchased.

But the document marked C and D are public documents. They purport to be travelling passports, under official seal and signature, issued in November 1827 and April 1832 to Kungiasawmy as the son of Shevagami, and the document marked I, also under official seal and signature, purports to be the letter enclosing to Shevagami the passport (C), and states that it is for Kungiasawmy, "who is stated by you to be your son by adoption." The authenticity of these official documents we cannot in this case doubt, and taken with the plaintiff's evidence they show that, in 1827 and 1832, Kungiasawmy was publicly treated as adopted son, and it is difficult to suppose that this was without the knowledge and consent of Shevagami and Vigia Gopauloo.

But the case in this respect is evinced further by the documents A and B. The latter is a Mookteanamah from Shevagami and her husband to Kungiasawmy, "our adopted son." It is dated the 14th March 1830, and appears, from an endorsement, to have been entered in the Registry Book at the Madura Zillah Court on the 18th of March. It also bears an endorsement, stating that the Stamp was purchased on the 11th of the same month for a Mookteanamah. We cannot doubt that this document existed in 1830, or do otherwise than believe (although we have

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no evidence from the attesting witnesses) that it is signed by Shevagami and Vigia Gopauloo. With respect to the document A, we have had much doubt; the names of the two witnesses examined as attesting witnesses, Soobaroy and Parenjory Dara, appear with one other name at least to have been added sometime after the date of the document, and this and some of the answers elicited from the witnesses, especially Soobaroy Taver, lead us to think that the evidence of their being present at the execution is untrue; and if the document had stood alone we could hardly have acted upon it. But it is dated two months after the document (B), and like it bears an endorsement, made apparently by the same person, stating the purchase of the Stamp for a Will on the 25th February 1830, and we think, taken with (B) and the official documents, there is a strong probability that it bears the signatures of Shevagami and Vigia Gopauloo, and, so treated, it adds an explicit statement, in 1830, of the adoption by them.

Giving, however, the fullest effect to all these documents, they are insufficient to establish the alleged adoption in 1814, now for the first time sought to be established in a suit brought 10 years after the death of Kungiasawmy. It is most impossible that an adoption, made in the life-time of the late Zemindar's widow, of, as it was supposed, an heir to this great Zemindary, would not have been formally reported to the Collector at the time or soon after, and recorded. There is, however, not only an absence of evidence on the part of the plaintiff of such a report, or of any official reference to Kungiasawmy's adoption earlier than 1827, but we have given in evidence by the 5th defendant an extract from an official Registry in the Collector's Office (marked No. 2), which shows satisfactorily that no report could have been made to the Collector's office, and indeed makes it almost impossible to believe that a ceremony of adoption could then have taken place. We have thought it right to obtain the original Registry book from the Collector's office, and find that the entry has been accurately extracted; and although the book is not altogether of a very satisfactory kind, we see no ground for thinking that the entry was not made in 1816. It states in effect that, on the 14th December 1816, Shevagami had informed the Collector of her desire that Vigia Gopauloo should marry, as his second wife, her elder aunt's Grand-daughter, Poonosoon drum, in order that there might be an heir to succeed herself and Vigia Gopauloo; and also that, on the 20th of the same month, the Collector's permission for the celebration of the marriage was granted. Now, if Shevagami did herself make the application there stated, the whole effect of the plaintiff's documents is got rid of; but certainly the entry cannot be considered as proof of that put. We only act upon it as evidence to show the receipt of the application in the name of Shevagami, and the Collector's order upon it sanctioning the marriage; and assuming even that Shevagami was ignorant of the application, it is incredible that such an order would have been issued only two years after an adoption had been made. The Collector could have had no intimation of the adoption set up in this case, and he must, in all reason, have known of an occurrence of so much local importance, and so publicly made known as the witnesses represent, if it had taken place, though not formally reported. The statements found on the plaintiff's documents cannot, on the face of this entry and the probabilities of the case, be referred to an adoption in 1814; and an adoption at any other time is put quite out of question. It appears that, some years after the death of the late Zemindar, serious disputes existed about the Zemindary, and that Shevagami and her husband were driven from it; and at that time there seems no doubt, from the testimony of the witnesses before referred to, that Kungiasawmy was a relation of Vigia Gopauloo and managed certain villages held by Shevagami;—and as the case stands, we can only believe that Shevagami, when there was no likelihood of her having a child, was induced (as Hindoo women so circumstanced easily are) to represent Kungiasawmy as her adopted son, with a view to strengthen and preserve her claim of right to the Zemindary. The terms of the document A throughout very much favor this belief, and certainly the provision on it, that Kungiasawmy's use and enjoyment of the property was to commence after the death of both Shevagami and her husband, is rather inconsistent with her having made a valid adoption. For these reasons we think the case of the plaintiff, as regards the adoption, fails.

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The further question then arises—can effect be given to the document (A) as a testamentary bequest by Shevagami of her property? and we think not. It is an instrument executed not by her alone but (as we have said it may be treated) by her and her husband, jointly, 20 years before her, and six years before his, death. But besides this, it does not purport to be a disposition of the property by gift or bequest. It was obviously made to support Kungiasawmy's claim as adopted son. It is addressed to him as adopted son, and though termed a will and made whilst in good memory and understanding, it is no more than a declaration in writing of his adoption having taken place, and of his right to succeed, as adopted son, to the Zemindary and all other property, and to perform the funeral obsequies of Shevagami and Vigia Gopauloo. And the direction, as to the use and enjoyment of the property, after Shevagami and her husband, was no doubt the husband's doing: put in that, the document might serve to support a claim of right in him for his life, as well as the adoption, and consistently with it, as seems to have been supposed. We think, therefore, the document can have no effect given to it, except as containing a recognition of Kungiasawmy's adoption, and in that way we have already dealt with it.

The result is that the plaintiff's claim of right to the relief prayed in the suit wholly fails and must be dismissed; and we cannot add to the decree of dismissal any declaration as to the right of Satoo Carasoo, the 5th defendant. If, however, we had entertained a clearer opinion in favor of her right, we should probably have expressed it so that the Government might, if so disposed, act upon it; but at present, we are not prepared to give such an opinion. The right set up is that Satoo Carasoo, as the daughter of Vigia Gopauloo by a 2nd wife, Poonoosoondrum, is entitled through her father to the property of Shevagami. To establish such right the Court should be satisfied that valid marriages took place between Vigia Gopauloo and both Shevagami and Poonoosoondrum; and that his marriage with Shevagami was sufficient in law to constitute him the successor to the property of his wife. Two witnesses for the plaintiff say they heard that Shevagami had been divorced from a former husband, who was alive at her marriage with Vigia Gopauloo, and that, being divorced, she could, according to the custom of the Marava caste, of which she was a member, properly contract a second marriage: and as to a marriage in fact having taken place with Poonoosoondrum the evidence is very contradictory. Altogether, as the case at present stands, we certainly cannot venture to express any distinct opinion as to the 5th defendant's claim.

The suit therefore must be dismissed with the costs of the defendants, who have appeared.

(True Copy).

(Signed) J. R. BOYSON,
Government Solicitor.

No. 160.

ORDER THEREON, 19th December 1865, No. 1815.

The foregoing letter, with copy of the Decree referred to, will be communicated to the Collector of Madura.

2. The Governor in Council concurs in the opinion of the Advocate General, that, under the circumstances of the case, it is not desirable that the Government should apply for costs.

(True Extract).

Chief Secretary.

To the Collector of Madura.
„ Revenue Department.
„ Government Solicitor.

Exd. J. H. Burns.

Feb 701.
J. R. M. 22 November 1864
15th Feb 1865
28th April 1865
7th Dec 1865
2nd Dec 1865
11th Jan 1866
16th May 1866
14th Sep 1866
Eschewary State - 1st 11th of 1863.

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19 December 1865 No. 1815

The foregoing letter with copy
of the Decree referred to, will be
communicated to the Collector of Madras.

Mr J. in Councils in the
opinion of the Government
General must find the
circumstances of the case
it is not desirable that
the Govt. should apply
for writ.

The Collector of Madras
Revenue Department } despd 21/12
Govt. Secy —

21/12