

MADRAS RECORD OFFICE.

Government of Madras.

Judicial DEPARTMENT.

G.O. No.	1222	Press Mis.
Dated	7-8-1918	

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Not to be folded or roughly handled

Proceedings of the Madras Government, Judicial Department,
7th August 1866.

No. 94. Read the following letter from the Acting Advocate General, to the Chief Secretary to Government, Fort Saint George; dated Madras, 30th July 1866.

I have the honor to forward a copy of the judgment of the High Court in the two cases of Kolundasawmy Taver, *v.* the Government and others (Original Suit 71 of 1866), and Rancee Sathoo Carasoo Natchiar, *v.* the Government and others (Original Suit 62 of 1866). In each case the same subject matter was claimed, viz., a sum of Rupees 12,851-2-6, lying in the hands of Government, the proceeds of the property of the late Mootoo Ramalinga Sathoopathy. This sum has been the subject of previous litigation in the High Court, which is fully reported upon by my predecessor in his letter dated 4th December 1865.

2. The mode in which the plaintiffs in these two cases shaped their claims will be readily seen from the following pedigree.

Mootoo Ramalinga Sathoopathy.
||
Ranee Rajeeswari Nachiar. Kuraji Authall
(admitted to be his Puttabystreo). (said to be his Bhogastree.)
||
Ramasawmy= Sevagami Natchiar= Viziagopaloo Niraj.
(her 1st husband). (said to be her 2nd husband).
||
Poonasundera Kolundasawmy
(his 2nd wife). (plaintiff in 71, 1866).
||
Rance Sathoo Carasoo Natchiar
(plaintiff in 62, 1866).

3. It is evident then that Kolundasawmy had only to prove that Niraj, was the legitimate son of Mootoo Ramalinga, in order to establish his title against every one. If he made out that Niraj was the son, but failed to show that he was the legitimate son, then the heir to Mootoo Ramalinga at his death was unquestionably Sevagami, who was admitted to be the legitimate daughter. But in order to entitle Sathoo Carasoo to succeed, it was necessary for her to go on to show two things: first, that Sevagami's property could go after her death to her husband; and, secondly, that Viziagopaloo was her husband. If the title once came to him, then Rancee Sathoo Carasoo was admittedly his heir. On the other hand, if Sathoo Carasoo's claim could be got rid of, then Kolundasawmy would be relieved from the necessity of showing that Niraj was legitimate, for, even if illegitimate, he would rank next after Sevagami.

4. The High Court decided, first, that Niraj was not legitimate; secondly, that Viziagopaloo was not shown to have been legally married to Sevagami, who at the time of such alleged marriage was admitted to have another husband, Ramasawmy, living, though said to have been divorced; and, thirdly, that, if married at all, the marriage was not one which would have made him the heir to his wife. Whether Sevagami had any interest in the property beyond a life estate was a point raised before the Court, but which it became unnecessary to decide. The result was that neither Viziagopaloo nor his daughter had any title; and, therefore, upon the pedigree set up, Niraj was the next heir. This would have made Kolundasawmy completely successful; but, unfortunately for him, his witnesses proved the existence of two

other illegitimate sons of Mootoo Ramalinga, viz., Puttaby Ramasawmy and Raliana Ramasawmy. Each of these, therefore, had as good a claim as Niraji; and, as each of them had left a son, those sons had as good a claim as Kolundasawmy Taver. The result, therefore, was that Kolundasawmy only got a decree for one-third.

5. Costs in both cases were awarded to Government, payable in Original Suit 71, out of Kolundasawmy's one-third, and, in Original Suit 62, by the plaintiff personally. Of course, the Government will accept its costs in the former case. In the latter case, the plaintiff has probably no means of paying them, and, therefore, I should recommend that the claim be waived, as was done in the former litigation. Practically, the costs recoverable in Original Suit 71 will cover the expense of both suits.

6. It would be observed that the Court has not, nor indeed could it have, made any order as to the remaining two-thirds. No doubt the representatives of Kaliana and Putaby Ramasawmy will before very long prefer their claims. Till they do so, no further steps need be taken on behalf of Government.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

In its Ordinary Original Jurisdiction.

Wednesday, the eighteenth day of July, one thousand eight hundred and sixty-six.

O. S. No. 71 of 1866.

Kolundasawmy Taver of Ramnad, in the Zillah of Madura, the only son and legal personal representative of Niranji Taver, who was the only son and legal personal representative of Mootoo Ramalinga Sathoopathy, a deceased Zemindar of Ramnad — Plaintiff.

The Government of Fort Saint George carrying on business at Madras, Streemuth Prathapah Simha Parasooopani Sathoopathy of Ramnad in the Zillah of Madura, Rance Paravatha Vurthany Natchiar residing at Ramnad aforesaid, Mungalasawmy Taver and Rance Natchiar, the son and widow of Puttaby Ramasawmy Davur deceased, also residing at Ramnad aforesaid, and Sathoo Carasoo Natchiar, also residing at Madura aforesaid, and Allamalloo Authall of Madura, widow of the late Niranji Taver, and mother of the Plaintiff above named, residing at Ramnad in Madura aforesaid — Defendants.

O. S. No. 62 of 1866.

Rance Sathoo Carasoo Natchiar residing at Madura — Plaintiff.

The Government of Fort Saint George carrying on business at Madras, and Kolundasawmy Taver, Pensioner, residing at Ramnad in the Zillah of Madura, Rance Paravatha Vurthany Natchiar residing at Ramnad aforesaid, Mungalasawmy Taver and Rance Natchiar, the son and widow of Puttaby Ramasawmy Davur deceased, also residing at Ramnad aforesaid, and Allamalloo Authall of Madura aforesaid, widow of the late Niranji Taver, and mother of the said Kolundasawmy Taver residing at Ramnad aforesaid — Defendants.

Judgment.

These cases have by consent been heard together, and the question for decision in each is the right of the Plaintiff as heir of Mootoo Ramalinga Sathoopathy, to the sum of 12,851-2-6 in the hands of the Government. In the first suit, the Plaintiff, Kolundasawmy Taver, claims as the son of Niranji Taver, the son of the said Mootoo Ramalinga, who died in 1809. In the second suit, the Plaintiff, Sathoo Carasoo Natchiar, claims as the daughter of Viziagopaloo, the second husband of Sevagami Natchiar, the daughter of the said Mootoo Ramalinga. The first question, therefore, is whether Niranji Taver was the legitimate son of Mootoo Ramalinga, for, if so, the claim of Sathoo Carasoo through the daughter Sevagami cannot arise.

If the case of Kolundasawmy had rested upon the evidence adduced by him alone, we should perhaps have had some difficulty in saying that it had been satisfactorily shown that his father Niranji was the son of Mootoo Ramalinga, but after hearing the evidence on the part of the Defendant, we cannot doubt, and in effect it was not disputed, that Niranji was one of the sons of Mootoo Ramalinga by Kuraji Authall, who was one of the "Bhogastrees" of Ramalinga. Then was he a legitimate son? Now Kolundasawmy's own case is that Kuraji was one of 20 "Bhogastrees," all of whom were kept by Ramalinga at Ramnad, and that Rajah Rajeeswari Natchiar was his "Puttabystree."

It is not likely that all these women were married wives, and there is no evidence given by Kolundasawmy of any ceremony of marriage, nor that Kuraji was treated in any way differently from the other Bhogastrees, or differently from the additional 7 or 8 women whom Ramalinga kept whilst he was at Madras, and some of whom appear to have been dancing women. Beyond this, the case of Kolundasawmy rests only on very unsatisfactory loose evidence given by witnesses, who are not members or connections of the family, of statements said to have been made by Niranji and his two brothers; and it is a singular fact that the 7th Defendant, the mother of Kolundasawmy, has not been called by him as a witness. The statement made by him that his father received a pension from Government, and that he also has received a pension since about 4 years after his father's death, we can give no weight to, as evidence in support of the claim of legitimacy; and of the circumstances under which the pensions were granted, we have no information. With reference to the evidence on the part of Defendants, we need only observe that, although not of much weight, it bears, so far as it goes, against the legitimacy of Niranji. On the whole, we think the evidence altogether is insufficient to prove the legitimacy of Kolundasawmy's father, and consequently the Plaintiff's claim, as the legitimate heir of Ramalinga fails, and it becomes necessary to consider the claim of Sathoo Carasoo in the 2nd Suit. Her case is a very singular one. She claims as the daughter of Viziagopaloo and Ponakandura; but their marriage is disputed, and it is remarkable that not one of the witnesses now called to prove the fact was called in the former suit, and not one of the former witnesses has been called on this occasion. Assuming, however, this marriage proved, Sathoo Carasoo's claim depends on the title of Viziagopaloo to succeed to the property of his alleged wife Sevagami, and to make out his title, the Court must be satisfied that there was a valid marriage between Viziagopaloo and Sevagami, and that the marriage was according to one of the approved forms (Section I, Strange's H. L. 43 and 250.—Mitacah, Ch. 2, Section 11, Clause 10-11.) Here both points are denied; and as to the form of the marriage the case was left without any evidence, until, in consequence of an observation from the Court, the plaintiff's Counsel recalled three witnesses, two of whom in effect stated that the objectionable "Ausura" form was always adopted by the Brahmins, which rather accords with the observation in the 1st volume of Sir Thomas Strange's H. L. p. 43, "it is questionable whether in Southern India any other form than the Ausura be now observed." But as to the practice of marriage in other divisions of the Sudra Caste, the three witnesses professed to have little information, and only one said that amongst the Maravars it was not usual to make a payment to obtain the consent of the girl's parents. So that, as respects the form of the marriage, between Viziagopaloo and Sevagami, we are unable to come to the conclusion that it was not one of the "Ausura" form, which is said "to be appropriated to the two inferior classes"—Strange's H. L. 44.

But further, was there any valid marriage between those persons? It is admitted that, at the time of the alleged marriage, Ramasawmy, to whom Sevagami had been married, was alive; and, in order to get over this obstacle under the general Hindoo Law, a special custom in this Marava Caste is set up, which, it is alleged, sanctions the divorce by a wife of her husband, and her re-marriage. There are no doubt decided cases showing that a custom in some castes, allowing a wife to divorce her husband, has been recognized; but we have not found, nor was it stated that there has been, any judicial decision recognizing such a custom in this Marava Caste; and in order to establish it, there ought to be, as stated in the recent judgment of this Court in the Appellate Side in *Sivanarajee Permali Setharoyar v. Mooloo Ramalinga Setharoyar and others* (not yet reported), "satisfactory proof of usage, so long and invariably acted upon in practice

as to show that it has by common consent been submitted to as the established governing rule of the particular family, class, or District of Country; and the course of practice on which the custom rests must not be left in doubt, but be proved with certainty." Now the only evidence here of the alleged custom is that of two witnesses, who are cultivators, and give very different accounts of the matter. According to one, the wife may put away her husband, and take another at her pleasure, no ceremony of any kind being necessary. It is true this witness says that Ramasawmy became afflicted with a disordered intellect and wandered away, and that this was the cause of the divorce; but he asserts that, according to the custom, he could have been divorced though he continued of sound mind, and that, for that purpose, nothing more was necessary than that Sevagami should take another husband, and that, in fact, nothing else did take place. But the other witness' evidence is that, before a second husband can be taken in accordance with the custom, the first must be put away formally for some fault, disease, or defect, and with the sanction of an assembly of respectable men of the caste, 10 Fanams or so being given to the divorced husband. He also mentioned two causes for the divorce, and particularized the gold coins which were, he said, given on the occasion to Ramasawmy's mother, and his maternal uncle, for him. Upon such evidence as this, it is impossible to say that the alleged custom has been proved, and the documents produced on the part of Sathoo Carasoo—which at the most prove statements by Sevagami that Viziagopaloo was her husband, and that she desired that he should be publicly acknowledged as her husband, both before and after his death—do not we think afford any proof in support of the dissolution of her marriage with Ramasawmy, in accordance with an established custom. The custom then, and consequently the divorce, not being established, Viziagopaloo's right to succeed to the property of Sevagami as her husband falls to the ground, and this is fatal to the claim of Sathoo Carasoo.

In these observations, we have assumed that Sevagami took by inheritance from her father this property as "Stridhanum." It seems clear that, according to the law prevalent in Bengal, a daughter takes only a life interest (*see Banes Doss Dett v. Sreemuttee Uppoornah Dossee, 6 Moore I. A. 433*), but whether, as Mr. O'Sullivan contended, the interest of a daughter in her deceased father's estate is limited to her life under the law prevailing here, as is that of a widow, and also of a mother, according to the recent decision on the Appellate Side of this Court, reported at page 402 of 2nd Madras H. C. Report in S. A. 81 of 1865, is a question that has not we believe been pointedly decided, and it is unnecessary for us to consider.

It remains to be considered whether Kolundasawmy has any claim to the property in dispute, though his father was an illegitimate son. Now it is clear law that amongst the Sudra class illegitimate sons inherit on failure of daughters, and it is not questioned that this family are of the Sudra class. So that if Kolundasawmy be the son of Niranji Taver, he is entitled to succeed to whatever interest Niranji had in the property. It is not disputed that he is the son of Niranji. But one of Sathoo Carasoo's witnesses stated that Kolundasawmy was the illegitimate son of Niranji by Allamaloo; it is, however, unnecessary to consider this point, for if Niranji was not married to Allamaloo, she cannot succeed as widow, and Niranji had, it appears, no other child. Then was Niranji entitled to the whole property, or only a portion of it? Upon the plaintiff's own statement, it appears that there are two other persons equally entitled with him, one of them the 4th defendant, the son of Puttaby Ramasawmy, and the other Kotah Taver, the son of Kaliana Ramasawmy, the said Puttaby and Kaliana being illegitimate sons of Mootoo Ramalinga by two of the Madras women. This being so, the plaintiff is entitled to one-third of the property in dispute, and though in his plaint he claims the whole amount of money as the only grandson of Ramalinga, yet we think he has not thereby dis-entitled himself to a decree for such proportion as he has shown a right to, as a grandson of Ramalinga, though not the only and legitimate grandson.

We have felt some doubt whether, before making a decree in this suit, we should not direct Kotah Taver to be made a party, and served with notice. But upon consideration, we think that unnecessary. We could not, in this suit, on the mere statement of the plaintiff, properly make any decree in favor of Kotah Taver, or the 4th defendant, who has not appeared in the suit at all, and they must be left to make, and, if they can, establish, their claims, as they may be advised.

As to the costs, first in Kolundasawmy's suit: he has failed to prove his claim as put forward in the plaint, and we do not think we can order any of the defendants to pay his costs.

The taxed costs of the Government must, we think, under the circumstances of this case be deducted from the plaintiff's one-third of the fund ordered to be paid to him. If the plaintiff had succeeded in establishing his claim as alleged, the defendant resisting him must have re-paid him those costs; but as he has failed to do so, and has only partially succeeded, we cannot in justice make that order against the resisting defendant.

No. 95. ORDER THEREON, 7th August 1866, No. 1222.

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

2. The Governor in Council consents to waive the claim to costs in Original Suit No. 62 of 1866.

(True Extract).

Chief Secretary.

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

Exd. J. H. Barnes.

7 W.

7 August 1866 N^o 1222.

Sta. No. 155-160

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The foregoing letter, with
copy of the decree accom.
paining it, will be
communicated to the
Collector of Madras.

The Govt. C. consents
to waive the claim to
costs in No. 2062 of
1866.

WDL

by

To the Col^l of Madras }
" Rev^d Secy } des^d 11/8
" Govt Solicitor }