M.R.O. 1—89,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Political DEPARTMENT.

G.O. No. 356 Press ~~Mis.~~

Dated 3. 9. ~~18~~ 862

Not to be folded or roughly handled

Proceedings of the Madras Government, Political Department, 5th September 1862.

No. 18. Read the following Proceedings of Government in the Military Department, dated 1st September 1862, No. 3,010.

Communicating Political Proceedings of Government, No. 336, dated 21st August 1862, *(regarding the distribution of the property of the late Rajah of Tanjore), to the Inspector General of Ordnance, &c., with the request that he will instruct the Commissary of Ordnance at Trichinopoly to value and deposit the Arms referred to in the Arsenal, and to report their value for the information of Government.*

(Vide Proceedings Military Department, dated 1st September 1862, Nos. 18 & 19.)

No. 19. ORDER THEREON, 5th September 1862, No. 356.

To be recorded.

(Signed) T. PYCROFT,
Chief Secretary.

Exd. T. O'Connor.

POLITICAL DEPARTMENT.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

Read the following papers :—

From Colonel H. M. DURAND, Secretary to the Government of India; to the Acting Chief Secretary to Government, Fort Saint George, dated Fort William, the 23rd June 1862, No. 599.

Foreign Department.
Political.

I am directed to acknowledge the receipt of your letter, dated 17th ultimo, No. 194, soliciting further instructions regarding the disposal of the landed property of the Tanjore Raj, and in reply to state that, since it is doubtful whether the lands in question can be legally dealt with as State property, and since the plea in equity and policy for treating them as the private property of the Rajah is so strong, that it commands the unanimous support of the members of the Madras Government, the Governor General in Council sanctions the relinquishment of the whole of the lands in favor of the heirs of the late Rajah.

MEMORANDUM.

The Acting Deputy Registrar is directed to forward the opinions of the Pundits of the Sudder Court called for in the Proceedings of Government, dated the 25th April last, No. 162.

SUDDER COURT, REGISTRAR'S OFFICE,
21*st July* 1862.

(Signed) THOMAS WILKINS,
Acting Deputy Registrar.

To the Acting Chief Secretary to Government.

ANSWERS BY THE PUNDITS OF THE SUDDER COURT.

By the Senior Pundit.

1. The personal property of a man who, having separated from his co-heirs and not subsequently remained with them, dies leaving no male issue, all his widows remaining chaste, are entitled to participate in equally, the seniority among them making no difference whatever.

2. As regards the real property, it goes solely to the widow who has a daughter, but not to the widow who has no daughter. If there be no widow having a daughter, then all the widows would be entitled to participate equally in the real property also.

3. In dividing the real property, a sufficiency should be left for the support of other members of the family. If there does not exist sufficient real property, then, an adequate portion of personal property should also be set apart for their maintenance and the remainder divided.

4. The widows are competent to dispose of their respective shares of the personalty at will, but they can by no means alienate the real property without the consent of their Dayadees (Kinsmen), except for most indispensable purposes. The Hindu Law in this respect is the same for Marattas, as for other Dravida Hindus. The law book (Mayukha) which is an acknowledged authority for Marattas, is in accordance with the Dharmasastras of the other Dravidas. There is therefore apparently no usage among them, which modifies the law of inheritance.

Authority.

Vignameswaryam Yajuavulkya says " the *wife* and the daughters also," &c., &c.

" The singular number used is illustrative of the plural number. Hence, if there be a " plurality of wives, let them all (be they of the same, or of a different, class) participate and " take their respective shares."

Mayukham.—" A lawfully married wife, restrained (in her conduct) takes the wealth. If " there be more than one, they will divide it and take shares."

Mayukham.—As for the text of Brahaspati, " Whatever property a man possesses of " every kind, after division, whether mortgaged or other, the wife (in whatever form married " *Jaya*) shall enjoy, after the death of her husband, with the exception of fixed property.

" Even if virtuous, and if partition have been made, a woman is not fit to enjoy real property. It, according to Smiriti Chandrika, refers to a wife who has not (even) a daughter: a woman " having a daughter, obtains the fixed property also. Madhava again considers it to relate to the " prohibition of sale or other transfer, of real property by a widow, without concurrence of " the heirs."

Saraswati Vilasum.—" Where there exists an only widow having no daughter, she takes " both the real and personal property exclusively."

Vignaneswaryam, Menu says:—"They who are born and they who are yet unbegotten " and they who are still in the womb, require the means of support. Such means should not " therefore be destroyed." Yajnavulkya property may be given away (except a wife or a son) " without detriment to the family."

Signed) APPANNASASTRY,
Senior Pundit, Sudder Court.

30th April 1862.

By the Junior Pundit.

Where a man, either with the consent of his eldest wife, or from a belief that she is incapable of bearing of male issue, marries other females, them, the latter would certainly become his lawful wives, but if he marries them, notwithstanding his knowledge of his eldest wife's capability of bearing issue, they cannot be viewed as his lawful wives, but only such as were intended merely for purposes of sensual gratification. This observation is supported by the text, which says, the " first is the wife married from a sense of duty, the second promotes " sensual gratification." The junior wives married upon grounds not strictly legal by the Hindu Law, are not, under the law book " Mitachara" entitled to participate in the property of their husband.

The text of Yajnavulkya declaratory of a *wife's* right of succession, refers generally to the (Patni) would have been used in the plural, and not in the singular number, in the said text, which is to be found in the law book " Vegnaneswaryam," &c., applicable to this part of the country, and also in the text contained in the law book, " Smiriti Chandrika," which says " a " wife, upon the death of her husband takes his share." Hence, it is obvious that all the Hindu law books regard only the first wife as a lawful wife.

Even according to the passage in Mayukha, a division is optional and not compulsory. All the widows may, of their own accord, enjoy the property in common but in doing so, they should take the property, each in turn according to seniority. The party in possession should support the rest.

So long as the property remains undivided, it cannot be used for any, but legal purposes. When it is divided, the parties can dispose of their respective shares of the personal property as they please. They can dispose of also the real property under the special circumstances noticed in the Sastras.

When the eldest wife is alive, the younger has no special rights, though she may have a daughter.

In respect of inheritance, the Marattas as well as the other Hindus (not being Goudas) are governed by the law book " Mitachara." Mayukham is particularly applicable to the Maratta country.

If there be any peculiar custom among Marattas in respect of inheritance, such custom must be acted upon.

Signed) GOPALASASTRY,
Junior Pundit, Sudder Court.

25th May 1862.

Further question put to the Junior Pundit Sudder Court.

You are requested to state what would be the rights of the widows mentioned in your answer of the 25th May 1862, if they are of unexceptional character.

Signed) T. WILKINS,
Acting Deputy Registrar.

10th July 1862.

Answer.

If the widows above referred to are of unexceptional character, they should enjoy the property according to seniority; the party in possession being bound to afford the rest full protection.

(Signed) GOPALASASTRY,
Junior Pundit, Sudder Court.

12th July 1862.

Question to the Junior Puudit of Sudder Court.

You are requested to cite the authorities on which your answer rests.

(Signed) T. WILKINS,
Acting Deputy Registrar.

14th July 1862.

Answer.

The following are the authorities in support of my answer.

The law book entitled " Jagannatha Turka Punchanana," which is particularly acted upon in this part of the country, (page 127,) contains the following passage: " On the concurrent texts of Dacsha, (who says " the first is " the wife married from a sense of duty, the second promotes sensual gratification"), and of Vishnu, who says, " If many wives of his own class be living, with the eldest alone should " the husband conduct business relating to acts of religion") " and by the law above cited, " the term " legal wife" signifies her who was married from a sense of duty; the rest are " entitled to maintenance only." Sir Thomas Strange, Volume 1, pages 56, 136, and 137. Colebrook's Digest of Hindu law, Volume II, pages 405, 406 and 407, Volume III, pages 461, 486 and 489. Sudder Udalut Decrees in Appeals No. 5 of 1824, 1 of 1835, &c.

Vide Sections 8 and 320 of Strange's Manual.

(Signed) GOPALASASTRY,
Junior Pundit, Sudder Court.

17th July 1862.

Translation of Questions proposed by the Acting Sub-Judge of Mangalore to be put to Hindu Law Officers of the Sudder Udalut.

1. A Hindu dies, and a dispute arises between his first wife, his 2nd wife and his daughter-in-law, each laying claim to a sum payable to the deceased, or his heirs according to a decree of Court. Who possesses the best claim, in accordance with the Dharma Shastra?

2. If the *widows*, have they an equal right, or has one a title superior to that of the other? No other heirs are supposed to be surviving.

(True translation.)
(Signed) C. F. CHAMIER,
Acting Sub-Judge.

Answer.

Widows alone possess the best claim, the daughter-in-law being only entitled to receive maintenance from them.

The widows have an equal right. There is no distinction between them.

5th October 1854.

(Signed) APPANASASTRY,
Senior Pundit S. U.
(„) C. GOPALASASTRY,
Junior Pundit S. U.

Qestions to be put to the Hindu Law Officers of the Sudder Udalut.

A, a Sudra of Vellala caste, had three sons, B, C and D—C died unmarried, and D died afterwards issueless—B also died subsequently, without male issue, but leaving a daughter and 2 widows E and F surviving—B had performed the funeral rights of D.

Answer.

As it is understood from the query, that the property of A descended to B, as the survivor, after the death of D, E and F, the two wives of B are the legal claimants to that property upon the death of B; and the wife of D has no claim to it, but is merely entitled to

The property of A is in possession of E and F.

G, the widow of D, claims a moiety of that property.

Is such claim valid under the Hindoo Law?

(Signed) J. SILVER,
Acting Civil Judge.

COMBACONUM,
2nd October 1855.

Question to be put to the Hindu Law Officers of the Sudder Udalut.

A, died without male issue, and B is a divided cousin of A, in the second degree. C, is the 1st widow, and D is the 2nd widow of A.

E, is the second son of B and aged 10 years, and F is the daughter's son of C and aged 3 or 4 years—E and F have brought in 2 separate suits, each asserting that he performed the funeral rites of A, who had no male issue, and claiming an exclusive right to succeed to the property of A.

Which of them has the lawful title to perform the funeral rites of A, and succeed to his property, under the Hindoo Law?

Answer of the Senior Pandit of the Court of Sudder Udalut.

It appears from the question that B is a divided cousin of A. With respect to succession to the property of an issueless divided member of a family it is laid down that his widow, his daughter, his daughter's son, his mother, his father, his brother, his brother's son, his Gotrangnas or Sapindas, and Samanodakas shall be consecutively entitled to succeed to his Estate. B and his son E are Gotrangnas of A. To A's property, his widows C and D, after them C's daughter, and after her F, son of the daughter, are entitled to succeed.

If A leaves no widows, his daughter's son shall have right to perform his funeral ceremony: but if he leaves widows, either his daughter's son or his widows may perform it. While A's widows or his daughter or his daughter's son are surviving as above stated, his Gotrangna B or his son can have no title whatever to succeed to his property.

COMBACONUM, (Signed) J. SILVER,
22nd October 1855. *Ag. Civil Judge.*

(Signed) APPANASASTRY,
1st November 1855. *Senior Pandit S. C.*

Answer of the Junior Pandit.

C and D, the widows of A, are entitled to succeed to his property and to perform his funeral ceremony. It is laid down in some Shastras that a daughter's son has also right to perform the funeral ceremony.

While A's widows, &c., are surviving, his Gotrangna B or his (B's) son, though undivided, has no right to perform his funeral ceremony, nor is either of them entitled at all to succeed to his property since it appears that they are his divided cousins.

2nd November 1855. (Signed) C. GOPALASASTRY.
Junior Pandit S. C.

(True Copies.)
(Signed) THOMAS WILKINS.
Acting Deputy Registrar.

From APPANASASTRY, Senior Pandit, Sudder Court; to the Registrar of the Sudder Court, dated 19th July 1862.

In addition to the authorities quoted in my answer given on the 30th April last, to the question propounded to us in that month, I beg leave to refer to the unanimous answers given by

me and the Junior Pundit of the Court on the 5th October 1854 and 9th October 1855, and to the separate answer given by the Junior Pundit on the 2nd November 1855, in all which it is most unequivocally declared that where a plurality of wives exists all of them are equally entitled to the property of their husband.

ORDER THEREON, 21st August 1862, No. 336.

In Colonel Durand's letter above recorded the Government of India have furnished their instructions with reference to the disposal of the landed property of the Tanjore Raj, regarding which this Government addressed them under date the 17th May last. Their decision is to the effect that "since it is doubtful whether the lands in question can be legally dealt with as State "property, and since the plea in equity and policy for treating them as the private property of "the Rajah is so strong that it commands the unanimous support of the Members of the Ma-"dras Government," the whole of the lands are to be relinquished in favor of the heirs of the late Rajah.

2. This question having been settled, it has to be determined on what principle the distribution of the property both real and personal shall be made, or in other words, what are the respective rights of the Rajah's widows and of his daughter. The Government have now before them the opinion of the Hindu Law Officers of the Sudder Court on a question put with the view of ascertaining the Hindu Law as applicable to the case.

3. The Law Officers differ. The Senior Pundit is of opinion that the real property should go to the widow who has a daughter, and if there be no widow having a daughter, then the real property as well as the personal property should be divided among the widows in equal shares without any regard to seniority. The Junior Pundit holds that the Senior widow should succeed to the enjoyment of the whole of the property both real and personal, being at the same time responsible for the maintenance of the others.

4. The Governor in Council concurs in the opinion of the Junior Pundit which, he observes, is in accordance with the provisions of the Hindu Law, as sanctioned by several decisions of the Sudder Court. In the decree passed by that Court in Appeal Suit No. 5 of 1824, printed at page 454 of the 1st Volume of Selected Decrees, and in that passed in Appeal Suit No. 1 of 1835, printed at page 40 of the 2nd Volume, the principle that where there are no male heirs, the Senior widow is entitled to succeed to the management of the Estate, both real and personal, is distinctly recognized. The Senior Pundit admits that the rights of the widows, according to his construction of the Law, whereby they are severally declared to be entitled to an equal share of the real and personal property, are limited to the use of it during their life time, that they cannot alienate it, and that on the death of the widows it goes to the next heir of the husband. It is obvious that such a distribution of the property, as the Senior Pundit contends for, would greatly endanger its security and the rights of those next in succession. On the other hand, the recognition by the law of a Senior widow, who during her life time manages the property, providing for the due participation in its proceeds by the other widows her co-heirs, prevents much confusion and endless disputes, and by limiting the responsibility to a single individual, gives greater security to the property itself.

5. The Senior Pundit refers to an opinion given by himself and by the Junior Pundit in reply to a question put to them on the 22nd October 1855 which, it appears to the Governor in Council, exactly meets the case now under consideration. The opinion in question is referred to by the Senior Pundit with the view of showing that the Junior Pundit did not always hold the opinion for which he now contends, but it appears to the Government to tell just the other way. In the opinion referred to it is not suggested that the property should be divided, but it declared, (and no distinction is made between real and personal property) that it vests first in the widows and after their death is to be inherited by the daughter. This, the Governor in Council conceives, is strictly in accordance with the principles of Hindu Law as expounded by the Court of Sudder Adawlut in the decrees already referred to, and with the evidence adduced in, and deci-

sion given by the Supreme Court in the suit instituted against the Government by Kamatchee Boyee; and by this principle the Government must be guided in dealing with the estate of the late Rajah of Tanjore. The estate will therefore be made over to the Senior widow who will have the management and control of the property, and it will be her duty to provide, in a suitable manner for the participative enjoyment of the estate in question, by the other widows her co-heirs. On the death of the last surviving widow, the daughter of the late Rajah, or failing her, the next heirs of the late Rajah, if any, will inherit the property.

6. The Governor in Council directs that the Government Agent at Tanjore will communicate this decision to the widows and daughter of the late Rajah, and will take steps to place the Senior widow in possession of the property both real and personal, impressing upon her the responsibility which will attach to her both in regard to her conduct towards her co-heirs and for the security of the property. She will of course be required to give a receipt for the whole of the personal property on being placed in possession of it.

7. In supersession of the Orders conveyed in paragraphs 9 and 10 of the Proceedings of Government, under date the 17th May last, the Governor in Council directs that the Government Agent will ascertain the wishes of the family through their representative, the Senior widow, in regard to the Library and Menagerie. The Government have no objection to the Library being retained at Tanjore, if the family desire it. If not, the books must be sent down to Madras for the purpose of being valued and their value in money paid to the family. Such of them as may be of value will be placed in the Library of the Madras Literary Society. The family will also have the option of retaining the animals in the Menagerie. If they do not wish to retain them, such as are worth keeping will be sent to the 'People's Park' and the rest will be destroyed.

8. [illegible] public security, the Governor in Council deems it necessary to direct, that the arms or the greater part of them should [illegible] to be kept or deposited in a safe place. They will be sent to the Commissary of Ordnance at Trichinopoly, by whom they will be valued and deposited in the Arsenal under receipt to which will be joined in the Military Department and their value will be paid to the family. The Agent must ascertain whether among the arms there are any which the family would wish to retain for their use, and of such he will make over to them a limited number.

(True Extract.)

Chief Secretary.

To the Government Agent at Tanjore.
" Military Department.

Exd. F. Cartledge.

Military Department

No. 2010

Communicated to the Inspector General of Ordnance and Magazines, with the request that he will instruct the Commissary of Ordnance at Trichinopoly to value and deposit the arms in question in the Arsenal, and to report their value for the information of Government.

2. In submitting the Commissary's report, the Inspector General will state whether the arms can be made available for Army purposes, and in communication with the Controller of Military Finance, whether their value can be met from the Military Budget.

Fort St. George,
1st September 1852.

Secretary to Govt

To The Inspector General of Ordnance.
" Contr. of Military Finance.
" Military Accountant.
" Adjutant General, for information.
" Political Department.

B.C.

Rec 21st Aug 1862 N 35659

Petitioned 18th Sept

dist 27th Sept

Pet from Gov in the Military Dept 3810

Dft 1st
Rq 3rd 2/3 Sept 1862.

No 3953

Consig Col Bro: on Govt No 3360 of 20th Augt 62 regarding the disposition of the property of the late Rajah of Tanjore & the justice or [illegible] of Directing the request that he or his Agent may be Commissioned to value & dispose of such of the articles as the Govt may decline to keep in the Arsenal & to report their value for the information of Govt

No 3956 – 5 Sept 1862
Recorded

18419