

Political (1898) Department.

ORDINARY MS.

G.O., No. 403

DATED 17-6-98

RECEIVED.

[Despatch Abstract.]

Requesting the Board of Rev.
to examine the facts connected with the
petitions from certain inhabitants of Agathi
island, one of the Laccadives, appealing against
the decision of the Collector of Malabar regarding
the succession to certain property, and to advise
further as to the course that should be
pursued.

BACK PAPERS.

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

FURTHER PAPERS.

G.O.	No.	Department.	Date.	G.O.	No.	Department.	Date.
1015/98	597						
1242/98	739						
387/00							

Political
Judicial (1898) Department.

CURRENT No. 417



From the Board of Revenue,
(Land Revenue), Madras.

Order

No. 26

Dated 11th March 1898.

Received 14 }
Registered 15 } Date 98

Enclosures 5.

Spare copies

SUBJECT.

Submitting for the orders of Govt.
petitions from certain inhabitants of
the Agathi island of the Malabar Lac-
cadives regarding succession to pro-
perty.

R.O.

km
15-8-98

Recd from
R.O.
28/3/98

km
26-8-98

BACK PAPERS.

G.O.	No.	Department.	Date.

FURTHER PAPERS.

G.O.	No.	Department.	Date.

Reference on Petns Nos 591 & 505 of 1898.

In replying the above should be quoted.

(LAND REVENUE.)



Read _____ petition from Adiyar Hajee of Agathi Island, Malabar District, dated 16th February 1898.

Read _____ also letter from the Collector of Malabar, to the Secretary to the Commissioners of Land Revenue, Madras, Dist. No 24, dated 10th February 1898.

~~~~~

Reference 2-36 dated 11th March 1898.

The above petitions with the Collector's letter will be submitted for the orders of Government.

2. So far as the Board is aware it is wholly without jurisdiction to entertain appeals against decrees of the Collector of Malabar in suits between private parties relating to moveable and immoveable property situated on the Malabar Laccadives.

*R. A. L.*

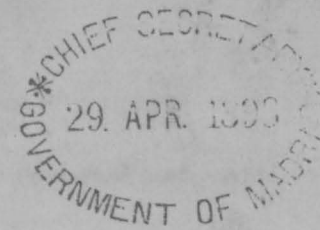
Secretary.

To the Chief Secretary to Government,  
Political Department, with the petitions  
& enclosures & Collector's letter in original.

M.S.N.

2  
Political (1898) Department.

CURRENT No. 616



From

The Board of Revenue  
Land Revenue  
Madras.

Order

Ref. No. 64.

Dated 26.4.98.

Received

Registered

Enclosures

Spare copies

SUBJECT.

Submitting for the orders of  
Govt. in continuation of Board's  
Reference No. 36, Dated 11.3.98,  
a petition from the amin of the  
Agathi Island regarding  
Succession to property.

C. No. 417

# BACK PAPERS.

| G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|
|      |     |             |       |

# FURTHER PAPERS.

| G.O. | No. | Department. | Date. |
|------|-----|-------------|-------|
|      |     |             |       |

Reference on No. of 1898.

In replying the above should be quoted.

(LAND REVENUE.)



Read petition from K. M. Kasmi Koya, amin of Agathi Island, Malabar Dt, dated 10.3.98 and the following reference dated 14.3.1898.

The petitioner should produce a certified and duly stamped Copy of the Assistant Collector's order, dated 8.4.1897, Dis. No. 52 of 97 Isl, against which he appealed to the Collector.

Also petition from the same person dated 16.4.1898.

Reference No. 64 dated 26.4.1898.

Submitted for the orders of Government in continuation of Board's Cal. 417. Reference No. 36 dated 11.3.1898.

David Davidson

Ag. Secretary.

W. The Chief Secy to Govt. Pol. Dept. with the Petition & Encl. in Original.

C. No. 417 and 616.

SUBJECT.

HIS EXCELLENCY THE GOVERNOR.  
THE HON'BLE SIR HENRY BLISS, K.C.I.E.  
THE HON'BLE MR. GROSE, C.I.E.

Petitions regarding Succession to property in Agathi Island of the Laccadives.

FOR ORDERS.

The Board of Revenue submits for the orders of Govt. petitions from certain inhabitants of Agathi Island, one of the Laccadives, appealing against the decision of the Collector of Malabar regarding the Succession to the Pakkermooopanoda Estate in the Island.

2. The Board in para 2 of <sup>its</sup> Proceedings which form the present current declares that it is wholly without jurisdiction to entertain appeals against the orders of the Collector

of Malabar in suits between private parties relating to property of any description in the Malabar Laccadives.

3. The Collector submits the petitions without any remarks.

4. The order of the Collector against which the petitions are appeals is that of the 2<sup>nd</sup> December 1897 on Island Appeal No. 159 of 1897 K. in which 5 individuals, of whom the present petitioners C. Salini and Adiyar Haji are Nos 1 and 2 on the list, appealed against the order of the Asst. Collector by whom the case was decided in the first instance. [vide Asst. Collr's order dated 8<sup>th</sup> April 1897.] R

5. The property under dispute consists of the Pakker moopanoda house with land and trees, three boats and some nets.

On the death of Cheria Akhamad Koya the last holder (No. 5) in the genealogical table flagged) the property was attached by the Amin under orders of the Collector as the Pakker moopanoda Tanwad had become extinct. The Asst. Collector in para 5 of his order states the procedure followed on the male members of a Tanwad becoming extinct. According to former custom the property should escheat to Govt. but the British Govt. has stopped this custom and the following solutions are proposed.

I. That the property becomes Makkatayam and is divided among the last holder's children or in accordance with the Mahomedan Shira.

II. That it remains Marumakkatayam and

passes undivided through remote female lines, and III. that it descends to the heirs of all the previous Karanavans according to Mahomedan Law. This last solution of the difficulty the Asst. Collector styles "preposterous and quite impossible to carry out." therefore The Asst. Collector could only adopt one of the 2 first mentioned procedures.

6. The Asst. Collector found (1) that at the death of Cheria Ahamed Koya the last holder, the Tanwad as regards the male members became extinct, (2) that the property has all along descended through the female line, and that a proof of its being Maramakkatayam is contained in the ending oda in Pakkar-moopanada, (3) that the male members being extinct it ought to escheat to

Government. But in default of doing so, and as the property was in every sense Cheria Ahamed Koya's sole property, he ruled that it should go to his legal only heir, Fatuma Bi, the daughter of the last holder.

7. An appeal was then lodged by five members of the family, including the <sup>present</sup> two petitioners, against the order of the Asst.

Collector with the Collr of Malabar. The Collector dealt with the case of the General Appellate Sociation.

The claim of C. Salmi, one of the present petitioners, to the property, <sup>which he</sup> ~~the~~ <sup>had</sup> held would have been valid if according to the decision of the Asst. Collr it could be proved that the property was Maruma-khatayam. The Collr was however of the opinion

K in his Progs. dated 2.12.1897

10  
that the property having  
been "enjoyed" by the  
"other branch of the  
"family for several  
"generations" his claim  
"should in equity be over-  
ruled". The Collr. wained  
the claims of Govt. to  
the property on the ground  
that it was not worth  
while claiming and then  
proceeded to uphold the  
decision of the District  
Collr. granting the im-  
moveable property to  
Fathima Bai and the  
boats and nets to her  
son Shems-ud-din.

8. In a subsequent order  
dated the 26<sup>th</sup> January 1898  
the Collector amended his  
previous order of the  
Second<sup>nd</sup> December 1897  
and admitted the claims  
of Abdul Khader and  
Abdul Azeez, two  
brothers of Fathima Bai,  
to a share of the

114  
immoveable property but  
gave the ~~immoveable~~  
property to Shems-ud-din  
the son of Fathima Bai,  
as there was evidence to  
show that it belonged to  
him of right.

X  
M  
P  
P  
Q. The first of the <sup>three</sup> ~~two~~  
petitions under considerat-  
ion is that from Adijan  
Haji, No. II in List B,  
enclosed with his petition.  
His main contention is that  
the Estate was acquired  
by Pakkermospan No. 2  
in the aforesaid List B,  
who is the petitioner's  
maternal grand father.  
He states that the property  
passed from Pakkermospan  
to his brother Kadiri Koya,  
No. 3 in List B, and then  
to the management of  
Ahamed Koya, <sup>No. 4</sup> and Kutti  
Haji, sons of Kadiri  
Koya's sister Biyyati Bai.  
That on the death of these  
two individuals it was

1901.21.2 6305 opw? id in

in his file dated 2.12.1897

... managed by Cheria  
Ahamed Koya No. 5 in list  
B, he who was Ahamed  
Koya's mother's sister's daughter's  
son. He contends that he is  
entitled to the property on  
the following grounds:  
(1). He is the nearest heir  
of Pakhermoopan the original  
owner.  
(2). ~~That~~ The property being  
Maramakkatayam the  
petitioner as eldest member  
of the Tarwad is entitled to  
it.  
(3). Cheria Ahamed Koya is  
not an a holder, though so  
considered by Govt. but  
he merely a manager.  
(4). <sup>Petitioner</sup> He is the son of Kutti  
Haji one of the holders, who  
again was the son of  
Biyatti Bi sister of  
Pakhermoopan.  
(5). If the Pakhermoopan  
Tarwad has become extinct  
with the death of Cheria  
Ahamed Koya then

the property must be  
divided among all the  
heirs of Pakhermoopan  
according to Mahomedan  
Law.

Petitioner  
(6). ~~He~~ and Abu Buckar

P. No. III in list B are in the  
same degree of relationship to  
Pakhermoopan as Cheria  
Ahamed Koya No. 5 in the  
same list.

10. It will be seen that  
all the arguments except  
the 5<sup>th</sup> rest on the assump-  
tion that Pakhermoopan  
the second holder according  
to the list is the original  
owner. This view has been  
rejected by the Asst. Collr.  
in para 5 of his order of the  
8<sup>th</sup> April 1897. As for the 5<sup>th</sup>  
ground of the present  
petitioner's claim it is  
sufficient to state that he  
asks that the third of the  
3 courses suggested in  
para 5 of this note  
regarding the devolution

112  
of the property should be followed. It is therefore submitted that the claims of Adrijan Haji and his Cousin Abu Bucker may be rejected. The property if submitted must be either Mak Katayam or Maruma Kkatayam. In the former case its division among the natural heirs of the last holder suggests itself as the easiest and most equitable procedure.

11. There <sup>next</sup> remains for consideration the appeal petition of C. Saluni dated the 24<sup>th</sup> February 1898. <sup>It contains</sup> ~~After~~ a lengthy history of the estate in the course of which he traces it from the woman No. 1 in list A, whose three daughters founded the three Tarwads and then goes on to state how on the house founded by the eldest of the three daughters becoming extinct its property was

15  
absorbed by the two surviving houses. The following are the grounds on which he claims the property:-

- (1) the Collector has erred in saying that "the property has been enjoyed by the other branch for several generations" and the petitioners claim "should in equity be over-ruled," "because the line of the other branch has only become extinct on the death of Cheria Ahamed Koya, Appellants Karanaven, last holder of the Pakker-Moopanoda tarwad and hence only the appellant is entitled to put forth his claims to those properties";
- (2) the appellant and the last holder are children of 2 sisters (cousins);
- (3) the Tarwads have community of interest and reversionary right to each other.

16  
(4). of the 3 original Jarwads  
2 are now extinct and  
the appellants' line of Jarwad  
alone exists now;

(5). the estate has always  
followed the Marumakk  
Katayam rule of descent,  
[vide list A]

(6). applicant is the true  
heir according to  
Marumakkatayam Law  
for it is the invariable  
custom in the absence of  
female lines for the estate  
to devolve in more distant  
female lines;

(7). the Collr. and asst. Collr.  
while admitting that the  
property is Marumakkatay-  
am and that the petitioner  
is the rightful heir never-  
theless decide in favour of  
the children of the deceased  
Karnavar (i.e. Cheria  
Ahamed Koya);

(8). this is neither in accord-  
ance with Mahomedan  
or Marumakkatayam

17  
Please see para 67 of  
Rama chandra Iyer  
in para 1 of his order of the  
2<sup>nd</sup> December 1897 K

Law;

(9). he presumes that the "other  
branch" referred to by the  
Collector is that of a  
woman whose sister is the  
female ancestor of the  
appellant. If so his line is  
the successor to the line in  
question according to  
Marumakkatayam Law;

(10). a precedent for the above  
is the division of the  
Cheriakadiyapad Jarwad  
between 2 relatives by the  
female side who both  
applied for them when the  
male line became extinct.

(11). From the words of the  
Collector in para 1 of his  
order of the 26<sup>th</sup> January  
1898 that Abdul Kader  
and Abdul Azeez "are  
of course entitled to the  
shares of the property which  
they would receive if it  
were Marumakkatayam"

it is clear that the Collr. is  
still in doubt as to whether

his decision is correct.  
12. It is submitted that this appellant has a far stronger case than the first. As the Collr stated in his order, if the fact of Pakkermoo-panada Jarwad having become extinct be overlooked, and the principles of the Marumakkathayam law be applied, the appellants mother is undoubtedly the heiress. But this would be following the second of the three procedures discussed by the Asst. Collr in his judgment. [vide para 5 of this note]. In such a case the property of the extinct Jarwad passes through a remote female line. With regard to the third point brought forward by the appellant it is a well known fact that Community of Interest can only exist between

18  
The law is clear that the property of a Jarwad is not divided among the heirs of the last holder but is inherited by the next holder of the Jarwad.

as in para 7 of this note

19  
Please see para 67 of Ramachandra Iyer's Manual of Malabar Law put up & marked.

in para 7 of this note.

two or more kindred Jarwads when they are undivided. This is a fact that will have to be proved and the evidence up to now seems to show that the three Jarwads had become permanently divided. With regard to (4) & (5) it is admitted that the Jarwad of the appellant is the only one surviving of the three but it does not follow that his Jarwad can absorb the property of the Pakkermoo-panada Jarwad. Attention is however invited to Section 49 of Ramachandra Iyer's Manual of Malabar Law which seems to support the position taken up by the appellant. With regard to points (7) and (8) the reasons why the Collr of Malabar followed the procedure complained of have already been stated, and it is submitted that being officers with

Considerable amount of local knowledge they are the best judges of the crude mixture of Mahomedan and Maruma-Khatayam law that obtains on the Malabar Laccadives. In the 9<sup>th</sup> point the appellant merely reiterates his desire that the devolution should pass through a remote female line of which he is the Senior Male member. The 10<sup>th</sup> point rests on the assumption that the bonds of union between the branches of the Darwad have remained what they were at the time of the precedent quoted by him. The 11<sup>th</sup> point is obviously founded on a misconception of the Collector's language, which it must be confessed is somewhat misleading.

In C. No. 616, submitted for the orders of Govt. a petition from K. M. Kasim

20  
The Board of Revenue  
submitted for the orders of Govt.

in

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Please see page 67 of  
Rama chandra  
manu, Malabar  
pat. up to 1000

21 Another claimant to the same property. The petitioner is the son of Agathi Island and is the 5<sup>th</sup> appellant in the appeal suit before the Collector. His name will be found numbered I at the left hand bottom corner of the Genealogical list. His petition of the 18<sup>th</sup> April is merely a reminder to his earlier petition dated 10<sup>th</sup> March 1898 which contains the grounds on which he claims the property. (1) The collector in his decision has ignored the "custom of inheritance" obtaining in the island; (2) <sup>Petitioner</sup> ~~he is~~ the proper heir according to the "custom" of the island. He further states that the Collector is wrong in declaring the property of small value as it is worth about Rs 5000. It is submitted that the

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Claims of the petitioner are quite inadmissible. He is not the heir by Inammakkatayam or by Inakattayam law. He says that he is the heir by "the custom of inheritance" but nowhere in his petition explains what that custom is. It is submitted that the Asst. Collr and the Collr are the best judges of the Island Customs and laws of inheritance. The present petition may, however, be referred to the Collr for information regarding the laws of inheritance obtaining in the Laccadives.

R.N.J.  
3/5/98

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Political Dept  
C. Nos 417 & 616.

Order No. 403 of 17<sup>th</sup> June 1898  
Mis.

H.E. No. 444 of E.O. in linked file.

With reference to para 2 of P.O. No. 402 of 16<sup>th</sup> June 1898 in which <sup>the</sup> Govt. has adopted the view of the Bd. of Rev. in para 2 of its Reference No 36 of 11<sup>th</sup> March 1898 as to its want of jurisdiction in the disposal of appeals from orders of the collector of Malabar in Civil Suits as to property on the Laccadives, the Board will be requested to examine the facts of the present case, and advise the Govt. as to the course that should be pursued.

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7.6.98

11/6/98

11/6/98. H.E. 1.6.98.

The Board of Revenue  
Land Revenue, with  
enclosures to both  
Currents returned in  
original. (9/70)

17/6/98

*[Faint, mostly illegible handwritten text on the left page, possibly bleed-through from the reverse side.]*

*The Board of Revenue  
Land Revenue, with  
reference to the  
...*

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GOVERNMENT.

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