Revenue Consultation

No. 635

Dated 4th to 10th May 1859

No. 43. Read the following Extract from the Proceedings of the Board of Revenue, dated 16th April 1859, No. 1346.

Read letter from the Collector of Tanjore, dated 18th March 1859, No. 51.

(In Con. 22nd March 1859, No. 1193.)

Resolved that the above letter be submitted to Government with reference to their Endorsements on Petitions Nos. 2432, 2563 and 2908 of 1858.

2. All these Petitions have reference to the Inam (Surva Manium) village of Munjacoody in Tanjore, at present in possession of Appa Row Moodelly, eldest surviving grandson of the original grantee, under the decision of Government, dated 4th February 1850,

In Con. 14th Feb. 1850, *No.* 328.

Extract Minutes Consultation, No. 109, R. D.

3. Ammai Ammal the Petitioner in No. 2908 of 1858, is first cousin to Appa Row, and her claim was fully considered and rejected when the above quoted order of Government was passed, in favor of the present possessor, whose claim was preferred by the Collector, by the Board, and finally by Government, as being the eldest surviving male descendant of the original grantee, the Inam being under the terms of the Purwana inalienable from the family.

4. She states nothing in her present Petition that was not known when the case was before under consideration, and the Board see no reason whatever to modify the opinion expressed by them in their Proceedings of 7th January 1850, No. 10. They recommend therefore that the prayer of her present Petition be rejected and that she be referred to the former decision of Government upon her claim.

5. Somewhat more detail is necessary to place clearly before Government the claim of Rungasawmy Moodelly, whose Solicitor is the Petitioner in No. 2432 of 1858.

6. Moottoo Kistna Moodelly the original grantee of Munjacoody died, leaving issue by three wives.

7. The family by the first wife is extinct. Ammai Ammal is the sole surviving descendant of the second wife. Appa Row Moodelly is the eldest representative and Rungasawmy Moodelly is the youngest member of the family by the third wife.

8. In 1794, after the death of their father Moottoo Kistna Moodelly, the sons by the several wives divided the family property into three shares, and became henceforth a divided family as to that generation, but the descendants of the several wives continued to be undivided as to the enjoyment of their respective shares.

Note.—From the "Bill of Complaint" enclosed in Petition No. 2432 of 1859, it will appear that no mention was made of Munjacoody at all in the Deed of Partition.—See folio 7.

9. In the apportionment of the family property that was thus made, although it does not distinctly appear from the papers before the Board, to which of the three shares the village of Munjacoody was assigned, it is certain that it was not included in that which fell to the issue of the third wife, and also that it was for many years in the possession of the descendants of the second wife, on the entire failure of whose male issue it was, in 1850, transferred by orders of Government, as above stated, to Appa Row Moodelly as the eldest surviving male heir of the original grantee, it being an inalienable property, and therefore not heritable by Ammai Ammal, who claimed it as heir to her brother the last male descendant of the second family.

10. The Shrotrium property of Moottoo Kistna Moodelly is said in Section 6 of the Bill of Complaint, to have been continued in common when the division took place in 1794. But from folio. 6 it would seem to have been enjoyed in turn during their respective lives by the son of the 1st wife, and then by the son of the 2nd wife, and eventually to have come to Appa Row's father Tumbiappa Moodelly, the eldest son of the 3rd wife, from whom it passed to the possession of Appa Row.

11. His first cousin Rungasawmy Moodelly, now seeks to obtain a division of the share that fell originally or has since come to the family of the 3rd wife, and for this purpose proposes to file a Bill of Complaint in the Supreme Court of Madras against Appa Row Moodelly, his

brother Rajagopala Moodelly, and the widow of their deceased brother Soobbaroya Moodelly, but to do this the permission of Government is needed under Regulation IV. of 1831, as he includes in it the Surva manium village of Munjacoody, and also certain Shrotrium lands, with the particulars of which the Board is not at present acquainted, but regarding which the permission of Government is probably not needed to allow of a suit at law being instituted.

12. Assuming then that Munjacoody is the only portion of the property which cannot be litigated in Court without the special leave of Government, the Board in consideration of the terms of the Purwana, of the circumstances under which it came into Appa Row's possession, and of the many serious objections that exist to the sub-division of Inam lands, beg to recommend that the permission of Government be not granted for making it the subject of a suit in the Civil Courts.

13. The Board do not think that the exclusion of this village from the Bill of Complaint will in any way injuriously affect Rungasawmy Moodelly's present equitable rights, or such as may eventually arise, should he become at any time the senior surviving male of the family.

(A true Extract.)

(Signed) W. HUDLESTON, *Sub-Secretary.*

No. 44. ORDER THEREON, 7th May 1859, No. 635.

It does not appear that the interests of Government are concerned in this case; and the Governor in Council therefore grants permission to Rungasawmy Moodelly under Section II. Regulation IV. of 1831, to sue Appa Row Moodelly for the Surva Manium village of Munjacoody or any part thereof.

2. The Governor in Council does not recognize the validity of the grounds on which the Board of Revenue (para. 12) advocate a contrary course. The terms of the Purwanah, so far as they affect the course of succession to the village, will form matter for the consideration of the Court trying the case; as will also the award of the village to Appa Row by Government; and the Governor in Council regards Enams of the character of that in question as standing on precisely the same footing as other private landed property.

3. Petition 2908 from Ammai Ammall has not been sent up by the Board; but no further order seems necessary in her case.

(Signed) J. D. BOURDILLON,
Secretary to Government.

IN CON. 22ND MARCH 1859, No. 1193.

From W. M. CADELL, Esq., Collector of TANJORE,
dated Vullum, 18th March 1859, No. 51.

1. I have the honor to report upon the Petitions noted in the margin and which with their enclo-
No. 2432, of 1858 sures are herewith returned.
„ 2908, „ 2. I would also here observe that in the endorsement of Government upon the latter Petition, I am referred to a previous order dated the 17th September last and on a Petition numbered 2563 of 1858; neither the Petition last mentioned nor the order issued thereon have however reached this office, but I presume that the subject matter thereof is the same as those above noted.

3. In the first of these Petitions presented on behalf of Mavaly Rungasawmy Moodelly the sanction
No. 2432 of 1858. of Government is requested under Section I Regulation IV of 1831 to enable him to file a suit in the Supreme Court against Appa Row Moodelly, Rajagopala Moodelly his cousins and Alamailoo Ammaul the widow of another cousin for recovering from them his share in the Inam Village of Munjacoody in the Puttoocottah Talook.

4. The annexed genealogical tree shews the relationship which the Petitioner bears to the late Moottoo Kistna Moodelly and it is now stated by him that although the Village in question did not form part of the ancestral property the division of which took place in the year 1794, yet Apparow, another member of the Petitioner's family, has lately succeeded in establishing his claim to it. Petitioner therefore now prays for permission to sue for the share which he considers due to him in the village and which he estimates at one half and in virtue of its having been the property of his late undivided uncle, Thambiappa Moodelly.

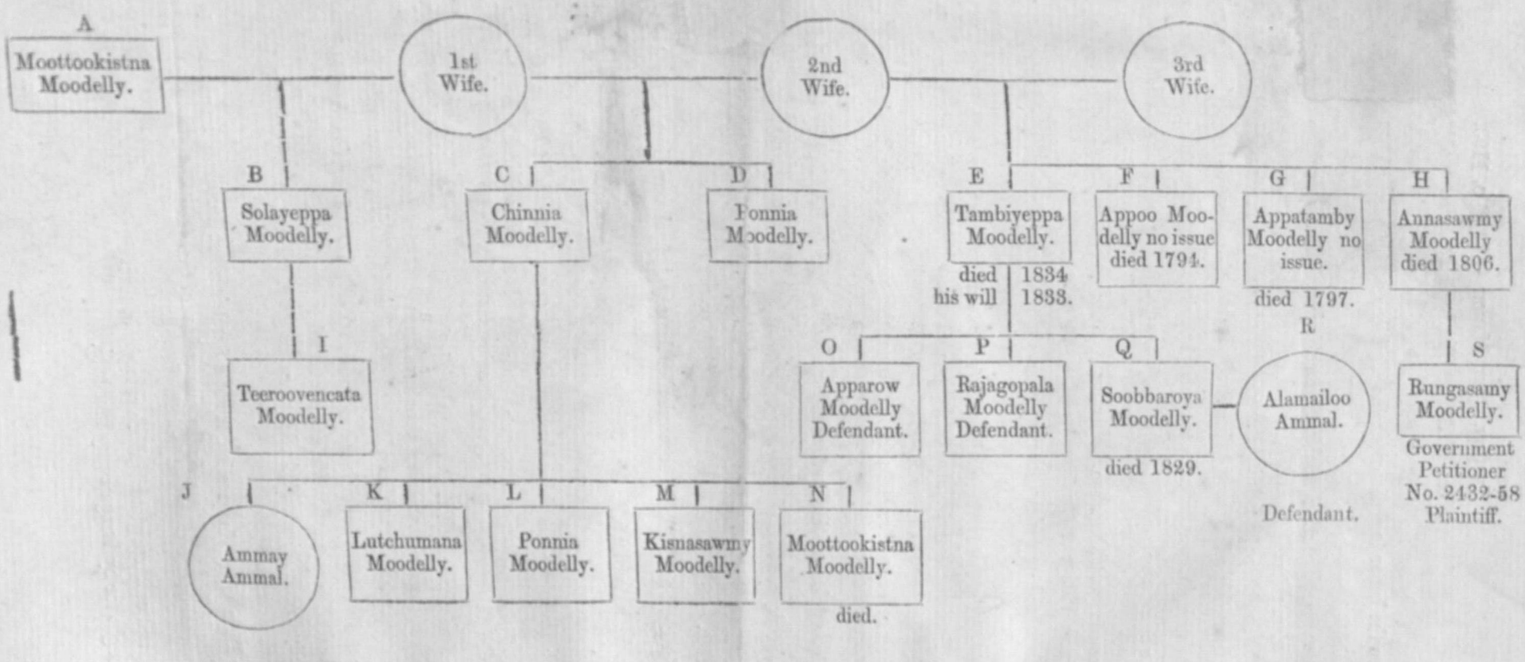
5. The village in question appears to have been originally inherited by Chinnia Moodelly from whom it again descended to his son, Mootookistna Moodelly. This individual sold it to his brother, Lutchmana Moodelly, and at his death his sister, Ammay Ammal, and her husband, Ramasawmy Moodelly, took possession of it as the executors of his Will. Ammay Ammal at her husbands' death, succeeded to the management of it.

6. So far back as 1849, the succession of Ammay Ammal was disputed by Apparow Moodelly, and
Ex. Min. Con. 17th April 1849, No. 391. the matter formed the subject of the correspondence noted
Boards' Pro. 3rd May „ in margin, till in conformity with the decision of Govern-
To Board 19th Nov. „ ment contained in Minutes Consultation 4th February 1850,
Board's Pro. 3rd Dec. „ the village was awarded to Apparow Moodelly as the re-
To Board 26th Dec. „ presentative of the original grantee; and he is now in the
Board's Pro. 7th January 1850, No. 10.
Min. Con. 4th February „ No. 109. enjoyment of it.

7. The 2nd of the Petitions under report is from Ammay Ammal herself and appears to be simply
No. 2908 of 1858. an appeal from the above decision of Government and a reassertion of her claim to being replaced in the possession of the village from which she was ousted.

8. The matter however having already been finally decided by Government it is unnecessary again to re-open it and all that remains for consideration is whether the permission now solicited by Rungasawmy Moodelly to sue Apparow Moodelly can be given without compromising the interests of Government.

9. The Inam village in question is not a Shrotriem but Survamaniem grant made by the late Tolaja Rajah of Tanjore in 1783. It was in the possession of the family of the grantee in July 1802, and is therefore exempt from interference on the part of Government under the Board's Circular dated the 11th August 1853, and on these grounds, I am of opinion that there is no objection to the granting of the permission sought for by Rungasawmy Moodelly.



Madras 27th August 1860

To the Right Honorable the Governor
in Council

Sir,

I the Petitioner of and as Plaintiff for
Rauala Rungasawmy Moodelly, Plaintiff in the Honorable
to pursue the Petitioner of a Petition filed
Complaint against Rauala Appasawmy Moodelly
and others, which the Petitioner of the Petition
Honorable the Governor in Council, the Petitioner
Rauala Rungasawmy Moodelly is desirous of
filing in the Supreme Court.

His Petition it is requisite that Rauala
Rungasawmy Moodelly should give under Section
of Regulation 4 of 1827.

The circumstances which call for the
institution of the proposed suit are as follows
to the Petitioner the Plaintiff is the
Heritage under the Will of Tambiyeppa
Moodelly, which will the Petitioner
Government to the Petitioner is called the attention
the favor of your obedient

by the Regulation and forwarding it to me together with the Engrossment of the proposed Bill.

I have the honor to be

Sir,

Your most Obed Servant

Ephm Miller.

IN CON. 22ND MARCH 1859, No. 1193.

From W. M. CADELL, Esq., Collector of TANJORE,
dated Vullum, 18th March 1859, No. 51.

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No. 2432, of 1858
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2. I would also here observe that in the endorsement of Government upon the latter Petition, I am referred to a previous order dated the 17th September last and on a Petition numbered 2563 of 1858; neither the Petition last mentioned nor the order issued thereon have however reached this office, but I presume that the subject matter thereof is the same as those above noted.

3. In the first of these Petitions presented on behalf of Mavaly Rungasawmy Moodelly the sanction of Government is requested under Section I Regulation IV of 1831 to enable him to file a suit in the Supreme Court against Appa Row Moodelly, Rajagopala Moodelly his cousins and Alamailoo Ammaul the widow of another cousin for recovering from them his share in the Inam Village of Munjacoody in the Puttoocottah Talook.

No. 2432 of 1858.

4. The annexed genealogical tree shews the relationship which the Petitioner bears to the late Moottoo Kistna Moodelly and it is now stated by him that although the Village in question did not form part of the ancestral property the division of which took place in the year 1794, yet Apparow, another member of the Petitioner's family, has lately succeeded in establishing his claim to it. Petitioner therefore now prays for permission to sue for the share which he considers due to him in the village and which he estimates at one half and in virtue of its having been the property of his late undivided uncle, Thambiappa Moodelly.

5. The village in question appears to have been originally inherited by Chinnia Moodelly from whom it again descended to his son, Mootookistna Moodelly. This individual sold it to his brother, Lutchmana Moodelly, and at his death his sister, Ammay Ammal, and her husband, Ramasawmy Moodelly, took possession of it as the executors of his Will. Ammay Ammal at her husbands' death, succeeded to the management of it.

6. So far back as 1849, the succession of Ammay Ammal was disputed by Apparow Moodelly, and the matter formed the subject of the correspondence noted in margin, till in conformity with the decision of Government contained in Minutes Consultation 4th February 1850, the village was awarded to Apparow Moodelly as the representative of the original grantee; and he is now in the enjoyment of it.

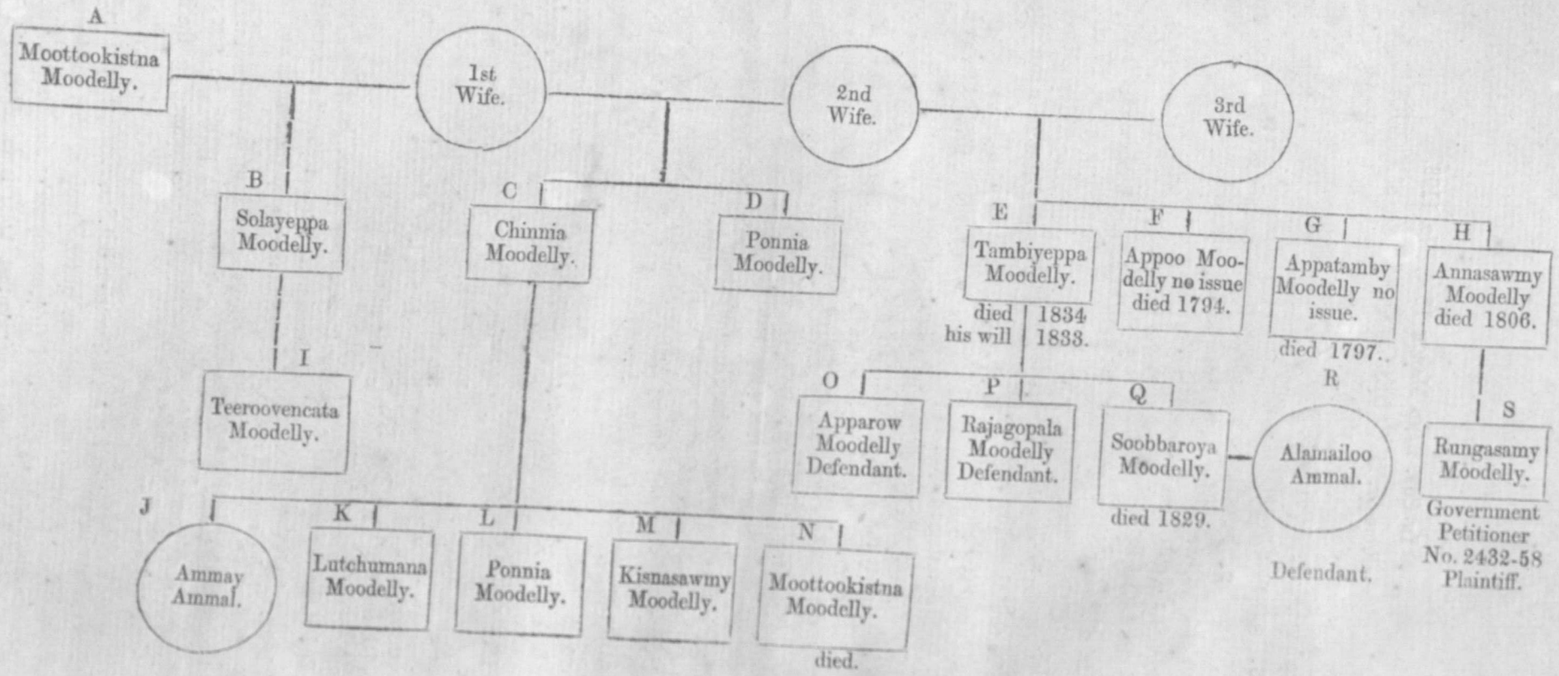
Ex. Min. Con. 17th April 1849, No. 391.
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7. The 2nd of the Petitions under report is from Ammay Ammal herself and appears to be simply an appeal from the above decision of Government and a reassertion of her claim to being replaced in the possession of the village from which she was ousted.

No. 2908 of 1858.

8. The matter however having already been finally decided by Government it is unnecessary again to re-open it and all that remains for consideration is whether the permission now solicited by Rungasawmy Moodelly to sue Apparow Moodelly can be given without compromising the interests of Government.

9. The Inam village in question is not a Shrotriem but Survamaniem grant made by the late Tolaja Rajah of Tanjore in 1783. It was in the possession of the family of the grantee in July 1802, and is therefore exempt from interference on the part of Government under the Board's Circular dated the 11th August 1853, and on these grounds, I am of opinion that there is no objection to the granting of the permission sought for by Rungasawmy Moodelly.


A
Moottookistna Moodelly.
1st Wife.
2nd Wife.
3rd Wife.
B
Solayeppa Moodelly.
C
Chinnia Moodelly.
D
Ponnia Moodelly.
E
Tambiyeppa Moodelly.
died 1834
his will 1833.
F
Appoo Moodelly no issue died 1794.
G
Appatamby Moodelly no issue.
died 1797.
H
Annasawmy Moodelly died 1806.
I
Teeroovencata Moodelly.
O
Apparow Moodelly Defendant.
P
Rajagopala Moodelly Defendant.
Q
Soobbaroya Moodelly.
died 1829.
R
Alamailoo Ammal.
Defendant.
S
Rungasamy Moodelly.
Government Petitioner No. 2432-58 Plaintiff.
J
Ammay Ammal.
K
Lutchumana Moodelly.
L
Ponnia Moodelly.
M
Kisnasawmy Moodelly.
N
Moottookistna Moodelly.
died.

1859 Debart.ts

Enclosure in a letter from the Secretary to the Board of Revenue to the Secretary to Government – R. D. dated 16th April 1859 No. 1346

R 717/59.

Printed copy from the Collector of Tanjore dated 18th March 1859 No 31.

On the demise of the Father the whole of the property including the said Enam Village were divided to the surviving sons - In this division the Village in question fell to the share of Chinniah Moodelly, and at his death, it reverted to his eldest son Brother Kroostone Moodelly, who some time after the enjoyment thereof, On account of pecuniary transac=tions, alienated his right to the said Enam Village (besides other Villages his personal property) to his Brother Luchamana Moodelly - Copy of the Deed of such alienation is herewith appended - and the said Luchamana Moodelly during his lifetime after such transfer, peaceably enjoyed the aforesaid Enam & other Villages without Opposition on the part of any of his relatives -

Your Lordship in Council will observe that, after such alienation by the said —— Brother Kroostone Moodelly to the said Luchamana= Moodelly and while the latter, during his life time, was in the full enjoyment thereof, None of the relatives attempted at any One time to prefer the remotest Claim thereto - But a short time after his death, Apparoo Moodelly, a Cousin of the said Luchamana Moodelly, professing to have a right to the said Enam Village, preferred his Claim to the Collector, who — refused to

refused him to the Civil Court for redress - Subsequent to this he applied to the Board of Revenue on the Subject of his Claim & that Authority gave an Endorsement, Concurring in the views of the Collector.

Finding that he had failed in his illegal Claim to the property in question the said Appa=roo Moodelly petitioned the Govt on the 12th March 1849, wherein he stated that the Village was under Enam — tenure while the Collector of Tanjore & the Board of Revenue in their respective reports dated 19th November 1849 and 7th January 1850 misconstrued the grant as Shotrium while it is Enam, as will be proved by the accompanying Copy of the Sunnud granted by his late Highness Amarsing Maharajah of Tanjore, wherein it is clearly declared in express terms that the grant is "under Enam tenure" and probably the Govt having no knowledge of the existence of the Document now brought to their Notice, which is in the possession of your Memo=rialist — now believing it to be from the misconstrued reports of the Collector & the Board as Shotrium under Regulation IV of 1831 passed an order of 6th February 1850 favorably to the alleged Claims of the said —— Apparoo Moodelly.

Previous to his death, the said Luchamana Moodelly made his last Will and Testa=ment wherein he nominated your Memorialist (his Sister) as his Sole heir and Executrix to his Estate

Estate and Effects which said Will & Testament was after his death probated in Her Majesty's Supreme Court at Madras in the usual form which publickly was given in the Official Gazette by her Attorney.

Your Worship will be pleased minutely to observe that the said Apparoa Moodelly who now asserts to have a claim to the property in question, never thought it necessary on the above occasion to oppose the legality of the said Will of the Testator / Cachamana Moodelly / but thinking it easy to take advantage of a Female after quietly permitting them to take its lawful Course has since set forth his pretended Claim which he Could not by law have claimed as a matter of Right.

Your Memorialist is led to believe that Apparoa Moodelly has stated his claim to the said Conam Village as the Grandson of the Grantee / Manelly Mookhoo Kondama Moodelly / based on the expression in the summons which states "that the said Conam Village is to be enjoyed from generation to generation but this is never ruled by the Suder Adalat as being mere forms usually employed in such Documents & not to be taken literally.

In the Matter of appeal
No. 689 1847 Para 19 which refers to a dispute regarding the proprietary

proprietary right of the Village of Cadaramangalam in the District of Joypore, the Summons of which is a part of the Limits of the Village of Mungacondy in question the Judgement of the Suder Adalut is recited as follows.

Judgement - "The Appellant dwells much on the terms of the Summons as giving him absolute & exclusive property to the Village & its appertenances but the Court are inclined to consider that as there formal expressions usually employed in such documents and not to be taken literally.

With a view to prove to Your Lordship that alienation of Grants under Enam tenure had been permitted & held as valid a prominent Case She begs to lay before Your Lordship which Your Memorialist humbly trust will at once convince that her Case is not the first nor inadmissible

In the aforesaid No. 689 1847 the Lower Court as well as the Court of Suder Adalut entertained the Suit as falling under general regulation without the Sanction of Govt. as required by Regulation IV of 1831 and passed Judgement on the merits of the question therein set at issue - a printed Copy of which is herewith submitted

The Division of Tranquebar in the Joypore District which was granted by the former Rajah to the Denmark people on Survamanieem tenure 12 years ago alienated by the latter to the Honorable East

East India Company & that they thereby still hold it by virtue of such alienation.

The Suryamaneium or Lake Enam lands of one Hubber Hakim Jurzah situated in Oombaconum in the Tanjore District was sold by Public auction in satisfaction of the Claim of a Creditor under a Decree of the Zillah Court so recently as in the year 1850 and there are on the records of the Sudder Adalat innumerable other instances of alienations of Enam lands &c for certain Considerations.

Under the foregoing Circumstances your Lordship will observe, that the family in question is a divided one - & that on the division of the property the said Enam Village fell to the Share of Moothoorama Mondelly, who while in possession thereof on account of pecuniary transactions with his Brother alienated the said Village for an adequate Consideration duly received by him — There is the same by which the Testator Vachamana Mondelly acquired right and title to the said Enam Village besides other Villages — and that it is not by inheritance to entitle the said Appellees to a share thereto.

Your Memorialist having given in the foregoing paragraphs a faithful detailed History of her Case invariably supported by precedents

precedents, humbly prays that your Lordship in Council will be pleased minutely to look into the several points therein indicated & from the facts of what has been related. your Lordship will be graciously moved to refer the Claimant to Judicial Tribunal thereto afsert his Claim - if he can maintain it - & for which act of Equity & Justice your Memorialist shall as in duty bound

Ever Pray

Madras
22nd October 1858

N. Amery Commiss Signed

No 2908 of 1858

Forwarded to the Collector of Tanjore with reference to the orders of Government dated 1st & 17th September last on Petitions Nos 2432 & 2563 of 1858.

By Order

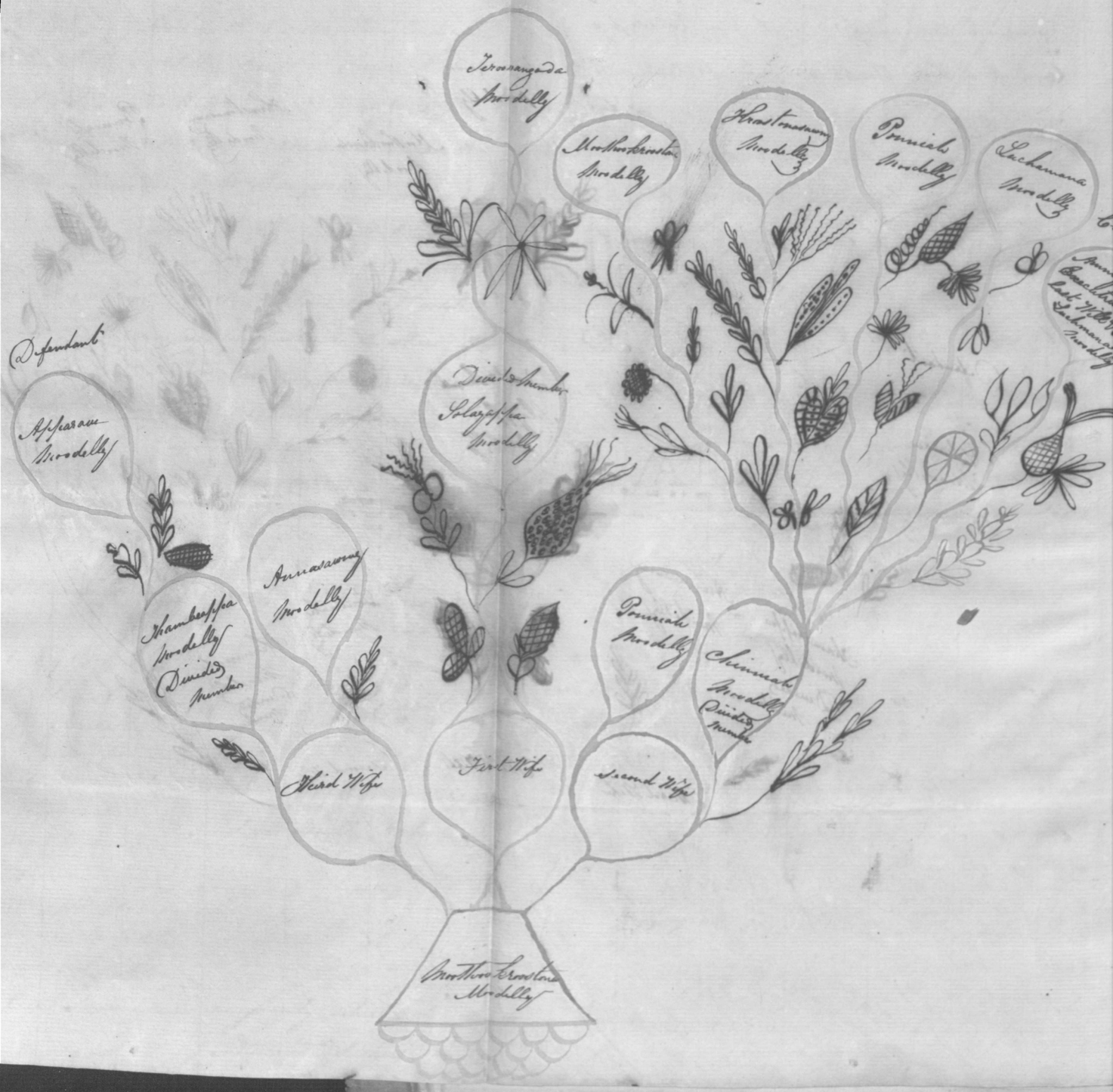
Fort St George
8th November 1858

W Morrieson
Dy Secy to Govt

× How there



Genealogical Table or Tree



Translation

On the 18th day of April in the Year 1840 Corresponding with the 8th day of Chittera Month of Sarvery year a Deed of Sale was written and given by Manelly Mootthoo Kroostna Mroodelly residing at Madras to Manelly Lachamana Mroodelliar of the same place.

That is to say In respect to the Amount of debt due by me to you I have written and given you a Judgement Mortgage Bond dated 7th October 1837 for all the Landed properties fallen to the share out of the Deed of Division made and executed regarding our paternal property, and to a Considerable sum of Money, you have thereafter lend us to this day, as money was liquidated to you up this day and as you have demanded me the means to Satisfy the payment of money, I have pawned a Sum of Company's Rs. 2000 on my Mariage Village situated at Tonjore Province is as follows.

1 Village Called Cockoor	situated at Mawyavarum District
1 Village Called Chinna Cockoor	
1 Village Called Seroovalley	situated at Shealley District
1 Do " Vyseroopoo	
1 Do " Cottoomangoody	
1 Do " Mayerendittum	
1 Do " Auchapooram	
1 Do " Agaram	
1 Do " Seroopparcodal	
and the Manieum lands at Colendaporum & Poleyen Kora	
One Village Called Sarvamanieum	Manjacody situated at Puttocottah district

All these 12 Villages including settled Manieums and all the produce, derived thereon from Nunja and Punja, ready money Collection, Grass waste Lands among the said Village in question which Sum of Forty two Thousand Rupees I have acknowledged to have received as aforesaid Sum being Credited in the debt due & owing in the Vadgement Mortgage debt, you are to enjoy all them from Posterity to Posterity as long as the Sun and Moon shall exist all the above enumerated settled Manieums Lands including to Nunja and Punja Ready money Collections of the above Villages, and all the appurtenances of Adichary & Parachary, Church, Tank, & Buildings Stands raising grounds above Water in a River— Thadul or dry place in a River Nullums and all other produce derived from Village hereto belonging by way of Gift or Sale, no Claim whatever to this- if any Claims— exist I shall engage to Indemnify- Thus I have Voluntarily written and given this Deed of Sale.

[Signed] Moothoo Crishnah

Witnesses
N Ramasawmy I Know
Co. Chockalingum I Know
D. F. Crampton
Attorney at Law
in the Supreme Court Madras

Translation of a Sicka Sunnud or Pauteed issued by Maharaja Rajesery Srolajah Rajah Said to the Cauriboo or authorities of Cullapat Division under date the 6th Maharum Year Sumvaranine Mygah alaf Corresponding with Fasly 1188 or A.D. 1772.

Moothoo Crishna Moodaly Dubash of Madras to whom the late Maharajah said, on the 12th Shaban Year Hejeree Sun Sulla Saritine Corresponding A.D. granted under Enam tenure the entire Village of Satticody in Poolyoor Maganum attached to Vellumpat Soobah having been since dispossessed of the same Village, now it has been pleased in lieu to grant him under Enam tenure the Village named Munyacody in the Munyacody Maganum of the above Soobah- The Total extent of the Lands measuring by a Road of 24 feet is Mawes- 150 of which — " deduct Mawes 24 being the Parambokes the Spot where the Water remains the fields already granted Colour Land and the remainder is

		V.	M.
Punjah or dry land	"	5	
Nunjah or Wet land	"	121	
The Total Mawes		126	

The

The above Total 126 Mauns of land including Poramboke has been entirely granted on Cnanm tenure with all appertenances viz.t Water Trees Stones Hidden treasure in this Village which shall be Continued in Each from Generation to Generation, one new Adavu is required for Year to Year Copy to be taken of this & this Original returned to the holder.

/Signed/ Nazaint Rayerkey Trimbaka
Raw Avendaraw Peerkeway

6th Moharam

Seal

Seal of

/Signed/ Sorcars

/Signed/ Talungarnis

Entered No. 41 in the Register of Sarvamanium & alienated lands at the Collectors Cutcherry on the 8th June 1809

/Signed/ J Wallace

Collector of Tanjore

To

J Pycroft Esq.

Chief Secretary to Govt.

Fort St. Georg

Sir

I beg leave respectfully to request that you will be so good as to lay before the Right Honorable Governor in Council the accompanying Memorial to the address and you will thereby infinitely Oblige

Sir

Your most Obedient

[illegible]

Madras
22nd October 1858

N. Annuy Tummall Signed

DECISIONS OF THE SUDDER COURT. No. II MARCH, 1851. PRINTED AND PUBLISHED BY AUTHORITY

DFC.

№ 2908 of 1858

Rs 10

From N. Ammiji
Unmall the Sale
of his and Executrix
the estate and effects
of Mandelly Lutchma
and Mundelly deceased.

Date 22d October
Rec'd Rs 717/59
Sent with 1 enclosure

Sub No 110 of 1859
Sir Lau 22 Heads

Prop that the claim
agt Rs share in the late
~~husband~~ Shro Trivyam
Village, may be rejd
by Jt Tribunal

Rejd

Rs 12—11—58

Sutta 1173. of 1859
Sultan 27 March.

ERRATUM.

At Page 92 of the printed Decisions of the Sudder Udalut for October 1850 in Appeal No. 52 of 1849, para 2, for the "Head Serishtadar of the District of *Ganjam*," read "Head Serishtadar of the District of *Vizagapatam*."

R 7/7/59.

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No. 11 of 1851. *Page.*

1.—Narraina Budkillaya (Plaintiff) Special Appellant, versus 1st, Narraina Pudyaya. 2nd, Vitta Boya (Defendants) Special Respondents.

Claim: Enforcement of the registry of a Wurg alleged to have been sold to the Plaintiff.

Suit remanded for re-investigation, on the ground that the Plaintiff (Respondent) had not been called upon by the Appellate Court to put in an answer to the Appeal.

The practice of disposing of two Appeals not strictly cross Appeals was objected to by the Court of Sudder Udalut, and it was pointed out when one or more Deeds are referred to in a Decree they should be severally distinguished by a number or letter and referred to accordingly..... 7

No. 64 of 1848.

2—Mootoocoomaroo Taver (Plaintiff) Appellant, versus 1st, Caroopayee widow of Saseevurna Taver; 2nd, Vengum Perria Oodia Taver; 3rd, Samy Iyah Taver, her sons and 28 others (Defendants) Respondents.

Claim: Division of certain villages claimed as ancestral property producing annually Rupees 3,516-7-1 with their appurtenances, and Rupees 14,577-12-6 on account of loss of produce. .....

Appeal Decree declaring the landed estate sued for not to be liable to division confirmed in respect to the landed estate, and Suit remanded for re-investigation with reference to the personal property sued for..... 9

No. 12 of 1851.

3—Samy Chetty (2nd Defendant) Special Appellant, versus Chendroya Chetty (Plaintiff) Special Respondent.

Claim: Recovery of Rupees 78-4-0 alleged to be due under an agreement executed to the Plaintiff by the father of the 1st and 2nd Defendants.

Suit remanded to the Court of Original jurisdiction for re-investigation, on the ground that the interest adjudged to be due by the Defendants had been erroneously calculated, and that the liability of the (2nd Defendant) Special Appellant should have been confined to the extent of property inherited by him from his father..... 13

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P

No. 68 of 1847.

4—Shettoobava Swamy, alias Settoo Ramaswamy, Avergul of Tanjore (Plaintiff) Appellant, versus Parasooramier and 89 others (Defendants) Respondents.

Claim: Recovery of rent free village valued at Rupees 88,672-8 and the produce thereof for three Fuslies valued at Rupees 1170-6-11.

Appeal dismissed, and Original Decree dismissing the Plaintiff's claim confirmed with costs, the right of the Defendants as Meerasidars of the village to a share of the produce being considered by the Sudder Udalut to be established. ....

Nos. 38 and 41 of 1849.

5.—Sawmynadha Chetty (Son and heir of 6th Defendant) Appellant, versus Pundah Kristnama Chetty (4th Defendant) Appellant.

Vencataramien, alias Vencatakristna Chetty, (Plaintiff) Respondent versus Vencataramien, alias Vencatakristna Chetty, (Plaintiff) Respondent.

Claim: Recovery of an Estate consisting of a house, ready money, jewels, &c. valued at Rupees 13,570-0-0.

Original Decree in so far as it adjudged the 4th Defendant to pay Plaintiff a sum of Rupees 350 reversed on the ground that an agreement granted by the Plaintiff to the 4th Defendant had been improperly rejected, in other respects confirmed. .....

No. 51 of 1849.

6.—Ammaloo (Plaintiff) Special Appellant, versus Samoovien (Defendant) Special Respondent.

Claim: Recovery of certain Nunjah and Punjah lands.

Appeal Decree reversed, and Original Decree awarding to the Plaintiff the land sued for confirmed; Special Respondent (Defendant) being assessed with all costs of Suit ....

No. 43 of 1850.

7.—Chennapah and Soobbamah (2nd and 3rd Defendants) Special Appellants, versus P. Chellamanah, Son of P. Soobbaroydoo; 2nd Mullapah his Uncle and Guardian, (Plaintiffs) Special Respondents.

Claim: Recovery of Rupees 262 on account of the value of 1[illegible] candies of paddy alleged to be due under a bond.

Decree of the Lower Courts amended, the 2nd and 3rd Defendants the Wife and Son of the 1st Defendant, being declared not liable for the sum awarded to the Plaintiffs. The Wife and Son of an individual not being liable under the Hindu Law during the lifetime of that individual for debts contracted by him.

Observed that in all cases involving questions of Hindu or Mahomedan Law, the Courts should adhere strictly to the provisions of Section XVII, Regulation III of 1802. ....

DECISIONS

OF THE

Sudder Udalut.

3RD MARCH 1851.

PRESENT.

G. S. HOOPER, Esquire.
E. P. THOMPSON, Esquire.

No. 11 OF 1851.

Special Appeal from the decision passed by G. M. SWINTON, Esquire *Assistant Judge of Mangalore, dated 10th July* 1850.

NARRAINA BUDKILLAYA.... *Special Appellant.*

versus

NARRAINA PUDYAYA..... } *Special Respondents.*
2, VITTA BOYA.....

R. TEROOMULROW..... *Vakeel for Special Appellant.*

1. The Original Suit was filed to enforce the transfer of the Registry of a certain Wurg which the Plaintiff alleged that the 1st Defendant sold and delivered to him in 1836. The 2nd Defendant was joined in the action as having purchased the said Wurg from the 1st Defendant in 1847.

2. The 1st Defendant denied the sale to the Plaintiff, averring that the Plaintiff obtained possession as his Agent or Manager and that he had sold the Wurg to the 2nd Defendant.

3. The 2nd Defendant's answer was to the same effect. It is to be observed that he had previously filed a Suit No. 564 of 1848 against the Plaintiff and the 1st Defendant to compel the former to surrender the Wurg in question.

4. The Sudder Ameen discredited the Bill of Sale and Receipt put in by the Plaintiff, as well as the evidence to the payment of the consideration: he considered however that, as the 1st Defendant had formerly admitted that he had mortgaged the land to the Plaintiff for 60 Pagodas, and had allowed the Plaintiff to retain possession for 12 years, there was ground for presuming that the Plaintiff had some

lien upon the Wurg, nevertheless, as the Bill of Sale had not been proved, the Sudder Ameen refused to adjudge the transfer of the Registry sued for.

5. The Sudder Ameen also dismissed the claim set up by the 2nd Defendant in Original Suit, No. 564 of 1848.

6. The Appeal preferred by the Plaintiff was heard, together with that from the Decree of the Sudder Ameen in the Suit filed by the 2nd Defendant, No. 564 of 1848 (Appeal Suit, No. 26 of 1850), by the Assistant Judge, who agreed with the Sudder Ameen in rejecting the Bill of Sale filed by the Plaintiff. The Assistant Judge however considered that the Sudder Ameen had erroneously declared that the Plaintiff had a mortgage lien upon the Wurg, a question "which was not properly before the Court," and this part of the Original Decree in 610 of 1848 he cancelled.

7. The Decree of the Sudder Ameen in the Suit filed by the 2nd Defendant, 564 of 1848, the Assistant Judge reversed on the ground that there could be no question that the Wurg had been sold to the 2nd Defendant in 1847, the Bill of Sale having not only been admitted during the progress of the Suit by the 1st Defendant, but been registered at the time it was executed; and he consequently decreed that the Wurg should be made over to the 1st Defendant, the Plaintiff being left to establish any lien he might have upon it by a fresh Suit.

8. On the application of the Plaintiff a Special Appeal was admitted by the Sudder Udalut on the ground that the Plaintiff had not been called upon to put in an answer to the Appeal, No. 26 of 1850.

9. The Court of Sudder Udalut observe, that by the judgment of the Sudder Ameen in 564 of 1848, the Special Appellant was left in possession of the land, the subject of the Suit now under the immediate consideration of the Court, and it was therefore obviously incumbent on the Assistant Judge, prior to reversing that judgment, to call upon the Special Appellant to put in his answer to the Appeal, No. 26 of 1850.

10. In order that this omission may be supplied, the Court of Sudder Udalut direct that the Suit be remanded for re-investigation to the Assistant Judge, who, in passing judgment de novo, will state in full his reasons for crediting the genuineness and legality of the Deed of Sale obtained in 1847 by Vitta Boya (Plaintiff in Original Suit, No. 564 of 1848) for land which he admits has been in the Special Appellant's enjoyment since 1836.

11. The Court of Sudder Udalut deem it also necessary to direct that in future the Assistant Judge will abstain from disposing of two Appeals, not strictly cross Appeals, in one Decree. This course has led to much confusion in this case, and is calculated to complicate the question at issue and mislead the superior Court.

12. The Court further observe that, when the merits of more than one Deed come to be discussed in a Decree, it is desirable that such Deed should be distinguished by a number or letter, and referred to accordingly. In the Suit under consideration there are two Deeds of Sale and one Mortgage Deed, and these are so mixed up in the Assistant Judge's decision that it is difficult to distinguish one from the other.

10TH MARCH 1851.

PRESENT.

W. A. MOREHEAD, Esquire.

No. 64 OF 1848.

Regular Appeal from the decision passed by C. R. BAYNES, Esquire, *Civil Judge of Madura, under date the 13th March* 1848.

MOOTOOCOOMAROO TAVER, Pauper.....*Appellant,*

versus

1st, CAROOPAYEE, Widow of SASEEVURNA TAVER....
2nd, VENGUM PERRIA ODIA TAVER, and
3rd, SAMY IYAH TAVER, her Sons, and 28 others..... } *Respondents.*

V. SETH SAM, Esquire..... *Vakeel for Appellant.*

S. TEROOMULROW. *Vakeel for* CAROOPAYEE, and SAMY IYAH TAVER.

1. The following transcript of the Civil Judge's Decree fully details the merits of the case.

2. "This action was brought to compel the Defendants to divide "certain ancestral lands, viz., the villages of Sukundy, Pasarangary, "Perria Cadombungoody with their appurtenances, &c. producing "annually Rupees 3,516-7-1, with Rupees 14,577-12-6, being loss of "produce since 1839, when these Defendants, at the instigation, and "with the assistance, of the others, withheld and debarred Plaintiff "from the equal and joint enjoyment which he avers himself to have "had with them, of the property in question up to that period."

3. "The following table exhibits the connection of the parties, and "the Plaint merely averred that, being so related, Plaintiff is entitled "to half the property.

" Mootoocoomaroo Taver clearer and founder of Villages in question
" 300 years ago."
" or
" according to 3rd Defendant
" Pitha Oodia Taver
⊥
" Cooronda Taver
⊥
" Vengoo Taver
⊥
" Oodian Taver
⊥
Mootoo Comaroo Taver.

" Vengoo Peria Oodia Taver married the last lineal heiress of Shevagungah on whose death the Zemindary escheated.

" Moosooradoogoo Taver died 1820."

By 1st Wife. By 2d Wife.

" Saseevurna Taver, " husband of 1st " Defendant."

" Mootoo Coomaroo Taver, " Plaintiff."

" Vengum Peria Oodia Taver, 2nd " Defendant (died without issue.)"

" Samy Iyah Taver, " 3rd Defendant."

4. " In February 1846 the Plaintiff and 3rd Defendant put in a " Razeenamah to which objection was taken by the 4th Defendant, and " which as it did not specify the land which was to be given to Plain- " tiff, and was otherwise informal, was returned to the parties. It was " not reproduced, and in September 1847 the 3rd Defendant moved " the Court by Miscellaneous Petition, No. 359 of 1847 to allow him " to put in an answer which under all the circumstances of the case, " and as the only means it had of passing a satisfactory Decree the " Court allowed."

5. " The 3rd Defendant then stated that the estate in question " was a Poliaput which always had, and always ought, to descend in " the hereditary line, according to primogeniture, that the Plaintiff and " his mother had never received more than maintenance, which they " did at a rate varying from 5 to 7 Rupees a month up to 1834, when " the 2nd Defendant, who then held the Estate, being in very em-

" barrassed circumstances, was constrained to reduce it, upon which " Plaintiff complained to the Zemindar of Shevagungah, who on the " 22nd February 1834 ordered him to continue the allowance which " was done, and moreover 2⅛ cheys of land were allotted to the Plain- " tiff and his mother, which were enjoyed by them up to the time of " the institution of this suit."

6. " The 3rd Defendant further remarked that Plaintiff had greatly " over-estimated the value of the estate, and his resources; that, as is " known to the Court, by other cases, the estate is under attachment " and loaded with mortgages, debts, and that the jewels and ancient " property, of the house have all been parted with, and that he had not " 100 Rupees worth of such property left."

7. " The Plaintiff in reply observes that the 3rd Defendant admits " the relationship and that no division has ever taken place, and that " in the Razeenamah Defendant admitted his claim. In 1834, when " Defendants attempted to alienate the property, he complained to the " Zemindar of Shevagunga, who ordered the Villages to be kept under " attachment and the annual net produce to be shared between them " which was accordingly done up to 1839; and further, that the proper- " ty is divisible and should be shared, &c."

8. " Third Defendant in a rejoinder states, that in the Razeenamah " into which he entered with the Plaintiff it was agreed that he (De- " fendant) would give him certain lands for maintenance but did " not recognize his right to share, &c."

9. " A motion No. 5 of 1847 setting forth a claim to certain of the " property in question, was made by Moodookristnum Pillay, and " another on the 4th January 1847 and another objection was taken in " Miscellaneous Petition, No 486 of 1847 on behalf of the Zemindar " of Shevagungah saving his right to the estate as a grant which he " may resume at pleasure."

10. " The main point for decision in this case is " Is the estate lia- " ble to division"—In determining it the Court can only be guided by " usage and prescription which are clearly in favor of its not being so " liable. Both parties admit the fact that it has never been divided " and that for 300 years since its original occupation by their family " it has descended in unbroken succession from father to son ac- " cording to the rules of primogeniture—The Court therefore has no " hesitation in non-suiting Plaintiff as respects his demand to have " the division made."

11. In the latter part of his Decree the Civil Judge remarked that " the Plaintiff appeared entitled to a decent and proper subsistence " from the resources of the estate. What he ought in the present em- " barrassed and reduced state of the family to receive on that score, the " Court has not in this place the means of determining. His claim to " half the gross revenues, without deducting the encumbrances, to " which even supposing him to be undivided and entitled in division,

"he would be equally liable, is absurd and preposterous. The present "claim is dismissed as untenable."

12. Parties to pay their own costs.

13. Dissatisfied with the above award the Original Plaintiff appealed.

14. In the Appeal Petition the liability to partition of the ancestral property claimed is contended for; the property in dispute not being of the nature of a Poliaput, but merely a certain number of Villages paying rent to the Zemindar of Shevagungah, and therefore clearly liable to the division sought for.

15. In the Decree passed by the Civil Judge it is allowed that Appellant is an undivided member of the family and entitled consequently to maintenance. The Civil Judge however remarks, that from the present embarrassed state of the family it is impossible to declare what the amount of that maintenance should be. In respect to the present embarrassed state of the property it is sufficient to point out that, when the Appellant was living as a joint member of the family, no debts existed; and that by debts incurred subsequent to 1840 he can possibly be in no way affected.

16. The Appeal answer assents to the Decree passed, and requests the Court to confirm the same.

17. The Court of Sudder Udalut are of opinion that the Decree of the Civil Judge declaring the landed estate in question one which is not liable to division, is correct, and they therefore affirm so much of the Civil Judge's Decree.

18. The Villages or Estate in dispute, form a part of the Shevagungah Zemindary, and the right of enjoying them must have been granted to the ancestors of the Appellant by the Zemindar, as shown by the proceedings in the case, upwards of 300 years ago.

19. The deed of grant conveying the estate to the Appellant's ancestors, by which alone the particular tenure of the Estate could be satisfactorily ascertained, has not been produced.

20. In the absence therefore of this document and of any proof as to its nature, the Court of Sudder Udalut concur with the Civil Judge in deeming that the only guide for the Courts to take, in determining the question at issue, is to be found in the fact that for 300 years, the period the estate has been in the possession of the family, "it has descended in unbroken succession from father to "son according to the rules of primogeniture."

21. The Court are however of opinion that the Appellant, as an undivided member of the family, has an unquestionable right under the Hindoo Law to claim a division of the personal property belonging to the family. And as this part of his claim has been treated by

the Civil Judge as forming a part of the estate pronounced to be undividable, and consequently no judgment on its merits given, the Court of Sudder Udalut, resolve on this point only, to remand the Suit for further enquiry and decision.

22. The costs as regards the portion of the claim disallowed in Appeal to be borne by the Appellant.

23. The costs in respect to the point referred back to the Lower Court for decision will be determined by that Court in its amended decree.

10TH MARCH 1851.

PRESENT.

E. P. THOMPSON, Esquire.
W. A. MOREHEAD, Esquire.

No. 12 of 1851.

Special Appeal from the decision passed by J. G. S. BRUERE, Esquire, *Civil Judge of Salem, dated 20th June* 1850.

SAMY CHETTY.....*Special Appellant,*

versus

CHENDROYA CHETTY.....*Special Respondent.*

S. TEROOMALA CHARRY.....*Vakeel for Special Appellant.*

1. The Original Suit was instituted for the recovery of Rupees 78-4-0 due under an agreement executed by the father of the 1st and 2nd Defendants to the Plaintiff on the 11th September 1836. The Plaintiff explained that he had not brought the Suit at an earlier period in consequence of the Defendants having no property.

2. The 1st Defendant did not appear. The 2nd Defendant denied that his father had any dealings with the Plaintiff, and urged that, as neither his brother nor himself inherited any property from their father, they could not be liable for his debts.

3. In a motion the Plaintiff pleaded that the 2nd Defendant had sued to recover a debt due to his father and had also inherited certain brass and copper vessels.

4. The District Moonsiff passed judgment in the Plaintiff's favor on the grounds, that the agreement sued on had been proved, and that the Defendants had been shewn to be the sons and heirs of the obligor.

5. The 2nd Defendant appealed, and contended that the evidence adduced in support of the agreement by the Plaintiff was worthless, and that, as his father left no property, under Hindoo Law and the Circular Order Sudder Udalut No. 73, he could not be held liable for his father's debts. With reference to the Suit mentioned by the Plaintiff in his motion he explained that his father had negotiated a loan, on behalf of one Boodoo Chetty, with Appoo Teroopaty Chetty; that the sale proceeds of the jewels pledged as security for the loan were found insufficient to cover the debt, upon which Appoo Teroopaty Chetty sued him for the difference, which he paid, and then filed a Suit against Boodoo Chetty for the recovery of the same.

6. The Zillah Judge considered that the evidence adduced in support of the Plaint had established the following points; that the agreement sued on had been executed by the 1st and 2nd Defendant's father; that the 1st and 2nd Defendants had promised to pay the balance due under it; and that the 2nd Defendant had inherited property from his father: and on these grounds he affirmed the decree of the District Moonsiff.

7. On the application of the 2nd Defendant a Special Appeal was admitted by the Court of Sudder Udalut on the ground that the interest decreed to the Plaintiff had been incorrectly calculated and that the liability of the 2nd Defendant had not been limited to the property inherited by him.

8. The Special Appellant contends that the supposition of his having inherited any property from his father is irreconcilable with the Plaintiff's declaration, that the Suit was not laid earlier because he and his brother had no property.

9. That though the decree of the Civil Judge states that it is proved that he (2nd Defendant) inherited property it does not state whether the property inherited was sufficient to cover the present claim, or not.

10. And that consequently the judgment of the Civil Judge is alike opposed to the pleadings of the Plaintiff and to the Circular Order Sudder Udalut No. 73, which rules that a son is only liable for his father's debt to the extent of the property inherited by him from his father.

11. It is also urged that the Courts below have adjudged interest on the whole principal sum of the original settlement or Rupees 41-1-0; whereas according to the Plaintiff's own shewing he had received Rupees 3-14-0.

12. The Court of Sudder Udalut observe that an error has been made in calculating the interest adjudged to be due by the Defendants, who are entitled to counter interest upon the several instalments admitted in the Plaint to have been paid by them.

13. The Court of Sudder Udalut further observe that under the Circular Order, Sudder Udalut No. 73, the Courts below were bound to confine the liability of the Special Appellant to the extent of the property inherited by him from his father, and in order that these errors may be corrected, the Court resolve to remand the Suit back to the Court of Original jurisdiction, with an injunction to revise the decree passed in the case in conformity with these observations.

17TH MARCH 1851.

PRESENT.

G. S. HOOPER, Esquire.

No. 68 OF 1847.

Appeal from the decision passed by F. M. LEWIN, Esquire, *Civil Judge of Combaconum, dated 3rd May* 1847.

SHETTOOBAVA SWAMY, alias SETTOO RAMASWAMY, } *Appellant.*

versus

PARASOORAMIER, and 89 others ..... *Respondents.*

GOOLAM MOORTOOZAH, ... *Vakeel for Appellant.*

V. SETH SAM, Esquire ..... *Vakeel for Respondents.*

1. This action was originally instituted by Plaintiff (Appellant) to recover uncontrolled possession and enjoyment of a rent free village called "Cadiramungalum" situated in the Talook of Coottalum in the Province of Tanjore, valued at Rupees 88,672-8 as well as the produce thereof for Fuslies 1250-1251 and 1252 valued at Rupees 1,170-6-11 total Rupees 89,842-14-11.

2. The Plaint set forth that the said village, and another named "Condalapaudy," were granted to Plaintiff's grandfather in the year 1757 by the then reigning Prince "Pretaub Sing," whose priest he was, under a Sicca Sunnud by virtue of which the Plaintiff, as well as his ancestors, have ever since enjoyed the latter village without interruption, but disputes having arisen with regard to the said village of "Cadiramungalum" between Plaintiff's father and the cultivators thereof they were amicably settled by an "Astachee" executed by the father-in-law of the 41st Defendant and four of his Paracoodies under date 7th Audy 20th July of the year "Pramadee" or A. D. 1819 in which year Plaintiff's father died; that fresh disputes having however afterwards occurred, Plaintiff sued the Paracoodies (among whom were several of the present Defendants) in five separate Suits in the year 1814, but was ordered to bring one Suit for the entire village; that there were no further disputes till 1839, when some of the present Defendants, 82 in number behaved so ill, that Plain-

tiff, dismissed them, and employed others in their stead in 1840 allowing them a Warum of 33 per Cent. but the former Paracoodies having combined together and attempted to carry away the produce, the Sub Collector, on Plaintiff's complaining to him, made an enquiry and ordered the produce to be reaped and kept in deposit till further orders—this was in 1840; that in 1841 the same thing occurred and the Sub Collector decided that the Plaintiff should have 60 per Cent. of the produce, and the rest should be sold and the proceeds kept in deposit, and that again in 1842, the same authority awarded 40 perCent. to the Paracoodies and 60 per Cent. to the Plaintiff which however, is not a fair and equitable division, because the Original Sicca Sunnud gives the village as a "Survamaunium;" that, as the Plaintiff's right is therefore that of a "*Survamauniemdar*," and the Defendants are mere *Paracoodies*, possessing no Meerassy right in the land, he (Plaintiff) has brought this Suit to set aside the Sub Collector's award, and to establish his own paramount authority and rights in the said village to the exclusion of any other right on the part of the Defendants beyond that of Paracoodies liable to be dismissed as such.

3. Such of the Defendants as defended the Suit admit the existence of a Royal Grant (Sicca Sunnud) to Plaintiff's grandfather, but deny that the said Grant includes the Meerassy right in the village and aver that that right is vested in themselves as it was in their ancestors before them.

4. They state that Plaintiff's grandfather himself executed to their ancestors an agreement or Cowle in 1757 agreeing to receive only the Mailwarum and to increase the Defendant's share in case of any thing being conceded to Meerassidars in Tanjore generally; that their ancestors accordingly received 40 per Cent. on Cadappoo and 35 per Cent. on Sumbah crops of Nunjah lands and paid him a Puttcut rent on Poonjah lands, but in 1792, on Plaintiff's order, his Agent allowed them 37 per Cent. on Cadappoo and 33 per Cent on Sumbah, which continued for sometime, and in 1805 Plaintiff's father executed a Rent Bond proposing to receive a Puttcut of Chuckrums 215 on Poonjah lands, and again in 1806 he agreed to give 10 per Cent. more as Warum; that in 1816 Plaintiff gave a Cowle and received an agreement, which, with his own accounts will shew that for the last 10 years they have always received from 40 to 43 per Cent. as their share of Warum; that their (Defendants) right to be considered *Meerassidars* and *permanent cultivators*, and to receive 40 or 43 per Cent. Warum was established by a Punchayet assembled by order of the Circar, as well as by the order of the Sub Collector passed under Regulation V of 1822.

5. They further assert that the very ground upon which the Plaintiff's grandfather built the Agraharum, was, in fact purchased by him from their (Defendant's) ancestors.

6. They, then, instance the Village of "Oomayapooram" as an example, in which the Mauniumdar receives a *Mailwarum* share *only*,

and the Rajah himself had consented to purchase the *Meerassy* share of the cultivators, and they aver that the reciprocal rights of the ancestors of both parties have been all along acknowledged by the Circar.

7. Lastly they object to the Suit as being opposed to the Statute of Limitations.

8. In his reply the Plaintiff denies that any such Cowle Deed as that alluded to by Defendants was granted, and argues that the power to grant Survamauniums, to the exclusion of any other right, was vested in the Rajah, who was the ruling power at the time the Sicca Sunnud was granted, and that if any such right, as is now set up by the Defendants, existed, it would have been mentioned in that Sunnud or in the accounts. He says the Defendant's assertion, that the site of the Agraharam was purchased by his grandfather, is a mere evasion to get rid of the fact of his having built it in the character of Proprietor of the village. He observes that the village of "Oomayapooram" is *not* an instance in point, but he names *several other* Villages, in which he says, the rights claimed by him exist *undisputed*, and have been upheld by Decree of Courts.

9. In rejoinder the Defendants urge that, if the villages quoted by Plaintiff are *entirely Rent free*, the Rajah must have purchased the Meerassy rights of the Meerassidars, and in that case they differ from the Village in dispute; that the Sub Collector's award declared Defendants entitled to receive a Warum of 40 per Cent, and to be permanently entitled to the land they cultivate.

10. The Civil Judge observed, in his Decree, that, as it was not denied that the village in question had been all along from time immemorial, in the hands of the Defendant's ancestors who cultivated it, it must be inferred that they are Meerassidars, having Meerassy rights, and as such entitled to a Warum or allowance of the produce; that none of the Plaintiff's documents proved the contrary; that the Attachee by which Plaintiff asserts the Mahajenums or Brahmin Meerassidars gave up those rights to Plaintiff's Father, was not produced, and its destruction by white ants in the Court's Records was not proved; that moreover the execution of such a document was highly improbable, but that at all events the allegation implied the *previous existence* of such rights, and that as there are about 75 Mahajenums in the village, the said document, which is said to have been signed by only five of them, would have no validity; that, on the other hand, the Cowle granted by Plaintiff's ancestor contains a distinct provision that he would respect the *rights* of the Defendants, and go according to custom—and the Sunnud issued by Plaintiff's Father to his Agent alludes to the same *rights*; that the evidence of the witnesses was too conflicting and interested to be much relied on, but the documents filed by the Defendants appeared to be more worthy of consideration, and that although the actual Warum may have varied from time to time, the evidence on the whole shewed that the Mahajenums

have generally received 40 per Cent of the Paddy produce in regular Nunjah land, and 43 per Cent of the Paddy produce of Poonjah lands converted into Nunjah; that Plaintiff had adduced no proof that he retained exclusive possession and management of the Poonjah lands, but it appeared that Defendants had all along paid 215 Chuckrums as Puttcut for those lands, and that Plaintiff's conduct in regard to the previous Suits instituted by him and struck off the file for default so far back as 1817, and his revival of these claims after such a lapse of time appeared extraordinary. He was therefore of opinion that the Plaintiff's claim was "quite untenable," and that he was wrong in endeavouring to reduce the Defendants, including the Mahajenums, to the level of Paracoodies, to the extinction of rights which, it was clear, they and their ancestors before them had always possessed; that with reference to the custom of the country, and the practice in numerous villages held under similar Grants (such as "Oomayapooram") and the Sub Collector's award, the Defendants were entitled to a Warum at the rates above mentioned;—and that Plaintiff was entitled to receive from them a Puttcut of 215 Chuckrums on the regular Poonjah lands of the Village. He passed judgment accordingly; observing, however, that Defendants were doubtless the Plaintiff's inferiors, and bound to respect his authority, and they ought not, by refractory or factious resistance to his orders and wishes regarding the cultivation and management of the village, to occasion him any loss, or convert the village, conferred upon his ancestors as a great and distinguished boon and privilege, into a source of vexation and trouble and constant litigation to himself.

11. The Civil Judge disallowed the Plaintiff's claim to the produce for the 3 fuslies, as inadmissible, and directed that, after deducting the usual Paracoody share, the rest of the Meerassywarum according to the rates above fixed, should go to the Defendants and the Mahajenums.

12. From the above decision the Plaintiff appealed to this Court, urging, as proof that the Cowle on which Defendants rest their defence is a forgery, that it will be found on examination to have been passed 8 *years* before the Sicca Sunnud was granted, and therefore before Plaintiff's grandfather had obtained a title to the village; that the Sicca Sunnud contains the same conditions with regard to *both* villages, and that no dispute has arisen about "Cundalapady;" that a comparison of the Sunnuds of the villages named by him, and which Defendants admit are "Soodda Survamanium," with that upon which this Suit is founded would shew that there is no difference between them; that he (Appellant) paid a Cavil fee as usual and bore the expenses of digging a Channel, &c.; that long cultivation of the lands of a village and residence therein, can give no right to a share in it; that the "Astachee" in question was filed in Suit No. 541 of 1844, and was destroyed by white ants, as he had proved by an Extract from a Diary; that it is usual for *only a few* of the Headmen of a village

to execute such documents in the names of the rest; that he is ready to file a Memo. sent by the Collector to the Palace in 1817, and the reply thereto, in which the village is stated to be the Survamaunium of Appellant, and that the *Meerassy thereof belongs to him*—the existence of which Document only came to his knowledge after the Decree in Original Suit was passed; that he has filed six Decrees as well as other documents to shew that Defendants are mere Paracoodies, and have no Meerassy right; and yet the Civil Judge remarks that *no documents* have been adduced in support of that allegation; and he concludes by observing that the provision made in the Civil Judge's Decree that Defendants are inferior to Appellant and bound to obey him is all well and good, but that Officer has omitted to point out what course he (Appellant) is to adopt in case they fail to act according to that injunction.

13 In his Appeal Answer, the 1st Respondent in the first place objects, that as the Decree of the Civil Judge was in fact passed in *Appeal from the Award* of the Sub Collector passed under Section XVI Regulation V of 1822 the Appellant ought to have preferred a *Special* and not a *Regular* Appeal to this Court. He then goes on to state that when the Rajah intended to grant a village *with its Meerassy*, as Maunium, he used to purchase the Meerassy right from the Ryots and grant it together with the Mailwarum, as proved by their witnesses; but that Appellant has not proved that such was the case with regard to the village in question; that the right of the Respondents is based on enjoyment of the lands from time immemorial and from generation to generation upon Circar Accounts and numerous other documents; that it was the custom of the Rajah when about to grant a village as Maunium, to pass an order, called "Pramaniker" to that effect which was immediately acted upon, but the *Sicca Sunnud* was not issued *till* afterwards, at leisure, which circumstance will account for the Cowle (No. 14) having been executed on a date previous to that of the Sicca Sunnud; that the customs of the two villages of "Cadiramungalum" and "Condalapaudy" are very different and that it is not usual for Bramins in Tanjore to carry on cultivation as Paracoodies; that it has been fully proved by a public document that Appellant's grandfather bought lands in the village and sold them again, and that the Respondents are in the habit of transferring lands by sale from one to another; that Appellant has given three different versions of the Attachee which he pretends was destroyed by white ants; that this Court has before declared that the Memos. written by the Palace authorities are of no weight whatever; and he concludes by observing that a Suit similar to this was instituted by the Mauniumdar of "Tiroopalatory," with the same object, but the Subordinate Judge and Civil Judge passed Decrees declaring that the Meerassy right was vested in the Ryots thereof, and on a Special Appeal being preferred to this Court, it was rejected.

14. With regard to the objections taken by the Respondents in their

Appeal Answer, and also in a motion subsequently presented by them, to the admission of a regular Appeal from the Decree of the Civil Court, the Court of Sudder Udalut ruled that they were altogether inadmissible, as the award of the Sub Collector merely provided for the settlement of certain disputes between the parties in regard to the division of the produce of the lands under litigation, but the Suit instituted before the Civil Court was for the absolute and exclusive *proprietary right* to the village, respecting which, a Collector is not competent to adjudicate under Regulation V of 1822.

The rest of Respondents also filed an answer to the same effect.

15. On a deliberate and careful consideration of the whole of the proceedings held in this important case, and after hearing the Vakeels of both parties orally in support of their respective pleadings, the Court of Sudder Udalut concur entirely in the view taken of it by the Lower Court.

16. There can be no doubt that the lands appertaining to the villages in dispute have been from time immemorial in the occupation of the Defendant's (Respondent's) ancestors; hence it is to be inferred that they were *Meerassidars.*

17. Unless, therefore, the Rajah deprived them of their Meerassy rights when he gave the village on Sicca Sunnud to the Plaintiff, (Appellant) or purchased those rights from them—he could only have given to the Appellant what he himself was entitled to, viz. the Mailwarum or Circar share. It is not at all likely that he did the former, and there is no proof that he did the latter, although the evidence for the Respondents shews that this (latter) was the course usually observed, when it was the intention of the ruling power to make a grant of the *entire rights* of a village; and instances of such a proceeding are adduced.

18. Although much reliance cannot safely be placed in *any oral* evidence in a case of this nature, yet the Court are of opinion that the testimony of the Respondents' witnesses is much less open to objection on the score of interestedness, than that of the Appellant's witnesses; that it is also in other respects more satisfactory and conclusive, and goes far to prove that Respondents are *Meerassidars*, and entitled to Meerassy rights.

19. The Appellant dwells much on the *terms* of the Sunnud, as giving him absolute and exclusive property in the village and its appurtenances, but the Court are inclined to consider them as mere *formal* expressions, usually employed in such documents and not to be taken literally.

20. With regard to the Cowle produced by the Respondents as having been executed to their ancestors by Plaintiff's grandfather in 1757, promising them the customary Warum and allowance, and agreeing to receive the Mailwarum share due to the Circar, the Court see no reason to doubt its authenticity, and they think the objection raised by the Appellant that it bears date prior to that of the Sunnud, has been sufficiently explained away by the Respondents.

21. This document appears to have been filed by the Respondents in one of the five Suits instituted by the Appellant in 1814, it is clear therefore that it could not have been fabricated for production in *this* Suit and if it was *forged at that time* (1814) it is extraordinary that Appellant took no steps to expose its true character *then*, as it went to destroy his claim to the Meerassy right, especially as the said Suits were not struck off the file till 1817, but allowed the Suits to be dismissed, because, as the Zillah Judge observed, he refused to pay the stamp fees for the *Meerassy*, which it was, in reality, his wish to establish; after which he allowed 30 years to pass before he took any further steps in the matter.

22. In the said document the expression "your (Respondents) village," is used, by which is obviously meant "your *Meerassy* village."

23. The village in question is styled in some public documents a "Mokasa," and in others a "Survamaunium," and the Respondents are sometimes called Ryots and Mahajenum Ryots and sometimes Meerassidars.

24. The Respondents, who are nearly, if not all, Mahajenums or Bramins, carried on the cultivation by means of other inhabitants, Soodras and others, some of whom were employed for a time by Appellant to cultivate a portion of the lands, when the disputes arose, and were cited by him as witnesses in this Suit.

25. As for Appellant's plea that in the other village included in his Grant, viz. "Cundalapady" no disputes have occurred between him and the Ryots, although a Warum of only 26½ per Cent. is allowed them, it cannot be depended upon as an argument in Appellant's favor; because it is impossible to say what the particular circumstances may be, under which those Royts cultivate their lands, or what the customs of that village may be, but it is evident that they differ from those which obtain in "Cadiramungalum."

26. There is no satisfactory evidence in proof of the alleged destruction by white ants of the "Attachee" alluded to by Appellant, and besides, if executed at all, it was signed by only five out of about 75 Mahajenums of the village.

27. Little or no reliance can be placed, as this Court have observed on former occasions, upon Reports or Memoranda furnished from the Tanjore Palace, and therefore those filed by the Appellant in this Suit, although they, in some degree, corroborate his statements, are not considered by the Court of any value.

28. The document marked N seems to deserve more consideration, for the Collector therein states that the Respondents have failed to produce any document before him to shew that the Meerassy belongs to them, and that the public accounts do not shew it, but he concludes by saying that, as they (Respondents) have long been the *permanent* "Paracoody Ryots" of the village, they "*ought not to be removed from it.*"

29. The Defendants moreover have cited other Suits in which similar claims were set up by the holders of similar Grants, which were decided against the claimant, particularly that instituted by "Chendra Segra Row" Pesihway for the exclusive right to the village of "Teroopalatory" in Tanjore, as a *Survamaunium*, against the Defendants who claimed to be Meerassidars, which case was originally decided by the Zillah Judge in Plaintiff's favor, and confirmed by the Provincial Court in appeal, from which a Special Appeal having been admitted by this Court, it was remanded for further investigation, the Court observing that "the principle involved in this case is the monstrous doctrine that "Rajahs of Tanjore, while "they governed the country, exercised the power of resuming at "their discretion, the Meerassy rights of a whole village, and con-"ferred them upon their nominee; this is so opposed to all that has "hitherto been established and believed respecting Meerassy rights "that the gravest investigation is required before it is judicially "sanctioned by the Court." The Peishway's claim was subsequently dismissed by the Subordinate Judge, who reinvesigated the said Suit, and his decision was confirmed by the Civil Judge in Appeal, which decree became *final*, this Court having refused to admit a Special Appeal.

30. In the said case, the village of "Oomalapoorum," in which village, although avowedly held as a "*Mokasa*" *Maunium*, the grantee only receives the Mailwarum of 60 per Cent of the produce, and the Ryots 40 per Cent, was adverted to by both the Lower Courts as a reason why the same Warum should be accorded to the Ryots of "Teroopalatory."

31. And the Court concur with the Civil Judge in thinking that the case in question may be fairly taken as a guide for the decision of this Suit.

32. The Court, on the other hand, are not disposed to attach much weight to the Decrees cited by the Appellant on his side of the question, as they were mostly passed by Courts of inferior jurisdiction, and upon less satisfactory grounds.

33. But whatever may have been the rights and privileges which it was originally intended to confer on the Appellant's ancestor by the Sunnud in question, the Court are decidedly of opinion that he cannot, now, either in equity or justice, be allowed to eject the Respondents from the lands which they, and their ancestors before them, have lived upon and cultivated from time immemorial, or to deprive them of the share of the produce which they have all along undeniably enjoyed, whether by sufferance of the Appellant or by virtue of their own positive and inherent right, at his sole will and pleasure.

34. The Court on the above grounds resolve to dismiss this Appeal, and to affirm the Decree of the Lower Court in all respects, adjudging the Appellant to pay all costs of Suit.

17TH MARCH 1851.

PRESENT.

G. S. HOOPER, Esquire.

W. A MOREHEAD, Esquire.

Nos. 38 and 41 OF 1849.

Regular Appeals from Decisions passed by S. SCOTT, Esquire, *Civil Judge of Combaconum, dated 6th February* 1849.

Appeal No. 38 *of* 1849.

SAWMYNADHA, CHETTY. *Appellant.*

versus

VENCATARAMIEN, alias VENCATA-KRISTNA CHETTY.. *Respondent.*

STREENEWASA CHARRY.. *Vakeel for Respondent.*

Appeal No. 41 *of* 1849.

PUNDAH KRISTNAMA, CHETTY, *Appellant.*

versus

VENCATARAMIEN, alias VENCATA-KRISTNA, CHETTY.. *Respondent.*

GOOLAM MOORTOOZAH.. *Vakeel for Appellant.*

STREENEWASA CHARRY, *Vakeel for Respondent.*

1. The Original Suit was filed by the Plaintiff in formâ pauperis for recovery of his adoptive Father's estate, valued at Rupees 13,570, consisting of a house, ready money, jewels, &c.

2. The different items claimed are set forth in the Plaint, and the following transcript of the Civil Judge's Decree fully details the merits of the case.

3. "The Plaintiff was adopted, when about three years old, by the 1st Defendant's husband, who died shortly after making the adoption, about 26 or 27 years ago. The amount of property he left cannot now be ascertained with certainty, but the 1st Defendant, in the deposition taken from her, acknowledges to 600 Pagodas in money, a debt Bond for 897 Pagodas due by the 6th Defendant, besides a house, jewels, household utensils, &c. The Plaintiff being a minor, the 1st Defendant took possession of the property without opposition, and the former does not appear to have taken any decided steps to assert his rights till the year 1845, when discovering that the 1st Defendant and her son-in-law were making away with the property he locked up all that he could get hold of. This led to a rupture between them, and both parties appealed to the Police authorities. The 1st Defendant denied the adoption (since proved beyond question and acknowledged by herself), and procuring false evidence to support her denial, the Joint Magistrate directed that the property should be placed in her possession, leaving the Plaintiff to seek his remedy by a Civil action."

4. "The Plaintiff then prepared to appeal to the Session Court, but that not suiting the views of the 1st Defendant and her son-in-law, they prevailed on him to agree to an amicable arrangement, which ended in the execution of a written agreement on the 24th February 1846, by which the adoption is recognized, and the Plaintiff was to receive jewels to the value of 350 Rupees, the title deeds of the house, and the Bond for 897 Pagodas which the 6th Defendant had executed to the 1st, and finally he was to succeed to the rest of the property on the death of his adoptive mother; and at the same time; a written acknowledgment filed as No. II was executed jointly by the Plaintiff and the 1st, Defendant to the 4th Defendant, in which they admitted to have received from him all the jewels, deeds, &c. deposited with him."

5. "The Plaintiff states in his plaint that he consented to an amicable adjustment merely to ascertain where the property was, and that the 6th Defendant paid him 500 Rupees on account of interest due on the Bond for 897 Pagodas; both these assertions are probably false, the first being made in the hope that such a motive would be considered sufficient to cancel the agreement he was party to, and the second under the impression that such payment would tend to prove that the Bond for 897 Pagodas (filed by the 6th Defendant as No. III to shew that it has been discharged) was cancelled subsequent to the agreement of the 24th February 1846; it is most likely that finding he had been tricked, and that the acknowledgment for 897 Pagadas which had been given to him was a mere duplicate, the actual Bond (No. III) remaining still in the possession of the 1st Defendant, he had no resource left but to bring an action, from the consequences of which action the Defendants affect to consider themselves absolved by the agreement above alluded to."

6. "The property left by the 1st Defendant's husband being almost all of a personal nature, it was of course easy to make away with it, and she affirms that the whole has been expended for the support and incident expences of her family. She however has no accounts to show, and she evaded every attempt of the Court to obtain from her some statement of the household expenditure, or of the manner in which the property had disappeared, averring merely that the money was all spent long ago, that some of the jewels, had been stolen, and some sold for the family exigencies. Nor is any of the property now forthcoming but a box of jewels, (deposited in the Court's Treasury), which during the progress of this enquiry was traced to the house of a friend of the 5th Defendant, who placed it there for concealment by order of the 1st a few months ago."

7. "With regard to the 1,000 rupees said to have been lent to the 4th Defendant, there is no positive proof, but as he is said to have had the use of it at a time when the Plaintiff and his adoptive mother were on good terms, he (Plaintiff) has probably good grounds for his assertion, for the 4th Defendant states that his Original Teloogoo accounts were destroyed by white ants, and he has produced to the

Court some written in Tamil, which he himself cannot read. In these accounts 220 Pagodas is credited to the 1st Defendant in the year Veyah (1826), in which year the 4th Defendant asserts that his transactions with the 1st Defendant commenced. He says this 220 Pagodas was the price of a house he bought of Moottien Chetty (6th Defendant) at whose request he credited the amount to 1st Defendant, but, if this were true, there ought to be a corresponding debit against the 1st Defendant in Moottien Chetty's accounts which there is not, and there is therefore ground to suppose, as the Plaintiff now intimates, that this house, which in reality belonged to the 1st Defendant, and not to Moottien Chetty, was not sold, but given to the 4th Defendant and that this entry of 220 Pagodas was money actually advanced by 1st Defendant. It is however impossible to ascertain the real truth, now, but it serves to show how little reliance can be placed on these accounts."

8. "Among other items there is an entry in them of 270¼ Rupees paid to Budrummaul (deceased) daughter of the 1st Defendant in Viswavasoo, 1845. The 4th Defendant says it was paid her by order of the 1st to purchase jewels; the 1st Defendant however, when examined separately, said that she had never given any such order, that Budrummaul never received the money, and had no jewels when she died about 3 years ago. The Plaintiff affirms that this money was expended in bribery, and procuring false evidence when their differences were under investigation by the Police authorities, which, looking at the date of the entry, and the contradictory statements of the 1st and 4th Defendants, is extremely probable; at any rate it may safely be inferred that it was never paid to Budrummaul, and I am therefore of opinion that the 1st and 4th Defendants must jointly account to the Plaintiff for that sum."

9. "With regard to the balance of 453 Rupees in favor of the 1st Defendant when they settled accounts in February 1846, the 4th Defendant says he paid that sum to the Plaintiff, at his request, in lieu of the jewels he was to receive to that amount. The 1st Defendant on the contrary stated in her examination that to raise this 350 Rupees she gave certain jewels to the 7th Defendant's brother to dispose of. The Plaintiff denies having received the money, and considering the fraudulent conduct of the 4th Defendant throughout, and the description of witnesses he has brought to prove the payment, I entirely discredit his assertion of having paid 350 Rupees to the Plaintiff, and hold him answerable for that amount with interest."

10. "There is also an item of 37 Pagodas as received from the 10th Defendant; the 4th Defendant explains this in his deposition by saying that he advanced 10th Defendant 70 Pagodas by order of the 1st, of which he repaid this 37, and that the 1st Defendant herself received the remaining 33. The 10th Defendant however, when examined, gave a very different account of the transaction, and the Plain-

[illegible] for the payment of which they

tiff averred that he had been bribed to give evidence against him during the investigation before the Police, which, considering the 10th Defendant's admission that his Bond was cancelled about that time, and that about 20 Rupees were remitted to him, seems very likely ; and as he received back his Bond cancelled, from the 4th Defendant, whose accounts exhibit no credit for the remaining 33 Pagodas, he and the 10th Defendant must be answerable for that amount viz. the 10th Defendant for 20 Rupees he admits was remitted, and the 4th Defendant for the remainder."

11. "The 5th Defendant has been living for some time past with the 1st, and by his own shewing, in the deposition taken from him, was a pauper 5 or 6 years ago, and is greatly in debt, yet he purchased a house in the year 1846, for 195 Rupees. He is quite unable to account in any satisfactory manner for the purchase money, and considering the time at which the purchase was made, and the whole conduct of this person, together with his connection with the 1st Defendant, there can be no doubt, in my opinion, that the money was supplied by the latter, as the Plaintiff affirms, and the 5th Defendant must therefore be held responsible for the price of the house, or in lieu thereof give up the house itself."

12. "In the accounts of the 6th Defendant are several items to which the Plaintiff objects; many of these are for valuable jewels of which no trace is to be found, and for which the 1st Defendant could not have had any occasion, and as no allusion is made to them in the first deposition taken from her, there are grounds to suppose the entries are fictitious, but as the 6th Defendant died before the Pleadings were closed, no opportunity offered of obtaining an explanation from him. There are also various entries of money to the amount of 66 Rupees paid on the 10th Pertasee and 6th Margalee of Partivah for Court expences, to which the Plaintiff objects, but it is most likely these sums were paid, though the object for which the disbursements were made would hardly seem to have been a legal one, to judge from the persons who received them. On the latter date is also an entry of 157½ for the Parianaikummon Charity, but there is no corresponding entry for this item in the "Cooroopoo" or Ledger accounts, and therefore it cannot be admitted."

13. "The 1st Defendant has also as appears from these accounts remitted on two occasions, viz. 14th Pungoony of Soobhanoo, and 10th Cartick of Krodhee, interest to the amount of 210 Pagodas, but as the interest on the money due by Moottien Chetty (6th Defendant) and on that left by 1st Defendant's husband would have more than sufficed for the maintenance of the family, so that the Plaintiff might have received the principal when he came of age, the Court cannot allow that the 1st Defendant had the power to make these remissions, and therefore the 6th Defendant and his heirs must be accountable to the Plaintiff for that amount."

14. "The costs to be paid by 1st Defendant and by the 4th, 5th and 6th Defendants on the sums awarded against them."

15. Against the above award two Appeals have been filed.

16. One by Pundah Kistnama Chettyar, the Original 4th Defendant, and one by Samynadha Chetty, the son and heir of the Original 6th Defendant.

17. Both of which Appeals the Court of Sudder Udalut resolve to dispose of by one Appeal Decree.

18. In neither of the above Appeals is any objection taken to the Civil Judge's Decree, determining the right of Original Plaintiff's title to succeed to the estate of his adoptive father, the late husband of the 1st Defendant, the respective Appellants merely contending that the sums they have been adjudged to pay are not due by them to Original Plaintiff.

19. The 4th Defendant (Appellant in Appeal No. 41) is by the Civil Judge's Decree compelled to pay 664-10-8 on his own account and 270-4-0 jointly with the 1st Defendant.

20. In his Appeal Petition he contends that no just reason can be found why he should be required to pay any thing to the Plaintiff, as he, Appellant, has filed an agreement, executed to him by the Original Plaintiff and 1st Defendant, releasing him from all demands on account of the estate in question, which agreement the Original Plaintiff has fully admitted. It has moreover been filed and proved before the Lower Court.

21. The Respondent in his Appeal answer argues in favor of the Decree appealed against.

22. The Court of Sudder Udalut are of opinion that the Decree of the Civil Judge, where it rejects the agreement granted to this Appellant by the Original Plaintiff and 1st Defendant, must be set aside, and this they accordingly do.

23. The Original Plaintiff allows that he signed the agreement willingly, because it acknowledged him to be the adopted son of the 1st Defendant's late husband, and thereby heir to the estate claimed ; a fact which previous to the execution of the said agreement had been denied by the 4th Defendant and others. It is not improbable, as surmised by the Civil Judge, that the Original Plaintiff has been defrauded by the Appellant ; nevertheless, as the above agreement was executed by him with a perfect knowledge of its consequences, and as it is manifest beyond all question, that by its execution he has benefited largely, the Court of Sudder Udalut cannot justly, in their opinion, do otherwise than deem it binding upon all parties.

24. The Court of Sudder Udalut however confirm that part of the Civil Judge's Decree, which pronounces this Appellant liable to Respondent in the sum of Rupees 350 with interest, being the balance of accounts up to February 1846, and for the payment of which they

agree with the Civil Judge in considering that the Appellant has shown no satisfactory proof.

25. The Appellant in Appeal No. 38 alleges that the Civil Judge had no just cause for deciding that he was indebted to Respondent in the sum of Rupees 392-8, in as much as the accounts filed by him show that his late father was not indebted in any sum to the estate of the Respondent's adoptive father.

26. In his answer the Respondent asserts that the Civil Judge has erred in only awarding to him so small a sum as that decreed out of the amount (5,779 Rupees) claimed. The Respondent in regard to this decision, seeks from the Court a judgment for the full sum claimed.

27. The Court of Sudder Udalut see no reason to question the correctness of the decision passed by the Lower Court, as it affects the point at issue between the present parties. The Decree of the Lower Court, in this respect, is therefore affirmed.

28. The Bonds executed by the Appellant's late father have been filed by the Appellant. Unless therefore the Bonds in question had been in some way or other discharged, the Appellant could not have obtained possession of them, and his having such possession is certainly much opposed to the justness of the Respondent's claim as urged by him in his Original Plaint.

29. The Court of Sudder Udalut are however of opinion that the Lower Court has rightly decided, that the remissions made by the 1st Defendant to the Appellant's late father on account of the said Bonds were not authorized, and also that the alleged payment of Rupees 157½ on a similar account had not been substantiated.

30. The Appellants to pay all costs in Original and Appeal on the sums now awarded against them.

31st March 1851.

PRESENT.

G. S. HOOPER, Esquire.

W. A. MOREHEAD, Esquire.

No. 51 of 1849.

Special Appeal from the decision passed by S. SCOTT, Esquire, *Civil Judge of Combaconum, dated 10th March* 1848.

AMMALOO ..... *Special Appellant,*

versus

SAMOOVIEN ..... *Special Respondent.*

J. OUCHTERLONY, Esquire ..... *Vakeel for Appellant.*

S. TEROOMALA CHARRY ..... *Vakeel for Respondent.*

1. The Original Suit was brought by the Special Appellant for the recovery from Special Respondent as 1st Defendant and 5 others, of 9 Valies, 2 Maws and $\frac{3}{4}$ goolies of Nunjah and 13 Maws and $\frac{51}{64}$ goolies of Punjah land.

2. The plaint set forth that Plaintiff's mother on her marriage with "Valoo Pillay," (4th Defendant) in the year 1818 received from her father, "Viswanada Pillay," the land in question as her marriage portion, that on her death leaving two daughters, Plaintiff and her sister, the said Viswanada Pillay brought a Suit (No. 332 of 1823) to get back this land, but was nonsuited, the Decree declaring Plaintiff and her sister the legal heirs and prohibiting their father (4th Defendant) from alienating it; notwithstanding which he, Valoo Pillay, mortgaged it to 5th Defendant and father of the 6th Defendant; that Plaintiff's sister died 14 years ago, and her funeral rites were performed by "Cundasawmy," Plaintiff's half brother; that in 1832 when Plaintiff married, she and her father (4th Defendant) executed mutual agreements, whereby it was settled that she (Plaintiff) was to have 5 Pungoos, and the said "Cundasawmy" 4 Pungoos of the land in litigation, that Plaintiff, however, did not obtain possession, and soon after became deranged, and that an attempt was made to get the land registered in Special Respondent's name into whose possession it passed in about 1836.

3. The 1st Defendant in his answer admitted that 5th Defendant and the father of the 6th Defendant received, each, a moiety of the lands on mortgage from Plaintiff's father, which two heirs were alluded to in the said agreements executed in 1832, but contended that in 1835 Plaintiff and her father, redeeming the said two Mortgages executed to him (1st Defendant) upon stamped Cadjan, a Bill of Sale (No. 1) for the whole of the land, and that the Meerass thereof was registered in his name; that the plea of derangement set up by

the Plaintiff was false, and that this Suit was brought fraudulently at the instigation of 4th Defendant.

4. The Sudder Ameen decided in favor of the Plaintiff, adjudging 1st Defendant to restore to her the land sued for, mainly on the ground that the sale itself was doubtful (the evidence to its execution being unsatisfactory) and at any rate, whether fraudulent or not, not valid, because, as a portion of the land had become the property of "Cundasawmy," neither Plaintiff, nor her father, had any power to dispose of it. He did not discredit the evidence as to the fact of the Plaintiff's insanity, although he considered it defective in some respects.

5. The 1st Defendant having appealed from the said Decree, it was reversed by the Civil Judge, on the ground that, after the enquiry which he had considered it necessary to institute on that point, the plea of insanity put forward by the Plaintiff (Respondent) in explanation of her omission to object to the transfer of the land to the 1st Defendant (Appellant) was shewn to be "entirely false;" that under all the circumstances it was impossible to avoid the conviction that she was a party to the sale of the land; and that upon the strength of the Decree above alluded to, and at the instigation of her father, she had brought this Suit and trumped up the story of her insanity as the only way of explaining her silence for ten years.

6. The Respondent was adjudged to pay all costs of Suit.

7. Against this Decree the Plaintiff (Respondent,) presented a Petition praying for the admission of a Special Appeal, which was rejected by this Court, no good or legal ground having been shewn therein.

8. But on her presenting a second application, through a Vakeel setting forth further grounds and praying for a review of the said order, it was granted.

9. In this Petition it is urged in support of the application that the Decree of the Civil Court is contrary to law and usage, inasmuch as it *rejects altogether* from its consideration the nature of the important Document upon which alone a judgment can be founded, viz, the 1st Defendant's Deed of Sale, and reverses the Decree of the Lower Court solely under its conviction that the plea of insanity is false, and that circumstances establish the inference that the Petitioner (Special Appellant) was a willing party to the transfer of the property; that the considerations, which led the Civil Judge to the said conviction and inference, were found in the correspondence and reports drawn from the Collector's Cutcherry, which form a quality of evidence quite undeserving of the weight attached to it by the Civil Judge, especially when placed beside the established fact of the Special Appellant's remonstrance against the Registration in 1st Defendant's name by Petition to the Collector, which a subsequent recurrence of her malady alone prevented her from following up; that the said Deed of Sale bears on the face of it certain (specified)

irregularities and falsehoods which are of themselves sufficient to stamp it as a fraudulent and fictitious document; a presumption which is only strengthened when the contradictory and suspicious nature of the oral evidence adduced in support of it, is considered, and lastly and chiefly, there is the grave objection to the said Deed of Sale, significantly noticed by the Sudder Ameen, viz, that it is in itself, an illegal instrument, for it makes parties assign away property which they are not authorized to transfer.

10. The Court of Sudder Udalut admitted a Special Appeal on the ground that, even supposing the said document to have been duly executed, its validity was doubtful, inasmuch as the lands in question, having been placed entirely out of the control of the 4th Defendant, "Valoo Pillay," father of the Plaintiff, (Special Appellant,) by virtue of a Decree of Court (Original Suit No. 332 of 1823) which was final, and an agreement (said Defendant's document No. 7) having been passed giving a $\frac{4}{9}$th share of the same to "Cundasawmy" Plaintiff's half brother, after her sister's death, neither Plaintiff herself nor the said "Valoo Pillay" would appear to have had any legal right to alienate the said share to any other person; a point, which the Petitioner failed to urge in her former application, and to which no allusion whatever is made in the Decree of the Civil Judge, although great stress is laid upon it in that of the Sudder Ameen.

11. The Special Respondent filed an answer in which he endeavours to shew that, as the said agreement, whereby a portion of the land was given up by the Special Appellant to Cundasawmy, was executed when the latter was a minor of 2 years old, having been obtained by "Valoo Pillay" on his behalf as his guardian, and as the Deed of Sale was, in like manner, executed by "Valoo Pillay" in the same capacity, on behalf of Cundasawmy (still a minor) *jointly* with the Special Appellant, he ("Valoo Pillay") was empowered to act in such a manner, and Cundasawmy was bound by his acts, under the provisions of Regulation V of 1804 and that, therefore, the said Deed of Sale is to all intents and purposes a legal and valid document.

12. Having attentively considered the whole of the proceedings held in this case the Court are of opinion that the Deed of Sale (No. 1) upon which the Special Respondent claims the property in dispute as having been sold to him by 4th Defendant, Valoo Pillay and Special Appellant jointly, is neither a legal nor a valid document, and cannot be upheld.

13. Setting aside the suspicious character of the document itself, drawn up originally, as it is found to be, in the name of the Special Appellant alone, as the executor, but afterwards altered and having the signature of the said Valoo Pillay affixed to it *after* those of the attesting Witnesses, and containing a falsehood in the Stamp Vender's endorsement, viz, that the Cadjan was sold to "Sooboo Pillay" *elder brother of Special Appellant* on her account, when in fact she had *no* elder brother, as admitted by the Special Respondent himself—circumstances in themselves sufficient to create strong suspicion as

to the genuineness of the said document :—it is clear that neither the 4th Defendant nor the Special Appellant herself was competent to execute it, because a portion of the lands therein mentioned had been previously made over by Special Appellant (who became heir to the whole after her sister's death) to "Cundasawmy" her half brother, and therefore that portion at least was no longer hers to dispose of, and the Decree in No. 332 of 1823, copy of which was filed by Special Respondent, declared that the said lands constituted the Streedanum property of the Special Appellant's mother, and according to Hindoo law became, after her death, the property of her daughters; that *Valoo Pillay* had nothing to do with them and could not dispose of them by sale or otherwise, although during their (the daughters') minority, or until their marriage, he might retain possession of them for their use.

14. The Court therefore reverse the Decree of the Civil Judge and affirm that of the Sudder Ameen adjudging Special Respondent to pay all costs.

31st March 1851.

PRESENT.

E. P. THOMPSON, Esquire,
W. A. MOREHEAD, Esquire,

No. 43 of 1850.

Special Appeal from the decision passed by W. ELLIOT, Esq., *Civil Judge of Cuddapah, dated 29th June* 1850.

CHENNAPAH and SOOBBAMAH.....*Special Appellants.*

versus

1st. P. CHELLAMANAH son of SOOBBAROYDOO
2nd. MULLAPAH his Uncle and Guardian.....} *Special Respondents.*

R. TEROOMALAROW.....*Vakeel for Special Respondents.*

1. This Suit was laid for the recovery of 252 Rupees, the market value of 14 candies of Paddy, due under a Bond executed by the 1st Defendant on the 30th June 1836.

2. It was admitted that the Bond sued on, which was for 200 Rupees and which stipulated that repayment should be made by 10 annual instalments of 2 candies of Paddy, had been executed and the points at issue consequently were—

Whether it had been liquidated in full, as stated by the 1st Defendant, or in part only, as asserted by the Plaintiff.

And whether the 3rd Defendant, the wife of the 1st Defendant, and his son, the 2nd Defendant, who was stated to have been adopted by his maternal grandfather, were, equally with the 1st Defendant, liable.

3. The Moofty Sudder Ameen held that a part only of the original debt had been liquidated, and that the 2nd and 3rd Defendants, though living apart from the 1st Defendant, had, by promising to satisfy the demand, and by frequent intercourse with the 1st Defendant, made themselves liable to the claim.

4. He discredited the plea of adoption advanced by the 3rd Defendant and consequently decreed that the Defendants should satisfy the Plaintiff's claim in full.

5. The Civil Judge in appeal took the same view of the plea of adoption as the Moofty, but modified the Original Decree by adjudging payment of $\frac{2}{3}$rds of the sum originally lent, or Rupees 123-5-4 and subsequent interest, on the ground that it was admitted that $\frac{1}{3}$rd of the Paddy stipulated in the Bond, viz., 20 candies, had been delivered.

6. Upon the application of the 2nd and 3rd Defendants the Court of Sudder Udalut admitted a Special Appeal to ascertain, by a reference to the Law Officers of the Court, if the awards of the Lower Courts, as they affected the 2nd and 3rd Defendants, were in accordance with Hindoo Law or not.

7. The Special Respondent filed an answer which contained no new matter.

8. The Court of Sudder Udalut referred the following question to their Law Officers.

"A the Husband of B and the father of C executes a Bond, B and C are living away from A with B's parents; no deed of separation or division of property has taken place, are B and C liable to be called upon, jointly with A, to pay the debt contracted by A, A being at the time alive?"

Answer.

"The Hindoo Law books "Vijnanaswareyum" &c. do not declare that the debt contracted by a person shall be discharged by his wife and son, while the said person is alive, is residing in his own village and is still capable of carrying on business."

"Consequently the wife and son of A referred to in the question are not liable to pay jointly with A the debt contracted by him, whilst he is alive."

9. As it is shown from the above answer that the Lower Courts, in finding the 2nd and 3rd Defendants liable with the 1st Defendant for the debt contracted by him, have mistaken the Law of the case, the Court of Sudder Udalut do hereby amend the said Decrees and declare the 1st Defendant alone answerable for the sum awarded.

10. The Court of Sudder Udalut further direct that all costs incurred by the 2nd and 3rd Defendants in the three Courts be defrayed by Plaintiffs.

11. The Court of Sudder Udalut also desire to point out to the Lower Courts that it is necessary in all cases involving questions of Hindoo or Mahomedan Law to adhere strictly to the provisions of Section XVII, Regulation III of 1802.

Rev Dept

No 635

Extract from the Minutes of Consultation
Under date the 7th May 1859

Read the following
Extract from the Proceed
-ings of the Board of
Revenue.

(Here enter 16th April/59 No 1/3

It does not ap
-pear that the interest
of Government are con
-cerned in this case, the
Governor in Council
therefore grants permis
-sion to Pung Aaung
Moodelly under Section
Reg: II of 1831, to use Ap
Row Moodelly for the
Lower Maniarm village
of Mungaeoody or any
part thereof.

By

The Governor
in Council does not re-
cognize the validity of the
grounds on which the
Board of Revenue (Para 12) advocate
a contrary course. The
terms of the purwanah
so far as they affect the
course of succession to the
village, will form matter
for the consideration of
the Court trying the case;
as will also the award
of the village to appear
how by Govt, and the
Governor in Council
regards Inams of the
character of that in ques-
tion as standing on pre-
cisely the same footing
as other private landed
property.

Petition 2908 from
Annai Ammall has not
been sent up by the Board,
but

but no further order
seems necessary in her
case.

3 Copies to the Bd of Rev. Dupy Sgt
1 — Gl. Dept.-

34

Revenue 1859 Departt.
Cons: 10th May.

No 635.

Pro: of the Madras Govt.
Dy 7th May 59.

Ringasawmy Moodelly permitted to sue Apppa Row Moodelly for the Inam Manigum Village of Munjacoody or any part thereof. No further order seems necessary in the case of Chinnai Ammall Petn. Cover in No 2908.

No 43 & 44.