M.R.O. 14—10,000—21-4-22.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1733 Press ~~Mis.~~

501-502

Dated 28-9- 1866.

Not to be folded or roughly handled

Proceedings of the Madras Government, Revenue Department, 28th September 1860.

No. 501. Read the following letter from CLEMENT DALE, Esq., Government Pleader Sudder Adalat to J. D. BOURDILLON, Esq., Secretary to Government, Revenue Department, dated Madras, 24th September 1860, No. 138 :—

SIR.

1. In continuation of the letter I had the honor to address *22nd August* 1860, *No.* 124. to you under the date and number noted in the margin, I have now the honor to enclose for your information a printed copy of the Decree passed by the Court of Sudder Adalat in Appeal Suit No. 234 of 1859.

2. The copies of the Order in this case had been bespoken prior to the receipt of your Official Memorandum, dated 17th September 1860, No. 373.

No. 502. ORDER THEREON, 28th September 1860, No. 1,733.

Ordered to be communicated to the Board of Revenue, together with Mr. Dale's former letter with reference to the Order 16th July 1860, No. 1,175.

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

DECREE OF THE SUDDER COURT AT MADRAS.

Before the Civil Judge of Madura, Original Suit No. **2** *of* **1857**.
Before the Sudder Court at Madras, Appeal No. **234** *of* **1859**.

(Signed) T. L. Strange.

(Or) H. Frere.

SEAL OF THE SUDDER COURT AT MADRAS.

Appellant.	*versus*	*Respondents.*
MUTTU MADAVA NAYAKAR.		SHANMUGA MADAVA NAYAKAR, Zemindar of Puleyankolum, and others.

The plaintiff has brought this suit to be placed in possession of the property of his father, the first defendant, the zemindar of Puleyankolum. He also sued to set aside a razinama in No. 89 of 1856, charging the zemindary with debt to the fifth defendant, affirming this to have been got up collusively. The plea on which the suit was brought is, that plaintiff is the son of the pattaba stri, or royal wife, and that first defendant is imbecile. First defendant it may be observed, has since demised.

The defence is that the second defendant is the pattaba stri, and that her son named Sirata Muttu Madava Nayakar is the heir to the zemindary. The debt in question is declared to be a true one.

The civil judge excluded from adjudication in the suit the matter of the aforesaid debt. He rejected the evidence oral and documentary offered by the plaintiff to prove that at the time of the marriage of his mother and the second defendant, which was effected on the same day, his mother had been made the pattaba stri. He considered the presumption to be that the dignity was conferred upon the second defendant. He thereupon dismissed the suit, observing also that the plaintiff's claim was barred by the statute of limitation.

From this decision the plaintiff has appealed, and he has been answered by the second defendant.

Mr. Branson appeared for the plaintiff, and Mr. Arthur M. Ritchie for the second defendant.

Judgment

The Court are of opinion that this suit is not affected by the statute of limitation. In

(Signed) L. F. L.

Registrar.

respect of such a claim as the present, that is of heirship and succession, they consider that the statute would run only from the time when the succession might fall to the heir and the plaintiff might be opposed in entering upon his asserted right. They do not think it should run as held by the civil judge from the time when dispute arose as to the right being in the plaintiff at the time that his father held the zemindary.

The Court concur with the civil judge in rejecting the evidence offered by the plaintiff to his mother having been declared pattaba stri at the time of the marriage. The civil judge has given his reasons for discrediting the document *A* and the witnesses adduced to establish the said fact. These appear to the court cogent, and they have not been shaken by any thing offered in this appeal. It has been attempted at the hearing of the appeal to maintain the plaintiff's right to succeed as being the eldest son. This however was not the position taken in the court below, where the succession was allowed to depend upon another circumstance, namely the mother being the pattaba stri, and the Court therefore hold the argument to be an inadmissible one. They observe that there is no evidence that the first defendant at any time subsequent to the marriage acknowledged plaintiff's mother to be the pattaba stri, while the plaintiff has allowed, as stated in the civil judge's decree, that from the date of his birth, or the year 1844, the son of the second defendant was declared by the first defendant to be his heir. The Court concur with the civil judge that the presumption is in favor of the second defendant having been the pattaba stri, while the plaintiff, assuredly, has offered no reliable evidence to prove the contrary, and that the post was held by his mother.

The Court resolve therefore to dismiss the appeal with costs.

IN THE SUDDER COURT.

Appellant's costs.					
Pleader's fee on Rs. 9,250-0-0				335	0 0
1 Roll for brief appeal petition				250	0 0
1 do. for special grounds of appeal				4	0 0
1 do. for vakalatnama				2	0 0
Printing charge				8	0 0
To be borne by the appellant					599 0 0
Respondents' costs.					
Pleader's fee as above				335	0 0
1 Roll for answer				4	0 0
1 do. for vakalatnama				2	0 0
Printing charge				0	8 0
To be paid to the respondents by the appellant					341 8 0

Given under our hands and the seal of the Court, this twenty-second day of August, in the year of our Lord 1860.

By order of the Sudder Court.

(Signed) L. F. Channier.
Registrar.

Signed and sealed in Court,
this 13th day of Septr 1860.

(Signed) L. F. L.
Registrar.

Second and last Sheet.

(Signed) L. F. L.
Registrar.

Copy

Mad. Legislative Dept.

№ 738 2

From Clement Dale Esquire Government Pleader Sudr Adalat
To J. D. Bourchier Esquire Secretary to Government

Madras 24th September 1860

Sir.

Para 1 In continuation of the letter I had the
honor to address to you under the date
22d August 1860 № 124 and number noted in the margin
I have now the honor to Enclose for your information
a Printed Copy of the Decree passed by the Court
of Sadr Adalat in Appeal suit № 234 of 1859.

2 The Copies of the Order in this Case
had been despatched prior to the Receipt of your
Official Memo dated 17th September 1860 № 373.

I have the honor to be
Sir.
Your most Obedient Servant

Govt Pleader S.A.

R. Rev. for Sept 1860 Re
893-536-

Revenue 1860 Depart.
Proc: of Govt for Sept.
Nº 2070
From the Govt Pleader
Sadr Adalat -
Dated 24th September, 1860
Rec.d 25
1. Encls.
Forwarding Copy of the
Judges Court's decree in
Civil Nº: 234 of 1859 respecting
succession to the Rule:
-ship & Volume Zamindari
in Madeira.

Nº 1733. 28th Sept.
Written order

Nº 501 & 502

Nº 1733

Referred to Government
Order of Nº 1733 dated
28th September 1860
Forwarding Copy of the
Decree of Nº 234 of 1859
Judges Court of Civil Appeal
Madura Zillah
Copy of the order 16th July 1860
Enclosed
Nº 29