M.R.O. 14—10,000—21-4-22

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 693 Press ~~Mis.~~

12-13

Dated 1- 5- 1860.

Not to be folded or roughly handled

No. 12. Read the following Proceedings of the Board of Revenue, dated 3rd April 1860, No. 1,662:—

Read again letter from the Collector of Madura, dated 12th October 1859, No. 196.

(In Con. 17th October 1859, No. 5,146.)

Read also letter from the same Officer, dated 8th March 1860, No. 48.

(In Con. 13th March 1860, No. 1,149.)

ORIGINAL SUIT No. 2 OF 1857.

Muttumádava Naiker, son of Shanmugamádava Naiker, by his first and lawful wife, residing at Pulienkulam in the Zamíndári of Pulienkulam in the Tirumangalam Táluq, *Plaintiff*.

versus.

1 Shanmugamádava Naiker of Pulienkulam Zamíndári.
2 Virachin Ammál *alias* Periavellai Ammál, younger wife of the first Defendant.
3 Aulu Chinnama Naiker, father of the second Defendant
4 His son Muttumádavani Naiker.
5 Vallimuttu Naid of Shippipanravi in Sankharanainar Kovil Táluq in Tinnevelly District.

} *Defendants*.

In the first of the above letters the Collector reported that an appeal from the decision of the Civil Court of Madura, in Original Suit No. 2 of 1857 had been preferred to the Sadr Adálat by the Plaintiff.

2 This Suit was brought by Plaintiff;

1st. To establish his claim to be considered the son of the "Pattama Stri," or principal wife of his father the first Defendant.

2nd. To obtain immediate possession of the Pulienkulam Páleyam on the plea that his father, first Defendant, then in possession, was incapable of managing his own affairs.

3rd. To void a debt contracted by his father.

3. The Government were not parties to the Suit, but its progress was watched on their behalf, in consequence of their possessing the right of nominating the successive holders of the Estate, which right might be affected by the decision.

4. The Decree of the Court on the first point (which alone need here be noticed) was adverse to Plaintiff, the judgment being that he had "failed to prove that his mother was first Defendant's 'Pattama Stri,' and that he is the first Defendant's heir to the exclusion of the second Defendant's sons," the second Defendant being his father's other wife.

5. From this decision, as already stated, Plaintiff appealed; but, as the Collector also reports in the same communication, first Defendant died shortly afterwards, on the 2nd October last. It now devolves on Government to decide on the succession to the Estate, which is an "unsettled Páleyam" not held under a permanent Sanad.

To Government, 24th August 1859, *No.* 3,332, *paragraph* 5.

6. The deceased was of the "Kambala Tottier" caste, in which the succession runs only in the male line, and has left two widows and three sons.

7. He married both his wives on the same day, and the question to be solved is which of these is the chief wife, as the son of that wife succeeds by the rules of the caste in preference to the sons of the junior wife without reference to primogeniture.

8. One wife, Verachin Ammál *alias* Periavellai Ammál, aged 40, was the neice of the deceased, and was married by him when she was only 2½ years of age. She has two* sons and four daughters.

* *Sivattamuttumáda Naick, aged* 19 *years.*
Shunmukamádava Naick, aged 4 *years.*

9. The other wife Ling Ammál *alias* Kan Ammál, aged 52, was a very distant cousin of the deceased, and was about 16 years of age when married to him. She has one son, Muttumádava Naick, aged 32 years, who was Plaintiff in the Suit above referred to, and was on very bad terms with his father.

10. The Civil Court, as already observed, has rejected Muttumádava's claim, and though the oral evidence is no doubt questionable, the Board concur in the Civil Judge's view of the conflicting claims of the two branches of the family. Mr. Clarke in paragraphs 15 and 16 of his second letter above recorded, adduces strong reasons in support of the Decree, and not the least of these in the Board's judgment is the late Pálegár's repeated assertions that Virachin Ammál was his chief wife, and his registered will to the same effect. The Deputy Collector, Ram Ráu, who enquired into the subject, also holds this view.

11. Independent, however, of all these circumstances, there is the Decree of a competent Tribunal in favor of the pretensions of the younger wife, Virachin Ammál, and though this decision might be reversed or modified in appeal, it is valid pending that contingency, and is, moreover, supported by all the probabilities of the case.

12. The Board, therefore, recommend that Sivattamuttumáda Naick, the eldest son of Virachin Ammál, be registered and recognised as Proprietor of the Estate.

13. The Páleyam pays a Peshkash of Rupees 1,931-8-9 and is now under attachment for an arrear of Rupees 580-8-9, on liquidation of which possession will be given to the Proprietor.

4,111, From Madura, 12th, in Con. 17th August 1859, No. 153.
3,332, To Government, 24th August 1859.
4,349, From Government, 31st, in Con. 31st August 1859, R. D. No. 1,167.
4,732, From Madura, 19th, in Con. 22nd September 1859, No. 173.
3,910, To Government, 29th September 1859.

14. Ordered, that copy of these Proceedings be submitted to Government, with reference to the correspondence noted in the margin.

(A true Extract.)

(Signed) J. D. SIM, *Secretary.*

No. 13. ORDER THEREON, 1st May 1860, No. 693.

* *24th August* 1859, *No.* 3,332.

1. The Board of Revenue in reporting* the institution of a suit by Muttumádava Naiker against his father the Zamíndár of Pulienkulam, in the District of Madura, appear to have regarded it as merely in the light of an action for possession of the Estate on the ground of the Zamíndár's incapacity, and not as a direct claim for right of succession. They observed (paragraph 7) that "should the right "of succession be in any way involved" they would request that Government might be made a party to the suit.

2. It would appear, however, both from the plaint in O. S. No. 2 of 1857, and the decree of the Civil Judge, that the question of the right to succeed *was* proposed and *tried*. The Civil Judge decided that as Plaintiff had not proved himself to be the son of the "Pattamastri," or principal wife, he was not entitled to be considered heir to the Estate.

Civil Court of Madura.

3. From the present Proceedings of the Board it appears that the Plaintiff, dissatisfied with this decision, appealed to the Court of Sadr Adálat. In the mean time, however, the 1st Defendant in the suit, his father, has died, and the question of succession has now come before Government, who are to decide as to who shall succeed him in the enjoyment of the Estate.

† *No.* 48.

4. The Collector's letter of the 8th March 1860,† gives a detailed account of the circumstances of the Estate, the children of the late Pálegár, and the reasons which have led him to recommend that the younger son by the younger of the two widows should be recognized as heir to the Paliapat. This recommendation has been backed by the Board, and after a careful consideration of the arguments adduced, the Honorable the Governor in Council is pleased to concur, and accordingly directs that the Paliapat of Pulienkulam be delivered (as soon as the arrears at present outstanding against it are settled) to Sivalta Mattumádava Naiker, the eldest son of the late Zamíndár by Virachin Ammál, and that he be recognized as proprietor of the Estate.

5. Referring, however, to paragraph 11 of the Board's Proceedings now under consideration, the Governor in Council observes that the decrees of the Sadr Adálat noted in the margin of paragraph 5 of the Board's letter, dated 24th August 1859, No. 3,332, are clear as to the right of Government to determine the succession to such properties as the present. It will, therefore, be the duty of the Board of Revenue, in case the appeal to the Sadr has not been withdrawn, to inform themselves of the nature of such appeal, and, if necessary, to take measures to secure a recognition of the rights of Government in this respect.

(Signed) C. G. MASTER,
Deputy Secretary to Government.

IN CON. 13TH MARCH 1860, No. 1149.

From T. CLARKE, Esq., Collector of MADURA,

dated Madura, 8th March 1860, No. 48.

I have the honor to submit the Report promised in my letter of the 12th October 1859, No. 196, regarding the Poliaput of Puliangulam.

2. This Poliaput is situated at the extreme south of this District in the Taluq of Terumangalom. Its size is about three miles from east to west and two and a half miles from north to south. It is computed to contain 1,939 souls. Its Revenue is stated to be Rupees 3,515-8-0, and it pays a Peishkist of Rupees 1,931-8-9.

3. The Estate is under attachment for arrears, which accrued in Fasli 1268, to the amount of Rupees 580-8-9.

4. The late Poligar, Shunmukamathava Naick, whose death I reported on the 12th October 1859, No. 196, the only son of Muttumadava Naick, first Zemindar, after our assumption of the country, succeeded to the Estate in the year 1828, and died on the 21st October last.

5. He has left two Widows one named Virachinn Ammal *alias* Periavellai Ammal, and the other Ling Ammal *alias* Kann Ammal.

Sivattamuttumadava Naick	aged	19
Mutt Ammal.....	„	12
Mini Ammal.....	„	8
Krish Ammal.....	„	5
Shunmukamadava Naick..	„	4
Ling Ammal.....	„	1

6. The first, aged forty, has two sons and four daughters, whose names and ages are noted, in the margin.

7. The second, aged fifty-two, has one son named Muttamadava Naick. This son is married to one Ling Ammal by whom he has no issue, but he has a son, Muttasami, aged four years old by a woman named Kumar Ammal. None of the children by Virachinn Ammal *alias* Periavellai Ammal are married.

8. The late Poligar was of the Kambala Totia caste and married both his wives on the same day. Virachinn Ammal *alias* Periavellai Ammal, his niece (being his sister's daughter), is said at that time to have been a child in arms about two and a half years of age, and Ling Ammal *alias* Kann Ammal, a very distant Cousin, being his great great Uncle's daughter, said to have been about sixteen years of age.

9. The law of succession among this caste of people, it will be seen, from the three enclosed replies to enquiries put to the several Poligars in this and Tinnevelly Districts of the same caste as the deceased Poligar is, that the sons of the chief wife, though born after the sons of other wives, succeed to the Estate in preference to all their brethren, the sons of other wives.

10. It will be in the recollection of the Board that Puliangulam is one of the Poliams in this District, to which no permanent Sunned was issued; and that, therefore, according to the law laid down in the Decrees of the Sudr Adalat noted marginally, the right of determining the succession to the Estate is vested exclusively in the Ruling Power. I have, therefore, felt it my duty to place before the Government all the available evidence, in order that they may, if practicable, arrive at a conclusion in the case.

13 of 1813
11 of 1816
14 of 1817

11. There has been much oral evidence taken. I do not think that by adding to it we should in any way elicit or elucidate the true facts of the case. I quite concur with the Civil Judge and Deputy Collector that it deserves no consideration.

12. In this instance there has been a long-standing dispute as to which of the wives is entitled to the rank of Chief Wife, or Pattamastri.

13. No reliance can be placed in the recorded oral evidence. The testimony of one set of witnesses being in direct contradiction to that of another on the same point, as may be seen from the translation of the two Depositions enclosed, A and B.

14. The first-born son rests his claim on a Deed alleged to have been passed to his Mother at her marriage and the testimony of witnesses cited by him during the several enquiries held into the claim set forth by him. It appears to me the Civil Judge in his Decree has satisfactorily and completely disposed of the Agreement. It is a most suspicious Document written by a dismissed Karnam, who was the instigator and prime mover in the feud that existed between the father and the son. It is engrossed in an Olai not purchased by the Zemindar and at the nearest Cutchery, but by a woman named Soob Ammal in the Cutcherry at Madakulam, thirty miles off.

15. But, if the allegations set forth in the second paragraph of the Petition presented to the Collector of Madura on the 8th November 1852 and forwarded in translation with my letter of the

6th October 1853, No. 168, have any foundation in truth that the Marriage of the second wife was diametrically opposed to all the principles of the Sastra and propriety, and could not be entered into, except by the violation of all Rules of Law and Caste Custom, then where was the necessity for this Document. The marriage of the elder woman was in accordance with rule; that of the second, contrary to it. The elder at once was addmitted to all the rights and privileges of a wife; it was natural to suppose she would be the first blessed with a son; then, what circumstances suggested to this wife, though first in age, and, as is now asserted, the first in rank, the desirableness of requiring from her husband, contrary to any known precedent, an agreement. It rather appears to me that the very weakness and known inadmissibility of her claim suggested the preparation of a deed so clumsily got up. Against this Document, we have the repeated assertions of the late Poligar and his Registered Will that the younger woman was his chief wife together with the probabilities of the case.

16. I am free to admit that the assertions of the deceased are open to the objection that they were actuated by ill-will and originated in malice; but when did this ill-will arise? At the birth of a son of the younger wife when the long-cherished hopes of the elder brother of succeeding to the Estate were dashed to the ground. Up to this period all had been harmony and good will. Again the younger wife was the daughter of the deceased Poligar's sister, while the other wife was a mere distant relative, a distant cousin. It is likely affection should prompt the deceased to intend the post of honor for his sister's daughter rather than for a mere distant connection, and this probability is heightened by the fact that his sister's daughter at the time of the marriage was only two and a half years old. Why marry her at that age, on the same date he married the older woman, except it were to secure to her the right of Chief Wife. He felt bound by the rules of his Caste to marry this young child in order to secure her the position he designed for her, when he entered upon a mere natural marriage. He married her also on the same date in order that he might first place on her the Marriage Emblem, and thus proclaim to all present that she was intended for his Chief Wife. Unless this was his motive, the marriage of this child would naturally have been postponed till she was more fit for marriage and its duties.

17. On a consideration of all these circumstances, I am induced to concur in the views expressed by the Civil Judge and the Deputy Collector in the Decree and letter herewith forwarded. I am aware there are difficulties about the case, and the evidence is neither so complete nor satisfactory as could be desired; but I do not see any probability of obtaining any better on either side, and I am inclined to give weight to the assertion of the late Poligar and to believe his testimony, which has not been shewn by any reliable testimony to be untrue.

18. Should the Board concur with me in opinion, I beg leave to recommend that I be permitted to deliver to Sevattamuttu Madava Naick the Estate of Puliencolum and to place him in possession of it as soon as the arrears at present outstanding against it are settled.

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Enc. 1.

Abstract.—Translate of a Deposition taken from Sutte Kodangi Naiken *alias* Bomme Naiken.

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Enc. 2.

Abstract.—Translate of a Deposition taken from Kodangi Selle Bomi Naiken.

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Enc. 3.

Abstract.—Translate of questions to, and answer from the Rani of Pavali Zemindar.

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Enc. 4.

Abstract.—Translate of a Yadast from Vadavasal Ramalinga Naiker, Zemindar of Muliputti.

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Enc. 5.

Abstract.—Translate of a Deposition taken from Oottuppa Naiker, Zemindar of Oottuppa Naiknoor.

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Enc. 6.

Abstract.—Copy of a letter from the Deputy Collector 4th class, dated 18th January 1860.

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Enc. 7.

Abstract.—Genealogical Table of the Palianakolam, Zemindar's family.

Exd. J. Wright.

Rev. Dept.

3

In Con. 17th October 1859, No. 5146.

From T. CLARKE, Esq., Collector of MADURA,
dated Madura, 12th October 1859, No. 196.

Civil Court of Madura, O. S. No. 2 of 1857.
Plaintiff Mootoomadava Naiker, son of Shunmoogamadava Naiker, by his first and lawful wife, residing at Pooliencolum in the zemindary of Pooliencolum in the Tiroomungalum talook.

versus.

1. Shunmoogamadava Naiker of Pooliencolum (zemindary.)
2. Veerasinnoo Ammal, alias Perceuvally Ammal, younger wife of the 1st defendant.
3. Owloo Chinnama Naiker, father of the 2nddefendant.
4. His son Mootoomadavanay Naiker.
5. Vallymoottoo Nadan of Shippeepaurany in the talook of Sungerniner Covil in Tinnevelly district.

With reference to your letter of the 20th ultimo, No. 3910, I have the honor to report that the Government vakeel has just informed me that an appeal has been preferred by the plaintiff in the suit No. 2 of 1857 against the decree of the Civil Judge.

2. This appeal will now, I suppose, abate, as I have received an urzee, dated the 9th instant from the 2nd defendent in the suit, reporting the death of her husband the 1st defendant, on the 2nd instant.

3. I have issued orders to the Deputy Collector in charge of the Tiroomungalum talook to enquire into and report on the respective claims of the two sons. I will take an early opportunity of submitting the result of the enquiry, with my own opinion on the matter.

Exd. J. Tulloch.

No. 693.

Proceedings of the Madras Government
Under date the 1st May 1860.

Read the following Proceedings of the Board of Revenue.

Submitting letters from the Collector of Madura and recommending that Sivattamuttumoda Ivaick the eldest son of Veerachin Ammáh be registered and recognized as proprietor of the Pulliem-calum Estate in that District.

(Here enter 3rd April 1860 No. 1663)

+ 24th August 1859 No. 3332.

1. The Board of Revenue in reporting the institution of a suit by Mutamanadavar Vaiker against his father the Zamindar of Polliencolam, in the District of Madura, appear to have regarded it as merely in the light of an action for possession of the estate on the ground of the Zamindar's incapacity - and not as a direct claim for right of succession. They observed (para 7) that "should "the right of succession be in "any way involved" they would request

Pulicontalam
Sivattamúdaia

request that Government might be made a party to the suit.

3. It would appear however both from the plaint, in O.S. No. 2 of 1857, and the decree of the Civil Judge, that the question of the right to succeed was proposed and tried. The Civil Judge decided that as Plaintiff had not proved himself to be the son of the "Pattamastri", or principal wife, he was not entitled to be considered heir to the estate.

4. From the present Proceedings of the Board it appears that the Plaintiff, dissatisfied with this decision appealed to the Court of Sadr Adálat. In the meantime however, the 1st Defendant in the suit, his father, has died - and the question of succession has now come before

Civil Court of Madura.

No. 48

Pálegár

before Government who are to decide as to who shall succeed him in the enjoyment of the estate.

4. The Collectors letter of the 8th March 1860 gives a detailed account of the circumstances of the estate, the children of the late Poligar, and the reasons which have led him to recommend that the younger son by the younger of the two widows should be recognized as heir to the Poliapat. This recommendation has been backed by the Board, and after a careful consideration of the arguments adduced the Honorable the Governor in Council is pleased to concur, and accordingly directs that the Poliapat of Pulikutchalam be delivered as soon as the arrears at present outstanding against it are settled to

Siratta Muttumádawa
to ~~Sivanatten Padawa~~ has
the eldest son of the late
Zamindar by Virachun
Ammál, and that he be
recognized as Proprietor of
the Estate.

5. Referring however to
para 11 of the Board's Pro-
ceedings now under con-
sideration, the Governor in
Council observes that the
~~-ed, without wishing for a mo-~~
~~-ment to doubt the propriety~~
~~of the Civil Judge's argu-~~
~~-ments as contained in his~~
~~decree, and which agree~~
~~with the opinions express-~~
~~-ed by the Board and Col-~~
~~-lector, has strong doubts~~
~~about the necessity for~~
~~having gone into those~~
~~arguments at all.~~ The
decrees of the Sadr Ádálat
noted in the margin of
para 5 of the Board's let-
-ter dated 24th August 1859

No 4

No. 3332, a
right of Govern
-termine the success
such Properties as the
present.

It will therefore be
the duty of the Board of Re-
-venue, in case the appeal
to the Sadr has not been
withdrawn, to inform
themselves of the nature
of such appeal and if
necessary to take mea-
-sures to secure a recog-
-nition of the rights of
Government in thisrespect.

11 Copies to the Board of Rev: Dispd 2d
with 7 Encls

Revenue 1860 Departt.
Pro: of Govt. 10th May

No. 693.

Pro: of the Madras Govt.
Dy 1st May 1860.

Ens of the Bd of Revs Dy 14th July 60
C No 1426 in Pro 16th " " No 1175

Ordering that Sivalla
Mutturmadawa Nailer, the
Eldest Son of the deceased
Zemindar of Pudiem Arlam
in Madura be put in pos:
-session of the Paliapat and
recognized as proprietor of
the Estate.

No 12 & 13.