

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 22 64

Press
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416-419

Dated 20-9-1865.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
20th September 1865.*

No. 416. Read the following papers:—

Proceedings of the Board of Revenue, dated 5th September 1865, No. 5,473.

Read again letter from the Collector of Salem, recorded in Board's Proceedings, dated 23rd June 1865, No. 3,509.

Read also the following letter from the Honorable D. ARBUTHNOTT, Esq., Collector of Salem, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated 19th August 1865, No. 103:—

SIR,

1. With reference to my letter under date 16th June last, No. 81, I have now the honor to forward a genealogical tree of the Shoolagiri Poliapat family.

2. The claimants of the Poliapat are Savithiri Ammani (N) widow of the deceased Poligar.

Dalavoyveraigounden (O) grandson (*i. e.*, daughter's son) of the original grantee.

Chokiagounden (W) and Nirinjanagounden (X) grandsons of original grantee (*i. e.*, sons of his sons by third wife.)

3. Savithiri Ammani (N) has, through her Vakeel, presented certain documents, noted marginally, to prove that the family is divided, and that therefore she is entitled to succeed her husband Ramanada Chokiagounden (M) the last holder of the Poliapat.

Translation of Decree in Suit No. 125 of 1863, on the file of the Moonsiff's Court at Usur.

Do. of Deposition given by Chokiagounden before the District Moonsiff of Usur, dated 2nd December 1863.

Do. do. given by Verammal before Commissioner Venketsami Pillai, dated 28th November.

Do. do. given by Nunjammani before do. do.

Do. of a petition addressed to Sub-Collector by Nirinjanagounden, dated 6th June 1865.

4. The other applicants have merely presented petitions setting forth their claims.

5. Sub-Collector, Mr. Thomas, upholds the claims of Savithiri Ammani (N) as the real heir according to Hindu Law, and although his reasoning in paragraphs 12 and 13 is somewhat obscure, I think that as the family appears to be a divided one her claim is good, and next to her's is that of Chokiagounden (W.)

6. Savithiri Ammani (N), the Board will observe, is only eight years of age, and her father might be appointed her guardian, (if Government are pleased to appoint her to the Poliapat,) as suggested by Mr. Thomas; but in consideration of the heavy amount of debt under which the Poliapat now lies, viz., 30,000 Rupees, I would recommend that the management be undertaken by the Court of Wards under Regulation V. of 1804, till the widow attains her majority.

7. A suitable allowance for the maintenance of the widow should be made from the proceeds of the Poliapat to her father Moodachika Royel as her guardian.

8. The history of the Poliapat is given in paragraph 1 of the Board's Proceedings, dated 20th February 1861, No. 955.

9. No permanent Sannud has ever been issued for this Poliapat.

10. The annual revenue of the Poliapat is computed at Rupees 14,274. The Peshcush amounts to Rupees 5,628-2-6, and the number of villages comprised in the estate is sixty-nine. Of these, nine villages are enjoyed by different members of the family for maintenance.

ENCLOSURE No. 1.

From H. S. THOMAS, Esq., Sub-Collector of Salem, to the Honorable D. ARBUTHNOTT, Collector of Salem, dated Oosoor, 12th July 1865.

1. I have the honor to acknowledge the receipt of your letters, Nos. 341 and 403, dated 16th and 30th June 1865, respectively, together with the enclosure Chokiagounden's petition, and as therein directed to submit the information required.

2. At the time of the assumption of the country by the British, the Poliaput of Shoolagiri was in the enjoyment of Hiraniagavudu.
3. A genealogical tree tracing descent from him, marked A, is enclosed. Those who have succeeded to the Poliaput are coloured pink, and the late deceased Poligar is marked M.
4. I cannot procure the original Sunnud, it having been filed in the Civil Court of Salem in Appeal Suit No. 152 of 1864, from whence you can doubtless obtain an authorized copy. I enclose an unattested copy produced by the parties.
5. It is not a Sunnud Milkeut Istimrar, or deed of permanent property, but simply an order from Mr. Collector Graeme (dated Fusly 1209,) 12th December 1840 and marked I, and the next order (marked II) from Mr. Collector Cockburn sets forth that it is by the pleasure of the Governor that the succession is permitted to his son.
6. Being an "unsettled" Polliem, the right of disposing thereof rests with the Governor in Council, and it is not hereditary.
7. Though in the former of your letters under reply it is stated that the estate is "indivisible," practically it has been divided for the last forty years: villages having been allotted for the maintenance of the brothers, and succeeded to without re-allotment by their sons who have lived separately. One of the present claimants Chokiagounden has so succeeded.
8. Chokiagounden submits his claim as a co-parcener; but in my view he is not properly a co-parcener, not being entitled to any particular share of the estate, but only to such maintenance as the Poligar for the time being might think fit to accord him, which, had the late Poligar and his father selected, might have been in the shape of actual food and clothing in his own house, instead of the allotment of the rent of villages and a separate domicile. Moreover, if Chokiagounden were a co-parcener, all the other heirs of sons and daughters would also be co-parceners. In support of this view, I beg to refer you to Clause 5, paragraph 18 of the Proceedings of the Board of Revenue, 14th January 1863, No. 210.
9. If it be concluded that Chokiagounden is not a co-parcener, then by Sections 315 and 316, pages 76 and 77 of the first edition of Strange's Manual of Hindu Law, it would appear that tracing from the late Poligar, Ramanatha Chokiagounden, he having no sons or grandsons, his widow has the best claim to be nominated to the succession.
10. This widow, Savithri Ammani, on account of whose marriage it was that the main part of the debt in which the estate is involved was contracted, is only eight years old. Her father Mutha Chokkaraiya, younger brother of Poligar of Pangalur offers and appears competent to manage the estate in the interests of his daughter.
11. But Chokiagounden also lays claim to the succession, on the ground that he "is the only lineal male descendant of the elder branch of the undivided family of the original grantee." This is incorrect; he belongs to the younger branch of the family, being a grand-son by the third wife; neither is he the only grand-son. There is a grandson Dalavoy Veraigavundan in the elder branch of the family by a daughter of the first wife. This name Chokiagounden omits to mention while re-counting in paragraph 9 of his petition the names of those alive.
12. Chokiagounden lays great stress on his being a male heir, and paragraph 2 of your first letter alludes to "succession in the estate having been uninterruptedly enjoyed by the male members of the elder branch of the family." But I do not see any ground for concluding that had there been no males in the elder branch of the family, i. e., by first wife, the females of that branch would have been set aside in favor of the males of the younger branch, i. e., by third wife. On the contrary the son of the first wife, though himself younger, has been selected in preference to the son of the third wife, though at the time an older man. This is admitted by Chokiagounden in the 3rd paragraph of his petition, and militates against his claim on account of age.
13. If, as you seem to indicate, the males of the elder branch, i. e., descendants of the first wife, are to have preference to the males of the younger branch, then Dalavoy Veraigavundan is a grandson of the first wife through a daughter.
14. But there is nothing to shew that in this estate, females have been excluded, as Chokiagounden argues; though, I believe, it was argued in the Madura District that in all Poliaputs the Salique law obtains, on the ground of the bearing of arms and leading a contingent being the condition of tenure of a Poliaput, and this may be what he means to express. But the fact, that a female has twice acted as manager of this estate argues that females are not excluded, and that consequently the widow of the deceased Ramanatha Chokiagounden has the best claim for consideration, her father being appointed guardian.

15. I am unable to notice all the authorities quoted by Chokiagounden, as I have not the Works he refers to.

16. I enclose a list of the papers submitted to you.

(True Copy.)

(Signed) D. ARBUTHNOTT, Collector.

ENCLOSURE No. 2.

ABSTRACT.—Genealogical tree of the Shoolagiri Poliaput.

ENCLOSURE No. 3.

ABSTRACT.—Copy of Memorandum shewing the number of villages assigned for the maintenance of the members of the Poligar's family.

ENCLOSURE No. 4.

ABSTRACT.—Copy of Statement shewing the revenues and other particulars connected with the Shoolagiri Poliaput.

ENCLOSURE No. 5.

ABSTRACT.—Petition of Chokiagounden, dated 27th June 1865.

ENCLOSURE No. 6.

ABSTRACT.—Do. do. 31st July 1865.

ENCLOSURE No. 7.

ABSTRACT.—Do. do. 11th August 1865.

ENCLOSURE No. 8.

ABSTRACT.—Translation of Decree in Suit No. 125 of 1863 on the file of the Moonsiff's Court at Usoor.

ENCLOSURE No. 9.

ABSTRACT.—Do. of deposition given by Chokiagounden before the District Moonsiff of Usoor.

ENCLOSURE No. 10.

ABSTRACT.—Do. do. given by Virammal before Commissioner Venkatsami Pillai, dated 28th November.

ENCLOSURE No. 11.

ABSTRACT.—Do. do. given by Nunjammani before do. do.

ENCLOSURE No. 12.

ABSTRACT.—Translation of a petition addressed to Sub-Collector by Nerimana Gounden, dated 6th June 1865.

1. Resolved that the foregoing letters be submitted for the consideration and orders of Government.

2. Under the circumstances detailed in them, the Board are of opinion that the widow of the late Poligar should be recognized as his heir, and that the estate should be taken under the charge of the Court of Wards on her behalf.

No. 417. Petition from CHOKIA GOWD, son of SADANAPULLY GOWD, and paternal grandson of HIRANIYA GOWD, original grantee of the Polliem of Shoolagiri, Talook of Oosoor, Salem, to W. HUDLESTON, Esq., Acting Secretary to Government, Revenue Department, Fort Saint George, dated 5th September 1865.

HONORED SIR,

1. In submitting the enclosed printed detailed petition as regards my claim to succeed to the Polliem of Shoolagiri, permit me most humbly and respectfully to state that great injustice is being done to me.

2. From a perusal of the said petition, your honor will be convinced that I have fully proved the following points:—

- I. That the Polliem is *indivisible*.
- II. That the family is *undivided*.
- III. That I am the paternal grandson of the original grantee, Hiraniya Gowd.
- IV. That I am the next heir to the last incumbent, Ramnad Chokia Gowd, being his uncle.
- V. That according to Hindu Law Savithiri Ammani, the widow of Ramnad Chokia Gowd, is entitled to maintenance only.

3. These several points are distinctly and indisputably established in my petition, and in all fairness and justice, according to law and usage, my right and title to succeed to the Polliem is unquestionable.

4. The Sub-Collector and Collector, however, without taking the slightest consideration, or enquiry of my just and rightful claims, forwarded a report to the Board of Revenue, misrepresenting the true facts of the case, and the Board with as little deliberation have, I am given to learn, submitted their Proceedings, upsetting my claims, for the orders of Government.

5. I therefore most humbly solicit your honor to take my enclosed printed petition into mature and deliberate consideration, in connection with the report of the local authorities, and the Proceedings of the Board of Revenue, and be graciously pleased to bring my claim to the favorable notice of His Excellency in Council.

No. 418. Petition from CHOKIA GOWD, son of SADANAPULLY GOWD, and paternal grandson of HIRANIYA GOWD, original grantee of the Shoolagiri Polliem, Talook of Oosoor, Salem, to W. HUDLESTON, Esq., Acting Secretary to Government, Revenue Department, Fort Saint George, dated 7th September 1865.

HONORED SIR,

1. In bringing my unfortunate case to your kind consideration, I have to state that, though I have fully proved and established my right and claim to the succession of the Shoolagiri Polliem, the Board of Revenue, without taking them into consideration, have, I am given to understand, on the misrepresentations of the Collector, recommended the registering of the name of the widow of the last incumbent to the Polliem, whilst she is entitled to nothing more than mere maintenance; the Board in their recommendation have done me great injustice.

2. In my printed petition submitted on the 5th instant, I have fully proved:

- I. That the Polliem is *indivisible*.
- II. That the family is *undivided*.
- III. That I am the paternal grandson of the original grantee.
- IV. That I am the next heir to the last incumbent, and that according

to Hindu Law, the widow is entitled to maintenance only.

3. Although I have thus fully and clearly established my claim—a claim admitted by the authorities also—the Board of Revenue, without giving it their consideration, have done me great injustice in recommending the widow's name to be registered.

4. Under such circumstances, I respectfully beg your honor will be pleased to peruse my said printed petition; and, after comparing it with the Board's Proceedings, which, I am given to understand, are now before Government, lay my case, with your kind recommendation, before His Excellency the Governor in Council for his favorable consideration; and procure an order, setting aside the groundless and unjust recommendation of the Board, and registering my name as the sole heir to the Polliem.

No. 419. ORDER THEREON, 20th September 1865, No. 2,264.

Land Revenue.

1. The Sub-Collector, Collector, and Board recommend that the minor widow of the deceased Poligar be recognized as his successor on the assumption, apparently, that the succession is to follow the Hindoo Law of inheritance, and that the family is a divided one, and the estate, the "self-acquired property of the late Poligar by virtue of his permitted succession to it."

2. This line of argument is, in the opinion of Government, altogether inconsistent with the fact that the estate being an *unsettled* Polliem, the succession to it depends on the will of the Government, and is *not* hereditary.

3. Moreover, the evidence as to the family being divided, appears to the Government to be insufficient to establish the fact,—the assignment of particular villages for the maintenance of younger branches of the family, as is stated in this instance, being a very usual arrangement in such cases, without any such division of family interests, as is implied by the term in Hindoo Law; but be this as it may, the Government cannot admit that any family arrangements can bar the State right to select the successor to the Polliem; and thus by a private agreement, without the knowledge of Government, nullify what the Courts have repeatedly established by Decree as its rights.

4. Hiraniya Gowd, who was Poligar when the District became British territory, left issue by his first and third wife, but there are now no living descendants in the male line by the first wife. The son of the first wife's daughter cannot claim to exclude direct descendants in the male line.

5. Chokia Gowd is apparently the eldest son of Hiraniya Gowd's eldest son by his third wife, and as such appears to Government to have unquestionably the best claim to be recognized as successor to the Polliem, he being the eldest representative of the family in the direct male line.

6. They resolve, therefore, to direct that he be recognized as Poligar of Shoolagiri in succession to the deceased, and that the Collector make over to him possession of the Polliem with its appurtenances and mesne profits.

7. It will be his duty to make proper provision for the maintenance of the widow of the deceased.

(True Extract.)

(Signed) W. HUDLESTON,
Acting Secretary to Government.

To the Board of Revenue.
,, the Accountant General.

Exd. T. O'Connor.

No. 3,509.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 23rd June 1865.

Read the following letter from the Honorable D. ARBUTHNOTT, Collector of Salem, to R. A. DALYELL, Esq., Acting Secretary to the Board of Revenue, dated 16th June 1865, No. 81:—

1. I have the honor to report, for the information of the Board, the death of Ramanada Chockaya Goudah, the Poligar of the Shoolagherry Poliput in the Usur Taluk, on the 31st May 1865.

2. The deceased succeeded to the estate on the death of his father in 1851, and having then been a minor, the estate was placed under the management of his grand-mother Nunjai Amani—vide Board's Proceedings, dated the 31st July 1851. The Minor having since attained his majority, was placed in charge of his estate on the 1st September last, in conformity with the Board's Proceedings, dated the 29th July 1864, No. 4,817.

3. The deceased has left a widow only nine years old. Her father, Moodoochicka Royal who is the younger brother of the Poligar of Poonganoor in North Arcot, urges the widow's claims to succession, and desires to be made manager on the widow's behalf during her minority. Chocka Gouda, who is the cousin of the late Poligar's father, has also preferred his claims to succession. I have called upon the Sub-Collector to ascertain and report the names of the several members of the family, and the interest they possess in the property. On the receipt of Mr. Thomas's reply, I will submit a full report on the subject.

4. Immediately on the death of the young Poligar, Mr. Thomas proceeded to Shoolagherry and took charge of the seals of the deceased Poligar, and as there was some rivalry about the succession, and some danger of moveable property being removed, took lists thereof, and left all the more valuable moveable personal property under his seal and their key. Pending the decision as to the succession, the rival claimants have selected one member from each faction for the temporary management of the Poliput. This arrangement being unobjectionable, Mr. Thomas has allowed it.

The Board await the Collector's further report.

(A true Copy and Extract.)

(Signed) R. A. DALYELL,
Acting Secretary.

To the Honorable D. Arbuthnott, Collector of Salem.

Rd. J. Wright

Awaiting the Collector's report in regard to the person to succeed the late Ramnada Chokkaya, Polliar of the Sholagiri Polliem in Usur Taluk.

No. 8,509.

Received

Despatched

Dated 23rd June 1865.

PROCEEDINGS OF THE BOARD OF REVENUE

No.

Rev: 2516/65

1865.

Department.

Enclosed herewith are 38 copies of the Report of the Collector of the Sholagiri Polliem, dated 23rd June 1865, and 38 copies of the Report of the Collector of the Sholagiri Polliem, dated 23rd June 1865.

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2578/65
one enclosure

To

The Honorable the President and Members
of the Board of Revenue.

THE HUMBLE PETITION OF CHOKIA GOWD, SON
OF SADANAPULLY GOWD, AND PATERNAL
GRANDSON OF HIRANIYA GOWD, ORIGINAL
GRANTEE OF THE SHOOLAGHIRRI POLLIEM;
TALUQ OF OOSSOOR; SALEM.

RESPECTFULLY SHEWETH,

That Petitioner most humbly and respectfully solicits your Honorable Board's kind consideration of the following facts relative to his claim to succeed to the Polliem of Shoolaghirri.

2. That previous to stating the grounds on which he founds his claim, he would beg to premise that the Polliem is an *indivisible and hereditary one*, and that the Shoolaghirri family has always been, and still is an undivided one.

I. That the Polliem is indivisible is self-evident from the fact that it is an "unsettled" one, and that consequently it must continue to remain in its entirety, so long as it is held under its present tenure. In Strange's Manual, para 276, 1st Edition, is given that "regalities and Ancient Zemindaries vesting in the eldest son are not divisible." Again, in para 274, clauses 2 & 4, it is thus stated "the following descriptions of property besides self-acquired property are not subject to partition." (Clause 2) "Regalities and ancient Zemindaries which have vested in the eldest son." (Clause 4) "Zemindaries held under grant from the Government and renewed to the eldest son." Further, though according to Hindu Law and usage, the property of a deceased party is divisible among co-parceners, yet there is one exception which is thus stated by Sir T. Strange in his Elements of Hindu Law, "upon the same principle of usage, stands, with respect to many of the great Zemindaries of Bengal, and other parts of India, at this day, the exclusive succession of the eldest son." This principle is upheld by the late Select Decrees, No. 11 of 1816, page 141, wherein it is decided "that his [Appellant's] demand, therefore, for a fourth of the "Zemindaree" was rejected." This was pronounced in regard to a neighbouring Polliem which formerly formed a part of that of Shoolaghirri, viz. that of Unkusaghirri. One of the sons of the Grantee asked for a division of the Polliem, when the Court pronounced that it was indivisible. Moreover, it is to be remembered that all the Zemindaries in Southern India were originally Polliems, and held as Military fiefs, and it was only by granting them Milkiyat Istimirar Sunnuds that the Polliems were converted into Zemindaries. But however they may be designated, and whether they are "settled" or "unsettled," they are one and all indivisible consisting of permanent property, descending lineally.

II. That the Estate is hereditary, there can be no question, and it is simply sufficient to quote here a portion of para 24 of the Boards Proceedings of the 14th January 1863, in which it is stated, "that in some instances although Sunnuds have not been issued, the Government have pledged themselves to accept the present rate of Peshcush in perpetuity." The Polliem of Shoolaghirri being an ancient one, and having been given in perpetuity, and so enjoyed from generation to generation, it must of necessity be hereditary.

III. The Estate being both indivisible and hereditary, it follows that the family of the

original Grantee is an undivided one, and that therefore Petitioner is a co-parcener. In Morley's Digest page 305, para 3, it is thus laid down: "Sons by different mothers inherit equally." Hiraniya Gowd, the original Grantee, had at the time of his death, three sons, by as many different wives. The three sons were respectively named Chokia Gowd, Sadanapully Gowd and Kariappa Gowd. As is the law and practice throughout Southern India, the Polliem was registered in the name of Chokia Gowd, not because he had an exclusive right to the Polliem, but from the adventitious circumstance of his being the son of the 1st wife, though not indeed the eldest son. Thus in Morley's Digest, page 305, para I it is thus laid down: "Sons share equally in the landed estate of their deceased father, the eldest has no claim to a greater portion than the rest on the ground of primogeniture," and in para 314 of Strange's Manual, it is given that

"the claim of primogeniture does not now exist, saving that 'regalities and certain ancient Zemindaries vest in the eldest Son.' Again, the reason of an estate being entrusted to a single individual is thus forcibly stated by Sir T. Strange, in his Elements of Hindu Law; Chap. viii, para. i, page 176: 'The inheritance having descended in co-parcenary, the characteristic

"of this state, while it continues is, with reference to the property and management of it, a community of interest; though in order to avoid confusion, reason" and law alike suggest the propriety of adopting some one to conduct the family, concerns. The Polliem therefore having been in strict accordance with reason and law registered in the name of Chokia Gowd, it became his bounden duty to provide for the due maintenance of his two brothers, which he did by allotting them each a village. But surely, this apportioning of two villages cannot by any possibility be construed into a division of the family; nor can the circumstance of the two brothers living in separate domiciles in any way affect their co-parcenaryship. As is the universal practice among respectable and wealthy families, such as those of Zemindars, Poligars and others of their standing, the two brothers of Chokia Gowd, preferred living separately with their families for the sake of greater comfort, convenience and harmony, and for the same reasons, Chokia Gowd himself chose to grant them 2 villages for their support. But surely, this natural and just act of Chokia Gowd cannot be understood to have been an act of division. If the family had become a "divided" one, then there should have been a written Instrument of division exchanged between them. "In order to prevent disputation and to protect the interest of the respective shares there should be written instruments of division interchanged between the parties coming to division." And even if such an instrument been executed, it "should contain specifications of

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"the items forming the share of each member, and be attested by kinsmen, or at the least by neighbours." And again, "the mere execution of deeds of division will not constitute a family a divided one. It is requisite in order to be viewed as divided that the parties should have actually entered upon their respective shares." The fact then of the Polliem not having been enjoyed by all three brothers equally and separately in shares of one-third each, is conclusive proof that no division ever took place.

3. Having thus shown that the Polliem is an indivisible and hereditary one, and that the family of the original Grantee has always continued to be "undivided," Petitioner begs to submit the grounds of his claim to the succession, consequent on the demise of the late incumbent.

1st. He rests his claim from his being the paternal grandson of the original Grantee.

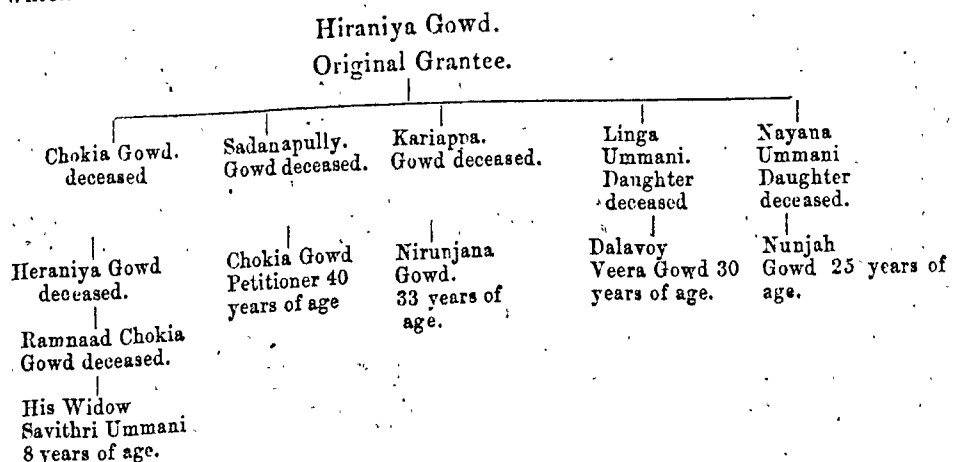
2nd. He is the nearest male heir to Ramnaad Chokia Gowd, the last incumbent, being his uncle.

3rd. He is the oldest male representative of the family of the original Grantee.

4th. Savithri Ummani, the widow of Ramnaad Chokia Gowd, is according to Hindu Law entitled to maintenance only, and

5th. That according to Hindu Law he has the prior title to the Polliem to that of the grandsons in the female line.

4. The first two points will be clearly apparent to your Honorable Board from an inspection of the following Genealogical Map, in which the names of the principal parties are alone given and which will on enquiry be found correct.



5. No doubt then can be entertained as to Petitioner being the paternal grandson of Hiraniya Gowd the Original Grantee, as also of his being the uncle of Ramnaad Chokia Gowd, and that therefore he is next in succession to inherit the Polliem. In W. H. Macnaghten's "Precedents of Hindu Law" page 33, the rule of succession is thus given: "The paternal uncle of the whole blood, of the half blood &c." Elberling also, in para 180, clause 13, page 82 gives the same: "The paternal uncles first of the whole blood, then of the half blood." Petitioner then being the undivided paternal uncle of the half blood of the last incumbent has an undoubted right to succeed his deceased nephew who has died without issue.

6. In Strange's Manual para 340, it is thus stated, "the self acquired property of a co-parcener, immoveable and moveable, vests wholly in his male issue as far as his great grandson. Failing male issue, it goes to his undivided brothers and their line."

The Polliem was self acquired by Petitioner's paternal grandfather, Hiraniya Gowd, the original Grantee, on whom it was conferred by the Government of the late Honorable East India Company, and in the same sense, the Polliem has been self acquired by each successive Poligar, on whom the Government were pleased to bestow it. Being self acquired, and the last incumbent having died without any issue whatever, the Polliem should fall to Petitioner the oldest male representative of Sadanapully Gowd. the undivided brother of Chokia Gowd. and grandson of Hiraniya Gowd, the original Grantee.

7. Petitioner, it will be seen, has but one male coheir, Nirunjana Gowd in existence, but that still, Petitioner being the oldest male representative of the family, he is unquestionably the next in succession to the late incumbent. As for the daughter's sons, they can only fall into succession on Petitioner's and his half brother's family becoming extinct. So long as members of the male line are in existence, members of the female branch can have no right or title to the succession.

8. Savithri Ummani, the widow of Ramnaad Chokia Gowd would indeed have the right to succeed were the family a divided one; but since that is not the case, she is according to Hindu law, simply entitled to maintenance. In Sir T. Strange's Elements of Hindu Law Chap. vii. page 142, lines from 8 to 10, it is distinctly stated that if the widow's "husband so dying separated, allowing her, when he dies undivided maintenance only." In Mitachshara, Cp. ii Sect. I. para 19, page 331, it is stated "that if the husband dies either unseparated from his

"coparceners or reunited with them, she has not a right to the succession" and in para 20 that "a mere maintenance for the widow is at the same time ordained." Again, according to Mitachshara, Chap. ii. Sect. I. para 39, it is stated that it is only in the event "of a man dying separated from his coheirs, that his widow takes the Estate of her deceased husband." In W. H. Macnaghten's Precedents of Hindu Law, page 32, lines 5 and 6, it is stated, "But if her hus

"band's Estate was joint and held in co-parcenary, she is only entitled to maintenance." Further still, the late Sudr Court in their Decree, No. 64 of 1856 page 44, last para, say, "the answer of the Pundits that the succession rests not in the widow, but in the undivided cousin is in strict accordance with Hindu Law." It is to be noted that the above Decree refers to the Polliem of Narigunttee, in North Arcot, and is of a similar nature as that of Shoolaghirri being indivisible. To the same effect is the decree of the High Court; in No. 374 of 1863, page 414. "I have always understood that in this Presidency at least the law was clearly that the immoveable property of an undivided member of a Hindu family may go to his surviving coparceners, whether such property was self acquired or ancestral * * * * and that on his death without male issue, such property, if not previously alienated, devolves on his coparceners. But his widow whether childless or not, has no title to any thing but maintenance." See also Select decrees No. 11 of 1827, para. 29 page 544.

9. That Petitioner has a superior right to all other claimants to the succession to the Polliem is clearly established by Law. In Strange's Manual, para 309, the line of succession is thus laid down. "Sons, sons' Sons, grandsons, and then wife, daughters and daughters' sons." The same is given in para 180, clauses from 1 to 6, page 81 of Elberling's Law of inheritance. "The son, son's son and son's grandson. (1 to 3.)" The Widow of the deceased was separated otherwise she is only entitled to maintenance." (4) The daughters, first the maiden daughter, then the married indigent, lastly the married wealthy daughter." (5) The daughter's son." (6) These passages clearly prove that neither the widow Savithri Ummani, nor the daughter nor their sons have any right or title to the Polliem so long as Petitioner's and his half brother's families are not extinct.

10. Petitioner would further point out that the widow Savithri Ummani is precluded from her sex from performing the funeral oblations of her husband, to whom Petitioner is heir, and that therefore she cannot be entitled to inherit the property. Thus Elberling at page 67, para 152, states, "Females cannot on account of their sex, perform the periodical obsequies, and as they do not therefore confer any benefit upon the deceased and his ancestors, they are generally disqualified from inheriting."

11. Besides, what can a marriage between two young children, such as that of the late Minor Poligar, and the present infant widow, 8 years of age only, be but a farce? and is that farce to be carried out by the recognition of a claim like her's? In Elberling Chap. V., page 67 para 152, Clause I, it is thus stated:—"The widow in consideration of the assistance rendered by her to her husband in the performance of his religious duties," when alone she would be entitled to the succession. Savithri Ummani, and her late husband being both children, they could not have performed any religious ceremonies together. Is it from the mere fact that the nuptial string had been knotted by a young boy on the neck of a still younger girl, that Petitioner's claims is to be disputed? They two did not live together,—for the widow, then bride, lived and still lives with her father at Poonganoor, and therefore she is not entitled to any thing but maintenance.

12. Petitioner would therefore most humbly and respectfully submit, whether with reference to all the foregoing grounds, it would be just and legal to supercede him in the succession.

13. The only ground on which his claim is sought to be disputed is the alleged statement of the family being a divided one; but the fact of the Polliem being an indivisible one, and not enjoyed in shares of one-third each respectively, is in itself prima facie evidence that no division ever took place.

14. The simple circumstance of one village having been granted by Chokia Gowd to Petitioner's father, Sadanapully Gowd, for his maintenance is sought to be construed into a division of the family. Your Honorable Board will be pleased to observe that several villages have been bestowed as Inams on perfect Strangers to the family. Is Petitioner to be placed on a level with them? Other villages have been conferred on female members of the family for their maintenance. Are they also to be considered "divided"? The Polliem consists of 69 villages, and one of the 69 was granted to Petitioner's father for his maintenance, and such allotment is sought to be construed into a division!! 68 for one brother, and 1 for another brother!!! What kind of a division can this be? From the misrepresentation of interested parties, the Sub Collector and

Collector recommended the widow Savithri Ummani as the successor to the Polliem, though according to Law and practice she is entitled to maintenance only.

15. Petitioner's opponents have used the most strenuous endeavours to prove the family a "divided one." Especially Soorappa Chetty, the creditor of my half brother Niranjana Gowd, who instituted a suit against him. Whilst under a Decree of the Court said Soorappa Chetty was about selling the village granted for his father's maintenance Nunjah Ummani the late Manager of the Polliem, and widow of Chokia Gowd, the successor of the original Grantee brought an original suit against the said Soorappa Chetty in O. S. No. 125 of 1863 on the ground that the village formed an integral portion of the Polliem, and that from its not being separated from the Polliem it could not be sold for debt, but should revert to the Polliem. During the enquiry said Nunjah Ummani, and Vira Ummani, gave depositions, the truth of which cannot be deduced from what has been forwarded to your Honorable Board by the Collector. For it is to be noted that those Depositions were not taken before the Court, but in a private house, and they were taken down in Tamul, a language which they do not understand, and read over to them in Canarese, a language, they cannot read. Such being the case, it were an easy matter for the Goomastah to put down just such words, as Soorappa Chetty, the creditor of Niranjana Gowd, may have dictated, and there can be little question that the females referred to were grossly imposed upon.

16. But after all, what is to be deduced from the depositions of the two females:—Simply just this; that at the time they were 10 and 11 years of age respectively, certain 2 villages were granted by Chokia Gowd, for the maintenance of his two brothers, that they were not present on the occasion, and that no Deed of Division had been executed.

17. It is for your Honorable Board to adjudge whether the statements of the said females are worthy of acceptance. Even if their evidence were taken down correctly, their depositions do not refer to Petitioner's claim to the succession to the Polliem, but given with reference to a suit instituted by Nunjah Ummani, as above stated.

18. Further still, it is to be observed, that the depositions were not given on solemn affirmation, and that Petitioner, who is seriously affected by their depositions was not cited to appear when their depositions were taken down, nor was he allowed the opportunity to cross question them. In regard to this point, Petitioner would beg to refer to Starkie's Evidence, pages 408 and 409, (Edition of 1853) in which it is stated that "depositions of witnesses although made under the sanction of an oath, are not in general evidence as to the facts which they contain unless the party to be affected by them has cross examined the deponents, or has been legally called upon, and had the opportunity to do so: for otherwise one of the great and ordinary tests of truth would be wanting. Evidence of this kind is weak and is not admissible."

19. That there is some imposition practised on the said females may be clearly ascertained from the fact that Nunjah Ummani, the widow of Chokia Gowd, (who was the successor of the original Grantee,) addressed the Collector, your Honorable Board and Government, requesting the Polliem to be registered in Petitioner's name. Would she have done so, if she did not consider Petitioner as the chief and only claimant to the Polliem? From a perusal of the Principal Sudr Amih's Decree, in No. 95 of 1864, (Appendix I.), on an appeal of Nunjah Ummani, against the Decree of the District Moonsiff of Oosoor, in No. 125 of 1863, your Honorable Board will be clearly convinced that no division of the Shoolaghirri family ever took place, and that the Sub Collector and Collector were both misled as regards the true facts of the case.

20. Niranjana Gowd, in his petition to the Sub Collector claims the succession either on his own behalf or that of Savithri Ummani, the widow of Chokia Gowd; your Honorable Board will perceive that Petitioner's claim is superior to both. If I, the oldest male, head representative of the family, have no right to the succession, what right can Niranjana Gowd have to it? The fact is that Niranjana Gowd, being in needy circumstances was induced to submit his petition, in hope of receiving some consideration from the father of the widow, who is a wealthy man, being the brother of the Poligar of Poonganoor.

21. Petitioner is destitute; so very destitute, as to have the village given for mainten-

ance to be mortgaged which he was compelled to do to liquidate the debts of his late father. From his poverty, petitioner cannot command neither influence nor interest: whereas, the father of Savithri Ummani has many friends and possesses extensive influence. My only trust and confidence is in your Honorable Board, from whom, alone I fully hope to obtain justice.

22. Besides, in conclusion, petitioner would beg to submit, that if the Polliem were registered in the name of the young widow of a surety it will be ruined; and for the simple reason, that she, as well as her father, who is a non-resident of the place will be completely at the mercy of the Polliem servants, who will have no hesitation in plundering the proceeds of the Polliem and oppress the tenants.

23. In recapitulation Petitioner would beg to submit.

- I. That the Polliem is indivisible.
- II. That the Polliem is hereditary.
- III. That the family is an undivided one.
- IV. That Petitioner is the paternal grandson of the original Grantee.
- V. That he is the uncle and legal heir of the last incumbent.

VI. That the documents filed to show that the family is a divided one are not credible and are not at all worthy of notice.

On all these several grounds, Petitioner most humbly and respectfully solicits your Honorable Board to take his rightful claim into just and favorable consideration, and pass an order, directing the Registry of the Polliem in Petitioner's name.

And Petitioner in duty bound,

Shall ever Pray.

21st August 1865.

APPENDIX I.

APPEAL SUIT No. 95 OF 1864.

Original Suit No. 125 of 1863, on the file of the Oosoor District Munsiff.

In the Court of the Principal Sudr Amin, Salem.

PRESENT—C. Lutchmiah Naidu.

Nunja Ummani, Plaintiff. Appellant.

versus

1. Bupalam Surappa Chetty,
2. Niranjana Gownden,
3. Sampanghy Rami Chetty, } Defendants. Respondents.

GROUND OFS OF APPEAL.

1. That the grants of the village which form part of the Poliaput is binding only on her husband who granted them, and not on her, under the terms of the decree of the late Sudr Court in No. 15 of 1862, and that the Poliaput is not, under the Hindoo Law, divisible.

2. That these villages were only granted to the father of the 2nd Defendant by the late Poligar, Plaintiff's husband, for his maintenance, and that the 2nd Defendant has no interest in them after the demise of his father as admitted by him 2nd Defendant.

3. That the decision of the Principal Sudr Amin in Original Suit No. 7 of 1861 in favor of the 1st Defendant will not affect her claim, as she is not a party in it.

Decree.

Judgment below is reversed; and the villages in question adjudged to be released from attachment and made over to the Plaintiff's possession.

(Signed) C. LUTCHMIAH,
Acting Principal Sudr Amin.

Appeal Suit No. 95 of 1864.

Original Suit No. 125 of 1863, on the file of the Oosoor District Munsiff.
In the Court of the Principal Sudr Amin, Salem.

PRESENT—C. Lutchmiah Naidu.

Judgment.

1. This suit was instituted for the recovery of 2 villages Calloogoorigay and Allassapully, attached to the Soolaghirry Poliaput. It was alleged that the villages in question with another village called Thorapully, had been in the year Tharana or 1824 granted by the former Poligar Chockia Gownden to his cousins Kariappa Gownden, father of 2nd Defendant, and Sadanapully Gownden for their maintenance; but they were advertised to be sold in auction on account of Judgment obtained by 1st Defendant against 2nd Defendant, the Plaintiff sought to recover them.

2. The 1st Defendant contended that the former Poligar Chockia Gownden and the 2nd Defendant's father Kariappa Gownden as also Sadanapully Gownden being brothers, were equally entitled to the Soolaghirry Poliaput; that the villages in question had been conferred upon the 2nd Defendant's father, and was by him mortgaged to the 1st Defendant 20 years ago, and that the claim brought forward by Plaintiff was untenable.

3. The 2nd and 3rd Defendants allowed Judgment to go by default.

4. The District Munsiff dismissed the Suit with Costs.

5. It is admitted by the 1st Defendant that the villages aforesaid form part of the Poliaput, but it is contended that they have been alienated by the former Poligar to the 2nd Defendant's father.

6. This alienation does not appear to have been registered in the Office of the Collector, and should be held invalid and inoperative, the conditions specified in Section VIII. Regulation XXV. of 1802 not being fulfilled.

7. According to the provisions of this Regulation, a proprietor of an Estate cannot alienate any portion of it to the detriment of the rights of Government and of the successors to the Estate, and this construction of the Law is supported by the observations of the High Court in their Judgment in Special Appeal No. 114 of 1862.

8. The villages in question as part of the Poliaput are legally descendible to the Poligar's successors and responsible to the State for payment of the Beriz of the Poliaput. Their alienation by the former proprietor cannot therefore be binding upon his successor, neither can they be held accountable for the debts incurred by the 2nd Defendant.

9. The Acting Principal Sudr Amin, therefore, reverses the Judgment below and adjudges the villages in question to be released from attachment and made over to the Plaintiff's possession.

10. The 1st Defendant is to pay all costs original and appeal.

(Signed) C. LUTCHMIAH,

Actg. Principal Sudr Amin.

13th March 1865.

Honored Sir.

I That the Potters is an indivisible one.
 II That the Sholagheru family is an

incumbent, Petitioner being his uncle. ¹⁸⁸¹ That according to Hindu Law, the
widow Sushila Umman is, under the circumstances
stated in the Petition, entitled to maintenance only.

From the father of the young man being a wealthy person, he has influenced the lower subordinates in his favor and their misrepresentations the Sub Collector and Collector were induced to take a false view and to state to the Board that the family is a divided one.

family is a similar one. From a perusal of my petition as
also of the appeal petition of Kanyak Kammam, again ^{the}

Charles
Agnew

John

Admitted to Government service
reference to the Board's Proceedings
dated 5th September 1885. No. 5473. -

that the village granted to his father was only given for his maintenance; that, from the circumstance, it is absurd to say that division was made; that the said Southwell knew, words & her father being influential persons they to induce him of his inheritance, and that the Bill C. 10. & C. 11. were misled as regards the true facts of the case.

Prays that order may be issued for the registry of the Sale in his name.

23 September / 65
Mae 2164

[illegible]

On what considerations the local authorities have come to the conclusion that the family is a divided one, it is difficult to imagine: for nothing is to be deduced from the depositions of Kunjath Umman or Vira Umman or even that of Niranjana Gowd, opposing my claim on the ground of the family being a divided one.

In the enclosures forwarded to the Board, by the collector, one principal document given as Appendix I is my printed petition, viz. that of the decision of the Principal Sudr Amin of Salem, in appeal suit No 95 of 1864, has been omitted. From that decree your honor will perceive that Kunjath Umman, the widow of Chokia Gowd opposed the sale of the villages granted for the maintenance of Kariappa Gowd, the father of 2^d Defendant, Niranjana Gowd, was illegal, since the villages formed an integral portion of the Pollum, which, according to Hindu Law is not devisible and that the second Defendant himself admitted that he had no interest in the village after the demise of his father. The deposition of 2^d Defendant also has not been forwarded. A perusal of Kunjath Umman's deposition together with her grounds of Appeal in No 95 of 1864 will, in itself clearly show that the family is ^{not} a divided one.

If the family were a divided one, would she have stated in her appeal that the alienation was binding only on her husband during his life-time and not on that of his successor. Further the decision of the Principal Sudr Amin is conclusive on the subject. In para. 4 of said decision it is thus correctly given.

Ac

Received 1865
No 251827/1865

"According to the provisions of this regulation 25 of 1802
"a proprietor of an Estate cannot alienate any portion
"of it to the detriment of the rights of Government and
"of the successors to the Estate and this construction of the
"Law is supported by the observations of the High Court
"in their Judgment in Special Appeal No 114 of 1862
This case is still more clearly given in special Appeal
No 15 of 1862 of the High Court. Vide Stokes' Report
of Cases Vol. I page 141.

My claim to the succession being thus clearly established, I humbly solicit your honor to bring the enclosed Decree to the special notice of the Board, in connection with my printed petition with the Collector's Report previous to their passing orders on my case.

I remain

Honored Sir

Your most obedient humble Servt

[Signature]

25 August 1865

[Vertical text in right margin, likely a list of names or titles]

To
His Excellency the Honorable,
The Governor in Council,
Fort St. George, Madras.

THE HUMBLE PETITION OF CHOKIA GOWD, SON
OF SADANAPULLY GOWD, AND PATERNAL
GRANDSON OF HIRANIYA GOWD, ORIGINAL
GRANTEE OF THE SHOOLAGHIRRI POLLIEM;
TALUQ OF OOSSOOR; SALEM.

RESPECTFULLY SHEWETH,

That Petitioner being deeply aggrieved with the conclusion at which the Board of Revenue have arrived, from the misrepresentations of the local authorities, as regards his claim to the Polliem of Shoolaghirri, he begs most humbly and respectfully to solicit the attention of your Excellency in Council to the following considerations, whereby it will be clearly seen that he, and he alone, is the rightful heir to the succession, and that Savithri Ummani, the young widow of the late incumbent, Ramnaad Chokia Gowd, is entitled to maintenance only.

2. That previous to stating the grounds on which he founds his claim, he would beg to premise that the Polliem is an indivisible and hereditary one, and that the Shoolaghirri family has always been, and still is, an undivided one.

I. That the Polliem is indivisible is self-evident from the fact that it is an "unsettled" one, and that consequently it must continue to remain in its entirety, so long as it is held under its present tenure. In Strange's Manual, para 276, 1st Edition, is given that "regalities and Ancient Zemindaries vesting in the eldest son are not divisible." Again in para 274, clauses 2 & 4, it is thus stated "the following descriptions of property besides self-acquired property are not subject to partition." (Clause 2) "Regalities and ancient Zemindaries which have vested in the eldest son." (Clause 4) "Zemindaries held under grant from the Government and renewed to the eldest son." Further, though according to Hindu Law and usage, the property of a deceased party is divisible among co-parceners, yet there is one exception which is thus stated by Sir T. Strange in his Elements of Hindu Law, "upon the same principle of usage, stands, with respect to many of the great Zemindaries of Bengal, and other parts of India, the exclusive succession of the eldest son." This principle is upheld by the late Sudr Udalut in Decree, No. 11 of 1816, page 141, wherein it is decided "that his [Appellant's] demand, therefore, for a fourth of the "Zemindaree" was rejected." This was pronounced in regard to a neighbouring Polliem which formerly formed a part of that of Shoolaghirri, viz, that of Unkusaghirri. One of the sons of the Grantee asked for a division of the Polliem, when the Court pronounced that it was indivisible. Moreover, it is to be remembered that all the Zemindaries in Southern India were originally Polliems, and held as Military fiefs, and it was only by granting them Milkiyat Istimirar Sunnuds that the Polliems were converted into Zemindaries. But however they may be designated, and whether they are "settled" or "unsettled," they are one and all indivisible, consisting of permanent property, descending lineally.

II. That the Estate is hereditary, there can be no question, and it is simply sufficient to quote here a portion of para 24 of the Board's Proceedings of the 14th January 1863, in which it is stated, "that in some instances although Sunnuds have not been issued, the Government have pledged themselves to accept the present rate of Peshcush in perpetuity." The Polliem of Shoolaghirri

Recd 1863
No. of 1863
Chokia Gowd
son of Sadanapully
Gowd, & paternal grand
son of Hiraniya
Gowd, original grant
of the Polliem of Shoolaghirri, Taluq of Oosoor, Salem.

Placed in 3
Recd 26/9/1863

61-

admitting a
petition to this effect
by the late incumbent
for the said claim to be
accepted to the Polliem
of Shoolaghirri, in as
far as it may be said
before the Board of
Revenue, with other
objections connected
with the said case.

W. A. 20/9/11

2/4/17

being an ancient one, and having been given in perpetuity, and so enjoyed from generation to generation, it must of necessity be hereditary.

III. The Estate being both indivisible and hereditary, it follows that the family of the original Grantee is an undivided one, and that therefore Petitioner is a co-parcener. In Morley's Digest, page 305, para 3, it is thus laid down; "Sons by different mothers inherit equally." Hiraniya Gowd, the original Grantee, had at the time of his death, three sons, by as many different wives. The three sons were respectively named Chokia Gowd, Sadanapully Gowd and Kariappa Gowd. As is the law and practice throughout Southern India, the Polliem was registered in the name of Chokia Gowd, not because he had an exclusive right to the Polliem, but from the adventitious circumstance of his being the son of the 1st wife, though not indeed the eldest son. Thus in Morley's Digest, page 305, para I it is thus laid down: "Sons share equally in the

landed estate of their deceased father, the eldest has no claim to a greater portion than the rest on the ground of primogeniture," and in para 314 of Strange's Manual, it is given that "the claim of primogeniture does not now exist, saving that

"regalities and certain ancient Zemindaries vest in the eldest Son." Again, the reason of an estate being entrusted to a single individual is thus forcibly stated by Sir T. Strange, in his Elements of Hindu Law; Chap. viii, para. i, page 176. "The inheritance having descended in co-parcenary, the characteristic of this state, while it continues is, with reference to the property

"and management of it, a community of interest; though in order to avoid confusion, reason and law alike suggest the propriety of adopting some one to conduct the family concerns."

The Polliem therefore having been in strict accordance with reason and law registered in the name of Chokia Gowd, it became his bounden duty to provide for the due maintenance of his two brothers, which he did by allotting them each a village. But surely, this apportioning of two villages cannot by any possibility be construed into a division of the family; nor can the circumstance of the two brothers living in separate domiciles in any way affect their co-parcenaryship. As is the universal practice among respectable and wealthy families, such as those of Zemindars, Poligars and others of their standing, the two brothers of Chokia Gowd, preferred living separately with their families for the sake of greater comfort, convenience and harmony, and for the same reasons, Chokia Gowd himself chose to grant them each a village out of 69 villages of which the Polliem consists for their support. But surely, this natural and just act of Chokia Gowd cannot be understood to have been an act of division. If the family had become a "divided" one, then there should

have been a written Instrument of division exchanged between them. "In order to prevent disputation and to protect the interest of the respective shares there should be written instruments of division interchanged between the parties coming to division." And even if such an instrument been

executed, it "should contain specifications of the items forming the share of each member, and be attested by kinsmen, or at the least by neighbours." And again, "the mere execution of deeds of division will not constitute a family a divided one. It is requisite in order

"to be viewed as divided that the parties should have actually entered upon their respective shares." The fact then of the Polliem not having been enjoyed by all three brothers equally and separately in shares of one-third each, is conclusive proof that no division ever took place.

3. Having thus shown that the Polliem is an indivisible and hereditary one; and that the family of the original Grantee has always continued to be "undivided," Petitioner begs to submit the grounds of his claim to the succession, consequent on the demise of the late incumbent.

1st. He rests his claim from his being the paternal grandson of the original Grantee.

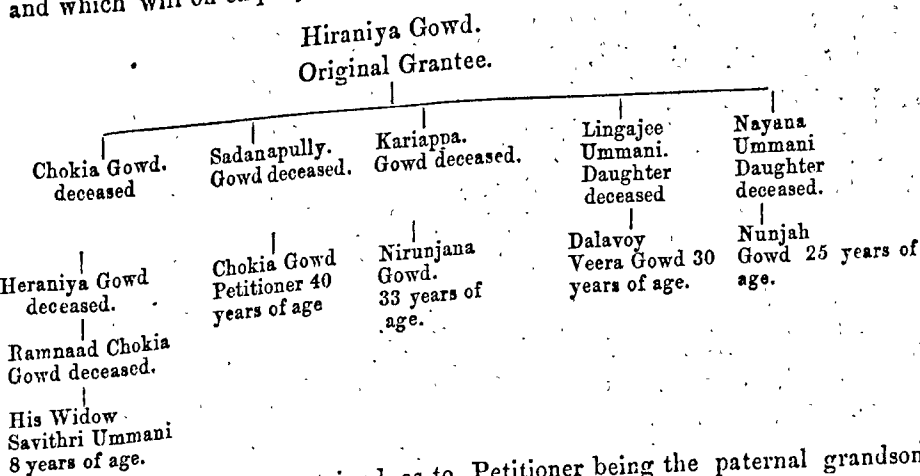
2nd. He is the nearest male heir to Ramnaad Chokia Gowd, the last incumbent, being his uncle.

3rd. He is the oldest male representative of the family of the original Grantee.

4th. Savithri Ummani, the widow of Ramnaad Chokia Gowd, is according to Hindu Law entitled to maintenance only, and

5th. That according to Hindu Law he has the prior title to the Polliem to that of the grandsons in the female line.

4. The first two points will be clearly apparent to your Excellency in Council from an inspection of the following Genealogical Map, in which the names of the principal parties are alone given and which will on enquiry be found correct.



5. No doubt then can be entertained as to Petitioner being the paternal grandson of Hiraniya Gowd the Original Grantee, as also of his being the uncle of Ramnaad Chokia Gowd, and that therefore he is next in succession to inherit the Polliem. In W. H. Macnaghten's "Precedents of Hindu Law" page 33, the rule of succession is thus given: "The paternal

"uncle of the whole blood, of the half blood &c." Elberling also, in para 180, clause 13, page 82 gives the same: "The paternal uncles

"first of the whole blood, then of the half blood." Petitioner then being the undivided paternal uncle of the half blood of the last incumbent has an undoubted right to succeed his deceased nephew who has died without issue.

6. In Strange's Manual para 340, it is thus stated, "the self acquired property of a co-parcener, immoveable and moveable, vests wholly in his male issue as far as his great grandson. Failing male issue, it goes to his undivided brothers and their line."

The Polliem was self acquired by Petitioner's paternal grandfather, Hiraniya Gowd, the original Grantee, on whom it was conferred by the Government of the late Honorable East India Company, and in the same sense, the Polliem has been self acquired by each successive Poligar, on whom the Government were pleased to bestow it. Being self acquired, and the last incumbent having died without any issue whatever, the Polliem should fall to Petitioner the oldest male representative of Sadanapully Gowd, the undivided brother of Chokia Gowd, and grandson of Hiraniya Gowd, the original Grantee.

7. Petitioner, it will be seen, has but one male coheir, Nirunjana Gowd in existence, but that still, Petitioner being the oldest male representative of the family, he is unquestionably the next in succession to the late incumbent. As for the daughters' sons, they can only fall into succession on Petitioner's and his half brother's family becoming extinct. So long as members of the male line are in existence, members of the female branch can have no right or title to the succession.

8. Savithri Ummani, the widow of Ramnaad Chokia Gowd would indeed have the right to succeed were the family a divided one; but since that is not the case, she is according to Hindu law, simply entitled to maintenance. In Sir T. Strange's Elements of Hindu Law, Chap. vii, page 142, lines from 8 to 10, it is distinctly stated that if the widow's "husband so dying separated, allowing her, when he dies undivided maintenance only." In Mitachshara, Chap. ii Sect. I. para 19, page 331, it is stated "that if the husband dies either unseparated from his

"coparceners or reunited with them, she has not a right to the succession" and in para 20 that

"a mere maintenance for the widow is at the same time ordained." Again, according to Mitachshara, Chap. ii. Sect. I. para 39, it is stated that it is only in the event "of a man dying sepe-rated from his coheirs, that his widow takes the Estate of her deceased husband." In W. II. Macnaghten's Precedents of Hindu Law, page 32, lines 5 and 6, it is stated, "But if her husband's Estate was joint and held in co-parcenary, she is only entitled to maintenance." Further still, the late Sudr Court in their Decree, No. 64 of 1856 page 44, last para, say, "the answer of the Pundits that the succession rests not in the widow, but in the undivided cousin is in strict accordance with Hindu Law." It is to be noted that the above Decree refers to the Polliem of Narigunttee, in North Arcot, and is of a similar nature as that of Shoolaghirri, being indivisible. To the same effect is the decree of the High Court; in No. 374 of 1863, page 414. "I have always understood that in this Presidency at least the law was clearly that the immoveable property of an undivided member of a Hindu family may go to his surviving coparceners, whether such property was self acquired or ancestral * * * * and that on his death without male issue, such property, if not previously alienated, devolves on his coparceners. But his widow whether childless or not, has no title to any thing but maintenance." See also Select Decrees of Sudr Court No. 11 of 1827, para. 29 page 544.

9. That Petitioner has a superior right to all other claimants to the succession to the Polliem is clearly established by Law. In Strange's Manual, para 309, the line of succession "is thus laid down, "Sons, sons' Sons, grandsons, and then wife, daughters and daughters' sons." The same is given in para 180, clauses from 1 to 6, page 81 of Elberlings Law of inheritance." The son, son's son and son's grandson. (1 to 3.)" The Widow of the deceased was "separated otherwise she is only entitled to maintenance." (4) The daughters, first the maiden daughter, then the married indigent, lastly the married wealthy daughter." (5) The daughter's son." (6) These passages clearly prove that neither the widow Savithri Ummani, nor the daughter nor their sons have any right or title to the Polliem so long as Petitioner's and his half brother's families are not extinct.

10. Petitioner would further point out that the widow Savithri Ummani is precluded from her sex from performing the funeral oblations of her husband, to whom Petitioner is heir, and that therefore she cannot be entitled to inherit the property. Thus Elberling at page 67, para 152, states, "Females cannot on account of their sex, perform the periodical obsequies, and as they do not therefore confer any benefit upon the deceased and his ancestors, they are generally disqualified from inheriting."

11. Besides, what can a marriage between two young children, such as that of the late Minor Poligar, and the present infant widow, 8 years of age only, be but a farce? and is that farce to be carried out by the recognition of a claim like her's? In Elberling Chap. V., page 67 para 152, Clause I., it is thus stated:—"The widow in consideration of the assistance rendered by her to her husband in the performance of his religious duties when alone she would be entitled to the succession." Savithri Ummani, and her late husband being both children, they could not have performed any religious ceremonies together. Is it from the mere fact that the nuptial string had been knotted by a young boy on the neck of a still younger girl, that Petitioner's claims is to be disputed? They two did not live together,—for the widow, then bride, lived and still lives with her father at Poonganoor, and therefore she is not entitled to any thing but maintenance.

12. Petitioner would therefore most humbly and respectfully submit, whether with reference to all the foregoing grounds, it would be just and legal to supercede him in the succession.

13. The only ground on which his claim is sought to be disputed is the alleged statement of the family being a divided one; but the fact of the Polliem being an indivisible one, and not enjoyed in shares of one-third each respectively, is in itself prima facie evidence that no division ever took place.

14. The simple circumstance of one village having been granted by Chokia Gowd to Petitioner's father, Sadanapully Gowd, for his maintenance is sought to be construed into a division of the family. Your Excellency in Council will be pleased to observe that several villages have been bestowed as Inams on perfect Strangers to the family. Is Petitioner to be placed on a level with

them? Other villages have been conferred on female members of the family for their maintenance. Are they also to be considered "divided"? The Polliem consists of 69 villages, and one of the 69 was granted to Petitioner's father for his maintenance, and such allotment is sought to be construed into a division!! 68 for one brother, and 1 for another brother!!! What kind of a division can this be? From the misrepresentation of interested parties, the Sub Collector and Collector recommended the widow Savithri Ummani as the successor to the Polliem, though according to Law and practice she is entitled to maintenance only.

15. Petitioner's opponents have used the most strenuous endeavours to prove the family a "divided one." Especially, Soorappa Chetty, the creditor of my half brother Niranjana Gowd, who instituted a suit against him. Whilst under a Decree of the Court said Soorappa Chetty was about selling the village granted for his father's maintenance, Nunjah Ummani, the late Manager of the Polliem, and widow of Chokia Gowd, the successor of the original Grantee, brought an original suit against the said Soorappa Chetty in O. S. No. 125 of 1863 on the ground that the village formed an integral portion of the Polliem, and that from its not being sepe-rated from the Polliem it could not be sold for debt, but should revert to the Polliem. During the enquiry said Nunjah Ummani, and Vira Ummani, gave depositions, the truth of which cannot be deduced from what has been forwarded to the Board of Revenue by the Collector. For it is to be noted that those Depositions were not taken before the Court, but in a private house, and they were taken down in Tamul, a language which they do not understand, and read over to them in Canarese, a language, they cannot read. Such being the case, it were an easy matter for the Goomastah to put down just such words, as Soorappa Chetty, the creditor of Niranjana Gowd may have dictated, and there can be little question that the females referred to were grossly imposed upon.

16. But after all, what is to be deduced from the depositions of the two females:—Simply just this; that at the time they were 10 and 11 years of age respectively, certain 2 villages were granted by Chokia Gowd, for the maintenance of his two brothers, that they were not present on the occasion, and that no Deed of Division had been executed.

17. It is for your Excellency in Council to adjudge whether the alleged depositions of the said females are worthy of credit. Even if their evidence were taken down correctly, their depositions do not refer to Petitioner's claim to the succession to the Polliem, but given with reference to the claim of Nunjah Ummani, as above stated.

18. Further still, it is to be observed, that the depositions were not given on solemn affirmation, and that Petitioner, who is seriously affected by their depositions was not cited to appear when their depositions were taken down, nor was he allowed the opportunity to cross question them. In regard to this point, Petitioner would beg to refer to Starkie's Evidence, pages 408 and 409, (Edition of 1853) in which it is stated that "depositions of witnesses although made under the sanction of an oath, are not in general evidence as to the facts which they contain unless the party to be affected by them has cross examined the deponents, or has been legally called upon, and had the opportunity to do so: for otherwise one of the great and ordinary tests of truth would be wanting. Evidence of this kind is weak and is not admissible."

19. That there is some imposition practised on the said females may be clearly ascertained from the fact that Nunjah Ummani, the widow of Chokia Gowd, (who was the successor of the original Grantee,) addressed the Collector, the Board of Revenue and Government, requesting the Polliem to be registered in Petitioner's name. Would she have done so, if she did not consider Petitioner as the chief and only claimant to the Polliem? From a perusal of the Principal Sudr Amin's Decree, in No. 95 of 1864, (Appendix I.), on an appeal of Nunjah Ummani, against the Decree of the District Moonsiff of Oosoor, in No. 125 of 1863, your Excellency in Council will be clearly convinced that no division of the Shoolaghirri family ever took place, and that the Sub Collector and Collector were both misled as regards the true facts of the case.

20. Nunjah Ummani in her grounds of appeal in said No. 95 of 1864, states:—
I. That the grants of the Villages, which form part of the Poliaput is binding only on her husband who granted them * * * * and that the Poliaput is not, under the Hindu Law, divisible.

II. That the village was only granted to the father of the 2nd Defendant by the late Poligar her husband for his maintenance, and

III. That the 2nd Defendant, son of Kariappa Gowd, admitted that he had no interest in the village after the demise of his father.

21. These points distinctly show that the grantor, having only a life interest in the Estate, could not alienate any portion of it to the detriment of the interest of his successors and ultimately of Government, and that the son of the grantee, Kariappa Gowd, himself admitted that the grant of the village for the maintenance of his father was for life only.

22. As then the grant of the village for maintenance is not a permanent one, and as it is liable to be resumed at the will and pleasure of the Poligar for the time being, by what process of reasoning can it be said that the family is a divided one? And how can the grant of one village out of 69 villages under such tenure be considered a division of the Polliem. Your Excellency in Council cannot but be convinced that the conclusion of the Collector and Sub Collector as to the division of the family is a palpable error. One man to have under certain reserved conditions, one village—resumable, at pleasure—Whilst the other enjoys the other 68 villages unreservedly. This forsooth is called a division!!

23. Your Excellency in Council will perceive that the principal and only ground on which Petitioner's claim is contested, is that the family is a divided one. He has, as he humbly trusts, proved to the satisfaction of your Excellency in Council, that the family is an undivided one.

24. The Collector and Sub Collector were induced to misapprehend the real nature of the case by their Subordinates, who are evidently under the influence of the opposite party who are wealthy and powerful, and to take without the slightest consideration a mistaken view of Petitioner's just right; and the Board of Revenue, with as little deliberation, concurred in their opinion, and have recommended to your Excellency in Council, as Petitioner is given to understand, that the Polliem should be registered in the name of the widow who has no right or title to it, notwithstanding all the representations of Petitioner, setting forth his claim, of which the slightest notice has not been taken.

25. Niranjana Gowd, in his petition to the Sub Collector claims the succession either on his own behalf or that of Savithri Ummani, the widow of Chokia Gowd; your Excellency in Council will perceive that Petitioner's claim is superior to both. If I, the oldest male, head representative of the family, have no right to the succession, what right can Niranjana Gowd have to it? The fact is that Niranjana Gowd, being in needy circumstances was induced to submit his petition, in hope of receiving some consideration from the father of the widow, who is a wealthy man, being the brother of the Poligar of Poonganoor.

26. Petitioner is destitute; so very destitute, as to have the village given for maintenance to be mortgaged, which he was compelled to do to liquidate the debts of his late father. From his poverty, petitioner cannot command neither influence nor interest; whereas, the father of Savithri Ummani has many friends and possesses extensive influence. My only trust and confidence is in your Excellency in Council, from whom, alone I fully hope to obtain justice.

27. In conclusion, petitioner would beg to submit, that if the Polliem were registered in the name of the young widow, of a surety it will be ruined; and for the simple reason, that she, as well as her father, who is a non-resident of the place will be completely at the mercy of the Polliem servants, who will have no hesitation in plundering the proceeds of the Polliem and oppress the tenants.

28. In recapitulation Petitioner would beg to submit.

- I. That the Polliem being "unsettled" is indivisible.
- II. That the Polliem is hereditary.
- III. That the family is an undivided one.
- IV. That Petitioner is the paternal grandson of the original Grantee.
- V. That he is the uncle and legal heir of the last incumbent.
- VI. That according to Hindu Law Savithri Ummani the widow of Ramnaad Chokia Gowd is entitled to maintenance only.
- VII. That the documents filed to show that the family is a divided one are not credible and are not at all worthy of notice.

On all these several grounds, Petitioner most humbly and respectfully solicits your Excellency in Council, to take his rightful claim into just, and favorable consideration, and in reference to the Collector's report and the Board's Proceedings as also in reference to Appendix I, herewith submitted, to be graciously pleased to pass an order directing the registry of the Polliem in Petitioner's name.

And Petitioner as in duty bound,

Shall ever Pray,

5th September 1865.

APPENDIX I.

APPEAL SUIT No. 95 of 1864.

Original Suit No. 125 of 1863, on the file of the Oosoor District Munsiff.

In the Court of the Principal Sudr Amin, Salem.

PRESENT—C. Lutchmiah Naidu.

Nunja Ummani, Plaintiff. Appellant.

versus

1. Bupalam Surappa Chetty,
2. Niranjana Gownden,
3. Sampanghy Rami Chetty, } Defendants. Respondents.

GROUND OFS OF APPEAL.

1. That the grants of the village which form part of the Poliaput is binding only on her husband who granted them, and not on her, under the terms of the decree of the late Sudr Court in No. 15 of 1862, and that the Poliaput is not, under the Hindoo Law, divisible.

2. That these villages were only granted to the father of the 2nd Defendant by the late Poligar, Plaintiff's husband, for his maintenance, and that the 2nd Defendant has no interest in them after the demise of his father as admitted by him 2nd Defendant.

3. That the decision of the Principal Sudr Amin in Original Suit No. 7 of 1861 in favor of the 1st Defendant will not affect her claim, as she is not a party in it.

Decree.

Judgment below is reversed; and the villages in question adjudged to be released from attachment and made over to the Plaintiff's possession.

(Signed) C. LUTCHMIAH,
Acting Principal Sudr Amin.

Appeal Suit No. 95 of 1864.

Original Suit No. 125 of 1863, on the file of the Oosoor District Munsiff.

In the Court of the Principal Sudr Amin, Salem.

PRESENT—C. Lutchmiah Naidu.

Judgment.

1. This suit was instituted for the recovery of 2 villages Calloogoorigay and Allassapul, attached to the Soolaghirry Poliaput. It was alleged that the villages in question with another village called Thorapully, had been in the year Tharana or 1824 granted by the former Poligar Chockia Gownden to his cousins Kariappa Gownden, father of 2nd Defendant, and Sadanapully Gownden for their maintenance; but they were advertised to be sold in auction on account of Judgment obtained by 1st Defendant against 2nd Defendant, the Plaintiff sought to recover them.

2. The 1st Defendant contended that the former Poligar Chockia Gownden and the 2nd Defendant's father Kariappa Gownden as also Sadanapully Gownden being brothers, were equally entitled to the Soolaghirry Poliaput; that the villages in question had been conferred upon the 2nd Defendant's father, and was by him mortgaged to the 1st Defendant 20 years ago, and that the claim brought forward by Plaintiff was untenable.

3. The 2nd and 3rd Defendants allowed Judgment to go by default.

4. The District Munsiff dismissed the Suit with Costs.

5. It is admitted by the 1st Defendant that the villages aforesaid form part of the Poliaput, but it is contended that they have been alienated by the former Poligar to the 2nd Defendant's father.

6. This alienation does not appear to have been registered in the Office of the Collector, and should be held invalid and inoperative, the conditions specified in Section VIII. Regulation XXV. of 1802 not being fulfilled.

7. According to the provisions of this Regulation, a proprietor of an Estate cannot alienate any portion of it to the detriment of the rights of Government and of the successors to the Estate, and this construction of the Law is supported by the observations of the High Court in their Judgment in Special Appeal No. 114 of 1862.

8. The villages in question as part of the Poliaput are legally descendible to the Poligar's successors and responsible to the State for payment of the Beriz of the Poliaput. Their alienation by the former proprietor cannot therefore be binding upon his successor, neither can they be held accountable for the debts incurred by the 2nd Defendant.

9. The Acting Principal Sudr Amin, therefore, reverses the Judgment below and adjudges the villages in question to be released from attachment and made over to the Plaintiff's possession.

10. The 1st Defendant is to pay all costs original and appeal.

(Signed) C. LUTCHMIAH,
Actg. Principal Sudr Amin.

13th March 1865.

To
The Honorable T. Pycroft Esq.
Member of Council.

Honorable and Honored Sir,

I am soliciting your honors attention to the enclosed printed petition, in regard to my claim to the succession to the Pollem of Shullaghiri permit me most respectfully to state that a great injustice has been done me by the Sub Collector and Collector, who without the slightest consideration have taken my right, and title to the Pollem. Their views to my great misfortune have been adopted by the Board of Revenue, whose Proceedings I hear are before Government.

From a perusal of my petition your honor will perceive that I have clearly proved the following points.

- I. That the Pollem is indivisible
- II. That the Pollem is undivided
- III. That I am the paternal grandson of the original grantee, Hiranija Gowd.
- IV. That I am the next heir of Ramnaad Chokia Gowd, the last incumbent, being his Uncle.
- V. That I am the head male living representative of the family and
- VI. That Savithri Ummani, the Widow of the last incumbent, is according to Hindu Law, entitled to maintenance only.

Yours
Hence

No. _____ of 1865.

From Chokia Gowd, son of Sadanapally Gowd, and paternal grandson of Hiranija Gowd, original grantee of the Pollem of Shullaghiri; Taluk of Oosoor; Salem.

Dated 5th. }
Received } September 1865.

Prefers his claim to the succession to the Pollem of Shullaghiri on the ground, that as the Pollem, being an "unsettled" one, is indivisible and the family undivided, he, as the paternal grandson of the original grantee and uncle of the last incumbent is the rightful successor; Represents that the views taken by the Sub Collector and Collector, under a misapprehension of the true facts of the case of the family being a divided one, and concurred in by the Board of Revenue are palpably erroneous, since if a division of the Pollem and family could have possibly taken place, the Pollem would have been enjoyed equally and separately among the three sons of the original grantee; Shows further, that according to Hindu Law, Savithri Ummani, the widow of the last incumbent is entitled to maintenance only. Prays that as the only ground on which his claim to the succession is opposed, is, that the family is a divided one, the Decree of the Principal Sudr Amm, herein submitted, may be especially taken into consideration, together with the several points urged by him, which clearly prove that the family is not divided, and an order passed recognizing his claim to the succession to the Pollem.

10.2264; 20-9-65. Rm

Failing your honor I have no one else to look to.
Already I am greatly reduced in circumstances, and should
I not be fortunate enough to obtain your good graces I will
be utterly ruined by unnecessary litigation.

I beg to remain
Honorably and Honored Sir
Your most O^b and very humble Servant.

11th September 1865.

I. That the Commission is to be made
II. That the Commission is to be made
III. That the Commission is to be made
IV. That the Commission is to be made
V. That the Commission is to be made
VI. That the Commission is to be made

Memo: from
 a B. P. Ex. of 5 Sept 1853.
 No. 5473

I do report the date
on 31. being last of
the obliging obligor
in Salem D. & request
others as to the
succession. - Econ.
According to recognition
as obligor of the
widow of the deceased
who is 9 years old
and further being a
younger brother of
the deceased's grandchild
in North East.

This is one of the
ancient ^{unwritten} ~~unwritten~~
politics in Salem
the succession to B is
dependent on the will
of the Gov.
It is thus noticed

Hence
rightful
deference
= closed /
Board
request
Abroad
I not to
be public

W. Johnson's letter of the
1822 - from A.

The Ankengini family acquired the Solim
of Kanster 726 years ago - or in the year
1008. of Salomon. B. they held for 301. year
at B. time the Solim of Ankengini
& Subagini were annexed to that of
Kanster - and all three were possessed
by this family for 264 years. Then
Kanster was taken from them.

The Solim remained in Ankengini
for 88 years. When Subagini was captured
by Hydrom a younger branch of the
Kanster family & the Solim of
Subagini & Ankengini have been
ever since separated since that period or
for 72 years. Kanster was never
restored & is at present included
in the Mysore territories.

At the time of the assumption
of the country by the British the
Solim was in the enjoyment
of Karaniga Gowda who had
3 wives - & died leaving issue
by the 1st & 3rd.

His 1st wife died by his 1st
life appears to have died without
issue in his life time.

His 2nd wife incurred
him - & was in life when

of the Solim. Karaniga
incurred by his son, &
was the Solim last
deceased without issue
leaving a young widow of
9 years of age.

Karaniga Gowda
had also a daughter
by his first wife. Those
in Saloor Virajwara
is now living - and
a claimant for the
succession.

By his 3rd wife. Karaniga
Gowda left 2 sons
Karaniga and K.
Karaniga & Karaniga
Gowda are also
claimants.

Karaniga left a daughter
by his 3rd wife. Those
in is living. Karaniga
Gowda.

The 1st Solim (W.
H.) upheld the claim
of the widow & incurred
in the ground apparently
that the family is a
divided one. The 2nd
incurred that Chokin

widow has the next best claim as the oldest representative of Karaniga Goundu in the direct male line.

It appears that Chokia Goundu's claim to succeed is unquestionably the best. He is the oldest male representative of the family - as eldest son of the eldest son of Karaniga Goundu by his third wife.

The widow that the family is a divided one seems very questionable but my mind does not affect in the slightest the question of succession to one of these ancient and settled claims.

Childless widows by Hindu law are entitled only to maintenance.

To give this old family estate to a childless widow of 9 years old & to make her father the manager. They being members of a perfectly distinct family. While in effect to deprive the original family of the old estate for ever. The widow having only a life interest & will have very possible in due course to extract every possible penny out of the estate. & the chance of its returning to the old family on her death will be very slight.

It seems to me to be a solemn duty for keeping the male representative of her husband's family out of the family estate during her life time. Especially as she is a child & a widowed man.

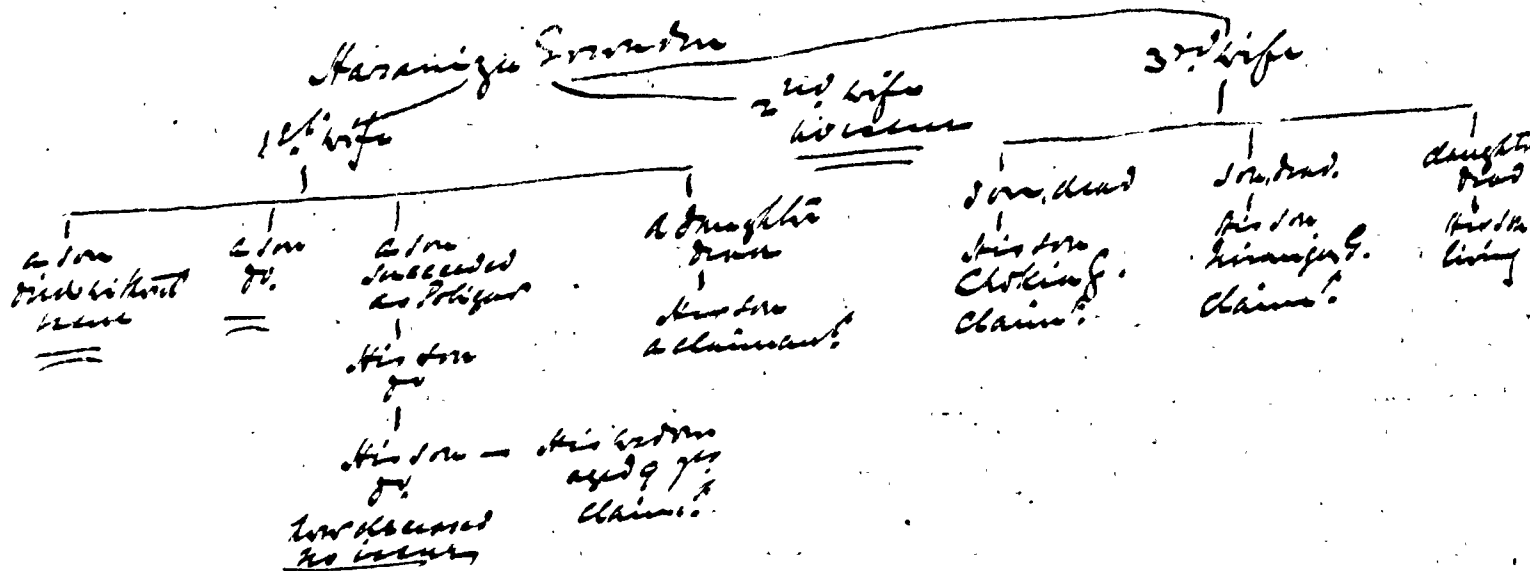
It goes to show that village law is all good for maintenance of persons who are members of the family. A very common arrangement must be such cases as to have any actual distinction in the family.

I have no doubt - I believe that the best law, custom, and the R. B. have taken a wrong view of this question and I do not hesitate, as proposed in this Memo. from the Rev. Secy, to recognize, as I suppose, the Poliput; - I cannot add to the legal reasons which seem to me to be sufficient. W.D.

11 Sept 65
I agree J.P.
W.D.

The son of Karaniga Goundu's daughter by his first wife - but his claim is a daughter is inferior to that of Chokia Goundu's son - although the 3rd wife.

Karaniga Goundu is the son of a younger brother of Chokia's father. & thus from him an inferior claim - I annex a sketch of person and relationships of J.P. 9.9.65



The gross price of the estate is Rs. 159/8

The settlement is Rs. 50/30.

J.P.

W. 2264 - 20c. & 10c.
Send the following
to Mr. J. S. Lipton
W. 5473.

Chopin Grove

The Subj. of the
W. 2264 is a
to the interest of the
the deceased & the
step is required
as his success
on the assumption
apparently that the
succession is to
follow the British
law of inheritance
& that the family is
a dissonance & the
estate the "disposition"
property of the estate
to be by virtue

This permitted succession
2nd It is his line of argument
is in the opinion of Govt.
altogether inconsistent with
the fact that the estate being
an inherited estate - the succession
is dependent on the will of the
Govt. & is not hereditary.

Moreover the evidence as
to the family being divided,
appears to the Govt. to be
insufficient to establish
the assignment
of particular villages for the
main branches of family
branches of the family being
a very usual arrangement
in such cases, as is proved
by the fact that any such division of
family interests as is implied
by the law in Hindu law, but
in this case the Govt. cannot
admit that any family arrangement
can bar the State right to select
the successor to the office - & thus
by a private agreement nullify
the knowledge of Govt.
nullify the Govt. the Govt. have

repeatedly established by
decree as a right.
According to the
Govt. the Govt. the Govt.
became British territory
left issues by his 1st &
3rd life - but there was
no living descendant
in the male line of the
1st life - The son of the
1st life's daughter cannot
claim to exclude direct
descendants in the male
line -
Colon Govt. was the
eldest son of the
Govt. eldest son by
his 3rd life and
as such appears
to Govt. & has
no questionably the
best claim to be
recognised as successor
to the office - he being
the eldest representative
of the family in the direct
male line -
They have therefore
to direct that he be
recognised as Poligar

23
of Sulagiri in succession
to the deceased & that the
Joh. make over to him
possession of the Estate
with its appurtenances
to intent profit -

It will be his duty
to make proper provision
for the maintenance
of the widow of the
deceased

S.B.

14.9.65

14. To the Order of the Court of Sessions
by the Sheriff and General

Revenue 1865-1866
No. of feet for 1865

No. 2264.

Geo. of the Blackhawk
J. 20th Sept 1865

23-7-61

Cur

Directing the Board
to recognize the Board
in the execution of the
theological estate in
which and to make it
over to him.

No. 1600 1865.