

MADRAS RECORD OFFICE.

Government of Madras.

Revenue DEPARTMENT.

G.O. No. 2152

Press

~~Mis.~~

512-513

Dated

21-8-1866.

Not to be folded or roughly handled

*Proceedings of the Madras Government, Revenue Department,
21st August 1866.*

No. 512. Read the following Proceedings of the Madras Government in the
Judicial Department :—

Passing orders on letter from Acting Advocate
General, forwarding copy of the Judgment of
the High Court in the cases of Kolunda-
saway Payer v. the Government and others,
and Rancee Sathoo Garasoo Natchiar v. the
Government and others.

(Here enter 7th August 1866, No. 1,222.)

No. 513. ORDER THEREON, 21st August 1866, No. 2,152.

Miscellaneous.

Communicated to the Board of Revenue.

(True Extract.)

(Signed) J. GROSE,

Under Secretary to Government.

To the Board of Revenue, with Proceedings Judicial Department, No. 1,222.

Proceedings of the Madras Government
Revenue Department
Read the following

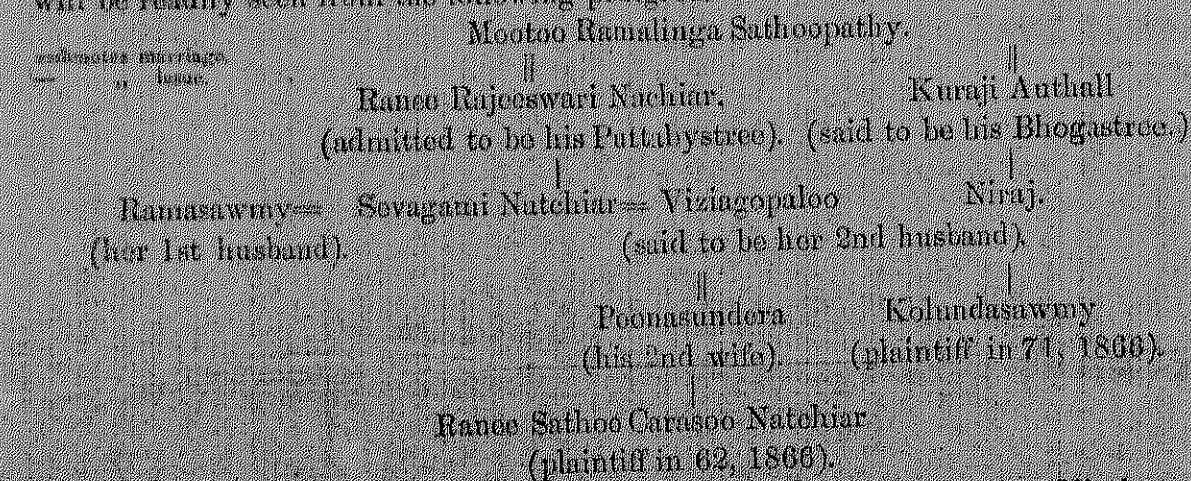
Proceedings of the Madras Government, Judicial Department,

7th August 1866.

No. 94. Read the following letter from the Acting Advocate General, to the Chief Secretary to Government, Fort Saint George; dated Madras, 30th July 1866.

I have the honor to forward a copy of the judgment of the High Court in the two cases of Kolundasawmy Taver, *v.* the Government and others (Original Suit 71 of 1866), and Rancee Sathoo Carasoo Natchiar, *v.* the Government and others (Original Suit 62 of 1866). In each case the same subject matter was claimed, viz., a sum of Rupees 12,851-2-6, lying in the hands of Government, the proceeds of the property of the late Mootoo Ramalinga Sathoopathy. This sum has been the subject of previous litigation in the High Court, which is fully reported upon by my predecessor in his letter dated 4th December 1865.

2. The mode in which the plaintiffs in these two cases shaped their claims will be readily seen from the following pedigree.



3. It is evident then that Kolundasawmy had only to prove that Niraj, was the legitimate son of Mootoo Ramalinga, in order to establish his title against every one. If he made out that Niraj was the son, but failed to show that he was the legitimate son, then the heir to Mootoo Ramalinga at his death was unquestionably Sevagami, who was admitted to be the legitimate daughter. But in order to entitle Sathoo Carasoo to succeed, it was necessary for her to go on to show two things: first, that Sevagami's property could go after her death to her husband; and, secondly, that Viziagopaloo was her husband. If the title once came to him, then Rancee Sathoo Carasoo was admittedly his heir. On the other hand, if Sathoo Carasoo's claim could be got rid of, then Kolundasawmy would be relieved from the necessity of showing that Niraj was legitimate, for, even if illegitimate, he would rank next after Sevagami.

4. The High Court decided, first, that Niraj was not legitimate; secondly, that Viziagopaloo was not shown to have been legally married to Sevagami, who at the time of such alleged marriage was admitted to have another husband, Ramasawmy, living, though said to have been divorced; and, thirdly, that, if married at all, the marriage was not one which would have made him the heir to his wife. Whether Sevagami had any interest in the property beyond a life estate was a point raised before the Court, but which it became unnecessary to decide. The result was that neither Viziagopaloo nor his daughter had any title; and, therefore, upon the pedigree set up, Niraj was the next heir. This would have made Kolundasawmy completely successful; but, unfortunately for him, his witnesses proved the existence of two

other illegitimate sons of Mootoo Ramalinga, viz., Puttaby Ramasawmy and Raliana Ramasawmy. Each of these, therefore, had as good a claim as Niraj; and, as each of them had left a son, those sons had as good a claim as Kolandasawmy Teyar. The result, therefore, was that Kolandasawmy only got a decree for one-third.

5. Costs in both cases were awarded to Government, payable in Original Suit 71, out of Kolundasawmy's one-third, and, in Original Suit 63, by the plaintiff personally. Of course, the Government will accept its costs in the former case. In the latter case, the plaintiff has probably no means of paying them, and, therefore, I should recommend that the claim be waived, as was done in the former litigation. Practically, the costs recoverable in Original Suit 71 will cover the expense of both suits.

6. It would be observed that the Court has not, nor indeed could it have made any order as to the remaining two-thirds. No doubt the representatives of Kallana and Pataly Ramaswamy will before very long prefer their claims. Till they do so, no further steps need be taken on behalf of Government.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

For its Ordinary Original Jurisdiction.

Wednesday, the eighteenth day of July, one thousand eight hundred and sixty-six.

O.S. No. 71 of 1866

Kotun Sasawney Tayer of Hammar, the only son and legal personal representative of Nimrui Tayer, who was the only son and legal personal representative of Momo Ramalinga Sathcopathy, a deceased Zemindar of Hammar. Plaintiff

The Government of Fort Saint George carrying on business at Madras, Strengthen Pillayiah Singha Pungappa Sathupathy of Bangalore the Zillah of Madras, Rance Paravathar Varadany Natchiar residing at Ramanad aforesaid, Mangalakavay Thayer and Rance Natchiar, the son and widow of Puthoby Ramakavay Thayer deceased, also residing at Ramanad aforesaid, and Sathas Chinnasoo Natchiar, also residing at Madras aforesaid, and Athamaloo Anthall of Madras, widow of the late Narayana Thayer, and mother of the Plaintiff above named, residing at Ramanad in Madras aforesaid.

0-18-A-02-07-1800

Rance Sathco Carasco Natchez residing at Mudum _____ Plaintiff
and _____

The Government of Port-Saint-George carrying on business at Madras, and Rahmudasswamy Tayer, Esquire, residing at Ramanul in the Zillah of Madras, Ramee Paravatha Viruthany Natchiar residing at Ramanul aforesaid, Mangalsawmy Tayer and Ramee Natchiar, the son and widow of Rahmudassawmy Tayer deceased, also residing at Ramanul aforesaid, and Allamallee Anthall of Madras aforesaid, widow of the late Nirmul Tayer, and mother of the said Rahmudassawmy Tayer residing at Ramanul aforesaid.

4007-51

These cases have by consent been heard together, and the question for decision in each is the validity of the claim as heir of Master Bernardino Saborido, to the sum of \$12,851.20, as the heirs of the testaments. In the first suit, the Plaintiff, Redundawany Taver, claims as the son of Natividad, the son of our said Master Bernardino, who died in 1809. In the second suit, the Plaintiff, Josefa Garcia Benítez, claims as the daughter of Valeriano de la Cruz, the second husband of Natividad, the daughter of the late Mercedes Rivas, etc. The first question, therefore, is whether Natividad was the daughter of Master Bernardino, but if so, the claim of Saborido is not valid, as the daughter of a poor man cannot inherit.

7/11 August 1905.

If the case of Kalandaswamy had rested upon the evidence adduced by him alone, we should perhaps have had some difficulty in saying that it had been satisfactorily shown that his father Nimmaji was the son of Mootar Ramalinga, but after hearing the evidence on the part of the Defendant, we cannot doubt, and in effect it was not disputed, that Nimmaji was one of the sons of Mootar Ramalinga by Kurup Anthall, who was one of the "Bhogastrees" of Ramalinga. Then was he a legitimate son? Now Kalandaswamy's own case is that Kuraji was one of 20 "Bhogastrees," all of whom were kept by Ramalinga at Reemal, and that Rajaji Rajeswari Natchiar was his "Putta-bhargya."

It is not likely that all these women were married wives, and there is no evidence given by Kolumbasawmy of any ceremony of marriage, nor that Karaji was treated in any way differently from the other Bhagastrees, or differently from the additional 7 or 8 women whom Karamappa kept while he was at Madras, and some of whom appear to have been dancing women. Beyond this, the fact of Kolumbasawmy's name only on very unsatisfactory loose evidence given by witnesses, who are not members or connections of the family, of statements said to have been made by Niramji and his two brothers; and it is a singular fact, that Sir 7th Defendant, the mother of Kolumbasawmy, has not been called by him as a witness. The statement made by him that his father received a pension from the Government, and that he also has received a pension since about 4 years after his father's death, we can give no weight to, no evidence in support of the claim of legitimacy; and of the circumstances under which the pensions were granted, we have no information. With reference to the evidence on the part of De'Saunde, we need only observe that, although not of much weight, it bears so far as it goes, against the legitimacy of Niramji. On the whole, we think the evidence altogether is insufficient to prove the legitimacy of Kolumbasawmy's father, and consequently the Plaintiff's claim, as the legitimacy of her father fails, and is becoming necessary to consider the claim of Sathya Lakshmi as the 2nd Plaintiff. Her case is a very singular one. She claims as the daughter of A. Mangalaji and "Ansuru" and that this marriage is disputed, and it is remarkable that not one of our witnesses was called to prove the fact was called in the former case, and not one of the former witnesses has been called on this occasion. Assuming, however, this marriage proved, Sathya Lakshmi's claim depends on the title of Vengalpet to succeed to the property of his alleged wife Savarnani, and to make out his title, the Court must be satisfied that there was a valid marriage between Vengalpet and Savarnani, and that the marriage was according to one of the approved forms. Section 1, Strang's H. L. 43 and 250—Mace's, Ch. 2, Section 11, Clause 10-11.) Here both parties are denied: as to the form of the marriage the case was left without any evidence, and, in consequence of an observation from the Court, the plaintiff's Counsel recalled these witnesses, two of whom in effect stated that the objectionable "Ansuru" form was always adopted by the Brahmins, and rather accords with the observation in the 1st volume of Sir Thomas Strang's H. L. p. 13, "it is questionable whether in Southern India any other form than the Ansuru be now observed." But as to the practice of marriage in other divisions of the Sudra Caste, the three witnesses professed to have little information, and only one said that amongst the Maravars it was not usual to make payment to obtain the consent of the girl's parents. So that, as respects the form of the marriage between Vengalpet and Savarnani, we are unable to come to the conclusion that it was not one of the "Ansuru" form, which is said to be appropriated to the two inferior classes.—Strang's H. L. 44.

This plaintiff was formerly married to a man, Raju, but since that person's death, it is admitted that, to the knowledge of the alleged marriage, defendant, to whom defendant had been married, was alive; and, in order to get over this obstacle under the general Hindu Law, a special custom in the Maratha caste is set up which, it is alleged, sanctions the divorce by a wife of her husband, and her remarriage. There are no known judicial cases showing that a custom to some extent, allowing a wife to divorce her husband, has been recognized, but we have not found, nor was it stated that there has been any judicial decision recognizing such a custom in the Maratha Caste; and in order to establish it, there ought to be, as stated in the recent judgment of this Court in the important case of *Sahakar Singh, Parashuram Sahakar v. Prabhu Din Singh, Sahakar* and others, not only a valid, but a satisfactory proof of usage so long and invariably acted upon in practice

as to show that it has by common consent been submitted to as the established governing rule of the particular family, class, or District of Country; and the course of practice on which the custom rests must not be left in doubt, but be proved with certainty." Now the only evidence here of the alleged custom is that of two witnesses, who are cultivators, and give very different accounts of the matter. According to one, the wife may put away her husband, and take another at her pleasure, no ceremony of any kind being necessary. It is true this witness says that Ramasawmy became afflicted with a disordered intellect and wandered away, and that this was the cause of the divorce; but he asserts that, according to the custom, he could have been divorced though he continued of sound mind, and that, for that purpose, nothing more was necessary than that Sevagami should take another husband, and that, in fact, nothing else did take place. But the other witness' evidence is that, before a second husband can be taken in accordance with the custom, the first must be put away formally for some fault, disease, or defect, and with the sanction of an assembly of respectable men of the caste, 10 Panams or so being given to the divorced husband. He also mentioned two causes for divorce—loss of intellect and loss of virility—and that he was one of the assembly which sanctioned the divorce, and particularized the gold coins which were, he said, given on the occasion to Ramasawmy's mother, and his maternal uncle, for him. Upon such evidence as this, it is impossible to say that the alleged custom has been proved, and the documents produced on the part of Sathoo Carasoo—which at the most prove statements by Sevagami that Viziagopaloo was her husband, and that she desired that he should be publicly acknowledged as her husband, both before and after his death—do not we think afford any proof in support of the dissolution of her marriage with Ramasawmy, in accordance with an established custom. The custom then, and consequently the divorce, not being established, Viziagopaloo's right to succeed to the property of Sevagami as her husband falls to the ground, and this is fatal to the claim of Sathoo Carasoo.

In these observations, we have assumed that Sevagami took by inheritance from her father this property as "Sundhantam." It seems clear that, according to the law prevalent in Bengal, a daughter takes only a life interest (*see Buxee Doss Dutt v. Sreemuttee Upoornah Dossce*, 6 Moore I. 2, 433), but whether, as Mr. O'Sullivan contended, the interest of a daughter in her deceased father's estate is limited to her life under the law prevailing here, as is that of a widow, and also of a mother, according to the recent decision on the Appellate Side of this Court, reported at page 402 of 2nd Madras H. C. Report in S. A. 81 of 1865, is a question that has not we believe been pointedly decided, and it is unnecessary for us to consider.

It remains to be considered whether Kolundasawmy has any claim to the property in dispute, though his father was an illegitimate son. Now it is clear law that amongst the Sudra class illegitimate sons inherit on failure of daughters, and it is not questioned that this family are of the Sudra class. So that if Kolundasawmy be the son of Niranjai Taver, he is entitled to succeed to whatever interest Niranjai had in the property. It is not disputed that he is the son of Niranjai. But one of Sathoo Carasoo's witnesses stated that Kolundasawmy was the illegitimate son of Niranjai by Allamalloo; it is, however, unnecessary to consider this point, for if Niranjai was not married to Allamalloo, she cannot succeed as widow, and Niranjai had, it appears, no other child. Then was Niranjai entitled to the whole property, or only a portion of it? Upon the plaintiff's own statement, it appears that there are two other persons equally entitled with him, one of them the 4th defendant, the son of Puttaby Ramasawmy, and the other Kotah Taver, the son of Kaliana Ramasawmy, the said Puttaby and Kaliana being illegitimate sons of Mootoo Ramalinga by two of the Madras women. This being so, the plaintiff is entitled to one-third of the property in dispute, and though in his plaint he claims the whole amount of money as the only grandson of Ramalinga, yet we think he has not thereby dis-entitled himself to a decree for such proportion as he has shown a right to, as a grandson of Ramalinga, though not the only and legitimate grandson.

We have felt some doubt whether, before making a decree in this suit, we should not direct Kotah Taver to be made a party, and served with notice. But upon consideration, we think that unnecessary. We could not, in this suit, on the mere statement of the plaintiff, properly make any decree in favor of Kotah Taver, or the 4th defendant, who has not appeared in the suit at all, and they must be left to make, and, if they can, establish, their claims, as they may be advised.

As to the costs, first in Kolundasawmy's suit: he has failed to prove his claim as put forward in the plaint, and we do not think we can order any of the defendants to pay his costs.

The taxed costs of the Government must, we think, under the circumstances of this case be deducted from the plaintiff's one-third of the fund ordered to be paid to him. If the plaintiff had succeeded in establishing his claim as alleged, the defendant resisting him must have paid him those costs; but as he has failed to do so, and has only partially succeeded, we cannot in justice make that order against the resisting defendant.

No. 96. ORDER THEREON, 7th August 1866, No. 1222.

The foregoing letter, with copy of the Decree accompanying it, will be communicated to the Collector of Madras.

2. The Governor in Council consents to waive the claim to costs in Original Suit No. 62 of 1866.

(True Extract).

Chief Secretary.

To the Collector of Madras.
Revenue Department.
Government Solicitor.

Edw. J. H. Barnes

1866
Hon of Govt. for dispatch
1868

Proceedings of the
Board of Education
the 18.9.1868

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