

Go. No. 1 - 2032 Rev 24.7.1868
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Go No:- 2032, Back No:- 424-25
Revenue No 24-7-1868

*Proceedings of the Madras Government, Revenue Department,
24th July 1868.*

No. 424. Read the following Proceedings of the Court of Wards, dated 7th July 1868, No. 4,976 :—

Read the following letter from the Collector of Tinnevely, to the Acting Secretary to the Court of Wards, dated 7th May 1868, No. 217.

1. I have the honor to forward, herewith, a copy of a Judgment of the Civil Court of this district, deciding the right of succession to the Maniachi Zemindary.
Proceedings of the Court of Wards, No. 281, dated 16th January 1867.

2. The Court of Wards are aware of the dissensions and intrigues that have helped to ruin the Maniachi family, and will not be surprised to hear that though, as the Court's Agent, I was included as a defendant in the suit, the other defendants would not make common cause with me, either by acquainting me with their line of defence, or by taking opinion from me.
Vide Collector's letter, No. 140, dated 9th March 1867.

3. From the first there was no chance of a successful defence, as the High Court had ruled that a younger son had no claim to succession, unless he was the son of a first wife, or unless the custom of the family permitted a departure from Hindu law. The Court's ward, in the present instance, was a younger son, (it is disputed whether he is the son of a fourth or fifth wife,) and seeing that the late Zemindar and the late Zemindar's father had held the Zemindary for eighty-five years without the alleged peculiar custom of succession occurring, no living man could prove that this custom ever existed.

4. The eldest son, Subramania Pandia Chockatalavar, the son of Shanmugavadivu Talavachi, (the widow who has striven throughout to uphold the right and expose the malpractices that took place on the death of the late Zemindar,) is now declared to be the heir, and I beg to solicit the Court of Ward's recognition of him, and their approval of the following arrangements to save his estate from ruin :—

5. The Court of Wards have sanctioned my apportionment of Pesheush on two divisions of the estate, with the view of these divisions being sold by the Civil Court of this district, pursuant to Decrees in Suits Nos. 9 of 1865 and 14. of 1866, and Miscellaneous Petition No. 251 of 1865, for debts amounting to Rupees 1,03,396. The debts of the estate aggregate 1,72,576 Rupees, and the surplus income* is not sufficient to pay the interest of the money. It is not necessary, however, that any integral portion of the estate should be sacrificed to free the remainder from debt, and I have accordingly moved the Civil Court to defer the sale, pending the approval of the Court of Wards of my plan for raising the money without injury to the estate.
* 17,401 Rupees last Fusly.

13th January 1863, No. 215.

Karakurichi.
Perurani.

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6. Instead of selling the Karakurichi and Perurani divisions, which are close to Maniachi itself, the outlying villages of Mulleiseval and Ramanadapuram, in the Yelayirampannei division, some thirty miles distant, might be sold to advantage, and their sale will realize 40,000 Rupees. This is the only territorial loss that the Zemindary need sustain, and getting rid of these villages will be rather a gain than a loss, as they are too far off to be managed, and the Zemindar gets little from them.

Yelavalankal.
Marudur.
Marudantavu.

7. The Zemindar holds puttahs for lands in three Government villages, and the sale of these lands and the palmirahs on them will realize 7,000 Rupees.

8. There are 627 acres of home-farm dry lands which cannot be managed to advantage when the estate is under wardship, and even at other times the arrangement of an annual rent with the cultivators gives rise to endless disputes and confusion; the sale of the Zemindar's right of farming these lands himself, and the concession of puttahs to the actual cultivators, will realize 30,000 Rupees.*

* The Tirukurungudi Talavar offers to pay this amount.

9. The conversion of waram or grain rent on 536 acres of wet land to a fixed money rent, and declaring the occupancy of the tenants permanent, will realize another 30,000 Rupees.

At 35 Rupees an acre under rain-fed tanks, and 300 Rupees an acre under channels.

10. There are 80,000 palmirahs scattered about the fields in twos and threes, tens and twenties. These are now divided into three classes, assessed at $1\frac{1}{2}$, 5, and 9 Pies each, average 5 Pies each; the sale of this assessment at 15

Olivettu.
Kattu.
Paruvam.

years purchase, or at 6 Annas a-tree, will realize 30,000 Rupees.

11. The total peshcush of the Zemin is now 9,925 Rupees, and the dry land assessment is 24,138 Rupees; this assessment is thus rather high, and might well be reduced by two Annas in the Rupee, or by $12\frac{1}{2}$ per cent. all round. In my

The total assessment of the Zemin was 31,572 Rupees in Fusly 1276, or more than three times the peshcush.

present position I could easily demark the villages, prepare land registers, settle disputes, and lower the assessment; and in the matter of puttahs, accounts, recognition of occupancy &c., put this Zemindary as far in advance of the other Zemindaries of the district as it is now behind them. The tenants will pay for this reduction at the rate of 10 years purchase, or $1\frac{1}{4}$ Rupee for each two Annas of rent remitted, or 30,000 Rupees for 3,000 Rupees remitted. This will not be lost to the estate, as the better position of the tenants will induce them to extend cultivation by taking up the waste, of which there is a large extent that will be laid out in convenient blocks, and all be recorded in detail as usual in the Settlement Registers.

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12. We can thus raise 1,67,000 Rupees from the estate, not only without injury to it, but very greatly to its advantage. The ryots who have been consulted seem much pleased with the prospect before them, and both landlord and tenants are likely to benefit largely by the abolition of anomalies and by the settlement of vexatious disputes.

13. There is another reason why the Karakurichi division should not be sold just now. The northern channel from Kolayankarisel, Seervakarenmadam, and Nalla Malei. the projected anicut at Strivycuntam will pass through three of the villages, and irrigate 1,000 acres; the area irrigated will then be worth 100 or 200 Rupees an acre, but is hardly worth having now, being nearly all blown sand. A purchaser at auction is not likely to pay the real value of this on the possible contingency of getting it irrigated some day, and thus it is greatly to the interest of the estate to retain these villages unsold.

14. When the estate is freed from debt, I will submit a revised scale of the establishment and maintenance required by the family.

In the Civil Court of Tinnevely, Original Suit No. 25 of 1866.

PRESENT.—F. S. CHILD, Esq., Civil Judge.

Plaintiffs.

versus.

Defendants.

1. Subramania Pandia Chockatalavar.
2. His mother and guardian, Shanmugavadivu Talavachi.

1. Chockatalavar.
2. His mother and guardian, Rama Talavachi.
3. Kathana Talavachi, Patta Stri, or first wife of deceased Zemindar of Maniachi.
4. Mr. Puckle, or Collector of the district, and Agent of Court of Wards.

This is a suit brought to recover from the first and second defendants the Zemindary of Maniachi, and from the third defendant, certain personal property and jewels, &c., of the late Zemindar, valued at Rupees 8,808-7-0, as well as certain Punnai land and houses improperly taken possession by the third defendant.

The present Zemindar, first defendant, being a minor under the Court of Wards, the Collector, as Agent of the Court of Wards, is included as defendant.

The grounds of the plaintiffs' claim to the Zemindary, as alleged in the plaint, are, that the first plaintiff is the eldest son of the deceased Zemindar by his mother, second plaintiff, who was the fourth wife; whereas the first defendant is a younger son of deceased by his mother, second defendant, the fifth wife of the said deceased. In the written statement of the second defendant, the mother and guardian of the first, it is asserted that first defendant is the rightful heir of his father, inasmuch as his mother, second defendant, is the fourth wife of the deceased, whereas the mother of plaintiff is only the fifth wife; that the practice in this Zemindary is for the estate to descend by seniority of mothers, not by priority of birth; and that the question had, at the time of the late Zemindar's death, been fully considered by the revenue authorities, who had, after due consideration, recognized first defendant as the heir to the Zemindar, and held the estate in trust for him.

Third defendant, in her statement, denies possession of the property mentioned in Schedule 12 of plaint, that is, moveables, and the right of plaintiffs to recover from her the Punnai lands and houses in her possession given in Schedule, column 8.

In his written statement, the Collector, fourth defendant, states that, as is the custom, the late Zemindar just before his death wrote to the Collector declaring who was his heir, and that he declared in favor of first defendant.

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That on his death the question of right to succession was fully considered, and the first defendant recognized by the Government as the heir.

That in letters written to Collector in 1849, deceased stated the custom of his family to inherit by seniority of mother and not by priority of birth, and supports the statement of the second defendant as to the second defendant being the fourth, and second plaintiff the fifth wife, and not fifth and fourth as alleged in the plaint.

At the first hearing, certain points were considered on both sides as beyond dispute—

1st.—That the plaintiff is the eldest son of the deceased Zemindar.

2nd.—That the Patta Stri or first wife has no male child living, and the following issues were given :—

1. Is there any custom in this family which will overcome the general principle laid down in the Oorkad succession case, (High Court 70 of 1864, volume III, page 75,) that in the absence of a son by the first wife, sons succeed by priority of birth and not by seniority of mothers?

2. If so, which is the elder wife, the second plaintiff or second defendant?

3. Has the third defendant possessed herself of any moveable property as laid down in plaint, Schedule 12, and is the first plaintiff as rightful Zemindar, and the second plaintiff as his guardian, entitled to recover the same?

4. Are the first and second plaintiffs, as Zemindar and his guardian, entitled to recover possession of the houses mentioned in column 8? The question regarding the Punnai lands was allowed to drop.

It will be noted that this case is exactly parallel to the Oorkad succession case, decided on the 12th February 1866 by the High Court.

The families are in both instances Maravars by caste.

They are Zemindary families.

There are several wives and no male child by the first wife.

The plaintiff is the eldest son of his father.

There is a dispute as to the seniority of his mother and the mother of the first defendant. Now, by the decision in that case, it was distinctly laid down that the Hindu law gave the property to the eldest son and not to the son of an elder wife under such circumstances as above said, and that to overcome this law there must be established "an usage so long and invariably acted upon in practice as to shew 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 upon which the custom rests must not be left in doubt but be proved with certainty." It lays, therefore, with the defendants, first, second, and fourth, to establish this custom, and the question I have first to consider is, have they done so? and I have no hesitation in deciding that they have not.

The defendant's Vakeel examined six witnesses to this point, his first to fifth and ninth witnesses. By the testimony of first to fifth witness, it is proved that the deceased Zemindar succeeded to the estate on the death of his father Chockatalavar in Aundoo 20, or twenty-three years back, he being the son of the Patta Stri or first wife; that about sixty years before that, Chockatalavar had succeeded his father being his only son; that Chockatalavar's father, Coomarasamy Talavar, succeeded his father Picha Pillay, who had but one wife, so that to get at the alleged custom, it is necessary to learn what occurred at some successions prior to the last four successions, previous to the present disputed one.

How far this carries us back it is impossible to say; the second or Chockatalavar's succession was some eighty-three years back; but though the witnesses pretend to be well up with the exact order of wives and sons of the Zemindar of still more ancient date, they are entirely unable to give the slightest idea as to the length of time either Coomarasamy Talavar, or his father Picha Pillay Talavar, were in possession of the estate, or as to their age at their deaths.

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This is easily accounted for, because the witnesses allow that there are no family records connected with the Maniachi Zemindary. This also is natural, for previous to the confiscation of the Panjalameurichi Zemindary at the end of the last century, this Zemindary was one of very minor consideration.

It is, however, rather ridiculous to suppose that under such circumstances the slightest credit or weight can be attached to their evidence, that by common report they know the exact order of wives and sons of Zemindars, the latest of whom must have been deceased more than a century.

The fact is, these witnesses have just got by heart the family tree made out by the late Zemindar in 1849, and how made out there is nothing to shew, with the exception of one of the witnesses who had not remembered his lesson perfectly; the rest went just as far as the family tree went, and there stopped, and beyond the facts mentioned in the family tree they knew nothing. As for the letter referred to in the answer of the fourth defendant, that in the first place is of no value to the case, as it purports merely to be a letter written by the deceased to say that the first defendant should succeed him, and in the second it was proved to be a forgery, written after the Zemindar's death—see Calendar No. 15 of 1867—and sentence of guilty passed on the forgers was upheld on appeal. The second witness for defendant in this case was one who supported the authenticity of the above letter, and his evidence was then considered utterly false. The ninth witness was another Maravar Zemindar, but he declared he knew nothing as to how succession went in such cases. It appeared to me that he was annoyed at being summoned, and was determined not to help the party summoning him even if he could.

There were two other Zemindars whose evidence the first defendant wished to get; but one was sick and the other kept out of the way.

Such being the nature of the evidence, I have no hesitation in finding that the existence of the particular custom alleged is not left without doubt, and is not proved with certainty; and, therefore, following the decision in the Oorkad succession case, I find for the plaintiff as to the right to succeed to Zemindary.

Such being the case, it is unnecessary to go into the question of the seniority of the wives, though I am inclined to attach more weight to the evidence for the plaintiff than to that for the defence. The second and third witnesses for the plaintiff impressed me very favorably; the second witness called by the Court, one who had been summoned by plaintiffs, but not examined by their side confirming them; this man is in a very independent position, being a man of good property, and that property old family property not within the Zemindary, so that were it necessary to decide this second issue, I should decide it in favor of the plaintiffs also.

I have, moreover, a very strong idea that the Zemindar's family also knew from the first that the plaintiff was the heir. From the evidence of the Nazir called by the Court, it is proved, as was most probable, that the Patta Stri, Kattana Talavachi, was the head of the deceased family on his death, and took charge and possession of everything. The Zemindar's jewels and valuables had and have disappeared, and it was only the plaintiff's mother who tried to have them placed in safe custody; defendant's mother was quite content apparently that they should disappear; also the first and second defendants' party were obliged to resort to the forgeries, the subject of Calendar No. 15 of 1867, and to support their alleged rights of succession, assisted, as that trial also shewed, by the Patta Stri Kattana Talavachi (see her letter in that trial marked C) a very unlikely state of things, if the first defendant was believed to be the heir to his father by being the son of the elder wife.

The next question to be considered is about the jewels. Every one knows that Zemindars, invariably I may say, wear valuable jewels and have valuable vessels. When the Nazir was ordered by the Court to take possession of the moveables of deceased to prevent their misappropriation, with but a few petty exceptions, not a jewel or valuable vessel was to be found. Now, besides the probability of the case, plaintiffs' first witness speaks generally to the deceased wearing jewels which were kept in the same house as the Patta Stri (that is, first wife) occupied, that is, the principal house in the enclosure, and where the Nazir found her living. Second witness describes some of the jewels generally worn by the Zemindar, and also deposes that the first wife had them in her charge.

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Third witness, who was Accountant with the Zemindar at his death, and besides being one of the hereditary Accountants, has independent property, deposes to a like effect; he puts down the value of the jewels at about 5,000 Rupees. Fourth deposes to the jewels on the Zemindar's body when carried to the burning ground, as is the custom; he puts the valuables down as worth, including the vessels, at 1,000 Rupees. After the body was burned, the jewels were taken back to the first wife. This is again confirmed by second witness, called by Court, above referred to. He puts the value of the jewels on the body of the Zemindar at the time of burning at Rupees 7,000, besides the valuable vessels; and that the third defendant, or first wife, is the person properly to be looked to as responsible, is further confirmed by the evidence of the Nazir, also called by the Court as first witness. I, therefore, consider that the plaintiffs have proved satisfactorily that there has been a great abstraction of property, valuables, &c., that they are justified in the schedule they have put in, and also in holding the third defendant responsible for the loss; and I, therefore, find on that issue for the plaintiffs, though such jewels would be divisible among the other sons when recovered. As to the last issue, there is little to be said: by the evidence it appears that the houses referred to are within the aramanai enclosures or mansion-house compound, all forming part and parcel of the mansion-house property, which belongs to the Zemindar, whoever he may be, and therefore, on this point also, I find for plaintiffs.

There now remains but one question, that is, the question of costs. In general, the cost incurred in deciding a question of succession in such cases would have to come out of the estate; but the present case has marked peculiarities.

On the 12th of February 1866, the High Court gave their decision in the Oorkad case. On the 16th February, the Collector, the Agent for the Court of Wards, wrote letter marked IV. It may be taken as almost certain that the decision of the High Court was telegraphed to Tinnevely, and that it was publicly known before this letter was written, and I have a very strong impression that it was the subject of public conversation at the time. However, though it is not positively proved that the Agent for the Court of Wards was aware of the decision of the High Court when he wrote the letter of 16th February, Exhibit IV., there is positive evidence that the Court of Wards were aware of that decree before they recommended Government to acknowledge first defendant as the Zemindar, and so gave rise to this litigation, and also, that the Collector was aware of the decision long before he received the Orders of Government, and yet did not (except incidentally) report the matter to the Court of Wards with reference to his recommendation of the 16th February, now at all events known to be contrary to the law. The Proceedings of the Court of Wards, recommending the succession of first defendant to be acknowledged, are dated 12th March; Exhibit marked IV., the Order of Government thereon, is dated the 23rd of March, that is, the former exactly one month, and the latter more than a month after the Decree of the High Court in the Oorkad case. Now in the Oorkad case, the Court of Wards were interested, the estate being at that time in charge of the Court of Wards, from which that decree released it, and I am of opinion that it must be considered to be the duty of the Court of Wards to know what decrees are passed by the highest Court in the country in case with which they are immediately concerned.

But not only was it, I conceive, the duty of the Court of Wards to know what decision had been passed at the Presidency, where they hold their office, but in this case there is evidence that it was brought to their notice, though, as above said, not as directly as I think the Collector should have written. In a letter called for by the Court, marked D., which the late Collector wrote on 2nd March, on the subject of the then minor Zemindar of Oorkad's education, he states, "I understand that a decree has been given in favor of the elder branch of this family which will take the estate and minors out of wardship;" yet, notwithstanding that this was thus brought to the notice of the Court of Wards, they either did not inquire what that decree was, although the question in that case and this were precisely similar, or they did know it and paid no attention to it; in either case, this litigation ensued and was, I consider, caused by the wrong action of the Court of Wards, caused partly as above said by their Agent, the Collector, not giving them information as directly as he might have done, for I hold that they are bound in their decisions to act in accordance with the law as laid down by the High Court, unless such interpretation has been declared erroneous by the Privy

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Council. Under such circumstances, I do not think the costs for the recovery of estate ought to come out of the estate, now the property of the plaintiff, but that the first, second, and fourth defendants must be answerable for them jointly. The first and second defendants are included, because if they had not set up false claims, the fourth defendant would not have recommended in their favor; the costs on the other parts of the plaint will be paid by the third defendant. Costs to bear five per cent.

(Signed) F. S. CHILD,
Civil Judge.

1st May 1868.

(True Copy.)

(Signed) R. K. PUCKLE,
Collector.

1. In this letter the Collector of Tinnevely reports the result of the suit brought against Chockatalavar, the late minor proprietor of the Maniachi estate by his half-brother, Subramania Pandia Chockatalavar, who is also a minor. The Court has decided in favor of the latter, and has saddled the Collector as representative of the Court of Wards with costs, on the ground that they adopted a course which they knew, or ought to have known, to be contrary to law in supporting the claims of Chockatalavar to inherit the estate in 1866. Mr. Puckle also submits proposals for liquidating the debts due by the estate without dismembering it.

2. The Court have first to remark on that part of the Judge's decree which makes the Collector answerable for costs. Mr. Puckle does not allude to this point, and the amount of the costs is not given in the papers.

3. The Judge argues, that the Court of Wards were aware of the decision of the High Court in an analogous case, that of Oorkad, when they recommended Government to acknowledge Chockatalavar as the Zemindar, and that they knew at the time that their recommendation was contrary to law. A reference to the Board's records shews that in a letter, dated the 2nd March 1866, and received on the 9th, the Collector, Mr. Wedderburn, remarked that he understood a decree had been given in favor of the elder branch of the Oorkad family. On the 12th, the Board's Proceedings, under Section 3, Regulation No. V. of 1804, recommending Government to recognize Chockatalavar, were issued. They had probably been passed and sent to the Press some days before. On the 22nd, the Board asked the Collector for full information regarding the decree mentioned in his letter of the 2nd. On the 27th April the information thus called for was received. Thus, the facts before the Civil Judge did not warrant him in concluding that the Court of Wards knew of the Oorkad decree when they supported Chockatalavar.

4. But even if this had been the case, there would have been nothing improper in their recommendation, for the Oorkad and Maniachi cases, though similar, are not analogous in a material point. In the Oorkad case, the late Zemindar, in 1849, formally declared that in his family the succession was determined by priority of birth. The late Zemindar of Maniachi, on the contrary, declared that in his family succession was determined by seniority of the mother and not by priority of birth. The family, with the exception of Subramania Pandia Chockatalavar's mother, concurred in stating that Chockatalavar's mother was senior to the mother of the other claimant, and that the late Zemindar had designated Chockatalavar his heir. A petition to this purport was received by the Collector as written by the Zemindar on his death bed, and was supposed to be genuine at the time,

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though it has since been proved to be a forgery. It was implied on the Oorkad decree that a family custom if sufficiently established would modify the law as to the succession of the eldest son, independent of the rank of his mother, and the Court, even if they had had that decree before them, would therefore have been fully warranted in upholding the claim of Chockatalavar—*vide* No. 2,440, from the Board of Revenue, 18th July 1868.

5. The Court resolve to ask the permission of Government to appeal against that part of the decree to which they have alluded, in order to prevent such a precedent from being established.

6. With reference to the general purport of the decree, it is necessary for the Court to ask the formal sanction of Government to continue in charge of the estate on account of the new minor proprietor.

7. If this sanction is accorded, the Collector will have to recommend a Manager and Guardian for the Minor, and the Court will then take his financial propositions into consideration. If the Court are warranted by law in adopting them, it will obviously be advantageous to the estate to carry them into effect. The Court should be asked, if necessary, to suspend the execution of its decrees until the estate has been taken into wardship.

No. 425.

ORDER THEREON, 24th July 1868, No. 2,032.

Land Revenue.

1. The Government authorize the Court of Wards to take charge of the Maniachi estate on behalf of the Minor, Subramania Pandia Chockatalavar, who has been recognized as heir to the Zemin-dary in a judgment of the Civil Court.

2. The Court of Wards should consult the Government Pleader as to the probable result of an appeal against so much of the decree as awards costs against the Collector. If the Government Pleader is of opinion that such an appeal is likely to be successful, the Government have no objection to the Court of Wards acting on his advice.

(True Extract.)

(Signed.) R. A. DALYELL,

Acting Secretary to Government.

To the Court of Wards.

Exd. F. R. Bantleman.

No. 2032.

The Govt. authorize the Court of Wards to take charge of the Maniachi estate on behalf of the minor Subramania Pandia Chockatalavar, who has been recognized as heir to the Zemin-dary in a judgment of the Civil Court. ~~whom the estate has been decreed by~~ The Civil Court.

The Court of Wards ^{should} ~~had better~~ consult the Govt Pleader as to the probable result of an appeal against so much of the decree as awards costs against the ^{Collector} ~~the~~. If the Govt Pleader is of opinion that such an appeal is likely to be successful the Govt have no objection to the Court of Wards acting on his advice.

M.S. Copy - Letter Court of Wards 24th July 1868
SC 14 24th July 1868.

24th July 1868.