M.R. O. 1—32,000—16-10-39.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1887 Press —Mis.—

431-33
Dated 30—11—1870 ~~19~~ .

Not to be folded or roughly handled

Read the following :—

No. 431. Proceedings of the Board of Revenue, dated 21st February 1870, No. 1,211.

Read the following letter from the Sub-Collector in charge of Tanjore, to the Acting Secretary to the Board of Revenue, dated Negapatam, 12th February 1870, No. 59.

I HAVE the honour to enclose translation of plaint in Suit No. 162 of 1869, which has been filed in the District Munsif's Court at Tranquebar, and in which the Collector has been included as a defendant.

2. The facts of the case are fairly given in the plaint. In the village of Budanur in the Mayaveram Taluq, there was a ryot by name Ramasawmy Pillay, holding 10 mas and 64 gulies of land, ancestral property. He died about fifteen years ago, but the Puttah continued in his name till June 1868.

3. The deceased, at the time of his death, left a widow and an undivided younger brother, Krishna Pillay, who died about the year 1865, leaving a widow (the plaintiff), a son aged 3 years (since dead), and a daughter aged 7.

4. Thus in 1868, when the question of giving Puttah to the proper heir came before the Acting Head Assistant Collector, there remained in the Puttahdar's family his own widow Salakshi, his younger brother's widow Swarnathachi (the plaintiff), and her daughter, and each of the widows claimed the Puttah.

5. It is true, that, for some reason not known, the possession of the land passed on the Puttahdar's death to his brother, and after him to the plaintiff, but the Acting Head Assistant Collector, in consideration of the fact that the family was an undivided one, directed that a joint Puttah should be made out in the names of the widows of the two brothers. Dissatisfied with this decision, Swarnam, widow of the younger brother, has brought this Suit for the transfer of the Puttah to her own name solely.

6. The land being ancestral, necessarily belongs equally to the two brothers, and as they did not divide it between them, they held it jointly, and accordingly the joint Puttah should now pass to the representatives of each, their widows, so that the order for a joint Puttah to the two seems perfectly correct. I therefore enclose draft of the answer proposed, and request the sanction of the defence in the usual way. The date of hearing is the 23rd instant, but I have applied for an extension of two months.

ENCLOSURE No. 1.

The Court of the District Munsif of Tranquebar.

Plaintiff versus *Defendants.*

Swarnathachi, widow of Krishna Pillay, residing in Budanur, Mayaveram Taluq.

1. Salakshi Achi, widow of Ramasawmy Pillay, residing in Terukalacheri in the said taluq.
2. Nagalinga Pillay, her brother.
3. Pavadai Padayachi.
4. Narayana Pillay.
5. G. Lee-Morris, Esq., Collector of Tanjore.

Petition of Plaint.

PLAINTIFF files this Suit, valued at Rupees 231-7-2, in order to establish her right to certain Malguzari lands, consisting of Nunjah, Punjah, etc.; to obtain the Mirassy Puttah in her name; and to recover the produce lost.

1. (*a*) My husband and the husband of the first defendant were undivided brothers, and they enjoyed one share of land, specified below, as also some other property which they inherited from their father. The husband of the first defendant died about twenty years ago, leaving no issue. Since then, first defendant lived under the protection of my husband till the year Pingala or 1857-58, and subsequently she has been receiving maintenance allowance from my husband now dead, and afterwards from me, and living separately in her brother's (second defendant's) house.

(*a*) The statements here made are believed to be fairly correct.

2. Since the death of my husband, the said one share of land has been in my sole enjoyment; but as the first defendant objected to the transfer of the Puttah of the said land from her late husband's name to mine, the Head Assistant Collector passed an order on the 19th June 1868, ordering the Puttah to be made out jointly in the names of the first defendant and myself. I remonstrated against this order, but that officer told me to appeal; and accordingly I preferred an appeal petition to the Collector (fifth defendant), who rejected it on the 7th April of the current year (*b*) without making any inquiry. I therefore pray that the Court will declare that, according to law, I am entitled to the said one share of land, and that first defendant has no right to it; and also decree to me the produce of paddy and black-gram which I had raised on the said land in 1869, and which, at the instigation of first defendant, second, third, and fourth defendants have unlawfully carried away.

(*b*) As the appeal petition itself showed that the Puttah had been correctly given, there were no grounds for appeal.

(Here enter the Schedule of property.)

2nd September 1869.

(Signed) SWARNATHACHI.

Filed 10th September 1869.

(Signed) T. GANAPATI AIYAR,
District Munsif.

(True Translation.)

(Signed) W. F. HATHAWAY,
Sub-Collector in charge.

ENCLOSURE No. 2.

Answer proposed to be filed in Suit No. 162 *of* 1869 *of the Court of the District Munsif of Tranquebar.*

As the land referred to was ancestral property, it belonged equally to the two brothers, and as they were undivided and held it jointly, the joint Puttah passed after their death to their widows, the plaintiff and the first defendant; but the fifth defendant is willing to give the Puttah to whoever may establish his or her right in a Civil Court.

NEGAPATAM,
12th February 1870.

(Signed) W. F. HATHAWAY,
Sub-Collector in charge.

THE defence of the Suit is sanctioned, and the proposed answer approved.

No. 432. Proceedings of the Board of Revenue, dated 16th November 1870, No. 6,687.

Read the following letter from the Collector of Tanjore, to the Acting Secretary to the Board of Revenue, dated Tanjore, 11th October 1870, No. 348.

WITH reference to the Board's Proceedings, dated 21st February 1870, No. 1,211, I have the honour to submit, herewith, a copy of the judgment passed by the District Munsif of Tranquebar in Suit No. 162 of 1869.

Proceedings of the Madras Government, Revenue Department, 30th November 1870.

2. The Board will observe that the plaintiff has won the Suit, but I do not think that it is either desirable to prefer an appeal, or that one can be preferred with success.

ENCLOSURE No. 1.

Original Suit No. 162 *of* 1869:

On the file of the District Munsif's Court of Tranquebar.

PRESENT: T. GANAPATI AIYAR.

Plaintiff	*versus*	*Defendants.*
Swarnathachi.		1. Salakshi Achi.
		2. Nagalinga Pillay.
		3. Pavadai Padayachi.
		4. Narayana Pillay.
		5. G. Lee-Morris, Esq.

THE plaint states that the husbands of plaintiff and first defendant were undivided brothers; that while they were enjoying the property specified in the schedule and some other property, and living together, first defendant's husband died twenty years ago without any issue; that subsequently first defendant was under the protection of plaintiff's husband for a time, but in 1857, 1858, separated herself from the family; that ever since she receives maintenance; that four years ago plaintiff's husband died, leaving by plaintiff a daughter and a boy; that the boy died sixteen months ago, and plaintiff is his heiress; that ever since her husband's demise, she has been in the enjoyment of the land in question; that in consequence of first defendant protesting against the transfer of Mirassi in plaintiff's name, the Head Assistant Collector, by an Order, dated 19th June 1868, directed the issue of Puttah in the joint names of plaintiff and first defendant; that the Head Assistant Collector, notwithstanding that the untenability of his order was pointed out to him, left the plaintiff to appeal; that the Order of the 5th defendant, dated 7th April 1869, rejecting the appeal without any inquiry whatever, is clearly wrong, and that this Suit is, therefore, laid for a declaration of plaintiff's right to the one pungoo of land in her enjoyment, for the registry thereof in her sole name, and for value of produce carried away by defendants 2 and 4 at the instigation of the first witness. Further to declare that first defendant has nothing to do with the said lands.

2. First defendant after raising several legal objections as she thinks them, and not one of them at least is sustainable, contends that her and plaintiff's husband divided off long ago; that ever since the land in question was and is enjoyed by her husband and herself, and it is not, therefore, in plaintiff's possession; that she was never in the protection of plaintiff's husband; that the quantity and price of the produce claimed are over-rated, and that defendants 2 and 4 did not carry the produce away.

3. Defendants 2 and 3 support the first defendant, and fourth defendant has been tried *ex parte*.

4. The Sub-Collector, who was in charge, put in the following defence on behalf of the fifth defendant:—

"As the land referred to was ancestral property, it belonged equally to the two brothers, and "as they were undivided, and held it jointly, the joint Puttah passed after their death to their "widows, the plaintiff and the first defendant; but the fifth defendant is willing to give the Puttah "to whoever may establish his or her right in a Civil Court".

5. The following issues were recorded:—

1st.—Whether the family is undivided, and whether first defendant was on receipt of maintenance in pursuance of an agreement?

2nd.—Whether the land in question has been in the enjoyment of plaintiff and her husband, or whether it was obtained by first defendant's husband in division, and has been in his and first defendant's enjoyment ?

3rd.—Whether the quantity of Mahassool claimed in the plaint was carried away in the manner stated, and whether it is due at the rate asked ?

4th.—Whether the fifth defendant was justified in issuing the Puttah for the land in question in the joint names of plaintiff and first defendant ?

6. The status of a Hindu family is non-division until the contrary is shown. The contrary, that is division, was asserted by first defendant, and it lay on her to have proved it. Whether has she proved it ? No. Her fourth witness in his examination in chief stated that "plaintiff's husband and first defendant's husband were divided." But in his cross-examination, he said that "I do not know of a division between them." This is the only witness on the point for the defence, who blows hot and cold in the same breath. When plus and minus destroy each other, there is a zero. So the evidence for the defence to prove division is quite a cipher, and the wholesome doctrine of the Hindu Law that the status of a Hindu family is non-division until the contrary is shown, therefore, applies. Copy of a deposition (I.) which first defendant gave before the Tahsildar of Mayaveram on the 15th June 1868, and the Agreement A., supported by the evidence of the second, third, and fourth witnesses for the prosecution, show that the family is undivided, and the latter document that the first defendant agreed to receive maintenance. The payment of maintenance is proved by the document (1) and the receipts B. to H. spoken to, some to some by plaintiff's witnesses 1 to 6. First defendant denies having given the deposition (1). Plaintiff's first witness declares that she did give it at the request of plaintiff's vakeel; the original deposition was asked for from the taluq records, but has not been received. I have, however, no doubt that it is a genuine document. I therefore find on the first issue that the family is undivided, and that first defendant was on receipt of maintenance in pursuance of an agreement.

7. Plaintiff's first, second, third, and sixth witnesses, residents of the village where the land in question is situate, depose to plaintiff's enjoyment; seventh witness, also a resident of the same village, speaks to both plaintiff's and her husband's enjoyment of the land in question. First defendant herself in the deposition (1) admits plaintiff's enjoyment. Contrary to this admission she brings into court four witnesses to prove enjoyment. These witnesses are residents of different villages, and the third knows nothing in the matter. Of the three that speak to anything, the first witness says "plaintiff's husband and plaintiff enjoy the land in dispute. In the third year, first defendant went to the taluq, and obtained the Puttah in her name. First defendant ever since pays the kist." The two other witnesses declare that they saw first defendant enjoy the land, one says half pungoo of land for upwards of ten years. What oppqrtunities they had, seeing that they have no lands in the village in question, for watching her enjoyment for this pretty long period, and what object they had in doing so, it does not appear. They appear to be mere men of straw. First defendant who deliberately admitted plaintiff's enjoyment before the Tahsildar, now simply tries, through these witnesses, to establish a different state of things. I think it would be unsafe to believe in the testimony of these witnesses. First defendant has put in two receipts for kists paid. The receipts themselves show that the kists were paid on the strength of the joint Puttah. They are documents that came into existence subsequent to the commencement of the dispute between the parties before the Revenue authorities. One of the objects of this Suit is to set aside the joint Puttah, in pursuance of which the said receipts are granted. They cannot, therefore, evidence any enjoyment of the land by first defendant; non-division has already been established. My finding on the second issue, therefore, is, that the land in question has been in the enjoyment of plaintiff and her husband, and that neither it was obtained in division by first defendant's husband, nor was it in his and first defendant's enjoyment.

8. Four witnesses for plaintiff, the first, third, sixth, and seventh are let in to prove the third issue. The quantity of produce they say that was carried away differs. The first witness says that he had placed his "Pannaiaul" to watch the quantity of produce carried away. Who is that man, and why was he not produced, does not appear. If he had been produced, he would have given the best evidence in the case. Moreover, first witness says he derived his knowledge of the quantity of the produce carried away from the said "aul." From the statement of the said witnesses, it would appear that first defendant in open day carried away the Mahassool through ten or twenty people. If this was a fact, I have no doubt, bearing in mind the hostilities between the parties regarding the land, that plaintiff would have at once lodged a Mahassool complaint, the first step invariably taken in this district in similar cases, against first defendant. I therefore cannot rely on the evidence on the third issue, and it is decided against plaintiff.

9. On what principles the joint Puttah was issued I am unable to see. It is laid down in Mr. Dalyell's Standing Orders of the Board of Revenue, page 127, paragraph 3, edition of 1867, that "on the death of a Puttahdar, the Village Curnum should at once report to the Tahsildar, "and the Tahsildar to the Collector, stating who is the nearest heir. The Collector on being "satisfied, should cause a fresh Puttah to be issued at the annual settlement to the heir or heirs." The heir or heirs in the said order must mean the heir or heirs-at-law, and to determine who is the nearest heir to the deceased Puttahdar, the Hindu Law should be consulted. For instance, if a Hindu dies leaving a widow and mother, and dispute arises as to the transfer of registry, how is the heirship to be decided ? This being an ordinary case, perhaps even common sense may point out the widow as the nearest heir. Let another case be supposed, a Hindu in whom certain lands are individually vested dies, leaving a couple of brothers, father and mother. The brothers, father and mother individually claim the transfer of registry, and will the Collector determine who is the nearest heir to the deceased ? If he transfers it to the names of the brothers, or to that of the father, he will not be transferring it to the name of the nearest heir to the deceased; because under the Hindu Law, the mother is the nearest heiress. Therefore, heir or heirs must mean heir or heirs-at-law, and such heirship should only be determind according to law. The issue of joint Puttah in this case is neither in accordance with law nor with usage. It is not in accordance with law for the following reasons :—The fifth defendant, in his defence, admits that the family is an undivided one, and in an undivided family, if two brothers die in succession without male issue, each leaving a widow, the widow of the last survivor alone inherits, for the reason that on the demise of the brother, who first died, the whole property rests in the surviving brother, and so it passes on to his widow. The circumstances of this case are nearly parallel, with a single exception. The exceptional circumstance is, that plaintiff's husband, the surviving brother died, leaving a boy and daughter. On the death of plaintiff's husband, the boy, according to the law, was the heir. He (the boy) himself having died, his mother, plaintiff, is the heiress, *vide* paragraphs 349 and 347 of Strange's Manual of Hindu Law, Second Edition. First defendant is simply entitled to maintenance, and she has in the document (I.) admitted having received maintenance. So much for the issue of joint Puttah not being in accordance with law. The issue of joint Puttah is not according to the usage prevalent. I understand that there is a practice in the Revenue Courts to issue "Anooboga Puttahs" (puttahs according to enjoyment). This might have been done in this case, because first defendant admits in the said document (I.) that plaintiff, till three months prior to 15th June 1868, enjoyed the lands and paid the kists, and first defendant referred to a Civil Court. For these reasons, I am of opinion that there was no justification for the issue of the joint Puttah, and fifth defendant is not, therefore, entitled to his costs.

I disallow the claim for value of produce, and declare plaintiff's right to the lands in question, which are in her enjoyment, that she is entitled to have a Puttah for the said lands issued in her sole name, and that first defendant has nothing to do with the said lands. First defendant will pay plaintiff proportionate costs. She and defendants 2, 3, and 5, will bear their costs.

(Signed) T. GANAPTI ALYAR,
District Munsif.

17*th September* 1870.

SUBMITTED (together with a copy of Board's Proceedings, dated 21st February 1870, No. 1,211) for the information and orders of Government.

2. The plaintiff and first defendant in this Suit are the widows of two undivided brothers who held a joint Puttah for the land which has been in dispute.

3. The first defendant's husband died many years ago, and she was then supported by her brother-in-law, the plaintiff's husband. On the subsequent death of the latter, a joint Puttah was made out in the names of the two widows.

4. To this the plaintiff objected, and the Court has decided in her favour; and has adjudged the Collector to pay his own costs, on the ground that the widow of the last surviving brother alone should inherit, according to Hindu law.

5. There appears to be no ground for questioning this decision.

No. 433. ORDER THEREON, 30th November 1870, No. 1,887.

Miscellaneous.

THE Government accept the decision. The Board will report the amount of costs awarded against the Collector for sanction.

(True Extract.)

(Signed) W. HUDLESTON,
Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

Rev- 1870. Dept

Board of Revenue,

MADRAS. D.3641

PROCEEDINGS, 16TH NOVEMBER 1870, No. 6,687.

Dept 23 Sharpe Encl. 1

Received 24 Nov.

NOVEMBER.

No. 6,687.

Suit,—No 162 of 1869, instituted in Tranquebar Munsif's Court in Tanjore District, regarding puttah for certain land in Budanur village,—Letter from Collector forwarding a copy of judgment passed in favor of plaintiff in, submitted to Government, together with a copy of Board's Proceedings sanctioning defence of this suit.

No 1887 - 30 Nov
Wit Order

Copy to the Collector of Tanjore.

Exd. G. A. Turton.

No 1887. Submit accepting decision. Suit to recover the amount of costs awarded against the Collr. 30 Nov 70

In Collr 15th & Rent Suppt Nos

Dept 23 Sharpo 228

Govt. of {1870} Madras.

REVENUE.

To

THE BOARD OF REVENUE.

Dated November, 30th. Encl.

Recd.

G. O., 30th November 1870, *No.* 1,887.

D. No 3360 of 1871.

NOVEMBER.
Nos. 421 -433.

Suit No. 162 *of* 1869 *regarding certain Puttah-land in Tanjore District.*—Decision of the Court in favour of the plaintiff accepted. Board of Revenue to report the amount of costs awarded against the Collector for execution.