

REVENUE DEPARTMENT.

No. 2524

From *Secy. of Revenue*
Dated *30th June* 187*4*

FOR ORDERS.

I see no particular
reason why the right
of the Crown should be
at once tried. I shall refer
this however to the
right would be an official
order by formal notice
being

No. 2525
Revenue 1874
BIRTH OF GIBBUNA
MADRAS.

PROCEEDINGS, 31st JANUARY 1874, No. 1744.

W. J. G. G. G.

1874

Revenue

W. J. G. G.

JULY

No. 1744

*Notice of the Secretary (Chief of Land
in Chittoor District) - Letter from Govt.
most please for acting in connection with
question of Government right to succeed by
escheat to certain of surviving widows) copy
of a statement and return to Govt. of
revenue and land revenue of Madras and
Co. Madras.*

pen to the surviving widow
I the husband of the deceased
in no way the claim of
the estate, in the absence
of the death of the latter.

If I am wrong, a declara-
tion should, I think, be
filed.

Lot

A more notice
can be of no value
as they already have
the whole estate

A delay until the stock ^{market} rises
on the death of Mr. C. for cause,
is the detriment to the claim
of the widow's estate. That
is the case.

Not as proposed
J. H. Robinson
11/23/77

PROCEEDINGS OF THE BOARD OF REVENUE, dated 30th June 1874.

Read again Board's Proceedings, dated 5th May 1874, No. 1,039.

Read also the following letter from W. M. SCHARLIEB, Esq., Acting Government Pleader, to J. GROSE, Esq., Secretary to the Board of Revenue, dated Madras, 22nd May 1874, No. 91:—

I HAVE the honour to report my opinion on the question referred to the Government Pleader, in the Proceedings of the Board, dated 5th May 1874, No. 1,039.

2. Whether it is expedient that a suit should be brought on behalf of Government in respect to the property left by Srinavassa Ragava Charry of Darnal, Conjeveram Taluq, Chingleput District, is a matter entirely for the Board's consideration; but it is clear that the Government have a right to bring such a suit as a question of law.

3. I quite agree with Mr. Barlow in the opinion expressed by him in paragraph 5 of his letter of the 26th March last, that co-widows take their husbands' property as a joint estate for life, with rights of survivorship, and that any division they may effect is a matter of convenience as between themselves. It was so held by the High Court of Madras (Scotland O. J. and Ellis J.) in the case of the Ranees of Tanjore, III, H. C. R. 424. Their lordships laid down the law in those words:— "The sound rule of inheritance is that two or more lawfully married wives (*Pat-nis*) take a joint estate for life in their husbands' property, with rights of survivorship and equal beneficial enjoyment." And though further down in their judgment they were of opinion that a case might be made out entitling one of several widows to the relief of separate possession of a portion of the inheritance, they held that the division spoken of in the texts referred only to the distributive enjoyment of the benefits of the joint property, so that two or more widows might by an agreement *inter se*, not prejudicial to the rights of the next heir in succession, provide for such enjoyment by an apportionment of the property; but that a partition converting the joint estate into an estate in severalty, whenever either of the widows chose to insist upon it, was quite incompatible with the right of survivorship to the whole property, arising out of the joint estate for life, and the surviving widows being the nearest heir or heirs of the husband. Under the law thus laid down, therefore, neither the fact of Lutchammal (the senior widow) and Kana-kammal (the junior widow) having divided Srinavassa Ragava Charry's property between themselves, nor the circumstance that Narasimma Charry has got possession of his sister, the elder widow's portion, can prejudice the right of the next heir which can only arise on the death of the surviving widow.

4. As there appear to be no kinsmen, however, remote, or other heirs, of the late Srinavassa Ragava Charry, the Board are sound in the opinion that the property will escheat to the Crown when the surviving widow dies. In the case of *Reerut Sing and Koolahul Sing*, II, Moore's Privy Council Reports, the side note is: "According to the Hindoo Law, the widow, in default of issue, is entitled to

succeed to the whole of her deceased husband's estate; but her title to such estate is only as tenant for life, and she has no power to alienate or devise any portion of her husband's estate which, on her death, devolves to his legal heirs." The property must go to the husband's heirs, not to the heirs of the widows. Narasimma Chetty, the brother of Lutchmamma, is neither an agnate nor a cognate of the deceased Srinavassa Ragava Chetty. Indeed, he is not even heir to his sister, who was completely covered by her marriage from her natural family, being taken by such marriage into an entirely new gotra and family. The case, however, which has most recently determined the question of the Crown's inheritance is that of *the Collector of Masulipatam v. Gopal Venkata Narainappa*, commonly known as the Visanapetta Zemindari case. In the first appeal to the Privy Council, VIII, Moore, 509, it was held that the estate of a Hindoo of the Brahmin caste, dying without heirs, escheats to the Crown as the Sovereign power in British India. In the second appeal, reported at page 529 of the same volume of Moore, it was laid down that by the Hindoo Law of Inheritance, a childless widow takes as heir, but it is only a special and qualified estate; that if there be collateral heirs of the husband, the widow cannot alien the property except for special purposes, such as for religious or charitable objects, or those acts which are supposed to conduce to the spiritual welfare of her husband, in which circumstances she has a larger power of disposition than that which she possesses for purely worldly purposes; but that to support an alienation for the latter purpose, she must show actual necessity; that the restrictions imposed by the Hindoo Law on a widow's power of alienation of her husband's estate are inseparable from her estate, and do not depend on the existence of heirs capable of taking on her death; and that when the Crown takes by escheat for want of heirs, it has the same right to impeach an unauthorized alienation by the widow, which the heirs of the husband, had there been any, would have had. In the last appeal, a report of which will be found in XI, Moore, 619, the appellant, it is true, succeeded in establishing a large debt incurred partly by the husband, partly by the widow, against the estate; but it was held that the right of the Crown to take by escheat was not defeated, the appellant being only entitled to hold the Zemindari against the Crown as a security for so much of the debt and interest as remained unpaid, the Crown possessing the right to redeem.

6. Adverting to the circumstance of a portion of Srinavassa Ragava Chetty's property having been transferred by Lutchmamma to Narasimma Chetty, and such assignment having since been recognized by the junior widow Kanakamma, I am of opinion that a suit may at once be brought to obtain a declaratory decree in favour of Government. If, independently of the general principle of law restricting the widow's right to encumber her husband's estate only for very limited and special purposes, we need any decided case warranting the intervention of a reversioner, we have one in the case of *Surend Chandra Sen v. Muthoora Nuth*, 7 W. R. 805, which I find noted at page 854 of the Indian Digest by Cowell and Woodhouse, First Edition. The note is as follows:—"Though a reversioner cannot obtain possession during the lifetime of a Hindoo widow, yet he may be entitled to a declaration whether the alienations made by the widow are, or are not, valid and binding on the absolute heir."

6. The Razinama and the Munsif's judgment and decree, referred to in paragraph 2 of the Board's Proceedings under reply, have not reached this Office from the Collector of Chingleput, but I do not apprehend that they are likely to affect the views expressed above.

Submitted for the orders of Government.

2. A man named Srinavassa Ragava Chetty, who possessed property at Damal died in 1858, leaving two widows, but no other heirs.

3. The widows divided the property into two equal shares, and the senior widow's share of the immoveable property has been valued at Rupees 5,027.

4. The senior widow died in 1872, after making over her property to her brother who is now in possession. The junior widow is still alive, and has recognized the transfer.

5. The Government Pleader advises that the whole property will become an escheat on the death of the junior widow, but not before, and thinks that Government should secure their right to the portion in possession of the late senior widow's brother by suing for a declaratory decree.

6. It is accordingly necessary for Government to decide now whether they will assert their right to the future escheat. The Board see no reason why they should not do so.

(A true Copy and Extract.)

H. G. M.
Secretary.

To the Acting Secretary to Government, Revenue Department,
with Board's Proceedings, dated 5th May 1874, No. 1,249.

Copy to the Collector of Chingleput,
" to the Government Pleader.

Edw. G. A. Tait.

for conference
Sept 11