M.R.O. 1—20,002—12-8-65.

(1) Number of Pages 32

(2) Date of repair 3.6.69

(3) Initials of the Referencer

# MADRAS RECORD OFFICE

## GOVERNMENT OF MADRAS

Revenue DEPARTMENT

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| G.O. No. / ~~B.P. No.~~ | 1364 | Press / ~~Mis.~~ |
| Dated | 27 - 9 - | 1876 ~~196~~ . |

*Not to be folded or roughly handled*

1364

*Proceedings of the Madras Government, Revenue Department,*
*27th September* 1876.

No. 323. Read the following letter from W. LOGAN, Esq., Collector of Malabar, to the Hon. D. F. CARMICHAEL, Secretary to Government, Revenue Department, Ootacamund, dated Calicut, 14th September 1876, No. 67 :—

REFERRING to G.Os., Revenue Department, Nos. 694 and 543, dated respectively 5th May 1875 and 24th April 1876, on the subject of the Malikhana allowance drawn by the late Kunni Kutti Valiya Nambyar, of Mithangot Kunnummal family, I have the honor to inform you that I have received a petition (translation enclosed) from one Raman Nambyar who claims to be considered the present senior member of that family, protesting against the payment of the Malikhana allowance to the adoptee referred to in the above Government Orders, and praying that the same be paid to him after instituting necessary inquiries into the claim, or that payment may be suspended pending the result of a suit now being carried on between himself and the Karanavars of the adoptee, or until a special suit for the Malikhana be brought and disposed of.

2. My views of the question at issue have been stated in my letter printed in the second of the Government Orders quoted above; but perhaps I ought to have explained more fully the peculiar constitution of these Nair families, which renders it possible (as in the present instance) that persons should be declared not to have any rights over certain portions of the property belonging to members of the Tarwâd, and yet to be entitled to come in as residuary heirs. A respectable Malabar Tarwâd usually consists of an aggregation of families or tajvaries (branches) as they are called. The eldest male of *all* the families is the Karanavan, and he manages the Tarwâd property, *i.e.*, the property in the common enjoyment of *all* the branches; but the Karanavan *must* have sprung from one or other of the tajvaries, and each tajvari usually possesses property which it *exclusively* enjoys, and which, in default of heirs in that tajvari, the members thereof may dispose of as they please. This description, however, only applies to theoretically distinct branches; in practice, very often it is difficult to say whether the head of a tajvari has power to alienate his own special tajvari's property in default of heirs in that particular tajvari. For instance, in the present case two women (sisters or cousins) seem to have been adopted into the Tarwâd at one and the same time. The one woman's branch is represented by petitioner, the other branch became extinct in the person of the late Valiya Nambyar, whose Malikhana is now in dispute, or (if the Courts should so hold) is still represented by the adoptee. But for those proceedings before the Principal Collector alluded to in my report, in the course of which the late Valiya Nambyar's branch set up the contention that the other branch had no claim upon them as heirs, *i.e.*, in the current phrase, they had community of pollution, but no community of property, there is in my mind but little doubt that it would have been held by the Courts that the present petitioner's branch had community of property still, inasmuch as both branches could prove their descent from a common ancestress, the person, to wit, who adopted the two women. The Courts, you will observe, found this last point *as a matter of fact*; but they also found that petitioner's branch had not insisted on their rights to community of property within the statutory period subsequent to the date when the contention alluded to above was raised before the Principal Collector. The Courts, therefore, legally held that the petitioner's branch were, *so far as the alienation of the special property of the Valiya Nambyar's branch was concerned*, no longer entitled to contest it.

3. But, at the same time, it should be borne in mind that if petitioner's branch can show that there was any property common to *both* branches (this Malikhana allowance for instance), they still come in as residuary heirs of it; and even if any property was left unalienated in the late Valiya Nambyar's branch, they would also, I fancy, (barring the woman's claim as adoptee) have, as "Attâlatakkakârs" (residuary heirs), a right to it, inasmuch as it is now generally held by the Courts that residuary heirs must prove their descent from a common ancestress, and this, you will observe, the petitioner's branch has already done.

4. I expect the Courts may very possibly, looking to the facts already found, upset the adoption of the woman (M. K. Lakshmi Amma), on whose petition I formerly reported, because it is doubtful if the Valiya Nambyar had any right to adopt, so long as heirs were left to him. If petitioner's branch had established their claim to community of property in the late Valiya Nambyar's branch, there is no doubt the adoption must have been held to be invalid; but, under the circumstances of the case, it is possible the Courts may adopt the view that, as there was no community of property so far as that of the late Valiya Nambyar's *branch* was concerned, there was, therefore, no legal inability to adopt.

5. In any case, however, this may be decided, it seems to me that the Malikhana, being property common to both branches, should not be affected by the question of the validity of the adoption, and if it is to be continued to any one, it seems that it should be given to the Karanavan or eldest male of the Tarwâd, *i.e.*, of the petitioner's branch and of the branch which *may* be founded by the adopted woman, should her claim as adoptee be admitted as valid by the Courts.

6. I would, however, advise the Government not to interfere in the matter at present, but to await the decision of the Courts before finally deciding what is to be done. I urge this, because it is obviously unadvisable to prejudge the decision of the Courts on the points now at issue between the parties.

7. Meanwhile, I would solicit orders to hold the payment of the Malikhana in abeyance.

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No. 324. ORDER THEREON, 27th September 1876, No. 1,364.

Miscellaneous.

THE Government do not see sufficient reason to suspend the operation of G.O., dated 24th April 1876, No. 543, as proposed by the Collector.

2. The Collector will inform the petitioner that he is permitted to sue for establishing his claim to the Malikhana, and that unless he produces an injunction from the Courts prohibiting the disbursement of the Malikhana to the adopted heir of the deceased, the payments will continue to be made to her.

(True Extract.)

(Signed) D. F. CARMICHAEL,
*Secretary to Government.*

To the Collector of Malabar.
„ the Board of Revenue.

Exd. F. R. Bantleman.

1364

Govt. of Madras.

REVENUE.

To

THE COLLECTOR of MALABAR.

&c, &c, &c.

Dated September, 27th.

Read.

Encl.

G.O. 27th September 1876. No. 1,363.

SETTLEMENT.

No. 1,363.

*Petition dated 5th September 1876 from Kunhi Kutti Nambiar of Mithungat Kummunal Parai Nadoor, in Walluvanad District*—Declining to suspend the operation of G.O., 24th April 1876, No. 543, on the subject of the —; and directing the Collector to inform the petitioner that he is permitted to sue for establishing his claim to the Malikana, and that unless he produces an injunction from the Civil Court prohibiting the disbursement of the Malikana to the adopted heir of the deceased, the payments will continue to be made to her.

To

The Collector of Malabar,

1364/76

The petition of Mithungat Kummunal Poman Valia Nambiar of Panoor Amshom & Deshom, Cottayam Taluk.

Kunhi Kutti Nambiar the late Karanavan of Mithungat Kummunal Tharwad having died on the 28th Karkadagom 1048 I and Pookot Mattathil Lekshmi presented petitions on the 25th August 1873 and in No 1176 of 1873 respectively, I claiming the Malikana of the deceased as his immediate heir and successor and she as his adopted heiress, and the result was a Proceedings of your Office dated 5 September 1873 stating that the claim for the Malikana would be taken into consideration after the disposal of the suit then pending with regard to the succession of the deceased.

2 Since then I understand that an order has been received from Govt. saying that the decree in the above suit has declared the claim of the real heirs of the deceased to succeed him as barred and that the Malikana should be paid to the adopted heiress, and that it is according in contemplation to pay the allowance to her.

3. The suit above alluded to was brought by certain members junior to me of the Mithungat Kummunal Tharwad to set aside the gift of

of some family property made by the late Kunhi Kutti Valia Nambiar to Kammarath Makan the widow of his deceased brother Kunhi Kunkan Nambiar. I and the said Kunhi Kutti Valia Nambiar were among others, defendants. The judgement in the suit was given against plaintiffs, who were declared as barred by lapse of time to recover the property sued for. It cannot however, be considered as in favorable to my legal claim now favorable to that of the alleged adopted heiress.

(4) In Minom 1046 when the said Kunhi Kutti Valia Nambiar was in his dotage, he executed and got registered a Deed of Gift in favor of Janamajeyan and Dhoumasadan sons of his said brother Kunhi Kunkan Nambiar by a second wife, granting them Mettangal Kunnumab Tharwad and all properties moveable and immoveable belonging to it, the Malikana allowance attached to the family, the rights and privileges due to its position, temples and their endowments and authorizing them to perform his funeral ceremonies after his death. As this grant has not (hitherto) produced the desired effect the grantee very shortly before the said Valia Nambiar's death, forged a deed which is in diametrical opposition to that document as it purports to have adopted a niece of theirs, who cannot be legally adopted because she

1364/13

she was 25 years old and belonged to a family from which adoption, could not be made, so that the adoptee cannot perform the funeral ceremonies, and at the same time sent a false application by post in Valia Nambiar's name on the subject of the payment of the Malikana. The alleged adopted heiress has not hitherto and can by no means come into the possession of any title or property in virtue of her adoption.

5. Since the death of Kunhi Kutti Valia Nambiar, all the properties of Mettangal Kunnumab Tharwad are managed by and under me. While I was so doing, the above mentioned Janamajeyan and his brother, who are the Karanavan of the alleged adopted heiress, brought O.S. No. 208 of 1845 into the District Munsiff's Court Chavacad against certain tenants under me, and upon the Court ordering my inclusion in the suit as a party, the plaintiffs withdrew their case and they had therefore to pay my costs. They are now prosecuting O.Ss. Nos. 312, 313 & 314 in which the Court after including me as a party, has framed issues the final hearing of which are posted for the 15th August current.

6. The Limitation Act which governs Civil suits has no application to a Malikana which is purely revenue and regarding which no cause of action has arisen. Matters political are always investigated in accordance with truth and

and justice. If it is however, ordered that the Claim for the Malikanas should be taken to a Court of Law, I am ready to do so, but if the allowance is paid away with reference to recent orders to the alleged adopted heiress before making any such investigation, it will be a great grievance. I therefore request you will be kind enough to make an enquiry into my Claim and order the payment of the Malikanas to me or that an order may be passed suspending payment of the Malikanas until the result of the suit now pending between me and the Karanavans of the adoptee is known, or until a suit to be brought for the Malikanas specially is disposed of. I request that a reply to this may be sent bearing". Dated 6 August 1876.

Sd/ Raman Nambiar

"True Translation"

W. Logan

Collector

Enc

1362/1875

1364
b

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Malabar Collector's Office
Calicut, 14th September 1876.

No. 67.

From,
W. Logan, Esqre,
Collector of Malabar.

To,
D. F. Carmichael, Esqre,
Secretary to Government. Rev: Dept.
Ootacamund.

Sir,

Refering to G.O., Revenue Department, Nos. 644 & 648, dated respectively 5th May 1876 and 24th April 1876, on the subject of the Malikhana allowance drawn by the late Kunni Kutti Valiya Nambyar of Mithanlot Kunnummal family, I have the honor to inform you that I have received a petition (translation enclosed) from one Raman Nambyar, who claims to be considered the present senior Member of that family, protesting against the payment of the Malikhana allowance to the adoptee

2 a letter from the Collector of Malabar to the Revenue Secretary to Government dated 14th September 1876 No 67.

Pnr 3843/76

Translation of Petition from Kunni Kutti Valia Nambiar of Mithanlot Kunnummal family

referred to in the above G.Os and praying that the same be paid to him, after instituting necessary enquiries into the claim, or that payment may be suspended pending the result of a suit now being carried on between himself and the Karanavars of the adoptee, or until a special suit for the Malikhana be brought and disposed of.

2. My views of the question at issue have been stated in my letter printed in the second of the G.Os quoted above, but perhaps I ought to have explained more fully the peculiar constitution of these Nair families which renders it possible (as in the present instance) that persons should be declared



not to have any rights over certain portions of the property belonging to members of the Tarwâd and yet to be entitled to come in as residuary heirs. A respectable Malabar Tarwâd usually consists of an aggregation of families or Tâjvaries (branches) as they are called. The eldest male of all the families is the Karanavan, and he manages the Tarwâd property i.e. the property in the common enjoyment of all the branches, but the Karanavan must have sprung from one or other of the Tâjvaries, and each Tâjvari usually possesses property which it exclusively enjoys, and which in default of heirs in that Tâjvari, the members thereof may dispose of as they

An ADOption notes in this case

pleases. His description, however, only applies to theoretically distinct branches- in practice, very often it is difficult to say whether the head of a Tâjvâni has power to alienate his own special Tâjvâni's property in default of heirs in that particular Tâjvâni. For instance, in the present case two women (sisters or cousins) seem to have been adopted into the Tarwâd at one and the same time. The one woman's branch is re- -presented by Petitioner, the other ~~es~~ branch became extinct in the person of the late Valia Nambyar, whose Malikhana is now in dispute, or (if ~~if~~ the Courts should so hold) is still represented by the adoptee. But for

those



1364/09

those proceedings before the Principal Collector alluded to in my report, in the course of which the late Valia Nambya- -ri's branch set up the contention that the other branch had no claim upon them as heirs, i.e. in the current phrase, they had community of pollution but no community of property, there is in my mind but little doubt that it would have been held by the Courts that the present Petitioner's branch had com- -munity of property still, inasmuch as both branches could prove their descent from a common ancestress, the person to wit who adopted the two women. The Courts, you will observe, found this last point as a matter of fact, but they also found that Petitioner's branch had not insisted

on their rights to community of property within the statutary period subsequent to the date when the contention alluded to above was raised before the Principal Collector. The Courts, therefore, legally held that the Petitioner's branch were, so far as the alienation of the special property of the Valia Nambyar's branch was concerned, no longer entitled to contest it.

3. But at the same time, it should be borne in mind that if Petitioner's branch can show that there was any property common to both branches (this malikhana allowance for instance), they still come in as residuary heirs of it, and even if any property was left unalienated in the late Valia Nambyar's



1364/9

branch, they would also. I fancy (having the woman's claim as adoptee) have as "attâlatakkakâr" (residuary heirs) a right to it, inasmuch as it is now generally held by the Courts that residuary heirs must prove their descent from a common ancestress, and this you will observe the Petitioner's branch has already done.

4. I expect the Courts may very possibly, looking to the facts already found, upset the adoption of the woman (Mrs. Lekshmi Amma) on whose petition I formerly reported, because it is doubtful if the Valia Nambyar had any right to adopt, so long as heirs were left to him. If Petitioner's branch had established their claim to community of property in the late

Valia Nambyar's branch, there is no doubt the adoption must have been held to be invalid, but under the circumstances of the case it is possible the Courts may adopt the view that, as there was no community of property, so far as that of the late Valia Nambyar's branch was concerned, there was therefore no legal inability to adopt -

5. In any case, however this may be decided, it seems to me that the Malikhana, being property common to both branches, should not be affected by the question of the validity of the adoption, and if it is to be continued to any one, it seems that it should be given to the Karanavan or eldest male of the Tarwâd, i.e. of the Petitioner's branch



1364/12

branch and of the branch which may be founded by the adopted woman, should her claim as co adoptee be admitted as valid by the Courts -

6. I would, however, advise the Government not to interfere in the matter at present, but to await the decision of the Courts before finally deciding what is to be done - I urge this because it is obviously inadvisable to prejudge the decision of the Courts on the points now at issue between the parties -

Meanwhile, I would solicit orders to hold the payment

of the Malikhana in abeyance —

I have the honor to be,
Sir,
Your most obedient Servt.
W. Lucas
Collector

Letter from the Collector Tinnevelly dt. 14th Sept 67
1876 No. 3743 —

In this letter the Collr Tinnevelly proposes with ref to 26th April 1876 No 543, dt. ordering that the adoption of Lakshmi Ammal by the late Malikkhana holder of the Nattampatti Kumaramangalam family be recognized by the Govt, & that Lakshmi Ammal be left in charge of the Malikkhana pending further litigation between the adoptee & the nearest of the deceased owner to whom proof can be given of the adoption & to recognize the adoption & permanent Malikkhana claim.

It should be remembered that when the order of April 1876 was passed, the whole

No. 3543
Rev. 1876. Dept
Sept

From,
The Collector of Madura,
To
The Secretary to Govt. Fort St. George
Rev. Dept.

Dated 14th Sept 1876
Read 19th " } 1876.

Enclosure 1 /

Reporting with reference to G.O. Rev. dt. 26th April 1876 No. 543 & dt. 3rd May 1875 & 24th April 76 respectively on the subject of the Malikkhana allowance drawn by the late Rani Kattu Vella Nachiyar of Ramnad family

C-25-Sept/76 (R2)/65

No. 3543 Rev. 24th April 1876

24 April 1876

this resolution was once
that the prior order of 1875
should be cancelled, &
that the Malikhana thus
leave to the adopted — It
has now to be considered
whether fresh reasons have
been adduced to recon-
-sider this order also —

The facts of this case are briefly
as noted below.

The family consists of two
branches which came into
existence by the adopting of
two sisters originally by a
common ancestor. The Mal-
-ikhana holder, the Valia
Kambiar, represented an
branch; & the present Pathiver
who has assumed the family
title represent the other branch.
In 1835; disputes arose between
the two branches regarding the
distribution of the Malikhana
allowance; the Valia Kambiar,
last Malikhanadar, alleging
that the other branch had no
title to the same. The Sub

S.C. Sheriff's S. 20537

+ Kunhi Kutti Kambiar.

@ Raman Kambiar.

case before the Principal
Collector, & it was ad-
-mitted by both parties
that the present petitioner
branch wanted their
claim & agreed to leave
the Malikhanadar in the
undisturbed enjoyment
of Malikhana & his
property. Thus a complete
separation has been brought
about between the two
branches as regards pro-
-perty & pany Kunhi
-ssi Kambiar, the last
holder, according to the
the whole of his property during
his life time only to pass
after his & adopted a female
just before his death &
represent his line & re-
-ceive the Malikhana from
Government. The owners
of the deceased, whose
& other members of

now represented by his present petition, disputed his adoption alone opposed both his Counsel; whereupon decided that his claim is barred by limitation—

The Government according to their order of April last decided that the adoption of the female whereby adopted into the family contemporaneously with her deceased husband's brother, has been declared by the Civil Tribunals to be inoperative under the limitation Act, in like of their hereby disqualifying her late valid husband's as her heiress in immediate to a technical objection that notice of the adoption was not given to the Collector within months before the adoption death is inequitable in the case of a malabar



an allowance in lieu
examined etc. etc. —

the Log an two points
not met his own family
of malabar consist of two
distinct branches; each
holding property with an
extinction of one branch
property falls to other
branches as "Attal adakka
kars" or "residuaries" that
attal condition must be held good
the case of the Kunhamu
dial family
any probability of his Counsel
deciding in favour of the pre-
sent petitioner of his question
of right to the Malabhana
is brought before them. He
observes that the decision
of the Courts as regards the alien
ation of the property belonging
to the deceased's branch
cannot affect the right to
Malabhana which belongs to
family

branch alone. He says
that the present Petitioner
is in possession of the
deceased's property, that
there is a fresh suit before
the Courts between the
members of his branch
& that if decree should
be passed in favour of
the deceased his property
& that pending this suit,
the Malikhana may be
suspended.

The Government have already
revised their first order
on the subject; & that first
decree does not seem
to have been advanced
to keep in abeyance the
second order as proposed.

In 1838, the present Petitioners
branch first claimed a
share of the Malikhana.
& then deliberately gave up
all claim to the Malikhana
& all property enjoyed by the

deceased - It is the latest
which has formed fatal
to their cause in this
suits brought by the Petitioners
Courts branch & they cannot
not be permitted to renew
their claim on their present
ment. that the arrangement
was not intended to
but only during the life
of the deceased. Further
the nature of the contention
now said to be for the
Courts is not explained. The
alone is still
probably legally to argue
possession from the present
Petitioners branch. The state-
ment contained in the Peti-
tion that the Petitioners was
not a Plaintiff in the former
suit which has been lost,
that it was brought only
by the present brothers & that
he himself was made one of
the defendants in that
it shows that he can only

1364/16

Capt. Humphreys under whose command
Found that he may Recommence
a claim of his branch of
a different form from that
the failure of his first at-
tempt —

There appears likewise
reason for receding from
the position already taken
upon for this — The present
Claimant maybe informed
that unless he produces
an injunction from the
Courts ~~of~~ prohibiting
~~the~~ disbursement of the
Malikhana. Lohri &c. of his
heir of the deceased, he
payment will continue
to be made to them

He is permitted to sue for the claim [illegible]

Certainly
Right

Malabar Malabar

Board Room

Order No 1364
Dy 27 September 1876

The Government do not see sufficient reason to suspend the operation of Proc dy. 24 April 1876 No 543 as proposed by the Collector.

The Collector will inform the Petitioners that he is permitted to sue for establishing his claim to the Malabar Coast unless restrained by an injunction from the Civil Court prohibiting the disbursement of the Malabar Coast Assets to the heirs of the deceased the payments will remain

To The Collector of Malabar
The Board of Trade

25 Sept 76 R 27 Sept