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MADRAS RECORD OFFICE

GOVERNMENT OF MADRAS

Revenue DEPARTMENT

G.O. No.	1757	Press
~~B.P. No.~~		~~Mis.~~
Dated	22. 11- 1876	196- .

Not to be folded or roughly handled

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No. 389.

Read the following Proceedings of the Board of Revenue, dated 30th October 1876, No. 2,691:—

Read the following paper from W. S. WHITESIDE, Esq., Collector of North Arcot, to C. A. GALTON, Esq., Acting Secretary to the Board of Revenue, dated Tripati, 7th September 1876.

Statement of lapsed Service Yeomiah recommended for review in the District of North Arcot.

Case Number.	Taluq and Village, extent and value of the entire luam.	When and by whom granted, name of the original grantee; Sansad in support of the grant.	Nature of the grant, charity or service; if service, nature of the duty prescribed by the grant.	Name of the holder, date of his decease, and the relationship in which he stood to the original grantee.	Share enjoyed by the deceased, and that held by the other members of the family.	Fami-ly left by the deceased, and name and age of the parties, and their circumstances, and the means of subsistence possessed by them.	Recommendation of the Collector and the grounds on which it is made.
1	2	3	4	5	6	7	8
554	Ready-money allowance of Rupees 23-4-4 per annum for defraying expenses in the Durgah of Hazrat Shair Ally at Arcot, and for the subsistence of the Khademen in the above Durgah.	19th Jamadulani 1200, as per Sansad of Nawab Wajid Ali Khan, Name of the original grantee not known.	For the performance of the service of Khademen in the Durgah.	Syed Kallamullah, died on the 24th January 1876. Not known.	The deceased was in the enjoyment of the full allowance.	1. Syed Mahomed Ali, aged 46 years. 2. Yemna Bi, concubine of the deceased, aged 50 years. 3. Syed Kader, aged 8 years.	Syed Kallamullah, Service, Yeomindar, No. 554, who was in receipt of an annual allowance of Rupees 23-4-4 under the order of Government, dated 21st July 1873, No. 738, died on the 24th January 1876. Syed Mahomed Ally, younger brother of the above-named Syed Kallamullah, and Yemna Bi, who represents herself as the nika wife of the deceased, claim the allowance enjoyed by the deceased; the former for himself and the latter on behalf of his minor son Syed Kader, aged 8 years. Syed Mahomed Ally, the 1st claimant, states that his deceased brother was not married and that the 2nd claimant Yemna Bi is not the nika wife of the deceased, but his concubine. He further argues that if Yemna Bi was the wife of the deceased as she now states, his late brother Syed Kallamullah would not have failed to mention her as his heir, nor would he have relinquished his claim for this yeomiah when it last fell vacant in 1873 in favor of himself (2nd claimant) as has been reported by the Collector in the tabular statement embodied in G.O., dated 21st July 1873, No. 738.

An inquiry was instituted into this matter by the Tahsildar of Arcot, and from the records of inquiry received with that officer's arzis, Nos. 117 and 136, dated 8th June and 17th August 1876, respectively, the following facts are elicited:—
Two Service Yeomindars Hafeza Syed Sadak Hussaini, No. 496, and Syed Ahmed, No. 496, drawing an annual allowance of Rupees 90 and 671, respectively, state that Syed Kallamullah died on the 24th January 1876, and his wife died about 10 years ago; that he left no children behind him; that he kept as his concubine a woman named Yemna Bi, who has now a son aged 8 years, and is residing in the deceased's house. They add also that Syed Mahomed Ally is the brother of the late Yeomindar and performs the service connected with the Durgah. Mahomed Isak states that he is the only Naib of the Kazi of Arcot and Raupet, and, as such, registers all marriages contracted among the Mahomedan community in the above-named towns and adjacent places; that no nika marriage took place between the deceased and Yemna Bi; that there is no entry made to this effect in the marriage register kept by him; and that he knows Yemna Bi as the concubine of late Syed Kallamullah.
Yemna Bi, the 2nd claimant, states that Syed Kallamullah died 4 months ago; that she is his nika wife having been so married to him 15 years ago; that she is not his concubine; and that she has a son 8 years old by the deceased.
Four witnesses were examined on behalf of this woman, of whom Gulam Hussain and Hussan Ally, Yeomindars Nos. 497 and 497, and whose allowances have been committed into a grant of land revenue, state that the deceased used to take about with him during his lifetime a boy who, he stated, was his son by his nika wife, but that neither of them know personally as to whether the nika marriage took place or not. The other two witnesses Hanada Bi and Helinea, who are laborers, speak from their personal knowledge as to the nika marriage of Yemna Bi with late Syed Kallamullah having taken place in Kara village near Raupet, and add that Gulam Hussain, Naib of the Kazi, who is now dead, was present on the occasion.

* No. 1 is in the enjoyment of an yeomiah allowance of Rupees 48-4-8 per annum as per G.O., dated 19th February 1869, No. 430.

1757/4

*Proceedings of the Madras Government, Revenue Department,
22nd November 1876.*

Recommendation of the Collector and the grounds on which it is made—(continued)

From the above, though it has not been satisfactorily proved that a yarka marriage took place between the deceased and Yemma Bi, yet all the witnesses and the brother of the deceased admit that Yemma Bi was in the house of the deceased Syed Kallamullah, and neither the 1st claimant Syed Mahomed Ally nor the witnesses on his behalf dispute that the deceased was the father of the minor Syed Kader. Under these circumstances, and with reference to the view taken by the Board of Revenue in paragraph 4 of their Proceedings, dated 14th December 1869, No. 9,144, in a similar case, and approved by Government in their Order, dated 25th January 1870, No. 130, it must be presumed that Yemma Bi was the wife of the deceased, although she was a regular yarka, and that her son is the legal heir to succeed to the allowance enjoyed by Syed Kallamullah.

The Collector therefore begs to recommend that the Board of Revenue will be pleased to obtain the sanction of Government for the registry of the allowance in question in the name of Syed Kader, minor son of the deceased Syed Kallamullah, and, as regards the payment of the arrears that may be due from 1st January 1875 up to date of sanction, it is recommended that a moiety thereof may be paid to Syed Kader, and the other moiety to Syed Mahomed Ally the 1st claimant (brother of the deceased), who is now performing the service in the Dargah.

This yemish of Rupees 23-4-1 a-year for service in the Dargah of Hazarat Shair Ally at Arcot was formerly held by Bi Sahiba Bibi who died in 1873 leaving two sons—

1. Syed Kallamullah.
2. Syed Mahomed Ally.

3. The elder son wished to relinquish his claim to the allowance in favor of his younger brother No. 2; but, as the grant is hereditary, it was decided that it should be registered in the name of the elder son (G.O., 21st July 1873, No. 758). The latter has now died, and the allowance is claimed by Syed Mahomed Ally. His claim is opposed by Yemma Bi, who says she was the nicka wife of the deceased. Syed Ally says she was not his brother's wife, but his concubine, and this assertion is supported by three witnesses, one of whom is the Naib Kazi of Arcot, who registers the marriages of Mahomedans. He says Yemma was not married to the deceased, and that he knew her to be his concubine.

4. In support of Yemma Bi's claim there is the evidence of four witnesses. Two of them say the deceased used to take about with him a boy whom he acknowledged to be his son by his nicka wife, but they have no personal knowledge of the marriage. Two other witnesses state from personal knowledge that the marriage was performed by a Naib Kazi since dead.

5. According to Mahomedan law continued cohabitation and acknowledgment of paternity raise a legal presumption of marriage and legitimacy. In this case cohabitation is admitted by those who deny the marriage, and there is evidence as to the acknowledgment of paternity. There is also direct evidence in support of the marriage. Adverting to the fact that the deceased formerly relinquished his claim in favor of his brother Syed Mahomed Ally, the latter desires to raise the inference that he would not have done so to the prejudice of a legitimate son. But this is of little weight against the legal presumption and evidence in support of the marriage.

6. The Board think Syed Kader's legitimacy and his claim to succeed to the allowance held by his father should be recognized (*vide* G.O., 25th January 1870, No. 130), in which a similar case was disposed of.

7. The Board further recommend that half of the arrears be paid to Syed Mahomed Ally in consideration of the fact that since his brother's decease he has performed the duties of the office.

*Proceedings of the Madras Government, Revenue Department,
22nd November 1876.*

7. It appears that Syed Mohamed Ally holds an allowance of Rupees 46-8-8 a-year for service in the same Durgah as is referred to in the present case. (*vide* G.O., 19th February 1869, No. 430).

(A true Copy and Extract.)

(Signed) C. A. GALTON,
Acting Sub-Secretary.

No. 390.

ORDER THEREON, 22nd November 1876, No. 1,757.

Miscellaneous.

The Government will not object to sanction the Board's recommendations in paragraphs 5 and 6; although the fact of the deceased having expressed his willingness in 1873 to give up his right in favor of Syed Mahomed Ally notwithstanding the birth of Syed Kader, who must have been then 5 years old, raises a strong presumption in favor of Syed Mahomed Ally.

(True Extract.)

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

To the Board of Revenue.
„ the Accountant-General.

Exd. F. R. Bantleman.

PROCEEDINGS OF THE BOARD
Read the following paper from W. S. WHITESIDE, Esq.; C.
Board of Revenue, do
Statement of lapsed Service Yeomiah r

Case Num- ber.	Tidq and Vil- lage, extent and value of the en- tire inam.	When and by whom granted; name of the original grantee; Sins in support of the grant.	Nature of the grant, charity or service; if ser- vice, nature of the duty pre- scribed by the grant.	Name of the last holder, date of his decease, and the relationship in which he stood to the original grantee.	Shas by th ed, he the of t
1	2	3	4	5	6
554	Ready-money allowance of Ru- pees 23-4-4 per annum for de- fraying expenses in the Durgah of Hazrat Shair Ali at Arcot; and for the sub- sistence of the Khadeem in the above Durgah.	15th Jamadul- Hilal 1200, as per sanad of Nawab-Wal- ayah. Name of the original grantee not known.	For the per- formance of the service of Kh- deep in the Dur- gah.	Syed Kallamul- lah, died on the 24th January 1876. Not known.	7

the Collector in the tabular statement embodied in G.O.; dated 21st July 1873, No. 754
1876, respectively, the following facts are elicited:—

Two Services Yeomindars Hafiza Syed Sadak Hussaini, No. 496, and Syed Ahmed
on the 24th January 1876, and his wife died about 10 years ago; that he left no children
residing in the deceased's house. They add also, that Syed Mahomed Ally is the be-
Mahomed Isak states that he is the only Nakh of the Kazi of Arcot and Hanipet, an
adjacent places; that no nicks marriage took place between the deceased and Yemna
Bi as the concubine of late Syed Kallamullah.

Yemna Bi, the 2nd claimant, states that Syed Kallamullah died 4 months ago; that
has a son 8 years old by the deceased.

Four witnesses were examined on behalf of this woman, of whom Gulam Hussain ar
revenue, states that the deceased used to take about with him during his lifetime a boy a
nicka marriage took place or not. The other two witnesses Hanuda Bi and Halina, w
Kallamullah having taken place in Karai village near Hanipet, and add that Gulam Hussain

* No. 1 is in the enjoyment of an yeomiah allowance

, 691.

VENUE, dated 30th October 1872.

r of North Arcot, to C. A. GALTON, Esq., Acting Secretary to the
ipati, 7th September 1876.

ailed for renewal in the District of North Arcot.

Family left by the deceased, and name and age of the parties, their circumstances, and the means of sub- sistence possessed by them.	7	8
1. Syed Mahomed Ally, aged 46 2. Yemna Bi, concubine of the deceased, aged 50 3. Syed Kader, aged 8		

Syed Kallamullah, Service, Yeomidar, No. 554, who was in receipt of an
annual allowance of Rupees 23-4-4 under the order of Government, dated
21st July 1873, No. 754, died on the 24th January 1876

Syed Mahomed Ally, younger brother of the above-named Syed Kalla-
mulah, and Yemna Bi, who representing herself as the nicks wife of the
deceased, claim the allowance enjoyed by the deceased; the former for
himself and the latter on behalf of his minor son Syed Kader, aged 8 years.

Syed Mahomed Ally, the 1st claimant, states that his deceased brother
was not married, and that the 2nd claimant Yemna Bi is not the nicks
wife of the deceased, but his concubine. He further argues that if Yemna
Bi was the wife of the deceased as she now states, his late brother,
Syed Kallamullah would not have failed to mention her as his heir, for
would he have relinquished his claim for this yeomiah when it last fell
vacant in 1873 in favor of himself (2nd claimant) as has been reported by

is of inquiry received with that officer's arsis, Nos. 117 and 496, dated 6th June and 17th August
1876, respectively, state that Syed Kallamullah died
drawing an annual allowance of Rupees 90 and 67, respectively, state that Syed Kallamullah died
at him; that he kept as his concubine a woman named Yemna Bi, who has now a son aged 8 years, and
[the late Yeomidar and performs the service connected with the 1st claimant.

ch, registers all marriages contracted among the Mohammedan community in the above-named towns and
there is no entry made to this effect in the marriage register kept by him; and that he knows Yemna

is nicks wife having been so married to him 15 years ago; that she is not his concubine; and that she
an Ally, Yeomindars Nos. 497 and 497, and whose allowances have been commuted into a grant of land
stated, was his son by his nicks wife, but that neither of them know personally as to whether the
laborers, speak from their personal knowledge as to the nicks marriage of Yemna Bi with late Syed
p of the Kazi, who is now dead, was present on the occasion.

speces 40-8-8 per annum as per G.O., dated 13th February 1869, No. 430.

Recommendation of the Collector and the grounds on which it is made—(Continued.)

From the above, though it has not been satisfactorily proved that a y nicka marriage took place between the deceased and Yemna Bi, yet all the witnesses and the brother of the deceased admit that Yemna Bi was in the keeping of the deceased Syed Kallamullah, and neither the 1st claimant Syed Mahomed Ally nor the witnesses on his behalf dispute that the deceased was the father of the minor Syed Kader. Under these circumstances, and, with reference to the view taken by the Board of Revenue in paragraph 6 of their Proceedings, dated 14th December 1869, No. 2,144, in a similar case, and approved by Government in their Order, dated 25th January 1870, No. 130, it must be presumed that Yemna Bi was the wife of the deceased, although she was not regularly married, and that her son is the legal heir to succeed to the allowance enjoyed by Syed Kallamullah.

The Collector therefore begs to recommend that the Board of Revenue will be pleased to obtain the sanction of Government for the registry of the allowance in question in the name of Syed Kader, minor son of the deceased Syed Kallamullah, and, as regards the payment of the arrears that may be due from 1st January 1874 up to date of sanction, it is recommended that a moiety thereof may be paid to Syed Kader, and the other moiety to Syed Mahomed Ally the 1st claimant (brother of the deceased), who is now performing the service in the Durgah.

This yeomiah of Rupees 23-4-4 a-year for service in the Durgah of Hazarat Shair Ally at Arcot was formerly held by Bi Sahiba Bibi who died in 1873 leaving two sons—

1. Syed Kallamullah.
2. Syed Mahomed Ally.

2. The elder son wished to relinquish his claim to the allowance in favor of his younger brother No. 2; but, as the grant is hereditary, it was decided that it should be registered in the name of the elder son (G.O., 21st July 1873, No. 758). The latter has now died, and the allowance is claimed by Syed Mahomed Ally. His claim is opposed by Yemna Bi, who says she was the nicka wife of the deceased, and claims the allowance on behalf of her son, a minor eight years old. Syed Mahomed Ally says she was not his brother's wife, but his concubine, and this assertion is supported by three witnesses, one of whom is the Naib Kazi of Arcot, who registers the marriages of Mahomedans. He says Yemna was not his wife, but that he knew her to be his concubine.

3. In support of Yemna Bi's claim there is the evidence of four witnesses. Two of them say the deceased used to take about with him a boy whom he acknowledged to be his son by his nicka wife, but they have no personal knowledge of the marriage. Two other witnesses state from personal knowledge that the marriage was performed by a Naib Kazi since dead.

4. According to Mahomedan law, continued cohabitation and acknowledgment of paternity raise a legal presumption of marriage and legitimacy. In this case cohabitation is admitted by those who deny the marriage, and there is evidence as to the acknowledgment of paternity. There is also direct evidence in support of the marriage. Adverting to the fact that the deceased formerly relinquished his claim in favor of his brother Syed Mahomed Ally, the latter desires to raise the inference that he would not have done so to the prejudice of a legitimate son. But this is of little weight against the legal presumption and evidence in support of the marriage.

5. The Board think Syed Kader's legitimacy and his claim to succeed to the allowance held by his father should be recognized (vide G.O., 25th January 1870, No. 130), in which a similar case was disposed of.

7. It appears that Syed Mahomed Ally holds an allowance of Rupees 45-8-8 a-year for service in the same Durgah as is referred to in the present case. (vide G.O., 19th February 1869, No. 480).

(A true Copy and Extract.)

Acting Sub-Secretary.

To the Secretary to Government, Revenue Department.
Copy to the Collector.

10 19 July/69 No. 244-52.
 — 25 July/70. 244-55.
 — 21 Aug/73. 176-79.

1754

The Court will not object to
 sanction the Board's recommendations in paras 5 and 6,
 attesting the fact of the deceased having expressed his
 willingness in 1873 to give up his rights in favour of
 Syed Mahomed Ally notwithstanding the
 birth of Syed Kader, who must have been then
 5 years old, raises a strong presumption in
 favor of Syed Mahomed Ally.

147. Red Hill. Court of Appeal 8/24/11

244/75

Revised 1876. de pte
 Board of Revenue,
 MADRAS.

PROCEEDINGS, 30TH OCTOBER 1876, No. 2,691.

244/51a/176

Encl.

Received 9. Decr/76

OCTOBER.
 No. 2,691.

Yemish—enjoyed by late Syed Kallamul-
 lah for service in a Durgh in North Arcot
 District.—Stating that Syed Kader's legitimacy
 and his claim to succeed to — should be recog-
 nized; and recommending that half the arrears
 be paid to the deceased's brother, Syed Mahomed
 Ally, who now performs the service in the
 Durgh.

With order

e. 13. Aug 6 A/31. dec