M.R.O. 1—39,000—16-10-29.

MADRAS RECORD OFFICE.

Government of Madras.

Revenue **DEPARTMENT.**

G.O. No. 1801	Press Mis.
546-547	
Dated 24th June 19-1869	

Not to be folded or roughly handled

No. 546. Read the following Proceedings of the Board of Revenue, dated 1st June 1869, No. 3,894:—

Read the following letter from the Acting Collector of Tinnevelly, to the Acting Secretary to the Board of Revenue, dated Trichendur, 12th May 1869, No. 203.

ADVERTING to the Board's Proceedings, No. 7,366, dated 11th November 1867, I have the honor to forward, herewith, translation of a Judgment in Original Suit No. 855 of 1867 on the file of the District Moonsiff of Tinnevelly, wherein the Collector was made a defendant. The Court decreed in favor of the plaintiff, and directed him and the second defendant to pay the costs incurred by the Collector.

2. The suit was originally filed* in the District Moonsiff's Court of Strivycuntam, but transferred to the Tinnevelly Moonsiff's Court, as the village in which the cause of action arose was transferred to that division.

* No. 286 of 1867.

ENCLOSURE No. 1.

District Moonsiff's Court of Tinnevelly No. 855 *of* 1867.

JUDGMENT.

Plaintiff.	*versus*	*Defendants.*
Sunkaralingam Pillay. Subba Naik, Vakeel.		Collector of Tinnevelly and two others. Omaiyorubhagam Pillay, Vakeel for the first defendant: Mutusamia Pillay, Vakeel for the second and third defendants.

Abstract of the Plaint.

PLAINTIFF states that he and the second defendant's husband were undivided brothers; that the latter died without issue; that an agreement was executed to him by the second defendant, (on the 9th Panguni, Andu 1038, corresponding with 21st March 1863), relative to her right of maintenance; that the Curnum of the village having made out puttahs of certain property which belong to the plaintiff in the second defendant's name, he (plaintiff) presented a petition in the Tinnevelly Talook Cutcherry, praying for the cancelment of such a puttah; that the Tahsildar made inquiries and referred the matter to the Collector's instructions, who passed orders on the 7th November 1866, to cancel the puttahs made out by the Curnum, and to make out a puttah in the second defendant's name, for all the landed property that stood in her husband's name, and prays that the Collector's order in question may be set aside; that his claims to the property under litigation may be upheld, and the puttah may be transferred to him; and that he be permitted to enjoy the property undisturbed by the second and third defendants.

The first defendant in his answer pleads that, as the second defendant did not consent to the puttah being made out in the plaintiff's name, orders were issued for making out the same in the second defendant's name; that he has no objection to issue the puttah to whomsoever the Court may adjudge; and begs that he may be excluded from the suit, and the costs incurred by him ordered to be made good by the plaintiff.

The second and third defendants admit the execution of the agreements, and state that they have no objection to the plaintiff's enjoying the lands in dispute; but that they objected to the

transfer of the registry, because the plaintiff has not fulfilled the terms of the agreement executed by him to the second defendant.

Plaintiff's Exhibits.

A. Copy of an Order from the Collector to the Tinnevelly Tahsildar, No. 447.

B. Puttah issued to second defendant's widow on 3rd April 1860, for the dry lands, etc., under litigation.

C. Receipt puttah granted to the second defendant's husband in the year 1860.

D. Do. do. do. 1861.

E. Do. do. do. 1862.

F. Agreement executed to plaintiff by the second defendant on the 21st March 1863.

Finding.

THE only point at issue in this suit is, whether the plaintiff and the second defendant's husband were divided or undivided.

2. The second defendant clearly admits the plaintiff's right and the execution of the agreement mentioned in the plaint, and of having accepted a portion of the property mentioned therein.

3. I am of opinion that no further inquiry is needed, and that the suit may be brought to a close with the proceedings now before the Court, under Section 145 of the Civil Code.

4. The objection raised by the second defendant that the plaintiff has not fulfilled the terms of the agreement will not weaken the plaintiff's cause in this suit, and she must have her remedy by a regular suit.

5. The inclusion of the Collector as defendant in this suit for having issued a puttah in the second defendant's name is quite in accordance with the High Court's Judgment noted as per margin.

Vide Judgment in Special Appeal No. 79 of 1866, Volume 3, Part II., page 134.

I therefore adjudge the right to the lands under litigation to the plaintiff. The second and third defendants should not interfere with the property, and are to bear their own costs. The plaintiff and second defendant must pay the costs incurred by the first defendant.

7th November 1868.

(Signed) MAHALINGAM AIYAR,
Acting District Moonsiff.

(True Translation.)

(Signed) C. T. LONGLEY,
Acting Collector.

SUBMITTED for the information of Government, together with a copy of Board's Proceedings, dated 11th November 1867, No. 7,366.

2. The suit arose out of the issue of a puttah by the Collector to the second defendant for the landed property of her late husband who was plaintiff's undivided brother.

3. The Collector in the answer expressed his readiness to make over the puttah to whomsoever the Court might adjudge it, and the Board, while sanctioning defence of the suit, pointed out that an undivided brother should inherit before a widow who had no son.

4. The puttah has been awarded to the plaintiff, who is, however, ordered to pay the costs of the Collector.

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4. The objection raised by the second defendant that the plaintiff has not fulfilled the terms of the agreement will not weaken the plaintiff's cause in this suit, and she must have her remedy by a regular suit.

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3. The Collector in the answer expressed his readiness to make over the puttah to whomsoever the Court might adjudge it, and the Board, while sanctioning defence of the suit, pointed out that an undivided brother should inherit before a widow who had no son.

4. The puttah has been awarded to the plaintiff, who is, however, ordered to pay the costs of the Collector.

No. 7,366.

PROCEEDINGS OF THE BOARD OF REVENUE, dated 11th November 1867.

Read the following letter from R. K. PUCKLE, Esq., Collector of Tinnevelly, to the Secretary to the Board of Revenue, dated 2nd November 1867, No. 583:—

1. One Suba Naick, son of Nagama Naick of Kombukaranattam, attached to Karaseri in Tinnevelly talook, has filed a Suit No. 286 of 1867, in the District Munsiff's Court of Strivycuntam, in which the Collector is included as a defendant; I have, therefore, the honour to forward for approval, a Statement prepared in answer to the plaint, a translation of which is enclosed.

2. The circumstances of the case are as follow:—

A puttah for $17\frac{5}{16}$ chains (63 acres, 1 cent) of land stood, up to Fusly 1274, in the name of the plaintiff's elder brother, Nagamani Naick, who died four years ago. In Fusly 1275, the Curnum of the village of his own accord made out two puttahs, one for $14\frac{5}{16}$ chains (52 acres, 9 cents) of land in the plaintiff's name, and another for 3 chains (10 acres, 92 cents) in the name of the second defendant, the widow of the original Puttahdar.

The second defendant, in the meanwhile, presented a petition in the Talook Cutcherry, objecting to the puttah in the plaintiff's name, on the ground that the plaintiff had not made over to her all the property mentioned in the agreement, and she prayed that the puttah in her deceased husband's name may be transferred to her. The plaintiff replied that, as no division had been made between himself and his brother, second defendant's husband, the puttah should be transferred to him.

The second defendant inherits her deceased husband's property, and her consent is quite necessary for a transfer of the puttah standing in her husband's name. As she did not consent to such transfer, orders were issued to cancel the unauthorized puttahs made out by the Curnum, and to register the whole landed property in the name of the second defendant.

3. As there is no objection to transferring the puttah to the plaintiff if the Court so adjudge, it is unnecessary to answer the several points mentioned in the plaint.

4. The hearing of the suit is fixed for the 17th November.

ENCLOSURE No. 1.

Translation of a plaint filed in the District Munsiff's Court at Strivycuntam by Suba Naick, (Cultivator,) son of Nagava Naick, residing at Kombukaranattam, attached to Corasari in Tinnevelly talook, against (1) the Collector of Tinnevelly; (2) Virammal, widow of Nagamani Naick, (plaintiff's elder brother); and (3) Adiperumal Naick, son of Narayana Naick, guardian of the second defendant, residing at the above village.

This is a suit brought by the plaintiff to establish his right to $13\frac{1}{16}$ chains* of punjah land, yielding an annual produce of Rupees 290-1-0 per annum, and to three Margosa trees, valued at Rupees 3, total Rupees 293-1-0, which stand registered in his deceased brother's (second defendant's husband) name, and which the plaintiff prays may be transferred to him.

* Assessed at Rupees 74-11-10.

I. The plaintiff and the second defendant's deceased husband are undivided brothers.

II. On the demise of his brother (second defendant's husband) without issue, plaintiff executed an agreement to the second defendant making over to her a portion of the undivided property for her maintenance and other expenses with reference to the award of the Punchayet, assembled at the consent of both parties, and a counter-agreement was also executed† by the second defendant, to the plaintiff to that effect.

† 9th Punguniaundoo 1033, corresponding with 21st March 1863.

III. The Curnum of the village, having fraudulently made out puttahs of certain property which belong to the plaintiff, in the second defendant's name, and of the Punjah lands that were granted her for maintenance, as per the Punchayet's award above stated, in plaintiff's name, he (the plaintiff) presented a petition in the Tinnevelly Talook Cutcherry, praying that the puttah fraudulently made out in the second defendant's name may be cancelled, and that another may be made out in his (plaintiff's) name for the property; in the meanwhile the second defendant also presented a counter-petition, objecting to the plaintiff's prayer, and the Tahsildar referred the matter for the Collector's orders, who passed orders, under date the 7th November 1866, to cancel the puttahs made out by the Curnum, and to make out a puttah in the second defendant's name, for all the property that stood in the name of her husband.

IV. The Collector's order in question is against the claims of the plaintiff, and the second and third defendants have endeavoured to misappropriate the plaintiff's property in question on the strength of the said order.

V. Plaintiff, therefore, prays that the Collector's order in question may be cancelled; that his claims to the property under litigation may be upheld; and that the puttah which stood in his brother's (second defendant's husband) name may be transferred to him, with directions to enjoy the property undisturbed by the second and third defendants.

(Signed) VEDANAYAGUM PILLAI,
Pleader.

I, Suba Naick, the plaintiff, do hereby certify that what is stated in the plaint, is true to the best of my knowledge and belief.

(True translation.)

(Signed) R. K. PUCKLE,
Collector.

ENCLOSURE No. 2.

Written Statement proposed to be filed by the first defendant in Original Suit No. 286 of 1867, on the file of the District Munsiff of Strivycuntam.

1. The plaintiff states that the Curnum made out puttahs for his landed property in the name of the second defendant, and that he presented a petition in the Talook Cutcherry, praying that the puttah may be made out in his name; that the second defendant presented a counter-petition objecting to the plaintiff's prayer; that with reference to this objection, the Collector, first defendant, ordered the transfer of the puttah that stood in the second defendant's husband's (plaintiff's brother) name to the second defendant; that this order of the Collector is against his (plaintiff's) interests, and he prays that the same may be cancelled, that his claims to the property in dispute may be upheld, and that the puttah which stood in the second defendant's husband's name may be transferred to his name.

2. The second defendant, both in her petition presented at the Talook Cutcherry, and in her deposition given in the course of inquiry, admits the execution of the agreement, alluded to in the plaint, between herself and the plaintiff, but objects to the puttah being made out in the plaintiff's name, on the ground that he (the plaintiff) did not make over all the property mentioned in the agreement. The plaintiff gave a deposition to the effect that a puttah should be made out in his name for all the landed property, on the ground that there has been no division of the family property between himself and his deceased brother. As the parties could not come to terms, orders were issued for cancelling the unauthorized puttahs made out by the Curnum without the consent of the second defendant, who is the principal heir, and for making out a puttah for all the landed property in the second defendant's name.

3. The Collector has no objection to issue the puttah to the plaintiff, if the Court give effect to the agreement and pass judgment as prayed for by the plaintiff, and as the inclusion of the Collector in this suit is unnecessary, he begs that he may be excluded therefrom, and that the costs incurred by him be ordered to be made good by the plaintiff.

(Signed) R. K. PUCKLE,
Collector.

The Board sanction the defence of the suit on the usual terms, and approve of the written Statement. The suit might have been avoided had the principles of the Hindoo Law been observed in the issue of the puttah. When there is no son, the heir, in an undivided family, to a deceased brother, is his undivided elder brother, not his widow, who is only presumptive heir in divided families.

(True Copies and Extract.)

(Signed) R. A. DALYELL,
Secretary.

To the Collector of Tinnevelly.

Copy to the Accountant General.

Exd. J. Wright.

Revenue 1869 Sept
A° 1902.

1869.

Board of Revenue,

MADRAS.

PROCEEDINGS, 1ST JUNE 1869, No. 3,894.

Encl. 1.

Desp. 7 June 1869
Received

JUNE.

No. 3,894.

Suit—No. 855 of 1867, on file of Tinnevelly District Munsiff's Court, regarding Puttah for certain land,—Letter from Collector forwarding translation of Judgment in, submitted for information of Government.

3. *The Collector in the answer, expressed his readiness to make over the puttah to whomsoever the Court might adjudge it, and the Board, while sanctioning defence of the suit, pointed out that an undivided brother should inherit before a widow who had no son.*

4. *The puttah has been awarded to the plaintiff, who is, however, ordered to pay the costs of the Collector.*

(True Copies and Extract.)

Sub-Secretary.

To the Acting Secretary to Government, Revenue Department,
with copy of Board's Proceedings, No. 7,366 of 1867.

Copy to the Acting Collector of Tinnevelly.

Esd. G. A. Turton.

14 Sheets Rec'd Desp 25

c 12 June 69 R 16

26 June