
(1924) 01 MAD CK 0016
In the Madras High Court

Maharaja of Kolhapur

APPELLANT

Vs

S. Sundaram Ayyar and Others

RESPONDENT

Date of Decision : 21-01-1924

Acts Referred:

Evidence Act, 1872 — Section 50
Succession Act, 1925 — Section 107

Citation : AIR 1925 Mad 497 : (1925) ILR (Mad) 1

Hon'ble Judges : Spencer, O.C.J.

Bench : Division Bench

Judgement

Spencer, Offg.C.J.

1. In A.D. 1674 during the reign of the great Mogul Emperor Aurangzeb, Ekoji alias Venkaji took Tanjore from its Nayak Rulers without firing a

shot. This Mahratta General was the son of Shabji who had attained military distinction under the independent Muhamadan States of Ahmednugger

and Bijipur and in the course of one of his military expeditions had levied a contribution from the Nayak Chiefs of Tadjore and Madura in the

South Carnatic country.

2. Ekoji's grandfather was Malloji, a Mahratta of the Bhonsle family, who distinguished himself under Jadava or Jadow Bow, a Mahratta Chief in

the service of the Ahmednugger Government, and won the hand of his daughter Jiji Bai for his elder son Shahji. Shahji by his first wife Jiji Bai was

the father of the famous Sivaji who founded the Mahratta Empire in the Deccan in the 17th century, and by his second wife Tukka Bai, daughter of

Mahratta parents with the surname of Mohitai, was the father of Ekoji, the founder of the Mahratta dynasty in Tanjore. When Shahji died from a

fall in the hunting field, Ekoji performed his funeral rites and was confirmed by the Bijapur Government in the enjoyment of the fiefs of Bangalore

and Tanjore. In 1677 the forces of Ekoji and those of his half brother Sivaji came into conflict but by a compromise the former was allowed to

retain Tanjore. In 1680 Sivaji got Tanjore and other territories ceded to him by the Bijapur Government, but in the same year Sivaji died and Ekoji

retained his hold on Tanjore.

3. Ekoji died in 1686 or 1687 leaving 3 sons, Shahji II, Sarabhoji, and Tukkoji who each in turn succeeded to the Raj. During the reign of the

first named, there were two invasions led by general of the Moghul Emperor and considerable sums were levied from Tanjore as indemnity

coupled with a promise to pay annual tribute to Delhi. After Tukkoji died in 1735, his legitimate son Baba reigned for about a year, and then was

succeeded by his widow Sujana Bai whose regency only lasted for a short period. Two years after revolution followed. A pretender known as

Savai Shaji or Katturaja which signifies in Tamil "Jungle King" usurped the throne with the aid of Muhamadan commander of the Fort named Said.

The usurper was assassinated, and the principal men in the State assisted by Said "the King maker" first put Saiyajii the second legitimate son of

Tnkkoji on the musnud and secondly Pnttap Singh, the son of Tukkoji by his sword wife Annapurni. Pratap Singh's first act was to have Said put

to death. He ruled for 24 years and during his reign his forces came into conflict with the army of Mahomed Ali, the Nawab of Arcot, and with the

troops of the East India Company sent to aid the deposed Saiyajii, and with the French under Lally. In 1762 by the intervention of the British a

treaty was concluded under which the Raja of Tanjore agreed to pay tribute to the Nawab at the rate of four lakhs of rupees annually. Pratapa

Singh died in 1763 and was succeeded by his son Tulsaji. In 1771 and 1773 Tanjore territory was twice invaded by the British from Trichinopoly.

On the second occasion the Fort was taken and the Raja and his family were made prisoners, but in 1776 under the orders of the Court of

Directors he was restored to all his territories and became an ally of the British under a treaty by which he had to pay an annual subsidy of 14 lakhs

of rupees and his State became a Protected State under the Company's Government. On Tulsaji's death without issue in 1787 his half brother

Amar Singh, son of Pratapa Singh by a sword wife succeeded and concluded two treaties with the British in 1787 and 1792, but he was deposed

in 1798 in favour of Serfoji, an adopted son of Tulsaji, whose tutor and guardian Mr. Swartz of the Danish Mission was able to satisfy the Court of

Directors through a memorial presented to the Governor-General Lord Cornwallis that the verdict of the Pandits which had previously been

pronounced against the adoption was erroneous in law and had been obtained by corrupt means.

4. In 1799 Serfoji resigned the government of the country into the hands of the Company, and Tanjore then became a British District with the

exception of the Fort of Tanjore and some villages and lands which constituted his Mokhasa or private property and are the subject of the present

litigation. In addition to these he agreed to receive 31/2 lakhs of rupees and 1/5th of the net revenues of the country while the Company took the

other 4/5ths. In 1832 Serfoji died and was succeeded by his only son Sivaji, the last Rija of Tanjora. Sivaji married 3 daughters of his sisters. Two

of these wives predeceased him. To the elder Rani Sydamba Bai were born two daughters Rajes Bai and Muktamba Bai who both in turn were

married to the same man - Sakharam Saheb. The Raja's second wife Kamakshi Bai survived him and died in 1892. In 1852 in his desperate

anxiety to get an heir, he married 17 women in two batches of 9 and 8 on one day (July 11th, 1852). When His Highness Maharaja Sivaji died On

October 29th, 1855, he left 15 Ranis, two legitimate daughters, a mother, 60 women living in a seraglio called the Mangala Vilas, of whom 40

aspired to be called sword wives in distinction to the dancing girls who were ordinary concubines, and 17 natural children begotten by the Raja

through sword wives, six of these children being males. There were also the remnants of Serfoji's seraglio called the Kalyana Mahal. Upon the

Resident, Mr. Forbes, reporting the death of the Raja and putting forward the claim of his younger daughter to be his successor and upon the

Government expressing "a decided and unanimous opinion that there being no male heir there was no legitimate claimant to the Raja, the Court of

Directors in a despatch of April 16th, 18th agreeing with the opinions of the Government of Madras and the Government of India, declared the

dignity of Raja of Tanjore to be extinct and the Raj to have lapsed to the British Government, as the Raja died "without leaving a son by birth or

adoption"" and his father Serfoji was only an adopted son. On October 18th of the same year Mr. Forbes, in his new capacity of Commissioner,

took possession of the Fort of Tanjore and the lands held by the late Raja or upon demise from him.

5. Thereafter Kamakshi Bai as senior surviving Rani filed a Bill on the Equity side of this Court against the East India Company and succeeded in

obtaining a decree declaring her to be entitled to the estate of her deceased husband and declaring the Company to be trustees of the property

taken possession of by their servants and directing an account to be furnished. The case went on appeal to the Privy Council (the Secretary of

State in Council of India taking the place of the East India Company) and the Judicial Committee in The Secretary of State in Council of India v.

Kamaehee Boye Sahaba (1859) 7 M.I.A. 476 reversed the above decision on the ground that the seizure of the property was an exercise of

sovereign power effected at the arbitrary discretion of the Company by the aid of military force and that the act so done with its consequences

was an act of State over which the Supreme Court of Madras had no jurisdiction. On the Plaintiff's Bill being thus dismissed, Sir Charles

Trevelyan President of the Council, in spite of the opinion of the Judicial Committee to the contrary vide The Secretary of State in Council of India

v. Kamaehee Boye Sahaba (1859) 7 M.I.A. 476 decided to treat the case as one of lapse by escheat, and to instruct the Madras Government to

that effect. The Madras Government accordingly regarded the Raj as merges in the Government which had become the Raja's residuary heir

discharging his obligations, and proceeded to work out a scale of pensions for the maintenance of the late Raja's dependants. The widows,

backed by a large amount of public sympathy, did not sit quiet under this disposition of their fortunes. They enlisted the services of Mr. John Bruce

Norton, then Government Pleader of the Supreme Court on leave, who drafted for them what is termed in Jijoyiamba Bayi Saiba v. Kamakshi

Bayi Saiba (1868) 3 M.H.C. 424 a ""forcible memorial"" and himself proceeded to England in 1860 in order to rouse the British public to an

appreciation of the injustice done by the act of confiscating the property of an independent Prince who had always been faithful to the British, and

to induce Parliament to interfere in their favour and get the estate restored to the family. Mr. Norton's appeal evoked a remarkable response and

on June 23rd, 1862, Colonel Durand, Secretary to the Government of India, announced Lord Canning's sanction to the relinquishment of the whole of the lands in favour of the heirs of the late Raja.

6. Since the plea in equity and policy for treating them as the private property of the Raja was so strong that it commanded the unanimous support of the members of the Madras Government.

7. On the 21st August 1862, an order of the Governor in Council was issued by the Madras Government declaring the manner in which this

relinquishment was to be effected. By this time Rajes Bai, the elder daughter of Sivaji, had died on December 26th, 1856, and her husband

Sakharam had married his deceased wife's sister Muktamba Bai, the Raja's second daughter, in February 1860. This all important order sets out

that the Government having consulted the opinion of the two Pundits of the Sudder Court in order to ascertain what were the respective rights of

the Raja's widows and of his daughter according to Hindu Law, concurred with the opinion of the Junior Pundit, which was in accordance with the

principles of Hindu Law as expounded by the Sudder Court and the Privy Council, namely, that the senior widow was entitled to manage the

property during her life-time being at the same time responsible for the maintenance of the other widows. The G.C. then proceeds to declare:

The Estate will therefore be made over to the senior widow who will have the management and control of the property, and it will be her duty to

provide in a suitable manner for the participative enjoyment of the Estate in question by the other widows - her co-heirs. On the death of the last

surviving widow, the daughter of the late Raja, or failing her, the next heirs of the late Raja, if any, will inherit the property.

8. This order was duly carried out by the officers of Government and the private personal property of the Raja was made over to the senior

widow, Kamakshi Bai, but there was no restoration of the dignity of the Raj.

9. On July 1st, 1863, acting on the advice of Mr. Norton and in spite of the protests of other widows and of the Princess Muktamba Bai,

Kamakshi Bai adopted Rajaram Ingle alias Serfoji, the late Raja's sister's grandson, whom the Raja was said to have designated for adoption

when he found himself without a son by any of his Ranis and who performed the Raja's obsequies and the obsequies of the Ranis. The

Government of Madras, as advised by the Government Agent, when informed of the fact, took no official notice of it but directed the Government Agent to impress on Kamakshi Bai as senior widow her responsibility to the other widows and to the late Raja's daughter "who would inherit the whole property in the event of her surviving the widows." Kamakshi Bai, besides adopting Rajaram, transferred to him all the properties which she had got through the grant of August 21st, 1862, and enjoined the estate servants to take orders from him, styling him Sorfoji Maharaja. When, however, she and Rajaram memorialized the Governor of Madras and the Secretary of State to recognize the adoption, the former declared his intention of declining to hold any communication with any one but Kamakshi Bai on the subject of the estate and the family of the late Raja, and the latter while approving of the course adopted, observed "The validity of the alleged adoption by her as regards private property is a matter for the Civil Courts" The Government of India also declined to interfere with the orders passed by the Madras Government.

10. The next thing that happened was that two of the junior Rania filed a suit (Original Suit No. 16 of 1866) in the Civil Court of Tanjore against Kamakshi Bai and the adopted son for their shares of the movable property of their late husband and of the proceeds of the immovable property on the strength of a private agreement and for a declaration that the adoption was invalid and for the appointment of a permanent Receiver to manage the property during Kamakshi Bai's lifetime. The Civil Judge (Mr. Davidson) refused the relief by way of a division of property but made an order for the appointment of a Receiver, while holding that the validity of the adoption of the fourteenth defendant had not been established and that the first defendant Kamakshi Bai was totally unfit to be entrusted with the management of the estate. He had previously in an order in Miscellaneous Proceedings held that the transfer of property from first to fourteenth defendant was ultra vires and not bona fide. From this decision the plaintiffs appealed, and Kamakshi Bai and Rajaram preferred a cross-appeal which was dismissed for non-payment of the Court fees.

11. The appeal was heard by Scotland, C.J., and Ellis, J., and is reported *Jijoyiamba Bayi Saiba v. Kamakshi Bayi Saiba* (1868) 3 M.H.C. 424.

Those very learned Judges decided that Rajaram could not maintain any claim by reason of his adoption, even if it was valid as owing to the break

between the Raja's death and the re-grant to the widows the property did not devolve upon him directly from his adoptive father, that the transfer

from his adoptive mother was invalid and that the plaintiffs could not enforce a partition, seeing that all the widows were possessed of a joint estate

for their respective lives with rights of survivorship, that the first defendant, was not fit to be entrusted with the management of the Estate and that a

Receiver and Manager (preferably the Collector) should be appointed to manage it during the lives of the widows or until the Civil Court.

considered the appointment to be no longer necessary. These directions were carried out. The Collector managed the Estate for a time until a

Court Receiver under the superintendence of the District Judge was appointed. It is today in the management of the Court Receiver though there

have been changes from time to time in the personnel of the office. Rajaram alias Sarfoji after the decision in Jijogiamba Bayi Saiba v. Kamikshi

Bayi Saiba (1868) 3 M.H.C. 424 never during his lifetime filed a suit for a declaration that his adoption was valid, but in a petition for a succession

certificate to collect the debts of one of the junior widows who died on March 29th, 1881, his adoption was put in issue and it was held by the

District Judge (Mr. Parker) in 1883 that there had been no valid adoption. His appeal to the High Court was also dismissed vide Surfoji v.

Kamakshiamba (1884) 7 Mad. 452. His sons are the first and second defendants in this suit. The Raja's second daughter Muktamba Bai died of

small-pox on January 31st, 1885, when she was 38 or 39. She had one son and two daughters who predeceased her. In 1884 her husband

adopted a son named Sambu Singh who died in 1891, and the third defendant claims to be the adopted son of that adopted son. Avu Saheba, the

mother of the Raja, died on June 21st, 1864. The widows of the Raja died off one by one and the last Rani Jijamba Bai died on May 3rd, 1912,

having outlived her husband by 56 years. Thereupon the Receiver on July 8th, 1912, instituted this interpleader suit to decide who was entitled to

take the estate making the adopted son's sons, the daughter's adopted grandchild, the sons and grandsons of the Raja by his sword wives, distant

agnates including the Maharaja of Kolhapur, the descendants of the last ruler of Satara and of the Patel of Jinti, and remote bandhus, in fact all

possible claimants, parties to the suit. The trial commenced on July 2nd 1917 before the Subordinate Judge, Tanjore and judgment was

pronounced on July 1st, 1918, after voluminous evidence had been recorded and innumerable exhibits admitted. At the hearing of 1 these appeals

against the Subordinate Judge's decree out of 73 issues the following are the principal questions which have come to be decided:

(1) On the death of the last surviving widow which of the defendants are "the next heirs of the late Raja" specified in the Government grant of

1862?

(2) On the true construction of the grant, are the sons of the subsequently adopted son the grand-child by adoption of the Raja's daughter, and the

children and grand-children of the Rajah by sword wives excluded from inheritance?

(3) What is the status of the Raja's offspring by sword wife mothers in this family? Are they legitimate or illegitimate? Are sword wives a species of

inferior wives or kind a of superconcubines?

(4) Are the Kolhapur and Satara branches of the family liable to be excluded from inheritance by reason of the bar sinister caused by the late

Tanjore Raja's groat-grandfather Pratapa Singh having been begotten by his father Tukkoji, through a sword wife Annapurni?

(5) Is the family, to which the late Raja of Tanjore belonged, a family of Kshatriyas or Sudras?

(6) Was the adoption of the father of defendants 1 and 2 by the Senior Rani Kamakshi Bai valid as having been made with the authority of her

deceased husband, or with the consent of kindred, or by her own act without any authority according to the personal law of the Mahratta family to

which she and he belonged?

(7) What is the law of adoption applicable to this family?

(8) Is the adoption of the father of defendants 1 and 2 invalid by reason either (1) of the senior widow's power to adopt having been exhausted by

the act of State in annexing the Raj or (2) by the adopted son's failure to establish his adoption in a Court of Law within 12 years of the act of

adoption?

(9) Has the fourteenth defendant established his collateral relationship through Ramraja in the branch of the family which sprang from Sivaji the

Great?

(10) What shares are the Mangala Vilas defendants (i.e., the sons of sword wives and their sons) entitled to take in the personal property of the late Bajah?

(11) Of the daughter's adopted son's adopted son (third defendant) and the late Raja's sisters grandson which is the nearest bandhu?

(12) Is the third defendant the validly adopted son of Sambhu, and is Sambhu the validly adopted son of the Princess Muktamba Bai and her consort Sakharam?

(13) Has the twenty-fourth defendant proved his connection through Sambaji, half-brother of Ekoji, to the family of the Tanjore Rajas?

12. When the Government decided that "the whole of the lands were to be relinquished in favour of the heirs of the late Raja" they proceeded on

the assumption, which appears in the minute of Sir Charles Trevelyan printed in 7 Moore's Indian Appeals at page 540, that the Rajah had died

leaving no legitimate or adopted son. They had to decide between the conflicting claims of the Raja's daughter, which Mr. Forbes, the Resident,

put prominently forward in his letters of November 6th, 1855, and September 9th, 1856, and those of the widows jointly and severally, whom Mr.

Norton represented, and they consulted the opinion of the Pundits in order that the distribution of the property might conform with the principles of

Hindu Law, so far as they might be compatible with "their own notions of what was just and reasonable" vide Jijoyiamba Bayi Saiba v. Kamakshi

Bayi Saiba (1868) 3 M.H.C. 424. They do not appear to have given a thought to the case of the sword wives' children. No one came forward to

lead their cause. The law that the widow and the illegitimate son of a Sudra share together in the deceased's estate had not been expounded at that

date. There had been a strong tendency to refuse to recognize adoptions when the estate would otherwise fall in as an escheat and a subsequent

reaction against that doctrine. In the end, after due deliberation and consideration of the advice of the Pundits and the decisions of the Suddar

Adawlat and the Supreme Court, the Government designated the widows as co-heirs in whom the property would vest for their lives, and the

Raja's daughter as the person who would inherit the property on the death of the last surviving widow. Failing her, the next heirs of the late Raja

were to inherit. As the Government made a re-grant to the heirs the late owner,

the title which they got must depend entirely on the terms of the re-grant, vide *Nawab Mallca Jahan Sahiba v. Deputy Commissioner of Lucknow* (1879) 6 I.A. 63. At that time, although it is late Raja bad presented Rajaram Ingle to Lord Harris, the Governor of Madras, as the boy whom he intended to adopt, no actual adoption had taken place.

Mr. Forbes in his report of February 18th, 1816 states that no adoption had been made to his knowledge and Kamakshi Bai in paragraph (1) of her plaint used words to the same effect and showed by her conduct in adopting Rajaram Ingle in 1863 that his adoption had not already been performed. It was held in *Jijoyiamba Bayi Saihu v. Kamakshi Bayi Saiba* (1868) 3 M.H.C. 424 that the adoption which took place in 1863 did not have the effect of divesting the widows' estate, the nature of which is described in the decree as being "a joint estate for their respective lives with rights of survivorship." In the first paragraph of their order Government speak of the grant as a relinquishment of the whole of the lands in favour of the heirs of the late Raj. I am therefore unable to follow the learned Judges in their conclusion that what the Government purported to do was rather a grant of grace and favour than a restoration of property to those entitled to it by right of succession or an abandonment of all claims arising from the act of seizure c.f. *Baboo Beerpertab Sahee v. Maharaja Rajender Pertab Sahee* (1868) 12 M.I.A. 1. That a surrender would amount to a confession of wrong doing, itself improbable in the face of Government's firm insistence on their sovereign rights being upheld, seems to me to be a *non sequitur*. It is more important to determine what was granted than to discuss in what light the officers of Government regarded the grant. The document sets out to determine what are the respective rights of the Raja's widows and of his daughter. It goes on to find that according to Hindu Law the property should not be divided but that "it vests first in the widows and after their deaths is to be inherited by the daughter." The Senior Pundit who was consulted declared that the widows' rights were limited to the use of the property during their lifetime, that they could not alienate it, and that on the death of the widows it went to the next heir of the husband. His statement that they had no power of alienation must be read in the light of his detailed answer attached to the grant, which indicates that he meant to qualify it by the words "except for

most indispensable purposes." The difference of opinion that existed between the Senior and Junior Pundit related to the rights of the widows inter

se and not to the general principles regulating the order of succession of widows and daughters under the Hindu Law. It would have been easy for

the Government to have provided in the grant against the divestment of the estate by a subsequent adoption or against an adopted son succeeding

at any future point of time, and Mr. Norton was astute enough to perceive that if the widows made an adoption before the estate was restored, it

might occur to the Government to so word the grant that the adopted son would be effectually and finally cut out, and he advised them accordingly.

As it happened there was no express exclusion of an heir by adoption. The learned Counsel who represents the Maharaja of Kolhapur argues that

what was granted to the widows was a widow's estate of inheritance, with the necessary consequence that on their deaths it goes to the next heir

of the propositus with all the incidents attaching to such an estate under the Hindu Law except that they had no power of alienation during their

lives and that they were not liable to have their estate divested by an adopted son. The expression used in speaking of heirs in the grant is "inherit.

In the ordinary line of inheritance by Hindu Law an adopted son never takes after a widow and daughter. Therefore he contends the adopted son

was not merely postponed but entirely excluded. This theory is based upon implication; but is it a necessary implication? Assuming that the

Government intended to exclude the adopted son and the sword wives' sons during the widows' and the daughter's lives, it does not follow that

they meant to exclude them for ever for the mere reason that in an ordinary case of inheritance they would take in preference to females.

13. No doubt it is possible to create a widow's estate by will or by grant vide *Ram Bahadur v. Jager Nath Prasad* (1918) 3 P.L.J. 199

Vengamma v. Chelomayya (1913) 36 Mad. 484 and *Mahomed Shumsool v. Shewukram* (1874) 2 I.A. 7 and it may even be acquired by

prescription vide *In re Pattipati Seshayya* (1912) 11 M.L.J. 261 but did the Government create such an estate in this case, is the question.

14. Scotland, C.J., and Ellis, J. expressed an opinion in *Jijoywmba Bayi Saiba v. Kamukshi Bayi Saiba* (1868) 3 M.H.C. 424 that "the order in

question was intended to pass and did pass the property to the widows to be held Hid enjoyed with the same rights as the law of succession gives

widows on the devolution of property by inheritance.

15. They held that the interval during which the estate was in the ownership and possession of Government before the grant was made to the

widows was fatal to the fourteenth defendant's claims by right of adoption to the Baja. There was another interval between the death of the Raja

and the annexation, so that if the Government meant to restore the estate as it was on the date of their taking it over, there would have been no

obstacle to any one who was in existence on the Raja's death and entitled as a male to preference over widows being deemed to succeed directly

as lineal heir of the Raj. With due deference to those learned Judges I consider that they would have been on safer ground if they had disposed of

the claim of the adopted son to dispossess the widows during their lifetime by reference to the fact that the grant distinctly designates the widows

during their lives and the daughter as persons whom the grant indicated as having a preferential right over all other heirs. I am totally unable to

accept Mr. Grant's contention that the daughter is here mentioned merely as an illustration of the course of succession after the death of the last

surviving widow. In earlier and later orders Government speak of the Princess's reversionary rights. She evidently was given what may either be

described as a vested interest defeasible in the event of her predeceasing the last widow or a contingent interest on her surviving all the widows.

Her death at some future date was a certainty but whether she would outlive them all was an uncertain contingency (see illustrations c and d to

Section 107 of the Indian Succession Act). The succession opened when the last widow died in 1912. As the daughter was not alive on that date,

the words "failing her" make it necessary for us to look elsewhere for "the next heirs" of the Raja. I may at once dispose of the plea advanced on

behalf of adopted grandson that "failing her" means "failing her and her heirs," as that involves reading into the grant words that are not there. As the

daughter's heirs were not expressly mentioned in the grant and as the interest of third defendant's grandmother was contingent or liable to be

divested by her death before the succession fell in the estate never vested in them. The daughter, who by the terms of the grant herself got nothing if

she predeceased the widows, could not transmit a full estate to her heirs before the succession opened - vide *Finch v. Lane* (1870) 10 Eq. Cas

501.

16. There is no occasion for the Court to determine at this time whether what was intended to be given to the Princess was a life estate or an

absolute estate, seeing that, whatever it was, she did not live to take it. In *Jijoyiamba Bayi Saiba v. Kamakshi Bayi Saiba* (1868) 3 M.H.C. 424

mention is made of her "proprietary rights" and "all the legal rights of heirship", whatever that may mean, but she was not a party to that suit and the decree is silent on the subject of her rights at the date when it was decided. When a grant has been made to a woman who ordinarily takes only a

limited life interest, whether there was an intention on the part of the grantor to convey an absolute estate, is not a question which falls to be

decided in the present case. It is sufficient to say that the designation of the daughter as a person to be preferred to other heirs mark her out as

having got something more than a mere spes successionis.

17. As for the adopted son, in a despatch issued four years later, the Secretary of State for India, while approving of the proceedings of the

Madras Government, left the validity of his adoption to be decided by the Civil Courts. The grant itself, after designating the widows and the

daughter as the persons who should first to the estate, left the next heirs unascertained.

18. In 1862 when the grant was made, it was not possible to predicate which of the late Raja's relations would be alive at the expiry of eighteen

(including the daughter's) lives, much less the order of their succession and the amount of their shares, From certain expressions in the Government

proceedings it appears probable that Government did not want the daughter to be cut out by an adoption being made by the widows after their

husband's death. But when once the daughter was dead and gone, Government was indifferent as to which heir of the Raja got the property. The

authorities steadfastly refused to restore the dignity of the Raj, but they did not reserve to themselves any right to resume the Raja's private

property if an adoption was put forward. Their dominant idea seem to have been to provide for the widows and the daughter having the first

enjoyment of the estate and that object being scoured by the terms of their grant, they left the further determination of the line of succession to its

natural course which could only be traced in the light of future events. The result

of the grant, being worded in favour of the widows" and daughter's priority as heirs was to prevent immediate divestment occurring through an adoption made after the grant and before the death of the last widow. The words "on the death of the last surviving widow" clearly indicate that the time when the next heirs were to be ascertained was the date of the last Rani's death. An argument has been based on the use of the words "next heirs" that as an adopted son is never postponed to a widow or a daughter, the words must mean "next after the daughter" in the line of succession of heirs in Hindu Law. In paragraph 4 of the order, the words "next heir of the husband" are used in the sense of "nearest heir of the husband." In paragraph 5 the context implied that when the Government were speaking of "next heirs" they were thinking of those who would take next after the daughter as the widows and daughter are placed first in a certain relative order, If several objects are placed in a certain order and mention is made of one and then of the next, the word next, ordinarily signifies the next in that order vide *Eastwood v. Lockwood* (1867) 3 Eq. Cas. 487. But here owing to the death of the daughter, the words "next heir" have lost the significance that they would have had if she had lived: Now that all the widows and the daughter have gone, the original intention of Government to see that the widows and the daughter were not dispossessed so long as they lived becomes unimportant, and therefore these words need not affect our examination of the problem of finding out who was the next heir to the Raja at the death of the last widow. It cannot be maintained that in the terms of the grant there is any conscious or express exclusion of one who would have even better claims than a daughter at the date when the succession opened. Again there is no reason to assume an intention on the part of the donor to exclude sons by adoption, if what was given was not a widow's estate, but a life estate. The opinion of Scotland, C.J., and Ellis, J., in *Jijoyimba Bayi Saiba v. Kamakshi Bayi Saiba* (1868) 3 M.H.C. 424 has already been quoted. They considered that the property was passed to the widows "to be held and enjoyed with the same rights as the law of succession gives widows on the devolution of property by inheritance." The terms of this grant came up again for consideration in *Kaliana-Sunduram Ayyar v. Umamba Bayi Saheba* (1897) 20 Mad. 421 where Mr. Justice Shephard observed that

the inference was irresistible that the intention was to grant a widow's estate, that is, to put Kamakshi Bayi in the position which she would have

enjoyed had there been no confiscation on the death of her husband, the Raja.

19. Now there is no physical or legal impossibility in such a grant being made by will or by deed of gift or contract vide Mahomed Shumsool v.

Shewukram (1874) 2 I.A. 7 Ram Bahadur v. Jager Nath Prasad (1918) 3 P.L.J. 199 and Vengamma v. Chelamayya (1913) 36 Mad. 484 but

after giving the fullest consideration to the opinions of those learned Judges of this Court who have had the terms of this grant before them, I think

that the more correct view is that the widows of Sivajij Raja got the gift of a life estate very much resembling the ordinary estate of a Hindu widow

and with all the incidents of a widow's estate except the liability to be divested, but nevertheless a life estate rather than an estate of inheritance,

and that this view is in consonance with the decisions of the Privy Council in the Jatindra Mohan Tagore v. Ganendra Mohan Tagore (1872) 20

Mad. 421 Mahamed Shumsool v. Shewnkram (1874) 2 I.A. 7, Mt. Bhagbutti Daee v. Chowdry Bholanath Thakoor (1875) 1 Cal. 104 Bhagabati

Barmcnya v. Kalicharan Singh (1911) 38 Cal. 468 and Bhujpendra Krishna ghose v. Amarendra JNath Ley AIR 1915 P.C. 101 and with the

judgment of the Calcutta High Court in Gooroo Das Muttfa v. Sarat Chancier Mastfa (1902) 29 Cal. 699.

20. I am impelled to this view by a consideration of the fact that there is in the grant a clear gift over in the alternative to the daughter or to other

heirs of her father, a fact which seems to have escaped the notice of the Bench which decided Jijoyiamla Bayi Saiba v. Kamaicshi Bayi Saiba

(1868) 3 M.H.C. 424 in that the nature of the estate given to the daughter was not defined in their preliminary judgment, though in the final

judgment and the decree there are observations as to Kamaktbi Bai's proprietary right for life which are consistent with the grant to her and her

co-widows being that of a life estate. At a later date the Government seem to have approached the widows and daughter with a request to transfer

a certain building and grounds for a college as if they had a disposing power as reversioners of the Raja's estate. If kamakshi Bai had taken the

estate as a Hindu widow, she would have completely represented the estate for the time being, and could have disposed of it for a necessary

purpose without consulting the daughter (vide Mt. Bhagbutti Late v. Chowdry Bhalanuth Thakoor (1875) 1 Cal. 104.

21. For these reasons I find that the right of the after-adopted son and his descendants to succeed after the death of the widows and daughter was

not negatived by the grant. The daughter was never made a stock of descent and her adoption of a son confers no title on him, seeing that the

conditions on which she was to succeed were not fulfilled. As for the Mangala Vilas people, I reserve what I have to say till I deal with their special

case under other heads, but for the present it may be noticed, first that the terms of the grant are not such as to exclude them from the category of

Next heirs of the Raja, he being the stock of descent to whom relationship has to be traced, and secondly the fact that they and the daughter were

given annuties under another Government Order will not stand in the way of their coming in as heirs if they can prove a light of inheritance apart

from a right to maintenance.

22. The first mention of sword marriage that occurs in the records of this case is in Exhibit B 140, which is a Maharatti inscription which has been

ascertained to date from the beginning of the 19th century and to have been written round the walls of the Tanjore temple in the reign of Serfoji

Raja. This inscription states that Tukkoji had five married wives. It proceeds ""Besides these, he had six con-cubinee, of whom only one belonged

to Maharatta caste ; the other five belonged to Nayudu race. The one who belonged to Mabratta caste was married to the sword."" (The Mabratta

words are ""Tul-warlagna kalai)"". . ""In 1641 this kept woman Annapuma Bai gave birth to Raja Pratapa Singh."" The mother of Pratapa Singh is

again referred to a little further on as a kept woman (Eakya) as distinguished from a lawfully wedded wife (Lagna). Mention later is made of Mukta

Bai, who was Serfoji's mistress before his regular marriage) a woman of Kavarai caste in whoso honour he erected a chat-tram, but the document

does not state that she was his sword wife. Pratapa Singh had a sword wife named Rcdha Bai. This Pratap Singh was the son of Raja Pratapa

Singh's second Eon Ainar Singh who was himself deposed partly on account of his being only a sword wife's son.

23. In Sir John Malcolm's Memoir of Central India published in 1832, Volume 2, page 158, mention is made of a kind of sword marriage which is

described thus:

This sword of the Mahratta ruler, with his handkerchief bound round it, represented the Prinep, and to that the female was united; she married the wearer of the sword, not the shepherd.

24. The incident therein referred to was that of a marriage between Holkar who was a Sudra with a woman of Khettree bleed and the sword

marriage marked the difference between the caste of the bride and the bridegroom. In this respect there is a distinction between that marriage and

the one referred to in the inscription. Annapurana Bai (it is stated) being of the sama caste as the Raja was married to the sword, whereas the other

concubines were not BO married.

25. In Mr. Enthoven's Tribes and Castes of Bombay, Volume III, page 280, there is another description of sword marriage among Rajputs.

The bridegroom puts a sword and acocoanut in charge of a maid servant who takes his place in a litter and is taken in procession to the bride's

house where the maid servantsits holding the sword and represents the bridegroom even in the ceremony of joining hands with the bride.

26. The Resident of Tanjore in reporting in 1849 on the dependants of Raja Pratapa Singh informed the Government that persons in the situation

of Radha Bai ""the concubine of the late Rajestry"" was ""not considered in the light of a common mistress or prostitute but rather that of an inferior

wife."" He adds:

She is recognized and associated with by the lawful wife. She cannot be put away destitute, and if put away is entitled to maintenance.

27. He compared the right to consideration of a woman who has gone through the ceremony of sword marriage to the rights of a ""Nikka"" wife

among Muhammadans.

28. Mr. Forbes, another Resident of Tanjore, in reporting in 1856 on the state of the Tanjore Palace after the Raja's death, mentions the case of

ten dancing girls whom the Rajah was said to have promised to make sword wives. He proceeds to describe the nature of sword marriage; but he

does not mention the sources of his information or say that he himself had ever witnessed a sword marriage. He says:

There are two kinds of marriages among the Mahrattas - one in which the tali is tied round the neck of the bride by the bridegroom whose full wife

she then becomes, the other in which the tali is tied to a sword, a ceremony which constitutes the woman a permanent concubine of the man.

29. Sonabhadra Bai who was one of Serfoji's twenty-six sword wives examined as a witness in a suit of 1865 describes the ceremony. She said

that the Raja with his own hand tied a tali round her neck and he then had a sword in his hand. Bhavani Bai, another sword wife who was a

witness in the same case, gave a similar description. In the present case, the last surviving sword wife of the late Raja by name Dharmavalli Bai was

examined as a witness and she stated that a sword was placed and homam was performed and she came round the homam while the men chanted

mantrams. After she had prostrated herself before the Maharaja, he tied the tali. She adds that seven or eight women were married at the same

time and all were married in the same fashion with the placing of the sword. It is significant that there is no mention of the giving of the bride to the

brideroom, an essential feature of every valid marriage. A case of sword marriage once came before this Court and was reported in Ramasami

Kamaya Naik v. Sundaralingasami Kamaya Naik (1894) 17 Mad. 422. In that case there was a dagger employed instead of a sword. The

Zamindar of Saptur who was the bridegroom was of Kumbala caste, while the bride was of Vellala caste. Both these are sub-divisions of the same

Sudra caste and the learned Judges (Muthuswami Ayyar and Davies, JJ.) explained the presence of the dagger at the marriage as being due to the

inferiority of the bride's status. There the tali or bottu was tied in the presence of the dagger, the dagger being placed to represent the zamindar

who did not attend in person. But there was a performance of the customary rites of the Kumbala caste in addition to the use of the dagger (page

425). It was held that the woman was the wife of the zamindar, but inferior in status to that of a patni wife. The dagger marriage was held to be

analogous to an anuloma marriage, that is, a marriage between a man of a higher caste and a woman of a lower caste (page 436). We have it on

the authority of the tutor of Mangala Vilas children (defendants' witness No. 32) that the sword wives of the late Raja Sivaji were drawn from

several castes different from the Rajah's caste and that there were Mahrattas, Sudras, Ayyangars and Christians among them. We know from a

mortgage deed that one of them was a Brahman woman. There are other judicial decisions which have not found place in the law reports, but are

exhibited in this case. In Original Suit No. 5 of 1899, a suit brought by a reversioner in Amar Singh's branch, which settled at Tiruvadamardur in

the Tanjore district, the Subordinate Judge of Kumbakonam found that there was no such form of marriage as sword marriage recognized in Hindu

Law and that Radha Bai was not the lawfully wedded wife of Pratapa Singh but only his concubine and her daughter's son was not a re-versioner

but the child of an illegitimate mother. Two witnesses examined at the trial stated that the bride held the tip of $\frac{1}{2}$ the sword while the bridegroom

held the handle and in that state they went round the sacred fire in the Palace, and that tying of tali, taking seven steps, homam and other

ceremonies were performed simultaneously. The Pandit declared that sword marriage was a Gandharva form of marriage peculiar to Kshatriyas,

the distinctive feature of Gandharva marriage being that there is no giving away of the bride. In another case Mr. Knox, the District Judge upon a

petition for a succession certificate presented by one of the Mangala Vilas children, the father of the present eleventh defendant, observed:

These women called sword wives are concubines and their children are illegitimate children of the late Raja. No authority exists for treating them

otherwise than according to the ordinary laws of the Hindus.

30. The certificate of heirship to the estate of another sword wife was consequently refused.

31. The accounts of sword marriage thus differ in details, but they agree on one point, the presence of a sword or dagger which is the token of

Kshatriyaship, the weapon of the warrior class.

32. In Mr. Ganapathi Ayyar's Hindu Law, Volume I, page 491, the author refers to Ramasami Kamaya Naik v. Sunduralingasami Kamaya Naik

(1894) 17 Mad. 422 and he states,

Among the Kshatriya castes, there is a form of marriage known as the sword or dagger marriage (kadga vivaha) and this prevails even now among

some Zamindar families.

33. He refers to the Jyotirvidabharanam by Kalidas; the date of which is unknown, in which there is a description of sword marriage. That

commentator says:

Wise men should perform Brahma and other marriages in which the lotus hand (of the bride) is received (by the bride-groom) at the time stated

before, and the Grandharva, Paishachi, Rakshasa and Asura (forms of marriage) at any time.

34. Then he observes:

Among all Varnas in all ages the first four forms of marriage are praiseworthy according to the above maxim, but other forms (Gandharva, etc.) are performed in the Kali age.

35. Again

In the Kali age a king should perform the auspicious sword marriage ceremony in the summer solstice when the star is auspicious for marriage in the evening.

36. This is an authority for the theory that a sword marriage is an institution peculiar to Kshatriyas and is not common to persons of other cast:

Section If this is so, the legitimacy of the children of sword wives of the late Raja of Tanjore will depend on the question to be considered later,

namely whether he was a Kshatriya or Sudra by caste. Mr. Ganapathi Ayyar gives it as his opinion that the use of the dagger is in lieu of the seizure

of the hand (Karagraha or Panigraha) which is observed in the ordinary forms of marriage. The Mahratta chieftains (he says) used to resort to this

form of marriage. Now a sword or a dagger (tulwar or kadga) is essentially an emblem of the warrior or Kshatriya whose profession is that of

arms. It is noticeable that in Exhibit B-140 the tharwar (or tulwar) is mentioned in speaking of the sword marriage of Annapurna Bai to Tukkoji

Raja, and that the word Panigraha is used when speaking of the wives who were married according to the ordinary forms of marriage in which the

wives became united to the Raja in lawful wedlock as distinguished from kept women (Rakkiya).

37. In order to constitute a lawful marriage among Hindu?, it is essential that certain nuptial rites should be performed; otherwise the marriage is

only a Gandharva marriage, or, as it is described in *Brindavana v. Radhamani* (1889) 12 Mad. 72 "a marriage importing an amorous connection

founded on reciprocal desire," in fact, a marriage in a form which has become obsolete. See Mayne's Hindu Law, paragraph 83 and T.B.K.

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38. The Subordinate Judge finds that the sword wives of the late Raja were legitimate but inferior wives. Somewhat inconsistently he has given

their offspring the shares which illegitimate children are entitled to under the Hindu Law. It appears to me that there can be no half way house

between legitimacy and illegitimacy. It is necessary to find either that the sword wives were regularly married or 1 that they were concubines

whose offspring 1 are illegitimate. Lists of the sword wives in the Tanjore Mangala Vilas Establishment have been filed. The first list divides the

sword wives into Ammamara and Baimars and Ranganayaki, etc. The second distinguishes between the Ammamars of Ayyan Mahal and the

Baimars of Huzur Mahal, but; this document is unsigned and proof of its authenticity is wanting. There is clear evidence which no one disputes, that

all the sword wives lived in one institution called Mangala Vilas. There was a similar institution for sword wives of Serforji which was called the

Kalyana Mahal. The inmates of these institutions were kept behind the purdah and were not allowed to mingle with the outside world after their

introduction into the Palace. They had prefixed to their names the honorific title of Sowbhagyavathy (literally ""a woman having good fortune"") or

Sumangali (one who has a husband or protector) which are terms ordinarily associated with married woman. After the Raja died this was altered

to Mathusris (widows). Their children prefixed the title of Vijaya to their names to indicate their royal descent, Vijeswara being the Raja's favourite

deity. Much may be gathered from the treatment accorded to them by the Raja, so far as the records are available of such treatment and from the

way in which they speak of themselves in official documents and petitions and legal proceedings in which they were parties. Evidence of this kind is

conduct admissible u/s 50 of the Evidence Act [see illustration] (b), as it shows the repute in which sword marriage was held in this family. In a

manuscript obtained from the Oriental Library in Madras the reflections of Tulsaji on his death-bed are recorded, and it is there stated that before

making the adoption he regretted the stigma attached to his father Pratapa Singh owing to his father having been born to a mother whom Tukkoji

had not married. It is unnatural that the Raja should have voluntarily cast a stain on his ancestor's legitimacy unless there was some truth in the fact.

In those days sword marriage was evidently not considered as conferring a status equal to that of a lawful wife. The last Raja Sivaji thought of

adopting a son at a time when he had six natural sons. If they were fit to be his heirs there was no need for adoption to be made. There is no

evidence that any invitations to relations and officials were issued when the sword marriages of the Raja to the Mangala Vilas women were performed. The 5th Defendant, who is the son of a sword wife admitted that he and other sword wives' sons took no part in the Raja's funeral ceremonies. The adopted son (Rajaram) performed the Raja's obsequies. The sword wives seem to have all worn Mungalasuthrams or tali's and to have removed their talis at the Raja's death when they were given addigais instead. The children of different sword wives have not been treating each other as brothers and sisters as would be the case with consanguine children of co-widows of legitimate descent. The children of Mangala Vilas ladies in some cases have married pure-blooded persons of the Mahratta community but some social stigma seems to be attached to such marriages as the witnesses - D.Ws. 83, 84, 31 16,87 - who have spoken to their existence admit, The attitude of the children and grandchildren born of sword wives in this family as to their legitimacy has been inconsistent. When it has suited their purpose to be illegitimate sons, for instance, when they want to obtain the share of the illegitimate son of a Sudra, they style themselves illegitimate. When they want to recover the Raj or to cut out the adopted son, they pose as legitimate offsprings. The 4th Defendant in his written statement alleged that he was legitimate, but asserted that Pratapa Singh was an illegitimate Son of Tukoji. Defendants 5 and 7 to 11 allege that sword marriage conferred on them the status of royal children born in wedlock and that they had a right to exclude an adopted son from succession. But in the alternative they pleaded their right as illegitimate children of a Sudra to take the shares appropriate to such illegitimate children. In his letter of November 4th, 1880, to the Governor of Madras, 7th Defendant claimed as sword wife's son of a Raja to be the rightful heir to the Raj. In legal proceedings to which they have been parties from time to time these sword wives' sons have described themselves as illegitimate and they have been consistently described as illegitimate or natural children by Government officers and by the legitimate wives and relations and the establishment in which they lived has been described as "Sergalio". For instance in the plaint in O.S. No. 39 of 1908 in which the father of the 11th Defendant was Plaintiff, he coupled Dharmavalli Bai, a sword wife with a pension of Rs. 150 and Hira Amma, a dancing girl with a pension of Rs. 70 and described them as "members

of the congregation of women known as Mangala Vilasam attached to the Tanjore Palace." In the plaints in O.S. No. 30 of 1911 on the file of the

Sub-Court, Kumbakonam, in which the 5th and 7th Defendants in the present suit were Plaintiffs and 4th Defendant was a Defendant, it is stated

that the Raja left behind him "6 illegitimate sons born to him by Mangala Vilas ladies." 7th Defendant in his evidence says they instituted the suit as

illegitimate sons acting under the advice of their legal advisers. In a mortgage deed executed by the 5th Defendant he describes himself as the son

of Mathusri Meena Bai "attached to the Mangala Vilasam." In a petition sent to the Viceroy of India in 1880 and in a letter to the Chattram

Tahsildar the 4th Defendant describes himself as a "natural" son of His Highness the Sivaji Maharaja, "natural" being used in the sense of not born

in lawful wedlock - vide Brewer's and Webster's dictionaries. In a letter addressed to the Governor of Madras in 1880 he compares his status as

son of wife's son to that of Amar Singh, son of Pratapa Singh, who was not regarded as a legitimate son.

39. On behalf of the Maharaja of Kolhapur it is contended that the marriage of the mothers of the 4th and 5th Defendants and the grandmothers of

Defendants 6 to 11 have not been proved in fact to be legitimate marriages, but as regards Pratapa Singh, through whom this defendant traces his

connection with the Tanjore line it is argued that Annapurni was married to Tukkoji according to the records available and that there is nothing to

show that the marriage in fact was not a marriage in law. Reference has been made to *Inderan Valungypooly Taver v. Ramasawmy Pandia Talaver*

(1869) 13 M.I.A. 141 as to the presumption in favour of a marriage in fact being a marriage in law, and to *Manji Lal v. Chandrabati Kumari*

(1911) 38 Cal. 700 in which a strong presumption in favour of the validity of a marriage and the legitimacy of the offspring was held to arise when

a couple were regarded as man and wife, and evidence was only wanting as to the mental capacity of one of the parties and as to the performance

of the forms and ceremonies necessary to constitute the marriage a valid one.

40. In the district of Ceylon, whence the case came which went to the Privy Council in *Sastry Velaider Aronegary v. Sembecutty Vaigalie* (1881)

6 A.C. 364 there was evidence that wives were treated differently from concubines and that the parties went through some form of marriage, and

that the woman was treated by the man as his wife and yet their Lordships drew a presumption of legitimacy though there was no evidence that the

form in which the marriage was celebrated was a legal one. At Tanjore a distinction was made in the treatment of sword wives and dancing girls, at

any rate after the Raja's death. So it is a legitimate inference that sword wives were regarded as superior to dancing girls in the Tanjore Palace, the

latter having no permanent status. But when the status of sword wives is compared to that of Ranis, the presumption arising from mere co-

habitation is weakened by the undeniable fact that there were a number of women in an institution of their own kept apart from the Ranis or

recognized wives, and there were also dancing girls, or professional concubines dedicated to some temple, in the keeping of the same husband.

One of the sword wives of Serfoji admitted that the patta wives wore gold jewels on their legs and sat equally on the throne with the Maharaja;

whereas the sword wives wore silver jewels and were not accorded the dignity of sitting with the Maharaja. When sword wives died, their corpses

were carried through a different gate from that used for the funerals of Ranis. The full period of pollution was not observed at their deaths, as the

Raja married 17 wives on July 18th 1852, though a sword wife Maya Bai died on July 13th, 1852. The maintenance and clothing of sword wives

is consistent with their being in the permanent keeping of the Raja. The treatment of the children was such as would naturally be accorded to

illegitimate children. In social and ceremonial matters they appear to have associated with the Ranis or lawfully wedded wives. Much oral evidence

has been let in as to the performance of ceremonies such as Hunmuk (introduction of mother-in-law to daughter-in-law), badan (uncovering head by

bridegroom's sister), mathrupuja (worship of mother), bowbiz (exchange of presents), feet washing, barsa (or tonsure) and viayabhyasa (initiation

into studies) and as to the repetition of sraddhs by children of sword wives to their paternal ancestors, which would be impossible for children of

common prostitutes, and as to the interchange of ahairs (small pieces of cloth). These sword wives seem to have performed ceremonies at child

birth such as jatakarmam, barsa, etc, which indicate a conscious assertion of a wish to be treated as married women. In Bai Monghibai v. Bai

Nagubai AIR 1923 Bom. 130 reference is made to Mayne's Hindu Law and other authorities which show that when there is a permanent

connection of women with a man analogous to that of female slaves in former times, the women and their offspring have been recognized as

members of the family. This seems to have been the case at Tanjore. As permanent concubines they were members of the family and naturally took

part in feast and ceremonials. The wearing of the tali by the sword wives only indicated their permanent connexion with the Raja. Temporary

concubines and prostitutes would not have been given talis because talis are badges of the permanence of the union.

41. As to the legitimacy of Pratapa Singh, owing to the distance of time there is more room for a presumption of legitimacy being made. But the

verdict of history is that he was illegitimate. The Subordinate Judge says that his sonship to a sword wife was a matter of local tradition. History

relates that he was put on the throne by the popular vote owing to his good looks and his other good qualities in spite of his being a sword wife's

son. We know from the inscription that his mother was of the same caste as her husband. The earliest of the historians is Orme. He speaks in 1861

of Pratapa Singh as the son of Serbojee born by one of his inferior wives. Mill's History of India is to the same effect. Grant Duff plainly says that

he was the son of a concubine. Aitchinson's Treatise speaks of Pratapa Singh as of illegitimate birth. Ranade in his "Rise of the Mahratta Power" at

page 248 says the same. Mill in his History of India in his later edition speaks of Pratapa Singh as the son of a concubine. Mr. Kincaid in his

History of the Mahratta People, Vol. II, page 273, says that Tukkoji left two legitimate sons and a natural son Pratapa Singh. Mr. Venkasami Rao,

who wrote the Tanjore District Manual, observes "that Pratapa Singh was illegitimate is nowhere denied." These historians probably extracted the

fact that Pratapa Singh was the son of a sword wife from the Tanjore temple inscription and drew their own conclusion as to the meaning of sword

marriage, or the later writers may have accepted the verdict of the earlier. Dr. Swartz, the tutor of Serfoji, addressed the Governor-General on

behalf of his ward and pupil. He attached to his letter a genealogy. This shows three sons Nana Sahib, Anna Sahib and Pratapa Singh born to

Tukkoji by a concubine mother, and Pratapa Singh is shown as having left one son by his wife and two by a concubine, viz., Amar Singh and

Krishnaswami. Mr. Swartz in his letter to Lord Hobart states that he made careful inquiries as to the correctness of this pedigree. During the

course of the hearing we directed that the Government of India and the Government of Madras should be addressed for the production of the original genealogy from which Exhibit B-81(a) is a copy in order to see whether the description ""born to a concubine"" is in Swartz's own handwriting, but as the original is not now forthcoming, the statement must be taken for what it is worth. At this distance of time no evidence is forthcoming as to the ceremonies performed when Tukkoji married Annapurni. It may be presumed that the ordinary ceremonies attached to the institution of sword marriage were performed on that occasion. But, if, as I am inclined to hold, sword marriage is an institution peculiar to Kshatriyas and if it is proved that Tukkoji was only a Sudra in caste there can be no presumption as to the legitimacy of the offspring of such a marriage.

42. As sword marriage is an institution peculiar to Kshatriyas, the sword being one of the characteristic insignia of the Kshatriya caste, the performance of ceremonies, if any, which fell short of valid marriage by a Sudra ruler in a form of marriage recognized among Sudras, did not give rise to any higher status than permanent concubinage. There are indications that the members of the family were conscious that this was so.

43. Mr. Justice Ranade in his ""Rise of the Mahratta Power,"" page 271 mentions the celebration of a marriage between the daughter of the Nizam of Hyderabad, who was a Muhammadan, and the Peshwa, Bilaji Rao, who was a Brahman, and the form of the marriage was in that case a sword marriage. This is another indication that the presence of the sword indicates a difference in caste between the bridegroom and the bride.

44. There is evidence that a Tonk was put up to Mukta Bai. A Tank is an image of a deceased person put in a temple. It is a very unconvincing piece of evidence to prove the status of sword wives. In my judgment no importance should be attached to the suggestion that the memory of sword wives was kept alive by Tonks, as it does not appear certain that Mukta Bai was a sword wife and not a mistress of Sorfoji. Moreover, we find that Tonks were put up even to a servant put to death by Pratapa Singh and to a minister, to propit