

Present: Lascelles C.J. and Pereira J.

1912.

BANDIRALA v. MAIRUMA NATCHIA.

247—D. C. Kurunegala, 4,308.

Muhammadan law—Code of 1806 must be followed even if it clashes with principles of Muhammadan law.

It is the duty of the Court to give effect to the code of "Special Laws concerning Maurs or Mahomedans" of 1806 even if the provisions contained therein appear to clash with well-established principles of Muhammadan law.

THE facts appear from the judgment.

De Sampayo, K.C. (with him *Talaisingham*), for first, second, and third defendants, appellants.

Vernon Grenier, for fourth defendant, respondent, and added defendant, respondent.

November 13, 1912. LASCELLES C.J.—

This appeal raises certain questions on the Muhammadan law of succession, Uduma Lebbe, the *propositus*, died leaving a widow, since dead, three daughters (whose interests are vested in the plaintiff), and the fourth defendant and the added party, who are the daughters of a predeceased daughter.

The learned District Judge has allotted one-eighth share to the widow, which devolved on her only daughter, the third defendant, who has waived her share in favour of the plaintiff.

I do not understand that there is any objection to this part of the decree. With regard to the remainder of the estate, the learned District Judge has allotted three-fourths to the daughters, and the balance (namely, one-eighth) to the grandchildren. This distribution of the estate is impugned as being contrary to the general principles of Muhammadan law, and in particular it is said that the fourth defendant and the added party as grandchildren through a daughter of the *propositus* have no share in the inheritance.

In the "Special Laws concerning Maurs or Mahomedans" there are many provisions which are difficult to reconcile with the principles laid down in the standard text books on Muhammadan law, but there can be no question with regard to the duty of the Courts in Ceylon to give effect to those provisions even if they appear to clash with well-established principles of Muhammadan law.

These "Special Laws" embody the rules which the Legislature has laid down with regard to the succession to the estates of Muhammadans and other kindred matters, and where any rule is plain and

1912.

LASCELLES
C.J.*Bandirala*
v. Mairuma
Natchia

unambiguous, it is unnecessary to have recourse to the text books on Muhammadan law.

The question then is simply whether the distribution made by the learned District Judge is in accordance with the " Special Laws " to which I have referred.

In giving three-fourths to the three daughters, the learned District Judge has followed section 6. This section, as Mr. F. H. de Vos has pointed out in his valuable commentary, is a deviation from the rules of the Shafei law, and, indeed, from the general principles of Muhammadan law, under which the shares of the daughters, however many, should not exceed the " Koranic two-third."

But the decision of the learned District Judge is plainly in accordance with section 6, and must be upheld. So with regard to the one-eighth allotted to the two grandchildren by a daughter of the *propositus*. It may be doubtful whether on the general principles of Muhammadan law these grandchildren, who trace descent through a daughter, are entitled to come in as " residuaries," but section 32 is a clear authority for the distribution effected by the learned District Judge.

I would dismiss the appeal with costs.

PEREIRA J.—I agree.

Appeal dismissed.

