

1948 Present : Wijeyewardene A.C.J. and Jayetileke S.P.J.

ANNAM, Petitioner, and KATHIRAVELUPILLAI *et al.*,
Respondents.

S. C. 561—*In the matter of an Application for Revision in D. C.
Jaffna, 2,650.*

*Thesavalamai—Property derived from the father's side—Right of mother—
Persons "above enumerated"—Section 27—Chapter 48—Part III.*

Where a woman subject to the *Thesavalamai* died leaving her mother
and cousins on the father's side—

Held, that the cousins were entitled to succeed to property derived
from the father's side to the exclusion of the mother.

Held, further, that the mother was not one of the persons "above
enumerated" within the meaning of section 27 of the *Jaffna Matrimonial
Rights and Inheritance Ordinance*.

APPPLICATION to revise an order of the District Judge, Jaffna.

S. Sharvananda, for the defendant, petitioner.

H. W. Tambiah, for the plaintiffs, respondents.

Cur. adv. vult.

August 16, 1948. WIJEYWARDENE A.C.J.—

This application involves a question relating to the law of inheritance
under the *Jaffna Matrimonial Rights and Inheritance Ordinance* (Legis-
lative Enactments, Volume 2, Chapter 48.)

By right of purchase one Saravanaperumal was entitled to three lands:—

- (A) Anaivilunthan of the extent of $1\frac{3}{8}$ lachams V. C.
- (B) Anaivilunthan of the extent of veedu $\frac{1}{2}$.
- (C) Payatolai of the extent of $1\frac{1}{2}$ lachams V. C.

I give the names and extents of the lands, as a great deal of confusion
has been caused by the manner in which the plaint and the decree referred
to the subject matter of this action. I shall refer to these three properties
as "A", "B", and "C" respectively.

Saravanaperumal died intestate leaving his widow, the defendant, and
two daughters, Poompavai and Seethangany, and, thereupon, the
defendant became entitled to $\frac{1}{2}$ A, $\frac{1}{2}$ B, and $\frac{1}{2}$ C and each of the daughters
to $\frac{1}{4}$ A, $\frac{1}{4}$ B, and $\frac{1}{4}$ C. Later, Poompavai died intestate and issueless and
her shares of the lands devolved on Seethangany. There is no dispute
between the parties with regard to the devolution of title so far.

Seethangany died intestate and issueless in 1941 and leaving her
surviving her mother, the defendant, and first, second, fourth, and sixth
plaintiffs who are four out of the six children of Visagaperumal, a brother
of Saravanaperumal. The remaining two children of Visagaperumal or
their descendants are not parties to this action.

3—L.

Seethangany had also purchased in 1936 another allotment of Payatolai containing in extent $1\frac{1}{2}$ lachams V. C. I shall refer to this property as "D".

At her death Seethangany was, therefore, possessed of :—

- (i.) $\frac{1}{4}$ A, $\frac{1}{4}$ B, and $\frac{1}{4}$ C as *Mudusam* " derived from the father's side ".
- (ii.) $\frac{1}{4}$ A, $\frac{1}{4}$ B, and $\frac{1}{4}$ C as *Urumai* from the sister, which would thus be a part of the " remainder of the estate of the deceased " mentioned in sections 23 and 24.
- (iii.) D which would also be a part of the " remainder of the estate of the deceased " mentioned in sections 23 and 24.

The estate of Seethangany is governed by Part III of Chapter 48 by virtue of the provisions of section 14.

The defendant claimed to be the sole heir of Seethangany. Her Counsel sought to support the claim as follows :—The plaintiffs who are children of a parental uncle of the deceased could claim a share of the inheritance only under section 27. But the plaintiffs cannot rely on that section, as it says that such cousins would be entitled to an inheritance only in the circumstance of " all the persons above enumerated failing ". Sections 24 and 26 mention the mother who will thus be one of " the persons above enumerated " (*vide Markandu v. Vytialingam*¹). There is thus no express provision made by Chapter 48 regarding the estate of a deceased person who leaves her surviving her mother and cousins on the father's side. Therefore, under section 36 of Chapter 48, the question of inheritance must be decided under the Matrimonial Rights and Inheritance Ordinance (Chapter 47) and by virtue of section 35 of that Ordinance the mother becomes entitled to the whole estate of Seethangany.

In order to test the soundness of this argument it is necessary to examine in some detail the scheme of Part III of Chapter 48. Sections 15 to 19 refer to certain classes of property a person may die possessed of. Those sections read with sections 23 and 24 show that all these properties are classified into three groups :—

- (i.) " Property derived from the father's side."
- (ii.) " Property derived from the mother's side."
- (iii.) " Remainder of the estate of the deceased."

Section 20 deals with the right of the surviving spouse of the deceased. All the rules of inheritance given in the following sections are subject to that right of the surviving spouse. Section 21 states that the right of inheritance is " divided in the following order as respects (a) descendants, (b) ascendants, (c) collaterals ". Section 22 shows children and remoter descendants have a preferential right. Then we come to a group of sections dealing with the estate of a person who dies without descendants. The estate of such a person is divided into two parts for deciding the mode of devolution :—

- (a) Property derived from the father's side ((i) above) and half the remainder of the estate ((iii) above)
- (b) Property derived from the mother's side ((ii) above) and half the remainder of the estate ((iii) above).

¹ (1917) 20 N.L.R. 216

The rules of succession relating to property (a) are given in sections 23, 25 and 27, while the rules relating to property (b) are given in sections 24, 26 and 28. Thus, when section 27 proceeds to designate the heirs who succeed to property (a) of the estate of a deceased person on the failure of "all the above persons enumerated", the persons so "enumerated" have to be found by reference to sections 23 and 25 and not by reference to all the sections 23, 24, 25 and 26 as suggested by the defendant's Counsel. Those persons would be father, brothers and sisters (full or half on the father's side) and the descendants of such brothers and sisters. The paternal cousins, therefore, of Seethangany would be entitled to claim a share of the inheritance, as the mother of Seethangany is not one of the "persons above enumerated" within the meaning of section 27. The interpretation I have given to section 27 receives support from the provisions of section 30. That section enacts, "on failure of kindred on the father's side property derived from that side shall devolve on the mother". That shows clearly that "property derived from the father's side" does not devolve on the mother so long as there is a kinsman living on the father's side. The interpretation favoured by the defendant's Counsel would make section 30 irreconcilable with section 27.

I shall consider now the case of *Markandu v. Vythilingam* (*supra*) cited by the defendant's Counsel. The facts of that case are briefly as follows:—One Espari Amma died unmarried and without issue, leaving certain property inherited from her father, Siva Subramaniam. Siva Subramaniam himself inherited the property from his mother, Siva Kani. That estate of Espari Amma was claimed by her paternal grandfather, the husband of Siva Kani. His claim was contested by the nearest relatives of Siva Kani. There was no claim by the mother of Espari Amma, even if, in fact, she was alive. In upholding the claim of the paternal grandfather of Espari Amma, the Court relied on section 27. In the course of his judgment Wood Renton C.J. said:—"The section is explicit on this point. That section provides that 'all the persons above enumerated (viz., children, father and mother) failing, the property'". The defendant's Counsel relies on the words within the brackets as an authoritative judicial interpretation of the words "all the persons above enumerated". The Court was not there concerned with the claim of a mother and it is difficult to think that the learned Judge directed his attention to the question which we are considering. He did not have to consider who "the persons above enumerated" were. It was not disputed that all those persons, whoever they might be, were not living at the death of Espari Amma. Moreover, it would have been clearly wrong for him to exclude from the "persons above enumerated" the brothers and sisters (full or half on the father's side) and their children, if he was thinking of giving an interpretation of the words "all the persons above enumerated".

For the reasons given by me I hold that the first, second, fourth and sixth plaintiffs are each entitled to 1/16A, 1/16B, 1/16C, and 1/12D.

There is another matter for which I think it prudent to make some provision in this judgment. The defendant claimed a "sum of Rs. 460 being the amount due to the defendant from the estate of the said Seethangany on account of settling the mortgage debt (*i.e.*, a mortgage

on lands A, B, and C) and Rs. 2,100 being amount due to the defendant as funeral and testamentary expenses". The plaintiffs in their replication admitted their liability "to pay the defendant their share of the sum of Rs. 722 due to her as shown by the account filed by her in Testamentary Case No. 198 P.T. (in which the estate of Seethangany is administered)". The decree entered in this case is silent on this point. I think it safe to make a reference to that liability in the decree in this case.

I direct that decree be entered declaring the first, second, fourth, and sixth plaintiffs entitled each to 1/16A, 1/16B, 1/16C, and 1/12D and ordering each of them to pay the defendant one-sixth share of Rs. 722.

The plaintiffs will be entitled to costs here and in the District Court.

JAYETLEKE S.P.J.—I agree.

Application allowed.

