

1917.

Present: Wood Renton C.J. and De Sampayo J.

MARKANDU *et al.* v. VYTIALINGAM.

117—D. C. Jaffna, 3,344.

Tesawalamai—Person dying issueless leaving grandfather and grand-uncles and grandaunts—Inheritance.

A, a Tamil subject to the *Tesawalamai*, died intestate and issueless, leave her surviving a grandfather (B) (father's father) and brothers and sisters of a grandmother (father's mother). The property in question was inherited by A from her father, who inherited the same from his mother.

Held, that B was entitled to A's estate to the exclusion of A's granduncles and grandaunts.

THE facts are set out in the judgment.

Bawa, K.C. (with him *Arulanandan*), for appellants.—According to the *Tesawalamai* the property must go to the source from which it came. *Espari Amma's* father inherited the property from his mother. The property should, therefore, go back to the heirs of *Espari Amma's* grandmother. The Ordinance of 1911 has not expressly altered the law on this point. We must not construe that the section (29) was intended to alter the law, unless it is quite clear that that was the intention of the Legislature. Counsel cited *Thiagarajah v. Paranchotipillai*.¹

Balosingham (with him *Joseph*), for the respondent (not called upon).

Cur. adv. vult.

November 21, 1917. WOOD RENTON C.J.—

The material facts are these: *Espari Amma*, a Tamil lady, died unmarried and without issue, leaving certain property which she had inherited from her father *Siva Subramaniam*. *Siva Subramaniam* had himself inherited it from his mother *Siva Kami*. In a contest for the grant of letters of administration to *Espari Amma's* estate, both sides have agreed that the question of title to this property shall be determined. The claimants are, on the one side, the nearest relatives of *Siva Kami*, and, on the other, her surviving husband, *Siva Subramaniam's* father. The learned District Judge has held that under section 29 of the Jaffna Matrimonial Rights and Inheritance Ordinance, 1911,² on the death of *Espari Amma* intestate and without issue the property would devolve on her sole surviving grandparent to the exclusion of relations on the other side. This decision is clearly right. The section is explicit on the point. It

¹ (1907) 1 N. L. R. 345; (1908) 12 N. L. R. 345.

² No. 1 of 1911.

provides that " all the persons above enumerated (viz., children, father, and mother) failing, the property derived by the intestate from the father's side and one-half of the remainder of the intestate's estate (exclusive of the property derived from the mother's side) shall devolve on the paternal grandparent or grandparents of the intestate if surviving. " It was urged that section 29 of the Ordinance should be interpreted in the spirit of the principle of the *Tesawalamai*, affirmed by the Court in *Thiagarajah v. Paranchotivillai*,¹ that, on the death of a father, his inherited property returns to his own line, while on the death of a mother the dowry returns to hers. It is, as the learned District Judge has pointed out, in accordance with the principle that the Jaffna Matrimonial Rights and Inheritance Ordinance, 1911,² provides that under the circumstances of Espari Amma's case her property should be divided, and what came from her father should go up along the father's line. But when we are invited to go further and say that, when Espari Amma's property has travelled back as far as her father it should again be divided, and that portion of her estate which came to her own father from his mother should go along the line of Siva Subramaniam's mother, we are entitled to look for direct authority for such a proposition in the language of the Ordinance of 1911 itself. But the language of section 29 is unambiguous, and must be applied in its ordinary sense. The appeal must be dismissed. We are asked to order the costs to be paid out of the estate, in view of the novelty of the point involved in the appeal. Nothing is said on this subject in the petition of appeal, and there is no record of any application in regard to it having been made in the District Court. The original petitioners do not appeal. I would not interfere with the District Judge's order that they and the appellant should pay the respondent's costs of contention in the District Court, and would give the respondent the costs of this appeal.

DE SAMPAYO J.—I agree.

Affirmed.

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¹ (1907) 11 N. L. R. 345 ; (1908) 12 N. L. R. 345.

² No. 1 of 1911.