

1915.

Present: Ennis J. and De Sampayo J.

MARIKAR v. NATCHIA.

94—D. C. Puttalam, 359.

Muhamadan law—Intestate dying leaving widow, female children of paternal uncles, and agnate grandsons of paternal uncles—“Residuary”—“Sharer.”

Under the Muhammadan law, in default of nearer male agnates, the paternal uncles' sons' sons, how low soever, are entitled to the residuary estate to the exclusion of female agnates more remote than sisters.

The Ceylon Muhammadan Code appears to make no provision for intestate succession other than to set out the shares of those entitled as “sharers.” It contains no provision for the distribution of residuary estate.

The paternal uncles' agnate grandchildren are “residuaries.”

THE facts appear from the judgment.

A. St. V. Jayswardene, for appellant.

Drisberg, for respondent.

Cur. adv. vult.

October 6, 1915. Ennis J.—

This is a question of succession under Ceylon Muhammadan law, The intestate died leaving surviving him a widow, three female children of paternal uncles, of whom the intervenient appellant is one, and agnate grandsons of paternal uncles. The paternal uncles' grandsons claim the residuary estate as “residuaries.” The intervenient claims to participate as one of the “distant kindred,” and her case is that the surviving male agnates of the intestate cannot claim as residuaries when there are surviving female agnates less remote. Under Muhammadan law it is clear (*Wilson's Anglo-Muhammadan Law, 3rd, ed. s. 337*) that in default of nearer male agnates the paternal uncles' sons' sons, how low soever, are entitled to the residuary estate to the exclusion of female agnates more remote than sisters. It was urged that section 68 of the Ceylon Muhammadan Code provides that all descendants are entitled to share. It is difficult to understand the section, but it seems to

formulate a rule for inheritance by descendants who are entitled to come in as "sharers," and not to apply at all to the distribution of the residuary estate.

It must be remembered that the Ceylon Muhammadan Code is not exhaustive (*Lebbe v. Thameen* ¹), and that where it contains no special provisions the ordinary rules of Muhammadan law must be referred to. The Code appears to make no provision for intestate succession other than to set out the shares of those entitled as "sharers." It contains no provision that I can see for the distribution of residuary estate.

In the present case the widow is the only "sharer," and the only question is whether the paternal uncles' agnate grandchildren are "residuaries." I am of opinion, following the Muhammadan rule, that they are, and that the order appealed from is right. I would dismiss the appeal with costs.

DE SAMPAYO J.—I agree.

Appeal dismissed.

1915.
ENNIS J.

*Meritar v.
Natchia*

