

1897.  
November  
10 and 19.

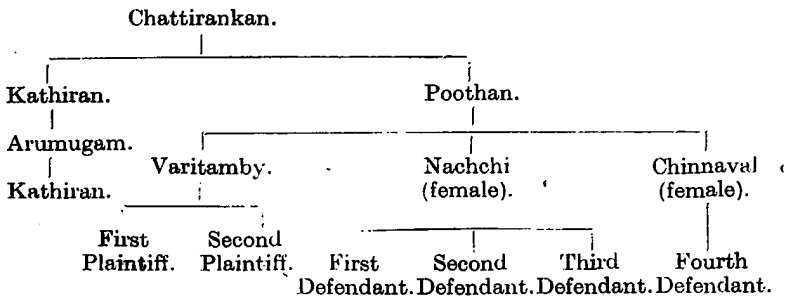
PUTHATAMPY *et al.* v. MAILVAKANAM *et al.*

D. C., Jaffna, 577.

*Thesavalamai*—What law to apply, where *Thesavalamai* is silent—Inheritance.

Where K died intestate and without heirs in the descending or ascending line, and where there were children of K's uncle and aunts, the succession should be governed, in the absence of any rule of the *Thesavalamai*, by the Roman-Dutch Law, which admits such children to the inheritance *per stirpes*.

THIS was a dispute between certain heirs who claimed descent from a common ancestor named Chattirankan. The genealogy, admitted on both sides, was as follows :—



It was also admitted that Kathiran (son of Arumugam) was the owner of the land in dispute. The question was whether, upon his death without issue, the first and second plaintiffs, as the only heirs of the deceased in the male line, should inherit his property, or whether it should devolve upon the first, second, third, and fourth defendants as well, as children of the plaintiffs' aunts.

The District Judge (Mr. Cameron) gave judgment in favour of the plaintiffs.

The defendants appealed.

*Sampayo*, for defendants, appellants.

19th November, 1897. LAWRIE, A.C.J.—

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Thesavalamai undoubtedly is the law governing inheritance in the Northern Province, but sub-sections 5 and 7 of section 1 seem to me to be silent as to the succession of remote relations to each other : 5 and 7 deal only with the succession *inter se* of members of the same family, father and mother, brothers and sisters.

I presume that when the Thesavalamai is silent the law of succession in the rest of Ceylon must be applied ; if so, then the first and second plaintiffs should get one-third, the fourth defendant one-third, and the first, second, and third defendants one-third.

I would set aside and so decree.

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