

THE  
NEW LAW REPORTS OF CEYLON.

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Present: Mr. Justice Middleton and Mr. Justice Wood Renton. 1

MANGANDI UMMA v. LEBBE MARIKAR. *Nov*

*D. C., Colombo (Testamentary), 2,257.*

*Mohammedan Law—Special laws relating to Moors or Mohammedans—  
Heirs on father's side and on mother's side—Division of estate.*

Where a Mohammedan died childless leaving as next of kin a daughter (the administratrix) of his deceased father's sister, and the petitioner and four others who were the son and daughters of two sisters of the intestate's deceased mother—

*Held*, that the petitioner was entitled to two twenty-sevenths and the administratrix to eighteen twenty-sevenths of the intestate's estate.

MIDDLETON J.—Where the heirs to the estate of a deceased Mohammedan are equal in degree the persons related on the father's side are entitled to double the share of the persons related on the mother's side.

THE petitioner, who was a son of one of the sisters of the deceased mother of the intestate, who was a Mohammedan and whose estate was being administered in this suit, applied that the Court do order the administratrix to transfer in his favour two-tenths share of certain premises forming part of the intestate's estate. The administratrix, who was a daughter of the intestate's deceased father's sister, contended that the petitioner was only entitled to two twenty-sevenths share according to the Mohammedan law.

The District Judge having held in favour of the petitioner, the administratrix appealed.

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*E. W. Jayewardene*, for administratrix, appellant.—By section 63 of the Code of 1806 all descendants are entitled to their respective shares of inheritances according to the persons they represent, and fathers' brothers' and mothers' sisters' children are entitled to the same shares as sons and daughters. The principle that males shall receive the double of females in the same degree is there recognized. It seems to have been intended to draw a distinction between the ancestors according to the side (father's or mother's) on which they are related (*Nell's Mohammedan Law*, p. 15). The person related on the father's side is entitled to double the share given to the person related on the mother's side (*Ameer Ali*, vol. 2, p. 61, and *Sir Roland Wilson's Mohammedan Law*, pp. 314, 316, and 305).

*Schneider*, for the petitioner, respondent.—The petitioner and the respondents are related in an equal degree, and the males would get double of the females. Section 63 merely enunciates that principle (*Ameer Ali's Student's Manual*, p. 23). The property must be divided with reference to the sex and number of the claimants (*Ameer Ali*, p. 62).

*E. W. Jayewardene*, in reply.—The share would be regulated by the number and sex of the persons existing when the inheritance opens, provided the persons through whom the claimants are connected with the deceased are of the same sex, or provided the sex of the roots agrees (*Ameer Ali*, p. 62).

*Cur. adv. vult.*

8th November, 1906. MIDDLETON J.—

The petitioner, respondent, applied in these testamentary proceedings that the Court should order the transfer to him by the administratrix, appellant, of two-tenths share of certain premises forming part of the estate being administered.

The Court made the order prayed for, and the administratrix appealed on the ground that under section 63 of the Special Laws concerning Moors or Mohammedans the petitioner was not entitled to so large a share of the estate. That section runs as follows:—

“Lastly, agreeable to the same rule, all descendants are entitled to their respective shares of inheritances according to the persons they represent in the same manner as: a wife or her descendants, a full brother or his descendants, paternal uncle and full uncles and aunts and their children, and their descendants if there be no nearest kin, fathers' brothers' and mothers' sisters' children are entitled to the same shares as sons and daughters.”

The deceased died childless, leaving as next of kin only the administratrix, who was a daughter of his deceased father's sister, and the petitioner and four others, who were the son and daughters of two sisters of the intestate's deceased mother.

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J.

The contest is therefore between a female cousin on the father's side and four male and one female cousins on the mother's side.

It was admitted by counsel for the respondent that if the appellant's contention was held to be correct the petitioner, respondent, would be entitled to two twenty-sevenths and the administratrix to eighteen twenty-sevenths.

The rule referred to in section 63 is evidently that which ordains that males shall receive the double of females in the same degree. It may further be gathered from the section that the doctrine of representation appertains in the cases mentioned, *i.e.*, her descendants represent a wife and her children, a paternal uncle if there be no nearest kin.

The paternal uncle would, as *Nell*, p. 15, says, let in the half-brother of the father, and his children would receive what their father was entitled to. Full aunts and uncles of a deceased would derive what they were entitled to through the grandfather and grandmother of the deceased, who in their turn would succeed to the deceased through his father and mother.

Section 63 does not specifically provide for the case of fathers' sisters' children, but only for fathers' brothers' children and mothers' sisters' children, apparently drawing a distinction, as *Nell*, p. 15, says, between his ancestors according to their sexes.

The administratrix's mother was full aunt of the deceased, taking "full aunt" to mean that she was the daughter of the same father and mother as the deceased's father.

I do not think we are entitled to do more than refer to the general principles of the Mohammedan law of inheritance to enable us to construe the obscure portion of our own Code.

*Ameer Ali*, at page 40, vol. 2, states that neither the Sunnis nor the Shiahs recognize the principle of representation as a general rule, and he gives certain exceptions in regard to the succession of the cognates.

It would appear also from the same author (page 15) that Shafei was the founder of a school whose doctrines are generally followed among the Mussulmans of Ceylon.

He also says at page 92 that the Shafeis are in general accord with the Hanafis on the broad principles upon which the Sunni system of classification is based.

1906. As regards the shares and the classification of the Zaril Furuz  
*November 8.* (person specified in the Koran as shares) there is no difference  
**MIDDLETON,** between the Shafeis, Malikis, and Hanafis (*page 94, Ameer Ali*), and  
**J.** although according to the primitive Shafei doctrines the succession  
of cognates was not recognized, now it has been held that they are  
entitled to succeed to the exclusion of the Beit al Mal:

I can find nothing in the chapter in *Ameer Ali* relating to the  
Shafei rules of succession which would guide me in disposing of the  
claims of these agnates and cognates, and I feel therefore con-  
strained to hold in conformity with the Hanafi doctrine at page 61  
(*Ameer Ali*) that the sides being equal in degree the person related  
on the father's side is entitled to double the share of the person  
related on the mother's side.

The administratrix and the petitioner are both cousins in the  
fourth degree, but the administratrix is related on the father's  
side.

In my opinion therefore the order of the District Court must be  
varied by ordering that two twenty-sevenths be transferred to the  
petitioner, and this appeal must be allowed with costs.

WOOD RENTON J.—

I agree. The contest is between a paternal and a maternal cousin  
of equal degree. I think that the effect of section 63 of the Code of  
1806 is to introduce into Ceylon the rules stated by *Ameer Ali* (*II.*,  
*p. 61*) that, under such circumstances, the person related on the  
father's side is entitled to double the share given to the person  
related on the mother's side.

*Appeal allowed.*

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