SIVAGNANALINGAM
v.
SUNTHERALINGAM

SUPREME COURT.
SHARVANANDA, C. J., ATUKORALE, J. AND L. H. DE ALWIS, J.
S.C. 69/86.
C.A. 177/79(F).
D.C. COLOMBO CASE No. 441/PC.
FEBRUARY 8, 1988.

Thesawalamai–Succession–Matrimonial Rights and Inheritance Ordinance (Jaffna)–Persons to whom Thesawalami applies–Regulation of 1806–Letters of Administration–s. 523 Civil Procedure Code (as amended by Law No. 20 of 1977).

The Thesawalamai is a collection of the Customs of the Malabar Inhabitants of the Province of Jaffna (colected by Dissawe Isaak) and given full force by the Regulation of 1806. For Thesawalamai to apply to a person it must be established that he is a Tamil inhabitant of the Northern Province.

The meaning of ordinary words is question of fact but the meaning to be attributed to enacted words is a question of law. The meaning of the expression "inhabitant of the Province of Jaffna" is a question of law.

Inhabitant means permanent inhabitant–One who has his permanent home in Jaffna in the nature of a domicile in the Northern Province. There can only be a Sri Lankan domicile and to that extent the term differs from the expression inhabitancy. Yet the idea of permanent home underlies both concepts and rules for identifying a person's domicile can be applied to discover whether a family has a permanent home in the Northern Province and hence its members are inhabitants in that Province.

There is a strong presumption in favour of the continuance of a domicile of origin. The burden of proving a change of domicile from one of origin to one of choice is a heavy one. With regard to the standard of proof necessary to rebut the presumption the judicial conscience must be satisfied by evidence of change. Otherwise the domicile of origin persists. The acquisition of a domicile of choice is a serious matter and should not be lightly presumed. The same presumption must be applied to resolve the question whether there was a change of inhabitancy. There must be a clear intention of abandoning the old inhabitancy.

The Thesawalamai is the personal law of the Tamil inhabitants of the Northern Province. It applies to them wherever they are and to their movable and immovable property wherever situated in Sri Lanka.

For the purpose of deciding on the rights of inheritance to the estate of a deceased husband, the time of his death is the relevant time and not the time of marriage.

Where the deceased was a Jaffna Tamil born in Malaya of Jaffna Tamil parents and after his school education in Jaffna came to Colombo for technical studies, joined Government service and worked in several parts of the island, married a Tamil lady in Jaffna (with a substantial dowry) who predeceased him leaving no children whereupon the deceased married a Jaffna Tamil lady in Colombo who had a house in Point Pedro but was employed in Colombo as a teacher. no intention of abandoning the original Jaffna inhabitancy can be held to be established. The deceased never ceased to be a Jaffna inhabitant. He had his permanent home in Jaffna and was in Colombo for employment. There should be unequivocal evidence of abandonment of that inhabitancy in Jaffna. The presumption prevails until abandonment of that inhabitancy is established.

Under the Thesawalamai the surviving spouse is not an heir of the deceased spouse's estate. After the addition of the provisio to s. 523 of the Civil Procedure the preferential claim of the surviving spouse to letters of administration to the deceased spouse's estate can yield if there is good reason for it. In certain circumstances the principle grant follows interest can be applied where the surviving spouse has no interest in the estate and there are no minor children whose interests she or he has to protect, in favour of an heir with interests in the estate.

Cases referred to:

(1) *Spencer v. Rajaratnam (1913) 16 NLR 321, 326, 327, 328, 331*

(2) *Somasunderam Pillai v. Charavanamuttu (1942) 44 NLR 1, 12.*

(3) *Soundranayagam v. Soundranayagam (1917) 20 NLR 274.*

(4) *King v. Perumal (1911) 14 NLR 496.*

(5) *Wellapulla v. Sitambalam (1875) Ram. Rep. (1872-76) 114.*

(6) *Tharmalingam Chetty v. Arunalasam Chettiar (1944) 45 NLR 414.*

(7) *Chetty v. Chetty (1935) 37 NLR 253.*

(8) *Nagaratnam v. Suppiah (1967) 74 NLR 54.*

(9) *Velupillai v. Sivakamipillai (1910) 13 NLR 74.*

(10) *Landeradale Peerage case 10 A.C. 692.*

(11) *Whicker v. Hume 7 HL Cases 124.*

(12) *Winans v. A.G. (1904) AC 287, 290.*

(13) *Re Rules Estate (1966) 2 WLR 717, 726.*

(14) *Sethukavalar v. Alvapillai (1934) 36 NLR 291.*

(15) *Jamila Umma v. Jailabdeen (1943) 44 NLR 187.*

(16) *Appuhamy v. Menike (1916) 19 NLR 149, 151.*

N.B.—*Spencer v. Rajaratnam* (supra) not approved.

APPEAL from judgment of the Court of Appeal

A. Mahendrarajah P.C. with *S. Mahenthiran* and *S. K. Nageswaran* for appellant.
A. A. Marleen with *A. R. M. Azad* and *S. Bagirathan* for respondent.

Cur. adv. vult.

February 15, 1988.

SHARVANANDA, C.J.,

An important question of law as to whom the Law of Thesawalamai applies arises on the facts of this case.

One Nagalingam Suntheralingam aged fifty four years, died in Colombo on 27th August 1974, intestate and issueless. The petitioner-appellant, who is a brother of the deceased made an application for the grant of Letters of Administration in respect of the estate of the deceased. According to him the deceased was a Jaffna Tamil governed by Thesawalamai and hence the estate should be distributed, in terms of the provisions of the Matrimonial Rights and Inheritance Ordinance (Jaffna) Chap. 58 Vol. III, L.E. The ninth respondent, who is the respondent to this appeal and is referred to herein as the respondent opposed the petitioner's application and claimed Letters of Administration as the widow of the deceased. The basic contention of the respondent was that the deceased was not governed by the law of Thesawalamai and that hence succession to his estate should be in accordance with the provisions of the Matrimonial Rights and Inheritance Ordinance of 1876 as amended (Chap. 57 Vol. III, L.E.).

The matters in dispute between the petitioner and the respondent had been set out in the form of issues numbered 1-18. The main issue on which the parties went to inquiry was issue (i)–

viz: Was the deceased the late Mr. Nagalingam Suntheralingam governed by the law of Thesawalamai.

The District Judge, after a protracted inquiry answered the issue in the negative. This finding has been affirmed by the Court of Appeal. This finding has been vehemently attacked before this court. Counsel for the petitioner-appellant submitted that on the facts disclosed in the case, both the lower courts had misdirected themselves in law in holding that the deceased was not, at the relevant time viz: at the time of his death, subject to Thesawalamai.

"As the Thesawalamai is a custom in derogation of the common law, any person who alleges that it is applicable to him must affirmatively establish the fact" per Wood-Renton A.C.J. in *Spencer v. Rajaratnam, (1)*. The burden lay on the petitioner-appellant who alleged that Thesawalamai applied to the deceased to establish that fact. *Somasunderam Pillai v. Charavanamuttu, (2)*

Section 2 of the Matrimonial Rights and Inheritance Ordinance (Jaffna) Chap. 58, states that–

"This Ordinance shall apply only to those Tamils to whom the Thesawalamai applies, and it shall apply in respect of their movable and immovable property wherever situate."

The preamble to the Thesawalamai law states that Thesawalamai is a collection of the Customs of *the Malabar Inhabitants of the Province of Jaffna*. The Tamil inhabitants of the Northern Province have been identified as the said Malabar Inhabitants. For a person to claim the benefit of or be subject to Thesawalamai, he should be a Tamil and also be an inhabitant of the Northern Province.

"The Thesawalamai is not a personal law attaching itself by reason of descent and religion to the whole Tamil population of Ceylon, but an exceptional custom in force in the province of Jaffna–now the Northern Province and in force there primarily and mainly at any rate, only among Tamils who can be said to be inhabitants of that Province" per Wood-Renton C.J. in 16 N.L.R. 321 at 326-327. In

Soundranayagam v. Soundranayagam (3), it was held that S. who was born in Jaffna but whose father was a Colombo Chetty who had become a permanent resident of Jaffna was not governed by Thesawalamai. In *King v. Perumal* (4), it was held that the Thesawalamai did not apply to Indian Tamils resident in the Central Province.

In *Wellapulla v. Sitambalam* (5), it was held that Thesawalamai is not applicable to the Tamils of Trincomalee.

In *Tharmalingam Chetty v. Arunasalam Chettiar*, (6) it was contended by counsel for the appellant that Thesawalamai did not apply to all Tamil inhabitants of the Northern Province but only to such of them as were descended from the Malabar Tamils who were inhabitants of Jaffnapatam at the time the Dissawe Isaak's collection of customs was given full force by the Regulation of 1806 or alternatively to other Malabar Tamils who had since become inhabitants of the peninsula. This contention was rejected by court which held that the father of the appellants being a Tamil, although he came from Ramnad, India had settled permanently in Jaffna, *animo manendi et non revertendi* and hence the appellant was govened by Thesawalamai. Soertsz J., thus upheld the generally accepted view that Thesawalamai applied to Tamils inhabiting the Northern Province. "The Thesawalamai applies to Tamils with a Ceylon domicile and a Jaffna inhabitancy." Thus Thesawalamai applies to persons of the Tamil race who settled in Jaffna after the enactment of the Code of Thesawalamai. In *Chetty v. Chetty*, (7) 37 N.L.R. 253 the parties were Tamils belonging to the community known as the Vaniyas, who had, for about three generations made Jaffna their permanent home and had observed the customs followed by other Hindu families. It was held that the parties were Malabar inhabitants of Jaffna to whom the Thesawalamai applied. In *Nagaratnam v. Suppiah*, (8) an Indian Tamil who by his permanent residence and marriage in Jaffna had established that he was an inhabitant of the Northern Province was held to be subject to Thesawalamai.

Thus, for Thesawalamai to apply to a person it must be established that he is a Tamil inhabitant of the Northern Province.

According to Wood-Renton, A.C.J.,—

"Inhabitant" means a person who had acquired a permanent residence in the nature of a domicile in the Northern Province" *Velupillai v. Sivakamipillai* (9). He further stated in 16 N.L.R. 321 at

327-328 "It is not desirable or possible to lay down any general rules as to the circumstances which will suffice to establish the existence of such a residence. Each case must depend on its own facts. There may be, on the one hand a residence in Jaffna which will not suffice to make a Tamil an "inhabitant" of that province, within the meaning of the Regulation of 1806, and, on the other hand, a residence elsewhere, even for protracted periods, which will not deprive him of that character. An advocate practising before the Supreme Court of Colombo or a Government Servant permanently attached to the Kachcheri at Galle or Matara might, well, if he were a Jaffna Tamil, retain such a connection with his native province as to entitle him to the benefit of its customary law. But, the mere fact that a man is a Jaffna Tamil by birth or by descent, while it is a circumstance of which account must be taken in considering his real position, will not bring him within the scope of the statutory definition of the class of persons to whom the Thesawalamai applies."

Though the meaning of ordinary words is a question of fact, the meaning to be attributed to enacted words is a question of law, being a matter of statutory interpretation. So in this case a question of law arises as to the meaning of "inhabitant of the Province of Jaffna," even though it arises only at a preliminary stage in the process of determining a question of fact, namely whether the petitioner has established the fact that the deceased was at all relevant times an inhabitant of the Northern Province.

Middleton J., in *Velupillai v. Sivakamipillai* (supra) construed the word "inhabitant" as indicating a "permanent inhabitant"—one who has his permanent home in the Province of Jaffna. He said that the question of domicile affects the inferences as to the meaning of the word "inhabitant." He further stated "as regards the law of domicile, the *Lauderdale Peerage* case (10) lays it down that a change of domicile, which, I think is very much equivalent to what I call "*inhabitancy*" here, must be *sine animo revertendi*, and I think, that the Judge was right in holding in accordance with the ruling in that case that every presumption is to be made in favour of original domicile, that no new domicile can be taken to have been acquired without a clear intention of abandoning the old". Wood Renton J., in his judgment stated that he entirely concurred both in the reasoning and conclusion of Middleton J.,

Both Middleton J., and Wood-Renton A.C.J., were of the view that inhabitancy connected "permanent residence in the nature of domicile.". A person's "domicile" means, generally speaking the place where he has his permanent home. (*Whicker v. Hume*), (11). "Domicile" signifies connection with a territory subject to a single system of law and hence there can be only a Sri Lanka (Ceylon) domicile; there can be no Jaffna or Kandy domicile, in that respect domicile differs from 'inhabitancy.' Yet the idea of permanent home underlies both concepts; rules for identifying a person's domicile can be applied to discover whether a Tamil has a permanent home in the Northern Province and hence is an inhabitant in that Province. There is a strong presumption in favour of the continuance of a domicile of origin. As contrasted with a domicile of choice, it has been said by Lord Macnaughten that "its character is more enduring, its hold stronger and less easily shaken off." *Winans v. A.G.* (12). Overwhelming evidence is required to shake it off. The burden of proving a change of domicile from one of origin to one of choice is a heavy one. With reference to the standard of proof necessary to rebut the presumption, Scarman, J., stated–

> "Two things are clear–first that unless the judicial conscience is satisfied by evidence of change, the domicile of origin persists; and secondly, that the acquisition of a domicile of choice is a serious matter not to be lightly inferred from slight indication or casual words. "*Re Rule's Estate* (13).

Middleton J., approved in *Velupillai v. Sivakamipillai* (9) the application of the above presumption by the trial Judge to resolve the question whether there was change of 'inhabitancy.' He said that–

> "A change of domicile which I think, is very much equivalent to what I call inhabitancy here must be *sine animo revertendi*" . . . . . "every presumption is to be made in favour of original domicile and that no new domicile can be taken to have been acquired without a clear intention of abandoning the old."

As stated earlier Wood-Renton, J., concurred both in the reasoning and conclusion of Middleton J.,

However *Ennis J.*, in *Spencer v. Rajaratnam*, (1) has stated:

> "In questions relating to domicile there is a presumption of law that the domicile of origin is retained until a change is proved, but it seems to me that when the question is one of inhabitancy, for the purpose of the application of a local custom, the presumption is not in favour of the original inhabitancy, but of the actual residence at a particular time."

I regret that I cannot agree that no such presumption exists in favour of the original inhabitancy. No authority has been cited by Ennis J., in support of the proposition which is opposed to principle and authority and does not represent the law. It is contrary to the statement of the law enunciated by Middleton J., in *Velupillai v Sivakamipillai* (9) which has not been referred to. Further Ennis J., assumes that Thesawalamai is local customary law which is in force within the limits of Jaffna only. Both Wood-Renton and Ennis J., were in error in thinking that Thesawalamai constitutes a local rather than a personal law. In my view Thesawalamai is the personal law of the Tamil inhabitants of the Northern Province. It applies to them wherever they are and to their movable and immovable property wherever situated in Sri Lanka (vide section 2 of the Matrimonial Rights and Inheritance Ordinance (Jaffna)). The observation of Ennis J., (quoted above) is only an obiter dictum and does not form the ratio decidendi of the judgment. In that case though Naganathan, the subject in question, was born in Jaffna, he left Jaffna when he was a few months old and lived, carried on business, married a Tamil of Colombo and died in Colombo and except for occasional visits was never in the Northern Province. When his marriage was arranged, Naganathan had said "that he was a Colombo man and domiciled in Colombo." The finding in the case was that Naganathan's parents were not inhabitants of the Province of Jaffna. In the context of these facts there was no question of Naganathan's inhabitancy having originated in Jaffna and hence any reference to the presumption in favour of domicile of origin or inhabitancy was not relevant to the facts of the case. In fact, in that case on the facts found by the court Naganathan's inhabitancy originated outside the Northern Province. The Court of Appeal has misdirected itself in reaching the conclusion on the basis of this dictum of Ennis, J., that a person should actually be residing in Jaffna at the relevant point of time to qualify himself to be an inhabitant of Jaffna.

In the present case, it is not in dispute that the deceased was a Jaffna Tamil. He was born in 1920 in Malaya where his father was employed. It is common ground that the deceased's parents were Jaffna Tamils and that on the retirement of his father, he came along with his parents to Sri Lanka and lived in Jaffna. From 1933 to 1947 he resided in Jaffna and was educated in Jaffna. Thereafter he came to Colombo to study at the Ceylon Technical College. On completion of his course of studies he joined the Public Works Department as an Inspector and worked in various parts of the Island, including Jaffna.

He married his cousin Pushpam, a Tamil lady, in Jaffna in 1949 and lived together till Pushpam's death in 1968. Pushpam brought by way of dowry a residential house in Jaffna. The deceased used to go to Jaffna during vacations and stay in the dowried house. The deceased had no children by Pushpam. During the twenty years of his married life with Pushpam, the deceased had made several investments in shares. In 1968 he had investments in as many as twenty companies, situated in Colombo to the tune of Rs. 125,000. He did not then choose to buy a house in Colombo, but lived with Pushpam in rented out houses. After the death of Pushpam he married in 1969 the respondent, a Jaffna Tamil. This marriage took place in Colombo. The respondent was also employed in Colombo as a teacher. She owned a house in Point Pedro. The evidence is that the deceased used to go and stay in that house when he went to Jaffna. Between the registration of his marriage to the respondent on 29.5.69 and the religious ceremony celebrating the marriage on 29.6.69 the respondent conveyed to his sister's daughter Gnanatheepam Pushpam's house in Jaffna which had devolved on him in terms of the last will executed by Pushpam. When he gifted the house to his niece, he reserved the life-interest in the property to himself. He maintained his links with Jaffna and did not sever his connection with Jaffna where his mother lived. Though he died in Colombo in 1974, his body was taken to Jaffna and the funeral was had in Jaffna, the thirty-first day ceremony and alms-giving following on his death were also had in Jaffna. The deceased did not invest in any immovable property during the tenure of his marriage to the respondent, though according to her he was intending to purchase a house to live in Kollupitiya.

It is against the backdrop of these facts that the question has to be decided: was the deceased an inhabitant of Jaffna at the time of his death? Had he abandoned his Jaffna inhabitancy and settled for good in Colombo? Can it be said that the deceased had severed his connexion with Jaffna and chosen to have his permanent home in Colombo?

The Court of Appeal is in error in holding that the point of time relevant for the determination of the question of the applicability of Thesawalamai to the deceased was the time of his marriage to the respondent. The time of marriage is relevant only to the question of deciding the applicability of Thesawalamai to married women—vide section 3, 3(1) and 3(2) of the Matrimonial Rights and Inheritance Ordinance Jaffna. When the issue is whether the deceased husband is

governed by Thesawalamai, for the purpose of deciding on the rights of inheritance to the estate of the deceased husband, the time of his death is the relevant time and not the time of his marriage.

I cannot agree with the lower courts that the evidence falls short of establishing that "the deceased had at the relevant time, a Jaffna inhabitancy." This conclusion cannot be supported having regard to the totality of the evidence of record. In fact, a proper appreciation of the relevant evidence leads to only one conclusion viz. that the deceased never ceased to be a Jaffna inhabitant and that his permanent home was Jaffna; he resided in Colombo only for purposes of his employment. The evidence does not show that the deceased had given up his intention to return to Jaffna. The reservation of life-interest in himself, when he donated Pushpam's house to his niece militates against the unwarranted assumption that he had no intention of returning to Jaffna to settle down. Both the lower courts had failed to attribute proper significance to this strong item of evidence.

The evidence shows that the deceased maintained his links with Jaffna where his aged mother lived. It was in the order of things that, though the deceased died in Colombo, his funeral was had in Jaffna.

In view of the admitted fact that the deceased was a Jaffna Tamil who started life as an inhabitant of Jaffna, the burden lay on the Respondent to rebut the presumption of continuance of the inhabitancy by leading unequivocal evidence of abandonment of that inhabitancy. The presumption prevails until abandonment of that inhabitancy is established. The Respondent did not raise any issue relating to abandonment. The lower courts had reached their decision that the deceased "had left Jaffna several years ago" by attaching undue weight to his actual residence in Colombo after he got employed. Wood-Renton A.C.J., with reference to such employment, said in *Spencer v. Rajaratnam, (1)* that residence outside Jaffna for the purpose of business or employment for protracted periods will not deprive a person of his character of "inhabitant of Jaffna." For such residence, to divest a person of such character, it should have been in pursuance of an intention of remaining there permanently. Such residence must have been voluntary, a matter of free choice and not of constraint as being obliged to reside in a place for the purposes of his employment, profession or business. In the present case, the deceased resided in Colombo because his employment in Colombo required him to reside in Colombo.

Counsel for the Respondent stressed the fact that the deceased did not make any investment in Jaffna and that he intended to purchase a house property in Colombo and that all his investment in shares was made in Colombo. These circumstances do not point unequivocally to the abandonment of an intention to return to Jaffna when the time came for his retirement from Government Service. The deceased might have chosen to invest on shares in Colombo for convenience or for good commercial reasons. Again he might have intended to invest on house property in Colombo for the reason that he wanted to reside in a house of his own rather than in a rented house. Such an investment, by itself, is not indicative of an intention to settle down permanently in Colombo. From an acquisition alone, of a house or other immovable property outside Jaffna, an intention to relinquish Jaffna inhabitancy cannot be spelt out.

Before the Court of Appeal, Counsel for the Appellant sought to produce deed No 5516 dated 26.6.1969 which was the deed of donation by which the deceased donated the dowry house of his deceased wife Pushpam to which he had become entitled in terms of the Last Will of Pushpam, to his niece Gnanatheepan, subject to his life-interest. Both Appellant and Respondent had referred to this donation in their evidence, without producing this deed at the trial. The Respondent admits the donation. In fact she claims credit for the transfer—'the property was transferred on my persuasion.' The Appellant's application to produce the document was refused by the Court of Appeal on the ground that fresh evidence was being sought to be led in the Court of Appeal, which evidence was available at the time of the trial and could have been led, had the appellant exercised reasonable diligence. In my view, the court did not exercise its discretion correctly in refusing to admit the deed of donation. The transaction to which the deed refers was admitted by the Respondent at the trial and the execution of the deed was not challenged. The document is not "fresh evidence" as the latter is understood. In my view, the document should have been admittted even in appeal; it did not take anybody by surprise. That deed of donation was executed by the deceased and by the Respondent. They had stated there specifically that "the donors viz: the deceased Suntheralingam and the respondent, are both governed by the law of Thesawalamai." This statement by them dispels all doubt as to whether the deceased was governed by Thesawalamai. I must however state that though this statement confirms the conclusion that the deceased was always

subject to Thesawalamai, even without this piece of evidence, on the material on record, the conclusion is irresistible that the deceased was always a Malabar inhabitant to whom the Thesawalamai applied.

Both the lower courts have arrived at this finding that the deceased had ceased to be an inhabitant of Jaffna by placing undue weight on the component of actual residence outside Jaffna without reference to the nature of the intention associated with such residence, whether there was the intention to reside permanently out of Jaffna. The fact that a person has resided for a long period of time outside Jaffna is by itself not sufficient. In *Velupillai v. Sivakamipillai.* (9), the deceased Alvapillai who was a native of Jaffna went to Batticaloa about thirty five years ago. Yet the court held that he was still an inhabitant of Jaffna, subject to Thesawalamai.

I set aside the finding of the Court of Appeal and of the District Court that the deceased was not governed by Thesawalamai and answer issue (*a*) "was the deceased M. Nagalingam Suntheralingam governed by the law of Thesawalamai" in the affirmative.

I am not disposed to interfere with the finding that a sum of Rs. 19,000 is due to the 9th respondent from the estate of the deceased. Though the respondent had claimed Rs. 70,262.47 from the estate, the District Judge had held that only a sum of Rs. 19,000 was due to the 9th respondent. I affirm the finding.

It was admitted by Counsel for the respondent that no portion of the estate left by the deceased constituted Thediathettam acquired subsequent to his marriage to the respondent and that hence, the respondent has no interest in the estate. Under the Thesawalamai the surviving spouse is not an heir of the deceased spouse's estate. Under the Jaffna Matrimonial Rights and Inheritance Ordinance, one spouse is not an heir of the other spouse; only one half of the Thediathettam, if any, which belonged to the deceased spouse and had not been disposed of, devolved on the surviving spouse (section 20).

In this case, there is a conflict of claims between the petitioner who is one of the intestate heirs and the 9th respondent, the widow, for grant of letters of administration. Section 523 of the Civil Procedure Code provides that the claim of the widow should be preferred to all others. In *Sethukavalar v. Sivapillai,* (14) a Divisional Bench of the

Supreme Court held that the court has power to pass over the claim of the widow in favour of another for good reasons. In *Jamila Umma v. Jailatdeen,* (15) the court held that in a contest for letters of administration the preference given by law to a widow's claim cannot be displaced merely because her interest in the estate is small. In that case Keuneman J., observed–

> "no doubt the fact that the widow has no claim or a very small claim to the estate may be one of the grounds which the District Judge may take into account in considering the question, but I am not satisfied that taken by itself it is a sufficient ground to displace the preference given by law to her claim for letters."

However section 523 of the Civil Procedure Code has now been amended by section 71 of Law No. 20 of 1977, by the addition of the proviso "Provided however, that the court may for good cause supersede the claim of the widow or widower."

In the instant case, the widow has no interest as intestate heir in the estate of her deceased husband. Further there were no children born out of the union, whose interests, she, as their mother had to protect. In my view Keuneman J's above observation states the law too broadly. It can very well apply to a case where though the widow has no claim to the estate of the deceased, yet where she has children who are interested in the estate and whose interests she has to protect, her preferential claim for administration should be upheld. Wood-Renton C.J. relevantly observed in *Appuhamy v. Menike* (16)–

> "Even though a binna husband may have no pecuniary interest in his wife's estate, he has interests of another kind. He is still her husband and the father of her children and it is quite right that he should have an opportunity of seeing that his wife's estate is properly dealt with, and that the position of the children in regard to it is adequately safeguarded."

In view of the proviso introduced by the amendment of 1977 that for good cause the court may supersede the claim of the widow or widower I think effect should be given to the principle 'grant follows interest' and that the claimant who had the greatest interests in the effects of the deceased should be granted administration and the claim of a widow or widower who has no interest as heir in the estate of the deceased and who has no minor children whose interests have to be protected should be superseded in favour of a claimant who is an heir of the deceased, for letters of administration.

In the circumstances the claim of the 9th respondent, the widow of the deceased for the grant of letters should be superseded in favour of that of the petitioner who, admittedly is an intestate heir of the deceased and whose claim is supported by the other heirs.

I allow the appeal and set aside the judgment of the Court of Appeal and of the District Court and direct that the petitioner-appellant Nagalingham Sivagnanalingam be granted letters of administration in respect of the estate of the deceased in question. I dismiss the 9th Respondent's application for letters of administration. I however hold that the 9th Respondent is entitled to a sum of Rs. 19,000/– from the estate of the deceased, on account of her claims against the estate. I make order that parties will bear their own costs in the District Court, but the 9th Respondent shall pay the petitioner the costs of the Court of Appeal and of this Court.

ATUKORALE, J.–I agree.

L. H. DE ALWIS, J.–I agree.

Appeal allowed.