

Present: De Sampayo A.J.

KUDDIAR *et al.* v. SINNAR *et al.*

43—C. R. Point Pedro, 15,510.

Tesawalamai—Sister dying intestate and unmarried—Both married and unmarried sisters succeed.

Under the *Tesawalamai*, where an unmarried sister dies intestate and issueless, but leaving brothers and both married and unmarried sisters, all the sisters succeed to the said estate. There is no rule excluding a married sister from succession to an unmarried sister.

THE facts appear sufficiently from the judgment.

Wadsworth (with *Balasingham*), for the third and fourth defendants, appellants.—The general rule of the *Tesawalamai* is, males succeed to males and females to females (4 *Tamb.* 60, 11 *N. L. R.* 345, 14 *N. L. R.* 60). There is no rule excluding married sisters from succession to unmarried sisters. Dowried sisters succeed to the property of dowried sisters, but there is no corresponding rule which restricts succession to unmarried sisters to unmarried sisters only. In the absence of such a rule the general principle should apply, and all sisters, irrespective of marriage, should succeed.

Kanagasabai, for the plaintiff, respondent.—A daughter once dowried has no further claim on her parents' property, nor to the property of the parents which has devolved on the unmarried sisters or brothers. The fact that dowried sisters succeed exclusively to the property of the dowried sisters clearly implies that they have no further right to any other property. The principle that females succeed to females means, in a case like this, that there is a right to succession among females, barring those who have been dowried.

Wadsworth, in reply.

Cur. adv. vult.

March 19, 1914. DE SAMPAYO A.J.—

This appeal raises a point of inheritance under the *Tesawalamai* in the following circumstances. Ponatchi was owner of 2/8ths share of the property in question by right of donation. She died intestate and unmarried, leaving four sisters, Letchimi (the second plaintiff), Sivakami, Meenatchi (the fourth defendant), and Valliammai, and two brothers, Kandiah and Velupillai. It is common ground between the parties that the two brothers did not succeed. Of the

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four sisters, the first two were at that time unmarried, and the last two were married and dowried. The question is, whether the two unmarried sisters alone succeeded to the property of the deceased Ponatchi to the exclusion of the married sisters. There is no express rule of the point in the *Tesawalamai*, nor is there any decision directly bearing on it. The question has, therefore, to be decided on general principles. One general rule of the *Tesawalamai* is that males succeed to males and females to females, and accordingly it was held in *Thambar v. Chinnatamby*¹ that where an unmarried woman left a married sister and brothers, the sister succeeded to the exclusion of the brothers. Another rule is that as among the females themselves, if the deceased was dowried, which in this connection means the same thing as married, her married sisters exclude the unmarried sisters; but I can find no support for the contention that in the case of the deceased being unmarried the unmarried sisters exclude the married sisters. The learned Commissioner, however, considers that the latter proposition follows as a natural corollary from the rule just stated. I do not see how this can be a corollary of the rule at all; it is rather the reverse of it. At the argument of this appeal, section 12 of the *Tesawalamai* was also referred to, but it has to do with succession to the parents, and has no bearing on the present question. I am of opinion that as regards succession to an unmarried woman, the first general rule above-mentioned should have full effect, and it should be held that females, whether married or not, succeed to the unmarried female. Consequently the fourth defendant, who is the wife of the third defendant, is entitled to an equal share with the second plaintiff, viz., 1/16th of the land. This was the only dispute between the parties, though the plaintiffs prayed for declaration of title to certain other shares which were not in dispute.

The appeal of the third and fourth defendants is allowed, and the decree appealed against is set aside and the plaintiffs' action dismissed, without prejudice, however, to their rights to any shares other than the 1/16th share to which I find the fourth defendant entitled. The plaintiffs should pay the costs of the third and fourth defendants in the Court below and in this Court.

Appeal allowed.

¹ (1903) 4 *Tamb.* 60.