[IN REVIEW.]

1908.
October 27.

Present : Mr. Justice Wendt, Mr. Justice Wood Renton, and Mr. Justice Grenier.

In re the Estate of SIVAPAKIAM.

THIAGARAJAH *v.* PARANCHOTIPILLAI *et al.*

D. C., Jaffna (Testamentary), 1,798.

Tesawalamai—*Property inherited by child from mother—Death of child—Rights of father—Heirs of the mother—Roman-Dutch Law—Applicability.*

According to the *Teswalamai*, property inherited by a child from its mother goes, on the death of the child, to the mother's next of kin and not to the father.

Judgment in appeal [(*1907*) *11 N. L. R. 46*] affirmed.

HEARING in review of the judgment of the Supreme Court in appeal reported in (*1907*) *11 N. L. R. 46*.

Van Langenberg (with him *Balasingham*), for the appellant.

Walter Pereira, K.C., S.-G. (with him *Wadsworth*), for the respondents.

Cur. adv. vult.

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October 27, 1908. WENDT J.—

The question in this case, which arises out of a contest for letters of administration, is whether the father or the next of kin of the mother succeed to the estate of the deceased girl, who had inherited that estate from her mother, and left no brother or sister surviving her. The District Judge held the father to be sole heir and committed letters to him, but on appeal this Court reversed his order, holding that the next of kin on the mother's side were to be preferred, and directing a grant to one of them. This decision we have now to consider in review.

A question arose at the argument whether the order of this Court was a final order, that is to say, finally determinative of the appellant's claim to the entire estate. This question we decided in appellant's favour at the argument, considering that section 207 of the Civil Procedure Code would bar his reassertion of that claim in any fresh proceeding, if the order were not got out of the way. We then heard the argument on the merits.

The District Judge based his finding on the Roman-Dutch Law as the Common Law of the Island, being of opinion that the case was a *casus omissus* in the *Tesawalamai*, the system of customary law applicable to the parties. This Court, however, ruled that the *Tesawalamai* was not silent on the point, and that its principles gave the preference to those claiming through the mother, to the entire exclusion of the father. I am of opinion that the decision of this Court was right on both points.

One principle of the *Tesawalamai*, though it admits of exceptions, appears to be that the property of a man devolves in the male line, and that of a woman in the female line. (See section 1, paragraphs 5, 7, 15). If this principle be applied, the intestate's property, having been derived solely from her mother, must go back to the mother's heirs. The decisions which have been cited from *Mutukisna* are neither very fully reported nor very definite upon the point we have to determine, but such as they are they have been exhaustively analysed by my brother Middleton; and I agree with the conclusion to which they have led him.

I think that the judgment under review should be confirmed, and that the petitioner Saravanamuttu Thiagarajah should pay the costs of the review hearing.

WOOD RENTON J.—

In my opinion the judgment under review should be affirmed with costs. A clear principle is, I think, deducible from the *Tesawalamai*, that on the death of a father his inherited property returns to his own line, while on the death of a mother, her dowry returns to her line. (See, e.g., section 1, sub-section 15.) The balance of judicial authority, enunciated in the cases collected and examined by Middleton J. in his judgment on the appeal, seems to me to show that

this principle would be applied to such a case as the present, and that property inherited by a child from its deceased mother would go on the death of that child intestate, and without brother and sister, to the mother's nearest relations and not to the father. There is no need, therefore, to consider the question of the applicability of Roman-Dutch Law. The point was very fairly raised by Mr. Van Langenberg, counsel for the appellant, himself at the commencement of the argument in review, whether the original order made by the Disrict Judge in this case, granting to the petitioner-appellant letters of administration to the estate of his minor daughter, was appealable to the Privy Council under section 42 of the Courts Ordinance, No. 1 of 1889, as re-enacted by section 10 of Ordinance No. 24 of 1901. The learned Solicitor-General, however, waived any objection on that ground to the argument proceeding on the merits, and, apart from that waiver, I think that as the order of the District Court granting the letters of administration declared the petitioner-appellant to be the sole heir of the intestate, it was an order "having the effect of a final or definitive sentence" within the meaning of section 42 of the Ordinance of 1889, and was therefore appealable under that section.

GRENIER J.—

I agree with the rest of the Court in affirming the judgment under review. As regards the question of succession under the *Tesawalamai* which was argued before us, I have a case that was decided by my brother Wood Renton and myself on June 19 last (276, D. C., Jaffna, 5,061) in which I expressed my opinion at length. I said there as follows with reference to the particular point now before us:— "To my mind there is a distinction intended to be drawn between males and females and the mode of succession to their property. The principle is enunciated plainly that males take from males and females from females." In construing sub-section 5 of section 1 of the *Tesawalamai* I said that the words were not very clear, but I gathered the sense of the passage to be that if a dowried daughter dies without issue, those who are entitled to inherit from her are her sisters, their daughters, and granddaughters. Failing a female succession, those who are entitled to inherit are the brothers, their sons, and grandsons, if any, and failing them the property goes back to the source from which it came, namely, to the parents. I also said that it was possible to torture the words of the section I have referred to in such a way as to make them convey a different meaning, but that we must gather the sense from the whole passage and assign a reasonable and consistent meaning to the words. I further remarked that whatever doubts there may be in regard to the section under consideration, they all disappear when it is placed side by side with section 7 when the principle is repeated in unmistakable language, that on the death of the parents the sons first inherit the

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property left by them, and that the property of the sons devolves on the men, and failing them on the women. There is thus recognized by the *Tesawalamai* a principle regulating intestate succession, which may be described as a fundamental one, that males inherit from males and females from females. In the case under review, the intestate, being a minor and unmarried at the date of her death, had no dowry or *chidenam*, or acquired property of her own. The mother having predeceased her, she was, at the date of her death, possessed of property inherited from her mother, that property being her mother's dowry property. The father had clearly no right to claim any part of the intestate's inheritance as her sole heir. The rule of succession I have already stated, must be applied with the result that the inherited property of the intestate would go to the mother's nearest relations in the female line, and not to the father, who is the present applicant for administration.

Judgment in appeal affirmed.