1955 *Present :* **Gratiaen, J., and Swan, J.**

W. HERMAN SILVA *et al.*, Appellants, *and* W. KAINERISHAMY *et al.*, Respondents

S. C. 229–230—D. C. Kalutara, 28,896

Inheritance—Child of "putative marriage"—Right to inherit property of his father—Matrimonial Rights and Inheritance Ordinance (Cap. 47), ss. 23, 24, 33, 36.

In view of the express provisions of Sections 23, 24 and 33 of the Matrimonial Rights and Inheritance Ordinance, Section 36 cannot enable an illegitimate child to be recognised as enjoying the status of a legitimate child in accordance with a doctrine of Roman-Dutch Law relating to "putative marriages".

APPEALS from a judgment of the District Court, Kalutara.

S. C. E. Rodrigo, for the 2nd, 4th and 5th defendants-appellants in No. 229 and the 3–6th defendants-respondents in No. 230.

D. S. Jayawickreme, Q.C., with *C. de S. Wijeyeratne*, for the 2nd and 3rd plaintiffs-appellants in No. 230 and the 1st, 2nd and 3rd plaintiffs-respondents in No. 229.

November 25, 1955. GRATIAEN, J.—

This is an action for partition and there is only one point of contest between the parties. The dispute relates to the question as to who are the heirs of a man called Peduru who died in 1945. It is common ground that Peduru married the 1st plaintiff on 19th February, 1920, and that at the time of his death there were two lawful children of that marriage who are the 2nd and 3rd plaintiffs. One month after he had contracted this marriage, Peduru purported to marry the 2nd defendant and three children, namely, the 3rd, 4th and 5th defendants, were born to that union. The learned District Judge was attracted by an argument that, notwithstanding the clear and unequivocal provisions of section 33 of the Matrimonial Rights and Inheritance Ordinance, the 3rd defendant, although illegitimate, should be recognised as enjoying the status of a legitimate child in accordance with a doctrine of Roman-Dutch Law relating to "putative marriages". He rejected the argument that the same doctrine could be invoked by the 4th and 5th defendants because admittedly they were born after the 2nd defendant realised that Peduru was not her lawful husband. It is true that Section 36 made the rules of the Roman-Dutch Law as it prevailed in North Holland applicable to questions of intestate succession which are not expressly provided for in the Ordinance. But it seems to me that sections 23, 24 and 33 of the Ordinance leave no room for any argument which in the case of illegitimate children would permit our Courts to apply the rules of any other system of Law.

For this reason appeal No. 230 must be allowed with costs and appeal No. 229 must be dismissed with costs. We set aside the judgment under appeal and send the case back with a direction that the learned District Judge should enter a decree for partition on the basis that the 1st, 2nd and 3rd plaintiffs are the sole intestate heirs of the deceased, Peduru. The 3rd defendant will, however, be declared in the interlocutory decree entitled to be compensated for the improvements specified in the original interlocutory decree. The plaintiffs are entitled to the costs of the contest in the court below which must be paid by the 2nd, 3rd, 4th and 5th defendants.

SWAN, J.—I agree.

Appeal No. 229 dismissed.
Appeal No. 230 allowed.