Privy Council Appeal No. 142 *of* 1917.

Hewadewage Rosaline Fernando and another - - - *Appellants*

v.

Hewadewage Lilian Pedris and others - - - - *Respondents*

FROM

THE SUPREME COURT OF CEYLON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 22ND MAY, 1919.

Present at the Hearing:

VISCOUNT HALDANE.
LORD BUCKMASTER.
LORD DUNEDIN.

[*Delivered by* VISCOUNT HALDANE.]

The question which their Lordships have to consider in this case is one of construction only. By their joint will, two spouses, the father and mother of the daughters who are the parties in this appeal, after ratifying certain deeds of gift in favour of their daughters, went on to ratify another deed of gift in favour of the first appellant daughter, whereby, as recited in the joint will, the first appellant was to receive only a sum of 30 rupees per month out of the property, the subject of this deed. The joint will then declared that "save and except the said monthly sum of Rs. 30 which" the first appellant "is to receive during her lifetime after the death of her parents in terms of" the deed just referred to "she shall have no manner of right to or interest in any share or part of our Estate and we do hereby expressly disinherit her and her descendants." The joint will next proceeded as follows: "We do hereby devise and bequeath all the rest and residue of our property moveable and immoveable of what kind or nature soever nothing excepted unto the survivor of us," and appointed such survivor to be executor or executrix.

The father died first, and the mother took out probate and conveyed to herself all the property belonging to the estate of her deceased husband. She afterwards herself died without having made any testamentary disposition other than the joint will.

The point raised in the litigation which has given rise to this appeal is whether the first appellant is entitled to share in her mother's estate as if the latter had died intestate. Was the operation of the clause in the will disinheriting the first appellant exhausted when the husband died, or did it operate further as expressing the will of the mother upon her death ?

The Roman-Dutch law applicable to such joint wills is well settled. In the judgment delivered by this Board in *Denyssen* v. *Mostert* (L.R. 4. P.C. 236), which was approved in the later case of *Natal Bank* v. *Rood* (1910 A.C. 570), it was laid down that such mutual wills are to be read as separate wills, the dispositions of each spouse being treated as applicable to his or her share of the joint property. There is, in their Lordships' opinion, nothing in the will before them to exclude this construction, or to show an intention that the will should be that only of the spouse who died first. If this be so, there is a clear intention expressed that the first appellant should be excluded from succeeding along with the others who would succeed by law, in the absence of any further disposition, on the surviving spouse's death. As Shaw, J., points out in his lucid judgment there is no reason for treating such mere disinheritance as inoperative. The suggested analogy of the case of an heir at law to real estate in England depends on incidents of tenure, which do not apply in the case of the property in Ceylon disposed of by the will under consideration.

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.

In the Privy Council.

HEWADEWAGE ROSALINE FERNANDO
AND ANOTHER

v.

HEWADEWAGE LILIAN PEDRIS
AND OTHERS.

DELIVERED BY VISCOUNT HALDANE.

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