[GRIFFITH WILLIAMS, J., AND ZEKIA, J.]

(January 7, 1953)

FADIL BILAL OF LARNACA, *Appellant,*

v.

FADIL N. KORKUT AND ANOTHER,

Respondent.

(*Sheri Appeal No.* 57.)

Sheri Law—right of inheritance by male residuary heirs of emancipator—abrogated after passing of Involuntary Servitude Declaration Law, 1879.

The right of inheritance possessed under the Sheri Law by the male residuary heirs of an emancipator over the estate of a descendant of a freed slave in preference and to the exclusion of the uterine relations of the latter, no longer exists.

Involuntary Servitude Declaration Law, 1879, put an end to that part of the Sheri Law.

Appeal by plaintiff from the judgment of the Sheri Court of Nicosia (Actions No. 10/47 & 11/50 (consolidated)).

E. Emilianides for the appellant.

Respondent in person.

The facts of the case sufficiently appear in the judgment of the Court which was delivered by :

ZEKIA, J. : A certain Melek Moustafa *alias* Melek Kirlizade originally of Nicosia died on or about 15.7.46 in Istanbul leaving no issue or husband. The said Melek was at the time of her death the registered owner of a house valued at £200 situate in Nicosia. It appears that this house constitutes the whole estate of the said deceased.

The claims in both consolidated actions relate to one issue, namely, who are the legal heirs of the said deceased Melek. Defendants 1 and 2 in action 10/47 did not take an active part in the proceedings and did not allege any right of inheritance. The issue was tried out between Plaintiff 1 together with Defendant 1 in action No. 11/50 on one side and Defendants 2 and 3 on the other side, Plaintiffs 1 and 2 in the earlier action being cited as Defendants 2 and 3 in the latter action.

According to Hanefi Law of Succession, the natural heirs, i.e. heirs connected with the deceased by the tie of blood, are of three classes : (1) The sharers (Zavil Furuz or ashabi feraiz). (2) Agnates (Asabah). (3) Uterine relations (Zavil Arham). According to the Sunni Law which was the law governing the rights of inheritance in mulk and movable properties of the Moslems of this Colony, if there are no

heirs coming under classes 1 and 2, and in this case admittedly there are no such heirs, the emancipator or his male residuary heirs succeed to the estate of a deceased freed man to the absolute exclusion of the deceased's uterine relations. "By the *wala* of manumission . . ." says Hedaya "Asabah is established". In other words when a person emancipates his slave he is "asabah" to such slave and is entitled to inherit from him in preference to his maternal uncle or aunts or other uterine kindred."

The trial Court found that the respondents in this appeal were the male residuary heirs of the emancipator of a certain woman slave Mahboube or Mahkoube, the maternal grandmother of deceased Melek. The emancipator being a certain Hji Moustafa Agha Kirlizade, a full brother of respondent's grandfather Osman Agha, and as such entitled to inherit the estate of deceased Melek to the exclusion of the appellants, who tried to establish that deceased Melek was the grand-daughter of their paternal aunt. In other words they allege that they were the uterine relatives of deceased Melek.

The new Wills and Succession Law came into operation on the 1st September, 1946, and the death of Melek having occurred a month and a half earlier it could not apply to the present case. The point for consideration therefore is whether at the time of the death of Melek the provisions of the Sheri Law giving to the male residuary heirs of an emancipator right of inheritance over the estate of a descendant of a freed slave in preference and to the exclusion of the uterine relations, were in force in this Colony.

Having gone into the authorities in the matter we have no doubt, at any rate after the passing of Law 29 of 1879 Involuntary Servitude Declaration Law, 1879, that the said provisions of the Sheri Law have been abrogated and since the date of the said declaratory law that part of the Sheri Law had no application in this Colony. Section 3 reads :—

> "that no person who may have acquired property by inheritance shall be dispossessed or prevented from taking possession thereof on the ground that the person from whom the property may have been derived was a slave."

This section is almost identical with section 3 of the Indian Act 5, of 1843, which was judicially interpreted by the Privy Council in *Sayad Mir Ujmuddin Khan* v. *Zia-ul-Nissa Begum* reported in page 11771 Digest of Indian Law Cases Vol. 5 which reads :—

> "Assuming that, by the *willa* rule of the Mahomedan Law, the heirs of the master who emancipates a slave are entitled to the property of which the emancipated slave dies possessed to the exclusion of his natural heirs, the effect of section 3, Act V of 1843, which enacts 'that

no person who may have acquired property by inheritance shall be dispossessed or prevented from taking possession thereof on the ground that the person from whom the property may have been derived was a slave,' is to abrogate the rule of the Mahomedan Law, and to secure the succession of the heirs of the emancipated slave, as if he had never been a slave." (For full report see L.R. 6 I.A. p. 137).

Sayad Ammer Ali refers to the said rule of Sheri Law in his book on Mahomedan Law, Vol. II, 5th Edition, page 69, which he describes as of merely antiquarian interest.

There remains to find whether the appellants have established themselves as being uterine relatives of deceased Melek. The trial Court did not make a finding in this connection but having gone into the evidence we are of opinion that appellants proved themselves to be related as uterine relatives of the deceased Melek and she having no other blood relations, we find that they are the only heirs of deceased Melek.

This appeal is therefore allowed. No order as to costs.