

1972  
April 3

[TRIANTAFYLLIDES, P., STAVRINIDES, HADJIANASTASSIOU, JJ.]

RAGIBE  
REMZI  
ALIAS  
RAGIBE  
SOYHAN (No. 2)  
v.  
AYTEN  
SENCER  
ALIAS  
AYTEN REMZI

RAGIBE REMZI *ALIAS* RAGIBE SOYHAN, AS  
ADMINISTRATRIX WITH THE WILL ANNEXED OF THE  
ESTATE OF THE DECEASED  
REMZI MEHMET RUSTI (No. 2),

*Appellant-Defendant,*

v.

AYTEN SENCER, *ALIAS* AYTEN REMZI,

*Respondent-Plaintiff.*

(Civil Appeal No. 4931).

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*Illegitimate child—Moslem—Right to succession—Illegitimate child (Moslem) legitimated under section 54 (1) of the Wills and Succession Law, Cap. 220 (1949 ed.)—Right to succession not affected by the Moslem Sacred Law<sup>2</sup> by operation of the provisions of section 54 (5) (a) of Cap. 220 (supra)—But governed by the Wills and Succession Law, Cap. 195 (1959 ed.) in force when the parties appeared before the trial Court.*

*Legitimated child—Moslem—Has the legal status of a legitimate child in respect of both his father and mother and their relatives by blood.*

*Legitimation order—See supra.*

The sole issue in this appeal is whether the hereditary rights of the respondent, (a Moslem), as the legitimated child of the deceased, are affected by the provisions of the Moslem Sacred Law as submitted by counsel for the appellant. This submission was based on paragraph (a) of sub-section (5) of section 54 of the Wills and Succession Law, Cap. 220 (1949 ed.).

Paragraph (a) of sub-section (5) of section 54 reads as follows :

“ Nothing in this section contained shall affect—

(a) any right to succession, under the provisions of the Moslem Sacred Law, of an illegitimate child born before the date of the coming into operation of this Law ” ;

It is to be noted that the respondent was legitimated by the deceased by virtue of a legitimation order made on March 29, 1955, by the District Court of Limassol under section 54 of the said Law. On the other hand sub-section (4) of the same section 54 provides :

“ An illegitimate child who has been declared legitimate under this section shall, as from the date of his birth, have the legal status of a legitimate child in respect of both his father and mother and their relatives by blood ”.

Dismissing the appeal, the Court :—

*Held*, (1). We are of the view that the afore-quoted provision in paragraph (a) of sub-section (5) of section 54 of the Wills and Succession Law, Cap. 220 (1949 ed.) (*supra*), when construed together with the aforesaid sub-section (4) of section 54 (*supra*), cannot be regarded as intended to limit the succession rights of a moslem illegitimate child who was legitimated under section 54, but, on the contrary, as intended to preserve whatever rights to succession existed under the Moslem Sacred Law in favour of an illegitimate child who was born before the date of the coming into operation of Cap. 220 (*supra*) and who was not legitimated thereunder.

(2) In any event, section 16 of the Illegitimate Children Law, 1955 (Law No. 15 of 1955, and now Cap. 278) repealed, *inter alia*, the whole of section 54 of the then Cap. 220 (now Cap. 195) subject only to a proviso that its repeal would not affect any legitimation order made thereunder.

(3) When the parties to this appeal appeared before the trial Court their rights to succession were governed by the Wills and Succession Law, Cap. 195, in force at that time ; and under section 46 of that Law the respondent (admittedly a lawful child of the deceased).

*Appeal dismissed.*

### Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Malachtos, P.D.C. & Loris, D.J.) dated the 1st September, 1970, (Action No. 928/69) whereby it was declared, *inter alia*, that the plaintiff is a legal heir entitled to one half hereditary share in the estate of her deceased father Remzi Mehmet Rusti.

*M. Houry with E. Avdjioglou*, for the appellant.

*A. Dana with S. Hilmi (Miss)*, for the respondent.

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The judgment of the Court was delivered by :—

. TRIANTAFYLIDIS, P. : In this case the respondent, who is the appellant's sister, has sought, in effect, a declaration that, as one of the two children of the deceased Remzi Mehmet Rusti, she is entitled, both under the will of the deceased and as a legal heir of his, to the one half of his estate.

The appellant denied that the respondent is a " legitimate child or heiress " of the deceased ; and she counterclaimed for an order setting aside a legitimation order which was made on the 29th March, 1955, by the District Court of Limassol and by virtue of which the respondent was declared to be a legitimate child of the deceased, under section 54 of the Wills and Succession Law (at the time Cap. 220 of the 1949 edition of the Laws of Cyprus and now Cap. 195 of the 1959 edition of the Laws of Cyprus).

The trial Court dismissed the counterclaim and gave judgment in favour of the respondent.

In support of the counterclaim for the setting aside of the legitimation order there were advanced before the trial Court certain arguments with which we do not have to deal on appeal as they have not been repeated before us in relation to any ground in the notice of appeal.

It was argued by learned counsel for the appellant that the hereditary rights of the respondent, as a legitimated child of the deceased, are affected by the provisions of the Moslem Sacred Law ; this submission was based on paragraph (a) of sub-section (5) of section 54 of Cap. 220 which reads as follows :—

“ Nothing in this section contained shall affect—

(a) any right to succession, under the provisions of the Moslem Sacred Law, of an illegitimate child born before the date of the coming into operation of this Law ; ”

We are of the view that the afore-quoted provision, when construed together with sub-section (4) of section 54, which provides that

“ An illegitimate child who has been declared legitimate under this section shall, as from the date of his birth, have the legal status of a legitimate child in respect of both his father and mother and their relatives by blood ”,

cannot be regarded as intended to limit the succession rights of an illegitimate child who was legitimated under section 54, but, on the contrary, as intended to preserve whatever rights to succession existed under the Moslem Sacred Law in favour of an illegitimate child who was born before the date of the coming into operation of Cap. 220 and who was not legitimated thereunder.

In any event, section 16 of the Illegitimate Children Law, 1955 (Law 15/55 and now Cap. 278) repealed, *inter alia*, the whole of section 54 of the then Cap. 220 (now Cap. 195), subject only to a proviso that its repeal would not affect any legitimation order made thereunder.

When the parties to this appeal appeared before the trial Court their rights to succession were governed by Cap. 195 as in force at that time ; and under section 46 of Cap. 195 the respondent had the same such rights as the appellant.

In the result we dismiss this appeal ; but we order the appellant to pay only half of the costs of the respondent in this appeal because we take the view that the appellant had good reason to file this appeal inasmuch as the point of law which concerned section 54 (5) (a) of Cap. 220 was raised before, but was not determined by, the trial Court.

*Appeal dismissed. Order  
for costs as above.*

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