

CHAPTER 2

LAW OF SUCCESSION

A woman could bequeath the property of her husband to her children or even to her own brothers and sisters, except when there was an explicit stipulation against it in her husband's will and testament. A wife could also disinherit children from her private property, the property she brought into the marriage, as well as from her one-third in the communal property. She could determine who should inherit her land and movable property and she could selectively bequeath specific property to certain children, as we shall see below in the example of Naunakhte's will.

1) GENERAL

There is much documentary evidence at hand to prove that women could inherit property and this custom of female inheritance gave women considerable power.

According to Janssen and Pestman (1968 : 165) one should mention that three types of properties could be owned by the husband and wife, namely:

- 1) The private property of the husband that he inherited from his parents;
- 2) The private property of the wife that she inherited from her parents; and
- 3) Their jointly accrued property - to which a 1/3 share went to the wife and a 2/3 share to the children upon the death of the husband.¹

¹ The will of Naunakhte contains a list of those children of hers, of whom she states: "They shall not come in the division of my 1/3; they shall come in the 2/3 of their father". A further example is from the Strike Papyrus (P. Tur 1880), and apparently the text refers to a winding up of a deceased estate wherein the property is divided according to: "What is his: 20 *deben* of copper; what is hers: [10] *deben* of copper: in total 30 *deben*". A division of property is thus made in the ratio 2:1.

It can be noted, however, that a husband and wife did not inherit from each other, but only received their part of the joint property. This was not a rule, however, and there were exceptions. Thèodoridès (1971 : 292) mentions that a wife was not her husband's legal heir, but that she could be made his legatee.

2) THE RIGHT TO INHERIT

A wife automatically inherited a percentage, a third, of her husband's private property, and indeed, some husbands used their knowledge of the legal system to ensure that their partner inherited the greatest part of the communal estate by transferring the property legally to her before they died (Tyldesley 1995 : 43)². The normal laws of inheritance could be circumvented by, for example, the adoption of the wife by the husband:

“Nebnefer, my husband, made a writing for me, the chantress of Seth, Nenefer, **making me a child of his** and writing down to me all he possessed, having no son or daughter apart from myself”³.

If the husband so desired, he could bequeath all his property to his wife. Testaments to this effect, and signed by witnesses, have survived. Such a testament, dating from the Middle Kingdom, was made by Wah in Papyrus Kahun 1. After he inherited property from his brother, Wah made his last will and testament and bequeathed everything to his wife, Teti. It seems that they did not have any children, because the text states further:

² Also see Hawass (2000 : 129).

³ The Adoption Papyrus.

“...she shall bequeath it as she pleases to (any) one of the children that she will bear to me”.

He also left her three Asiatic slaves and his house and further stipulates that she must be buried with him in his tomb.

In the Stela of Senmose⁴, Senmose also states that:

“[I, Senmose, give all my property via tra[nsfer document(?)] to my wife Hudjer as long as she lives, but without thereby letting [that she dispose of the property except to pay (?) a] ritual priest...”

A wife was legally *capax* to act with an inheritance as she wished to, as seen from these testaments of Wah and Senmose.

Watterson (1991 : 32) states that a will has survived wherein the husband bequeathed 15 slaves to his wife as her 1/3 of the communal property. Another 60 slaves are mentioned, but apparently these slaves had already been transferred to the wife and were thus not subject to disposal in his will. Unfortunately no information about this testament could be obtained to verify Watterson's statement, seeing that no specific reference was made by Watterson to the text in her book.

Round about 1900 BC two brothers drew up a testament (Papyrus Kahun I) that dealt with the disbursement of property over two generations. The eldest brother, Ankhren, did not name a wife and children and bequeathed all his immovable and movable property and dependants by way of a house-document to his younger brother. The younger brother made his own testament five years later and bequeathed all the

property, originally inherited from Ankhren his brother, including a house, to his wife, and he clearly stated that nobody could evict her therefrom. The youngest brother's own property would be inherited by his own children, but he made sure that his wife had her own inheritance. He also mentioned that she could act with her inheritance as she pleased⁵.

During 1300 BC, a small stone stela was placed at a temple at Amarna West⁶. It has an excerpt of declarations by a mother and her son. The father, now deceased, had originally bequeathed his property between his wife and son. Both mentioned that the entire inheritance would go to a daughter because she had consented to look after her mother when she grew older.

Another small stela (Cairo Stela 52456) was found at Edfu and it stated:

“I acquired land of two cubits, one (cubit) is for (my wife) Hormini as her property, the other (cubit) in her (possession) is mine; I (also) acquired one cubit of land to be given to (my) children”.

It is very interesting that a wife received the same size of land from her husband as the children.

During 1100 BC an interesting case was heard in the vizier's court, according to Papyrus Cairo 58092. A priest, now living with his second wife, appeared before the vizier to establish the division of his property. He had no children by his second wife, but did have children by his first wife. The matter dealt with the communal property

⁴ P. Kahun VII, as translated by Ward (2001).

⁵ Also see Allam (1989 : 125).

⁶ Stela from Amarah West.

acquired in both marriages and that should, technically, have gone to his children. He wanted to divide the communal property: what had accrued during the second marriage should go to his wife and what had accrued during the first marriage should go to his children. This required preceding consent by his children and they appeared before the court and gave their consent, even to the stipulation that none of them would contest the testament in the future. The wife thus inherited what her husband wanted her to inherit.

3) THE RIGHT TO BEQUEATH

Women had an absolute right to the disposal of their own property. A husband could also give his wife the right to bequeath his property after his death to whichever of their children, as she wished to:

“She may give these things as she pleases to any children of mine she may bear”.⁷

The earliest tomb bibliography known, from about 2700 B.C, makes note of a legal document, a testament made by a woman. It comes from the tomb of Metchen at Saqqara, an important official of the Delta area. His mother had died and she bequeathed land to her children. Metchen only indicates his portion of the inheritance. We do not know more about the testament except that other children were involved and that the property she owned was considerable in extent:

“Fifty *arouras* of (farm) land belonging to his mother Nebsenet were given to him...”⁸

What is important is that Metchen's mother conveyed the property by means of a so called "house-document" (*imt.pr*) and then declared it to some offices. It reveals that a woman had the right to immovables and that, because, as Watterson (1991 : 33) states:

“ a woman, [was] free under the law to dispose of her own property as she wished...”,

she could bequeath it to whom she wanted to.

A will⁹ from the Ramesside period, of a woman named Naunakht, has survived. She inherited property from her father and her first husband. She re-married and had eight children with her second husband. In the testament she differentiated between her own property and the property of her second husband. A third of his property would go to her as his wife and the remaining two-thirds would automatically be divided between the children. Naunakht complained when naming the heirs, as some of her children had not looked after her in her later years. She left one son out of her will¹⁰ and bequeathed her property to those who looked after her. She even had one son inherit more than the other children. The testament was signed by all of the children and witnessed by the local authority.

⁷ P. Kahun, as translated by Ward (2001).

⁸ As translated by Ward (2001).

⁹ P. Amherst and P. Leopold II. Romer (2003 : 77-78): "... Naunakhte made a written will describing in detail her wishes for the disposal of her large estate.... In a declaration before the village court she first describes her legal status in the community: "I am a free woman", and then proceeds with how her estate should be divided between her children. Also see Cerny (1945 : 31-32) for a detailed discussion of this will.

¹⁰ He did not inherit anything, except for some objects she had given him previously. Romer (2003 : 74) indicates that her first husband might have made special arrangements with regard to the disposal of his property, as she gave some of his property to the children of her second husband.

The care taken to draw it up and the lengths taken to legitimize the testament make the above mentioned document an unusual and rare document.

4) LITIGATION

4.1) Law of the Pharaoh

If there were any disputes on inheritance, the law of the Pharaoh ¹¹was applied:

“Let the possessions be given to him who buries”.

It seems that both daughters and sons had a right to inherit, but that not only could they be disinherited, but they could also lose their right to the inheritance should they omit to take part in the parent’s burial. Romer (2003 : 77) states that:

“Just as the kings performed the funeral rites for their predecessors to assure their full legitimacy to the throne, so the village children had to bury their parents to qualify for their inheritance. Indeed common law decreed that whoever buried a person inherited a large amount of that person’s property”.

In the case where a son claimed the whole inheritance for himself (Papyrus Bulaq X), because he had buried his mother without the help of his other siblings, he relied on the law of the Pharaoh and the two precedents that had previously occurred in their community.

Janssen and Pestman (1968 : 140) provides a translation of Papyrus Bulaq X:

¹¹ P. Cairo 58 092 (Originally published under P. Bulaq X by Mariette).

“List of objects ... which he gave to the lady Tgemy, his mother: 1 burial-place after he had given her coffin to P[atjêwem]diamûn, makes 40 *deben*
Again: what he gave to her: 1 coffin for her burial, while he had (also) made the burial place for Huynufe, his father. But see, the children of the lady Tgemy contest this today, in order to claim her possessions. **But they are not those who buried their father, nor did her children bury (her);** (still) it is her property which they claim today, **although they did not bury together with my father, when he buried his father and his mother. “Let the possessions be given to him who buries”, says the law of Pharaoh.** My good lord, see, I am in the presence of the officials; cause that the right thing is done. See, the landed property of Tenhasy was given to Siwadjy when she was buried, while he gave her his coffin. One gave him her share in the presence of the officials, for it was the king Amenophis who gave it to him in the court”.

According to the above mentioned precedent of Tenhasy and Siwadjy¹² mentioned in the latter case, the woman’s immovable property went to the man who took care of her after her death. The case of Tenhasy and Siwadjy is described as follows:

“List of objects, **which the workman Siwadjy made in order to bury the lady Tenhasy, his mother, while his brothers and sisters did not help him:** 1 wooden coffin, decorated and treated with oil, makes 33 *deben*; 1 small hollowed inner coffin, makes 20 *deben*. May my lord take care to let it be shared with me because of these (objects), **since he took care of her when she was dead”.**

This above mentioned case was preceded by another case where a man undertook the burial of a woman, Iner.¹³ He then inherited her share in a storeroom, but her daughter then claimed his part of the inheritance:

“List of what a workman Nebsmen, my father, made for the lady, Iner: 1 wooden decorated coffin, for her share, which consists of the lower storehouse. But see, Waab, her daughter, (now) comes in order to take a share with the workman [Huy-]nûfe in the storehouse. May my lord ... take care to let her share be given to me, <saying:> **“Share it you children of Nebsmen, for he it is who has buried her”.**

¹² O. Petrie 16 (Hier. Ostr. 21,1) as translated by Janssen and Pestman.

¹³ O. Petrie 16 (Hier. Ostr. 21,1) as translated by Janssen and Pestman.

We can deduce from these examples that immovable property could be bequeathed to women or men and that the person who buried the deceased person had a claim on or to the inheritance. Such a person could be a family member, descendant or even a stranger, as long as he or she undertook the burial of the deceased person.

4.2) Other inheritance disputes

One document¹⁴ narrates about a woman who complained that her mother had cheated her out of her inheritance:

“Help me, my lord! My mother has caused quarreling with my brothers, saying: “I gave you two shares of copper,” though it was really my father who gave me a copper bowl, a copper razor, and two copper jars. It was the scribe Pentaweret who gave them to me. But she has taken them and bought a mirror. May my (lord) establish a price in *deben* for them. My father also gave me 5 sacks of emmer and 2 sacks of barley. They belong to my husband for a period of 7 years, but he has only received 4 sacks. “There is one man and one woman; take two shares.” Thus my mother said to me.”

Another testament that survived and that was made by a commoner, contained the injunction that no man or woman in the family would have rights to the inheritance of his son. Ward (2001) mentions that the women in the family would clearly be able to challenge the testament. The reason(s) that the women might contest the said will is not known, seeing that any one could dispose of his property as he wanted to.

¹⁴ Ostraca Berl. 10629 as translated by Ward (2001).

One New Kingdom document (Ostraca Deir el-Medina 235) reports a woman who successfully sued for her inheritance following her husband's death, assisted by her son:

“Year 1, month 2 of the Summer Season, last day. On this day, the Citizeness Isis complained against the Workman Khaemipet, the Workman Khaemwast, and the Workman Amon-nakht, saying: “Let be given to me the property of Panakht my husband”. Inquiry was made with regard to the opinion of members of the court and they said: “The woman is right.” So she was given the property of her husband.”

The most interesting case regarding inheritance found in the Inscription of Mose entailed a dispute over farmland by two families. The winning litigants provided the court with original documentary proof and the losers supported their claim with forged documents. The claimant's mother and grandmother were both executors in the estate and the claimant's great aunt had also instituted a claim previously, disputing the claimant's grandmother's administrative status regarding the estate.

Westbrook (1991 : 125) states that:

“... the Demotic Code of Hermopolis West, ..., suggests that the duties of administrator of the estate fell automatically upon the eldest son”,

but adds that

“... a woman was appointed administrator of the inheritance for her brothers and sisters by a court order. The special circumstances which necessitated the court order are not revealed by the document”.

It is therefore clear that the women of the family could be the administrators of the estate, dispute legal decisions and be litigants with regards to their inheritance¹⁵.

¹⁵ The Inscription of Mose. Also see Chapter 3 regarding Immovable Property.

SUMMARY

Moret (2001 : 306) states that: “Egypt kept very ancient traditions of the eminent right of women to inheritance”. This right, a woman being free under Egyptian law to dispose of her property as she wished, meant that she was also perfectly free to disinherit her children, as was seen in the will of Naunakhte.

Women usually received a third of their husband’s property as their inheritance, and usually stipulations were included in the testament of the husband as to how the wife had to dispose of the inheritance from her husband after her death.

Women had an absolute right on the disposal of their property and were legally *capax* to make over the property to whom they wanted.

Women were also able to litigate with regard to an inheritance. The Law of the Pharaoh was applied in certain cases where a person took care of the burial of a parent, and in such cases the inheritance was given to the person who in actual fact undertook the burial. Women could litigate without the help of a guardian, even though cases are known where women were assisted by male relatives.

If all the above mentioned evidence is taken into consideration, it may be concluded that women had the same right to an inheritance as men and that they could dispose of their property by means of a will, to whomever they wanted to bequeath their property.

Were there any other ways she could obtain property? In the next chapter we shall endeavour to find answers to this question.