

1897.  
August 3.

AHUGODA UKKU ETENA *et al.* v. DOMBEGODA  
PUNCHIRALA *et al.*

*C. R., Kurunegala, 4,181 L 452.*

*Kandyan Law—Diga marriage—Presumption of legitimacy—Minute proof of wedding ceremonies.*

Where, prior to 1870, a woman was, according to Kandyan customs, duly conducted in *diga* to a man, lived with him till his death, bore a child to him, and the husband's family recognized such union—*Held*, that the presumption of legitimacy dispensed with the necessity of giving minute proof of the ceremonies attending the marriage, and that the marriage was a lawful one, and did not require to be registered.

THIS action was instituted by first plaintiff as the widow, and second plaintiff as the only child, of one Sohondirala, deceased, to recover possession of an undivided half share of certain lands belonging to the said deceased by *paraveni* right, plaintiffs averring that the defendants were entitled to the remaining half share under one Kaluhami, the sister of Sohondirala. Defendant denied that first plaintiff was the widow and second plaintiff the child of Sohondirala, and claimed the lands in their entirety under Sohondirala and Kaluhami. The main issue in the case was whether first plaintiff was the lawful wife, and the second the lawful child, of Sohondirala. Oral evidence was adduced that the first plaintiff was conducted in *diga* to Sohondirala about forty-seven years ago, according to Kandyan custom; that she lived with him and was

acknowledged to be his wife by the husband's family ; and that during such coverture the second plaintiff was born. An extract from the register of births was put in evidence in proof of the registration of second plaintiff's birth as the child of Sohondirala. The Commissioner held in favour of the plaintiffs and entered judgment for them. Defendants appealed.

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*Alwis*, for appellants.

*Sampayo*, for respondents.

3rd August, 1897. WITHERS, J—

In my opinion there is quite sufficient evidence of marriage to justify the Commissioner finding that the first plaintiff was married, according to Kandyian customs, to Sohondirala, and that the other plaintiff is the child of that marriage. Mr. Alwis contended that the ceremonies of the marriage were not given sufficiently in detail ; but I think the presumption in favour of legitimacy saves the plaintiff from the necessity of giving such minute proof of the ceremonies attending the marriage. She was duly conducted in *diga* to Sohondirala's house, lived with him till his death, and the child was the issue of the union. His family appeared to recognize the marriage at the time. This occurred before Ordinance No. 3 of 1870 came into force, so that the marriage did not require to be registered. The title to half, then, being in the plaintiffs, it was incumbent on the defendants to displace it by proving ten years' adverse and uninterrupted possession previous to action. This they have failed to do, and I therefore affirm the judgment, which I think is eminently a right one. It sustains the true rights of the respective families.

