

KANDAPPA v. RANKIRI *et al.*

C. R., Anuradhapura, 88.

1895.
July 18.

Kandyan Law—Widow's right to husband's paraveni property—How her maintenance from such property is to be secured—Forfeiture of such right.

Under the Kandyan Law a widow is not entitled to succeed to her husband's paraveni property if any relations of her husband are in existence, but she is entitled to maintenance. If the heirs wish to get the property, they must secure her her maintenance. If the estate is a large one, the heirs are entitled to specify a portion of it and reserve that to the widow for her maintenance; but if the estate is small and only just sufficient for her maintenance, the widow is entitled to possession of it during her lifetime, subject however to this, that if she takes a second husband contrary to the wish of the members of her late husband's family, she forfeits her right to maintenance.

THE facts of the case appear in the judgment.

Sampayo, for appellant.

Seneviratne, for respondents.

18th July, 1895. BONSEN, C.J.—

This is an appeal from a decision of Mr. Bowes, who was acting as the Commissioner of the Court of Requests of Anuradhapura, and incidentally several interesting questions of Kandyan Law and custom have been raised. The plaintiffs claim to eject the two defendants from the possession of two paddy fields, which they say are worth something like Rs. 25.

The first defendant Rankiri is the wife of the second defendant. Rankiri, when she married the second defendant, was a widow, her first husband having been one Udayare. Udayare died in 1877, and his widow married again in August, 1885.

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Udayare was in possession of these lands during his lifetime, and on his death in 1877 his widow, who, according to Kandyan Law, is entitled to maintenance from the husband's property, entered into possession of these fields, and has been in possession ever since.

Now, a widow is not entitled to succeed to her husband's *paraveni* property, that is, the property which her husband has inherited, if any relations of her husband are in existence. But she is entitled to maintenance, and if the heirs wish to get the property they must secure her her maintenance. If the estate is a large one, the heirs are entitled to specify a portion of the estate and reserve that to the widow for her maintenance, analogous to the old English custom of dower. But if the estate is small and only just sufficient for her maintenance, the widow is entitled to possession of it during her lifetime, subject however to this, that if she takes a second husband contrary to the wish of the members of her late husband's family—that is, of the heirs—she forfeits her right to maintenance. That appears to be the Kandyan Law.

The widow here remains in possession of this property until the institution of this action in November, 1894, when the four plaintiffs, who are all brothers and sisters, filed a plaint, claiming to eject the widow from the land. They state in their plaint that they allowed her to continue in possession because they thought, as they express it, that she would live in the name of Udayare until her death, *i.e.*, as I understand it, that she would remain unmarried, and would not marry again. But then they allege that "Udayare" having no children, and the marriage with Udayare having, as "they express it, turned null and void owing to the second marriage, "the plaintiff objected to her continuing in possession."

Now, the plaintiffs say that they are the heirs of Udayare, and they try to make that out in this way:—They say there were two sisters, Ran Etana and Walli Etana; that Walli Etana had one child, who was Udayare; and that Ran Etana had one child, whose name was Kapurala, who was the plaintiff's father. If this pedigree be correct, Kapurala and Udayare were cousins, and the plaintiffs would be first cousins once removed of Udayare.

At the trial the issues settled were: (1) Were the plaintiffs or the defendants entitled to the land by inheritance through Udayare? That raises the question of relationship, because if the plaintiffs are the first cousins once removed of Udayare they would be entitled to this land; if they are not, and it is not suggested that Udayare had any other relatives, then the widow would be entitled.

The second issue was: Was the possession of the first defendant,

i.e., the widow, such as to create a title in her favour? It was admitted by both sides that Udayare was in possession of this land.

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The evidence was almost entirely directed to this question of relationship. It was proved that Kapurala died twenty or thirty years ago and that Udayare died in 1877.

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The plaintiff's story is that Kapurala had possession during his lifetime, and that after his death Udayare had possession. Then the obvious remark arises, How is it that no claim was ever made by the plaintiffs to Kapurala's share? Why was Udayare allowed to possess the whole property, and his widow after his death, when plaintiffs, if their story be true, were entitled to one-half? No explanation is forthcoming. The Commissioner did not decide the question of relationship, but he decided the case in favour of the defendants and dismissed the plaintiff's action for a reason which Mr. Seneviratne, who appeared in support of the decree, admits cannot be supported. He decided that prescription began to run against the plaintiffs from the date of Udayare's death. But that is not so, for, as I said before, the widow was entitled to the possession of this land. But Mr. Seneviratne says that the decree can be supported on other grounds, and he has cited a case from *Austin's Report, page 88*, decided so long ago as 1846, where it was held that, inasmuch as a widow is entitled to possession of her husband's lands by way of maintenance, she cannot be ejected by the heirs. It seems to me that that is so. It has not been proved that the widow has forfeited in any way her right to maintenance, and therefore the action must fail.

The Commissioner, although he did not decide the issue as to relationship, recorded his opinion that the evidence in favour of relationship of the plaintiffs to Udayare was unsatisfactory. I have read that evidence, and I fully concur in that opinion.

The Commissioner's judgment must be affirmed.

