

AUSADAHAMI v. TIKIRI ETANA.

1901.

June 4 and 10.

C. R., Kurunegala, 7,210.

Kandyan Law—Acquired property of husband—Right of widow in possession—Action against heirs during lifetime of widow.

Lands acquired during wedded life belong exclusively to the husband, and after his death the widow has a life interest in them.

It is premature on the part of the children of the first bed to bring an action in ejectment against the children of the second bed for an undivided half of the lands acquired by their deceased father, so long as his widow is alive.

PLAINTIFF, alleging himself to be the only surviving child of the first marriage of Punchirala, sued the defendants, who were said to be the second wife of Punchirala and her children, for a declaration of title to a half share of Punchirala's lands. It was contended for the defence that the plaintiff was not a legitimate child of Punchirala, and that the lands were acquired after he had married the first defendant. The Commissioner dismissed plaintiff's action on the ground that the children of the second bed were entitled to the whole of the property acquired during the time of the said marriage.

Plaintiff appealed.

Allan Driehberg, for appellant, cited D. C., Kandy, 28,756, *Rāmanāthan*, 1877, p. 54, and argued that the first wife was not entitled to more than half the estate.

Bawa for respondent.—According to Kandyan Law the children can only share after the death of the widow in the case of acquired property as distinct from *paraveni* lands. The case quoted from *Rāmanāthan* deals with *paraveni* lands, as is shown in page 55. In the case of such lands, they must be

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distributed after the father's death. Questions as to paternity are premature in the lifetime of the widow. They should be raised afterwards. These lands were acquired after the first marriage, by laying out on them the second wife's dowry. The widow cannot be dispossessed of any portion.

10th June, 1901. LAWRIE, A.C.J.—

The Commissioner has not expressly found that the plaintiff is a son of Punchirala; he assumes that he is. The question is, however, still an open one. Assuming that he is, this action is premature, because the first defendant, if she be the plaintiff's stepmother, is entitled to a life rent of the property acquired by her husband during their marriage. The plaintiff cannot sue the widow in ejectment (4 S. C. C. 37).

I do not agree with the Commissioner that the children of the second bed are entitled to the whole of the acquired property. I am aware that that opinion is supported by *Sawer*, p. 6, but that is inconsistent with the settled law that acquired landed property belongs exclusively to the husband (subject to the widow's life rent), and on her death I think it must be divided among her children *per stirpes*. All that can be decided here is that the plaintiff is not entitled to a decree in ejectment for half the lands.

The dismissal of the action is affirmed.
