

1903.

March 9.

NILA HENAYA v. DISSANAYAKA APPUHAMI.

C. R., Kandy, 10,597.

Kandyan Law—Acquired property of husband—Departure of widow from his house and subsequent marriage in another village—Forfeiture of life interest of widow.

The life interest of a widow of a deceased Kandyan in his acquired property does not cease by her departure from his house and her marriage a second time in another village.

THE plaintiff prayed for a declaration of title in respect of two-thirds of an allotment of land which originally belonged to one Dantuwa. He died about 1882 leaving a widow, Setu, and three children, Ukkuwa, Samara, and Ukku. Ukku died leaving children surviving him. Ukkuwa and Samara conveyed their two-third shares of the land to the plaintiff. The land was the acquired property of Dantuwa, after whose death Setu, his widow, departed from his house and married a second time in another village. She returned to Dantuwa's house in 1897.

Her life interest in the land was sold upon a writ of execution against her in 1891 to the defendant.

The question for the decision of the Court was, whether Setu by her departure from her first husband's house, and her subsequent marriage, forfeited her life interest in the land.

The Commissioner held against the widow and gave judgment for the plaintiff.

The defendant appealed. The case came on for argument on 28th October, 1902.

Bawa, for appellant.

Van Langenberg, for respondent.

Cur. adv. vult.

9th March, 1903. MONCREIFF, J.—

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I was asked to say in this case whether Setu, a Kandyan woman, a widow of a Kandyan named Dantuwa, having after Dantuwa's death entered into an alliance with another man, and having five years subsequently returned to the *mulgedara* without objection from her children, was entitled to the possession during life of her husband's acquired property. In *Menika v. Horatala* (3 S. C. R. 167), decided by Lawrie and Withers, J.J., the former Judge says: "I do not find authority of a kind which I think sufficient, that the widow's possession of acquired land was to come to an end on a second marriage. One reason why she was allowed to possess it for her life was that in most cases it had been purchased by the savings and exertions of the wife as much as of the husband."

As there is nothing in *Perera* or *Thomson*, or so far as I know anywhere else, in contradiction of this, I think that Setu's interest in the acquired property did not come to an end, but passed to the defendant.

I believe I gave judgment to this effect in October, and that the case was to be mentioned in a week's time, when inquiry had been made with a view to showing the effect of the judgment upon the decree made in the Court of Requests. After four months the record was returned to me without comment, without information, and without trace of any order or judgment made by me.

I send the case back to the Court of Requests in order that the Commissioner may consider in what way the decree is affected by my finding on the point argued before me, and may alter the decree accordingly.
