

UKKU v. KALU.

D. C., Kandy, 13,889.

1903.

January 12.

*Intestate succession—Plaintiff's title—Necessity for administration—Duty of plaintiff to show that estate was less than Rs. 1,000 in value.*

It is incumbent on a plaintiff claiming title by intestate succession to show affirmatively that the intestate estate was less than Rs. 1,000 in value. If over that value, probate or administration must be taken.

It is not sufficient that both parties ignore the necessity for administration, or even agree that it is not necessary.

The Court must be satisfied that in every intestate succession probate or administration has been taken; if not taken, that it was dispensed with owing to the smallness of the estate.

**I**N this case the plaintiff alleged that her son Wattuwa was by inheritance from his father Sirimala entitled to an undivided half of certain lands which were the acquired property of Sirimala; that Wattuwa died in January, 1896, leaving him surviving his mother, the plaintiff, who succeeded to his shares of the said lands; and that defendant had taken forcible possession of all the said lands, though he was bound by the decree of the District Court of Kandy, pronounced in the case No. 9,519, which was a suit instituted by the next friend of Wattuwa against the defendant and the administrator of Sirimala.

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The District Judge (Mr. J. H. de Saram) found that Wattuwa's right to an undivided half share in the land was established in suit No. 9,519 as against the present defendant and the administrator of Sirimala, and that therefore the decree was *res judicata*.

As regards the contention for the defendant, that Wattuwa should have obtained a transfer from the administrator of Sirimala of his estate for his share, and that in the absence of such a transfer he could not inherit any share, the District Judge held as follows:—

“ By our law inheritance devolves instantly upon death, and the successor takes the estate subject to administration, if any. *Tikiri Banda v. Ratwatte* (3 C. L. R. 70). I take this to mean if administration be taken and a sale to pay debts becomes necessary. That is not the case here. Having already held that the decree in action 9,519 is *res judicata*, I must hold that the plaintiff succeeds to her son's share, and I give her judgment as prayed for. ”

The defendant appealed.

*Bawa*, for appellant.—Sirimala's estate, being of higher value than Rs. 1,000, was administered. The estate vested in the administrator; and Wattuwa, if an heir, ought to have obtained a conveyance from the administrator. *Moysa Fernando v. Alice Fernando*. (4 N. L. R. 201). Wattuwa was an illegitimate child of Sirimala. He could succeed only to the purchased property of his father, not to all his acquired property.  *Armour, 34; Sawers, 8; Niti-nighanduwa, 71*. But the plaintiff's claim to a moiety of Wattuwa's property cannot be maintained, because his estate has not been administered. Her title having been put in issue, it was incumbent on her to prove affirmatively either that she had obtained letters of administration or that the estate was so small as to dispense with the necessity for administration.

*Van Langenberg*, for respondent.—There was no issue framed as regards the value of the estate. It is not fair to bring it within the general issue as to title.

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The only objection seriously pressed by the appellant is the defect in plaintiff's title owing to the want of administration to his son's estate. She claims by intestate succession from him, and it is incumbent on a plaintiff in that position to show affirmatively that the intestate estate was less than Rs. 1,000 in value. It is not sufficient that both parties ignore the necessity for administration, or even agree that administration was not necessary. They might

well do that in order to save themselves expense, even in the case of a very large estate.

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Where the Court has to be satisfied that the plaintiff has title, it must be satisfied that in every intestate succession upon which the plaintiff's title depends, probate or administration has been taken; if not taken, that it was dispensed with by reason of the smallness of the estate.

The case will go back to the District Judge to find on these points. If he finds that administration is not required, the appeal will stand dismissed. If he finds the contrary, the action will stand dismissed, with liberty to the plaintiff to perfect his title and sue again if necessary. The costs of the appeal will abide the result of the District Judge's final inquiry.

LAYARD, C.J.—I agree.

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