[FULL BENCH]

Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice Mr. Justice Middleton, and Mr. Justice Wood Renton

1907
September 25

MUTTIAH CHETTY *v.* DINGIRIA *et al.*

C. R., Kandy, 3,525.

Kandyan Law — Minor female — Marriage — Majority — Ordinances Nos. 5 of 1852, s. 5, and 7 of 1865, s. 2—Civil Procedure Code, s. 502.

A Kandyan woman under the age of twenty-one years does not become a major by marriage.

APPEAL by the plaintiff from a judgment of the Commissioner (J. H. Templer, Esq.) dismissing his action against the first defendant.

The facts sufficiently appear in the judgments.

H. A. Jayewardene (with him *Van Langenberg*), for the plaintiff, appellant.

Bawa, for the first defendant, respondent.

Cur. adv. vult.

September 25, 1907. HUTCHINSON C.J.—

The question is whether a Kandyan woman who marries under the age of twenty-one becomes by her marriage capable of entering into and binding herself by a contract, although she is still under twenty-one.

The plaintiff sued the defendants, who are husband and wife, on a note made by them. The Commissioner dismissed the action as against the woman on the ground that she was under twenty-one at the time when she gave the note.

By Ordinance No. 7 of 1865 all persons are to be deemed to have attained the legal age of majority on attaining the age of twenty-one, and no person shall be deemed to have attained majority at an earlier period, any law or custom to the contrary notwithstanding; but nothing therein contained shall prevent any person under twenty-one from attaining his majority at an earlier period by operation of law. The intention of this appears to have been to abolish any local law or custom fixing any other age than twenty-one as the age of majority, but without prejudice to any rule by which a person may, on the happening of any event, attain majority by operation of law irrespective of his age—doubtless referring principally to the rule of Roman-Dutch Law prevailing in the non-Kandyan Provinces that a woman attains majority by operation of law on her marriage.

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The appellant contends that the rule that marriage confers majority was also a rule of Kandyan Law. This contention is, however, opposed to the decision of Creasy C.J. and Lawson J. given in 1871 and reported in *Vanderstraaten* 251, which decision was followed by Lawrie J. and Browne J. in a case reported in *Modder* 119. The appellant, however, asks us to over-rule these decisions on the ground that the Court in those cases overlooked, or did not give effect to, the enactment of section 5 of Ordinance No. 5 of 1852, that " where there is no Kandyan Law, or custom having the force of law, applicable to the decision of any matter or question arising for adjudication within the Kandyan Provinces, for the decision of which other provision is not herein specially made, the Court shall in any such case have recourse to the law as to the like matter or question in force within the Maritime Provinces, which is hereby declared to be the law for determination of such matter or question." The argument apparently is that, if there is no Kandyan Law or custom whereby marriage confers majority, the law of the Maritime Provinces on that point must be adopted. But the Kandyan Law was that a person attained majority by attaining the age of twenty-one, and that he did not attain majority by marriage, so that it cannot be said that there was no Kandyan Law or custom applicable to the decision of the question.

In my opinion the appeal should be dismissed with costs.

MIDDLETON J.—

This was an action on a promissory note made by the defendants, husband and wife, in favour of Kannappa Chetty, and endorsed by him to the plaintiff.

The husband—the second defendant—did not contest the case, but the first defendant, the wife, pleaded that she signed the note at the request of her husband, and at the time she did so she was a minor under the age of twenty-one.

The learned Commissioner of Requests gave judgment against the second defendant, but dismissed the case against the first defendant on the ground that she was a minor at the time of the contract.

It was admitted that the first defendant was a Kandyan minor at the time of the contract, and the sole question for our determination on this appeal of the plaintiff is whether a Kandyan woman attains majority by marriage.

The argument for the appellant was that, as the Kandyan Law is silent as to the effect of marriage on majority, the case would be governed by the Roman-Dutch Law under section 5 or Ordinance No. 5 of 1852; also that as puberty under the Kandyan Law was the age of majority, the fact of marriage would imply puberty, and so majority, which would thus come about by operation of law.

In *Deeresekere v. Goonesakere*[1] it was laid down that by the common law of Ceylon majority was conferred on a woman under twenty-one years of age by marriage.

The age of sixteen, according to Sawer (page 2 of *Perera's Armour*), was the age of majority for male and female Kandyans.

Ordinance No. 7 of 1865 made twenty-one years the age of majority for all persons in Ceylon, any law or custom to the contrary notwithstanding, except as hereinafter provided, and the proviso was that nothing herein contained shall extend or be construed to prevent any person under the age of twenty-one years attaining his or her majority by operation of law. This would refer no doubt to the Roman-Dutch Law as to marriage and the grant of *venia ætatis* by the Governor.

In the Kandyan Law no trace is to be found as to the effect of marriage on majority, as was stated by this Court in the case reported at page 251 of *Vanderstraaten*. This case was decided in 1871, and it is difficult to believe that the learned Judges who decided it overlooked section 5 of Ordinance No. 5 of 1852.

In the case of *Uyandena Ukku v. Yatawila Arumedureya*,[2] reported in *Modder* 119-120, Lawrie J. and Browne A.J. in 1898 apparently followed the ruling in the case reported in Vanderstraaten.

No case has been cited to us in which it has been held that the Roman-Dutch Law applied to the case of a Kandyan minor wife. I do not think, therefore, that after the lapse of upwards of thirty-five years we ought to disturb what has apparently been considered to be the law on this point.

I am not prepared to follow the learned Commissioner of Requests in his reasoning as regards the equitable jurisdiction of the Court of Requests, nor the argument of the learned counsel for the appellant in reference to section 502 of the Civil Procedure Code, for the reasons given by my brother Wood Renton in his judgment, which I have had the advantage of perusing.

I think, therefore, that the appeal should be dismissed with costs.

WOOD RENTON J.—

The appellant sued the respondent, a Kandyan married woman, and her husband, as endorsee of a promissory note made by them in favour of one Kannappa Chetty. The husband did not contest the claim, and the only question before us on this appeal is as to the liability of the respondent, who was married, and under the age of twenty-one, at the date when the note was signed.

The learned Commissioner of Requests has held (1) that the case is governed by Kandyan and not by Roman-Dutch Law; and, that under Kandyan Law, the contract of a minor wife is void and

[1] (1903) 1 *A. C. R.* 135.

[2] *S. C. Min. June* 22, 1898.

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incapable of being legalized by her husband's adoption or ratification of it; (2) that, even assuming that the Kandyan Law were silent on the point, the Roman-Dutch Law (section 5 of Ordinance No. 5 of 1852 to the contrary notwithstanding) ought not to be applied, since it would deprive the Court of Requests of its "equitable jurisdiction" to protect the property of minors. I am not prepared to follow the learned Commissioner on the latter point. It may well be—and I think it would be—the case that, where money is recovered on behalf of a minor through the agency, and with the assistance, of a Court of Requests, that Court would be entitled to see that the money so recovered was properly applied for the minor's benefit. But I am not aware that Courts of Requests possess any "equitable jurisdiction" over the property of minors; and they certainly possess no jurisdiction of that kind which would empower them to decline to apply a positive rule of Statute Law.

The questions whether the case is governed by Kandyan or Roman-Dutch Law, and, if by the former, what the rule laid down by that law is, are more difficult. It is clear, of course, that if Roman-Dutch Law governs the case, marriage confers emancipation: *Deeresekere v. Goonesakere;*[1] and also—to put aside at the outset a preliminary argument suggested by Mr. Hector Jayewardene on behalf of the appellant—that section 502 of the Civil Procedure Code throws no light on the problem we have now to solve. Section 502 merely provides that marriage, *inter alia*, confers majority "for the purposes" of the chapter of which it forms part, and which deals with actions by and against minors and persons under other disqualifications.

The only enactments really relevant are Ordinance No. 5 of 1852, section 5, which introduces the Roman-Dutch Law as the law to be applied to the decision of any case arising for adjudication within the Kandyan Provinces where the Kandyan Law is silent, and Ordinance No. 7 of 1865, which makes twenty-one the legal age of majority throughout the Colony (section 1), with a saving clause (section 2) in favour of the attainment of majority by operation of law.

It is admitted by Mr. Jayewardene that there are two direct decisions against him on the question at issue in this case. In D. C., Kandy, 53,972,[2] Creasy C.J. and Lawson J. set aside a bond executed by a minor married woman during nonage on the grounds that (1) prior to Ordinance No. 7 of 1865 the age of majority by Kandyan Law had been sixteen, but there was "no trace of any Kandyan Law by which marriage before sixteen was held to confer majority by operation of law," and (2) therefore, as section 2 of Ordinance No. 7 of 1865 could not apply, section 1 must be taken to

[1] (1903) *A. C. R.* 135.   [2] (1871) *Vanderstraaten* 251.

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have substituted twenty-one for sixteen as the legal age of majority throughout the Kandyan Provinces. In *Uyandena Ukku v. Yatawila Arumedureya*,[1] which strangely enough is only reported in *Modder* (119-120), Lawrie J. and Browne J. set aside a deed of lease by a minor wife on the same grounds.

Mr. Jayewardene invited us, however, to review these decisions. He contended that in both cases the Court had lost sight of the provisions of section 5 of Ordinance No. 5 of 1852 as to the application of Roman-Dutch Law where Kandyan Law was silent, and further, that if Kandyan Law was not to be regarded as silent on the point, it recognized the contractual capacity of the wife in such a case as the present.

I do not think that either branch of this argument can prevail. Although, in the first of the two cases last cited, the Court speaks of " no trace " having been found of any Kandyan Law recognizing marriage as an emancipation from minority, the actual decision clearly must be taken to be that marriage did not confer majority. This is expressly affirmed in the second of the cases I refer to. The question, therefore, is not one on which Kandyan Law is silent, and the provisions of section 5 of Ordinance No. 5 of 1852 do not apply.

In support of his argument that, even if Kandyan Law governs this case, the respondent would be liable, Mr. Jayewardene referred us to various passages in *Modder* (118-119) in which the contractual and testamentary capacity of minors is affirmed. None of these passages, however, relate to a minor wife, and I do not think that they are either sufficiently strong or sufficiently analogous to warrant us in setting aside two formal decisions of the Supreme Court, one of which was pronounced so far back as 1871, while the other was participated in by Mr. Justice Lawrie, an expert Kandyan lawyer. On the grounds I have mentioned I would dismiss this appeal with costs.

Appeal dismissed.

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[1] *S. C. Min. June* 22, 1898.