

Present : Sir Joseph T. Hutchinson, Chief Justice, and
Mr. Justice Wendt.

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March 18.

RANHAMI *v.* MENIK ETANA.

D. C., Kandy, 17,396.

*Kandyan Law—Rights of illegitimate children—acquired property—
Rights of mother and brother and sisters.*

Where a Kandyan died intestate leaving him surviving his mother, and brother and sisters, and an illegitimate child,—

Held, that the illegitimate child was entitled to succeed to the intestate's acquired property in preference to intestate's mother and brother and sisters, subject to the life interest of the widow if any.

Judgment in review in *Re the Estate of Sundara* (1) followed.

THE facts of the case are fully set out in the following judgment of the District Judge (J. H. de Saram, Esq.):—

“ This is a case involving a question of Kandyan Law as to the right of an illegitimate child to succeed to her father's acquired property. • The lands in question belonged to Wattededara Appu Naide, to whom they were gifted by his adoptive father and mother, his uncle, and aunt. He died a short time ago, leaving, as is alleged, an estate below the value of Rs. 1,000. The value of the estate is not in issue. He has no legitimate issue. The first defendant, who died after the institution of this action, is his mother; the second

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defendant is his brother; and the third, fourth, and fifth defendants are his sisters. The defendants deny that the plaintiff is the child of Appu Naide. The evidence as to the plaintiff's paternity is all one way. I hold it well proved that she is the illegitimate child of Appu Naide. The property being Appu Naide's acquired property, the question is, Who is entitled to the *dominium* of it? The illegitimate child, or the intestate's brother and sisters? I can only repeat what I have said in the action No. 15,657 of this Court, in which I have to-day pronounced judgment. The question here involved is the same as in that action.

"The right of a near relation, such as a sister, to succeed to the deceased's acquired property in preference to an illegitimate child was recognized by the Full Court in *Re the Estate of Sundara, deceased* (1). In the present case there is a brother as well as sisters. A brother stands on the same footing as a sister. They are all stumbling blocks to the plaintiff succeeding.

"There is no widow in this case, as there was in the case of *Mahatmaya v. Banda* (2). When Lawrie A.C.J. said in that case that it is well-established Kandyan Law that, provided there be no legitimate children and no widow, illegitimate children succeed to the whole of the acquired property of the father, I think he meant that the rights of the illegitimate children remain in abeyance during the lifetime of the widow. That must be so, for His Lordship, with his knowledge of Kandyan Law, that a widow's rights are those of a life renter only, could not possibly have meant that the widow has an absolute right, and would exclude illegitimate children, when legitimate children, who have a permanent right, could not exclude them. Adopting this suggestion, His Lordship's judgment is quite reconcilable with previous judgments. As I said in the action No. 15,657, I respectfully venture on the expression of this suggestion because of what was stated at the hearing of that action regarding His Lordship's judgment.

"It is good Kandyan Law that when a deceased father left both legitimate and illegitimate children, the latter are entitled only to one-half of the acquired property. [*Niti Nigh* pp. 15, 17, and 108, *D: C., Kandy, 721* (3)]. By illegitimate children I mean only children, as in the present case, born by a woman who was living with a man as his wife, and not the issue of a casual or secret connection. In the action No. 721 (3) of this Court referred to by Lawrie A.C.J., the widow and legitimate child were the plaintiffs, and the illegitimate child the defendant. The legitimate child died during the pendency of the action. His mother was held entitled to half the deceased's acquired property by *daru urume*, and the illegitimate child to the other half.

(1) (1903) 7 N. L. R. 364.

(2) (1893) 2 S. C. R. 142.

(3) S. C. Min., March 11, 1842.

“ *In Re Estate of Sundara, deceased* (1), if I read Wendt J.’s judgment rightly, His Lordship was influenced by Lawrie A.C.J.’s judgment reported in *Mahatmaya v. Banda* (2), that if there be no legitimate children and no widow, the illegitimate children succeed to the whole of the acquired property of the father; but, as I have said, I think His Lordship the Acting Chief Justice only meant that the rights of the illegitimate children remained in abeyance during the lifetime of the widow.

“ Mr. La Brooy said Mr. Justice Wendt rested his judgment on the fact that the widow was alive, and not on the ground that a sister would stand in the way of the illegitimate children. That is not so. This is what His Lordship said when considering the rights of the parties to the intestate’s estate: ‘ The great bulk of his estate consisted of lands “ acquired ” by him, and the contest relates to these lands. His ancestral lands admittedly devolved on the sister, and have been conveyed to her by Ukku, who is the administratrix. It is also admitted that Ukku, as widow, has a life interest in the acquired lands. The question is, Who is entitled to the *dominium* of these lands, the illegitimate children or the sister? The District Judge rightly held that any claim of the widow to the *dominium* (which, according to *Pereira’s Armour*, p. 23, could only prevail against her husband’s “ more distant relations, paternal aunt’s children, for instance ”) was excluded by the existence of the sister, and the widow has not appealed.’

“ There is a distinct expression of opinion as to the rights of the sister, and, as I have said, a brother stands on the same footing as a sister. Then, if I understand Middleton J.’s judgment correctly, he starts with the proposition that under Kandyan Law a purely illegitimate child might not share in his father’s acquired property, but that only purely illegitimate children born under the circumstances mentioned in section 2 of page 34 of *Armour* might succeed to his acquired property. This, he said, would exclude all offspring of casual intercourse or of a woman maintained in another house. His Lordship then goes on to say on page 372, if there are no legitimate children, nor an adopted child, nor parents, nor any near relations, the widow by *lat-himi* right succeeds to the possession of the deceased’s entire estate, including *paraveni* lands (*Armour*, s. 26, p. 22), and he added that by the last paragraph of the same section, page 23, if the deceased without issue has survived his parents, brothers and sisters, and their children, the widow is given an absolute *lat-himi* right of acquest to such lands as belonged to the deceased, which he did not derive by inheritance.

“ If therefore (Middleton J. said) there were a sister of the deceased living, as there was in that case, that would bar the widow’s absolute *lat-himi* right to the acquired property, and if there were

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(1) (1903) 7 N. L. R. 364.

(2) (1893) 2 S. C. R. 142.

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no sister, the widow's absolute *lat-himi* right would bar the illegitimate children, and therefore illegitimate children were in that case, in his opinion, barred both by the widow and the full sister, and could not inherit any part of their father's acquired land under the old Kandyan Law.

“Layard C.J. (page 373) thought Mr. Baumgartner, who decided *Re Estate of Sundara, deceased*, was right in following the judgment of the Supreme Court in *Mahatmaya v. Banda* (1). I humbly and respectfully think that my interpretation of Lawrie A.C.J.'s opinion in *Mahatmaya v. Banda* (1) is correct, and that, according to Kandyan Law, a widow or a brother or a sister of the deceased does not bar the right of illegitimate children to their father's acquired property. Whatever my own humble opinion may be, I am bound by their Lordships' decision in *Re Estate of Sundara* (2), near relatives such as a brother and sisters stand in the way of the plaintiff succeeding.

“The plaintiff's next friend should have been advised to wait the decision of *Re Estate of Sundara, deceased*, before instituting this action. Nothing was to be gained by rushing into Court when plaintiff did.

“I dismiss this action with costs.”

The plaintiff appealed.

Bawa, for the plaintiff, appellant.

Van Langenberg, for the defendants; respondents.

Cur. adv. vult.

18th March, 1907. HUTCHINSON C.J.—

This is an appeal by the plaintiff from a judgment of the District Court of Kandy. Appu Naide died intestate in 1905, leaving no widow and no legitimate issue. The plaintiff is his illegitimate child by a woman with whom he lived as his wife, but to whom he was not married. The defendants are his mother (who has died since the commencement of the action) and brother and sisters. He was at that time of his death entitled to lands which he had acquired, situate in the Kandyan district. The defendants are in possession of those lands. This action is brought by the plaintiff to recover possession; and the question is, whether the plaintiff, the illegitimate child, is entitled by Kandyan Law to succeed to the intestate's acquired lands in preference to the mother and brother and sisters.

The District Judge held that he was bound by the opinion expressed by the Supreme Court in *Re Estate of Sundara* (2), and decided that the plaintiff was not entitled. All that was decided in that case was that the illegitimate child was not entitled when the intestate had left a widow. The case has lately been heard in

(1) (1893) 2 S. C. R. 142.

(2) (1903) 7 N. L. R. 364.

review, and I have given judgment in review holding that the decision was based on a misunderstanding of a dictum of Lawrie, A.C.J., in *Mahatmaya v. Banda* (1), and was erroneous, and that by Kandyan Law the illegitimate child is entitled to inherit the acquired lands of its father, subject to the widow's life interest, if any, and sharing with the legitimate children, if any.

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The respondents have, however, contended that in such a case as this the intestate's mother is entitled to his acquired property, relying on a passage in *Sawer's Digest*, p. 17, to the effect that "the mother is entitled to all her son's acquired property if he died without widow or issue." But inasmuch as illegitimate are entitled equally with legitimate children to the acquired lands, the word "issue" in the passage from *Sawer* must include both legitimate and illegitimate issue.

In my opinion, therefore, the judgment appealed from ought to be set aside, and judgment entered for plaintiff for recovery of possession of the property claimed in the plaint, with costs in both Courts.

WENDT J.—

This is a contest between the intestate's infant illegitimate daughter (the plaintiff) and his mother (first defendant) and brothers (the other defendants) as to the succession to his acquired lands.

The decision in this case was from time to time postponed pending our hearing in review the case of *Re Sundara* (1), which is in point. Eventually the learned District Judge, although his own opinion was in plaintiff's favour, held himself bound by the decision in that case and dismissed the action. Since the argument of the present case, we have considered *Re Sundara in review* (2), and I have expressed the opinion that my view of the law therein was erroneous. It follows that the present plaintiff succeeds.

I agree with the Chief Justice in reading the words "without issue" at page 17 of *Sawer* (edition of 1860) as meaning "without issue, legitimate or illegitimate."

The appeal will therefore be allowed, with damages, as agreed at the rate of Rs. 10 per annum from the date of action, and costs of suit in both Courts.

Appeal allowed.

(1) (1903) 7 N. L. R. 364.

(2) (1907) 10 N. L. R. 129.