1929.

*Present:* Lyall Grant and Drieberg JJ.

LEBBE *v.* BANDA.

*443—D. C. Kandy, 34,887.*

*Kandyan law—Property gifted by a Kandyan to his grandson—Devolution to aunt—Rule of succession—Nature of property.*

A Kandyan gifted property to his grandson A, who died leaving an only child as his heir. Upon the death of the latter the property devolved upon B, sister of A.

*Held* (on a question of inheritance arising upon the death of B without issue), that the property in the hands of B was acquired and not *paraveni*, and therefore devolved on her *binna* father to the exclusion of her half-brother.

THIS was an action for declaration of title to land. Kiribindu and Sirimalee were the daughters of one Sallelu and her *binna* husband Rankira; Kirisanda was the son of Sallelu by her first husband. Kiribindu had become entitled during the life-time of her mother to certain property on a gift from her maternal grandfather. On Kiribindu's death this property devolved on her sole surviving child; the later too died, and the property in question passed to her maternal aunt, Sirimalee. Sirimalee died issueless, and the question is whether her *binna* father Rankira or her half-brother Kirisanda was entitled to her property.

*Navaratnam* (with *Wendt*), for plaintiff, appellant.—The finding is that the property in question is *ancestral* and the half-brother Kirisanda is entitled to it as such. This, in spite of the fact that a deed of gift intervened to snap an essential link in the chain of *paraveni* title. Sallelu, the mother of Kirisanda, was at no time the owner of the property, so that the principle that on the failure of descendants property goes back to the source whence it came can have no application. The property in the hands of Kiribindu was clearly *acquired* by virtue of the gift from her grandparent. Authority for this proposition is to be found in *Dingiri Banda v. Meddima Banda et al.* [1] and *Ran Menika v. Madalihamy* [2] and other cases. In the hands of Kiribindu's child, no doubt, the property was *paraveni*, but in the hands of Sirimalee it was not property *derived through her mother but otherwise acquired.* Sawer at page 14 definitely states that a *binna* father, although he is not entitled to the property of his children born in *binna* where such property is derived through their mother, succeeds to such children's property if otherwise acquired. The rule of Kandyan law that

[1] *17 N. L. R. 201.* [2] *16 N. L. R. 131.*

property reverts to the source whence it came is merely an exception to the natural and general principle of succession, and must therefore be strictly applied. Thus on principle and authority the right of the *binna* father to succeed must prevail.

March 23, 1929. LYALL GRANT J.—

This appeal from the District Court of Kandy raises a question whether certain lands are to be considered *paraveni* lands.

The land originally belonged to the maternal ancestors of the person whose inheritance is now in dispute. They by a deed of August 31, 1898, donated them to two grandchildren, born of their *binna* married daughter, in equal shares.

We are concerned with the devolution of one of these shares. The grandchild Kiri Bindu, daughter of Sallelu, died leaving a child, also called Sallelu, who inherited this share. This child died and her share passed to her aunt Sirimalee. Sirimalee has now died and the share is claimed on the one hand by her father, the appellant, and on the other by her uterine half-brother, the respondent. Sallelu, the mother of Sirimalee, predeceased her.

It is agreed that the question to be decided is whether in the hands of Sirimalee the land was ancestral (*paraveni*) or acquired.

The learned District Judge says that this property is the ancestral property of Sirimalee and her mother Sallelu. But it is important to observe that the land never was the property of Sallelu, the mother. Accordingly the passage in *Sawer* to which the learned District Judge refers does not support the contention that the father cannot succeed to the property.

The learned District Judge thinks that as the property originally came from the parents of the deceased's mother, it had *paraveni* character in the hands of the deceased and that the mere accident that it did not come by descent through the mother cannot divest it of this character.

On this question the case of *Dingiri Banda v. Maduma Banda* [1] is directly in point. There Ukkurala and Mutumenika had a daughter, Kirimenika, who was married in *binna* to plaintiff. After the daughter's death Ukkurala and Mutumenika gifted the land to a grandson Tikiri Banda, who died leaving a son Ran Banda, who also died. After Ran Banda's death, Mutumenika—Ukkurala having died—purported to gift the land to her brothers. It was held that in the hands of Tikiri Banda the property was acquired and not *paraveni*, and that on Ran Banda's death it devolved on his grandfather, the plaintiff, and did not revert to Mutumenika. De Sampayo J. there distinguished the case of *Ranhamy v. Pinghamy*.

[1] *17 N. L. R. 201.* [2] *1 S. C. C. 3.*

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In *Ukkuwa v. Banduwa* [1] it was again held that property gifted to a person even by an ancestor is acquired and not *paraveni* property.

This rule seems in accordance with the principle laid down by Sawer. The present case is even stronger as the property does not come through the mother Sallelu, who never had any interest.

The document D 2 to which the learned District Judge refers as showing that Rankira, the widower of Sallelu, acknowledged respondent's title clearly refers to lands which belonged to his deceased wife and cannot therefore apply to the land in dispute.

The appeal is allowed, and judgment will be entered for the plaintiff with costs. The plaintiff will also have the costs of this appeal.

DRIEBERG J.—

The question in this appeal is as to the succession to the intestate estate of Sirimalie, who died unmarried and without issue, possessed of an undivided half share of two lands.

The entire lands were owned by Hadaya Horanakaraya, who had a daughter, Sallelu, whom I shall refer to as the elder. Sallelu the elder had by her first husband Pinna one child, Kiri Sanda, the defendant-respondent. By her second husband Rankira, to whom she was married in *binna*, she had two children, Kiri Bindu and Sirimalie.

By a deed of August 31, 1898 (P 1), Hadaya Horanakaraya gifted these two lands to his grandchildren, Kiri Sanda, the respondent, and Kiri Bindu. Kiri Bindu, who was entitled to a half share under this deed of gift, died leaving an only child, Sallelu, whom I shall refer to as the younger, who succeeded to this half share by inheritance. Sallelu the younger died intestate and without issue, and it is common ground that her half share passed by inheritance to her aunt Sirimalie, the succession to whose estate is now disputed.

The rival claimants are the appellant and the respondent. The appellant holds a transfer of March 24, 1926 (P 2 A), from Rankira and contends that Rankira, the *binna* husband of Sallelu the elder, succeeded to what he says is the acquired property of his child Sirimalie.

For the respondent Kiri Sanda it is contended that as uterine half brother of Sirimalie he must be preferred to her *binna* married father.

If the half share of these lands is to be regarded as the acquired property of Sirimalie and not as her *paraveni* property it is clear that her father, her surviving parent, would have succeeded to the

[1] *19 N. L. R. 63.*

inheritance and not the respondent. Express authority for this will be found in the case of *Ukkuhamy v. Bala Ettana*,[1] where the claim of the mother, the father being dead, to the acquired property of her child was upheld against that of the child's full brothers and sisters.

Further, direct authority will be found in the case of *Ranhoti v. Bilinda*,[2] where the conflict between Sawer and Armour on this point is considered. The only exception to this rule which has been recognized by our Courts is where the property is acquired by a child by gift from a *binna* married mother. In such a case, though it has the quality of acquired property, if the child died intestate or without issue it will pass to the maternal grandmother, the mother being dead, in preference to the *binna* married father (*Ran Menika v. Mudalihamy* [3]).

There only remains for consideration therefore the question whether these lands were the acquired or the *paraveni* property of Sirimalie. There is no express authority, so far as I am aware, whether land inherited from a collateral or a descendant is acquired or *paraveni* property, but our Courts have in questions of inheritance always regarded *paraveni* property as meaning ancestral property which has descended by inheritance, property derived by any other source of title or by any other means being regarded as acquired property. Authority for this will be found in the case of *Dingiri Banda v. Maduma Banda*,[4] in which the earlier cases are referred to, and also in the case of *Ran Menika v. Mudalihamy* (*supra*).

The learned District Judge based his judgment on the principle of inheritance in Kandyan law of property reverting to the source from which it was derived, and he regarded the property as the ancestral property of Sirimalie and her mother Sallelu the elder, but this principle does not apply to acquired property (de Sampayo J. in *Dingiri Banda v. Meduma Banda* (*supra*) on page 210). It should also be noted that Sallelu the elder was never the owner of this property.

The judgment in favour of the respondent is also based on the finding that Rankira acknowledged the title of the respondent by the document D 2 of September 20, 1918, in which he agreed not to dispute the title of the respondent to "possession of the lands belonging to my deceased wife Epitahenagedera Sallelu and which lands were possessed by her children Kiri Bindu and Sirimalie after her death, who also have died."

Rankira was allowed one pela out of the field of two pelas for his use and maintenance. This arrangement cannot bar the appellant, who claims from Rankira, from asserting title. The surrender by

[1] *(1908) 11 N. L. R. 226.*
[2] *(1909) 12 N. L. R. 111.*
[3] *(1913) 16 N. L. R. 131.*
[4] *(1914) 17 N. L. R. 201.*

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Rankira by D 2 was of his claims to lands which belonged to his wife Sallelu the elder, and this half share was not at any time her property.

The arrangement was begun within ten years of the filing of this action, and the claim of the appellant cannot be barred by prescription.

The appeal is allowed, and judgment will be entered for the appellant as claimed. The respondent will pay to the appellant the costs of this appeal.

*Appeal allowed.*