Present: Ennis J. and De Sampayo J.

1916.

UKKUWA *v.* BANDUWA.

16—D. C. Kurunegala, 5,396.

Kandyan law—Acquired property—Inheritance—Donation by father to son—Son dying issueless, leaving mother and step-brothers.

S, a Kandyan, gifted a land to his son P. P. died issueless, leaving him surviving his mother, D, and step-brothers (children of S by another wife).

Held, that the property devolved on D on the death of P, to the exclusion of his (P's) step-brothers.

Property gifted to a person is acquired property of that person.

THE facts are fully set out in the judgment.

Bawa, K.C., for appellants.

G. Koch (with him *P. M. Jayawardene*), for respondent.

Cur. adv. vult.

March 3, 1916. ENNIS J.

The question in this appeal is one of the Kandyan law of inheritance. In 1906 one Sedara gifted an undivided half share of certain lands to his son Pina. Pina died intestate, leaving surviving him his mother, Dingiri. Dingiri gifted the land to Kiriya, who sold it to the plaintiff. The defendants are the step-brothers of Pina, children of Sedara by another wife. Two points arose in the case: first, whether the property was "acquired" or *paraveni* property; and second, whether Dingiri inherited the land on the death of Pina, or had only a life interest. It was conceded on the authority of *Dingiri Banda v. Medduma Banda*[1] that the property was "acquired" property. On the second point it was urged that *Bungappu v. Obias Appuhamy*[2] was an authority. The same question arose in the case of *Ukkuhamy v. Bala Etana*,[3] in which it was pointed out that in *Bungappu v. Obias Appuhamy*[2] it was not denied that the intestate's acquired lands passed to his brothers and sisters. It would seem that the point now at issue was not decided in that case, which is therefore not an authority for the proposition. In *Ukkuhamy v. Bala Etana*[3] Wendt J. dealt exhaustively with the question, and decided that an intestate's acquired immovable property devolved on the mother (the father being dead). I am in entire accord with that decision, and would accordingly dismiss the appeal, with costs.

[1] *(1914) 17 N. L. R. 201.* [2] *(1901) 2 Br. 286.*
[3] *(1908) 11 N. L. R. 226.*

1916.

DE SAMPAYO J.—

Ukkuwa v. Banduwa

This appeal raises for determination a point in the Kandyan law of inheritance. One Sedara, who was married to Dingiri, was the owner of certain lands. He gifted one of the lands to his son Pina by two deeds in 1900 and 1906, respectively. Pina died intestate, unmarried, and issueless, leaving his mother Dingiri. Sedara appears to have predeceased Pina. The plaintiffs have purchased the lands from a donee of Dingiri, and the defendants, who are children of Sedara by a former wife, claim the same as heirs of their half-brother Pina. The chief authority relied on by Mr. Bawa for the defendants is a passage in *Sawer's Digest*, at page 13, where it is stated: " A person dying childless, having parents and brothers and sisters, the property which the deceased may have had from his other parents reverts to them reciprocally (if from the father to the father, if from the mother to the mother), as does his acquired property, whether land, cattle, or goods, to his parents, but his parents have only the usufruct of the acquired property. " The expression " from his *other* parents " is rather curious. Probably it is intended to refer to cases of associated marriages. With regard to property inherited from the parents, the rule laid down in the above passage is universally accepted; but so far as acquired property is concerned, it is inconsistent with *Sawer's* page 17, and with *Armour* on the same subject. After full consideration of all the authorities, including *Sawer's* page 13, it has been decided in *Ukkuhamy v. Bala Etana*[1] that where a Kandyan dies unmarried, and childless, and intestate, his acquired property, in default of his father, devolves on his mother in full ownership, to the exclusion of his brothers and sisters. *Ukkurala v. Tillekeratne* is to the same effect. These decisions, with which I entirely agree, will apply much more strongly to a case where there are only half-brothers and half-sisters. Property gifted to a person is " acquired property " of that person. *Ukkurala v. Tillekeratne* (*supra*) and *Kiri Menika v. Mutu Menika*.[3] The view taken in those cases appears to be in accordance with the principle; and I myself adopted it in *Dingiri Banda v. Medduma Banda*, and held that " acquired property " is opposed to *paraveni* or inherited property, and that property gifted to a son by the father was " acquired property " of the son. I cannot agree to the distinction which Mr. Bawa, for the defendants, sought to draw between a gift made by the donee's own parents and one made by a third party.

I therefore think that the judgment of the District Judge is right, and would dismiss the appeal, with costs.

Appeal dismissed.

[1] *(1908) 11 N. L. R. 226.*
[2] *5 S. C. C. 46.*
[3] *(1899) 3 N. L. R. 376.*
[4] *(1941) 17 N. L. R. 201.*