

1948

Present: Howard C.J. and Jayetilleke J.

KAWWAUMMA, Appellant, and DAVID SINGHO, *et al.*
Respondent.

228—*D. C. Kurunegala, 948.*

Kandyan Law—Diga marriage—Severance of family ties—Forfeiture of inheritance.

The essence of a diga marriage under the Kandyan Law is the severance of the daughter from the father's family and the entry into that of the husband.

Punchi Menika v. Appuhamy (19 N. L. R. 353) followed.

A PPEAL from a judgment of the District Judge of Kurunegala.

H. V. Perera, K.C. (with him *E. A. P. Wijeratne*), for eighth defendant, appellant.

C. V. Ranawake (with him *Ivor Misso*), for sixth and seventh defendant, respondents.

Cur. adv. vult.

January 19, 1945. JAYETILEKE J.—

This is an action for the partition of a land called Karandagahamulawatta. The contesting parties are the eighth defendant, who is the appellant, and the six and seventh defendants, who are the respondents. One Ukku Banda Aratchi was entitled to an undivided $\frac{1}{4}$ share of the land. He died in or about the year 1919, leaving his widow, Bandara Menika, a son by the first bed, Muthu Banda, and a son and a daughter by the second bed, the seventh and the eighth defendants. At the time of his death the seventh and eighth defendants were of the ages of 9 and 4 years, respectively. Two or three years after her husband's death Bandara Menika married one Kiri Banda in diga. After the marriage she went to her husband's house taking with her the seventh and eighth defendants. Thereupon, her brother, Wirakoon, who administered the estate of her deceased husband, leased the mulgedera to a Muslim. The mulgedera went to ruin through decay and was pulled down about three years ago. Bandara Menika died 4 years after her marriage, whereupon Wirakoon removed the seventh and eighth defendants to his house. When the eighth defendant attained the age of puberty the seventh defendant removed her to his half-brother Muttu Banda's house. Three

or four months later Kiri Banda gave the eighth defendant in marriage in diga to a Police Constable called Illangakoon. The only question raised by the appeal is whether or not the eighth defendant forfeited her rights of paternal inheritance by being married out in diga. The general rule is that when a woman marries in diga she forfeits her right to inherit any portion of her father's estate. The forfeiture seems to be founded on the principle enunciated by Lawrie J. in the case of *Kiri Menika v. Kalu Menika*¹, a note of which is given in Modder's Kandyan Law at page 426. He said:

" In olden times land in the Kandyan Kingdom did not belong to the individual in separate shares: the unit was the family, not the individual members of the family. All the members who lived in the house had a right to share in the produce, which was the result of the labour of all, and all the males living in that house were bound to perform the services due to the King. It was contrary to Kandyan custom that the produce of the lands should be removed to other houses and eaten by other families. Those who lived in the house had the right to share and eat. Those who left the house could not demand that the shares they formerly enjoyed should be sent after them. On this rests the rule that a priest in robes had no share; if he threw off the robes and rejoined the family his right revived. As a diga marriage did, in fact, remove one of the family from the house, she in fact, ceased to share in the produce "

In *Punchi Menika v. Appuhamy*², de Sampayo J. said—

" The point to be kept in view in all cases, I think, is that the essence of a diga marriage is the severance of the daughter from the father's family and the entry into that of her husband "

The evidence in the case shows that after her marriage the eighth defendant lived for some time in the husband's mulgedera and then accompanied her husband to various places where he was stationed. It was urged on behalf of the eighth defendant that, as Ukku Banda Aratchi's house ceased to exist, it cannot be said that the eighth defendant severed her connection with her father's house by going out in diga. The short answer to this contention is that, according to the decisions referred to above, the severance of family ties is involved in a woman marrying in diga and becoming a member of her husband's family. In the present case it cannot be said that the seventh defendant has not treated the eighth defendant well. He has given her all the jewellery that belonged to the mother, and has also provided her with a dowry. We are satisfied upon the evidence that the eighth defendant severed her connection with her father's family and entered the family of her husband. She thereby forfeited the right to participate in the inheritance of her father's property with her brother. We would, accordingly, dismiss the appeal with costs.

HOWARD C. J.—I agree.

Appeal dismissed.

¹ D. C., *Kurunegala 434/140*, S. C. Min. 5. 1. 1894.

² 19 N. L. R. 353.