

1963

*Present : T. S. Fernando J., and Abeyesundere, J.*

YASO MENIKA, Appellant, and  
BISO MENIKA and another, Respondents

*S. C. 54/1961—D. C. Kurunegala, 5299*

*Kandyan Law Declaration and Amendment Ordinance (Cap. 59)—Acquired property—Intestate succession—Binna and diga marriages—Illegitimate children—Birth certificate—Sections 9 (1), 15 (c).*

The Kandyan Law Declaration and Amendment Ordinance debars a woman married in *diga* after the commencement of that Ordinance from succeeding to any rights in the acquired property of her father who died after the commencement of that Ordinance.

Where a deceased person had merely caused to be registered a birth of a child in the sense that he had informed the registrar of the birth, but had not had himself registered as the father of that child, the latter can maintain no claim as an illegitimate child of the deceased to succeed to any acquired property of the deceased by virtue of section 15 (c) of the Kandyan Law Declaration and Amendment Ordinance.

**A**PPPEAL from a judgment of the District Court, Kurunegala.

*Walter Wimalachandra*, with *M. T. Sivardeen*, for the petitioner-appellant.

*W. D. Gunasekera*, for the 9th and 10th respondents.

May 9, 1963. T. S. FERNANDO, J.—

The question agitated on this appeal is whether the 9th and 10th respondents, Ran Menika and Pemawathie Menika, are entitled to a share in the acquired property of the deceased John Banda who died intestate on 30th July 1956, i.e. after the commencement of the Kandyan Law Declaration and Amendment Ordinance (now chapter 59).

By a statement of claim presented to the court on 14th March 1957, the 9th & 10th respondents, along with another, the 8th respondent, Biso Menika, claimed to be children of the deceased John Banda and of a woman called Dingiri Amma, and further claimed to be entitled to shares in the acquired property left by the deceased. At the inquiry before the District Court it was established on Biso Menika's own evidence that she had married and moved away from her parent's household and had not come back to reside therein. Her claim to succeed to the deceased intestate's property therefore failed in any event. The learned District Judge, while holding that the 8th respondent was not entitled to succeed

in her claim, held that the other two claimants were so entitled because, to use the learned Judge's own words, although they were given out in *diga* they have come back to the house of Dingiri Amma and are entitled to a share of the acquired property. Against this finding the petitioner, the widow of the deceased intestate, appeals to this Court.

There was no dispute that the parents of the 9th & 10th respondents were not married. The question arising on this case appears to have been decided in the District Court without paying any regard to the relevant provisions of the Kandyan Law Declaration and Amendment Ordinance. Sections 9 and 15 of this Ordinance are not merely relevant, but they also effectively bar Ran Menika and Pemawathie Menika from succeeding to any rights in the acquired property of John Banda. In the case of Ran Menika, the 9th respondent, there is no dispute that she herself was married in *diga* in 1950. Her claim to succeed is therefore barred by section 9 (1) of the Ordinance referred to above which enacts that "a marriage contracted after the commencement of this Ordinance in *binna* or in *diga* shall be and until dissolved shall continue to be, for the purposes of the law governing the succession to the estates of the deceased persons, a *binna* or a *diga* marriage, as the case may be, and shall have full effect as such; and no change after such marriage in the residence of either party to that marriage and no conduct after any such marriage of either party to that marriage or of any other person shall convert or be deemed to convert a *binna* marriage into a *diga* marriage or a *diga* marriage into a *binna* marriage or cause or be deemed to cause a person married in *diga* to have the rights of succession of a person married in *binna*, or a person married in *binna* to have the rights of succession of a person married in *diga*."

In the case of Pemawathie Menika, the 10th respondent, we have permitted the production before us by her of her birth certificate; an examination of that document reveals that John Banda has not registered himself as her father, but has merely given his name as the informant to the registrar of the birth, the cage relating to the father's name being left blank. Section 15 (c) of the Ordinance aforesaid precludes Pemawathie Menika in these circumstances from maintaining her claim to a share of the acquired property of John Banda.

The appeal has to be allowed and the order made by the District Court declaring the 9th and 10th respondents entitled to a share of the acquired property of the deceased intestate is accordingly set aside. The costs of the inquiry in the District Court will be borne by the parties, but the 9th and 10th respondents are ordered to pay to the petitioner-appellant the costs of the appeal to this Court.

ABEYESUNDERE, J.—I agree.

*Appeal allowed.*