

1955 Present : Basnayake, A.C.J., and Pulle, J.

WIMALAWATHIE, Appellant, and PUNCHI BANDA,  
Respondent

*S. C. 449—D. C. (Final) Kegalla, S. 517*

*Kandyan Law—Diga marriage—Death of wife intestate—Husband's rights in respect of wife's acquired property—Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, ss. 15, 18.*

The law as laid down in *Tikiri Banda v. Appuhamy* (1914) 18 N. I. R. 105 that the surviving husband of a *diga* marriage has a life interest in the acquired property of his deceased wife has not been altered by section 18 of the Kandyan Law Declaration and Amendment Ordinance. The husband's right is unaffected by the fact that there are children by a former marriage of the deceased spouse.

APPEAL from a judgment of the District Court, Kegalla.

*C. R. Gunaratne*, for the plaintiff-appellant.

*H. W. Jayewardene, Q.C.*, with *P. Ranasinghe*, for the defendant-respondent.

June 24, 1955. BASNAYAKE, A.C.J.—

The only question for determination in this appeal is whether the husband of a *diga* married spouse who dies intestate leaving a child by a former marriage has a life interest over the property acquired by the deceased spouse during coverture.

In the instant case, one B. N. Ukku Etana who had married in *diga* died intestate leaving the plaintiff-appellant, Kottapola Vidanelage Wimalawathie (hereinafter referred to as the appellant), a child by a former marriage; the defendant, her surviving husband; and four children of her marriage with the defendant.

The appellant claims title to an undivided one-fifth share of a paddy field acquired by her deceased mother during her second marriage, and disputes her step-father's right to a life interest over that share.

Learned counsel on behalf of the appellant argued that the effect of section 18<sup>1</sup> of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938 (hereinafter referred to as the Ordinance), was to wipe out the rights of the surviving husband of a woman married in *diga* to a life interest over the property acquired by her during coverture. He supported his argument by reference to section 15<sup>2</sup> of that Ordinance wherein it is enacted that the succession of a child to the father's estate is subject to the interests of the surviving spouse. Alternatively he argued that the *diga* husband's life interest over his deceased spouse's property acquired during coverture does not extend to the shares of a child or children by a former marriage of the deceased spouse.

Although prior to the decision in *Tikiri Banda v. Appuhamy*<sup>3</sup> there was some uncertainty as to a *diga* married husband's rights over his deceased wife's property acquired during coverture, that case has put an end to that uncertainty by laying down authoritatively the proposition that the surviving husband of a *diga* marriage has a life interest in the acquired property of his deceased wife even though there are children of the marriage.

We are unable to uphold learned counsel's submission that the law as laid down in that case has been altered by section 18 of the Ordinance. The rule is that statutes are to be construed in reference to the principles

<sup>1</sup> Section 18 of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938 :

" 18. (1) When a woman unmarried, or married in *diga*, or married in *binna* on her mother's property, shall die intestate after the commencement of this Ordinance leaving children or the descendants of a child or children, the estate of the deceased shall devolve in equal shares upon all such children, (the descendant or descendants of any deceased child being entitled to his or their parent's share by representation) whether male or female, legitimate or illegitimate, married or unmarried and, if married, whether the marriage be in *binna* or in *diga* :

Provided that if the deceased was married in *binna* as aforesaid, an illegitimate child or children shall not be entitled to succeed to the *paravani* property of the deceased :

Provided further that the descendant of a deceased child shall be entitled to that child's share by representation whether or not he or she has been kept apart from the deceased intestate.

(2) When a woman married in *binna* on her father's property shall die intestate after the commencement of this Ordinance leaving children or the descendants of a child or children, such child or children, and his or their descendant by representation, shall be entitled to succeed inter se in like manner and to the like share as they would have become entitled out of the estate of their father :

Provided that if the deceased was married in *binna* as aforesaid an illegitimate child or children shall not be entitled to succeed to the *paravani* property of the deceased."

<sup>2</sup> Section 15 of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938 :

" 15. When a man shall die intestate after the commencement of this Ordinance leaving an illegitimate child or illegitimate children—

(a) such child or children shall have no right of inheritance in respect of the *paravani* property of the deceased ;

(b) such child or children shall, subject to the interests of the surviving spouse, if any, be entitled to succeed to the acquired property of the deceased in the event of there being no legitimate child or the descendant of a legitimate child of the deceased ;

(c) any such child shall, subject to the interests of the surviving spouse, if any, be entitled to succeed to the acquired property of the deceased equally with a legitimate child or the legitimate children, as the case may be—

(i) if the deceased intestate had registered himself as the father of that child when registering the birth of that child ; or

(ii) if the deceased intestate had in his lifetime been adjudged by any competent court to be the father of that child."

<sup>3</sup> (1914) 18 N. L. R. 105.

of the common law. It is not to be presumed that the Legislature intended to make any innovation upon the common law, further than the case absolutely required. The law rather infers that the statute did not intend to make any alteration, other than what is specified, and besides what has been plainly expressed. It would be wrong to construe the enactment by instituting a textual comparison of the sections 15 and 18 and inferring from the fact that, while in the former the life interest of the surviving spouse is expressly preserved and in the latter it is not, the Legislature intended to take away the rights of a *diga* husband to his life interest over the wife's property acquired during coverture. Such an interpretation would be contrary to the accepted rule of interpretation of statutes of this nature.

Learned counsel's alternative argument is not supported by any authority, nor is he able to give any sound reason why the *diga* husband's rights to the life interest over the deceased wife's acquired property should be diminished by the fact that she has left offspring by a former marriage.

We are of opinion that the rule as formulated in the case of *Tikiri Banda v. Appahamy* (*supra*) admits of no such exception.

The appeal is dismissed with costs.

PULLE, J.—I agree.

*Appeal dismissed.*

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