

Present : Hutchinson C.J. and Middleton J.

Feb. 24, 1911

SILINDUHAMY *et al.* v. MOHOTTIHAMY *et al.*

8—C. R. Ratnapura, 11,323.

Kandyan Law—Children by three beds—Succession among half-brothers and sisters—Per stirpes and not per capita.

A, a Kandyan, who was thrice married, died intestate, leaving him surviving one child S by his first wife, one child D by his second wife, and four children (plaintiffs) by his third wife. S died leaving two children (defendants). D, who inherited one-third share of A's estate, died intestate and childless.

Held, that the four plaintiffs were entitled to one-half and the two defendants to the other half of D's property.

THE facts are fully set out in the judgment of Hutchinson C.J. The case was referred to a Bench of two Judges by Van Langenberg A.J.

R. H. Morgan (with him Zoysa), for the plaintiffs, appellants, referred to the following authorities : *Sawyer's Digest*, pp. 9, 10 ; *Perera's Collection*, p. 124 ; *Siriya v. Kaluwa* ;¹ 2 *Lorensz* 27

No appearance for respondents.

Cur. adv. vult.

February 24, 1911. HUTCHINSON C.J.—

This case was referred to a Court of two Judges by Van Langenberg A.J., as it raised a point of Kandyan Law on which there does not seem to be any authority. Rajapakse Appuwa was entitled to certain land, he died intestate forty years ago ; he was thrice married. By his first wife he had one child, Setuhamy ; by his second wife he had one child, Dingiri Etana ; and by his third wife he had four children, who are the plaintiffs. It was admitted by the parties in their pleadings that on his death the child of the first wife became entitled to one-third of the land ; the child of the second wife to another one-third ; and the four-children of the third wife to the remaining one-third between them.

Setuhamy died intestate eighteen years ago leaving two children, who are first and second defendants. Dingiri Etana then died intestate and childless. Appuwa's third wife, Sanchihamy, died after Dingiri Etana.

On the above facts, which are admitted, the plaintiffs claim in this action that on Dingiri Etana's death Sanchihamy, the third wife, became entitled to the whole of her share, and that they, as

¹ (1899) 9 S. C. C. 45.

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Sanchihamy's heirs, are now entitled to it. The first and second defendants, the children of Setuhamy, say that on the death of Dingiri Etana they became entitled to one-half of her share and the plaintiffs to the other half.

The Commissioner upheld the defendants' contention. On appeal by the plaintiffs their counsel did not contend that Sanchihamy became entitled to the whole of Dingiri Etana's share, but he has argued that they and the children of Setuhamy are entitled to Dingiri Etana's share in equal shares *per capita*.

The question has to be decided by the rules of Kandyan Law, and there does not seem to be any authoritative statement as to what is the law on the point in dispute. In *Siriya v. Kaluwa*¹ the majority of the Court held that by Kandyan Law where a man dies intestate leaving issue by two or more beds his estate is divided among his children *per stirpes* and not *per capita*, that is, they held that each of the wives was a *stirpes*. That rule is one by which we are bound, and in accordance with which the parties here agreed that on Appuwa's death Setuhamy (the child of the first wife) took one-third ; that Dingiri Etana took one-third ; and that the plaintiffs (the children of the third wife) took the remaining one-third between them. It seems to me to be right that the same rule should be applied now, when the property which Dingiri Etana inherited from her father has to be divided amongst her half-brothers and sisters and the children of another half-sister who died before her. In my opinion, therefore the appeal should be dismissed with costs.

MIDDLETON J.—I agree.

Appeal dismissed.



¹ (1889) 9 S. C. C. 45.