

1962 Present : Basnayake, C.J., Herat, J., and Abeyesundere, J.

MUTTU MENIKA KUMARIHAMY, Appellant, and MUDIYANSE
and others, Respondents

S. C. 510/59—D. C. Puttalam, 6041

Kandyan Law—Woman married in deega—Re-acquisition of binna rights—Kandyan Law Declaration and Amendment Ordinance, s. 9.

A woman married in *deega* prior to the Kandyan Law Declaration and Amendment Ordinance may be shown, on proper evidence, to have regained *binna* rights.

Plaintiff, whose marriage was registered in *deega* prior to the Kandyan Law Declaration and Amendment Ordinance, did not leave her *mulgedera* but looked after her father till his death and enjoyed equally with her brother and sisters the paternal property.

Held, that the plaintiff was entitled to claim *binna* rights.

APPEAL from a judgment of the District Court, Puttalam.

H. W. Jayewardene, Q.C., with *D. R. P. Goonetilleke* and *L. C. Seneviratne*, for Plaintiff-Appellant.

G. T. Samerawickreme, with *M. Rafeek*, for Defendants-Respondents.

October 26, 1962. BASNAYAKE, C.J.—

The only point in dispute in this action is whether the plaintiff whose marriage is registered as a *deega* marriage is entitled to claim *binna* rights and whether the plaintiff's brother, the 1st defendant, and her sisters have by their declarations and conduct conceded those rights to her.

It is not denied that the plaintiff's marriage was registered as a *deega* marriage. The plaintiff's evidence is that though she married in *deega* she resided in the *mulgedera* with her husband who was a clerk in the Kurunegala Kachcheri. Two children were born in the *mulgedera* at Wadigamangawa—one in 1914 and the other in 1917. At the time of her marriage in 1909 her mother was dead but her father was alive. It was in 1919 that he died. During his life time the plaintiff and her

other sisters Dingiri Amma *alias* Sittamma Kumarihamy and Hemawathie Kumarihamy lived together in the *mulgedera*. Hemawathie died in 1938. Her child Ran Menika is the 3rd defendant. Dingiri Amma *alias* Sittamma Kumarihamy died in 1940 leaving a daughter Nandawathie the 2nd defendant. The plaintiff supported her oral testimony that she was accorded *binna* rights by her brother and sisters with documentary evidence. They are as follows :—

(a) The birth certificates P1 and P2 which show that her two children were born at Wadigamangawa where the *mulgedera* was.

(b) Mortgage Bond P4 by which the plaintiff, 1st defendant Abeysingha Rasanayaka Kiri Mudiyanse Nilame and her sister Hemawathie Kumarihamy mortgaged in March 1933 five lands called Kongahawatta, Suriyagahalanda, Katuru-muwangahawatta, Palugahahena and Navaditotamedamagahawatta in extent 5 acres 3 roods and 1 perch with the buildings and plantations thereon.

(c) Document P5 dated 1st July 1933 by which the 1st defendant in authorising D. W. Kasturi Arachchi an assistant teacher at the Anamaduwa School to occupy a house and land described it as " our house built on the portion of land extending from the fence of Sultan Tamby up to the fence of the land whereon Stephen, the painter, resides out of the lands belonging to us, Abeysingha Rasanayaka Dingiriamma Kumarihamy, Abeysingha Rasanayaka Kiri Mudiyanse Nilame, Muttumenika Kumarihamy and Hemawathie Kumarihamy of Wadigamangawa ".

(d) Document P11 dated 26th July 1931 whereby Dingiri Amma Kumarihamy, the 1st defendant Kirimudiyanse Nilame, the plaintiff Muttu Menika Kumarihamy and her sister Hemawathie Kumarihamy permitted Kaluanaide Vidanage Naide to occupy and reside on the portion of land extending from the fence of the garden of Asanar Mudalaly up to the fence where Sandana resides " out of the lands situated at Anamaduwa and belonging to them ".

(e) Document P12 dated 26th July 1931 by which Dingiri Amma Kumarihamy, the 1st defendant Kiri Mudiyanse Nilame, the plaintiff Muttu Menika Kumarihamy and her sister Hemawathie Kumarihamy of Wadigamangawa authorised Jayakody Arachchige Don Hendrick Appuhamy to reside on the portion of land between the fence of John's boutique and the fence of the boutique where Upasaka Tamby resides " of the lands belonging to them " and situated at Anamaduwa.

The tenant on P12 Hendrick Appuhamy stated that the 1st defendant said that the land belonged to them and the others whose names were inserted in the document. Kaluanaide's evidence that it was the 1st defendant who gave the names of the other co-owners and that the document was written to his dictation goes a long way to strengthen the plaintiff's claim. The 1st defendant admitted in his evidence that after the marriage the plaintiff came back to the *mulgedera* and looked after

her father and lived there, as his eldest sister Dingiri Amma Kumarihamy was a cripple and was unable to attend on her father. He also admitted that the plaintiff took the produce of the paddy fields at Helambe for quite a long time. The plaintiff's niece Ran Menika also admitted that fact in her evidence. Oral evidence of an interested person where it is unsupported by other evidence has to be closely scrutinised to ascertain to what extent it is coloured by self-interest; but the evidence that has been referred to above goes to show that in this case the plaintiff's oral evidence finds support in a number of documents to which she, the 1st defendant and her sisters were parties. In the face of the oral evidence supported by documentary evidence, the learned District Judge's conclusion that the plaintiff did not regain any rights in her paternal property cannot be sustained.

In the instant case the plaintiff's marriage appears to have been a *deega* marriage only in name. She did not leave her *mulgedera*, she looked after her father till his death and enjoyed equally with her brother and sisters the paternal property. This being a marriage before the Kandyan Law Declaration and Amendment Ordinance, it is not bound by the inflexible rule laid down in section 9 of that Ordinance. In a marriage before that Ordinance the mere registration of the marriage as a *deega* marriage does not result in the forfeiture of the rights of the woman whose marriage is registered as a *deega* marriage (Marshall's Judgments—*Mampitiya v. Wegodapola*¹). There are a number of decisions of this Court² in which on less cogent material a woman married in *deega* has been held to have regained *binna* rights.

The judgment of the learned District Judge is therefore set aside and the case sent back in order that interlocutory decree may be entered in terms of the prayer in the amended plaint.

The appellant is entitled to the costs of this appeal.

HERAT, J.—I agree.

ABEYESUNDERE, J.—I agree.

Appeal allowed.

¹ (1922) 24 N. L. R. 129.

² (a) *Dingiri Amma v. Ukku Banda*, (1905) Ord. 193.

(b) *Appuhamy v. Kiri Menike*, (1912) 16 N. L. R. 238.

(c) *Appuhamy v. Kumarihamy*, (1922) 24 N. L. R. 109.

(d) *Punchi Menika v. Appuhamy*, 19 N. L. R. 358.

(e) *Punchi Menika v. Peeris Sinno*, (1911) 1 Times 148.

(f) *Appuhamy v. Kiri Banda*, (1926) 7 Law Recorder 176, (1926) 4 Times 75.

(g) *Banda v. Ungarala*, 9 Law Recorder 45.

(h) *Perera v. Aslin Nona*, (1958) 60 N. L. R. 73 at 75-76.