

Present : Wood Renton C.J. and De Sampayo J.

1916.

APPUHAMY v. MENIKA.

58—D. C. Kurunegala, 1,371.

*Conflict of claims for grant of letters of administration—Binna husband—
"Widower,"—Civil Procedure Code, s. 523.*

A *binna* husband is, on his wife's death, entitled to the preference, in case of a conflict of claims, for grant of administration to his wife's estate.

THE facts appear from the judgment.

E. T. de Silva, for the appellant.—The terms of section 523 of the Civil Procedure Code are imperative, and gives the husband the right to administer the wife's estate. Claims to a share of the estate by inheritance do not arise at this stage. See 25—D. C. Badulla, 483.

J. S. Jayewardene, for the respondent.—Section 523 contemplates widowers who would be heirs under the rules of intestate succession (later). Counsel cited *Ram. 1860-62*, p. 5. Under the old "rules and orders" which contained the identical provision, *binna* widowers were not granted letters of administration to their wife's estate.

E. T. de Silva, in reply, cited *Ram. 1877*, p. 26. Husband is best able to protect the interests of children. The plain meaning should be given to section 523.

1916. May 22, 1916. WOOD RENTON C.J.—

*Appuhamy
v. Menika*

This appeal arises out of a conflict of applications for letters of administration to the estate of a woman, Ukku Amma, who has died intestate. The one application is by a full sister, Dingiri Amma, and the other, on the finding of the learned District Judge, is by the husband, to whom she was married in *binna*. The District Judge has held that under Kandyan law the *binna* husband has no interest in his deceased wife's estate, and that, therefore, the proper party to administer it is the full sister Dingiri Amma. The question we have to consider, therefore is whether a *binna* husband, on the death of his wife, is a "widower" within the meaning of section 523 of the Civil Procedure Code. At the close of the first argument before us, my brother De Sampayo and I delivered judgment at once, answering this question in the affirmative. Subsequently, however, and before the decree passed the seal of this Court, Mr. J. S. Jayewardene, the respondent's counsel, called our attention to the case of D. C. Kandy, No. 338¹ in which it was held by Sterling A.C.J. and Morgan J. that a *binna* husband has no right or interest in his wife's estate after her death, and that he is not entitled to be her administrator. We thought it desirable, therefore, to put the case down for further argument as to the effect of that decision. We have now had the advantage of hearing counsel on both sides upon this question.

In my opinion the conclusion at which we originally arrived is correct. The case of D. C. Kandy, No. 338,¹ no doubt supports Mr. Jayewardene's contention, and there is another authority, at least, to the same effect in *In re the Estate of Muttu Pulle*,² although even under the old law the authorities were not unanimous.³ But the rules and regulations under which these cases were decided,⁴ while they no doubt indicate that a preference was intended to be assigned to the widow or widower of an estate in claims for administration, do not express that preference in the peremptory language of section 523 of the Civil Procedure Code. Under that section the claim of a widow or widower is to be preferred to all others, language to which it is impossible not to attach great significance when we compare it with the terms of section 519. In the latter section express provision is made for the selection of a proper person as a grantee of letters of administration with the will annexed. The point of which we have now to dispose arose recently in 25—D. C. (Inty.) Badulla, B 483. When the matter came up for argument, it was admitted, on behalf of the respondent, that, in view of the provisions of section 523 of the Civil Procedure Code, the appellant's claim was widower to administer the estate of his deceased wife married in *binna* could not be resisted, and the claim was restricted

¹ *Ram.* 1860-62, p. 5.

² 3 *Lor.* 193.

³ 3 *Lor.* 159; 1877 *Ram.* 26.

⁴ *Section IV.*

to one of joint administration with him. In disposing of the case on the appeal, my brother De Sampayo called attention to the fact that the District Judge had made an inquiry into the question of *binna* or *diga* marriage, as if it were relevant to the respondent's claim, and pointed out that there was no legal authority for such a proposition. In my opinion, for the purpose of section 523 of the Civil Procedure Code, a *binna* husband is on his wife's death a widower, and his claim is entitled to the preference conferred by that section. There is, I think, nothing unreasonable in this construction of the law. Even although a *binna* husband may have no pecuniary interest in his wife's estate, he has interests of another kind. He is still her husband and the father of her children, and it is quite right that he should have an opportunity of seeing that his wife's estate is properly dealt with, and that the position of the children in regard to it is adequately safeguarded.

I would set aside the order of the District Judge directing grant of administration to the deceased's estate to her sister Dingiri Amma, and would direct administration to be granted to her husband. The appellant is entitled to the costs of the appeal.

DE SAMPAYO J.—I agree.

Set aside.

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