WICKRAMASINGHE
VS.
ROBERT BANDA AND OTHERS

SUPREME COURT
BANDARANAYAKE, J.
AMARATUNGA, J AND
MARSOOF, J
SC (APPEAL) NO. 14/2004
12TH MAY 2005 AND 14TH AND 20TH JUNE, 2005

Kandyan Law – Daughter married in deega. – Forfeiture of rights to paternal (mulgedera) inheritance – Re-acquisition of binna rights in mulgedera – Rights of daughter's son to succeed to maternal grandfather's property.

The District Court gave judgement in a partition case in favour of the 1st respondent Robert Banda on the ground that the property of his paternal grandfather Mohotty Appuhamy who died intestate devolved on Punchi Banda (son) and Podimahathmayo (daugther), Robert Banda's mother, who married in deega and lived at Kegalle. That marriage was dissolved in two years on 30.01.1908. In 1915, Robert Banda was born to Podimahthmayo by an illicit

connection with one Mudiyanse ; and Podimahathmayo returned to the mulgedera as was customary, where she gave birth to Robert Banda (the plaintiff).

The district Judge gave judgement for the plaintiff on the basis that by reverting to mulgedera, at Halpandeniya. Podimahaththayo had by such "close connection" with the mulgedera re-acquired her rights to mulgedera property.

The Court of Appeal affirmed the District Judge's order notwithstanding that Podimahathmayo had predeceased Mohotti Appuhamy, the plaintiff's maternal grandfather on the strength of *Appuhamy v Lapaya* (8 NLR 328) on the basis that the plaintiff was entitled to inherit the acquired property of his maternal grandfather.

HELD:

1. In Kandyan Law, a daugther who marries in deega forfeits her rights to mulgedera property, except that she would reacquire binna rights by proof of several instances :–

   (a) having a close link with mulgedera even after the marriage ;

   (b) by a subsequent marriage in binna ;

   (c) by leaving a child with the grand parents at the mulgedara ;

   (d) by possessing shares of property in spite of the marriage in binna ;

   (e) any evidence to indicate the waiver of the forfeiture of her rights by other members of the family.

2. When it was found that Podimahathmayo had predeceased her father, plaintiff's maternal grandfather, the Court of Appeal held wrongly that the plaintiff is entitled to succeed to the property of his maternal grandfather, Mohotti Appuhamy. On the strength of *Appuhamy* v *Lapaya* which decision has been criticized by Hayley and *Kiri Puncha* v *Kiri Ukku* (1981)[1] Sri LR 341 as having been wrongly decided.

3. In the circumstances and on the evidence, the plaintiff was not entitled to judgment on any basis. Both the District Court and Court of Appeal had erred in giving judgment for the plaintiff.

CASES REFERRED TO :

(1) *Gunasena* v *Ukku Menika* (1976) 78 NLR 524
(2) *Dingiri Amma* v *Ukku Banda* (1905) 1 BAL 193
(3) *Tikiri Kumarihamy* v *Loku Menika* (1875) RAM 1972-76 p. 106
(4) *Babanisa* v *Kaluhamy* (1909) 12 NLR 105
(5) *Dingiri Amma* v *Ratnayake* (1961) 64 NLR 163
(6) *Madawalatenna* (1834) Marshal's Judgements 329
(7) *Ukku* v *Pingo* (1907) 1 Leader 53
(8) *Appuhamy* v *Kiri Menika* et at (1912) 16 NLR 238
(9) *Banda* v *Angurala* 50 NLR 276
(10) *Appu Naide* v *Heen Menika* (1948) 51 NLR 63
(11) *Emi Nona* v *Sumanapala* (1948) 49 NLR 440
(12) *Appuhamy* v *Lapaya* (1905) 8 NLR 328
(13) *Kiri Puncha* v *Kiri Ukku and Others* (1981) 1 Sri LR 341
(14) *Rankiri* v *Ukku* (1907) 10 NLR 129

APPEAL from the judgment of the Court of Appeal.

J. Joseph with *Ms. H. P. Ekanayake* and *Chamindika Perera* for appellant.
Peter Jayasekera with *Gamini Peiris and Kosala Senedeera* for respondent.

Cur.adv.vult

09th September, 2005,
SHIRANI BANDARANAYAKE, J.

This is an appeal from the judgement of the Court of Appeal dated 27.08.2003. By that judgment the Court of Appeal affirmed the judgment of the District Court dated 30.07.1993 and dismissed the appeal. The 1st defendant-appellant-appellant (hereinafter referred to as the 1st defendant) appealed against the said judgment of the Court of Appeal on which this Court granted special leave to appeal.

The main issue in this appeal is whether the plaintiff-respondent-respondent (hereinafter referred to as the plaintiff), the son of Podimahathmayo, could succeed to his maternal grandfather, Mohottihamy.

The facts of this appeal, *albeit* brief, are as follows :

The plaintiff instituted action in the District Court of Kurunegala to partition the land described in the schedule to the plaint (P1). The plaintiff had stated that one Mohottihamy alias Mohotti Appuhamy, (hereinafter referred to as Mohotti Appuhamy) who was the original owner of the property, died intestate and his property devolved on his son and daughter namely Punchi Banda (son) and Podimahathmayo (daughter) and the said Podimahathmayo owned and possessed her 1/2 share of the property, which devolved upon her death to her only child Robert Banda, who was the plaintiff in the District Court case.

According to the plaintiff, his mother (Podimahathmayo) was married in *diga* to S. M. Dingiri Banda on 30.05.1906 and the said marriage was dissolved on 30.01.1908 (P2). Podimahathmayo returned to her *Mulgedera* and while living with her father at Halpandeniya there had been an illicit relationship with one Menawa Ralalage Mudiyanse and the plaintiff was born to Podimahathmayo in 1915. Thereafter Podimahathmayo had died in 1918, when the plaintiff was 3 years of age. Mohotti Appuhamy (the maternal Grandfather) had brought him up at the *mulgedera* in Halpandeniya until his death in 1929 and thereafter the plaintiff's maternal uncle (Punchi Banda) had looked after him.

The contention of the 1st defendant, however, is different and his position is that at the time the plaintiff was born in 1915, his parents were residing not at Halpandeniya as stated by the plaintiff, but at Menawa in Kegalle. Further it was contended that the union between Podimahathmayo and Menawa Ralalage Mudiyanse, though not registered, is a *diga* marriage since Podimahathmayo had left the *mulgedera* with the said Menawa Ralalage Mudiyanse. The 1st defendant took up the position that as there is no *binna* marriage contracted between the parents of the plaintiff, that the plaintiff is not entitled to the 1/2 share of the property.

Learned Counsel for the 1st respondent further contended that the plaintiff had not averred that his mother married in *binna* and that his Certificate of Birth (P3) indicates clearly that his parents were residing at Menawa in Kegalle and not at Halpandeniya, the village of the plaintiff's mother and the grandfather. The learned Counsel for the 1st respondent submitted that the union between the plaintiff's mother Podimahathmayo and Menawa Ralalage Mudiyanse, although not registered, is a *diga* marriage since the plaintff's mother, Podimahathmayo had left the *mulgedera* with the said Menawa Ralalage Mudiyanse. Further he contended that, there was no

binna marriage between Podimahathmayo and Menawa Ralalage Mudiyanse as there is no evidence of *binna* settlement. Therefore his submission is that since Podimahathmayo married Menawa Ralalage Mudiyanse in *diga,* the plaintiff had forfeited his rights to his maternal grandfather's property.

It is well recognized in Kandyan Law that a daughter who marries in *diga,* forfeits her right to the paternal inheritance (*Gunasena* v *Ukku Menika* (1)). Hayley referring to the Kandyan Law that is applicable to a daughter who had married in *diga,* clearly states that,

> "the general rule is that neither a *diga*-married daughter, nor her children, can compete with other children by the same mother, or their descendants, in the distribution of a deceased intestate's estate. This rule has been accepted without hesitation ever since the Kandyan Law was first administered by British Courts ..... (The Laws and Customs of the Sinhalese or Kandyan Law, Reprint 1993, pg. 379)."

In terms of the general rule, a *diga*-married daughter, or her children would therefore not be entitled to any paternal or maternal inheritance. However, the general rule is not to be applied thus simply as the modern case law has clearly accepted certain exceptions, which favours the *diga*-married daughter enabling her to re-acquire the rights of a *binna*-married daughter in the event she fulfils certain requirements. In fact Hayley points out that 'certain modern judgments have tended towards engrafting an exception in favour of the *diga*-married daughter who has[1] kept up a close connection with her father's home' (Supra, pg. 379).

The exception to the general rule thus appears to be a development through the case law and therefore it would be useful to examine the important judgments to assess the circumstances in which the exception had been applied.

Dingiri Amma v *Ukku Banda* [(2)] is one of the early decisions, which had considered a daughter married in *diga* re-acquiring the rights of a daughter who had married in *binna.* In Dingiri Amma's case the plaintiff first lived with her husband in her father's house prior to the marriage being registered. Subsequently the marriage was registered and both husband and wife lived in the father's *mulgedera* as well as in the husband's house, until the *mulgedera* was demolished. Thereafter the plaintiff's husband built a new

house in the same garden where the *mulgedera* was situated and both the husband and the wife were living together in that house. Pereira, J., held that even if the plaintiff was married in *diga,* she had acquired *binna* rights.

In *Tikiri Kumarihamy* v *Loku Menika* [3] the Court was of the view that a daughter originally married in *binna,* subsequently leaving her parents' house and going to live with her husband in *diga* and still keeping up a close connection with the *mulgedera* or a daughter originally married in *diga* and subsequently returning to her parents house and being re-married in *binna,* may preserve her rights to any share in her parents estate.

The entitlement of a Kandyan woman to her parental inheritance, who had contracted a *diga* marriage, but who had subsequently returned to the parental roof and contracted a *binna* marriage during the lifetime of her father, was further strengthened in *Babanisa* v *Kaluhami* [4] as well as in *Dingiri Amma* v *Ratnayake* [5].

It is therefore clear that a daughter who had married in *diga,* but under varying circumstances had kept a close connection with the *mulgedera,* would re-acquire the rights to inherit from her father as that of a daughter who had married in *binna.* This position has been endorsed in an early case, namely in *Madawalatenne* [6] decided in 1834 where the Supreme Court was of the view that,

> "..... it appears that, though she was married in *diga,* she always kept up a close connection with her father's house, in which indeed three of her children were born ; ..... again it appears that the father, on his death-bed, gave one talpot to the defendant and two others to his wife, what had become of those two latter olas does not appear, but it is not improbable that one of them may have been intended for the plaintiff, **more especially considering the frequency of her visits to the paternal residence** (emphasis added)."

However, it is to be borne in mind that, as correctly pointed out by Hayley (*Supra*), that the daughter in Madawalatenne was awarded only

one-sixth of what her mother possessed and not the half share to which she would have been entitled if not for her marriage.

Be that as it may, there are several other decisions that had taken the view that depending on the circumstances, a Kandyan woman married in *diga* could later re-acquire the rights of a *binna* marriage. I would refer to some of the judgments to indicate the circumstances in which such re-acquiring the rights of a *binna* marriage had taken place.

In *Ukku* v *Pingo*[7] it was held that a daughter, who married in *diga,* after her father's death, retained her share by leaving behind in the *mulgedera* a child previously born to her there as mistress of her brother-in-law. A similar view was adopted in the decision in *Appuhamy* v *Kiri Menika* et al[8] where a Kandyan woman, who was married in *diga* went to live with her husband about two miles away from the *mulgedera.* One of their children was left in the *mulgedera* and brought up by her grandmother. It was also revealed that the woman, although maried in *diga,* kept up a constant and close connection with the *mulgedera.* Lascelle, C. J., held that in the circumstances, the woman did not by reason of her marriage in *diga,* forfeit her right to the paternal inheritance.

The decision in *Banda* v *Angurala*[9] on the other hand, clearly indicates that the Court had looked at the question from another perspective and held that the regaining of *binna* rights may be evidenced by material other than in connection with the *mulgedera.* Emphasising on this aspect, Bertram, C. J., stated that,

> "In all previous cases the question for the recovery of *binna* rights has always appeared to turn upon something done in connection with the *mulgedera,* such as a resumption of residence there ; the cultivation of the paternal lands held in connection with it ; the leaving of a child in the *mulgedera ;* or the maintenance of a close connection with the *mulgedera.* But in this case nothing of the sort is suggested. The claim to *binna* rights, however, in the case is based upon circumstances of a very significant and uneqivocal character....."

In this case notwithstanding the fact that the *diga* marriages of the two daughters, their brothers had executed a series of deeds clearly based upon the supposition that their sisters retained rights in the paternal inheritance. It was held that the execution of a series of deeds for a number of years by other members of the family on the footing that a *diga* married lady still possessed rights would be sufficient evidence of such waiver. In deciding so, Bertram C. J., further stated that—

> The point at issue is the forfeiture of certain rights of inheritance. Any forfeiture may be waived by those in whose benefit it takes place. It has been customary in considering whether a forfeiture of *binna* rights has been waived to look at the matter from the point of view of the connection of the daughter in question with the *mulgedera*. But in my opinion there is nothing to show that this is the only test. To use a favourite phrase of the late Lord Bowen, 'there is nothing magic about the *mulgedera*. When a forfeiture has taken place it is not the connection with the *mulgedera* which restores the *binna* rights, it is the waiver of the forfeiture of which the connection with the *mulgedera* is the evidence. As was said by Wood Renton C. J., in Fernando vs. Bandi Silva (1917) 4 C. W. R. 12), 'The instances given in the text books on Kandyan Law of the cases in which *binna* rights can be regained are illustrations of a principle and not categories exhaustive in themselves. **The underlying principle is that the forfeiture by a marriage in *diga* of the rights of the *diga* married daughter to a share of the inheritance may be set aside by her readmission into the family** (emphasis added.)"

Several years later, another aspect was taken into consideration by the then Supreme Court and the decision in *Appu Naide* vs. *Heen Menika* [10] brought in a new concept to the question of the rights of a woman married in *diga* to acquire property of her family. The question in this case was whether the two sisters who were married in *diga* and had no re-acquisition of *binna* rights be entitled to their father's property on his death. There was evidence that on the death of their father, who was the original owner of the land, the two sisters with their brother in pursuance of an arrangement among themselves, possessed and enjoyed their father's lands in equal shares. It was held that where a brother permits his sisters,

in spite of their marriages in *diga* to possess their share of the land for a long period of time, he has acquiesced in their right and cannot be permitted to deny it.

On an examination of the afore-mentioned decisions as well as the early authorities, it is apparent that a Kandyan woman who had married in *diga,* could establish the re-acquisition of *binna* rights by proof of several instances, which would include —

(a) having a close link with the *mulgedera* even after the marriage ;
(b) by a subsequent marriage in *binna ;*
(c) by leaving a child with the grand parents at the *mulgedera* ;
(d) by possessing their shares of property in spite of the marriage in *diga* ;
and most importantly
(e) any evidence to indicate waiver of the forfeiture of her rights.

Having said that, let me now turn to examine the circumstances in which the plaintiff had made a claim to the property in question.

Admittedly, the plaintiff's mother, the said Podimahathmayo married one Dingiri Banda, on 30.05.1906. The certificate of marriage (P1) states that the marriage was in *diga.* The said marriage had been dissolved on 30.11.1908 (P2). According to the Register of Dissolution, there had been no children from that marriage. The plaintiff was born on 06.06.1915 at Halpandeniya and the Certificate of Birth (P3) discloses that Menawa Ralalage Mudiyanse and Podimahathmayo are the parents and that they were not married at the time of the birth of the plaintiff. Podimahathmayo had died in 1918 and the plaintiff's maternal grandfather, Mohotti Appuhamy, had died in 1929.

Learned Counsel for the plaintiff, referred to the judgment of the District Court and submitted that the learned District Judge had held that from the fact that the plaintiff was born and bred in the mother's village, that it could be concluded that the plaintiff's mother had close connection with the *mulgedera* and therefore she does not forfeit her paternal inheritance. I reproduce below the relevant portion from the judgment of the learned District Judge where he had stated that —

"පැමිණිලිකරු ඉපදී හැදී වැඩී ඇත්තේ මවගේ ගමේ බව පෙනී යාමෙන් මව වන පොඩිමහත්මයා මහගෙදර සමඟ සබඳකම් පවත්වා තිබුණ බවට නිගමනය කළ හැකිය."

Except for the afore-mentioned statement, learned District Judge has not referred to any instances which had indicated that plaintiff's mother had maintained a close and constant affiliation with the *mulgedera* at Halpandeniya. The Court of Appeal was of the view that the judgment of the District Court would not warrant interference and had stated that —

> "In the instant case the plaintiff's paternal grandfather (sic) having brought up the child from tender years and admittedly in the '*mulgedera*' by the maternal grandfather whose rights the plaintiff claims in the instant action, had not obviously disapproved of the daughter's cohabitation with the plaintiff's father."

On a careful examination of the evidence of the plaintiff and the 1st defendant and on a perusal of the documents that were produced in the District Court, it appears that except for the Certificate of Birth of the plaintiff, there is no other material which reveals detailed information regarding the residence of the plaintiff's parents. The Certificate of Birth clearly indicates that the plaintiff was born at Halpandeniya and that being the village of the plaintiff's mother, Podimahathmayo, it would appear that she had been at the *mulgedera* for the confinement. However, with reference to the name and residence of informant and in what capacity he had given information, it had been stated that—

> *" මේනව රාලලාගේ මුදියන්සේ ගමආරච්චිල සහ රාජපක්ෂ මුදියන්සේලාගේ පොඩිමහත්මයෝ 'පදිවිය මේනව' - උපන් ළමයාගේ දෙමව්පියෝ (emphasis added)."*

The inference that could be clearly drawn from this statement is that Podimahathmayo, who had been living with ther husband at Menawa had returned to her *mulgedera* at Halpandeniya for her confinement, in keeping with the customary traditions. Except for the fact that Podimahathmayo had given birth to the plaintiff at Halpandeniya, there is no other material that indicate that Podimahathmayo had maintained a close relationship with her *mulgedera*. Although the plaintiff in his evidence in the District

Court had stated that his mother had a *binna* marriage with his father and that they had lived at Halpandeniya there is no material to substantiate this position. Furthermore, it is to be borne in mind that when the plaintiff was questioned about his mothers previous marriage as to whether it was *diga,* he had vehemently denied that position. However, as stated earlier, Podimahathmayo's first marriage was clearly in *diga* and therefore the question arises as to the credibility of the plaintiff's evidence.

Be that as it may, the issue that has to be considered would be whether the return of Podimahathmayo to the *mulgedera* for her confinement could be regarded as an instance where there was a re-admission into the family and thereby whether there had been a waiver of the forfeiture of inheritance. The question as to the return of a Kandyan woman to her parental home for her confinement would re-establish the connection with the *mulgedera* was considered in *Emi Nona* vs. *Sumanapala* [11], where Jayatilake, S. P. J., held that, although there is evidence that after her marriage in *diga* she had visited her parents from time to time and stayed for some time with them, that she went to her parents house for her confinement and attended on her father during his last illness is insufficient to establish a re-acquisition of *binna* rights.

In the instant case, there is no evidence to establish that Podimahathmayo was living with the plaintiff's father in the *mulgedera.* Also there is no material to show that, the plaintiff had been living with his maternal grandparents prior to his mother's demise. He was brought up by the maternal grandfather only after the death of his mother Podimahathmayo in 1908. On the other hand, the Certificate of Birth clearly states that the plaintiff, although was born at Halpandeniya, his parents were living at Menawa in the Kegalle district. In such circumstances it is evident that Podimahathmayo had not been living with Menawa Ralalage Mudiyanse at her *mulgedera.*

The legal position in regard to the property rights of a married daughter therefore is quite clear and even if one were to consider the rights of a daughter who had returned from her *diga*-husband's house, according to Hayley (Supra at pg. 384), such a woman does not ordinarily recover any right to inherit whether she returns before or after her father's death. The only exception to this position where she would be able to inherit, is that if she marries again in *binna,* with the consent of her parents.

In such circumstances, it is apparent that the plaintiff's mother Podimahathmayo does not come within the said exception and therefore she would not be entitled to inherit from her father.

There is one other matter that has to be considered in this appeal. Inheritance is claimed by the plaintiff from the Estate of his maternal grandfather. Plaintiff's mother, Podimahathmayo pre-deceased her father and therefore the consideration should be regarding the rights of an illegitimate child to succeed to his maternal grandfather's property. Hayley (Supra at pg. 391) referring to the said rights of illegitimate children states that, an illegitimate child does not succeed to his grandfather.

The Court of Appeal, however, relying on the decision of *Appuhamy* vs *Lapaya* [12] was of the view that irrespective of the fact that the plaintiff was illegitimate that he is entitled to acquired property of his maternal grandfather.

In *Appuhamy* vs. *Lapaya* (*Supra*) the Court had to deal with the rights of an illegitimate child of the deceased person, namely one Rattarana, who had pre-deceased his father. Wendt, J., sitting alone, was of the view that—

> "he succeeds directly to his grandfather ; the property does not come 'through' his father Rattarana in the sense that the father ever had any interest in it, and there is therefore no reason for the argument that when it reached Wattuwa it was Rattarana's *paraveni* property."

It has to be observed that this view is not in accordance with the laws applicable to intestate succession in Kandyan Law. Referring to the decision in *Appuhamy* vs. *Lapaya* (Supra), Hayley in his treatise on the Laws and Customs of the Sinhalese (*Supra*) stated that in deciding the matter in hand, Wendt, J., has disregarded the general principles of representation on which the rights of grandchildren are based. In his observation Hayley stated that—

> "in allowing the appeal, Wendt, J., relies mainly on the proposition that the property descended to the grandchild directly in its character of acquired property. Such a view, however,

> disregards the general principle of representation on which the rights of grandchildren are based and also fails to take account of the fact that illegitimacy itself usually arose from the refusal of the grandparents to recognize the marriage, for which very reason the issue of such marriage was debarred from inheriting any property descending from them."

The decision in *Appuhamy* vs *Lapaya* (*Supra*) was considered by Wanasundera, J., in *Kiri Puncha* vs. *Kiri Ukku and others* [13]. In that case, the question arose as to the rights of illegitimate children to *paraveni* property and it was held that although illegitimate children are entitled to succeed to their father's acquired property, that in the general Kandyan Law an illegitimate child cannot inherit the property of his grandfather. Further it was held that if his father had predeceased the grandfather, he would not be in a better position than if his father had survived and the property would still descend as *paraveni*.

In Kiri Puncha's (Supra) case, Wanasundera, J. closely examined the decision of Wendt, J. in *Appuhamy* vs. *Lapaya* (*Supra*) and was of the view that Wendt, J.,'s position was clearly not in accordance with the Kandyan Law. Referring to Wendt J.,'s judgment in *Appuhamy* vs. *Lapaya* (*Supra*), Wanasundera, J. stated that,

> "This view is clearly not in accordance with the principles of Kandyan Law. Hayley at page 392 of his book shows by reference to the passage from Armour and other institutional writers on Kandyan Law that Wendt, J., had overlooked certain basic features of the Kandyan Law in coming to this conclusion."

On an examination of the decision in *Appuhamy* vs. *Lapaya* (*Supra*) and *Kiri Puncha* vs. *Kiri Ukku* and the principles of Kandyan Law referred to by Armour and Hayley, it is apparent that in *Appuhamy* vs. *Lapaya Wendt, J.,* had overlooked certain basic features applicable to Kandyan Law in coming to his conclusion. It is also to be born in mind that in *Kiri Puncha* vs. *Kiri Ukku* (*Supra*) decided in 1981, Wanasundera, J. disapproved the decision in *Appuhamy* vs. *Lapaya* (*Supra*) and did not follow that judgment.

The Court of Appeal in considering the present appeal however has relied on the decision in *Appuhamy* vs. *Lapaya* (*Supra*) where it was stated that—

"Even in the case of acquired property of a deceased who dies intestate under the Kandyan Law both legitimate and illegitimate children are entitled to such property in equal shares, *vide Appuhamy* vs *Lapaya* 8 *(Supra).*

On a consideration of the above, I am inclined to the view that the impugned judgment would not warrant interference."

Thus it is evident that the Court of Appeal in deciding that there should not be any interference with the decision of the District Court, had relied on a decision, which was disapproved by the Supreme Court and has been regarded by Hayley, as a decision which had overlooked certain basic features in succession to property by illegitimate children under the Kandyan Law.

The judgment of the Court of Appeal thus creates the impression that *Appuhamy* vs. *Lapaya* (*Supra*) is decided correctly and has to be followed in deciding property rights of illegitimate children.

The position with regard to the intestate succession of illegitimate children in Kandyan Law is quite clear. Under the general Kandyan Law an illegitimate child could not succeed to *paraveni* property if there are any other relations however remote (*Rankiri* vs. *Ukku* [14]). Considering this position Hayley (The Laws and customs of the Sinhalese (Supra) pg 3) has clearly stated that the illegitimate child does not succeed to the grandfather. In Hayleys words :

"I llegitimate children are, however not entitled, to succeed to the *paraveni* if there are any other relations however, remote. It follows therefore that an illegitimate child can never inherit the property of his grandfather, for, even if his father has predeceased the grandfather, he cannot be in a better position than if his father had survived in which case the property would descend as *paraveni."*

As referred to earlier, the decision in *Appuhamy* vs. *Lapaya* (*Supra*), clearly constitutes a departure from the general principles applicable in Kandyan Law dealing with property issues pertaining to an illegitimate child. The Court of Appeal decision is based on the decision in *Appuhamy* vs. *Lapaya*

which was disapproved in *Kiri Puncha* vs. *Kiri Ukku* (*Supra*) and for the reasons aforementioned, I hold that that the Court of Appeal has decided this matter erroneously.

For the reasons afreosaid, I answer the issue in the appeal in the negative. This appeal is accordingly allowed and the judgment of the Court of Appeal dated 27.08.2003 and the judgment of the District Court dated 30.07.1993 are set aside. In all the circumstances of this case there will be no costs.

AMARATUNGA, J. - I agree.

MARSOOF, J. - I agree.

Appeal allowed