

Present: Schneider A.C.J. and Lyall Grant J.

1926.

DINGIRIYA v. UKKU AMMA *et al.*

22—D. C. Kurunegala, 9,930

Kandyan law—Property inherited from mother—Intestate succession thereto.

A Kandyan died intestate leaving property, which he had inherited from his mother who was married in *binna*. The plaintiff claimed title to the intestate's property on a deed of transfer from the maternal granduncle and the cousin of the deceased, while the defendants relied on a deed of sale from the *binna* married father.

Held, that the maternal granduncle of the intestate being the lawful heir, the title derived from him prevailed.

A PPEAL from a judgment of the District Judge of Kurunegala.

The facts appear from the judgment.

*Appuhamy v. Gamarala*¹ considered.

Hayley, for plaintiff, appellant.

Samarakoon, for defendants, respondent.

October 13, 1926. SCHNEIDER A.C.J.—

Nanduwa, a Kandyan, inherited two allotments of land from his mother Horatalai who had acquired them by a deed. Horatalai was married in *binna* to Setuwa. Nanduwa died intestate, and the only persons who might possibly be regarded as his heirs to the lands in question are Setuwa his father, Menika an uncle of his mother, and Puncha the son of another uncle of his mother who is dead. The plaintiff acquired title to the land by purchase from Menika and Puncha, the defendants by purchase from Setuwa. The District Judge upheld the defendants' claim as he thought that the claim of the father Setuwa should be preferred to the "mother's granduncle's son, a very distant relation." He purported to follow the case of *Appuhamy v. Gamarala* (*supra*), but it seems to me that he has misapprehended that decision. It was there held that the law as laid down by Sawyer should be accepted, with the limitation to be found in *Armour*, and that the claim of the *binna* married father of the *propositus* was to be preferred to the claim of the great-grandson of a sister of the great great-grandfather, the preference being given to the husband as the relations on the mother's side were "distant". I agreed with the judgment in that case, but on further consideration I am doubtful whether the statement of

¹ *Times of Ceylon L. R. 147 (1925); (1925) 27 N. L. R. 361.*

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law by Armour should be regarded as limiting the law as stated by Sawyer. However, it was held in that case that the law as stated by Sawyer should be followed. According to Sawyer, the maternal uncles, and failing them, the next of kin on the mother's side, are the heirs. Menika being a maternal granduncle is, in my opinion, entitled to preference to Setuwa the *binna* married father. I do not think that Puncha succeeds as an heir together with Menika, that is, according to the application of the general principles of the law of inheritance. No authority was cited to us to show that he is entitled to so succeed. Even if the law as stated by Armour be regarded as limiting the law as stated by Sawyer, neither Menika nor Puncha would be excluded by the *binna* married father. Both of them would succeed as next of kin on the mother's side who are not "distant." The instance of a distant relation given by Armour is "mother's granduncle's son." Puncha is the son of the mother's uncle not granduncle. Armour clearly intended to say that any relations nearer in degree than a mother's granduncle's son were not to be regarded as "distant" relations. Whether Menika and Puncha be regarded as joint heirs, or Menika as the sole heir, the plaintiff is entitled to succeed inasmuch as his purchase includes all the right, title, and interest of his vendors in the lands in claim.

The learned District Judge's decree must therefore be set aside, and the plaintiff be declared entitled to the two allotments of land described in his plaint. He will have his costs in the District Court, and also of this appeal.

It was agreed at the argument of the appeal that from the land No. 1 in the plaint should be excluded an extent of 1 pela in favour of the 2nd defendant. This 1 pela should be so excluded in the decree.

At the argument there were cited to us the following authorities: *Modder's Kandyan law*, pp. 492 and 602; *Modder's Edition of Sawyer's Digest*, p. 17; *Pereira's Armour*, p. 77; *Marshall's Judgments*, p. 354; An anonymous case from the District Court of Kurunegala No. 14,628 (*Legal Miscellany*, 1866, p. 83), the facts of which are to be found in *Modder's Kandyan law*, p. 494, where the name of the case is given as *Bandirala v Ukku Menika; Punchi Menika v. Dingiri Menika*.¹; *Appuhamy v. Dingiri Menika*,²; *Ran Menika v. Mudalihamy*,³; *Appuhamy v. Tikiri Menika*.⁴

It does not appear to me to be necessary to refer to these authorities further in my judgment, as the authorities are all, or nearly all of them, discussed in *Appuhamy v. Gamarala (supra)*.

LYALI. GRANT J.—I agree.

Appeal allowed.

¹ (1872-76) *Ram. Rep.* 130.

² (1889) 9 *S. C. C.* 34.

³ (1912) 16 *N. J. R.* 131.

⁴ (1913) 17 *N. L. R.* 1.