Present: Lascelles C.J.

1913.

RAN MENIKA *v.* MUDALIHAMY.

421—C. R. Kegalla, 11,017.

Kandyan law—Donation by mother of her acquired property to her children—Death of mother and children—Maternal grandmother heir to property in preference to father.

A Kandyan mother married in *bina* donated her acquired property to her children. The children died intestate and issueless after their mother.

Held, that the property devolved on their maternal grandmother in preference to their father.

"The father is not the heir of the property of his children born in a *bina* marriage, which they have acquired through their mother; the maternal uncles or next of kin on the mother's side being the heir to such property; but the father will succeed to such children's property if otherwise acquired."

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THIS was an appeal from the following judgment of the Commissioner of Requests, Kegalla (W. de Livera, Esq.):—

I have to decide in this case a question of Kandyan law. On the admissions the following issue has been framed:—

> "When Punchi Banda and Punchi Appuhami died, did their father, Menikrala, or their maternal grandmother, Dingiri Amma, succeed to their inheritance."

After a perusal of the numerous authorities quoted by counsel I find there is a recognized difference in the social status of a *bina* husband from that held by a *diga* husband, and there is a marked distinction shown in the inheriting status of *bina* to *diga* husbands (*7 N. L. R. 242*).

A *bina* husband has no right to or interest in his wife's property, whether ancestral or acquired, after her death, whether she has left children or not.

A *diga* husband succeeds to his wife's acquired property when she has left no children (*2 S. C. C. 176*), and when she has left issue to a life interest therein. I would refer to C. R. Kegalla, 6,766, decided on August 24, 1905, appeal judgment February 22, 1906. In this case the passages from *Sawer's Digest* in pages 8 and 13 (*Ondaatje's edition*) are discussed. The passage in page 18 clearly states: "The father is not the heir of the property of his children born in a *bina* marriage, which they have acquired through their mother. The maternal uncles or next of kin on the mother's side are the heirs to such children."

In the passage in page 8: "The husband is heir to his wife's landed property, which will at his demise go to his heir."* I find a note in another edition of Sawer, which Mr. Ondaatje has omitted in his edition.

I find in the case reported in *9 S. C. C. 34* it was held that a child's grandmother and uterine half-sister of the latter was preferred to the *bina* husband. This is a Full Court judgment. The passages from *Armour* do not apply; they refer to "Jateke uruma." Under these circumstances, I answer the issue that the maternal grandmother succeeded to the estate of Punchi Banda and Punchi Appuhami in preference to their father Menikrala. I therefore hold that the defendant, the full brother of Dingiri Amma, is entitled to the land, and dismiss the plaintiff's action with costs.

The plaintiff appealed.

Bawa, K.C., Acting S.-G., for the plaintiff, appellant.—The father is the heir to the child's acquired property under the Kandyan law (*Pereira's Armour 88*). Of the two tables given by Sawer, Table B applies to this case.

* *Note.*—This is the opinion of Doloswala Dissawa of Sabaragamuwa, but the chiefs of the Udarata are unanimously of opinion that the husband is not the heir to the wife's landed paraveni estate which she inherited from her parent nor of her acquired landed property. The moment the wife dies the husband loses all interest in his wife's estate, which, if she left no issue, reverts to her parents or their heirs. Though the wife is entitled to the entire possession of her deceased husband's estate so long as she continues single and remains in her house, the husband must quit his wife's estate the moment of her demise.

According to Kandyan law, where a person dies unmarried, childless, and intestate, his acquired property devolves on his father to the exclusion of his brother (*Ranhotia v. Bilinda et al.*[1]). If a brother was excluded, remoter relations on the mother's side would have less right to succeed.

Dingiri Banda v. Kiri Banda [2] does not touch the point now under discussion.

Counsel cited *Punchirala v. Punchi Menika;* [3] *Mudalyhamy v. Bandirala;* [4] *Ukkuhamy v. Bala Etana et al.;* [5] *Modder 186 et seq.*

A. St. V. Jayewardene, for defendant, respondent.—Where the marriage is a *bina* marriage as here, the father is not the heir of the property of his children, which they have acquired through their mother. Such property must go to the next of kin on the mother's side.

Counsel cited C. R. Kegalla, 6,766;[6] *Appuhami v. Dingiri Menika;*[7] *Dingiri Banda v. Kiri Banda.*[8]

Bawa, K.C., in reply.

Cur. adv. vult.

January 27, 1913. LASCELLES C.J.—

This appeal raises a rather obscure point in the Kandyan law of succession. The *propositi* are Punchi Banda and Punchi Appuhami. The question is whether, on the death of these two persons intestate in the lifetime of their father Menikrala, their property devolved on their father, who is now represented by the plaintiff-appellant, or, as the learned Commissioner has held, on their maternal grandmother Dingiri Amma.

The first step in the inquiry is to ascertain the nature of the property, whether it is ancestral *paraveni* or acquired property. On this there is no room for doubt. The property, which consists of lands, was the acquired property of Punchi Menika, the mother of the *propositi*, and she donated it to the *propositi*, reserving a life interest in half the lands in favour of her husband and of her own mother Dingiri Amma.

The character of the property is thus not open to doubt (*vide* definition of the term *lathimi* in *Armour, chapter 6, section 1*). It is in the technical language of the Kandyan law "acquired," and not "ancestral" *paraveni*, property. This being so, the question at first sight would appear to be readily determinable by the tables given in the text books for the succession to acquired property. Two tables of succession are given in different editions of *Sawer*. Both are set out in *Modder* on pages 186 and 187. But in both

[1] *(1909) 12 N. L. R. 111.*
[2] *(1911) 14 N. L. R. 510.*
[3] *(1879) 2 S. C. C. 44.*
[4] *(1898) 3 N. L. R. 209.*
[5] *(1908) 11 N. L. R. 226.*
[6] *S. C. Min., Feb. 22, 1906.*
[7] *(1889) 9 S. C. C. 34.*
[8] *(1911) 14 N. L. R. 510.*

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cases, on the death of the child intestate, his acquired property goes (1) to the mother, and (2) to the father, (3) to brothers and sisters of the whole blood, (4) brothers and sisters uterine of the half blood. There is some difference between the two tables as regards the subsequent order of succession, but this is not material to the question under consideration. Thus, according to the general rules of succession, the plaintiff, as representing the father of the *propositi*, their mother being dead, would appear to be entitled to succeed, and this was the view to which I was inclined at the close of the argument. Further consideration, however, has convinced me that this opinion is not right.

I have been referred, amongst other authorities, to *Ranhotia v. Bilinda et al.*[1] and *Ukkuhamy v. Bala Etana et al.*,[2] but these cases are merely examples, where the Courts have followed the general rules of succession laid down in the text books for the devolution of acquired property on the death of a son or daughter intestate. They do not touch the point on which the Commissioner has decided the case.

The learned Commissioner bases his judgment on a principle of Kandyan law, which forms an exception to the general rule of inheritance. It is thus enunciated by *Sawer* (*p. 14*): "The father is not the heir of the property of his children born in a *bina* marriage, which they have acquired through their mother; the maternal uncles or next of kin on the mother's side being the heir to such property; but the father will succeed to such children's property if otherwise acquired."

There can be no doubt with regard to this exception to the ordinary rule of inheritance. It is reproduced by *Marshall* (*p. 344*) amongst the other rules of succession. (*Vide* also *Modder 65*). Nor can there be any doubt as to the applicability of this rule to the present case. The property here was clearly "acquired through their mother."

The appellant's case, as shown by paragraph 7 (iii.) of his petition of appeal, is based on the authority of the following passage in *Pereira's Armour* (*p. 77*): "But if the child, albeit the issue of a *bina* connexion, had remained under the father's care after the mother's demise, in that case the father will be entitled to a reversion of the child's estate in preference to any child's distant maternal relations (mother's granduncle's son for instance), and that whether the father was or was not also an *ewessa* cousin of the said child's mother."

This apparent conflict between *Sawer* and *Armour* was discussed by the Collective Court in *Appuhami v. Dingiri Menika* [3] (which was a case of ancestral *paraveni* property), with the result that the opinion of Sawer was followed and Sir Charles Marshall's view was followed.

[1] (*1909*) *12 N. L. R. 111.* [2] (*1908*) *11 N. L. R. 226.*

[3] (*1889*) *9 S. C. C. 34.*

Lawrie J., in C. R. Kurunegala 4,944,[1] seems to have had some doubts as to the correctness of this decision. But the decision of the Collective Court on the relative values of the conflicting authorities is binding on me, and in any case I could not have held that the passage in *Armour* was applicable to the facts of the present case. As a matter of construction, I should have held that it was applicable only to cases where the claimants in the maternal line stood in a more remote degree of relationship to the *propositus* than that of great aunt.

For the above reasons, I think the judgment of the learned Commissioner is right, and I dismiss the appeal with costs.

Appeal dismissed.