June 8, 1910 *Present:* The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice van Langenberg.

MEERA SAIBO *et al.* *v.* PUNCHIRALA *et al.*

D. C., Badulla, 2,321.

Kandyan Law—Woman marrying in diga *after her father's death—Forfeiture of rights to paternal inheritance.*

A woman who marries in *diga* after her father's death does not forfeit her rights to the paternal inheritance by reason of the marriage.

THE facts are fully set out in the judgments.

Zoysa, for the appellants.—A daughter who marries in *diga* after her father's death does not forfeit her rights to her paternal inheritance (see *Dingiri Menika v. Heenhami et al.*[1]).

Bawa, for the respondents.—Under the Kandyan Law a daughter gets at her father's death only a defeasible title. She forfeits her right on her being given in marriage in *diga* by her brothers or stepfather. The principle underlying Kandyan Law in this matter is that property should always remain in the family (see *Modder 51, 55; Austin's Reports 164*).

Zoysa.—The fact that a daughter marries in *diga* does not necessarily make her lose her right to the paternal inheritance. Counsel cited *Dingiri Amma v. Ukku Banda*,[2] *Sawyer 1, Armour 50.*

June 8, 1910. HUTCHINSON C.J.—

The plaintiffs claimed a declaration of the title of the first and second plaintiffs to a field called Illuktalawa, and to recover possession and damages. The first plaintiff claimed an undivided half of the field by purchase from the second plaintiff, and also claimed to be lessee of the other half from the second plaintiff; and the second plaintiff claimed the other half by inheritance from his father; the third plaintiff claimed under an *ande* agreement with the first plaintiff.

The field belonged to the second plaintiff's father. He had one son, Siyatu (who is the second plaintiff), and five daughters. All the daughters married in *diga*, and the District Judge held that under the Kandyan Law, which applies in this case, they by their marriages forfeited their rights in this field, but that two of them

[1] *(1909) 3 Leader L. R., Part 2, 8.* [2] *(1905) 1 Bal. 193.*

afterwards regained their rights, and as to those two the plaintiff has not appealed. The only appeal is by the second and third defendants. The third defendant claims under a usufructuary mortgage of their shares from two of the daughters, Ran Menika and Muttu Menika, whom the Judge held to have forfeited, and not regained, their rights; and the second defendant claims those same shares under an agreement with the third defendant.

The contention on behalf of the defendants has been that, inasmuch as both Ran Menika and Mutu Menika were unmarried at the time of their father's death, they did not forfeit their rights; that the Kandyan Law is that a daughter who is unmarried at her father's death does not forfeit her rights in the paternal lands by subsequent marriage in *diga*. There is a decision of mine to that effect reported in *3 Leader L. R., Part 2, 8*. That was a Court of Requests case. There was no appearance for the respondent, and I see from my notes that the appellant's counsel only referred to the passage in *Perera's Armour 59*, and did not mention the authorities which might have been quoted on the other side, and that I did not discover them for myself. Having now read them, I am obliged to say that I think my former opinion was wrong. I concur in the order proposed by Van Langenberg J.

VAN LANGENBERG A.J.—

This is an action by the plaintiff to be declared entitled to a field Illuktalawa. This field belonged to one Illuktalawa Vidane, a Kandyan, who died in 1893, intestate, leaving him surviving one son, Siyatu, the second plaintiff, and five daughters, Hin Menika (wife of the first defendant). Ukku Menika, Ran Menika (wife of the second defendant), Muttu Menika, and Kudu Menika. The five daughters married in *diga*, and the plaintiffs say that under the Kandyan Law they foreited their rights to their father's estate, and that the second plantiff became entitled to the entirety.

On February 25, 1907, the second plaintiff sold an undivided half of the field to the first plaintiff, and later leased the remaining half to him. The third plaintiff is a tenant under the first. The first plaintiff claimed a right to the possession of one-sixth under his wife. The third defendant based his right to possession to two-sixths on usufructuary mortgages executed in his favour by Ran Menika and Muttu Menika, while the second defendant said that he was cultivating these shares under the third defendant.

The learned District Judge held that the five daughters lost their rights to share in their father's estate, but that two of them, namely, Kudu Menika and Hin Menika, regained their rights, the former by continued residence in the paternal home and the latter by returning to it, and he declared Kudu Menika and Hin Menika each entitled to one-sixth, and allotted the remaining two-thirds to the first

June 8, 1910

VAN LANGENBERG A. J.

Meera Saibo v. Punchirala

plaintiff. The second and third defendants have appealed, but there was no appeal either by the plaintiff or by the first defendant.

Ran Menika married in 1898 and Muttu Menika about 1903, and the first point argued by Mr. de Zoysa for the appellant was that as these two women were unmarried at the time of their father's death they succeeded to the inheritance, and their subsequent marriage in *diga* did not affect their rights, and he cited in support of his contention the case of *Dingiri Menika v. Heenhami et al.*[1] The Solicitor-General, for the respondent, referred us to several authorities, showing that the daughter does in these circumstances forfeit her share of her father's estate, and it was so expressly decided by this Court in a case reported in *Austin's Reports 164, South Court, No. 14,991.* This decision and others to the same effect were cited and followed by Sir Archibald Lawrie in D. C., Kurunegala, 434/140. *Okandapola Kiri Menika v. Okandapola Kalu Menika:*[2]

In my opinion both Ran Menika and Muttu Menika were divested of their rights to the paternal estate by marrying in *diga*. The fact that they " went out in *diga* of their own accord " (I am quoting the evidence of their mother) does not affect the question. It follows that neither the second defendant nor the third defendant has any right to remain in possession of any portion of the field, and they are therefore trespassers. This being so, it does not concern the appellants whether first plaintiff has been given a larger share than he is entitled to, and it is also unnecessary to determine a point raised in the course of the argument as to the effect of the return to the paternal home of a woman who had forfeited her inheritance by a *diga* marriage, whether she becomes entitled to a share of the paternal inheritance or can claim maintenance only.

The District Judge, I think, was wrong in decreeing the cancellation of the mortgage bonds made in favour of the third defendant, and I think that this portion of the decree should be struck out. With this modification I would affirm the decree with costs.

Appeal dismissed; decree varied.

[1] *(1909) 3 Leader L R., Part 2, 8.*
[2] *(May 1 and 15, 1894) Modder's Kandyan Law 55.*