Present: Wood Renton C.J. and De Sampayo J. **1916.**

KIRI MENIKA *v.* RAN MENIKA.

36—D. C. (Inty.) Kurunegala, 1,295.

Kandyan law—Person dying childless—Acquired property—Intestate succession—Does a niece exclude the widow?—Rule when widow is ewessa *cousin of husband—Rule as to movable property.*

Under the Kandyan law, where a person dies childless, the widow is entitled to the movable property, except heirlooms.

As regards landed property, the general rule is that the widow is excluded by the deceased's parents and brothers and sisters and their issue, but she has the same life interest in her husband's acquired and hereditary property as the widow of a husband who died leaving issue. If the barren widow be the husband's paternal aunt's daughter or his maternal uncle's daughter, she inherits next to full brothers the acquired lands.

THE facts are set out in the judgment.

A. St. V. Jayewardene, for appellant.

Bawa, K. C., for respondent.

Cur. adv. vult.

May 23, 1916. DE SAMPAYO J.—

This appeal raises an interesting point of Kandyan law under the following circumstances. Ukku Banda died intestate and issueless, and letters of administration to his estate have been granted to his widow Kiri Menika, the respondent to this appeal. The intestate had a sister, Dingiri Menika, who predeceased him, leaving one child, Ran Menika, the appellant. The appellant applied to be declared the sole heir of the intestate and entitled to all his property, subject only to a life interest in the widow in the acquired property. At the inquiry, however, it was admitted that the estate consisted of acquired property only, and the inventory shows that it comprises both immovable and movable property.

The question is whether under the Kandyan law a niece excludes the widow of a person who dies childless. The authorities are agreed that the widow is entitled to the movable property, except heirlooms (*Sawers 15* and *22*; see also *Armour 22* and *Marshall's Judgments 346* and *347*). I think, therefore, that the appellant's claim cannot be sustained, so far as the movable property is concerned. As regards landed property, the general rule appears to be that the widow of a person dying childless is excluded by the deceased's parents and brothers and sisters and

1916.

DE SAMPAYO J.

Kiri Menika v. Ran Menika

their issue, who are sometimes described as "near relations" (*Armour 22, 23,* and *26*), but she has "the same life interest, and that only in her husband's landed property, whether hereditary or acquired, as the widow of a husband who died leaving issue" (*Sawers 1; Marshall's Judgments 326; Modder 324*). But the Kandyan law appears to draw a distinction and to regard with greater favour a widow who is also the husband's *ewessa* cousin, that is to say, a paternal aunt's daughter or maternal uncle's daughter. *Sawers 23* lays down that "if the barren widow be the husband's paternal aunt's daughter or his maternal uncle's daughter, she inherits next to full brothers the acquired lands." Now, the respondent in this case is the intestate Ukku Banda's *ewessa* cousin, being the daughter of his paternal aunt Ukku Menika, and Ukku Banda not having left parents or brothers and sisters, his widow, the respondent, would, under the rule laid down by *Sawers*, inherit his acquired landed property, that is to say, in the circumstances of the case, his entire immovable estate, to the exclusion of the appellant, who is only the daughter of a deceased sister. But the authority of *Sawers* on this point is disputed by Mr. Jayewardene for the appellant, who depends on *Armour*, and we have been referred to *Tittewelle Sangi v. Tittewelle Mohotta*[1] as to the relative weight of the opinions of *Sawers* and *Armour*. I am not disposed to revive that controversy, and would be prepared to follow *Armour* if there were any passage there directly opposed to *Sawers*. But I can find no such passage. *Armour* omits to discuss the specific case of the right of a widow, who is also the *ewessa* cousin of the husband, to the acquired lands where there is no relative nearer than a brother or sister. But at page 26 he does discuss and allow such a widow's right to lands inherited from his father or mother in preference to his other cousins, and at page 17 other cases are mentioned which show the preferential position generally of an *ewessa* widow under the Kandyan law. On the other hand, *Marshall 324* quotes the above passage of *Sawers* without any comment, and presumably with approval, as stating an accepted principle of the Kandyan law. It is well known that a marriage between *ewessa* cousins is the most favoured form of marriage under that law. *Sawers*, as quoted by *Marshall 343*, says: "Their custom makes their intermarriages the most approved connections. The son of the eldest brother has a sort of vested right to have for his wife his cousin, the eldest daughter of his father's eldest sister, and the connections of the most respectable families often run in this way from generation to generation." In this state of the authorities, I do not see any reason derivable from the text books of the Kandyan law or from the principles of natural justice why the rule laid down by *Sawers* on the point in question should not be accepted as correct.

[1] (*1903*) *6 N. L. R. 20.*

I accordingly think that the learned District Judge, who himself has large experience in the administration of the Kandyan law, was right in rejecting the application of the appellant. I would dismiss the appeal with costs.

WOOD RENTON C.J.—I agree.

Appeal dismissed.