1955 *Present :* **Gratiaen J. and Sansoni J.**

B. A. J. APPUHAMY, Appellant, *and* B. S. SILVA *et al.*, Respondents

S. C. 34—D. C. Kurunegala, 4,087

Kandyan Law—Child born in diga *marriage—Death intestate and issueless—Inheritance—*Stare decisis.

When a Kandyan child born in a *diga* marriage dies intestate and without issue, his interests in immovable property inherited from his deceased mother (who had herself inherited the property from her father because, in spite of her *diga* marriage, she had for one reason or another not forfeited her rights of succession) pass absolutely to his father.

Chelliah v. Kuttapitiya Tea and Rubber Co. Ltd. (1932) 34 N. L. R. 89, followed.
Bisona v. Janga (1948) 41 C. L. W. 40, not followed.

It is undesirable to disturb a long-established ruling on any question of law affecting rights of succession.

APPEAL from a judgment of the District Court, Kurunegala.

Cyril E. S. Perera, Q.C., with *S. W. Jayasuriya*, and *T. B. Dissanayake*, for the plaintiff appellant.

H. W. Jayewardene, Q.C., with *P. Ranasinghe*, for the 1st and 2nd defendants respondents.

Cur. adv. vult.

January 26, 1955. GRATIAEN J.—

In *Chelliah v. Kuttapitiya Tea and Rubber Co., Ltd.* [1] this Court was called upon to consider the correctness of the proposition that when a Kandyan child born in a *diga* marriage dies intestate and without issue, his interests in immovable property inherited from his deceased mother (who had herself inherited the property from her father because, in spite of her *diga* marriage, she had for one reason or another not forfeited her rights of succession) pass absolutely to his father. Garvin J. and Jayawardene J. pointed out that the balance of judicial decision supported this proposition which, right or wrong, ought therefore not to be disturbed. As far as we are aware, this ruling has ever since 1932 been regarded as having settled the law.

It is true that in *Bisona v. Janga* [2] Basnayake J., sitting alone, took the view that in the circumstances referred to the father would inherit only a life-interest in his child's estate. His attention does not appear, however, to have been directed to the ruling in *Chelliah v. Kuttapitiya Tea and Rubber Co., Ltd.* (supra) ; he certainly makes no reference to it in his judgment.

[1] *(1932) 34 N. L. R. 89.* [2] *(1948) 41 C. L. W. 40.*

It may well be correct to say, as Garvin J. himself seems to have thought, that the view preferred by Basnayake J. is more in keeping with the spirit of the Kandyan Law. But a single Judge is powerless to over-rule an earlier decision (not made *per incuriam*) of a Bench of two Judges of this Court. Indeed, my brother and I, sitting together, are equally powerless, and we must therefore decline the invitation to review the question as if it were *res integra.* Nor do we consider it appropriate to request my Lord the Chief Justice to revive the controversy by referring the matter at this late stage for an authoritative pronouncement by a collective Court constituted under Section 51 of the Courts Ordinance. It is not at all desirable to disturb a long-established ruling on any question affecting rights of succession. As Bertram C.J. pointed out in a similar situation, " there should be a fixed rule rather than one varied from time to time " —*Nanduwa v. Punchirala* [1]. A reversal of the earlier decisions which were pronounced in 1922 to have settled the controversy once and for all would gravely prejudice the property-rights of many persons who are not parties to the immediate litigation. In such cases, the salutary rule of *stare decisis* is specially compelling.

The learned District Judge of Kurunegala was perfectly correct in applying to the facts of this case the ruling in *Chelliah v. Kuttapitiya Tea and Rubber Co. Ltd.* (supra). I would therefore dismiss the appeal with costs.

SANSONI J.—I agree.

Appeal dismissed.