

1916.

*Present* : Shaw A.C.J. and De Sampayo J.

HUDI *v.* RANGI *et al.*

340—D. C. Badulla, 3,028.

*Kandyan law—Life interest of widow over husband's acquired property—  
Widow marrying a second time contrary to the wishes of the  
husband's family.*

The life interest of the widow of a deceased Kandyan over his acquired property does not cease on her marrying a second time contrary to the wishes of her late husband's family.

**T**HE facts appear from the judgment.

*J. W. de Silva*, for the appellants.

*E. W. Jayewardene*, for the respondent.

September 14, 1916. SHAW A.C.J.—

The plaintiff in this case is a childless Kandyan widow, and brings the present action claiming a declaration that she is entitled to possession of the acquired property of her late husband and to a life interest therein. The defendants by their answer alleged that

the plaintiff had married a second time contrary to the wishes of the heirs, and had left her late husband's house. The District Judge has decided that the answer affords no defence in law, and has given judgment for the plaintiff for the declaration claimed. It is well-established law that a Kandyan widow has the right to retain possession during her lifetime of the acquired property of the husband. (See *Kalu v. Lami*,<sup>1</sup> *Kuda Etana v. Ran Etana*.<sup>2</sup>) It has also been held in two cases that the life interest of a widow of a deceased Kandyan in his acquired property does not cease on her marrying a second time. (See *Nila Henaya v. Dissanayaka Appuhamy*,<sup>3</sup> *Manika v. Horetala*.<sup>4</sup>) This latter case was decided by Lawrie and Withers, Justices, the former of whom says in his judgment: "I do not find authority of a kind which I think sufficient that the widow's possession of acquired land was to come to an end on a second marriage. One reason why she was allowed to possess for her life was that in most cases it had been purchased by the savings and exertions of his wife as much as of the husband." The defendants in the present case base their argument on this appeal upon a passage in Armour's *Grammar of Kandyan Law* 23, in Percra's Edition 27, which is cited in *Marshall's Judgments* at page 326, which is to the effect that the widow will lose her rights and life interest in her husband's estate by taking a second husband contrary to the wishes of her first husband's family, or by disgraceful conduct, and it is said that it applies in the present case. It will be noticed that in the portion of Armour's work in which this paragraph occurs he is dealing with the widow's rights in her husband's *paraveni* property and for her maintenance therefrom, and I think that the statement of the law which I have referred to is intended to refer to her interest in the *paraveni* property only, and the author is not directing his mind to question the widow's rights in acquired property, and this, I think, is the view of the statement of this paragraph in the cases I have referred to. No case has been cited to us in which it has ever been held by the Courts that a widow loses her interest in acquired property if she marries against the wishes of her late husband's family, and the dicta in the cases appears to me to exclude any such reading of the law. The reason given by Mr. Justice Lawrie for her being allowed a life interest in acquired property, namely, that it had very likely been acquired largely by the exertions of the wife, seems equally to be opposed to any attempt to take it from her by her late husband's relations should they chose to oppose a second marriage. Moreover, that this is the view taken in recent times appears in Mr. Modder's work on Kandyan law, where he says at paragraph 169: "A widow forfeits her right to maintenance by contracting a subsequent marriage contrary to the wishes of the first husband's

1916.

SHAW A.C.J.

*Hudi v.  
Rangi*<sup>1</sup> (1905) 11 N. L. R. 222.<sup>3</sup> 6 N. L. R. 214.<sup>2</sup> (1912) 15 N. L. R. 154.<sup>4</sup> 3 S. C. R. 167.

1916.  
SEAW A.C.J.  
*Hudi v.*  
*Rangi*

family or by disgraceful conduct." The author is obviously here referring to the passage in Armour's work, to which I have referred, and he restricts it to the right of maintenance, namely, to her right in the *paraveni* property, of her husband, and does not extend it to her right in his acquired property, which it is sought to do in the present case. In my opinion the decision of the District Judge is right, and should be affirmed, with costs.

DE SAMPAYO J.—I agree.

*Affirmed.*

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