1950 *Present:* **Nagalingam J. and Pulle J.**

AUSADAHAMY *et al.*, Appellants, *and* TIKIRI BANDA, Respondent

S. C. 234—D. C. Kurunegala, 5,155

Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938—Inheritance —Rights of childless Kandyan widow to life interest in acquired property of deceased husband—Meaning of "acquired property"—Retrospective effect of Ordinance—Sections 10, 11, 26.

M gifted certain immovable property to his son U in 1908. U gifted it in 1917 to his son P. P, who was a Kandyan, died in 1943, intestate and issueless leaving him surviving his widow, his brother and another.

[1] *(1947) 2 A. E. R. 541.* [2] *(1946) 2 A. E. R. 345.*

Held, that the property in the hands of P was " acquired property " and that on his death his widow became entitled to a life interest over it.

Per NAGALINGAM J.—" I am therefore of opinion that the term ' acquired property ' as used in the proviso to sub-section (1) (of section 10 of the Kandyan Law Declaration and Amendment Ordinance) has not the same meaning as that term has in sub-section (3) and that clauses (*b*) and (*c*) of sub-section (1) are not retrospective in their operation. The term " acquired property " in the proviso must be determined having regard not to the provisions of the Ordinance or in particular to section 10, but having regard to what the law was at the date the property became vested in the person from whom it passed to the propositus."

APPEAL from a judgment of the District Court, Kurunegala.

E. B. Wikramanayake, K.C., with *C. Seneviratne* and *H. Wanigatunga*, for the defendants appellants.

C. R. Guneratne, with *T. B. Dissanayake*, for the plaintiff respondent.

Cur. adv. vult.

November 15, 1950. NAGALINGAM J.—

The rights of a childless Kandyan widow arise for determination on this appeal. Punchi Banda, admittedly a Kandyan, died on December 16, 1943, leaving him surviving his widow Ran Menika, his brother Ausadahamy the 1st defendant and one Dingiri Menika the 2nd defendant. By indenture of lease P 3 of 1947 the widow executed a lease demising certain lands which were owned by her deceased husband to the plaintiff. The defendants dispute the right of the plaintiff to enter into possession of three of the lands demised. Punchi Banda became owner of the lands in dispute under a deed of gift P 2 of 1917 executed by his father Ukkuhamy. Ukkuhamy himself had obtained a gift of the lands under deed P 1 of 1908 from his father Menik Hamy.

The question that arises for determination on these facts is whether the widow Ran Menika has a life-interest over the disputed lands and no greater interests are claimed on her behalf; for if she has, then the lease P 3 would be good for the full term of the demise provided she survives the term. Punchi Banda having died after the coming into operation of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, the claim of the widow would fall under section 11 of the Ordinance which vests on her an estate for life in the *acquired property* of her husband. The problem then narrows itself down to an ascertainment of whether the lands in dispute are " acquired property " within the meaning of section 11 of the Ordinance.

The connotation of the term " acquired property " is indicated in section 10 of the Ordinance but no attempt has been made to define it directly or affirmatively. Sub-section 3 of the section enacts:

" *Except as in this section provided* all property of a deceased person shall be deemed to be acquired property. "

The task, then, is to determine what it is that the section excepts. The section, first of all, defines the opposite of " acquired property ", namely, Paraveni property. Sub-section 1 of the section demonstrates that the character of Paraveni that is superimposed on property is dependent entirely upon the manner or mode in which a person becomes entitled to it, and it indicates three different modes by which a person becoming the owner of property would throw the mantle of paraveni on property the subject of such ownership. It is an essential requisite of paraveni that the property should pass to the person from one to whose intestate estate he would be an heir; provided this requisite is satisfied, then if the property passes by (1) succession or (2) gift *inter vivos* or (3) devise under a last will, the property becomes paraveni.

The proviso next proceeds in certain circumstances to convert what the main provisions—section 10 (1) (*a*), (*b*) and (*c*)—declare to be paraveni into acquired property, and this it does by imposing the fulfilment of certain conditions specified therein. There are two conditions which are antecedently predicated, (1) that the propositus should not have left him surviving a child or descendant, and (2) that the property should have been the *acquired property* of the person from whom it passed to the propositus. The difficulty that is created arises by the use of the term " acquired property " both in the proviso and in sub-section 3. The contention for the defendants is that the two terms are used in identically the same sense and that in fact the term " acquired property " in the proviso must be held to have the same meaning that the term " acquired property " is given in sub-section 3, on the basis that " it is a sound rule of construction to give the same meaning to the same words occurring in different parts of an Act of Parliament or other document " —*Coustauld v. Legh* [1]. But this is not an inflexible rule, for " many instances occur of a departure from the cardinal rule that the same word should always be employed to mean the same thing "—*per* Chitty, L.J., in *Thames Conservators v. Smeed Deen & Co.* [2]. The proper approach, therefore, is to examine the sense of the word in the different contexts in which it has been used and ascertain whether it bears the same meaning or not in the different parts of the Act, nay of the same section.

First of all, assuming that the term " acquired property " has the same meaning in the proviso as that given to it in sub-section 3, the following position would result: The propositus being in this case Punchi Banda and the deed of gift P 2 having been executed in his favour by his father to whom he would have been an intestate heir, by virtue of section 10 (1) (*b*) the property would be paraveni. Punchi Banda admittedly had no children surviving him. Then one has to apply the proviso and determine whether the property in Ukkuhamy's hands which passed to the propositus was the acquired property of Ukkuhamy. Now, Ukkuhamy is shown to have obtained the property under deed of gift P 1 from his father Menik Hamy, and if section 10 is to be applied to determine the character of the property in the hands of Ukkuhamy, then by sub-section 1 (*b*), it would be undoubtedly paraveni, and as there is a failure of the conditions necessary to apply the proviso, no further questions would arise. But the soundness of the proposition

[1] *(1869) L. R. 4 Ex. 126.* [2] *(1897) 2 Q. B. 334.*

must be tested by application of the principle to situations that may arise even apart from the facts of this case. Let us assume that the deed of gift P 1 was executed in favour of Ukkuhamy not by his father but by B a brother of his to whom he was an heir and that the brother in fact died without children. In such a case it would not be possible not to apply the proviso to section 10 (1) for the operation of the provision of sub-section 1 is limited by the proviso and cannot be read independently of the proviso. This process may have to be repeated several times in appropriate cases. I do not think that the Legislature intended such a result. It may, however, be said that the proviso does not permit of an investigation of the nature of the property in the hands of B, the brother, from whom it passed to Ukkuhamy, as the proviso refers only to the person (Ukkuhamy) from whom the property passed to the propositus and not to any other person such as B. I think there is weight in this contention. It must then necessarily follow that as the proviso cannot be applied to determine the character of the property in the hands of B, the brother, the main provisions too cannot be applied to determine the nature of the property in his hands; in other words the main provisions must be restricted in their application to cases to which the proviso itself can be applied. The logical position then is that sub-section (1) inclusive of the proviso can have application only to the determination of the character of the property in the hand of the propositus and of no one else.

Mr. Wikramanayake sought an avenue of escape from the difficulty resulting from the application of the proviso even in regard to the third person from whom the property passed to the person from whom it vested on the deceased by suggesting that the term "acquired property" in sub-section (3) should be read as acquired property other than what is described as paraveni in the main provisions of sub-section (1) excluding therefrom the proviso. This argument at the outset fails to take note of the provision of sub-section (2), to which I shall presently advert. It may, however, be said that the argument really is that not only should paraveni as described in sub-section (1) (*a*), (*b*) and (*c*) (without resort to the proviso) but also paraveni as indicated in sub-section (2) should be excluded and the rest regarded as acquired property of a deceased person. I cannot accede to this suggestion, for to do so would be to include among paraveni what by the proviso is deemed to be acquired property; it would also set at naught the canon of interpretation relating to statutes, that all parts of a statute must be given effect to and that no part is to be treated as redundant unless very cogent reasons exist for adopting such a course. In this case no such reasons have been shown to exist. Indeed on the other hand it is admitted that the proviso has a real function to perform, at any rate in the application of the sub-section to estates of persons dying after the commencement of the Ordinance, and that even in the application of the sub-section to estates of persons dying before the commencement of the Ordinance, as has been contended for by the defendants, no absurdity necessarily results if the proviso were allowed to have operation.

A perusal of the various provisions makes it clear that the Legislature has been careful not only not to affect past transactions but also not to

disturb the law with regard to accepted principles as administered by Courts save in regard to acts done after the commencement of the Ordinance and to inheritances that came into existence after the commencement of the Ordinance. This aspect is prominently noticeable when one considers the provisions of sub-section 2.

The character of paraveni, it must be noted, is not something that the property acquires at the time of the death of the owner but on the contrary it is a character that the property assumes at the time that a person *becomes* the owner of the property. But in certain circumstances, paraveni property may become acquired property in the hands of the person in whom it was paraveni, and that during his lifetime. Sub-section 2 recognises such a possibility for it provides that where the paraveni consists of an undivided interest and that undivided interest is converted into divided ownership either by amicable partition or by decree of Court, such divided portion is to be regarded as paraveni property provided such division takes place after the commencement of the Ordinance. It is true, however, to say that it would not be proper in construing a provision of the law to deduce the existence of a principle by way of implication. Now, this sub-section does not say that undivided interest in paraveni converted into divided ownership prior to the commencement of this Ordinance is to be regarded as acquired property although it may be said that that is the implication; the true view, however, would be that the Ordinance does not deal with such a case. One must therefore look to what the law is apart from and independent of the Ordinance itself. Looked at from this standpoint, the law as settled by the judgments of this Court is that where paraveni co-ownership is converted into divided ownership, the divided lot to which the paraveni co-owner may thereby become entitled loses its character of paraveni and becomes acquired property. The Ordinance thus leaves the law in this regard in the same position in which it was prior to its enactment.

It will be noticed that in sub-section (2) the term " person " is used as distinct from the term " deceased person " in sub-section (1) or (3). The reason is fairly obvious; the ambit of the sub-section is intended to extend beyond the class of deceased persons referred to in sub-sections (1) and (3) and to include a class of living persons as well. A person alive at the date of the commencement of the Ordinance may have converted his undivided paraveni into a divided interest *before the commencement of the Ordinance.* Now, that class of transactions the Ordinance does not attempt to reach; this is another instance where the Ordinance makes no inroads into the law as it stood at the date of its passing. Sub-section 2, however, affects a case of transmutation of paraveni co-ownership into divided ownership effected after the commencement of the Ordinance—and this can only be by a person alive at the date of the enactment of the Ordinance—and declares that the character of paraveni shall continue to attach notwithstanding the transmutation. Under this latter class will fall the group of cases where a deceased person becomes vested with title to property under a deed of gift executed by a donor who survives him and who after the commence-

ment of the Ordinance and prior to the execution of the deed of gift had converted the gifted property into a divided interest from one that had been his undivided paraveni. Had the term " deceased person " been used in sub-section (2) instead of the term " person " then this group of cases would result in being excluded.

So that, if the Legislature did not intend to alter the law completely even in regard to the estate of a person dying after the commencement of the Ordinance, there is less reason to hold that the Legislature intended to reach transactions of persons who may have died before the passing of the Ordinance.

Further, it would be manifest that the word " person " in sub-section (2) is used in the sense of persons who were alive at the date of the commencement of the Ordinance, while in the provisions to sub-section (1) the word " person " is used in the sense both of persons who were alive at the date of the commencement of the Ordinance and of those who may have died before the commencement of the Ordinance. The Legislature has therefore, in its use of the term " person ", departed from the rule that the same word should have the same meaning in the different parts of the Ordinance.

Another consideration against the contention put forward by the defendants is that section 26 of the Ordinance expressly enacts that its provisions shall not have and shall not be deemed or construed to have any retrospective effect *except in cases where express provision is made to the contrary*. The words used are very emphatic and admit of no ambiguity. No retrospective effect should be given to the provisions of the Ordinance unless it could be shown that express provision is made that retrospective effect should be given. And to put the matter beyond any argument, the Legislature has taken pains to say that not only are the provisions not to have but that they shall *not be deemed to or construed to have retrospective effect*. Now, neither in section 10 nor in any other part of the Ordinance are there words from which it could be said that express provision has been made for retrospective effect being given to the provisions of section 10; therefore, even a construction of the section so as to give it retrospective effect is completely barred. The application of section 10 (1) (*b*) to determine the character of the property in Ukkuhamy's hands would indisputably result in giving retrospective effect to the estate of a person who had died before the commencement of the Ordinance, for it would be noticed that the sections comprised in Cap. 4 of the Ordinance and dealing with inheritance to immovable property apart from section 10 which is intended to be one explanatory of the terms used, all deal with rights of inheritance to estates of persons who die after the commencement of the Ordinance, and in no single instance to the estate of a person who may have died before the commencement of the Ordinance.

It is, however, said that the Ordinance being a declaratory one, retrospective effect should be given to its provisions—*Attorney-General*

v. Theobald [1]. This rule too is subject to qualification. In the words of Lord Watson in *Young v. Adams* [2],

> " It may be true that the enactments are declaratory in form; but it does not necessarily follow that they are therefore retrospective and were meant to apply to acts which had been completed or to interests which had vested before they became law. "

The Ordinance is, however, not entirely declaratory, for it is also an amending piece of legislation. Where the Ordinance confers on a childless widow a life interest on the acquired property of the husband, it is purely declaratory, as it was always the law; similarly, where it provides that property vesting by succession *ab intestato* on an heir is paraveni, it enacted nothing new; but when it says that a gift by a deed *inter vivos* or a devise under a last will belonging to a person dying after the commencement of the Ordinance is to be paraveni, it enacts new law, which cannot be given retrospective effect.

I am therefore of opinion that the term " acquired property " as used in the proviso to sub-section (1) has not the same meaning as that term has in sub-section (3) and that clauses (*b*) and (*c*) of sub-section (1) are not retrospective in their operation. The term " acquired property " in the proviso must be determined having regard not to the provisions of the Ordinance or in particular to section 10, but having regard to what the law was at the date the property became vested in the person from whom it passed to the propositus and, applying the principle to the facts of the present case, what the law was at the date of the gift by Menikhamy to Ukkuhamy. Undoubtedly, according to the law that governed this transaction at the date it took place, it was acquired property in the hands of Ukkuhamy though it was a gift by his father. In this view of the matter, it must follow that the property in dispute is the acquired property of Punchi Banda and that his widow Ran Menika has a life interest over it.

For the foregoing reasons, the judgment of the learned District Judge is affirmed and the appeal is dismissed with costs.

PULLE J.—

I agree that the term " acquired property " in the proviso to section 10 (1) of the Kandyan Law Declaration Amendment Ordinance, No. 39 of 1938, must be interpreted on the facts of the present case as meaning the character of the property in the hands of Punchi Banda determined according to the law as it stood prior to the coming into operation of the Ordinance. I am firmly convinced that section 26 of the Ordinance was purposely intended not to alter paraveni to acquired property or *vice versa* solely by reason of anything contained in the Ordinance. It is on this basis that I arrive at the conclusion that the property in question was at all times " acquired " in the hands of Punchi Banda and that on his death the widow Ran Menika became entitled to a life interest.

Appeal dismissed.

[1] *(1890) 24 Q. B. D. 557.*

[2] *(1898) A. C. 469.*